

ORDINANCE _____

1
2 AN ORDINANCE relating to the licensing and regulation of nightlife establishments;
3 establishing a Nightlife Commission; and adding a new Chapter 6.280 to the Seattle
4 Municipal Code.

5 WHEREAS, many neighborhoods throughout Seattle, including downtown, have experienced a
6 significant growth in nightlife establishments; and

7 WHEREAS, the growth of nightlife establishments has contributed greatly to the economic
8 vitality and cultural vibrancy of the city, strengthening Seattle’s international image as a
9 music and entertainment capital; and

10 WHEREAS, the growth of nightlife establishments in close proximity to residential areas has
11 sometimes caused concern among neighboring residents, with common complaints
12 centered on public safety, noise, littering, and liquor control law violations; and

13 WHEREAS, the Mayor formed a Nightlife Task Force in October 2005 (composed of nightlife
14 establishment owners and resident groups) to assist the City in coordinating, planning and
15 regulating nightlife premises throughout the city, while balancing the needs of a vibrant
16 and healthy nightlife industry with the needs of residents and other businesses who share
17 the same neighborhoods; and

18 WHEREAS, a comprehensive plan of assistance to operators of nightlife establishments is
19 needed to address all the issues facing nightlife in Seattle; and

20 WHEREAS, success in other cities demonstrates that identifying and implementing best
21 practices, establishing operating standards for nightlife establishments, and intervening
22 early in potential problem situations can help prevent many of the common issues from
23 becoming chronic problems; and

24 WHEREAS, the creation of a Nightlife Commission (which will include representatives of
25 nightlife premises licensees and neighborhood residents), will promote a safe, vibrant
26 nightlife industry; and

27 WHEREAS, reasonable operating standards applicable to nightlife establishments will promote
28 public safety and increase predictability for both establishments and their neighbors, and
will eliminate the need for individually negotiated good neighbor agreements; NOW
THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 6.280 is added to the Seattle Municipal Code as follows:

6.280.015 Definitions.

For the purpose of this chapter:

A. "City" means the City of Seattle.

B. "Department" means the Department of Executive Administration, or successor entity.

C. "Director" means the Director of the Department of Executive Administration or successor entity, or his or her designee.

D. "Division Director" means the Director of the Department's Division of Revenue and Consumer Affairs or successor entity, or his or her designee.

E. "Hearing Examiner" means the City of Seattle Hearing Examiner, or his or her designee.

F. "Licensee" means the person, persons, or entity that has applied for and been issued a nightlife premises license. For purposes of SMC Section 6.280.080, licensee includes employees and agents of the licensee.

G. "Liquor" has the same meaning as in chapter 66.04 RCW.

H. "Nightlife Premises" means any for-profit business open to the public;

1. in which at any time between the hours of 10:00 p.m. and 6:00 a.m. liquor is sold to the public;

2. which charges patrons an admission charge as a condition for admission to the premises;

3. whose total revenue from liquor sales and admissions charges represents fifty percent (50%) or more of its total revenues; and,

1 4. has any assembly space within the premises with a maximum occupancy of two-
2 hundred (200) or more persons as provided in a Certificate of Occupancy issued by the City.

3 I. “Nightlife Commission” or “Commission” means the commission authorized by this
4 ordinance.

5 J. “Person” means any individual, sole proprietorship, partnership, corporation,
6 association, or other public or private organization of any character.

7 K. “Premises” means any location where a nightlife premises is operated, and shall
8 include any room, place, space, or portion thereof, including hallways and restrooms, as well as
9 all other areas, such as parking lots, that are under the ownership or control of the applicant or
10 licensee and that are accessible to patrons or employees.

11 **6.280.020 License required.**

12 A. It is unlawful for any person to operate a nightlife premises without having a valid
13 nightlife premises license issued pursuant to this chapter.

