

File No. 080324

Committee Item No. 10

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: City Operations & Neighborhood Ser. Date August 10, 2009

Board of Supervisors Meeting

Date _____

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Completed by: Victor Young

Date August 7, 2009

Completed by: Victor Young

Date _____

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FILE NO. 080324

ORDINANCE NO.

1 [Extended-Hours Premises Permits.]

2
3 Ordinance amending the San Francisco Police Code by amending Sections 1070,
4 1070.1, 1070.2, 1070.3, 1070.5, 1070.7, 1070.8, 1070.19, 1070.22, and 1070.24, by adding
5 Sections 1017.17.1, 1017.17.2, 1017.17.3, 1070.28, 1070.29, 1070.30, 1070.31, 1070.32,
6 and 1070.33, and 1070.34, 1070.35, and 1070.36; by repealing Sections 1070.4, ~~1070.12,~~
7 1070.17, 1070.20, 1070.20-1, 1070.21, and 1070.26; and by adding new Sections 1070.4,
8 1070.17, and 1070.20, relating to the application, approval, amendment, suspension,
9 revocation, and transfer of Extended-Hours Premises Permits, including changes in
10 penalties.

11 NOTE: Additions are single-underline italics Times New Roman;
12 deletions are ~~strike through italics Times New Roman~~.
13 Board amendment additions are double-underlined;
14 Board amendment deletions are ~~strikethrough normal~~.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. The San Francisco Police Code is hereby amended by amending Sections
16 1070, 1070.1, 1070.2, and 1070.3, to read as follows:

17 **SEC. 1070. DEFINITIONS.**

18 For the purpose of this Article, unless otherwise provided in this Article, the following
19 words and phrases shall mean and include:

20 (a) "Any Sidewalk Abutting the Premises." The sidewalk not more than 50 feet from the
21 premises of the Business that is located between the premises and a public street. For purposes of this
22 definition, "premises" includes any immediately adjacent area that is owned, leased, or rented by the
23 permit applicant or Permittee.

24 (b) "Bona Fide Nonprofit Club or Organization." Any fraternal, charitable, religious,
25 benevolent, or other nonprofit organization for mutual social, mental, political, or civic welfare, to

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1 which admission is limited to members and guests if the revenue accruing therefrom is used exclusively
2 for the benevolent purposes of said organization or agency, and if the organization or agency is exempt
3 from taxation under the Internal Revenue laws of the United States as a bona fide fraternal, charitable,
4 religious, benevolent or nonprofit organization.

5 (c) "Bona Fide Public Eating Place." A place which is regularly and in a bona fide
6 manner used and kept open for the serving of meals to guests for compensation, with and which
7 has suitable kitchen facilities connected therewith, containing conveniences for cooking an
8 assortment of foods which may be required for ordinary meals, the kitchen of which must be kept
9 in a sanitary condition with the proper amount of refrigeration for keeping of food on said
10 premises and must comply with all the regulations of the Department of Public Health. "Meals"
11 means the usual assortment of foods commonly ordered at various hours of the day; the
12 service of such food and victuals only as sandwiches or salads shall not be deemed a
13 compliance with this requirement. "Guests" shall mean persons who, during the hours when
14 meals are regularly served therein, come to a bona fide public eating place for the purpose of
15 obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in
16 this Section, however, shall be construed to require that any food be sold or purchased with
17 any beverage.

18 (d) "Business." The enterprise for which a permit is sought or has been issued under this
19 Article, whether operated on a for-profit or not-for-profit basis.

20 (e) "Conduct that Constitutes a Nuisance." Any conduct that would constitute a violation of
21 the following laws: assault and battery (Cal. Penal Code §240, 242, 245); sexual battery (Cal. Penal
22 Code §243.4); discharging firearm (Cal. Penal Code §246, 246.3); unlawful weapons (Cal. Penal
23 Code §12020; S.F. Police Code §1291); disturbing the peace (Cal. Penal Code § 415, 416, 417);
24 unlawful threats (Cal. Penal Code §422); obstruction of pedestrian or vehicle right of way (Cal. Penal
25 Code § 370); gambling (Cal. Penal Code §§ 330, 337a); rape (Cal. Penal Code §261); statutory

1. rape (Cal. Penal Code §261.5); prostitution and related offenses (Cal. Penal Code §§ 266, 266a,
2. 266e, 266h, 266i, 315, 316, 647(b)); sex crimes for which registration is required under the Sex
3. Offender Registration Act (Cal. Penal Code §290); felony sexual assault; loitering for lewd or
4. lascivious purposes (Cal. Penal Code §647(d)); loitering on private property without lawful business
5. (Cal. Penal Code §647(h)); identify theft (Cal. Penal Code §530.5); a violent felony warranting
6. enhancement of a prison term (Cal. Penal Code §667.5); criminal gang activity (Cal. Penal Code
7. §186.22); drug offenses (Cal. Health & Safety Code §§ 11351, 11352, 11359, 11360, 11378, 11379,
8. 11378.5, 11379.5); violation of Alcohol Beverage Control laws (Cal. Business & Professions Code §§
9. 23300, 25602, 25631, 25657, 25658); public urination or defecation (San Francisco Police Code
10. §153); accumulation of filth (Cal. Health & Safety Code § 17920.3(j)); or excessive noise emissions
11. (San Francisco Police Code Section 49 or Article 29).

12. (f) "Corrective Action." Action which includes, but is not limited to, the following:

13. (1) Requesting assistance from the local law enforcement agency in a timely manner
14. regarding the conduct.

15. (2) Requesting those individuals engaging in Conduct that Constitutes a Nuisance to cease
16. the conduct, or ejecting those Persons from the premises.

17. (3) Revising the Security Plan, subject to approval by the Entertainment Commission or the
18. Director as provided under this Article.

19. (g) "Dance Academy." The term "Extended-Hours Premises" also includes a dance
20. academy wherein students are admitted between 2:00 a.m. and 6:00 a.m., and instruction is given in
21. ballroom or other types of dancing, whether to the students in groups or individually.

22. (h) "Director." The Executive Director of the Entertainment Commission or an individual
23. designated by the Director to act on his or her behalf.

24. (i) "Entertainment." Any of the following, except when conducted in a private residence:

1 (1) Any act, play, review, pantomime, scene, song, dance act, song and dance act, or poetry
2 recitation, conducted in or upon any premises to which patrons or members are admitted.

3 (2) The playing or use of any instrument capable of producing or used to produce musical
4 or percussion sounds, including but not limited to, reed, brass, percussion, or string-like instruments,
5 or karaoke, or recorded music presented by a live disc jockey on the premises.

6 (3) A fashion or style show.

7 (4) The act of any female professional entertainer, while visible to any customer, who
8 exposes the breast or employs any device or covering which is intended to simulate the breast, or wears
9 any type of clothing so that the breast may be observed.

10 (j) "Extended-Hours Premises." Every premises to which patrons or members are admitted
11 or which allows patrons or members to remain between 2:00 a.m. and 6:00 a.m. which serves food,
12 beverages, or food and beverages, including but not limited to, alcoholic beverages, for consumption
13 on the premises or wherein Entertainment as defined in Subsection (i) is furnished or occurs upon the
14 premises. The term includes a "Dance Academy."

15 (k) "Manager. The individual authorized by the Permittee to exercise discretionary power
16 to organize, direct, carry out or control the operations of the Business.

17 (l) "Permittee." The person to whom a permit has been issued under this Article.

18 (m) "Person." Any person, individual, firm, partnership, joint venture, association, social
19 club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver,
20 syndicate, or any other group or combination acting as a unit excepting the United States of America,
21 the State of California, and any political subdivision of either.

22 (n) "Security Guard." A person who has a valid Proprietary Private Security Officer
23 registration document issued by the California Department of Consumer Affairs; or a person who is a
24 Patrol Special Police Officer appointed by the Police Commission or an assistant to a Patrol Special

1 Police Officer and is operating in accordance with rules of the Police Commission governing
2 Patrol Special Police Officers and assistants to Patrol Special Police Officers.

3 (o) "Security Plan." A plan that adequately addresses the safety of persons and property by

4 (i) providing a ratio of one Security Guard to a specific number of individuals as described in
5 the paragraph immediately below at least one Security Guard for every 100 individuals
6 anticipated to be present at any one time during Entertainment events on the premises of the
7 Business, (ii) securing the sidewalk for a 100-foot radius in all directions around the premises of the
8 Business to prevent injury to persons and/or damage to property, and (iii) providing for the orderly
9 dispersal of individuals and traffic from the premises of the Business and within 100 feet of any door
10 that patrons use to enter or exit the premises. The phrase "100 feet" in (iii) of this Subsection (o)
11 means 100 feet from the door in both directions on the same side of the street as the premises of the
12 Business. The plan shall include sufficient staff with the requisite experience to implement the plan.

13 The Security Plan must provide at least one Security Guard for every 100 individuals
14 anticipated to be present at any one time during Entertainment events on the premises of the
15 Business, with the following two qualifications. There must always be at least one Security
16 Guard for every 100 individuals actually present at any one time during Entertainment events
17 on the premises of the Business. Further, in those areas of the City where a conditional use
18 authorization is required for a late night use, on Fridays Thursdays, Fridays, Saturdays, and
19 Sundays from 9:00 p.m. until closing (including early morning hours Saturday Friday,
20 Saturday, Sunday, and Monday) and Saturdays from 9:00 p.m. until closing (including early
21 morning hours Sunday) the Security Plan must provide at least one Security Guard for every
22 100 individuals authorized by the Occupancy Permit during Entertainment events on the
23 premises of the Business.

1 The definition of Security Plan in this subsection 1060(o) does not limit the discretion of
2 the Entertainment Commission and Director as specified in this Article to impose more
3 stringent requirements for a Security Plan as circumstances warrant.

4

(p) "Tax Collector." Tax Collector of the City and County of San Francisco.

5

(q) "Professional Entertainer." A person who is compensated for his or her
6 performance. This definition does not restrict the definition of "Entertainment" in Subsection
7 (i) and is relevant only to the extent the term "professional entertainer" is used in this Article.

8

~~(a) Extended Hours Premises. Every premises to which patrons or members are admitted or~~
9 ~~which allows patrons or members to remain on the premises between the hours of 2:00 a.m. and 6:00~~
10 ~~a.m. which serves food, beverages, or food and beverages, including but not limited to, alcoholic~~
11 ~~beverages, for consumption on the premises or wherein entertainment as defined in Subsections (b) and~~
12 ~~(c) is furnished or occurs upon the premises.~~

13

~~(l) Dance Academies. An extended hours premises shall also include a dance academy~~
14 ~~wherein students are admitted between the hours of 2:00 a.m. and 6:00 a.m., and instruction is given in~~
15 ~~ballroom or other types of dancing, whether given to the students in groups or individually.~~

16

~~(b) Entertainment. Any act, play, review, pantomime, scene, song, dance act, song and dance~~
17 ~~act, or poetry recitation, conducted or participated in by any professional entertainer in or upon any~~
18 ~~premises to which patrons or members are admitted. "Entertainment" also includes a fashion or style~~
19 ~~show, except when conducted by a bona fide nonprofit club or organization as part of the social~~
20 ~~activities of such club or organization, and when conducted solely as a fund-raising activity for~~
21 ~~charitable purposes. (The term "professional entertainer" as used herein means a person or persons~~
22 ~~who engage in the presentation of entertainment for livelihood or gain.)~~

23

~~"Entertainment," in addition, is defined to mean and include the playing upon or use of any~~
24 ~~instrument that is capable of or can be used to produce musical sounds or percussion sounds, including~~
25 ~~but not limited to, reed, brass, percussion or string-like instruments; provided, further, that~~

1 ~~"entertainment" is defined to mean any instrument or device capable of producing or reproducing~~
2 ~~sound, which device is located in a premises open between the hours of 2:00 a.m. and 6:00 a.m.~~

3 ~~(c) Informal Entertainment. Any act, play, review, pantomime, scene, song, dance act, song~~
4 ~~and dance act, or poetry recitation, conducted or participated in by any nonprofessional person or~~
5 ~~persons in or upon any premises to which patrons or members are admitted.~~

6 ~~(d) Person. An individual, firm, partnership, joint venture, association, social club, fraternal~~
7 ~~organization, joint stock company, corporation, estate, trust, business trust, receiver, syndicate, or any~~
8 ~~other group or combination acting as a unit excepting the United States of America, the State of~~
9 ~~California, and any political subdivision of either thereof.~~

10 ~~(e) Operator. Any person operating an extended hours premises in the City and County of San~~
11 ~~Francisco, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee,~~
12 ~~mortgagee in possession, licensee or any other person operating such place of entertainment or~~
13 ~~amusement.~~

14 ~~(f) Bona Fide Nonprofit Club or Organization. Any fraternal, charitable, religious or~~
15 ~~benevolent, or any other nonprofit organization having a regular membership association primarily for~~
16 ~~mutual social, mental, political and civil welfare, to which admission is limited to members and guests~~
17 ~~and revenue accruing therefrom to be used exclusively for the benevolent purpose of said organization~~
18 ~~and which organization or agency is exempt from taxation under the Internal Revenue laws of the~~
19 ~~United States as a bona fide fraternal, charitable, religious, benevolent or nonprofit organization.~~

20 ~~(g) Admission Charge. Any charge for the right or privilege to enter any extended hours~~
21 ~~premises including a minimum service charge, a cover charge or a charge made for the use of seats~~
22 ~~and tables, reserved and otherwise.~~

23 ~~(h) Tax Collector. Tax Collector of the City and County of San Francisco.~~

24 ~~(i) "Bona Fide Public Eating Place." A place which is regularly and in bona fide manner used~~
25 ~~and kept open for the serving of meals to guests for compensation and which has suitable kitchen~~

1 ~~facilities connected therewith, containing conveniences for cooking an assortment of foods which may~~
2 ~~be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the~~
3 ~~proper amount of refrigeration for keeping of food on said premises and must comply with all the~~
4 ~~regulations of the Department of Public Health. "Meals" means the usual assortment of foods~~
5 ~~commonly ordered at various hours of the day; the service of such food and victuals only as sandwiches~~
6 ~~or salads shall not be deemed a compliance with this requirement. "Guests" shall mean persons who,~~
7 ~~during the hours when meals are regularly served therein, come to a bona fide public eating place for~~
8 ~~the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein.~~
9 ~~Nothing in this Section, however, shall be construed to require that any food be sold or purchased with~~
10 ~~any beverage.~~

11 **SEC. 1070.1. PERMIT REQUIRED.**

12 (a) It shall be unlawful for any Person to own, conduct, operate, maintain, or to cause or
13 permit to be conducted, operated, or maintained, an Extended-Hours Premises in the City and County
14 of San Francisco without first having obtained a permit from the Entertainment Commission.

