



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change

HEARING DATE: MARCH 19, 2015

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*Project Name:* Noise Regulations Relating to Residential Uses Near Places of Entertainment  
*Case Number:* 2015-000180PCA [Board File No. 141298]  
*Initiated by:* Supervisor Breed / Introduced December 16, 2014  
*Staff Contact:* Diego R Sánchez, Legislative Affairs  
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*Reviewed by:* Aaron Starr, Manager Legislative Affairs  
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*Recommendation:* **Recommend Approval with Modifications**

### PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Building Code to require attenuation of exterior noise for new residential structures and acoustical analysis and field testing in some circumstances.

The proposed Ordinance would amend the Administrative Code to provide that a Place of Entertainment (POE) shall not become a public or private nuisance on the basis of noise for nearby residents of newly constructed or converted residential structures if that POE has had permits to operate for 12 months or longer; to authorize the Entertainment Commission to hold a hearing on a proposed residential use near a POE and require the sponsor's participation in the hearing; to authorize the Entertainment Commission to measure noise conditions at such project sites and provide comments and recommendations regarding noise to the Planning Department and Department of Building Inspection; to require lessors and sellers of residential property to disclose to lessees and purchasers potential noise and other inconveniences associated with nearby POEs and authorize civil penalties for not providing disclosure; and to require that such disclosure requirements be recorded against a residential property in a Notice of Special Restrictions.

The proposed Ordinance would amend the Planning Code to add a Section 314 to require the Planning Department and the Planning Commission to consider the compatibility of uses when approving residential uses near existing POE.

The proposed Ordinance would amend the Police Code to specify additional considerations for the Entertainment Commission when granting or amending a POE permit.

### The Way It Is Now:

1. The Planning Department does not notice the Entertainment Commission (EC) of proposed residential projects located within 300 feet of a POE.

2. There is no formal process for the Planning Department or the Planning Commission to consider comments and recommendations from the EC about proposed residential projects located within 300 feet of existing POEs.
3. There is no Code requirement for the Planning Department or Planning Commission to consider EC comments or recommendations about proposed residential projects located within 300 feet of existing POEs.
4. The Planning Department does not require the recordation of a Notice of Special Restrictions (NSR) on residential projects that discloses that a POE is located within a 300 foot distance.

**The Way It Would Be:**

1. The Administrative Code would be amended to require the Planning Department to notice the EC of proposed residential projects located within 300 feet of a POE. Notice would occur upon acceptance of an application for any residential project located within 300 feet of an existing POE. In addition, the Planning Department would notice adjacent POEs of the project application and would provide project applicants with a copy of the proposed Ordinance.
2. The Administrative Code would be amended to provide a formal process for the Planning Department or the Planning Commission to consider comments and recommendations from the EC about proposed residential projects located within 300 feet of existing POEs. The process would occur as follows:
  - a. After noticing the EC of the residential project, the Planning Department would hold the application until the EC provides notice of its decision to hold a hearing on the project. The EC will provide this notice within 14 calendar days after receiving notice of the application from the Planning Department.
  - b. The Planning Department would not approve or deny a project application until it receives written notice from the EC about its decision to hold a hearing. Should the EC decide to hold a hearing, the Planning Department would abstain from providing a project approval or denial until after that hearing. If the EC decides against holding a hearing, the Planning Department would continue its review of the project.
  - c. Should the EC decide to hold a hearing, it would occur within 30 calendar days of notifying the Planning Department of that decision. The EC would also provide the Planning Department with written comments and recommendations arising from that hearing. Comments would include, but not be limited to, a report on any acoustical measurements taken by EC staff. Recommendations would include whether project approvals should be granted or noise attenuation measures be imposed.
3. The Planning Code would be amended to include a new Section 314. This section would require the Planning Department or the Planning Commission to consider comments and recommendations from the EC about proposed residential projects located within 300 feet of an existing POE.
4. The Planning Department would require the recordation of a Notice of Special Restrictions (NSR) on approved projects subject to the proposed Ordinance. The NSR would require transferors to provide a disclosure statement to purchasers or lessees. This disclosure statement would indicate that the

property transferred is adjacent to a POE and note the possibility of associated inconveniences with living in proximity to a POE.

## **ISSUES AND CONSIDERATIONS**

### **The Importance of the Nightlife and Entertainment Industry to San Francisco**

San Francisco owes its allure and reputation as a global destination in part to its storied nightlife and entertainment scene. Over the years, many different social groups have enriched this scene. Since the early 1900's the LGBT community has established famed bars and entertainment venues across the City. These serve as safe havens for the community and to bring LGBT culture into the mainstream. During the 1940's and 1950's the Fillmore District enjoyed a jazz music scene rivaled only by Harlem. The jazz greats of that era played at the numerous Fillmore jazz clubs that supported the scene. North Beach was the location of the beatnik poetry movement and the exploration of other live performance art such as cabaret and striptease. The 1960's and 1970's saw the Haight Ashbury neighborhood take center stage of the popular rock scene. The local bands of that moment emerged playing at a number of entertainment venues throughout the City. The success of those local bands attracted musicians from outside San Francisco, further enriching the entertainment scene and San Francisco's reputation as a locale for such endeavors. Today San Francisco continues to host a number of popular entertainment venues as well as outdoor festivals and events. Taken together, the live performances and the venues that support them add to the character of San Francisco and make the City a desirable location to live, work and play.

The nightlife and entertainment industry is also a significant contributor to the City economy. A recent study by the San Francisco Office of the Controller, Office of Economic Analysis highlights its significant impact.<sup>1</sup> The study found that in 2010 entertainment venues/nightclubs hosted 3,200,000 customers who spent \$220,000,000 in San Francisco. Patronage from outside of San Francisco was also found to be a significant contributor. The study found that tourists from outside of San Francisco made patronizing entertainment venues/nightclubs the reason for their visit approximately one third of the time. These tourists, on average spent three times what a San Franciscan resident would spend on a similar visit.

Without question, the nightlife and entertainment industry is an integral part of the City fabric. This industry makes San Francisco an alluring destination, filled with cultural attractions. These attractions are also financially beneficial to the City.

### **Compatibility of Uses: Housing and Nighttime Entertainment**

San Francisco, like many other major US cities, is experiencing a growth in population that will continue into the coming decades.<sup>2</sup> However, the amount of land available to develop new housing is constrained by the City's land mass and other land use restrictions. As a result, many new housing projects are being constructed in neighborhoods of the City that were typically reserved for industrial, office and nighttime entertainment uses. Nighttime entertainment venues tend to produce noise from performances and from

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<sup>1</sup> The Economic Impact of San Francisco's Nightlife Businesses. City and County of San Francisco, Office of the Controller-Office of Economic Analysis. March 5, 2012.

<sup>2</sup><http://www.bayareacensus.ca.gov/counties/SanFranciscoCounty70.htm>;  
<http://quickfacts.census.gov/qfd/states/06/06075.html>; "San Francisco at 1 million: City's population is booming once again." Dan Schreiber. San Francisco Examiner. Dec 29, 2013.

existing patrons at levels atypical for wholly residential areas. When residential uses locate in close proximity to nighttime entertainment venues noise complaints and conflicts often arise.

It is understandable for those having recently purchased or leased a residence to expect a certain quality of life, irrespective of their proximity to a nighttime entertainment venue. It is also reasonable for an established nighttime entertainment operator in good standing to expect to continue in business despite the concerns of new neighbors. One method for potentially lessening noise complaints and conflicts is an outreach and notification process. Informing prospective developers that they are adjacent to an existing nighttime entertainment venue can help shape the design of the project and persuade them to include noise mitigating features. Informing purchasers or lessees of residential property that they are purchasing or renting a unit in close proximity to a nighttime entertainment use can help better inform prospective residents before they invest significant sums into a property that may not be right for them. And informing venue operators of a new residential development would provide them with an opportunity to fine tune their crowd control and community relations policies.

#### **Residential Permit Review and Outreach**

Another, related benefit of an early outreach process is the potential time saved during the entitlement process. Time devoted to resolving community concerns about forthcoming development during Planning review and prior to entitlement can be significant. In certain instances it may add months to an already lengthy process. As of the date of this report, a small residential project may need five months to secure entitlements. Providing a forum for airing concerns prior to the Planning Department's review can result in a project the community can support through the entitlement process. This can reduce the time a project spends securing land use entitlements.

#### **REQUIRED COMMISSION ACTION**

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

#### **RECOMMENDATION**

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. **Refine the universe of residential projects subject to the new Entertainment Commission outreach process.** The Department proposes limiting the types of projects that are subject to this new process to residential projects that are 1) subject to the Department's Preliminary Project Assessment (PPA) process (projects with seven or more units), 2) residential projects subject to the Department's pre-application meeting requirement for new construction, and 3) converting a building from a non-residential use to a residential use. This would specifically exclude projects that are adding dwelling units to existing residential buildings, and which are likely to be approved over the counter.

The following would amend proposed Section 116.2 of the Administrative Code:

“Development Permit” means any land use permit or entitlement, including but not limited to any building permit, site permit, Conditional Use authorization, variance, or decision based on discretionary review of a proposed project, where the project meets at least one of the following criteria:

- (1) The project is subject to the Planning Department’s requirement for a Preliminary Project Assessment for residential use, pursuant to Planning Department Policy;
- (2) The project is subject to the Planning Department’s requirement that a Pre-Application Meeting be held for new construction, pursuant to Planning Department policy; or
- (3) The project proposes a conversion of a structure from non-residential use to residential use

2. **Require sponsors of residential projects subject to the new Entertainment Commission outreach process to conduct it prior to submitting a development application to the Planning Department.** The following would amend proposed Section 116.5 of the Administrative Code:

Section 116.5 Planning Department Notification to Project Sponsors and Acceptance of Development Permits

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~~(b) When a Project sponsor submits an application for Development Permit for a Project, Based on the list described in subsection (a), the Planning Department shall notify in writing the a sponsor of a proposed Project that the Project is within 300 radial feet of a Place(s) of Entertainment at the earliest practicable time, and the Entertainment Commission of the Project application, and shall provide the Project sponsor with a copy of the provisions of this Ordinance.~~

~~(c) The Planning Department will not consider an application for a Development Permit to be complete until the following has occurred:~~

~~(1) pursuant to Section 116.7, the Entertainment Commission has provided written notification to the Planning Department either that the Entertainment Commission did not hold a hearing, or that it held a hearing and the Project sponsor attended the hearing; and~~

~~(2) pursuant to Section 116.7, the Entertainment Commission has provided written comments and recommendations, if any, or the time provided in this Section 116.7 for doing so has elapsed.~~

3. **Reduce the timeframe for the Planning Department to receive comments or recommendations from the EC from 45 days to 30 days, in most cases.** The following would compose the proposed Section 116.7 of the Administrative Code:

Section 116.7 Entertainment Commission Hearing

(a) Prior to submitting an application for a Development Permit to the Planning Department, the Project sponsor shall notify the Entertainment Commission of its intent to submit such an application, and may provide materials describing the proposed Project.

(b) Upon receipt of the notice described in subsection (a), the Entertainment Commission shall determine whether to hold a hearing on noise issues related to the proposed Project and any Place of Entertainment within 300 radial feet of the proposed Project. The Entertainment Commission, or its staff as delegated by the Entertainment Commission, may, in its discretion, determine that a hearing is not required, if the available evidence indicates that noise from the Place of Entertainment is not likely to create a significant disturbance for residents of the Project.

(c) If the Entertainment Commission determines that a hearing is required, it shall hold that hearing within 30 calendar days after a Project sponsor provides notice to the Entertainment Commission pursuant to subsection (a). The Entertainment Commission, or its staff as delegated by the Commission, may extend this 30-day period for up to 15 additional days to accommodate scheduling conflicts between the Entertainment Commission and Project sponsor.

(d) For any such hearing:

(1) the Entertainment Commission shall invite any Place of Entertainment that is within 300 radial feet of the Project to attend the hearing and present evidence, including testimony, regarding noise issues related to the Place of Entertainment and the Project; and

(2) the Project sponsor shall attend the hearing and present evidence, including testimony, regarding current noise levels in the area of the proposed Project, including all acoustical analysis conducted to date; the Project's proposed noise attenuation features; other possible noise attenuation measures, including voluntary collaboration with the Place of Entertainment; the projected level of interior noise for residential units in the Project; and the Project sponsor's engagement or plans for engagement with the Place(s) of Entertainment.

