

1 [Police, Administrative Codes - Entertainment-Related Permits]

2

3 **Ordinance amending the Police Code to clarify permit requirements and procedures, as**
4 **well as to expand suspension, citation, and enforcement provisions regarding**
5 **Entertainment Commission permits, including Place of Entertainment Permits, Limited**
6 **Live Performance Permits, Temporary Place of Entertainment Permits, Temporary**
7 **Limited Live Performance Permits, Extended-Hours Premises Permits, and Temporary**
8 **Extended-Hours Premises Permits, and noise limits and standards; amending the**
9 **Administrative Code to clarify fee setting and reporting procedures; and making**
10 **environmental findings.**

11

NOTE: Additions are *single-underline italics Times New Roman*;
12 deletions are ~~*strike-through italics Times New Roman*~~.
13 Board amendment additions are double-underlined;
14 Board amendment deletions are ~~strike-through normal~~.

14

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

16

17 Section 1. The Planning Department has determined that the actions contemplated in
18 this ordinance comply with the California Environmental Quality Act (California Public
19 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
20 Board of Supervisors in File No. 130429 and is incorporated herein by reference.

20

21 Section 2. Article 1 of the Police Code is amended by amending Section 49 to read as
22 follows:

23 **SEC. 49. UNNECESSARY NOISE, AUTHORIZED EMERGENCY VEHICLES.**

24 (a) Except as provided in Sections 43, 45, 46, 47.1, 47.2, and 48 of this Code, and to
25 amplifying equipment used in authorized emergency vehicles as defined in the California

1 Vehicle Code, it shall be unlawful for any person to use, operate, maintain, or permit to be
2 played, used or operated any radio or television receiving set, musical instrument,
3 phonograph, juke box, broadcasting equipment or other machine or device for the producing,
4 reproducing or amplification of sound or human voice in such manner as to produce raucous
5 noises or in such manner so as to disturb the peace, quiet and comfort of persons in the
6 neighborhood or with volume louder than is necessary for convenient hearing for the person
7 or persons for whom said machine, instrument or device is operated.

8 (b) The operation of any such set, instrument, phonograph, juke box, broadcasting
9 equipment, machine or device between the hours of 10:00 p.m. and 7:00 a.m., in such a
10 manner as to be plainly audible at a distance of 50 feet from the property line of the property
11 from whence the sound is emitted, shall be prima facie evidence of a violation of this Section.

12 (c) The operation of any such set, instrument, phonograph, juke box, broadcasting
13 equipment, machine or device at any time in such a manner as to cause a noise level in
14 excess of the standards set forth in Article 29 of this Code shall be prima facie evidence of a
15 violation of this Section.

16 (d) Any person who violates this Section shall be deemed guilty of an infraction or
17 misdemeanor and subject to the criminal penalties specified in Section 1060.25(a) as well as the civil
18 penalties specified in Section 1060.25(c).

19 (e) In addition to the criminal and civil penalties in Subsection (d), the Director of the
20 Department of Public Health, or his or her respective designee, may also issue administrative citations
21 for the violation of this Section. San Francisco Administrative Code Chapter 100, "Procedures
22 Governing the Imposition of Administrative Fines," is hereby incorporated in its entirety and shall
23 govern the amount of fees and the procedure for imposition, enforcement, collection, and
24 administrative review of administrative citations issued under this Subsection (e). For purposes of
25 calculating and imposing the administrative penalties under this Subsection (e), each day a violation

1 occurs or continues shall constitute a separate violation. The Director of the Department of Public
2 Health may recover any costs and fees, including but not limited to attorneys' fees, for enforcement
3 initiated through this Section and authorized under this Section.

4 (f) The remedies specified in this Section shall not preclude any other remedies available under
5 state or local law.

6
7 Section 3. Article 15.1 of the Police Code is hereby amended by amending Sections
8 1060, 1060.1, 1060.13, 1060.17, 1060.18, 1060.20.1, 1060.20.2, 1060.20.3, 1060.24,
9 1060.25, 1060.28, and 1060.38.1, deleting Section 1060.15 and adding a new Section
10 1060.15, and deleting Sections 1060.23 and 1060.27, to read as follows:

11
12 **SEC. 1060. DEFINITIONS.**

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

15 * * * *

16 (g) "Entertainment." Any of the following, except when conducted in a private
17 residence:

18 (1) Any act, play, review, pantomime, scene, song, dance act, song and dance
19 act, or poetry recitation, conducted in or upon any premises to which patrons or members are
20 admitted.

21 (2) The playing or use of any instrument capable of producing or used to
22 produce musical or percussion sounds, including but not limited to, reed, brass, percussion, or
23 string-like instruments, or karaoke, or recorded music presented by a live disc jockey on the
24 premises.
25

1 (3) A fashion or style show.

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

5 * * * *

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

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

14 (m) "Security Guard." A person who has a valid Proprietary Private Security Officer
15 registration document issued by the California Department of Consumer Affairs; a person
16 who is a Patrol Special Police Officer appointed by the Police Commission or an assistant to a
17 Patrol Special Police Officer and is operating in accordance with rules of the Police
18 Commission governing Patrol Special Police Officers and assistants to Patrol Special Police
19 Officers; or, a person who is a Private Patrol Operator, as defined by California Business and
20 Professions Code Sections 7582.1-7582.2, as may be amended from time to time.

21 (n) "Security Plan." A plan that adequately addresses the safety of persons and
22 property by (i) providing a ratio of one Security Guard to a specific number of individuals as
23 described in the paragraph immediately below (ii) securing the sidewalk for a 100-foot radius
24 in all directions around the premises of the Business to prevent injury to persons and/or
25 damage to property, and (iii) providing for the orderly dispersal of individuals and traffic from

1 the premises of the Business and within 100 feet of any door that patrons use to enter or exit
2 the premises. The phrase “100 feet” in (iii) of this Subsection (n) means 100 feet from the
3 door in both directions on the same side of the street as the premises of the Business. The
4 plan shall include sufficient staff with the requisite experience to implement the plan.

5 The Security Plan must provide at least one Security Guard for every 100 individuals
6 anticipated to be present at any one time during Entertainment events on the premises of the
7 Business, with the following two qualifications. There must always be at least one Security
8 Guard for every 100 individuals actually present at any one time during Entertainment events
9 on the premises of the Business. Further, in those areas of the City where a conditional use
10 authorization is required for a late night use, on Thursdays, Fridays, Saturdays, and Sundays
11 from 9:00 p.m. until closing (including early morning hours Friday, Saturday, Sunday, and
12 Monday) the Security Plan must provide at least one Security Guard for every 100 individuals
13 authorized by the Occupancy Permit during Entertainment events on the premises of the
14 Business.

15 The definition of Security Plan in this Subsection 1060(n) does not limit the discretion of
16 the Entertainment Commission and Director as specified in this Article to impose more
17 stringent requirements for a Security Plan as circumstances warrant.

18 *If no Entertainment event is occurring on the premises, the Security Plan does not have to*
19 *include Security Guards, but the Entertainment Commission retains discretion to impose Security*
20 *Guard requirements as part of a Security Plan.*

21 * * * *

22 (q) “Limited Live Performance Permit.” A permit allowing a Limited Live Performance
23 Locale to present Live Performances.

24 (r) “Limited Live Performance Locale.” A locale with all the following features:
25

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

3 (2) The locale is indoors, or consists of an outdoor plaza, courtyard, or similar space,
4 enclosed by surrounding buildings, with or without open means of public ingress and egress, with an
5 area in which Live Performances are presented that is no greater than 200 square feet.

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

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

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

12 (s) "Live Performance." Any act, play, review, pantomime, scene, song, dance act,
13 song and dance act, poetry recitation, fashion or style show, recorded music presented by a live
14 disc jockey on the premises, or the playing or use of any instrument capable of producing or
15 used to produce musical or percussion sounds, including but not limited to, reed, brass,
16 percussion, or string-like instruments.

17 **SEC. 1060.1. PERMIT REQUIRED.**

18 (a) It shall be unlawful for any Person to own, conduct, operate, or maintain, or to
19 cause or permit to be conducted, operated, or maintained, any Place of Entertainment,
20 Limited Live Performance Locale, or ~~One-One~~-Time Event in the City and County of San
21 Francisco without first having obtained the required permit from the Director or Entertainment
22 Commission. No Person shall operate a Place of Entertainment between 2:00 a.m. and 6:00 a.m.
23 without having both a Place of Entertainment Permit and an Extended-Hours Premises Permit.

24 (b) It shall be unlawful for any Person to conduct, operate or maintain, or cause or
25 permit to be conducted, operated, or maintained, a Place of Entertainment, Limited Live

1 Performance Locale, or ~~One~~One-Time Event for which a permit has been granted (1) after the
2 permit has been revoked or is otherwise invalid or (2) for any period of time during which the
3 permit has been suspended.

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

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

13 **SEC. 1060.13. MINORS.**

14 No person under 21 years of age shall enter, be, or remain in or on any premises on or
15 in which any exhibition of the human body, as defined in Section 1060(~~g~~)(4)(~~f~~), is presented
16 and permittee shall not permit such a person to enter, be, or remain in or on any such
17 premises.

18 **SEC. 1060.15. ~~SIGNS, CONTINUED.~~ SOUND TEST.**

19 *No sign or signs which, in whole or in part, advertise any entertainment and which sign or signs*
20 *use the word “nude,” “bottomless,” “naked” or words of like import, except that the words “adult*
21 *entertainment” or “adult show” or “topless entertainment” will be permissible, shall be maintained,*
22 *erected, used, or placed upon or adjacent to the outside of any building where it is visible from public*
23 *streets or from adjacent buildings, or premises, the purpose of which sign is intended to attract, lure or*
24 *entice customers. As a condition of any permit issued under this Article, the Commission or the*
25

1 Director shall have the authority to require a sound test to ensure compliance with the allowable noise
2 limits under Section 49 and Article 29 of the San Francisco Police Code.

3
4 **SEC. 1060.17. REMOVAL OF SIGNS AND PICTORIAL REPRESENTATION.**

5 Any sign, or signs, or portions thereof, in violation of Section 1060.14 ~~and 1060.15~~ shall
6 be removed within 60 days after the effective date of this Article.

7
8 **SEC. 1060.18. VISIBILITY FROM THE STREET.**

9 No operator of a ~~p~~Place of ~~e~~Entertainment shall permit, or cause to be permitted, any
10 ~~e~~Entertainment as defined in Section 1060(g)(4) ~~so~~ that ~~said entertainment~~ would be visible at any
11 time from the street, sidewalk or highway.

12 **SEC. 1060.20.1. SUSPENSION BY THE ENTERTAINMENT COMMISSION.**

13 (a) GROUNDS FOR SUSPENSION. The Entertainment Commission may suspend
14 any permit issued under this Article under any of the following circumstances:

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

18 (2) The Permittee or an employee or agent of the Permittee has operated the
19 Business:

20 (~~i~~A) In a manner that has harmed the public health, safety, or welfare by
21 significantly increasing pedestrian congestion, the incidence of disorderly conduct, or the level
22 of noise in the area in which the premises are located, and

23 (~~ii~~B) The Permittee has refused or failed, upon request by the Police
24 Department, Entertainment Commission or the Director, to take reasonable steps to alleviate

1 these conditions, such as providing additional off-street parking, security, soundproofing,
2 restroom facilities, or refuse containers; or

3 (3) (~~i~~A) The Permittee or any employee or agent of the Permittee has engaged
4 in conduct on the premises of the Business, or in connection with the operation of the
5 Business, that would constitute a violation of any of the following laws: assault and battery
6 (Cal. Penal Code §§ 240, 242, 245); sexual battery (Cal. Penal Code § 243.4); discharging
7 firearm (Cal. Penal Code §§ 246, 246.3); unlawful weapons (Cal. Penal Code § 12020; S.F.
8 Police Code § 1291); disturbing the peace (Cal. Penal Code §§ 415, 416, 417); unlawful
9 threats (Cal. Penal Code § 422); obstruction of pedestrian or vehicle right-of-way (Cal. Penal
10 Code § 370); gambling (Cal. Penal Code §§ 330, 337a); rape (Cal. Penal Code § 261);
11 statutory rape (Cal. Penal Code § 261.5); prostitution and related offenses (Cal. Penal Code
12 §§ 266, 266a, 266e, 266h, 266i, 315, 316, 647(b)); sex crimes for which registration is
13 required under the Sex Offender Registration Act (Cal. Penal Code § 290); felony sexual
14 assault; loitering for lewd or lascivious purposes (Cal. Penal Code § 647(d)); loitering on
15 private property without lawful business (Cal. Penal Code § 647(h)); identify theft (Cal. Penal
16 Code § 530.5); a violent felony warranting enhancement of a prison term (Cal. Penal Code §
17 667.5); criminal gang activity (Cal. Penal Code § 186.22); drug offenses (Cal. Health & Safety
18 Code §§ 11351, 11352, 11359, 11360, 11378, 11379, 11378.5, 11379.5); violation of Alcohol
19 Beverage Control laws (Cal. Business & Professions Code §§ 23300, 25602, 25631, 25657,
20 25658); public urination or defecation (San Francisco Police Code § 153); accumulation of filth
21 (Cal. Health & Safety Code § 17920.3(j)); or excessive noise emissions (San Francisco Police
22 Code Section 49 or Article 29); or

23 (~~ii~~B) The Permittee has failed to take reasonable steps within the
24 Permittee's control upon the request of the Police Department, the Entertainment Commission
25 or the Director to halt conduct on the premises of the Business, or in connection with the

1 operation of the Business, that would constitute a violation of the laws set forth in Section
2 (a)(3)(~~iA~~) of this Section; or

3 (~~iiiC~~) The Permittee in the operation of the Business has implemented,
4 maintained, or permitted an admission or related policy or practice prohibited by San
5 Francisco Police Code Section 3305 (prohibiting discrimination); or

6 (4) The Permittee or any employee or agent of the Permittee has violated any
7 requirement of this Article or any other applicable ordinance, any regulation adopted pursuant
8 to this Article, or any condition placed on the permit; or

9 (5) The Permittee has failed to submit a proposed Security Plan as required by
10 Section 1060.31; or

11 (6) The Permittee or any agent or employee of the Permittee has failed to
12 comply with an approved Security Plan as required by Section 1060.31 or a revised Security
13 Plan as required by Section 1060.32; or

14 (7) The Permittee or any agent or employee of the Permittee has failed to
15 request emergency medical services as required by Section 1060.20(b).

16 (b) HEARING PROCEDURE AND DETERMINATION.

17 (~~i1~~) The Entertainment Commission shall give the Permittee and the Manager
18 written notice of a hearing to determine whether to suspend a permit. The notice shall set
19 forth the grounds for the proposed suspension and the date, time and location of the hearing.

20 (~~ii2~~) The Chief of Police or the Chief's designee may request in writing that the
21 Director bring a suspension proceeding before the Entertainment Commission. If, within 10
22 business days of receiving the request, the Director has not brought the suspension
23 proceeding, the Chief may bring the suspension proceeding before the Entertainment
24 Commission. In such a case, the Chief or the Chief's representative shall present the case for
25

1 suspension, ~~except that the~~ The Director may join in presenting the case for suspension if the
2 Director agrees to do so.

3 (c) PERIOD OF SUSPENSION. The Entertainment Commission may suspend a
4 permit for the periods of time set forth in this Subsection (c).

5 (i1) For the first violation under Subsection (a)(1) through (6) of this Section,
6 for up to 30 days.

7 (ii2) For the second violation of the same or any other provision of Subsection
8 (a)(1) through (6) within six months of the order of suspension for the first violation, for up to
9 60 days.

10 (iii3) For the third and subsequent violation of the same or any other provision
11 of Subsection (a)(1) through (6) within six months of the order of suspension for the second
12 or any subsequent violation, for up to 90 days.

13 (iv4) For the purpose of Subsections (c)(ii2) and (iii3) of this Section, calculation
14 of the six months shall not include any period of time during which the permit was suspended.

15 (v5) In determining the length of the suspension, the Entertainment Commission
16 shall consider the seriousness and the frequency of the violation(s) in light of the effort taken
17 to correct them and the impact of the violation(s) on the surrounding neighborhood.

18
19 **SEC. 1060.20.2. LIMITED SUSPENSION BY THE DIRECTOR; APPEAL TO**
20 **ENTERTAINMENT COMMISSION.**

21 (a) GROUNDS FOR SUSPENSION. The Director may suspend any permit issued
22 under this Article for a period of up to ~~seven~~fifteen days if the Director determines, after
23 providing the Permittee, or his or her agent, including but not limited to the Manager, at least five
24 days written notice and an opportunity to respond, that any of the circumstances set forth in
25 Subsections (a)(1), (2), or (3) of this Section has occurred. Each order of limited suspension

1 may include multiple violations under Subsections (a)(1), (2), or (3) of this Section. The
2 Director shall provide the written notice required under this Subsection either by mail and
3 electronically or by personal delivery.

4 (1) The Business has exceeded the allowable noise emissions under Section
5 49 or Article 29 of the San Francisco Police Code, or as required under any condition imposed
6 on the permit, on three separate days within a three-month time period. The Director may
7 suspend a permit under this Subsection (a)(1) only if:

8 (iA) The San Francisco Police Department, the Director, or an authorized
9 agent of either has issued a noise emission report for each violation showing noise levels that
10 exceed those allowed under Section 49 or Article 29 of the San Francisco Police Code, or as
11 required under any condition imposed on the permit, and

12 (iiB) The Director has provided notice of the issuance of each noise
13 emission report to the Permittee *or his or her agent, including but not limited to the Manager*
14 electronically or by mail within three City business days of its issuance.

15 (2) The Permittee or any employee or agent of the Permittee has engaged in
16 Conduct that Constitutes a Nuisance or the Permittee has failed to take reasonable steps
17 within the Permittee's control to halt another Person from engaging in Conduct that
18 Constitutes a Nuisance. "Conduct that Constitutes a Nuisance" as defined in Section 1060(d),
19 means any conduct that would constitute a violation of the following laws: assault and battery
20 (Cal. Penal Code § 240, 242, 245); sexual battery (Cal. Penal Code § 243.4); discharging
21 firearm (Cal. Penal Code § 246, 246.3); unlawful weapons (Cal. Penal Code § 12020; S.F.
22 Police Code § 1291); disturbing the peace (Cal. Penal Code § 415, 416, 417); unlawful threats
23 (Cal. Penal Code § 422); obstruction of pedestrian or vehicle right-of-way (Cal. Penal Code §
24 370); gambling (Cal. Penal Code §§ 330, 337a); rape (Cal. Penal Code § 261); statutory rape
25 (Cal. Penal Code § 261.5); prostitution and related offenses (Cal. Penal Code §§ 266, 266a,

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

12 This Subsection (a)(2) applies only when both of the following apply:

13 (iA) The conduct occurred on the premises of, or on Any Sidewalk
14 Abutting the Premises of, the Business, and

15 (iiB) The conduct continued after the Director had notified the Permittee
16 of the problem and informed the Permittee of Corrective Action, as defined in Section 1060, to
17 address the problem, but the Permittee failed to take the Corrective Action.

18 * * * *

19 **SEC. 1060.20.3. SUSPENSION FOR PUBLIC SAFETY BY THE DIRECTOR.**

20 (a) GROUND FOR SUSPENSION. The Director may suspend any permit issued
21 under this Article for up to 72 hours if the Director determines, after providing the Permittee at
22 least 8 hours written notice and an opportunity to respond, that any of the circumstances set
23 forth in Subsection (a)(1)(iA) or (iiB) of this Section has occurred either on the Premises of the
24 Business, on Any Sidewalk Abutting the Premises of the Business, or within 100 feet of the
25 Premises of the Business, provided in this last instance that the person engaging in the

1 conduct that would constitute a violation of a law specified in Subsection (a)(1)(~~iA~~) had been
2 on the Premises of the Business no more than 30 minutes before engaging in that conduct;
3 that the conduct has resulted or could have resulted in serious bodily injury or death; and that
4 continued operation of the Business poses a serious threat to public safety.

5 (1) (~~iA~~) The Permittee or any employee or agent of the Permittee has engaged
6 in conduct that would constitute a violation of any of the following laws: assault and battery
7 (Cal. Penal Code §§ 240, 242, 245); felony sexual assault; sexual battery (Cal. Penal Code §
8 243.4); rape (Cal. Penal Code § 261); statutory rape (Cal. Penal Code § 261.5); pimping (Cal.
9 Penal Code § 266); discharging firearm (Cal. Penal Code §§ 246, 246.3); unlawful weapon
10 (Cal. Penal Code § 12020; S.F. Police Code § 1291); disturbing the peace (Cal. Penal Code
11 §§ 415, 416, 417); unlawful threats (Cal. Penal Code § 422); a violent felony warranting
12 enhancement of a prison term (Cal. Penal Code § 667.5); criminal gang activity (Cal. Penal
13 Code § 186.22); or

14 (~~iiB~~) The Permittee has failed to take reasonable steps within the
15 Permittee’s control and within the limits of the law to halt the conduct of another Person that
16 would constitute a violation of any law described in Subsection (a)(1)(~~iA~~) of this Section.

17 (b) NOTICE OF PROPOSED ORDER. The Director shall provide the written notice
18 required under Subsection (a) of this Section to the Permittee ~~and the Manager~~ by personal
19 delivery and electronically.

20 * * * *

21 ~~SEC. 1060.23. LIMITED SUSPENSION.~~

22 ~~Any permit issued under the terms of this Article may be suspended for a period of 30 days by~~
23 ~~the Entertainment Commission if the Entertainment Commission determines after a noticed hearing~~
24 ~~that violation of the regulations or any provision of the Municipal Code has occurred.~~

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

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

6 (b) If a Place of Entertainment Permittee or Limited Live Performance Permittee Sells
7 the Business, the Permittee shall promptly surrender the permit to the Director. If the
8 Permittee fails to surrender the permit to the Director, the Director may, after giving the
9 Permittee notice by mail and electronically of the proposed action and an opportunity to
10 respond, revoke the 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 (h) Temporary Permits. Once the Entertainment Commission receives a surrendered Place of
12 Entertainment Permit or Limited Live Performance Permit under Subsection 1060.24(b), the new
13 owner of the business may apply to the Director for a temporary Place of Entertainment Permit or
14 Limited Live Performance Permit, subject to any required Planning Department approvals, for a
15 period not to exceed 90 days from the date of surrender (a "Temporary Permit"). The Director may
16 grant a Temporary Permit provided that (1) the new owner has submitted a completed application for a
17 Place of Entertainment Permit or Limited Live Performance Permit, (2) the new owner's Entertainment
18 or Live Performance events and activities are consistent with those allowed under the prior Permit, (3)
19 the premises at issue complies with all existing health, safety, and fire ordinances, and (4) a Temporary
20 Permit is necessary to ensure uninterrupted operations of a business at the premises. This Temporary
21 Permit may not be renewed as a Temporary Permit. The Entertainment Commission may
22 establish additional procedures and Temporary Permit criteria to help carry out the goals of this
23 Section 1060.24(h).

24
25 **SEC. 1060.25. CRIMINAL, ~~AND~~ ADMINISTRATIVE, ~~AND~~ CIVIL PENALTIES.**

1 (a) **CRIMINAL PENALTY~~IES~~**. Any person who violates any provision of this Article
2 shall be deemed guilty of an infraction. Any person who violates this Article 15.1, or Police
3 Code Section 49, more than once in a 12-month period shall be guilty of an infraction or a
4 misdemeanor, at the discretion of the prosecutor. A first violation of this Article 15.1, or Police
5 Code Section 49, is an infraction punishable by a fine of not more than \$100. A second
6 violation within one year of the date of the first violation is an infraction punishable by a fine of
7 not more than \$200 or a misdemeanor punishable by a fine of not to exceed \$1,000 or by
8 imprisonment in the County Jail for a period not to exceed six months, or by both such fine
9 and imprisonment, at the discretion of the prosecutor. A third or subsequent violation within
10 one year of the date of the second or subsequent violation is an infraction punishable by a fine
11 of not more than \$500 or a misdemeanor punishable by a fine of not to exceed \$1,000 or by
12 imprisonment in the County Jail for a period not to exceed six months, or by both such fine
13 and imprisonment, at the discretion of the prosecutor. Each day a Person conducts, operates,
14 or maintains a Business without a valid permit shall constitute a separate violation.

15 (b) **ADMINISTRATIVE PENALTY~~IES~~**.

16 (1) The Director may issue administrative citations for the violation of any
17 condition imposed on a permit granted under this Article and ~~any~~ the violation of any provision
18 of this Article including but not limited to Section 1060.1 (operating without a lawful Place of
19 Entertainment permit) and Section 1060.31 or 1060.32 (governing Security Plans). In addition,
20 the Director may issue administrative citations for the violation of any provision of law regarding such
21 permits, including but not limited to permits authorized under Police Code Article 29 (Regulation of
22 Noise). San Francisco Administrative Code Chapter 100, "Procedures Governing the
23 Imposition of Administrative Fines," is hereby incorporated in its entirety and shall govern the
24 amount of fees and the procedure for imposition, enforcement, collection, and administrative
25 review of administrative citations issued under this Subsection (b). The Director shall impose

1 fines for violations of any permit condition and any violation of Section 1060.31 or 1060.32 as
2 set forth in Section 100.5(a) of the San Francisco Administrative Code. For purposes of
3 calculating and imposing the administrative penalties under this Subsection 1060.25(b), each day a
4 violation occurs or continues shall constitute a separate violation. The Director may recover any costs
5 and fees, including but not limited to attorneys' fees, for enforcement initiated through this Section and
6 authorized under this Article.

7 (2) Notwithstanding Subsection (b)(1) of this Section, the procedure governing
8 the appeal of a citation set forth in San Francisco Administrative Code Chapter 100 is revised
9 as provided in this Subsection (b)(2). The Controller may designate the Director of the
10 Department of Public Works as a hearing officer under San Francisco Administrative Code
11 Section 100.7, but shall designate such officer for no more than one appeal a month and for
12 no more than 12 times in a 12-month period.

13 (c) CIVIL PENALTIES.

14 (1) Presumption of Noncompliance with Order. In addition to any other penalties
15 provided in this Article, any person or entity served with a notice or order by the Director setting forth
16 the nature of the violation of this Article, demanding correction of such violation, and specifying the
17 time within which such violation must be corrected, shall be presumed, in subsequent civil proceedings,
18 to have failed to comply with that notice or order at and after the time given in that notice or order for
19 correction of such violation, after the time period specified in the notice or order has expired without
20 correction of that violation.

21 (2) Penalty Amounts. Any person or entity violating this Article shall be liable for a
22 civil penalty of up to \$500 per violation for each day such violation is committed or permitted to
23 continue, which penalty shall be assessed and recovered in a civil action brought in the name of the
24 people of the City and County of San Francisco by the City Attorney in any court of competent
25 jurisdiction.

1 (3) **Setting Civil Penalty.** In assessing the amount of the civil penalty, the Court shall
2 consider any one or more of the relevant circumstances presented by any of the parties to the case,
3 including but not limited to the following: the nature and seriousness of the misconduct, the number of
4 violations, the persistence of the misconduct, the length of time over which the misconduct occurred,
5 the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth. In
6 addition, such violations will not be deemed legally abated until the property owner makes full payment
7 of the assessment of costs and fees awarded to the City under this Article or any applicable State law.

8 (4) **Cost Recovery.** In any civil proceeding filed by the City Attorney to collect civil
9 penalties, the Court may award the Department costs and fees, including but not limited to attorneys'
10 fees, and costs of investigation, enforcement, abatement, and litigation, authorized under this Article.

11 (d) The remedies specified in this Article shall not preclude any other remedies available under
12 state or local law.

