

# 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 ADDING A NEW CHAPTER 6.62, TO REQUIRE PROMOTERS TO BE PERMITTED OR LICENSED PRIOR TO PROMOTING EVENTS IN PUBLIC ENTERTAINMENT VENUES OR PUBLIC DANCEHALLS, AND REQUIRING THE OPERATORS OF THOSE VENUES TO USE ONLY PERMITTED OR LICENSED PROMOTERS**

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 by adding a section to be numbered and entitled and to read as follows:

**6.58.150 Use Of Event Promoters And Record Retention**

- A. No permittee shall use, hire, employ or otherwise avail itself of the services of an event promoter, as defined in Chapter 6.62, to promote any public dance if the event promoter has failed to obtain a promoter business permit or promoter ownership/management license pursuant to Chapter 6.62.
- B. The permittee shall maintain a copy of any contract between the permittee and the event promoter on file at the permittee's principal place of business for a period of not less than two (2) years. The two (2) year period shall begin to run on the last day of operation of the specific event being promoted.
- C. A copy of the contract shall be made available for inspection upon request by the Chief of Police or any City official responsible for enforcing the provisions of this Code.

## **DRAFT**

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

### **6.60.295 Use Of Event Promoters And Record Retention**

- A. No permittee shall use, hire, employ or otherwise avail itself of the services of an event promoter, as defined in Chapter 6.62, to promote any event at the permitted business if the event promoter has failed to obtain a promoter business permit or promoter ownership/management license as required by Chapter 6.62.
- B. The permittee shall maintain a copy of any contract between the permittee and the event promoter on file at the permittee's principal place of business for a period of not less than two (2) years. The two (2) year period shall begin to run on the last day of operation of the specific event being promoted.
- C. A copy of the contract shall be made available for inspection by the Chief of Police or any City official responsible for enforcing the provisions of this Code.

**SECTION 3.** 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**

## DRAFT

### 6.62.010 Definitions

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

### 6.62.020 Event

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

### 6.62.030 Event Promoter

A. “Event promoter” means any person who:

1. Is directly or indirectly responsible for the organization of an event as evidenced by activities such as contracting with the principles, selecting entertainment, advertising or otherwise holding out the event to members of the general public, inviting participants to the event, or renting or controlling the event site; and
2. Directly or indirectly receives or shares in any of the following:
  - 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 the following:

## DRAFT

1. A print, broadcast or internet medium that is paid 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 for his performance at an event, but exercises no other financial or promotional responsibilities in connection with the event;
4. An agent of an entertainer or a performer who is compensated for negotiating his or her client's contract to perform at an event, but exercises no other financial or promotional responsibilities in connection with the performance;
5. An employee of any person permitted, or required to be permitted, under Chapter 6.58 of this Code, that engages in event promoter activities exclusively for that person in the course of such employment;
6. An employee of any person permitted or licensed, or required to be permitted or licensed, under Chapter 6.60 of this Code that engages in event promoter activities exclusively for that person in the course of such employment; or
7. An employee of the City of San Jose who engages in event promoter activities exclusively for the City of San Jose in the course of such employment.

# DRAFT

## Part 2 General Provisions

### 6.62.200 Business Permit Required

- A. It shall be unlawful for any event promoter to conduct business in the City without first having obtained an event promoter business permit from the Chief of Police.
- B. It shall be unlawful for any person to maintain, manage, operate, conduct, control or own a business engaged in event promotion in the City unless the business is maintained and operated in strict compliance with a valid event promoter business permit.

### 6.62.210 Ownership/Management License Required

- A. It shall be unlawful for any person to work as a manager or as an owner, as those terms are defined in Chapter 6.01, of a business engaged in event promotion in the City without first having obtained an event promoter ownership/management license from the Chief of Police.
- B. It shall be unlawful for an event promoter business permittee to have any person work as a manager or to be an owner in the event promotion business without that person first having obtained an event promoter ownership/management license from the Chief of Police.
- C. A natural person holding an event promoter business permit may also function as an owner/manager for the business without procuring a separate event promoter ownership/management license, unless the event promoter business permit

## **DRAFT**

expressly precludes such person from acting in an ownership/management capacity.

### **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 business permit and each event promoter ownership/management license 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 business permit and each holder of an event promoter ownership/management license issued pursuant to this Chapter.
  
- C. It shall be unlawful for any person permitted or licensed under this Chapter, or required to be permitted or licensed under this Chapter, to violate any of the provisions of this Part.

#### **6.62.310 Posting Of Permit And License**

Each event promoter shall post his permit or license issued 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 is promoting, carry on his person a promoter identification (ID) card issued by the Chief of Police containing

## DRAFT

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 or present 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 will occur.
  
- B. The contract shall include the following information:
  - 1. The event promoter's permit or license number;
  
  - 2. A photocopy, or other legible reproduction, of the event promoter's permit or license;
  
  - 3. The permit and/or license number of any other permit or license required for the event referred to in the contract;
  
  - 4. The legally-authorized maximum occupancy limit of each room, floor or other area where the event is to occur;
  
  - 5. The name and contact telephone number for the event promoter;
  
  - 6. The 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;

## DRAFT

7. A telephone number for the event promoter or his designated on-site representative that is a valid 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, who will be present during the event and the name of the security personnel's employer and telephone number;
  9. The name and date of birth of any security personnel, retained by either the event promoter or the person hiring the event promoter, who will be carrying a firearm during the event;
  10. The date(s), location and hours of the event;
  11. A list naming all entertainers and performers who will perform during the event;
  12. A general description of the methods that will be used for the promotion, marketing and advertising of the event; and
  13. The 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 site of the event for the duration of the event and shall be made available by the event promoter or his designated on-site representative for inspection upon request of the Chief of Police or any City official responsible for enforcing the provisions of this Code.

## DRAFT

- 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 service requiring a permit or license under this Chapter. Such records shall include, but not be limited to, any contracts, including the contract required by Section 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 donations collected at such events. The two (2)-year period shall begin to run on the last day of operation of the specific event being promoted.
- B. The records required by this Section shall be made available for inspection 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;

## DRAFT

2. Be permitted or licensed under Section 6.62.200 or 6.62.210 of this Chapter;
3. Be present on-site at all times during the event;
4. Comply with all laws and ordinances governing, or in any way connected with, the promotion or presentation of the event;
5. Comply with all conditions imposed by the event promoter business permit and/or the event promoter ownership/management license;
6. Comply with all conditions imposed by any other license or permit required by law for the event;
7. Carry on his person, at all times during the event, the ID card issued to him by the Chief of Police pursuant to Section 6.62.320 of this Chapter; and, upon request by the Chief of Police or any City official responsible for enforcing the provisions of this Code, produce such ID card for inspection;
8. Maintain the ability to be available at the telephone number identified in the contract required by Section 6.62.330 of this Chapter;
9. Comply with any reasonable request made by the Chief of Police or any City official responsible for enforcing the provisions of this Code which is necessary or appropriate to implement the requirements of this Chapter;
10. Cooperate fully with the Chief of Police or any City official responsible for enforcing the provisions of this Code with any inquiry, inspection or

## DRAFT

investigation necessary or appropriate to implement the requirements of this Code or to enforce any other local, state or federal law; and

11. Immediately report to the San Jose Police Department and, if necessary, emergency medical services at 9-1-1, any conditions which he knows, or reasonably should know, exist at the event and could create or have created an imminent danger to the public health, safety or welfare.

### **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 promoter business permit or ownership/management license;
3. Comply with all conditions imposed by any other permit or license required by law for any promoted event;
4. Ensure that none of his employees is under the age of 21 if alcohol is to be sold or provided at the event, unless such employee is a musician who is identified as a performer or an entertainer 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

## DRAFT

thereof, or on the front thereof, in a space free of other matter, the event promoter's permit and/or license 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 by law for the event;
  3. Any violation of any other applicable law that occurs during the promotion of the event.

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

- A. Except for retaining security for performers or entertainers performing at the event, no event promoter shall provide, organize or be responsible for any security which those persons operating public dancehalls or public entertainment business are required to have under Chapter 6.58 or Chapter 6.60, respectively.
- B. Each event promoter shall comply with the standards specified by the Chief of Police in the event promoter's permit or license pertaining to security personnel retained by the event promoter for any event he is promoting.
- C. No event promoter shall retain any security personnel for an event he is promoting unless that security personnel is licensed by the appropriate state agency.

## **DRAFT**

- 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 such firearm.
  
- E. Each event promoter who retains security personnel for an 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 Regulations**

The Chief of Police shall have the authority to promulgate rules and regulations necessary to implement the requirements of this Chapter.

## **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 or license required by this Chapter, except as specifically provided in this Part.

### **6.62.410 Indemnification Agreement Required**

Any person applying for an event promoter business permit shall agree to fully indemnify, defend and hold harmless the City, its officers, employees and agents for all

## DRAFT

claims, losses, or liabilities that arise out of the issuance or use of the 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 Nontransferrable**

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

### **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 or the event promoter's business 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 a permit or license 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 Or License Following A Revocation**

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

## DRAFT

representative, under the same or different name, for a person permitted or licensed, or required to be permitted or licensed, under this Chapter for a period of five (5) years from the date of revocation.

### **6.62.450 Term Of Permits And Licenses**

Each business permit and ownership/management license issued under this Chapter shall expire two (2) years after the date of issuance.

### **6.62.460 Permit And License Fees**

Each person who applies for or holds an event promoter business permit or event promoter ownership/management license 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:

---

CHUCK REED  
Mayor

ATTEST:

---

LEE PRICE, MMC  
City Clerk

RD:AGN:ED  
2/21/2008

**DRAFT**