(e) Within two business days after the Entertainment Commission holds a hearing pursuant to this Section 116.7, or if no hearing is to be held, within 30 calendar days after receiving notice pursuant to subsection (a) of this Section 116.7, the Entertainment Commission shall provide in writing to the Planning Department and/or Department of Building Inspection, as appropriate, a notice regarding whether a hearing was held and whether the Project sponsor attended the hearing, and shall provide written comments and recommendations, if any, pertaining to noise issues for the proposed Project, including but not limited to the following:

(A) a report of any acoustical measurements taken pursuant to Section 116.6, and

(B) any recommendations regarding whether Development Permits should be issued and whether conditions relating to noise attenuation should be imposed.

(f) The Project sponsor shall indicate its compliance with Section 116.7(b) on the face of any building plans submitted to the Planning Department and Department of Building Inspection.

(g) The Project sponsor shall include with its application for a Development Permit any date(s) on which an Entertainment Commission hearing on the proposed Project was held, and shall include a copy of any comments and recommendations provided by the Entertainment Commission regarding the proposed Project.

(h) For purposes of this Section 116.7, any required writing by the Entertainment Commission may be transmitted by electronic means.

(i) This Section 116.7 does not give the Entertainment Commission approval authority over any Development Permit.

## BASIS FOR RECOMMENDATION

The Department supports the proposed Ordinance because it helps initiate communication between neighbors and project sponsors at an early stage in the development process. This can help identify potentially problematic issues and allows ample time for all parties to address concerns. It is expected that such a process will help reduce complaints, conflicts and misunderstandings between residential and entertainment uses. The preservation and expansion of both of these uses is paramount to the health and vibrancy of the City. Promotion of processes that allow these competing uses to coexist is therefore an important endeavor.

**Recommendation 1: Refine the universe of residential projects subject to the new Entertainment Commission outreach process.**

Applying the new outreach process only to projects that are of a larger scope or currently require an outreach process is in line with Mayor Lees Executive Directive 13-01, which he issued on December 18, 2013. This Directive orders City departments with authority over the permitting of new housing to prioritize the development of all new housing. Included in this prioritization is the implementation of policies that provide incentives to foster the development of small scale, infill rental units.

In compliance with Directive 13-01, the Planning Code was amended to facilitate the production of dwelling units in residential buildings. Amendments were made to three Planning Code Sections. The first section amended was Planning Code Section 207.3. This Section provides a formalized route to add secondary units to the City's supply of affordable housing. Planning Code Section 311 was the second section amended. This section was amended to expedite the production of new units in existing residential buildings. The third section amended was Planning Code Section 715, the Castro NCD. The amendment allows the addition of in-law units within the Castro NCD and generally 1,750 feet around it, irrespective of a zoned maximum density. These units must also be within an existing residential building envelope.

**Recommendation 2: Require sponsors of residential projects subject to the new Entertainment Commission outreach process to conduct it prior to submitting a development application to the Planning Department.**

An early outreach process allows project sponsors ample time to refine proposals in response to community concerns. It also provides an opportunity for project sponsors to build relations with existing neighbors, which can help build support for their project. Projects that have community support tend to complete the planning process faster and encounter fewer delays at the Planning Commission.

Further, conducting this outreach process prior to submitting an entitlement application reduces the time the project is under Planning Department review. Reducing this is especially critical given the current timeframe experienced in residential permit review. As mentioned previously, Planning review for smaller residential projects can last five months. For larger residential projects that timeframe can easily reach 12 to 14 months. Increasing public outreach while reducing Planning Department review timeframes is a worthy goal that satisfies multiple aims.

**Recommendation 3: Reduce the timeframe for the Planning Department to receive comments or recommendations from the EC.**

The proposed Ordinance provides the EC with a total of 45 days to provide the Planning Department with written comments or recommendations on a project with the option of a 60-day extension. The length of this timeframe was discussed with Supervisor Breed's office and the EC. All parties agreed that a total of 32 days would be sufficient to provide the Planning Department with comments. It was also agreed that a 15 day extension to the 32 day period would provide sufficient time to accommodate scheduling conflicts with Project Sponsors.

This new timeframe is acceptable for two reasons. First, the EC believes that they are provided with sufficient time. This is key because they are the agency that will lead the new outreach process. Second, the new timeframe allows the Planning Department review to begin at an earlier date. This may help

expedite the total time spent securing entitlements and is in conformance with Mayoral direction to expedite the production of housing.

## **ADDITIONAL CONSIDERATIONS**

### **Forthcoming Substitute Legislation**

Since introduction of the proposed Ordinance the Office of Supervisor London Breed has proposed revisions to original amendments to the Administrative Code. The majority of these amendments do not have implications for the Planning Department or its procedures. The changes that do affect Planning Department procedures include:

- A refinement in the types of residential projects that are subject to the new Entertainment Commission outreach process
- A requirement that the Planning Department not consider an application for a project subject to the new outreach process as complete until the Project Sponsor has contacted the Entertainment Commission and the Entertainment Commission has provide comments, if any, about the project.
- A reduction in the time allotted for the Entertainment Commission to provide comments, if any, to the Planning Commission on a project subject to the new outreach process

For reference, the forthcoming substitute legislation is included as an exhibit to this Executive Summary.

## **ENVIRONMENTAL REVIEW**

The proposal to amend the Building Code, Administrative Code, Planning Code and Police Code to address noise related issues arising when considering development proposals that would place either residential land uses or Places of Entertainment (POEs) in close proximity to one another is exempt from environmental review under Sections 15061(b)(3) and 15308 of the CEQA Guidelines.

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department has not received any public comment in regard to the proposed Ordinance.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval with Modification</b>
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### **Attachments:**

- Exhibit A: Draft Planning Commission Resolution  
Exhibit B: Board of Supervisors File No. 141298  
Exhibit C: Submittal from the Office of Supervisor London Breed





# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Resolution

HEARING DATE MARCH 19, 2015

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*Project Name:* Noise Regulations Relating to Residential Uses Near Places of Entertainment  
*Case Number:* 2015-000180PCA [Board File No. 141298]  
*Initiated by:* Supervisor Breed / Introduced December 16, 2014  
*Staff Contact:* Diego R Sánchez, Legislative Affairs  
diego.sanchez@sfgov.org, 415-575-9082  
*Reviewed by:* Aaron Starr, Manager Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6362  
*Recommendation:* **Recommend Approval with Modifications**

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE BUILDING, ADMINISTRATIVE PLANNING AND POLICE CODES TO REQUIRE ATTENUATION OF EXTERIOR NOISE FOR NEW RESIDENTIAL STRUCTURES AND ACOUSTICAL ANALYSIS AND FIELD TESTING IN SOME CIRCUMSTANCES; TO PROVIDE THAT A PLACE OF ENTERTAINMENT (POE) PERMITTED FOR 12 MONTHS NOT BECOME A PUBLIC OR PRIVATE NUISANCE ON THE BASIS OF NOISE FOR NEARBY RESIDENTS OF NEWLY CONSTRUCTED OR CONVERTED RESIDENTIAL STRUCTURES; TO AUTHORIZE THE ENTERTAINMENT COMMISSION TO HOLD A HEARING ON A PROPOSED RESIDENTIAL USE NEAR A POE, AND REQUIRE THE PROJECT SPONSOR'S PARTICIPATION IN THE HEARING; TO AUTHORIZE THE ENTERTAINMENT COMMISSION TO MEASURE NOISE CONDITIONS AT SUCH PROJECT SITES AND PROVIDE COMMENTS AND RECOMMENDATIONS REGARDING NOISE TO THE PLANNING DEPARTMENT AND DEPARTMENT OF BUILDING INSPECTION; TO REQUIRE LESSORS AND SELLERS OF RESIDENTIAL PROPERTY TO DISCLOSE TO LESSEES AND PURCHASERS POTENTIAL NOISE AND OTHER INCONVENIENCES ASSOCIATES WITH NEARBY POES AND AUTHORIZE CIVIL PENALTIES FOR NOT PROVIDING DISCLOSURE; TO REQUIRE THAT SUCH DISCLOSURE REQUIREMENTS BE RECORDED AGAINST A RESIDENTIAL PROPERTY IN A NOTICE OF SPECIAL RESTRICTIONS; TO REQUIRE THE PLANNING DEPARTMENT AND COMMISSION TO CONSIDER NOISE ISSUES WHEN REVIEWING PROPOSED RESIDENTIAL PROJECTS; AND TO SPECIFY FACTORS CONCERNING NOISE FOR THE ENTERTAINMENT COMMISSION TO REVIEW WHEN CONSIDERING GRANTING A POE PERMIT; AND MAKING ENVIRONMENTAL FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1 AND DIRECTING THE CLERK OF THE BOARD OF SUPERVISORS TO FORWARD THE ORDINANCE TO THE STATE BUILDING STANDARDS COMMISSION UPON FINAL PASSAGE.**

WHEREAS, on December 16, 2014, Supervisor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 141298, which would amend the Building, Administrative, Planning and Police Code to require attenuation of exterior noise for new residential structures and acoustical analysis and field testing in some circumstances; to provide that a Place of Entertainment (POE) not become a public or private nuisance on the basis of noise for nearby residents of newly constructed or converted residential structures; to authorize the Entertainment Commission to hold a hearing on a proposed residential use near a POE, and require the project sponsor's participation in the hearing; to authorize the Entertainment Commission to measure noise conditions at such project sites and provide comments and recommendations regarding noise to the Planning Department and Department of Building Inspection; to require lessors and sellers of residential property to disclose to lessees and purchasers potential noise and other inconveniences associated with nearby POEs and authorize civil penalties for not providing disclosure; to require that such disclosure requirements be recorded against a residential property in a Notice of Special Restrictions; to require the Planning Department and Commission to consider noise issues when reviewing proposed residential projects; and to specify factors concerning noise for the Entertainment Commission to review when considering granting a POE permit; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code Section 101.1, and directing the Clerk of the Board of Supervisors to forward the Ordinance to the State Building Commission upon final passage;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 19, 2015; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15061(b)(3) and 15308; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve, with modification**, the proposed ordinance.

**The Commission recommended modifications are:**

1. **Refine the universe of residential projects subject to the new Entertainment Commission outreach process.** The following would amend proposed Section 116.2 of the Administrative Code:

“Development Permit” means any land use permit or entitlement, including but not limited to any building permit, site permit, Conditional Use authorization, variance, or decision based on discretionary review of a proposed project, where the project meets at least one of the following criteria:

- (1) The project is subject to the Planning Department’s requirement for a Preliminary Project Assessment for residential use, pursuant to Planning Department Policy;
- (2) The project is subject to the Planning Department’s requirement that a Pre-Application Meeting be held for new construction, pursuant to Planning Department policy; or
- (3) The project proposes a conversion of a structure from non-residential use to residential use

**2. Require sponsors of residential projects subject to the new Entertainment Commission outreach process to conduct it prior to submitting a development application to the Planning Department. The following would amend proposed Section 116.5 of the Administrative Code:**

Section 116.5 Planning Department Notification to Project Sponsors and Acceptance of Development Permits

\*\*\*

(b) ~~When a Project sponsor submits an application for Development Permit for a Project, Based on the list described in subsection (a), the Planning Department shall notify in writing the a sponsor of a proposed Project that the Project is within 300 radial feet of a Place(s) of Entertainment at the earliest practicable time. and the Entertainment Commission of the Project application, and shall provide the Project sponsor with a copy of the provisions of this Ordinance.~~

(c) The Planning Department will not consider an application for a Development Permit to be complete until the following has occurred:

(1) pursuant to Section 116.7, the Entertainment Commission has provided written notification to the Planning Department either that the Entertainment Commission did not hold a hearing, or that it held a hearing and the Project sponsor attended the hearing; and

(2) pursuant to Section 116.7, the Entertainment Commission has provided written comments and recommendations, if any, or the time provided in this Section 116.7 for doing so has elapsed.

**3. Reduce the timeframe for the Planning Department to receive comments or recommendations from the EC from 45 days to 30 days, in most cases. The following would compose the proposed Section 116.7 of the Administrative Code**

Section 116.7 Entertainment Commission Hearing

(a) Prior to submitting an application for a Development Permit to the Planning Department, the Project sponsor shall notify the Entertainment Commission of its intent to submit such an application, and may provide materials describing the proposed Project.

(b) Upon receipt of the notice described in subsection (a), the Entertainment Commission shall determine whether to hold a hearing on noise issues related to the proposed Project and any Place of Entertainment within 300 radial feet of the proposed Project. The Entertainment Commission, or its staff as delegated by the Entertainment Commission, may, in its discretion, determine that a hearing is not required, if the available evidence indicates that noise from the Place of Entertainment is not likely to create a significant disturbance for residents of the Project.

(c) If the Entertainment Commission determines that a hearing is required, it shall hold that hearing within 30 calendar days after a Project sponsor provides notice to the Entertainment Commission pursuant to subsection (a). The Entertainment Commission, or its staff as delegated by the Commission, may extend this 30-day period for up to 15 additional days to accommodate scheduling conflicts between the Entertainment Commission and Project sponsor.

(d) For any such hearing:

(1) the Entertainment Commission shall invite any Place of Entertainment that is within 300 radial feet of the Project to attend the hearing and present evidence, including testimony, regarding noise issues related to the Place of Entertainment and the Project; and

(2) the Project sponsor shall attend the hearing and present evidence, including testimony, regarding current noise levels in the area of the proposed Project, including all acoustical analysis conducted to date; the Project's proposed noise attenuation features; other possible noise attenuation measures, including voluntary collaboration with the Place of Entertainment; the projected level of interior noise for residential units in the Project; and the Project sponsor's engagement or plans for engagement with the Place(s) of Entertainment.

(e) Within two business days after the Entertainment Commission holds a hearing pursuant to this Section 116.7, or if no hearing is to be held, within 30 calendar days after receiving notice pursuant to subsection (a) of this Section 116.7, the Entertainment Commission shall provide in writing to the Planning Department and/or Department of Building Inspection, as appropriate, a notice regarding whether a hearing was held and whether the Project sponsor attended the hearing, and shall provide written comments and recommendations, if any, pertaining to noise issues for the proposed Project, including but not limited to the following:

(A) a report of any acoustical measurements taken pursuant to Section 116.6, and

(B) any recommendations regarding whether Development Permits should be issued and whether conditions relating to noise attenuation should be imposed.

(f) The Project sponsor shall indicate its compliance with Section 116.7(b) on the face of any building plans submitted to the Planning Department and Department of Building Inspection.

(g) The Project sponsor shall include with its application for a Development Permit any date(s) on which an Entertainment Commission hearing on the proposed Project was held, and shall include a copy of any comments and recommendations provided by the Entertainment Commission regarding the proposed Project.

(h) For purposes of this Section 116.7, any required writing by the Entertainment Commission may be transmitted by electronic means.

(i) This Section 116.7 does not give the Entertainment Commission approval authority over any Development Permit.

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. San Francisco enjoys a storied nighttime entertainment industry. It is an industry with a long history and broad participation from various social groups. It forms part of the City's social and cultural fabric and is indispensable to the City's identity.
2. The nighttime entertainment industry is a significant contributor to the economic well-being of the City. The San Francisco Office of the Controller-Office of Economic Analysis reports that live music venues and nightclubs alone contributed \$220,000,000 in spending in 2010. Live music venues and nightclubs are also a large attractor of visitors from outside of San Francisco. The San

Francisco Office of the Controller-Office of Economic Analysis reports that approximately one third of visits to San Francisco from tourists were to patronize the City's live music venues and nightclubs.

3. San Francisco is also a city without vacant lands to develop new residential neighborhoods. As a result, many new housing projects are being constructed in neighborhoods of the City that were typically reserved for industrial, office and nighttime entertainment uses.
4. It is common that nighttime entertainment venues produce noise from performances and from exiting patrons at levels atypical for wholly residential areas. When residential uses locate in close proximity to nighttime entertainment venues noise complaints and conflicts often arise.
5. One method for potentially lessening noise complaints and conflicts is an outreach and notification process. Informing prospective developers that they are adjacent to an existing nighttime entertainment venue can help shape the design of the project and persuade them to include noise mitigating features. Informing purchasers or lessees of residential property that they are purchasing or renting a unit in close proximity to a nighttime entertainment use can help better inform prospective residents before they invest significant sums into a property that may not be right for them. And informing venue operators of a new residential development would provide them with an opportunity to fine tune their crowd control and community relations policies.
6. **General Plan Compliance.** The proposed amendments to the Planning Code are not addressed in the General Plan; the Commission finds that the proposed Ordinance is not inconsistent with the Objectives and Policies of the General Plan.

## COMMERCE AND INDUSTRY ELEMENT

### OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

#### Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

*The outreach process between residential developers and adjacent Places of Entertainment will help identify potentially undesirable aspects of new developments, create a route to discuss improvements and result in development that is sensitive to its context.*

### OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

#### Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

**Policy 2.3**

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

*Through an early outreach process, owners and operators of Places of Entertainment will become aware of new residential development. The outreach process will allow these owners and operators to meet with residential developers and discuss community context. Through this process it is expected that future conflicts, including those related to noise, would be avoided. This would allow two competing land uses – residential and nighttime entertainment- to coexist. This business climate is favorable to the City and helps it attract and retain commercial activity.*

**OBJECTIVE 4**

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

**Policy 4.1**

Maintain and enhance a favorable business climate in the city.

*The outreach process will help create a favorable business climate by connecting owners and operators of Places of Entertainment with residential developers at a public commission hearing. This public venue offers the opportunity for the all members of the business community to feel that they have a "receptive ear" when they approach City government.*

7. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have an effect upon neighborhood retail serving uses as the proposed Ordinance concerns itself with increasing the compatibility of residential uses with Places of Entertainment.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would help conserve and protect neighborhood character through the implementation of an outreach process between residential developers and existing Places of Entertainment.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance can help preserve and enhance the City's supply of affordable housing by requiring an outreach process between forthcoming residential development and existing Places of Entertainment.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance would not cause impediments to MUNI transit service or would it cause an overburdening of City streets or neighborhood parking because the proposed Ordinance concerns itself with increasing the compatibility of residential uses with Places of Entertainment.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired as the proposed Ordinance concerns itself with increasing the compatibility of residential uses with Places of Entertainment.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an impact on City's preparedness against injury and loss of life in an earthquake because the proposed Ordinance concerns itself with increasing the compatibility of residential uses with Places of Entertainment.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an impact on the City's Landmarks and historic buildings because the proposed Ordinance concerns itself with increasing the compatibility of residential uses with Places of Entertainment.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an impact on the City's parks and open space and their access to sunlight and vistas because the proposed Ordinance concerns itself with increasing the compatibility of residential uses with Places of Entertainment.*

8. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 19, 2015.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: March 19, 2015



1 [Various Codes - Noise Regulations Relating to Residential Uses Near Places of  
2 Entertainment]

3 **Ordinance amending the Building, Administrative, Planning, and Police Codes to**  
4 **require attenuation of exterior noise for new residential structures and acoustical**  
5 **analysis and field testing in some circumstances; to provide that a Place of**  
6 **Entertainment (POE) permitted for 12 months not become a public or private nuisance**  
7 **on the basis of noise for nearby residents of newly constructed or converted**  
8 **residential structures; to authorize the Entertainment Commission to hold a hearing on**  
9 **a proposed residential use near a POE, and require the project sponsor's participation**  
10 **in the hearing; to authorize the Entertainment Commission to measure noise**  
11 **conditions at such project sites and provide comments and recommendations**  
12 **regarding noise to the Planning Department and Department of Building Inspection; to**  
13 **require lessors and sellers of residential property to disclose to lessees and**  
14 **purchasers potential noise and other inconveniences associated with nearby POE's**  
15 **and authorize civil penalties for not providing disclosure; to require that such**  
16 **disclosure requirements be recorded against a residential property in a Notice of**  
17 **Special Restrictions; to require the Planning Department and Commission to consider**  
18 **noise issues when reviewing proposed residential projects; and to specify factors**  
19 **concerning noise for the Entertainment Commission to review when considering**  
20 **granting a POE permit; and making environmental findings, and findings of**  
21 **consistency with the General Plan, and the eight priority policies of Planning Code,**  
22 **Section 101.1, and findings of local conditions under California Health and Safety**  
23 **Code, Section 17958.7; and directing the Clerk of the Board of Supervisors to forward**  
24 **the Ordinance to specified state agencies upon final passage.**

1           NOTE:   **Unchanged Code text and uncodified text** are in plain Arial font.  
2                   **Additions to Codes** are in *single-underline italics Times New Roman font*.  
3                   **Deletions to Codes** are in ~~*single-underline italics Times New Roman font*~~.  
4                   **Board amendment additions** are in double-underlined Arial font.  
5                   **Board amendment deletions** are in ~~Arial font~~.  
6                   **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
7                   subsections or parts of tables.

8           Be it ordained by the People of the City and County of San Francisco:

9           Section 1. Environmental and Other Findings.

10          (a) The Planning Department has determined that the actions contemplated in this  
11 ordinance comply with the California Environmental Quality Act (California Public Resources  
12 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
13 Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference. The Board hereby  
14 affirms this determination.

15          (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted  
16 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
17 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board  
18 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
19 Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

20          (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
21 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
22 in Planning Commission Resolution No. \_\_\_\_\_ and the Board incorporates such reasons  
23 herein by reference.

24          (d) At a duly noticed hearing held on \_\_\_\_\_, the Building Inspection  
25 Commission considered this ordinance, pursuant to San Francisco Charter § 4, Appendix  
D.3.750-5.

1  
2           Section 2. Findings of Local Conditions Under California Health and Safety Code  
3 Section 17958.7.

4           (a) San Francisco is a small and unusually dense city, in which residential,  
5 commercial, and industrial uses are often located close to each other. San Francisco is  
6 approximately 49 square miles, located on a peninsula and bounded on three sides by water.  
7 Therefore, the opportunities for new development are largely limited to vertical development.  
8 To accommodate all desirable uses, San Francisco has many mixed use zoning districts.  
9 Modification of the State Building Code is necessary to maximize the compatibility of those  
10 diverse uses.

11           (b) San Francisco is currently experiencing a high demand for housing. Residential  
12 vacancy rates are approximately 7%. As a result, in recent years there has been a significant  
13 increase in residential development in the City, including in areas that traditionally have not  
14 had substantial residential development.

15           (c) Due to the unusual density and topography of San Francisco's built environment,  
16 including the proximity of residential, commercial, and industrial uses, as well as the design  
17 and zoning of San Francisco's neighborhoods, new residential developments may be located  
18 close to existing Places of Entertainment, which may generate nighttime noise.

19           (d) In San Francisco, current California building standards for new residential  
20 development often do not adequately attenuate interior noise created by or associated with  
21 nearby Places of Entertainment.

22           (e) The City's Entertainment Commission and Department of Public Health have  
23 received numerous complaints from residents who have moved into new developments near  
24 existing licensed Places of Entertainment about nighttime noise created by or associated with  
25 those Places of Entertainment.

1 (f) Because of San Francisco's topography, the modifications to the California Building  
2 Code contained in this ordinance are reasonably necessary to increase compatibility between  
3 existing Places of Entertainment and new residential development, and to promote the health,  
4 safety, and welfare of the residents of San Francisco.

5  
6 Section 3. Legislative Findings.

7 (a) During evening and nighttime hours, noise generated by or associated with  
8 permitted Places of Entertainment may sometimes be heard by nearby residents in their  
9 homes, and, from time to time, levels of interior noise may reach undesirable levels for some  
10 residents.

11 (b) Even so, many residents of San Francisco wish to live close to commercial uses,  
12 including Places of Entertainment, and the City's zoning regulations allow for mixed uses in  
13 the same zoning district in many areas.

14 (c) Places of Entertainment are an important part of the City's cultural fabric and  
15 provide an important amenity to its residents.

16 (d) In addition, according to a 2012 report by the Office of the Controller, "The  
17 Economic Impact of San Francisco's Nightlife Businesses," Places of Entertainment and other  
18 nightlife businesses are a major source of employment, economic activity, and tax revenue for  
19 San Francisco, as well as an economic driver, drawing new visitors and spending to San  
20 Francisco. In 2010, nightlife establishments, including live music venues, nightclubs,  
21 restaurants, bars, live theater and other performance venues, and art galleries, generated  
22 \$4.2 billion in spending within San Francisco. Furthermore, in 2010, live music venues,  
23 nightclubs, bars, and theaters hosted approximately 16 million customers and generated \$820  
24 million in spending within San Francisco; 43% of Bay Area residents who visited the City did  
25

1 so primarily to patronize live music venues, nightclubs, bars, and theaters; and 47% of tourists  
2 from outside the Bay Area visited the City for that reason.

3 (e) Some Places of Entertainment have been the subject of numerous noise  
4 complaints and as a result have been required to undertake costly noise attenuation  
5 measures. The imposition of these requirements may impose a significant financial burden on  
6 those Places of Entertainment, threatening their continued operation.

7 (f) Developers of residential projects routinely communicate with and perform  
8 outreach to neighbors and neighborhood groups prior to construction of the projects, but do  
9 not always similarly engage with or about neighboring Places of Entertainment.

10  
11 Section 4. The Building Code is hereby amended by adding new Sections 1207.4  
12 through 1207.8, to read as follows:

13 **SECTION 1207.4. Definitions.**

14 *The following definitions apply to Sections 1207.4 through 1207.8 of this Code.*

15 **COMMUNITY NOISE EQUIVALENT LEVEL (CNEL)** *is a metric similar to the Ldn, except*  
16 *that a 5 dB adjustment is added to the equivalent continuous sound exposure level for evening hours (7*  
17 *p.m. to 10 p.m.) in addition to the 10 dB nighttime adjustment used in the Ldn.*

18 **DAY-NIGHT AVERAGE SOUND LEVEL (Ldn)** *is the A-weighted equivalent continuous*  
19 *sound exposure level for a 24-hour period with a 10 dB adjustment added to sound levels occurring*  
20 *during nighttime hours (10 p.m. to 7 a.m.).*

21 **NORMALIZED A-WEIGHTED SOUND LEVEL DIFFERENCE (Dn)** *means for a specified*  
22 *source room sound spectrum, the difference, in decibels, between the average sound levels produced in*  
23 *two rooms after adjustment to the expected acoustical conditions when the receiving room under test is*  
24 *normally furnished.*

1           **SECTION 1207.5. Exterior sound transmission control.**

2           **1207.5.1 Application.** *Residential structures located in noise critical areas, such as in*  
3 *proximity to highways, county roads, city streets, railroads, rapid transit lines, airports, nighttime*  
4 *entertainment venues, or industrial areas, shall be designed to prevent the intrusion of exterior noises*  
5 *beyond levels prescribed by the Municipal Code. Proper design to accomplish this goal shall include,*  
6 *but not be limited to, orientation of the residential structure, setbacks, shielding, and sound insulation*  
7 *of the building.*

8           **1207.5.2. Allowable interior noise levels.** *Interior noise levels attributable to exterior sources*  
9 *shall not exceed 45 dB in any habitable room. The noise metric shall be either the day-night average*  
10 *sound level (Ldn) or the community noise equivalent level (CNEL), whichever is higher.*

11           **1207.5.3. Other noise sources.** *Residential structures to be located where the Ldn or CNEL*  
12 *exceeds 60dB shall require an acoustical analysis showing that the proposed design will limit exterior*  
13 *noise to the prescribed allowable interior level. The Planning Department's map titled Areas*  
14 *Potentially Requiring Noise Insulations, and similar maps and guidance produced by the Planning*  
15 *Department, shall be used where possible to identify sites with noise levels potentially greater than 60*  
16 *dB.*

17  
18           **SECTION 1207.6. Compliance.**

19           (a) *Evidence of compliance with Section 1207.5 shall consist of submittal of an acoustical*  
20 *analysis report, prepared under the supervision of a person experienced in the field of acoustical*  
21 *engineering, with the application for a building permit. The report shall show topographical*  
22 *relationships of noise sources and dwelling sites, identification of noise sources and their*  
23 *characteristics, predicted noise spectra and levels at the exterior of the proposed dwelling structure*  
24 *considering present and future land usage, the basis or bases for the prediction (measured or obtained*  
25 *from published data), noise attenuation measures to be applied, and an analysis of the noise insulation*

1 effectiveness of the proposed construction showing that the prescribed interior noise level requirements  
2 are met.

3 (b) If interior allowable noise levels are met by requiring that windows be unopenable or  
4 closed, the design for the structure must also specify a ventilation or air-conditioning system to provide  
5 a habitable interior environment. The ventilation system must not compromise the dwelling unit or  
6 guest room noise reduction.

7  
8 **SECTION 1207.7. Field testing.**

9 (a) When inspection indicates that the construction is not in accordance with the approved  
10 design, or that the noise reduction is compromised due to sound leaks or flanking paths, field testing  
11 may be required. A test report showing compliance or noncompliance with prescribed interior  
12 allowable levels shall be submitted to the building official.

13 (b) Field measurements of outdoor sound levels shall generally follow the guidelines prepared  
14 by the American Society for Testing and Materials (ASTM) in ASTM E 1014.

15 (c) Field measurements of the A-weighted airborne sound insulation of buildings from exterior  
16 sources shall generally follow the guidelines prepared by the American Society for Testing and  
17 Materials (ASTM) in ASTM E 966.

18 (d) For the purpose of this Section 1207.7, sound level differences measured in unoccupied  
19 units shall be normalized to a receiving room reverberation time of one-half second. Sound level  
20 differences measured in occupied units shall not be normalized to a standard reverberation time.

21  
22 **SECTION 1207.8. The Department of Building Inspection shall consult with the Planning**  
23 **Department to ensure that notice to sponsors of residential development projects affected by Sections**  
24 **1207.4 through 1207.7 are provided with notice of the requirements of this Section as soon as**  
25 **practicable in the project approval process.**

Section 5. The Administrative Code is hereby amended by adding new Chapter 116, consisting of Sections 116.1 through 116.10, to read as follows:

**CHAPTER 116: COMPATIBILITY AND PROTECTION**  
**FOR RESIDENTIAL USES AND PLACES OF ENTERTAINMENT**

**SECTION 116.1. DECLARATION OF POLICY.**

*It shall be the policy of the City to protect existing Places of Entertainment from potential conflicts with adjacent and nearby residential development uses, provided that such Places of Entertainment are operated and maintained in accordance with all applicable federal, state, and local laws and regulations, including applicable noise restrictions. The City encourages the use by developers of residential projects of best available noise control technologies and best management practices whenever possible to reduce the potential for conflict with Places of Entertainment.*

*Furthermore, it shall be the policy of the City to protect the future residents of industrial, commercial, and mixed-use neighborhoods in which Places of Entertainment operate, by providing notification processes to inform such residents of the possible noise levels in such neighborhoods and by requiring design features in new residential construction to promote the compatibility of residential uses and entertainment uses in adjacent or nearby Places of Entertainment.*

**SECTION 116.2. DEFINITIONS.**

*For the purposes of this Chapter 116, the following definitions shall apply.*

*“City” means the City and County of San Francisco.*



1           "Development Permit" means any land use permit or entitlement, including but not limited to  
2 any building permit, site permit, Conditional Use authorization, variance, or decision based on  
3 discretionary review of a proposed project.

4           "Place of Entertainment" is defined in Section 1060 of the Police Code.

5           "Project" means a structure for Residential Use, where the structure's exterior boundaries are  
6 within 300 radial feet of a Place of Entertainment that has been permitted for 12 or more consecutive  
7 months prior to the filing of the first complete application for a Development Permit for construction of  
8 the structure or for its conversion to Residential Use.

9           "Project Site" means the lot or lots on which a Project is located.

10          "Residential Use" means the use of any real property as a dwelling unit or units, regardless of  
11 whether it is a primary residence or a mixed use property.

12          "Transfer" means sale or lease.

13          "Transferor" means an owner of a Project who sells or leases all or any portion of the Project  
14 to a Transferee, and includes but is not limited to the owner's agents, partners, employees, assigns,  
15 successors, representatives, and heirs.

16          "Transferee" means a purchaser or lessee of all or any portion of a Project, and includes but is  
17 not limited to the owner's agents, partners, employees, assigns, successors, representatives, and heirs .

### 18 19          **SECTION 116.3. EXEMPTIONS AND NONAPPLICATION.**

20          (a) This Chapter 116 does not supersede or limit any other provision of the Municipal Code,  
21 including but not limited to the Police Code, Building Code, Health Code and Planning Code,  
22 regarding the regulation and control of Nighttime Entertainment Uses as defined in the Planning  
23 Code.

24          (b) This Chapter 116 does not authorize a change in use or uses where such is otherwise  
25 controlled or prohibited by the Municipal Code or state or federal law.

1           (c) This Chapter 116 does not authorize the continuation or expansion of a nonconforming use  
2 where such is otherwise controlled or prohibited by the Municipal Code.

3  
4           **SECTION 116.4. PROTECTION FOR EXISTING PLACES OF ENTERTAINMENT.**

5           No establishment that has held a permit to operate as a Place of Entertainment within 300  
6 radial feet of a building constructed or converted for Residential Use within the past 10 years shall be  
7 or become a public or private nuisance on the basis of noise for that resident, if the Place of  
8 Entertainment operates in compliance with the Municipal Code and the terms of its permits.

9  
10           **SECTION 116.5. PLANNING DEPARTMENT NOTIFICATION TO PROJECT**  
11 **SPONSORS.**

12           (a) The Planning Department shall maintain a list of permitted Places of Entertainment,  
13 available to the public on its website, received from and updated by the Entertainment Commission  
14 pursuant to Police Code Section 1060.5.

15           (b) When a Project sponsor submits an application for Development Permit for a Project, the  
16 Planning Department shall notify in writing the Place(s) of Entertainment and the Entertainment  
17 Commission of the Project application, and shall provide the Project sponsor with a copy of the  
18 provisions of this Ordinance.

19  
20           **SECTION 116.6. ACOUSTICAL MEASUREMENTS BY ENTERTAINMENT**  
21 **COMMISSION STAFF.**

22           (a) In addition to any acoustical analysis required by the Building Code, prior to any hearing  
23 by the Entertainment Commission on a Project pursuant to Section 116.7, Entertainment Commission  
24 staff may take exterior acoustical measurements of conditions at the Project site, to determine normal  
25 daytime conditions, normal nighttime conditions when no performance is taking place at any Place of

1 Entertainment within 300 radial feet of the proposed Project, and conditions during a performance at  
2 any Place of Entertainment within 300 radial feet of the proposed Project. The property owner shall  
3 provide Entertainment Commission staff with reasonable access to the Project Site for this purpose.  
4 This information may be made available to the Entertainment Commission to inform the Entertainment  
5 Commission's consideration of the Project pursuant to Section 116.7.

6 (b) The acoustical measurements required by this Section 116.6 shall not constitute  
7 determinations or findings of the Entertainment Commission.

8 (c) A report of the acoustical measurements required by this Section 116.6 shall be forwarded  
9 to the Department of Public Health within five business days after the measurements are take, and at  
10 least five business days prior to any Entertainment Commission hearing on the Project.

#### 11 12 **SECTION 116.7. ENTERTAINMENT COMMISSION HEARING.**

13 (a) After receiving notice from the Planning Department of an application for a Development  
14 Permit for a proposed Project pursuant to Section 116.5 of this Code, and prior to the City's issuance  
15 of any Development Permit, the Entertainment Commission shall hold a hearing on noise issues related  
16 to the proposed Project and any Place of Entertainment within 300 radial feet of the proposed Project.  
17 The Entertainment Commission, or its staff as delegated by the Entertainment Commission, may, in its  
18 discretion, determine that a hearing is not required, if the available evidence indicates that noise from  
19 the Place of Entertainment is not likely to create a significant disturbance for residents of the Project.

20 (b) For any such hearing, the Entertainment Commission shall invite any Place of  
21 Entertainment that is within 300 radial feet of the Project to attend the hearing and submit evidence,  
22 including testimony, at the hearing, and the Project sponsor shall present testimony and submit  
23 evidence to the Entertainment Commission regarding current noise levels in the area of the proposed  
24 Project, including all acoustical analysis conducted to date; the Project's proposed noise attenuation

1 features; the projected level of interior noise for residential units in the Project; and the Project  
2 sponsor's engagement or plans for engagement with the Place(s) of Entertainment.

3 (c) Within 14 calendar days after the Entertainment Commission receives notice of a  
4 Development Permit application for a proposed Project pursuant to Section 116.5 of this Code, the  
5 Entertainment Commission shall give written notice to the Planning Department and/or Department of  
6 Building Inspection, as appropriate, of whether it intends to hold a hearing on the proposed Project.  
7 Within 30 days after providing that notice, the Entertainment Commission shall hold a hearing, if it has  
8 elected to do so, and shall provide in writing to the Planning Department and/or Department of  
9 Building Inspection, as appropriate, a notice regarding whether the Project sponsor attended the  
10 hearing and written comments and recommendations, if any, pertaining to noise issues for the proposed  
11 Project, including but not limited to the following:

12 \_\_\_\_\_ (A) a report of any acoustical measurements taken pursuant to Section 116.6; and  
13 \_\_\_\_\_ (B) any recommendations regarding whether Development Permits should be issued  
14 and whether conditions relating to noise attenuation should be imposed.

15 The Entertainment Commission, or its staff as delegated by the Commission, shall extend this  
16 30-day period for up to 60 additional days if requested by the Project sponsor.

17 (d) The Planning Department, Planning Commission, and Department of Building Inspection  
18 shall not approve any Development Permit until the following has occurred:

19 \_\_\_\_\_ (1) the Entertainment Commission has provided written notification either that the  
20 Entertainment Commission does not intend to hold a hearing, or that it has held a hearing and the  
21 Project sponsor attended the hearing; and

22 \_\_\_\_\_ (2) the Entertainment Commission has provided written comments and  
23 recommendations, if any, pursuant to Section 116.7, or the time provided in this Section 116.7 for doing  
24 so has elapsed.

1           (e) The Project sponsor shall indicate its compliance with Section 116.7(b) on the face of any  
2 building plans submitted to the Planning Department and Department of Building Inspection.

3           (f) For purposes of this Section 116.7, any required writing by the Entertainment Commission  
4 may be transmitted by electronic means.

5  
6           **SECTION 116.8. NOTICE REQUIREMENTS FOR TRANSFER OF REAL PROPERTY**  
7 **FOR RESIDENTIAL USE.**

8           **(a) Notice Requirement.**

9           (1) Any Transferor of all or part of a structure for Residential Use within 300 radial  
10 feet of a Place of Entertainment, where the Place of Entertainment has been in operation for 12 or  
11 more consecutive months prior to the Transfer, shall provide notice to the Transferee as follows:

12           (A) For transfers of all or part of a Project having any Residential Use, the  
13 Transferor shall provide the disclosure described in this Section 116.8 on a separate written document.  
14 This notice shall be provided as follows:

15           (i) for a lease, prior to the tenant(s) signing the lease; and  
16           (ii) for a purchase agreement, at the time required by California Civil  
17 Code Section 1102.3.

18           (B) Disclosure.  
19           The disclosure shall include a citation to this Chapter 116 and a statement containing  
20 substantially the following language in at least 12-point font:

21           **"DISCLOSURE OF NEIGHBORING PLACE OF ENTERTAINMENT.**

22           You are purchasing or leasing property that is adjacent or nearby to [name and address of the  
23 Place(s) of Entertainment]. This venue is an existing Place of Entertainment, as defined in Police Code  
24 Section 1060, which includes establishments such as live music venues, nightclubs and theaters. This  
25 establishment may subject you to inconveniences or discomfort arising from or associated with its

1 operations, which may include, but are not limited to, nighttime noise, odors, and litter. One or more  
2 of the inconveniences or discomforts may occur even if the Place of Entertainment is operating in  
3 conformance with existing laws and regulations and locally accepted customs and standards for  
4 operations of such use. If you live near a Place of Entertainment, you should be prepared to accept  
5 such inconveniences or discomforts as a normal and necessary aspect of living in a neighborhood with  
6 mixed commercial and residential uses."

7 (3) The Transferor shall provide each Transferee with a copy of this Chapter 116 in  
8 effect when the notice required by this Section 116.8 is given to the Transferee.

9 (4) Affidavit of Disclosure.

10 (A) Contents of Affidavit. The Transferor shall sign, upon penalty of perjury, an  
11 affidavit containing the following information, with appropriate terms to be inserted in place of the  
12 bracketed language, as specified:

13 (i) the identity of the Transferor, and any entity on whose behalf the  
14 Transferor is acting;

15 (ii) the identity of the Transferee;

16 (iii) the address, including unit number, of the portion of the Project  
17 being transferred;

18 (iv) whether the Transfer is a sale or lease; and

19 (v) the following language:

20 "I have provided to the [purchaser or lessee] the disclosure required by San Francisco  
21 Administrative Code Chapter 116. Attached is a true and correct copy of the notice provided to the  
22 [purchaser or lessee].

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
24 true and correct. Executed on [date] in [city and state]."

25 (B) Affidavit Transmitted to Entertainment Commission.

1        The Transferor shall transmit to the Entertainment Commission the Affidavit and a copy of the  
2        notice provided to each Transferee; provided, however, that the attachment need not also include a  
3        copy of the then-current text of this Chapter 116. Upon request of the Transferee, the Transferor shall  
4        also provide a copy of this Affidavit, with an attached copy of the notice referenced in the Affidavit, to  
5        the Transferee.

6        \_\_\_\_\_ (C) Upon request, the Entertainment Commission shall provide a copy of the  
7        Affidavit and attached notice to any member of the public, including a representative of a Place of  
8        Entertainment.

9        \_\_\_\_\_ (5) Covenants, Conditions & Restrictions for Condominium Projects. If the Project will  
10       be subdivided into condominiums, the requirements of this Section 116.8 must be included as terms of  
11       the Covenants, Conditions, & Restrictions ("CC&Rs") that will be filed with the State and that govern  
12       owners of the property. Upon request, a copy of the CC&Rs must be provided to the Planning  
13       Department.

14        **(b) Failure to Provide Notice.**

15        \_\_\_\_\_ (1) In addition to any liability for administrative penalties pursuant to the Planning  
16       Code due to failure to comply with this Section 116.8, any person who fails to provide the disclosure  
17       required by this Section may be liable for a civil penalty of \$500 for each failure to provide said  
18       disclosure to a Transferee. This penalty may be assessed and recovered in a civil action brought in the  
19       name of the people of the City by the City Attorney in any court of competent jurisdiction. The City  
20       Attorney also may seek recovery of the attorneys' fees and costs incurred in bringing a civil action  
21       pursuant to this Section 116.8.

22        \_\_\_\_\_ (2) Any member of the public, including any Place of Entertainment, may file a  
23       complaint with the Planning Department regarding a Transferor's failure to provide the notice  
24       required by this Section 116.8.

1           **SECTION 116.9. NOTICE OF SPECIAL RESTRICTIONS.**

2           (a) At the time a proposed Project is approved, a Notice of Special Restrictions (NSR) must be  
3 recorded with the Assessor-Recorder that states all of the restrictions of Section 116.8 and any other  
4 conditions that the Planning Commission or Department places on the property. Pursuant to Article 1.7  
5 of the Planning Code, the Planning Department is authorized to enforce the terms of the NSR,  
6 including but not limited to enforcement for any failure to comply with the provisions of Section 116.8.

7  
8           **SECTION 116.10. NO PRIVATE RIGHT OF ACTION AGAINST CITY.**

9           This Chapter 116 shall not create any private right of action against the City. The City shall  
10 have no duty or liability based on any failure to achieve the disclosure required by this Chapter or  
11 based on the City's failure to prosecute.

12  
13           Section 5. The Planning Code is hereby amended by adding new Section 314, to read  
14 as follows:

15           **SECTION 314. REVIEW OF RESIDENTIAL PROJECTS.**

16           In addition to any other factors appropriate for consideration under the Planning Code, the  
17 Planning Department and Commission shall consider the compatibility of uses when approving  
18 Residential Uses adjacent to or near existing permitted Places of Entertainment and shall take all  
19 reasonably available means through the City's design review and approval processes to ensure that the  
20 design of such new residential development projects takes into account the needs and interests of both  
21 the Places of Entertainment and the future residents of the new development. Such considerations may  
22 include, among others:

23           (a) The proposed project's consistency with applicable design guidelines;  
24  
25



1           (b) any proceedings held by the Entertainment Commission relating to the proposed project,  
2           including but not limited to any acoustical data provided to the Entertainment Commission, pursuant to  
3           Administrative Code Section 116.5; and

4           (c) any comments and recommendations provided to the Planning Department by the  
5           Entertainment Commission regarding noise issues related to the project pursuant to Administrative  
6           Code Section 116.7.

7  
8           Section 6. The Police Code is hereby amended by revising Sections 1060.5, 1060.15,  
9           and 1060.24.1, to read as follows:

10  
11           **SEC. 1060.5. DETERMINATION OF APPLICATION FOR A PLACE OF**  
12           **ENTERTAINMENT PERMIT.**

13           \* \* \* \*

14           (b) (1) The applicant shall cause a notice of the hearing to be conspicuously and  
15           continuously posted for at least 30 days before the scheduled hearing date on the premises of  
16           the Business. Where the Business is located in a neighborhood-commercial or mixed  
17           residential district, as defined in Article 7 and 8 of the ~~San Francisco~~ Planning Code, the  
18           applicant shall also make a good faith effort to distribute leaflets at each residence located  
19           within 150 feet of the Business, unless the Entertainment Commission finds that a Business  
20           located in a district is not likely to significantly generate nighttime noise and traffic to the  
21           detriment of residences located in that immediate area. Applicants subject to the requirement  
22           of distributing leaflets shall do so at least 30 days before the scheduled hearing date and the  
23           distribution shall be done in compliance with the provisions of Article 57 (beginning with  
24           Section 184.69) of the ~~San Francisco~~ Public Works Code. The Director shall provide notice of  
25           the hearing at least 30 days before the hearing to any Person who has filed a written request

1 for such notice, which notice may be given electronically if the Person has provided electronic  
2 contact information, or by mail.

3 \* \* \* \*

4 (d) (1) The Entertainment Commission shall hold a hearing and determine whether to  
5 grant or deny the permit within 45 City business days of the date that the applicant has  
6 submitted a complete application under Section 1060.5(a), except that this 45 day period shall  
7 be extended for such period or periods of time that apply under the following circumstances:

8 (A~~+~~) If the Entertainment Commission finds that an extension of time is  
9 necessary to obtain additional information for its review of the application under the standards  
10 set forth in Subsection (f) of this Section, the time period shall be extended for an additional  
11 amount of time as the Commission determines appropriate, up to 15 additional days; and

12 (B~~+~~) Upon the applicant's request, the Entertainment Commission shall  
13 continue the hearing for an additional period of time to allow the applicant an opportunity to  
14 comply with the requirements of this Article, in which case the time period is extended for that  
15 additional period; and

16 (C~~++~~) If the applicant fails to post or maintain notice of the hearing, or  
17 make a good faith effort to distribute leaflets to residences, as required by Subsection (b) of  
18 this Section, the Director shall have the hearing before the Entertainment Commission  
19 continued for such period or periods of time that the Director determines necessary for the  
20 applicant to comply with the posting requirement, in which case the time period is extended  
21 for that additional period or periods of time; and

22 (D~~++~~) If the Director finds that the Commission is unable to meet during  
23 the 45 day time period or any permitted time extension due to exigent circumstances, the time  
24 period shall be extended until the Commission is able to meet; the Commission shall consider  
25 the matter at the first meeting that it conducts following such circumstances.

1           \*   \*   \*   \*

2           (g) Conditions on Permits.

3                   (1) When the Commission grants or conditionally grants a permit, it shall require  
4 the applicant as a condition of the permit to comply with the Security Plan that has been  
5 approved as provided under this Article.

6                   (2) Pursuant to its authority under subsection (e) of Section 2909 of this Code, when the  
7 Commission grants, conditionally grants, or amends a permit, it may require the Permittee as a  
8 condition of the permit to comply with noise limits that are lower or higher than those set forth in  
9 Article 29 of this Code. In considering whether to impose noise limits that are different from those in  
10 Article 29, the Commission may consider any or all of the following factors:

11                   (A) Noise generated by licensed Places of Entertainment generally Citywide, as  
12 determined by Commission staff;

13                   (B) Noise generated by the Place of Entertainment in the evening and nighttime;

14                   (C) In the case of an amendment to an existing permit, the length of time the  
15 Place of Entertainment has operated, either under the current operator or prior operators;

16                   (D) In the case of an amendment to an existing permit, whether the Commission,  
17 Police Department, and/or Department of Public Health have received noise complaints related to the  
18 operation of the Place of Entertainment;

19                   (E) The proximity of the Place of Entertainment to other Places of  
20 Entertainment or commercial uses;

21                   (F) The proximity of the Place of Entertainment to existing residential buildings;  
22 and

23                   (G) In the case of an amendment to an existing permit, whether the Place of  
24 Entertainment's operations preceded the construction or current use of the buildings in which  
25 complainants reside or work.

1                   (3) The Commission may impose additional reasonable time, place and manner  
2 conditions on the permit. In considering whether to impose said conditions, the Commission  
3 shall consider where relevant the circumstances surrounding any previous denial of a permit  
4 application or previous suspension or revocation of a permit, under this Article or Article 15.2,  
5 for the same permit applicant or Permittee.

6                   \* \* \* \*

7                   *(i) The Entertainment Commission shall maintain an updated list of all currently permitted*  
8 *Places of Entertainment, and shall provide that list, with updates as appropriate, to the Planning*  
9 *Department.*

10  
11                   **SEC. 1060.15. SOUND TEST.**

12                   As a condition of any permit issued under this Article, the Commission or the Director  
13 shall have the authority to require a sound test to ensure compliance with the allowable noise  
14 limits under Section 49 and Article 29 of the San Francisco Police Code or any alternative noise  
15 limits set by the Commission in the permit as authorized by subsection (e) of Section 2909 of this Code.

16  
17                   **SEC. 1060.24.1. COMPLIANCE WITH CONDITIONS; AMENDMENT OF PERMIT TO**  
18 **CHANGE CONDITIONS.**

19                   No Permittee shall operate a Business in any manner inconsistent with any condition  
20 imposed on the permit. A Permittee may request an amendment to a permit to remove or  
21 change a condition, including but not limited to an amendment to increase the noise limits contained  
22 in the permit as authorized by subsection (e) of Section 2909, by filing a request with the Secretary  
23 of the Commission and paying the fee for an Amendment to a Permit required under Police  
24 Code Section 2.26. The Entertainment Commission shall conduct a hearing and determine  
25 whether to approve the application to amend the permit according to the procedures

1 governing the initial application as set forth in Section 1060.5 and the standards set forth in  
2 Section 1060.5(f).

3  
4 Section 7. Effective Date; Inapplicability to Pending Building Permit Applications.

5 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs  
6 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
7 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
8 Mayor's veto of the ordinance.

9 (b) This ordinance shall not apply to any complete application for a building or site  
10 permit that was submitted to the Department of Building Inspection before the effective date of  
11 this ordinance.

12  
13 Section 8. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
17 additions, and Board amendment deletions in accordance with the "Note" that appears under  
18 the official title of the ordinance.

19  
20 Section 9. Undertaking for the General Welfare. In enacting and implementing this  
21 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not  
22 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it  
23 is liable in money damages to any person who claims that such breach proximately caused  
24 injury.

1           Section 10. Directions to Clerk of the Board. The Clerk of the Board of Supervisors is  
2 directed to forward this ordinance to the State Building Standards Commission after final  
3 passage, as required by Health and Safety Code Section 17958.7. The Clerk is further  
4 directed to send a copy of the finally-passed ordinance to the California Department of  
5 Housing and Community Development for informational purposes, as required by Health and  
6 Safety Code Section 19165.

7  
8 APPROVED AS TO FORM:  
9 DENNIS J. HERRERA, City Attorney

10 By: \_\_\_\_\_  
11       VICTORIA WONG  
12       Deputy City Attorney

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## **EXHIBIT C**

SUBMITTAL FROM THE OFFICE OF SUPERVISOR LONDON BREED

1 [Various Codes - Noise Regulations Relating to Residential Uses Near Places of  
2 Entertainment]

3 **Ordinance amending the Building, Administrative, Planning, and Police Codes to**  
4 **require attenuation of exterior noise for new residential structures and acoustical**  
5 **analysis and field testing in some circumstances; to provide that a Place of**  
6 **Entertainment (POE) not become a public or private nuisance on the basis of noise for**  
7 **nearby residents of residential structures constructed or converted on or after January**  
8 **1, 2005; to authorize the Entertainment Commission to hold a hearing on a proposed**  
9 **residential use near a POE, and require the project sponsor's participation in the**  
10 **hearing; to authorize the Entertainment Commission to measure noise conditions at**  
11 **such project sites and provide comments and recommendations regarding noise to the**  
12 **Planning Department and Department of Building Inspection; to require lessors and**  
13 **sellers of residential property to disclose to lessees and purchasers potential noise**  
14 **and other inconveniences associated with nearby POEs; to require that such**  
15 **disclosure requirements be recorded against all newly approved residential projects in**  
16 **a Notice of Special Restrictions; to require the Planning Department and Commission**  
17 **to consider noise issues when reviewing proposed residential projects; and to specify**  
18 **factors concerning noise for the Entertainment Commission to review when**  
19 **considering granting a POE permit; and making environmental findings, and findings**  
20 **of consistency with the General Plan, and the eight priority policies of Planning Code,**  
21 **Section 101.1, and findings of local conditions under California Health and Safety**  
22 **Code, Section 17958.7; and directing the Clerk of the Board of Supervisors to forward**  
23 **the Ordinance to the State Building Standards Commission upon final passage.**  
24  
25



1           NOTE:   **Unchanged Code text and uncoded text** are in plain Arial font.  
2                   **Additions to Codes** are in *single-underline italics Times New Roman font*.  
3                   **Deletions to Codes** are in ~~*striketrough italics Times New Roman font*~~.  
4                   **Board amendment additions** are in double-underlined Arial font.  
5                   **Board amendment deletions** are in ~~striketrough Arial font~~.  
6                   **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
7                   subsections or parts of tables.

8           Be it ordained by the People of the City and County of San Francisco:

9           Section 1. Environmental and Other Findings.

10          (a) The Planning Department has determined that the actions contemplated in this  
11 ordinance comply with the California Environmental Quality Act (California Public Resources  
12 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
13 Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference. The Board hereby  
14 affirms this determination.

15          (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted  
16 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
17 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board  
18 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
19 Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

20          (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
21 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
22 in Planning Commission Resolution No. \_\_\_\_\_ and the Board incorporates such reasons  
23 herein by reference.

24          (d) At a duly noticed hearing held on \_\_\_\_\_, the Building Inspection  
25 Commission considered this ordinance, pursuant to San Francisco Charter § 4, Appendix  
D.3.750-5.

1  
2 Section 2. Findings of Local Conditions Under California Health and Safety Code  
3 Section 17958.7.

4 (a) San Francisco is a small and unusually dense city, in which residential,  
5 commercial, and industrial uses are often located close to each other. San Francisco is  
6 approximately 49 square miles, located on a peninsula and bounded on three sides by water.  
7 Therefore, the opportunities for new development are largely limited to vertical development.  
8 To accommodate all desirable uses, San Francisco has many mixed use zoning districts.  
9 Modification of the State Building Code is necessary to maximize the compatibility of those  
10 diverse uses.

11 (b) San Francisco is currently experiencing a high demand for housing. Residential  
12 vacancy rates are approximately 7%. As a result, in recent years there has been a significant  
13 increase in residential development in the City, including in areas that traditionally have not  
14 had substantial residential development.

15 (c) Due to the unusual density and topography of San Francisco's built environment,  
16 including the proximity of residential, commercial, and industrial uses, as well as the design  
17 and zoning of San Francisco's neighborhoods, new residential developments may be located  
18 close to existing Places of Entertainment, which may generate nighttime noise.

19 (d) In San Francisco, current California building standards for new residential  
20 development often do not adequately attenuate interior noise created by or associated with  
21 nearby Places of Entertainment.

22 (e) The City's Entertainment Commission and Department of Public Health have  
23 received numerous complaints from residents who have moved into new developments near  
24 existing licensed Places of Entertainment about nighttime noise created by or associated with  
25 those Places of Entertainment.

1 (f) Because of San Francisco's topography, the modifications to the California Building  
2 Code contained in this ordinance are reasonably necessary to increase compatibility between  
3 existing Places of Entertainment and new residential development, and to promote the health,  
4 safety, and welfare of the residents of San Francisco.

5  
6 Section 3. Legislative Findings.

7 (a) During evening and nighttime hours, noise generated by or associated with  
8 permitted Places of Entertainment may sometimes be heard by nearby residents in their  
9 homes, and, from time to time, levels of interior noise may reach undesirable levels for some  
10 residents.

11 (b) Even so, many residents of San Francisco wish to live close to commercial uses,  
12 including Places of Entertainment, and the City's zoning regulations allow for mixed uses in  
13 the same zoning district in many areas.

14 (c) Places of Entertainment are an important part of the City's cultural fabric and  
15 provide an important amenity to its residents.

16 (d) In addition, according to a 2012 report by the Office of the Controller, "The  
17 Economic Impact of San Francisco's Nightlife Businesses," Places of Entertainment and other  
18 nightlife businesses are a major source of employment, economic activity, and tax revenue for  
19 San Francisco, as well as an economic driver, drawing new visitors and spending to San  
20 Francisco. In 2010, nightlife establishments, including live music venues, nightclubs,  
21 restaurants, bars, live theater and other performance venues, and art galleries, generated  
22 \$4.2 billion in spending within San Francisco. Furthermore, in 2010, live music venues,  
23 nightclubs, bars, and theaters hosted approximately 16 million customers and generated \$820  
24 million in spending within San Francisco; 43% of Bay Area residents who visited the City did  
25

1 so primarily to patronize live music venues, nightclubs, bars, and theaters; and 47% of tourists  
2 from outside the Bay Area visited the City for that reason.

3 (e) Some Places of Entertainment have been the subject of numerous noise  
4 complaints and as a result have been required to undertake costly noise attenuation  
5 measures. The imposition of these requirements may impose a significant financial burden on  
6 those Places of Entertainment, threatening their continued operation.

7 (f) Developers of residential projects routinely communicate with and perform  
8 outreach to neighbors and neighborhood groups prior to construction of the projects, but do  
9 not always similarly engage with or about neighboring Places of Entertainment.

10  
11 Section 4. The Building Code is hereby amended by adding new Sections 1207.4  
12 through 1207.9, to read as follows:

13 **SECTION 1207.4. RESERVED.**

14  
15 **SECTION 1207.5. Definitions.**

16 The following definitions apply to Sections 1207.4 through 1207.8 of this Code.

17 **COMMUNITY NOISE EQUIVALENT LEVEL (CNEL)** is a metric similar to the Ldn, except  
18 that a 5 dB adjustment is added to the equivalent continuous sound exposure level for evening hours (7  
19 p.m. to 10 p.m.) in addition to the 10 dB nighttime adjustment used in the Ldn.

20 **DAY-NIGHT AVERAGE SOUND LEVEL (Ldn)** is the A-weighted equivalent continuous  
21 sound exposure level for a 24-hour period with a 10 dB adjustment added to sound levels occurring  
22 during nighttime hours (10 p.m. to 7 a.m.).

23 **NORMALIZED A-WEIGHTED SOUND LEVEL DIFFERENCE (Dn)** means for a specified  
24 source room sound spectrum, the difference, in decibels, between the average sound levels produced in  
25

1 two rooms after adjustment to the expected acoustical conditions when the receiving room under test is  
2 normally furnished.

3  
4 **SECTION 1207.6. Exterior sound transmission control.**

5 **1207.6.1 Application.** Residential structures located in noise critical areas, such as in  
6 proximity to highways, county roads, city streets, railroads, rapid transit lines, airports, nighttime  
7 entertainment venues, or industrial areas, shall be designed to prevent the intrusion of exterior noises  
8 beyond levels prescribed by the Municipal Code. Proper design to accomplish this goal shall include,  
9 but not be limited to, orientation of the residential structure, setbacks, shielding, and sound insulation  
10 of the building.

11 **1207.6.2. Allowable interior noise levels.** Interior noise levels attributable to exterior sources  
12 shall not exceed 45 dB in any habitable room. The noise metric shall be either the day-night average  
13 sound level (Ldn) or the community noise equivalent level (CNEL), whichever results in a higher  
14 measurement of noise level.

15 **1207.6.3. Other noise sources.** Residential structures to be located where the Ldn or CNEL  
16 exceeds 60 dB shall require an acoustical analysis showing that the proposed design will limit exterior  
17 noise to the prescribed allowable interior level. The Planning Department's map titled Areas  
18 Potentially Requiring Noise Insulations, and similar maps and guidance produced by the Planning  
19 Department, shall be used where possible to identify sites with noise levels potentially greater than 60  
20 dB.

21  
22 **SECTION 1207.7. Compliance.**

23 **(a)** Evidence of compliance with Section 1207.6 shall consist of submittal of an acoustical  
24 analysis report, prepared under the supervision of a person experienced in the field of acoustical  
25 engineering, with the application for a building permit. The report shall show topographical

1 relationships of noise sources and dwelling sites, identification of noise sources and their  
2 characteristics, predicted noise spectra and levels at the exterior of the proposed dwelling structure  
3 considering present and future land usage, the basis or bases for the prediction (measured or obtained  
4 from published data), noise attenuation measures to be applied, and an analysis of the noise insulation  
5 effectiveness of the proposed construction showing that the prescribed interior noise level requirements  
6 are met.

7 (b) If interior allowable noise levels are met by requiring that windows be unopenable or  
8 closed, the design for the structure must also specify a ventilation or air-conditioning system to provide  
9 a habitable interior environment. The ventilation system must not compromise the dwelling unit or  
10 guest room noise reduction.

11  
12 **SECTION 1207.8. Field testing.**

13 (a) When inspection indicates that the construction is not in accordance with the approved  
14 design, or that the noise reduction is compromised due to sound leaks or flanking paths, field testing  
15 may be required. A test report showing compliance or noncompliance with prescribed interior  
16 allowable levels shall be submitted to the building official.

17 (b) Field measurements of outdoor sound levels shall generally follow the guidelines prepared  
18 by the American Society for Testing and Materials (ASTM) in ASTM E 1014.

19 (c) Field measurements of the A-weighted airborne sound insulation of buildings from exterior  
20 sources shall generally follow the guidelines prepared by the American Society for Testing and  
21 Materials (ASTM) in ASTM E 966.

22 (d) For the purpose of this Section 1207.7, sound level differences measured in unoccupied  
23 units shall be normalized to a receiving room reverberation time of one-half second. Sound level  
24 differences measured in occupied units shall not be normalized to a standard reverberation time.  
25

1        **SECTION 1207.9.** *The Department of Building Inspection shall consult with the Planning*  
2 *Department to ensure that notice to sponsors of residential development projects affected by Sections*  
3 *1207.5 through 1207.8 are provided with notice of the requirements of this Section as soon as*  
4 *practicable in the project approval process.*

5  
6        Section 5. The Administrative Code is hereby amended by adding new Chapter 116,  
7 consisting of Sections 116.1 through 116.10, to read as follows:

8  
9                    **CHAPTER 116: COMPATIBILITY AND PROTECTION**  
10                   **FOR RESIDENTIAL USES AND PLACES OF ENTERTAINMENT**

11  
12           **SECTION 116.1. DECLARATION OF POLICY.**

13           *It shall be the policy of the City to protect existing Places of Entertainment from potential*  
14 *conflicts with adjacent and nearby residential development uses, provided that such Places of*  
15 *Entertainment are operated and maintained in accordance with all applicable federal, state, and local*  
16 *laws and regulations, including applicable noise restrictions. The City encourages the use by*  
17 *developers of residential projects of best available noise control technologies and best management*  
18 *practices whenever possible to reduce the potential for conflict with Places of Entertainment.*

19           *Furthermore, it shall be the policy of the City to protect the future residents of industrial,*  
20 *commercial, and mixed-use neighborhoods in which Places of Entertainment operate, by providing*  
21 *notification processes to inform such residents of the possible noise levels in such neighborhoods and*  
22 *by requiring design features in new residential construction to promote the compatibility of residential*  
23 *uses and entertainment uses in adjacent or nearby Places of Entertainment.*

1           **SECTION 116.2. DEFINITIONS.**

2           For the purposes of this Chapter 116, the following definitions shall apply.

3           "City" means the City and County of San Francisco.

4           "Development Permit" means any land use permit or entitlement, including but not limited to  
5 any building permit, site permit, Conditional Use authorization, variance, or decision based on  
6 discretionary review of a proposed project , where the project meets at least one of the following  
7 criteria:

8           (1) the project is subject to the Planning Department's requirement for a Preliminary Project  
9 Assessment for residential use, pursuant to Planning Department policy;

10          (2) the project is subject to the Planning Department's requirement that a Pre-Application  
11 Meeting be held for new construction, pursuant to Planning Department policy; or

12          (3) the project proposes a conversion of a structure from non-residential use to residential use.

13          "Place of Entertainment" is defined in Section 1060 of the Police Code.

14          "Project" means a structure for Residential Use, where the structure's exterior boundaries are  
15 within 300 radial feet of a Place of Entertainment that has been permitted for 12 or more consecutive  
16 months prior to the filing of the first complete application for a Development Permit for construction of  
17 the structure or for its conversion to Residential Use.

18          "Project Site" means the lot or lots on which a Project is located.

19          "Residential Use" means the use of any real property as a dwelling unit or units, regardless of  
20 whether it is a primary residence or a mixed use property.

21          "Transfer" means sale or lease.

22          "Transferee" means a purchaser or lessee of all or any portion of a structure for Residential  
23 Use, the exterior boundaries of which are within 300 radial feet of a Place of Entertainment, and  
24 includes but is not limited to the purchaser or lessee's agents, partners, employees, assigns, successors,  
25 representatives, and heirs.



1       "Transferor" means an owner of a structure for Residential Use, the exterior boundaries of  
2 which are within 300 radial feet of a Place of Entertainment, who sells or leases all or any portion of  
3 the structure to a Transferee, and includes but is not limited to the owner's agents, partners,  
4 employees, assigns, successors, representatives, and heirs.

5  
6       **SECTION 116.3. EXEMPTIONS AND NONAPPLICATION.**

7       (a) This Chapter 116 does not supersede or limit any other provision of the Municipal Code,  
8 including but not limited to the Police Code, Building Code, Health Code and Planning Code,  
9 regarding the regulation and control of Nighttime Entertainment Uses as defined in the Planning Code.

10       (b) This Chapter 116 does not authorize a change in use or uses where such is otherwise  
11 controlled or prohibited by the Municipal Code or state or federal law.

12       (c) This Chapter 116 does not authorize the continuation or expansion of a nonconforming use  
13 where such is otherwise controlled or prohibited by the Municipal Code.

14  
15       **SECTION 116.4. PROTECTION FOR EXISTING PLACES OF ENTERTAINMENT.**

16       No establishment that has held a permit to operate as a Place of Entertainment within 300  
17 radial feet of a building for which construction or conversion for Residential Use was completed on or  
18 after January 1, 2005, shall be or become a public or private nuisance on the basis of noise  
19 disturbance for a resident of that building, if the Place of Entertainment operates in compliance with  
20 the Municipal Code and the terms of its permits.

1                   **SECTION 116.5. PLANNING DEPARTMENT NOTIFICATION TO PROJECT**  
2                   **SPONSORS AND ACCEPTANCE OF DEVELOPMENT PERMITS.**

3                   (a) The Planning Department shall maintain a list of permitted Places of Entertainment,  
4                   available to the public on its website, received from and updated by the Entertainment Commission  
5                   pursuant to Police Code Section 1060.5.

6                   (b) Based on the list described in subsection (a), the Planning Department shall notify a  
7                   sponsor of a proposed Project that the Project is within 300 radial feet of a Place of Entertainment at  
8                   the earliest practicable time.

9                   (c) The Planning Department will not consider an application for a Development Permit to be  
10                  complete until the following has occurred:

11                  (1) pursuant to Section 116.7, the Entertainment Commission has provided written  
12                  notification to the Planning Department either that the Entertainment Commission did not hold a  
13                  hearing, or that it held a hearing and the Project sponsor attended the hearing; and

14                  (2) pursuant to Section 116.7, the Entertainment Commission has provided written  
15                  comments and recommendations, if any, or the time provided in this Section 116.7 for doing so has  
16                  elapsed.

17  
18                   **SECTION 116.6. ACOUSTICAL MEASUREMENTS BY ENTERTAINMENT**  
19                   **COMMISSION STAFF.**

20                  (a) In addition to any acoustical analysis required by the Building Code, prior to any hearing  
21                  by the Entertainment Commission on a Project pursuant to Section 116.7, Entertainment Commission  
22                  staff may take exterior acoustical measurements of conditions at the Project Site, to determine normal  
23                  daytime conditions, normal nighttime conditions when no performance is taking place at any Place of  
24                  Entertainment within 300 radial feet of the proposed Project, and conditions during a performance at  
25                  any Place of Entertainment within 300 radial feet of the proposed Project. The Project sponsor shall

1 provide Entertainment Commission staff with reasonable access to the Project Site for this purpose.  
2 This information may be made available to the Entertainment Commission to inform the Entertainment  
3 Commission's consideration of the Project pursuant to Section 116.7.

4 (b) The acoustical measurements required by this Section 116.6 shall not constitute  
5 determinations or findings of the Entertainment Commission.

6 (c) A report of the acoustical measurements required by this Section 116.6 shall be forwarded  
7 to the Department of Public Health within five business days after the measurements are taken, and at  
8 least five business days prior to any Entertainment Commission hearing on the Project.

9  
10 **SECTION 116.7. ENTERTAINMENT COMMISSION HEARING.**

11 (a) Prior to submitting an application for a Development Permit to the Planning Department,  
12 the Project sponsor shall notify the Entertainment Commission of its intent to submit such an  
13 application, and may provide materials describing the proposed Project.

14 (b) Upon receipt of the notice described in subsection (a), the Entertainment Commission shall  
15 determine whether to hold a hearing on noise issues related to the proposed Project and any Place of  
16 Entertainment within 300 radial feet of the proposed Project. The Entertainment Commission, or its  
17 staff as delegated by the Entertainment Commission, may, in its discretion, determine that a hearing is  
18 not required, if the available evidence indicates that noise from the Place of Entertainment is not likely  
19 to create a significant disturbance for residents of the Project.

20 (c) If the Entertainment Commission determines that a hearing is required, it shall hold that  
21 hearing within 30 calendar days after a Project sponsor provides notice to the Entertainment  
22 Commission pursuant to subsection (a). The Entertainment Commission, or its staff as delegated by the  
23 Commission, may extend this 30-day period for up to 15 additional days to accommodate scheduling  
24 conflicts between the Entertainment Commission and Project sponsor.

25 (d) For any such hearing:

1 (1) the Entertainment Commission shall invite any Place of Entertainment that is within  
2 300 radial feet of the Project to attend the hearing and present evidence, including testimony,  
3 regarding noise issues related to the Place of Entertainment and the Project; and

4 (2) the Project sponsor shall attend the hearing and present evidence, including  
5 testimony, regarding current noise levels in the area of the proposed Project, including all acoustical  
6 analysis conducted to date; the Project's proposed noise attenuation features; other possible noise  
7 attenuation measures, including voluntary collaboration with the Place of Entertainment; the projected  
8 level of interior noise for residential units in the Project; and the Project sponsor's engagement or  
9 plans for engagement with the Place(s) of Entertainment.

10 (e) Within two business days after the Entertainment Commission holds a hearing pursuant to  
11 this Section 116.7, or if no hearing is to be held, within 30 calendar days after receiving notice  
12 pursuant to subsection (a) of this Section 116.7, the Entertainment Commission shall provide in writing  
13 to the Planning Department and/or Department of Building Inspection, as appropriate, a notice  
14 regarding whether a hearing was held and whether the Project sponsor attended the hearing, and shall  
15 provide written comments and recommendations, if any, pertaining to noise issues for the proposed  
16 Project, including but not limited to the following:

17 (A) a report of any acoustical measurements taken pursuant to Section 116.6, and  
18 (B) any recommendations regarding whether Development Permits should be issued  
19 and whether conditions relating to noise attenuation should be imposed.

20 (f) The Project sponsor shall indicate its compliance with Section 116.7(b) on the face of any  
21 building plans submitted to the Planning Department and Department of Building Inspection.

22 (g) The Project sponsor shall include with its application for a Development Permit any date(s)  
23 on which an Entertainment Commission hearing on the proposed Project was held, and shall include a  
24 copy of any comments and recommendations provided by the Entertainment Commission regarding the  
25 proposed Project.

1 (h) For purposes of this Section 116.7, any required writing by the Entertainment Commission  
2 may be transmitted by electronic means.

3 (i) This Section 116.7 does not give the Entertainment Commission approval authority over any  
4 Development Permit.

5  
6 **SECTION 116.8. DISCLOSURE REQUIREMENTS FOR TRANSFER OF REAL**  
7 **PROPERTY FOR RESIDENTIAL USE.**

8 **(a) Disclosure Requirement.**

9 Any Transferor shall provide a disclosure notice to any Transferee as follows:

10 (1) Timing of Disclosure.

11 The Transferor shall provide the disclosure notice described in this Section 116.8 on a separate  
12 written document. This disclosure notice shall be provided as follows:

13 (A) for a lease, prior to the Transferee(s) signing the lease; and

14 (B) for a purchase agreement, at the time required by California Civil Code  
15 Section 1102.3.

16 (2) Contents of Disclosure Notice.

17 The disclosure notice shall include a citation to this Chapter 116 and a statement containing  
18 substantially the following language in at least 12-point font, with appropriate terms to be inserted in  
19 place of the bracketed language:

20 **"DISCLOSURE OF NEIGHBORING PLACE OF ENTERTAINMENT.**

21 You are purchasing or leasing property that is adjacent or nearby to [name and address of the  
22 Place(s) of Entertainment]. This venue is an existing Place of Entertainment, as defined in Police Code  
23 Section 1060, which includes establishments such as live music venues, nightclubs and theaters. This  
24 establishment may subject you to inconveniences or discomfort arising from or associated with its  
25 operations, which may include, but are not limited to, nighttime noise, odors, and litter. One or more

1 of the inconveniences or discomforts may occur even if the Place of Entertainment is operating in  
2 conformance with existing laws and regulations and locally accepted customs and standards for  
3 operations of such use. If you live near a Place of Entertainment, you should be prepared to accept  
4 such inconveniences or discomforts as a normal and necessary aspect of living in a neighborhood with  
5 mixed commercial and residential uses."

6 (3) Copy of Chapter 116 to Be Provided.

7 The Transferor shall provide each Transferee with a copy of this Chapter 116 as is in effect  
8 when the disclosure notice required by this Section 116.8 is provided.

9 (4) Affidavit of Disclosure.

10 (A) Contents of Affidavit.

11 The Transferor shall sign, upon penalty of perjury, an affidavit containing the following  
12 information, with appropriate terms to be inserted in place of the bracketed language, as specified:

13 (i) the identity of the Transferor, and any entity on whose behalf the  
14 Transferor is acting;

15 (ii) the identity of the Transferee;

16 (iii) the address, including unit number, of the portion of the Project  
17 being transferred;

18 (iv) whether the Transfer is a sale or lease; and

19 (v) the following language:

20 "I have provided to the [purchaser or lessee] the disclosure required by San Francisco  
21 Administrative Code Chapter 116. Attached is a true and correct copy of the notice provided to the  
22 [purchaser or lessee].

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
24 true and correct. Executed on [date] in [city and state]."

25 (B) Affidavit Transmitted to Entertainment Commission.

1       The Transferor shall transmit to the Entertainment Commission, by any means acceptable to the  
2 Entertainment Commission, the Affidavit and a copy of the disclosure notice provided to each  
3 Transferee; provided, however, that the attachment need not also include a copy of the then-current  
4 text of this Chapter 116. Upon request of the Transferee, the Transferor shall also provide a copy of  
5 this Affidavit, with an attached copy of the disclosure notice referenced in the Affidavit, to the  
6 Transferee.

7               (C) Affidavits Available to the Public.

8       Pursuant to state and local law, upon request, the Entertainment Commission shall provide a  
9 copy of the Affidavit and attached notice to any member of the public, including a representative of a  
10 Place of Entertainment.

11               (5) Covenants, Conditions & Restrictions for Condominium Projects.

12       If the Project will be subdivided into condominiums, the requirements of this Section 116.8(a)  
13 must be included as terms of the Covenants, Conditions, & Restrictions ("CC&Rs") that will be filed  
14 with the State and that govern owners of the property. Upon request, a copy of the CC&Rs must be  
15 provided to the Planning Department.

16               (b) Enforcement.

17       The Planning Department may enforce this Section 116.8 through the application of Planning  
18 Code Sections 176 and 176.1.

19               (c) Complaints Regarding Failure to Provide Disclosure Notice.

20       Any member of the public, including any Place of Entertainment, may file a complaint with the  
21 Planning Department regarding a Transferor's failure to provide the notice required by this Section  
22 116.8.

1                   **SECTION 116.9. NOTICE OF SPECIAL RESTRICTIONS.**

2                   (a) At the time a proposed Project is approved, a Notice of Special Restrictions (NSR) must be  
3 recorded with the Assessor-Recorder that states all of the restrictions of Section 116.8 and any other  
4 conditions that the Planning Commission or Department places on the property. The Planning  
5 Department may enforce the terms of the NSR, including but not limited to enforcement for any failure  
6 to comply with the provisions of Section 116.8, through the application of Planning Code Sections 176  
7 and 176.1.

8  
9                   **SECTION 116.10. NO PRIVATE RIGHT OF ACTION AGAINST CITY.**

10                  This Chapter 116 shall not create any private right of action against the City. The City shall  
11 have no duty or liability based on any failure to achieve the disclosure required by this Chapter or  
12 based on the City's failure to enforce or prosecute pursuant to this Chapter.

13  
14                  Section 6. The Planning Code is hereby amended by adding new Section 314, to read  
15 as follows:

16                  **SECTION 314. REVIEW OF RESIDENTIAL PROJECTS.**

17                  In addition to any other factors appropriate for consideration under the Planning Code, the  
18 Planning Department and Commission shall consider the compatibility of uses when approving  
19 Residential Uses adjacent to or near existing permitted Places of Entertainment and shall take all  
20 reasonably available means through the City's design review and approval processes to ensure that the  
21 design of such new residential development projects takes into account the needs and interests of both  
22 the Places of Entertainment and the future residents of the new development. Such considerations may  
23 include, among others:

24                  (a) The proposed project's consistency with applicable design guidelines;  
25



1 (b) any proceedings held by the Entertainment Commission relating to the proposed Project,  
2 including but not limited to any acoustical data provided to the Entertainment Commission, pursuant to  
3 Administrative Code Section 116.6; and  
4 (c) any comments and recommendations provided to the Planning Department by the  
5 Entertainment Commission regarding noise issues related to the project pursuant to Administrative  
6 Code Section 116.7.

7  
8 Section 7. The Police Code is hereby amended by revising Sections 1060.5, 1060.15,  
9 and 1060.24.1, to read as follows:

10  
11 **SEC. 1060.5. DETERMINATION OF APPLICATION FOR A PLACE OF**  
12 **ENTERTAINMENT PERMIT.**

13 \* \* \* \*

14 (b) (1) The applicant shall cause a notice of the hearing to be conspicuously and  
15 continuously posted for at least 30 days before the scheduled hearing date on the premises of  
16 the Business. Where the Business is located in a neighborhood-commercial or mixed  
17 residential district, as defined in Article 7 and 8 of the ~~San Francisco~~ Planning Code, the  
18 applicant shall also make a good faith effort to distribute leaflets at each residence located  
19 within 150 feet of the Business, unless the Entertainment Commission finds that a Business  
20 located in a district is not likely to significantly generate nighttime noise and traffic to the  
21 detriment of residences located in that immediate area. Applicants subject to the requirement  
22 of distributing leaflets shall do so at least 30 days before the scheduled hearing date and the  
23 distribution shall be done in compliance with the provisions of Article ~~575.7~~ (beginning with  
24 Section 184.69) of the ~~San Francisco~~ Public Works Code. The Director shall provide notice of  
25 the hearing at least 30 days before the hearing to any Person who has filed a written request

1 for such notice, which notice may be given electronically if the Person has provided electronic  
2 contact information, or by mail.

3 \* \* \* \*

4 (d) (1) The Entertainment Commission shall hold a hearing and determine whether to  
5 grant or deny the permit within 45 City business days of the date that the applicant has  
6 submitted a complete application under Section 1060.5(a), except that this 45 day period shall  
7 be extended for such period or periods of time that apply under the following circumstances:

8 (A~~ii~~) If the Entertainment Commission finds that an extension of time is  
9 necessary to obtain additional information for its review of the application under the standards  
10 set forth in Subsection (f) of this Section, the time period shall be extended for an additional  
11 amount of time as the Commission determines appropriate, up to 15 additional days; and

12 (B~~ii~~) Upon the applicant's request, the Entertainment Commission shall  
13 continue the hearing for an additional period of time to allow the applicant an opportunity to  
14 comply with the requirements of this Article, in which case the time period is extended for that  
15 additional period; and

16 (C~~iii~~) If the applicant fails to post or maintain notice of the hearing, or  
17 make a good faith effort to distribute leaflets to residences, as required by Subsection (b) of  
18 this Section, the Director shall have the hearing before the Entertainment Commission  
19 continued for such period or periods of time that the Director determines necessary for the  
20 applicant to comply with the posting requirement, in which case the time period is extended  
21 for that additional period or periods of time; and

22 (D~~iv~~) If the Director finds that the Commission is unable to meet during  
23 the 45 day time period or any permitted time extension due to exigent circumstances, the time  
24 period shall be extended until the Commission is able to meet; the Commission shall consider  
25 the matter at the first meeting that it conducts following such circumstances.

1           \* \* \* \*

2           (g) Conditions on Permits.

3                 (1) When the Commission grants or conditionally grants a permit, it shall require  
4 the applicant as a condition of the permit to comply with the Security Plan that has been  
5 approved as provided under this Article.

6                 (2) Pursuant to its authority under subsection (e) of Section 2909 of this Code, when the  
7 Commission grants, conditionally grants, or amends a permit, it may require the Permittee as a  
8 condition of the permit to comply with noise limits that are lower or higher than those set forth in  
9 Article 29 of this Code. In considering whether to impose noise limits that are different from those in  
10 Article 29, the Commission may consider any or all of the following factors:

11                 (A) Noise generated by licensed Places of Entertainment generally Citywide, as  
12 determined by Commission staff;

13                 (B) Noise generated by the Place of Entertainment in the evening and nighttime;

14                 (C) In the case of an amendment to an existing permit, the length of time the  
15 Place of Entertainment has operated, either under the current operator or prior operators;

16                 (D) In the case of an amendment to an existing permit, whether the Commission,  
17 Police Department, and/or Department of Public Health have received noise complaints related to the  
18 operation of the Place of Entertainment;

19                 (E) The proximity of the Place of Entertainment to other Places of  
20 Entertainment or commercial uses;

21                 (F) The proximity of the Place of Entertainment to existing residential buildings;  
22 and

23                 (G) In the case of an amendment to an existing permit, whether the Place of  
24 Entertainment's operations preceded the construction or current use of the buildings in which  
25 complainants reside or work.

1           (3) The Commission may impose additional reasonable time, place and manner  
2 conditions on the permit. In considering whether to impose said conditions, the Commission  
3 shall consider where relevant the circumstances surrounding any previous denial of a permit  
4 application or previous suspension or revocation of a permit, under this Article or Article 15.2,  
5 for the same permit applicant or Permittee.

6           \* \* \* \*

7           *(i) The Entertainment Commission shall maintain an updated list of all currently permitted*  
8 *Places of Entertainment, and shall provide that list, with updates as appropriate, to the Planning*  
9 *Department.*

#### 11           **SEC. 1060.15. SOUND TEST.**

12           As a condition of any permit issued under this Article, the Commission or the Director  
13 shall have the authority to require a sound test to ensure compliance with the allowable noise  
14 limits under Section 49 and Article 29 of the San Francisco Police Code or any alternative noise  
15 limits set by the Commission in the permit as authorized by subsection (e) of Section 2909 of this Code.

#### 17           **SEC. 1060.24.1. COMPLIANCE WITH CONDITIONS; AMENDMENT OF PERMIT TO** 18 **CHANGE CONDITIONS.**

19           No Permittee shall operate a Business in any manner inconsistent with any condition  
20 imposed on the permit. A Permittee may request an amendment to a permit to remove or  
21 change a condition, including but not limited to, an amendment to increase the noise limits contained  
22 in the permit as authorized by subsection (e) of Section 2909 of this Code, by filing a request with the  
23 Secretary of the Commission and paying the fee for an Amendment to a Permit required  
24 under Police Code Section 2.26. The Entertainment Commission shall conduct a hearing and  
25 determine whether to approve the application to amend the permit according to the

1 procedures governing the initial application as set forth in Section 1060.5 and the standards  
2 set forth in Section 1060.5(f).

3  
4 Section 8. Effective Date; Inapplicability to Pending Building Permit Applications.

5 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs  
6 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
7 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
8 Mayor's veto of the ordinance.

9 (b) Administrative Code Sections 116.2 through 116.3, 116.5 through 116.7 and 116.9  
10 of this ordinance shall not apply to any complete application for a building or site permit that  
11 was submitted to the Department of Building Inspection before the effective date of this  
12 ordinance.

13  
14 Section 9. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
18 additions, and Board amendment deletions in accordance with the "Note" that appears under  
19 the official title of the ordinance.

20  
21 Section 10. Undertaking for the General Welfare. In enacting and implementing this  
22 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not  
23 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it  
24 is liable in money damages to any person who claims that such breach proximately caused  
25 injury.

1  
2 Section 11. Directions to Clerk of the Board. The Clerk of the Board of Supervisors is  
3 directed to forward this ordinance to the State Building Standards Commission after final  
4 passage, as required by Health and Safety Code Section 17958.7.

5  
6 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

7  
8 By:

  
VICTORIA WONG  
Deputy City Attorney

9  
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