

# DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 6 OF THE SAN JOSE MUNICIPAL CODE BY AMENDING CHAPTER 6.58 AND CHAPTER 6.60 TO ADD NEW SECTIONS AND AMEND SECTION 6.60.200, AND ADDING A NEW CHAPTER 6.62, TO REQUIRE PROMOTERS TO BE PERMITTED PRIOR TO PROMOTING EVENTS IN PUBLIC ENTERTAINMENT VENUES OR PUBLIC DANCEHALL VENUES IN THE CITY, AND REQUIRE THE OPERATORS OF THOSE VENUES TO USE ONLY PERMITTED PROMOTERS, AND TO SPECIFY THAT PERSONS REQUIRED TO BE PERMITTED OR LICENSED UNDER THE PROVISIONS OF THESE CHAPTERS, BUT NOT SO PERMITTED OR LICENSED, ARE ALSO SUBJECT TO THE PROVISIONS OF THESE CHAPTERS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

**SECTION 1.** Chapter 6.58 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered and entitled and to read as follows:

**6.58.150 Operating Regulations And Permit Conditions**

- A. The provisions of this Chapter shall constitute terms and conditions applicable to each permit issued by the Chief of Police.
- B. The provisions of this Chapter shall also constitute operating regulations that are applicable to each holder of a permit issued pursuant to this Chapter.
- C. It shall be unlawful for any person permitted under this Chapter, or any person required to be permitted under this Chapter, whether or not such person is actually permitted, to violate any of the provisions of this Chapter.

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**SECTION 2.** Chapter 6.58 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered and entitled and to read as follows:

**6.58.160 Event Promoters, Record Retention And Security Provided By Event Promoter**

- A. No permittee shall use, hire, employ or otherwise avail itself of the services of an event promoter, as defined in Chapter 6.62 of this Code, to promote any public dance in the City unless the event promoter has obtained an event promoter permit pursuant to Chapter 6.62 or the permittee and the event promoter comply with the provisions of Sections 6.62.210 and 6.62.390 of Chapter 6.62, including the requirement that the permittee and the event promoter enter into a written contract as described in Section 6.62.210.
- B. The permittee shall maintain a copy of any contracts executed between the permittee and the event promoter that are required by this Chapter and Chapter 6.62 for a period of not less than two (2) years. The two (2) year period shall commence on the later of the last day of operation of the specific event being promoted or the contract's expiration date.
- C. A copy of any contracts required by this Chapter and Chapter 6.62 shall be made available for inspection and copying upon request by the Chief of Police or any City official responsible for enforcing the provisions of this Code.
- D. Any permittee who uses, hires, employs or otherwise avails itself of the services of an event promoter shall ensure that the event promoter complies with the requirements pertaining to security personnel retained by the event promoter set forth in Section 6.62.370 of Chapter 6.62.

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**SECTION 3.** Section 6.60.200 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

### **6.60.200 Operating Regulations And Permit Conditions**

- A. The provisions of this Part shall constitute ~~business permit~~ terms and conditions applicable to each business permit and each ownership/management license issued by the ~~e~~Chief of ~~p~~Police.
- B. ~~In addition, t~~he provisions of this ~~p~~Part shall also constitute operating regulations that are applicable to each holder of a business permit and each holder of an ownership/management license issued pursuant to this Chapter.
- C. It shall be unlawful for any person permitted or licensed under this Chapter, or any person required to be permitted or licensed under this Chapter, whether or not such persons are actually so permitted or licensed, to violate any these provisions of this Part.
- D. For purposes of this Part only, any reference to “permittee” shall also include any person in possession of an ownership/management license and any persons required to be permitted or licensed under this Chapter, whether or not such persons are actually so permitted or licensed.

**SECTION 4.** Part 2 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered and entitled and to read as follows:

### **6.60.295 Event Promoters, Record Retention And Security Hired By Event Promoters**

- A. No permittee shall use, hire, employ or otherwise avail itself of the services of an event promoter, as defined in Chapter 6.62 of this Code, to promote any event at

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the permitted business unless the event promoter has obtained an event promoter permit as required by Chapter 6.62 or the permittee and the event promoter comply with the provision of Sections 6.62.210 and 6.62.390 of Chapter 6.62, including the requirement that the permittee and the event promoter enter into a written contract as described in Section 6.62.210.

