

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

1
2 **Ordinance amending the Building, Administrative, Planning, and Police Codes to**
3 **require attenuation of exterior noise for new residential structures and acoustical**
4 **analysis and field testing in some circumstances; to provide that a Place of**
5 **Entertainment (POE) not become a public or private nuisance on the basis of noise for**
6 **nearby residents of residential structures constructed or converted on or after January**
7 **1, 2005; to authorize the Entertainment Commission to hold a hearing on a proposed**
8 **residential use near a POE, and require the project sponsor's participation in the**
9 **hearing; to authorize the Entertainment Commission to measure noise conditions at**
10 **such project sites and provide comments and recommendations regarding noise to the**
11 **Planning Department and Department of Building Inspection; to require lessors and**
12 **sellers of residential property to disclose to lessees and purchasers potential noise**
13 **and other inconveniences associated with nearby POEs; to require that such**
14 **disclosure requirements be recorded against all newly approved residential projects in**
15 **a Notice of Special Restrictions; to require the Planning Department and Commission**
16 **to consider noise issues when reviewing proposed residential projects; and to specify**
17 **factors concerning noise for the Entertainment Commission to review when**
18 **considering granting a POE permit; and making environmental findings, and findings**
19 **of consistency with the General Plan, and the eight priority policies of Planning Code,**
20 **Section 101.1, and findings of local conditions under California Health and Safety**
21 **Code, Section 17958.7; and directing the Clerk of the Board of Supervisors to forward**
22 **the Ordinance to the State Building Standards Commission upon final passage.**
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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 ~~*strikethrough italics Times New Roman font*~~.
4 **Board amendment additions** are in double-underlined Arial font.
5 **Board amendment deletions** are in ~~strikethrough 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. 141298 and is incorporated herein by reference. The Board hereby
14 affirms this determination.

15 (b) On March 19, 2015, the Planning Commission, in Resolution No. 19336, 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. 141298, 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. 19336 and the Board incorporates such reasons
23 herein by reference.

24 (d) At a duly noticed hearing held on March 18, 2015, 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.

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 Project 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 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 partners, employees,
4 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) For any application for a Development Permit submitted after the effective date of
10 this Chapter 116, The Planning Department will not consider an application for a Development
11 Permit to be complete until the following has occurred:

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

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

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

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

1 any Place of Entertainment within 300 radial feet of the proposed Project. The Project sponsor shall
2 provide Entertainment Commission staff with reasonable access to the Project Site for this purpose.
3 This information may be made available to the Entertainment Commission to inform the Entertainment
4 Commission's consideration of the Project pursuant to Section 116.7.

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

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

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

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

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

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

1 (d) For any such hearing:

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

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

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

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

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

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

23 (g) The Project sponsor shall include with its application for a Development Permit any date(s)
24 on which an Entertainment Commission hearing on the proposed Project was held, and shall include a

1 copy of any comments and/or recommendations provided by the Entertainment Commission regarding
2 the proposed Project.

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

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

7
8 **SECTION 116.8. DISCLOSURE REQUIREMENTS FOR TRANSFER OF REAL**
9 **PROPERTY FOR RESIDENTIAL USE.**

10 **(a) Disclosure Requirement.**

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

12 (1) Timing of Disclosure.

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

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

16 (B) for a purchase agreement, at the time required by California Civil Code

17 Section 1102.3.

18 (2) Contents of Disclosure Notice.

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

22 "DISCLOSURE OF NEIGHBORING PLACE OF ENTERTAINMENT.

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

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

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

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

11 (4) Affidavit of Disclosure.

12 (A) Contents of Affidavit.

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

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

17 (ii) the identity of the Transferee;

18 (iii) the address, including unit number, of the portion of the Project
19 being transferred;

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

21 (v) the following language:

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

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

3 (B) Affidavit Transmitted to Entertainment Commission.

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

10 (C) Affidavits Available to the Public.

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

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

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

19 (b) Enforcement.

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

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

23 Any member of the public, including any Place of Entertainment, may file a complaint with the
24 Planning Department regarding a Transferor's failure to provide the notice required by this Section
25 116.8.

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

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

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

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

14
15 **SECTION 116.11. PROJECTS FOR WHICH COMPLETE DEVELOPMENT PERMIT**
16 **APPLICATIONS HAVE A FIRST CONSTRUCTION DOCUMENT HAS NOT BEEN**
17 **ISSUED BEEN SUBMITTED BEFORE THE EFFECTIVE DATE OF CHAPTER 116 THIS**
18 **ORDINANCE.**

19 For any proposed Project for which, as of the effective date of this Chapter 116, a
20 Project sponsor has applied for a Development Permit but for which a first construction
21 document, as that term is defined in Section 107A.13.1 of the Building Code, has not been
22 issued, a complete Development Permit application has been submitted, but for which no
23 Development Permit has been issued, before the effective date of this ordinance, the following
24 provisions shall apply, notwithstanding any contrary provisions of this Chapter 116:

25 (a) The proposed Project shall be subject to this Chapter 116.

1 (b) The Planning Department shall notify the Entertainment Commission and the Project
2 sponsor as soon as practicable that the proposed Project is within 300 radial feet of a Place of
3 Entertainment, to provide the Entertainment Commission with an opportunity to determine whether to
4 hold a hearing pursuant to Section 116.7.

5 (c) Notwithstanding subsection (a) above, any previously scheduled hearing on a Development
6 Permit application for the Proposed project shall not be delayed by the Entertainment Commission's
7 consideration of whether to hold a hearing pursuant to Section 116.7, or the Entertainment
8 Commission's holding of such a hearing.

9 (d) If the Entertainment Commission holds a hearing pursuant to Section 116.7 on a proposed
10 Project for which a complete Development Permit application has been submitted before the
11 effective date of this ordinance, the Project sponsor shall immediately thereafter provide to the
12 Planning Department and/or Department of Building, as appropriate, any date(s) on which the
13 Entertainment Commission held a hearing and a copy of any comments and/or recommendations
14 provided by the Entertainment Commission regarding the proposed Project.

15 (e) This Section 116.11 shall cease to be effective three years after the effective date
16 of this ordinance. If the Planning Department or Planning Commission has not received
17 comments or recommendations from the Entertainment Commission about the proposed
18 Project at the time of its review pursuant to Section 314 of the Planning Code, no additional
19 review or rehearing of the proposed Project by the Planning Department or Planning
20 Commission shall be required due to the absence of such comments or recommendations.

21
22 Section 6. The Planning Code is hereby amended by adding new Section 314, to read
23 as follows:

24 **SECTION 314. REVIEW OF RESIDENTIAL PROJECTS.**
25

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

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

9 (b) any proceedings held by the Entertainment Commission relating to the proposed Project,
10 including but not limited to any acoustical data provided to the Entertainment Commission, pursuant to
11 Administrative Code Section 116.6; and

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

15
16 Section 7. The Police Code is hereby amended by revising Sections 1060.5, 1060.15,
17 and 1060.24.1, to read as follows:

18
19 **SEC. 1060.5. DETERMINATION OF APPLICATION FOR A PLACE OF**
20 **ENTERTAINMENT PERMIT.**

21 * * * *

22 (b) (1) The applicant shall cause a notice of the hearing to be conspicuously and
23 continuously posted for at least 30 days before the scheduled hearing date on the premises of
24 the Business. Where the Business is located in a neighborhood-commercial or mixed
25 residential district, as defined in Article 7 and 8 of the *San Francisco* Planning Code, the

1 applicant shall also make a good faith effort to distribute leaflets at each residence located
2 within 150 feet of the Business, unless the Entertainment Commission finds that a Business
3 located in a district is not likely to significantly generate nighttime noise and traffic to the
4 detriment of residences located in that immediate area. Applicants subject to the requirement
5 of distributing leaflets shall do so at least 30 days before the scheduled hearing date and the
6 distribution shall be done in compliance with the provisions of Article ~~575.7~~ (beginning with
7 Section 184.69) of the ~~San Francisco~~ Public Works Code. The Director shall provide notice of
8 the hearing at least 30 days before the hearing to any Person who has filed a written request
9 for such notice, which notice may be given electronically if the Person has provided electronic
10 contact information, or by mail.

