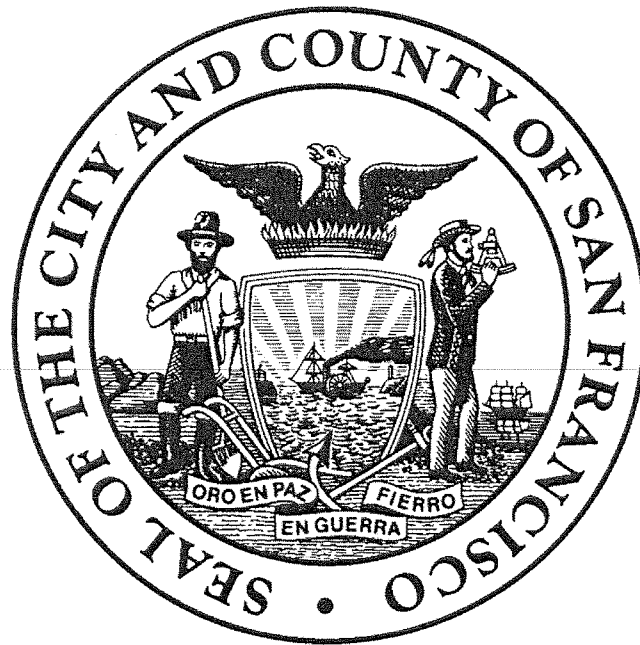


# San Francisco Entertainment Commission



**Rules and Hearing Procedures for Proceedings to Suspend or  
Revoke Place of Entertainment Permits and Permits for  
Extended Hours Premises**

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### **1. SCOPE; PURPOSE.**

These rules and hearing procedures shall govern proceedings before the San Francisco Entertainment Commission to suspend or revoke Place of Entertainment permits and permits for Extended Hours Premises. The purpose of these rules is to ensure that the Commission conducts hearings and takes action on requests to suspend or revoke such permits in a fair and efficient manner that protects the due process rights of permittees, protects the public health, safety and welfare from harm resulting from the improper or illegal operation of permitted entertainment and extended hours businesses, and ensures that the proceedings avoid unnecessary delay and inconvenience to the parties, witnesses, commissioners and public.

### **2. DEFINITIONS.**

The definitions set forth below apply only for the purposes of these rules and hearing procedures. Except as the context otherwise requires, terms defined in Articles 15.1 and 15.2 of the San Francisco Police Code for Place of Entertainment permits and permits for Extended Hours Premises, respectively, shall apply to these rules and hearing procedures.

(a) "Charging Official" means the Director of the Entertainment Commission, the Chief of Police, the Chief of the Fire Department, the Director of the Planning

Department, the Director of Public Health, the City Attorney, the department head of any department of the City and County of San Francisco having jurisdiction or control over property upon which the permitted premises is located, and their respective designees.

- (b) "Commission" means the San Francisco Entertainment Commission.
- (c) "Permit" means the Place of Entertainment permit issued pursuant to Article 15.1 of the San Francisco Police Code, or permit for Extended Hours Premises issued pursuant to Article 15.2 of the San Francisco Police Code, as the case may be, that is the subject of suspension or revocation proceedings initiated by a charging official.
- (d) "Permittee" means any person to whom a place of entertainment permit or permit for extended hours premises has been issued.
- (e) "Person" includes an individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability company, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, and any other group or combination acting as a legally recognized unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, having or claiming an interest in a permit subject to suspension or revocation proceedings before the Commission.
- (f) "President" means the President of the Entertainment Commission, or the Vice President in the President's absence, or another member of the Commission designated by the President to act as the presiding officer at the hearing or with respect to the particular matter.
- (g) "Rules" means the rules and hearing procedures set forth herein.

### **3. AUTHORITY AND NOTICE OF HEARING**

The Commission may suspend or revoke any permit after holding a noticed public hearing pursuant to its authority under Charter §4.102(10), Administrative Code §90.4(a) and (c), and Police Code §§1060.20 and 1070.17.

The President of the Commission shall specify the time, date and place for the Charging Official to present the case to the Commission and for the permittee to rebut the charges. Notice of the time, date, and place of the hearing shall be made to the parties in writing not less than fifteen (15) days prior to the date of the hearing.

When the Charging Official determines that exigent circumstances apply, notice shall be made to the parties in writing not less than five (5) days prior to the date of the hearing. The term "exigent circumstances" means circumstances which pose a substantial risk of serious harm to the safety of persons or property. The Charging Official's determination of exigent circumstances shall be in writing and shall include the grounds upon which the determination is made. The Chief of Police, the Chief of the Fire Department or the Director of Public Health must concur in a determination that exigent circumstances apply when none of those officials is the Charging Official.

### **4. GROUNDS FOR SUSPENSION.**

A charging official may file a complaint for suspension of a permit or permits on any of the grounds set forth in San Francisco Police Code §§1060.20 and 1070.17, as follows:

(a) The building, structure, equipment or location of the proposed place of entertainment does not comply with or fails to meet all of the health, zoning, fire and safety requirements or standards of all the laws of the State of California or ordinances of the City and County of San Francisco applicable to such business operation; or

(b) The establishment has been operated in a manner that has harmed the public health, safety or welfare by significantly increasing pedestrian traffic, the incidence of disorderly conduct, or the level of noise in the area in which the premises are located, and the permittee has failed, after being requested by the Police Department or Entertainment Commission to do so, to take reasonable steps to alleviate these conditions, such as providing additional off-street parking, security, soundproofing, restroom facilities, or refuse containers; or

(c) The proprietor or person or persons in charge of the establishment have violated, permitted the violation, or failed to take reasonable steps, after being requested by the Police Department or Entertainment Commission to do so, to halt violations on the premises or in connection with the operation of the establishment of any following laws of the State of California: Penal Code Sections 266h, 266i, 315, 316, 330, 337a, 647(b); Business and Professions Code Sections 23300, 25602, 25631, 25657, 25658; Health and Safety Code Sections 11351, 11352, 11359, 11360, 11378, 11379, 11378.5, 11379.5; or, the proprietor or persons in charge thereof have implemented, maintained or permitted any admission or related policy or practice which violates Section 3305 of the San Francisco Police Code.<sup>1</sup>

(d) The proprietor or person(s) in charge of the establishment have violated or permitted the violation of any other provision of Article 15.1 or 15.2 of the Police Code or of the permit, on the premises or in connection with the operation of the establishment.

## **5. GROUNDS FOR REVOCATION.**

A charging official may file a complaint for revocation of a permit or permits on any of the following grounds, as set forth in San Francisco Police Code §§1060.20 and 1070.17:

(a) The permittee has knowingly made a false, misleading or fraudulent statement of material fact in the application for the permit;

(b) The permittee has failed to pay any fee or charge required under this Article; or

(c) The permittee has permanently ceased operation of the business for which the permit was issued.

## **6. INITIATING PROCEEDINGS; CONTENTS OF COMPLAINT; ANSWER.**

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<sup>1</sup> Attached as Appendix A is a list of the laws listed in Police Code §§1060.20 and 1070.17 violations of which may result in suspension of a permit, together with a brief descriptions. Appendix A is set forth for purposes of convenience only, and may not be construed as a limitation or expansion of the Commission's authority to suspend or revoke permits for violations of such laws.

(a) A charging official may initiate administrative proceedings before the Commission to suspend or revoke a permit or permits by filing an original and 6 copies of a written complaint with the Commission requesting the suspension or revocation of the permit and setting forth as separate charges each specific violation or distinct ground for the request.

(b) The complaint shall set forth the factual basis for the charging official's request in sufficient detail to allow the permittee to reasonably understand and respond to each charge. The complaint shall set forth the specific date(s) of violation or other alleged conduct supporting each charge, if known to the charging official. The Charging Official may amend the complaint no later than 6 days before the hearing if the amendment reasonably relates to a charge contained in the complaint filed with the Commission. The President may allow amendments to add new charges if such amendment will not prejudice the permittee's ability to present a defense. The permittee shall be afforded no less than 7 days to respond to any substantive amendment to the complaint. The President may reschedule the hearing to provide additional time to the permittee to respond to an amended complaint if he or she determines that the delay will not otherwise prejudice the rights of the permittee or endanger public health, safety or welfare.

(c) The permittee shall file an original and 6 copies of an answer to the complaint with the Commission no later than 5 days before the first scheduled hearing. The permittee shall file an answer to any amended complaint no later than 3 days before the scheduled hearing. The answer shall respond to each separate charge in the complaint. The permittee may amend an answer no later than 2 days before the scheduled hearing.

(d) The President may allow amendments to the complaint or answer after the deadlines set forth above if he or she finds good cause for the late amendment, and determines that any delay in the hearing will not (i) prejudice the rights of parties, (ii) cause unreasonable hardship on the parties or witnesses, (iii) prejudice the ability of the parties to present the case, or (iv) endanger public health, safety or welfare.

(e) In cases involving exigent circumstances where the Commission provides less than 15 days notice of the hearing date, the following applies. The permittee shall file an original and 6 copies of an answer to the complaint with the Commission no later than 2 days before the first scheduled hearing. The answer shall respond to each separate charge in the complaint. The Charging official may not amend a complaint. The President shall have discretion at any time to consider whether to grant the permittee's request to amend an answer.

## **7. SERVICE.**

(a) The Charging Official shall serve the complaint and all attachments thereto on each person to whom the permit sought to be suspended or revoked was issued in a manner ensuring confirmation of delivery. For example, service may be achieved by United States Postal Service certified mail, return receipt requested or with other delivery confirmation, hand delivery (messenger service) or other commercial delivery service that provides written confirmation of delivery. The Charging Official shall file with the Commission a proof of service within 3 business days after serving the complaint.

(b) The Charging Official shall include on the complaint or set forth in a separate document his or her name, office address, mailing address (if different than office address), telephone number, facsimile number and e-mail address, or that of his or her designee responsible for the matter, upon whom the permittee(s) should serve the

answer. If the Charging Official will be represented by the City Attorney's Office or other counsel approved by the City Attorney, the Charging Official shall provide to the permittee the same contact information for counsel.

(c) The Charging Official shall serve copies of these rules with the complaint and so indicate on the proof of service filed with the Commission. The failure to serve these rules shall not affect the validity of the complaint or the Commission's action thereon at a duly noticed hearing.

(d) Each permittee served with the complaint shall serve the answer on the Charging Official at the address set forth on the complaint or separate document required under paragraph (b), and on the City Attorney's Office. Service may be achieved in a manner ensuring confirmation of delivery. Service on the City Attorney's Office shall be made to:

Office of the City Attorney  
Attn: Entertainment Commission Suspension/Revocation Hearing  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682

## **8. FAILURE TO ANSWER OR ATTEND THE HEARING.**

Failure of a permittee to file an answer or otherwise respond to the complaint, or failure of the permittee or the permittee's representative to appear for a duly noticed hearing, shall be deemed admission by the permittee of the allegations set forth in the complaint. Failure of a permittee to answer or respond to one or more separate charges in the complaint shall be deemed admission by the permittee of only those allegations to which no answer or response was made. In accordance with the procedures set forth below, the charging official shall present evidence in support of suspension or revocation of the permit, and the Commission shall make a determination based on such evidence.

## **9. RIGHT OF REPRESENTATION.**

The permittee may be represented by counsel licensed to practice law in the State of California, or by another person the permittee authorizes in writing to represent the permittee for purposes of the suspension or revocation proceedings. The written authorization must be filed with the Commission prior to the person's appearance at the hearing. The Charging Official may be represented by the City Attorney or other counsel as authorized by the City Charter.

## **10. ADDITIONAL NOTICE REQUIREMENTS.**

Notice of the hearing shall include notice to the parties of their right to representation by counsel. The President shall cause notice of the hearing to be posted in a conspicuous place on or in the immediate vicinity of the permitted premises not less than 10 days before the first scheduled hearing. Additional posting at the location shall not be required for rescheduled or continued hearing if the date, time and place of the rescheduled or continued hearing is announced at the time, date and place of the hearing set forth in the notice posted at the location of the permitted premises, or a written notice of the rescheduled or continued hearing is posted on or near the door of the hearing room on or before the date and time set forth in the posted notice.

## **11. FORMAL DISCOVERY AND RULES OF EVIDENCE INAPPLICABLE; MANDATORY DISCLOSURES.**

(a) Formal discovery pursuant to the California Code of Civil Procedure shall not apply to administrative proceedings before the Commission to suspend or revoke a permit. The Charging Official and permittee shall exchange and lodge with the Commission no later than 2 days before the hearing lists of witnesses, exhibits, documents and any other evidence they intend to introduce at the hearing, and any other information or material the President deems pertinent to the fair and efficient determination of the matter. In addition, the Charging Official shall provide the permittee with exculpatory evidence known to the Charging Official no later than 2 days before the hearing. The Charging Official shall immediately disclose to the permittee or permittee's counsel any exculpatory evidence discovered after such deadline.

(b) The President may allow offers of proof, set time limitations and limit the scope of evidence presented based on relevancy. The President may exclude any documentary, testimonial or other evidence not disclosed in accordance with paragraph (a).

(c) Each side shall be entitled to call witnesses and cross-examine witnesses. The members of the Commission may ask questions of any party for the purpose of reaching a determination.

(d) Formal rules of evidence shall not apply, but the President shall make rulings and follow principles designed to assure production of the most probative, relevant, and material evidence. Witnesses at the hearing shall give testimony orally. Witnesses shall be available for cross-examination, and at the discretion of the President, may be cross-examined without regard to the scope of direct examination as to any matter that is relevant and material to the proceeding. Witnesses shall swear or affirm as to the truth of their testimony. The President may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

## **12. PROMPT DETERMINATION; ISSUANCE OF FINDINGS.**

The Commission shall consider only the evidence introduced into the record and material facts of which the President takes official notice, and shall deliberate and decide the case. Within 15 days of the hearing, or of the date final written presentations or supplemental filings or submissions are due, the Commission shall issue its Findings and Determination. The Findings and Determination shall be in writing unless the parties stipulate that they may be announced orally, in which case the audiotape or written transcript shall be the official record of the Commission's Findings and Determination.

## **13. POWERS OF PRESIDENT.**

The President may:

(a) Continue the hearing as provided in rule 6, above, upon agreement of the parties or a showing of good cause, or upon his or her own initiative.

(b) Require parties to state their position with respect to the various issues in the proceeding;

(c) Require parties to produce for examination those relevant witnesses and documents under their control;

(d) Administer oaths;

(e) Rule on motions, and other procedural matters;

- (f) Regulate the course of the hearing and conduct of participants therein;
- (g) Examine and cross-examine witnesses and introduce into the record documentary or other evidence;
- (h) Receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
- (i) Fix time limits for submission of written documents and extend time limits established by these rules upon a determination that no party will be prejudiced and that the ends of justice will be served thereby;
- (j) Impose appropriate sanctions against any party or person failing to obey an order under these rules. Sanctions may include:
  - (i) Refusing to allow the disobedient party to support or oppose designated charges or defenses, or prohibiting the party from introducing designated matters in evidence;
  - (ii) Excluding all testimony of an unresponsive or evasive witness; and
  - (iii) Barring any party or person from further participation in the hearing.
- (k) Take official notice of any material fact not appearing in evidence in the record that is among the traditional matters of judicial notice.

#### **14. EX PARTE COMMUNICATIONS**

The members of the Commission may not consult any person or party on any fact at issue unless upon notice and opportunity for all parties to participate. No employee or agent of the City and County of San Francisco engaged in the investigation and prosecution of this case shall participate or advise in the rendering of the Commission's decision in the case, except as witness or counsel in the proceeding.



## 15. OFFICIAL TRANSCRIPT

The hearing shall be audio recorded. The audio recording shall be the official transcript of the hearing. Either party may arrange at no cost to the Commission for a certified reporter to record the hearing. The parties and the public as provided by state law may obtain transcripts of testimony from the official reporter. Upon notice to all parties, the Commission may authorize such corrections to the transcript as are necessary to reflect accurately the testimony. A reporter's transcript of the hearing shall not replace the audio recording as the official transcript of the hearing unless the Commission receives a copy thereof prior to its deliberations, at no cost to the Commission, and the parties stipulate that it shall be the official transcript.

## 16. RECORD FOR DECISION

The official transcript of the hearing, exhibits and all papers, documents and requests filed in the proceedings, including briefs, but excluding any correspondence regarding procedural matters, shall constitute the record for decision.

Adopted by the Entertainment Commission on December 7, 2004

I hereby certify that the foregoing Rules and Hearing Procedures for Proceedings to Suspend or Revoke Place of Entertainment Permits and Permits for Extended Hours Premises was adopted by a unanimous vote of the San Francisco Entertainment Commission on December 7, 2004 amended 2007.

/s/  
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Crystal Stewart, Commission Secretary  
San Francisco Entertainment Commission