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Legislation Details (With Text)

File #: SO2015-1532

Type: Ordinance **Status:** Passed

File created: 3/18/2015 **In control:** City Council

Final action: 5/6/2015

Title: Amendment of Municipal Code Chapter 4-4 by adding new Section 285 regarding summary closure of establishments deemed public safety threat

Sponsors: Emanuel, Rahm, Reilly, Brendan, Mitts, Emma, Reboyras, Ariel, Dowell, Pat, Holmes, Natashaia, Graham, Deborah L., Arena, John

Indexes: Ch. 4 General Licensing Provisions

Attachments: 1. SO2015-1532.pdf, 2. O2015-1532.pdf

Date	Ver.	Action By	Action	Result
5/6/2015	1	City Council	Passed as Substitute	Pass
5/5/2015	1	Committee on License and Consumer Protection	Add Co-Sponsor(s)	
5/5/2015	1	Committee on License and Consumer Protection	Substituted in Committee	Pass
3/18/2015	1	City Council	Referred	

SUBSTITUTE ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Title 4 of the Municipal Code of Chicago is hereby amended by inserting a new section 4-4-285, as follows:

4-4-285 Public safety threat - Summary closure - When authorized.

(a) Definitions. As used in this section:

"Acceptable nuisance abatement plan" or "nuisance abatement plan" means any conduct, action, step or acceptance of conditions that is reasonably calculated to prevent the reoccurrence of a public safety threat under this section, as agreed to by the licensee/owner and approved by the mayor in consultation with the superintendent.

"Appropriate means to effect the summary closure" or "means of closure" means a police order, sign, lock or other barrier or device intended to seal, secure, close or otherwise render an establishment or any part thereof inaccessible

to persons.

"Establishment" means any premises or place of business licensed or required to be licensed by law. The term "establishment" includes adjacent property. As used in this definition, "adjacent property" means (1) any public way located next to an establishment, if such public way is used by the licensee/owner, patrons or employees of the establishment; or (2) any private property that is located next to an establishment, if such private property is owned, leased, rented or used by the licensee/owner; or (3) any private property separated from an establishment by a public way and located next to such public way, if such private property is owned, leased, rented or used by the licensee/owner. ,

"Establishment's operating hours" means any time while the establishment is open for business or within one hour or less of the time the establishment is opened or closed for business.

"Licensee/owner" means the licensee of an establishment licensed under this Code. If an establishment is not licensed under this Code, "licensee/owner" means the owner of record of the building or premises in or on which the establishment is operating.

"Mayor" means the mayor of the City of Chicago or the mayor's designee.

"Public safety threat" means the occurrence of all of the following: (1) a violent offense occurs at an establishment during the establishment's operating hours, and (2).the violent offense

involves acts of the licensee/owner, or its employees, agents or patrons, or otherwise involves circumstances having a nexus to the operation of the establishment, and (3) the superintendent reasonably determines, based on data or information in the superintendent's possession, that continued operation of the establishment presents a danger to the public.

"Summary closure" or "summarily closed" means the immediate cessation of all business activities at an establishment and closure of the establishment.

"Superintendent" means the superintendent of police or the superintendent's designee.

"Violent offense" means the illegal discharge of a firearm; the killing of a human being by another; aggravated assault or aggravated battery; criminal sexual assault; or any other conduct that causes a person to suffer unconsciousness, severe bruising, severe bleeding, disability or disfigurement.

b) Unlawful act - Public nuisance. It shall be unlawful for any person to operate any establishment in a manner that presents a public safety threat. For purposes of this section, a public safety threat is hereby declared to be a public nuisance subject to abatement under this section. If a public safety threat occurs at an establishment, a rebuttable presumption shall exist, for a period of six months after the date on which the public safety threat occurred, that continued operation of the establishment presents a danger to the public.

c) Summary closure order - Lifting of summary closure order - When authorized. If the superintendent determines that an establishment presents a public safety threat, the superintendent may abate the threat by ordering the summary closure of the establishment. Except as otherwise provided in this subsection (c), such order shall remain in effect for an aggregate period of six months as measured from the date on which the public safety threat occurred.

Provided, however, that any summary closure order issued by the superintendent shall be lifted by the mayor, and the establishment shall be allowed to reopen, if (1) it is determined at a probable cause hearing or nuisance abatement hearing that a public safety threat did not occur, or (2) it is determined at a nuisance abatement hearing that continued operation of the establishment no longer presents a danger to the public, as may be evidenced by the submission and implementation of an acceptable nuisance abatement plan. Provided further, that no summary closure order shall be lifted by the mayor if the establishment is not properly licensed as required by law.

d) Notice of summary closure - Required. Upon ordering the summary closure of an establishment, the superintendent shall cause a dated notice to be posted in a prominent place on the establishment informing the licensee/owner of the following facts: (1) the superintendent has issued an order requiring the immediate cessation of all business activities at, and closure of, the establishment; (2) the reason(s) for the summary closure; (3) the licensee/owner's right to request in writing, within three business days after notice is posted, a probable cause hearing before the

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mayor to determine whether a public safety threat occurred; (4) if requested in writing, a probable cause hearing shall be commenced within three business days of receipt of such request; (5) the licensee/owner's right, at any time during the period of closure, to seek to resume business activities at the establishment, by requesting, in writing, a nuisance abatement hearing before the mayor to contest whether a public safety threat occurred or to rebut the superintendent's determination that continued operation of the establishment presents a danger to the public; (6) if requested in writing, a nuisance abatement hearing shall be commenced by the mayor within five business days of receipt of such request; (7) the name of the person and the address to which a written request for each hearing should be directed; (8) the consequences of not requesting a hearing; and (9) the owner's potential liability for three times the cost or expense incurred by the city in abating a public safety threat under this section.

If a person apparently in control of the establishment is present at the time the notice is posted at the establishment, a copy of such notice shall be personally served on such person at that time. In addition, a copy of such notice shall be mailed, by first class mail, to the licensee/owner. If the establishment identified in the notice is licensed under this Code, such copy shall be mailed to the licensee or, if applicable, to the registered agent or other officer of the licensee, at the licensee's business address and, if available, at the licensee's home address. If the establishment identified in the notice is not licensed under this Code, such copy shall be mailed to the owner of record as listed with the recorder of deeds, and to the taxpayer of record, of the building or premises in or on which the establishment is operating. At the time the establishment is summarily closed, the superintendent shall also post a sign at the establishment notifying the public of the penalty which shall attach, as set forth in subsections (m) and (n), if the summary closure order is violated or if any posted notice or means used to effect the closure is removed without authorization.

(e) Probable cause hearing. Within three business days after notice is posted under subsection (d), the licensee/owner of the establishment may request a probable cause hearing before the mayor to determine whether a public safety threat occurred at such establishment. Such request shall be in writing. Within three business days of receipt of a written request for a probable cause hearing, the mayor shall commence such hearing to determine whether a public safety threat occurred. The decision and order of the mayor shall be announced no later than two business days after the probable cause hearing is completed. If, after a probable cause hearing, the mayor determines, by a preponderance of the evidence, that a public safety threat did occur, the mayor shall enter an order authorizing continued closure of the establishment during the interim period prior to expiration of the aggregate six month period.- If, after the probable cause hearing, the mayor determines, by a preponderance of the evidence, that a public safety threat did not occur, the mayor shall enter an order lifting the summary closure order and business operations at the establishment shall be allowed to

resume during the interim period prior to expiration of the aggregate six month period. If, after notice is given to the licensee/owner in accordance with subsection (d), the licensee/owner fails to request a probable cause hearing in a timely manner, or requests a probable cause hearing but fails to appear at the hearing, the mayor shall enter a default

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order in favor of the city authorizing continued closure of the establishment during the interim period prior to expiration of the aggregate six month period. Upon entry of any order under this subsection, the mayor shall so notify the superintendent, who shall take appropriate steps to effect the mayor's order without delay.

(f) Nuisance abatement hearing. At any time during the interim period prior to expiration of the aggregate six month period, the licensee/owner may seek to have the summary closure order lifted by the mayor, by (1) requesting, in writing, a nuisance abatement hearing under this subsection, and (2) showing, at such hearing, that there is reasonable cause to believe that continued operation of the establishment no longer presents a danger to the public, as may be evidenced by the submission and implementation of an acceptable nuisance abatement plan. At such hearing, the licensee/owner may also contest whether a public safety threat occurred at the establishment unless it was previously determined at a probable cause hearing that such public safety threat did occur.

Within five business days of receipt of a written request for a nuisance abatement hearing, the mayor shall commence such hearing. The decision and order of the mayor shall be announced no later than three business days after the nuisance abatement hearing is completed. If, after the nuisance abatement hearing, the mayor determines, by a preponderance of the evidence, that a public safety threat did occur and that continued operation of the establishment presents a danger to the public, the mayor shall enter an order authorizing continued closure of the establishment during the interim period prior to expiration of the aggregate six month period. If, after the nuisance abatement hearing, the mayor determines, by a preponderance of the evidence, that a public safety threat did not occur or that continued operation of the establishment no longer presents a danger to the public, as may be evidenced by the submission and implementation of an acceptable nuisance abatement plan, the mayor shall enter an order lifting the summary closure order, in which case the establishment shall be allowed to reopen prior to expiration of the aggregate six month period.

If, at any time after an acceptable nuisance abatement plan is implemented at the establishment governed by such plan, the licensee/owner fails to comply with the plan or any part thereof or another violent offense occurs at the establishment, the superintendent may reinstate the summary closure order in accordance with the notice and hearing requirements of this section. In such case, the establishment shall remain closed for an additional aggregate period of six months, as measured from the date that the City acquired knowledge of the licensee's noncompliance with the nuisance abatement plan or any part thereof or from the date of the occurrence of another violent offense, as applicable, unless (i) it is determined at a probable cause hearing or nuisance abatement hearing that the licensee/owner was in full compliance with the nuisance abatement plan and all parts thereof or that another violent offense did not occur at the establishment, as applicable; or (ii) it is determined at a nuisance abatement hearing that continued operation of the establishment does not present a danger to the public, as may be evidenced by the submission of a modified nuisance abatement plan, approved by the mayor and implemented by the owner/licensee,

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containing new or additional reasonable and warranted measures capable of abating a nuisance under this section.

g) Evidentiary standard. At any hearing conducted under this section, any evidence on which a reasonably prudent person would rely may be considered without regard to the formal or technical rules of evidence, and the mayor may rely upon written official reports, affidavits and other business records submitted by police officers or other authorized city officials or city employees to determine whether a public safety threat occurred. Provided, however, that only evidence reasonably necessary to demonstrate the existence or absence of elements which must be considered when determining whether a public safety threat occurred shall be heard.

h) Cost recovery authorized. An amount equal to three times the cost or expense incurred by the city in abating a public safety threat under this section may be recovered by the city in an appropriate action instituted by the corporation counsel.

(i) Right of review. Any order of the mayor issued under this section may be appealed to a court of competent jurisdiction or as otherwise provided by law.

(j) Stay pending review. No summary closure order issued by the superintendent under subsection (c), or order of closure issued by the mayor under subsections (e) or (f), shall be considered to be a suspension or revocation of a liquor license subject to review by the License Appeal Commission under the Liquor Control Act of 1934. Nor shall any such order be subject to the automatic stay provision set forth in Section 7-9 of the Liquor Control Act of 1934.

