

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. INDUSTRIAL BUSINESS PROTECTION.

19 SEC. 35.1. SHORT TITLE.

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

22 SEC 35.2. DECLARATION OF POLICY.

23 It shall be the policy of the City and County of San Francisco to protect its existing and future
24 industrial businesses from potentially incompatible adjacent and nearby development provided that
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1 such industrial businesses are conducted and maintained in a manner consistent with proper and
2 accepted customs and standards and in accordance with all applicable federal, state, and local laws
3 and regulations.

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

10 SEC. 35.3. DEFINITIONS.

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

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

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

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

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

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

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

16 SEC. 35.4. PROTECTION OF INDUSTRIAL USES.

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

20 SEC. 35.5. EXEMPTIONS AND NONAPPLICATION.

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

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

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

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

8 **SEC 35.6. NOTICE REQUIREMENTS FOR TRANSFER OF REAL PROPERTY FOR**
9 **RESIDENTIAL USE.**

10 **(a) Notice Requirement. The transferor of Adjacent Property for Residential Use must provide**
11 **one of the following notices to the transferee.**

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

16 **(2) Transfers Not Subject to Civil Code Section 1102 et seq. For transfers of Adjacent**
17 **Property for Residential Use not subject to the disclosure requirements of California Civil Code**
18 **Section 1102 et seq., the transferor shall provide the notice described in Subsection 35.6(a)(3) on a**
19 **separate written document. This notice shall be provided prior to signing a lease or a purchase**
20 **agreement for the transfer of the Adjacent Property.**

21 **(3) Notice. The notice shall include a copy of the then-current text of this Chapter, as an**
22 **addendum, and a written statement containing substantially the following language in at least 12-point**
23 **font:**

24 **“NOTICE OF ADJACENT INDUSTRIAL USES**

1 You are purchasing or leasing property that may be adjacent to an existing industrial use.
2 Industrial uses may subject you to inconveniences or discomfort arising from industrial operations,
3 which may include, but are not limited to: noise, odors, dust, chemicals, smoke, operation of
4 machinery, and loading and unloading operations. One or more of these types of inconveniences may
5 occur even if the industrial use is operating in conformance with existing laws and regulations and
6 locally accepted customs and standards for operations of such use. If you live near industrial uses, you
7 should be prepared to accept such inconveniences or discomfort as normal and a necessary aspect of
8 living in a neighborhood with mixed industrial and residential uses.”

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

15 (c) Civil Penalty for Failure to Provide Notice. Any person who fails to provide the notice
16 required by this Section may be liable for a civil penalty, not to exceed \$500 for each failure to provide
17 notice. This penalty may be assessed and recovered in a civil action brought in the name of the people
18 of the City by the City Attorney in any court of competent jurisdiction. The City Attorney also may seek
19 recovery of the attorneys’ fees and costs incurred in bringing a civil action pursuant to this Section.

20 (d) Private Right of Action. The current or former transferee of the Adjacent Property
21 transferred for Residential Use may institute a civil proceeding for money damages, not to exceed \$500
22 for each failure to provide notice, and whatever other relief the Court deems appropriate. The
23 prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the Court.

1 The remedy available under this subsection shall be in addition to any other existing remedies that may
2 be available to the transferee.

3 (e) This Chapter shall not create any private right of action against the City. The City shall
4 have no duty or liability based on any failure to achieve the disclosure required by this Chapter or
5 based on the City's failure to prosecute.

6 SEC 35.7. PLANNING DEPARTMENT AND COMMISSION REVIEW OF RESIDENTIAL
7 PROJECTS.

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

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

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

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

20 SEC 35.8. SEVERABILITY

21 In the event that a court or agency of competent jurisdiction holds that a federal or state law,
22 rule, or regulation invalidates any clause, sentence, paragraph, or section of this Chapter or the
23 application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the

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1 court or agency sever such clause, sentence, paragraph, or section so that the remainder of this
2 ordinance shall remain in effect.

3 Section 4. Within one year of the effective date of this ordinance, the Planning
4 Department shall present a report to the Board at a public hearing, which report may include
5 recommendations for modifications to this legislation to fulfill its purpose.

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

9 By: _____
10 Marlena G. Byrne
11 Deputy City Attorney

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