

ORDINANCE NO. 2477

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS REPEALING
ORDINANCE NO. 2465 RELATED TO A MORATORIUM ON CERTAIN BAR,
NIGHTCLUB AND RESTAURANT USES AND REPEALING AND REENACTING
CHAPTER 11 OF THE CITY OF DAVIS MUNICIPAL CODE TO ESTABLISH
REQUIREMENTS FOR ENTERTAINMENT PERMITS AND TO
PROVIDE PENALTIES FOR NONCOMPLIANCE**

WHEREAS, the City Council encourages the development of arts and culture and a vibrant, healthy downtown in Davis, and recognizes that many entertainment venues provide a means for such development; and

WHEREAS, the City Council further recognizes that the variety of entertainment venues in the city provide a rich and diverse social and cultural experience for the residents and visitors of the city; and

WHEREAS, the City Council also finds that the operation of entertainment establishments often presents an environment with the demonstrated potential for excessive noise generation and disorderly conduct by patrons or guests, particularly at closing times and where alcoholic beverages are offered; and

WHEREAS, the disorderly and disruptive conduct of unregulated entertainment venues and the attendant adverse impacts on the surrounding business and residential community has resulted in a detrimental impact on public health, safety and welfare, inconsistent with the City's desire to maintain vibrant social and cultural entertainment opportunities; and

WHEREAS, on September 19, 2015, 23 year old Peter Gonzales was stabbed and tragically died in a downtown Davis nightclub; and

WHEREAS, the City Council adopted Ordinance No. 2463 on September 29, 2015, establishing a 45-day moratorium on new, expanded, or altered bars, nightclubs, and restaurants serving distilled spirits and restaurants exceeding 2,500 square feet serving beer and wine, which was extended by Ordinance No. 2465 to be in effect through and including September 28, 2016; and

WHEREAS, the City Council therefore desires to regulate the operation of entertainment establishments in a way that balances the competing interests of the community by establishing content-neutral operating requirements for obtaining an entertainment permit and penalties in the event of noncompliance; and

WHEREAS, the City Council believes that regulating entertainment establishments through establishment of entertainment permits is necessary for the public health, safety and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Repeal.

Chapter 11 of the Davis Municipal Code, regarding Dances and Dance Halls, is hereby repealed in its entirety.

SECTION 2. Amend.

Chapter 11, regarding Entertainment Permits, is hereby added to the City of Davis Municipal Code to read in full as set forth in Exhibit A, attached hereto and incorporated by this reference.

SECTION 3. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 4. Effective Date.

The City Clerk shall certify to the adoption of this Ordinance and shall cause the same or a summary thereof to be published as required by law. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

SECTION 5. Implementation.

Upon the Effective Date of this Ordinance, existing entertainment establishments and other persons or establishments required to obtain an entertainment permit pursuant to this Ordinance shall obtain an entertainment permit as follows:

- A. For all establishments that have existing operating conditions issued by the City that are intended to continue until the moratorium set forth in Ordinance No. 2465 expires, such operating conditions shall continue in full force and effect until the establishment obtains a permit pursuant to this Ordinance. The Police Chief shall provide written notice of this requirement to all such establishments within 10 days of the adoption of this Ordinance. All such establishments shall obtain a permit under this Ordinance within 60 days of the effective date of this Ordinance. After 60 days, entertainment will be prohibited and in violation of this Ordinance until a permit is obtained and in force;
- B. **Except as provided in section A, for establishments legally existing and in operation on the Effective Date of this Ordinance with a maximum legal occupancy of 100 or more persons that do not have operating conditions as set forth in subsection A, a permit must be obtained within 60 days of the Effective Date of this Ordinance.** After 60 days, entertainment will be prohibited and in violation of this Ordinance until a permit is obtained, unless exempt;

- C. **Except as provided in section A, for establishments legally existing and in operation on the Effective Date of this Ordinance with a maximum legal occupancy of 50-99 persons, a permit must be obtained within 90 days of the Effective Date of this Ordinance.** After 90 days, entertainment will be prohibited and in violation of this Ordinance until a permit is obtained, unless exempt;
- D. **For establishments legally existing and in operation on the Effective Date of this Ordinance with a maximum legal occupancy of less than 50 persons, a permit must be obtained within 120 days of the Effective Date of this Ordinance.** After 120 days, entertainment will be prohibited and in violation of this Ordinance until a permit is obtained, unless exempt;
- E. Immediately upon the Effective Date of this Ordinance, all new establishments that were not legally existing and in operation prior to the Effective Date, shall obtain a permit pursuant to this Ordinance, unless exempt, prior to conducting any activity that would require such permit; and
- F. The Police Chief is hereby authorized to accept applications for permits prior to the Effective Date of this Ordinance and to issue permits that will become effective upon the Effective Date of this Ordinance.

SECTION 6. Repeal. Ordinance No. 2465 is hereby repealed and of no further force and effect on and after thirty (30) days from and after the date of final passage and adoption of this Ordinance.

INTRODUCED on the 5th day of April, 2016, and PASSED AND ADOPTED by the City Council of the City of Davis on this 19th day of April, 2016, by the following vote:

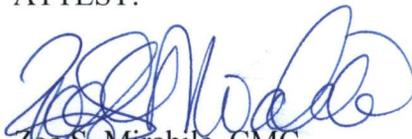
AYES: Davis, Frerichs, Lee, Swanson, Wolk

NOES: None



Daniel M. Wolk
Mayor

ATTEST:



Zoe S. Mirabile, CMC
City Clerk

EXHIBIT A

CHAPTER 11 ENTERTAINMENT PERMITS

Article 11.01 Entertainment Permits

11.01.010 Purpose and intent.

11.01.020 Definitions.

11.01.030 Entertainment permit required—Compliance with other laws.

11.01.040 Exemptions from the permit requirement.

11.01.010 Purpose and intent.

This Chapter shall be known as the Peter Gonzales Entertainment Permit Ordinance.

The City Council encourages the development of arts and culture in Davis, and recognizes that many entertainment venues provide a means for such development. The Council further recognizes that the variety of entertainment venues in the city provide a rich and diverse social and cultural experience for the residents and visitors of the city alike. The Council also recognizes that many non-alcoholic entertainment venues provide a safe place for families and young adults to gather.

The Council hereby finds that the operation of entertainment establishments presents an environment with the demonstrated potential for excessive noise generation and disorderly conduct by patrons, particularly late at night and at closing times, with the attendant adverse health and safety impacts on the surrounding business and residential community.

Therefore, it is the purpose of this chapter to regulate the operation of entertainment establishments for the public health, safety and welfare through the issuance of entertainment permits. All permittees will be held responsible for controlling patron conduct in and around the establishments, making adequate provisions for security and crowd control, protecting the city's youth from criminal activity and minimizing disturbances that may occur as a result of the operation of the entertainment.

It is also the intent of this chapter to provide options to the city manager and police chief in regulating the variety of businesses and events that provide entertainment. The Council finds that the imposition of conditions tailored to the particular establishment will allow the business or event to flourish while protecting the public health, safety and welfare. This approach also would avoid placing unnecessary restrictions on existing establishments with a history of compliance with city laws and requirements.

11.01.020 Definitions.

For purposes of this chapter:

“**ABC license**” means the license issued by the California Department of Alcoholic Beverage Control.

“**Admission charge**” means any charge for the right or privilege to enter any place of entertainment including a minimum service charge, an event charge, a cover charge, a charge for the use of seats and tables, or any other similar charge. It also includes the purchase or presentation of a ticket or token directly or indirectly required as a condition for entrance. It does not include tips, gratuities, voluntary donations, or suggested donations for employees or for any person providing entertainment.

“**City manager**” includes the city manager of the City of Davis and his or her designee.

“**Dance and dancing**” means movement of the human body, accompanied by music or rhythm.

“**Disorderly conduct**” means any of the following: consumption of alcoholic beverages on public property, public drunkenness, obstructing the free passage of pedestrians over public sidewalks, obstructing the free passage of vehicles within the public right of way, littering, fighting, loud speaking or shouting or the operation of automobile audio systems in a manner that violates Section 24.05.010, General Noise Prohibition, and such other conduct that constitutes a public nuisance or a violation of law.

“**Entertainment**” or “**entertainment establishment**” means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which the public is invited or allowed to watch, listen, or participate or that is conducted for the purposes of holding the attention of, gaining the attention of or diverting or amusing guests or patrons, including, but not limited to:

- (a) Presentations by single or multiple performers, such as musical song or dance acts, concerts, live shows, and any other such related activity which may be attended by members of the public or are open or advertised to the public, or occur in a public place;
- (b) Dancing to live or recorded music;
- (c) The presentation of recorded music played on equipment which is operated by an employee, agent or contractor of the establishment, commonly known as a “DJ” or “disc jockey.”

“**Entertainment Permit**” means a standard entertainment permit issued pursuant to this Chapter, which is not a Special Event Permit.

“**Permittee**” means a person that has been issued a permit as provided in this chapter.

“**Person**” means a person, firm, association, co-partnership, joint venture, corporation, entity, public or private in nature, or organization of any kind.

“Public agency” includes the state government; any city, city and county, or county government; and any department, district, division, commission, board, or other agency, which is authorized by law.

“Public place” means an area open to the public, or an alley, plaza, park, or parking lot, or an automobile, whether moving or not, or a building open to the general public, including one which serves food or drink, or provides entertainment.

“Reasonable efforts” means the provision of an adequate number of licensed security personnel, the adoption and posting of operating policies that are consistent with the requirements of this code and the permit and the adherence to those policies, the documented training of employees in the carrying out of the establishment operating policies, notifying the police of apparent criminal activity, and the taking of any and all additional measures, consistent with sound business judgment, that may be necessary to accomplish the required result.

