

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE REPEALING SECTION 6.02.160 OF CHAPTER 6.02 AND AMENDING VARIOUS SECTIONS AND ADDING SECTIONS TO CHAPTER 6.60 OF TITLE 6 OF THE SAN JOSE MUNICIPAL CODE TO LIMIT THE APPLICATION OF THE PUBLIC ENTERTAINMENT PERMIT ORDINANCE TO VENUES WITH OCCUPANCY GREATER THAN ONE HUNDRED, LIMIT THE DISCRETION OF THE CHIEF OF POLICE IN APPROVING APPLICATIONS FOR PERMITS AND LICENSES AND IN SETTING CONDITIONS ON PERMITS AND LICENSES, SPECIFY TIME LINES BY WHEN AN APPLICATION FOR A PERMIT OR LICENSE MUST BE ACTED UPON, ADJUST SECURITY REQUIREMENTS, EXTEND THE TERM OF PUBLIC ENTERTAINMENT PERMITS, CREATE A RENEWAL PROCESS FOR PERMITS AND LICENSES, PROVIDE FOR MANAGERS TO MOVE BETWEEN VENUES, CLARIFY THE APPLICATION PROCESS FOR PERMITS AND LICENSES AND CLARIFY PROVISIONS TO ENSURE CONSISTENCY THROUGHOUT THE CODE

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

SECTION 1. Section 6.02.160 of Chapter 6.02 of Title 6 of the San José Municipal Code is hereby repealed.

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

6.60.011 Entertainment License

“Entertainment License” means that Public Entertainment ownership/management license required by Section 6.60.060 of the Code.

SECTION 3. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.012 Entertainment Permit

“Entertainment Permit” means that Public Entertainment Business permit required by Section 6.60.040 of the Code.

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

6.60.01~~3~~4 Licensee

“Licensee” means and includes the holder of an Public-Entertainment ownership/management-Ilicense and any Persons required to have an Entertainment License under this Chapter, whether or not such Persons are actually so licensed.

SECTION ~~5~~3. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.015 Manager

“Manager” means any Person performing the type of duties generally performed by a general manager or supervisor, an assistant manager or supervisor, or a security manager or supervisor, including, but not limited to the following: supervising employees or agents of the Permittee; making business decisions about the Permittee’s Public Entertainment business, including but not limited to

hiring, disciplining or firing employees, and contracting with agents or other Persons; making decisions regarding the resolution of significant operational issues that arise during the Permittee's hours of operation; making final decisions about the scheduling of the Permittee's employees or agents; having primary responsibility for the opening or closing of the Permittee's Public Entertainment business; and, being a Person to whom Permittee's employees and agents direct any City official responsible for enforcing the provisions of this Code for responses to directives, questions or requests for information.

SECTION 64. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.018 Patron

"Patron" means any Person present at the Public Entertainment ~~b~~Business, whether such Person is a paying customer or guest. Patron does not include owners or employees of the Public Entertainment ~~b~~Business.

SECTION 7. Section 6.60.020 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.020 Permittee

"Permittee" means and includes the holder of an Entertainment Permit and any Persons required to be permitted under this Chapter, whether or not such Persons are actually so permitted.

SECTION 85. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.022 Person

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

SECTION 96. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.025 Premises

“Premises” means the location of the Public Entertainment ~~b~~Business.

SECTION 107. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.028 Public Entertainment

“Public Entertainment” means any of the following activities:

- A.. Dancing;
- B.. Singing;
- C.. Audience participation in the entertainment; or
- D.. Live entertainment.

SECTION 118. Section 6.60.030 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.030 Public Entertainment Business

- A. “Public Entertainment Business” means a business open to the public where alcohol is sold on the Premises, the Premises has a maximum occupant load that exceeds one-hundred (100) Persons, as determined by the Fire Marshal of the San José Fire Department, and where one or more Public Entertainment activities are also provided or allowed.

- B. “Public Entertainment Business” shall not include taverns, bars, lounges, cocktail lounges and other drinking establishments where electronically reproduced music emanating from a loudspeaker system is provided for the listening pleasure of Patrons, so long as no other Public Entertainment is provided or allowed.

SECTION 129. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.035 Security Personnel

“Security Personnel” means any Person(s) who perform(s) security related tasks on behalf of the Permittee or Licensee, including, but not limited to: removing problem Patrons from the Premises, removing illegal contraband from Patrons at the Premises, checking identifications of Patrons to ensure minimum age compliance with local and state laws, and escorting Patrons from the Premises.

SECTION 130. Section 6.60.040 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.040 Public Entertainment Business Permit Required

It shall be unlawful for a Person to maintain, manage, operate, conduct, control or own a Public Entertainment Business unless the Public Entertainment Business is maintained and operated in strict compliance with a valid ~~Public-Entertainment Business p~~Permit (“~~Entertainment Permit~~”).