13 **~~SEC. 1060.27. TIME LIMIT FOR OBTAINING PERMIT.~~**

14 ~~All premises required to obtain a permit and license pursuant to this Article because of the~~
15 ~~inclusion of recorded music presented by a live disc jockey on the premises within the definition of~~
16 ~~entertainment must obtain a permit within 90 days of the effective date of the amendments to this~~
17 ~~Article; failure so to do shall make continued operation of said place of entertainment a violation of~~
18 ~~Section 1060.25 hereof.~~

19 ~~Permits must be obtained from the Entertainment Commission as Sections 1060.1, 1060.2,~~
20 ~~1060.3 and 1060.4 hereof provided.~~

22 **SEC. 1060.28. EARPLUGS AND FREE DRINKING WATER.**

23 If the location for which the Place of Entertainment permit is issued ~~holds over 500~~
24 ~~persons and~~ contains a dance floor or other place primarily designated for dancing, the permit
25 holder shall provide:

1 (a) Free cool drinking water to patrons by means of an automatic drinking fountain or
2 by providing cups of water at all beverage service locations, or both; and

3 (b) Earplugs for free, or for sale on the premises at a reasonable price.
4

5 **SEC. 1060.38.1. EXTENSION OF EVENING HOURS LIMIT FOR LIMITED LIVE**
6 **PERFORMANCE PERMIT.**

7 (a) Notwithstanding Section 1060(r)(3), and except as provided in subsection (b),
8 below, at any time after a year has elapsed since the granting of a Limited Live Performance
9 Permit, the Director may, upon application of the Permittee, extend the hours during which
10 Live Performances may be presented at the Limited Live Performance Locale to any time
11 between 10:00 p.m., and 11:00 p.m., inclusive, on the basis that there have been no
12 significant public safety or public nuisance concerns at or near the establishment attributed to
13 the operation of the Limited Live Performance Permit. If the Director denies the application for
14 an extension of hours, the Permittee may appeal the Director's decision to the Entertainment
15 Commission, and the process for notifying the Permittee of the Director's decision and
16 providing an appeal right to the Entertainment Commission shall parallel to the extent
17 applicable the notice and appeal process prescribed in Section 1060.20.2(b).

18 (b) No extension may be granted as provided in subsection (a), above for Limited
19 Live Performance Permits granted in the following areas: the North Beach Neighborhood
20 Commercial District as defined in Planning Code Section 722.1; and the Polk Street
21 Neighborhood Commercial District as defined in Planning Code Section 723.1; the Union
22 Street Neighborhood Commercial District as defined in Planning Code Section 725.1; the
23 north and south sides of Chestnut Street between the east side of Fillmore Street and the
24 west side of Divisadero Street, and the north side of Lombard Street, between Fillmore Street
25 and Divisadero Street.

1 (c) Notwithstanding Subsection (a), above, a Live Performance involving recorded music
2 presented by a live disc jockey on the premises may not occur under a Limited Live Performance
3 Permit after 10:00 p.m. Nothing in this Subsection (c) shall interfere with Place of Entertainment
4 Permits or Extended-Hours Permits granted for Entertainment involving a live disc jockey.

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

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

16
17 Section 4. Article 15.2 of the San Francisco Police Code is hereby amended by
18 amending Sections 1070 and 1070.22, and deleting Section 1070.36, to read as follows:

19 **SEC. 1070. DEFINITIONS.**

20 For the purpose of this Article, unless otherwise provided in this Article, the following
21 words and phrases shall mean and include:

22 * * * *

23 (i) “Entertainment.” Any of the following, except when conducted in a private
24 residence:

1 (1) Any act, play, review, pantomime, scene, song, dance act, song and dance
2 act, or 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
5 produce musical or percussion sounds, including but not limited to, reed, brass, percussion, or
6 string-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 professional entertainer, while visible to any
10 customer, who exposes the breast or employs any device or covering which is intended to
11 simulate the breast, or wears any type of clothing so that the breast may be observed.

12 (j) "Extended-Hours Premises." Every premises to which patrons or members are
13 admitted or which allows patrons or members to remain between 2:00 a.m. and 6:00 a.m.
14 which serves food, beverages, or food and beverages, including but not limited to, alcoholic
15 beverages, for consumption on the premises or wherein Entertainment as defined in
16 Subsection (i) is furnished or occurs upon the premises. The term includes a "Dance
17 Academy."

18 * * * *

19 (n) "Security Guard." A person who has a valid Proprietary Private Security Officer
20 registration document issued by the California Department of Consumer Affairs; ~~or~~ a person
21 who is a Patrol Special Police Officer appointed by the Police Commission or an assistant to a
22 Patrol Special Police Officer and is operating in accordance with rules of the Police
23 Commission governing Patrol Special Police Officers and assistants to Patrol Special Police
24 Officers; or, a person who is a Private Patrol Operator, as defined by California Business and
25 Professions Code Sections 7582.1-7582.2.

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

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

20 The definition of Security Plan in this Subsection 1070(o) does not limit the discretion of
21 the Entertainment Commission and Director as specified in this Article to impose more
22 stringent requirements for a Security Plan as circumstances warrant.

23 *If no Entertainment event is occurring on the premises, the Security Plan does not have to*
24 *include Security Guards, but the Entertainment Commission retains discretion to impose security guard*
25 *requirements as part of a Security Plan.*

1 * * * *

2 **SEC. 1070.22. PERMITS NOT TRANSFERABLE; PERMIT MUST BE SURRENDERED**
3 **UPON SALE OF BUSINESS; PERMIT AMENDMENT REQUIRED TO CHANGE**
4 **PARTNERS OR OTHER OWNERS.**

5 (a) No Person may transfer a permit issued under this Article to any other Person.

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

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

17 (d) A Permittee seeking to amend a permit as required under this Section shall pay the
18 filing fee for Permit Amendment/Additional Partner set forth in Section 2.26 of this Code. The
19 applicant shall provide that portion of the information sought under Section 1070.3 that the
20 Director requires.

21 (e) The Director shall determine within 30 days of the filing of a complete application to
22 amend a permit whether to approve it. The Director shall approve the application unless he or
23 she determines that denial is warranted under any of the grounds set forth in Section
24 1070.5(f) (incorporating the standards set forth in Section 1060.5(f)) and shall notify the
25 Permittee and Manager of the approval electronically and either by mail or personal delivery.