15 (b) It shall be unlawful for any Person to own, conduct, operate or maintain, or cause or
16 permit to be conducted, operated, or maintained, an Extended-Hours Premises for which a permit has
17 been granted (1) after the permit has been revoked or is otherwise invalid or (2) for any period of time
18 during which the permit has been suspended.

19 (c) It shall be unlawful for any Person who is required to surrender a permit upon the sale
20 of a Business as required under Section 1070.22 to fail to do so.

21 (d) Any place or premises where an Extended-Hours Premises Permit is sought
22 must conform to all existing health, safety, zoning, and fire ordinances of the City and County
23 of San Francisco, and must have a valid permit to operate (formerly referenced in this Article
24 as a public eating place permit) from the Department of Public Health. The Entertainment
25

1 Commission may issue a permit under this Article conditional upon the applicant receiving the
2 other required permits.

3 ~~It shall be unlawful for any person to own, conduct, operate, maintain or to participate therein,~~
4 ~~or to cause or permit to be conducted, operated or maintained, any extended hours premises in the City~~
5 ~~and County of San Francisco without first having obtained a permit from the Entertainment~~
6 ~~Commission.~~

7 ~~Any place or premises where a permit to operate is sought must conform to all existing health,~~
8 ~~safety, and fire ordinances of the City and County of San Francisco, and must have a valid public~~
9 ~~eating place permit from the Department of Public Health.. The Entertainment Commission may issue~~
10 ~~a permit under this Section conditional upon the applicant receiving the other required permits.~~

11 ~~Any permit granted by the Entertainment Commission conditional upon the applicant receiving~~
12 ~~other required permits may be appealed to the Board of Appeals. Such appeal must be filed within 10~~
13 ~~days of the final decision of the Entertainment Commission issuing the conditional permit.~~

14 ~~Any conditional permit granted by the Entertainment Commission will expire nine months from~~
15 ~~the date of the final decision of the Entertainment Commission, if all the other required permits have~~
16 ~~not been received.~~

17 **SEC. 1070.2. FILING APPLICATION, NOTICE TO OTHER CITY DEPARTMENTS,**
18 **AND DEPARTMENTAL REPORTS.**

19 Every person seeking desiring a permit or an amendment to a permit under pursuant to this
20 Article shall file an application with the Entertainment Commission upon a form provided by
21 the Entertainment Commission and shall pay a filing fee as provided by Section 2.26 of this Code.

22 (b) The Director shall send the application to the San Francisco Police Department, Fire
23 Department, Department of Building Inspection, Department of Public Health, and Planning
24 Department. Those departments shall complete all necessary inspections and report their
25

1 determinations to the Entertainment Commission within 20 City business days of receiving the
2 application.

3 **SEC. 1070.3. APPLICATION FORM.**

4 ~~Operators under any permit issued pursuant to this Article shall be limited to the terms of the~~
5 ~~application.~~ Except as otherwise provided herein, an application for a permit for a Business
6 pursuant to the provisions of this Article shall specify for that Business the same information
7 required under Section 1060.3 of this Code for applications for Place of Entertainment Permits and the
8 applicant shall sign the application under penalty of perjury.

9 ~~(a) The address of the location for which the permit is required, together with the business name~~
10 ~~of such location.~~

11 ~~(b) The name and proposed business address of the applicant. If the applicant is a~~
12 ~~corporation, the name of the corporation shall be set forth exactly as shown in its articles of~~
13 ~~incorporation; and the applicant shall also set forth the date and place of incorporation; the names and~~
14 ~~residence addresses of each of the officers, directors, and each stockholder owning more than 10~~
15 ~~percent of the stock of the corporation. If the applicant is a partnership, the application shall set forth~~
16 ~~the name and residence address of each of the partners, including limited partners. If one or more of~~
17 ~~the partners is a corporation, the provisions of this Section pertaining to a corporate applicant apply.~~

18 ~~(c) Whether or not the applicant or any officer or director or member of applicant, as the case~~
19 ~~may be, has ever been convicted of any crime except misdemeanor traffic violations. In addition to the~~
20 ~~foregoing, any corporate applicant shall state whether or not any stockholder owning more than 10~~
21 ~~percent of the stock of such corporation has ever been convicted of any crime except misdemeanor~~
22 ~~traffic violations. If any person mentioned in this subsection has been so convicted, a statement must be~~
23 ~~made giving the name of the person so convicted, the place and court in which the conviction was had,~~
24 ~~the specific charge under which the conviction was obtained, and the sentence imposed as the result of~~
25 ~~said conviction.~~

1 ~~(d) The names and addresses of the persons who have authority or control over the place for~~
2 ~~which the permit is requested, and brief statement of the nature and extent of such authority and~~
3 ~~control.~~

4 ~~(e) Such information pertinent to the operation of the proposed activity, including information~~
5 ~~as to management, authority, control, financial agreements, and lease arrangements, that is reasonably~~
6 ~~related to the factual determinations this ordinance empowers the Chief to make in reviewing and~~
7 ~~acting upon permit applications as the Chief of Police may require of an applicant in addition to the~~
8 ~~other requirements of this Section. The foregoing examples are in explanation and not in limitation of~~
9 ~~the information which the Entertainment Commission may require.~~

10 ~~(f) A business plan for the proposed extended hours premises, specifying the days and hours of~~
11 ~~operation, the number of patrons, the numbers of employees and their duties, the identity of the~~
12 ~~manager or managers who shall be on premises during all hours of operation, the types or classes of~~
13 ~~entertainment (in terms of the types of instruments, numbers of performers and sound levels) to be~~
14 ~~provided, and the amount of parking, both on site and off site, to be provided. If sound amplification is~~
15 ~~to be used, the plan shall also include a specific description of the amplification system.~~

16 ~~(g) The address to which notice, when required, is to be sent or mailed, and the name and~~
17 ~~address of a person authorized to accept service of process, if not otherwise set forth herein.~~

18 ~~(h) Whether the application is for a new permit or for the renewal of an existing permit.~~

19 ~~(i) The Entertainment Commission may require further information as he or she deems~~
20 ~~necessary.~~

21 Section 2. The San Francisco Police Code is hereby amended by repealing Section
22 1070.4.

23 ~~**SEC. 1070.4. VERIFICATION OF APPLICATION.**~~

24 ~~Every application for a permit under this Article shall be verified as provided in the California~~
25 ~~Code of Civil Procedure for the verification of pleadings.~~

Mayor, Supervisor Maxwell
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1 Section 3. The San Francisco Police Code is hereby amended by adding Section
2 1070.4, to read as follows:

3 SEC. 1070.4. NOTICE REQUIREMENTS AND CONTACT INFORMATION.

4 (a) Unless otherwise provided in this Article, the following definitions apply.

5 (i) To provide notice "electronically" means to send written notice by email, facsimile or in
6 any other manner that the Director designates as appropriate to transmit written information other
7 than by mail or personal delivery.

8 (ii) To "mail" notice or give notice "by mail" means depositing the notice in a sealed
9 envelope or package, clearly labeled to identify the individual to whom it is sent, in a post office,
10 mailbox, or other facility regularly maintained by the United States Postal Service, by First Class Mail,
11 with postage prepaid. The requirement that notice be mailed within a specified period of time means
12 that the notice is deposited in the mail within that period of time.

13 (iii) "Personally deliver" or "personal delivery" means delivering notice or causing notice to
14 be delivered in person.

15 (iv) "Notice" means notice of a hearing, decision, action required of an applicant for a
16 permit or a Permittee, or any other information that this Article requires to be given or which the
17 Entertainment Commission or the Director find appropriate in implementing the provisions of this
18 Article.

19 (b) Applicants for a permit and Permittees shall provide information necessary to enable
20 the Entertainment Commission and the Director to give notice under this Article. Applicants and
21 Permittees shall provide the Director in writing with a street address where the applicant and
22 Permittee receive mail from the United States Postal Service, and with any email address, facsimile
23 number or other information necessary to enable notice to be sent to the applicant and Permittee
24 electronically. The applicant and Permittee shall keep the information required by this Section current
25 by informing the Director in writing of any change. When the Commission or Director mails or

1 personally delivers notice or sends notice electronically to the applicant or Permittee in accordance
2 with the information most recently provided in writing by that Person, such action shall satisfy the
3 requirements of this Article with respect to how notice is given.

4 (c) In some circumstances, this Article requires notice to the Manager. The Permittee shall
5 provide a telephone and/or cell phone number and a facsimile number or email address for the
6 transmission of notice to the Manager. The Permittee shall keep current the contact information for the
7 Manager and shall notify the Director in writing of any change in this information. The Manager may
8 designate other individuals to whom notice is to be given for any periods of the Manager's absence or
9 unavailability by providing this information in writing to the Director. When the Commission or
10 Director mails or personally delivers notice or sends notice electronically to the Manager, or to any
11 individual designated by the Manager to receive notice in place of the Manager, in accordance with the
12 information most recently provided in writing by the Permittee for the Manager, or by the Manager for
13 his or her designee, such action shall satisfy the requirements of this Article that notice be given to the
14 Manager.

15 (d) The Director may require applicants, Permittees and Managers to provide different or
16 additional contact information for receipt of notice as communication technologies change.

17 (e) A Permittee may change the name and/or address of the individual provided by the
18 Permittee in the permit application to accept service of process by providing written notice to the
19 Director.

20 Section 4. The San Francisco Police Code is hereby amended by amending Section
21 1070.5, to read as follows:

22 **SEC. 1070.5. DETERMINATION OF APPLICATION.**

23 The procedures and standards set forth in Section 1060.5 of this Code shall govern the review
24 and determination of applications for Extended-Hours Premises Permits.

1 ~~(a) When an application is filed for a new permit under this Article, the Entertainment~~
2 ~~Commission shall fix a time and place for a public hearing thereon to determine whether issuance of~~
3 ~~the permit would result in any of the conditions set forth in Subsection (e). The hearing must be held~~
4 ~~within 45 working days of the date the completed application is received.~~

5 ~~(b) At the time of filing of an application, the applicant shall notify the Entertainment~~
6 ~~Commission of any outstanding requests for permits or approvals from other City departments relating~~
7 ~~to the premises of the proposed extended hours premises. The Entertainment Commission shall notify~~
8 ~~those departments of the filing of the application. Those departments shall complete all necessary~~
9 ~~inspections and report their determinations to the Entertainment Commission within 20 working days~~
10 ~~of the filing of the application.~~

11 ~~(c) Not less than 30 days before the date of such hearing, the Entertainment Commission shall~~
12 ~~cause to be posted a notice of such hearing in a conspicuous place on the property in which or on~~
13 ~~which the proposed extended hours premises is to be operated. Such notice shall set forth the specific~~
14 ~~type of entertainment which the applicant intends to conduct. Such posting of notice shall be carried~~
15 ~~out by the Entertainment Commission, and the applicant shall maintain said notice as posted the~~
16 ~~required number of days. Notice of such hearing shall be mailed by the Chief of Police at least 30 days~~
17 ~~prior to the date of such hearing to any person who has filed a written request for such notice.~~

18 ~~(d) At the hearing, the applicant and any other interested party, including the Police~~
19 ~~Department or any other public agency, shall be allowed to introduce evidence and present argument.~~
20 ~~The Entertainment Commission shall make a final decision upon the application at a public hearing,~~
21 ~~and shall notify the applicant, and any other interested party who has made a written request, of the~~
22 ~~final decision by first class mail.~~

23 ~~(e) No time limit shall commence running until the submission of a completed application.~~
24 ~~Upon the applicant's request, the Entertainment Commission shall continue the hearing to allow the~~
25 ~~applicant opportunity to comply with the requirements of this Article or any other State or local law.~~

1 ~~Upon the applicant's request, the Entertainment Commission shall also issue a conditional approval of~~
2 ~~the permit application, pending approval of the permit by other City agencies, if sufficient information~~
3 ~~has been provided to allow for adequate evaluation of the proposal and if grounds for denial, as set~~
4 ~~forth in Subsection (f), are not present.~~

5 ~~(f) The Entertainment Commission shall grant a permit pursuant to this Article unless he or she~~
6 ~~finds that:~~

7 ~~(i) The building, structure, equipment or location of the proposed place of entertainment does~~
8 ~~not comply with or fails to meet all of the health, zoning fire and safety requirements or standards of all~~
9 ~~the laws of the State of California or ordinances of the City and County of San Francisco applicable to~~
10 ~~such business operation; or~~

11 ~~(ii) The building, structure, equipment or location of the proposed extended hours premises~~
12 ~~cannot adequately accommodate the type and volume of vehicle and pedestrian traffic anticipated; or~~

13 ~~(iii) The building, structure, equipment or location of the proposed extended hours premises~~
14 ~~lack adequate safeguards to prevent emissions of noise, glare, dust and odor that substantially interfere~~
15 ~~with the public health, safety and welfare or the peaceful enjoyment of neighboring property.~~

16 ~~(g) An applicant whose application for a permit has been denied pursuant to this Section may~~
17 ~~seek immediate judicial review pursuant to Code of Civil Procedure Section 1085 or Section 1094.5.~~

18 ~~The applicant is not required to exhaust his or her administrative remedies before the Board of~~
19 ~~Appeals.~~

20 Section 5. The San Francisco Police Code is hereby amended by amending Sections
21 1070.7 and 1070.8, to read as follows:

22 **SEC. 1070.7. SOLICITATION OF DRINKS OR MERCHANDISE.**

23 (a) No Permittee operator of an extended hours premises shall employ or permit any
24 hostess, entertainer, or Person person to solicit any patron or customer of or visitor in said

1 ~~Extended-Hours Premises~~ ~~extended hours premises~~ to purchase any beverage or merchandise for
2 the one soliciting or for any other ~~Person~~ ~~person~~.

3 (b) No ~~Permittee operator of an extended hours premises~~ shall employ any hostess or
4 entertainer for the purpose of procuring or encouraging the purchase or sale of beverages or
5 merchandise, or pay any such hostess or entertainer a percentage or commission on the sale
6 of beverages or merchandise for procuring or encouraging the purchase or sale of beverages
7 or merchandise on said premises.

8 **SEC. 1070.8. SOLICITATION OF TRADE.**

9 No ~~Permittee operator of an extended hours premises~~ shall permit or allow or cause any
10 ~~Person, including any~~ employee of the ~~Extended-Hours Premises, extended hours premises~~ to solicit
11 by personal solicitation or otherwise, or by means of any device whereby the voice of the
12 person soliciting can be heard at or near such entrance.

13 ~~Section 6. The San Francisco Police Code is hereby amended by repealing Section~~
14 ~~1070.12:~~

15 **~~SEC. 1070.12. MISCELLANEOUS RULES.~~**

16 No professional entertainer or employee may dance, unnecessarily converse, or
17 associate with any customer on the premises in any extended hours premises; provided,
18 however, that a regularly scheduled audience participation type of entertainment may be
19 presented during the time slated and in the manner described in an advertisement posted in a
20 regularly printed program. Provided, further, that a copy of said advertisement shall be
21 received by the Entertainment Commission 24 hours prior to the conducting of said audience
22 participation entertainment.

23 ~~Section 76. The San Francisco Police Code is hereby amended by repealing Section~~
24 ~~1070.17:~~

25 **~~SEC. 1070.17. SUSPENSION AND REVOCATION.~~**

1 ~~(a) Any permit issued under the terms of this Article may be suspended at any time by the~~
2 ~~Entertainment Commission if the Entertainment Commission determines after a noticed public hearing~~
3 ~~that any of the following conditions exist:~~

4 ~~(1) The building, structure, equipment or location of the proposed extended hours premises~~
5 ~~does not comply with or fails to meet all of the health, zoning, fire and safety requirements or standards~~
6 ~~of all the laws of the State of California or ordinances of the City and County of San Francisco~~
7 ~~applicable to such business operation; or~~

8 ~~(2) The establishment has been operated in a manner that has harmed the public health, safety~~
9 ~~or welfare by significantly increasing pedestrian traffic, the incidence of disorderly conduct, or the~~
10 ~~level of noise in the area in which the premises are located, and the permittee has failed, after being~~
11 ~~requested by the Police Department or Entertainment Commission to do so, to take reasonable steps to~~
12 ~~alleviate these conditions, such as providing additional off street parking, security, soundproofing,~~
13 ~~restroom facilities, or refuse containers; or~~

14 ~~(3) The proprietor or persons in charge thereof have violated, permitted the violation, or failed~~
15 ~~to take reasonable steps, after being requested by the Police Department or Entertainment Commission~~
16 ~~to do so, to halt violations on the premises or in connection with the operation of the establishment, of~~
17 ~~any following laws of the State of California: Penal Code Sections 266h, 266i, 315, 316, 330, 337a,~~
18 ~~657(b); Business and Professions Code Sections 23300, 25602, 25631, 25657, 25658; Health and~~
19 ~~Safety Code Sections 11351, 11352, 11359, 11360, 11378, 11379, 11378.5, 11379.5; or, the proprietor~~
20 ~~or persons in charge thereof have implemented, maintained or permitted any admission or related~~
21 ~~policy or practice which violates Section 3305 of the San Francisco Police Code.~~

22 ~~(4) The proprietor or persons in charge thereof have violated or permitted the violation of any~~
23 ~~other provision of this Article or of the permit, on the premises or in connection with the operation of~~
24 ~~the establishment.~~

1 ~~(b) The penalty for the first violation under Subsection (a) within a period of six months shall be~~
2 ~~suspension of said permit for a period of 30 days. The penalty for the second violation within a period~~
3 ~~of six months shall be suspension of said permit for a period of 60 days. The penalty for the third and~~
4 ~~subsequent violations within a period of six months shall be suspension of said permit for a period of~~
5 ~~90 days. For the purposes of this Subsection, calculation of the six months shall not include any period~~
6 ~~of time during which the permit was suspended.~~

7 ~~(c) Any permit issued under the terms of this Article may be revoked at any time by the~~
8 ~~Entertainment Commission if it determines after a noticed public hearing that any of the following~~
9 ~~conditions exist:~~

10 ~~(1) The permittee has knowingly made any false, misleading or fraudulent statement of material~~
11 ~~fact in the application for a permit;~~

12 ~~(2) The permittee has failed to pay any fee or charge required under this Article; or~~

13 ~~(3) The permittee has permanently ceased operation of the business.~~

14 ~~(d) A revocation pursuant to Subsection (c) shall not prejudice the right of an applicant to apply~~
15 ~~for a new permit.~~

16 ~~(e) The Entertainment Commission may not consider any request for emergency medical or~~
17 ~~ambulance services to treat a permittee's patrons as a basis for suspending a permit pursuant to~~
18 ~~subdivision (a).~~

19 Section 87. The San Francisco Police Code is hereby amended by adding Sections
20 1070.17, 1070.17.1, 1070.17.2, and 1070.17.3, to read as follows:

21 **SEC. 1070.17. SUSPENSION.**

22 (a) Permits issued under this Article may be suspended by the Entertainment Commission
23 and the Director as follows:

24 (1) The Entertainment Commission may suspend a permit issued under this Article as
25 provided in Section 1070.17.1.

1 (2) The Director may issue an order of limited suspension as provided in Section 1070.17.2,
2 which order the Permittee may appeal to the Entertainment Commission.

3 (3) The Director may issue an order of suspension for public safety as provided in Section
4 1070.17.3, which order is not appealable to the Entertainment Commission.

5 (4) The Entertainment Commission and the Director have independent authority to suspend
6 permits; the action of one does not limit action by the other.

7 (b) Every Permittee shall request emergency medical services when any person who has
8 been injured on the premises of the Business needs emergency medical services. The failure to request
9 such services, when such a request would have been reasonable under the circumstances, shall be
10 grounds for suspension of the permit. The Entertainment Commission and Director may allow any
11 circumstances involving the operation of the Business that relate to the injury as evidence supporting
12 suspension of a permit, but may not allow the request itself as evidence to support suspension.

13 (c) When considering whether to grant a permit application or to suspend or revoke a
14 permit under this Article, the Commission and the Director may shall consider any previous denial of
15 a permit application or previous suspension or revocation of a permit, under this Article or Article
16 15.1, for the same permit applicant or Permittee when the circumstances warranting the previous
17 action are relevant to the current determination.

18 **SEC. 1070.17.1. SUSPENSION BY THE ENTERTAINMENT COMMISSION.**

19 (a) GROUNDS FOR SUSPENSION. The Entertainment Commission may suspend any
20 permit issued under this Article under any of the following circumstances:

21 (1) The premises or operation of the Business does not comply with the health, zoning, fire,
22 and safety requirements of the laws of the State of California and ordinances of the City and County of
23 San Francisco applicable to the Business; or

24 (2) The Permittee or an employee or agent of the Permittee has operated the Business:
25

1 (i) In a manner that has harmed the public health, safety, or welfare by significantly
2 increasing pedestrian congestion, the incidence of disorderly conduct, or the level of noise in the area
3 in which the premises are located, and

4 (ii) The Permittee has refused or failed, upon request by the Police Department,
5 Entertainment Commission or the Director, to take reasonable steps to alleviate these conditions, such
6 as providing additional off-street parking, security, soundproofing, restroom facilities, or refuse
7 containers; or

8 (3)(i) The Permittee or any employee or agent of the Permittee has engaged in conduct on the
9 premises of the Business, or in connection with the operation of the Business, that would constitute a
10 violation of any of the following laws: assault and battery (Cal. Penal Code §§240, 242, 245); sexual
11 battery (Cal. Penal Code §243.4); discharging firearm (Cal. Penal Code §§246, 246.3); unlawful
12 weapons (Cal. Penal Code §12020; S.F. Police Code §1291); disturbing the peace (Cal. Penal Code
13 §§415, 416, 417); unlawful threats (Cal. Penal Code §422); obstruction of pedestrian or vehicle right
14 of way (Cal. Penal Code §370); gambling (Cal. Penal Code §§330, 337a); rape (Cal. Penal Code
15 §261); statutory rape (Cal. Penal Code §261.5); prostitution and related offenses (Cal. Penal
16 Code §§ 266, 266a, 266e, 266h, 266i, 315, 316, 647(b)); sex crimes for which registration is required
17 under the Sex Offender Registration Act (Cal. Penal Code §290); felony sexual assault; loitering for
18 lewd or lascivious purposes (Cal. Penal Code §647(d)); loitering on private property without lawful
19 business (Cal. Penal Code §647(h)); identify theft (Cal. Penal Code §530.5); a violent felony
20 warranting enhancement of a prison term (Cal. Penal Code §667.5); criminal gang activity (Cal.
21 Penal Code §186.22); drug offenses (Cal. Health & Safety Code §§11351, 11352, 11359, 11360,
22 11378, 11379, 11378.5, 11379.5); violation of Alcohol Beverage Control laws (Cal. Business &
23 Professions Code §§ 23300, 25602, 25631, 25657, 25658); public urination or defecation (San
24 Francisco Police Code §153); accumulation of filth (Cal. Health & Safety Code §17920.3(j)); or
25 excessive noise emissions (San Francisco Police Code Section 49 or Article 29); or

1 (ii) The Permittee has failed to take reasonable steps within the Permittee's control upon the
2 request of the Police Department, the Entertainment Commission or the Director to halt conduct on the
3 premises of the Business, or in connection with the operation of the Business, that would constitute a
4 violation of the laws set forth in Section (a)(3)(i) of this Section; or

5 (iii) The Permittee in the operation of the Business has implemented, maintained, or
6 permitted an admission or related policy or practice prohibited by San Francisco Police Code Section
7 3305 (prohibiting discrimination); or

8 (4) The Permittee or any employee or agent of the Permittee has violated any requirement
9 of this Article or any other applicable ordinance, any regulation adopted pursuant to this Article, or
10 any condition placed on the permit; or

11 (5) The Permittee has failed to submit a proposed Security Plan as required by Section
12 1070.28; or

13 (6) The Permittee or any agent or employee of the Permittee has failed to comply with an
14 approved Security Plan or a revised Security Plan as required by Sections 1070.28 and 1070.29; or

15 (7) The Permittee or any agent or employee of the Permittee has failed to request
16 emergency medical services as required by Section 1070.17(b).

17 (b) HEARING PROCEDURE AND DETERMINATION.

18 (i) The Entertainment Commission shall give the Permittee and the Manager written notice
19 of a hearing to determine whether to suspend a permit. The notice shall set forth the grounds for the
20 proposed suspension and the date, time and location of the hearing.

21 (ii) The Chief of Police or the Chief's designee may request in writing that the
22 Director bring a suspension proceeding before the Entertainment Commission. If, within 10
23 business days of receiving the request, the Director has not brought the suspension
24 proceeding, the Chief may bring the suspension proceeding before the Entertainment
25 Commission. In such a case, the Chief or the Chief's representative shall present the case for

1 suspension, except that the Director may join in presenting the case for suspension if the
2 Director agrees to do so.

3 (c) PERIOD OF SUSPENSION. The Entertainment Commission may suspend a permit for
4 the periods of time set forth in this Subsection (c).

5 (i) For the first violation under Subsection (a)(1) through (6) of this Section, for up to 30
6 days.

7 (ii) For the second violation of the same or any other provision of Subsection (a)(1) through
8 (6) within six months of the order of suspension for the first violation, for up to 60 days.

9 (iii) For the third and subsequent violation of the same or any other provision of Subsection
10 (a)(1) through (6) within six months of the order of suspension for the second or any subsequent
11 violation, for up to 90 days.

12 (iv) For the purpose of Subsections (c)(ii) and (iii) of this Section, calculation of the six
13 months shall not include any period of time during which the permit was suspended.

14 (v) In determining the length of the suspension, the Entertainment Commission shall
15 consider the seriousness and the frequency of the violation(s) in light of the effort taken to correct them
16 and the impact of the violation(s) on the surrounding neighborhood.

17 **SEC. 1070.17.2. LIMITED SUSPENSION BY THE DIRECTOR; APPEAL TO**
18 **ENTERTAINMENT COMMISSION.**

19 (a) GROUNDS FOR SUSPENSION. The Director may suspend any permit issued under
20 this Article for a period of up to seven days if the Director determines, after providing the Permittee
21 and the Manager at least five days written notice and an opportunity to respond, that any of the
22 circumstances set forth in either Subsections (a)(1), (2) or ~~(2)(3)~~ of this Section has occurred. Each
23 order of limited suspension may include multiple violations under Subsections (a)(1), (2), or and (2)
24 ~~(3)~~ of this Section. The Director shall provide the written notice required under this Subsection either
25 by mail and electronically or by personal delivery.

