

1 [Zoning –Entertainment Uses.]

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3 **Ordinance amending Sections 102.17, 790.38, and 890.37 of the San Francisco Planning**  
4 **Code to define three types of entertainment use based upon size; amending Sections**  
5 **1060, 1060.1, 1060.3, 1070, 1070.1 and 1070.3 of the San Francisco Police Code to**  
6 **define the three types of entertainment use authorized by the Planning Code and to**  
7 **require an application and the permit for a place of entertainment or extended-hours**  
8 **activity to specify one of the three types of entertainment use; adopting findings,**  
9 **including environmental findings and findings required by Section 302 of the Planning**  
10 **Code.**

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

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

15 Section 1. Findings.

16 (a) The Planning Department has determined that the actions contemplated in this  
17 ordinance are in compliance with the California Environmental Quality Act (California Public  
18 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
19 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference.

20 (b) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this  
21 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in  
22 Planning Commission Resolution No. \_\_\_\_\_, and incorporates those reasons by  
23 reference as though fully set forth herein. A copy of the Planning Commission resolution is on  
24 file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

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1 Section 2. The San Francisco Planning Code is hereby amended by amending Section  
2 102.17, to read as follows:

3 SEC. 102.17. NIGHTTIME AND OTHER ENTERTAINMENT USES.

4 (a) Nighttime Entertainment Use. Nighttime entertainment uses shall include dance  
5 halls, discotheques, nightclubs, private clubs, and other similar evening-oriented  
6 entertainment activities which require dance hall keeper ~~police permits,~~ ~~or~~ place of  
7 entertainment, ~~or extended hours police~~ permits which are not limited to non-amplified live  
8 entertainment, including restaurants and bars which present such activities, but shall not  
9 include any arts activities or space as defined in Section 102.2 of this Code, any theater  
10 performance space which does not serve alcoholic beverages during performances, or any  
11 temporary uses permitted pursuant to Sections 205 through 205.3 of this Code.

12 (b) Entertainment Use: Limited Occupancy. An Entertainment: Limited Occupancy use is  
13 an entertainment use, as defined in subsection (a) above, Section 790.38, and Section 890.37 of this  
14 Code, where the venue has an occupancy limit under the Building Code of less than 50 persons.

15 (c) Entertainment: Accessory Use. An Entertainment: Accessory use is an entertainment  
16 use that meets the definition of accessory use set forth in Sections 204 et seq., Section 703.2, or Section  
17 803.2 of this Code.

18 Section 3. The San Francisco Planning Code is hereby amended by amending Section  
19 790.38, to read as follows:

20 SEC. 790.38. ENTERTAINMENT, OTHER.

21 (a) Entertainment Use. An Entertainment use is a A retail use, other than adult  
22 entertainment, as defined in Section 790.36 of this Code, which provides live entertainment,  
23 including dramatic and musical performances, and/or operates as a dance hall which provides  
24 amplified taped music for dancing on the premises, including but not limited to those defined  
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1 in Sections 1060 and 1070 of the Police Code, and which is adequately soundproofed or  
2 insulated so as to confine incidental noise to the premises. Other entertainment also includes  
3 a bowling alley, billiard parlor, shooting gallery, skating rink and other commercial recreational  
4 activity, but it excludes amusement game arcades, as defined in Section 790.4 of this Code  
5 and regulated in Section 1036 of the Police Code.

6 (b) Entertainment Use: Limited Occupancy. An Entertainment: Limited Occupancy use is  
7 an entertainment use, as defined in subsection (a) above, where the venue has an occupancy limit under  
8 the Building Code of less than 50 persons.

9 (c) Entertainment: Accessory Use. An Entertainment: Accessory use is an entertainment  
10 use as defined in subsection (a) above that meets the definition of accessory use set forth in Section  
11 703.2 of this Code.