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

5 (g) The Entertainment Commission shall determine whether to approve the application
6 according to the standards governing the initial application for an Extended-Hours Premises
7 Permit (incorporating the standards set forth in Section 1060.5(f)).

8 (h) Temporary Permits. Once the Entertainment Commission receives a surrendered Permit
9 under this Article, the new owner of the business may apply to the Executive Director of the
10 Entertainment Commission for an Extended-Hours Premises Permit, subject to any required Planning
11 Department approvals, for a period not to exceed 90 days from the date of surrender (a “Temporary
12 Extended-Hours Permit”). The Executive Director of the Entertainment Commission may grant a
13 Temporary Extended-Hours Permit provided that (1) the new owner has already submitted an
14 application for an Extended-Hours Permit, (2) that the new owner’s Entertainment events and activities
15 are consistent with those allowed under the prior Permit, (3) that the premises at issue complies with
16 all existing health, safety, and fire ordinances, and (4) where a Temporary Extended-Hours Permit is
17 necessary to ensure uninterrupted operations of a business at the premises. This Temporary Permit
18 may not be renewed as a Temporary Permit. The Entertainment Commission may establish
19 additional procedures and Temporary Extended-Hours Permit criteria to help carry out the goals of
20 this Section 1070.22(h).

21 ~~SEC. 1070.36. PROSPECTIVE MORATORIUM ON GRANT OF EXTENDED-HOURS PREMISES~~
22 ~~PERMITS.~~

23 ~~(a) Within two weeks on either side of the yearly anniversary of the effective date of Ordinance~~
24 ~~No. 238-09, the Entertainment Commission shall hold an annual hearing to determine whether there~~
25 ~~has been a substantial increase since the effective date of Ordinance No. 238-09 in the number of~~

1 ~~Extended Hours Premises Permits in existence. To make this determination as to Extended Hours~~
2 ~~Premises Permits at the first annual hearing, the Commission shall compare the number of such~~
3 ~~permits in existence at the time of the hearing to the number of such permits in existence as indicated in~~
4 ~~the report submitted pursuant to Section 1070.35(h). To make this determination at subsequent annual~~
5 ~~hearings, the Commission shall compare the number of such permits in existence at the time of the~~
6 ~~hearing to the number of such permits in existence at the time of the last annual hearing.~~

7 ~~(b) If the calculation mandated by Subsection (a) of this Section demonstrates an increase of~~
8 ~~15% or more in any year in the number of Extended Hours Premises Permits in existence and the~~
9 ~~number is at least 15% greater than the number of such permits in existence as indicated in the report~~
10 ~~submitted pursuant to Section 1070.35(h), there shall be a City-wide moratorium on the granting of~~
11 ~~additional Extended Hours Premises permits. In lieu of a City-wide moratorium, the Entertainment~~
12 ~~Commission shall have discretion to impose a moratorium applicable only to certain geographic areas~~
13 ~~of the City in which there is a concentration of Extended Hours Premises Permits. In this context, a~~
14 ~~“concentration of Extended Hours Premises Permits” means geographic areas in the City that have~~
15 ~~the largest number of Extended Hours Premises Permits and that cumulatively account for at least~~
16 ~~70% of the Extended Hours Premises Permits in existence as of the hearing mandated by Subsection~~
17 ~~(a) of this Section. In this context, the Commission may define “geographic areas” by reference to~~
18 ~~Police Districts, zoning provisions of the Planning Code, or other measures that are reasonable in light~~
19 ~~of other provisions in City law or commonly understood notions of the contours of various San~~
20 ~~Francisco neighborhoods. The Commission may exercise its discretion to impose the aforementioned~~
21 ~~moratorium applicable only to certain geographic areas if the Commission makes a finding on the~~
22 ~~record that considering all factors, including but not limited to economic and public safety concerns,~~
23 ~~such a moratorium is preferable to a City-wide moratorium.~~

24 ~~(c) If a moratorium on Extended Hours Premises Permits is imposed pursuant to Subsection~~
25 ~~(b) of this Section, the Entertainment Commission or Director, in consultation with the Police~~

1 ~~Department, Planning Department, and such other departments as the Commission or Director shall~~
2 ~~designate, shall conduct a study of the effects of the moratorium, as well as the effects of the substantial~~
3 ~~increase in the number of Extended-Hours Premises Permits in existence that gave rise to the~~
4 ~~moratorium. The study shall be completed no earlier than six months and no later than eleven months~~
5 ~~after the moratorium is imposed. The Entertainment Commission shall hold a hearing on the subject of~~
6 ~~the study within one month of completion of the study and shall make a recommendation regarding~~
7 ~~continuing, modifying, or lifting the moratorium. The Police Department and Planning Department,~~
8 ~~shall participate in the hearing and other interested departments may participate in the hearing.~~
9 ~~Within three months of the Entertainment Commission hearing, the Board of Supervisors or a~~
10 ~~committee thereof shall hold a hearing on the same subject.~~

11
12 Section 5. Article 29 of the Police Code is hereby amended by amending Sections
13 2909, 2916, and 2917 to read as follows:

14 **SEC. 2909. NOISE LIMITS.**

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

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

20 (2) No person shall produce or allow to be produced by any machine, or device,
21 music or entertainment or any combination of same, on multi-unit residential property over
22 which the person has ownership or control, a noise level more than five dBA above the local
23 ambient three feet from any wall, floor, or ceiling inside any dwelling unit on the same
24 property, when the windows and doors of the dwelling unit are closed, except within the
25 dwelling unit in which the noise source or sources may be located.

1 (b) **Commercial And Industrial Property Noise Limits.** No person shall produce or
2 allow to be produced by any machine, or device, music or entertainment or any combination
3 of same, on commercial or industrial property over which the person has ownership or control,
4 a noise level more than eight dBA above the local ambient at any point outside of the property
5 plane. With respect to noise generated from a licensed Place of Entertainment, ~~or~~ licensed
6 Limited Live Performance Locale, or other location subject to regulation by the Entertainment
7 Commission or its Director, in addition to the above dBA criteria a secondary low frequency
8 dBC criteria shall apply to the definition above. No noise or music associated with a licensed
9 Place of Entertainment, ~~or~~ licensed Limited Live Performance Locale, or other location subject
10 to regulation by the Entertainment Commission or its Director, shall exceed the low frequency
11 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
4 **SEC. 2916. ENFORCEMENT.**

5 The Director of Public Health may enforce the provisions of Section 2904, 2909, and
6 2912 of this Article.

7 The Department of Building Inspection may enforce the provisions of Sections 2907
8 and 2908 of this Article insofar as said provisions relate to construction operations conducted
9 on private property under appropriate permits issued pursuant to the San Francisco Building
10 Code, Housing Code, Electrical Code and Plumbing Code. Insofar as these provisions relate
11 to construction operations conducted on publicly-owned property subject to the police power
12 of the City and County of San Francisco, the Department of Public Works may enforce the
13 provisions of Sections 2907 and 2908 of this Article.

14 The Executive Director of the Entertainment Commission may enforce noise standards
15 associated with licensed Places of Entertainment, ~~and~~ licensed Limited Live Performance
16 Locales, or other location subject to regulation by the Entertainment Commission or its Director.

17 The Chief of Police or his or her designee (“Chief of Police”) shall also enforce the
18 provisions of Section 2913 of this Article. The Chief of Police shall make law enforcement
19 activities related to Unenclosed Tour Buses under Section 2913 a priority for one year after
20 the effective date of the ordinance enacting that Section.

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

24
25 **SEC. 2917. VIOLATIONS.**

1 **(a) Criminal Penalties.** Any person violating any of the provisions of this Article shall
2 be deemed guilty of an infraction and upon conviction thereof, shall be fined in an amount not
3 exceeding (1) \$100 for a first violation of this Article; (2) \$200 for a second violation of this
4 Article; and (3) up to \$300 for each additional violation of this Article within one year of the
5 date of a second or subsequent violation. Each day such violation is committed or permitted
6 to continue shall constitute a separate offense and shall be punishable as such.

7 **(b) Administrative Penalties.** Administrative penalties shall be assessed and
8 collected by the Departments specified in Section 2916 of this Article in accordance with San
9 Francisco Administrative Code Chapter 100.

10 **(c) Civil Penalties.**

11 **(1) Presumption of Noncompliance with Order.** In addition to any other penalties
12 provided in this Article, any person or entity served with a notice or order by the Director setting forth
13 the nature of the violation of this Article, demanding correction of such violation, and specifying the
14 time within which such violation must be corrected, shall be presumed, in subsequent civil proceedings,
15 to have failed to comply with that notice or order at and after the time given in that notice or order for
16 correction of such violation, after the time period specified in the notice or order has expired without
17 correction of that violation.

18 **(2) Penalty Amounts.** Any person or entity violating this Article shall be liable for a
19 civil penalty of up to \$500 per violation for each day such violation is committed or permitted to
20 continue, which penalty shall be assessed and recovered in a civil action brought in the name of the
21 people of the City and County of San Francisco by the City Attorney in any court of competent
22 jurisdiction.

23 **(3) Setting Civil Penalty.** In assessing the amount of the civil penalty, the Court shall
24 consider any one or more of the relevant circumstances presented by any of the parties to the case,
25 including but not limited to the following: the nature and seriousness of the misconduct, the number of

1 violations, the persistence of the misconduct, the length of time over which the misconduct occurred,
2 the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth. In
3 addition, such violations will not be deemed legally abated until the property owner makes full payment
4 of the assessment of costs and fees awarded to the City under this Article or any applicable State law.

5 (4) **Cost Recovery.** In any civil proceeding filed by the City Attorney to collect civil
6 penalties, the Court may award the Department the costs and fees, including but not limited to
7 attorneys' fees, and costs of investigation, enforcement, abatement, and litigation, authorized under this
8 Article.

9
10 Section 6. The Administrative Code is hereby amended by amending Section 90.9, to
11 read as follows:

12
13 **SEC. 90.9. FEES.**

14 Within one year after the operative date of this Article, and annually thereafter as part of
15 the annual budget process, the Entertainment Commission shall submit a report to the Mayor
16 and Board of Supervisors analyzing the fee revenue generated from the issuance, renewal
17 and processing of applications for entertainment-related permits, and proposing fees therefor
18 that will cover the annual operating costs of the commission. Within three years of the
19 operative date of this Article, the Board of Supervisors shall establish fees for entertainment-
20 related permits ~~at levels sufficient to cover~~ that do not exceed the estimated annual operating
21 costs of the commission.

22
23 Section 7. Severability. If any section, subsection, sentence, clause, phrase, or word of
24 this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any
25 court of competent jurisdiction, such decision shall not affect the validity of the remaining

1 portions of the Ordinance. The Board of Supervisors hereby declares that it would have
2 passed this Ordinance and each and every section, subsection, sentence, clause, phrase,
3 and word not declared invalid or unconstitutional without regard to whether any other portion
4 of this Ordinance would be subsequently declared invalid or unconstitutional.

5
6 Section 8. Effective Date. This ordinance shall become effective 30 days from the
7 date of passage.

8
9 Section 9. Scope of Ordinance. In enacting this Ordinance, the Board intends to
10 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
11 punctuation marks, charts, diagrams, or any other constituent parts of the :Police Code and
12 Administrative Code that are explicitly shown in this Ordinance as additions, deletions, Board
13 amendment additions, and Board amendment deletions in accordance with the “Note” that
14 appears under the official title of the Ordinance.

15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By: _____
19 ADINE K. VARAH
20 Deputy City Attorney

21 n:\legana\as2013\1200330\00847503.doc