SECTION 144. Section 6.60.060 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.060 Public Entertainment Ownership/Management License Required

A. It shall be unlawful for any Person to work as a Manager or have an ownership interest in a Public Entertainment Business without having first obtained an ~~Public-Entertainment ownership/management l~~icense (“~~Entertainment License~~”) from the Chief of Police.

- B. It shall be unlawful for a Public Entertainment Business to allow any Person to work as a Manager or have an ownership interest in the Public Entertainment Business without such Person first having obtained an Entertainment License from the Chief of Police.

- C. An Entertainment Permit issued to a Public Entertainment Business may also serve as the Entertainment License for the Person who is authorized by the Public Entertainment Business to apply for an Entertainment Permit on behalf of the Public Entertainment Business, has applied for the Entertainment Permit on behalf of the Public Entertainment Business, and is required by this Chapter to obtain an Entertainment License.

SECTION 152. Part 1 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.070 Identification Card Requirements

- A. Upon the issuance of an Entertainment License to an owner or a Manager, the Chief of Police shall also issue a Public Entertainment identification (“ID”) card to the owner or Manager containing whatever information submitted by the owner or Manager pursuant to Sections 6.60.345 and 6.60.346 as the Chief of Police may deem necessary for the proper identification of the owner, Manager and the Public Entertainment Business with which the owner or Manager is associated.

- B. Each owner and Manager of a Public Entertainment Business shall, at all times while on the Premises, carry on his or her person a Public Entertainment ID card issued by the Chief of Police pursuant to this Section.

- C. The Public Entertainment ID card shall be updated every two (2) years, at the earlier of either the two-year review of the owner's Entertainment License, as provided for in Section 6.60.371, or at the renewal of the Entertainment License for the owner or the Manager, as provided for in Section 6.60.375.

SECTION 163. 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 And License Conditions

- A. The provisions of this Part shall constitute terms and conditions applicable to each Entertainment Permit and each Entertainment License issued pursuant to this Chapter.
- B. The provisions of this Part shall also constitute operating regulations that are applicable to each holder of an Entertainment Permit and each holder of an Entertainment 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 provisions of this Chapter.

~~D. For purposes of this Part, any reference to "Permittee" shall also include any Person in possession of an Entertainment 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 174. Section 6.60.220 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.220 Conditional Use or Planned Development Permit

The Permittee shall maintain a valid conditional use permit, a valid planned development permit, or evidence of a legal nonconforming use for the Premises which is satisfactory to the City.

SECTION 185. Section 6.60.240 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.240 Security

The Permittee shall comply with, and ensure that the Permittee's owners, Managers and employees comply with the standards for internal and external security arrangements specified below.

- A. There shall be a minimum of one (1) Security Personnel on duty for up to and including the first fifty (50) Patrons on site. Once the number of Patrons exceeds fifty (50), there shall be an additional one (1) Security Personnel on duty for up to and including every additional fifty (50) Patrons on site. "On site" means and includes all Patrons within the Premises and waiting in line to enter the Premises.
- B. The Security Personnel required to be on site pursuant to subsection A. shall be on duty when the Public Entertainment begins or 9:00 p.m., whichever occurs first in time, and shall remain on duty for at least one-half (1/2) hour after the Public Entertainment Business has closed or after all Patrons have vacated the area immediately surrounding the Premises

and the adjacent parking lots used by Patrons, whichever occurs later in time.

- C. The Security Personnel shall provide security inside the Premises, along the outside perimeter of the Premises, and at parking sites immediately adjacent to the Premises and used by Patrons.
- D. If found, Security Personnel shall remove any illegal contraband from Patrons, report its existence to the San José Police Department, identify the person in possession of the illegal contraband and immediately turn it over to the proper law enforcement authorities.
- E. All Security Personnel shall register and maintain valid registration status with the State of California's Department of Consumer Affairs ("State"). At no time, shall any Security Personnel register with the State at any level that is less than that of a Proprietary Private Security Officer. Proof of application and registration for all Security Personnel shall be maintained by the Permittee and shall consist of copies of all relevant documentation including: application forms, receipts for application fees and live scan fees, and actual proof of registration.
- F. At closing time, the Security Personnel shall be responsible for clearing the Permittee's Patrons from the sidewalk and street areas in front of the Premises and from other areas accessible to Persons around the perimeter and within one-hundred and fifty (150) feet of the Premises.
- G. While on duty, all Security Personnel shall wear a nameplate containing the Security Personnel's full name and the word "SECURITY" printed in bold, capital letters. The nameplate shall be exhibited prominently on the

clothing, at chest level, and shall be visible and easily read at all times. The nameplate shall be a minimum of two (2) inches high and four (4) inches wide, with the required information printed in capital letters at least three-fourths ($\frac{3}{4}$) inches high and in a contrasting color. As an alternative to a nameplate, the Security Personnel's name and the word "SECURITY" may be embroidered on the Security Personnel's outermost garment with the required information meeting the above specifications and located at chest level.

- H. The Permittee shall not allow any Security Personnel to, and no Security Personnel shall, sit at the bar, consume alcoholic beverages or any controlled substance, be under the influence of alcoholic beverages or any controlled substance, or engage in any other violations of law while on duty.
- I. The Permittee shall not allow any Security Personnel to be, and no Security Personnel shall be, in possession of any firearm while on the Premises without first having obtained a license from the appropriate state or local agency authorizing the Security Personnel to be in possession of a firearm.
- J. If the Permittee employs Security Personnel that will be in possession of a firearm while on the Premises, the Security Personnel shall, no less than (10) days prior to the date he or she will begin employment with the Permittee, provide the Chief of Police with the following:

1. A copy of the license issued to the Security Personnel by the appropriate state or local agency authorizing him or her to possess such firearm;
2. A copy of his or her law enforcement identification (if he or she is employed by a law enforcement agency); and
3. A copy of his or her California Driver's license or California identification card.

SECTION 196. Section 6.60.250 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.250 Waiting Lines

The Permittee shall at all times manage waiting lines outside the Premises to ensure there are no impediments to pedestrian travel in the pedestrian walkway, no blockage of neighboring businesses, and no disturbances of the public peace.

SECTION 2017. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.255 On-Site Manager

- A. At least one (1) Manager in possession of a valid Entertainment License shall be on the Premises at all times while Public Entertainment is being provided. Said Manager shall 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 to implement the requirements of this Code or to enforce any other local, state or federal law.

- B. In the event a Permittee terminates employment of a Manager or hires new Persons to manage the Public Entertainment Business, the Permittee shall, within ten (10) days of the change in management, report such change, in writing, to the Chief of Police.

SECTION 2148. Section 6.60.270 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.270 Occupancy Limit

The Permittee shall comply with the maximum occupancy load as set by the Fire Marshal of the San José Fire Department.

SECTION 2249. Section 6.60.300 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.300 Procedures and Determinations

- A. The procedures set forth in Part 1.5 of Chapter 6.02 for summary suspension shall govern the summary suspension of any Entertainment Permit or Entertainment License issued pursuant to this Chapter.
- B. Any other actions taken by the City regarding an application for a new Entertainment Permit or Entertainment License or an existing Entertainment Permit or Entertainment License shall be governed by the provisions set forth in Sections 6.60.310 through 6.60.390.

SECTION 239. Section 6.60.320 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.320 Term of Permit and Licenses

- A. Subject to the conditions set forth in Section 6.60.371, each Entertainment Permit issued under this Chapter and each Entertainment License issued to an owner under this Chapter shall expire four (4) years after the date of issuance.
- B. Each Entertainment License issued to a Manager under this Chapter shall expire two (2) years after the date of issuance.

SECTION 244. Section 6.60.330 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to read as follows:

6.60.330 Public Entertainment Fees

Fees for Entertainment Permit and Entertainment License applications, Entertainment Permit and Entertainment License renewal applications, change of venue applications, Public Entertainment ID cards and fingerprinting shall be as set forth in the schedule of fees and charges established by Council Resolution.

SECTION 252. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.335 Application - Form

An application for any Entertainment Permit or Entertainment License required by this Chapter must be filed on the form provided by the Chief of Police.

SECTION 263. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.340 Separate Permit or License

- A. Each and every Public Entertainment Business shall be required to secure its own separate Entertainment Permit in accordance with the requirements of this Chapter, regardless of whether the Public Entertainment Business shares the same owners, operators or Managers as another Public Entertainment Business.
- B. Each and every owner and Manager of a Public Entertainment Business shall be required to secure his or her own separate Entertainment License in accordance with the requirements of this Chapter for each and every Public Entertainment Business he or she has an ownership interest in or he or she manages.

SECTION 274. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.345 Permit Application

- A. Applications for a new Entertainment Permit shall contain or be accompanied by the following:

1. If the applicant is:
 - a. An individual, the individual shall state his or her legal name and any aliases and shall submit satisfactory proof that he or she is twenty-one (21) years of age.
 - b. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any.
 - c. A closely held corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors and of each stockholder, and the name and address of the registered corporate agent for service of process.
 - d. A corporation, other than a closely held corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation, evidence that the corporation is in good standing and authorized to do business in the state of California, the names and capacity of all officers, directors and principal owners, and the name and address of the registered corporate agent for service of process.
 - e. A limited liability company, the company shall state its complete name, the date of filing of the articles of organization and operating agreement, and the names of all managers and members.

2. The legal name under which the Public Entertainment Business is to be conducted;
3. The physical address and all telephone numbers of the proposed Public Entertainment Business;
4. Proof of the applicant's right to possess the Premises where the Public Entertainment Business is proposed to be conducted and proof that conducting a Public Entertainment Business from the Premises does not violate the terms of any contract or lease regarding the Premises;
5. The following personal information concerning the applicant, if an individual; and concerning each stockholder, each officer and each director, if the applicant is a closely held corporation; and concerning each partner, including limited partners, having an ownership interest in the business of more than ten percent (10%), if the applicant is a partnership; and concerning each of the Managers or other Person in charge of the operation of the business:
 - a. Complete legal name, and any aliases;
 - b. Date of birth;
 - c. Current residence address (post office boxes will not be deemed to satisfy this requirement);

- d. If the Person has resided at the current residence address for less than three (3) years, the previous addresses immediately prior to the present address for the last three (3) years;
 - e. A copy of a valid government issued photo identification card or valid government issued driver's license;
 - f. The business history experience, including but not limited to, whether or not the Person previously operating in this City or anywhere in the United States under any permit or license issued to an entertainment venue or a public drinking establishment, has had such a permit or license denied, revoked or suspended and the reasons therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation;
 - g. All criminal convictions for any offense listed in Section 6.60.370, the jurisdiction in which the conviction occurred, and the circumstances thereof;
 - h. One set of fingerprints in a form provided by the department.
6. Proof of payment of any applicable business tax for the Public Entertainment Business which is due to the City pursuant to Chapter 4.76 of the Code;
7. A copy of all permits, licenses or other authorization required by the City or any other federal, state or local agency for the Premises and for the operation of the Public Entertainment Business, including but not limited to

any and all permits, licenses and authorizations required by the California Department of Alcoholic Beverage Control, the County Department of Health, the City's Department of Planning, Building and Code Enforcement, and the Fire Marshal;

8. The name, telephone number and address of the Person authorized to accept service of process on behalf of the Public Entertainment Business and all its owners;
 9. The complete legal name of all Persons who will serve as Managers for the Public Entertainment Business;
 11. Authorization for the Chief of Police to seek other information that the Chief of Police considers necessary for a complete investigation and to conduct an investigation into the truth of the statements set forth in the application, including, but not limited to, a criminal history investigation with the California Department of Justice and other law enforcement agencies;
 12. A dated statement signed by the applicant, or the Person authorized to represent and legally bind the applicant, certifying under penalty of perjury that the information provided by the applicant is true and correct.
- B. An application shall not be deemed complete until all the information required in subsection A. has been provided to the Chief of Police and the required fees and any applicable business tax required pursuant to Chapter 4.76 of the Code have been paid.

SECTION 285. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.346 License Application

A. Applications for a new Entertainment License shall contain or be accompanied by the following:

1. If the applicant is:

- a. An individual, the individual shall state his or her legal name and any aliases and shall submit satisfactory proof that he or she is twenty-one (21) years of age.
- b. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any.
- c. A closely held corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors and of each stockholder, and the name and address of the registered corporate agent for service of process.
- d. A corporation, other than a closely held corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation,

evidence that the corporation is in good standing and is currently authorized to do business in the state of California, the names and capacity of all officers, directors and principal owners, and the name and address of the registered corporate agent for service of process.

- e. A limited liability company, the company shall state its complete name, the date of filing of the articles of organization and operating agreement, and the names of all managers and members.
2. The legal name of the Public Entertainment Business the applicant has an ownership interest in or will be managing;
 3. The physical address and all telephone numbers of the Public Entertainment Business the applicant has an ownership interest in or will be managing;
 4. The following personal information concerning the applicant, if an individual; and concerning each stockholder, each officer and each director, if the applicant is a closely held corporation; and concerning each partner, including limited partners, having an ownership interest in the business of more than ten percent (10%), if the applicant is a partnership:
 - a. Complete legal name, and any aliases;
 - b. Date of birth;

- c. Current residence address (post office boxes will not be deemed to satisfy this requirement);
 - d. If the Person has resided at the current residence address for less than three (3) years, the previous addresses immediately prior to the present address for the last three (3) years;
 - e. A copy of a valid government issued photo identification card or valid government issued driver's license;
 - f. The business history experience, including but not limited to, whether or not the Person previously operating in this City or anywhere in the United States under any permit or license issued to an entertainment venue or a public drinking establishment, has had such a permit or license denied, revoked or suspended and the reasons therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation;
 - g. All criminal convictions for any offense listed in Section 6.60.370, the jurisdiction in which the conviction occurred, and the circumstances thereof;
 - h. One set of fingerprints in a form provided by the San José Police Department.
5. Authorization for the Chief of Police to seek other information that the Chief of Police considers necessary for a complete investigation and to conduct an investigation into the truth of the statements set forth in the

application, including, but not limited to, a criminal history investigation with the California Department of Justice and other law enforcement agencies; and

6. A dated statement signed by the applicant, or the Person authorized to represent and legally bind the applicant, certifying under penalty of perjury that the information provided by the applicant is true and correct.
- B. An application shall not be deemed complete until all the information required in subsection A. has been provided to the Chief of Police and the required fees have been paid.

SECTION 296. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.350 Posting and Exhibition of Permit or License

- A. Every Person shall keep any Entertainment Permit or Entertainment License issued pursuant to this Chapter exhibited prominently in a conspicuous public place on the Premises named in the Entertainment Permit or Entertainment License while engaged in the subject business.
- B. Any Entertainment Permit or Entertainment License issued pursuant to this Chapter shall be kept in a readily accessible place and shown to any City official responsible for enforcing the provisions of this Code upon request.

SECTION 3027. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.355 Investigation and Determination

- A. Upon receiving a completed application for an Entertainment Permit or Entertainment License, the Chief of Police shall investigate the information required in Section 6.60.345.
- B. The Chief of Police shall also coordinate the investigation of the Premises for the purpose of assuring that the Premises complies with the requirements of this Chapter and applicable public health, safety, welfare and zoning laws set forth in this Code and in federal, state and local laws.
- C. The Chief of Police shall make a determination to approve or deny the application within forty-five (45) days after the applicant has submitted a complete application.

SECTION 3128. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.365 Criminal Background Investigation

The Chief of Police shall conduct a criminal background investigation on any Person applying for an Entertainment Permit or Entertainment License under this Chapter.

SECTION 3229. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.370 Denial, Suspension or Revocation

An application for an Entertainment Permit or Entertainment License shall be denied, and an Entertainment Permit or Entertainment License issued pursuant to this Chapter may be suspended or revoked by the Chief of Police upon any of the following grounds:

- A. Conviction of the applicant, Permittee or Licensee, within the last five (5) years, of any misdemeanor under the California Penal Code involving the following:
1. The use of violence, force, fear, fraud or deception;
 2. Lewd or lascivious acts;
 3. Prostitution;
 4. The use of money to engage in criminal activity;
 5. The employing or paying of any Person upon the Premises where alcoholic beverages are sold to procure or encourage the purchase or sale of alcoholic beverages;
 6. The sale of distilled spirits in any package which has been refilled or partly refilled; or
 7. The maintenance of a disorderly Premises.
- B. Conviction of the applicant, Permittee or Licensee, within the last ten (10) years, of any felony under the California Penal Code involving the following:

1. The use of violence, force, fear, duress, menace, fraud or deception;
 2. Pimping or pandering;
 3. Lewd or lascivious acts;
 4. The use of money to engage in criminal activity; or
 5. The unlawful possession, sale, distribution or transportation of a controlled substance.
- C. Knowingly making a false statement of fact or omitting a fact required to be revealed in an application for the Entertainment Permit or Entertainment License, or in any amendment or report or other information required to be made thereunder;
- D. The Premises in which the permitted or licensed activity will occur is in violation of any building, zoning, health, safety, fire, police or other provision of this Code or of county, state or federal law which substantially affects the public health, welfare or safety;
- E. Violation of the terms and conditions of the Entertainment Permit or Entertainment License or other requirements of this Chapter within the past five (5) years;
- F. The applicant, Licensee or Permittee has owned or leased a premises that has been the subject of an administrative, civil or criminal nuisance abatement action

and court judgment or administrative determination finding the premises to be a nuisance within the past five (5) years;

- G. Employment or otherwise contracting for the services of a Manager whose application for an Entertainment License has been denied, or whose Entertainment License has been suspended or revoked;
- H. The holding of any ownership interest of more than ten percent (10%) of a business, other than a publicly traded corporation, by any Person whom the Chief of Police has not approved through any applicable Entertainment License application procedure;
- I. Failure to pay any disturbance response fee imposed pursuant to Section 6.02.310;
- J. A prior permit or license application to operate or manage an entertainment venue or public drinking establishment in the City or anywhere in the United States has been denied by the City or any federal, state, or local agency on one or more of the grounds provided in this Section within five (5) years prior to the date of the current application;
- K. A permit or license issued by the City or any federal, state, or local agency to operate or manage an entertainment venue or public drinking establishment anywhere in the United States has been revoked or suspended within the past five (5) years;
- L. The applicant, Licensee or Permittee has conducted the Public Entertainment Business, in a manner that creates or results in a public nuisance, as defined in

Section 1.13.050 of this Code or Sections 3479 and 3480 of the California Civil Code, on or within one hundred fifty (150) feet of the Premises;

- M. If the applicant is a corporation, the corporation is not in good standing in the state of California or is not authorized to do business in the state of California;
- N. Conducting a Public Entertainment Business, or allowing or offering Public Entertainment at the Premises for which the Entertainment Permit or Entertainment License is sought, is prohibited under the terms of any contract or lease for that Premises.

SECTION 339. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new section to be numbered, entitled and to read as follows:

6.60.371 Two-Year Review on Permit and Owner License

Each Entertainment Permit issued under this Chapter and each Entertainment License issued to an owner under this Chapter shall be subject to review two (2) years into the term of such permit or license as follows:

- A. No later than sixty (60) calendar days prior to the two (2)-year anniversary date of each Entertainment Permit or Entertainment License issued to an owner, the Permittee or Licensee shall contact the Chief of Police to schedule a two (2)-year review of the Entertainment Permit or Entertainment License.
- B. Prior to the review, the Permittee shall provide the Chief of Police with copies of current and valid permits, licenses and authorizations required by the City or any

other federal, state or local agency for the Premises and for the Public Entertainment Business.

- C. Prior to the review, the owner Licensee shall pay the fee for and obtain a new Public Entertainment ID card as required by Section 6.60.070.
- D. For purposes of the Permittee, if the required documents have been provided to the Chief of Police, the Entertainment Permit will continue to be valid through the expiration date noted on the Entertainment Permit.
- E. For purposes of the owner Licensee, if the fees for the Public Entertainment ID card have been paid and a new Public Entertainment ID card has been obtained, the Entertainment License will continue to be valid through the expiration date noted on the Entertainment License.
- F. If the Permittee or Licensee has not complied with the requirements set forth in this Section, the Chief of Police may take such action as the Chief deems necessary to implement the intent of this Chapter, including but not limited to suspension and revocation of the Entertainment Permit or Entertainment License.

SECTION 344. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.375 Renewal of Permit or License

- A. An application to renew an Entertainment Permit or an Entertainment License issued to an owner or a Manager shall be filed with the Chief of Police as follows:
1. The application to renew must be filed on the form provided by the Chief of Police;
 2. The application to renew must be filed no later than sixty (60) days prior to the expiration date of the current Entertainment Permit or Entertainment License; and
 3. The application shall contain or be accompanied by the following:
 - a. A statement by the applicant detailing any changes in the information and documents required under this Chapter for the initial Entertainment Permit or Entertainment License application, including but not limited to:
 - (1) Any change in the Permittee's or Licensee's legal name, residence, phone number or other contact information;
 - (2) Any change in management for the Public Entertainment Business;
 - (3) Modifications to permits, licenses or other authorizations required by any other federal, state or local agency or by the

City for the Premises and for the Public Entertainment Business;

- (4) Changes in the applicant's criminal history; and
- (5) Changes in the applicant's government issued photo identification card or government issued driver's license.

- b. If the renewal application seeks to renew an Entertainment Permit, the applicant shall submit copies of current and valid permits, licenses or other authorizations required by any other federal, state or local agency or by this Chapter for the Premises and for the Public Entertainment Business;
- c. Authorization for the Chief of Police to seek other information that the Chief of Police considers necessary for a complete investigation and to conduct an investigation into the truth of the statements set forth in the application to renew, including, but not limited to, a criminal history investigation with the California Department of Justice and other law enforcement agencies;
- d. A dated statement signed by the applicant, or the Person authorized to represent and legally bind the applicant, certifying under penalty of perjury that the information provided by the applicant is true and correct.

B. An application to renew shall not be deemed complete until all the information required in subsection A. has been provided to the Chief of Police and the

required fees and any applicable business tax required pursuant to Chapter 4.76 of the Code have been paid.

- C. If such application to renew an Entertainment Permit or Entertainment License is not filed, or the renewal fees are not paid, prior to the expiration date of the current Entertainment Permit or Entertainment License, the Entertainment Permit or Entertainment License shall be deemed to have expired on the date of expiration noted on the Entertainment Permit or Entertainment License and the Permittee or Licensee shall be required to complete an application for a new Entertainment Permit or Entertainment License pursuant to Section 6.60.345 or 6.60.346 and pay the fees associated with the filing of an application for a new Entertainment Permit or Entertainment License.

SECTION 352. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.380 Penalty for Late Renewal

Any Person who fails for more than thirty (30) calendar days after the expiration of any Entertainment Permit or Entertainment License issued to apply for a new Entertainment Permit or Entertainment License and who continues to operate or manage the Public Entertainment Business with which the Person's Entertainment Permit or Entertainment License is associated shall pay to the City a penalty of ten percent (10%) of the amount of the Entertainment Permit or Entertainment License fee. Such penalty shall be paid at the time the Person applies for a new Entertainment Permit or Entertainment License.

SECTION 363. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.381 Investigation and Determination - Renewal

- A. Upon receiving a completed application to renew, the Chief of Police shall investigate the information required in Section 6.60.375.
- B. The Chief of Police shall also coordinate the investigation of the Premises for the purpose of assuring that the Premises complies with the requirements of this Chapter and applicable public health, safety, welfare and zoning laws set forth in this Code and in federal, state and local laws.
- C. The Chief of Police shall make a determination to approve or deny the application to renew an Entertainment Permit or Entertainment License within forty-five (45) days after the applicant has submitted a complete application.
- D. Any Entertainment Permit or Entertainment License issued to an owner and approved by the Chief of Police for renewal shall be subject to the provisions of Section 6.60.371.

