

BOARD of SUPERVISORS



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MEMORANDUM

TO: Chief William Scott, Police Department

FROM: Victor Young, Assistant Clerk

A handwritten signature in black ink that reads "Victor Young".

DATE: April 29, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed Ordinance:

File No. 240412

Ordinance amending the Administrative Code to repeal Chapter 26, known as the Deemed Approved Off-Sale Alcohol Use Nuisance Regulations, and thereby repealing certain City provisions regulating establishments that sell alcoholic beverages for off-site consumption..

If you have comments or reports to be included with the file, please forward them to Victor Young at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

c: Officer Maricela Sainez, Police Department
Office Joel Salmonson, Police Department
Lisa Ortiz, Police Department
Lili Gamero, Police Department
Rima Malouf, Police Department
Diana Oliva-Aroche, Police Department
Sgt Stacy Youngblood, Police Department
Carl Nicita, Police Department



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 240412 **File Type:** Ordinance **Status:** 30 Day Rule

Enacted: _____ **Effective:** _____

Version: 1 **In Control:** Rules Committee

File Name: Administrative Code - Repealing Deemed Approved Off-Street Alcohol Use Nuisance Ordinance **Date Introduced:** 04/23/2024

Requester: _____ **Cost:** _____ **Final Action:** _____

Comment: _____ **Title:** Ordinance amending the Administrative Code to repeal Chapter 26, known as the Deemed Approved Off-Sale Alcohol Use Nuisance Regulations, and thereby repealing certain City provisions regulating establishments that sell alcoholic beverages for off-site consumption.

Sponsors: Stefani; Dorsey

History of Legislative File 240412

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	04/23/2024	ASSIGNED UNDER 30 DAY RULE	Rules Committee	05/23/2024	

1 [Administrative Code - Repealing Deemed Approved Off-Street Alcohol Use Nuisance
2 Ordinance]

3 **Ordinance amending the Administrative Code to repeal Chapter 26, known as the**
4 **Deemed Approved Off-Sale Alcohol Use Nuisance Regulations, and thereby repealing**
5 **certain City provisions regulating establishments that sell alcoholic beverages for off-**
6 **site consumption.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

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

15 Section 1. Background and Findings.

16 (a) In 1994, the Legislature enacted California Business and Professions Code
17 Section 25612.5 ("Section 25612.5"), which established retail operating standards for liquor
18 stores, bars, and taverns, but also allowed local jurisdictions to implement more stringent
19 standards.

20 (b) In 2006, the City enacted Ordinance No. 43-06, adding Chapter 26 of the
21 Administrative Code, known as the Deemed Approved Off-Sale Alcohol Use Nuisance
22 Regulations (the "Deemed Approved Ordinance"). The Deemed Approved Ordinance
23 automatically designated all businesses or entities that engage in the sale of alcoholic
24 beverages for off-site consumption to be deemed approved as long as those liquor
25 establishments adhere to the performance standards prescribed in the Deemed Approved
Ordinance. Those performance standards, which generally incorporate and duplicate the

1 operating standards in Section 25612.5, require liquor establishments to take certain actions
2 to reduce illegal activity in and around the establishment. The operating standards imposed
3 by Section 25612.5 remain in effect and violations of those standards are, and will be,
4 enforced through the California Alcoholic Beverage Control's Informed Merchants Preventing
5 Alcohol-Related Crime Tendencies (IMPACT) Program, a community-oriented policing
6 approach involving local law enforcement and local merchants in deterring crime, as well as
7 through any other available legal remedy. The Deemed Approved Ordinance also established
8 an administrative hearing process for establishments that violated the performance standards.
9 Deemed Approved liquor establishments also pay an annual fee to the City that helps fund
10 education and outreach performed by the Department of Public Health ("DPH").
11 Establishments that timely pay the fee for three years, have no change in ownership during
12 that period, and adhere to the performance standards, are eligible to have the fee indefinitely
13 waived.

14 (c) Since enactment of the Deemed Approved Ordinance, liquor establishments
15 have largely complied with performance standards. According to annual reports of DPH, in
16 Fiscal Year 2022-2023, the Police Department issued no citation for violation of the
17 performance standards, in Fiscal Year 2021-2022, the Police Department issued only two
18 citations, and in Fiscal Year 2020-2021, the Police Department issued but one.

19 (d) Many liquor establishments are eligible for waiver of the annual fee but do not
20 apply for a waiver. According to a December 2020 report issued by the Economic Mitigation
21 Working Group convened by the Office of Small Business, approximately 646 businesses
22 were eligible for a fee waiver. In Fiscal Year 2022-2023, only 149 businesses applied for a
23 fee waiver, of which DPH approved 126 and denied 23.

24 (e) The Board of Supervisors finds that it is appropriate and in the public interest to
25 repeal Chapter 26 of the Administrative Code. The performance standards imposed by the

1 Deemed Approved Ordinance largely duplicate the operating standards provided in Section
2 25612.5, the Deemed Approved establishments are generally compliant with those standards,
3 and many of the establishments would qualify for a fee waiver if they applied for such a
4 waiver.

5
6 Section 2. The Administrative Code is hereby amended by repealing Chapter 26, in its
7 entirety, as follows:

8 ***CHAPTER 26.***

9 ***DEEMED APPROVED OFF-STREET ALCOHOL USE NUISANCE REGULATIONS***

10 ***SEC. 26.1. FINDINGS.***

11 ~~*—The Board hereby finds and declares as follows:*~~

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

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

17 ~~*— (3) Neighborhood character can change over time and the careful regulation of nuisance*~~
18 ~~*activity by off-sale alcohol uses will help to ensure that such uses do not contribute to the deterioration*~~
19 ~~*of neighborhoods; and,*~~

20 ~~*— (4) Poorly regulated off-sale alcohol uses increase the availability of alcohol in the*~~
21 ~~*communities in which they are located, and studies have demonstrated a link between the availability of*~~
22 ~~*alcohol and numerous negative consequences, including violence, fatal traffic crashes, and nuisance*~~
23 ~~*law violations; and,*~~

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

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

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

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

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

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

21 — (11) ~~Off-sale alcohol uses operating outside of the law negatively impact those uses~~
22 ~~operating within the law and as good neighbors; and~~

23 — (12) ~~The City recognizes its responsibility to enforce the law and the need for a partnership~~
24 ~~with off-sale alcohol uses and the City, including the Police Department and the City Attorney, to~~
25 ~~address illegal activities in proximity to an off-sale alcohol use. The City also recognizes that there are~~

1 *occasions when owners and employees of off-sale alcohol uses would fear for their personal safety in*
2 *requesting that persons engaging in illegal activities cease those activities; and*

3 *— (13) Good faith efforts on the part of the owners and employees of off-sale alcohol uses to*
4 *address illegal activities in proximity to their stores, including: timely calls to the Police Department;*
5 *the installation of lighting and security cameras; clear unobstructed windows; and clean sidewalks,*
6 *among others, can reduce the nuisance impacts of such off-sale alcohol uses; and*

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

10
11 ***SEC. 26.2. DEEMED APPROVED OFF-SALE ALCOHOL USE NUISANCE***

12 ***REGULATIONS.***

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

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

22 *— (2) To provide opportunities for businesses that sell alcoholic beverages for off-site*
23 *consumption to operate in a mutually beneficial relationship to each other and to other commercial and*
24 *civic services.*

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

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

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

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

10
11 **~~SEC. 26.3. DEFINITIONS.~~**

12 —(a) ~~Alcoholic Beverage. Alcoholic beverage shall mean alcohol, spirits, liquor, wine, beer,~~
13 ~~and every liquid or solid containing alcohol, spirits, wine or beer, that contains one half of one percent~~
14 ~~or more of alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed,~~
15 ~~or combined with other substances, and the sale of which requires a State of California Department of~~
16 ~~Alcoholic Beverage Control License.~~

17 —(b) ~~Off-Sale Alcohol Use. Off-Sale Alcohol Use shall mean any retail use that sells beer,~~
18 ~~wine, or distilled spirits to a customer in a closed container for consumption off the premises and that~~
19 ~~has a State of California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) or~~
20 ~~type 21 (off-sale general).~~

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

24
25 **~~SEC. 26.4. AUTOMATIC DEEMED APPROVED STATUS.~~**

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

6
7 **~~SEC. 26.5. STATUS OF NEW OFF-SALE ALCOHOL USES.~~**

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

13
14 **~~SEC. 26.6. PREVIOUSLY NON-CONFORMING OFF-SALE ALCOHOL USES.~~**

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

18
19 **~~SEC. 26.7. ABANDONMENT.~~**

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

24 ~~(1) Changes in ownership or an owner to owner transfer of an Alcohol Beverage Control~~
25 ~~License.~~

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

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

6
7 **~~SEC. 26.8. DEEMED APPROVED OFF-SALE ALCOHOL USES IN EXISTING SPECIAL~~**
8 **~~USE OR RESTRICTED USE DISTRICTS.~~**

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

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

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

24 — ~~The Police Department shall refer to the California Alcoholic Beverage Control Department's~~
25 ~~database of all active Type 20 and Type 21 Off-Sale Retail Licenses in the City and County of San~~

1 *Francisco to determine the names and addresses of the operators of Deemed Approved Off-Sale*
2 *Alcohol Uses.*

3
4 ***SEC. 26.10. EDUCATION AND OUTREACH TO DEEMED APPROVED OFF-SALE***
5 ***ALCOHOL USES.***

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

16 ~~*—(b) The education and outreach program shall include*~~

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

21 ~~*—(2) Commencing within six months of the enactment of this legislation, biennially the*~~
22 ~~*Department of Public Health shall provide educational sessions for operators of Deemed Approved*~~
23 ~~*Off-Sale Alcohol Uses at multiple locations throughout the City. Operators of Deemed Approved Off-*~~
24 ~~*Sale Alcohol Uses who do not attend at least one educational session every two years shall receive an*~~

1 *educational site visit from the Department of Public Health. This visit should be coordinated with and,*
2 *when possible, conducted with Police Department personnel.*

3 *—(3)—Coordination of community stakeholder meetings, which should include representatives*
4 *from City departments, Deemed Approved Off-Sale Alcohol Uses, business associations, the Small*
5 *Business Commission, the Youth Commission, neighborhood associations and community*
6 *organizations.*

7 *—(c)—The Police Department, in cooperation with the Department of Public Health, may*
8 *promulgate additional education, outreach, and administrative requirements for Deemed Approved*
9 *Off-Sale Alcohol Uses as are necessary to ensure successful implementation of the Deemed Approved*
10 *Off-Sale Alcohol Regulations.*

11
12 ***SEC. 26.11. INFORMED MERCHANTS PREVENTING ALCOHOL-RELATED CRIMES***
13 ***AND TENDENCIES – I.M.P.A.C.T.***

14 *—Any training conducted by the Police Department under the California Department of*
15 *Alcoholic Beverage Control's IMPACT program should, whenever possible, incorporate the*
16 *requirements of the Deemed Approved Performance Standards.*

17
18 ***SEC. 26.12. DEEMED APPROVED PERFORMANCE STANDARDS.***

19 *—A use shall retain its Deemed Approved status if it conforms to all of the following Deemed*
20 *Approved Performance Standards (hereinafter the "Performance Standards"):*

21 *—(a)—The owner, its employees, or agents does not participate in, or assist persons*
22 *participating in, illegal activities within the premises or within the boundaries of the use's property*
23 *line, including the sidewalk and areas between the use and the street, including, but not limited to,*
24 *disturbance of the peace, illegal drug activity, illegal sale of firearms, public drunkenness, drinking in*
25

1 ~~public, harassment of passersby, gambling, prostitution, sale or receipt of stolen goods, or theft,~~
2 ~~assaults or batteries.~~

3 ~~—(b) It does not result in repeated nuisance activities within the premises or within the~~
4 ~~boundaries of the use's property line, including the sidewalk and areas between the use and the street,~~
5 ~~including, but not limited to, accumulation of litter graffiti unabated within three days, excessive loud~~
6 ~~noises (especially in the late night or early morning hours), or calls for service to the Police~~
7 ~~Department not initiated by the Deemed Approved Off-Sale Alcohol Use.~~

8 ~~—(c) In an administrative hearing pursuant to this Chapter the City shall have the burden of~~
9 ~~proof to establish that the owner, its employees, or agents has participated in, or assisted persons~~
10 ~~participating in, the illegal activities outlined in Subsection 26.12(a) and/or that the use has resulted in~~
11 ~~the nuisance activity outlined in Subsection 26.12(b).~~

12 ~~—(d) No more than 33 percent of the square footage of the windows and clear doors of an~~
13 ~~Deemed Approved Off-Sale Alcohol Use shall bear advertising or signs of any sort, and all advertising~~
14 ~~and signage shall be placed and maintained in a manner that ensures that Law Enforcement Personnel~~
15 ~~have a clear and unobstructed view of the interior of the premises, including the area in which the cash~~
16 ~~registers are maintained, from the exterior public sidewalk or entrance to the premises. This~~
17 ~~requirement shall not apply to premises where there are no windows or where existing windows are~~
18 ~~located at a height that precludes a view of the interior of the premises by a person standing outside the~~
19 ~~premises.~~

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

23 ~~—(f) It does not result in the violation of Health and Safety Code Section 11570, which makes~~
24 ~~every building or place used for the purpose of unlawfully selling, serving, storing, keeping,~~
25

1 ~~manufacturing, or giving away any controlled substance a nuisance that shall be enjoined and for~~
2 ~~which penalties may be recovered.~~

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

8 ~~—(h) It does not result in violations of local, State, or Federal regulations, ordinances, or~~
9 ~~statutes.~~

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

13
14 **~~SEC. 26.13. VIOLATIONS OF DEEMED APPROVED PERFORMANCE STANDARDS.~~**

15 ~~—If the City Attorney receives from the Director of the Planning Department, the Chief of~~
16 ~~Police, the Director of the Department of Public Health or the Director of the Department of Building~~
17 ~~Inspection, or the designee of any of these officials, a request to consider bringing an administrative~~
18 ~~hearing pursuant to Sections 26.14—26.23 or prosecuting a Deemed Approved Off-Sale Alcohol Use~~
19 ~~for violations of City, State and/or Federal laws for violations of the Performance Standards specified~~
20 ~~in Section 26.12, or for violations of any condition that has been placed on a Deemed Approved Off-~~
21 ~~Sale Alcohol Use under the provisions of Sections 26.20—26.21, the City Attorney may determine that~~
22 ~~it is appropriate to file a civil action against the Deemed Approved Off-Sale Alcohol Use and/or may~~
23 ~~determine that it is appropriate to bring the Deemed Approved Off-Sale Alcohol Use to an~~
24 ~~administrative hearing. At the administrative hearing, the City Attorney may request that a decision be~~
25 ~~issued ordering that the violations of the Performance Standards be corrected, that a decision be issued~~

1 ~~imposing administrative penalties against the Deemed Approved Off-Sale Alcohol Use, and/or that a~~
2 ~~decision be issued imposing conditions on the continued operation of the Deemed Approved Off-Sale~~
3 ~~Alcohol Use.~~

4 ~~—In the event that the Deemed Approved Off-Sale Alcohol Use has, within the past three years,~~
5 ~~been the subject of an administrative hearing at which a finding of violation of the Performance~~
6 ~~Standards was made, at which conditions were imposed on the Deemed Approved Off-Sale Alcohol~~
7 ~~Uses' continued operations, and/or at which administrative penalties were imposed on the Deemed~~
8 ~~Approved Off-Sale Alcohol Use for violation of the Performance Standards, the City Attorney may~~
9 ~~request that an administrative hearing, as specified in Sections 26.15—26.23, be held to consider the~~
10 ~~revocation of the Deemed Approved Off-Sale Alcohol Use's Deemed Approved status and/or request~~
11 ~~additional penalties or conditions.~~

12
13 **~~SEC. 26.14. CONDITIONAL USE PERMITS.~~**

14 ~~—In the event that the City Attorney receives a request to consider bringing an administrative~~
15 ~~hearing pursuant to Sections 26.15—26.23, and determines that the alleged violations are violations of~~
16 ~~conditions imposed by the Planning Commission through the conditional use permitting process, the~~
17 ~~City Attorney shall refer its findings to the Planning Department for actions consistent with Planning~~
18 ~~Code Section 303. Notwithstanding the foregoing, any alleged violations that are not violations of~~
19 ~~conditions imposed by the Planning Commission through the conditional use permitting process shall~~
20 ~~be subject to the administrative hearing process in Sections 26.15—26.23.~~

21
22 **~~SEC. 26.15. OPERATION OF ADMINISTRATIVE HEARINGS BY THE CITY~~**
23 **~~ADMINISTRATOR.~~**

24 ~~—The City Administrator shall conduct administrative hearings provided for in the Deemed~~
25 ~~Approved Off-Sale Alcohol Use Regulations. All requests to the City Administrator by the City Attorney~~

1 ~~to schedule an administrative hearing shall be accompanied by sufficient information to allow the City~~
2 ~~Administrator to complete the Notice For Administrative Hearings as described in Section 26.17.~~

3
4 **~~SEC. 26.16. PROCEDURES FOR CONDUCT OF ADMINISTRATIVE HEARINGS AND~~**
5 **~~APPEALS.~~**

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

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

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

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

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

3
4 **~~SEC. 26.17. NOTICE OF ADMINISTRATIVE HEARINGS FOR VIOLATIONS OF~~**
5 **~~DEEMED APPROVED PERFORMANCE STANDARDS.~~**

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

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

1
2 **~~SEC. 26.18. FORM OF NOTICE FOR ADMINISTRATIVE HEARINGS AND APPEALS.~~**

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

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

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

18
19 **~~SEC. 26.19. CONDUCT OF HEARINGS.~~**

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

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

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

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

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

21 ~~—(c) In reaching a determination as to whether a use has violated the Performance Standards,~~
22 ~~or as to the appropriateness of imposing conditions on a use, revoking a use, assessing administrative~~
23 ~~penalties, or the amount of administrative penalties to assess, the Hearing Officer may consider:~~

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

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

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

4 —(d) ~~"Efforts to Remedy" shall include, but are not limited to:~~

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

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

11 —(3) ~~Making improvements to the use's property or operations, including but not limited to~~
12 ~~the installation of lighting sufficient to illuminate the area within the use's property line, the installation~~
13 ~~of security cameras, clear unobstructed windows, clean sidewalks, and graffiti abated within three~~
14 ~~days.~~

15 —(e) ~~The decision of the Hearing Officer shall be based upon all information received at the~~
16 ~~administrative hearing, including, but not limited to, information compiled by City staff, testimony from~~
17 ~~the owner of the Deemed Approved Off-Sale Alcohol Use, and the testimony of all other interested~~
18 ~~persons. Any conditions imposed by the Hearing Officer shall be a condition of the Deemed Approved~~
19 ~~Off-Sale Alcohol Use's continued operation. Any condition imposed by the Hearing Officer shall not be~~
20 ~~considered a suspension, revocation, or withdrawal of a Deemed Approved Off-Sale Alcohol Use's use~~
21 ~~permit.~~

22 —(f) ~~All determinations, decisions, and conditions made or imposed under this Chapter~~
23 ~~regarding the use of a Deemed Approved Off-Sale Alcohol Use shall run with the land; provided,~~
24 ~~however, that upon legal transfer of a use's State of California Department of Alcohol Beverage~~
25 ~~Control Board License, the fact that a use has been the subject of an administrative hearing at which a~~

1 ~~finding of violation of the Performance Standards was made may only be used as a basis for revoking~~
2 ~~the use's Deemed Approved Status within 18 months of the transfer or within three years of the prior~~
3 ~~administrative hearing, whichever is less.~~

4
5 **~~SEC. 26.21. ADMINISTRATIVE PENALTIES.~~**

6 ~~—The Hearing Officer may assess administrative penalties against the owner of the Deemed~~
7 ~~Approved Off Sale Alcohol Use of no less than \$500.00 and no more than \$1,000.00 for each violation~~
8 ~~of a Performance Standard. If the violation is of a continuing nature, the Hearing Officer may impose a~~
9 ~~penalty for each day the violation remains.~~

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

19 ~~—Any administrative penalties collected under this Chapter shall be deposited in the Deemed~~
20 ~~Approved Off Sale Alcohol Use Continuing Project Account, as set forth in Section 26.27.~~

21
22 **~~SEC. 26.22. METHOD AND FORM OF DECISION OF THE HEARING OFFICER.~~**

23 ~~—(a) The Hearing Officer shall, within a reasonable time not to exceed thirty 30 days from the~~
24 ~~date the hearing is closed, submit to the City Administrator a written decision containing a brief~~
25 ~~summary of the information considered and the Hearing Officer's findings and conclusions, including~~

1 *any conditions that are to be placed on the Deemed Approved Off-Sale Alcohol Use and any*
2 *administrative penalties to be imposed. The Hearing Officer's written decision shall also inform the*
3 *parties of their right to appeal the written decision and describe the appeal process. The Hearing*
4 *Officer's written decision shall be a public record. The City Administrator shall serve a copy of the*
5 *decision on each party by personal service or by U.S. mail. Service of the decision shall be deemed*
6 *complete at the time it is personally served or deposited in the mail with the correct amount of postage*
7 *affixed. Failure to receive a copy of the decision served pursuant to this section shall not affect the*
8 *validity of the decision. The City Administrator shall also provide a copy of the written decision to the*
9 *Director of the Planning Department, the Chief of the Police Department, the Director of the*
10 *Department of Public Health, the Director of the Department of Building Inspection, and the Board of*
11 *Supervisors.*

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

16
17 ***SEC. 26.23. PROCEDURE FOR CONSIDERATION OF VIOLATIONS TO CONDITIONS***
18 ***IMPOSED ON DEEMED APPROVED OFF-SALE ALCOHOL USES.***

19 *—In the event of a failure to comply with any prescribed condition imposed by the Hearing*
20 *Officer or with any Performance Standard, at the request of the City Attorney, another administrative*
21 *hearing may be set. Notification of this hearing shall be in accordance with Sections 26.17—26.18.*

22 *—The purpose of this administrative hearing is to receive information and determine whether*
23 *violations to any condition attached to the Deemed Approved Off-Sale Alcohol Use have occurred. The*
24 *hearing shall be conducted as provided in Sections 26.15—26.22. The Hearing Officer may add to or*
25 *amend the existing conditions based upon the information presented; may impose additional*

1 ~~administrative penalties, or, alternatively, if the previous conditions were imposed within the three~~
2 ~~years prior to the City Attorney's request for an administrative hearing, may revoke the Deemed~~
3 ~~Approved Use's Deemed Approved status and/or impose administrative penalties. The provisions of~~
4 ~~Section 26.22 concerning the Hearing Officer's written decision shall be followed. The decisions of the~~
5 ~~Hearing Officer shall become final in the same manner as provided for in Section 26.22.~~

6
7 ***SEC. 26.24. APPEAL TO THE BOARD OF APPEALS OR BOARD OF SUPERVISORS.***

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

20 ~~—The City Administrator shall forward a copy of the record before the Hearing Officer at the~~
21 ~~administrative hearing and a copy of the Hearing Officer's written decision to the Executive Secretary~~
22 ~~of the Board of Appeals or the Clerk of the Board of Supervisors at least 10 days before the date of the~~
23 ~~appeal hearing. If any party has obtained a certified transcript of the administrative hearing, that~~
24 ~~transcript may be submitted to the Executive Secretary of the Board of Appeals or to the Clerk of the~~

1 ~~Board of Supervisors by any party, no later than 10 days before the date of the appeal hearing, and~~
2 ~~shall be considered part of the record of the administrative hearing.~~

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

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

22 ~~—A decision of the Board of Appeals or Board of Supervisors is final. The Board of Appeals or~~
23 ~~the Board of Supervisors written decision shall apprise parties of their right to seek judicial review in~~
24 ~~the Superior Court of San Francisco pursuant to Section 1094.6 of the California Code of Civil~~
25 ~~Procedure. Any condition imposed by the Board of Appeals or the Board of Supervisors shall not be~~

1 ~~considered a suspension, revocation or withdrawal of a Deemed Approved Off-Sale Alcohol Use's~~
2 ~~permit to operate.~~

3
4 **~~SEC. 26.25. ILLEGAL USE.~~**

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

8
9 **~~SEC. 26.26. FEE.~~**

10 ~~—The owner of the Deemed Approved Off-Sale Alcohol Use shall be required to pay an annual~~
11 ~~fee of \$264 to cover the cost of administering the Deemed Approved Off-Sale Alcohol Use Education~~
12 ~~and Outreach Program and the cost of the City Attorney. This annual fee shall be billed by and paid to~~
13 ~~the Office of the Treasurer and Tax Collector, which shall deposit the monies collected in the Deemed~~
14 ~~Approved Off-Sale Alcohol Continuing Project Account, as set forth in Section 26.27. In the event that~~
15 ~~the owner of the Deemed Approved Off-Sale Alcohol Use fails to pay the fee during a given fiscal year,~~
16 ~~the Office of the Treasurer and Tax Collector shall notify the Department of Public Health, which may~~
17 ~~request that the City Attorney pursue collection of the penalties.~~

18 ~~—Beginning with fiscal year 2006-2007, the annual fee may be adjusted each year, without~~
19 ~~further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index, as~~
20 ~~determined by the Controller. No later than April 15th of each year, the Department of Public Health~~
21 ~~shall submit the annual fee to the Controller, who shall apply the price index adjustment to produce a~~
22 ~~new annual fee for the following year. No later than May 15th of each year, the Controller shall file a~~
23 ~~report with the Board of Supervisors reporting the new annual fee and certifying that: (a) the annual~~
24 ~~fee produces sufficient revenue to support the proposed costs of providing the services in the upcoming~~
25 ~~fiscal year for which the annual fee is being charged and (b) the annual fee will not produce revenue~~

1 ~~that exceeds the proposed costs of providing the services in the upcoming fiscal year for which the~~
2 ~~annual fee is charged. Notwithstanding the procedures set forth in this Section, the Board of~~
3 ~~Supervisors, in its discretion, may modify the annual fee by ordinance at any time. The license fee shall~~
4 ~~be paid annually on or before March 31, in accordance with the provisions of Section 76.1 of the~~
5 ~~Business and Tax Regulations Code.~~

6 ~~—A new Deemed Approved Off-Sale Alcohol Use or a Deemed Approved Off-Sale Alcohol Use~~
7 ~~that undergoes a change in ownership after the enactment of the Deemed Approved Off-Sale Alcohol~~
8 ~~Use Ordinance shall pay its first annual fee on a pro-rated basis reflecting the number of days left in~~
9 ~~the fiscal year. The license fee shall be paid annually on or before March 31, in accordance with the~~
10 ~~provisions of Section 76.1 of the Business and Tax Regulations Code.~~

11 ~~—Upon the request of the owner of a Deemed Approved Off-Sale Alcohol Use, the Department~~
12 ~~of Public Health may waive payment of the annual fee provided that the owner can show to the~~
13 ~~satisfaction of the Department of Public Health all of the following:~~

14 ~~—(1) That the Deemed Approved Off-Sale Alcohol Use has been under the same ownership for~~
15 ~~not less than the previous three years;~~

16 ~~—(2) That the annual fee for the Deemed Approved Off-Sale Alcohol Use has been paid in a~~
17 ~~timely manner for not less than the previous three years; and~~

18 ~~—(3) That the Deemed Approved Off-Sale Alcohol Use has not been the subject of a City~~
19 ~~Department-referred complaint or any administrative penalties or conditions imposed by a Hearing~~
20 ~~Officer, the Board of Appeals, or the Board of Supervisors under the provisions of this Chapter.~~

21 ~~—If the owner of the Deemed Approved Off-Sale Alcohol Use can show all of the above, the~~
22 ~~Department of Public Health shall waive the fee indefinitely, provided, however, that if the Deemed~~
23 ~~Approved Off-Sale Alcohol Use changes ownership or becomes the subject of a City Department-~~
24 ~~referred complaint or any administrative penalties or conditions imposed by a Hearing Officer, the~~
25

1 ~~Board of Appeals, or the Board of Supervisors under the provisions of this Chapter the annual fee shall~~
2 ~~be immediately reimposed.~~

3
4 **~~SEC. 26.27. DEEMED APPROVED OFF-SALE ALCOHOL USE CONTINUING~~**
5 **~~PROJECT ACCOUNT.~~**

6 ~~—(a) Annual fees and administrative penalties collected by the City pursuant to this Chapter~~
7 ~~shall be deposited in a Deemed Approved Off-Sale Alcohol Use Continuing Project Account within the~~
8 ~~City's General Fund (Continuing Projects Fund). The Deemed Approved Off-Sale Alcohol Use~~
9 ~~Continuing Project Account shall be administered by the Department of Public Health.~~

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

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

19
20 **~~SEC. 26.28. DEPARTMENTAL REPORTING REQUIREMENTS.~~**

21 ~~—(a) Beginning 18 months after the effective date of this ordinance, and annually thereafter,~~
22 ~~the City Attorney and the Department of Public Health shall each submit a report to the Board of~~
23 ~~Supervisors on the actions it has taken to implement this Chapter. The appropriate committee of the~~
24 ~~Board of Supervisors shall hold a hearing to review the report and potential amendments to this~~
25 ~~Chapter, based upon recommendations of the report and public comment.~~

LEGISLATIVE DIGEST

[Administrative Code - Repealing Deemed Approved Off-Street Alcohol Use Nuisance Ordinance]

Ordinance amending the Administrative Code to repeal Chapter 26, known as the Deemed Approved Off-Sale Alcohol Use Nuisance Regulations, and thereby repealing certain City provisions regulating establishments that sell alcoholic beverages for off-site consumption.

