

ORDINANCE NO. 1184

**AN ORDINANCE OF THE CITY OF FOLSOM
ADDING CHAPTER 5.90 TO THE FOLSOM MUNICIPAL CODE
PERTAINING TO ENTERTAINMENT PERMIT**

The City Council of the City of Folsom does hereby ordain as follows:

SECTION 1 PURPOSE

The purpose of this Ordinance is to amend the Folsom Municipal Code to establish a process for permitting and regulating the operation of entertainment activities offered by various establishments in entertainment district(s) established by the City Council in order to protect and promote the public health, ensure the safety of patrons and attendees, prohibit illegal activity from occurring within the entertainment venues, and to minimize any adverse effect from the entertainment activities to the surrounding neighborhood.

SECTION 2 ADDITION TO CODE

Chapter 5.90, "Entertainment Permit," is hereby added to the Folsom Municipal Code to read as follows:

Chapter 5.90

ENTERTAINMENT PERMIT

Sections:

- 5.90.010 Purpose.**
- 5.90.020 Definitions.**
- 5.90.030 Creation of entertainment district**
- 5.90.040 Establishing conditions applicable to an entertainment district**
- 5.90.050 Entertainment permit required—Compliance with other laws.**
- 5.90.060 Exemption from the permit requirement.**
- 5.90.070 Application of chapter.**
- 5.90.080 Hours of operation—Responsible person.**
- 5.90.090 Disturbing the peace—Disorderly conduct.**
- 5.90.100 Intoxicated customers.**
- 5.90.110 Observation of noise abatement laws required.**
- 5.90.120 Disorderly conduct within 20 feet prohibited.**
- 5.90.130 Orderly dispersal required.**
- 5.90.140 Threat to public safety.**
- 5.90.150 Application for permit.**
- 5.90.160 Application review and permit issuance.**
- 5.90.170 Fees.**
- 5.90.180 Display of permits.**

The foregoing instrument is a correct copy of the original on file in this office.

ATTEST: Christa Saunders
City Clerk of the City of Folsom, California

- 5.90.190 Duration of permit.**
- 5.90.200 Permit not transferrable.**
- 5.90.210 Suspension, modification or revocation of permit.**
- 5.90.220 Effect of revocation**
- 5.90.230 Appeals**
- 5.90.240 Violation—Penalty**

5.90.010 Purpose.

The City Council of the City of Folsom encourages the development of arts and culture in Folsom, and recognizes that many entertainment venues provide a means for such development. The Council further recognizes that the varied entertainment venues in the City provide a rich and diverse cultural experience for the residents of the city and visitors to the City.

The Council also recognizes that many entertainment venues provide a safe place for families and young adults to gather.

The City Council further recognizes that the operation of entertainment establishments can present, if improperly managed, an environment with the demonstrated potential for excessive noise generation and disorderly conduct by patrons, particularly at closing times, with the attendant adverse health and safety impacts on the surrounding business and residential community. It is recognized that some entertainment establishments in Folsom operate without conditions imposed through a Conditional Use Permit (CUP) while others have been issued CUP's with conditions. The City Council finds it is beneficial to all businesses within an entertainment area or district and for the residents who reside near such establishments that the businesses operate with similar reasonable and appropriate operating conditions.

Therefore, it is the purpose of this Chapter to set forth reasonable regulations relating to the operation of establishments that offer entertainment for the public health, safety and welfare of the businesses, residents, patrons and others present in or near entertainment areas or districts. The further purpose of this Chapter is to set forth regulations to provide that entertainment establishments participate in controlling patron conduct in and around the establishments, making adequate provisions for security, underage drinking and crowd control, noise and minimizing disturbances as a result of the operation of the entertainment.

5.90.020 Definitions.

The following definitions shall apply 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, token or equivalent directly or indirectly required as a condition for entrance. It does not include tips, gratuities, voluntary donations, or suggested donations to be provided to employees or for any person providing Entertainment.

“Chief of Police” means the Chief of Police of the City of Folsom or his/her designee.

“City Manager” means the City Manager of the City of Folsom or his/her designee.

