

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 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 establish deemed approved off-sale alcohol use nuisance regulation project**
16 **accounts within the City's General Fund and making environmental findings.**

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

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

22 Section 1. The San Francisco Administrative Code is hereby amended by adding
23 Chapter 26, Sections 26.1 through 26.28 to read as follows:

24 **Chapter 26**

25 **SEC. 26.1 FINDINGS**

The Board hereby finds and declares as follows:

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

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

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

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

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

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

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

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

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

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

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

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

13 **SEC. 26.2 DEEMED APPROVED OFF-SALE ALCOHOL USE NUISANCE**

14 **REGULATIONS**

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

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

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

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

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

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

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

13 **SEC. 26.3 DEFINITIONS**

14 (a) Alcoholic Beverage

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

20 (b) Off-Sale Alcohol Use

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

1 (c) Deemed Approved Off-Sale Alcohol Use

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

4 **SEC. 26.4 AUTOMATIC DEEMED APPROVED STATUS.**

5 All businesses or entities engaged in the sale of alcoholic beverages for off-site consumption
6 that are operating as permitted, conditionally permitted, or nonconforming uses prior to the effective
7 date of this ordinance are now automatically Deemed Approved Off-Sale Alcohol Uses. Each such
8 Deemed Approved Off-Sale Alcohol Use shall retain this status as long as it continues to comply with
9 the Deemed Approved Performance Standards as specified in Section 26.12.

10 **SEC. 26.5 STATUS OF NEW OFF-SALE ALCOHOL USES**

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

16 **SEC. 26.6 PREVIOUSLY NON-CONFORMING OFF-SALE ALCOHOL USES**

17 Any Deemed Approved Off-Sale Alcohol Use which was previously considered to be a non-
18 conforming use shall continue to be subject to those provisions of the Planning Code which govern
19 non-conforming uses to the extent those provisions do not conflict with the provisions of this Section.

20 **SEC. 26.7 ABANDONMENT.**

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

25 (1) Changes in ownership or an owner-to-owner transfer of an Alcohol Beverage Control

1 License,

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

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

7 **SEC. 26.8 DEEMED APPROVED OFF-SALE ALCOHOL USES IN EXISTING**
8 **SPECIAL USE OR RESTRICTED USE DISTRICTS**

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

12 **SEC. 26.9 NOTIFICATION TO OWNERS OF DEEMED APPROVED OFF-SALE**
13 **ALCOHOL USES.**

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

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

1 **SEC. 26.10 EDUCATION AND OUTREACH TO DEEMED APPROVED OFF-SALE**

2 **ALCOHOL USES**

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

13 (b) The education and outreach program shall include

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

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

24 (3) Coordination of community stakeholder meetings, which should include representatives
25 from City departments, Deemed Approved Off-Sale Alcohol Uses, business associations, the Small

1 Business Commission, the Youth Commission, neighborhood associations and community
2 organizations.

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

7 **SEC. 26.11 INFORMED MERCHANTS PREVENTING ALCOHOL-RELATED**
8 **CRIMES AND TENDENCIES – I.M.P.A.C.T.**

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

12 **SEC. 26.12 DEEMED APPROVED PERFORMANCE STANDARDS.**

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

15 (a) It does not result in repeated nuisance activities within the premises or in close
16 proximity of the premises, including, but not limited to, disturbance of the peace, illegal drug activity,
17 illegal sale of firearms, public drunkenness, drinking in public, harassment of passersby, gambling,
18 prostitution, sale or receipt of stolen goods, public urination, theft, assaults or batteries, acts of
19 vandalism, littering, loitering, graffiti, illegal parking, excessive loud noises, (especially in the late
20 night or early morning hours,) traffic violations, and police detentions and arrests.

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

1 requirement shall not apply to premises where there are no windows, or where existing windows are
2 located at a height that precludes a view of the interior of the premises by a person standing outside the
3 premises.

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

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

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

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

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

21 **SEC. 26.13 VIOLATIONS OF DEEMED APPROVED PERFORMANCE STANDARDS**

22 If the City Attorney receives from a member of the public or from the Director of the Planning
23 Department, the Chief of Police, the Director of the Public Health Department, or the Director of the
24 Department of Building Inspection, or the designee of any of these officials, a request to consider
25 bringing an administrative hearing pursuant to Sections 26.14 – 26.23, or prosecuting of a Deemed

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

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

19 **SEC. 26.14 CONDITIONAL USE PERMITS**

20 In the event that the City Attorney receives a request to consider bringing an administrative
21 hearing pursuant to Sections 26.14 – 26.23, and determines that the alleged violations are violations of
22 conditions imposed by the Planning Commission through the conditional use permitting process, the
23 City Attorney shall refer its findings to the Planning Department for actions consistent with Planning
24 Code Section 303. However, any alleged violations that are not violations of conditions imposed by the
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1 Planning Commission through the conditional use permitting process shall be subject to the
2 administrative hearing process in Sections 26.14 – 26.23.

3 **SEC. 26.15 OPERATION OF ADMINISTRATIVE HEARINGS BY THE CITY**

4 **ADMINISTRATOR.**

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

10 **SEC. 26.16 PROCEDURES FOR CONDUCT OF ADMINISTRATIVE HEARINGS AND**

11 **APPEALS**

12 (a) The City Administrator shall appoint one or more neutral Hearing Officers to conduct
13 administrative hearings. Within 10 days of receipt of a request from the City Attorney's office to
14 conduct an administrative hearing, the City Administrator shall select a Hearing Officer, at random, to
15 conduct the Administrative Hearing. The assigned Hearing Officer shall exercise all powers relating to
16 the conduct of the administrative hearing unless or until the decision of the Hearing Officer is appealed
17 to the Board of Appeals or the Board of Supervisors.

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

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

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

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

5 **SEC. 26.17 NOTICE OF ADMINISTRATIVE HEARINGS FOR VIOLATIONS OF**
6 **DEEMED APPROVED PERFORMANCE STANDARDS**

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

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

3 **SEC. 26.18 FORM OF NOTICE FOR ADMINISTRATIVE HEARINGS AND APPEALS.**

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

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

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

19 **SEC. 26.19 CONDUCT OF HEARINGS.**

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

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

7 **SEC. 26.20 PURPOSE OF THE ADMINISTRATIVE HEARING.**

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

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

20 The decision of the Hearing Officer shall be based upon all information received at the
21 administrative hearing, including, but not limited to, information compiled by City staff, testimony from
22 the owner of the Deemed Approved Off-Sale Alcohol Use, and the testimony of all other interested
23 persons. Any conditions imposed by the Hearing Officer shall be a condition of the Deemed Approved
24 Off-Sale Alcohol Use's continued operation. Any condition imposed by the Hearing Officer shall not be
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1 considered a suspension, revocation or withdrawal of a Deemed Approved Off-Sale Alcohol Use's use
2 permit.

3 **SEC. 26.21 ADMINISTRATIVE PENALTIES**

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

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

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

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

15 "Efforts to Remedy" shall include but are not limited to:

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

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

22 If payment of any administrative penalty imposed by the Hearing Officer is not received by the
23 City Administrator within the period of time set forth in the decision, and the decision has not been
24 appealed under the time periods set forth in Section 26.22, the City Administrator shall request that the
25 Tax Collector pursue collection of the penalty and fee against the owner of the Deemed Approved Off-

1 Sale Alcohol Use, up to and including imposition of a special assessment lien in accordance with the
2 requirements of Article 26 of Chapter 10 of the San Francisco Administrative Code (commencing with
3 Section 10.230). In the event that the unpaid administrative penalty is owed by an owner of a Deemed
4 Approved Off-Sale Alcohol Use who is not also the property owner of the building in which the Use is
5 located, the City Administrator may request that the City Attorney pursue collection of the penalties.

6 **SEC. 26.22 METHOD AND FORM OF DECISION OF THE HEARING OFFICER.**

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

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

1 **SEC. 26.23 PROCEDURE FOR CONSIDERATION OF VIOLATIONS TO**
2 **CONDITIONS IMPOSED ON DEEMED APPROVED OFF-SALE ALCOHOL USES.**

3 In the event of a failure to comply with any prescribed condition imposed by the Hearing
4 Officer or to comply with any Performance Standard, at the request of the City Attorney, another
5 administrative hearing may be set. Notification of this hearing shall be in accordance with Section
6 26.18.

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

16 **SEC. 26.24 APPEAL TO THE BOARD OF APPEALS OR BOARD OF SUPERVISORS**

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

1 deposited in the mail with the correct amount of postage affixed. As long as service has been made as
2 set forth above, failure to receive notice given pursuant to this section shall not affect the validity of any
3 appeal hearing hereunder.

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

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

23 The Board of Appeals or Board of Supervisors shall direct its staff to reduce their decision to
24 writing within 10 days. The decision shall contain findings of fact, a determination of the issues
25 presented, and any conditions to be imposed or administrative penalties to be paid. A copy of the

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

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

12 **SEC. 26.25 ILLEGAL USE.**

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

16 **SEC. 26.26 FEE.**

17 The owner of the Deemed Approved Off-Sale Alcohol Use shall each be required to pay an
18 annual fee of \$264.00 to cover the cost of administering the Deemed Approved Off-Sale Alcohol Use
19 Education and Outreach Program and the cost of conducting administrative hearings, including the
20 costs of the Director of Administrative Services and the City Attorney. In the event that the owner of
21 the Deemed Approved Off-Sale Alcohol Use fails to pay the fee during a given fiscal year, the Police
22 Department may request that the City Attorney pursue collection of the penalties.

23 Beginning with fiscal year 2006-2007, the annual fee may be adjusted each year, without
24 further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index, as
25 determined by the Controller. No later than April 15th of each year, the Police Department shall

1 submit the annual fee to the Controller, who shall apply the price index adjustment to produce a new
2 annual fee for the following year. No later than May 15th of each year, the Controller shall file a
3 report with the Board of Supervisors reporting the new annual fee and certifying that: (a) the annual
4 fee produces sufficient revenue to support the costs of providing the services for which the annual fee is
5 being charged and (b) the annual fee does not produce revenue that exceeds the costs of providing the
6 services for which the annual fee is charged. Notwithstanding the procedures set forth in this Section,
7 the Board of Supervisors, in its discretion, may modify the annual fee by ordinance at any time.

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

13 **SEC. 26.27 DEEMED APPROVED OFF-SALE ALCOHOL USE PROJECT ACCOUNT.**

14 Fees collected pursuant to this Section shall be deposited in the Deemed Approved Off-Sale
15 Alcohol Use Project Account established in Administrative Code Section 10..20-1.

16 **SEC. 26.28 DEEMED APPROVED OFF-SALE ALCOHOL USE PENALTY PROJECT**
17 **ACCOUNT.**

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

23
24 Section 3. The San Francisco Administrative is hereby amended by adding Section
25 10.19-5 to read as follows:

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

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

8
9 Section 4. The San Francisco Administrative is hereby amended by adding Section
10 10.19-6 to read as follows:

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

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

21
22 Section 5. Severability.

23 If any provision of this ordinance or the application thereof to any person or
24 circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not
25 affect other provisions or applications of this ordinance which can be given effect without the

1 invalid or unconstitutional provision or application. To this end, the provisions of this
2 ordinance shall be deemed severable.

3

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 Sarah Ellen Owsowitz
12 Deputy City Attorney

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