Existing Law

Chapter 26 of the Administrative Code, known as the Deemed Approved Off-Sale Alcohol Use Nuisance Regulations (the “Deemed Approved Ordinance”), automatically designated all businesses or entities that engage in the sale of alcoholic beverages for off-site consumption to be deemed approved as long as those liquor establishments adhere to the performance standards prescribed in the ordinance. Those performance standards require liquor establishments to take certain actions to reduce illegal activity in and around the establishment. The Deemed Approved Ordinance also established an administrative hearing process for establishments that violated the performance standards. Deemed Approved liquor establishments also pay an annual fee that helps fund education and outreach performed by the Department of Public Health. Establishments that timely pay the fee for three years, have no change in ownership during that period, and adhere to the performance standards, are eligible to have the fee indefinitely waived.

Amendments to Current Law

The proposed ordinance would repeal Chapter 26 in its entirety.

Background Information

In 1994, the Legislature enacted California Business and Professions Code Section 25612.5, which established retail operating standards for liquor stores, bars, and taverns, but also allowed local jurisdictions to implement more stringent standards. In 2006, the City enacted the Deemed Approved Ordinance, which generally incorporated and duplicated the operating standards in Section 25612.5. Since enactment of the ordinance, liquor establishments have largely complied with performance standards. Additionally, many liquor establishments are eligible for the fee waiver, but do not apply for a waiver.

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

From: [Rosas, Lorenzo \(BOS\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Stefani, Catherine \(BOS\)](#); [Donovan, Dominica \(BOS\)](#); [PEARSON, ANNE \(CAT\)](#); [LIFTON, HENRY \(CAT\)](#); [Ebadi, Mahanaz \(BOS\)](#); [Owen, David \(BOS\)](#)
Subject: FW: Ordinance for introduction - Repeal of Ch. 26 DAO
Date: Tuesday, April 23, 2024 3:24:08 PM
Attachments: [Final Ord - Repealing Deemed Approved Ordinance.docx](#)
[Leg Digest - Repealing Deemed Approved Ordinance.DOCX](#)
[SCS Introduction Form - Ordinance - DAO Repeal \(2024\).pdf](#)

Hello,

I'm emailing to introduce an ordinance. Please see attached for the introduction form, final ordinance text, and final legislative digest.

Please see below for Henry Lifton's electronic signature constituting his approval as to form.

I'm including colleagues from Supervisor Dorsey's office for them to confirm their co-sponsorship.

Please let me know if there are any additional questions.

Best,

Lorenzo Rosas | Legislative Aide
Office of Supervisor Catherine Stefani
San Francisco Board of Supervisors, District 2
City Hall, Room 273
(415) 554-7752
www.sfbos.org/Stefani

From: Lifton, Henry (CAT) <Henry.Lifton@sfcityatty.org>
Sent: Friday, April 19, 2024 2:50 PM
To: Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Rosas, Lorenzo (BOS) <Lorenzo.Rosas@sfgov.org>; Donovan, Dominica (BOS) <dominica.donovan@sfgov.org>
Cc: PEARSON, ANNE (CAT) <Anne.Pearson@sfcityatty.org>; VAN NOSTERN, JULIE (CAT) <Julie.Van.Nostern@sfcityatty.org>; CABRERA, ALICIA (CAT) <Alicia.Cabrera@sfcityatty.org>
Subject: Ordinance for introduction - Repeal of Ch. 26 DAO

Hi Sup. Stefani and team,

Attached please find a proposed ordinance that would repeal Chapter 26 of the Admin. Code in its entirety, and accompanying legislative digest. My use of an electronic signature constitutes my approval as to form. Please let me know if you have any questions.

Thanks,
Henry

Henry Lifton

Deputy City Attorney
Office of City Attorney David Chiu
(415) 554-3915 Direct

www.sfcityattorney.org

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Confidential Attorney Work Product - Do Not Disclose