“Responsible person” means the permittee, owner, proprietor, promoter, manager, assistant manager or other person exercising control over the operation of an entertainment establishment, whether or not that person is a named permittee.

“Special event” means entertainment conducted on private or residential property where all of the following circumstances exist:

- (a) The premises or location where the entertainment is to be conducted is not the subject of an existing entertainment permit issued pursuant to this chapter;
- (b) The person sponsoring or offering the entertainment is not in the business of regularly offering entertainment to the public;
- (c) Entertainment will only be offered for a limited period of time, not to exceed five consecutive days;
- (d) The entertainment is not a recurring or regularly scheduled event or celebration.

“Special event permit” means a permit issued pursuant to this Chapter for a special event.

“Police Chief” includes the police chief of the City of Davis and his or her designee.

“Theater” means any commercial establishment where regular concerts, motion picture screenings or theatrical performances are given, usually on a stage, and usually with ascending row seating or some permanent arrangement of seating.

11.01.030 Entertainment permit required—Compliance with other laws.

- (a) Unless exempt pursuant to Section 11.01.040, it is unlawful for any person to provide or permit any entertainment that is open to the public, or advertised to the public,

or occurs in a public place without an entertainment permit issued pursuant to this chapter.

(b) Neither the obtaining of an entertainment permit nor compliance with the operating standards provided in this chapter shall obviate the need for, or excuse any noncompliance with, other provisions of the Municipal Code, building code, fire code or any other or additional permit requirement or standard made applicable to the entertainment or entertainment establishment under any other local, state or federal law or regulation.

11.01.040 Exemptions from the permit requirement.

The following types of entertainment and events are exempt from the permit required by this chapter. An exemption does not relieve any person or entertainment establishment from complying with all other applicable laws, including, but not limited to, those pertaining to noise levels and nuisances contained in Chapter 23 and Chapter 24 of this code.

(a) Entertainment sponsored by any agency of the City of Davis, the County of Yolo, any public or private school, including the University of California Davis, or by any other public agency of the state of California. The leasing or subleasing of the agency's real property to an entertainment establishment does not constitute sponsorship of the entertainment by the public agency;

(b) Entertainment sponsored by any nonprofit public benefit organization, such as Girl Scouts, Boy Scouts, or Little League, whose primary objective is the sponsoring and development of youth activities and child welfare. If the event is a dance, the following requirements must be met:

(1) No person eighteen (18) years of age or older may be admitted as a guest, unless such person is a parent or guardian attending as a chaperone, or is a bona fide student at, or member of, the sponsoring agency or organization,

(2) No alcoholic beverages may be served, consumed or permitted on the premises,

(3) Chaperones are present on the premises at the rate of two adults, who are at least twenty-five (25) years of age, for every fifty (50) guests, and

(4) The event must conclude by 12:00 midnight and the premises and the adjoining parking lots must be promptly vacated by all the guests.

(c) Entertainment lawfully conducted at any city park, plaza, building or recreational facility pursuant to a use agreement or reservation that is approved by the city;

(d) Entertainment limited to the use of a radio, music recording machine, juke box, television, video games, video programs, or recorded music by an establishment that does not permit dancing or karaoke;

- (e) Entertainment provided for members and their invited guests at a private club having an established membership when admission is not open to the public. For purposes of this section, private club means corporations or associations operated solely for objects of national, social, fraternal, patriotic, political, or athletic nature, in which membership is by application and regular dues are charged, and the advantages of which club belong to members, and the operation of which is not primarily for monetary gain;
- (f) Entertainment provided for invited guests at a private event such as a wedding reception, banquet, or celebration where there is no admission charge;
- (g) Parades;
- (h) Street performers such as musicians, singers or mimes;
- (i) Entertainment conducted or sponsored by any religious organization, bona fide club, organization, society or association that is exempt from taxation pursuant to United States Internal Revenue Code Section 501(c)(3); when all proceeds, if any, arising from such entertainment are used exclusively for the benevolent purposes of such religious organization, club, society or association. Written proof of the tax-exempt status shall be provided to the police chief at least seven days before the entertainment occurs;
- (j) Performances by the students at educational institutions as defined by the California Education Code where such performances are part of an educational or instructional curriculum or program;
- (k) Entertainment in theaters where no alcohol is allowed or provided;
- (l) Dance lessons, theatrical and performing arts lessons and student recitals;
- (m) Book readings, book signings, poetry recitations, and any other similar entertainment consisting of the spoken word, including plays;
- (n) Fundraisers for a political cause;
- (o) Entertainment consisting of ambient or incidental music provided for guests or patrons by musicians such as a piano player, harpist, strolling violinist, mariachi band, or guitarist, if a sound amplifier is not utilized during the musical presentation and no admission charge is required to observe or attend;
- (p) Entertainment conducted in any hotel or motel having in excess of one hundred (100) rentable rooms or suites;
- (q) Entertainment lawfully conducted at any of the following regulated businesses:
 - (1) "Bingo," regulated under Chapter 7,

(2) "Cardrooms," regulated under Chapter 8A. However, if entertainment, other than the playing of cards, is conducted on the premises of any cardroom, such cardroom shall not, by virtue of this provision, be exempt from the permit requirement of this chapter,

(r) The normal and customary fitness services provided by an athletic club or fitness center.

Article 11.02 Operation of Entertainment Establishments

11.02.010 Application of Article.

11.02.020 Hours of operation—Responsible person.

11.02.030 Disturbing the peace—Disorderly conduct.

11.02.040 Intoxicated customers.

11.02.050 Reasonable passageway required.

11.02.060 Observation of noise abatement laws required.

11.02.070 Disorderly conduct within fifty (50) feet prohibited.

11.02.080 Orderly dispersal required.

11.02.090 Alcoholic beverage on premises.

11.02.100 Police chief authority where there is immediate threat to public safety.

11.02.010 Application of Article.

This Article establishes minimum standards applicable to the operation of all entertainment establishments whether or not such establishments are subject to the permit requirement of Section 11.01.030. Nothing in this Article shall limit the city's authority to impose and enforce permit conditions under Section 11.03.050 requiring entertainment establishments to comply with operating standards that are more strict, comprehensive or onerous than the minimum standards imposed by this Article.

11.02.020 Hours of operation—Responsible person.

(a) Except as otherwise provided herein, all entertainment establishments shall be closed to the public and all patrons shall vacate the premises between 2:00 a.m. and 6:00 a.m., except that as part of a New Year celebration, entertainment establishments may remain open until 3:00 a.m. on January 1st. It is unlawful for any responsible person to fail to abide by these hours of operation.

(b) A responsible person must be present in the entertainment establishment during all hours that the entertainment establishment is open and offering entertainment.

11.02.030 Disturbing the peace—Disorderly conduct.

Each responsible person shall make reasonable efforts to prevent the admittance of any person whose conduct is described in Penal Code Section 415 (fighting, loud noise, offensive words in public places) or Penal Code Section 647 (disorderly conduct) at the premises or on any

parking lot or similar facility used by the establishment. Each responsible person shall make reasonable efforts to remove any persons exhibiting such conduct from the establishment.

11.02.040 Intoxicated customers.

Each responsible person shall make reasonable efforts to prevent the admittance, or remove from the establishment, any obviously intoxicated person. For purposes of this section, a person is "obviously intoxicated" when he or she exhibits readily apparent outward manifestations of drug or alcohol intoxication, including but not limited to, inability to walk or stand in a normal manner, bloodshot or glassy eyes, flushed face, incoherent or slurred speech, alcoholic breath, belligerence or other loud or boisterous conduct, extreme agitation or nervousness or mental confusion.

11.02.050 Reasonable passageway required.

It is unlawful for any responsible person to fail to provide a reasonable passageway of at least forty-eight (48) inches in width for ingress and egress through any part of a room of the establishment used by patrons and entertainers.

11.02.060 Observation of noise abatement laws required.

Each responsible person shall obey all laws applicable to noise abatement, including those contained in Chapter 23.

11.02.070 Disorderly conduct within fifty (50) feet prohibited.

Each responsible person shall make reasonable efforts to control the conduct of patrons so as to prevent or minimize disorderly or unlawful conduct from occurring within the establishment and within fifty (50) feet of the establishment. The distance shall be measured in a straight line from the property line of the establishment.

11.02.080 Orderly dispersal required.

Each responsible person shall use reasonable efforts to cause the orderly dispersal of individuals from the vicinity of the establishment at closing time, or in the case of a special event, at the conclusion of the event. Where the entertainment occurs within a building or structure, each responsible person shall use reasonable efforts to prevent people from congregating within fifty (50) feet of the establishment in a disorderly fashion. The distance shall be measured in a straight line from the property line of the establishment.

11.02.090 Alcoholic beverage on premises.

It is unlawful for any person to bring an alcoholic beverage onto the premises of an entertainment establishment, or for any responsible person to permit a person to bring an alcoholic beverage onto the premises, unless such action is allowed by the entertainment establishment's ABC license.

11.02.100 Police chief authority where there is immediate threat to public safety.

(a) The police chief may require a permittee or responsible person to close down operations and disperse all patrons for the remainder of its daily operation whenever conduct by disorderly patrons reaches a magnitude that presents an immediate threat to the public safety or well-being of the patrons and general public in the vicinity, including

when the business or venue exceeds the maximum allowable posted business or venue occupancy.

(b) It is unlawful for any person to fail to comply with any directive issued by the chief of police under authority of Section 11.02.100(a).

Article 11.03 Issuance, Renewal, Suspension, Modification and Revocation of Permits

11.03.010 Application of article.

11.03.020 Application for permit—Posting premises.

11.03.030 Extended operating hours.

11.03.040 Fees.

11.03.050 Investigation of application and issuance of permit.

11.03.060 Display of permits.

11.03.070 Duration of permit.

11.03.080 Permits not transferable.

11.03.090 Effect of denial.

11.03.100 Suspension, modification or revocation of permit.

11.03.110 Application for Entertainment Permit Renewal and Extension.

11.03.120 Appeals.

11.03.130 Appeal Procedures.

11.03.010 Application of article.

This article shall apply to the issuance, renewal, suspension, modification or revocation of any permit required by Section 11.01.030.