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

“Director” means the Director of the City of Folsom Public Works and Community Development Department or his/her designee.

“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, the obstruction of free passage of vehicles within the public right-of-way, littering, fighting, shouting, conduct that violates any provision of Chapters 8.42 (noise ordinance), 9.42 (public urination or defecation) and 9.88 (firearm) of this Code, and such other conduct that constitutes a public nuisance or a violation of law.

“Entertainment” means any activity conducted for the purpose of diverting or entertaining a clientele in a premises open to the general public. Examples of such activity may include, but not be limited to, presentations by single or multiple performers such as hypnotists, mimes, comedians, musical song or dance acts; plays, concerts, dancing, any type of contest, whether by performers or patrons of the establishment; live musical performances, instrumental or vocal, when carried on by more than two (2) persons or whenever sound or music is amplified; musical Entertainment provided by a disc jockey or karaoke, or any similar Entertainment involving amplified, reproduced music; dancing to live or recorded music.

“Entertainment District” means an area or areas with specific boundaries designated by Resolution of the City Council.

“Entertainment Permit” means a special permit issued by the City under this Chapter related to the operation of an establishment offering Entertainment open to the public in the Entertainment District.

“Owner” means the owner of a business that is a sole proprietorship, or an authorized member of a partnership, corporation or other business entity.

“Permittee” means a person or business entity that has been issued an Entertainment Permit as provided in this Chapter.

“Reasonable Efforts” means the adoption, carrying out and posting of operating policies that are consistent with the requirements of this Code and the Entertainment 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 all additional measures, consistent with sound business judgment, necessary to accomplish the required result.

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

“Theater” means any commercial establishment where regular sporting events, concerts, motion picture screenings, dance lessons, student recitals or theatrical and performance arts are given, usually with a stage, and usually with ascending row seating or some arrangement of permanent seating.

5.90.030 Creation of an entertainment district.

The City Council may designate an Entertainment District by Council Resolution. The Resolution shall set forth the geographic boundaries of the district. Prior to establishing the Entertainment District, the City shall provide notice to all businesses and residences within the boundaries of the district of the date and time for the City Council meeting to consider creation of the district.

5.90.040 Establishing conditions applicable to an entertainment district.

A. The City Council shall establish conditions applicable to any business in the Entertainment District that requires an Entertainment Permit. The City Council shall generally apply uniform conditions based on the type of business operating in the district. Each Permittee issued an Entertainment Permit shall be required to follow the conditions established for the district. Examples of conditions the City Council may require include, but are not limited to, the following: allowable hours of Entertainment, hours for amplified music, and security requirements based on the type of Entertainment offered.

B. In the event of a conflict between the conditions established by the City Council pursuant to subsection A above and one or more conditions in a use permit existing on the Owner’s premises, the Owner may continue with Entertainment under the use permit as non-conforming use for a period not exceeding six (6) months from the date of adoption of the Entertainment Permit conditions, and shall thereafter comply with all conditions established by the City Council for the Entertainment Permit.

5.90.050 Entertainment permit required—Compliance with other laws.

A. Unless exempt pursuant to Section 5.90.060, it is unlawful for any person or entity to provide, host, organize, own or otherwise allow any Entertainment that is open to the public in an area designated by the City Council as an Entertainment District without an Entertainment Permit issued pursuant to this Chapter.

B. Any person or business entity providing Entertainment must comply with all of the provisions of this Chapter and any Conditions established by the City Council when creating an Entertainment District.

C. 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, the zoning code, building code, fire code or any other or additional permit requirement or standard made applicable to the Entertainment and/or the establishment providing, hosting, organizing or otherwise allowing the Entertainment under any other provision of this Code or state or federal law.

5.90.060 Exemption from the permit requirement.

The following types of Entertainment are exempt from the permit requirement in this Chapter. This exemption does not relieve any establishment from complying with all other applicable federal, state and local laws, rules and regulations including, but not limited to, regulations related to noise levels, Disorderly Conduct and nuisances.

A. Entertainment sponsored by the City of Folsom, the county of Sacramento, any public agencies, schools, school districts or by any other political subdivision of the state of California.

