

FILE NO. 051792

ORDINANCE NO.

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"), 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; and making environmental**
17 **findings.**

18 Note: Additions are *single-underline italics Times New Roman*;
19 deletions are *strikethrough italics Times New Roman*.
20 Board amendment additions are double underlined.
21 Board amendment deletions are ~~strikethrough normal~~.

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

22 Section 1. Environmental Findings. The Planning Department has determined that the
23 actions contemplated in this Ordinance are exempt from the California Environmental Quality
24 Act (California Public Resources Code section 21000 et seq.). Said determination is on file
25

1 with the Clerk of the Board of Supervisors in File No. _____ and is incorporated
2 herein by 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 Zzoning Ddistrict 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 Uuse'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) It does not result in repeated nuisance activities within the premises or in close
14 proximity of the premises, within the boundaries of the use's property line, including the
15 sidewalk and areas between the use and the street, including, but not limited to, disturbance of
16 the peace, illegal drug activity, illegal sale of firearms, public drunkenness, drinking in public,
17 harassment of passersby, gambling, prostitution, sale or receipt of stolen goods, public urination,
18 theft, assaults or batteries, acts of vandalism, accumulation of littering, loitering, graffiti unabated
19 within three days, illegal parking, excessive loud noises, (especially in the late night or early morning
20 hours), traffic violations, and police detentions and arrests or calls for service to the Police
21 Department not initiated by the Deemed Approved Off-Sale Alcohol Use.

22 (b) No more than 33 percent of the square footage of the windows and clear doors of an
23 Deemed Approved Off-Sale Alcohol Use shall bear advertising or signs of any sort, and all advertising
24 and signage shall be placed and maintained in a manner that ensures that law enforcement personnel
25 have a clear and unobstructed view of the interior of the premises, including the area in which the cash

1 registers are maintained, from the exterior public sidewalk or entrance to the premises. This
2 requirement shall not apply to premises where there are no windows, or where existing windows are
3 located at a height that precludes a view of the interior of the premises by a person standing outside the
4 premises.

5 (c) For those Deemed Approved Off-Sale Alcohol Uses that are located within an existing
6 Alcohol Use Restricted District as set forth in the Planning Code, it does not result in the violation of
7 any applicable restrictions imposed on off-sale alcohol uses in that District.

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

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

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

19 A copy of these Performance Standards, provided by mail by the Police Department per Section
20 26.9, ~~and~~ shall be posted in a conspicuous and unobstructed place visible from the entrance of the
21 establishment for public review.

22 SEC. 26.13 VIOLATIONS OF DEEMED APPROVED PERFORMANCE STANDARDS.

23 If the City Attorney receives from ~~a member of the public or from the~~ Director of the
24 Planning Department, the Chief of Police, the Director of the Department of Public Health
25 ~~Department~~, or the Director of the Department of Building Inspection, or the designee of any of these

1 officials, a request to consider bringing an administrative hearing pursuant to Sections 26.14 – 26.23;
2 or prosecuting ~~of~~ a Deemed Approved Off-Sale Alcohol Use for violations of City, state and/or federal
3 laws for violations of the Performance Standards specified in Section 26.12, or for violations of any
4 condition that has been placed on a Deemed Approved Off-Sale Alcohol Use under the provisions of
5 Sections ~~26.21 – 26.22~~ 26.20 – 26.21, the City Attorney may determine that it is appropriate to file a
6 civil action against the Deemed Approved Off-Sale Alcohol Use and/or may determine that it is
7 appropriate to bring the Deemed Approved Off-Sale Alcohol Use to an administrative hearing. At the
8 administrative hearing, the City Attorney may request that a decision be issued ordering that the
9 violations of the Performance Standards be corrected, that a decision be issued imposing
10 administrative penalties against the Deemed Approved Off-Sale Alcohol Use, and/or that a decision be
11 issued imposing conditions on the continued operation of the Deemed Approved Off-Sale Alcohol Use.

12 In the event that the Deemed Approved Off-Sale Alcohol Use has, within the past three years,
13 been the subject of an administrative hearing at which a finding of violation of the Performance
14 Standards was made, at which conditions were imposed on the Deemed Approved Off-Sale Alcohol
15 Uses' continued operations, and/or at which administrative penalties were imposed on the Deemed
16 Approved Off-Sale Alcohol Use for violation of the Performance Standards, the City Attorney may
17 request that an administrative hearing, as specified in Sections ~~26.14~~ 26.15 – 26.23, be held to
18 consider the revocation of the Deemed Approved Off-Sale Alcohol Use's Deemed Approved status
19 and/or request ~~for~~ additional penalties or conditions.

20 SEC. 26.14 CONDITIONAL USE PERMITS.

21 In the event that the City Attorney receives a request to consider bringing an administrative
22 hearing pursuant to Sections ~~26.14~~ 26.15 – 26.23, and determines that the alleged violations are
23 violations of conditions imposed by the Planning Commission through the conditional use permitting
24 process, the City Attorney shall refer its findings to the Planning Department for actions consistent
25 with Planning Code Section 303. ~~However~~ Notwithstanding the foregoing, any alleged violations

1 that are not violations of conditions imposed by the Planning Commission through the conditional use
2 permitting process shall be subject to the administrative hearing process in Sections ~~26.14-26.15~~ –
3 26.23.

4 SEC. 26.15 OPERATION OF ADMINISTRATIVE HEARINGS BY THE CITY
5 ADMINISTRATOR.

6 The City Administrator shall conduct administrative hearings provided for in the Deemed
7 Approved Off-Sale Alcohol Use Regulations. All requests to the City Administrator by the City
8 Attorney to schedule an administrative hearing shall be accompanied by sufficient information to allow
9 the City Administrator to complete the Notice For Administrative Hearings as described in Section
10 26.17.

11 SEC. 26.16 PROCEDURES FOR CONDUCT OF ADMINISTRATIVE HEARINGS AND
12 APPEALS.

13 (a) The City Administrator shall appoint one or more neutral Hearing Officers to conduct
14 administrative hearings. A neutral Hearing Officer shall be an impartial individual, without a
15 vested interest in either the Deemed Approved Off-Sale Alcohol Use or a complainant against
16 the Deemed Approved Off-Sale Alcohol Use, and may not be a current City employee.
17 Notwithstanding the foregoing, a contracted Hearing Officer shall not be considered a City
18 employee for the purposes of this Chapter. Within 10 days of receipt of a request from the City
19 Attorney's office to conduct an administrative hearing, the City Administrator shall select a Hearing
20 Officer, ~~at random,~~ to conduct the Administrative Hearing. The assigned Hearing Officer shall
21 exercise all powers relating to the conduct of the administrative hearing unless or until the decision of
22 the Hearing Officer is appealed to the Board of Appeals or the Board of Supervisors.

23 (b) A record of all administrative hearings shall be made by means of a permanent
24 recording determined to be appropriate by the City Administrator or, in the case of appeals to the
25

1 Board of Appeals, the Executive Director of the Board of Appeals or, in the case of appeals to the
2 Board of Supervisors, the Clerk of the Board of Supervisors.

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

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

8 (e) For the purposes of this ChapterSection, the term party or parties refers to the City
9 and County of San Francisco and the owner of the Deemed Approved Off-Sale Alcohol Use.

10 SEC. 26.17 NOTICE OF ADMINISTRATIVE HEARINGS FOR VIOLATIONS OF DEEMED
11 APPROVED PERFORMANCE STANDARDS.

12 Within 15 days of the receipt of a request from the City Attorney's office to conduct an
13 administrative hearing, the City Administrator shall send a notice to the owner of the Deemed
14 Approved Off-Sale Alcohol Use of the time and place of the administrative hearing for violation of the
15 Deemed Approved Performance Standards. The hearing date shall be set at the Hearing Officer's sole
16 discretion, except that the hearing must commence within 60 days of the date the City Attorney requests
17 the administrative hearing. The Hearing Officer may extend that 60 day period by up to 30 days at his
18 or her discretion or if the City Attorney or the owner of the Deemed Approved Off-Sale Alcohol Use
19 requests, within 5 days of receipt of the Notice of Administrative Hearing, to submit briefing to the
20 Hearing Officer on the alleged violations of the Performance Standards. In the event that briefing is
21 requested, the Hearing Officer shall inform the parties of a briefing schedule that will allow the
22 Hearing Officer sufficient time to consider the briefing prior to the administrative hearing.

23 Notice may be accomplished by personal service or by U.S. mail, or if both of these methods
24 prove unsuccessful, then by posting the Notice of Administrative Hearing in a conspicuous place on the
25 property. Notices shall include notification that conditions or administrative penalties may be imposed

1 on the Deemed Approved Off-Sale Alcohol Use or that the Hearing Officer may consider revocation of
2 the Deemed Approved status of the Off-Sale Alcohol Use. In addition, the City Administrator shall post
3 the notice in accordance with those laws governing the noticing of meetings of policy bodies contained
4 in Article II of Section 67 of the Administrative Code. As long as service has been made as set forth
5 above, failure of any person or party to receive notice given pursuant to this Section shall not affect the
6 validity of any proceedings hereunder.

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

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

10 “You are hereby notified that an administrative hearing will be held before the ([name of the
11 Hearing Officer]) on the day of _____ at the hour _____ to determine whether, due to
12 violations of the Performance Standards, conditions should be imposed on the Deemed Approved Off-
13 Sale Alcohol Use status of the business operated at _____ pursuant to the
14 Deemed Approved Off-Sale Alcohol Use Regulations contained in the San Francisco Administrative
15 Code, whether administrative penalties should be imposed, and/or whether the Deemed Approved
16 Status of the Off-Sale Alcohol Use should be revoked. You may be present and give testimony at the
17 hearing. You may be, but need not be, represented by counsel. In the event that you or the City
18 Attorney requests to submit briefing prior to the administrative hearing, all parties will be notified of
19 the briefing schedule set by _____, the Hearing Officer appointed in this matter.”

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

23 SEC. 26.19 CONDUCT OF HEARINGS.

24 In conducting an administrative hearing the Hearing Officer may take into consideration the
25 oral testimony, written submissions of the parties, and other forms of documentary information. The

1 Hearing Officer is not bound by the formal rules of evidence governing court proceedings. The
2 Hearing Officer may provide for sworn testimony, cross-examination, or other procedural adjustments
3 for ~~an~~ the administrative hearing as he or she determines is appropriate.

4 At any appeal from the decision of a Hearing Officer, the Board of Appeals, or the Board of
5 Supervisors may take into consideration the oral testimony, written submissions of the parties and other
6 forms of documentary information, the transcript of the administrative hearing, the written submissions
7 made by the parties at the administrative hearing, the written decision of the Hearing Officer, an
8 appeal letter setting forth those reasons why the appellant believes the Hearing Officer's decision is in
9 error, and a written response to the appeal letter prepared by the respondents.

10 SEC. 26.20 PURPOSE OF THE ADMINISTRATIVE HEARING.

11 The purpose of the administrative hearing is to receive information as to whether the Deemed
12 Approved Off-Sale Alcohol Use is in compliance with the Performance Standards.

13 The Hearing Officer shall determine whether the Deemed Approved Off-Sale Alcohol Use is in
14 compliance with the Performance Standards. Based on this determination, the Hearing Officer may
15 continue the Deemed Approved status for the Use in question, may impose administrative penalties for
16 violations of the Performance Standards, may impose such reasonable conditions as are in the
17 judgment of the Hearing Officer necessary to ensure compliance with the Performance Standards, and,
18 in the event that the Deemed Approved Off-Sale Alcohol Use has, within the past three years, been the
19 subject of an administrative hearing at which a finding of violation of the Performance Standards was
20 made, may revoke the Deemed Approved Off-Sale Alcohol Use's Deemed Approved Status. If the
21 Hearing Officer determines instead to impose further, new conditions on the Deemed Approved Off-
22 Sale Alcohol Use, such conditions shall be based upon the information then before the Hearing Officer.

23 The decision of the Hearing Officer shall be based upon all information received at the
24 administrative hearing, including, but not limited to, information compiled by City staff, testimony from
25 the owner of the Deemed Approved Off-Sale Alcohol Use, and the testimony of all other interested

1 persons. Any conditions imposed by the Hearing Officer shall be a condition of the Deemed Approved
2 Off-Sale Alcohol Use's continued operation. Any condition imposed by the Hearing Officer shall not be
3 considered a suspension, revocation, or withdrawal of a Deemed Approved Off-Sale Alcohol Use's use
4 permit.