- B. The permittee shall maintain a copy of any contracts executed between the permittee and the event promoter that are required by this Chapter and Chapter 6.62 on file at the permitted business for a period of not less than two (2) years. The two (2) year period shall commence on the later of the last day of operation of the specific event being promoted or the contract's expiration date.
- C. A copy of any contracts required by this Chapter and Chapter 6.62 shall be made available for inspection and copying by the Chief of Police or any City official responsible for enforcing the provisions of this Code.
- D. Any permittee who uses, hires, employs or otherwise avails itself of the services of an event promoter shall ensure that the event promoter complies with the requirements pertaining to security personnel retained by the event promoter set forth in Section 6.62.370 of Chapter 6.62.

**SECTION 5.** Title 6 of the San José Municipal Code is amended to add a new chapter, to be numbered and entitled and to read as follows:

**CHAPTER 6.62**  
**EVENT PROMOTERS**  
**Part 1**  
**Definitions**

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### **6.62.010 Definitions**

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

### **6.62.020 Person**

“Person” shall have the definition given in Section 1.04.020 of this Code.

### **6.62.030 Event**

“Event” means any activity requiring a permit under Chapter 6.58 (public dancehalls) or Chapter 6.60 (public entertainment permit) of this Code.

### **6.62.040 Event Promoter**

- A. “Event promoter” means any person who:
1. Is directly or indirectly responsible for the promotion of an event as evidenced by activities such as, but not limited to contracting with the principals, selecting entertainment, advertising or otherwise holding out the event to members of the general public, inviting participants to the event, renting or controlling the event site, or serving as a designated on-site representative while the event is occurring as provided in Section 6.62.350 of this Chapter; and
  2. In exchange for engaging in the promotion of the event, as described in Section 6.62.040(A)(1), directly or indirectly receives or shares in any of the following:

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- a. Admission or entrance fees paid by participants or spectators;
  - b. Compensation, consideration or other revenue from sponsors, private donors or managers and/or owners of the event site; or
  - c. Revenues from concessions or other sales at the event.
- B. Event promoter does not include any of the following:
1. A print, broadcast or internet medium that is paid solely for page space or broadcast time to advertise an event, but exercises no other financial or promotional responsibilities in connection with the event;
  2. A ticket seller who sells admission tickets to an event from its own place of business, off-site and in advance of such event, but exercises no other financial or promotional responsibilities in connection with the event;
  3. An entertainer or performer who is paid solely for his or her performance at an event;
  4. An agent of an entertainer or a performer who is compensated solely for negotiating his or her client's contract to perform at an event;
  5. Any person permitted or licensed under Chapter 6.58 or Chapter 6.60 of this Code that engages in event promoter activities for events that the person's permit or license authorizes;
  6. An employee of any person permitted under Chapter 6.58 of this Code who, in the course of his or her employment, promotes events that are authorized under the permit issued to his or her employer;

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7. An employee of any person permitted or licensed under Chapter 6.60 of this Code who, in the course of his or her employment, promotes events that are authorized under the permit or license issued to his or her employer;
8. An employee of any person permitted under this Chapter who, in the course of his or her employment, promotes events that are authorized under the permit issued to his or her employer; or
9. An agent, officer, or employee of the City of San Jose who engages in event promoter activities exclusively for the City of San José in the course of his position as an agent, officer or employee.

### Part 2 General Provisions

#### **6.62.200 Event Promoter Permit Required**

- A. It shall be unlawful for:
1. Any event promoter to engage in event promotion activities in the City without first having obtained an event promoter permit from the Chief of Police; and
  2. Any person to have more than a ten percent (10%) interest, legal or equitable or otherwise, in any event promotion business without first having obtained an event promoter permit from the Chief of Police.

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- B. An event promoter permit issued to an event promoter business may also serve as the required event promoter permit for any event promoter who is also the person who applied for the event promoter permit on behalf of the business entity.

### **6.62.210 Event Promoter Permit Exemption**

- A. An event promoter shall not be subject to the requirements of Section 6.62.200 if the following conditions are met:
1. The event promoter and the owner or operator of the site where the event is scheduled to occur have mutually agreed, by written contract, that the owner or operator of the event site shall be liable for the following:
    - a. All claims, losses or liabilities, except contract claims, that arise out of the promotion of the event;
    - b. Any violation of any licenses or permits required for the event;
    - c. Any violations of this Code that arise out of the promotion of the event; and
    - d. Any violations of any other applicable laws that arise out of the promotion of the event.
  2. The owner or operator of the site where the event is scheduled to occur is either permitted or licensed under Chapter 6.58 or Chapter 6.60 of this Code for the site where the event is scheduled to occur; and

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3. The event promoter and the owner or operator of the site where the event is scheduled to occur comply with the provisions of Section 6.62.390 of this Chapter.
  
- B. A copy of the written contract required by Section 6.62.210(A)(1) shall be maintained in accordance with Section 6.62.340 of this Chapter.
  
- C. A copy of the written contract required by Section 6.62.210(A)(1) shall be made available for inspection and copying upon request by the Chief of Police or any City official responsible for enforcing the provision of this Code.

### Part 3

#### Operating Regulations And Conditions

##### **6.62.300 Operating Regulations And Conditions**

- A. The provisions of this Part shall constitute terms and conditions applicable to each event promoter permit issued by the Chief of Police.
  
- B. The provisions of this Part shall also constitute operating regulations that are applicable to each holder of an event promoter permit issued pursuant to this Chapter.
  
- C. It shall be unlawful for any person permitted under this Chapter, or required to be permitted under this Chapter, whether or not such person is actually so permitted, to violate any of the provisions of this Part.

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### **6.62.310 Posting Of Permit**

Each event promoter shall post the event promoter permit issued to the event promoter pursuant to this Chapter in compliance with Section 6.02.100 of this Code.

### **6.62.320 Identification Card Requirements**

Each event promoter shall, at all times while present at the event he or she is promoting, carry on his or her person an event promoter identification card issued by the Chief of Police containing such information as the Chief of Police may deem necessary, including but not limited to a suitable photograph of the event promoter.

### **6.62.330 Event Promotion Contract Required**

- A. No event promoter shall promote an event except pursuant to a written contract executed between the event promoter and the person hiring the event promoter which may include, but is not limited to the owner, manager, lessee or renter of the site where the event is scheduled to occur.
  
- B. The contract shall include the following information:
  - 1. The event promoter's permit number;
  
  - 2. A photocopy, or other legible reproduction, of the event promoter's permit;
  
  - 3. The permit and/or license number of any other permit or license required for the event;

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4. The legally-authorized maximum occupancy limit of the event site, including each room, floor or other area where the event is scheduled to occur;
5. The complete name and contact telephone number for the event promoter;
6. The complete name, address and date of birth for the designated on-site representative required to be present pursuant to Section 6.62.350 of this Chapter;
7. A telephone number for the event promoter or the event promoter's designated on-site representative that is a working telephone number for the duration of the event and for two (2) hours both before and after such time as the event is scheduled to occur;
8. The number of security personnel, if any, retained by either the event promoter or the person hiring the event promoter to provide security for the event entertainer or performer, who will be present during the event and the name of the security personnel's employer and telephone number;
9. The complete name and date of birth of any security personnel, retained by either the event promoter or the person hiring the event promoter to provide security for the event entertainer or performer, who will be carrying a firearm during the event;
10. The time, date(s), and length of the event;
11. The name and address of the site where the event is scheduled to occur;

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12. A list naming all entertainers and performers who will perform during the event;
  13. A general description of the methods that will be used for the promotion, marketing and advertising of the event; and
  14. The complete name of each of the event promoter's employees who will be present at the event and a general description of their respective duties.
- C. A copy of the contract required by this Section shall be kept at the event site for the duration of the event and shall be made available by the event promoter or the event promoter's designated on-site representative for inspection and copying upon request of the Chief of Police or any City official responsible for enforcing the provisions of this Code.
- D. If the parties to the contract make any changes to the terms or provisions thereof between the time the contract is executed and the time when the event occurs, those changes shall be reflected in an amended contract which shall comply with the requirements set forth in subsections A through C above.

### **6.62.340 Record Keeping Required**

- A. Each event promoter shall maintain on file, for a period of not less than two (2) years, complete and accurate records of all business activities related to events for which the event promoter has performed any services or activities that are subject to the provisions of this Chapter. Such records shall include, but not be limited to, any contracts, including the contracts required by Sections 6.62.210 and 6.62.330, records of advance ticket sales, tickets sold at events, other admission or entrance fees or donations, and any other fees, charges or

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donations collected at such events. The two (2)-year period shall commence on the later of the last day of operation of the specific event being promoted or the contract's expiration date.

- B. The records required by this Section shall be made available for inspection and copying by the Chief of Police or any City official responsible for enforcing the provisions of this Code.

### **6.62.350 Designated On-Site Representative**

- A. Each event promoter shall designate an on-site representative for each and every event the event promoter is promoting.
- B. The designated on-site representative shall:
  - 1. Be at least 21 years of age;
  - 2. Be present on-site at all times during the event;
  - 3. Comply with all laws and ordinances governing, or in any way connected with, the promotion of the event;
  - 4. Comply with all conditions imposed by the event promoter permit;
  - 5. Comply with all conditions imposed by any other license or permit required for the event;
  - 6. Carry on his or her person, at all times during the event, a valid government issued photo identification card or license containing all of the person's following information: name, date of birth, and physical

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description (sex, height, weight, eye color, and hair color); and, upon request by the Chief of Police or any City official responsible for enforcing the provisions of this Code, produce such card or license for inspection;

7. Be available at the telephone number identified in the contract required by Section 6.62.330 of this Chapter;
8. Cooperate fully with the Chief of Police or any City official responsible for enforcing the provisions of this Code with any inquiry, inspection, reasonable request, or investigation necessary or appropriate to implement the requirements of this Code or to enforce any other local, state or federal law; and
9. Immediately report to the San Jose Police Department and, if necessary, emergency medical services at 9-1-1, any conditions which the designated on-site representative knows, or reasonably should know, exist at the event and could result or have resulted in harm or an imminent threat of harm to the health, safety or general welfare of any person or member of the public.

### **6.62.360 Other Legal Duties**

- A. Each event promoter shall:
  1. Comply with all applicable laws and ordinances governing the promotion of any event;
  2. Comply with all conditions imposed as part of the event promoter's permit;

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3. Comply with all conditions imposed by any other permit or license required for any promoted event;
  4. Ensure that none of the event promoter's employees is under the age of twenty-one (21) if alcoholic beverages are to be sold or provided at the event, unless such employee is identified as an entertainer or performer in the contract required by Section 6.62.330; and
  5. Ensure that all promotional materials, including but not limited to handbills, dodgers, circulars, booklets, cards, pamphlets, sheets or other written or printed notices, or any sample products, any of which advertise the event being promoted, contain plainly printed or stamped on the first page thereof, or on the front thereof, in a space free of other matter, the event promoter's permit number.
- B. Each event promoter, and any other persons responsible for the operation of the event site, excluding the City, its agents, officers and employees, shall be jointly and severally liable for:
1. Any violation of this Chapter;
  2. Any violation of any other license or permit required for the event; and
  3. Any violation of any other applicable law that arises out of the promotion of the event.

### **6.62.370 Security And Management Functions**

- A. Except for retaining security personnel for entertainers or performers performing at the event, no event promoter shall provide, organize or be responsible for any

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security personnel that is required for the operation of a public dancehall or public entertainment business pursuant to Chapter 6.58 or Chapter 6.60 of this Code, respectively.

- B. Each event promoter shall comply with the standards specified by the Chief of Police in the event promoter's permit pertaining to security personnel retained by the event promoter for any event he or she is promoting.
- C. No event promoter shall retain any security personnel for an event he or she is promoting unless the security personnel is licensed by the appropriate state agency.
- D. No event promoter shall allow any security personnel retained by the event promoter for the event to be in possession of any firearm while on the premises which is the site of the event without that security personnel first having obtained a license from the appropriate state or local agency authorizing the security personnel to be in possession of a firearm.
- E. Each event promoter who retains security personnel for the event that will be in possession of a firearm while on the premises which is the site of the event shall, no less than (10) days prior to the date of the event, provide the Chief of Police with a copy of the license issued by the appropriate state or local agency to the security personnel authorizing the security personnel to possess such firearm.

### **6.62.380 Rules And Regulations**

- A. The Chief of Police shall have the authority to promulgate rules and regulations consistent with this Chapter that are necessary to implement the requirements of this Chapter. The rules and regulations shall be in addition to the requirements set forth in this Chapter.

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- B. No rules or regulations shall be adopted by the Chief of Police as final prior to the Chief of Police meeting all the following requirements:
1. Any proposed rules and regulations shall be made available for inspection and copying by the public at the Office of the City Clerk during normal business hours.
  2. A copy of any proposed rules and regulations shall be mailed to each holder of an event promoter permit.
  3. A thirty (30) day public comment period shall be provided which shall commence on the date of service of the proposed rules and regulations on the permitted event promoters. During this period, any person may submit written comments to the Chief of Police.
  4. At the close of the public comment period, the Chief of Police shall consider all the public comments on the proposed rules and regulations.
  5. Once the Chief of Police has considered all public comments, the Chief of Police shall finalize the rules and regulations.
  6. The finalized rules and regulations shall be accompanied by a brief written statement from the Chief of Police that references all the reasonable written comments on the proposed rules and regulation and explains why the comments were accepted, rejected, or modified by the Chief of Police.
  7. The Chief of Police may adopt the rules and regulations as final upon service of the finalized rules and regulations on the permitted event promoters.

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- C. Any rules and regulations adopted by the Chief of Police may be amended by following the procedure outlined in subsection B.
- D. No person permitted under this Chapter, or required to be permitted under this Chapter, whether or not such person is actually so permitted, shall violate the provisions of the rules and regulations.

### **6.62.390 Operating Regulations And Conditions For Persons Operating Pursuant To The Exemption Under Section 6.62.210**

Any persons who are operating under the exemption authorized by Section 6.62.210 shall comply with the following:

- A. Each event promoter shall comply with Sections 6.62.330, 6.62.340, 6.62.360, 6.62.370 and 6.62.380 of this Chapter, except where those Sections require information from an event promoter's permit or compliance with an event promoter permit.
- B. The owner or operator of the event site shall ensure that any event promoter providing, organizing or responsible for any security personnel for the event complies with Section 6.62.370 of this Chapter, except where Section 6.62.370 requires compliance with an event promoter permit.
- C. The owner or operator of the event site shall agree to fully indemnify, defend and hold harmless the City, its officers, employees and agents for all claims, losses, or liabilities that arise out of the promotion of the event, in a form approved by the City Attorney's Office.
- D. The owner or operator of the event site shall be liable for any violations of this Code that arise out of the promotion of the event.

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- E. The owner or operator of the event site shall be liable for any violations of any other applicable laws that arise out of the promotion of the event.

### Part 4

#### Limitations On Permits And Licenses

##### **6.62.400 Procedures And Determinations**

The procedures set forth in Chapter 6.02 for permits and licenses shall govern the application for, and investigation, approval, denial, suspension and revocation of, any permit required by this Chapter, except as specifically provided in this Part.

##### **6.62.410 Indemnification Agreement Required**

Any person applying for an event promoter permit shall agree to fully indemnify, defend and hold harmless the City, its officers, employees and agents for all claims, losses, or liabilities that arise out of the issuance or use of the event promoter permit or any event promoted pursuant to the permit, in a form approved by the City Attorney's Office.

##### **6.62.420 Permit and License Nontransferable**

No event promoter shall assign or transfer any permit issued under this Chapter and any attempt to assign or transfer any permit issued under this Chapter shall render the permit void.

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### **6.62.430 Change Of Name**

- A. Each event promoter shall provide written notice to the Chief of Police of any change of name or telephone number of the event promoter within five (5) days of the occurrence.
- B. When notice of a change of name has been provided, the Chief of Police shall determine whether an updated application for an event promoter permit needs to be submitted for review by the Chief of Police. If the Chief of Police determines an updated application is required, the Chief of Police will so notify the event promoter.

### **6.62.440 Applying For A Permit Following A Revocation**

- A. No person whose event promoter permit has been revoked as provided in Chapter 6.02 shall be granted another such permit, under the same or different name, for a period of five (5) years from the date of revocation.
- B. No person whose event promoter permit has been revoked shall be a designated on-site representative, under the same or different name, for a person permitted, or required to be permitted, under this Chapter for a period of five (5) years from the date of revocation.

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### **6.62.450 Term Of Event Promoter Permit**

Each event promoter permit issued under this Chapter shall expire two (2) years after the date of issuance.

### **6.62.460 Permit Fees**

Each person who applies for or holds an event promoter permit shall pay all associated fees in the amounts established by resolution of the City Council.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk