

BOARD of SUPERVISORS



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MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection
Jocelyn Kane, Executive Director, Entertainment Commission

FROM: *AS*
for Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

DATE: October 13, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Breed on October 4, 2016:

File No. 161064

Ordinance amending the Administrative and Planning Codes to authorize the Entertainment Commission to hold a hearing on noise issues related to proposed projects for construction of new hotels and motels, or conversions of existing structures to hotel or motel uses, to be located within 300 feet of a Place of Entertainment, and to provide recommendations to the Planning Department and/or Department of Building Inspection regarding such projects, and require the Planning Department and Planning Commission to consider noise issues when reviewing proposed hotel and motel projects; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

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: alisa.somera@sfgov.org.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection
Crystal Stewart, Entertainment Commission

1 [Administrative Code - New Hotels and Motels Near Places of Entertainment]

2
3 **Ordinance amending the Administrative and Planning Codes to authorize the**
4 **Entertainment Commission to hold a hearing on noise issues related to proposed**
5 **projects for construction of new hotels and motels, or conversions of existing**
6 **structures to hotel or motel uses, to be located within 300 feet of a Place of**
7 **Entertainment, and to provide recommendations to the Planning Department and/or**
8 **Department of Building Inspection regarding such projects, and require the Planning**
9 **Department and Planning Commission to consider noise issues when reviewing**
10 **proposed hotel and motel projects; affirming the Planning Department's determination**
11 **under the California Environmental Quality Act; and making findings of consistency**
12 **with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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

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

21 Section 1. Environmental Findings.

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

1 (b) On _____, the Planning Commission, in Resolution No. _____,
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
5 the Board of Supervisors in File No. _____, and is incorporated herein by reference.
6

7 Section 2. The Administrative Code is hereby amended by revising Sections 116.1,
8 116.2, 116.4, 116.5, 116.8, 116.9, and 116.11, to read as follows:

9 **SEC. 116.1. DECLARATION OF POLICY.**

10 It shall be the policy of the City to protect existing Places of Entertainment from
11 potential conflicts with adjacent and nearby residential development uses, hotel uses, and motel
12 uses, provided that such Places of Entertainment are operated and maintained in accordance
13 with all applicable federal, state, and local laws and regulations, including applicable noise
14 restrictions. The City encourages the use by developers of residential projects, hotels, and
15 motels of best available noise control technologies and best management practices whenever
16 possible to reduce the potential for conflict with Places of Entertainment.

17 Furthermore, it shall be the policy of the City to protect the future residents of industrial,
18 commercial, and mixed-use neighborhoods in which Places of Entertainment operate, by
19 providing notification processes to inform such residents of the possible noise levels in such
20 neighborhoods and by requiring design features in new residential construction to promote the
21 compatibility of residential uses and entertainment uses in adjacent or nearby Places of
22 Entertainment.

23 **SEC. 116.2. DEFINITIONS.**

24 For the purposes of this Chapter 116, the following definitions shall apply.

25 "City" means the City and County of San Francisco.

1 "Development Permit" means any land use permit or entitlement, including but not
2 limited to any building permit, site permit, Conditional Use authorization, variance, or decision
3 based on discretionary review of a proposed project, where the project meets at least one of
4 the following criteria:

5 (1) the project is subject to the Planning Department's requirement for a
6 Preliminary Project Assessment for residential use, pursuant to Planning Department policy;

7 (2) the project is subject to the Planning Department's requirement that a Pre-
8 Application Meeting be held for new construction, pursuant to Planning Department policy; ~~or~~

9 (3) the project proposes a ~~conversion~~ change of use of a structure from non-
10 residential use to residential use; or

11 (4) the project proposes the new construction of a Hotel or Motel, or change of use to a
12 Hotel Use or Motel Use.

13 "Hotel" is defined in Section 102 of the Planning Code.

14 "Hotel Use" means the use of any real property as a Hotel, regardless of whether it is a mixed
15 use property.

16 "Motel" is defined in Section 102 of the Planning Code.

17 "Motel Use" means the use of any real property as a Motel, regardless of whether it is a mixed
18 use property.

19 "Place of Entertainment" is defined in Section 1060 of the Police Code.

20 "Project" means a structure for Residential Use, Hotel Use, or Motel Use, where the
21 structure's exterior boundaries are within 300 radial feet of a Place of Entertainment that has
22 been permitted for 12 or more consecutive months prior to the filing of the first complete
23 application for a Development Permit for construction of the Project structure or for its
24 conversion to Residential Use, Hotel Use, or Motel Use.

25 * * * *

1 **SEC. 116.4. PROTECTION FOR EXISTING PLACES OF ENTERTAINMENT.**

2 No ~~establishment that has held a permit to operate as a permitted~~ Place of Entertainment
3 ~~within 300 radial feet of a building for which construction or conversion for Residential Use was~~
4 ~~completed on or after January 1, 2005,~~ shall be or become a public or private nuisance on the
5 basis of noise disturbance ~~for a resident of that building,~~ if the Place of Entertainment operates
6 in compliance with the Municipal Code and the terms of its permits.

7 **SEC. 116.5. PLANNING DEPARTMENT NOTIFICATION TO PROJECT SPONSORS**
8 **AND ACCEPTANCE OF DEVELOPMENT PERMITS.**

9 (a) The Planning Department shall maintain a list of permitted Places of Entertainment,
10 available to the public on its website, received from and updated by the Entertainment
11 Commission pursuant to Police Code Section 1060.5.

12 (b) Based on the list described in subsection (a), the Planning Department, at the
13 earliest practicable time, shall notify a sponsor of a proposed Project that the Project is within
14 300 radial feet of a Place of Entertainment ~~at the earliest practicable time.~~

15 (c) For any application for a Development Permit for a Project submitted after the
16 effective date of this Chapter 116, the Planning Department will not consider an application for
17 a Development Permit to be complete until the following has occurred:

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

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

1 **SEC. 116.8. DISCLOSURE REQUIREMENTS FOR TRANSFER OF REAL**
2 **PROPERTY FOR RESIDENTIAL USE.**

3 * * * *

4 (d) Does Not Apply to Hotels or Motels. This Section 116.8 does not apply to the transfer of a
5 Hotel or Motel.

6 **SEC. 116.9. NOTICE OF SPECIAL RESTRICTIONS.**

7 At the time a proposed Project for a Residential Use is approved a Notice of Special
8 Restrictions (NSR) must be recorded with the Assessor-Recorder that states all of the
9 restrictions of Section 116.8 and any other conditions that the Planning Commission or
10 Department places on the property. The Planning Department may enforce the terms of the
11 NSR, including but not limited to enforcement for any failure to comply with the provisions of
12 Section 116.8, through the application of Planning Code Sections 176 and 176.1. This Section
13 116.9 does not apply to a Project for a Hotel Use or Motel Use.

14 **SEC. 116.11. PROJECTS FOR WHICH A FIRST CONSTRUCTION DOCUMENT**
15 **HAS NOT BEEN ISSUED BEFORE THE EFFECTIVE DATE OF CHAPTER 116.**

16 For any proposed Project for a Residential Use for which, as of the effective date of this
17 Chapter 116, or any proposed Project for a Hotel Use or Motel Use for which as of the effective date
18 of the ordinance in Board File No. _____ amending this Chapter 116, a Project sponsor has applied
19 for a Development Permit, but for which a first construction document, as that term is defined
20 in Section 107A.13.1 of the Building Code, has not been issued, the following provisions shall
21 apply:

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

23 (b) As soon as practicable, ~~t~~The Planning Department shall notify the Entertainment
24 Commission and the Project sponsor ~~as soon as practicable~~ that the proposed Project is within
25

1 300 radial feet of a Place of Entertainment, to provide the Entertainment Commission with an
2 opportunity to determine whether to hold a hearing pursuant to Section 116.7.

3 (c) Notwithstanding subsection (a) above, any previously scheduled hearing on a
4 Development Permit application for the ~~P~~proposed ~~p~~Project shall not be delayed by the
5 Entertainment Commission's consideration of whether to hold a hearing pursuant to Section
6 116.7, or the Entertainment Commission's holding of such a hearing.

7 * * * *

8
9 Section 3. The Planning Code is hereby amended by revising Section 314 to read as
10 follows:

11 **SEC. 314. REVIEW OF RESIDENTIAL, HOTEL, AND MOTEL PROJECTS.**

12 In addition to any other factors appropriate for consideration under the Planning Code,
13 the Planning Department and Planning Commission shall consider the compatibility of uses
14 when approving Residential Uses, Hotel Uses, or Motel Uses, as those terms are defined in Chapter
15 116 of the Administrative Code, adjacent to or near existing permitted Places of Entertainment
16 and shall take all reasonably available means through the City's design review and approval
17 processes to ensure that the design of such new residential, hotel, or motel development project
18 takes into account the needs and interests of both the Places of Entertainment and the future
19 residents or guests of the new development. Such considerations may include, among others:

20 (a) the proposed project's consistency with applicable design guidelines;

21 (b) any proceedings held by the Entertainment Commission relating to the proposed
22 ~~P~~project, including but not limited to any acoustical data provided to the Entertainment
23 Commission, pursuant to Administrative Code Section 116.6; and
24
25

1 (c) any comments and recommendations provided to the Planning Department by the
2 Entertainment Commission regarding noise issues related to the project pursuant to
3 Administrative Code Section 116.7.
4

5 Section 4. Effective Date. This ordinance shall become effective 30 days after
6 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
7 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
8 of Supervisors overrides the Mayor's veto of the ordinance.
9

10 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
11 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
12 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
13 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
14 additions, and Board amendment deletions in accordance with the "Note" that appears under
15 the official title of the ordinance.
16

17 Section 6. Undertaking for the General Welfare. In enacting and implementing this
18 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
19 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
20 is liable in money damages to any person who claims that such breach proximately caused
21 injury.
22

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

24 By: 
25 FRANCESCA GESSNER
Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - New Hotels and Motels Near Places of Entertainment]

Ordinance amending the Administrative and Planning Codes to authorize the Entertainment Commission to hold a hearing on noise issues related to proposed projects for construction of new hotels and motels, or conversions of existing structures to hotel or motel uses, to be located within 300 feet of a Place of Entertainment, and to provide recommendations to the Planning Department and/or Department of Building Inspection regarding such projects, and require the Planning Department and Planning Commission to consider noise issues when reviewing proposed hotel and motel projects; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

Chapter 116 of the Administrative Code, titled "Compatibility and Protection for Residential Uses and Places of Entertainment," provides a hearing process at the Entertainment Commission for new residential construction and conversion projects within 300 radial feet of a Place of Entertainment ("POE") that has been permitted by the Entertainment Commission for 12 or more consecutive months. The law prohibits the issuance of development permits for such residential projects until the Entertainment Commission hearing process has been completed, and the Entertainment Commission has submitted its comments and recommendations regarding noise issues related to the proposed residential project and the existing POE, if any, to the Planning Department and Department of Building Inspection.

Chapter 116 also provides that a permitted POE shall not constitute a public or private nuisance on the basis of noise for residents of residential buildings constructed or converted for residential use on or after January 1, 2005.

The Planning Code directs the Planning Commission and Planning Department to consider the compatibility of uses when approving residential uses adjacent to or near existing permitted POEs and to take all reasonably available means through the City's design review and approval processes to ensure that the design of new residential development projects takes into account the needs and interests of both the POEs and the future residents of the new development. (Planning Code § 314.)

Amendments to Current Law

The proposed ordinance would expand the Entertainment Commission hearing and comment process under Chapter 116 of the Administrative Code to apply to proposed projects for new

construction of hotels or motels, or conversion to a hotel or motel use, to be located within 300 radial feet of an existing permitted POE.

The ordinance would also broaden the nuisance provision in Chapter 116 of the Administrative Code to provide that no permitted POE shall be or become a public or private nuisance on the basis of noise disturbance if the POE operates in compliance with the Municipal Code and the terms of its permits.

The proposed ordinance would also amend Section 314 of the Planning Code to require the Planning Department and Commission to (1) consider the compatibility of uses when approving hotel uses or motel uses adjacent to or near existing POEs, and (2) take all reasonably available means through the City's design review and approval processes to ensure that the design of such a new hotel or motel takes into account the needs and interests of both the POE and the future guests of the hotel or motel.

Background Information

In 2015, the Board of Supervisors passed Ordinance No. 70-15, amending the Building, Administrative, Planning and Police Codes to address noise associated with Places of Entertainment (POEs) that impact nearby residents of newly constructed or converted residential buildings. This ordinance would expand that legislation to apply to newly constructed or converted hotels or motels, as opposed to just residential developments, to address the growing number of hotels and/or motels being developed close to POEs and potential noise impacts on guests of those hotels or motels.

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