SECTION 374. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.382 Criminal Background Investigation - Renewal

The Chief of Police shall conduct a criminal background investigation on any Person applying to renew an Entertainment Permit or Entertainment License under this Chapter.

SECTION 385. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.383 Denial – Renewal

An application to renew an Entertainment Permit or Entertainment License shall be denied by the Chief of Police upon any of the following grounds:

- A. Conviction of the applicant within the last five (5) years, of any misdemeanor under the California Penal Code involving the following:
1. The use of violence, force, fear, fraud or deception;
 2. Lewd or lascivious acts;
 3. Prostitution;
 4. The use of money to engage in criminal activity;
 5. The employing or paying of any Person upon the Premises where alcoholic beverages are sold to procure or encourage the purchase or sale of alcoholic beverages;
 6. The sale of distilled spirits in any package which has been refilled or partly refilled; or
 7. The maintenance of a disorderly Premises.

- B. Conviction of the applicant within the last ten (10) years, of any felony under the California Penal Code involving the following:
1. The use of violence, force, fear, duress, menace, fraud or deception;
 2. Pimping or pandering;
 3. Lewd or lascivious acts;
 4. The use of money to engage in criminal activity; or
 5. The unlawful possession, sale, distribution or transportation of a controlled substance.
- C. Knowingly making a false statement of fact or omitting a fact required to be revealed in an application to renew an Entertainment Permit or Entertainment License, or in any amendment or report or other information required to be made thereunder;
- D. The Premises in which the permitted or licensed activity will occur is in violation of any building, zoning, health, safety, fire, police or other provision of this Code or of county, state or federal law which substantially affects the public health, welfare or safety;
- E. Violation of the terms and conditions of the Entertainment Permit or Entertainment License or other requirements of this Chapter which have not been corrected;

- F. The Premises or the Public Entertainment Business has been the subject of an administrative, civil or criminal nuisance abatement action and court judgment or administrative determination finding the Premises or the Public Entertainment Business to be a nuisance within the past five (5) years;
- G. Employment or otherwise contracting for the services of a Manager whose application for an Entertainment License has been denied or revoked, or whose Entertainment License has been suspended and the violations leading to the suspension have not been corrected;
- H. The holding of any ownership interest of more than ten percent (10%) of a Public Entertainment Business, other than a publicly traded corporation, by any Person whom the Chief of Police has not approved through any applicable Entertainment License application procedure;
- I. Failure to pay any disturbance response fee imposed pursuant to Section 6.02.310;
- J. A permit or license issued by the City or any federal, state, or local agency for the Premises or for the Public Entertainment Business has been suspended and the suspension has not been lifted or the violations leading to that suspension have not been corrected;
- K. A permit or license issued by the City or any federal, state, or local agency for the Premises or the Public Entertainment Business has been revoked;
- L. The applicant has conducted the Public Entertainment Business in a manner that creates or results in a public nuisance, as defined in Section 1.13.050 of this

Code or Sections 3479 and 3480 of the California Civil Code, on or within one hundred fifty (150) feet of the Premises, and the applicant failed to abate the public nuisance after being requested by the City to do so;

- M. If the applicant is a corporation, the corporation is not in good standing in the state of California or authorized to do business in the state of California;
- N. Conducting a Public Entertainment Business, or allowing or offering Public Entertainment at the Premises for which the renewal of the Entertainment Permit or Entertainment License is sought, is prohibited under the terms of any contract or lease for that Premises.

SECTION 396. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.385 Permit And License Nontransferable

No Person shall assign or transfer any Entertainment Permit or Entertainment License issued under this Chapter and any attempt to assign or transfer any Entertainment Permit or Entertainment License issued under this Chapter shall render the Entertainment Permit or Entertainment License void.

SECTION 4037. Part 3 of Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

6.60.390 License – Change of Venue – Managers

- A. A Manager may cease employment at one Public Entertainment business and begin employment with a different Public Entertainment business without having to apply for a new Entertainment License by complying with the following:
1. An application for a change of venue must be filed with the Chief of Police prior to the expiration of the Manager's Entertainment License on the form provided by the Chief of Police;
 2. Applications for change of venue shall contain or be accompanied by the following:
 - a. A copy of the Manager's current Entertainment License;
 - b. An affidavit from the prospective Public Entertainment Business employer indicating its intent to hire the applicant as a Manager;
 - c. A copy of the current Entertainment Permit for the prospective Public Entertainment Business employer;
 - d. Payment for the issuance of a new Public Entertainment ID card;
and
 - e. A dated statement signed by the applicant certifying under penalty of perjury that the information provided by the applicant is true and correct.

