



# Capitola Bar and Grill Entertainment Permit Appeal

Capitola City Council Meeting  
June 21, 2023



## Appeal – Capitola Bar and Grill

### Presentation Overview

1. City Entertainment Permit requirements
2. Capitola Bar and Grill application
3. Reasons for City's denial
4. Appeal



## Municipal Code 5.24

### Capitola Municipal Code Chapter 5.24

- 5.24 – Governs entertainment permits issued by the City
- Identifies three categories of entertainment permits:  
Single, Minor, and General
- Authorizes CM, or Department Head, to issue permit, set with conditions to assure entertainment does not cause a disturbances
- Authorizes City Council or City Manager to add conditions including date/time of operation, and operating noise levels, to further manage noise level limits.



## Entertainment Application

### Entertainment Application

- 5.24.080 – Authorizes City Manager to create application forms. Applicants may be required to submit nonprivileged information reasonably related to intent of Ordinance.
- Current application requires:
  - Information about the business
  - Proposed entertainment including the hours of intended operation
  - Proper licensing and Fire inspections
  - Property Owner's Statement, including the property owner's signature
- Current application has been in place since **2018** and is **consistent with all neighboring jurisdictions.**



# Types of Entertainment Permits

## Capitola Municipal Code Chapter 5.24 – Entertainment Permits

Police Department issues entertainment permits

| Year | Number of Permits |
|------|-------------------|
| 2023 | 8                 |
| 2022 | 12                |
| 2021 | 7                 |
| 2020 | 10                |
| 2019 | 6                 |

- Single EP \$41
  - Single event within seven-day period
- Minor EP \$174
  - Entertainment that is incidental to the primary business
- General EP \$652
  - Live music that attracts business



# Timeline - Capitola Bar and Grill

Capitola Bar and Grill (CBG) History of Entertainment Permits:

**October 21, 2021** – CBG applied and received **Minor EP**. Permit was valid for approximately 6 weeks - issued on Nov 16, and expired on December 31, 2021.

**January 2022** – CBG applied for Minor EP. Based on application, staff required permit to be upgraded to a **General** Entertainment Permit.

Summer of 2022, staff received complaints about entertainment at CBG and discovered the property owner's statement had not been completed

**December 2022** – CBG applied for a General EP, without property owner authorizing signature



# Property Owner Statement

Property Owner Statement:

As the property owner, I do hereby consent to live entertainment of the type described in this application to be conducted upon the premises occupied by the above-named applicant in accordance with the provisions set for by Chapter 5.24 of the City of Capitola Municipal Code.

\_\_\_\_\_  
Property Owner's Signature

\_\_\_\_\_  
Date



# Staff Research

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- Prior to issuing final staff decision on 2023 CBG entertainment permit staff researched history of property owner consent
  - All existing records were examined
  - Staff who oversaw entertainment permits in prior years interviewed
  - Results showed that no other entertainment permits were issued without property owner consent





# Staff Determination and Appeal

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- Staff met with applicants in Dec. 2022 to explain situation and offered to encourage parties to mediate.
  - CBG expressed interest in mediating
  - Staff reached out to property owner to encourage mediation
- After entertainment continued into January 2023, staff issued notice of final decision denying the 2023 application on Jan 31
  - Appeal received from CBG on Feb. 21, 2023



# Appeal Summary

## **Appeal Point 1**

City staff exceeded its authority to put requirement for property owner authorization on the application

## **Response:**

Muni Code authorizes City Manager to develop an application for entertainment permits to implement the City's Code

City's Code is intended to protect persons not patronizing the business that is hosting entertainment

Because property owners often have multiple tenants in a building, ensuring the property owner is supportive of the permit request helps protect property owner's other tenants in the same building.



# Appeal Summary

## **Appeal Point 2:**

City should not cancel that permit unless there is a good reason such as excessive noise complaints

## **Response:**

City did not cancel or revoke the entertainment permit

Entertainment permits are issued on an annual basis

City denied applicant's 2023 entertainment permit because it lacked property owner's signature granting permission to use their property for entertainment purposes



# Appeal Summary

## **Appeal Point 3:**

Landlord is legally bound by his agreements to allow Entertainment.

## **Response:**

City is not a party to lease between landlord and appellant

Staff cannot comment on the provisions in the lease.

City is charged with administering and enforcing its own Municipal Code.



# Appeal Summary

## **Appeal Point 4:**

Because City has twice issued the permit in the past, without the landlord's signature, it should reissue it now.

## **Response:**

Staff acknowledges its error in previously issuing entertainment permits to Capitola Bar and Grill without landlord's signature.

However, the remedy for that mistake is not to grant another permit for 2023.



# Recommendation

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- Adopt resolution denying an appeal of the City Manager's decision to deny an application for a 2023 Regular Entertainment Permit for Capitola Bar and Grill.