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Title: Amending Section 9-703 of The Philadelphia Code, entitled "Special Assembly Occupancies," by providing for additional types of activity to be regulated, amending the application procedures and increasing the fee for a Special Assembly Occupancy license and for Promoter registration, clarifying the role of the Police Department in approvals of licenses, and making other technical changes; all under certain terms and conditions.

Sponsors: Councilmember Squilla

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2/4/2016	0	CITY COUNCIL	READ		
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Amending Section 9-703 of The Philadelphia Code, entitled “Special Assembly Occupancies,” by providing for additional types of activity to be regulated, amending the application procedures and increasing the fee for a Special Assembly Occupancy license and for Promoter registration, clarifying the role of the Police Department in approvals of licenses, and making other technical changes; all under certain terms and conditions.
THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 9-703 of The Philadelphia Code is hereby amended to read as follows:

§ 9-703. Special Assembly Occupancies.

(1) Definitions.

(a) (a) "Special Assembly Occupancy" shall mean the following types of establishments, provided that [50 or more people congregate at such establishment primarily for] social entertainment [purposes] *is provided* at one or more times during the course of any year:

(.1) nightclubs, *private clubs,* discotheques and cabarets;

(.2) taverns and bars;

(.3) restaurants;

(.4) private clubs;

(.5) banquet halls; and

(.6) similar places of assembly without primarily fixed seating.

(b) "Social entertainment [purposes]" shall mean *provision for* dancing *by patrons*, entertainment by live *or recorded* music *(whether or not also presented with video content)* or a disc jockey, [observing] a theatrical or other performance *act* or similar activities. The phrase shall not include the consumption of food and beverages, listening to a speaker or lecture, watching television *programming*, watching or participating in athletic events, or other similar activities.

(c) "Teen event" shall mean any event or time for which the special assembly occupancy is open for use either overwhelmingly or exclusively by minors.

(d) "Performance Act" shall mean any person or group of persons engaged in the act of singing, *disc jockeying,* rapping, dancing, playing musical instruments, and/or acting for an audience or group of patrons. *The term shall also include the presentation of streaming or recorded audio or video, whether or not obtained for a fee*, *where such audio or video is offered primarily for listening or viewing*.

(e) "Promoted Event" shall mean any event wherein the operator of a special assembly occupancy relinquishes operational control over a special assembly occupancy to an outside operator, but shall not include any of the following:

(.1) an event which occurs on a regular or recurring schedule at the special assembly occupancy *and is provided and controlled by the special assembly occupancy operator or licensee and not by a third party or promoter as defined in § 9-703(f);*

(.2) the exhibition of a motion picture or stage drama at a theater.

(f) "Promoter" shall mean any person who [places assets at risk] *sponsors,* through contracting with event venues, performing artists, advertising services, or similar entities*,* [to arrange for and produce] *and produces* an event, other than the exhibition of a motion picture or stage drama at a theater, where such event is for social entertainment purposes at a special assembly occupancy. The term shall not include:

(.1) a special assembly occupancy licensee *or operator,* or [such licensee's] *their* employees;

(.2) the City of Philadelphia, its agencies or city-related agencies;

(.3) a person who arranges for and produces a private event for invited guests such as

a wedding reception, banquet or other celebration where there is no admission charge;

(.4) an individual who arranges for and produces no more than one event to advance any charitable purpose as defined by the Solicitation of [funds] *Funds* for Charitable Purposes Act, 10 P.S. §§ 162.1 et seq.; [or]

(.5) a person who arranges for and produces an event that is ticketed for fund-raising purposes, on behalf of a non-profit entity; or

[(.5)]*(.6)* a political committee.

(g) "Outside Operator" shall mean any promoter who assumes operational control over a special assembly occupancy for the express purpose of conducting or otherwise managing a special assembly occupancy.

(h) "Operational control" shall mean the exercise of final authority over any of the following business operations of the special assembly occupancy during a promoted event: maintaining legal occupancy capacity, deployment and supervision of *any* security personnel [(if any exist)] or crowd control and dispersal. The term shall not include the exercise of final authority over the sale of liquor and/or malt or brewed beverages.

(i) "Event" shall mean any activity [requiring] *sponsored by* a special assembly occupancy [license] *operator or licensee*.

(j) "Regular or Recurring Schedule *Event*" shall mean an event that occurs with periodic regularity within a [three] *six* month time period, whether or not the same outside operator is involved.

(k) *"Special Event" shall mean an event, sponsored by the special assembly occupancy operator or licensee, that is not a regular or recurring schedule event.*

(l) "Theater" shall mean any special assembly occupancy primarily used for the exhibition of any motion picture or stage drama.

(2) Licenses.

(a) No person shall operate a special assembly occupancy *in an establishment in which the lawful occupancy is 50 or more* without first obtaining a special assembly occupancy license from the Department.

(.1) The fee for a special assembly occupancy license shall be [one] *five* hundred [(100)] *(500)* dollars.

(.2) Within five (5) days of filing an application for a special assembly occupancy

license, the applicant shall post a notice of application provided by the Department on the exterior of *each street frontage of* the proposed special assembly occupancy location*, in a location clearly visible to the public,* for a period of thirty (30) days.

(.3) Special assembly occupancy licenses shall be [annually] renewed *every two years* upon payment of the renewal fee of [one] *five* hundred [(100)] *(500)* dollars *and posting of the renewal application for 30 days as provided in subsection (2)(a)(.2) hereof, and* subject to the conditions set forth in subsection (2)(b) [herein] *hereof*.

(b) No special assembly occupancy license shall be issued or renewed by the Department unless the Department determines that:

(.1) The Police Department has approved the application and the suitability of the location. In making such determination, the Police Department shall take into account such factors as crime, traffic, litter, noise, parking and hours of operation; as well as any community concerns, particularly those of neighbors in the immediate vicinity;

[(.1)]*(.2)* The applicant has valid amusement and commercial activity licenses.

[(.2)]*(.3)* No special assembly occupancy license has been denied or revoked for the proposed location within the preceding [three (3)] *six (6)* months.

[(.3)]*(.4)* The proposed location is in compliance with all relevant local and state laws, including [zoning]*but not limited to the Philadelphia Zoning Code and the Philadelphia Property Maintenance Code*.

[(.4)]*(.5)* The proposed location is a safe and proper place for purposes of the special assembly occupancy. In making such determination, the Department shall consider[:

(.a)] the results of *any building or* safety inspection*s* of the proposed location[, including inspection relating to electrical wiring, lawful occupancy, fire safety and emergency exits].

[(.b) The results of a criminal background check of the applicant and its principals.]

[(.c) The suitability of the location, taking into consideration such factors as crime, traffic, litter, noise, parking and hours of operation. In making such suitability determination, the Department shall take into account community concerns, particularly those of neighbors in the immediate vicinity, as well as the views of the Police Department.]

[(.5)]*(.6)* The applicant or licensee has filed all required returns and made payment of any monies due and owing as a result of all taxes imposed by the City or School District of Philadelphia or, if

delinquent in the payment of taxes, interest or penalties, has entered into and is in compliance with a payment agreement with the Department of Revenue or the Law Department.

[(.6)]*(.7)* The applicant has *a lawful occupancy and has* received a certificate of occupancy.

(.8) The applicant has presented proof of compliance with the posting requirement of § 2(a)(.2) or 2(a)(.3) hereof, including a picture of the posted notice and an affidavit attesting to the location and the dates posted.

(c) No special assembly occupancy license shall be renewed unless the special assembly occupancy has been *re*-inspected by the Department [within the year prior to] *in connection with* the renewal application.

(d) A special assembly occupancy license [shall] *may* be revoked upon a finding of non-compliance with any provision(s) of this Section. A finding of one instance of non-compliance may be sufficient cause to revoke a special assembly occupancy license.

(3) Operation of Special Assembly Occupancies.

(a) It shall be the responsibility of every special assembly occupancy *operator and* licensee as a condition *of operation or* to the receipt or retention of the special assembly occupancy license, to ensure that patrons do not congregate in a disorderly manner, and do not engage in any illegal activity, including non-compliance with § 10-604 relating to alcoholic beverages in and around the immediate vicinity of the special assembly occupancy.

(b) No special assembly occupancy shall operate between the hours of 2:00 a.m. and 7:00 a.m.*, except for establishments that have obtained* [Notwithstanding the foregoing, special application may be made to the Department for permission for a special assembly occupancy to operate after-hours. The Department shall grant such permission only upon a showing of special circumstances, including, but not limited to, a showing that the proposed location and event are safe and proper for after-hours social entertainment.] *a Club ("C") or Catering Club ("CC") License, as defined by 47 P.S. § 4-401; and liquor licensed establishments that possess an Extended Hours Food Permit issued by the Pennsylvania Liquor Control Board*.

