

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection  
Ed Reiskin, Executive Director, Municipal Transportation Agency  
Mohammed Nuru, Director, Public Works  
William Scott, Police Chief, Police Department

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: August 1, 2017

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on July 25, 2017:

**File No. 170869**

**Ordinance amending the Police Code to clarify factors that Public Works and the Department of Building Inspection must consider in evaluating special permits to exceed ambient noise levels during night time construction, and to prohibit Public Works from issuing such permits for projects in certain residential areas (outside the area bounded by Pine, Taylor, Market, 8th, Folsom, Fremont, and Front Streets) covered by the Municipal Transportation Agency's Holiday Moratorium on issuance of daytime special traffic permits; and affirming the Planning Department's determination under the California Environmental Quality Act.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [erica.major@sfgov.org](mailto:erica.major@sfgov.org).

c: William Strawn, Department of Building Inspection  
Carolyn Jayin, Department of Building Inspection  
Janet Martinsen, Municipal Transportation Agency  
Kate Breen, Municipal Transportation Agency  
Dillon Auyoung, Municipal Transportation Agency  
David Steinberg, Public Works  
Jennifer Blot, Public Works  
John Thomas, Public Works  
Lena Liu, Public Works  
Rowena Carr, Police Department  
Kristine Demafeliz, Police Department

1 [Police Code - Noise Permits for Construction at Night]

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3 **Ordinance amending the Police Code to clarify factors that Public Works and the**  
4 **Department of Building Inspection must consider in evaluating special permits to**  
5 **exceed ambient noise levels during night time construction, and to prohibit Public**  
6 **Works from issuing such permits for projects in certain residential areas (outside the**  
7 **area bounded by Pine, Taylor, Market, 8th, Folsom, Fremont, and Front Streets)**  
8 **covered by the Municipal Transportation Agency's Holiday Moratorium on issuance of**  
9 **daytime special traffic permits; and affirming the Planning Department's determination**  
10 **under the California Environmental Quality Act.**

11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
13 **Deletions to Codes** are in *strikethrough-italics Times New Roman font*.  
14 **Board amendment additions** are in double-underlined Arial font.  
15 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
16 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
17 subsections or parts of tables.

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

19 Section 1. The Planning Department has determined that the actions contemplated in  
20 this ordinance comply with the California Environmental Quality Act (California Public  
21 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the  
22 Board of Supervisors in File No. \_\_\_\_ and is incorporated herein by reference. The Board  
23 affirms this determination.

24 Section 2. The Police Code is hereby amended by revising Section 2908, to read as  
25 follows:

1           **SEC. 2908. CONSTRUCTION WORK AT NIGHT.**

2           (a) It shall be unlawful for any person, between the hours of 8:00 p.m. of any day  
3 and 7:00 a.m. of the following day to erect, construct, demolish, excavate for, alter, or repair  
4 any building or structure if the noise level created thereby is in excess of the ambient noise  
5 level by 5 dBA at the nearest property plane, unless a special permit therefor has been  
6 applied for and granted by the Director of Public Works or the Director of Building Inspection.

7           (b) In granting such special permit, the Director of Public Works or the Director of  
8 Building Inspection shall consider:

9           (1) if construction noise in the vicinity of the proposed work site would be less  
10 objectionable at night than during daytime because of different population levels or different  
11 neighboring activities;

12           (2) if obstruction and interference with traffic, particularly on streets of major  
13 importance, would be less objectionable at night than during daytime;

14           (3) if the kind of work to be performed emits noises at such a low level as to  
15 not cause significant disturbance in the vicinity of the work site;

16           (4) if the neighborhood of the proposed work site is primarily residential in  
17 character wherein sleep could be disturbed, the Director of Public Works or Director of Building  
18 Inspection shall deny the permit unless the Director determines in written findings that at least one of  
19 the following factors applies:

20                   (A) if great economic hardship would occur if the work were spread  
21 over a longer time;

22                   (B) if the work will abate or prevent hazard to life or property; or, and

23                   (C) if the proposed night work is in the general public interest.

24           (c) Notwithstanding subsection (b), the Director of Public Works shall not issue a special  
25 permit where:

1                   (1) the Municipal Transportation Agency has denied the applicant a special traffic  
2 permit to perform work between the hours of 7 a.m. to 10 p.m. because of that agency's Holiday  
3 Moratorium;

4                   (2) the work is outside the area bounded by Pine Street, Taylor Street, Market Street,  
5 8th Street, Folsom Street, Fremont Street, and Front Street; and.

6                   (3) the work would be located on a block with any residential uses.

7           (d) The Director of Public Works or the Director of Building Inspection shall  
8 prescribe such conditions, working times, types of construction equipment to be used, and  
9 permissible noise emissions, as required in the public interest.

10           (e) The provisions of this Section 2908 shall not be applicable to emergency work.

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12           Section 3. Effective Date. This ordinance shall become effective 30 days after  
13 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
14 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
15 of Supervisors overrides the Mayor's veto of the ordinance.

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Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

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

By:   
ROBB KAPLA  
Deputy City Attorney

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## LEGISLATIVE DIGEST

[Police Code - Noise Permits for Construction at Night]

**Ordinance amending the Police Code to clarify factors that Public Works and the Department of Building Inspection must consider in evaluating special permits to exceed ambient noise levels during night time construction, and to prohibit Public Works from issuing such permits for projects in certain residential areas (outside the area bounded by Pine, Taylor, Market, 8th, Folsom, Fremont, and Front Streets) covered by the Municipal Transportation Agency's Holiday Moratorium on issuance of daytime special traffic permits; and affirming the Planning Department's determination under the California Environmental Quality Act.**

### Existing Law

Section 2908 of the Police Code prohibits construction that would result exceedances of ambient noise levels during the hours of 8:00 p.m. and 7:00 a.m. the following day without a special permit from the Director of the Department of Public Works (for work in the public right of way) or the Director of the Department of Building Inspection (for work in buildings). The section provides a list of items the applicable Director should consider when granting or denying a permit, but does not organize the items or provide any guidance on how the Directors are to weigh the items.

The Municipal Transportation Agency ("MTA") has a Holiday Moratorium from Thanksgiving to January 1 that prohibits construction, excavation, or demolition in the public right of way between 7:00 a.m. to 10:00 p.m. within the area bounded by Pine, Taylor, Market, 8th, Folsom, Fremont, and Front Streets, and on any block where 50% or more of the frontage is devoted to businesses ("Business Block"). Projects that seek to construct, demolish, or excavate within these areas during the moratorium may seek night noise permits per section 2908.

### Amendments to Current Law

The Proposed Legislation organizes the existing items in section 2908 into factors the Directors must apply when considering night noise permits. The Proposed Legislation also requires that the Directors make certain written findings before granting a night noise permit in residential areas.

The Proposed Legislation also prohibits the Director of Public Works from granting a night noise permit to any project located on Business Block and subject to MTA's Holiday Moratorium if the Business Block also contains any residential uses.

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