

1 [Police, Administrative Codes - Entertainment-Related Permits]

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3 **Ordinance amending the Police Code to clarify permit requirements and procedures, as**
4 **well as to expand suspension, citation, and enforcement provisions regarding**
5 **Entertainment Commission permits, including Place of Entertainment Permits, Limited**
6 **Live Performance Permits, Temporary Place of Entertainment Permits, Temporary**
7 **Limited Live Performance Permits, Extended-Hours Premises Permits, and Temporary**
8 **Extended-Hours Premises Permits, and noise limits and standards; amending the**
9 **Administrative Code to clarify fee setting and reporting procedures; and making**
10 **environmental findings.**

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 ~~strike through normal~~.

14

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

16

17 Section 1. The Planning Department has determined that the actions contemplated in
18 this ordinance comply with the California Environmental Quality Act (California Public
19 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
20 Board of Supervisors in File No. _____ and is incorporated herein by reference.

21

22 Section 2. Article 1 of the Police Code is amended by amending Section 49 to read as
23 follows:

24 **SEC. 49. UNNECESSARY NOISE, AUTHORIZED EMERGENCY VEHICLES.**

25

1 (a) Except as provided in Sections 43, 45, 46, 47.1, 47.2, and 48 of this Code, and to
2 amplifying equipment used in authorized emergency vehicles as defined in the California
3 Vehicle Code, it shall be unlawful for any person to use, operate, maintain, or permit to be
4 played, used or operated any radio or television receiving set, musical instrument,
5 phonograph, juke box, broadcasting equipment or other machine or device for the producing,
6 reproducing or amplification of sound or human voice in such manner as to produce raucous
7 noises or in such manner so as to disturb the peace, quiet and comfort of persons in the
8 neighborhood or with volume louder than is necessary for convenient hearing for the person
9 or persons for whom said machine, instrument or device is operated.

10 (b) The operation of any such set, instrument, phonograph, juke box, broadcasting
11 equipment, machine or device between the hours of 10:00 p.m. and 7:00 a.m., in such a
12 manner as to be plainly audible at a distance of 50 feet from the property line of the property
13 from whence the sound is emitted, shall be prima facie evidence of a violation of this Section.

14 (c) The operation of any such set, instrument, phonograph, juke box, broadcasting
15 equipment, machine or device at any time in such a manner as to cause a noise level in
16 excess of the standards set forth in Article 29 of this Code shall be prima facie evidence of a
17 violation of this Section.

18 (d) Any person who violates this Section shall be deemed guilty of an infraction or
19 misdemeanor and subject to the penalties specified in Section 1060.25.

20
21 Section 3. Article 15.1 of the Police Code is hereby amended by amending Sections
22 1060, 1060.1, 1060.13, 1060.15, 1060.17, 1060.18, 1060.20.1, 1060.20.2, 1060.20.3,
23 1060.24, 1060.25, 1060.28, and 1060.38.1, and deleting Sections 1060.23 and 1060.27, to
24 read as follows:
25

1 **SEC. 1060. DEFINITIONS.**

2 For the purposes of this Article, unless otherwise provided in this Article, the following
3 words and phrases shall mean and include:

4 * * * *

5 (g) "Entertainment." Any of the following, except when conducted in a private
6 residence:

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

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

14 (3) A fashion or style show.

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

18 * * * *

19 (k) "Place of Entertainment." Every premises to which patrons or members are
20 admitted which serves food, beverages, or food and beverages, including but not limited to
21 alcoholic beverages, for consumption on the premises and wherein Entertainment as defined
22 in Subsection (g) is furnished or occurs upon the premises.

23 (l) "Sale of the Business" or "Sell the Business." The sale or other transfer of the
24 ownership interest in a Business that result in a Person (who did not already have such a
25

1 percentage interest) owning 50% or more of the Business, regardless of the form of
2 ownership.

3 (m) "Security Guard." A person who has a valid Proprietary Private Security Officer
4 registration document issued by the California Department of Consumer Affairs; a person
5 who is a Patrol Special Police Officer appointed by the Police Commission or an assistant to a
6 Patrol Special Police Officer and is operating in accordance with rules of the Police
7 Commission governing Patrol Special Police Officers and assistants to Patrol Special Police
8 Officers; or, a person who is a Private Patrol Operator, as defined by California Business and
9 Professions Code Sections 7582.1-7582.2, as may be amended from time to time.

10 (n) "Security Plan." A plan that adequately addresses the safety of persons and
11 property by (i) providing a ratio of one Security Guard to a specific number of individuals as
12 described in the paragraph immediately below (ii) securing the sidewalk for a 100-foot radius
13 in all directions around the premises of the Business to prevent injury to persons and/or
14 damage to property, and (iii) providing for the orderly dispersal of individuals and traffic from
15 the premises of the Business and within 100 feet of any door that patrons use to enter or exit
16 the premises. The phrase "100 feet" in (iii) of this Subsection (n) means 100 feet from the
17 door in both directions on the same side of the street as the premises of the Business. The
18 plan shall include sufficient staff with the requisite experience to implement the plan.

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

1 Monday) the Security Plan must provide at least one Security Guard for every 100 individuals
2 authorized by the Occupancy Permit during Entertainment events on the premises of the
3 Business.

4 The definition of Security Plan in this Subsection 1060(n) does not limit the discretion of
5 the Entertainment Commission and Director as specified in this Article to impose more
6 stringent requirements for a Security Plan as circumstances warrant.

7 If no Entertainment event is occurring on the premises, the Security Plan does not have to
8 include Security Guards, but the Entertainment Commission retains discretion to impose Security
9 Guard requirements as part of a Security Plan.

10 * * * *

11 (q) "Limited Live Performance Permit." A permit allowing a Limited Live Performance
12 Locale to present Live Performances.