11.03.020 Application for permit—Posting premises.

(a) Applications for permits, including permits for special events, shall be written by the applicant under penalty of perjury and filed with the police chief on forms prescribed by the police chief, and shall contain the following:

(1) The name and permanent address of the applicant, the name and permanent address of any person, business or other entity having at least a 10% ownership interest in the entertainment establishment, and the name and permanent address of the landlord(s), if any, of the business or premises where the entertainment is to be located;

(2) A description of the proposed entertainment, including the maximum number of persons who are expected to be present within the entertainment establishment at any one time;

(3) The proposed opening date and hours of operation of the entertainment establishment;

(4) For special or limited duration events, the date or dates, hours and location of the proposed entertainment;

(5) The proposed security arrangements for the safety and control of patrons;

(6) The name or names of the person or persons managing or supervising the proposed entertainment, or any business or premises wherein the entertainment is proposed to be located;

(7) Whether or not the applicant or any other responsible person(s) have been convicted of a misdemeanor or felony offense within the past five years, the nature of such offense(s), and the sentence(s) imposed;

(8) Written consent for the proposed entertainment on the premises from the owner of the property on which the entertainment is to be conducted, and, if different, the owner(s) of the business or other entity operating the entertainment establishment; and

(9) Such other information as the police chief deems necessary for the proper processing and review of the application.

(b) The applicant and all responsible persons for a standard entertainment permit shall submit to fingerprinting by the police chief. All applicable livescan fees shall be paid for by the applicant and all responsible persons.

(c) An application is complete when all the requirements of subsections (a) and (b) have been satisfied, including the return of all livescan results, if required, from the Department of Justice. Within three (3) business days of receipt of a complete application, the police chief shall provide to the applicant a notice of application for entertainment permit. The applicant shall post the notice on the exterior of the premises for which the permit is sought within twenty-four (24) hours after receiving the notice and for no less than fourteen (14) consecutive days, or in the case of an application for a special event permit, for a period of no less than forty-eight (48) hours in a location that allows interested members of the public to read the notice.

(d) The police chief shall either approve, conditionally approve, or deny an entertainment permit application as follows:

(1) For a standard entertainment permit, the police chief shall approve, conditionally approve, or deny the permit within thirty (30) calendar days of receipt of the complete application. The police chief may extend the time for consideration of the application for up to an additional twenty-one (21) calendar days with the written consent of the applicant. The failure of the police chief to timely act shall constitute approval of the permit.

(2) For a special event permit, the police chief shall approve, conditionally approve, or deny the permit within ten (10) calendar days of receipt of the completed application. The police chief may extend the time for consideration of the application for up to an additional three working days with the written consent of the applicant. The failure of the police chief to timely act shall constitute approval of the permit.

11.03.030 Extended operating hours.

(a) An applicant for a permit may request, and the police chief may approve, extended operating hours that will be applicable to the permitted entertainment

establishment. The extended operating hours approved by the police chief, and any conditions relating thereto, shall be specifically stated in the permit.

(b) Any entertainment establishment, exempt from the permit requirement under Section 11.01.040, may apply for an entertainment permit under the procedures provided in section 11.03.020 for the sole purpose of obtaining extended operating hours. The extended operating hours approved by the police chief, and any conditions relating thereto, shall be specifically stated in the permit.

11.03.040 Fees.

(a) The following entertainment permit program fees shall be imposed in amounts established by resolution of the city council:

- (1) New Permit Fee. Every application for a new entertainment permit must be accompanied by a nonrefundable application fee.
- (2) Renewal Permit Fee. Every application to renew an entertainment permit must be accompanied by a nonrefundable application fee.
- (3) Special Event Permit Fees. Every application for an entertainment permit for a special event must be accompanied by a nonrefundable application fee.
- (4) Inspection Fees.
 - (a) Initial Inspection. Initial inspection of the location where the entertainment is to be conducted shall be done at no charge to the applicant or permittee.
 - (b) Re-Inspection. There is a nonrefundable fee for every inspection after the initial inspection.
 - (c) If an applicant or permittee agrees with the police chief upon a day and time for an inspection and the applicant or permittee fails by act or omission to provide access onto the premises, the failure to provide access to the premises constitutes an inspection for the sole purpose of calculating inspection fees pursuant to this section.
- (5) Modification Fee. Each permittee may submit up to six modification requests to the police chief during the two-year permit term. Every additional request within the two-year permit term must be accompanied by a nonrefundable modification fee. For the purposes of this subsection only, a request by a permittee to update the responsible persons listed on the permit does not constitute a request to modify the permit.

(b) The fees established in this section are in addition to the city's business license tax and any other license or permit fee imposed upon the applicant or permittee by this code or any other law, ordinance or regulation.

11.03.050 Investigation of application and issuance of permit.

(a) The police chief shall conduct a thorough investigation of the application. The police chief shall obtain recommendations and reports from the fire marshal and such other city departments as he or she deems necessary, concerning the application.

(b) The police chief shall approve the issuance of the entertainment permit if he or she finds:

- (1) That issuance of the permit and conduct of the entertainment at the proposed location, as may be conditioned, is consistent with federal, state and local laws, rules, regulations and any existing special permit(s); and
- (2) That issuance of the permit at the proposed location, as may be conditioned, will not constitute an undue burden on the neighborhood because of its proximity to residences, inadequate parking or other neighborhood circumstances and will not interfere with the reasonable use and enjoyment of the neighborhood by its residents; and
- (3) Neither the applicant or any responsible person or principal of the applicant has, within the past five years, been convicted of a felony or other crime of moral turpitude that is substantially related to the qualifications, functions or duties of a proprietor of the premises upon which the entertainment activities are conducted; and
- (4) Neither the applicant or any responsible person or principal of the applicant has a history of committing, permitting or failing to prevent significant violations of the city code, or any license or permit, in connection with an entertainment establishment for which he or she was a responsible person; and
- (5) It does not appear, based upon the information before the police chief, that the applicant has provided false or misleading material information in the application; and
- (6) That the application is complete; and
- (7) The applicant does not owe the City of Davis a fee authorized by Section 11.02.040 or an administrative penalty for violation of a provision of this chapter or a condition of an entertainment permit issued pursuant to this chapter.

(c) Where the police chief does not approve a permit, the police chief shall inform the applicant of the reason(s) for the denial in writing.

(d) In issuing the permit, the police chief may impose conditions relating to the operation of the entertainment establishment.

- (1) Conditions may relate to:
 - a. The days, hours and location of operation;
 - b. Restrictions designed to prevent minors from obtaining alcohol, such as separate entrances, exits, and restroom facilities on the premises;
 - c. The number and age of persons allowed on premises;
 - d. Whether licensed security guards are required, and if so, the minimum number required;
 - e. Specific measures the permittee must undertake to control the conduct of patrons so as to prevent or minimize disorderly conduct within the establishment and surrounding neighborhood, including conditions relating to the entry or formation of lines by patrons;

- f. Specific measures the permittee must undertake to remove trash attributable to the establishment or its patrons in and around the establishment, the surrounding neighborhood and the public right-of-way;
or
 - g. Other matters necessary for public health, safety and welfare.
- (e) Conditions shall be based on specific facts reasonably related to insuring the public health, safety and welfare, including, but not limited to, the protection of minors from alcohol and other criminal activity, the conservation of limited city public safety resources and the prevention of public nuisance activity that detracts from the peace and quiet of residential neighborhoods.
- (f) Conditions shall be listed on, or attached to, the permit.
- (g) The police chief shall give the permittee an opportunity to review any proposed conditions and the police chief will consider the input of the permittee prior to imposing those conditions.
- (h) Conditions may not be imposed that conflict with any local, state or federal law, or that conflict with the permittee's ABC license. Nothing in this subsection is intended to prevent the police chief from imposing any condition related to the age of patrons inside an ABC establishment if the ABC license does not address that issue. The intent of this subsection is to allow the sale and service of food to minors in a bona fide public eating place (ABC license types 41, 47 and various club licensed premises) with reasonable conditions placed on the permit to protect the minors from alcohol and other criminal activity.
- (i) No condition may be imposed pursuant to this chapter that suppresses or regulates speech or expression in any manner contrary to law.
- (j) Imposition of any particular condition is appealable through the procedures set forth in Section 11.03.100.

11.03.060 Display of permits.

The permit issued pursuant to this chapter shall at all times be posted in a conspicuous place in the entertainment establishment for which it was issued and shall be immediately produced upon the request of any police or code enforcement officer of the city.

11.03.070 Duration of permit.

- (a) Except as provided in subsection (b) and Section 11.03.120, an entertainment permit issued pursuant to this chapter is valid for two years from the date it was issued subject to any conditions or restrictions existing at the time it was issued.
- (b) A special event permit issued pursuant to this chapter is valid for the term stated in the permit, but in no event for a period greater than one year from the date it was issued.

11.03.080 Permits not transferable.

Permits issued pursuant to this chapter shall not be sold, transferred, or assigned to any other person, entertainment establishment or location. Any such sale, transfer or assignment shall be deemed a voluntary surrender of the permit, and the permit shall thereafter be null and void.

11.03.090 Effect of denial.

If an application for an entertainment permit is denied by the police chief for failure to satisfy the eligibility requirements stated in Section 11.03.050(b)(2), no application for a permit to conduct any entertainment activity at the same location shall be considered by the police chief for a period of one year from the date of denial. If an application for a special event permit is denied by the police chief for failure to satisfy the eligibility requirements stated in Section 11.03.050(b)(2), no application for a special event at the same location shall be considered by the police chief for a period of six months from the date of denial. In addition, if denial of a permit is for failure to satisfy an eligibility requirement stated in Section 11.03.050(b)(4) or (b)(5), the police chief shall not consider any application from the same applicant for a period of one year.

11.03.100 Suspension, modification or revocation of permit.

(a) After notice and an opportunity for a hearing to the permittee as provided in this section, the police chief may suspend, modify or revoke any permit issued pursuant to the provisions of this chapter for any of the following reasons:

- (1) The entertainment has been conducted in a manner contrary to the findings for the issuance of a permit set forth in Section 11.03.050(b);
- (2) The permittee has failed to comply with one or more conditions of the permit;
- (3) The entertainment has created noise levels that violate the municipal code;
- (4) The permittee or his or her employees, agents, or representatives have violated or are violating federal, state or local laws, rules or regulations in connection with the entertainment;
- (5) The entertainment has been conducted in an illegal or disorderly manner or has been conducted in such a manner as to constitute an unreasonable burden on the use and enjoyment of neighboring properties;
- (6) The applicant made a false statement of material fact or omitted a material fact in the application;
- (7) The entertainment has created or is creating a nuisance;
- (8) The permittee or any other responsible person has violated any provision of this chapter; or
- (9) A modification of the permit has been requested by the permittee and the police chief finds the modification is consistent with the provisions of this code and will not constitute a nuisance or an unreasonable burden upon city resources or the surrounding neighborhood.

(b) In the event the police chief proposes to suspend, modify or revoke a permit, written notice of the proposed suspension, modification or revocation shall be personally delivered or sent by certified mail to the permittee at least fourteen (14) calendar days

prior to the date of the proposed suspension, modification or revocation. The notice shall contain:

- (1) A brief statement of the specific grounds for such suspension, modification or revocation;
- (2) A statement that the permittee may appeal the proposed suspension, modification or revocation by submitting a written request for an appeal to the city manager, within ten (10) calendar days of the date of service of the notice;
- (3) A statement that the failure to timely request an appeal of the proposed suspension, modification or revocation will constitute a waiver of the right to an administrative appeal hearing, and the proposed suspension, modification or revocation will be final.

(c) The appeal hearing shall be conducted by the city manager in accordance with Section 11.03.130. The permittee may have the assistance of counsel and shall have the right to present evidence.

(1) Failure to properly file a written appeal of the notice of suspension, modification or revocation within ten (10) calendar days of the date of service of the notice will constitute a waiver of the right to an appeal hearing, and the suspension, modification or revocation will be final. Failure to properly and timely appeal the notice of suspension, modification or revocation shall also constitute a failure to exhaust administrative remedies and bar judicial action pertaining to the final decision.

(2) If the permittee or counsel for the permittee files a proper appeal and then fails to appear at the hearing, the appeal is abandoned, and the decision of the city manager is final and may not be further appealed. Failure to appear at the hearing constitutes a waiver of all right to an appeal hearing and shall also constitute a failure to exhaust administrative remedies and bar any judicial action pertaining to the city manager's decision.

11.03.110 Application for Entertainment Permit Renewal and Extension.

(a) A permittee may apply for an entertainment permit renewal by submitting to the police chief at least fourteen calendar (14) days before the expiration of the permit, a renewal application and a non-refundable renewal fee in an amount set by resolution of the city council. Failure to timely submit a renewal application prior to expiration of the permit shall result in permit expiration, and an application for a new permit shall be required pursuant to section 11.03.020.

(b) If a timely and complete application for renewal is filed, the permit's expiration shall be stayed until a decision on the renewal application is issued.

(c) The police chief shall either approve or deny the renewal of a permit within thirty (30) calendar days of receipt of the complete application. The police chief may extend the time for consideration of the application for up to an additional twenty-one (21) calendar

days with the written consent of the applicant. The failure of the police chief to timely act shall constitute approval of the renewal of the permit.

(d) The police chief shall approve the renewal of a permit if he or she finds that the circumstances existing during the term of the permit and during the review period of the application for renewal are consistent with all of the findings required for approval of a new permit specified in Section 11.03.050, and that no permittee or responsible person of the entertainment establishment has committed, permitted, or failed to prevent violations of the municipal code, or any license or permit condition, during the preceding two years. Notwithstanding an approval for a permit renewal, the police chief may add, delete or modify the permit conditions using the criteria set forth in Section 11.03.050(d).

(e) A permit renewed pursuant to this section may be extended for up to two additional years.

11.03.120 Appeals.

Except as provided in Section 11.03.100(c)(1) and (c)(2), any applicant or permittee aggrieved by a decision of the police chief in denying, suspending, modifying or revoking a permit, or imposing conditions on the issuance of a permit or permit renewal, may appeal the decision to the city manager in accordance with the procedures set forth in Section 11.03.130.

11.03.130 Appeal Procedures.

(a) Appeal to City Manager or Designee.

(1) Any applicant or permittee who desires to appeal a decision of the police chief as specified in Section 11.03.120, may appeal the decision by submitting a written appeal to the city manager within ten (10) calendar days from the date of service of the notice of denial, suspension, modification, revocation, or conditioned approval or renewal. The written appeal shall contain:

a. A brief statement in ordinary and concise language of the specific decision or condition protested, together with any material facts claimed to support the contentions of the appellant;

b. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;

c. The signatures of all parties named as appellants and their official mailing addresses; and

d. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

(2) Upon receipt of a timely filed appeal, the city manager may hire or appoint a hearing officer or may serve as the hearing officer.

(3) Upon receipt of any appeal filed pursuant to this section, the hearing officer shall calendar it for hearing within fifteen (15) calendar days. However, if

the appeal pertains to a special event permit, the appeal shall be calendared for hearing within seven (7) calendar days.

(4) Written notice of the time and place of the hearing shall be given at least seven (7) calendar days prior to the date of the hearing to each named appellant either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address(es) shown on the appeal. However, if the appeal pertains to a special event permit, notice of the hearing shall be given at least three (3) calendar days prior to the date of the hearing.

(5) Failure of any person to timely file an appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and decision, or any portion thereof.

(6) Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

(7) In the case of a suspension, modification, or revocation of a permit or permit renewal, the permittee may continue to conduct entertainment during the pendency of any appeal.

(b) Hearings—Generally.

(1) At the time set for hearing, the hearing officer shall proceed to hear the testimony of the police chief, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically raised by the appellant in the notice of appeal.

(2) The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

(3) The hearing officer may, upon request of the appellant or upon request of the city, grant continuances from time to time for good cause shown, or upon his or her own motion.

(4) In any proceedings under this chapter, the hearing officer has the power to administer oaths and affirmations and to certify to official acts.

(c) Conduct of Hearing.

(1) Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

(2) Oral evidence shall be taken only upon oath or affirmation.

(3) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

(4) The hearing officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(5) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

(6) Each party shall have these rights, among others:

- a. To call and examine witnesses on any matter relevant to the issues of the hearing;
- b. To introduce documentary and physical evidence;
- c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
- d. To impeach any witness regardless of which party first called the witness to testify;
- e. To rebut the evidence presented against the party; and
- f. To represent him, her, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.

(7) In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city or any of its departments.

(d) Form and Contents of Decision—Finality of Decision.

(1) If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, modify, or revoke the permit, the hearing officer shall affirm the police chief's decision to deny, suspend, modify, revoke or condition the permit. Following the hearing and after reviewing the testimony and evidence presented at the hearing, the city manager shall issue a decision, or if the city manager appointed a hearing officer, the hearing officer shall issue a recommendation to the city manager, regarding the propriety of the police chief's determination. The decision or recommendation shall be in writing and shall contain findings of fact and a determination of the issues presented. The city manager shall accept, amend and accept, or reject a hearing officer's recommendation.

(2) The city manager's determination of the appeal shall be final.

(3) The final decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure Section 1094.6. Copies of the decision shall be delivered to the appellant personally or sent by certified mail to the address shown on the appeal within ten (10) business days following the conclusion of the hearing.

(4) The decision shall be final when signed by the city manager and served as provided in this section.

Article 11.04 Penalties for Violation

11.04.010 Violation—Penalty.

11.04.020 Cumulative remedies, procedures and penalties.

11.04.030 Severability.

11.04.010 Violation—Penalty.

(a) Any person violating any provision of this chapter, other than Sections 11.02.030, 11.02.040, 11.02.070 and 11.02.080, is guilty of an infraction for each of the first two violations within a six month period, and upon conviction thereof, shall be punished by a fine not to exceed the fine prescribed in accordance with the provisions of Section 36900 (b) of the California Government Code, or successor legislation. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Any repetition or continuation of any violation, reasonably capable of immediate correction after receipt of written or verbal notice shall constitute a separate offense and shall be punished as such.

(b) Any person violating or permitting violation of any provision of this chapter, other than Sections 11.02.030, 11.02.040, 11.02.070 and 11.02.080 for the third time within a six month period is guilty of a misdemeanor, and shall be punished by a fine or, by imprisonment in the county jail, or by both such fine and imprisonment not to exceed the maximum fine and/or imprisonment established in Section 36901 of the California Government Code, or successor legislation.

(c) Any person violating Section 11.02.030, 11.02.040, 11.02.070 or 11.02.080 of this chapter shall be subject to a civil action and/or administrative penalties pursuant to Chapter 1, Article 1.02.

(d) An administrative citation may be issued for any violation of this chapter pursuant to Davis Municipal Code Chapter 1, Article 1.02.

(e) As an additional remedy, the violation of any provision of this chapter shall be deemed and is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

11.04.020 Cumulative remedies, procedures and penalties.

The remedies, procedures and penalties provided by this chapter are cumulative to each other and to any others available under state law or other city ordinances.

11.04.030 Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, phrase, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this article, or the validity of its application to other persons or circumstances.