[Prohibition on loitering outside nightclubs.]

Ordinance amending the San Francisco Police Code by adding Section 121, to prohibit loitering outside nightclubs.

Note: Additions are single-underline italics Times New Roman; deletions are strikethrough italics Times New Roman. Board amendment additions are double underlined. Board amendment deletions are strikethrough normal.

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

Section 1. The San Francisco Police Code is hereby amended by adding Section 121, to read as follows:

SEC. 121. LOITERING OUTSIDE NIGHTCLUBS PROHIBITED.

(a) Findings. The Board of Supervisors of the City and County of San Francisco finds that persons who loiter outside a nightclub when an event is in progress imperil the public's safety and welfare. The areas outside nightclubs have become the site of robberies, assaults, and battery. In addition, the Board finds that persons attending nightclubs have become intimidated and fearful for their safety because of the presence of persons loitering outside the clubs. Prohibiting loitering outside nightclubs will assist police and club security staff in protecting club patrons and may decrease the incidence of crimes of violence directed at club patrons by providing law enforcement officers with an additional crime-fighting tool that does not infringe on any person's basic rights.

(b) Prohibition. In the City and County of San Francisco, it shall be unlawful for any person to loiter outside any nightclub between the hours of 9 p.m. and 3 a.m. when the nightclub is open for business.

(c) Definitions.

(1) For the purpose of this ordinance, unless a person is engaged in an activity described in Subsection (d), a person loiters outside a nightclub when the person remains as a pedestrian for a
period of over three (3) minutes within ten (10) feet from the entrance to the nightclub or within ten
(10) feet from any point on any lines formed at the entrance to a nightclub.

(2) For the purposes of this ordinance, a nightclub is a Place of Entertainment as defined in
Police Code Section 1060.

(d) Application. This ordinance is not intended to prohibit any person from engaging in any
lawful activity that must be conducted within ten (10) feet from the entrance to a nightclub or ten (10)
feet from any point at any lines formed at the entrance to a nightclub such as (1) waiting in line to enter
a nightclub, (2) being present in a smoking area designated by the club outside the club for patrons, or
(3) waiting for a bus at a bus stop or waiting in line to enter a theater or other business. Lawful
activity does not include any activity that can be conducted more than ten (10) feet from the entrance to
the nightclub or more than ten (10) feet from any point on any lines formed at the entrance to a
nightclub.

(e) Warning. Before any law enforcement officer may cite or arrest a person under this
ordinance, the law enforcement officer or personnel working for the nightclub must warn the person
that his or her conduct is in violation of this ordinance and must give the person an opportunity to
comply with the provisions of this ordinance.

(f) Penalties.

(1) First Conviction. Any person violating any provision of this section shall be guilty of a
misdemeanor or an infraction. The complaint charging such violation shall specify whether the
violation is a misdemeanor or infraction, which decision shall be that of the District Attorney. If
charged as an infraction, upon conviction, the violator shall be punished by a fine of not less than
$50 or more than $100, and/or community service, for each provision violated. If charged as a
misdemeanor, upon conviction, the violator shall be punished by a fine of not less than $200
or more than $500, and/or community service, for each provision violated, or by imprisonment
in the County Jail for a period of not more than six (6) months, or by both such fine and imprisonment.

(2) Subsequent Convictions. In any accusatory pleading charging a violation of this section, if the defendant has been previously convicted of a violation of this section, each such previous violation and conviction shall be charged in the accusatory pleading. Any person violating any provision of this section a second time within a thirty (30)-day period shall be guilty of a misdemeanor and shall be punished by a fine of not less than $300 or more than $500, and/or community service, for each provision violated, or by imprisonment in the County Jail for a period of not more than six (6) months, or by both such fine and imprisonment. Any person violating any provision of this section a third time, and each subsequent time, within a thirty (30)-day period shall be guilty of a misdemeanor and shall be punished by a fine of not less than $400 and not more than $500, and/or community service, for each provision violated, or by imprisonment in the County Jail for a period of not more than six (6) months, or by both such fine and imprisonment.

(g) Severability. If any subsection, sentence, clause, phrase, or word of this section be for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of this section or any part thereof.

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

By: Paul Zarefsky
Deputy City Attorney
Ordinance amending the San Francisco Police Code by adding Section 121, to prohibit loitering outside nightclubs.

May 5, 2009  Board of Supervisors — AMENDED
Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

May 5, 2009  Board of Supervisors — PASSED ON FIRST READING AS AMENDED
Ayes: 9 - Alioto-Pier, Campos, Chiu, Chu, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi
Noes: 2 - Avalos, Daly

May 12, 2009  Board of Supervisors — FINALLY PASSED
Ayes: 9 - Alioto-Pier, Campos, Chiu, Chu, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi
Noes: 2 - Avalos, Daly
File No. 080322

I hereby certify that the foregoing Ordinance was FINALLY PASSED on May 12, 2009 by the Board of Supervisors of the City and County of San Francisco.

5/20/09
Date Approved

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom