

**PROPOSED PROMOTER ORDINANCE  
FREQUENTLY ASKED QUESTIONS (FAQ)  
MAY 21, 2008**

**NOTE:** Below are general answers to frequently asked questions about the proposed Promoter Ordinance (proposed Chapter 6.62 of the San Jose Municipal Code) that will help explain the ordinance. For more detailed definitions and explanations, please refer to the ordinance itself.

**1. Why are we proposing a promoter ordinance?**

A: Various community groups and entertainment recommendations, such as the Downtown Working Group, the Hospitality Zone Assessment Report, the Downtown Association, the Urgency Ordinance Task For, and the City Council asked that a promoter ordinance be considered to improve the City's Downtown nightlife.

**2. What is the definition of a promoter?**

A: Proposed Ordinance, San Jose Municipal Code (SJMC), Section 6.62.020 (A). A person would be considered a promoter if the answer is yes to all of the questions below.

- Is the person or business promoting?
- Is the person or business receiving any type of consideration for the promotion?
- Is the event occurring at a location that requires an entertainment permit or dance hall permit?
  - o Entertainment Permit SJMC Chapter 6.60 (alcohol and)
    - Dancing
    - Singing
    - Audience participation in the entertainment
    - Live entertainment
  - o Dance Hall Permit SJMC Chapter 6.58
    - Any public dance and
    - Some type of payment

**3. Who is not considered a promoter?**

A: Proposed Ordinance SJMC Section 6.62.040 (B)

- Print, broadcast or internet media....
- Ticket seller who sells admission tickets only....
- Entertainer or performer who is paid solely for his performance...
- Agent of an entertainer or performer...
- Any person permitted under SJMC Chapter 6.58 (public dancehalls) or Chapter 6.60 (public entertainment permit) who engages in promoter activities for that venue....
- An employee of person permitted under SJMC Chapter 6.58 or Chapter 6.60...

- An employee of any person permitted under this proposed Chapter 6.62 (promoter)....
- A person employed by the City of San Jose in the course of his duty to promote....

**4. Who can be exempt from the promoter ordinance?**

A: See Proposed Ordinance, SJMC Section 6.62.210 – Event Promoter Exemption

- The promoter is exempt from obtaining a promoter’s permit if the owner or operator of the venue where the event is occurring agrees, through a contract with the promoter, that he will accept all liability and responsibility for the promotion. However, the following conditions must be met:
  - There must be a contract that includes:
    1. The agreement between the venue and promoter that the venue is accepting liability and responsibility
    2. The contract should contain the same information required for the promoter if the promoter were permitted.
  - The record keeping is the same as for a permitted promoter
  - All legal duties must be complied with
  - The security requirements remain the same as for a permitted promoter

**5. Are hosts, musicians, and DJ’s considered promoters?**

A: If they fall under the definition of Section 6.62.020 (A), then yes. However, if they are an employee of a permitted promoter or venue they don’t need a promoter permit.

**6. Are poets and authors considered promoters?**

A: If they fall under the definition of Section 6.62.020 (A), then yes. However, if they are an employee of a permitted promoter or venue they don’t need a promoter permit.

**7. What are the promoter’s responsibilities?**

A: These are found in the ordinance under Part 3 (Section 6.62.300) but, generally, include:

- Get a promoter’s permit
- Post the promoter permit at your place of business
- The promoter must have a promoter contract with the person hiring the promoter which must include
  1. Promoter permit number
  2. Copy of promoter permit
  3. Permit and license number of any required permits or licenses for the event
  4. The occupancy of the venue
  5. Name and contact number of the event promoter
  6. Name address and DOB for the on-site representative
  7. Telephone number for on-site representative for 2 hours before and after the event

8. The number of security personnel, if any, retained by the promoter and their names and DOBs, etc.
  9. Time date and length of event
  10. Name and address of site where event will occur
  11. A list of all entertainers
  12. General description of methods used for the promotion
  13. Name of event promoter's employees who will be present at the event and their duties
- The contract must be kept at the event site during the event
  - Each promoter must have a promoter ID and have it with them when promoting an event
  - Maintain records relating to the event and keep for two years
  - A designated on-site representative will be present for every event and shall be:
    - At least 21
    - Present at the site at all times during the event
    - Comply with all laws connected with the promotion
    - Comply with conditions imposed in the permit and any other license required for the event
    - Carry a valid government issued photo ID
    - Be available at the phone number identified in the contract
    - Cooperate with officials responsible for enforcing the code
    - Immediately report to the SJPD any conditions that could result in harm to any person.
  - Comply with all applicable laws
  - Comply with all provisions of proposed Chapter 6.62 (the promoter ordinance)
  - Ensure none of the promoter's employees are under 21 if alcohol is being sold or provided, unless that employee is an entertainer identified in the contract
  - Ensure all promotional materials contain the promoter's permit number
  - Comply with all conditions of the permit
  - Only provide security personnel for the act being promoted and not the venue. Those personnel must be licensed by the appropriate state agency, must not be in possession of any firearms without the appropriate state license and must advise the Chief of Police of their intent to carry a firearm 10 days prior to the event

**8. What are the venue/business owner's responsibilities?**

- A. If a venue is using a promoter, the promoter needs to be permitted or qualify for the exemption. The venue also needs to have a contract with the promoter. Additionally, the venue must comply with their entertainment permit and all laws relating to their business and the ABC laws.

**9. Are promoters responsible for only the customers they bring to a venue?**

- A. The venue is always responsible to screen the customers.

**10. Can promoters have a security contingent?**

A: The venue is always responsible for security. However, the promoter may hire security personnel for the act being promoted (see Section 6.62.370).

**11. Why does the City need to be indemnified?**

A: This is a standard requirement in all City contracts and for all business regulated by Title 6. It requires the permit holder to indemnify, defend and hold harmless the City for the permittee's acts of negligence if a lawsuit is filed against the permittee and the City.

**12. Who will administer the promoter permit?**

A: The Police Department.

**13. What is the cost of the permit?**

A: The approximate cost of the permit is \$1000 based on 10 hours of staff time.

**14. What is the process for obtaining a permit?**

A: The applicant would fill out an application at the SJPD Permits Unit. The applicant would then need to go to the Sheriff's Office and get fingerprinted. The applicant would pay a fee for the permit. Once the permit was issued, the applicant would need to be photographed and be given an identification card that they would have to have on their person.

**15. How long does it take to obtain a permit?**

A: Between 14 to 90 days, depending on the volume of permit applications and other work police and city departments must do.

**16. Does this ordinance apply Citywide or only Downtown San Jose?**

A: Citywide.

**17. Will the Convention Center and HP Pavilion be subject to the Promoter Permit ordinance?**

A: No. The ordinance does not require promoters of downtown special events or promoters promoting events at City-owned or operated facilities to obtain a permit because the operators of those venues are subject to specific indemnification, insurance, security requirements and performance standards which make the operators liable for the type of activities the Police are not able to address in private venues using promoters.

**18. If my promoter permit is denied, suspended or revoked what recourse do I have?**

A: If a permit is denied, suspended or revoked, the applicant can appeal to the Chief of Police. The process is found in Section 6.62.400 of the proposed ordinance and Chapter 6.02 of the existing SJMC.

- If the applicant is not satisfied with the decision of the Chief of Police, the decision can be further appealed to the Appeals Hearing Board (SJMC, Section 6.02.230)
  - The Appeals Hearing Board is comprised of seven citizens of San Jose, all with different backgrounds, who hear all matters regarding Code Enforcement, including, denial, suspension or revocation of Title 6 permits.

**19. For what reason(s) can the permit be denied, suspended or revoked?**

A: The permit can be denied for those things as spelled out in SJMC, Section 6.02.130, some of which include,

- Violation of the terms and conditions of the permit or other requirements of the San Jose Municipal Code.
- The permittee has conducted the permitted business in a manner that creates a public nuisance on or within 150 feet of the licensed premises
- Conviction of a crime if the crime is substantially related to the qualifications, functions or duties of the business
- Conviction of a felony within the previous five years
- Conviction for commission of acts involving dishonesty, fraud, or deceit with the intent to substantially benefit the applicant or another or substantially injure another
- Commission of acts which would constitute a felony or which would constitute a crime if the crime is substantially related to the qualifications, functions, or duties of the business
- Knowingly make a false statement of fact or omitting a fact required in an application
- Employment or contracting for the services of a manager whose ownership has been denied or revoked
- The holding of an ownership interest of more than ten percent of a business whom the department head has not approved through the application process
- Failure to pay any disturbance response fee
- A prior permit application has been denied, revoked or suspended by the city or any state, county or local agency on one or more of the grounds provided within five years prior to the date of the current application