14 B. A separate license is required for each location at which a nightlife premises is
15 operated.

16 **6.280.030 Transfer.**

17 No license shall be transferable from one person to another.

18 **6.280.040 Application for license.**

19 A. License applications shall be filed with the Director on forms provided by the
20 Department and shall include:

- 21 1. The name and business address of the applicant, and the name and business
22 address of the applicant's partners, owners, officers, directors, and the establishment's
23 primary manager. If the applicant is a corporation, the name of the corporation shall
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1 be set forth exactly as shown in its articles of incorporation, and the applicant shall set
2 forth the date and place of incorporation, the names and residence addresses of each
3 of the officers, directors, and each stockholder owning more than ten percent (10%)
4 of the stock of the corporation. If the applicant is a partnership, the application shall
5 set forth the name and residence address of each partner, including limited partners.
6 If one or more of the partners is a corporation, the provisions of this section
7 pertaining to a corporate applicant shall apply.
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9 2. The name of the business and the business address of the location for which the
10 license is sought.

11 3. A copy of a floor plan of the premises showing all points of ingress and egress, a
12 copy of either the nightlife premises' current liquor license or the nightlife premises'
13 pending application for a liquor license; a copy of either the current valid Certificate
14 of Occupancy ("Certificate") for the premises or, if the current Certificate does not
15 accurately reflect current uses of the premises or if a new applicant has applied for
16 but not yet received a Certificate, a copy of the pending application for such a
17 Certificate.
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19 4. A completed license application questionnaire. The Director shall develop the
20 questionnaire. An applicant's responses in the questionnaire shall include a
21 description of the measures the applicant will implement in order to comply with
22 SMC 6.280.080. The Office of Economic Development may, upon a request by the
23 applicant, review the questionnaire and provide assistance to the applicant.
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25 5. Whether the applicant or any one of the applicant's partners, officers, directors, or
26 the establishment's primary manager has, in the past five (5) years, been convicted of
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1 any crime. Any corporate applicant shall state whether any stockholder owning more
2 than ten percent (10%) of the stock of the corporation has, in the past five (5) years,
3 been convicted of any crime. For purposes of this subsection, "convicted" includes
4 any suspended or deferred sentence or acceptance of any deferred prosecution or
5 diversion from formal adjudication. If any person mentioned in this subsection has
6 been so convicted, the application must contain a statement giving the name of the
7 person so convicted, the place and court in which the conviction was obtained, the
8 caption and cause number under which the conviction was obtained, the specific
9 charge under which the conviction was obtained, and the sentence as a result of the
10 conviction.
11 conviction.

12 6. The name and address of an agent residing in King County to whom any notice
13 issued under this chapter may be sent.
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15 B. An application is complete only when the applicant has submitted to the Department
16 all information required by this section together with payment of the applicable fees.

17 C. Upon receipt of a complete application, the Department shall circulate the application
18 to the City's Police Department, Department of Planning and Development, Fire Department, and
19 Department of Neighborhoods, the Nightlife Commission and to the King County Department of
20 Public Health, or their functional successors ("departments"). The departments shall review the
21 application to determine if the proposed operation of the nightlife premises complies with this
22 chapter and other applicable laws. The departments shall, within fifteen (15) days of their
23 receipt of the application, make a recommendation to the Division Director regarding whether
24 the license should be granted or denied. A department's failure to respond shall not be a basis
25 for denying an application.
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1 D. The Division Director may also seek comment on the application from the
2 Washington State Liquor Control Board, and other governmental agencies the Division Director
3 determines to have relevant information.

4 **6.280.050 Term.**

5 All Nightlife Premises licenses, except interim licenses, shall expire on December 31st of
6 each calendar year.

7 **6.280.055 Timing of renewal applications.**

8 An application for a renewal of a license shall be filed with the Department between
9 ninety (90) days and forty-five (45) days prior to the expiration of the current license.
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11 **6.280.060 Fee schedule.**

12 The initial application fee for a nightlife premises license shall be Three Hundred Fifty
13 Dollars (\$350). The annual license fee shall be Three Hundred Dollars (\$300). Both the
14 application fee and the annual license fee shall be tendered as part of the complete license
15 application. If an application is made for a new license to be effective during the last six (6)
16 months of an annual license period, the license fee shall be one-half (1/2) of the license fee.
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18 **6.280.070 Grant or denial of a Nightlife Premises license.**

19 A. The Division Director, in consultation with other City departments, shall determine
20 whether the applicant's completed application, including the applicant's responses to the
21 questionnaire, appear reasonably adequate to prevent violations of SMC 6.280.080.
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23 B. Within thirty (30) days of the filing of a complete application for a license or any
24 renewal thereof, the Division Director shall grant or deny the license, or communicate to the
25 applicant in writing additional information the applicant must submit before the Division
26 Director can make a final decision regarding the application. If the Division Director requests
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1 additional information, he or she shall grant or deny the application within fifteen (15) days of
2 the receipt of such additional information. All denials shall be in writing, and shall state specific
3 facts and conclusions supporting the denial.

4 C. The Division Director shall grant the license or any renewal thereof unless he or she
5 makes one or more of the following findings:

- 6 1. The premises of the proposed nightlife premises does not comply with a State,
7 King County or City health, safety, zoning or fire law;
- 8 2. The applicant's responses to the license application questionnaire are not
9 reasonably adequate to prevent one or more violations of this chapter, including SMC
10 6.280.080;
- 11 3. The applicant has not complied with the requirements of SMC Section 6.280.040;
- 12 4. The applicant made a false statement or material omission in the application;
- 13 5. The applicant has not obtained all applicable City licenses or permits, or has failed
14 to pay applicable City taxes or fines;
- 15 6. The applicant, or any one of the applicant's partners, owners, officers, directors, or
16 the primary manager, owns, operates or manages a nightlife premises whose license is
17 currently suspended, or has owned, operated, or managed a nightlife premises which
18 has within a year preceding the receipt of the application:
 - 19 a. Had a nightlife premises license revoked or a retail liquor license canceled or
20 revoked;
 - 21 b. Been determined by a court or administrative tribunal to constitute a public
22 nuisance; or

- 1 c. Ceased operations after a public nuisance action involving such business has
2 been commenced by the City or other governmental unit.

3 **6.280.075 Interim Nightlife Premises License.**

4 A. A person operating a nightlife premises as of the effective date of this ordinance may
5 apply for an interim nightlife premises license by submitting an application within sixty (60)
6 days of the effective date of this ordinance.

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8 B. The Division Director shall issue an interim license to an applicant who has submitted
9 a complete application unless the Division Director determines that the applicant has engaged in
10 practices that are or would be a violation of this chapter.

11 C. An interim license shall authorize the licensee to operate a nightlife premises for a
12 period not to exceed twelve (12) months pending a full review of the applicant's application and
13 questionnaire. An interim license shall be subject to all other provisions of this chapter in the
14 same manner as a nightlife premises license.

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16 D. The Division Director shall complete a full review of the license application and
17 questionnaire within twelve (12) months of the issuance of an interim nightlife premises license
18 and shall issue a final decision either granting or denying the application for a nightlife premises
19 license. Upon issuance of the final decision, the interim license shall be canceled and have no
20 further effect.

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22 **6.280.080 Prevention of Violence.**

23 Nightlife premises licensees are required to implement all reasonable measures to prevent
24 violent criminal activity on the premises. Violent criminal activity means conduct that would
25 constitute a violation of:

- 26
27 1. Any crime that is defined as a violent offense by RCW 9.94A.030(50)(i)-(xi); or
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1 2. SMC Sections 12A.06.010, 12A.06.025, 12A.14.080, or

2 3. RCW Sections 9A.36.031, or 9A.36.041.

3 **6.280.090 Notice of Violation.**

4 If the Division Director has reasonable cause to determine that a nightlife premises
5 licensee has violated a provision of this chapter, the Division Director shall serve a Notice of
6 Violation (NOV) upon the licensee or agent designated pursuant to this chapter. The NOV shall
7 be served by personal service in the manner set forth in RCW 4.28.080 for service of a summons,
8 or sent by first class mail. Service shall be complete at the time of personal service, or if mailed,
9 three (3) days following the date of mailing. If a NOV sent by first class mail is returned as
10 undeliverable, service may be made by posting the NOV at a conspicuous place on the nightlife
11 premises.
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14 The NOV shall: 1) specify the provision the Division Director believes the licensee has
15 violated; 2) summarize the facts upon which the Division Director relies in making that
16 determination; and 3) state the penalty or other consequences of the violation. If a licensee has
17 not received a NOV within the last 18 months, the Division Director shall attach to a NOV a
18 request for the licensee to meet with the Nightlife Commission.
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20 **6.280.100 Penalties for Violations.**

21 Upon finding a second or subsequent violation of SMC Section 6.280.080 within any
22 eighteen (18) month period, the Division Director may, issue a suspension by written notice to
23 the licensee.
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25 **6.280.110 Notice of License Suspension or Revocation.**

26 A notice of suspension or revocation shall state the specific grounds for suspension and
27 that the suspension or revocation shall go into effect ten (10) days from the date of the notice
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1 unless the licensee, within that time, delivers a written request for a hearing to the Hearing
2 Examiner and to the Director. The Director shall send a copy of the Notice of Suspension or
3 revocation to the Washington State Liquor Control Board.

4 **6.280.120 Periods of suspension.**

5 A. The first suspension of a Nightlife Premises license under SMC Section 6.280.100
6 shall be for a period of up to seven (7) days. The second suspension of a Nightlife Premises
7 license under SMC Section 6.280.100 shall be for a period of up to thirty (30) days. The third
8 suspension within any eighteen (18) month period for a violation of SMC Section 6.280.080
9 shall result in revocation of the license.
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11 B. Any person who has had a Nightlife Premises license revoked may not apply for
12 another Nightlife Premises license for a period of one (1) year from the date of such revocation.
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14 C. For the purposes of this section, calculation of the period of eighteen (18) months
15 shall not include any period of time during which the license was suspended.

16 **6.280.130 Response and Request for Administrative Review.**

17 A. A licensee or applicant may request that the Department conduct an administrative
18 review of the Division Director's: 1) denial of an interim nightlife premises license, 2) denial,
19 suspension, or revocation of a nightlife premises license or a renewal thereof; or 3) issuance of a
20 Notice of Violation.
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22 B. A licensee's request shall be made in writing to the Division Director and must be
23 received within 10 business days after issuance of the decision to be reviewed. The applicant's
24 or licensee's response shall also state any facts in the denial, suspension, revocation, or NOV that
25 the licensee contests and any different or additional facts or other information, including any
26 additional measures the licensee has taken to correct the violation(s) or to prevent future
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1 violations, that the applicant or licensee wants the Department to consider as part of the
2 administrative review.

3 C. The applicant or licensee may also request in its response a meeting with either the
4 Division Director or the Commission to discuss the license denial, suspension, revocation, or
5 NOV and the licensee's response. The Division Director shall meet with the licensee if the
6 licensee has made a timely request. Minutes of any such meeting shall be made and included in
7 the official record of the matter.
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9 D. If the applicant or licensee submits a response and a timely written request for an
10 administrative review, the Division Director shall review the denial, suspension, revocation, or
11 NOV and consider the information provided by the licensee in the response, may conduct a site
12 visit or otherwise investigate the facts, and shall make a written recommendation to the Director.
13 The Division Director may recommend that a denial, suspension, or revocation be reversed or
14 affirmed, or that a NOV be withdrawn, modified, or affirmed. The factual record regarding the
15 matter is then closed.
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17 E. If the applicant or licensee does not submit a timely written response and a request for
18 an administrative review: 1) the license denial, suspension, revocation, or NOV shall be final;
19 and, 2) the violation or violations described in the NOV shall be established as having occurred
20 as described in the NOV.
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22 **6.280.140 Director's Administrative Review.**

23 If the applicant or licensee has submitted a timely written request for an administrative
24 review, the Director shall review the record, including the NOV or license denial, suspension or
25 revocation; the applicant's or licensee's response; the recommendation of the Division Director;
26 and any information relied upon by the Division Director in making that recommendation. The
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1 Director shall issue a draft written decision based upon that review of the record, and may
2 reverse or affirm a denial, suspension, or revocation, and may withdraw, modify, or affirm a
3 NOV. This draft written decision shall be submitted to the Commission for review. The
4 Commission shall have twenty (20) business days to review the draft written decision and
5 provide comments to the Director. The Director shall consider any comments received from the
6 Commission within those twenty (20) days and issue a decision that shall become final upon
7 service in the manner set forth in SMC Section 6.280.090.
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9 **6.280.150 Summary Suspension of Nightlife Premises License.**

10 The Director may summarily suspend a nightlife premises license as provided in SMC
11 Section 6.202.240.
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13 **6.280.160 Determinations.**

14 In making any decisions or determinations required or permitted by this chapter, the
15 Department may rely upon, among other things, written reports issued by law enforcement
16 officers in the course of their duties, and upon the type of civilian reports that would ordinarily
17 be relied upon by law enforcement officers in making determination regarding probable cause.
18 Determinations regarding license applications, suspensions, revocations, and NOV's are
19 administrative in nature, and may be established by a preponderance of the evidence under all the
20 circumstances.
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22 **6.280.170 Appeal of Denial of Interim License Application, Initial License**
23 **Application, or Renewal License Application or Suspension or Revocation of License.**

24 An applicant may appeal the Director's final decision that: denies an interim license
25 application, denies an initial application for a license, or denies an application for a renewal
26 license. A licensee may appeal the Director's final decision suspending or revoking their license.
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1 An applicant or licensee may file an appeal with the Office of the Hearing Examiner only if the
2 applicant or licensee has exhausted the administrative review process provided in SMC Sections
3 6.280.130 and 6.280.140.

4 Appeals must be made in writing and served on the Office of the Hearing Examiner and
5 on the Director no later than ten (10) days after the mailing of the notice of the Director's final
6 decision. Except for good cause shown, or upon agreement of the parties, the Hearing Examiner
7 shall commence a hearing within forty-five (45) days of receiving a notice of appeal. The
8 Hearing Examiner shall conduct the hearing pursuant to the Hearing Examiner's rules for the
9 conduct of hearings. The Director has the burden to prove by a preponderance of the evidence
10 that grounds for denial, suspension, or revocation exist.

11
12 The Nightlife Commission may submit a report to the Hearing Examiner concerning the
13 Director's decision related license denial, suspension or revocation. The Hearing Examiner shall
14 consider this report as part of its review. The Hearing Examiner shall affirm, vacate or modify
15 the Director's decision regarding the license denial, suspension, or revocation. If appealed, the
16 Director's decision denying a renewal license application or decision suspending or revoking a
17 license shall be stayed until the Hearing Examiner issues a final decision. Summary suspensions
18 under SMC Section 6.202.240 shall not be stayed during appeal.

19
20 The Hearing Examiner shall issue a decision including findings of fact and conclusions of
21 law within fifteen (15) days of the close of the record.

22
23 A licensee aggrieved by the Hearing Examiner's final decision may seek judicial review
24 in King County Superior Court as provided in chapter 7.16 RCW. Such appeal must be filed
25 within fourteen (14) days of the date the Hearing Examiner's decision is issued.

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27 **6.280.180 Operating without a license--Penalties.**

1 A. Civil Penalty. Any person who operates a nightlife premises without a valid nightlife
2 premises license issued pursuant to this chapter shall be subject to a cumulative civil penalty of
3 \$1,000.00 (One Thousand Dollars) per day for each violation. The penalty imposed by this
4 section shall be collected by civil action brought in the name of the City. In any action for a
5 penalty, the City has the burden of proving by a preponderance of the evidence that a violation
6 exists or existed.

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8 B. Alternative Criminal Penalty. Any person who operates a nightlife premises without
9 a valid nightlife premises license issued pursuant to this chapter shall be guilty of a misdemeanor
10 subject to the provisions of SMC Chapters 12A.02 and 12A.04, except that absolute liability
11 shall be imposed for such a violation or failure to comply and none of the mental states described
12 in SMC Section 12A.04.030 need be proved to prosecute such violations criminally as an
13 alternative to the citation procedure outlined in this chapter. Each day that a person operates a
14 nightlife premises without a valid license shall constitute a separate violation of this section.

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16 **6.280.190 Rules.**

17 The Director may issue rules to implement and enforce the provisions of this chapter,
18 including but not limited to policies and procedures for granting, denying, or suspending a
19 nightlife premises license.

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21 **6.280.200 Nightlife Commission**

22 A. The Nightlife Commission shall consist of nine (9) members. Members in odd-
23 numbered positions from one (1) thru seven (7) shall be appointed by the Mayor. Members in
24 even-numbered positions from two (2) thru eight (8) shall be appointed by a majority vote of the
25 City Council. The member in position nine (9) shall be appointed by a majority vote of the other
26 members of the Nightlife Commission. Appointments to odd-numbered positions shall be
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1 subject to confirmation by a majority of the City Council. The Mayor or City Council may
2 remove any member it appoints to the Commission. The member appointed by the Commission
3 may be removed by an affirmative vote of six of the other members of the Board.

4 B. The positions on the Nightlife Commission shall be numbered one (1) thru nine (9).
5 Positions one (1) thru four (4) shall be filled with representatives from the music and nightlife
6 industry. Position five (5) shall be filled with a neighborhood representative from northern part
7 of the city (north of the ship canal). Position six (6) shall be filled with a neighborhood
8 representative from the central part of the city (south of the ship canal and north of Interstate 90).
9 Position seven (7) shall be filled with a neighborhood representative from the southern part of
10 the city (south of Interstate 90). Position eight (8) shall be filled with a neighborhood
11 representative from West Seattle (including the Greater Duwamish). Position nine (9) shall be
12 filled with an at-large member.
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15 C. Members of the Commission shall serve a three (3) year term and may be reappointed
16 to one additional term for a total of two (2) terms. Service on the Commission is voluntary and
17 members shall not be compensated.
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19 D. The Commission shall meet at minimum once a month. The Office of Economic
20 Development shall staff the Nightlife Commission.

21 E. Duties of the Commission.

22 1. The Commission's duties shall include advising the City regarding: (1) the
23 promotion, development and sustainability of the nightlife industry in Seattle; (2) the
24 development of guidelines for effective and responsible business practices for the operation of
25 nightlife establishments (including guidelines to promote the safety of operators, patrons,
26 entertainers and promoters); (3) the effectiveness of the City's enforcement of nightlife related
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1 regulations; (4) the emerging nightlife issues related to increasing density in urban villages and
2 centers; (5) new ideas related to balancing neighborhood and residential needs with a vibrant and
3 active nightlife environment and (6) the implementation of the nightlife licensing program.

4 2. The Commission shall review and make recommendations to the City on the
5 renewal of liquor licenses. The Commission shall review and make recommendations on
6 nightlife establishment safety plans required by the City. The Commission shall may make itself
7 available to nightlife establishments and neighborhood residents that want to discuss methods to
8 mitigate conflicts and issues related to nightlife activity. The Commission shall prepare and
9 submit an annual report to the Mayor and City Council no later than July 1 of each year advising
10 the City regarding the effectiveness of the City's enforcement of regulations related to the
11 nightlife industry and observations about nightlife in Seattle.
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14 **Section 2. Severability.**

15 If any provision, section, subsection, subdivision, paragraph, sentence, clause or
16 phrase of this chapter shall be held void or unconstitutional, all other parts, provisions and
17 sections of this chapter not expressly so held to be void or unconstitutional shall continue in full
18 force and effect.
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20 **Section 3. Effective dates.** This ordinance, with the exception of SMC Section
21 6.280.020, shall take effect and be in force thirty (30) days from and after its approval by the
22 Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it
23 shall take effect as provided by Municipal Code Section 1.04.020. SMC Section 6.280.020 shall
24 not take effect until 90 days after the effective date of the rest of this ordinance.
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27 Passed by the City Council the ____ day of _____, 2007, and signed by me in
28 open session in authentication of its passage this ____ day of _____, 2007.

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President _____ of the City Council

Approved by me this ____ day of _____, 2007.

Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2007.

City Clerk

(Seal)