(c) It shall be the responsibility of every special assembly occupancy *operator and* licensee as a condition *of operation or* to the receipt or retention of the special assembly occupancy license to:

(.1) refrain, under color of such license *or otherwise*, [from] *from:* selling, transferring, delivering or manufacturing, illegal drugs to any person[.]*;any violations of the Pennsylvania Liquor Code and its Regulations, including the sale or transfer of* alcoholic beverages to a minor[,]*;* [or engaging in] *allowing* acts of prostitution or promoting prostitution as defined at 18 Pa. C.S. § 5902(a) and (b)

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[,]*;* or permitting a minor to remain upon the premises of said establishment in violation of Chapter 10-300 of The Philadelphia Code[.]*;*

(.a) [To ensure that no special assembly occupancy knowingly permits a minor to remain upon the premises of said establishment in violation of Chapter 10-300 of The Philadelphia Code, all] conclude all teen events and take reasonable steps to vacate all minors from the premises no later than thirty (30) minutes prior to the time restrictions set forth in Chapter 10-300 of The Philadelphia Code;

(.2) refrain, under color of such license *or otherwise*, from leasing real estate to a person knowing, or having reason to know, that such person is using, or intends to use, such real estate or improvements thereon in the selling, transferring, delivering or manufacturing of illegal drugs, or in the sale of alcoholic beverages to a minor, or to engage in acts of prostitution or promoting prostitution as defined at 18 Pa. C.S. § 5902(a) and (b) or permitting a minor to remain upon the premises of said establishment in violation of Chapter 10-300 of The Philadelphia Code;

(.3) refrain from causing or permitting a patron or employee to cause a public or private nuisance, either directly or indirectly, or by permitting third persons or conditions to do so, when such nuisances may be minimized or prevented by reasonable measures, regardless of whether the special assembly occupancy *operator or* licensee was aware of such nuisance. A nuisance shall include the sale of illegal drugs or paraphernalia on or about the premises of the special assembly occupancy. As used in this subparagraph, a special assembly occupancy operator shall be conclusively deemed to have taken reasonable measures and therefore to have complied with its obligations under this subparagraph if it (i) has a reasonable policy to prevent nuisances such as the sale of illegal drugs, (ii) has an adequate security staff to enforce such a policy, and (iii) its security staff does in fact undertake good faith measures to enforce said policy;

(.4) prohibit the use of pyrotechnic devices, fireworks, explosives, or similar material as defined and regulated by the Philadelphia Fire Prevention Code within the special assembly occupancy. A special assembly occupancy operator *or licensee* shall inform all performance acts, in writing, that the use of the above mentioned devices [are] *is* prohibited inside the special assembly occupancy, and take appropriate measures to enforce said policy;

(.5) refrain, under color of such license or otherwise, from entering into any contracts or agreements with a promoter to arrange for and produce a promoted event at the special assembly occupancy, knowing, or having reason to know, that such person is not registered as a promoter with the Managing Director and/or does not possess a valid commercial activity license. *A special assembly operator or licensee shall, as part of any contract or agreement with a promoter, provide written notice to the promoter that any advertising activity for the promoted event must comply with the requirements of Chapter 10-500 (prohibiting damage to or interference with property) and Chapter 10-1200 pertaining to posting of signs) of The Philadelphia Code, and shall monitor such activity to ensure compliance. A special assembly operator or licensee shall maintain and produce for inspection upon request by the Department or any City or State law enforcement agency a copy of such contract and written notice, including the full name, address and phone number of the promoter;*

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(.6) *maintain and produce for inspection upon request by the Department and any City or State law enforcement agency the full name, address and phone number of all performance acts scheduled to perform on the premises of the special assembly occupancy at any time;*

(.7) refrain, under color of such license or otherwise, from engaging in any advertising activity that violates any requirement of Chapter 10-500 and Chapter 10-1200 of this Code;

(.8) notify the local Police District [Commander] *Captain* two weeks in advance of any promoted event *or special event*. If notice *of a promoted event* is provided less than two weeks in advance, the *operator or* licensee must demonstrate good cause for the late notice. The form for providing advance notice shall be available for filing online and shall include:

(a) The full name, address, *phone number,* [and] commercial activity license *and permanent promoter registration issued by the Managing Director* of the outside operator *or promoter, where applicable*;

(b) The date, starting time and duration that the promoted event *or special event* is scheduled;

(c) The lawful occupancy of the special assembly occupancy where the promoted event *or special event* will be held;

(d) The anticipated number of persons who will attend the promoted event *or special event,* based upon the best information available, which may include advance ticket sales and the number of attendees at similar events in the past;

(e) Whether private security will be on location of the promoted event *or special event* to manage security and traffic concerns;

(f) If private security will be on location of a promoted event *or special event,* the name and telephone number of the person who will be in charge of security during the [promoted] event;

(g) If private security will be on location of a promoted event *or special event* , whether or not the security staff will be armed [or unarmed].

(h) The full name, address and phone number of all performance acts scheduled to perform during the promoted event or special event. Licensees *or operators*[are encouraged to] *shall* update the local Police [Commander] *Captain* if there are substantial changes in the nature of the promoted event *or special event*, including, but not limited [to] *to,* cancellation of the event. The form for providing updated notifications shall be available for filing online;

(.9) post the special assembly occupancy license in a visible location at the premises; and

(.10) for every promoted event, maintain and produce for inspection by any City or State law enforcement agency a written agreement with any outside operator delineating the specific operational areas in which the outside operator will be in operational control of the special assembly occupancy during the promoted event. The written agreement shall be on a form prescribed by the Managing Director and shall be available online.

(d) The Department*, and the Police Department,* shall take all steps necessary to terminate the business operations of any special assembly occupancy that has violated any provisions of this subsection *9-703(2) or* (3), including, but not limited to the following:

(.1) The seizure of the illegal drugs and/or drug paraphernalia*, and any illegal weapons* located at such establishment, and the delivery of the material taken to appropriate law enforcement personnel for forfeiture proceedings pursuant to the provisions of the Act of June 30, 1988, P.L. 464, No. 79, § 4, as amended, P.L. 1337, No. 154, § 1; [and]

(.2) padlocking and physical closure of the special assembly occupancy; [and]

(.3) the initiation of proceedings to enjoin preliminarily and/or permanently the further operation of the special assembly occupancy which has violated or intends to violate such [subsections.] *subsections; and*

(.4) issuance of a Cease Operations Order.

(e) Any special assembly occupancy licensed under, *or otherwise subject to,* this Section *9-703* who violates [the]*any* provisions of this Section or whose agents or employees violate [the]*any* provisions of this Section shall also be subject to immediate revocation of his or her *special assembly occupancy,* amusement and commercial activity licenses *and to a Cease Operations Order.*

(4) Registration of Promoters. No person shall operate as a promoter without first registering as a promoter with the Managing Director.

(a) All promoters shall be registered on forms provided by the Managing Director. These forms shall also be available online.

(b) The application for promoter registration shall contain the following information:

(.1) promoter's name and address;

(.2) promoter's business name;

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(.3) promoter's work and mobile telephone number;

(.4) promoter's email address and website (if any); and

(.5) promoter's commercial activity license number.

It shall be the responsibility of the promoter to report any changes in the registration information to the Managing Director within fifteen (15) days of the change. The form for reporting changes shall be available online.

(c) A permanent registration shall be issued upon payment of a fee of [forty dollars ($40)] *one hundred dollars ($100).*

(5) Enforcement.

(a) All special assembly occupancies shall be subject to inspection by the Philadelphia Police Department,[or] the Department of Licenses and Inspections*, or the Fire Department* at all reasonable times and whenever such place is open for business.

(b) The Police Department,[and] the Department of Licenses and Inspections*, and the Fire Department* shall have the power to order a place vacated and/or closed in the event a special assembly occupancy is not in compliance with the terms of this Section *or of the Fire Code.*

(c) The special assembly occupancy licensee *or operator* and the outside operator, if one exists, shall be jointly liable for the costs incurred by the [police] *Police Department,* [fire] *Fire* [d]*D*epartment, [and/or]the Department, [and/or] *and any other City department,* in responding to and [quelling] *stopping or preventing* any violations of this Section *9-703 or any other sections of The Philadelphia Code,* including any disorderly crowds, disturbances of the peace or riots and any other private or public nuisances arising from the *advertising of or* operations of the special assembly occupancy. Such assessment of costs shall not include those costs expended by the [p]*P*olice or [f]*F*ire [d]*D*epartment responding to or investigating isolated criminal acts or medical emergencies.

(d) The Department [shall] *may* promulgate such regulations as it deems proper to regulate the form and manner of issuing and revoking special assembly occupancy licenses and the imposition of sanctions set forth in this Chapter for operating without, or in violation of the conditions of, a valid license. Such regulations may provide for the imposition of sanctions on one or more of the premises operated under a particular license, depending on the breadth of occurrence of the violative behavior.

(e) A violation of any provision of subsection *9-703*(3)(a), (b) or (c)(.1) through (.4) [of this Section] shall be classified as a Class III offense as set forth in Section 1-109. All violations of each subsection of subsection (3)(a), (b) or (c)(.1) through (.4) which are committed on a single calendar day shall be

aggregated together and constitute one single violation for the purpose of issuing citations and assessing penalties under this Section. Violations of different subsections of subsection (3) which are committed on a single calendar day shall not be aggregated and shall constitute separate and distinct violations for the purpose of issuing citations and assessing penalties under this Section.

(6) Supersession. This Ordinance is intended to supersede Act 1919, May 16, P.L. 193, as amended, 53 P.S. §§ 4731 to 4742, with respect to the regulation of special assembly occupancies and social entertainment events in the City of Philadelphia, and said Act shall no longer be applicable to the regulation of special assembly occupancies and social entertainment events in the City of Philadelphia.

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Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

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