File No. 161064 Committee Item No. 1
Board Item No. 3

COMMITTEE/BOARD OF SUPERVISORS

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Board of Supervisors Meeting **Date** 2/28/17

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Completed by: Alisa Somera Date February 2, 2017
Completed by: Alisa Somera Date February 9, 2017

[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.

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

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

Section 1. Environmental Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 161064 and is incorporated herein by reference. The Board affirms this determination.

(b) On January 5, 2017, the Planning Commission, in Resolution No. 19826, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 161064, and is incorporated herein by reference.

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

SEC. 116.1. DECLARATION OF POLICY.

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

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

SEC. 116.2. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * *

SEC. 116.4. PROTECTION FOR EXISTING PLACES OF ENTERTAINMENT.

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

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

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

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

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

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

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

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

* * * *

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

SEC. 116.9. NOTICE OF SPECIAL RESTRICTIONS.

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

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

For any proposed Project for *a Residential Use for* which, as of the effective date of this Chapter 116, *or any proposed Project for a Hotel Use or Motel Use for which as of the effective date of the ordinance in Board File No. 161064 amending this Chapter 116*, a Project sponsor has applied for a Development Permit, but for which a first construction document, as that term is defined in Section 107A.13.1 of the Building Code, has not been issued, the following provisions shall apply:

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

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

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

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

* * * *

(f) This Section 116.11 shall not apply to Hotel or Motel Projects that have received a Planning Commission approval by October 4, 2016.

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

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

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

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

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

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

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

Section 5. 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 6. 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.

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

By: _____
VICTORIA WONG
Deputy City Attorney

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FILE NO. 161064

REVISED LEGISLATIVE DIGEST
(2/6/2017, Amended in Committee)

[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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BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
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TDD/TTY No. 554-5227

October 13, 2016

File No. 161064

Lisa Gibson
Acting Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On October 4, 2016, Supervisor Breed introduced the following proposed legislation:

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.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board
for Ross Mirkarimi
By: Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

Not defined as project under CEQA Sections 1537 and 15060(c)(2) because it does not result in a physical change in the environment.

Joy Navarrete
Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning, ou=Environmental Planning, email=joy.navarrete@sfgov.org, c=US
Date: 2016.10.20 15:15:52 -0700'

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

SAN FRANCISCO
PLANNING DEPARTMENT

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January 10, 2017

Ms. Angela Calvillo, Clerk
Honorable Supervisor Breed
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: **Transmittal of Planning Department Case Number 2016-013419PCA:**
New Hotels and Motels near Places of Entertainment
Board File No. 161064
Planning Commission Recommendation: ***Approval with Modification***

Dear Ms. Calvillo and Supervisor Breed,

On January 5, 2017, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance that would amend 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, introduced by Supervisor Breed. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. Modify the grandfathering clause in the Administrative Code Section 116.11 to exclude hotel and motel projects that have secured an approval from the Planning Commission by October 4, 2016. The modification would read as follows:

   (f) This Section 116.11 shall not apply to Hotel or Motel projects that have received a Planning Commission approval by October 4, 2016.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

Aaron D. Starr
Manage of Legislative Affairs

cc:
Francesca Gessner, Deputy City Attorney
Conor Johnston, Aide to Supervisor Breed
Alisa Somera, Office of the Clerk of the Board

Attachments:
Planning Commission Resolution
Planning Department Executive Summary

SAN FRANCISCO
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Planning Commission Resolution No. 19826

HEARING DATE JANUARY 5, 2017

Project Name:	**New Hotels and Motels Near Places of Entertainment**
Case Number:	2016-013419PCA [Board File No. 161064]
Initiated by:	Supervisor Breed / Introduced October 4, 2016
Staff Contact:	Diego R Sánchez, Legislative Affairs diego.sanchez@sfgov.org, 415-575-9082
Reviewed by:	Aaron D Starr, Manager of Legislative Affairs aaron.starr@sfgov.org, 415-558-6362

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND 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; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on October 4, 2016 Supervisor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 161064, which would amend 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 motel, 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;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on January 5, 2017; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15060(c)(2) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors approve with modifications the proposed ordinance.

Those modifications include:

1. Modify the grandfathering clause in the Administrative Code Section 116.11 to exclude hotel and motel projects that have secured an approval from the Planning Commission by October 4, 2016. The modification would read as follows:

   (f) This Section 116.11 shall not apply to Hotel or Motel projects that have received a Planning Commission approval by October 4, 2016.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The nighttime entertainment industry is a significant contributor to the economic well-being of the City. The San Francisco Office of the Controller-Office of Economic Analysis reports that live music venues and nightclubs alone contributed $220,000,000 in spending in 2010.

2. It is common that nighttime entertainment venues produce noise heard outside the venue from performances and from exiting patrons. When hotel and motel uses locate in close proximity to existing nighttime entertainment venues noise complaints and conflicts may arise.

3. One method for potentially lessening noise complaints and conflicts is an outreach and notification process. Informing prospective hotel and motel developers that they are adjacent to an existing nighttime entertainment venue can help shape the design of the project and persuade them to include additional noise mitigating features. Informing venue operators of a hotel or motel development would provide them with an opportunity to fine tune their crowd control and community relations policies as well.

4. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are is consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1
MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1
Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The outreach process between hotel and motel developers and adjacent Places of Entertainment will help identify potentially undesirable aspects of new developments, create a route to discuss improvements and result in development that is sensitive to its context.

OBJECTIVE 2
MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1
Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3
Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

Through an early outreach process, owners and operators of Places of Entertainment will become aware of new hotel and motel development. The outreach process will allow these owners and operators to meet with hotel and motel developers and discuss community context. Through this process it is expected that future conflicts, including those related to noise, would be avoided. This would allow competing land uses – hotel/motel and nighttime entertainment- to coexist. This business climate is favorable to the City and helps it attract and retain commercial activity.