(k) Construction of section. Nothing in this section shall be construed to: (1) prohibit the mayor from taking disciplinary action under section 4-4-280 or any other applicable section of this Code against a licensee for any violation of this section or of this Code; or (2) effect the status of any ongoing city prosecution or other action involving such licensee or establishment, including, but not limited to, any ongoing license suspension or revocation hearing under this Code; or (3) prevent the superintendent from closing any establishment for purposes of conducting an investigation of a crime scene or for any other reason authorized by law; or

4) prevent the arrest and prosecution of any person, pursuant to section 4-4-010 or other applicable section of this Code, for operating a business or occupation without a license; or

5) prevent the arrest and prosecution of any person, pursuant to section 4-4-015 or other applicable section of this Code, for operating a business or occupation in violation of any closure order; or (6) constitute an act of possession, ownership or control by the city over the closed premises; or (7) deny common law right to anyone to abate a nuisance.

(1) Manner of enforcement. The superintendent is authorized to use appropriate means to effect the summary closure of an establishment. The summary closure authorized by this section shall not be executed in a manner that prevents legally required ingress to or egress from the residential occupancy portion of a building. Access to the closed establishment by the

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licensee/owner and other persons able to prove an interest in the establishment may be permitted for the purposes of maintaining the establishment in safe and code-compliant condition, correcting code violations, removing items from the closed establishment and any other purpose authorized in accordance with rules and regulations promulgated by the superintendent. Entry to the closed establishment by government inspectors and investigators acting within the scope of their employment shall be permitted. No means used to close an establishment pursuant to this section shall be removed by the superintendent unless the mayor or a court of competent jurisdiction orders the removal of such means. For purposes of this section, any period of time during which the means used to close an establishment are temporarily

removed pursuant to a court order shall not be included in the calculation of the required closure period.

(m) Prohibition on conducting business. It shall be unlawful for any person to conduct any business activity at, or to knowingly frequent, any establishment that has been summarily closed pursuant to this section. In addition to any other penalty provided by law, any person who violates this subsection shall be fined not less than \$1,000.00 nor more than \$10,000.00 for each offense, or incarcerated for a term of not less than 3 days nor more than 6 months, or both. Each day that a violation continues shall constitute a separate and distinct offense.

(n) Prohibition on tampering with means of closure. Except as authorized pursuant to subsection (1), it shall be unlawful for any person to damage, tamper with, destroy or remove, or to cause to be damaged, tampered with, destroyed or removed, any means of closure used to summarily close an establishment pursuant to subsection (1) or any notice of summary closure or closure sign affixed at such establishment pursuant to subsection (d). In addition to any other penalty provided by law, any person who violates this subsection shall be fined not less than \$1,000.00 nor more than \$10,000.00 for each offense, or incarcerated for a term of not less than 3 days nor more than 6 months, or both. Each day that a violation continues shall constitute a separate and distinct offense.

(o) Failure to comply with approved nuisance abatement plan. It shall be unlawful for any person to fail to comply with any nuisance abatement plan or part thereof approved or subsequently modified under subsection (f). In addition to any other penalty provided by law, which may include license suspension or revocation, any person who violates this subsection shall be fined not less than \$1,000.00 nor more than \$10,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

SECTION 2. This ordinance shall take full force and effect 30 days after its passage and publication.

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Chicago, May 6, 2015

To the President and Members of the City Council:

Your Committee on License and Consumer Protection, having under consideration a substitute ordinance introduced by Mayor Emanuel and Aldermen Reilly, Dowell, Mitts, Reboyras, Holmes, Graham and Arena (which was referred on March 18, 2015), to amend Chapters 4-4 and 4-60 of the Municipal Code of Chicago regarding summary closure of establishments deemed a public safety threat, begs leave to recommend that Your Honorable Body pass the substitute ordinance which is transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the committee on May 5, 2015.

CHAIRMAN, COMMITTEE ON LICENSE AND CONSUMER PROTECTION

Respectfully submitted,