

1 [Regulating Deemed Approved Off-Sale Alcohol Uses and Establishing An Annual Fee.]

2

3 **Ordinance amending the Administrative Code to add Chapter 26, ("Deemed Approved**

4 **Off-Sale Alcohol Use Nuisance Regulations"),~~z~~ deeming all existing non-conforming and**

5 **permitted off-sale alcohol uses "approved;" establishing an administrative hearing**

6 **process to abate nuisance activities by deemed approved off-sale alcohol uses;**

7 **creating a list of performance standards ~~which~~ that reflect existing local nuisance and**

8 **related state and federal laws; providing for an education and outreach program;**

9 **authorizing penalties for violation of performance standards including administrative**

10 **penalties from \$500 to \$1000 or revocation of deemed approved status; providing for**

11 **appeals of conditions or administrative penalties to the Board of Appeals; providing for**

12 **appeals of the revocation of deemed approved status to the Board of Supervisors or**

13 **the Board of Appeals; setting an annual fee of \$264 for deemed approved off-sale**

14 **alcohol uses; ~~and amending the Administrative Code to add Sections 10.19-5 and~~**

15 **~~10.19-6 to~~ establishing a deemed approved off-sale alcohol use nuisance regulation**

16 **continuing project accounts within the City's General Fund; requiring annual reports**

17 **from the City Attorney's Office and the Departments of Public Health and Police; and**

18 **making environmental findings.**

19 Note: Additions are *single-underline italics Times New Roman*;

20 deletions are *strikethrough italics Times New Roman*.

21 Board amendment additions are double underlined.

22 Board amendment deletions are ~~strikethrough normal~~.

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

23 Section 1. Environmental Findings. The Planning Department has determined that the

24 actions contemplated in this Ordinance are exempt from the California Environmental Quality

25 Act (California Public Resources Code section 21000 et seq.). Said determination is on file

1 with the Clerk of the Board of Supervisors in File No. 051792 and is incorporated herein by
2 reference.

3 Section 2. The San Francisco Administrative Code is hereby amended by adding
4 Chapter 26, Sections 26.1 through 26.287 to read as follows:

5 CHAPTER 26

6 SEC. 26.1 FINDINGS.

7 The Board hereby finds and declares as follows:

8 (1) San Francisco has the highest ratio of off-sale alcohol uses per capita in California, the
9 great majority of which are liquor stores; and,

10 (2) Nuisance and criminal activities such as drug dealing, public drunkenness, loitering, and
11 other behaviors that negatively impact neighborhoods occur with disproportionate frequency at and
12 around the premises of off-sale alcohol uses; and,

13 (3) Neighborhood character can change over time and the careful regulation of nuisance
14 activity by off-sale alcohol uses will help to ensure that such uses do not contribute to the deterioration
15 of neighborhoods; and,

16 (4) Poorly regulated off-sale alcohol uses increase the availability of alcohol in the
17 communities in which they are located, and studies have demonstrated a link between the availability of
18 alcohol and numerous negative consequences, including violence, fatal traffic crashes, and nuisance
19 law violations; and,

20 (5) Research published in the American Journal of Public Health found that communities and
21 neighborhoods that have a high number of bars and liquor stores per capita experience more violent
22 assaults; and,

23 (6) Researchers at Columbia University found that 25 to 40 percent of all patients in U.S.
24 general hospital beds (not in maternity or intensive care) are being treated for complications of
25 alcohol-related problems; and,

1 (7) The Center for Substance Abuse Prevention has determined that the three leading causes of
2 death for teenagers are associated with alcohol use: car crashes, homicides, and suicides; and,

3 (8) A study conducted by the Youth Leadership Institute found that 50 percent of stores in the
4 South of Market, Tenderloin, and Mission neighborhoods of the City are not in compliance with the
5 State's "Lee Law" which requires that no more than 33 percent of a liquor store's windows and doors
6 are to be covered with any kind of advertising; and,

7 (9) The City currently lacks a targeted administrative mechanism to enforce its existing Alcohol
8 Restricted Use Districts in the Mission, Haight, Third Street, Divisadero, and North of Market
9 neighborhoods, and to enforce its existing nuisance laws based on the past activities of off-sale uses on
10 a store-by-store basis through the attachment of conditions, the imposition of administrative penalties,
11 or the revocation of use permits; and,

12 (10) Educational campaigns directed at off-sale alcohol uses have been shown to improve their
13 appearance, reduce nuisance activity, and benefit the local community; and

14 (11) Off-sale alcohol uses operating outside of the law negatively impact those uses operating
15 within the law and as good neighbors; and

16 (12) The City recognizes its responsibility to enforce the law and the need for a
17 partnership with off-sale alcohol uses and the City, including the Police Department and the
18 City Attorney, to address illegal activities in proximity to an off-sale alcohol use. The City also
19 recognizes that there are occasions when owners and employees of off-sale alcohol uses
20 would fear for their personal safety in requesting that persons engaging in illegal activities
21 cease those activities; and

22 (13) Good faith efforts on the part of the owners and employees of off-sale alcohol
23 uses to address illegal activities in proximity to their stores, including: timely calls to the Police
24 Department; the installation of lighting and security cameras; clear unobstructed windows; and
25

1 clean sidewalks, among others, can reduce the nuisance impacts of such off-sale alcohol
2 uses; and

3 (14) Given the successful implementation of similar programs in other California
4 municipalities, the Youth Leadership Institute worked with the Board of Supervisors to develop
5 legislation to help San Francisco to address nuisances associated with off-sale alcohol uses.

6 SEC. 26.2 DEEMED APPROVED OFF-SALE ALCOHOL USE NUISANCE
7 REGULATIONS.

8 The provisions of Chapter 26 shall be known as the "Deemed Approved Off-Sale Alcohol Use
9 Nuisance Regulations." The purpose of these regulations is to promote the public health, safety and
10 general welfare by requiring that businesses ~~which~~that sell alcoholic beverages for off-site
11 consumption and that were permitted, conditionally permitted, or nonconforming uses before the
12 adoption of these regulations, or ~~which~~that are permitted or conditionally permitted by the City after
13 the adoption of these regulations, comply with the Deemed Approved Performance Standards as
14 specified in Section 26.12 in order to achieve the following objectives:

15 (1) To protect adjacent neighborhoods from the harmful effects of nuisance activities often
16 attendant to the sale of alcoholic beverages for off-site consumption.

