

## LEGISLATIVE DIGEST

[Place of Entertainment Permits and Board of Appeals Procedures]

**Ordinance amending the San Francisco Police Code by amending Sections 2.26, 1060, 1060.1, 1060.2, 1060.3, 1060.5, 1060.24, 1060.25 and 1060.29, by adding Sections 1060.20.1, 1060.20.2, 1060.20.3, 1060.20.4, 1060.24.1, 1060.24.2, 1060.29.1, 1060.30, 1060.31, 1060.32 and 1060.33, by repealing Sections 1060.4, 1060.20 and 1060.22, and by adding new Sections 1060.4, 1060.20, and 1060.34, relating to the application, approval, amendment, suspension, revocation, and transfer of Place of Entertainment Permits and One Night Event Permits (now called "One Time Event Permits"), including changes in penalties, and amending the San Francisco Business and Tax Regulations Code by amending Sections 8 and 26 to provide the time for appealing to the Board of Appeals, to provide an additional category of permit suspension and revocation actions that are not suspended pending a decision by the Board of Appeals, and to clarify the standards governing the review of permits.**

### DEFINITION OF ENTERTAINMENT

#### Existing Law

Every premises that provides "entertainment" as defined in Police Code Section 1060, admits patrons or members, and serves food, beverages, or food and beverages (including alcoholic beverages) for consumption on the premises, must obtain a Place of Entertainment permit from the Entertainment Commission.

#### Proposed Amendments

The definition of "Entertainment" would be changed as follows:

- (1) The definition covers entertainment performed by either a professional or a non-professional entertainer.
- (2) The definition includes karaoke as an example.
- (3) The definition covers a fashion or style show whether those involved are professionals or non-professionals and even if the show is conducted by a nonprofit organization as part of its social activities for charitable purposes.
- (4) The definition does not apply to activities conducted in a private residence.

### APPLICATION REQUIREMENTS – PLACE OF ENTERTAINMENT PERMITS

Existing Law

Applicants must disclose criminal history information (for any crime except misdemeanor traffic violations) for the applicant, any officer, director, or member of the applicant and, for corporate applicants, any stockholder owning more than 10% of the corporation's stock.

Applicants must disclose a business plan specifying, among other information, the number of patrons, the identity of the manager who shall be on the premises during all hours of operation, the types or classes of entertainment to be provided (in terms of the types of instruments, numbers of performers, and sound levels).

Applicants are not required to disclose persons who appear on the business registration certificate or the person to whom a liquor license was issued for the business.

Proposed Amendments

Applicants for a Place of Entertainment permit would be required to disclose the person to whom the liquor license was issued, those persons appearing on the business registration certificate for the business, and the manager of the business (defined as the person authorized to exercise discretionary power to organize, direct, carry out or control the operations of the business).

Applicants would also be required to disclose specified criminal history information for the applicant, the manager of the business, the person who appears on the business registration certificate, the person to whom the liquor license was issued, persons who will have authority or control over the business, and, except for publicly traded corporations, persons who directly or indirectly own or control 10% or more of the assets, ownership interests or voting interests of the applicant.

The criminal history information sought falls into two categories: (1) all criminal charges, complaints or indictments in the preceding five years which resulted in a conviction or a plea of guilty or no contest for specified criminal laws and (2) all criminal charges, complaints or indictments in the preceding five years for any other offense which is a felony or misdemeanor under California law if the offense arose out of the operation of a nightclub, dance hall, cabaret, Place of Entertainment, or an establishment that services food or beverages.

When describing the business plan, applicants would not be required to disclose the number of patrons or the types or classes of entertainment to be provided.

The requirement that applications be verified would be deleted.

GRANTING OR DENYING PLACE OF ENTERTAINMENT PERMITS

Existing Law

**FILE NO. 080323**

The Entertainment Commission is required to grant a permit unless it makes certain findings. The hearing must be held within 45 working days of the date that the completed application is received.

Upon an applicant's request, the Entertainment Commission shall issue a conditional approval of the permit application, pending approval of the permit by other City agencies, if the Commission has sufficient information to adequately evaluate the proposal and there are no grounds for denial. A conditional permit will expire nine months from the date of the Commission's final decision if the applicant has not received all other required permits.

Proposed Amendments

The Entertainment Commission is required to grant a permit unless it finds that.

- (1) The premises or the proposed operation of the business does not comply with the health, zoning, fire and safety requirements of the laws of the State of California or ordinances of the City and County of San Francisco applicable to the business; or
- (2) Notwithstanding the mitigation provided under the security plan submitted by the applicant, the building, structure, equipment or location of the proposed business cannot adequately accommodate the type and volume of vehicle and pedestrian traffic anticipated; or
- (3) The premises or the proposed operation of the business lacks adequate safeguards to prevent emissions of noise, glare, dust and odor that would substantially interfere with the public health, safety and welfare or the peaceful enjoyment of neighboring property; or
- (4) The permit applicant has not provided a security plan that adequately addresses the safety of persons and property and provides for the orderly dispersal of individuals and traffic.

The Entertainment Commission is required to grant, conditionally grant, or deny a permit within 45 City business days of the date that the applicant has submitted a complete application, although this deadline is extended under certain circumstances. If the Commission fails to act within the required time, the permit shall be deemed granted conditioned on the permittee's obtaining required permits from other City departments within nine months and complying with all the requirements of the Article governing Places of Entertainment.

If the Entertainment Commission conditionally grants a permit subject to the applicant's receiving required permits from other City departments, but the applicant has not obtained the required permits within nine months, the conditionally granted permit shall be void.

ONE NIGHT EVENT ("ONE TIME EVENT") PERMITS)

Existing Law

No person may conduct, promote or sponsor a one night occurrence of entertainment without obtaining a permit from the Entertainment Commission. Applications for permits must be verified.

Persons who apply for One Night Events Permits must have a security plan that (i) provides at least one security guard for every 100 persons authorized by the occupancy permit, (ii) secures a 50 foot perimeter in all directions around the location of the business to prevent injury to persons and/or damage to property, and (iii) provides for the orderly disbursement of persons and traffic.

The Entertainment Commission is required to grant a One Night Event Permit unless it makes certain findings. The Commission may issue a permit conditioned on the applicant's obtaining other required permits.

An applicant whose application is denied is required to exhaust administrative remedies before the Board of Appeals.

Proposed Amendments

Entertainment Events provided on an occasional basis are regulated as "One Time Events" rather than "One Night Events."

Persons who want to provide Entertainment for a limited number of one-day events in a 12-month period must obtain a One Time Event Permit. One Time Event Permits may authorize operation between 2:00 a.m. and 6:00 a.m. (in which case the permittee would not be required to obtain an Extended Hours Premises Permit under Article 15.2). One Time Event Permits may be issued for premises that have a Place of Entertainment Permit for operation between 2:00 a.m. and 6:00 a.m. (if an Extended-Hours Premises Permit has not also been issued). For purposes of One Time Event Permits, the word "premises" means the area or structure where the event for which a permit is sought occurs.

Each One Time Event Permit shall issue for events no longer than 24 hours. There would be no limit to the number of permits a person may obtain, but no more than one permit per month could be issued for the same premises, with one exception. The exception allows the Director to issue permits for events that will occur on consecutive days on the same premises or on non-consecutive days within a 10-day period, but he may not issue permits allowing events to occur for more than 12 days on the same premises within any 12-month period.

The Director is required to grant the permit unless denial is warranted under the standards governing the review of applications for Place of Entertainment Permits or another application has been submitted, and a permit issued, for the same premises during the same time period. The definition of the security plan that applicants must provide with the application is revised (see sections below describing the requirements for security plans). The Director may require changes to a permittee's security plan after the permit issues if he receives additional

**FILE NO. 080323**

information that reasonably demonstrates that the security plan is inadequate to address the safety of persons and property.

The Director would have the discretion to refer any application to the Entertainment Commission for its consideration and action.

One Time Event Permits would be subject to reasonable time, place and manner conditions. Permits are not transferable.

Applicants must apply no later than 14 days before the proposed event. The Director is required to refer the application to City departments for their review. Applicants who file a permit application for a permit at least 40 days before the proposed date of the event have the right to appeal an adverse decision to the Entertainment Commission. Applicants who file an application after that time do not have a right to appeal to the Commission unless the Commission has sufficient time to schedule the matter for a regularly scheduled meeting.

An applicant whose application is denied would not be required to exhaust administrative remedies before the Entertainment Commission or the Board of Appeals.

**SPECIAL PERMIT PROCEDURE FOR ONE TIME EVENTS FOR DESIGNATED DAYS**

**Existing Law**

The Police Code does not contain a special permit procedure for One Time Events occurring on days involving special occasions that typically attract large crowds at multiple events.

**Proposed Amendments**

The Entertainment Commission would be authorized to adopt a special permit procedure for One Time Events occurring on those designated days for which the Commission finds a substantial risk that the approval of multiple, simultaneous or overlapping One Time Events would (i) require the diversion of so great a number of police officers to police the events as to prevent adequate police protection to the rest of the City or (ii) result in a concentration of persons and vehicles that would unduly interfere with the proper delivery of essential services in the City. If the Entertainment Commission elects to adopt a special permit procedure, it must first consult with the San Francisco Police Department.

The Entertainment Commission could designate no more than 12 days in a calendar year when the special permit procedure would apply to applications for One Time Event Permits.

For applications filed later than 40 days before the proposed event, the Commission would be authorized to impose conditions on the permit that would not have been necessary had the applicant given the City more time to prepare for the delivery of essential services for the event. The conditions may include the hiring of additional security guards and members of the Police Department under Section 10B of the San Francisco Administrative Code for increased crowd control purposes and for monitoring to detect and stop illegal or dangerous

**BOARD OF SUPERVISORS**

**FILE NO. 080323**

behavior in connection with the event. The Commission would also be authorized to disapprove the application on the ground that the applicant filed too late to give the City adequate time to plan for the provision of essential services without compromising the safety and security of the rest of the City and alternative conditions could not sufficiently mitigate the public safety and security problems that the event presents.

The Entertainment Commission would also be authorized to deny applications for One Time Events on the days designated for the special permit procedure, without regard to the date that the application was submitted, if required for public safety and alternative conditions could not sufficiently mitigate the public safety and security problems that the event presents.

The procedure may limit the number of permits issued for the designated days and may include a schedule of limits that vary depending on the size and location as they affect congestion that could impede prompt delivery of essential services.

The Entertainment Commission may delegate to the Director the authority to exercise all powers involving the special permit procedure except the power to adopt and amend the procedure.

**SUSPENDING PERMITS**

**Existing Law**

The Entertainment Commission may suspend a Place of Entertainment or One Night Event Permit if it determines that the (1) building, structure, equipment or location does not comply with all health, zoning, fire, and safety requirements or standards of State or local law; (2) the establishment has been operated in a manner that has harmed the public health, safety, or welfare by significantly increasing pedestrian traffic, disorderly conduct, or the level of noise and the permittee has failed, after being requested by the Police Department or Entertainment Commission to do so, take reasonable steps to alleviate these conditions; (3) the proprietor or person in charge has violated or permitted the violation of certain State or local laws or failed to take reasonable steps, after being requested by the Police Department or Entertainment Commission to do so, to halt such violations; or (4) the proprietor or person in charge violates or permits the violation of any provision of Article 15.1 of the Police Code (the Article governing Place of Entertainment and One Night Events Permits) or of the permit in connection with the operation of the establishment.

The penalty for the first violation is suspension of the permit for 30 days, and for repeated violations within specified time periods, the penalty is suspension for a periods of 60 and 90 days.

In addition, the Entertainment Commission may suspend a permit for 30 days for violation of the regulations or any provision of the Municipal Code.

**Proposed Amendments**

The proposed ordinance would provide three separate procedures for suspending a Place of Entertainment or One Time Event Permit:

(1) Suspension by Entertainment Commission. The Entertainment Commission would have the authority to suspend a permit if:

- (a) The premises or operation of the business does not comply with health, zoning, fire, and safety requirements; or
- (b) The permittee, or an employee or agent, has operated the business in a manner that has harmed the public health, safety, or welfare by significantly increasing pedestrian congestion, the incidence of disorderly conduct, or the level of noise and has refused or failed to take reasonable steps to alleviate these conditions after being requested to do so by the Police Department, the Entertainment Commission or the Director; or
- (c) The permittee, or an employee or agent, has engaged in conduct on the premises of the business, or in connection with its operation, that would constitute a violation of specified state or local laws, or the permittee has failed to take reasonable steps within his control to halt conduct that would constitute such a violation after being requested by the Police Department, Entertainment Commission, or Director to do so.
- (d) The permittee has implemented or maintained an admission policy or practice in violation of Police Code Section 3305 (prohibiting discrimination).
- (e) The permittee, or any employee or agent, has violated any requirement of Article 15.1 or any other applicable ordinance, any regulation adopted under Article 15.1, or any condition placed on the permit.
- (f) The permittee fails to comply with an approved security plan, or a revised plan when required to do so under the ordinance, or fails to submit a security plan when required under the Article. The period of suspension would be up to 30 days for a first violation and up to 60 and 90 days for repeated violations within a specified time period; the length of the suspension would depend on the seriousness and the frequency of the violations in light of the effort to correct them and the impact on the surrounding neighborhood.

(2) Suspension by Director, appealable to Entertainment Commission. The Director would be authorized to issue an order of limited suspension of a permit for up to seven days upon determining that (i) the Business has exceeded allowable noise emissions on three separate days within a 3-month period, but only if three noise emission reports showing excessive noise levels have been issued and notice of these reports given to the permittee or manager within three City business days of issuance or (ii) the permittee, or an employee or agent, has engaged in certain conduct that would constitute a violation of certain laws, or the permittee has failed to take reasonable steps within his control to stop others from doing so, if the

**FILE NO. 080323**

conduct occurs after the Director has provided notice of the problem and informed the permittee of corrective action to address the problem but the permittee failed to undertake it. The Director would be authorized to vacate an order of limited suspension under certain circumstances.

(3) Suspension by Director. The Director would be authorized to suspend a permit for up to 72 hours for public safety upon determining that the permittee, or an employee or agent, has engaged in certain conduct that would constitute a violation of certain laws, or that the permittee failed to take reasonable steps within his control to halt others from doing so, if the conduct has resulted in serious bodily injury or death and continued operation of the business poses a serious threat to public safety.

**REVOKING PERMITS**

**Existing Law**

The Entertainment Commission may revoke a Place of Entertainment or One Night Event Permit if the permittee has knowingly made any false, misleading or fraudulent statement of material fact in the permit application, has failed to pay any fee or charge required under Article 15.1, or has permanently ceased operation of the business. Revocation does not prejudice the right of an applicant to apply for a new permit.

**Proposed Amendments**

The Commission would be authorized to revoke a Place of Entertainment or One Time Event Permit if the permittee (1) has knowingly made any false, misleading, or fraudulent statement of material fact or has knowingly omitted a material fact in the application for a permit, or (2) has failed to pay any fee or charge required under Article 15.1. The Article would no longer provide for revocation in the event that a permittee permanently ceases operation of the business.

Revocation of a permit would not prejudice the right of any person to reapply for a permit under Article 15.1 or to appeal action on the reapplication to the Board of Appeals.

**PERMITS NOT TRANSFERABLE EXCEPT FOR  
PARTIAL CHANGE IN OWNERSHIP**

**Existing Law**

No permit is transferable except with the written consent of the Entertainment Commission.

**Proposed Amendments**

No permittee may transfer a Place of Entertainment Permit to any other person. If a permittee sells or otherwise completely transfers ownership of the business to another party, the

**FILE NO. 080323**

permittee is required to promptly surrender the permit to the Director. If the permittee fails to do so, the Director may revoke the permit.

Notwithstanding the prohibition against complete transfers of ownership, a permittee may change partners, shareholders or other owners of a business if the transfer results in a person owning no more than 50% of the business and the permittee obtains a permit amendment.

- Note: There is an exception for minor changes in partners, shareholders or other owners. No approval is required if the transfer does not result in a person (who did not already have such a percentage interest) having an ownership interest of 10% or more (however, this change must be reported to the Commission).

When a permit amendment is required for a partial change of ownership, the Director may act on the application and shall approve it unless disapproval may be warranted under the same standards governing the review of initial permit applications. If the Director determines that disapproval of the application may be warranted, he shall schedule a hearing for the next regularly scheduled meeting of the Entertainment Commission for a final determination.

**PENALTIES**

**Existing Law**

Any person who violates any provision of Article 15.1 governing Places of Entertainment and One Night Events is deemed guilty of an infraction; violation of Article 15.1 more than once in a 12-month period is an infraction or misdemeanor, at the discretion of the prosecutor.

**PROPOSED AMENDMENTS**

**Criminal Penalty.** The actions that would give rise to a criminal penalty are more limited. It would be a misdemeanor for any person to operate without a valid permit.

**Administrative Penalty.** The Director would be authorized to issue an administrative citation for the violation of any condition imposed on a permit and of the provisions of Article 15.1 governing security plan requirements. If the citation is upheld, the violator would be required to pay a fine. The amount of the fine would be \$100 for a first violation, \$200 for the second violation of the same provision within one year of the first, and \$500 for each additional violation of the same provision within one year of the second or subsequent violation.

Persons who have been cited may file an administrative appeal to the Controller. The Controller may designate the Director of the Department of Public Works to serve as a hearing officer for these appeals, but for no more than 12 appeals in a 12-month period.

**CONSIDERATION OF REQUESTS FOR EMERGENCY SERVICES**

**Existing Law**

**BOARD OF SUPERVISORS**

The Entertainment Commission may not consider any request for emergency medical or ambulance services to treat a permittee's patrons as a basis for suspending a permit.

### Proposed Amendments

Every Permittee shall request emergency medical services when any person who has been injured on the premises of the Business needs emergency medical services. The failure to request such services, when such a request would have been reasonable under the circumstances, shall be grounds for suspension of the permit. The Entertainment Commission and Director may allow any circumstances involving the operation of the Business that relate to the injury as evidence supporting suspension of a permit, but may not allow the request itself as evidence to support suspension.

### ADDITIONAL PROPOSED AMENDMENTS TO ARTICLE 15.1 OF THE POLICE CODE

In addition to the proposed amendments described above, the legislation would make the following amendments to Article 15.1 of the Police Code governing Place of Entertainment and One Night Event Permits.

### Security Plans

The definition of "security plan" would be revised and the requirements for such plans expanded as follows.

- The security plan must adequately address the safety of persons and property by (i) providing at least one Security Guard for every 100 individuals anticipated to be present at any one time during Entertainment events on the premises of the business, (ii) securing the sidewalk for a 100-foot radius in all directions around the premises of the business to prevent injury to persons and/or damage to property, and (iii) providing for the orderly dispersal of individuals and traffic from the premises of the business and within 100 feet of any door that patrons use to enter or exit the premises. The phrase "100 feet" means 100 feet from the door in both directions on the same side of the street as the premises of the business. The plan must include sufficient staff with the requisite experience to implement it.
- The security plan imposes minimum requirements.
- Permittees would be required to comply with an approved security plan as a condition of the permit.
- The Entertainment Commission would not be permitted to approve any permit or other application unless the applicant has an approved security plan.
- Any Place of Entertainment permittee who does not have a security plan on the effective date of the Ordinance would be required to submit a proposed plan to the Director. A permittee whose proposed plan was disapproved by the Director could appeal to the Entertainment Commission.

**FILE NO. 080323**

- The Director could issue an order directing a permittee to comply with a revised security plan if the Director reasonably determines that such revisions will address the safety and traffic concerns that arise when: (1) conduct occurs that would constitute a violation of certain laws or (2) the current security plan is inadequate to address safety or traffic concerns. The Director's decision may be appealed to the Entertainment Commission.
- The Entertainment Commission may suspend a permit for non-compliance with security plan requirements, and the suspension of the permit may be appealed to the Board of Appeals.

Amending Permits

Permittees are required to operate the business for which a permit issues in a manner that is consistent with any condition imposed on the permit. A permittee may seek approval from the Commission to remove or change a condition imposed on a permit by applying for an amendment to the permit.

Place of Entertainment Permittees Required to Report Certain Information

Permittees would be required to report updated criminal conviction information for persons whose criminal history is required in the permit application.

Every Place of Entertainment permittee, except for a publicly traded corporation, would be required to maintain a record of the name and address of every person who directly or indirectly owns or controls 10% or more of the assets, ownership interests or voting interests of the permittee and to make the information available to the Entertainment Commission upon request. Every Place of Entertainment permittee would also be required to report any change of such 10% ownership within 30 days of the transaction that effects the change. A "publicly traded" corporation is a company that has issued securities through an initial public offering which are traded on at least one stock exchange or over-the-counter market.

Authority of Entertainment Commission to Adopt Regulations

The Entertainment Commission would be authorized to adopt regulations implementing the provisions of Article 15.1 governing Place of Entertainment and One Time Event Permits and Article 15.2 governing Extended-Hours Premises Permits, including regulations governing the procedures for hearings before the Commission.

The Entertainment Commission, in consultation with the San Francisco Police Department, would be required to develop rules and regulations governing Security Plans under both Articles 15.1 and 15.2, which would address the number of security guards required to protect the public safety in light of the number and placement of exits on the premises of a Business.

Appeals to the Entertainment Commission and Board of Appeals

The ordinance would specify the actions that may be appealed to the Board of Appeals, but would also provide that a permittee or permit applicant may seek immediate judicial review without exhausting administrative remedies before the Entertainment Commission or the Board of Appeals.

Duplicate Section Repealed

This ordinance would repeal Section 1060.22, which deals with license fees payable to the Tax Collector. Section 1060.22 was replaced by Section 1060.1-1 on July 29, 2005 (Ordinance 193-05).

BOARD OF APPEALS PROCEDURES

Existing Law

The Business and Tax Regulations Code governs appeals to the Board of Appeals. That Code provides that pending a decision by the Board of Appeals, the action of the department from which an appeal is taken is suspended, excluding (1) actions of revocation or suspension of a permit by the Director of Public Health in the case of extreme public health hazard and (2) actions by the Zoning Administrator or the Director of the Department of Building Inspection stopping work under or suspending a permit.

Proposed Amendments

As described above, the Business and Tax Regulations Code provides that pending a decision by the Board of Appeals, the action of the department from which an appeal is taken is suspended, subject to two exceptions. The legislation would add a third exception: the actions of suspension by the Entertainment Commission or the Director of a Place of Entertainment, One Time Event, or Extended-Hours Premises permit when the suspending or revoking authority determines that ongoing operation of the activity during the appeal to the Board of Appeals would pose a serious threat to public safety.

The legislation would also amend the Business and Tax Regulations Code by specifying the time for appealing actions on Place of Entertainment, One Time Event and Extended-Hours Premises Permits and by clarifying the standards governing the review of these permits.