1 (1) The Business has exceeded the allowable noise emissions under Section 49 or Article 29
2 of the San Francisco Police Code, or as required under any condition imposed on the permit, on three
3 separate days within a three month time period. The Director may suspend a permit under this
4 Subsection (a)(1) only if:

5 (i) The San Francisco Police Department, the Director, or an authorized agent of either
6 has issued a noise emission report for each violation showing noise levels that exceed those allowed
7 under Section 49 or Article 29 of the San Francisco Police Code, or as required under any condition
8 imposed on the permit, and

9 (ii) The Director has provided notice of the issuance of each noise emission report
10 described in Subsection (a)(1) to the Permittee or the Manager electronically or by mail within three
11 City business days of its issuance.

12 (2) The Permittee or any employee or agent of the Permittee has engaged in Conduct that
13 Constitutes a Nuisance or the Permittee has failed to take reasonable steps within the Permittee's
14 control to halt another Person from engaging in Conduct that Constitutes a Nuisance. "Conduct that
15 Constitutes a Nuisance" as defined in Section 1070(e), means any conduct that would constitute a
16 violation of the following laws: assault and battery (Cal. Penal Code §240, 242, 245); sexual battery
17 (Cal. Penal Code §243.4); discharging firearm (Cal. Penal Code §246, 246.3); unlawful weapons (Cal.
18 Penal Code §12020; S.F. Police Code §1291); disturbing the peace (Cal. Penal Code § 415, 416, 417);
19 unlawful threats (Cal. Penal Code §422); obstruction of pedestrian or vehicle right of way (Cal. Penal
20 Code § 370); gambling (Cal. Penal Code §§ 330, 337a); rape (Cal. Penal Code §261); statutory
21 rape (Cal. Penal Code §261.5); prostitution and related offenses (Cal. Penal Code §§ 266, 266a,
22 266e, 266h, 266i, 315, 316, 647(b)); sex crimes for which registration is required under the Sex
23 Offender Registration Act (Cal. Penal Code §290); felony sexual assault; loitering for lewd or
24 lascivious purposes (Cal. Penal Code §647(d)); loitering on private property without lawful business
25 (Cal. Penal Code §647(h)); identify theft (Cal. Penal Code §530.5); a violent felony warranting

1 enhancement of a prison term (Cal. Penal Code §667.5); criminal gang activity (Cal. Penal Code
2 §186.22); drug offenses (Cal. Health & Safety Code §§ 11351, 11352, 11359, 11360, 11378, 11379,
3 11378.5, 11379.5); violation of Alcohol Beverage Control laws (Cal. Business & Professions Code §§
4 23300, 25602, 25631, 25657, 25658); public urination or defecation (San Francisco Police Code
5 §153); accumulation of filth (Cal. Health & Safety Code § 17920.3(j)); or excessive noise emissions
6 (San Francisco Police Code Section 49 or Article 29).

7 This Subsection (a)(2) applies only when both of the following apply:

8 (i) The conduct occurred on the premises of, or on Any Sidewalk Abutting the Premises of,
9 the Business, and

10 (ii) The conduct continued after the Director had notified the Permittee of the problem and
11 informed the Permittee of Corrective Action, as defined in Section 1070, to address the problem, but the
12 Permittee failed to take the Corrective Action.

13 (3) The Permittee or any agent or employee of the Permittee has failed to comply
14 with an approved Security Plan as required by Section 1060.28 or a revised Security Plan as
15 required by Section 1060.29.

16 (b)(1) ISSUANCE OF ORDER; RIGHT TO APPEAL TO COMMISSION. On the day that the
17 Director issues an order of limited suspension, the Director shall send the order to the Permittee and
18 Manager by mail or electronically. The order shall state the date that the order issued and the date
19 that it takes effect. To provide the Permittee with an opportunity to file an appeal to the Entertainment
20 Commission, an order of limited suspension shall not take effect for at least five City business days
21 from the date that the Director issues the order.

22 (2) A Permittee may appeal an order of limited suspension to the Entertainment
23 Commission by filing with the Commission Secretary a written request for review within five City
24 business days of the date that the Director has issued the order. The filing of an appeal stays the order
25 pending the Commission's decision. If a Permittee withdraws the appeal, the Director's order shall no

1 longer be stayed and shall take effect on the date of the withdrawal or the date that the order was to
2 take effect, whichever is later.

3 (3) The Commission may affirm, overturn, or modify the Director's order. When the
4 Commission affirms or modifies the Director's order, the order takes effect the day following the day of
5 the hearing at which the Commission made its determination.

6 (4) If the Permittee does not file a timely appeal of the Director's order, the order shall take
7 effect the day after the time to appeal has expired or the effective date set forth in the order, whichever
8 is later; provided, however, that the Director and the Permittee may agree in writing to an earlier
9 effective date.

10 (5) The Entertainment Commission may adopt a regulation establishing a procedure which
11 would allow the Director or the Commission, or both, to stay and vacate an order of limited suspension
12 if the Permittee submits and complies with a plan to address the problems that gave rise to the
13 suspension.

14 (c) The Director may initiate orders of limited suspension under this Section against
15 a Permittee for a Business at a single location no more than three times in any twelve-month
16 period. The Director shall initiate suspension proceedings before the Commission under
17 Section 1070.17.1 against any Business that is suspended by the Director under this Section
18 three times in any twelve-month period. For purposes of this Subsection (c), "suspended by
19 the Director" includes a suspension affirmed in whole or part or modified by the Commission if
20 appealed pursuant to Subsection (b)(2) but does not include a suspension overturned by the
21 Commission on appeal. This Subsection (c) shall not in any way preclude the Commission
22 from otherwise exercising its authority to suspend a Business under Section 1070.17.1, or
23 preclude the Director or Chief of Police or Chief's designee from initiating a suspension
24 proceeding under Section 1060.17.1.
25

1 (d) POLICE DEPARTMENT RECOMMENDATION OF LIMITED SUSPENSION BY
2 THE DIRECTOR. The Chief of Police, or the Chief's designee, may recommend to the
3 Director, orally or in writing, that the Director suspend a permit in accordance with the grounds
4 for suspension stated in subsection (a) above. If the recommendation is oral, it shall later be
5 reduced to writing and filed with the Director when time permits. If the Director fails to follow
6 the oral or written recommendation, the Director shall report to the Entertainment Commission
7 both the recommendation and the reason or reasons for not following the recommendation.
8 This report shall occur at the next regular Commission meeting subsequent to the
9 recommendation, consistent with the provisions of the Brown Act and Sunshine Ordinance.
10 For purposes of this subsection (d), the Captain for the district where the Place of
11 Entertainment is located, or the Captain's designee, is deemed the Chief's designee unless
12 the Chief of Police directs otherwise.

13 This subsection (d) shall not preclude any police officer from recommending to the
14 Director that the Director suspend a permit in accordance with the grounds for suspension
15 stated in subsection (a) above.

16 **SEC. 1070.17.3. SUSPENSION FOR PUBLIC SAFETY BY THE DIRECTOR.**

17 (a) GROUND FOR SUSPENSION. The Director may suspend any permit issued under
18 this Article for up to 72 hours if the Director determines, after providing the Permittee at least 8 hours
19 written notice and an opportunity to respond, that any of the circumstances set forth in Subsection
20 (a)(1)(i) or (ii) of this Section has occurred either on the premises of the Business, or on Any
21 Sidewalk Abutting the Premises of the Business, or within 100 feet of the Premises of the Business,
22 provided in this last instance that the person engaging in the conduct that would constitute a
23 violation of a law specified in Subsection (a)(1)(i) had been on the Premises of the Business
24 no more than 30 minutes before engaging in that conduct; that such the conduct has resulted or
25

1 could have resulted in serious bodily injury or death, and that continued operation of the Business
2 poses a serious threat to public safety.

3 (1)(i) The Permittee or any employee or agent of the Permittee has engaged in conduct that
4 would constitute a violation of any of the following laws: assault and battery (Cal. Penal Code §§240,
5 242, 245); felony sexual assault; sexual battery (Cal. Penal Code §243.4); rape (Cal. Penal Code
6 §261); statutory rape (Cal. Penal Code §261.5); pimping (Cal. Penal Code §266); discharging
7 firearm (Cal. Penal Code §§246, 246.3); unlawful weapons (Cal. Penal Code §12020; S.F. Police
8 Code §1291); disturbing the peace (Cal. Penal Code §§ 415, 416, 417); unlawful threats (Cal. Penal
9 Code §422); a violent felony warranting enhancement of a prison term (Cal. Penal Code §667.5);
10 criminal gang activity (Cal. Penal Code §186.22); or

11 (ii) The Permittee has failed to take reasonable steps within the Permittee's control and
12 within the limits of the law to halt the conduct of another Person that would constitute a violation of
13 any law described in Subsection (a)(1)(i) of this Section.

14 (b) NOTICE OF PROPOSED ORDER. The Director shall provide the written notice
15 required under Subsection (a) of this Section to the Permittee and the Manager by personal delivery
16 and electronically.

17 (c) EFFECTIVE DATE AND TIME OF ORDER. The order of suspension for public safety
18 issued under this Section shall take effect at the date and time stated in the order.

19 (d) DIRECTOR MAY VACATE ORDER. The Director may vacate an order of suspension
20 for public safety if the Director determines that operation of the Business before expiration of the
21 suspension order will not pose a danger to the public because additional information demonstrates that
22 the conduct was not related to the operation of the Business, the Permittee has taken adequate steps to
23 correct the problem giving rise to the suspension, or other circumstances warrant such action.

24 (e) POLICE DEPARTMENT RECOMMENDATION OF SUSPENSION FOR PUBLIC
25 SAFETY. The Chief of Police, or the Chief's designee, may recommend to the Director, orally

1 or in writing, that the Director suspend a permit for public safety in accordance with the
2 grounds for suspension stated in subsection (a) above. If the recommendation is oral, it shall
3 later be reduced to writing and filed with the Director when time permits. If the Director fails to
4 follow the oral or written recommendation, the Director shall report to the Entertainment
5 Commission both the recommendation and the reason or reasons for not following the
6 recommendation. This report shall occur at the next regular Commission meeting subsequent
7 to the recommendation, consistent with the provisions of the Brown Act and Sunshine
8 Ordinance. For purposes of this subsection (e), the Captain for the district where the Place of
9 Entertainment is located, or the Captain's designee, is deemed the Chief's designee unless
10 the Chief of Police directs otherwise.

11 This subsection (e) shall not preclude any police officer from recommending to the
12 Director that the Director suspend a permit for public safety in accordance with the grounds
13 for suspension stated in subsection (a) above.

14 Section 98. The San Francisco Police Code is hereby amended by amending Section
15 1070.19, to read as follows:

16 **SEC. 1070.19. EXCEPTIONS.**

17 (a) The Entertainment Commission may grant an exception to an Extended-Hours
18 Premises extended hours premises as defined herein from the provisions of Sections 1070.11,
19 1070.13, and 1070.16 relating to lighting of the premises, booths, and minors ~~being on the~~
20 premises if the Entertainment Commission shall find that the Extended-Hours Premises extended-
21 hours premises is used exclusively for any of the following purposes:

22 (1) A Bona Fide Public Eating Place bona fide public eating place as defined herein to
23 which the Department of Public Health has issued a public eating place permit ~~has been issued by~~
24 ~~the Department of Public Health.~~ Any such Bona Fide Public Eating Place must be kept in a

1 sanitary condition with the proper amount of refrigeration for keeping of food on said premises
2 and must comply with all the regulations of the Department of Public Health.

3 (2) A Place of Entertainment with no place of entertainment that has no liquor license.

4 (3) An Extended-Hours Premises ~~An extended hours premises that is~~ operated by any
5 public agency; ~~or~~ by any educational, recreational, or social agency; or by any Bona Fide
6 Nonprofit Club or Organization ~~bona fide fraternal, charitable, or religious or benevolent or any other~~
7 ~~nonprofit organization having a regular membership association primarily for mutual social, mental,~~
8 ~~political and civic welfare, to which admission is limited to members and guests and revenue accruing~~
9 ~~therefrom is used exclusively for the benevolent purposes of said organization and which organization~~
10 ~~or agency is exempt from taxation under the Internal Revenue laws of the United States as a bona fide~~
11 ~~fraternal, charitable, religious, benevolent or nonprofit organization.~~

12 (b) Any determination as to the exception status of any applicant pursuant to this
13 Section shall be made by the Entertainment Commission.

