

File No. 110506

Committee Item No. 8

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date July 25, 2011

Board of Supervisors Meeting Date _____

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
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| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Small Business Commission Recommendation, dtd 6/21/11</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Resolution No. 10595</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Hearings Notice</u> |
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Completed by: Alisa Somera Date July 22, 2011

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

1 [Police, Planning, and Business and Tax Regulations Codes - Limited Live Performance
2 Permits]

3 Ordinance amending the San Francisco Police Code Sections 2.26, 2.27, 1060, 1060.1,
4 1060.1-1, 1060.7.1, 1060.9, 1060.19, 1060.20.4, 1060.24, 1060.35, 2901, 2909, and 2916;
5 adding to the San Francisco Police Code Sections 1060.2.1, 1060.3.1, 1060.5.1, 1060.38,
6 and 1060.38.1; amending the San Francisco Planning Code Sections 102.17, 703.2,
7 790.38, 803.2, 803.3, and 890.37; and amending the San Francisco Business and Tax
8 Regulations Code Section 8 to 1) create a Limited Live Performance Permit for indoor
9 locales whose primary function is not presentation of live performances, said permit to
10 include noise and hours restrictions but not necessarily security plan requirements; 2)
11 to specify application and license fees and hearing requirements for said permit; and 3)
12 making findings, including environmental findings, Planning Code Section 302
13 findings, and findings of consistency with the General Plan and the Priority Policies of
14 Planning Code Section 101.1.

15 NOTE: Additions are *single-underline italics Times New Roman*;
16 deletions are ~~*strike-through italics Times New Roman*~~.
17 Board amendment additions are double-underlined;
18 Board amendment deletions are ~~strikethrough normal~~.

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

20 Section 1. FINDINGS.

21 (a) Currently, the San Francisco Police Code defines Entertainment broadly and
22 requires all Places of Entertainment to obtain a Place of Entertainment Permit, without regard
23 to such factors as whether the presentation of Entertainment is a secondary rather than
24 primary purpose of the establishment, whether Entertainment is in the form of Live
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1 Performances, the hours during which Live Performances are presented, and the degree to
2 which Live Performances are audible outside, if at all. Yet these factors directly relate to the
3 degree and nature of regulation that is appropriate for an establishment at which Live
4 Performances are presented, the costs the City incurs in regulating such establishments, and
5 the impact they may have on the surrounding neighborhood. In general, establishments the
6 primary purpose of which is not to present Entertainment, but that present Live Performances
7 during evening hours only and without substantial noise emanating from the premises, do not
8 present the same regulatory challenges or impose the same enforcement costs on the City as
9 venues where Entertainment is presented under other circumstances. In particular, such
10 establishments rarely present public safety or public nuisance concerns and rarely are the
11 subject of police calls or neighbors' complaints.

12 (b) Currently, the San Francisco Planning Code generally treats any use that requires
13 a Place of Entertainment Permit as an entertainment land use. This category of land use
14 comprises a broad range of activities, from performances at regional destination nightclubs to
15 acoustic folk-music performances at coffee houses. From a planning perspective, this one-
16 size-fits-all approach is incongruous with the markedly different uses of land that are placed
17 under the general rubric of entertainment land use. For example, a live guitarist playing
18 background music at a neighborhood restaurant has little in common with a professional DJ
19 playing dance music to a crowd of hundreds in a cavernous warehouse. It is appropriate to
20 amend the Planning Code to recognize a distinction between these different types of
21 entertainment uses, to enable the City to more widely permit those uses with no adverse
22 impacts on a surrounding neighborhood, while restricting those entertainment uses which
23 could have adverse neighborhood impacts.

24 (c) The costs associated with a Place of Entertainment Permit, such as application and
25 license fees and expenses for staffing a security force, are often prohibitive for small

1 businesses, such as restaurants, bars, cafes, art galleries, and nonprofit enterprises, that may
2 desire to present Live Performances on a limited basis, secondary to the main purpose of the
3 establishment. As a result, such enterprises often forego presenting Live Performances,
4 which results in lost employment opportunities for musicians and other performers, reduced
5 earnings for the businesses affected, reduced tax revenues for the City, and reduced
6 opportunities for residents and visitors to San Francisco to enjoy music and culture in their
7 daily lives. In some cases, such enterprises do not forego presenting Live Performances, but
8 instead operate in violation of Police Code provisions requiring a permit for the presentation of
9 Entertainment, and thereby evade the existing regulatory process.

10 (d) Establishing a Limited Live Performance Permit, as defined and restricted in this
11 ordinance, will enhance employment opportunities for musicians and other performers,
12 increase earnings for businesses affected, increase City tax revenues, and increase
13 opportunities for residents and visitors to enjoy music and culture in their daily lives.
14 Establishing a Limited Live Performance Permit will further the goals of the City's Music and
15 Culture Sustainability Policy as declared in Administrative Code Chapter 90A.

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17 Section 2. ENVIRONMENTAL AND PLANNING FINDINGS.

18 (a) The Planning Department has determined that the actions contemplated in this
19 ordinance are in compliance with the California Environmental Quality Act (California Public
20 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
21 Board of Supervisors in File No. 110506 and is incorporated herein by reference.

22 (b) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
23 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
24 Planning Commission Resolution No. 18395. Said resolution is on file with the Clerk of the
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1 Board of Supervisors in File No. 110506, and the resolution, including the reasons set forth
2 therein, is incorporated herein by reference.

3 (c) The Planning Code amendments herein are consistent with the General Plan and
4 the Priority Policies of Planning Code Section 101.1 for the reasons set forth in Planning
5 Commission Resolution No. 110506, and the Board of Supervisors incorporates those
6 reasons herein by reference.

7
8 Section 3. The San Francisco Police Code is hereby amended by amending Sections
9 2.26, 2.27, 1060, 1060.1, 1060.1-1, 1060.7.1, 1060.9, 1060.19, 1060.20.4, 1060.24, 1060.35,
10 2901, 2909, and 2916, to read as follows:

11 **SEC. 2.26. SCHEDULE OF PERMITS AND SERVICES; FILING AND SERVICE**
12 **FEES.**

13 The following filing fees, payable in advance to the City and County of San Francisco,
14 are required when submitting applications for permits to the Police Department or
15 Entertainment Commission:

TYPE OF PERMITFILING FEE	
Permit Amendment	257
Permit Renewal (unless otherwise specified)	600
Amusement Park	0
Antique Shop	943
Auto Wrecker	1,069
Ball or Ring Throwing Games	0
Balloon and Kite Advertising	0

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Billiard Parlor	456
Bingo Games	257
Charitable Organizations - Certificate of Registration	
Sales Solicitations	130
Non-Sales Solicitations	99
Document Copies	25
ID Card	25
Circus	0
Closing-Out Sale	0
Commercial Parking (garage or lot)	455
Dance Hall Keeper	1,401
Amendment to Permit	660
One Night Dance	40
Dealer in Firearms and/or Ammunition	1,276
Renewal	364
Discharge of Cannon	636
Driverless Auto Rental	1,039
Encounter Studio	
Owner	725
Employee	202
Escort Service	

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Owner	976
Employee	373
Extended Hours Permit	1,500
Amendment to Permit	660
Fortuneteller	0
Funeral Procession Escort	353
Insignia and Uniform	0
General Soliciting Agent	252
Itinerant Show	680
Itinerant Show/Nonprofit [Fee set by Police Code Section 1017.2	100
Junk Dealer	1,358
Junk Gatherer	
Resident	768
Nonresident	841
Licensed Tour Guide	
Owner - Buses	75
Owner - Other Motorized Vehicles	694
Owner - Bicycle/Segway/Other Mechanism	483
Owner - Walking	389
Employee	114
<i>Limited Live Performance</i>	<u>385</u>

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<i>Amendment to Permit</i>	<i>129</i>
Loudspeaker	416
Vehicle	416
Masked Ball	779
Massage Establishment	1,684
Masseur/Masseuse	202
Trainee	202
Mechanical Amusement Devices	568
Mechanical Contrivance	568
Miniature Golf Course	586
Mobile Caterer	1,092
Additional Stop	257
Assistant	320
Transfer of Stop	820
Museum	645
Nude Models in Public Photographic Studio	
Owner	704
Employee	202
Off-Heliport Landing Site	667
One Time Event	255
Outcall Massage	462

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Pawnbroker	925
Peddler	
Food for Human Consumption	824
Nonfood	551
Employee	161
Pedicab Driver	165
Pedicab Owner	
First Pedicab	446
Each Additional Pedicab	161
Photographer, Public Place	
Owner	634
Solicitor	415
Photographic Solicitor	
Owner	634
Employee	227
Place of Entertainment	1,500
Amendment to Permit	660
Poker	1,259
Amendment to Permit	257
Public Bathhouse	1,122
Public Outcry Sales	1,134

1	Recreational Equipment Vendor	408
2	Rodeo Exhibition/Wild West Show	651
3	Second Hand Dealer	925
4	Second Hand Dealer, Auto Accessories	1,075
5	Shooting Gallery	886
6	Skating Rink	693
7	Tow Car Driver	570
8	Tow Car Firm	1,013
9	Trade-In Dealer	1,039
10	Valet Parking	
11	Fixed Location	886
12	Annual Special Event	886
13	Vehicle for Hire, Nonmotorized	966
14	Advertising and notices	165
15	Backgrounds	66
16	Fingerprints	96

SEC. 2.27. SCHEDULE OF LICENSE FEES FOR PERMITS ISSUED BY THE POLICE DEPARTMENT OR ENTERTAINMENT COMMISSION.

The following license fees are payable to the Tax Collector for permits issued by the Police Department or Entertainment Commission and, when applicable, for their renewal:

Note: All license fees are at an annual rate unless otherwise indicated.

25	TYPE OF PERMITLICENSE FEE
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Amusement Park.....	\$0
Antique Shop	0
Auto Wrecker	488
Ball or Ring Throwing Games	136
Balloon and Kite Advertising	0
Billiard Parlor	
First Table	139
Each Additional Table	14
Bingo Game	66
Circus	0
Dance Hall Keeper	424
Dealer in Firearms and/or Ammunition	452
Discharge of Cannon	49 per day
Driverless Auto Rental	322
Encounter Studio	
Owner	510
Employee	58
Escort Service	
Owner	516
Employee	90
Extended Hours Permit	505

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Fortuneteller	0
Funeral Procession Escort	0
General Soliciting Agent	88
Itinerant Show, Each Concession 43 per day	
Junk Dealer	542
Junk Gatherer	
Resident	103
Nonresident	103
Licensed Tour Guide	
Owner - Buses, per vehicle	957
Owner - Other Motorized Vehicles, per vehicle	153
Owner - Bicycle/Segway/Other Mechanisms, per mechanism	153
Owner - Walking	153
Employee	26
<i>Limited Live Performance</i>	<u>139</u>
Loudspeaker	150
Masked Ball 231 per day	
Massage Establishment	860
Masseur/Masseuse	119
Trainee 119 per 90-day permit	

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Mechanical Amusement Devices	
First Machine	279
Each Additional Machine	0
Mechanical Contrivance	0
Miniature Golf Course	164
Mobile Caterer	695
Assistant	49
Museum	206
Nude Models in Public Photographic Studio	
Owner	488
Employee	90
Off-Heliport Landing Site	38 per day
Outcall Massage	
Pawnbroker	535
Peddler	
Food for Human Consumption	747
Nonfood	199
Employee	81
Pedicab Driver	26
Pedicab Owner	0
Photographer, Public Place	

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Owner	206
Solicitor	80
Photographic Solicitor	
Owner	166
Employee	80
Place of Entertainment	486
Poker	312
Public Bathhouse	436
Public Outcry Sales	294
Recreational Equipment Vendor	312
Rodeo Exhibition/Wild West Show	0
Second Hand Dealer	0
Second Hand Dealer, Auto Accessories	0
Shooting Gallery	0
Skating Rink	0
Tow Car Driver	34
Tow Car Firm	
First Tow Truck	546
Each Additional Tow Truck	217
Trade-In Dealer	613
Valet Parking	

1	Fixed Location	266
2	Annual Special Event	166
3	Vehicle for Hire, Nonmotorized	166

4
5 **SEC. 1060. DEFINITIONS.**

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

8 (a) "Any Sidewalk Abutting the Premises." The sidewalk not more than 50 feet from
9 the premises of the Business that is located between the premises and a public street. For
10 purposes of this definition, "premises" includes any immediately adjacent area that is owned,
11 leased, or rented by the permit applicant or Permittee.

12 (b) "Bona Fide Nonprofit Club or Organization." Any fraternal, charitable, religious,
13 benevolent, or other nonprofit organization for mutual social, mental, political, or civic welfare,
14 to which admission is limited to members and guests if the revenue accruing therefrom is
15 used exclusively for the benevolent purposes of said organization or agency, and if the
16 organization or agency is exempt from taxation under the Internal Revenue laws of the United
17 States as a bona fide fraternal, charitable, religious, benevolent or nonprofit organization.

18 (c) "Business." The enterprise for which a permit is sought or has been issued under
19 this Article, whether operated on a for-profit or not-for-profit basis.

20 (d) "Conduct that Constitutes a Nuisance." Any conduct that would constitute a
21 violation of the following laws: assault and battery (Cal. Penal Code § 240, 242, 245); sexual
22 battery (Cal. Penal Code § 243.4); discharging firearm (Cal. Penal Code § 246, 246.3);
23 unlawful weapons (Cal. Penal Code § 12020; S.F. Police Code § 1291); disturbing the peace
24 (Cal. Penal Code § 415, 416, 417); unlawful threats (Cal. Penal Code § 422); obstruction of
25 pedestrian or vehicle right-of-way (Cal. Penal Code § 370); gambling (Cal. Penal Code §§

1 330, 337a); rape (Cal. Penal Code § 261); statutory rape (Cal. Penal Code § 261.5);
2 prostitution and related offenses (Cal. Penal Code §§ 266, 266a, 266e, 266h, 266i, 315, 316,
3 647(b)); sex crimes for which registration is required under the Sex Offender Registration Act
4 (Cal. Penal Code § 290); felony sexual assault loitering for lewd or lascivious purposes (Cal.
5 Penal Code § 647(d)); loitering on private property without lawful business (Cal. Penal Code §
6 647(h)); identify theft (Cal. Penal Code § 530.5); a violent felony warranting enhancement of a
7 prison term (Cal. Penal Code § 667.5); criminal gang activity (Cal. Penal Code § 186.22); drug
8 offenses (Cal. Health & Safety Code §§ 11351, 11352, 11359, 11360, 11378, 11379,
9 11378.5, 11379.5); violation of Alcohol Beverage Control laws (Cal. Business & Professions
10 Code §§ 23300, 25602, 25631, 25657, 25658); public urination or defecation (San Francisco
11 Police Code § 153); accumulation of filth (Cal. Health & Safety Code § 17920.3(j)); or
12 excessive noise emissions (San Francisco Police Code Section 49 or Article 29).

13 (e) "Corrective Action." Action which includes, but is not limited to, the following:

14 (1) Requesting assistance from the local law enforcement agency in a timely manner
15 regarding the conduct.

16 (2) Requesting those individuals engaging in Conduct that Constitutes a Nuisance to
17 cease the conduct, or ejecting those Persons from the premises.

18 (3) Revising the Security Plan, subject to approval by the Entertainment Commission
19 or the Director as provided under this Article.

20 (f) "Director." The Executive Director of the Entertainment Commission or individual
21 designated by the Director to act on his or her behalf.

22 (g) "Entertainment." Any of the following, except when conducted in a private
23 residence:
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1 (1) Any act, play, review, pantomime, scene, song, dance act, song and dance act, or
2 poetry recitation, conducted in or upon any premises to which patrons or members are
3 admitted.

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

8 (3) A fashion or style show.

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

12 (h) "Manager." The individual authorized by the Permittee to exercise discretionary
13 power to organize, direct, carry out or control the operations of the Business.

14 (i) "Permittee." The Person to whom a permit has been issued under this Article.

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

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

23 (l) "Sale of the Business" or "Sell the Business." The sale or other transfer of the
24 ownership interest in a Business that result in a Person (who did not already have such a
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1 percentage interest) owning 50% or more of the Business, regardless of the form of
2 ownership.

3 (m) "Security Guard." A person who has a valid Proprietary Private Security Officer
4 registration document issued by the California Department of Consumer Affairs; or a person
5 who is a Patrol Special Police Officer appointed by the Police Commission or an assistant to a
6 Patrol Special Police Officer and is operating in accordance with rules of the Police
7 Commission governing Patrol Special Police Officers and assistants to Patrol Special Police
8 Officers.

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

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

1 authorized by the Occupancy Permit during Entertainment events on the premises of the
2 Business.

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

7 (o) "Tax Collector." Tax Collector of the City and County of San Francisco.

8 (p) "Professional Entertainer." A person who is compensated for his or her
9 performance. This definition does not restrict the definition of "Entertainment" in Subsection
10 (g) and is relevant only to the extent the term "professional entertainer" is used in this Article.

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

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

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

16 (2) The locale is indoors, with an area in which Live Performances are presented that is no
17 greater than 200 square feet.

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

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

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

23 (s) "Live Performance." Any act, play, review, pantomime, scene, song, dance act, song and
24 dance act, poetry recitation, fashion or style show, or the playing or use of any instrument capable of
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1 producing or used to produce musical or percussion sounds, including but not limited to, reed, brass,
2 percussion, or string-like instruments.

3 **SEC. 1060.1. PERMIT REQUIRED.**

4 (a) It shall be unlawful for any Person to own, conduct, operate, or maintain, or to
5 cause or permit to be conducted, operated, or maintained, any Place of Entertainment, Limited
6 Live Performance Locale, or One Time Event in the City and County of San Francisco without
7 first having obtained the required permit from the Director or Entertainment Commission.

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

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

15 (d) Any place or premises where a Place of Entertainment Permit, Limited Live
16 Performance Permit, or One Time Event Permit is sought must conform to all existing health,
17 safety, zoning, and fire ordinances of the City and County of San Francisco, and must have a
18 valid permit to operate (formerly referenced in this Article as a public eating place permit) from
19 the Department of Public Health. The Entertainment Commission, including the Director in the
20 case of a One Time Event Permit, may issue a permit under this Article conditional upon the
21 applicant receiving the other required permits.

22 **SEC. 1060.1-1. LICENSE FEES.**

23 Every person granted a Place of Entertainment Permit or Limited Live Performance
24 Permit by the Entertainment Commission under this Article shall pay to the Tax Collector an
25 annual license fee, payable in advance.

1 The license fee prescribed in this Section is due and payable on a calendar year basis,
2 starting January 1st of each year. Fees for new permits issued after the first day of January of
3 a particular year shall be prorated with regard to the calendar year on a monthly basis. The
4 amount of the license fee for the 2005-2006 fiscal year shall be as set forth in Section 2.27 of
5 this Code, and such amount shall be adjusted for inflation commencing with the 2006-2007
6 fiscal year, and annually thereafter, in accordance with Section 2.31 of this Code.

7 **SEC. 1060.7.1. SOLICITATION OF DRINKS OR MERCHANDISE.**

8 No operator of a *p*Place of *e*Entertainment *or Limited Live Performance Locale* shall
9 employ or permit any hostess, entertainer or person to solicit any patron or customer of or
10 visitor in said *p*Place of *e*Entertainment *or Limited Live Performance Locale* to purchase any
11 beverage or merchandise for the one soliciting or for any other person.

12 **SEC. 1060.9. MISCELLANEOUS RULES.**

13 No professional entertainer or employee may dance with any customer on the
14 premises in any *p*Place of *e*Entertainment *or Limited Live Performance Locale*.

15 **SEC. 1060.19. PERMIT FEE; EXEMPTIONS.**

16 The provisions of Section 1060.2 relating to a permit fee shall not apply to any *p*Place
17 of *e*Entertainment *or Limited Live Performance Locale* used exclusively for any of the following
18 purposes:

19 (a) Places of *e*Entertainment *or Limited Live Performance Locales* that are operated by
20 any public agency or by any educational, recreational or social agency, or by any bona fide
21 fraternal, charitable, or religious or benevolent or any other nonprofit organization having a
22 regular membership association primarily for mutual social, mental, political and civic welfare,
23 to which admission is limited to members and guests and revenue accruing therefrom to be
24 used exclusively for the benevolent purposes of said organization and which organization or
25

1 agency is exempt from taxation under the Internal Revenue laws of the United States as a
2 bona fide fraternal, charitable, religious, benevolent or nonprofit organization.

3 **SEC. 1060.20.4. REVOCATION OF A PERMIT.**

4 (a) Grounds for Revocation. The Entertainment Commission may revoke any ~~Place of~~
5 ~~Entertainment or One Time Event Per~~ permit issued under this Article if it determines after a public
6 hearing that any of the following conditions exist:

7 (1) The Permittee has knowingly made any false, misleading, or fraudulent statement
8 of material fact or has knowingly omitted a material fact in the application for a permit.

9 (2) The Permittee has failed to pay any fee or charge required under this Article.

10 (3) The Permittee has failed to surrender the permit as required by Section 1060.24(b).

11 (4) One or more of the grounds for suspension enumerated in Section 1060.20.1(a)
12 applies, and considerations of public safety warrant revocation of the permit. For purposes of
13 this provision, "considerations of public safety" means a substantial risk of physical harm or
14 injury to individuals. In determining whether considerations of public safety warrant revocation,
15 the Commission shall evaluate the likelihood and seriousness of the threat to public safety
16 that continued operation of the Business under the permit presents. In making its
17 determination, the Commission shall consider the following factors: (i) the history of violence
18 and other public safety problems associated with the operation of the Business; (ii) a pattern
19 of the Permittee's noncompliance with Security Plan requirements imposed by law or as a
20 condition of the permit; (iii) the frequency of the Permittee's violations of other provisions of
21 law or permit conditions, which violations have contributed to violence or other public safety
22 problems associated with the operation of the Business; (iv) the degree to which the
23 Permittee's action or inaction has been responsible for violence and other public safety
24 problems associated with the operation of the Business; and (v) the degree to which the City,
25 through the Entertainment Commission, Director, Police Department, or otherwise, has

1 notified the Permittee of violence or other public safety problems associated with the
2 operation of the Business and/or of the need to take action to reduce such problems, and the
3 promptness and efficacy of the Permittee's responses.

4 (5) One or more of the grounds for suspension enumerated in Section 1060.20.1(a)
5 applies, and revocation is warranted because the problems that those grounds have created
6 have been serious and continuing, and the action or inaction of the Permittee contributing to
7 those problems has been persistent; provided, that the circumstances warranting revocation
8 under this provision would constitute a public nuisance within the meaning of Section 3480 of
9 the California Civil Code.

10 (b) Hearing by Commission. The Entertainment Commission shall give the Permittee
11 and the Manager written notice of a hearing to determine whether to revoke a permit. The
12 notice shall set forth the grounds for the proposed revocation and the date, time and location
13 of the hearing.

14 (c) Application for Permit After Revocation. The revocation of a permit under this
15 Article shall not preclude the Permittee from applying for a new permit under this Article,
16 except that, notwithstanding any other provision of law, including but not limited to Sections
17 1060.5(f) *and 1060.5.1(f)*, revocation under Section 1060.20.4(a)(4) or Section 1060.20.4(a)(5)
18 shall render the Permittee ineligible to apply for a new permit under this Article for one year
19 from the date of revocation.

20 (d) When considering whether to revoke a permit under this Article, the Commission
21 and the Director shall consider any previous denial of a permit application or previous
22 suspension or revocation of a permit, under this Article or Article 15.2, for the same permit
23 applicant or Permittee when the circumstances warranting the previous action are relevant to
24 the current determination.

1 **SEC. 1060.24. ~~PLACE OF ENTERTAINMENT~~ PERMITS NOT TRANSFERABLE;**
2 **PERMIT MUST BE SURRENDERED UPON SALE OF BUSINESS; PERMIT AMENDMENT**
3 **REQUIRED TO CHANGE PARTNERS OR OTHER OWNERS.**

4 (a) No Person may transfer a Place of Entertainment Permit or Limited Live
5 Performance Permit issued under this Article to any other Person.

6 (b) If a Place of Entertainment Permittee or Limited Live Performance Permittee Sells the
7 Business, the Permittee shall promptly surrender the permit to the Director. If the Permittee
8 fails to surrender the permit to the Director, the Director may, after giving the Permittee notice
9 by mail and electronically of the proposed action and an opportunity to respond, revoke the
10 permit.

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

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

22 (e) The Director shall determine within 30 days of the filing of a complete application to
23 amend a permit whether to approve it. The Director shall approve the application unless he or
24 she determines that denial is warranted under any of the grounds set forth in Section
25

1 1060.5(f) or 1060.5.1(f) and shall notify the Permittee and Manager of the approval
2 electronically and either by mail or personal delivery.

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

8 (g) The Entertainment Commission shall determine whether to approve the application
9 according to the standards governing the initial application set forth in Section 1060.5(f) or
10 1060.5.1(f).

11 **SEC. 1060.35. RESPONSIBLE PERSON ON PREMISES.**

12 At any time a Business is open for operation as a Place of Entertainment or Limited Live
13 Performance Locale, there shall be at least one person on the premises who is responsible for
14 the operation of the Business and who is readily available to respond to and interact with
15 Police Officers, the Director, or any other City employee or official. The Entertainment
16 Commission, in consultation with the San Francisco Police Department, shall develop rules
17 and regulations to further implement this requirement.

18 **SEC. 2901. DEFINITIONS.**

19 (a) "Ambient" means the lowest sound level repeating itself during a minimum ten-
20 minute period as measured with a type 1, precision sound level meter, using slow response
21 and "A " weighting. The minimum sound level shall be determined with the noise source at
22 issue silent, and in the same location as the measurement of the noise level of the source or
23 sources at issue. However, for purposes of this chapter, in no case shall the ambient be
24 considered or determined to be less than: (1) Thirty-five dBA for interior residential noise, and
25 (2) Forty-five dBA in all other locations. If a significant portion of the ambient is produced by

1 one or more individual identifiable sources of noise that contribute cumulatively to the sound
2 level and may be operating continuously during the minimum ten-minute measurement period,
3 determination of the ambient shall be accomplished with these separate identifiable noise
4 sources silent or otherwise removed or subtracted from the measured ambient sound level.

5 (b) "Director" means the Director or department head of any City department having
6 administrative or enforcement responsibilities under this Article or any other provision of the
7 Municipal Code regarding noise control, as well as his or her designee.

8 (c) "Dwelling Unit" means (1) a dwelling space consisting of essentially complete
9 independent living facilities for one or more persons, including, for example, permanent
10 provisions for living and sleeping; (2) a room in group housing, even if such room lacks private
11 cooking facilities and private plumbing facilities, such as rooms in senior citizen housing,
12 single room occupancy or residential hotels, dorms, hostels, or shelters; or, (3) a
13 housekeeping room as defined in the Housing Code.

14 (d) "Emergency work" means work made necessary to restore property to a safe
15 condition following a public calamity or work required to protect persons or property from an
16 imminent exposure to danger or work by private or public utilities when restoring utility service.
17 This term shall not include testing of emergency equipment.

18 (e) "Fixed source" means a machine or device capable of creating a noise level at the
19 property upon which it is regularly located, including but not limited to: industrial and
20 commercial process machinery and equipment, pumps, fans, air-conditioning apparatus or
21 refrigeration machines.

22 (f) "Low frequency ambient" means the lowest sound level repeating itself during a ten-
23 minute period as measured with a sound level meter, using slow response and "C" weighting.
24 The minimum sound level shall be determined with the music or entertainment noise source at
25 issue silent, and in the same location as the measurement of the noise level of the source or

1 sources at issue. However, for purposes of this chapter, in no case shall the local ambient be
2 considered or determined to be less than: (1) Forty-five dBC for interior residential noise, and
3 (2) Fifty-five dBC in all other locations. If a significant portion of the ambient is produced by
4 one or more individual identifiable sources that would otherwise be operating continuously
5 during the minimum ten-minute measurement period, determination of the low-frequency
6 ambient shall be accomplished with these separate identifiable noise sources silent or
7 otherwise removed or subtracted from the measured ambient sound.

8 (g) "Noise level" means the maximum continuous sound level or repetitive peak sound
9 level, produced by a source or group of sources as measured with a sound level meter. In
10 order to measure a noise level, the controls of the sound level meter should be arranged to
11 the setting appropriate to the type of noise being measured. For example, the settings should
12 be slow response for continuous noise sources and fast response for noises with rapid onset
13 and decline.

14 (h) "Person" means a person, firm, association, copartnership, joint venture,
15 corporation, or any entity, public or private in nature.

16 (i) "Place of Entertainment" has the same meaning as the term is defined in San
17 Francisco Police Code Section 1060.

18 (j) "Powered construction equipment" means any tools, machinery, or equipment used
19 in connection with construction operations which can be driven by energy in any form other
20 than manpower, including all types of motor vehicles when used in the construction process of
21 any construction site, regardless of whether such construction site be located on-highway or
22 off-highway, and further including all helicopters or other aircraft when used in the
23 construction process except as may be preempted for regulation by State or Federal law.

24 (k) "Property plane" means a vertical plane including the property line that determines
25 the property boundaries in space.

1 (l) "Public Property " means property leased or owned by a governmental entity, to
2 which the public or a substantial group of persons has access, including but not limited to any
3 street, highway, parking lot, plaza, transportation facility, school, place of amusement, park, or
4 playground located within the City and County of San Francisco.

5 (m) "Residential Property" means any property that has at least one dwelling unit and
6 has been approved for human habitation by the City and County of San Francisco.

7 (n) "Sound level," expressed in decibels (dB), means a logarithmic indication of the
8 ratio between the acoustic energy present at a given location and the lowest amount of
9 acoustic energy audible to sensitive human ears and weighted by frequency to account for
10 characteristics of human hearing, as given in the American National Standards Institute
11 Standard S1.1, "Acoustic Terminology," paragraph 2.9, or successor reference. All references
12 to dB in this chapter refer to the A-level or C-level weighting scale, abbreviated dBA or dBC,
13 measured as set forth in this section.

14 (o) "Limited Live Performance Locale" has the same meaning as the term is defined in San
15 Francisco Police Code Section 1060.

16 **SEC. 2909. NOISE LIMITS.**

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

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

22 (2) No person shall produce or allow to be produced by any machine, or device, music
23 or entertainment or any combination of same, on multi-unit residential property over which the
24 person has ownership or control, a noise level more than five dBA above the local ambient
25 three feet from any wall, floor, or ceiling inside any dwelling unit on the same property, when

1 the windows and doors of the dwelling unit are closed, except within the dwelling unit in which
2 the noise source or sources may be located.

3 (b) **Commercial And Industrial Property Noise Limits.** No person shall produce or
4 allow to be produced by any machine or device, music or entertainment or any combination of
5 same, on commercial or industrial property over which the person has ownership or control, a
6 noise level more than eight dBA above the local ambient at any point outside of the property
7 plane. With respect to noise generated from a licensed Place of Entertainment or licensed
8 Limited Live Performance Locale, in addition to the above dBA criteria a secondary low
9 frequency dBC criteria shall apply to the definition above. No noise or music associated with
10 a licensed Place of Entertainment or licensed Limited Live Performance Locale shall exceed the
11 low frequency ambient noise level defined in Section 2901(f) by more than 8 dBC.

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

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

24 (e) **Noise Caused By Activities Subject To Permits From the City and County of**
25 **San Francisco.** None of the noise limits set forth in this Section apply to activity for which the

1 City and County of San Francisco has issued a permit that contains noise limit provisions that
2 are different from those set forth in this Article.

3 **SEC. 2916. ENFORCEMENT.**

4 The Director of Public Health may enforce the provisions of Section 2904, 2909, and
5 2912 of this Article.

6 The Department of Building Inspection may enforce the provisions of Sections 2907
7 and 2908 of this Article insofar as said provisions relate to construction operations conducted
8 on private property under appropriate permits issued pursuant to the San Francisco Building
9 Code, Housing Code, Electrical Code and Plumbing Code. Insofar as these provisions relate
10 to construction operations conducted on publicly-owned property subject to the police power
11 of the City and County of San Francisco, the Department of Public Works may enforce the
12 provisions of Sections 2907 and 2908 of this Article. The Executive Director of the
13 Entertainment Commission may enforce noise standards associated with licensed Places of
14 Entertainment *and licensed Limited Live Performance Locales*.

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

18
19 Section 4. The San Francisco Police Code is hereby amended by adding Sections
20 1060.2.1, 1060.3.1, 1060.5.1, 1060.38, and 1060.38.1, to read as follows:

21 **SEC. 1060.2.1. FILING APPLICATION AND NOTICE TO OTHER CITY**

22 **DEPARTMENTS FOR LIMITED LIVE PERFORMANCE PERMIT.**

23 (a) Every Person seeking a Limited Live Performance Permit, or an amendment to such a
24 permit, shall file an application with the Entertainment Commission upon a form provided by the
25 Entertainment Commission and shall pay a filing fee as provided in Section 2.26 of this Code.

1 (b) The Director shall send the application to the San Francisco Police Department and the
2 Planning Department. Those departments shall complete all necessary inspections and report their
3 determinations to the Entertainment Commission within 20 City business days of receiving the
4 application.

5 **SEC. 1060.3.1. APPLICATION FORM FOR LIMITED LIVE PERFORMANCE PERMIT.**

6 An application for a Limited Live Performance Permit shall specify the following and be signed
7 under penalty of perjury:

8 (a) The name and street address of the Business for which the permit is sought.

9 (b) The name and address of the applicant as follows:

10 (1) If the applicant is a corporation, the name of the corporation exactly as shown in its articles
11 of incorporation; the date and place of incorporation; and the name and address of each officer and
12 director.

13 (2) If the applicant is a Person other than a publicly traded company, the name and address of
14 every Person that directly or indirectly owns or controls 10% or more of the assets, ownership interests
15 or voting interests in that Person.

16 (c) The name of and contact information for the Manager who shall directly, or through
17 designees, be on the premises during all hours of operation.

18 (d) The name and address of each Person who appears on the business registration certificate
19 for the Business for which a permit is sought.

20 (e) The name and address of each Person to whom the Department of Alcoholic Beverage
21 Control has issued a license for the Business for which a permit is sought.

22 (f) The names and addresses of the Persons who have or will have authority or control over the
23 Business and a brief statement of the nature and extent of such authority and control, if the applicant
24 has not otherwise provided this information in the application.

25 (g) The name and address of the Person authorized to accept service of process.

1 (h) A plan for the Business to operate as a Limited Live Performance Locale, specifying the
2 days and hours of operation, the number of employees and their duties, the number of patrons, a
3 statement certifying that the Business shall comply with the maximum occupancy load for the space as
4 established under the San Francisco Building and Fire Codes, the types or classes of live performances
5 (in terms of the types of instruments, numbers of performers, and sound levels) to be provided, and the
6 amount of parking, both on and off-site, to be provided. If sound amplification is to be used, the plan
7 shall also include a specific description of the amplification system.

8 (i) Such further information as the Entertainment Commission requires regarding financial and
9 lease arrangements and management, authority, and operational control of the Business or its premises
10 when the information will assist the Commission in its determination whether to grant or deny the
11 permit.

12 **SEC. 1060.5.1. DETERMINATION OF APPLICATION FOR A LIMITED LIVE**
13 **PERFORMANCE PERMIT.**

14 (a) The applicant shall file the application for a Limited Live Performance Permit with the
15 Director. The Director may require that the applicant or the applicant's agent file the application in
16 person. Upon determining that an application is complete, the Director shall accept and file it and
17 shall schedule a public hearing before the Entertainment Commission to determine whether the permit
18 should be granted. The Director shall provide written notice of the hearing to the applicant by mail or
19 to the applicant's agent by personal delivery at least 30 days before the date of the hearing.

20 (b)(1) The applicant shall cause a notice of the hearing to be conspicuously and continuously
21 posted on the premises of the Business for at least 30 days before the scheduled hearing date. The
22 Director shall promptly provide notice of the hearing to any Person who has filed a written request for
23 such notice, which notice may be given electronically if the Person has provided electronic contact
24 information, or by mail.

1 (2) In the event of a continued hearing, the applicant shall cause notice of the continued
2 hearing to be conspicuously and continuously posted on the premises of the Business for at least 10
3 days before the date of the continued hearing. The Director shall promptly provide notice of the
4 continued hearing electronically or by mail to any Person who has filed a written request for such
5 notice.

6 (3) The failure of the Director to provide the notice of the hearing to any Person who filed a
7 written request as provided in Subsections (b)(1) and (2) shall not constitute grounds for invalidation of
8 the actions of the Commission taken at the hearing.

9 (c) At the hearing on the application, the applicant and any other interested party, including
10 the Police Department or any other public agency, may introduce evidence and present argument
11 relating to the standards for review under Subsection (f).

12 (d) The Entertainment Commission shall hold a hearing and determine whether to grant or
13 deny the permit within 45 City business days of the date that the applicant has submitted a complete
14 application under Section 1060.5-1(a), except that this 45 day period shall be extended for such period
15 or periods of time that apply under any of the following circumstances:

16 (1) If the Entertainment Commission finds that an extension of time is necessary to obtain
17 additional information for its review of the application under the standards set forth in Subsection (f) of
18 this Section, the time period shall be extended for an additional amount of time as the Commission
19 determines appropriate, up to 15 additional days.

20 (2) Upon the applicant's request, the Entertainment Commission shall continue the hearing for
21 an additional period of time to allow the applicant an opportunity to comply with the requirements of
22 this Article, in which case the time period is extended for that additional period.

23 (3) If the applicant fails to post or maintain notice of the hearing as required by Subsection (b)
24 of this Section, the Director shall have the hearing before the Entertainment Commission continued for
25 such period or periods of time that the Director determines necessary for the applicant to comply with

1 the posting requirement, in which case the time period is extended for that additional period or periods
2 of time.

3 (4) If the Director finds that the Commission is unable to meet during the 45-day time period or
4 any permitted time extension due to exigent circumstances, the time period shall be extended until the
5 Commission is able to meet; the Commission shall consider the matter at the first meeting that it
6 conducts following such circumstances.

7 (e)(1) If the permit applicant has not obtained all permits required for the Business from other
8 City departments by the date of the hearing on the application, the Entertainment Commission may
9 grant a conditional permit pending the issuance of the other required City permits; provided, however,
10 the Commission shall take this action only if sufficient information has been provided to allow for
11 adequate evaluation of the application and if grounds for denial, as set forth in Subsection (f), are not
12 present. Any permit conditionally granted by the Entertainment Commission under this
13 Subsection(e)(1) may be appealed to the Board of Appeals. Any such appeal shall be filed within 10
14 days of the decision of the Entertainment Commission's conditionally granting the permit. No Person
15 may operate a Business for which a permit has been conditionally granted unless and until the Person
16 has obtained all permits and authorizations required from other City departments.

17 (2) If the Entertainment Commission does not grant, conditionally grant or deny the permit for
18 a Limited Live Performance Locale within the time required by Subsection (d), including any
19 extensions of time provided for therein, the permit sought by the applicant shall be deemed granted,
20 conditioned on the requirements that the Permittee obtain all required permits from other City
21 departments within nine months and comply with all the requirements of this Article. The time by
22 which the Entertainment Commission must act commences on the date that the applicant has filed a
23 completed application under Section 1060.5-1(a).

24 (f) The Entertainment Commission shall grant or conditionally grant a Limited Live
25 Performance Permit pursuant to this Article unless it finds that:

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

4 (2) The establishment does not qualify as a Limited Live Performance Locale as defined in
5 Section 1060(r); or

6 (3) The presentation of Live Performances at the Limited Live Performance Locale will (i)
7 generate the type and volume of vehicle and pedestrian traffic that will cause substantial congestion,
8 (ii) adversely affect the safety and security of persons, (iii) impede the orderly dispersal of individuals
9 and traffic, or (iv) otherwise substantially interfere with the public health, safety, and welfare or the
10 peaceful enjoyment of neighboring property due to excessive noise or any other factor. The
11 Commission may impose conditions on the permit, including a security plan or time, place, and manner
12 restrictions, if necessary and appropriate to guard against these adverse effects. The Limited Live
13 Performance Permit is subject to Article 29 of the Police Code, regulating noise.

14 (g) If there is an unresolved citation applicable to the premises that has been issued by a City
15 department, the Entertainment Commission shall not grant the permit without documented
16 authorization from the department that issued the citation.

17 (h) In considering whether to make any of the findings stated in Subsections (f)(1)-(3), or to
18 impose conditions on a Limited Live Performance Permit, the Commission shall consider where
19 relevant the circumstances surrounding any previous denial of a permit application or previous
20 suspension or revocation of a permit, under this Article or Article 15.2, for the same permit applicant
21 or Permittee.

22 (i) If a Permittee has been conditionally granted a permit but has not obtained all of the
23 permits required from other City departments within nine months from the date that the Entertainment
24 Commission conditionally granted the permit, the conditionally granted permit shall expire by
25 operation of law and be void.

1 **SEC. 1060.38. RELATIONSHIP OF LIMITED LIVE PERFORMANCE PERMIT TO**
2 **OTHER PERMITS.**

3 (a) A Person may not simultaneously hold a Place of Entertainment Permit and a Limited Live
4 Performance Permit for the same location.

5 (1) If a Person holds a Place of Entertainment Permit and applies for a Limited Live
6 Performance Permit for the same location, and the Commission grants the application, the Limited
7 Live Performance Permit shall become operative only upon the Person's relinquishment of the Place of
8 Entertainment Permit.

9 (2) If a Person holds a Limited Live Performance Permit and applies for a Place of
10 Entertainment Permit for the same location, and if the Commission grants the application, the Place of
11 Entertainment Permit shall become operative only upon the Person's relinquishment of the Limited Live
12 Performance Permit.

13 (b) Subject to the requirements of the Planning Code, the Commission may issue a One Time
14 Event Permit to the holder of a Limited Live Performance Permit, provided that the standards for
15 issuance of the One Time Event Permit are met, including but not limited to the maximum number of
16 such permits that may be issued for a venue under Subsection 1060.29(d).

17 (c) Subject to the requirements of the Planning Code, the Commission may issue an Extended-
18 Hours Premises Permit to the holder of a Limited Live Performance Permit, provided that the
19 standards for issuance of the Extended-Hours Premises Permit are met.

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

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

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

7 (b) If, following the Director's granting, pursuant to Subsection (a), an extension of hours
8 during which Live Performances may be presented at a Limited Live Performance Locale, there are
9 significant public safety or public nuisance concerns at or near the establishment attributed to the
10 operation of the Limited Live Performance Permit, the Director may reduce the hours during which
11 Live Performances may be presented at the establishment to an earlier time, but no earlier than 10:00
12 p.m. The process for notifying the Permittee of the Director's order and providing an appeal right to
13 the Entertainment Commission shall parallel to the extent applicable the notice and appeal process
14 prescribed in Section 1060.20.2(b).

15 (c) This Section shall not limit the permitting, suspension, revocation, or other powers of the
16 Director or Entertainment Commission.

17
18 Section 5. The San Francisco Business and Tax Regulations Code is hereby amended
19 by amending Section 8, to read as follows:

20 **SEC. 8. METHOD OF APPEAL TO THE BOARD OF APPEALS.**

21 Except for variance decisions and place of entertainment, *limited live performance*,
22 extended hours premises, and loudspeaker permits issued by the Entertainment Commission,
23 appeals to the Board of Appeals shall be taken within 15 days from the making or entry of the
24 order or decision from which the appeal is taken. Appeals of variance decisions shall be taken
25 within 10 days.

1 Appeals of actions taken on the granting, denial, amendment, suspension, or
2 revocation of a Place of Entertainment, Limited Live Performance, One Time Event, or
3 Extended-Hours Premises Permit, or on denial of exceptions from regulations for Extended-
4 Hours Premises Permit, shall be taken within 10 days from the making of the decision.
5 Nothing in this Section is intended to require an appeal to the Board of Appeals if any
6 provision of Article 15.1 (Entertainment Regulations Permit and License Provisions) or Article
7 15.2 (Entertainment Regulations for Extended-Hours Premises) of the Police Code governing
8 these permits otherwise provides. Appeals shall be taken by filing a notice of appeal with the
9 Board of Appeals and paying to said Board at such time a filing fee as follows:

10 (a) Zoning Administrator, Planning Department, Director of Planning and Planning
11 Commission.

12 (1) For each appeal from the Zoning Administrator's variance decision the fee shall be
13 \$600.

14 (2) For each appeal from any order, requirement, decision or other determination
15 (other than a variance) made by the Zoning Administrator, the Planning Department or
16 Commission or the Director of Planning, including an appeal from disapproval of a permit
17 which results from such an action, the fee shall be \$600.

18 (b) Department of Building Inspection.

19 (1) For each appeal from a Department of Building Inspection denial, conditional
20 approval or granting of a residential hotel or apartment conversion permit the fee shall be
21 \$525.

22 (2) For each appeal from the granting or denial of a building demolition, or other permit
23 (other than residential hotel conversion) the fee shall be \$175.

24 (3) For each appeal from the imposition of a penalty only the fee shall be \$300.

25 (c) Police Department and Entertainment Commission.

1 **(1)** For each appeal from the denial or granting of a permit or license issued by the
2 Police Department or Entertainment Commission to the owner or operator of a business the
3 fee shall be \$375; for each such permit or license issued to an individual employed by or
4 working under contract to a business, the fee shall be \$150.

5 **(2)** For each appeal from the revocation or suspension of a permit or license by the
6 Police Department or Entertainment Commission the fee shall be \$375 for an entity or
7 individual.

8 **(d)** Department of Public Works. For each appeal from the decision of the Director of
9 the Department of Public Works concerning street tree removal by a City agency,
10 commission, or department the fee shall be \$100.

11 **(e)** For each appeal from any other order or decision the fee shall be \$300.

12 **(f)** For requests for rehearing under Section 16 of this Article the fee shall be \$150.

13 **(g)** For requests for jurisdiction the fee shall be \$150.

14 **(h)** An exemption from paying the full fee specified in Subsections (a), (b), (c), (d), (e),
15 (f), and (g) herein may be granted upon the filing under penalty of perjury of a declaration of
16 indigency on the form provided and approved by the Board. All agencies of the City and
17 County of San Francisco are exempted from these fees.

18 **(i)** Additional Requirements.

19 **(1)** Notice of appeal shall be in such form as may be provided by the rules of the Board
20 of Appeals.

21 **(2)** On the filing of any appeal, the Board of Appeals shall notify in writing the
22 department, board, commission, officer or other person from whose action the appeal is taken
23 of such appeal. On the filing of any appeal concerning a structural addition to an existing
24 building, the Board of Appeals shall additionally notify in writing the property owners of
25 buildings immediately adjacent to the subject building.

1 (3) The Board of Appeals shall fix the time and place of hearing, which shall be not
2 less than 10 nor more than 45 days after the filing of said appeal, and shall act thereon not
3 later than 60 days after such filing or a reasonable time thereafter. In the case of a fixed
4 pedestal newsrack permit, a place of entertainment permit, a limited live performace permit, or
5 an extended-hours premises permit, the Board of Appeals shall set the hearing not less than
6 15 days after the filing of said appeal, shall act thereon not more than 30 days after such
7 filing, and shall not entertain a motion for rehearing.

8 (4) With respect to any decision of the Board of Appeals related to any "dwelling" in
9 which "protected class members" are likely to reside (each as defined in Administrative Code
10 Chapter 87), the Board of Appeals shall comply with the requirements of Administrative Code
11 Chapter 87 which requires, among other things, that the Board of Appeals not base any
12 decision regarding the development of such units on information which may be discriminatory
13 to any member of a "protected class."

14 (5) Pending decision by the Board of Appeals, the action of such department, board,
15 commission, officer or other person from which an appeal is taken, shall be suspended,
16 except for (1) actions of revocation or suspension of permit by the Director of Public Health
17 when determined by the Director to be an extreme public health hazard and (2) actions by the
18 Zoning Administrator or Director of the Department of Building Inspection stopping work under
19 or suspending an issued permit, and (3) actions of suspension or revocation by the
20 Entertainment Commission or the Director of the Entertainment Commission of a Place of
21 Entertainment, Limited Live Performance, One Time Event, or Extended-Hours Premises permit
22 when the suspending or revoking authority determines that ongoing operation of the activity
23 during the appeal to the Board of Appeals would pose a serious threat to public safety.
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1 Section 6. The San Francisco Planning Code is hereby amended by amending
2 Sections 102.17, 703.2, 790.38, 803.2, 803.3, and 890.37, to read as follows:

3 **SEC. 102.17. NIGHTTIME ENTERTAINMENT USES.**

4 Nighttime entertainment uses shall include dance halls, discotheques, nightclubs,
5 private clubs, and other similar evening-oriented entertainment activities which require ~~dance~~
6 ~~hall keeper police permits or p~~Place of ~~e~~Entertainment ~~or Limited Live Performance~~ ~~police~~ permits,
7 as defined in Section 1060 of the Police Code, which are not limited to non-amplified live
8 entertainment, including restaurants and bars which present such activities, but shall not
9 include any arts activities or space as defined in Section 102.2 of this Code, any theater
10 performance space which does not serve alcoholic beverages during performances, or any
11 temporary uses permitted pursuant to Sections 205 through 205.3 of this Code.

12 **SEC. 703.2. USES PERMITTED IN NEIGHBORHOOD COMMERCIAL DISTRICTS.**

13 A use is the specific purpose for which a property or building is used, occupied,
14 maintained, or leased. Whether or not a use is permitted in a specific district is set forth or
15 summarized and cross-referenced in Sections 710.1 through 730.95 of this Code for each
16 district class.

17 (a) **Use Categories.** The uses, functions, or activities, which are permitted in each
18 Neighborhood Commercial District class include those listed below by zoning control category
19 and number and cross-referenced to the Code Section containing the definition.

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No.	Zoning Control Categories for Uses	Section Number of Use Definition
.24	Outdoor Activity Area	§ 790.70
.25	Drive-Up Facility	§ 790.30

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.26	Walk-Up Facility	§ 790.140
.27	Hours of Operation	§ 790.48
.38	Residential Conversion	§ 790.84
.39	Residential Demolition	§ 790.86
.40	Other Retail Sales and Services	§ 790.102
.41	Bar	§ 790.22
.42	Full-Service Restaurant	§ 790.92
.43	Large Fast-Food Restaurant	§ 790.90
.44	Small Self-Service Restaurant	§ 790.91
.45	Liquor Store	§ 790.55
.46	Movie Theater	§ 790.64
.47	Adult Entertainment	§ 790.36
.48	Other Entertainment	§ 790.38
.49	Financial Service	§ 790.110
.50	Limited Financial Service	§ 790.112
.51	Medical Service	§ 790.114
.52	Personal Service	§ 790.116
.53	Business or Professional Service	§ 790.108
.54	Massage Establishment	§ 790.60
.55	Tourist Hotel	§ 790.46
.56	Automobile Parking	§ 790.8

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.57	Automotive Gas Station	§ 790.14
.58	Automotive Service Station	§ 790.17
.59	Automotive Repair	§ 790.15
.60	Automotive Wash	§ 790.18
.61	Automobile Sale or Rental	§ 790.12
.62	Animal Hospital	§ 790.6
.63	Ambulance Service	§ 790.2
.64	Mortuary	§ 790.62
.65	Trade Shop	§ 790.124
.66	Storage	§ 790.117
.67	Video Store	§ 790.135
.68	Fringe Financial Service	§ 790.111
.69A	Self-Service Specialty Food	§ 790.93
.70	Administrative Service	§ 790.106
.80	Hospital or Medical Center	§ 790.44
.81	Other Institutions, Large	§ 790.50
.82	Other Institutions, Small	§ 790.51
.83	Public Use	§ 790.80
.84	Medical Cannabis Dispensary	§ 790.141
.90	Residential Use	§ 790.88
.95	Community Residential Parking	§ 790.10

1 **(b) Use Limitations.** The uses permitted in Neighborhood Commercial Districts are
2 either principal, conditional, accessory, or temporary uses as stated in this Section, and
3 include those uses set forth or summarized and cross-referenced in the zoning control
4 categories as listed in Paragraph (a) in Sections 710.1 through 729.95 of this Code for each
5 district class.

6 **(1) Permitted Uses.** All permitted uses shall be conducted within an enclosed
7 building in Neighborhood Commercial Districts, unless otherwise specifically allowed in this
8 Code. Exceptions from this requirement are: uses which, when located outside of a building,
9 qualify as an outdoor activity area, as defined in Section 790.70 of this Code; accessory off-
10 street parking and loading and other uses listed below which function primarily as open-air
11 uses, or which may be appropriate if located on an open lot, outside a building, or within a
12 partially enclosed building, subject to other limitations of this Article 7 and other sections of
13 this Code.

No.	Zoning Control Category
.56	Automobile Parking
.57	Automotive Gas Station
.58	Automotive Service Station
.60	Automotive Wash
.61	Automobile Sale or Rental
.81	Other Institutions, Large (selected)
.83	Public Use (selected)
.95	Community Residential Parking

1 If there are two or more uses in a structure and none is classified below under Section
2 703.2(b)(1)(C) of this Code as accessory, then each of these uses will be considered
3 separately as independent principal, conditional or temporary uses.

4 **(A) Principal Uses.** Principal uses are permitted as of right in a Neighborhood
5 Commercial District, when so indicated in Sections 710.1 through 729.95 of this Code for
6 each district class.

7 **(B) Conditional Uses.** Conditional uses are permitted in a Neighborhood Commercial
8 District when authorized by the Planning Commission; whether a use is conditional in a given
9 district is indicated in Sections 710.10 through 729.95. Conditional uses are subject to the
10 provisions set forth in Sections 178, 179, 303, and 316 through 316.8 of this Code.

11 (i) An establishment which sells beer or wine with motor vehicle fuel is a conditional
12 use, and shall be governed by Section 229.

13 (ii) Notwithstanding any other provision of this Article, a change in use or demolition of
14 a movie theater use, as set forth in Section 790.64, shall require conditional use authorization.
15 This Subsection shall not authorize a change in use if the new use or uses are otherwise
16 prohibited.

17 (iii) Notwithstanding any other provision of this Article, a change in use or demolition of
18 a general grocery store use, as defined in Section 790.102(a), which use exceeds 5,000 gross
19 square feet shall require conditional use authorization. This Subsection shall not authorize a
20 change in use if the new use or uses are otherwise prohibited.

21 **(C) Accessory Uses.** Except as prohibited in Section 728 and subject to the
22 limitations set forth below and in Sections 204.1 (Accessory Uses for Dwelling Units in R and
23 NC Districts), 204.4 (Dwelling Units Accessory to Other Uses), and 204.5 (Parking and
24 Loading as Accessory Uses) of this Code, a related minor use which is either necessary to the
25 operation or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental

1 and subordinate to any such use, shall be permitted as an accessory use when located on the
2 same lot. Any use which does not qualify as an accessory use shall be classified as a
3 principal or conditional use, unless it qualifies as a temporary use under Sections 205 through
4 205.2 of this Code.

5 No use will be considered accessory to a permitted principal or conditional use which
6 involves or requires any of the following:

7 (i) The use of more than 1/3 of the total floor area occupied by such use and the
8 principal or conditional use to which it is accessory, except in the case of accessory off-street
9 parking and loading;

10 (ii) Any bar, or restaurant, ~~other entertainment~~, or any other retail establishment which
11 serves liquor for consumption on-site;

12 (iii) Any take-out food use, as defined in Section 790.122, except for a take-out food
13 use which occupies 100 square feet or less (including the area devoted to food preparation
14 and service and excluding storage and waiting areas) in a general grocery or specialty
15 grocery store;

16 (iv) Any take-out food use, as defined in Section 790.122, except for a take-out food
17 use operating as a minor and incidental use within a full-service restaurant;

18 (v) The wholesaling, manufacturing or processing of foods, goods, or commodities on
19 the premises of an establishment which does not also use or provide for primarily retail sale of
20 such foods, goods or commodities at the same location where such wholesaling,
21 manufacturing or processing takes place.

22 (vi) Any retail liquor sales, as defined in Section 790.55, except for beer, wine, and/or
23 liquor sales for the consumption off the premises with a State of California Alcoholic Beverage
24 Control ("ABC") Board License type (off-sale beer and wine) or type 21 (off-sale general)
25 which occupy less than 15% of the gross square footage of the establishment (including all

1 areas devoted to the display and sale of alcoholic beverages) in a general grocery store,
2 specialty grocery store, or self-service specialty food use.

3 The foregoing rules shall not prohibit take-out food activity which operates in
4 conjunction with a fast-food restaurant or a self-service restaurant. A fast-food restaurant or a
5 self-service restaurant, by definition, includes take-out food as an accessory and necessary
6 part of its operation.

7 (vii) Any other entertainment use, as defined in Section 790.38, except for one that involves a
8 Limited Live Performance Permit as set forth in Police Code Section 1060 et seq.

9 **(D) Temporary Uses.** Temporary uses are permitted uses, subject to the provisions
10 set forth in Section 205 of this Code.

11 **(2) Not Permitted Uses.**

12 (A) Uses which are not specifically listed in this Article are not permitted unless they
13 qualify as a nonconforming use pursuant to Sections 180 through 186.1 of this Code or are
14 determined by the Zoning Administrator to be permitted uses in accordance with Section
15 307(a) of this Code.

16 (B) No use, even though listed as a permitted use, shall be permitted in a
17 Neighborhood Commercial District which, by reason of its nature or manner of operation,
18 creates conditions that are hazardous, noxious, or offensive through the emission of odor,
19 fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or excessive
20 noise.

21 (C) The establishment of a use that sells alcoholic beverages, other than beer and
22 wine, concurrent with motor vehicle fuel is prohibited, and shall be governed by Section 229
23 Except in the SoMa NCT, where these uses are permitted accessory uses.

24 **SEC. 790.38. ENTERTAINMENT, OTHER.**

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

10 **SEC. 803.2. USES PERMITTED IN CHINATOWN MIXED USE DISTRICTS.**

11 A use is the specific purpose for which a property or building is used, occupied,
 12 maintained, or leased. Whether or not a use is permitted in a specific Chinatown Mixed Use
 13 District is set forth, summarized or cross-referenced in Sections 810.1 through 812.96 of this
 14 Code for each district class.

15 (a) **Use Categories.** The uses, functions, or activities, which are permitted in each
 16 Chinatown Mixed Use District class include those listed in Table 803.2 below by zoning
 17 control category and numbered and cross-referenced to the Code Section containing the
 18 definition.

19 **TABLE 803.2 USE CATEGORIES PERMITTED IN THE**
 20 **CHINATOWN MIXED USE DISTRICTS**

No.	Zoning Control Categories for Uses	Section Number of Use Definition
803.2.24	Outdoor Activity Area	§ 890.71
803.2.25	Drive-Up Facility	§ 890.30
803.2.26	Walk-Up Facility	§ 890.140

1	803.2.27	Hours of Operation	§ 890.48
2	803.2.38a	Residential Conversion, Residential Hotels	§ 890.84
3	803.2.38b	Residential Demolition, Residential Hotels	§ 890.86
4	803.2.39a	Residential Conversion, Apartments	§ 890.84
5	803.2.39b	Residential Demolition, Apartments	§ 890.86
6	803.2.40a	Other Retail Sales and Services	§ 890.102
7	803.2.40b	Gift Store—Tourist-Oriented	§ 890.39
8	803.2.40c	Jewelry	§ 890.51
9	803.2.41	Bar	§ 890.22
10	803.2.42	Full-Service Restaurant	§ 890.92
11	803.2.43	Fast-Food Restaurant—Small	§ 890.90
12	803.2.44	Fast-Food Restaurant—Large	§ 890.91
13	803.2.45	Take-Out Food	§ 890.122
14	803.2.46	Movie Theater	§ 890.64
15	803.2.47	Adult Entertainment	§ 890.36
16	803.2.48	Other Entertainment	§ 890.37
17	803.2.49	Financial Service	§ 890.110
18	803.2.50	Limited Financial Service	§ 890.112
19	803.2.51	Medical Service	§ 890.114
20	803.2.52	Personal Service	§ 890.116
21	803.2.53	Professional Service	§ 890.108
22	803.2.54	Massage Establishment	§ 890.60
23	803.2.55	Tourist Hotel	§ 890.46
24	803.2.56	Automobile Parking Lot, Community Commercial	§ 890.9

1	803.2.57	Automobile Parking Garage, Community Commercial	§ 890.10
2	803.2.58	Automobile Parking Lot, Public	§ 890.11
3	803.2.59	Automobile Parking Garage, Public	§ 890.12
4	803.2.60	Automotive Gas Station	§ 890.14
5	803.2.61	Automotive Service Station	§ 890.18
6	803.2.62	Automotive Repair	§ 890.15
7	803.2.63	Automotive Wash	§ 890.20
8	803.2.64	Automobile Sale or Rental	§ 890.13
9	803.2.65	Animal Hospital	§ 890.6
10	803.2.66	Ambulance Service	§ 890.2
11	803.2.67	Mortuary	§ 890.62
12	803.2.68	Trade Shop	§ 890.124
13	803.2.70	Administrative Service	§ 890.106
14	803.2.71	Light Manufacturing, Wholesale Sales or Storage	§ 890.54
15	803.2.72	Fringe Financial Service	§ 890.113
16	803.2.73	Business Services	§ 890.111
17	803.2.80	Hospital or Medical Center	§ 890.44
18	803.2.81	Other Institutions	§ 890.50
19	803.2.82	Public Use	§ 890.80
20	803.2.90	Residential Use	§ 890.88
21	803.2.95	Automobile Parking Lot, Community Residential	§ 890.7
22	803.2.96	Automobile Parking Garage, Community Residential	§ 890.8
23	803.2.97	Tobacco Paraphernalia Establishments	§ 890.123
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1 **(b) Use Limitations.** Uses in Chinatown Mixed Use Districts are either permitted,
2 conditional, accessory, temporary, or are not permitted.

3 **(1) Permitted Uses.** All permitted uses in Chinatown Mixed Use Districts shall be
4 conducted within an enclosed building, unless otherwise specifically allowed in this Code.
5 Exceptions from this requirement are: accessory off-street parking and loading; uses which,
6 when located outside of a building, qualify as an outdoor activity area, as defined in Section
7 890.71 of this Code; and uses which by their nature are to be conducted in an open lot or
8 outside a building, as described in Sections 890 through 890.140 of this Code.

9 If there are two or more uses in a structure and none is classified under Section
10 803.2(b)(1)(C) of this Code as accessory, then each of these uses will be considered
11 separately as an independent permitted, conditional, temporary or not permitted use.

12 **(A) Principal Uses.** Principal uses are permitted as of right in a Chinatown Mixed Use
13 District, when so indicated in Sections 810.1 through 812.96 of this Code for each district
14 class.

15 **(B) Conditional Uses.** Conditional uses are permitted in a Chinatown Mixed Use
16 District when authorized by the Planning Commission; whether a use is conditional in a given
17 district is indicated in Sections 810 through 812. Conditional uses are subject to the provisions
18 set forth in Section 303 of this Code.

19 (i) An establishment which sells beer and wine with motor vehicle fuel is a conditional
20 use, and shall be governed by Section 229.

21 (ii) Any use or feature which lawfully existed and was permitted as a principal or
22 conditional use on the effective date of these controls which is not otherwise nonconforming
23 or noncomplying as defined in Section 180 of this Code, and which use or feature is not
24 permitted under this Article is deemed to be a permitted conditional use subject to the
25 provisions of this Code.

1 (iii) Notwithstanding any other provision of this Article, a change in use or demolition of
2 a movie theater use, as set forth in Section 890.64, shall require conditional use authorization.
3 This Subsection shall not authorize a change in use if the new use or uses are otherwise
4 prohibited.

5 (iv) Notwithstanding any other provision of this Article, a change in use or demolition of
6 a general grocery store use, as set forth in Section 890.102(a) and as further defined in
7 Section 790.102(a), which use exceeds 5,000 gross square feet shall require conditional use
8 authorization. This Subsection shall not authorize a change in use if the new use or uses are
9 otherwise prohibited.

10 (v) Installing a garage in an existing residential building of four or more units requires a
11 mandatory discretionary review hearing by the Planning Commission; Section 311 notice is
12 required for a building of less than four units. In approving installation of the garage, the
13 Planning Commission shall find that: (1) the proposed garage opening/addition of off-street
14 parking will not cause the "removal" or "conversion of residential unit," as those terms are
15 defined in Section 317 of this Code; (2) the proposed garage opening/addition of off-street
16 parking will not substantially decrease the livability of a dwelling unit without increasing the
17 floor area in a commensurate amount; (3) the building has not had two or more "no-fault"
18 evictions, as defined in Section 37.9(a)(7)—(13) of the San Francisco Administrative Code,
19 with each eviction associated with a separate unit(s) within the past ten years, and (4) the
20 proposed garage/addition of off-street parking installation is consistent with the Priority
21 Policies of Section 101.1 of this Code.

22 Prior to the Planning Commission hearing, or prior to issuance of notification under
23 Section 311(c)(2) of this Code, the Planning Department shall require a signed affidavit by the
24 project sponsor attesting to (1), (2), and (3) above, which the Department shall independently
25

1 verify. The Department shall also have made a determination that the project complies with
2 (4) above.

3 **(C) Accessory Uses.** Subject to the limitations set forth below and in Sections 204.1
4 (Accessory Uses for Dwelling Units in R Districts) and 204.5 (Parking and Loading as
5 Accessory Uses) of this Code, a related minor use which is either necessary to the operation
6 or enjoyment of a lawful principal use or conditional use or is appropriate, incidental and
7 subordinate to any such use, shall be permitted in Chinatown Mixed Use Districts as an
8 accessory use when located on the same lot. Any use not qualified as an accessory use shall
9 only be allowed as a principal or conditional use, unless it qualifies as a temporary use under
10 Sections 205 through 205.2 of this Code.

11 No use in a Chinatown Mixed Use District will be considered accessory to a principal
12 use which involves or requires any of the following:

13 (i) The use of more than 1/3 of the total floor area occupied by both the accessory use
14 and the principal use to which it is accessory, combined, except in the case of accessory off-
15 street parking;

16 (ii) Any bar, or restaurant, ~~other entertainment~~, or any other retail establishment which
17 serves liquor for consumption on-site;

18 (iii) Any take-out food use, except for a take-out food use which occupies 100 square
19 feet or less (including the area devoted to food preparation and service and excluding storage
20 and waiting areas) in a retail grocery or specialty food store;

21 (iv) The wholesaling, manufacturing or processing of foods, goods, or commodities on
22 the premises of an establishment which does not also provide for primarily retail sale of such
23 foods, goods or commodities at the same location where such wholesaling, manufacturing or
24 processing takes place.

1 (v) Any other entertainment use, as defined in Section 890.37, except for one that involves a
2 Limited Live Performance Permit as set forth in Police Code Section 1060 et seq.

3 ~~The above~~ No part of this subsection (C) shall ~~not~~ prohibit take-out food activity which
4 operates in conjunction with a fast-food restaurant. A fast-food restaurant, by definition,
5 includes take-out food as an accessory and necessary part of its operation.

6 **(D) Temporary Uses.** Uses not otherwise permitted are permitted in Chinatown
7 Mixed Use Districts to the extent authorized by Sections 205, 205.1 or 205.2 of this Code.

8 **(2) Not Permitted Uses.**

9 (A) Uses which are not listed in this Article are not permitted in a Chinatown Mixed
10 Use District unless determined by the Zoning Administrator to be permitted uses in
11 accordance with Section 307(a) of this Code.

12 (B) No use, even though listed as a permitted use or otherwise allowed, shall be
13 permitted in a Chinatown Mixed Use District which, by reason of its nature or manner of
14 operation, creates conditions that are hazardous, noxious, or offensive through the emission
15 of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or
16 excessive noise.

17 (C) The establishment of a use that sells alcoholic beverages, other than beer and
18 wine, concurrent with motor vehicle fuel is prohibited, and shall be governed by Section 229.

19 (D) No off-street parking garage installations or new curb cuts are permitted on the
20 alleyways in the Chinatown Mixed-Use Districts.

21 **SEC. 803.3. USES PERMITTED IN EASTERN NEIGHBORHOODS MIXED USE**
22 **DISTRICTS AND SOUTH OF MARKET MIXED USE DISTRICTS.**

23 **(a) Use Categories.** A use is the specified purpose for which a property or building is
24 used, occupied, maintained, or leased. Whether or not a use is permitted in a specific Eastern
25 Neighborhood Mixed Use District and South of Market Mixed Use District is generally set

1 forth, summarized or cross-referenced in Sections 813.3 through 818 and 840 through 843 of
2 this Code for each district class.

3 **(b) Use Limitations.** Uses in Eastern Neighborhood Mixed Use Districts and South of
4 Market Mixed Use Districts are either permitted, conditional, accessory, temporary or are not
5 permitted.

6 **(1) Permitted Uses.** If there are two or more uses in a structure, any use not
7 classified below under Section 803.3(b)(1)(C) of this Code as accessory will be considered
8 separately as an independent permitted, conditional, temporary or not permitted use.

9 **(A) Principal Uses.** Principal uses are permitted as of right in an Eastern
10 Neighborhood Mixed Use District and South of Market Mixed Use District, when so indicated
11 in Sections 813 through 818 and 840 through 843 of this Code for the district. Additional
12 requirements and conditions may be placed on particular uses as provided pursuant to
13 Section 803.5 through 803.9 and other applicable provisions of this Code.

14 **(B) Conditional Uses.** Conditional uses are permitted in an Eastern Neighborhood
15 Mixed Use District and South of Market Mixed Use District, when authorized by the Planning
16 Commission; whether a use is conditional in a given district is generally indicated in Sections
17 813 through 818 and 840 through 843 of this Code. Conditional uses are subject to the
18 applicable provisions set forth in Sections 178, 179, 263.11, 303, 316.8, and 803.5 through
19 803.9 of this Code.

20 (i) An establishment which sells beer or wine with motor vehicle fuel is a conditional
21 use, and shall be governed by Section 229.

22 (ii) Notwithstanding any other provision of this Article, a change in use or demolition of
23 a movie theater use, as set forth in Section 890.64, shall require conditional use authorization.
24 This Section shall not authorize a change in use if the new use or uses are otherwise
25 prohibited.

1 (iii) Notwithstanding any other provision of this Article, a change in use or demolition of
2 a general grocery store use, as set forth in Section 890.102(a) and as further defined in
3 Section 790.102(a), shall require conditional use authorization. This Subsection shall not
4 authorize a change in use if the new use or uses are otherwise prohibited.

5 **(C) Accessory Uses.** Subject to the limitations set forth below and in Sections 204.1
6 (Accessory Uses for Dwelling Units in R and NC Districts), 204.2 (Accessory Uses for Uses
7 Other Than Dwellings in R Districts); 204.4 (Dwelling Units Accessory to Other Uses), and
8 204.5 (Parking and Loading as Accessory Uses) of this Code, an accessory use is a related
9 minor use which is either necessary to the operation or enjoyment of a lawful principal use or
10 conditional use, or is appropriate, incidental and subordinate to any such use, and shall be
11 permitted as an accessory use in an Eastern Neighborhoods Mixed Use District and South of
12 Market Mixed Use District. In order to accommodate a principal use which is carried out by
13 one business in multiple locations within the same general area, such accessory use need not
14 be located in the same structure or lot as its principal use provided that (1) the accessory use
15 is located within 1,000 feet of the principal use; and (2) the multiple locations existed on April
16 6, 1990 (the effective date of this amendment). Accessory uses to non-office uses (as defined
17 in Section 890.70) may occupy space which is non-contiguous or on a different story as the
18 principal use so long as the accessory use is located in the same building as the principal use
19 and complies with all other restrictions applicable to such accessory uses. Any use which
20 does not qualify as an accessory use shall be classified as a principal use.

21 No use will be considered accessory to a principal use which involves or requires any
22 of the following:

23 (i) The use of more than one-third of the total occupied floor area which is occupied by
24 both the accessory use and principal use to which it is accessory, combined, except in the
25

1 case of accessory off-street parking or loading which shall be subject to the provisions of
2 Sections 151, 156 and 157 of this Code;

3 (ii) A hotel, motel, inn, hostel, ~~nighttime entertainment~~, adult entertainment, massage
4 establishment, large fast food restaurant, or movie theater use in a RED, SPD, RSD, SLR,
5 SLI, SSO, DTR, MUG, MUR, MUO, or UMU District;

6 (iii) Any take-out food use, except for a take-out food use which occupies 100 square
7 feet or less (including the area devoted to food preparation and service and excluding storage
8 and waiting areas) in a restaurant, bar, catering establishment, bakery, retail grocery or
9 specialty food store.

10 (iv) Any sign not conforming to the limitations of Section 607.2(f)(3).

11 (v) Any nighttime entertainment use, as defined in Section 102.17-; provided, however, that
12 except for one that involves a Limited Live Performance Permit as set forth in Police Code Section
13 1060 et seq. is allowed in any District except for and which is located in either (1) the South Park
14 District or (2) an Eastern Neighborhoods Mixed Use District or South of Market Mixed Use
15 District where nighttime entertainment is either principally or conditionally permitted (a) an SLI
16 District that is included in the Western SoMa Planning Area Special Use District or (b) an
17 RED, RSD, SLR, MUR, or MUG District.

18 **(D) Temporary Uses.** Temporary uses not otherwise permitted are permitted in
19 Eastern Neighborhoods Mixed Use Districts and South of Market Mixed Use Districts to the
20 extent authorized by Sections 205 through 205.3 of this Code.

21 **SEC. 890.37. ENTERTAINMENT, OTHER.**

22 In the Chinatown Mixed Use Districts, a retail use, other than adult entertainment, as
23 defined in Section 890.36 of this Code, which provides live entertainment, including dramatic
24 and musical performances, and/or ~~operates as a dance hall which~~ provides amplified taped
25 music for dancing on the premises, including but not limited to Places of Entertainment and

1 Limited Live Performance Locales, as those defined in Section 1060 of the Police Code. Other
2 entertainment also includes a bowling alley, billiard parlor, shooting gallery, skating rink and
3 other commercial recreational activity, but it excludes amusement game arcades, as defined
4 in Section 890.4 of this Code and regulated in Section 1036 of the Police Code. For South of
5 Market Districts, see Section 102.17.

6
7 Section 7. SEVERABILITY. If any section, subsection, subdivision, paragraph,
8 sentence, clause, or phrase of this ordinance or of Article 15.1 of the Police Code, or any part
9 thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of
10 competent jurisdiction, such decision shall not affect the validity or effectiveness of the
11 remaining portions of this ordinance or of Article 15.1, or any part thereof. The Board of
12 Supervisors hereby declares that it would have passed each section, subsection, subdivision,
13 paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more
14 sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared
15 unconstitutional or invalid or ineffective.

16
17 Section 8. EFFECTIVE DATE. This ordinance shall become effective 30 days from
18 the date of passage.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: 
23 PAUL ZAREFSKY
24 Deputy City Attorney
25

REVISED LEGISLATIVE DIGEST
(Amended in Committee: 7/18/2011)

[Police, Planning, and Business and Tax Regulations Codes - Limited Live Performance Permits]

Ordinance amending the San Francisco Police Code Sections 2.26, 2.27, 1060, 1060.1, 1060.1-1, 1060.7.1, 1060.9, 1060.19, 1060.20.4, 1060.24, 1060.35, 2901, 2909, and 2916; adding to the San Francisco Police Code Sections 1060.2.1, 1060.3.1, 1060.5.1, 1060.38, and 1060.38.1; amending the San Francisco Planning Code Sections 102.17, 703.2, 790.38, 803.2, 803.3, and 890.37; and amending the San Francisco Business and Tax Regulations Code Section 8 to 1) create a Limited Live Performance Permit for indoor locales whose primary function is not presentation of live performances, said permit to include noise and hours restrictions but not necessarily security plan requirements; 2) to specify application and license fees and hearing requirements for said permit; and 3) making findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

Existing Law

The Police Code defines "Entertainment" broadly and requires all Places of Entertainment to obtain a Place of Entertainment (POE) Permit, without regard to such factors as whether the presentation of Entertainment is a secondary rather than primary purpose of the establishment, whether Entertainment is in the form of Live Performances, the hours during which Live Performances are presented, and the degree to which Live Performances are audible outside the establishment, if at all. As a result, restaurants, bars, cafes, and other small businesses whose primary purpose is not presentation of Entertainment must still obtain a POE Permit if they wish to have any Live Performance whatsoever. Yet the application and license fees for a POE Permit are substantial, and there must be a Security Plan for each POE Permit, requiring each location to have one or more Security Guards.

The Planning Code generally treats any use that requires a POE Permit as an entertainment land use. This category of land use comprises a broad range of activities, and does not account for the markedly different uses of land that are placed under the general rubric of entertainment land use. Regulations for entertainment uses vary widely between zoning districts. For example, in many South of Market and Eastern Neighborhoods Mixed Use Districts entertainment uses are not allowed, while in many Neighborhood Commercial Districts entertainment uses are allowed only with Conditional Use Authorization. Generally, and unlike many other land uses, an entertainment use cannot be considered an accessory use and accordingly can only be established as a principal land use.

Amendments to Current Law

The proposed ordinance would amend the Police Code to create a Limited Live Performance (LLP) Permit and amend the Planning Code to include the LLP Permit into the various definitions of entertainment-related land uses and allow uses which involve an LLP Permit as an accessory use in Zoning Districts other than (1) an SLI District that is included in the western SoMa Special Use District or (2) an RED, RSD, SLR, MUR, or MUG District. Existing restrictions on conventional entertainment uses would remain unchanged.

An establishment could not hold both a POE Permit and an LLP Permit. As compared to the POE Permit, the application process for the LLP Permit would be less complicated and less costly, and the costs of maintaining the LLP Permit would be much less. Key differences between the POE and LLP Permits are summarized below.

<p align="center">Existing Law: Place of Entertainment Permit</p>	<p align="center">Amendments to Existing Law: Limited Live Performance Permit</p>
<p align="center"><u>Definition: Place Of Entertainment</u></p> <p align="center"><u>Food/Beverages</u></p> <p>Serves food, beverages, or food and beverages for consumption on the premises</p> <p align="center"><u>Private Residence</u></p> <p>Excluded from definition</p> <p align="center"><u>Primary/Secondary Purpose of Venue</u></p> <p>Entertainment may be primary or secondary purpose of venue</p> <p align="center"><u>Area Where Entertainment Presented</u></p> <p>No square footage limit</p> <p align="center"><u>Hours of POE Permit Operation</u></p> <p>Until 2:00 a.m. (or 6:00 a.m. with Extended-Hours Premises Permit)</p>	<p align="center"><u>Definition: Limited Live Performance Locale</u></p> <p align="center"><u>Food/Beverages</u></p> <p>Same</p> <p align="center"><u>Private Residence</u></p> <p>Same</p> <p align="center"><u>Primary/Secondary Purpose of Locale</u></p> <p>Live Performance must be secondary, not primary, purpose of venue</p> <p align="center"><u>Area Where Live Performance Presented</u></p> <p>No greater than 200 square feet</p> <p align="center"><u>Hours of LLP Permit Operation</u></p> <p>Until 10:00 p.m. (or, after a year, may be extended to 11:00 p.m. by Director, based on</p>

<p style="text-align: center;"><u>Noise Limitations</u></p> <p>Compliance with noise standards under Article 29 of Police Code</p>	<p>absence of public safety or public nuisance problems)</p> <p style="text-align: center;"><u>Noise Limitations</u></p> <p>Same</p>
<p style="text-align: center;"><u>Definition of Entertainment</u></p> <p>An act, play, review, pantomime, scene, song, dance act, song and dance act, or poetry recitation; the playing of a musical instrument including but not limited to, reed, brass, percussion, or string-like instruments; karaoke; recorded music presented by a live DJ on-site; a fashion or style show; the act of a female entertainer who exposes her breast or uses a device or covering to simulate breast, or wears clothing so that breast may be observed</p>	<p style="text-align: center;"><u>Definition of Live Performance</u></p> <p>Same, except does not include (1) karaoke, (2) recorded music presented by a live DJ on-site, (3) act of female entertainer described in definition of Entertainment</p>

Application and license fees for the LLP Permit would be considerably less than for a POE permit. And, for the LLP Permit, there would be no requirement of a Security Plan or Security Guard, as there is for a POE Permit.

NOTE: This legislative digest reflects an amendment made in committee on July 18, 2011.



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

June 21, 2011

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

Re: File No. 110506 [Limited Live Performance Permits]

Small Business Commission Recommendation: **Approval with modification**

Dear Ms. Calvillo:

On June 13, 2011, the Small Business Commission (SBC) voted unanimously to recommend that the Board of Supervisors approve BOS File No. 110506 with modifications.

The Commission found that this new type of entertainment permit will help foster economic growth at our local small business cafés, restaurants, bars and other locales where live performances will compliment a primary business use. Offering live performances will help attract and retain customers and will provide opportunities for residents to enjoy cultural offerings at a business located in their neighborhood. The Commission thanks Supervisor Mirkarimi for sponsoring this important piece of legislation and co-sponsors Supervisors Campos, Mar and Wiener for sharing his commitment to expanding opportunities for small businesses.

Currently, a "Place of Entertainment" (POE) permit requires a \$1700 non refundable application fee. In over 20 other zoning areas, including most of our vibrant NC districts, a Conditional Use Authorization is also required, often costing upwards of \$2000. Small businesses, many of which are already struggling during this difficult economy, often cannot afford the nearly \$4,000 that it may cost to obtain a POE permit. This POE permit also requires a security plan, security staff, and other requirements which are geared towards late night entertainment venues. This new opportunity, only costing \$385, will significantly reduce the cost burden of providing limited entertainment and on-going requirements to maintain the permit will be reasonable for the intensity of the use. The SBC recognizes the work that Supervisor Mirkarimi did to keep the permit costs and requirements minimal.

The Commission recommends modification in the following areas

- 1) Add the West Portal, Pacific Avenue and South of Market NC Districts to the areas in which this permit will be permitted. Currently, since Entertainment is not permitted by right or conditional use in these three NC districts, they are omitted from the ordinance. While these NC's do not currently allow full scale entertainment, this scaled down limited live performance permit is appropriate for these zoning districts and will contribute to the economic and cultural vitality of these areas.



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

2) Add South of Market Mixed Use Districts. The South of Market area has a large number of vibrant restaurants and cafés. These businesses will benefit from providing limited live performances. Currently a large part of South of Market does not permit entertainment. This was a result of neighborhood concerns over full scale entertainment venues and nighttime noise. Again, as with the above NC's, offering these limited performances will contribute to the economic and cultural vitality of the South of Market area.

3) Extend the initial permitted time to 11:00pm and remove the option for extended hours until midnight. The SBC determined that simplifying the permit and removing the option to extend hours will reduce confusion for businesses and allay potential neighborhood concerns.

The Commission thanks Supervisor Mirkarimi and his aide Robert Selna for their work in championing the legislation. The SBC also thanks Jocelyn Kane of the Entertainment Commission and Dan Sider of the Planning Department for their close collaboration.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

cc. Supervisors Mirkarimi, Campos, Mar, Wiener
Jason Elliott, Mayor's Office
Sophie Hayward, Planning Commission
Jocelyn Kane, Entertainment Commission



SAN FRANCISCO PLANNING DEPARTMENT

July 13, 2011

Supervisor Mirkarimi and
Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**Re: Transmittal of Planning Case Number 2011.0526T
BF No. 11-0506: Creation of a Limited Live Performance Permit for Indoor
Locales**

Recommendation: Approval with Modifications

Dear Supervisor Mirkarimi and Ms. Calvillo,

On July 7, 2011, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance under Board of Supervisors File Number 11-0506.

At the July 7th hearing, the Commission voted 6-0 to recommend approval with modifications of the proposed Ordinance which would create a Limited Live Performance Permit for indoor locales whose primary function is not presentation of live performances. At that hearing, the Commission requested that the proposal be amended to extend the opportunity for small-scale entertainment to be considered an accessory use in the SOMA Mixed Use Districts, the SOMA NCT, West Portal, and Pacific Avenue neighborhood commercial districts – districts in which entertainment is not currently permitted. In addition, the Planning Commission recommended that any restrictions on the visibility of entertainment from public rights-of-way be removed, as well as any requirement that doors and windows be closed while the accessory performances are underway.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission. The attached resolution and exhibit provides more detail about the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

AnMarie Rodgers
Manager of Legislative Affairs

Cc: City Attorneys Paul Zarefsky and Judith Boyajian

www.sfplanning.org

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RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2011 JUL 18 AM 10:21
BY dlc

Attachments (one copy of the following):

Planning Commission Resolution No. 18395
Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18395

HEARING DATE: JULY 7, 2011

Project Name: Amendments to Planning Code Sections 102.17, 703.2, 790.38, 803.2, 803.3, and 890.37: Creation of a Limited Live Performance Permit for Indoor Locales

Case Number: 2011.0526T [Board File No. 11-0506]

Initiated by: Supervisor Mirkarimi / Introduced April 26, 2011

Staff Contact: Sophie Hayward, Legislative Affairs
sophie.hayward@sfgov.org, 415-558-6372

Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

Recommendation: **Recommend Approval with Modifications**

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND SECTIONS 102.17, 703.2, 790.38, 803.2, 803.3, AND 890.37 OF THE SAN FRANCISCO PLANNING CODE AND SECTIONS OF THE SAN FRANCISCO POLICE CODE AND THE SAN FRANCISCO BUSINESS AND TAX CODE TO CREATE A LIMITED LIVE PERFORMANCE PERMIT FOR INDOOR LOCALES WHOSE PRIMARY FUNCTION IS NOT PRESENTATION OF LIVE PERFORMANCES, SAID PERMIT TO INCLUDE NOISE AND HOURS RESTRICTIONS BUT NOT NECESSARILY SECURITY PLAN REQUIREMENTS; SPECIFYING APPLICATION AND LICENSE FEES AND HEARING REQUIREMENTS FOR SAID PERMIT;

PREAMBLE

Whereas, on April 26, 2011, Supervisors Mirkarimi, Wiener, Mar, and Campos introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 11-0506 which would amend Planning Code Sections 102.17 (Definition of "Nighttime Entertainment Use," 703.2 (Uses Permitted in Neighborhood Commercial Districts), 790.38 (Definition of use, "Entertainment, Other" in Neighborhood Commercial Districts), 803.2 (Uses Permitted in Chinatown Mixed Use Districts), 803.3 (Uses Permitted in Eastern Neighborhood and South of Market Mixed Use Districts), and 890.37 (Definition of "Entertainment, Other" in Mixed Use Districts) to create a Limited Live Performance Permit for indoor locales whose primary function is not presentation of live performances; and

Whereas, on July 7, 2011, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed zoning changes have been determined not to be a project the California Environmental Quality Act Section 15378; and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends *approval of the proposed Ordinance with modifications* and adopts the attached Draft Resolution to that effect.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Planning Code does not currently distinguish between forms of entertainment, and that all forms of entertainment, large and small, are subject to the same controls;
2. No form of entertainment is currently considered an accessory use;
3. The existing process associated with the Place of Entertainment (POE) permits are geared toward large or late night venues whose primary use is entertainment. The POE permits do not appropriately address, and an undue burden on, cafes, restaurants, and other businesses seeking to offer limited live performance as an accessory use. The current permit costs are prohibitive for many small businesses which provide economic development and contribute to the vibrancy and diversity of mixed-use areas and neighborhood commercial districts;
4. The Commission believes that the scaled down, Limited Live Performance (and the restrictions it places on noise, hours, and the form of entertainment) permit is appropriate for thriving, neighborhood-serving commercial districts;
5. Limited Live Performance permits would be police permits managed by the Entertainment Commission, with review by the Planning Department, and would allow for certain live performances to be considered "accessory use," with restrictions on noise, space, hours, and forms of entertainment;
6. The Limited Live Performance permit would be offered at a significantly lower cost than the existing POE permit, and would therefore remove an existing obstacle for small business owners to cultivate appropriate accessory live entertainment in conjunction with permitted uses;

7. The Commission recommends that the Board of Supervisors adopt the proposed Ordinance with an amendment to extend the opportunity for small-scale entertainment to be considered an accessory use in the SOMA Mixed Use Districts, the SOMA NCT, West Portal, and Pacific Avenue neighborhood commercial districts – in which entertainment uses are currently not permitted as a primary land use category –with the issuance of the Limited Live Entertainment permit by the Police Department.
8. The Commission also recommends that the Board of Supervisors amend the Ordinance to remove any limitations or restrictions on the visibility of the accessory live entertainment from public rights-of-way, as well as any requirement that doors and windows be closed while performances occur.
9. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE & INDUSTRY ELEMENT

THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

GOALS

THE THREE GOALS OF THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN RELATE TO CONTINUED ECONOMIC VITALITY, SOCIAL EQUITY, AND ENVIRONMENTAL QUALITY.

OBJECTIVE 6

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

POLICY 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

POLICY 6.10

Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

The Planning Code currently treats any use that requires a POE Permit as an entertainment land use, and entertainment uses cannot be considered an accessory use and therefore can only be established as a principal land use. Because an entertainment use cannot be considered an accessory use in any circumstance and can only be considered a principal use, a restaurant with a live guitarist playing background music while diners eat is treated in the same manner as a warehouse in which a DJ is playing amplified music for a large crowd. The creation of the Limited Live Performance permit (and the

restrictions it places on noise, hours, and the form of entertainment) permit is appropriate for thriving, neighborhood-serving commercial districts, and would support and promote economic development efforts in efforts in these districts.

The proposed Ordinance seeks to remedy the undue burden currently placed on small businesses such as restaurants and cafes that seek to provide limited and small forms of live entertainment to augment their primary land use.

10. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance will encourage neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses by allowing limited live performance as an accessory use in order to augment permitted uses in non-residential areas. The proposed new entertainment permit will encourage and foster economic growth by helping to attract and retain customers.

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed new Limited Live Performance permit is intended to provide a means for small scale, live entertainment to be permitted as an accessory to a permitted use. The proposed Ordinance includes provisions specifically intended to preserve neighborhood character, such as the limit on the hours of operation, noise levels, and the maximum area that may be dedicated to the accessory use.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effect on the City's supply of affordable housing.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments. Any new construction or alteration associated with a use would be executed in compliance with all applicable construction and safety measures.

- G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed amendments. The proposed amendments would not result in a physical impact to historic structures, and any proposed project would be reviewed under the Department's existing preservation policies.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments. It is not anticipated that permits would be such that sunlight access, to public or private property, would be adversely impacted.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on July 7, 2011.

Linda Avery
Commission Secretary

AYES: Commissioners Olague, Antonini, Borden, Fong, Miguel, and Sugaya

NAYS: None

ABSENT: Commissioner Moore

ADOPTED: July 7, 2011



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change HEARING DATE: JULY 7, 2011

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Project Name: Creation of a Limited Live Performance Permit for Indoor Locales
Case Number: 2011.0526T [Board File No. 11-0506]
Initiated by: Supervisor Mirkarimi / Introduced April 26, 2011
Staff Contact: Sophie Hayward, Legislative Affairs
sophie.hayward@sfgov.org, 415-558-6372
Reviewed by: AnMarie Rodgers, Manager of Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: Recommend Approval with Modifications

PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Sections 102.17 (Definition of "Nighttime Entertainment Use," 703.2 (Uses Permitted in Neighborhood Commercial Districts), 790.38 (Definition of use, "Entertainment, Other" in Neighborhood Commercial Districts), 803.2 (Uses Permitted in Chinatown Mixed Use Districts), 803.3 (Uses Permitted in Eastern Neighborhood and South of Market Mixed Use Districts), and 890.37 (Definition of "Entertainment, Other" in Mixed Use Districts) to create a Limited Live Performance Permit for indoor locales whose primary function is not presentation of live performances.

The Way It Is Now:

The Police Code defines "Entertainment" broadly, and requires all Places of Entertainment to obtain a Place of Entertainment (POE) Permit. The Planning Code generally treats any use that requires a POE Permit as an entertainment land use, and entertainment uses cannot be considered an accessory use and therefore can only be established as a principal land use

Regulations for entertainment uses vary between zoning districts, with entertainment uses being prohibited in some districts (such as many South of Market and Eastern Neighborhoods Mixed Use Districts), while they are conditionally permitted in many Neighborhood Commercial Districts.¹ Because an entertainment use cannot be considered an accessory use in any circumstance and can only be considered a principal use, a restaurant with a live guitarist playing background music while diners eat is treated in the same manner, for the purposes of the POE Permit, as a warehouse rave in which a DJ is playing amplified music for a large crowd.

The Way It Would Be:

The proposed Ordinance would create a Limited Live Performance permit in the Police Code, and allow entertainment uses that require a Limited Live Performance police permit to be considered accessory uses in areas of the City where entertainment uses are allowed, either as principal or conditional uses.

¹ A summary chart, with an accompanying map, is attached to this case report. The chart lists the zoning districts in which entertainment as a primary land use is permitted, not permitted, and permitted with conditional use authorization.

The proposed Ordinance would:

- Create a sub-category of "Nighttime Entertainment Use," as defined in Section 102.17 of the Planning Code comprised of uses that require a "Limited Live Entertainment" police permit (in addition to uses that require "Place of Entertainment" police permits);
- Create a sub-category of the land use "Entertainment, Other," as defined in Section 790.38 and 890.37 of the Planning Code to include retail uses (other than adult entertainment) that provide live entertainment on the premises including "Limited Live Performance Locales" as defined in Section 1036 of the Police Code;
- Allow entertainment uses that require a "Limited Live Performance" police permit to be considered accessory to a permitted or conditional use in NC, Eastern Neighborhood, South of Market Mixed Use, and Chinatown Community Business districts where other entertainment is either principally or conditionally permitted (Sections 703.2(b)(1)(c)(vii), 803.2(b)(c)(v), 803.3(b)(c)(v)).
- Allow entertainment uses that require a "Limited Live Performance" police permit to be considered accessory to a permitted or conditional use in the Chinatown Mixed Use District provided that the use is either located within the Chinatown Visitor Retail District (a sub-district of the Chinatown Mixed Use District) below the second story and as an accessory to a full service restaurant (Section 803.2).

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

- **Allow Limited Live Performance as an accessory use in more districts.** The Department recommends that the Commission recommend that the Board of Supervisors amend the proposed Ordinance to extend the opportunity for small-scale entertainment to be considered an accessory use in the SOMA Mixed Use Districts, the SOMA NCT, West Portal, and Pacific Avenue neighborhood commercial districts with the issuance of the Limited Live Entertainment permit by the Police Department. Note: these are districts in which entertainment uses are currently not permitted as a primary land use even by conditional use authorization.

BASIS FOR RECOMMENDATION

Currently, a full POE Permit is required for any live performance, regardless of whether the venue is a large nightclub or a small, neighborhood-serving restaurant with an acoustic guitar player. POE permits are costly, and often require a Conditional Use authorization in order to be permitted. In addition, there are swaths of the City that do not permit entertainment uses under any circumstance.

The existing POE permit process is geared towards large or late night venues whose primary use is entertainment. The POE permits do not appropriately address, and in fact put an undue burden on, cafes,

restaurants, and other businesses seeking to offer small or occasional live performance as an accessory use. The current permit costs are prohibitive for many small businesses and limit opportunity for added vibrancy and diversity in mixed-use areas and neighborhood commercial districts.

Limited Live Performance permits would be police permits managed by the Entertainment Commission, with review by the Planning Department, and would allow for certain live performances to be considered an "accessory use," with the following restrictions:

- The area devoted to performances would not exceed 200 square feet;
- The live performance must be subordinate to the primary use;
- The Limited Live Performance permit will be available in areas of the City where "entertainment" as a primary use is permitted by right or through Conditional Use Authorization;
- Limited live performance is permitted until 10pm for the first year; an extension to 12am may be granted in subsequent years;
- DJ performance is not permitted;
- Audible noise is not allowed outside the business.

In addition, the Limited Live Performance permit would be offered at a significantly lower cost than the existing POE permit. While a POE permit requires a \$1,700 non-refundable application fee, the proposed Limited Live Entertainment permit application fee is \$385. Under existing controls, if entertainment as a primary use requires Conditional Use authorization, an applicant must also pay the nearly \$2,000 Conditional Use authorization application fee; this would no longer be necessary if the proposed Ordinance is adopted and the proposed entertainment is meets the parameters of the Limited Live Performance Permit.

As proposed, the Ordinance would only allow Limited Live Performance to be considered an accessory use in areas of the City that permit, either by right or through Conditional Use authorization, entertainment as a primary land use. This means that non-residential areas such as the West Portal NCD, Pacific Avenue NCD, and portions of SOMA would not permit entertainment as an accessory use. While these districts do not currently allow full scale entertainment, the Department believes that the scaled down, Limited Live Performance (and the restrictions it places on noise, hours, and the form of entertainment) permit is appropriate for thriving, neighborhood-serving commercial districts.

As proposed, the restrictions built into the Limited Live Performance permit would prevent the accessory entertainment from creating a disruptive noise nuisance in surrounding neighborhoods. The proposed permit creates a wholly new, limited definition of "entertainment" that is inherently different from larger, potentially more disruptive forms of entertainment (such as raves or concert venues). As such, even in neighborhoods in which large scale entertainment (that would require a POE permit) is not permitted, the proposed Limited Live Entertainment permit is an appropriate mechanism to provide small-scale entertainment in neighborhood-serving establishments.

As outlined below, the public comments Staff has received up to this point have been positive and in many cases supportive of amending the proposed Ordinance to include additional neighborhood commercial and mixed-use areas that do not permit large scale entertainment. These districts would benefit from offering small-scale, limited live entertainment as an accessory to neighborhood-serving establishments.

In sum, the Department supports the proposed Ordinance to permit limited live performance as an accessory use in association with the proposed new Limited Live Performance police permit. Further, the Department believes that the proposed Ordinance should be amended to include non-residential commercial districts that do not permit full scale entertainment, but could benefit from limited live performance as a subordinate use to a permitted primary land use, such as a restaurant or cafe.

ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Sections 102.17 (Definition of "Nighttime Entertainment Use," 703.2 (Uses Permitted in Neighborhood Commercial Districts), 790.38 (Definition of use, "Entertainment, Other" in Neighborhood Commercial Districts), 803.2 (Uses Permitted in Chinatown Mixed Use Districts), 803.3 (Uses Permitted in Eastern Neighborhood and South of Market Mixed Use Districts), and 890.37 (Definition of "Entertainment, Other" in Mixed Use Districts) would not be considered a project under CEQA Guidelines Section 15378.

PUBLIC COMMENT

Planning Department Staff has attended a community meeting in District 6 facilitated by the South of Market Business Solutions group. At that meeting, members of the public voiced support for the proposed ordinance, and many expressed the support for the idea of including commercial districts in which entertainment is not permitted as a primary land use.

Supervisor Kim's office is currently conducting outreach to constituent groups and merchant associations within District 6, and is considering an amendment to the proposed Ordinance that would include areas of SOMA that do not currently permit entertainment as a primary use, including but not limited to the SOMA NCT along 6th Street and the South Beach District.

Staff has received four emailed letters from constituents in the West Portal district, all of which support the legislation and request that the West Portal NCD, in which Entertainment is not permitted, be included as an area in which Limited Live Entertainment permits may be granted.

The Small Business Commission voted unanimously at their June 13 public hearing to recommend to the Board of Supervisors approval of the Ordinance, with the modification that the West Portal, Pacific Avenue and South of Market NC and Mixed Use Districts be included so that they may allow, with the issuance of the proposed Limited Live Entertainment permit, entertainment as an accessory to permitted uses. The full recommendation of the Small Business Commission is attached.

RECOMMENDATION:	Recommendation of Approval with Modifications
------------------------	------------------------------------------------------

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 10-0434
- Exhibit C: Zoning Districts in which Entertainment is Currently P, NP, and C
- Exhibit D: Map Illustrating Zoning Districts in which Entertainment is P, NP, and C
- Exhibit E: June 21, 2011 Recommendation from the Small Business Commission

BOARD of SUPERVISORS



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San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

LAND USE & ECONOMIC DEVELOPMENT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

NOTICE IS HEREBY GIVEN to the general public that the Land Use & Economic Development Committee will hold a public hearing to consider the following proposed legislation:

- Date:** Monday, July 18, 2011
- Time:** 1:00 p.m.
- Location:** Committee Room 263 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA
- Subject:** File No. 110506. Ordinance amending Sections 2.26, 2.27, 1060, 1060.1, 1060.1-1, 1060.7.1, 1060.9, 1060.18, 1060.19, 1060.20.4, 1060.24, and 1060.35 of the San Francisco Police Code; adding Sections 1060.2.1, 1060.3.1, 1060.5.1, 1060.38, and 1060.38.1 to the Police Code; amending Sections 102.17, 703.2, 790.38, 803.2, 803.3, and 890.37 of the San Francisco Planning Code; and amending Section 8 of the San Francisco Business and Tax Regulations Code, to create a Limited Live Performance Permit for indoor locales whose primary function is not presentation of live performances, said permit to include noise and hours restrictions but not necessarily security plan requirements; specifying application and license fees and hearing requirements for said permit; and making findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

If the legislation passes, a \$385.00 filing fee for a Limited Live Performance application and a \$129.00 filing fee for an Amendment to Permit application will be payable to the Police Department or Entertainment Commission. A \$139.00 fee for a Limited Live Performance license renewal will be payable to the Tax Collector after issuance by the Police Department or Entertainment Commission.

When filing an appeal of actions taken on the granting, denial, amendment, suspension or revocation of a Limited Live Performance permit, the appellant shall be subject to existing filing fees due to the Board of Appeals per Section 8 of the San Francisco Business and Tax Regulations Code.

Data in support of the proposed fees are available in the above-mentioned file of the Clerk of the Board of Supervisors ten days prior to the hearing. For more information regarding the above matters, call (415) 554-5184 or write to: Clerk's Office, Board of Supervisors, Room 244, City Hall, San Francisco, CA 94102.

Persons who are unable to attend the hearings may submit written comments regarding this matter prior to the beginning of the hearing. These comments will become part of the official public record.

Angela Calvillo, Clerk of the Board

POSTED: July 7, 2011
PUBLISHED: July 8, 2011 **4 July 13, 2011**

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NOTICE OF PUBLIC HEARING LAND USE & ECONOMIC DEVELOPMENT COMMITTEE SAN FRANCISCO BOARD OF SUPERVISORS JULY 18, 2011 -1:00 PM COMMITTEE ROOM 263, CITY HALL 1 DR. CARLTON B. GOODLETT PL SF, CA

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