5 All determinations, decisions, and conditions made or imposed under this Chapter
6 regarding the use of a Deemed Approved Off-Sale Alcohol Use shall run with the land.

7 SEC. 26.21 ADMINISTRATIVE PENALTIES.

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

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

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

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

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

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

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

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

11 Any administrative penalties collected under this Chapter shall be deposited in the
12 Deemed Approved Off-Sale Alcohol Use Continuing Project Account, as set forth in Section
13 26.27.

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

15 (a) The Hearing Officer shall, within a reasonable time, not to exceed thirty 30 days from
16 the date the hearing is closed, submit to the City Administrator a written decision containing a brief
17 summary of the information considered and the Hearing Officer's findings and conclusions, including
18 any conditions that are to be placed on the Deemed Approved Off-Sale Alcohol Use and any
19 administrative penalties to be imposed. The Hearing Officer's written decision shall also inform the
20 parties of their right to appeal the written decision and describe the appeal process. The Hearing
21 Officer's written decision shall be a public record. The City Administrator shall serve a copy of the
22 decision on each party by personal service or by U.S. mail. Service of the decision shall be deemed
23 complete at the time it is personally served or deposited in the mail with the correct amount of postage
24 affixed. Failure to receive a copy of the decision served pursuant to this section shall not affect the
25 validity of the decision. The City Administrator shall also provide a copy of the written decision to the

1 Director of the Planning Department, the Chief of the Police Department, the Director of the
2 Department of Public Health, the Director of the Department of Building Inspection, and the Board of
3 Supervisors.

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

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

10 In the event of a failure to comply with any prescribed condition imposed by the Hearing
11 Officer or to comply with any Performance Standard, at the request of the City Attorney, another
12 administrative hearing may be set. Notification of this hearing shall be in accordance with Sections
13 26.17 - 26.18.

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

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

24 A decision of a Hearing Officer, except a decision to revoke a Deemed Approved Off-Sale
25 Alcohol Use that was permitted as a conditional use, may be appealed to the Board of Appeals in the

1 manner prescribed in Article I of the San Francisco Business and Tax Regulations Code. A decision of
2 a Hearing Officer to revoke a Deemed Approved Off-Sale Alcohol Use that was permitted as a
3 conditional use may be appealed to the Board of Supervisors in the manner prescribed in Section 303
4 of the Planning Code. An appeal shall stay the decision of the Hearing Officer. All appeals must be in
5 writing and shall state specifically any claims that there was an error or abuse of discretion by the
6 Hearing Officer or why the Hearing Officer's decision is not supported by information contained in the
7 record. Notice to parties of the public hearing on the appeal shall be delivered personally, or served or
8 deposited in the mail with the correct amount of postage affixed. As long as service has been made as
9 set forth above, failure to receive notice given pursuant to this section shall not affect the validity of any
10 appeal hearing hereunder.

11 The City Administrator shall forward a copy of the record before the Hearing Officer at the
12 administrative hearing and a copy of the Hearing Officer's written decision to the Executive Secretary
13 of the Board of Appeals or the Clerk of the Board of Supervisors at least 10 days before the date of the
14 appeal hearing. If any party has obtained a certified transcript of the administrative hearing, that
15 transcript may be submitted to the Executive Secretary of the Board of Appeals or to the Clerk of the
16 Board of Supervisors by any party, no later than 10 days before the date of the appeal hearing, and
17 shall be considered part of the record of the administrative hearing.

18 The Board of Appeals or Board of Supervisors shall determine whether the Deemed Approved
19 Off-Sale Alcohol Use conforms to the applicable Performance Standards and/or any conditions that
20 have in the past been imposed on the Deemed Approved Off-Sale Alcohol Use, and may continue or
21 revoke a Deemed Approved use; and/or may impose conditions on the Deemed Approved Off-Sale
22 Alcohol Use as are, in its judgment, necessary to ensure conformity to the Performance Standards. The
23 Board of Appeals or Board of Supervisors may also continue, reduce, remove, or increase any
24 administrative penalties that have been assessed by the Hearing Officer. The Board of Appeals or
25 Board of Supervisors may not remove administrative penalties unless it also makes a finding that the

1 Deemed Approved Off-Sale Alcohol Use in question is not in violation of any Performance Standards.
2 In the event that the Board of Appeals or Board of Supervisors determines that the administrative
3 penalties shall be increased, such a determination shall be based on specific information and based on
4 the same factors listed in Section 26.21.

5 The Board of Appeals or Board of Supervisors shall direct its staff to reduce their decision to
6 writing within 10 days. The decision shall contain findings of fact, a determination of the issues
7 presented, and any conditions to be imposed or administrative penalties to be paid. A copy of the
8 decision shall be served on the parties by personal service or by U.S. mail. Service of this decision
9 shall be deemed complete at the time it is personally served or deposited in the mail with the correct
10 amount of postage affixed. As long as service has been made as set forth above, failure to receive a
11 copy of the decision served pursuant to this section shall not affect the validity of the decision rendered
12 herein.

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

19 SEC. 26.25 ILLEGAL USE.

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

23 SEC. 26.26 FEE.

24 The owner of the Deemed Approved Off-Sale Alcohol Use shall each be required to pay an
25 annual fee of \$264.00 to cover the cost of administering the Deemed Approved Off-Sale Alcohol Use

1 Education and Outreach Program and the cost of conducting administrative hearings, including
2 the costs of the Director of Administrative Services and the City Attorney. This annual fee shall
3 be billed by and paid to the Office of the Treasurer & Tax Collector, which shall deposit the
4 monies collected in the Deemed Approved Off-Sale Alcohol Continuing Project Account, as
5 set forth in Section 26.27. In the event that the owner of the Deemed Approved Off-Sale Alcohol Use
6 fails to pay the fee during a given fiscal year, the ~~Police Department~~Office of the Treasurer & Tax
7 Collector shall notify the Department of Public Health, which may request that the City Attorney
8 pursue collection of the penalties.

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

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

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

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

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

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

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

18 SEC. 26.27 DEEMED APPROVED OFF-SALE ALCOHOL USE CONTINUING PROJECT
19 ACCOUNT.

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

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

5 (c) Administrative penalties deposited in the Deemed Approved Off-Sale Alcohol
6 Use Continuing Project Account are to be expended to cover the cost of code enforcement
7 efforts by the City Attorney, additional education and outreach by the Department of Public
8 Health to Deemed Approved Off-Sale Alcohol Uses beyond that specifically provided by
9 Section 26.10, and other activities consistent with the intent of this Chapter.

10 ~~SEC. 26.28— DEEMED APPROVED OFF-SALE ALCOHOL USE PENALTY PROJECT~~
11 ~~ACCOUNT.~~

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

18 ~~Section 3.— The San Francisco Administrative is hereby amended by adding Section~~
19 ~~10.19-5 to read as follows:~~

20 ~~(a) Establishment of a Project Account. The Deemed Approved Off-Sale Alcohol~~
21 ~~Use Annual Fee Project Account established to receive funds collected pursuant to Section~~
22 ~~26.27 of the Administrative Code.~~

23 ~~(b) Use of Project Account. Proceeds in the Project Account are to be expended to~~
24 ~~cover the cost of administering the Deemed Approved Off-Sale Alcohol Use Education and~~
25 ~~Outreach Program, and the cost of conducting administrative hearings, including the costs of~~

1 the Director of Administrative Services and the City Attorney as set forth in Chapter 26 of the
2 Administrative Code.

3 Section 4. — The San Francisco Administrative is hereby amended by adding Section
4 10.19-6 to read as follows:

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

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

15 Section 5. Severability.

16 If any provision of this ordinance or the application thereof to any person or
17 circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not
18 affect other provisions or applications of this ordinance ~~which~~that can be given effect without
19 the invalid or unconstitutional provision or application. To this end, the provisions of this
20 ordinance shall be deemed severable.

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

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25 APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

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By: _____
Marlena G. Byrne
Deputy City Attorney