13 (r) "Limited Live Performance Locale." A locale with all the following features:

14 (1) The presentation of Live Performances is a secondary purpose of the locale
15 rather than its primary purpose.

16 (2) The locale is indoors, or consists of an outdoor plaza, courtyard, or similar space,
17 enclosed by surrounding buildings with or without open means of public ingress and egress, with an
18 area in which Live Performances are presented that is no greater than 200 square feet.

19 (3) Live Performances presented at the locale conclude by 10 p.m., except as
20 otherwise provided in Section 1060.38.1.

21 (4) The locale is not a private residence.

22 (5) Patrons or members are admitted to the locale, which serves food,
23 beverages, or food and beverages, including but not limited to alcoholic beverages, for
24 consumption on the premises.

1 (s) "Live Performance." Any act, play, review, pantomime, scene, song, dance act,
2 song and dance act, poetry recitation, fashion or style show, recorded music presented by a live
3 disc jockey on the premises, or the playing or use of any instrument capable of producing or
4 used to produce musical or percussion sounds, including but not limited to, reed, brass,
5 percussion, or string-like instruments.

6 **SEC. 1060.1. PERMIT REQUIRED.**

7 (a) It shall be unlawful for any Person to own, conduct, operate, or maintain, or to
8 cause or permit to be conducted, operated, or maintained, any Place of Entertainment,
9 Limited Live Performance Locale, or ~~One-One~~-Time Event in the City and County of San
10 Francisco without first having obtained the required permit from the Director or Entertainment
11 Commission. No Person shall operate a Place of Entertainment between 2:00 a.m. and 6:00 a.m.
12 without having both a Place of Entertainment Permit and an Extended-Hours Premises Permit.

13 (b) It shall be unlawful for any Person to conduct, operate or maintain, or cause or
14 permit to be conducted, operated, or maintained, a Place of Entertainment, Limited Live
15 Performance Locale, or ~~One-One~~-Time Event for which a permit has been granted (1) after the
16 permit has been revoked or is otherwise invalid or (2) for any period of time during which the
17 permit has been suspended.

18 (c) It shall be unlawful for any Person who is required to surrender a permit upon the
19 sale of a Business as required under Section 1060.24(b) to fail to do so.

20 (d) Any place or premises where a Place of Entertainment Permit, Limited Live
21 Performance Permit, or ~~One-One~~-Time Event Permit is sought must conform to all existing
22 health, safety, zoning, and fire ordinances of the City and County of San Francisco, and must
23 have a valid permit to operate (formerly referenced in this Article as a public eating place
24 permit) from the Department of Public Health. The Entertainment Commission, including the
25

1 Director in the case of a One-Time Event Permit, may issue a permit under this Article
2 conditional upon the applicant receiving the other required permits.

3 **SEC. 1060.13. MINORS.**

4 No person under 21 years of age shall enter, be, or remain in or on any premises on or
5 in which any exhibition of the human body, as defined in Section 1060(g)(4)(f), is presented
6 and permittee shall not permit such a person to enter, be, or remain in or on any such
7 premises.

8 **SEC. 1060.15. ~~SIGNS, CONTINUED.~~ SOUND TEST.**

9 *No sign or signs which, in whole or in part, advertise any entertainment and which sign or signs
10 use the word "nude," "bottomless," "naked" or words of like import, except that the words "adult
11 entertainment" or "adult show" or "topless entertainment" will be permissible, shall be maintained,
12 erected, used, or placed upon or adjacent to the outside of any building where it is visible from public
13 streets or from adjacent buildings, or premises, the purpose of which sign is intended to attract, lure or
14 entice customers. As a condition of any permit issued under this Article, the Commission or the
15 Director shall have the authority to require a sound test to ensure compliance with the allowable noise
16 limits under Section 49 and Article 29 of the San Francisco Police Code.*

17
18 **SEC. 1060.17. REMOVAL OF SIGNS AND PICTORIAL REPRESENTATION.**

19 Any sign, or signs, or portions thereof, in violation of Sections 1060.14 ~~and 1060.15~~ shall
20 be removed within 60 days after the effective date of this Article.

21
22 **SEC. 1060.18. VISIBILITY FROM THE STREET.**

23 No operator of a pPlace of eEntertainment shall permit, or cause to be permitted, any
24 eEntertainment as defined in Section 1060(g)(4) ~~so that said entertainment~~ would be visible at any
25 time from the street, sidewalk or highway.

1 **SEC. 1060.20.1. SUSPENSION BY THE ENTERTAINMENT COMMISSION.**

2 (a) GROUND FOR SUSPENSION. The Entertainment Commission may suspend
3 any permit issued under this Article under any of the following circumstances:

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

7 (2) The Permittee or an employee or agent of the Permittee has operated the
8 Business:

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

12 (~~i~~B) The Permittee has refused or failed, upon request by the Police
13 Department, Entertainment Commission or the Director, to take reasonable steps to alleviate
14 these conditions, such as providing additional off-street parking, security, soundproofing,
15 restroom facilities, or refuse containers; or

16 (3) (~~i~~A) The Permittee or any employee or agent of the Permittee has engaged
17 in conduct on the premises of the Business, or in connection with the operation of the
18 Business, that would constitute a violation of any of the following laws: assault and battery
19 (Cal. Penal Code §§ 240, 242, 245); sexual battery (Cal. Penal Code § 243.4); discharging
20 firearm (Cal. Penal Code §§ 246, 246.3); unlawful weapons (Cal. Penal Code § 12020; S.F.
21 Police Code § 1291); disturbing the peace (Cal. Penal Code §§ 415, 416, 417); unlawful
22 threats (Cal. Penal Code § 422); obstruction of pedestrian or vehicle right-of-way (Cal. Penal
23 Code § 370); gambling (Cal. Penal Code §§ 330, 337a); rape (Cal. Penal Code § 261);
24 statutory rape (Cal. Penal Code § 261.5); prostitution and related offenses (Cal. Penal Code
25 §§ 266, 266a, 266e, 266h, 266i, 315, 316, 647(b)); sex crimes for which registration is

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

11 (iiB) The Permittee has failed to take reasonable steps within the
12 Permittee's control upon the request of the Police Department, the Entertainment Commission
13 or the Director to halt conduct on the premises of the Business, or in connection with the
14 operation of the Business, that would constitute a violation of the laws set forth in Section
15 (a)(3)(iA) of this Section; or

16 (iiiC) The Permittee in the operation of the Business has implemented,
17 maintained, or permitted an admission or related policy or practice prohibited by San
18 Francisco Police Code Section 3305 (prohibiting discrimination); or

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

22 (5) The Permittee has failed to submit a proposed Security Plan as required by
23 Section 1060.31; or

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25

1 (6) The Permittee or any agent or employee of the Permittee has failed to
2 comply with an approved Security Plan as required by Section 1060.31 or a revised Security
3 Plan as required by Section 1060.32; or

4 (7) The Permittee or any agent or employee of the Permittee has failed to
5 request emergency medical services as required by Section 1060.20(b).

6 (b) HEARING PROCEDURE AND DETERMINATION.

7 (~~1~~) The Entertainment Commission shall give the Permittee and the
8 Manager written notice of a hearing to determine whether to suspend a permit. The notice
9 shall set forth the grounds for the proposed suspension and the date, time and location of the
10 hearing.

11 (~~2~~) The Chief of Police or the Chief's designee may request in writing
12 that the Director bring a suspension proceeding before the Entertainment Commission. If,
13 within 10 business days of receiving the request, the Director has not brought the suspension
14 proceeding, the Chief may bring the suspension proceeding before the Entertainment
15 Commission. In such a case, the Chief or the Chief's representative shall present the case for
16 suspension, ~~except that the~~ The Director may join in presenting the case for suspension if the
17 Director agrees to do so.

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

20 (~~1~~) For the first violation under Subsection (a)(1) through (6) of this Section, for
21 up to 30 days.

22 (~~2~~) For the second violation of the same or any other provision of Subsection
23 (a)(1) through (6) within six months of the order of suspension for the first violation, for up to
24 60 days.

25

1 (~~iii~~3) For the third and subsequent violation of the same or any other provision
2 of Subsection (a)(1) through (6) within six months of the order of suspension for the second or
3 any subsequent violation, for up to 90 days.

4 (~~iv~~4) For the purpose of Subsections (c)(~~ii~~2) and (~~iii~~3) of this Section, calculation
5 of the six months shall not include any period of time during which the permit was suspended.

6 (~~v~~5) In determining the length of the suspension, the Entertainment Commission
7 shall consider the seriousness and the frequency of the violation(s) in light of the effort taken
8 to correct them and the impact of the violation(s) on the surrounding neighborhood.

9
10 **SEC. 1060.20.2. LIMITED SUSPENSION BY THE DIRECTOR; APPEAL TO**
11 **ENTERTAINMENT COMMISSION.**

12 (a) GROUND(S) FOR SUSPENSION. The Director may suspend any permit issued
13 under this Article for a period of up to ~~seven~~fifteen days if the Director determines, after
14 providing the Permittee, or his or her agent, including but not limited to the Manager, at least five
15 days written notice and an opportunity to respond, that any of the circumstances set forth in
16 Subsections (a)(1), (2), or (3) of this Section has occurred. Each order of limited suspension
17 may include multiple violations under Subsections (a)(1), (2), or (3) of this Section. The
18 Director shall provide the written notice required under this Subsection either by mail and
19 electronically or by personal delivery.

20 (1) The Business has exceeded the allowable noise emissions under Section
21 49 or Article 29 of the San Francisco Police Code, or as required under any condition imposed
22 on the permit, on three separate days within a three-month time period. The Director may
23 suspend a permit under this Subsection (a)(1) only if:

24 (~~i~~A) The San Francisco Police Department, the Director, or an authorized
25 agent of either has issued a noise emission report for each violation showing noise levels that

1 exceed those allowed under Section 49 or Article 29 of the San Francisco Police Code, or as
2 required under any condition imposed on the permit, and

3 (iB) The Director has provided notice of the issuance of each noise
4 emission report to the Permittee or his or her agent, including but not limited to the Manager
5 electronically or by mail within three City business days of its issuance.

6 (2) The Permittee or any employee or agent of the Permittee has engaged in
7 Conduct that Constitutes a Nuisance or the Permittee has failed to take reasonable steps
8 within the Permittee's control to halt another Person from engaging in Conduct that
9 Constitutes a Nuisance. "Conduct that Constitutes a Nuisance" as defined in Section 1060(d),
10 means any conduct that would constitute a violation of the following laws: assault and battery
11 (Cal. Penal Code § 240, 242, 245); sexual battery (Cal. Penal Code § 243.4); discharging
12 firearm (Cal. Penal Code § 246, 246.3); unlawful weapons (Cal. Penal Code § 12020; S.F.
13 Police Code § 1291); disturbing the peace (Cal. Penal Code § 415, 416, 417); unlawful threats
14 (Cal. Penal Code § 422); obstruction of pedestrian or vehicle right-of-way (Cal. Penal Code §
15 370); gambling (Cal. Penal Code §§ 330, 337a); rape (Cal. Penal Code § 261); statutory rape
16 (Cal. Penal Code § 261.5); prostitution and related offenses (Cal. Penal Code §§ 266, 266a,
17 266e, 266h, 266i, 315, 316, 647(b)); sex crimes for which registration is required under the
18 Sex Offender Registration Act (Cal. Penal Code § 290); felony sexual assault; loitering for
19 lewd or lascivious purposes (Cal. Penal Code § 647(d)); loitering on private property without
20 lawful business (Cal. Penal Code § 647(h)); identify theft (Cal. Penal Code § 530.5); a violent
21 felony warranting enhancement of a prison term (Cal. Penal Code § 667.5); criminal gang
22 activity (Cal. Penal Code § 186.22); drug offenses (Cal. Health & Safety Code §§ 11351,
23 11352, 11359, 11360, 11378, 11379, 11378.5, 11379.5); violation of Alcohol Beverage
24 Control laws (Cal. Business & Professions Code §§ 23300, 25602, 25631, 25657, 25658);
25 public urination or defecation (San Francisco Police Code § 153); accumulation of filth (Cal.

1 Health & Safety Code § 17920.3(j)); or excessive noise emissions (San Francisco Police
2 Code Section 49 or Article 29).

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

4 (iA) The conduct occurred on the premises of, or on Any Sidewalk
5 Abutting the Premises of, the Business, and

6 (iiB) The conduct continued after the Director had notified the Permittee
7 of the problem and informed the Permittee of Corrective Action, as defined in Section 1060, to
8 address the problem, but the Permittee failed to take the Corrective Action.

9 * * * *

10 **SEC. 1060.20.3. SUSPENSION FOR PUBLIC SAFETY BY THE DIRECTOR.**

11 (a) GROUND(S) FOR SUSPENSION. The Director may suspend any permit issued
12 under this Article for up to 72 hours if the Director determines, after providing the Permittee at
13 least 8 hours written notice and an opportunity to respond, that any of the circumstances set
14 forth in Subsection (a)(1)(iA) or (iiB) of this Section has occurred either on the Premises of the
15 Business, on Any Sidewalk Abutting the Premises of the Business, or within 100 feet of the
16 Premises of the Business, provided in this last instance that the person engaging in the
17 conduct that would constitute a violation of a law specified in Subsection (a)(1)(iA) had been
18 on the Premises of the Business no more than 30 minutes before engaging in that conduct;
19 that the conduct has resulted or could have resulted in serious bodily injury or death; and that
20 continued operation of the Business poses a serious threat to public safety.

21 (1) (iA) The Permittee or any employee or agent of the Permittee has engaged
22 in conduct that would constitute a violation of any of the following laws: assault and battery
23 (Cal. Penal Code §§ 240, 242, 245); felony sexual assault; sexual battery (Cal. Penal Code §
24 243.4); rape (Cal. Penal Code § 261); statutory rape (Cal. Penal Code § 261.5); pimping (Cal.
25 Penal Code § 266); discharging firearm (Cal. Penal Code §§ 246, 246.3); unlawful weapon

1 (Cal. Penal Code § 12020; S.F. Police Code § 1291); disturbing the peace (Cal. Penal Code
2 §§ 415, 416, 417); unlawful threats (Cal. Penal Code § 422); a violent felony warranting
3 enhancement of a prison term (Cal. Penal Code § 667.5); criminal gang activity (Cal. Penal
4 Code § 186.22); or

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

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

11 * * * *

12 **~~SEC. 1060.23. LIMITED SUSPENSION.~~**

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

16 **SEC. 1060.24. PERMITS NOT TRANSFERABLE; PERMIT MUST BE SURRENDERED**
17 **UPON SALE OF BUSINESS; PERMIT AMENDMENT REQUIRED TO CHANGE**
18 **PARTNERS OR OTHER OWNERS.**

19 (a) No Person may transfer a Place of Entertainment Permit or Limited Live
20 Performance Permit to any other Person.

21 (b) If a Place of Entertainment Permittee or Limited Live Performance Permittee Sells
22 the Business, the Permittee shall promptly surrender the permit to the Director. If the
23 Permittee fails to surrender the permit to the Director, the Director may, after giving the
24 Permittee notice by mail and electronically of the proposed action and an opportunity to
25 respond, revoke the permit.

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

8 (d) A Permittee seeking to amend a permit as required under this Section shall pay the
9 filing fee for Permit Amendment/Additional Partner set forth in Section 2.26 of this Code. The
10 applicant shall provide that portion of the information sought under Section 1060.3 or 1060.3.1
11 for an application that the Director requires.

12 (e) The Director shall determine within 30 days of the filing of a complete application to
13 amend a permit whether to approve it. The Director shall approve the application unless he or
14 she determines that denial is warranted under any of the grounds set forth in Section
15 1060.5(f) or 1060.5.1(f) and shall notify the Permittee and Manager of the approval
16 electronically and either by mail or personal delivery.

17 (f) If the Director determines that disapproval of the application may be warranted
18 under Section 1060.5(f) or 1060.5.1(f), the Director shall schedule a hearing on the matter for
19 the next regularly scheduled meeting of the Entertainment Commission. The Director shall
20 promptly provide written notice of the hearing to the Permittee and the Manager by mail and
21 electronically.

22 (g) The Entertainment Commission shall determine whether to approve the application
23 according to the standards governing the initial application set forth in Section 1060.5(f) or
24 1060.5.1(f).

1 (h) Temporary Permits. Once the Entertainment Commission receives a surrendered Place of
2 Entertainment Permit or Limited Live Performance Permit under subsection 1060.24(b), the new owner
3 of the business may apply to the Director for a temporary Place of Entertainment Permit or Limited
4 Live Performance Permit, subject to any required Planning Department approvals, for a period not to
5 exceed 90 days from the date of surrender (a "Temporary Permit"). The Director may grant a
6 Temporary Permit provided that (1) the new owner has submitted a completed application for a Place
7 of Entertainment Permit or Limited Live Performance Permit, (2) that the new owner's Entertainment
8 or Live Performance events and activities are consistent with those allowed under the prior Permit, (3)
9 that the premises at issue complies with all existing health, safety, and fire ordinances, and (4) where a
10 Temporary Permit is necessary to ensure uninterrupted operations of a business at the premises. The
11 Entertainment Commission may establish additional procedures and Temporary Permit criteria to help
12 carry out the goals of this Section 1060.24(h).

13
14 **SEC. 1060.25. CRIMINAL, ~~AND~~ ADMINISTRATIVE, ~~AND~~ CIVIL PENALTIES.**

15 (a) **CRIMINAL PENALTIES.** Any person who violates any provision of this Article
16 shall be deemed guilty of an infraction. Any person who violates this Article 15.1, or Police
17 Code Section 49, more than once in a 12-month period shall be guilty of an infraction or a
18 misdemeanor, at the discretion of the prosecutor. A first violation of this Article, Police Code
19 Section 49, is an infraction punishable by a fine of not more than \$100. A second violation
20 within one year of the date of the first violation is an infraction punishable by a fine of not more
21 than \$200 or a misdemeanor punishable by a fine of not to exceed \$1,000 or by imprisonment
22 in the County Jail for a period not to exceed six months, or by both such fine and
23 imprisonment, at the discretion of the prosecutor. A third or subsequent violation within one
24 year of the date of the second or subsequent violation is an infraction punishable by a fine of
25 not more than \$500 or a misdemeanor punishable by a fine of not to exceed \$1,000 or by

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

4 (b) **ADMINISTRATIVE PENALTIES.**

5 (1) The Director may issue administrative citations for the violation of any
6 condition imposed on a permit granted under this Article and ~~any~~ the violation of any provision
7 of this Article including but not limited to Section 1060.1 (operating without a lawful Place of
8 Entertainment permit) and Section 1060.31 or 1060.32 (governing Security Plans). In addition,
9 the Director may issue administrative citations for the violation of any provision of law regarding such
10 permits, including but not limited to permits authorized under Police Code Article 29 (Regulation of
11 Noise). San Francisco Administrative Code Chapter 100, "Procedures Governing the
12 Imposition of Administrative Fines," is hereby incorporated in its entirety and shall govern the
13 amount of fees and the procedure for imposition, enforcement, collection, and administrative
14 review of administrative citations issued under this Subsection (b). The Director shall impose
15 fines for violations of any permit condition and any violation of Section 1060.31 or 1060.32 as
16 set forth in Section 100.5(a) of the San Francisco Administrative Code. For purposes of
17 calculating and imposing the administrative penalties under this subsection 1060.25(b), each day a
18 violation occurs or continues shall constitute a separate violation. The Director may recover any costs
19 and fees, including but not limited to attorneys' fees, for enforcement initiated through this Section and
20 authorized under this Article.

21 (2) Notwithstanding Subsection (b)(1) of this Section, the procedure governing
22 the appeal of a citation set forth in San Francisco Administrative Code Chapter 100 is revised
23 as provided in this Subsection (b)(2). The Controller may designate the Director of the
24 Department of Public Works as a hearing officer under San Francisco Administrative Code
25

1 Section 100.7, but shall designate such officer for no more than one appeal a month and for
2 no more than 12 times in a 12-month period.

3 (c) **CIVIL PENALTIES.**

4 (1) **Presumption of Noncompliance with Order.** In addition to any other penalties
5 provided in this Article, any person or entity served with a notice or order by the Director setting forth
6 the nature of the violation of this Article, demanding correction of such violation, and specifying the
7 time within which such violation must be corrected, shall be presumed, in subsequent civil proceedings,
8 to have failed to comply with that notice or order at and after the time given in that notice or order for
9 correction of such violation, after the time period specified in the notice or order has expired without
10 correction of that violation.

11 (2) **Penalty Amounts.** Any person or entity violating this Article shall be liable for a
12 civil penalty of up to \$500 per violation for each day such violation is committed or permitted to
13 continue, which penalty shall be assessed and recovered in a civil action brought in the name of the
14 people of the City and County of San Francisco by the City Attorney in any court of competent
15 jurisdiction.

16 (3) **Setting Civil Penalty.** In assessing the amount of the civil penalty, the Court shall
17 consider any one or more of the relevant circumstances presented by any of the parties to the case,
18 including but not limited to the following: the nature and seriousness of the misconduct, the number of
19 violations, the persistence of the misconduct, the length of time over which the misconduct occurred,
20 the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth. In
21 addition, such violations will not be deemed legally abated until the property owner makes full payment
22 of the assessment of costs and fees awarded to the City under this Article or any applicable State law.

23 (4) **Cost Recovery.** In any civil proceeding filed by the City Attorney to collect civil
24 penalties, the Court may award the Department the costs and fees, including but not limited to
25 attorneys' fees, authorized under this Article.

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~~SEC. 1060.27. TIME LIMIT FOR OBTAINING PERMIT.~~

~~All premises required to obtain a permit and license pursuant to this Article because of the inclusion of recorded music presented by a live disc jockey on the premises within the definition of entertainment must obtain a permit within 90 days of the effective date of the amendments to this Article; failure so to do shall make continued operation of said place of entertainment a violation of Section 1060.25 hereof.~~

~~Permits must be obtained from the Entertainment Commission as Sections 1060.1, 1060.2, 1060.3 and 1060.4 hereof provided.~~

SEC. 1060.28. EARPLUGS AND FREE DRINKING WATER.

If the location for which the Place of Entertainment permit is issued ~~holds over 500 persons and~~ contains a dance floor or other place primarily designated for dancing, the permit holder shall provide:

- (a) Free cool drinking water to patrons by means of an automatic drinking fountain or by providing cups of water at all beverage service locations, or both; and
- (b) Earplugs for free, or for sale on the premises at a reasonable price.

SEC. 1060.38.1. EXTENSION OF EVENING HOURS LIMIT FOR LIMITED LIVE PERFORMANCE PERMIT.

(a) Notwithstanding Section 1060(r)(3), and except as provided in subsection (b), below, at any time after a year has elapsed since the granting of a Limited Live Performance Permit, the Director may, upon application of the Permittee, extend the hours during which Live Performances may be presented at the Limited Live Performance Locale to any time between 10:00 p.m., and 11:00 p.m., inclusive, on the basis that there have been no

1 significant public safety or public nuisance concerns at or near the establishment attributed to
2 the operation of the Limited Live Performance Permit. If the Director denies the application for
3 an extension of hours, the Permittee may appeal the Director's decision to the Entertainment
4 Commission, and the process for notifying the Permittee of the Director's decision and
5 providing an appeal right to the Entertainment Commission shall parallel to the extent
6 applicable the notice and appeal process prescribed in Section 1060.20.2(b).

7 (b) No extension may be granted as provided in subsection (a), above for Limited Live
8 Performance Permits granted in the following areas: the North Beach Neighborhood
9 Commercial District as defined in Planning Code Section 722.1; and the Polk Street
10 Neighborhood Commercial District as defined in Planning Code Section 723.1; the Union
11 Street Neighborhood Commercial District as defined in Planning Code Section 725.1; the
12 north and south sides of Chestnut Street between the east side of Fillmore Street and the
13 west side of Divisadero Street, and the north side of Lombard Street, between Fillmore Street
14 and Divisadero Street.

15 (c) Notwithstanding subsection (a), above, a Live Performance involving recorded music
16 presented by a live disc jockey on the premises may not occur under a Limited Live Performance
17 Permit after 10:00 p.m. Nothing in this subsection (c) shall interfere with Place of Entertainment
18 Permits or Extended-Hours Permits granted for Entertainment involving a live disc jockey.

19 (ed) If, following the Director's granting, pursuant to Subsection (a), an extension of
20 hours during which Live Performances may be presented at a Limited Live Performance
21 Locale, there are significant public safety or public nuisance concerns at or near the
22 establishment attributed to the operation of the Limited Live Performance Permit, the Director
23 may reduce the hours during which Live Performances may be presented at the
24 establishment to an earlier time, but no earlier than 10:00 p.m. The process for notifying the
25 Permittee of the Director's order and providing an appeal right to the Entertainment

1 Commission shall parallel to the extent applicable the notice and appeal process prescribed in
2 Section 1060.20.2(b).

3 (~~de~~) This Section shall not limit the permitting, suspension, revocation, or other powers
4 of the Director or Entertainment Commission.

5
6 Section 4. Article 15.2 of the San Francisco Police Code is hereby amended by
7 amending Sections 1070 and 1070.22, and deleting Sections 1070.35 and 1070.36, to read
8 as follows:

9 **SEC. 1070. DEFINITIONS.**

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

12 * * * *

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

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

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

22 (3) A fashion or style show.

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

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

7 * * * * *

8 (n) "Security Guard." A person who has a valid Proprietary Private Security Officer
9 registration document issued by the California Department of Consumer Affairs; ~~or~~ a person
10 who is a Patrol Special Police Officer appointed by the Police Commission or an assistant to a
11 Patrol Special Police Officer and is operating in accordance with rules of the Police
12 Commission governing Patrol Special Police Officers and assistants to Patrol Special Police
13 Officers; or, a person who is a Private Patrol Operator, as defined by California Business and
14 Professions Code Sections 7582.1-7582.2.

15 (o) "Security Plan." A plan that adequately addresses the safety of persons and
16 property by (i) providing a ratio of one Security Guard to a specific number of individuals as
17 described in the paragraph immediately below (ii) securing the sidewalk for a 100-foot radius
18 in all directions around the premises of the Business to prevent injury to persons and/or
19 damage to property, and (iii) providing for the orderly dispersal of individuals and traffic from
20 the premises of the Business and within 100 feet of any door that patrons use to enter or exit
21 the premises. The phrase "100 feet" in (iii) of this Subsection (o) means 100 feet from the
22 door in both directions on the same side of the street as the premises of the Business. The
23 plan shall include sufficient staff with the requisite experience to implement the plan.

24 The Security Plan must provide at least one Security Guard for every 100 individuals
25 anticipated to be present at any one time during Entertainment events on the premises of the

1 Business, with the following two qualifications. There must always be at least one Security
2 Guard for every 100 individuals actually present at any one time during Entertainment events
3 on the premises of the Business. Further, in those areas of the City where a conditional use
4 authorization is required for a late night use, on Thursdays, Fridays, Saturdays, and Sundays
5 from 9:00 p.m. until closing (including early morning hours Friday, Saturday, Sunday, and
6 Monday) the Security Plan must provide at least one Security Guard for every 100 individuals
7 authorized by the Occupancy Permit during Entertainment events on the premises of the
8 Business.

9 The definition of Security Plan in this Subsection 1070(o) does not limit the discretion of
10 the Entertainment Commission and Director as specified in this Article to impose more
11 stringent requirements for a Security Plan as circumstances warrant.

12 *If no Entertainment event is occurring on the premises, the Security Plan does not have to*
13 *include Security Guards, but the Entertainment Commission retains discretion to impose security guard*
14 *requirements as part of a Security Plan.*

15 * * * *

16 **SEC. 1070.22. PERMITS NOT TRANSFERABLE; PERMIT MUST BE SURRENDERED**
17 **UPON SALE OF BUSINESS; PERMIT AMENDMENT REQUIRED TO CHANGE**
18 **PARTNERS OR OTHER OWNERS.**

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

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

24 (c) Notwithstanding Subsections (a) and (b) of this Section, a Permittee may change
25 partners, shareholders, or other owners of a Business provided that (1) the sale or other

1 transfer of ownership results in a Person owning no more than 50% of the Business,
2 regardless of the form of ownership, and (2) the Permittee obtains an amendment to the
3 Permit as provided in this Section. If the transfer of ownership does not result in any Person
4 (who did not already have such a percentage interest) having an ownership interest of ten
5 percent or more, the Permittee is not required to obtain a permit amendment.

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

10 (e) The Director shall determine within 30 days of the filing of a complete application to
11 amend a permit whether to approve it. The Director shall approve the application unless he or
12 she determines that denial is warranted under any of the grounds set forth in Section
13 1070.5(f) (incorporating the standards set forth in Section 1060.5(f)) and shall notify the
14 Permittee and Manager of the approval electronically and either by mail or personal delivery.

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

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

22 (h) **Temporary Permits.** Once the Entertainment Commission receives a surrendered Permit
23 under this Article, the new owner of the business may apply to the Executive Director of the
24 Entertainment Commission for an Extended-Hours Premises Permit, subject to any required Planning
25 Department approvals, for a period not to exceed 90 days from the date of surrender (a "Temporary

1 Extended-Hours Permit”). The Executive Director of the Entertainment Commission may grant a
2 Temporary Extended-Hours Permit provided that (1) the new owner has already submitted an
3 application for an Extended-Hours Permit, (2) that the new owner’s Entertainment events and activities
4 are consistent with those allowed under the prior Permit, (3) that the premises at issue complies with
5 all existing health, safety, and fire ordinances, and (4) where a Temporary Extended-Hours Permit is
6 necessary to ensure uninterrupted operations of a business at the premises. The Entertainment
7 Commission may establish additional procedures and Temporary Extended-Hours Permit criteria to
8 help carry out the goals of this Section 1060.24(h).

9 **~~SEC. 1070.36. PROSPECTIVE MORATORIUM ON GRANT OF EXTENDED-HOURS~~**
10 **~~PREMISES PERMITS.~~**

11 ~~(a) Within two weeks on either side of the yearly anniversary of the effective date of Ordinance~~
12 ~~No. 238-09, the Entertainment Commission shall hold an annual hearing to determine whether there~~
13 ~~has been a substantial increase since the effective date of Ordinance No. 238-09 in the number of~~
14 ~~Extended-Hours Premises Permits in existence. To make this determination as to Extended-Hours~~
15 ~~Premises Permits at the first annual hearing, the Commission shall compare the number of such~~
16 ~~permits in existence at the time of the hearing to the number of such permits in existence as indicated in~~
17 ~~the report submitted pursuant to Section 1070.35(h). To make this determination at subsequent annual~~
18 ~~hearings, the Commission shall compare the number of such permits in existence at the time of the~~
19 ~~hearing to the number of such permits in existence at the time of the last annual hearing.~~

20 ~~(b) If the calculation mandated by Subsection (a) of this Section demonstrates an increase of~~
21 ~~15% or more in any year in the number of Extended-Hours Premises Permits in existence and the~~
22 ~~number is at least 15% greater than the number of such permits in existence as indicated in the report~~
23 ~~submitted pursuant to Section 1070.35(h), there shall be a City-wide moratorium on the granting of~~
24 ~~additional Extended-Hours Premises permits. In lieu of a City-wide moratorium, the Entertainment~~
25 ~~Commission shall have discretion to impose a moratorium applicable only to certain geographic areas~~

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

12 (c) If a moratorium on Extended Hours Premises Permits is imposed pursuant to Subsection
13 (b) of this Section, the Entertainment Commission or Director, in consultation with the Police
14 Department, Planning Department, and such other departments as the Commission or Director shall
15 designate, shall conduct a study of the effects of the moratorium, as well as the effects of the substantial
16 increase in the number of Extended Hours Premises Permits in existence that gave rise to the
17 moratorium. The study shall be completed no earlier than six months and no later than eleven months
18 after the moratorium is imposed. The Entertainment Commission shall hold a hearing on the subject of
19 the study within one month of completion of the study and shall make a recommendation regarding
20 continuing, modifying, or lifting the moratorium. The Police Department and Planning Department,
21 shall participate in the hearing and other interested departments may participate in the hearing.
22 Within three months of the Entertainment Commission hearing, the Board of Supervisors or a
23 committee thereof shall hold a hearing on the same subject.

1 Section 5. Article 29 of the Police Code is hereby amended by amending Sections
2 2909, 2916, and 2917 to read as follows:

3 **SEC. 2909. NOISE LIMITS.**

4 (a) **Residential Property Noise Limits.**

5 (1) No person shall produce or allow to be produced by any machine, or device,
6 music or entertainment or any combination of same, on residential property over which the
7 person has ownership or control, a noise level more than five dBA above the ambient at any
8 point outside of the property plane.

9 (2) No person shall produce or allow to be produced by any machine, or device,
10 music or entertainment or any combination of same, on multi-unit residential property over
11 which the person has ownership or control, a noise level more than five dBA above the local
12 ambient three feet from any wall, floor, or ceiling inside any dwelling unit on the same
13 property, when the windows and doors of the dwelling unit are closed, except within the
14 dwelling unit in which the noise source or sources may be located.

15 (b) **Commercial And Industrial Property Noise Limits.** No person shall produce or
16 allow to be produced by any machine, or device, music or entertainment or any combination
17 of same, on commercial or industrial property over which the person has ownership or control,
18 a noise level more than eight dBA above the local ambient at any point outside of the property
19 plane. With respect to noise generated from a licensed Place of Entertainment, ~~or~~ licensed
20 Limited Live Performance Locale, or other location subject to regulation by the Entertainment
21 Commission or its Director, in addition to the above dBA criteria a secondary low frequency
22 dBC criteria shall apply to the definition above. No noise or music associated with a licensed
23 Place of Entertainment, ~~or~~ licensed Limited Live Performance Locale, or other location subject
24 to regulation by the Entertainment Commission or its Director, shall exceed the low frequency
25 ambient noise level defined in Section 2901(f) by more than 8 dBC.

1 (c) **Public Property Noise Limits.** No person shall produce or allow to be produced
2 by any machine or device, or any combination of same, on public property, a noise level more
3 than ten dBA above the local ambient at a distance of twenty-five feet or more, unless the
4 machine or device is being operated to serve or maintain the property or as otherwise
5 provided in this Article.

6 (d) **Fixed Residential Interior Noise Limits.** In order to prevent sleep disturbance,
7 protect public health and prevent the acoustical environment from progressive deterioration
8 due to the increasing use and influence of mechanical equipment, no fixed noise source may
9 cause the noise level measured inside any sleeping or living room in any dwelling unit located
10 on residential property to exceed 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. or 55
11 dBA between the hours of 7:00 a.m. to 10:00p.m. with windows open except where building
12 ventilation is achieved through mechanical systems that allow windows to remain closed.

13 (e) **Noise Caused By Activities Subject To Permits From the City and County of**
14 **San Francisco.** None of the noise limits set forth in this Section apply to activity for which the
15 City and County of San Francisco has issued a permit that contains noise limit provisions that
16 are different from those set forth in this Article.

17
18 **SEC. 2916. ENFORCEMENT.**

19 The Director of Public Health may enforce the provisions of Section 2904, 2909, and
20 2912 of this Article.

21 The Department of Building Inspection may enforce the provisions of Sections 2907
22 and 2908 of this Article insofar as said provisions relate to construction operations conducted
23 on private property under appropriate permits issued pursuant to the San Francisco Building
24 Code, Housing Code, Electrical Code and Plumbing Code. Insofar as these provisions relate
25 to construction operations conducted on publicly-owned property subject to the police power

1 of the City and County of San Francisco, the Department of Public Works may enforce the
2 provisions of Sections 2907 and 2908 of this Article.

3 The Executive Director of the Entertainment Commission may enforce noise standards
4 associated with licensed Places of Entertainment, ~~and~~ licensed Limited Live Performance
5 Locales, or other location subject to regulation by the Entertainment Commission or its Director.

6 The Chief of Police or his or her designee (“Chief of Police”) shall also enforce the
7 provisions of Section 2913. The Chief of Police shall make law enforcement activities related
8 to Unenclosed Tour Buses under Section 2913 a priority for one year after the effective date
9 of the ordinance enacting that Section.

10 The Chief of Police may enforce the provisions of this Article that relate to noise
11 created by humans or any other noise source not specifically assigned or designated to
12 another Department or Agency.

13
14 **SEC. 2917. VIOLATIONS.**

15 (a) Criminal Penalties. Any person violating any of the provisions of this Article shall be
16 deemed guilty of an infraction and upon conviction thereof, shall be fined in an amount not
17 exceeding (1) \$100 for a first violation of this Article; (2) \$200 for a second violation of this
18 Article; and (3) up to \$300 for each additional violation of this Article within one year of the
19 date of a second or subsequent violation. Each day such violation is committed or permitted
20 to continue shall constitute a separate offense and shall be punishable as such.

21 (b) Administrative Penalties. Administrative penalties shall be assessed and collected
22 by the Departments specified in Section 2916 in accordance with San Francisco
23 Administrative Code Chapter 100.

24 (c) Civil Penalties.

1 (1) **Presumption of Noncompliance with Order.** In addition to any other penalties
2 provided in this Article, any person or entity served with a notice or order by the Director setting forth
3 the nature of the violation of this Article, demanding correction of such violation, and specifying the
4 time within which such violation must be corrected, shall be presumed, in subsequent civil proceedings,
5 to have failed to comply with that notice or order at and after the time given in that notice or order for
6 correction of such violation, after the time period specified in the notice or order has expired without
7 correction of that violation.

8 (2) **Penalty Amounts.** Any person or entity violating this Article shall be liable for a
9 civil penalty of up to \$500 per violation for each day such violation is committed or permitted to
10 continue, which penalty shall be assessed and recovered in a civil action brought in the name of the
11 people of the City and County of San Francisco by the City Attorney in any court of competent
12 jurisdiction.

13 (3) **Setting Civil Penalty.** In assessing the amount of the civil penalty, the Court shall
14 consider any one or more of the relevant circumstances presented by any of the parties to the case,
15 including but not limited to the following: the nature and seriousness of the misconduct, the number of
16 violations, the persistence of the misconduct, the length of time over which the misconduct occurred,
17 the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth. In
18 addition, such violations will not be deemed legally abated until the property owner makes full payment
19 of the assessment of costs and fees awarded to the City under this Article or any applicable State law.

20 (4) **Cost Recovery.** In any civil proceeding filed by the City Attorney to collect civil
21 penalties, the Court may award the Department the costs and fees, including but not limited to
22 attorneys' fees, authorized under this Article.

23
24 Section 6. The San Francisco Administrative Code is hereby amended by amending
25 Section 90.9, to read as follows:

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SEC. 90.9. FEES.

Within one year after the operative date of this Article, and annually thereafter as part of the annual budget process, the Entertainment Commission shall submit a report to the Mayor and Board of Supervisors analyzing the fee revenue generated from the issuance, renewal and processing of applications for entertainment-related permits, and proposing fees therefor that will cover the annual operating costs of the commission. Within three years of the operative date of this Article, the Board of Supervisors shall establish fees for entertainment-related permits ~~at levels sufficient to cover~~ that do not exceed the estimated annual operating costs of the commission.

Section 7. Severability. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Ordinance would be subsequently declared invalid or unconstitutional.

Section 8. Effective Date. This ordinance shall become effective 30 days from the date of passage.

Section 9. Scope of Ordinance. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the :Police Code and

1 Administrative Code that are explicitly shown in this Ordinance as additions, deletions, Board
2 amendment additions, and Board amendment deletions in accordance with the "Note" that
3 appears under the official title of the Ordinance.

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

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By: _____
ADINE K. VARAH
Deputy City Attorney

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