B. Entertainment lawfully conducted at any City park, building, recreational facility, public plaza or public right-of-way under a City-issued permit or contract.

C. Entertainment limited to the use of a radio, juke box, television, video games, video programs, or recorded music by an establishment that does not permit dancing.

D. Entertainment provided for members and their guests at a private club, society, association, or religious organization who are exempt from taxation pursuant to the Internal Revenue Code when admission is not open to the public and all proceeds, if any, arising from such Entertainment are used exclusively for the benevolent purposes of such club, society, association, or religious organization. For purposes of this section, private club, society or association means a corporation, organization or association 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.

E. Entertainment provided for invited guests at a private event conducted entirely on private property such as a wedding reception, banquet, or celebration where there is no admission charge.

F. Street performers such as musicians, singers or mimes without amplified music or sound.

G. Theaters.

H. Book readings, book signings, poetry recitations, and any other similar Entertainment consisting of the spoken word, including plays.

I. Fundraisers for a political or charitable cause, provided that 100 percent of the proceeds are used for the purposes of the political or charitable cause.

J. Entertainment consisting of ambient or incidental non-amplified music provided for guests or patrons by musicians such as a piano player, harpist, strolling violinist, mariachi band, guitarist or band. This exemption shall not apply if there is an admission charge required to observe or attend such Entertainment.

5.90.070 Application of chapter.

This Chapter is intended to implement minimum standards applicable to the operation of all Entertainment activities in the Entertainment District. This Chapter sets forth requirements for all persons and business entities providing Entertainment in an Entertainment District. Nothing in this Chapter shall limit the City's authority to impose and enforce conditions in applicable City permits, including those approved by the City Council when approving an Entertainment District, or provisions of this Code or state or federal law requiring Entertainment establishments to comply with operating standards that are more strict, comprehensive or onerous than the minimum standards imposed by this Chapter.

5.90.080 Hours of operation—Responsible person.

A. The hours of operation for Entertainment in an Entertainment District shall be set by Resolution of the City Council.

B. A Responsible Person must be present in the Entertainment establishment during all hours that the Entertainment establishment is open and offering Entertainment.

5.90.090 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 647 (disorderly conduct), or who exhibits Disorderly Conduct as defined in Section 5.90.020 of this Code, 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 and the vicinity.

5.90.100 Intoxicated customers.

Each Responsible Person shall make Reasonable Efforts to prevent the admittance of any intoxicated person. For purposes of this section, a person is "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, where such manifestations lack other apparent cause.

5.90.110 Observation of noise abatement laws required.

Each Responsible Person shall ensure compliance with all laws applicable to noise abatement, including those contained in Chapter 8.42 of this Code as it exists or is hereafter amended.

5.90.120 Disorderly conduct within 20 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 within the establishment and within 20 feet of the property lines of the establishment.

5.90.130 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, and shall not allow them to congregate within 20 feet of the property lines of the establishment in a disorderly fashion.

5.90.140 Threat to public safety.

A. The Chief of Police may suspend an Entertainment Permit and require a Permittee or Responsible Person to suspend operations and disperse all persons for the remainder of its daily operation whenever conduct by disorderly patrons reaches a magnitude that presents an immediate and ongoing threat to the public safety or well-being of the patrons and/or the general public in the vicinity. Circumstances constituting an immediate threat to the public safety include, but are not limited to, the following:

1. There is an immediate ongoing and likely to continue threat of bodily harm or injury to a person or persons.
2. There is a clear and present danger of riot, disorder or unlawful interference with traffic upon the public streets.
3. When the occupancy rules are being violated.

B. It is unlawful for any person to fail to comply with any directive issued by the Chief of Police under the authority of this Section.

5.90.150 Application for permit.

A. The Owner of a business offering Entertainment shall be the applicant for an Entertainment Permit. All applications for permits shall be filed with the Director on such forms as he or she may prescribe, and shall contain at a minimum the following information: name,

address, and telephone number of the applicant and the Responsible Person for the Entertainment, a description of the proposed Entertainment, maximum number of persons expected to be present within the Entertainment establishment at any one time, the proposed dates, hours and location of the proposed Entertainment, security arrangement, property owner's consent, and any other information as the Director shall deem necessary for the proper processing and review of the application.

B. Except as provided below, the Director shall either approve or deny the permit application within 20 calendar days of receipt of the complete application. The Director may extend the time for consideration of the application by not more than 5 calendar days.

C. Any Owner of a business offering Entertainment in the City must apply for an Entertainment Permit within thirty (30) days of the City Council approving an Entertainment District in the area in which the business operates. If no application has been filed, no Entertainment is permitted until an Entertainment Permit has been issued.

5.90.160 Application review and permit issuance.

A. The Director shall review the application and may obtain recommendations and reports from such other City departments as he/ she deems necessary concerning the application.

B. The Director shall approve the issuance of the Entertainment Permit if he or she finds all of the following:

1. Issuance of the permit and conduct of the Entertainment at the proposed location, as conditioned, is consistent with federal, state and local laws, rules, regulations and any existing special permit(s).

2. The Owner has agreed in writing to adhere to this Chapter and any conditions imposed in the Entertainment District in which the business operates.

2. The proposed location has a current fire department occupancy permit and has received a fire and life safety inspection within the previous fiscal year.

3. It does not appear, based upon the information before the Director, that the applicant has provided false or misleading material information in the application.

C. Where the Director determines that a permit application should be denied, he or she shall inform the applicant of the reason(s) for the denial in writing.

D. The Permit shall include the conditions approved by the City Council relating to the operation of a business offering Entertainment in that District. Conditions shall be listed on, or attached to, the permit.

5.90.170 Fees.

Every application for an Entertainment Permit shall be accompanied by a nonrefundable application fee as established by Resolution of the City Council. This application fee shall be in addition to the City's business license tax and any other license or permit fee imposed by this Code upon the applicant.

5.90.180 Display of permits.

The permit issued pursuant to this Chapter shall at all times be displayed 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.

5.90.190 Duration of permit.

An Entertainment Permit issued pursuant to this Chapter shall be valid from the date it was issued, subject to any conditions or restrictions existing at the time it was issued, until change of ownership of the business or the premises at the Permit location, or until suspended or revoked under Section 5.90.210.

5.90.200 Permit not transferable.

Entertainment Permits issued pursuant to this Chapter are not transferable to another person, Owner or location.

5.90.210 Suspension, modification or revocation of permit.

A. In addition to the authority of the Chief of Police to suspend an Entertainment Permit under Section 5.90.140, the Director may suspend, modify or revoke any permit issued pursuant to the provisions of this Chapter, upon notice to the Permittee and an opportunity for a hearing as provided in this Section, 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 5.90.160(B);
2. The Permittee has failed to comply with one or more conditions of the permit;
3. The Permittee has failed to comply with all applicable federal, state and local laws, rules and regulations, including but not limited to the City's noise ordinance;
4. The Permittee or his/her employees, agents, representatives or Responsible Persons have failed to comply with all applicable federal, state and 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 reasonable use and enjoyment of neighboring properties;

6. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact in the application; or

7. The Entertainment has created or is creating a nuisance.

B. The Director's determination to suspend, modify or revoke any Entertainment Permit shall be in writing, setting forth the reasons for said determination

5.90.220 Effect of revocation.

In the event an Entertainment Permit is revoked by the Director, no application for another Entertainment Permit for any proposed Entertainment activity at the same location shall be considered by the Director for a period of one year from the date of revocation, unless proof of bona fide change of ownership has been presented to the Director.

5.90.230 Appeals.

A. In the event a decision to deny, suspend, modify or revoke an Entertainment Permit is made by a designee of the Director, the applicant shall have the right to appeal from said action to the Director within 10 calendar days after the notice is personally served upon or mailed to the applicant or Permittee. A written notice of appeal shall be timely filed with the Director, and on receipt of said notice, the Director shall set the matter for hearing within 15 calendar days of the filing of said notice of appeal. Written notice of the time and place of such hearing shall be served upon the applicant at least 5 calendar days prior to the date set for such hearing. Notice may be given either by personal delivery to the applicant, or by depositing it in the U.S. mail in a sealed envelope, postage prepaid, addressed to the person to be notified at his or her address as it appears in the application.

B. Within 5 calendar days after the hearing, the Director shall send written notice to the applicant either granting the permit or containing a statement of the grounds relied upon for suspending, modifying, revoking or denying the permit. The decision of the Director under this section may be appealed to the City Manager within 10 calendar days. Notwithstanding any other provision of this Code, the decision of the City Manager shall be final.

C. If a written notice of appeal is not timely filed pursuant to this section, the decision of the Director or his/her designee shall be final.

D. No Entertainment may be provided on the premises specified in the application or the Entertainment Permit while an appeal is pending.

5.90.240 Violation—Penalty.

A. In addition to all other remedies at law or in equity, unless exempt under Section 5.90.060 any person and/or business entity providing Entertainment in the Entertainment District without a valid Entertainment Permit or failing to comply with any directive issued by the Chief of Police under Section 5.90.140 is guilty of a misdemeanor, punishable by a fine not exceeding \$500.00 for the first violation. Successive violations shall be punishable by a fine not exceeding \$1,000.00 for the second violation within one year, and a fine not exceeding \$3,000.00 for each additional violation within one year of the initial violation. Violation not abated at the end of the day shall constitute a new violation on the following day.

B. Except as provided in Section 5.90.240(A), in addition to all other remedies at law or in equity, any person and/or business entity violating any provision of this Chapter or who violates any condition of the Entertainment Permit is guilty of an infraction, punishable by a fine not exceeding \$500.00 for the first violation. Successive violations shall be punishable by a fine not exceeding \$1,000.00 for the second violation within one year, and a fine not exceeding \$3,000.00 for each additional violation within one year of the initial violation. Violation not abated at the end of the day shall constitute a new violation on the following day.

C. Violations of this Chapter may also be enforced pursuant to the provisions of Chapter 1.09 of the Folsom Municipal Code as a Level B violation for the first and second offenses within one year, with a minimum penalty of \$500.00 per day for the first violation and a minimum penalty of \$1,000.00 per day for the second violation within one year. Each successive violation after the second violation within one year shall be enforced as Level C violation, with a minimum penalty of \$3,000.00 per day for each additional violation. Notwithstanding other provisions of Chapter 1.09, no Notice to Correct and Stop Order as provided therein shall be required prior to issuance of a Notice of Violation and imposition of administrative penalties.

D. The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the Folsom Municipal Code. None of the penalties or remedies authorized by, or set forth in, the Folsom Municipal Code shall prevent the City from using any other penalty or remedy under state statute which may be available to enforce this Section or to abate a public nuisance.

SECTION 3 SCOPE

Except as set forth in this ordinance, all other provisions of the Folsom Municipal Code shall remain in full force and effect.

SECTION 4 SEVERABILITY

If any section, subsection, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the

remaining portions of this Ordinance or any part thereof. The City Council declares that it would have passed each section irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared unconstitutional, invalid, or ineffective.

SECTION 5 EFFECTIVE DATE

This ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

This ordinance was introduced and the title thereof read at the regular meeting of the City Council on September 24, 2013, and the second reading occurred at the regular meeting of the City Council on October 8, 2013.

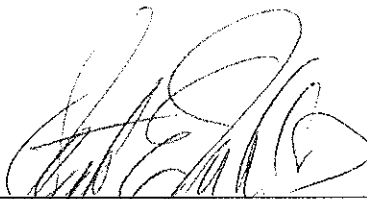
On a motion by Council Member Andy Morin seconded by Mayor Steve Miklos, the foregoing ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this 8th day of October, 2013 by the following roll-call vote:

AYES: Council Member(s): Morin, Sheldon, Starsky, Howell, Miklos

NOES: Council Member(s): None

ABSENT: Council Member(s): None

ABSTAIN: Council Member(s): None



Stephen E. Miklos, MAYOR

ATTEST:


Christa Saunders, CITY CLERK

Effective: November 7, 2013