12 Section 4. The San Francisco Planning Code is hereby amended by amending Section  
13 890.37, to read as follows:

14 SEC. 890.37. ENTERTAINMENT, OTHER.

15 (a) Entertainment Use. In the Chinatown Mixed Use Districts, a retail use, other than  
16 adult entertainment, as defined in Section 890.36 of this Code, which provides live  
17 entertainment, including dramatic and musical performances, and/or operates as a dance hall  
18 which provides amplified taped music for dancing on the premises, including but not limited to  
19 those defined in Sections 1060 and 1070 of the Police Code. Other entertainment also includes  
20 a bowling alley, billiard parlor, shooting gallery, skating rink and other commercial recreational  
21 activity, but it excludes amusement game arcades, as defined in Section 890.4 of this Code  
22 and regulated in Section 1036 of the Police Code. For South of Market Districts, see Section  
23 102.17.

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1           (b) Entertainment Use: Limited Occupancy. An Entertainment: Limited Occupancy use is  
2 an entertainment use, as defined in subsection (a) above, where the venue has an occupancy limit under  
3 the Building Code of less than 50 persons.

4           (c) Entertainment: Accessory Use. An Entertainment: Accessory use is an entertainment  
5 use as defined in subsection (a) above that meets the definition of accessory use set forth in Section  
6 803.2 of this Code.

7           Section 5. The San Francisco Police Code is hereby amended by amending Section  
8 1060, to read as follows:

9           SEC. 1060. DEFINITIONS.

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

12          (a)    “Place of Entertainment.” Every premises to which patrons or members are  
13 admitted which serves food, beverages, or food and beverages, including but not limited to  
14 alcoholic beverages, for consumption on the premises and wherein entertainment as defined  
15 in Subsections (b), (c), or (e) is furnished or occurs upon the premises.

16          (b)    “Entertainment.” Any act, play, review, pantomime, scene, song, dance act,  
17 song and dance act, or poetry recitation, conducted or participated in by any professional  
18 entertainer in or upon any premises to which patrons or members are admitted.

19                “Entertainment,” in addition, is defined to mean and include the playing upon or  
20 use by any professional entertainer of any instrument that is capable of or can be used to  
21 produce musical sounds or percussion sounds, including but not limited to, reed, brass,  
22 percussion or string-like instruments, or recorded music presented by a live disc jockey on the  
23 premises.

1 (c) "Entertainment," Continued. "Entertainment" also includes a fashion or style  
2 show in which the models are professional entertainers, except when conducted by a bona  
3 fide nonprofit club or organization as a part of the social activities of such club or organization,  
4 and when conducted solely as a fundraising activity for charitable purposes.

5 (d) "Professional Entertainer." A person who is compensated for his or her  
6 performance.

7 (e) "Entertainment," Continued; Exhibition of Human Body. "Entertainment" also  
8 includes the act of any female professional entertainer, while visible to any customer, who  
9 exposes the breast or employs any device or covering which is intended to simulate the  
10 breast, or wears any type of clothing so that the breast may be observed.

11 (f) Entertainment: Limited Occupancy. Entertainment: Limited Occupancy is  
12 entertainment where the venue has an occupancy limit under the Building Code of less than 50 persons.

13 (g) Entertainment: Accessory. Entertainment: Accessory is entertainment that meets the  
14 definition of accessory use set forth in Sections 204 et seq., Section 703.2, and Section 803.2 of the  
15 Planning Code.

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

21 (i) (g) "Operator." Any person operating a place of entertainment in the City and  
22 County of San Francisco, including, but not limited to, the owner or proprietor of such  
23 premises, lessee, sublessee, mortgagee in possession, permittee or any other person  
24 operating such place of entertainment or amusement.

1            (j) ~~(h)~~ "Bona Fide Nonprofit Club or Organization." Any fraternal, charitable, religious or  
2 benevolent, or any other nonprofit organization having a regular membership association  
3 primarily for mutual social, mental, political and civic welfare, to which admission is limited to  
4 members and guests and revenue accruing therefrom shall be used exclusively for the  
5 benevolent purposes of said organization and which organization or agency is exempt from  
6 taxation under the Internal Revenue laws of the United States as a bona fide fraternal,  
7 charitable, religious, benevolent or nonprofit organization.

