

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: September 13, 2017

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on September 12, 2017:

File No. 170869-2

Ordinance amending the Police Code to prohibit the Department of Public Works and the Department of Building Inspection from granting special permits to exceed ambient noise levels during night time construction unless certain written findings are made, and to prohibit the Department of 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 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.

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 prohibit the Department of Public Works and**
4 **the Department of Building Inspection from granting special permits to exceed ambient**
5 **noise levels during night time construction unless certain written findings are made,**
6 **and to prohibit the Department of Public Works from issuing such permits for projects**
7 **in certain residential areas (outside the area bounded by Pine, Taylor, Market, 8th,**
8 **Folsom, Fremont, and Front Streets) covered by the 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: whether if construction noise in the vicinity of the proposed
9 work site would be less objectionable at night than during daytime because of different
10 population levels or different neighboring activities, and shall deny the permit unless the Director
11 of Public Works or the Director of Building Inspection makes the following written findings:

12 (1) ~~if there are no traffic impacts, or, in the alternative, the Municipal~~
13 Transportation Agency has issued specific findings that the extent and duration of obstruction and
14 interference with traffic, particularly on streets of major importance, would be less
15 objectionable at night than during daytime;

16 (2) ~~if the kind of work to be performed emits noises at such a low level as to~~
17 ~~not cause significant disturbance in the vicinity of the work site;~~ and

18 (3) ~~for work sites adjacent to a residential property if the neighborhood of the~~
19 ~~proposed work site is primarily residential in character~~ wherein sleep could be disturbed, at least
20 one of the following factors applies:

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

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

24 (C) ~~if~~ the proposed night work is in the general public interest.
25

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

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

5 (2) the work is outside the area bounded by Pine Street, Taylor Street, Market Street,
6 8th Street, Folsom Street, Fremont Street, and Front Street; and,

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

8 (d) The Director of Public Works or the Director of Building Inspection shall
9 prescribe such conditions, working times, types of construction equipment to be used, and
10 permissible noise emissions, as required in the public interest. All permits shall include terms
11 reducing permissible noise emissions between the hours of 10:00 p.m. and 7:00 a.m..

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

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

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

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

11 By:


12 _____
13 ROBB KAPLA
14 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(Substituted, 9/12/2017)

[Police Code - Noise Permits for Construction at Night]

Ordinance amending the Police Code to prohibit the Department of Public Works and the Department of Building Inspection from granting special permits to exceed ambient noise levels during night time construction unless certain written findings are made, and to prohibit the Department of 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 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 City 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 required written findings the Directors must make before granting night noise permits. Specifically, the Proposed Legislation requires that the Directors deny the permit unless: there are no traffic impacts or the Municipal Transportation Agency has found that the extent and duration of any traffic obstructions is less objectionable at night than during the daytime; the noise emitted would not cause significant disturbance in the vicinity; and for work sites adjacent to a residential property, the Directors must find that the work is necessary to avoid economic hardship if work not completed in shorter time, to abate or prevent a hazard, or is in the general public interest.

FILE NO. 170869

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 the City's Holiday Moratorium if the Business Block also contains any residential uses.

Finally, the Proposed Legislation requires that the terms of special permits reduce permissible noise levels during the hours of 10:00 p.m. and 7:00 a.m., to ensure the loudest work is performed between 8:00 p.m. and 10:00 p.m..

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