17 (2) To provide opportunities for businesses ~~which~~that sell alcoholic beverages for off-site
18 consumption to operate in a mutually beneficial relationship to each other and to other commercial and
19 civic services.

20 (3) To provide mechanisms to address nuisance problems often associated with the sale of
21 alcoholic beverages, such as litter, ~~loitering~~, graffiti, unruly behavior, and escalated noise levels.

22 (4) To ensure that businesses ~~which~~that sell alcoholic beverages for off-site consumption are
23 not the source of undue public nuisances in the community.

1 (5) To ensure that sites where alcoholic beverages are sold for off-site consumption are
2 properly maintained so that negative impacts generated by these activities are not harmful to the
3 surrounding environment.

4 (6) To monitor off-sale alcohol uses to ensure that they do not substantially change their mode
5 or character of operation.

6 SEC. 26.3 DEFINITIONS.

7 (a) Alcoholic Beverage.

8 Alcoholic beverage shall mean alcohol, spirits, liquor, wine, beer, and every liquid or solid
9 containing alcohol, spirits, wine or beer, ~~which~~that contains one-half of one percent or more of
10 alcohol by volume and ~~which~~that is fit for beverage purposes either alone or when diluted, mixed, or
11 combined with other substances, and the sale of which requires a State of California Department of
12 Alcoholic Beverage Control license.

13 (b) Off-Sale Alcohol Use.

14 Off-Sale Alcohol Use shall mean any retail use ~~which~~that sells beer, wine, or distilled spirits to
15 a customer in a closed container for consumption off the premises and ~~which~~that has a State of
16 California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) or type 21 (off-
17 sale general) ~~or any other California Alcoholic Beverage Control Board License which includes~~
18 the privilege to sell alcoholic beverages for consumption off of the premises.

19 (c) Deemed Approved Off-Sale Alcohol Use

20 Deemed Approved Off-Sale Alcohol Use shall mean a business or entity ~~which~~that uses a
21 building, structure, or site, or portion thereof, for the sale of alcoholic beverages for off-site
22 consumption.

23 SEC. 26.4 AUTOMATIC DEEMED APPROVED STATUS.

24 All businesses or entities engaged in the sale of alcoholic beverages for off-site consumption
25 that are operating as permitted, conditionally permitted, or nonconforming uses prior to the effective

1 date of this ordinance are now automatically Deemed Approved Off-Sale Alcohol Uses. Each such
2 Deemed Approved Off-Sale Alcohol Use shall retain this status as long as it continues to comply with
3 the Deemed Approved Performance Standards as specified in Section 26.12.

4 SEC. 26.5 STATUS OF NEW OFF-SALE ALCOHOL USES.

5 After the effective date of this ordinance all new permitted Off-Sale Alcohol Uses shall also be
6 subject to the Deemed Approved Performance Standards as specified in Section 26.12 and shall receive
7 the same notices and be subject to the same administrative procedures, penalties and fees as those
8 Deemed Approved Off-Sale Alcohol Uses ~~which~~that were operating as permitted, conditionally
9 permitted, or nonconforming uses prior to the effective date of this ordinance.

10 SEC. 26.6 PREVIOUSLY NON-CONFORMING OFF-SALE ALCOHOL USES.

11 Any Deemed Approved Off-Sale Alcohol Use ~~which~~that was previously considered to be a non-
12 conforming use shall continue to be subject to those provisions of the Planning Code ~~which~~that govern
13 non-conforming uses to the extent those provisions do not conflict with the provisions of this
14 SectionChapter.

15 SEC. 26.7 ABANDONMENT.

16 Whenever a Deemed Approved Off-Sale Alcohol Use ceases to be operated continuously, or
17 undergoes a substantial change in mode or character of operation, such Deemed Approved Off-Sale
18 Alcohol Use shall not be resumed. A substantial change in the mode of character of operation shall not
19 include:

20 (1) Changes in ownership or an owner-to-owner transfer of an Alcohol Beverage Control
21 License,

22 (2) Re-establishment, restoration, or repair of an existing Off-Sale Alcohol Use on the same
23 lot after total or partial destruction or damage due to fire, riot, insurrection, toxic accident or act of
24 God,

1 (3) Temporary closure for not more than ninety (90) days for repair, renovation or
2 remodeling, or in cases of vacation or illness.

3 SEC. 26.8 DEEMED APPROVED OFF-SALE ALCOHOL USES IN EXISTING SPECIAL
4 USE OR RESTRICTED USE DISTRICTS.

5 Any Deemed Approved Off-Sale Alcohol Use operating in a Zoning District of the City that
6 further regulates off-sale alcohol uses shall continue to be subject to those regulations, where
7 applicable, in addition to the regulations contained in this SectionChapter.

8 SEC. 26.9 NOTIFICATION TO OWNERS OF DEEMED APPROVED OFF-SALE
9 ALCOHOL USES.

10 Within six months of the enactment of this legislation, and every year thereafter, the Police
11 Department, in coordination with the Department of Public Health, shall notify the owner of each
12 Deemed Approved Off-Sale Alcohol Use of the Use's Deemed Approved status. Such notice shall be
13 sent via U.S. mail and shall include a copy of the performance standards as specified in Section 26.12,
14 notification that the Deemed Approved Off-Sale Alcohol Use is required to comply with the Deemed
15 Approved Performance Standards, and notification that the Deemed Approved Off-Sale Alcohol
16 Use is required to comply with all other provisions of the Deemed Approved Off-Sale Alcohol Use
17 Regulations. As long as service is made following these procedures failure of any person to receive
18 notice given pursuant to this section shall not affect the Deemed Approved status of the use.

19 The Police Department shall refer to the California Alcoholic Beverage Control Department's
20 database of all active Type 20 and Type 21 Off Sale Retail Licenses in the City and County of San
21 Francisco to determine the names and addresses of the operators of Deemed Approved Off-Sale
22 Alcohol Uses.

23 SEC. 26.10 EDUCATION AND OUTREACH TO DEEMED APPROVED OFF-SALE
24 ALCOHOL USES.

1 (a) Within six months of the enactment of this legislation, the Director of the Department of
2 Public Health, or his or her designee, in cooperation with the Chief of the Police Department or his or
3 her designee, shall develop and implement an education and outreach program to educate Deemed
4 Approved Off-Sale Alcohol Uses about the steps each Use may take to adopt to operate as a good
5 neighbor in their communities, to avoid nuisance behaviors, and to abide by requirements of this
6 Chapter. This education and outreach program shall be based upon a public health/environmental
7 approach to the prevention of alcohol-related nuisances. The education and outreach program shall be
8 directed to all Deemed Approved Off-Sale Alcohol Uses, relevant business associations, and residential
9 and commercial property owners and tenants within one block of a Deemed Approved Off-Sale Alcohol
10 Use.

11 (b) The education and outreach program shall include

12 (1) The development and distribution of informational packets on the requirements and benefits
13 of this Chapter and of other educational materials, including, but not limited to, culturally and
14 linguistically appropriate informational posters, brochures, and other materials for display at Deemed
15 Approved Off-Sale Alcohol Uses.

16 (2) Commencing within six months of the enactment of this legislation, biennially the
17 Department of Public Health shall provide educational sessions for operators of Deemed Approved
18 Off-Sale Alcohol Uses at multiple locations throughout the City. Operators of Deemed Approved Off-
19 Sale Alcohol Uses who do not attend at least one educational session every two years shall receive an
20 educational site visit from the Department of Public Health. This visit should be coordinated with and,
21 when possible, conducted with, Police Department personnel.

22 (3) Coordination of community stakeholder meetings, which should include representatives
23 from City departments, Deemed Approved Off-Sale Alcohol Uses, business associations, the Small
24 Business Commission, the Youth Commission, neighborhood associations and community
25 organizations.

1 (c) The Police Department, in cooperation with the Department of Public Health, may
2 promulgate additional education, outreach, and administrative requirements for Deemed Approved
3 Off-Sale Alcohol Uses as are necessary to ensure successful implementation of the Deemed Approved
4 Off-Sale Alcohol Regulations.

5 SEC. 26.11 INFORMED MERCHANTS PREVENTING ALCOHOL-RELATED CRIMES
6 AND TENDENCIES – I.M.P.A.C.T.

7 Any training conducted by the Police Department under the California Department of Alcoholic
8 Beverage Control's IMPACT program should, whenever possible, incorporate the requirements of the
9 Deemed Approved Performance Standards.

10 SEC. 26.12 DEEMED APPROVED PERFORMANCE STANDARDS.

11 A use shall retain its Deemed Approved status if it conforms with to all of the following Deemed
12 Approved Performance Standards (hereinafter the "Performance Standards"):

13 (a) The owner, its employees, or agents does not participate in, or assist persons
14 participating in, illegal activities. It does not result in repeated nuisance activities within the
15 premises or in close proximity of the premises, within the boundaries of the use's property line,
16 including the sidewalk and areas between the use and the street, including, but not limited to,
17 disturbance of the peace, illegal drug activity, illegal sale of firearms, public drunkenness, drinking in
18 public, harassment of passersby, gambling, prostitution, sale or receipt of stolen goods, or public
19 urination, theft, assaults or batteries.

20 (b) It does not result in repeated nuisance activities within the premises or within the
21 boundaries of the use's property line, including the sidewalk and areas between the use and
22 the street, including, but not limited to, acts of vandalism, accumulation of littering, loitering,
23 graffiti unabated within three days, illegal parking, excessive loud noises, (especially in the late
24 night or early morning hours), traffic violations, and police detentions and arrests or calls for
25 service to the Police Department not initiated by the Deemed Approved Off-Sale Alcohol Use.

1 (c) In an administrative hearing pursuant to this Chapter the City shall have the
2 burden of proof to establish that the owner, its employees, or agents has participated in, or
3 assisted persons participating in, the illegal activities outlined in subsection 26.12(a) and/or
4 that the use has resulted in the nuisance activity outlined in subsection 26.12(b).

5 ~~(b)~~(d) *No more than 33 percent of the square footage of the windows and clear doors of an*
6 *Deemed Approved Off-Sale Alcohol Use shall bear advertising or signs of any sort, and all advertising*
7 *and signage shall be placed and maintained in a manner that ensures that law enforcement personnel*
8 *have a clear and unobstructed view of the interior of the premises, including the area in which the cash*
9 *registers are maintained, from the exterior public sidewalk or entrance to the premises. This*
10 *requirement shall not apply to premises where there are no windows, or where existing windows are*
11 *located at a height that precludes a view of the interior of the premises by a person standing outside the*
12 *premises.*

13 ~~(e)~~(e) *For those Deemed Approved Off-Sale Alcohol Uses that are located within an existing*
14 *Alcohol Use Restricted District as set forth in the Planning Code, it does not result in the violation of*
15 *any applicable restrictions imposed on off-sale alcohol uses in that ~~D~~district.*

16 ~~(d)~~(f) *It does not result in the violation of Health and Safety Code Section 11570, which makes*
17 *every building or place used for the purpose of unlawfully selling, serving, storing, keeping,*
18 *manufacturing, or giving away any controlled substance a nuisance ~~which~~that shall be enjoined and*
19 *for which penalties may be recovered.*

20 ~~(e)~~(g) *It does not result in the violation of Penal Code Section 11200, which makes every*
21 *building or place used for purpose of unlawfully selling, serving, or giving away any spirituous, vinous,*
22 *malt or other alcoholic liquor, and every building or place in or upon which such liquors are*
23 *unlawfully sold, served or given away, a nuisance ~~which~~that shall be enjoined, abated and prevented,*
24 *whether it is a public or private nuisance.*

1 (f)(h) It does not result in violations of ~~city and county~~ local, state, or federal regulations,
2 ordinances, or statutes.

3 A copy of these Performance Standards, provided by mail by the Police Department per Section
4 26.9, ~~and~~ shall be posted in a conspicuous and unobstructed place visible from the entrance of the
5 establishment for public review.

6 SEC. 26.13 VIOLATIONS OF DEEMED APPROVED PERFORMANCE STANDARDS.

7 If the City Attorney receives from ~~a member of the public or from~~ the Director of the
8 Planning Department, the Chief of Police, the Director of the Department of Public Health
9 ~~Department~~, or the Director of the Department of Building Inspection, or the designee of any of these
10 officials, a request to consider bringing an administrative hearing pursuant to Sections 26.14 – 26.23,
11 or prosecuting ~~of~~ a Deemed Approved Off-Sale Alcohol Use for violations of City, state and/or federal
12 laws for violations of the Performance Standards specified in Section 26.12, or for violations of any
13 condition that has been placed on a Deemed Approved Off-Sale Alcohol Use under the provisions of
14 Sections ~~26.21 – 26.22~~ 26.20 – 26.21, the City Attorney may determine that it is appropriate to file a
15 civil action against the Deemed Approved Off-Sale Alcohol Use and/or may determine that it is
16 appropriate to bring the Deemed Approved Off-Sale Alcohol Use to an administrative hearing. At the
17 administrative hearing, the City Attorney may request that a decision be issued ordering that the
18 violations of the Performance Standards be corrected, that a decision be issued imposing
19 administrative penalties against the Deemed Approved Off-Sale Alcohol Use, and/or that a decision be
20 issued imposing conditions on the continued operation of the Deemed Approved Off-Sale Alcohol Use.

21 In the event that the Deemed Approved Off-Sale Alcohol Use has, within the past three years,
22 been the subject of an administrative hearing at which a finding of violation of the Performance
23 Standards was made, at which conditions were imposed on the Deemed Approved Off-Sale Alcohol
24 Uses' continued operations, and/or at which administrative penalties were imposed on the Deemed
25 Approved Off-Sale Alcohol Use for violation of the Performance Standards, the City Attorney may

1 request that an administrative hearing, as specified in Sections ~~26.14-26.15~~ – 26.23, be held to
2 consider the revocation of the Deemed Approved Off-Sale Alcohol Use’s Deemed Approved status
3 and/or request ~~for~~ additional penalties or conditions.

4 SEC. 26.14 CONDITIONAL USE PERMITS.

5 In the event that the City Attorney receives a request to consider bringing an administrative
6 hearing pursuant to Sections ~~26.14-26.15~~ – 26.23, and determines that the alleged violations are
7 violations of conditions imposed by the Planning Commission through the conditional use permitting
8 process, the City Attorney shall refer its findings to the Planning Department for actions consistent
9 with Planning Code Section 303. ~~However~~Notwithstanding the foregoing, any alleged violations
10 that are not violations of conditions imposed by the Planning Commission through the conditional use
11 permitting process shall be subject to the administrative hearing process in Sections ~~26.14-26.15~~ –
12 26.23.

13 SEC. 26.15 OPERATION OF ADMINISTRATIVE HEARINGS BY THE CITY
14 ADMINISTRATOR.

15 The City Administrator shall conduct administrative hearings provided for in the Deemed
16 Approved Off-Sale Alcohol Use Regulations. All requests to the City Administrator by the City
17 Attorney to schedule an administrative hearing shall be accompanied by sufficient information to allow
18 the City Administrator to complete the Notice For Administrative Hearings as described in Section
19 26.17.

20 SEC. 26.16 PROCEDURES FOR CONDUCT OF ADMINISTRATIVE HEARINGS AND
21 APPEALS.

22 (a) The City Administrator shall appoint one or more neutral Hearing Officers to conduct
23 administrative hearings. A neutral Hearing Officer shall be an impartial individual, without a
24 vested interest in either the Deemed Approved Off-Sale Alcohol Use or a complainant against
25 the Deemed Approved Off-Sale Alcohol Use, and may not be a current City employee.

1 Notwithstanding the foregoing, a contracted Hearing Officer shall not be considered a City
2 employee for the purposes of this Chapter. Within 10 days of receipt of a request from the City
3 Attorney's office to conduct an administrative hearing, the City Administrator shall select a Hearing
4 Officer, ~~at random,~~ to conduct the Administrative Hearing. The assigned Hearing Officer shall
5 exercise all powers relating to the conduct of the administrative hearing unless or until the decision of
6 the Hearing Officer is appealed to the Board of Appeals or the Board of Supervisors.

7 (b) A record of all administrative hearings shall be made by means of a permanent
8 recording determined to be appropriate by the City Administrator or, in the case of appeals to the
9 Board of Appeals, the Executive Director of the Board of Appeals or, in the case of appeals to the
10 Board of Supervisors, the Clerk of the Board of Supervisors.

11 (c) Any party may have the administrative hearing recorded by a certified court reporter at
12 his or her own expense. A transcript of the proceedings shall be made available to all parties upon
13 request and upon payment of the fee required by the certified court reporter.

14 (d) The Hearing Officer, the Board of Appeals, or the Board of Supervisors may grant
15 hearing continuances of up to 30 days for good cause shown.

16 (e) For the purposes of this ~~Chapter~~Section, the term party or parties refers to the City
17 and County of San Francisco and the owner of the Deemed Approved Off-Sale Alcohol Use.

18 SEC. 26.17 NOTICE OF ADMINISTRATIVE HEARINGS FOR VIOLATIONS OF DEEMED
19 APPROVED PERFORMANCE STANDARDS.

20 Within 15 days of the receipt of a request from the City Attorney's ~~office~~ to conduct an
21 administrative hearing, the City Administrator shall send a notice to the owner of the Deemed
22 Approved Off-Sale Alcohol Use of the time and place of the administrative hearing for violation of the
23 Deemed Approved Performance Standards. The hearing date shall be set at the Hearing Officer's sole
24 discretion, except that the hearing must commence within 60 days of the date the City Attorney requests
25 the administrative hearing. The Hearing Officer may extend that 60 day period by up to 30 days at his

1 or her discretion or if the City Attorney or the owner of the Deemed Approved Off-Sale Alcohol Use
2 requests, within 5 days of receipt of the Notice of Administrative Hearing, to submit briefing to the
3 Hearing Officer on the alleged violations of the Performance Standards. In the event that briefing is
4 requested, the Hearing Officer shall inform the parties of a briefing schedule that will allow the
5 Hearing Officer sufficient time to consider the briefing prior to the administrative hearing.

6 Notice may be accomplished by personal service or by U.S. mail, or if both of these methods
7 prove unsuccessful, then by posting the Notice of Administrative Hearing in a conspicuous place on the
8 property. Notices shall include notification that conditions or administrative penalties may be imposed
9 on the Deemed Approved Off-Sale Alcohol Use or that the Hearing Officer may consider revocation of
10 the Deemed Approved status of the Off-Sale Alcohol Use. In addition, the City Administrator shall post
11 the notice in accordance with those laws governing the noticing of meetings of policy bodies contained
12 in Article II of Section 67 of the Administrative Code. As long as service has been made as set forth
13 above, failure of any person or party to receive notice given pursuant to this Section shall not affect the
14 validity of any proceedings hereunder.

15 SEC. 26.18 FORM OF NOTICE FOR ADMINISTRATIVE HEARINGS AND APPEALS.

16 The notice to the owner of the Deemed Approved Off-Sale Alcohol Use of the administrative
17 hearing shall be substantially in the following form, but may include additional information:

18 “You are hereby notified that an administrative hearing will be held before the ([name of the
19 Hearing Officer]) on the day of _____ at the hour _____ to determine whether, due to
20 violations of the Performance Standards, conditions should be imposed on the Deemed Approved Off-
21 Sale Alcohol Use status of the business operated at _____ pursuant to the
22 Deemed Approved Off-Sale Alcohol Use Regulations contained in the San Francisco Administrative
23 Code, whether administrative penalties should be imposed, and/or whether the Deemed Approved
24 Status of the Off-Sale Alcohol Use should be revoked. You may be present and give testimony at the
25 hearing. You may be, but need not be, represented by counsel. In the event that you or the City

1 Attorney requests to submit briefing prior to the administrative hearing, all parties will be notified of
2 the briefing schedule set by _____, the Hearing Officer appointed in this matter.”

3 A brief statement of the reason(s) for the hearing shall also be included with the notice,
4 including a list of which Performance Standards the Deemed Approved Off-Sale Alcohol Use is
5 considered to be violating.

6 SEC. 26.19 CONDUCT OF HEARINGS.

7 In conducting an administrative hearing the Hearing Officer may take into consideration the
8 oral testimony, written submissions of the parties, and other forms of documentary information. The
9 Hearing Officer is not bound by the formal rules of evidence governing court proceedings. The
10 Hearing Officer may provide for sworn testimony, cross-examination, or other procedural adjustments
11 for ~~an~~ the administrative hearing as he or she determines is appropriate.

12 At any appeal from the decision of a Hearing Officer, the Board of Appeals, or the Board of
13 Supervisors may take into consideration the oral testimony, written submissions of the parties and other
14 forms of documentary information, the transcript of the administrative hearing, the written submissions
15 made by the parties at the administrative hearing, the written decision of the Hearing Officer, an
16 appeal letter setting forth those reasons why the appellant believes the Hearing Officer’s decision is in
17 error, and a written response to the appeal letter prepared by the respondents.

18 SEC. 26.20 PURPOSE OF THE ADMINISTRATIVE HEARING.

19 (a) The purpose of the administrative hearing is to receive information as to whether the
20 Deemed Approved Off-Sale Alcohol Use is in compliance with the Performance Standards.

21 (b) The Hearing Officer shall determine whether the Deemed Approved Off-Sale Alcohol
22 Use is in compliance with the Performance Standards. Based on this determination, the Hearing
23 Officer may continue the Deemed Approved status for the Use in question, may impose administrative
24 penalties for violations of the Performance Standards, may impose such reasonable conditions as are
25 in the judgment of the Hearing Officer necessary to ensure compliance with the Performance

1 Standards, and, in the event that the Deemed Approved Off-Sale Alcohol Use has, within the past three
2 years, been the subject of an administrative hearing at which a finding of violation of the Performance
3 Standards was made, may revoke the Deemed Approved Off-Sale Alcohol Use's Deemed Approved
4 Status. If the Hearing Officer determines instead to impose further, new conditions on the Deemed
5 Approved Off-Sale Alcohol Use, such conditions shall be based upon the information then before the
6 Hearing Officer.

7 (c) In reaching a determination as to whether a use has violated the Performance
8 Standards, or as to the appropriateness of imposing conditions on a use, revoking a use,
9 assessing administrative penalties, or the amount of administrative penalties to assess, the
10 Hearing Officer may consider:

11 (1) The length of time the Deemed Approved Off-Sale Alcohol Use has been out of
12 compliance with the Performance Standard(s); and

13 (2) The impact of the violation of the Performance Standard(s) on the community;
14 and

15 (3) Any information regarding the owner of the Deemed Approved Off-Sale Alcohol
16 Use's efforts to remedy the violation of the Performance Standard.

17 (d) "Efforts to Remedy" shall include, but are not limited to:

18 (1) Timely calls to the Police Department that are placed by the owner of the
19 Deemed Approved Off-Sale Alcohol Use, his employees, or agents.

20 (2) Requesting that those persons engaging in activities causing violations of the
21 Performance Standards cease those activities, unless the owner of the Deemed Approved
22 Off-Sale Alcohol Use, or his employees or agents feels that their personal safety would be
23 threatened in making that request.

24 (3) Making improvements to the use's property or operations, including but not
25 limited to the installation of lighting sufficient to illuminate the area within the use's property

1 line, the installation of security cameras, clear unobstructed windows, clean sidewalks, and
2 graffiti abated within three days.

3 (e) The decision of the Hearing Officer shall be based upon all information received at the
4 administrative hearing, including, but not limited to, information compiled by City staff, testimony from
5 the owner of the Deemed Approved Off-Sale Alcohol Use, and the testimony of all other interested
6 persons. Any conditions imposed by the Hearing Officer shall be a condition of the Deemed Approved
7 Off-Sale Alcohol Use's continued operation. Any condition imposed by the Hearing Officer shall not be
8 considered a suspension, revocation, or withdrawal of a Deemed Approved Off-Sale Alcohol Use's use
9 permit.

10 (f) All determinations, decisions, and conditions made or imposed under this
11 Chapter regarding the use of a Deemed Approved Off-Sale Alcohol Use shall run with the
12 land; provided, however, that upon legal transfer of a use's State of California Department of
13 Alcohol Beverage Control Board License, the fact that a use has been the subject of an
14 administrative hearing at which a finding of violation of the Performance Standards was made
15 may only be used as a basis for revoking the use's Deemed Approved Status within 18
16 months of the transfer or within three years of the prior administrative hearing, whichever is
17 less.

18 SEC. 26.21 ADMINISTRATIVE PENALTIES.

19 The Hearing Officer may assess administrative penalties against the owner of the Deemed
20 Approved Off-Sale Alcohol Use of no less than \$500.00 and no more than \$1,000.00 for each violation
21 of a Performance Standard. If the violation is of a continuing nature, the Hearing Officer may impose
22 a penalty for each day the violation remains. In reaching a determination as to the
23 appropriateness of administrative penalties or the amount of administrative penalties to
24 assess the Hearing Officer may consider:

1 (1) — ~~The length of time the Deemed Approved Off-Sale Alcohol Use has been out of~~
2 ~~compliance with the Performance Standard(s); and~~

3 (2) — ~~The impact of the violation of the Performance Standard(s) on the community;~~
4 ~~and~~

5 (3) — ~~Any information regarding the owner of the Deemed Approved Off-Sale Alcohol~~
6 ~~Use's efforts to remedy the violation of the Performance Standard.~~

7 ——— "Efforts to Remedy" shall include, but are not limited to:

8 (1) — ~~Timely calls to the Police Department that are placed by the owner of the~~
9 ~~Deemed Approved Off-Sale Alcohol Use, or his employees or agents.~~

10 (2) — ~~Requesting that those persons engaging in activities causing violations of the~~
11 ~~Performance Standards cease those activities, unless the owner of the Deemed Approved~~
12 ~~Off-Sale Alcohol Use, or his employees or agents feels that their personal safety would be~~
13 ~~threatened in making that request.~~

14 *If payment of any administrative penalty imposed by the Hearing Officer is not received by the*
15 *City Administrator within the period of time set forth in the decision, and the decision has not been*
16 *appealed under the time periods set forth in Section 26.22, the City Administrator shall request that the*
17 *Tax Collector pursue collection of the penalty and fee against the owner of the Deemed Approved Off-*
18 *Sale Alcohol Use, up to and including imposition of a special assessment lien in accordance with the*
19 *requirements of Article 26 of Chapter 10 of the San Francisco Administrative Code*
20 *(commencing with Section 10.230). In the event that the unpaid administrative penalty*
21 *is owed by an owner of a Deemed Approved Off-Sale Alcohol Use who is not also the property owner of*
22 *the building in which the Use is located, the City Administrator may request that the City Attorney*
23 *pursue collection of the penalties.*

1 Any administrative penalties collected under this Chapter shall be deposited in the
2 Deemed Approved Off-Sale Alcohol Use Continuing Project Account, as set forth in Section
3 26.27.

4 SEC. 26.22 METHOD AND FORM OF DECISION OF THE HEARING OFFICER.

5 (a) The Hearing Officer shall, within a reasonable time, not to exceed thirty 30 days from
6 the date the hearing is closed, submit to the City Administrator a written decision containing a brief
7 summary of the information considered and the Hearing Officer's findings and conclusions, including
8 any conditions that are to be placed on the Deemed Approved Off-Sale Alcohol Use and any
9 administrative penalties to be imposed. The Hearing Officer's written decision shall also inform the
10 parties of their right to appeal the written decision and describe the appeal process. The Hearing
11 Officer's written decision shall be a public record. The City Administrator shall serve a copy of the
12 decision on each party by personal service or by U.S. mail. Service of the decision shall be deemed
13 complete at the time it is personally served or deposited in the mail with the correct amount of postage
14 affixed. Failure to receive a copy of the decision served pursuant to this section shall not affect the
15 validity of the decision. The City Administrator shall also provide a copy of the written decision to the
16 Director of the Planning Department, the Chief of the Police Department, the Director of the
17 Department of Public Health, the Director of the Department of Building Inspection, and the Board of
18 Supervisors.

19 (b) The decision of the Hearing Officer shall become final ten days after the service of the
20 decision is deemed complete unless appealed to the Board of Appeals, or, in the case of a decision to
21 revoke a Deemed Approved Off-Sale Alcohol Use that was permitted as a conditional use, to the Board
22 of Supervisors, in accordance with Section 26.24.

23 SEC. 26.23 PROCEDURE FOR CONSIDERATION OF VIOLATIONS TO CONDITIONS
24 IMPOSED ON DEEMED APPROVED OFF-SALE ALCOHOL USES.

1 In the event of a failure to comply with any prescribed condition imposed by the Hearing
2 Officer or to comply with any Performance Standard, at the request of the City Attorney, another
3 administrative hearing may be set. Notification of this hearing shall be in accordance with Sections
4 26.17 - 26.18.

5 The purpose of this administrative hearing is to receive information and determine whether
6 violations to any condition attached to the Deemed Approved Off-Sale Alcohol Use have occurred. The
7 hearing shall be conducted as provided in Sections ~~26.20~~ 26.15 – 26.22. The Hearing Officer may
8 add to or amend the existing conditions based upon the information presented; may impose additional
9 administrative penalties, or, alternatively, if the previous conditions were imposed within the three
10 years prior to the City Attorney's request for an administrative hearing, may revoke the Deemed
11 Approved Use's Deemed Approved status and/or impose administrative penalties. The provisions of
12 Section 26.22 concerning the Hearing Officer's written decision shall be followed. The decisions of the
13 Hearing Officer shall become final in the same manner as provided for in Section 26.22.

14 SEC. 26.24 APPEAL TO THE BOARD OF APPEALS OR BOARD OF SUPERVISORS.

15 A decision of a Hearing Officer, except a decision to revoke a Deemed Approved Off-Sale
16 Alcohol Use that was permitted as a conditional use, may be appealed to the Board of Appeals in the
17 manner prescribed in Article I of the San Francisco Business and Tax Regulations Code. A decision of
18 a Hearing Officer to revoke a Deemed Approved Off-Sale Alcohol Use that was permitted as a
19 conditional use may be appealed to the Board of Supervisors in the manner prescribed in Section 303
20 of the Planning Code. An appeal shall stay the decision of the Hearing Officer. All appeals must be in
21 writing and shall state specifically any claims that there was an error or abuse of discretion by the
22 Hearing Officer or why the Hearing Officer's decision is not supported by information contained in the
23 record. Notice to parties of the public hearing on the appeal shall be delivered personally, or served or
24 deposited in the mail with the correct amount of postage affixed. As long as service has been made as

1 set forth above, failure to receive notice given pursuant to this section shall not affect the validity of any
2 appeal hearing hereunder.

3 The City Administrator shall forward a copy of the record before the Hearing Officer at the
4 administrative hearing and a copy of the Hearing Officer's written decision to the Executive Secretary
5 of the Board of Appeals or the Clerk of the Board of Supervisors at least 10 days before the date of the
6 appeal hearing. If any party has obtained a certified transcript of the administrative hearing, that
7 transcript may be submitted to the Executive Secretary of the Board of Appeals or to the Clerk of the
8 Board of Supervisors by any party, no later than 10 days before the date of the appeal hearing, and
9 shall be considered part of the record of the administrative hearing.

10 The Board of Appeals or Board of Supervisors shall determine whether the Deemed Approved
11 Off-Sale Alcohol Use conforms to the applicable Performance Standards and/or any conditions that
12 have in the past been imposed on the Deemed Approved Off-Sale Alcohol Use, and may continue or
13 revoke a Deemed Approved use; and/or may impose conditions on the Deemed Approved Off-Sale
14 Alcohol Use as are, in its judgment, necessary to ensure conformity to the Performance Standards. The
15 Board of Appeals or Board of Supervisors may also continue, reduce, remove, or increase any
16 administrative penalties that have been assessed by the Hearing Officer. The Board of Appeals or
17 Board of Supervisors may not remove administrative penalties unless it also makes a finding that the
18 Deemed Approved Off-Sale Alcohol Use in question is not in violation of any Performance Standards.
19 In the event that the Board of Appeals or Board of Supervisors determines that the administrative
20 penalties shall be increased, such a determination shall be based on specific information and based on
21 the same factors listed in Section 26.21.

22 The Board of Appeals or Board of Supervisors shall direct its staff to reduce their decision to
23 writing within 10 days. The decision shall contain findings of fact, a determination of the issues
24 presented, and any conditions to be imposed or administrative penalties to be paid. A copy of the
25 decision shall be served on the parties by personal service or by U.S. mail. Service of this decision

1 shall be deemed complete at the time it is personally served or deposited in the mail with the correct
2 amount of postage affixed. As long as service has been made as set forth above, failure to receive a
3 copy of the decision served pursuant to this section shall not affect the validity of the decision rendered
4 herein.

5 A decision of the Board of Appeals or Board of Supervisors is final. The Board of Appeals or
6 the Board of Supervisors written decision shall apprise parties of their right to seek judicial review in
7 the Superior Court of San Francisco pursuant to Section 1094.6 of the California Code of Civil
8 Procedure. Any condition imposed by the Board of Appeals or the Board of Supervisors shall not be
9 considered a suspension, revocation or withdrawal of a Deemed Approved Off-Sale Alcohol Use's
10 permit to operate.

11 SEC. 26.25 ILLEGAL USE.

12 A Deemed Approved Off-Sale Alcohol Use, ~~which~~that has been finally revoked shall lose its
13 Deemed Approved Off-Sale Alcohol Use Status and shall no longer be considered a legal use of the
14 building, structure, site, or portion thereof, and shall cease operation immediately.

15 SEC. 26.26 FEE.

16 The owner of the Deemed Approved Off-Sale Alcohol Use shall each be required to pay an
17 annual fee of \$264.00 to cover the cost of administering the Deemed Approved Off-Sale Alcohol Use
18 Education and Outreach Program and the cost of ~~conducting administrative hearings, including~~
19 ~~the costs of the Director of Administrative Services and the City Attorney.~~ This annual fee shall
20 be billed by and paid to the Office of the Treasurer & Tax Collector, which shall deposit the
21 monies collected in the Deemed Approved Off-Sale Alcohol Continuing Project Account, as
22 set forth in Section 26.27. In the event that the owner of the Deemed Approved Off-Sale Alcohol Use
23 fails to pay the fee during a given fiscal year, the ~~Police Department~~Office of the Treasurer & Tax
24 Collector shall notify the Department of Public Health, which may request that the City Attorney
25 pursue collection of the penalties.

1 Beginning with fiscal year 2006-2007, the annual fee may be adjusted each year, without
2 further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index, as
3 determined by the Controller. No later than April 15th of each year, the ~~Police~~
4 ~~Department~~Department of Public Health shall submit the annual fee to the Controller, who shall
5 apply the price index adjustment to produce a new annual fee for the following year. No later than
6 May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting the
7 new annual fee and certifying that: (a) the annual fee produces sufficient revenue to support the
8 proposed costs of providing the services in the upcoming fiscal year for which the annual fee is
9 being charged and (b) the annual fee ~~does~~will not produce revenue that exceeds the proposed costs of
10 providing the services in the upcoming fiscal year for which the annual fee is charged.
11 Notwithstanding the procedures set forth in this Section, the Board of Supervisors, in its discretion,
12 may modify the annual fee by ordinance at any time.

13 A new Deemed Approved Off-Sale Alcohol Use or a Deemed Approved Off-Sale Alcohol Use
14 that undergoes a change in ownership after the enactment of the Deemed Approved Off-Sale Alcohol
15 Use Ordinance shall pay its first annual fee within 60 days of commencing operation or of the change
16 in ownership. This first annual fee payment shall be pro-rated based of the number of days left in the
17 fiscal year.

18 Upon the request of the owner of a Deemed Approved Off-Sale Alcohol Use, the
19 Department of Public Health may waive payment of the annual fee provided that the owner
20 can show to the satisfaction of the Department of Public Health all of the following:

21 (1) that the Deemed Approved Off-Sale Alcohol Use has been under the same
22 ownership for not less than the previous three years;

23 (2) that the annual fee for the Deemed Approved Off-Sale Alcohol Use has been
24 paid in a timely manner for not less than the previous three years; and
25

1 (3) that the Deemed Approved Off-Sale Alcohol Use has not been the subject of a
2 City Department-referred complaint or any administrative penalties or conditions imposed by a
3 Hearing Officer, the Board of Appeals, or the Board of Supervisors under the provisions of this
4 Chapter.

5 If the owner of the Deemed Approved Off-Sale Alcohol Use can show all of the above,
6 the Department of Public Health shall waive the fee indefinitely, provided, however, that if the
7 Deemed Approved Off-Sale Alcohol Use changes ownership or becomes the subject of a City
8 Department-referred complaint or any administrative penalties or conditions imposed by a
9 Hearing Officer, the Board of Appeals, or the Board of Supervisors under the provisions of this
10 Chapter the annual fee shall be immediately reimposed.

11 SEC. 26.27 DEEMED APPROVED OFF-SALE ALCOHOL USE CONTINUING PROJECT
12 ACCOUNT.

13 (a) Annual Fees and administrative penalties collected by the City pursuant to this
14 SectionChapter shall be deposited in the Deemed Approved Off-Sale Alcohol Use Continuing
15 Project Account within the City's General Fund (Continuing Projects Fund) established in
16 Administrative Code Section 10..20-1. The Deemed Approved Off-Sale Alcohol Use
17 Continuing Project Account shall be administered by the Department of Public Health.

18 (b) Annual fees deposited in the Deemed Approved Off-Sale Alcohol Use
19 Continuing Project Account are to be expended to cover the cost to the Department of Public
20 Health of administering the Deemed Approved Off-Sale Alcohol Use Education and Outreach
21 Program and the costs of the City Attorney as set forth in this Chapter.

22 (c) Administrative penalties deposited in the Deemed Approved Off-Sale Alcohol
23 Use Continuing Project Account are to be expended to cover the cost of code enforcement
24 efforts by the City Attorney, additional education and outreach by the Department of Public
25

1 Health to Deemed Approved Off-Sale Alcohol Uses beyond that specifically provided by
2 Section 26.10, and other activities consistent with the intent of this Chapter.

3 ~~SEC. 26.28 DEEMED APPROVED OFF-SALE ALCOHOL USE PENALTY PROJECT~~
4 ~~ACCOUNT.~~

5 ~~Penalties collected pursuant to this Section shall be deposited in the Deemed~~
6 ~~Approved Off-Sale Alcohol Use Penalty Project Account established in Administrative Code~~
7 ~~Section 10.20-2. Penalty monies shall be expended for the funding of code enforcement~~
8 ~~efforts, additional education and outreach to Deemed Approved Off-Sale Alcohol Uses~~
9 ~~beyond that provided for in Section 26.10, and other activities consistent with the intent of the~~
10 ~~Deemed Approved Off-Sale Alcohol Regulations.~~

11 SEC 26.28 DEPARTMENTAL REPORTING REQUIREMENTS.

12 (a) Beginning 18 months after the effective date of this ordinance, and annually
13 thereafter, the City Attorney and the Department of Public Health shall each submit a report to
14 the Board of Supervisors on the actions it has taken to implement this Chapter. The
15 appropriate committee of the Board of Supervisors shall hold a hearing to review the report
16 and potential amendments to this Chapter, based upon recommendations of the report and
17 public comment.

18 (b) Beginning 12 months after the effective date of this ordinance, and annually
19 thereafter, the Police Department shall submit a report to the Board of Supervisors, with a
20 copy to the San Francisco Public Library for public review, that lists all Deemed Approved Off-
21 Sale Alcohol Uses and the conditions and/or penalties placed upon each use, including
22 conditions or penalties imposed through: an administrative hearing under this Chapter; an
23 action of the Board of Supervisors, Planning Commission, Board of Permit Appeals, or
24 California Alcohol Beverage Control; the inclusion of the use in an Alcohol Restricted Use
25 District; or any other method.

1 Section 3.—~~The San Francisco Administrative is hereby amended by adding Section~~
2 ~~40.19-5 to read as follows:~~

3 ~~(a)—Establishment of a Project Account. The Deemed Approved Off-Sale Alcohol~~
4 ~~Use Annual Fee Project Account established to receive funds collected pursuant to Section~~
5 ~~26.27 of the Administrative Code.~~

6 ~~(b)—Use of Project Account. Proceeds in the Project Account are to be expended to~~
7 ~~cover the cost of administering the Deemed Approved Off-Sale Alcohol Use Education and~~
8 ~~Outreach Program, and the cost of conducting administrative hearings, including the costs of~~
9 ~~the Director of Administrative Services and the City Attorney as set forth in Chapter 26 of the~~
10 ~~Administrative Code.~~

11 Section 4.—~~The San Francisco Administrative is hereby amended by adding Section~~
12 ~~40.19-6 to read as follows:~~

13 ~~(a)—Establishment of Project Account. The Deemed Approved Off-Sale Alcohol Use~~
14 ~~Administrative Penalties Project Account is established to receive funds collected, pursuant to~~
15 ~~Section 26.28 of the Administrative Code, for penalties assessed for violations of regulations~~
16 ~~Deemed Approved Off-Sale Alcohol Uses.~~

17 ~~(b)—Use of Project Account. Proceeds in the Project Account are to be expended to~~
18 ~~cover the cost of staffing the Deemed Approved Off-Sale Alcohol Use Appeals Board, for~~
19 ~~funding code enforcement efforts, additional education and outreach to Deemed Approved~~
20 ~~Off-Sale Alcohol Uses beyond that provided by the Deemed Approved Off-Sale Alcohol~~
21 ~~Regulations contained in Chapter 26 of the Administrative Code, and other activities~~
22 ~~consistent with the intent of the Deemed Approved Off-Sale Alcohol Regulations.~~

23 Section 5. Severability.

24 If any provision of this ordinance or the application thereof to any person or
25 circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not

1 affect other provisions or applications or this ordinance ~~which~~that can be given effect without
2 the invalid or unconstitutional provision or application. To this end, the provisions of this
3 ordinance shall be deemed severable.

4 ~~Section 6. The Planning Department concluded environmental review of this ordinance~~
5 ~~pursuant to the California Environmental Quality Act. Documentation of that review is on file~~
6 ~~with the Clerk of the Board of Supervisors in File No. _____.~~

7

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

10 By: _____
11 Marlena G. Byrne
12 Deputy City Attorney

12

13

14

15

16

17

18

19

20

21

22

23

24

25