File No. 101497 Committee Item No. 3
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development **Date** April 30, 2012

Board of Supervisors Meeting **Date** _____

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Completed by: Alisa Miller **Date** April 27, 2012
Completed by: _____ **Date** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Police Code - Prohibiting the Use of Amplified Sound on Open Top Sightseeing Buses]

Ordinance amending the San Francisco Police Code by amending Section 46 to clarify that the definition of "Sound Truck" in that section does not include open top tour buses, amending Section 2901 to clarify that the noise restrictions imposed by Article 29 do not apply to City agencies, adding a new Section 2913 to prohibit the use of amplified sound on open top sightseeing buses in San Francisco except where the sound is audible only to individual listeners, amending Section 2916 to authorize the Department of Public Health and the Police Department to enforce the requirements of Section 2913, and amending Section 2922 to clarify that the Article should not be construed to conflict with Federal or State laws.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Findings.

a. The Board of Supervisors finds that in order to protect public health, it is and has been the policy of San Francisco to prohibit unwanted, excessive and avoidable noise.

b. There are a number of sightseeing bus operators in San Francisco who use amplified sound on open top sightseeing buses to communicate with their passengers as the buses travel along regular routes throughout the day. This amplified sound disturbs people in their homes and on the streets along the sightseeing bus route. The number of open top sightseeing buses in San Francisco has increased substantially in recent years.

c. The routes for most open top sightseeing buses include popular tourist destinations, which disproportionately impact a select group of local residences along the

route. These open top tour buses are typically operated eight hours per day, seven days per week.

d. The San Francisco Department of Public Health has observed that open top sightseeing announcements are audible in private residences along the tour route. The sound from open top sightseeing buses is more disruptive to listeners than amplified sound from other vehicles, including sound trucks, because these announcements are frequent, have informational content, and vary between tour guides, which makes this sound more difficult to ignore.

Section 2. The San Francisco Police Code is hereby amended by amending Sections 46, 2901, 2916, and 2922, and adding a new Section 2913 to read as follows:

SEC. 46. - DEFINITIONS.

(a) "Sound Truck." The words "sound truck" as used in this Code shall mean any motor vehicle, horse drawn vehicle or other means of conveyance, having mounted thereon, attached thereto or carrying any sound amplifying equipment*, except that an "Open Top Sightseeing Bus" as defined in Section 2913 of this Code shall not be considered a "sound truck" for purposes of this Article*.

(b) "Sound Amplifying Equipment." The words "sound amplifying equipment" as used in this Code, shall mean any machine or device for the reproduction or amplification of the human voice, music or other sound. "Sound amplifying equipment" shall not be construed as including standard automobile radios, television receiving sets or mobile radio telephone equipment or other mechanical sound or voice-reproducing devices when used and heard only by occupants of the vehicle in which installed, or warning devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic safety purposes.

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SEC. 2901. - DEFINITIONS.

(a) "Ambient" means the lowest sound level repeating itself during a minimum ten-minute period as measured with a type 1, precision sound level meter, using slow response and "A " weighting. The minimum sound level shall be determined with the noise source at issue silent, and in the same location as the measurement of the noise level of the source or sources at issue. However, for purposes of this chapter, in no case shall the ambient be considered or determined to be less than: (1) Thirty-five dBA for interior residential noise, and (2) Forty-five dBA in all other locations. If a significant portion of the ambient is produced by one or more individual identifiable sources of noise that contribute cumulatively to the sound level and may be operating continuously during the minimum ten-minute measurement period, determination of the ambient shall be accomplished with these separate identifiable noise sources silent or otherwise removed or subtracted from the measured ambient sound level.

(b) "Director" means the Director or department head of any City department having administrative or enforcement responsibilities under this Article or any other provision of the Municipal Code regarding noise control, as well as his or her designee.

(c) "Dwelling Unit" means (1) a dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping; (2) a room in group housing, even if such room lacks private cooking facilities and private plumbing facilities, such as rooms in senior citizen housing, single room occupancy or residential hotels, dorms, hostels, or shelters; or, (3) a housekeeping room as defined in the Housing Code.

(d) "Emergency work" means work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger or work by private or public utilities when restoring utility service. This term shall not include testing of emergency equipment.

(e) "Fixed source" means a machine or device capable of creating a noise level at the property upon which it is regularly located, including but not limited to: industrial and commercial process machinery and equipment, pumps, fans, air-conditioning apparatus or refrigeration machines.

(f) "Low frequency ambient" means the lowest sound level repeating itself during a ten-minute period as measured with a sound level meter, using slow response and "C" weighting. The minimum sound level shall be determined with the music or entertainment noise source at issue silent, and in the same location as the measurement of the noise level of the source or sources at issue. However, for purposes of this chapter, in no case shall the local ambient be considered or determined to be less than: (1) Forty-five dBC for interior residential noise, and (2) Fifty-five dBC in all other locations. If a significant portion of the ambient is produced by one or more individual identifiable sources that would otherwise be operating continuously during the minimum ten-minute measurement period, determination of the low-frequency ambient shall be accomplished with these separate identifiable noise sources silent or otherwise removed or subtracted from the measured ambient sound.

(g) "Noise level" means the maximum continuous sound level or repetitive peak sound level, produced by a source or group of sources as measured with a sound level meter. In order to measure a noise level, the controls of the sound level meter should be arranged to the setting appropriate to the type of noise being measured. For example, the settings should be slow response for continuous noise sources and fast response for noises with rapid onset and decline.

(h) "Person" means a person, firm, association, copartnership, joint venture, corporation, or any entity, public or private in nature*, but shall not include the City and County of San Francisco*.

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(i) "Place of Entertainment" has the same meaning as the term is defined in San Francisco Police Code Section 1060.

(j) "Powered construction equipment" means any tools, machinery, or equipment used in connection with construction operations which can be driven by energy in any form other than manpower, including all types of motor vehicles when used in the construction process of any construction site, regardless of whether such construction site be located on-highway or off-highway, and further including all helicopters or other aircraft when used in the construction process except as may be preempted for regulation by State or Federal law.

(k) "Property plane" means a vertical plane including the property line that determines the property boundaries in space.

(l) "Public Property " means property leased or owned by a governmental entity, to which the public or a substantial group of persons has access, including but not limited to any street, highway, parking lot, plaza, transportation facility, school, place of amusement, park, or playground located within the City and County of San Francisco.

(m) "Residential Property" means any property that has at least one dwelling unit and has been approved for human habitation by the City and County of San Francisco.

(n) "Sound level," expressed in decibels (dB), means a logarithmic indication of the ratio between the acoustic energy present at a given location and the lowest amount of acoustic energy audible to sensitive human ears and weighted by frequency to account for characteristics of human hearing, as given in the American National Standards Institute Standard S1.1, "Acoustic Terminology," paragraph 2.9, or successor reference. All references to dB in this chapter refer to the A-level or C-level weighting scale, abbreviated dBA or dBC, measured as set forth in this section.

SEC. 2913. AMPLIFIED SOUND RESTRICTIONS FOR OPEN TOP SIGHTSEEING BUSES.

(a) For purposes of this Section, "Open Top Sightseeing Bus" shall mean a privately-owned passenger vehicle for hire with a capacity of nine or more passengers, including the driver, that:

(1) is used primarily for the conveyance of passengers over the public streets, for the purpose of visiting or viewing places of interest; and

(2) lacks a permanently attached solid roof enclosing substantially all of the seating areas of the vehicle containing windows that are glass or other solid transparent material set in frames that are permanently attached to the body of the vehicle.

(b) Effective July 1, 2011, it shall be a violation of this Section for any person to operate an Open Top Sightseeing Bus using electronically amplified sound to communicate with passengers except by use of a system whereby the communications are audible to passengers only through the use of technology designed to make such communications audible only to the individual listener, such as individual headsets or headphones.

SEC. 2916. ENFORCEMENT

The Director of Public Health may enforce the provisions of Section 2904, 2909, and 2912 of this Article.

The Department of Building Inspection may enforce the provisions of Sections 2907 and 2908 of this Article insofar as said provisions relate to construction operations conducted on private property under appropriate permits issued pursuant to the San Francisco Building Code, Housing Code, Electrical Code and Plumbing Code. Insofar as these provisions relate to construction operations conducted on publicly-owned property subject to the police power of the City and County of San Francisco, the Department of Public Worlds may enforce the provisions of Sections 2907 and 2908 of this Article. The Executive Director of the Entertainment Commission may enforce noise standards associated with licensed Places of Entertainment.

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The Chief of Police and the Director of Public Health may enforce the provisions of Section 2913.

The Chief of Police may enforce the provisions of this Article that relate to noise created by humans or any other noise source not specifically assigned or designated to another Department or Agency.

SEC. 2922. - PREEMPTION

In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights or authority of the State to do those things that are required, directed, or expressly authorized by Federal or State law. Further, in adopting this Article, the Board of Supervisors does not intend to prohibit that which is prohibited by Federal or State law~~,~~. *This Article shall be construed so as not to conflict with applicable federal or State laws, rules, or regulations. Nothing in this Article shall authorize any City agency or department to impose any duties or obligations in conflict with limitations on municipal authority established by State or federal law at the time such agency or department action is taken.*

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

By: _____
DAVID A. GREENBURG
Deputy City Attorney

FILE NO. 101497

LEGISLATIVE DIGEST

[Police Code - Prohibiting the use of amplified sound on open top sightseeing buses]

Ordinance amending the San Francisco Police Code by amending Section 46 to clarify that the definition of "Sound Truck" in that section does not include open top tour buses, amending Section 2901 to clarify that the noise restrictions imposed by Article 29 do not apply to City agencies, adding a new Section 2913 to prohibit the use of amplified sound on open top sightseeing buses in San Francisco except where the sound is audible only to individual listeners, and amending Section 2916 to authorize the Department of Public Health and the Police Department to enforce the requirements of Section 2913.

Existing Law

San Francisco does not currently regulate the use of amplified sound on sightseeing buses. In addition, while the City's noise ordinance does not apply to City agencies, the text of that ordinance does not make this exclusion explicit.

Amendments to Current Law

The proposed ordinance would amend the City's existing noise ordinance to prohibit operators of open top sightseeing buses from using amplified sound to communicate with passengers except where that communication is audible only to the individual listener, such as through the use of individual headsets. An "open top sightseeing bus" would be defined as a privately-owned vehicle carrying nine or more passengers and used primarily to view or visit places of interest, and which lacks a permanently attached roof and windows. Violations of the ordinance could be enforced by either the Department of Public Health or the Police Department.

The proposed ordinance would also clarify that the definition of "Sound Truck" in the Police Code provisions regulating sound trucks does not include an open top sightseeing bus.

Finally, the proposed ordinance would clarify and reaffirm the long-standing law that the noise ordinance (Police Code Article 29) does not apply to City agencies.

Background Information

The City has received complaints from residents who are disturbed by the sound levels and repetitive nature of the amplified sound from open top sightseeing buses. In other popular tourist destinations, including Paris and Barcelona, open top sightseeing buses have successfully used headsets as an alternative to loudspeakers. In addition, New York City

recently enacted a law that will require the use of headsets on new sightseeing buses licensed by the City beginning in April, 2012.

BOARD of SUPERVISORS

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TDD/TTY No. 554-5227

June 16, 2011

File No. 101497

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On December 14, 2010, Supervisor Chiu introduced the following proposed legislation:

File No. 101497. Ordinance amending the San Francisco Police Code by amending Section 46 to clarify that the definition of "Sound Truck" in that section does not include open top tour buses, amending Section 2901 to clarify that the noise restrictions imposed by Article 29 do not apply to City agencies, adding a new Section 2913 to prohibit the use of amplified sound on open top sightseeing buses in San Francisco except where the sound is audible only to individual listeners, amending Section 2916 to authorize the Department of Public Health and the Police Department to enforce the requirements of Section 2913, and amending Section 2922 to clarify that the Article should not be construed to conflict with Federal or State laws.

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

Gail Johnson

By: Gail Johnson, Committee Clerk
Public Safety Committee

Exempt from CEQA per Guideline Section 15060(c)(2): activity that will not result in a direct or foreseable indirect physical change in the environment.

Brett Bollinger 7/06/11
Approved Planning Dept. Brett Bollinger 7/23/09

Attachment

cc: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

Environmental Review Referral

2011.0658E

SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

July 26, 2011

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

Re: Board of Supervisors File No. 101497 [Police Code- Prohibiting the Use of Amplified Sound on Open Top Sightseeing Buses.]

Small Business Commission Recommendation: **Approval with Modification**

Dear Ms. Calvillo:

On July 11, 2011, the Small Business Commission voted unanimously to recommend that the Board of Supervisors approve BOS File No. 101497 with modification.

The Commission supports the ordinance; however, Commissioners expressed concerns over potential costs to upgrade sound systems for single and small fleet operators. In order to accommodate these small business operators, the Commission requests that the Board of Supervisors stagger the dates of implementation to capture the large operators at an earlier time, with full implementation for the small operators set no longer than two years from the date of adoption of the ordinance.

The Commission thanks Legislative Aide Catherine Rauschuber for her informative presentations at our Legislation and Policy Committee and full Commission meetings.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

Cc: Supervisor Chiu
Jason Elliott, Mayor's Office