11 * * * *

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

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

20 (B*ii*) Upon the applicant's request, the Entertainment Commission shall
21 continue the hearing for an additional period of time to allow the applicant an opportunity to
22 comply with the requirements of this Article, in which case the time period is extended for that
23 additional period; and

24 (C*iii*) If the applicant fails to post or maintain notice of the hearing, or
25 make a good faith effort to distribute leaflets to residences, as required by Subsection (b) of

1 this Section, the Director shall have the hearing before the Entertainment Commission
2 continued for such period or periods of time that the Director determines necessary for the
3 applicant to comply with the posting requirement, in which case the time period is extended
4 for that additional period or periods of time; and

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

9 * * * *

10 (g) Conditions on Permits.

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

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

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

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

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

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

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

6 (F) The proximity of the Place of Entertainment to existing residential buildings;
7 and

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

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

16 * * * *

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

20
21 **SEC. 1060.15. SOUND TEST.**

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

1
2 **SEC. 1060.24.1. COMPLIANCE WITH CONDITIONS; AMENDMENT OF PERMIT TO**
3 **CHANGE CONDITIONS.**

4 No Permittee shall operate a Business in any manner inconsistent with any condition
5 imposed on the permit. A Permittee may request an amendment to a permit to remove or
6 change a condition, including but not limited to, an amendment to increase the noise limits contained
7 in the permit as authorized by subsection (e) of Section 2909 of this Code, by filing a request with the
8 Secretary of the Commission and paying the fee for an Amendment to a Permit required
9 under Police Code Section 2.26. The Entertainment Commission shall conduct a hearing and
10 determine whether to approve the application to amend the permit according to the
11 procedures governing the initial application as set forth in Section 1060.5 and the standards
12 set forth in Section 1060.5(f).

13
14 Section 8. ~~Effective Date; Inapplicability to Pending Building Permit~~
15 ~~Applications~~Projects Having First Construction Document.

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

20 (b) Inapplicability to Projects Having First Construction Document. Administrative
21 Code Sections 116.2 through 116.3, 116.5 through 116.7, and 116.9 and 116.11 of this
22 ordinance shall not apply to any Project for which a first construction document, as that term is
23 defined in Section 107A.13.1 of the Building Code, has been issued as of complete application
24 for a building or site permit that was submitted to the Department of Building Inspection before
25 the effective date of this ordinance.

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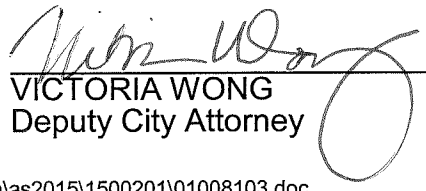
Section 9. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in 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.

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

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

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

By: 
VICTORIA WONG
Deputy City Attorney

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City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 141298

Date Passed: May 12, 2015

Ordinance amending 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) not become a public or private nuisance on the basis of noise for nearby residents of residential structures constructed or converted on or after January 1, 2005; 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; to require that such disclosure requirements be recorded against all newly approved residential projects 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; making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of local conditions under California Health and Safety Code, Section 17958.7; and directing the Clerk of the Board of Supervisors to forward the Ordinance to the State Building Standards Commission upon final passage.

April 20, 2015 Land Use and Transportation Committee - RECOMMENDED

April 28, 2015 Board of Supervisors - CONTINUED ON FIRST READING

Ayes: 10 - Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

Excused: 1 - Avalos

May 05, 2015 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 05, 2015 Board of Supervisors - PASSED ON FIRST READING AS AMENDED


Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 12, 2015 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 141298


I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on 5/12/2015 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board



Mayor



Date Approved