- B. An application for change of venue shall not be deemed complete until all the information required in subsection A. has been provided to the Chief of Police and the required fees for change of venue have been paid.
- C. Once the application has been accepted by the Chief of Police as complete, the Chief of Police shall grant the application for change of venue and issue to the applicant a new Entertainment License and a new Public Entertainment ID card, both reflecting the new Public Entertainment Business information.
- D. A change of venue shall in no way modify the term of the Manager's current Entertainment License.
- E. Notwithstanding the issuance of a change of venue, the requirements for Section 6.60.340 pertaining to separate permits and licenses must still be satisfied.

SECTION 4138. Chapter 6.60 of Title 6 of the San José Municipal Code is amended to add a new Part, to be numbered, entitled and to read as follows:

Part 5
Hearing And Appeal Procedure

6.60.500 Notice of Intended Decision

- A. Upon determining the existence of any of the grounds for denial, suspension, or revocation in accordance with Section 6.60.370 or Section 6.60.383, the Chief of Police shall issue to the applicant, Permittee or Licensee a notice of intended decision to deny, suspend or revoke the Entertainment Permit or Entertainment License.
- B. The notice of intended decision shall state all the grounds upon which the denial, suspension or revocation is based.
- C. The notice of intended decision shall advise that the denial, suspension or revocation shall become final unless the applicant, Permittee or Licensee files a written request for hearing before the Chief of Police within the time period specified in Section 6.60.510.
- D. In instances where an Entertainment Permit or Entertainment License is being revoked or suspended, the notice of intended decision shall specify the effective date of the revocation or suspension of such permit or license.

6.60.510 Procedure for Hearing Before the Chief of Police

With regard to a request for hearing before the Chief of Police to appeal any notice issued pursuant to Section 6.60.500, the following rules shall apply:

- A. The written request for a hearing before the Chief of Police must be received by the Chief of Police within ten (10) calendar days of the date of service of the notice of intended decision to deny, suspend or revoke the Entertainment Permit or Entertainment License.
- B. Upon receipt of a timely written request for hearing, the Chief of Police shall schedule a hearing which shall be held no later than thirty (30) calendar days after receipt of the request, unless that time is waived by the applicant, Licensee or Permittee.
- C. The Chief of Police shall serve a notice of hearing on the applicant, Licensee or Permittee no later than ten (10) calendar days prior to the scheduled date of the hearing.
- D. At the hearing before the Chief of Police, the applicant, Licensee or Permittee shall be given the opportunity to present witnesses and documentary evidence.
- E. The hearing will be conducted informally and the technical rules of evidence shall not apply. Any and all evidence which the Chief of Police deems reliable, relevant and not unduly repetitious shall be considered.

6.60.520 Decision of the Chief of Police

- A. Within twenty (20) calendar days after the close of the hearing held pursuant to Section 6.60.510, the Chief of Police shall serve on the applicant, Licensee or Permittee a written decision sustaining, reversing or modifying his or her intended decision. If the Chief of Police sustains or modifies the intended decision, the Chief of Police may impose additional conditions upon the Entertainment License or Entertainment Permit if those conditions were reviewed at the hearing and the conditions are intended to protect the health, safety or welfare of the public or prevent the conduct or condition that led to the issuance of the intended notice from reoccurring.

- B. With regard to the denial of an application for an Entertainment Permit or Entertainment License, or the denial of an application to renew an Entertainment Permit or Entertainment License, an applicant who is dissatisfied with the Chief of Police's decision after the hearing shall have a choice of either filing an appeal with the San Jose Appeals Hearing Board under the terms set out in Section 6.60.530 or accepting the decision of the Chief of Police as final and seeking judicial review pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California.

- C. With regard to the suspension or revocation of an Entertainment Permit or Entertainment License, the decision by the Chief of Police after hearing shall become final unless the Licensee or Permittee files an appeal before the San Jose Appeals Hearing Board within the time period specified in Section 6.60.530.

6.60.530 Appeal to Board

- A. If an applicant, Licensee or Permittee is dissatisfied with the written decision issued by the Chief of Police pursuant to Section 6.60.520, he or she may file an appeal to the Board.
- B. The appeal must be in writing on a form provided by Board and received by the secretary of the Board within ten (10) calendar days of the date the Chief of Police's decision is served upon the applicant, Licensee or Permittee.
- C. The appeal hearing before the Board shall be conducted in accordance with the rules and regulations of the Board, but shall be heard no later than thirty (30) calendar days after the receipt of the appeal, or within the next two regularly-scheduled meetings of the Board, whichever is later in time.
- D. Within twenty (20) calendar days after the hearing before the Board, the Board shall serve upon the applicant, Licensee or Permittee a written decision sustaining, reversing or modifying the Chief of Police's decision.
- E. The decision by the Board after hearing shall be final for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California.

RD:AGN
10-14-10

PASSED FOR PUBLICATION OF TITLE this _____ day of _____, 2010, by
the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk