

1 [Residential and Industrial Compatibility and Protection.]

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3 **Ordinance amending the Administrative Code to add Chapter 35 to provide that certain**
4 **industrial uses shall not be considered a nuisance due to changed circumstances on**
5 **adjacent property, with certain exceptions; to require notice regarding adjacent**
6 **industrial uses to be provided prior to the transfer of real property for residential uses;**
7 **to provide for civil penalties; to provide for a private right of action; and making**
8 **environmental findings.**

9 Note: Additions are *single-underline italics Times New Roman*;
10 deletions are *strikethrough italics Times New Roman*.
11 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. Environmental Findings. The Planning Department has determined that the
14 actions contemplated in this Ordinance are exempt from the California Environmental Quality
15 Act (California Public Resources Code section 21000 et seq.). Said determination is on file
16 with the Clerk of the Board of Supervisors in File No. _____ and is incorporated
17 herein by reference.

18 Section 2. Findings.

19 (a) It is in the public interest to recognize industrial businesses as an important
20 component of San Francisco's economic base. Accordingly, the City seeks to develop and
21 implement focused policies and programs that encourage the retention and expansion of
22 industrial businesses. This effort is consistent with and furthers the Commerce and Industry
23 Element of the General Plan, which calls for a balanced local economy where good paying
24 jobs are available to the widest breadth of the San Francisco labor force.

25 (b) Industrial businesses such as printing services, restaurant supply, and janitorial

1 services provide vital support services to San Francisco's leading industries. Moreover,
2 because they are strategically located near the City's major areas of business and commerce
3 and near major freeway corridors, industrial businesses provide support services to leading
4 downtown and regional businesses and industries in a timely and cost-efficient manner.

5 (c) Industrial businesses such as auto repair services, contractors, building supply
6 companies, and landscaping companies provide direct services to city residents, creating
7 easy access to services and enhancing the residents' quality of life.

8 (d) Industrial businesses are a key element in ensuring employment opportunities to all
9 San Franciscans. Industrial businesses pay higher wages and offer entry-level workers more
10 opportunity for advancement than service sector employment, and are an important source of
11 employment for people of all skill and educational levels. Industrial businesses provide
12 important employment opportunities for new immigrants, including those for whom English is a
13 second language. Studies have shown that the loss of industrial jobs has a disproportionate
14 impact on minorities and immigrants.

15 (e) Industrial businesses generate substantial tax revenue each year that helps to fund
16 vital City services.

17 (f) Industrial businesses are a stable sector of the City's economic base and support
18 the economy when other sectors experience slowed growth or decline. A sustainable San
19 Francisco economy depends on a diverse economic base.

20 (g) The economic importance of industrial businesses to cities like San Francisco is
21 demonstrated by an independent analysis of Boston's industrial businesses, which found that
22 such businesses provided one-fifth of the city's jobs, were mostly held by city residents, and
23 generated approximately \$30 million annually in city tax revenue.

24 (h) The continuing importance of industrial businesses to San Francisco is highlighted
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1 by the projection of the Association of Bay Area Governments (ABAG) that there will be
2 approximately 18,000 new industrial jobs created in San Francisco from 2000 to 2025.

3 (i) San Francisco’s zoning code currently permits residential uses in areas traditionally
4 reserved for industry. In addition, the Planning Department’s proposed zoning for the city’s
5 eastern neighborhoods would establish mixed-use districts comprised of both residential and
6 industrial uses. As a result of both historical and proposed zoning controls, an increasing
7 number of San Francisco’s businesses operate in close proximity to residential developments.

8 (j) It is in the public interest to notify potential future residents of these industrial and
9 mixed-use districts of the types of impacts such industrial uses may have, including, among
10 others, impacts related to noise and odors. Notice of possible impacts is one component of a
11 strategy to provide for compatible adjacent uses and to protect residents from potentially
12 unknown consequences of moving to an industrial or mixed-use neighborhood.

13 (k) The protection of industrial businesses from nuisance actions generated by new
14 residential developments is an important component of an economic development strategy for
15 the retention of San Francisco’s industrial sector.

16 Section 3. The San Francisco Administrative Code is hereby amended by adding
17 Chapter 35 to read as follows:

18 CHAPTER 35. RESIDENTIAL AND INDUSTRIAL BUSINESS COMPATIBILITY AND
19 PROTECTION.

20 SEC. 35.1. SHORT TITLE.

21 This Chapter may be referred to as the Residential and Industrial Compatibility and Protection
22 Ordinance.

23 SEC 35.2. DECLARATION OF POLICY.
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1 It shall be the policy of the City and County of San Francisco to protect its existing and future
2 industrial businesses from potentially incompatible adjacent and nearby development provided that
3 such industrial businesses are conducted and maintained in a manner consistent with proper and
4 accepted customs and standards and in accordance with all applicable federal, state, and local laws
5 and regulations. The City and County of San Francisco encourages the use of best available
6 control technologies and best management practices whenever possible to further reduce the
7 potential for incompatibility with other uses, including residential.

8 Furthermore, it shall be the policy of the City and County of San Francisco to protect the future
9 residents of industrial and mixed-use neighborhoods by providing for a notification process so that
10 such residents are made aware of some of the possible consequences of moving to an industrial or
11 mixed use neighborhood and by encouraging and, if possible, requiring, features in any new residential
12 construction designed to promote the compatibility of residential and adjacent or nearby industrial
13 uses.

14 SEC. 35.3. DEFINITIONS.

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

16 (a) "Adjacent Property" means all real property inside or within 150 feet of an Industrial Use
17 Zoning District.

18 (b) "Eligible Industrial Use" means any legally existing, including legally non-conforming, or
19 future Industrial Use, as defined in this Section, conducted or maintained for industrial purposes in a
20 manner consistent with proper and accepted customs and standards, as established and followed by
21 similar industrial uses in the same neighborhood if such uses exist, and in accordance with all
22 applicable federal, state, and local laws and regulations.

23 (c) "Industrial Use" means any industrial use as defined in the Planning Code, including, but
24 not limited to, Automotive as defined in Planning Code Section 223, Animal Services as defined in
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1 Planning Code Section 224, Wholesaling, Storage, Distribution and Open Air Handling of Materials
2 and Equipment as defined in Planning Code Section 225, Manufacturing and Processing as defined in
3 Planning Code Section 226, Other Uses as defined in Planning Code Section 227, and Light
4 Manufacturing, Wholesale Sales, Storage as defined in Planning Code Section 890.54. Upon adoption
5 of the permanent Eastern Neighborhoods Zoning Controls, “Industrial Use” shall also include
6 Production, Design, and Repair Uses (“PDR Uses”), as defined in the zoning controls, including, but
7 not limited to, Publishing, Audio/Visual, Arts, Fashion, Transport, Food/Event, Interior Design,
8 Construction, Equipment, Motor Vehicles, and Other PDR uses.

9 (d) “Industrial Use Zoning District” means a zoning district designated C-M (Heavy
10 Commercial), M-1 (Light Industrial), M-2 (Heavy Industrial), SPD (South Park), RSD
11 (Residential/Service Mixed Use), SLR (Service/Light Industrial/Residential Mixed Use), SLI
12 (Service/Light Industrial), SSO (Service/Secondary Office), or MB-CI (Mission Bay-Commercial
13 Industrial). Upon adoption of the permanent Eastern Neighborhoods Zoning Controls, “Industrial Use
14 Zoning District” shall also include a zoning district within the Eastern Neighborhoods Plan Area in
15 which PDR is a principally permitted use, including, but not limited to, zoning districts designated PDR
16 Zone, Employment and Business Development Zone, or Urban Mixed Use Zone.

17 (e) “Residential Use” means the use of any real property as a dwelling unit or units, regardless
18 of whether it is a primary residence.

19 (f) “Transfer” means, but is not limited to, the following: sale or lease.

20 SEC. 35.4. PROTECTION OF INDUSTRIAL USES.

21 No Eligible Industrial Use shall be or become a public or private nuisance due to any changed
22 condition in Adjacent Property after the Industrial Use has been in operation for more than two years if
23 it was not a nuisance at the time it was established.

24 SEC. 35.5. EXEMPTIONS AND NONAPPLICATION.

1 (a) The provisions of Section 35.4 shall not apply whenever a nuisance results from the
2 negligent, improper, or illegal operation of any Industrial Use.

3 (b) This Chapter is not intended to supercede or limit any other provisions of the Municipal
4 Code with regard to the regulation and control of Industrial Uses, including, but not limited to, Article
5 11 of the Health and Safety Code.

6 (c) This Chapter shall not authorize a change in use or uses where such is otherwise controlled
7 or prohibited by the Municipal Code or any state or federal law.

8 (d) This Chapter shall not authorize the continuation or expansion of a nonconforming use
9 where such is otherwise controlled or prohibited by the Municipal Code.

10 SEC 35.6. NOTICE REQUIREMENTS FOR TRANSFER OF REAL PROPERTY FOR
11 RESIDENTIAL USE.

12 (a) Notice Requirement. The transferor of Adjacent Property for Residential Use must provide
13 one of the following notices to the transferee as follows.

14 (1) For all transfers of Adjacent Property having any Residential Use, Transfers
15 Subject to Civil Code Section 1102 et seq. For transfers of Adjacent Property for Residential
16 Use subject to the disclosure requirements of California Civil Code Section 1102 et seq., the
17 transferor shall provide the notice described in Subsection 35.6(a)(3) on the Local Option Real
18 Estate Transfer Disclosure Statement provided for in California Civil Code Section 1102.6a.

19 (2) Transfers Not Subject to Civil Code Section 1102 et seq. For transfers of Adjacent
20 Property for Residential Use not subject to the disclosure requirements of California Civil
21 Code Section 1102 et seq., the transferor shall provide the notice-disclosure described in
22 Subsection 35.6(a)(3) on a separate written document. This notice shall be provided for a lease
23 prior to the tenant(s) signing a lease or for a purchase agreement for the transfer of the Adjacent
24 Property at the time required by California Civil Code Section 1102.3.

1 (32) Notice Disclosure. The noticed disclosure shall include a copy of the then-current text
2 of this Chapter, as an addendum, citation to this Section 35.6 and a written statement containing
3 substantially the following language in at least 12-point font:

4 **“NOTICEDISCLOSURE OF ADJACENT INDUSTRIAL USES**

5 You are purchasing or leasing property that may be adjacent to an existing industrial use.
6 Industrial uses may subject you to inconveniences or discomfort arising from industrial operations,
7 which may include, but are not limited to: noise, odors, dust, chemicals, smoke, operation of
8 machinery, and loading and unloading operations. One or more of these types of inconveniences may
9 occur even if the industrial use is operating in conformance with existing laws and regulations and
10 locally accepted customs and standards for operations of such use. If you live near industrial uses, you
11 should be prepared to accept such inconveniences or discomfort as normal and a necessary aspect of
12 living in a neighborhood with mixed industrial and residential uses. Transferor shall maintain a
13 copy of this disclosure in the transferor’s records for not less than two years, and a copy shall
14 be provided to the City or the transferee upon request.”

15 (b) Affidavit of Notice Disclosure. The transferor shall make and sign, upon penalty of
16 perjury, an affidavit stating that the transferor provided the noticed disclosure required by this Section
17 and shall attach a copy of the notice actually provided; provided, however, that the attachment need
18 not also include a copy of the then-current text of this Chapter. This affidavit, with the attached notice
19 provided, shall be maintained in the transferor’s records for not less than two years, and a copy shall
20 be provided to the City or the transferee upon request.

21 (c) Civil Penalty for Failure to Provide Notice. Any person who fails to provide the
22 noticed disclosure required by this Section may be liable for a civil penalty, not to exceed of not less
23 than \$500 for each failure to provide noticesaid disclosure. This penalty may be assessed and
24 recovered in a civil action brought in the name of the people of the City by the City Attorney in any
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1 court of competent jurisdiction. The City Attorney also may seek recovery of the attorneys' fees and
2 costs incurred in bringing a civil action pursuant to this Section.

3 (d) Private Right of Action. The current or former transferee of the Adjacent Property
4 transferred for Residential Use may institute a civil proceeding for money damages, not to exceed of
5 not less than \$500 for each failure to provide notice the disclosure required by this Section 35.6,
6 and whatever other relief the Court deems appropriate. The prevailing party shall be entitled to
7 reasonable attorney's fees and costs pursuant to order of the Court. The remedy available under this
8 subsection shall be in addition to any other existing remedies that may be available to the transferee.

9 (e) This Chapter 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 SEC 35.7. PLANNING DEPARTMENT AND COMMISSION REVIEW OF RESIDENTIAL
13 PROJECTS.

14 The Planning Department and Commission shall consider, among other considerations, the
15 compatibility of uses when approving Residential Uses adjacent to or near existing Industrial Uses and
16 to take all reasonably available means through the City's design review and approval processes to
17 ensure that the design of such new residential development projects is sensitive to both the existing
18 Industrial Uses and the future residents of the new development. Such considerations may include,
19 among others:

20 (a) The proposed project's consistency with the Industrial Area Design Guidelines;

21 (b) The proposed project's overall design, acoustical treatment, and ventilation to achieve
22 interior noise levels and ventilation compatible with residential standards; and

1 (c) The location of non-habitable spaces or spaces such as closets, bathrooms, kitchens, and/or
2 landscaping so that such spaces may provide a buffer between the proposed habitable residential areas
3 and any common property line with Industrial Uses.

4 SEC 35.8. SEVERABILITY

5 In the event that a court or agency of competent jurisdiction holds that a federal or state law,
6 rule, or regulation invalidates any clause, sentence, paragraph, or section of this Chapter or the
7 application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the
8 court or agency sever such clause, sentence, paragraph, or section so that the remainder of this
9 ordinance shall remain in effect.

10 Section 4. Within one year of the effective date of this ordinance, the Planning
11 Department shall present a report to the Board at a public hearing, which report may include
12 recommendations for modifications to this legislation to fulfill its purpose. In anticipation of
13 changes to the Planning Department's definitions of "Industrial Use" and "Industrial Use
14 Zoning District" due to the Eastern Neighborhoods planning process, the report shall focus on
15 Section 35.3 of this legislation. In addition, the report shall inform the Board of the Planning
16 Department's incorporation of the requirements of Section 35.7 of this legislation into its
17 project review procedures.

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

20 By: _____
21 Marlena G. Byrne
22 Deputy City Attorney