14 (c) A decision by the Entertainment Commission denying the exception from the
15 regulations shall be final except that an appeal therefrom may be taken within ten ~~10~~ days to
16 the Board of Appeals ~~Review created by Ordinance No. 245-68. The Board of Review will consist of~~
17 ~~the Director of Administrative Services, the Controller, and the Assessor-Recorder. Any member of the~~
18 ~~Board may deputize, in writing, and filed with the Board, any member of his or her office to serve in his~~
19 ~~or her place on such the Board or in such hearing as he or she may desire. A majority of the Board~~
20 ~~members of the Board shall constitute a quorum.~~

21 (d) ~~The Board, in addition to its several other duties, shall have the power and it shall be its~~
22 ~~duty to hear and determine appeals from the decisions of the Entertainment Commission made upon~~
23 ~~petition for an exception from the regulations. The Board may affirm or reverse such decision by the~~
24 ~~Entertainment Commission or dismiss the appeals therefrom as may be just, and shall prescribe such~~
25 ~~forms, rules, and regulations relating to appeals as it may deem necessary. In the review of the decision~~

1 ~~by the Entertainment Commission the Board may take such evidence and make such investigation as it~~
2 ~~may deem necessary. It shall give notice of its determinations in writing to the petitioner and shall file a~~
3 ~~copy of each determination with the Entertainment Commission. The determination shall become final~~
4 ~~10 days thereafter. If the Board of Review concurs with the determination of the Entertainment~~
5 ~~Commission, the regulations shall become effective as an order or decision of the Entertainment~~
6 ~~Commission. If the Board of Review overrules the order or decision of the Entertainment Commission,~~
7 ~~the regulations shall not be enforced by the Entertainment Commission.~~

8 Section 409. The San Francisco Police Code is hereby amended by repealing Section
9 1070.20:

10 ~~**SEC. 1070.20. LIMITED SUSPENSION.**~~

11 ~~Any permit issued under the terms of this Article may be suspended for a period of 30 days by~~
12 ~~the Entertainment Commission if the Entertainment Commission determines after a noticed hearing~~
13 ~~that violation of the regulations or any provisions of the Municipal Code has occurred.~~

14 Section 4110. The San Francisco Police Code is hereby amended by adding Section
15 1070.20, to read as follows:

16 **SEC. 1070.20. REVOCATION OF A PERMIT.**

17 **(a) GROUNDS FOR REVOCATION. The Entertainment Commission may revoke any**
18 **permit issued under this Article if it determines after a public hearing that any of the following**
19 **conditions exist:**

20 **(1) The Permittee has knowingly made any false, misleading, or fraudulent statement of**
21 **material fact or has knowingly omitted a material fact in the application for a permit; or**

22 **(2) The Permittee has failed to pay any fee or charge required under this Article; or**

23 **(3) The Permittee has failed to surrender the permit as required by Section**

24 **1070.22(b).**

1 **(b) HEARING BY COMMISSION.** *The Entertainment Commission shall give the Permittee*
2 *and the Manager written notice of a hearing to determine whether to revoke a permit. The notice shall*
3 *set forth the grounds for the proposed revocation and the date, time and location of the hearing.*

4 **(c) APPLICATION FOR PERMIT AFTER REVOCATION.** *The revocation of a permit*
5 *under this Article shall not preclude the Permittee from applying for a new permit under this Article.*

6 **(d)** *When considering whether to grant a permit application or to suspend or revoke a*
7 *permit under this Article, the Commission and the Director may shall consider any previous denial of*
8 *a permit application or previous suspension or revocation of a permit, under this Article or Article*
9 *15.1, for the same permit applicant or Permittee when the circumstances warranting the previous*
10 *action are relevant to the current determination.*

11 Section 4211. The San Francisco Police Code is hereby amended by repealing
12 Section 1070.20-1:

13 ~~**SEC. 1070.20-1. LICENSE FEES.**~~

14 ~~*Every permittee who conducts, permits or assists in conducting or permitting any extended-*~~
15 ~~*hours premises as defined, shall pay to the Tax Collector an annual license fee, payable in advance.*~~

16 ~~*The license fee prescribed in this Section is due and payable on a calendar year basis starting*~~
17 ~~*90 days after the effective date of this Article, prorated with regard to the calendar year on a monthly*~~
18 ~~*basis. Fees for new licenses issued after the first day of January, 1971, or in any subsequent calendar*~~
19 ~~*year shall be prorated with regard to the calendar year on a monthly basis.*~~

20 Section 4312. The San Francisco Police Code is hereby amended by repealing
21 Section 1070.21:

22 ~~**SEC. 1070.21. STAY ORDERS.**~~

23 ~~*Notwithstanding Section 8, Part III, of the San Francisco Municipal Code, the action of the*~~
24 ~~*Entertainment Commission in suspending a permit for a period not to exceed 30 days shall not be*~~
25 ~~*suspended by an appeal to the Board of Appeals.*~~

1 Section 4413. The San Francisco Police Code is hereby amended by amending
2 Section 1070.22, to read as follows:

3 **SEC. 1070.22. PERMITS NOT TRANSFERABLE; PERMIT MUST BE SURRENDERED**
4 **UPON SALE OF BUSINESS; PERMIT AMENDMENT REQUIRED TO CHANGE PARTNERS**
5 **OR OTHER OWNERS TRANSFER OF PERMIT.**

6 (a) No Person may transfer a permit issued under this Article to any other Person.

7 (b) If a Permittee Sells the Business, the Permittee shall promptly surrender the permit to
8 the Director. If the Permittee fails to surrender the permit to the Director, the Director may, after
9 giving the Permittee notice by mail and electronically of the proposed action and an opportunity to
10 respond, revoke the permit.

11 (c) Notwithstanding Subsections (a) and (b) of this Section, a Permittee may change
12 partners, shareholders, or other owners of a Business provided that (1) the sale or other transfer of
13 ownership results in a Person owning no more than 50% of the Business, regardless of the form of
14 ownership, and (2) the Permittee obtains an amendment to the Permit as provided in this Section. If
15 the transfer of ownership does not result in any Person (who did not already have such a percentage
16 interest) having an ownership interest of ten percent or more, the Permittee is not required to obtain a
17 permit amendment.

18 (d) A Permittee seeking to amend a permit as required under this Section shall pay the filing
19 fee for Permit Amendment/Additional Partner set forth in Section 2.26 of this Code. The applicant
20 shall provide that portion of the information sought under Section 1070.3 that the Director requires.

21 (e) The Director shall determine within 30 days of the filing of a complete application to
22 amend a permit whether to approve it. The Director shall approve the application unless he or she
23 determines that denial is warranted under any of the grounds set forth in Section 1070.5(f)
24 (incorporating the standards set forth in Section 1060.5(f)) and shall notify the Permittee and Manager
25 of the approval electronically and either by mail or personal delivery.

1 (f) If the Director determines that disapproval of the application may be warranted, the
2 Director shall schedule a hearing on the matter for the next regularly scheduled meeting of the
3 Entertainment Commission. The Director shall promptly provide written notice of the hearing to the
4 Permittee and the Manager by mail and electronically.

5 (g) The Entertainment Commission shall determine whether to approve the application
6 according to the standards governing the initial application for an Extended-Hours Premises Permit
7 (incorporating the standards set forth in Section 1060.5(f)).

8 ~~No permit shall be transferable except with the written consent of the Entertainment~~
9 ~~Commission. An application for such a transfer shall be in writing and shall be accompanied by the~~
10 ~~same filing fee as for an initial application. The written application for such transfer shall contain the~~
11 ~~same information as requested herein for an initial application for such a permit.~~

12 Section 4514. The San Francisco Police Code is hereby amended by amending
13 Section 1070.24, to read as follows:

14 **SEC. 1070.24. CRIMINAL AND ADMINISTRATIVE PENALTIES-PENALTY.**

15 (a) CRIMINAL PENALTY. Any person who violates any provision Section 1070.4 of
16 this Article (requiring a valid permit to operate a Business) any provisions of this Article shall be
17 deemed guilty of an infraction. Any person who violates this Article more than once in a 12-
18 month period shall be guilty of an infraction or a misdemeanor, at the discretion of the
19 prosecutor. A first violation of this Article is an infraction is punishable by a fine of not more
20 than \$100. A second violation within one year of the date of the first violation is an infraction
21 punishable by a fine of not more than \$200 or a misdemeanor punishable a misdemeanor and
22 upon conviction such person shall be punished by a fine of not to exceed \$1,000 or by
23 imprisonment in the County Jail for a period not to exceed six months, or by both such fine
24 and imprisonment, at the discretion of the prosecutor. A third or subsequent violation within
25 one year of the date of the second or subsequent violation is an infraction punishable by a fine

1 of not more than \$500 or a misdemeanor punishable by a fine of not to exceed \$1,000 or by
2 imprisonment in the County Jail for a period not to exceed six months, or by both such fine
3 and imprisonment, at the discretion of the prosecutor. Each day a Person conducts, operates, or
4 maintains a Business without a valid permit shall constitute a separate violation.

5 (b) ADMINISTRATIVE PENALTY.

6 (1) The Director may issue administrative citations for the violation of any condition
7 imposed on a permit granted under this Article and any violation of Section 1070.28 or 1070.29
8 (governing Security Plans). San Francisco Administrative Code Chapter 100, "Procedures Governing
9 the Imposition of Administrative Fines," is hereby incorporated in its entirety and shall govern the
10 amount of fees and the procedure for imposition, enforcement, collection, and administrative review of
11 administrative citations issued under this Subsection (b). The Director shall impose fines for violations
12 of any permit condition and any violation of Section 1070.28 or 1070.29 as set forth in Section
13 100.5(a) of the San Francisco Administrative Code.

14 (2) Notwithstanding Subsection (b)(1) of this Section, the procedure governing the appeal
15 of a citation set forth in San Francisco Administrative Code Chapter 100 is revised as provided in this
16 Subsection (b)(2). The Controller may designate the Director of the Department of Public Works as a
17 hearing officer under San Francisco Administrative Code Section 100.7, but shall designate such
18 officer for no more than one appeal a month and for no more than 12 times in a 12-month period.

19 Section 4615. The San Francisco Police Code is hereby amended by repealing
20 Section 1070.26:

21 ~~SEC. 1070.26. MORATORIUM ON THE GRANTING OF PERMITS.~~

22 ~~Notwithstanding any provision of this Code, neither the Chief of Police, nor the Board of~~
23 ~~Appeals on appeal, shall grant or issue to any person a permit to own, conduct, operate, maintain or to~~
24 ~~participate therein, or to cause or permit to be conducted, operated or maintained, any extended hours~~
25 ~~premises in the Moratorium Area described below in Subsection (a).~~

1 ~~(a) Moratorium Area Described. The "Moratorium Area" includes the area bounded by Bush~~
2 ~~Street to the North, O'Farrell Street to the South, Taylor Street to the East, and Van Ness Avenue to the~~
3 ~~West, including the properties fronting on each side of O'Farrell, Bush, and Taylor Streets, but not~~
4 ~~including the properties fronting Van Ness Avenue.~~

5 ~~(b) Sunset Provision. The moratorium provided by this ordinance shall expire on December~~
6 ~~31, 2000 unless repealed or further extended by ordinance.~~

7 Section 4716. The San Francisco Police Code is hereby amended by adding Sections
8 1070.28, 1070.29, 1070.30, 1070.31, 1070.32, and 1070.33, and 1070.34, 1070.35, and
9 1070.36, to read as follows:

10 **SEC. 1070.28. APPROVAL REQUIRED FOR SECURITY PLANS.**

11 (a) Every Extended-Hours Premises shall have a Security Plan, as defined in Section
12 1070(o), that has been approved by the Entertainment Commission or by the Director, as required by
13 this Article.

14 (b) As of the effective date of this Section, the Entertainment Commission shall not approve
15 any permit or other application relating to a Business unless the applicant has a Security Plan that has
16 been approved by the Commission or the Director as provided in this Article or has submitted a
17 proposed Security Plan with the application. The Security Plan shall meet the minimum
18 requirements of Section 1070(o) and any implementing rules and regulations. The Commission shall
19 disapprove any Security Plan that it determines does not adequately address the safety of persons and
20 property and provide for the orderly dispersal of persons and traffic, notwithstanding the compliance of
21 the proposed plan with the minimum requirements of Section 1070(o).

22 (c) Compliance with the Security Plan approved under this Article is a condition of the
23 permit.

24 (d) Every Extended-Hours Premises that does not have a Security Plan approved by the
25 Entertainment Commission on the effective date of this Section shall submit a proposed Security Plan to

1 the Director. The Entertainment Commission, the Director and every Permittee shall follow the
2 procedures and standards set forth in Section 1060.31 of this Code for the approval of Security Plans
3 under this Article. The Entertainment Commission may suspend a permit for the Permittee's failure to
4 comply with the requirements of Section 1060.31 as required by this Subsection (d), including the
5 failure to submit a proposed Security Plan and the failure to comply with an approved Security Plan.

6 (e) For the purpose of calculating compliance with the component of a Security Plan
7 that requires a ratio of one Security Guard to a specific number of individuals, a Security
8 Guard may be counted toward the ratio for only one Place of Entertainment at any one time.
9 This calculation rule applies whether the required ratio of Security Guard to individuals is
10 based solely on the definition of Security Plan in Section 1060(o), is otherwise required by this
11 Article, or is a condition of the Place of Entertainment permit.

12 **SEC. 1070.29. DIRECTOR MAY REQUIRE A PERMITTEE TO COMPLY WITH A**
13 **REVISED SECURITY PLAN.**

14 Notwithstanding a Security Plan's compliance with the minimum requirements of Section
15 1070(o) and prior approvals under this Article, after consulting with the San Francisco Police
16 Department, the Director may issue an order directing a Permittee to comply with a revised Security
17 Plan by directing such revisions as the Director reasonably determines will address safety and traffic
18 concerns. The procedures and standards set forth in Section 1060.32 of this Code shall govern the
19 issuance of orders directing a Permittee to comply with a revised Security Plan under this Article. The
20 Entertainment Commission may suspend a permit for the Permittee's failure to comply with the
21 requirements of Section 1060.32 as required by this Section.

22 **SEC. 1070.30. COMPLIANCE WITH CONDITIONS; AMENDMENT OF PERMIT TO**
23 **CHANGE CONDITIONS.**

24 No Permittee shall operate a Business in any manner inconsistent with any condition imposed
25 on the permit. A Permittee may request an amendment to a permit to remove or change a condition by

1 filing a request with the Secretary of the Commission and paying the fee for an Amendment to a Permit
2 required under Police Code Section 2.26. The Entertainment Commission shall conduct a hearing and
3 determine whether to approve the application to amend the permit according to the procedures and
4 standards governing the initial application for Extended-Hours Premises Permits.

5 **SEC. 1070.31. PERMITTEES REQUIRED TO REPORT CERTAIN INFORMATION.**

6 (a) Every Permittee shall provide written notice to the Entertainment Commission within 30
7 days after any of the following occurs:

8 (1) Criminal charges, complaints or indictments for the Permittee, the Manager, and each
9 Person with authority or control over the Business occurring after the filing of the permit application to
10 the extent that they fall within the categories specified in Sections 1060.3(j), (k) and (l) of this Code as
11 incorporated by Section 1070.3.

12 (b) Every Person holding a Extended-Hours Premises Permit, other than a publicly traded
13 corporation, shall maintain a record of the name and address of every Person that directly or indirectly
14 owns or controls 10% or more of the assets, ownership interests or voting interests in the Person
15 holding the Permit, which shall be known as a "record of principal owners," and shall make the
16 information available to the Entertainment Commission upon request. Every Person subject to this
17 Subsection (b) shall report any change to the record of principal owners within 30 days of the
18 transaction that effects the change. A "publicly traded" corporation is a company that has issued
19 securities through an initial public offering which are traded on at least one stock exchange or over-
20 the-counter market.

21 **SEC. 1070.32. APPEALS TO BOARD OF APPEALS.**

22 (a) The following actions taken under this Article may be appealed to the Board of Appeals:
23 The granting or denial of a permit, including a conditionally granted permit, or an amendment to a
24 permit; the suspension or revocation of a permit; and the denial by the Entertainment Commission of
25 an exception from the regulations under Section 1070.19. Any such appeal shall be filed within ten

1 days from the date of the decision, as provided in Section 8 of the San Francisco Business and Tax
2 Regulations Code.

3 (b) Notwithstanding the provisions of Subsection (a) of this Section, the Permittee or permit
4 applicant may seek immediate judicial review of the actions described in Subsection (a) of this Section
5 pursuant to California Code of Civil Procedure Section 1085 or Section 1094.8, as these provisions
6 may be amended, including any successor provisions, or any other procedure provided by law. The
7 Permittee or permit applicant is not required to exhaust his or her administrative remedies before the
8 Entertainment Commission or before the Board of Appeals.

9 **SEC. 1070.33 AUTHORITY OF SAN FRANCISCO POLICE DEPARTMENT.**

10 Nothing in this Article is intended to restrict or alter in any way the authority vested in the San
11 Francisco Police Department under Federal, State or local law to take action in response to conduct
12 that arises in connection with the operation of a Business.

13 **SEC. 1070.34. PROMOTION OF GENERAL WELFARE.**

14 In undertaking the enforcement of this Article, the City is assuming an undertaking only
15 to promote the general welfare. It is not assuming, nor is it imposing on its officers and
16 employees, an obligation for breach of which it is liable in money damages to any person who
17 claims that such breach proximately caused injury.

18 **SEC. 1070.35. REPORTS BY ENTERTAINMENT COMMISSION.**

19 (a) The Director shall prepare regular quarterly and yearly reports pertaining to
20 Extended-Hours Premises Permits and One Time Event Permits. The report for the January-
21 March quarter shall be completed no later than April 20; for the April-June quarter, no later
22 than July 20; for the July-September quarter, no later than October 20; for the October-
23 December quarter, no later than January 30. The first quarterly report shall only cover that
24 portion of the quarter that follows the effective date of Ordinance No. . The yearly
25 report shall cover the calendar year and be completed no later than January 30. A One Time

1 Event Permit covering the hours of 2:00 a.m. to 6:00 a.m. on January 1 shall be considered as
2 part of the October-December quarter and as part of the year ending December 31.

3 (b) Quarterly and yearly reports shall be promptly submitted to the Clerk of the
4 Board of Supervisors, the Mayor, the Chief of Police, and any City department that has
5 requested such reports or that in the Director's judgment would have an interest in such
6 reports. These reports shall be promptly posted on the Entertainment Commission website
7 and maintained on the website for at least seven years.

8 (c) Yearly reports shall include, for Extended-Hours Premises Permits, total number
9 of existing permits; number of existing permits in each Police District; name and location of
10 the Premises for each existing permit. Existing permits shall be measured as of December 31
11 immediately prior to submission of the yearly report.

12 (d) Yearly reports shall include, for One Time Event Permits, total number of
13 permits granted during the prior calendar year or granted for events occurring during the prior
14 calendar year; total number of those permits that included authorization for the event to go
15 beyond 2:00 a.m.; number of permits in each Police District; number of permits that included
16 authorization for the event to go beyond 2:00 a.m. in each Police District; name and location
17 of the Premises for each event.

18 (e) Quarterly reports shall include, for Extended-Hours Premises Permits granted
19 during the quarter that is the subject of the report, name and location (street address and
20 Police District) of the Premises; a summary of the Security Plan; a summary of the business
21 plan; and any conditions placed on the permit. In addition, quarterly reports shall include the
22 number of applications for Extended-Hours Premises Permits denied by the Commission,
23 suspended by the Commission or Director, or revoked by the Commission, during the quarter
24 that is the subject of the report, and a summary of the grounds for the denial, suspension, or
25 revocation.

1 (f) Quarterly reports shall include, for One Time Event Permits granted during the
2 quarter that is the subject of the report or granted for events occurring during that quarter,
3 name and location (street address and Police District) of the Premises; whether the permit
4 authorizes the event to go beyond 2:00 a.m.; a summary of the Security Plan; a summary of
5 the business plan; and any conditions placed on the permit. In addition, quarterly reports shall
6 include the number of applications for One-Time Event Permits denied by the Commission,
7 and a summary of the grounds for denial.

8 (g) Quarterly reports shall include a summary of every complaint, whether formal or
9 informal, brought to the attention of the Entertainment Commission or its staff and/or the
10 Police Department pertaining to the operation of an Extended Hours Premises or an event for
11 which a One Time Event Permit had been issued. The report shall state the general nature of
12 the complaint (by way of example but not limitation, noise, overcrowding, altercation, criminal
13 activity); the general type of source of the complaint (by way of example but not limitation, a
14 patron, neighbor, or police officer), and the resolution of the complaint, if any.

15 (h) Notwithstanding the time frame for submission of yearly reports as stated in
16 subsection (a), the Entertainment Commission shall submit no later than 30 days after the
17 effective date of Ordinance No. _____ a report containing the information for Extended-
18 Hours Premises Permits required to be included in a yearly report as stated in subsection (c),
19 current as of the effective date of Ordinance No. _____. Further, this report shall contain the
20 information for One Time Event Permits required to be included in a yearly report as stated in
21 subsection (d), covering calendar year 2008 and that portion of calendar year 2009 up to the
22 effective date of Ordinance No. _____.

23 (i) The San Francisco Police Department and other City departments shall
24 cooperate with and assist the Director, at the Director's request, in providing information for all
25 reports that must be submitted under this Section.

1 SEC. 1070.36. PROSPECTIVE MORATORIUM ON GRANT OF EXTENDED-HOURS
2 PREMISES PERMITS AND PROSPECTIVE LIMIT ON ONE TIME EVENT PERMITS GOING
3 BEYOND 2:00 A.M.

4 (a) Within two weeks on either side of the yearly anniversary of the effective date of
5 Ordinance No. _____, the Entertainment Commission shall hold an annual hearing to
6 determine whether there has been a substantial increase since the effective date of
7 Ordinance No. _____ in the number of Extended-Hours Premises Permits in existence
8 and/or in the granting of One-Time Event Permits with authorization for the event to go
9 beyond 2:00 a.m.

10 To make this determination as to Extended-Hours Premises Permits at the first annual
11 hearing, the Commission shall compare the number of such permits in existence at the time of
12 the hearing to the number of such permits in existence as indicated in the report submitted
13 pursuant to Section 1070.35(h). To make this determination at subsequent annual hearings,
14 the Commission shall compare the number of such permits in existence at the time of the
15 hearing to the number of such permits in existence at the time of the last annual hearing.

16 To make this determination as to One Time Event Permits at the first annual hearing,
17 the Commission shall compare the number of such permits with authorization for the event to
18 go beyond 2:00 a.m. that were granted since the effective date of Ordinance No.
19 _____ with the number of such permits with authorization for the event to go beyond
20 2:00 a.m. as indicated in the report submitted pursuant to Section 1070.35(h). To make this
21 determination at subsequent annual hearings, the Commission shall compare the number of
22 such permits with authorization to go beyond 2:00 a.m. that were granted since the last
23 annual hearing with the number of such permits with authorization to go beyond 2:00 a.m. that
24 were granted for the period measured at the last annual hearing.

1 (b) If the calculation mandated by subsection (a) of this Section demonstrates an
2 increase of 15% or more in any year in the number of Extended-Hours Premises Permits in
3 existence, there shall be a City-wide moratorium on the granting of additional Extended-Hours
4 Premises permits. In lieu of a City-wide moratorium, the Entertainment Commission shall
5 have discretion to impose a moratorium applicable only to certain geographic areas of the City
6 in which there is a concentration of Extended-Hours Premises Permits. In this context, a
7 "concentration of Extended-Hours Premises Permits" means geographic areas in the City that
8 have the largest number of Extended-Hours Premises Permits and that cumulatively account
9 for at least 70% of the Extended-Hours Premises Permits in existence as of the hearing
10 mandated by subsection (a) of this Section. In this context, the Commission may define
11 "geographic areas" by reference to Police Districts, zoning provisions of the Planning Code, or
12 other measures that are reasonable in light of other provisions in City law or commonly
13 understood notions of the contours of various San Francisco neighborhoods. The
14 Commission may exercise its discretion to impose the aforementioned moratorium applicable
15 only to certain geographic areas if the Commission makes a finding on the record that
16 considering all factors, including but not limited to economic and public safety concerns, such
17 a moratorium is preferable to a City-wide moratorium.

18 (c) If the calculation mandated by subsection (a) of this Section demonstrates an
19 increase of 15% or more in any year in the number of One Time Event Permits with
20 authorization for the event to go beyond 2:00 a.m., there shall be a limit on the number of
21 future One-Time Event Permits that may be granted with authorization for the event to go
22 beyond 2:00 a.m., as follows: The number of such permits to be issued per year shall
23 correspond to the average number that were issued per year since the inception of the One
24 Time Event Permit or the number that were issued for events occurring in calendar year 2008,
25 whichever number is higher, and adding a factor of 10%. If this limitation is imposed, the

1 Entertainment Commission shall by rule establish criteria for issuing One Time Event Permits
2 with authorization for the event to go beyond 2:00 a.m. If this limitation is imposed but the
3 Commission fails to establish such a rule, One Time Event Permits with authorization for the
4 event to go beyond 2:00 a.m. shall be limited to One Time Events for designated days as
5 established by the Commission pursuant to Section 1060.29.1 of this Code, if Ordinance No.
6 _____ is enacted. In determining the criteria for issuing One Time Event Permits with
7 authorization for the event to go beyond 2:00 a.m., the Commission may not consider the
8 content of constitutionally protected expression or entertainment that is part of the event.

9 (d) If a moratorium on Extended-Hours Premises Permits is imposed pursuant to
10 subsection (b) of this Section or a limit on the number of One Time Event Permits with
11 authorization for the event to go beyond 2:00 a.m. is imposed pursuant to subsection (c) of
12 this Section, the Entertainment Commission or Director, in consultation with the Police
13 Department, Planning Department, and such other departments as the Commission or
14 Director shall designate, shall conduct a study of the effects of the moratorium and/or
15 limitation, as well as the effects of the substantial increase in the number of Extended-Hours
16 Premises Permits in existence and/or in the granting of One-Time Event Permits with
17 authorization for the event to go beyond 2:00 a.m. that gave rise to the moratorium and/or
18 limitation. The study shall be completed no earlier than six months and no later than eleven
19 months after the moratorium and/or limitation is imposed. The Entertainment Commission
20 shall hold a hearing on the subject of the study within one month of completion of the study
21 and shall make a recommendation regarding continuing, modifying, or lifting the moratorium
22 and/or limitation. The Police Department and Planning Department shall participate in the
23 hearing and other interested departments may participate in the hearing. Within three months
24 of the Entertainment Commission hearing, the Board of Supervisors or a committee thereof
25 shall hold a hearing on the same subject.

Mayor, Supervisor Maxwell
BOARD OF SUPERVISORS

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~~Section 18. In undertaking the enforcement of this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.~~

Section ~~19~~17. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or of Article 15.2 of the Police Code, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or of Article 15.2, Code or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivision paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.

Section ~~20~~18. The Board of Supervisors has adopted findings and a statement of purpose regarding this Ordinance that are set forth in Ordinance No. _____.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
PAUL ZAREFSKY
Deputy City Attorney

Mayor, Supervisor Maxwell
BOARD OF SUPERVISORS

LEGISLATIVE DIGEST (REVISED) – ADDENDUM

[Entertainment Commission – Extended-Hours Premises Permits.]
Ordinance amending the San Francisco Police Code by amending Sections 1070, 1070.1, 1070.2, 1070.3, 1070.5, 1070.7, 1070.8, 1070.19, 1070.22, and 1070.24, by adding Sections 1017.17.1, 1017.17.2, 1017.17.3, 1070.28, 1070.29, 1070.30, 1070.31, 1070.32, 1070.33, and 1070.34, 1070.35, and 1070.36; by repealing Sections 1070.4, 1070.17, 1070.20, 1070.20-1, 1070.21, and 1070.26; and by adding new Sections 1070.4, 1070.17, and 1070.20, relating to the application, approval, amendment, suspension, revocation, and transfer of Extended-Hours Premises Permits, including changes in penalties.

Note: This addendum to the revised legislative digest incorporates changes as included in the Amendment of the Whole, presented at the May 18, 2009 meeting of the City Operations and Neighborhood Services Committee.

1. The definition of "Security Plan" in Section 1070(o) has been changed, for those areas of the City where a conditional use authorization is required for a late night use, to add Thursday and Sunday as days on which the security plan must provide at least one security guard for every 100 individuals authorized by the occupancy permit. A parallel change was made in Section 1060(n) of the proposed ordinance pertaining to Place of Entertainment Permits (File No. 080323).

2. Section 1070.35 has been added, requiring the Director of the Entertainment Commission to make yearly and quarterly reports on Extended-Hours Premises Permits and One-Time Event Permits. The yearly reports would compile information on the number of these types of permits existing as of the end of the prior year, including for One-Time Event Permits those extending beyond 2:00 a.m., and the name and location of the premises. The quarterly reports would compile information on the number, name, location, security plan, business plan, and conditions placed on permits issued during the prior quarter; on permit applications denied and permits suspended or revoked during the prior quarter and a summary of the grounds therefor; and complaints pertaining to the operation of Extended-Hours Premises Permits and One Time Event Permits during the prior quarter.

3. Section 1070.36 has been added, to provide for an annual hearing by the Entertainment Commission to determine whether in any year there has been a substantial increase in the number of Extended-Hours Premises Permits in existence or in the granting of One-Time Event Permits with authorization to go beyond 2:00 a.m. "Substantial increase" means 15% more than the prior year. If there is a substantial increase in Extended-Hours Premises Permits, there would be a City-wide moratorium on such permits or, at the Entertainment Commission's discretion, a moratorium in geographic areas of the City where

there is a concentration of such permits. If there is a substantial increase in One Time Event Permits with authorization to go beyond 2:00 a.m., a limit would be placed on the number of such permits that could be issued in a year. In either case, the Entertainment Commission would conduct a study and hold a hearing on this issue, as would the Board of Supervisors or a Board committee, within specified time frames.

LEGISLATIVE DIGEST (REVISED)

[Entertainment Commission – Extended-Hours Premises Permits.]
Ordinance amending the San Francisco Police Code by amending Sections 1070, 1070.1, 1070.2, 1070.3, 1070.5, 1070.7, 1070.8, 1070.19, 1070.22, and 1070.24, by adding Sections 1017.17.1, 1017.17.2, 1017.17.3, 1070.28, 1070.29, 1070.30, 1070.31, 1070.32, 1070.33, and 1070.34; by repealing Sections 1070.4, 1070.17, 1070.20, 1070.20-1, 1070.21, and 1070.26; and by adding new Sections 1070.4, 1070.17, and 1070.20, relating to the application, approval, amendment, suspension, revocation, and transfer of Extended-Hours Premises Permits, including changes in penalties.

Note: This revised legislative digest incorporates changes as included in the Amendment of the Whole, presented at the May 11, 2009 meeting of the City Operations and Neighborhood Services Committee. These changes largely parallel changes made at the same time in the companion ordinance pertaining to Place of Entertainment Permits (Board File No. 080323).

Note: This legislation would amend Article 15.2 of the San Francisco Police Code, which governs Extended-Hours Premises Permits. The provisions governing Extended-Hours Premises Permits are in many respects the same as those governing Place of Entertainment Permits, which are set forth in Article 15.1 of the Police Code. The proposed ordinance would incorporate by reference some provisions set forth in Article 15.1. Incorporating by reference avoids the necessity of repeating provisions in Article 15.2 that provide for the same authority and impose the same requirements as Article 15.1. For the convenience of the reader, this digest describes the changes that in the legislation simply incorporate by reference applicable sections of Article 15.1.

BUSINESSES REQUIRING AN EXTENDED-HOUR PREMISES PERMIT

Existing Law

Every premises to which patrons or members are admitted or allowed to remain between the hours of 2:00 a.m. and 6:00 a.m. which serves food, beverages, or food and beverages (including alcoholic beverages) for consumption on the premises or wherein entertainment, as defined in Section 1070, is furnished or occurs, must obtain an Extended-Hours Premises Permit.

The term "Entertainment" includes dance academies where students are admitted between 2:00 a.m. and 6:00 a.m. The term also includes an act, play, review, pantomime, scene, song, dance act, song and dance act or poetry recitation whether done by a professional or nonprofessional entertainer.

Proposed Amendments

The proposed amendment would make these changes to the definition of "entertainment" for which a permit is required:

- "Professional Entertainer" no longer included in definitions; definition of "Entertainment" includes activities by nonprofessional entertainers, not just professionals
- Karaoke included as an example
- Now includes all types of fashion shows, even those using non-professionals and conducted by a nonprofit
- Excludes activities conducted in private residences

APPLICATION REQUIREMENTS FOR EXTENDED-HOURS PREMISES PERMITS

Existing Law

Corporate applicants must disclose the names and residence addresses of each officer and director and each stockholder owning more than 10% of the stock of the corporation and partnerships must disclose the name and residence addresses of each partner, including limited partners.

Applicants must disclose criminal history information (for any crime except misdemeanor traffic violations) for the applicant, any officer, director, or member of the applicant and, for corporate applicants, any stockholder owning more than 10% of the corporation's stock.

Applicants must disclose a business plan specifying, among other information, the identity of the manager or managers, who shall be on the premises during all hours of operation, the types or classes of entertainment to be provided (in terms of the types of instruments, numbers of performers, and sound levels) for the purpose of gauging anticipated noise, the amount of parking to be provided, and the sound amplification system, if any.

Applicants are not required to disclose persons who appear on the business registration certificate or the person to whom a liquor license was issued for the business.

Proposed Amendments

Criminal history and other information required for application - criminal background information that applicants must provide - and permittees must update - is narrowed to the following:

- Certain enumerated crimes – assault and battery, felony sexual assault, sexual battery, rape, statutory rape, discharging firearm, unlawful weapons, disturbing the peace, unlawful threats, obstructing right of way, gambling, prostitution-related crimes, sex crimes for which registration is required, loitering for lewd or lascivious purposes, identity theft, violent

felonies warranting enhancement of a prison term, criminal gang activity, drug offenses, liquor license violations – and any offense that would be a felony or misdemeanor in California that arose out of the operation of a nightclub, dance hall, cabaret, entertainment venue, or place that serves food or beverages

- Applicants required to report a conviction or plea of guilty or no-contest
- Applicants required to report sentence imposed, and if the applicant was granted parole or probation, whether the applicant successfully completed parole or probation
- Applicants need only provide criminal history information for the preceding 10 years
- Criminal history information required for the applicant, including (except for publicly traded corporations) anyone with 10% ownership interest in the applicant, the business manager, persons listed on the business registration certificate, persons to whom the liquor license is issued, and persons with authority or control over the business

Change in other information that applicants must provide and requirements for providing contact information

The following would apply to applicants for Extended-Hours Premises Permits:

- Required to disclose the name and address of every person that directly or indirectly owns or controls 10% or more of the assets, ownership interests or voting interests of the applicant (other than publicly traded companies)
- Required to identify the holder of the liquor license for the business
- No longer required to identify in the business plan the class of entertainment to be provided
- Required to certify that the business shall comply with the maximum occupancy load for the space as established under the San Francisco Building Code and Fire Codes
- Required to sign the application under penalty of perjury (instead of with verification procedure provided under state law for court pleadings)
- Required to provide contact information for the applicant or permittee and the manager of the business so that the Commission is able to provide written notice to permit applicants and permittees, including electronic notice (the manager may designate others to act in the manager's absence and provide contact information for such persons to the Director)
- Required to provide 30 days notice of the proposed hearing by posting notice on the premises and making good faith efforts to distribute leaflets to residential properties within 150 feet of the premises in neighborhood-commercial and mixed residential districts (there is an exception for the leafleting requirement for businesses in areas that the Commission finds are not likely to significantly generate nighttime

noise and traffic to the detriment of residences located in that immediate area)

PROCEDURES FOR NOTICE BY CITY TO PERMIT APPLICANTS AND PERMITTEES

Existing Law

The Police Code does not define the terms used for notice requirements by the City to permit applicants and permittees.

Proposed Amendments

- Adds definitions for the terms used for providing notice (such as "mail" and "personal delivery")
- Specifies how the Commission delivers or transmits written notice under the Article to permit applicants and permittees, and the managers for the business

GRANTING OR DENYING EXTENDED-HOURS PREMISES PERMITS

Existing Law

The Entertainment Commission is required to grant a permit unless it makes certain findings. The hearing must be held within 45 working days of the date that the completed application is received.

Upon an applicant's request, the Entertainment Commission shall issue a conditional approval of the permit application, pending approval of the permit by other City agencies, if the Commission has sufficient information to adequately evaluate the proposal and there are no grounds for denial. A conditional permit will expire nine months from the date of the Commission's final decision if the applicant has not received all other required City permits

Proposed Amendments

The Entertainment Commission is required to grant a permit unless it finds that.

- The premises or the proposed operation of the business does not comply with the health, zoning, fire and safety requirements of the laws of the State of California or ordinances of the City and County of San Francisco applicable to the business; or
- Notwithstanding the mitigation provided under the security plan submitted by the applicant, the building, structure, equipment or location of the proposed business cannot adequately accommodate the type and volume of vehicle and pedestrian traffic anticipated; or

- The premises or the proposed operation of the business lacks adequate safeguards to prevent emissions of noise, glare, dust and odor that would substantially interfere with the public health, safety and welfare or the peaceful enjoyment of neighboring property; or
- The permit applicant has not provided a security plan that adequately addresses the safety of persons and property and provides for the orderly dispersal of individuals and traffic.

The proposed amendment also makes these changes with respect to permit applications:

- Makes explicit the right to deny an application based on an inadequate security plan
- Requires that the Commission grant or deny the permit application within 45 days, but provides for extensions of time under certain circumstances
- Makes void a permit that has been issued subject to the condition that the applicant obtain all other required City permits if the permittee fails to obtain the required permits within 9 months

SUSPENDING PERMITS

Existing Law

The Entertainment Commission may suspend an Extended-Hours Premises Permit if it determines that the (1) building, structure, equipment or location does not comply with all health, zoning, fire, and safety requirements or standards of State or local law; (2) the establishment has been operated in a manner that has harmed the public health, safety, or welfare by significantly increasing pedestrian traffic, disorderly conduct, or the level of noise and the permittee has failed, after being requested by the Police Department or Entertainment Commission to do so, to take reasonable steps to alleviate these conditions; (3) the proprietor or person in charge has violated or permitted the violation of certain State or local laws or failed to take reasonable steps, after being requested by the Police Department or Entertainment Commission to do so, to halt such violations; or (4) the proprietor or person in charge violates or permits the violation of any provision of Article 15.2 of the Police Code (the Article governing Extended-Hours Premises Permits) or of the permit in connection with the operation of the establishment.

The penalty for the first violation is suspension of the permit for 30 days, and for repeated violations within specified time periods, the penalty is suspension for periods of 60 and 90 days.

In addition, the Entertainment Commission may suspend a permit for 30 days for violation of the regulations or any provision of the Municipal Code.

Proposed Amendments

The proposed ordinance would provide three separate procedures for suspending an Extended-Hours Premises Permit. The ordinance would revise and clarify provisions governing suspension by the Commission. In addition, the proposed ordinance would authorize the Director to issue a suspension of up to seven days for several specified reasons, and to issue an emergency 72-hour suspension for public safety reasons.

(1) Suspension by Entertainment Commission

- Clarifies wording setting forth the grounds for suspension
- Makes explicit that may suspend a permit for failure to comply with an approved security plan, or a security plan that the Director has ordered revised
- Commission may suspend the permit of a business that does not currently have an approved security plan if it fails, after being notified of the requirement to do so, to send a proposed plan to the Director for review and approval
- Commission may suspend a permit for failing to request emergency medical care when someone is injured on the premises and the request would have been reasonable under the circumstances
- Commission may suspend a permit for the permittee's (or employee's or agent's) commission of certain crimes on the premises or in connection with the operation of the business, or the permittee's failure to take reasonable steps at the request of the police, the Commission, or the Director, to halt such conduct; the crimes which can trigger a suspension include assault & battery, sexual battery, discharge of firearm, unlawful weapons, disturbing the peace, unlawful threats, obstruction of pedestrian/vehicular right of way, gambling, rape, statutory rape, prostitution and related offenses, sex crimes where registration required, felony sexual assault, loitering (lewd purpose or on private property with no lawful business), identity theft, violent felony warranting prison enhancement, criminal gang activity, drug offenses, violation of ABC laws and provisions of the Police Code prohibiting urination/defecation, accumulation of filth, and excessive noise
- Clarifies that the Commission's authority to suspend for 30, 60 or 90 days includes the authority to impose "up to" that number; sets forth factors to guide the decision

(2) Limited suspension by Director, appealable to the Commission

- Director would have the authority to suspend a permit for up to 7 days

- Director may suspend for excessive noise emissions on 3 days within a 3-month period; Director must first give permittee copies of 3 reports showing excessive noise levels (must do so within 3 City business day of issuance of the report)
- Director may suspend a permit for the commission of certain crimes on the premises or the sidewalk abutting the premises, committed by the permittee (or employee or agent), or for failure to take reasonable steps to stop the commission of those crimes by others, provided the Director has given the permittee notice of the need to take corrective action and the permittee has failed to do so; the crimes are the same as those (listed above) that may serve as the basis for a suspension by the Commission
- Director may suspend a permit for failure to comply with an approved Security Plan or a revised Security Plan
- If the Director suspends a Business three times during a twelve-month period, the Director is required to initiate a suspension proceeding before the Commission

(3) 72-Hours suspension by Director for public safety, not appealable to the Commission

- Director would have the authority to suspend a permit for up to 72 hours, but must first give the permittee 8 hours notice and an opportunity to respond
- Three elements required – (a) the occurrence of conduct that would constitute a violation of certain crimes (assault & battery, felony sexual assault, sexual battery, rape, statutory rape, pimping, discharging firearm, unlawful weapon, disturbing the peace, unlawful threats, or a violent felony warranting enhancement of a prison term, criminal gang activity); (b) the conduct has resulted or could have resulted in serious bodily injury or death; (c) continued operation of the business poses a serious threat to public safety
- The conduct forming the basis for the suspension must have occurred on the premises of the Business, on the sidewalk abutting the premises, or within 100 feet of the premises, provided in this last instance that the person engaging in the conduct had been on the premises no more than 30 minutes earlier
- The conduct forming the basis for the suspension must have been engaged in by the permittee (or employee or agent), or by another person if the permittee failed to take reasonable steps within the law to prevent that person from engaging in the conduct

REVOKING PERMITS

Existing Law

The Entertainment Commission may revoke an Extended-Hours Premises Permit if the permittee has knowingly made any false, misleading or fraudulent statement of material fact in the permit application, has failed to pay any fee or charge required under Article 15.2, or has permanently ceased operation of the business. Revocation does not prejudice the right of an applicant to apply for a new permit.

Proposed Amendments

The proposed ordinance removes one ground for revocation (permanently ceasing business operations), because this situation would be covered by an expanded section governing the transfer of permits; retains two grounds for revocation (false statement on the application and failure to pay a fee), and adds one ground for revocation (a permittee's selling the business and failing to surrender the permit to the Director as required by the Ordinance.) The proposed ordinance also states that revocation shall not preclude the permittee from applying for a new permit (instead of stating that revocation does not prejudice right to apply again).

CONSIDERING PRIOR ACTIONS WHEN DECIDING WHETHER TO GRANT OR PLACE CONDITIONS ON A PERMIT, OR SUSPEND OR REVOKE A PERMIT

Existing Law

The Police Code currently provides that revocation of an Extended-Hours Premises Permit shall not prejudice the right of an applicant to apply for a new permit.

Proposed Amendments

The proposed ordinance would provide, in place of the current provision, that when considering whether to grant a permit application, place conditions on a permit, or suspend or revoke a permit, the Commission and the Director may consider any previous denial of a permit application or previous suspension or revocation of a permit under Article 15.1 (Place of Entertainment and One Time Event permits) or Article 15.2 (Extended-Hours Premises permits) for the same permit applicant or Permittee when the circumstances warranting the previous action are relevant to the current determination.

PERMITS NOT TRANSFERABLE EXCEPT FOR PARTIAL CHANGE IN OWNERSHIP

Existing Law

No permit is transferable except with the written consent of the Entertainment Commission.

Proposed Amendments

The proposed ordinance would delete the current provisions and instead provide the following:

- No person may transfer a permit to any person
- A permittee who sells or otherwise transfers 50% or more of the ownership in the business to another person must promptly surrender the permit to the Director; if he does not, the Director may revoke the permit
- Notwithstanding these provisions, a permittee may make a partial change in ownership, such as a change of partners or shareholders, so long as the transfer does not result in a person owning more than 50% of the business and the permittee obtains an amended permit (but if a transfer is minor - no change in ownership of 10% or more - no permit amendment needed)

When a permit amendment is required for a partial change in ownership, the Director may act on the application and shall approve it unless disapproval may be warranted under the same standards governing the review of initial permit applications. If the Director determines that disapproval of the application may be warranted, he shall schedule a hearing for the next regularly scheduled meeting of the Entertainment Commission for a determination.

PENALTIES

Existing Law

Any person who violates any provision of Article 15.2 governing Extended-Hours Premises is deemed guilty of a misdemeanor punishable by a fine not to exceed \$1,000 or by imprisonment of not more than 6 months, or both..

PROPOSED AMENDMENTS

Criminal Penalty

A first violation of Article 15.2 is an infraction punishable by not more than a \$100 fine. A second violation within a 12-month period is an infraction punishable by not more than a \$200 fine or a misdemeanor punishable by a fine of not more than \$1,000 or a prison term of not more than 6 months. A third or subsequent violation within 12 months of the prior violation is an infraction punishable by not more than a \$500 fine or a misdemeanor punishable by a fine of not more than

\$1,000 or a prison term of not more than 6 months, or both fine and imprisonment.

Administrative Fines

The Director may impose an administrative fine for violation of a condition imposed on the permit (such as a noise limit) or a requirement governing security plans. The fine would range from \$100 to \$500 (higher amounts for repeated violations). Persons cited could file an administrative appeal to the Controller (who could designate DPW as a hearing officer for up to 12 appeals a year)

CONSIDERATION OF REQUESTS FOR EMERGENCY SERVICES

Existing Law

The Entertainment Commission may not consider any request for emergency medical or ambulance services to treat a permittee's patrons as a basis for suspending a permit.

Proposed Amendments

The current provision is deleted and the following added:

- A permittee must request emergency medical services when someone is injured on the premises of the business and needs the services
- Failure to request emergency medical assistance when a request would have been reasonable under the circumstances is a ground for suspending a permit
- When considering a proposed suspension of a permit, the Commission and Director may consider as evidence the circumstances involving the operation of the business that relate to the injury, but not (consistent with current provisions) the request itself

EXCEPTIONS TO REQUIREMENTS FOR LIGHTING, BOOTHS AND MINORS

Existing Law

The Entertainment Commission may grant an exception to an Extended-Hours Premises from the provisions of certain requirements relating to lighting of the premises, booths, and minors being on the premises if the Commission finds that the premises (1) are used exclusively as a bona fide public eating place, (2) are a place of entertainment that has no liquor license, or (3) are operated by any public agency or by any educational, recreational or social agency, or by any

bona fide fraternal, charitable, or religious or benevolent or any other nonprofit organization.

A decision by the Entertainment Commission denying an exception would be final except that an appeal may be taken to the Board of Review created by Ordinance No. 245-68, consisting of the Director of Administrative Services, the Controller, and the Assessor Recorder.

Proposed Amendments

- The definition for exception (3) described above under "Existing Law" would be amended by using the definition of Bona Fide Nonprofit Club or Organization (which is the same definition for that term used in Article 15.1 governing Place of Entertainment Permits) instead of the language currently used in Section 1070.19(a)(3)
- Appeals of the Commission's denial of an exception taken to the Board of Appeals, not the Board of Review

ADDITIONAL PROPOSED AMENDMENTS TO ARTICLE 15.2 OF THE POLICE CODE

In addition to the proposed amendments described above, the legislation would make the following amendments to Article 15.2 of the Police Code governing Extended-Hours Premises Permits.

Security Plans

The proposed amendment would require applicants to obtain approval of a security plan for the business and would require permittees to comply with approved security plans. The proposed amendment:

- Makes the elements required for security plans minimum requirements – the Commission and Director may impose additional ones
- Requires at least one security guard for every 100 persons anticipated to be present at any one time during events, with two qualifications – (a) there must always be at least one security guard for every 100 persons actually present at any one time on the premises; (b) in areas where a conditional use authorization is required for a late night use, on Fridays and Saturdays from 9:00 p.m. until closing (including early morning hours Saturday and Sunday), there must be at least one security guard for every 100 persons authorized by the Occupancy Permit
- Defines the term "security guard" (a person who has a valid Proprietary Private Security Officer registration document issued by the State, or who is a Patrol Special Police Officer or an assistant to a Patrol Special Police Officer operating in accordance with rules of the Police

- Commission governing Patrol Special Police Officers and assistants to Patrol Special Police Officers)
- To calculate compliance with the part of a security plan that requires a ratio of one security guard to a specific number of persons, a security guard may be counted toward the ratio for only one Extended-Hours premises at one time
 - Requires the business to secure the sidewalk for a 100-foot radius in all directions around the premises of the business to prevent injury to persons or damage to property
 - Requires the business to provide for the orderly dispersal of persons and traffic from the business and within 100 feet of any door that patrons use for entry/exit
 - The plan must include sufficient staff with the requisite experience to implement it
 - Compliance with an approved plan would be a condition of the permit; permittees must seek a permit amendment to remove or change conditions
 - Commission may not approve a permit or other application unless the applicant has obtained approval of its security plan
 - Current businesses that have permits but were not required to submit a proposed security plan would now need to submit a plan for approval; the Director would notify these businesses and if they fail to submit a plan for approval, their permits could be suspended until they comply
 - Director may require a business to revise its security plan if he determines that revisions will address safety and traffic concerns that arise when (1) conduct occurs that would constitute a violation of certain laws or (2) the current security plan is inadequate to address safety or traffic concerns; this order is appealable to the Commission
 - Commission may suspend a permit for non-compliance with an approved security plan or with a plan that the Director has ordered revised

Amending Permits

Under the proposed ordinance, permittees must operate the business for which a permit issues in a manner that is consistent with any condition imposed on the permit. Permittees may seek approval from the Commission to remove or change a condition imposed on a permit by applying for an amendment to the permit.

Extended-Hour Premises Permittees Required to Report Certain Information

Under the proposed ordinance, the Permittee has a duty to report certain information to the Entertainment Commission. This duty does not encompass all changes in information that was included in the initial permit application, but is limited.

- Permittees must give the Commission updated criminal history information for convictions arising since the time of the permit application
- Permittees (other than a publicly traded corporation) would have to maintain a record of the persons who directly or indirectly own or control 10% or more of the assets, ownership interests, or voting interests of the business and make the information available to the Commission on request
- Permittees (other than a publicly traded corporation) would be required to report any change in ownership of 10% or more within 30 days of the transaction

Repeals Provision Affecting the Status of Permit Suspension When Appeal Filed to Board of Appeals

The proposed amendment would repeal Section 1070.21, which provides that the action of the Entertainment Commission in suspending a permit for up to 30 days shall not be suspended by an appeal to the Board of Appeals. See proposed legislative changes in File No. 080323 regarding status of entertainment permits upon appeal to the Board of Appeals.

Repeals Moratorium

The proposed amendment would repeal Section 1070.26, which prohibits issuance of Extended-Hours Premises Permits in a moratorium area bounded by Bush, O'Farrell, Taylor, and Van Ness, a provision which expired by its own terms on December 31, 2000.

Entertainment Commission Authorized to Adopt Regulations

A proposed amendment to Article 15.1 governing Place of Entertainment Permits would authorize the Entertainment Commission to adopt regulations implementing the provisions of both Article 15.1 governing Place of Entertainment Permits and Article 15.2 governing Extended-Hours Premises Permits, including regulations governing the procedures for hearings before the Commission.

In addition, a proposed amendment to Article 15.2 would require the Entertainment Commission, in consultation with the San Francisco Police Department, to develop rules and regulations governing Security Plans under Articles 15.1 and 15.2, which would address the number of security guards required to protect the public safety in light of the number and placement of exits on the premises of a Business.

Appeals and Exhaustion of Administrative Remedies

- Clarifies that permit applicants and permittees may seek judicial review without first exhausting administrative remedies

Duplicate Section Regarding Fees Repealed

- Repeals Section 1070.20-1, which deals with license fees payable to the Tax Collector; Section 1070.1-1, added in 2005 (Ord. 193-05), covers the subject of license fees.

RELATIONSHIP OF ENTERTAINMENT COMMISSION TO OTHER CITY BODIES

The proposed ordinance does not reduce or otherwise change the authority of the Entertainment Commission regarding the granting of permits, placement of conditions on permits, suspension of permits, or revocation of permits. But it has a number of provisions that recognize the important role that other City entities, including the Police Department, have in the process:

- When the Commission grants a permit over the objection of the Police Department or other City department, it must address the objection on the record at a public hearing.
- The Police Department has authority to bring a suspension proceeding before the Commission if the Director chooses not to do so.
- If the Director fails to initiate a proceeding for a limited (7-day) suspension or an emergency public safety (72-hours) suspension notwithstanding a Police Department recommendation to do so, the Director must report and explain to the Commission at its next meeting why he did not act on the Police Department recommendation.

In addition, to maximize the transparency of its decisionmaking, the proposed ordinance requires the Commission, when granting a permit, to explain in writing or on the record at a Commission hearing why it has not made any of the findings that would warrant denial of the permit.



OFFICE OF SMALL BUSINESS
BRAJAH Q. NORRIS, DIRECTOR



CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR

Memorandum

DATE: April 30, 2008

TO: Angela Calvillo, Clerk of the Board

FR: Brajah Norris

RE: File #080321, 080322, 080323, 080324

File #080321 [Promoter Permit Ordinance]: Ordinance adding Article 15.7 to the San Francisco Police Code, requiring promoters to obtain promoter permits in order to promote events within the City and County of San Francisco.

Small Business Commission took no action #080321.

File #080322 [Prohibit Loitering Outside Nightclubs]: Ordinance amending the San Francisco Police Code by adding Section 121, to prohibit loitering outside nightclubs.

Small Business Commission took no action #080322. Commission will rehear this item after the Entertainment Commission moves forward with their recommendations.

File #080323 [Entertainment Commission – Place of Entertainment Permits]: Ordinance amending the San Francisco Police Code Sections 1060, 1060.1, 1060.2, 1060.3, 1060.5, 1060.20, 1060.23, 1060.24, 1060.25 and 1060.29; repealing Section 1060.22; adding Sections 1060.23-1, 1060.30 and 1060.31, relating to the application, approval, amendment, suspension, revocation, and transfer of Place of Entertainment Permits and One Night Event Permits, including changes in penalties for violations of law, and amending the San Francisco Business and Tax Regulations Code by amending Section 8 to provide an additional category of permit suspension and revocation actions that are not suspended pending a decision by the Board of Appeal.

Small Business Commission unanimously approved #080323.

Comments: Small Business Commission encouraged the Entertainment Commission to find ways to work with the police to get better coverage without having to pay into the 10B program which is expensive.

OFFICE OF SMALL BUSINESS
BRAJAH Q. NORRIS, DIRECTOR



CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR

Discussion possible action to make recommendations to the Board of Supervisors on File #080324 [Entertainment Commission – Extended-Hours Premises Permits]: Ordinance amending the San Francisco Police Code Sections 1070, 1070.1, 1070.2, 1070.3, 1070.5, 1070.7, 1070.8, 1070.13, 1070.15, 1070.16, 1070.17, 1070.19, 1070.20, 1070.22, 1070.23, 1070.24, and 1070.27; amending Section 1070.20-1 and renumbering it as Section 1070.20-2; repealing Sections 1070.12, 1070.21, and 1070.26; and adding a new Section 1070.20-1 and Sections 1070.28 and 1070.29, relating to the application, approval, amendment, suspension, revocation, and transfer of Extended-Hours Premises Permits, including changes in penalties for violations of law.

Small Business Commission unanimously approved #080324