8            (k) ~~(i)~~ "Admission Charge." Any charge for the right or privilege to enter any place of  
9 entertainment including a minimum service charge, a cover charge or a charge made for the  
10 use of seats and tables, reserved or otherwise.

11           (l) ~~(j)~~ "Tax Collector." Tax Collector of the City and County of San Francisco.

12           (m) ~~(k)~~ "Security Plan." A plan that (i) provides at least 1 security guard for every 100  
13 persons authorized by the Occupancy Permit, (ii) secures a 50 foot perimeter in all directions  
14 around the location of the Place of Entertainment to prevent injury to persons and/or damage  
15 to property, and (iii) provides for the orderly disbursement of persons and traffic from the  
16 Place of Entertainment. The Entertainment Commission, in consultation with the San  
17 Francisco Police Department, shall develop rules and regulations implementing this section.

18           Section 6. The San Francisco Police Code is hereby amended by amending Section  
19 1060.1, to read as follows:

20           SEC. 1060.1. PERMIT REQUIRED.

21           It shall be unlawful for any person to own, conduct, operate, maintain or to participate  
22 therein, or to cause or permit to be conducted, operated or maintained, any place of  
23 entertainment in the City and County of San Francisco without first having obtained a permit  
24 from the Entertainment Commission.

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1 Any place or premises where a permit to operate is sought must conform to all existing  
2 health, safety, zoning and fire ordinances of the City and County of San Francisco, and must  
3 have a valid public eating place permit from the Department of Public Health. Permits shall  
4 specify whether they are issued for Entertainment, Entertainment: Limited Occupancy, or  
5 Entertainment: Accessory, as set forth in the permit application, and no Permittee shall allow the use of  
6 the premises for which the permit has been issued in a manner inconsistent with such designated use.  
7 The Entertainment Commission may issue a permit under this Section conditional upon the  
8 applicant receiving the other required permits.

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

13 Any conditional permit granted by the Entertainment Commission will expire nine (9)  
14 months from the date of the final decision of the Entertainment Commission, if all the other  
15 required permits have not been received.

16 Section 7. The San Francisco Police Code is hereby amended by amending Section  
17 1060.3, to read as follows:

18 SEC. 1060.3. APPLICATION FORM.

19 Operators under any permit issued pursuant to this Article shall be limited to the terms  
20 of the application. Except as otherwise provided herein, an application for a permit pursuant to  
21 the provisions of this Article shall specify:

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

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1           (b)     The name and proposed business address of the applicant. If the applicant is a  
2 corporation, the name of the corporation shall be set forth exactly as shown in its articles of  
3 incorporation; and the applicant shall also set forth the date and place of incorporation; the  
4 names and residence addresses of each of the officers, directors, and each stockholder  
5 owning more than 10 percent of the stock of the corporation. If the applicant is a partnership,  
6 the application shall set forth the name and residence address of each of the partners,  
7 including limited partners. If one or more of the partners is a corporation, the provisions of this  
8 Section pertaining to a corporate applicant apply.

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

17           (d)     The names and addresses of the persons who have authority or control over the  
18 place for which the permit is requested and a brief statement of the nature and extent of such  
19 authority and control.

20           (e)     Such information pertinent to the operation of the proposed activity, including  
21 information as to management, authority control, financial agreements, and lease  
22 arrangements, that is reasonably related to the factual determinations this ordinance  
23 empowers the Entertainment Commission to make in reviewing and acting upon permit  
24 applications as the Entertainment Commission may require of an applicant in addition to the  
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1 other requirements of this Section. The foregoing examples are in explanation of and not in  
2 limitation of the information which the Entertainment Commission may require.

3 (f) A business plan for the proposed place of entertainment, specifying the days  
4 and hours of operation, the number of patrons, the numbers of employees and their duties,  
5 the identity of the manager or managers who shall be on premises during all hours of  
6 operation, the types or classes of entertainment (in terms of the types of instruments,  
7 numbers of performers and sound levels) to be provided, and the amount of parking, both on-  
8 site and off-site, to be provided. If sound amplification is to be used, the plan shall also include  
9 a specific description of the amplification system.

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

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

15 (i) Whether the application is for Entertainment, Entertainment: Limited Occupancy, or  
16 Entertainment: Accessory, as defined above.

17 (j) (†) The Entertainment Commission may require further information as it deems  
18 necessary.)

19 Section 8. The San Francisco Police Code is hereby amended by amending Section  
20 1070, to read as follows:

21 SEC. 1070. DEFINITIONS.

22 For the purpose of this Article, the following words and phrases shall mean and  
23 include:

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1 (a) Extended-Hours Premises. Every premises to which patrons or members are  
2 admitted or which allows patrons or members to remain on the premises between the hours of  
3 2:00 a.m. and 6:00 a.m. which serves food, beverages, or food and beverages, including but  
4 not limited to, alcoholic beverages, for consumption on the premises or wherein entertainment  
5 as defined in Subsections (b) and (c) is furnished or occurs upon the premises.

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

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

18 "Entertainment," in addition, is defined to mean and include the playing upon or use of  
19 any instrument that is capable of or can be used to produce musical sounds or percussion  
20 sounds, including but not limited to, reed, brass, percussion or string-like instruments;  
21 provided, further, that "entertainment" is defined to mean any instrument or device capable of  
22 producing or reproducing sound, which device is located in a premises open between the  
23 hours of 2:00 a.m. and 6:00 a.m.

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

5 (d) Entertainment: Limited Occupancy. Entertainment: Limited Occupancy is entertainment  
6 where the venue has an occupancy limit under the Building Code of less than 50 persons.

7 (e) Entertainment: Accessory. Entertainment: Accessory is entertainment that meets the  
8 definition of accessory use set forth in Sections 204 et seq., Section 703.2, and Section 803.2 of the  
9 Planning Code.

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

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

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

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

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

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

18           Section 9. The San Francisco Police Code is hereby amended by amending Section  
19 1070.1, to read as follows:

20           SEC. 1070.1. PERMIT REQUIRED.

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

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1 Any place or premises where a permit to operate is sought must conform to all existing  
2 health, safety, and fire ordinances of the City and County of San Francisco, and must have a  
3 valid public eating place permit from the Department of Public Health. Permits shall specify  
4 whether they are issued for Entertainment, Entertainment: Limited Occupancy, or Entertainment:  
5 Accessory, as set forth in the permit application, and no Permittee shall allow the use of the premises  
6 for which the permit has been issued in a manner inconsistent with such designated use. The  
7 Entertainment Commission may issue a permit under this Section conditional upon the  
8 applicant receiving the other required permits.

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

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

16 Section 10. The San Francisco Police Code is hereby amended by amending Section  
17 1070.3, to read as follows:

18 SEC. 1070.3. APPLICATION FORM.

19 Operators under any permit issued pursuant to this Article shall be limited to the terms  
20 of the application. Except as otherwise provided herein, an application for a permit pursuant to  
21 the provisions of this Article shall specify:

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

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1           (b)     The name and proposed business address of the applicant. If the applicant is a  
2 corporation, the name of the corporation shall be set forth exactly as shown in its articles of  
3 incorporation; and the applicant shall also set forth the date and place of incorporation; the  
4 names and residence addresses of each of the officers, directors, and each stockholder  
5 owning more than 10 percent of the stock of the corporation. If the applicant is a partnership,  
6 the application shall set forth the name and residence address of each of the partners,  
7 including limited partners. If one or more of the partners is a corporation, the provisions of this  
8 Section pertaining to a corporate applicant apply.

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

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

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

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

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

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

15 (i) Whether the application is for Entertainment, Entertainment: Limited Occupancy or  
16 Entertainment: Accessory, as defined above, or for nighttime entertainment as defined in Section  
17 102.17 of the Planning Code.

18 (j) The Entertainment Commission may require further information as ~~he or she~~ it  
19 deems necessary.

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

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24 By: \_\_\_\_\_  
JUDITH A. BOYAJIAN  
Deputy City Attorney

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