OBJECTIVE 4
IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

Policy 4.1
Maintain and enhance a favorable business climate in the city.

The outreach process will help create a favorable business climate by connecting owners and operators of Places of Entertainment with hotel developers at a public commission hearing. This public venue offers the opportunity for the all members of the business community to feel that they have a "receptive ear" when they approach City government.

5. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

   1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

      The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

   2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

      The proposed Ordinance would not have a negative effect on housing or neighborhood character.

   3. That the City's supply of affordable housing be preserved and enhanced;

      The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

   4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

      The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

   5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

      The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

   6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

      The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

   7. That the landmarks and historic buildings be preserved;

      The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

   8. That our parks and open space and their access to sunlight and vistas be protected from

development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

6. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance with modifications as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on January 5, 2017.

Jonas P. Ionin
Commission Secretary

AYES: Koppel, Melgar, Moore, Richards, Fong

NOES: None

ABSENT: Hillis, Johnson

ADOPTED: January 5, 2017

Executive Summary
Planning Code Text Amendment
HEARING DATE: JANUARY 5, 2017
EXPIRATION DATE: JANUARY 11, 2017

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Project Name:	**New Hotels and Motels Near Places of Entertainment**
Case Number:	**2016-013419PCS** [Board File No. 161064]
Initiated by:	Supervisor Breed / Introduced October 4, 2016
Staff Contact:	Diego R Sánchez, Legislative Affairs diego.sanchez@sfgov.org, 415-575-9082
Reviewed by:	Aaron Starr, Manager of Legislative Affairs aaron.starr@sfgov.org, 415-558-6362
Recommendation:	**Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend 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.

The Way It Is Now:

1. The Planning Department notices Project Sponsors of residential projects of their proximity to a Place of Entertainment (POE). However it does not notice Project Sponsors of hotel or motel developments of their proximity to a Place of Entertainment (POE), nor are Project Sponsors of hotel or motel developments required to contact the Entertainment Commission (EC) of their hotel or motel projects.

2. There is a formal process for the Planning Department or Planning Commission to consider comments and recommendations from the EC about proposed residential projects located within 300 feet of existing POEs. However there is no similar process for hotel or motel projects.

3. Planning Code Section 314 requires the Planning Department and/or Planning Commission to consider EC comments or recommendations about proposed residential projects within 300 feet of existing POEs. However Section 314 does not require similar consideration for hotel or motel projects.

The Way It Would Be:

1. The Administrative Code would be amended to require the Planning Department to notice Project Sponsors of hotel or motel development that their project is within 300 feet of a POE. Project Sponsors would be required to contact the EC of their hotel or motel projects when they are within 300 feet of a POE.

2. The Administrative Code would be amended to provide a formal process for the Planning Department or the Planning Commission to consider comments and recommendations from the EC about proposed hotel or motel projects located within 300 feet of existing POEs. The process would occur as follows:
    a. After the EC is noticed of the hotel or motel project, the Planning Department would hold the application until the EC provides notice to the Planning Department of whether it has held a hearing on the hotel or motel project.
    b. Should the EC hold a hearing, it will provide the Planning Department with written comments and recommendations arising from that hearing. Comments would include, but not be limited to, a report on any acoustical measurements taken by EC Staff. Recommendations would include whether project approvals should be granted or whether noise attenuation measures should be imposed.
    c. The EC would also notify the Planning Department if it does not hold a hearing on the hotel or motel project.

3. Planning Code Section 314 would be amended to require the Planning Department or the Planning Commission to consider comments and recommendations from the EC about proposed hotel or motel projects located within 300 feet of an existing POE during its review.

BACKGROUND

Ensuring Compatibility between Places of Entertainment and Residential Uses
In May 2015 Mayor Lee signed into law Ordinance 70-15, Noise Regulations Relating to Residential Uses near Places of Entertainment.[1] This Ordinance, amending the Administrative, Planning, and Police Codes, declared the City's policy of protecting code complying POEs from potential conflicts with residential uses. It also encouraged residential developers to utilize noise control technologies and management practices that reduce the potential for conflict with POEs.

The declared policy is realized through an EC outreach and hearing process. This process requires a residential developer and the Planning Department to contact the EC about proposed residential projects within 300 feet of a POE. Once contacted the EC determines if noise from the POE is likely to create a significant disturbance to the residents of the proposed residential project. If the EC determines a disturbance is likely it requires a hearing to be held. The EC invites any POE within 300 feet of the proposed residential project as well as the residential project sponsor to the hearing. Both parties provide testimony regarding noise levels in the area or at the POE. The residential project sponsor discusses their proposed noise attenuation features, data on the projected level of interior noise for the residential units and plans for engagement with any nearby POEs. After the hearing the EC provides the Planning Department written comments and recommendations regarding noise issues for the proposed residential project. The residential project sponsor also includes these comments and recommendations on plan sets submitted to the Planning Department and the Department of Building Inspection. The Planning Department and/or Planning Commission then consider these comments and recommendations during its review of the residential project.

[1] http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances15/o0070-15.pdf

ISSUES AND CONSIDERATIONS

Economic Impact of the Nightlife and Entertainment Industry in San Francisco

The nightlife and entertainment industry is a significant and growing contributor to the City's economy. Recent studies by the Office of the Controller confirm the sector's economic contributions and growth.[2] For instance, the Office of the Controller reports that in 2010 entertainment venues/nightclubs hosted over 3,200,000 guests who spent $220,000,000. This report notes that tourists from outside of San Francisco made patronizing entertainment venues/nightclubs the reason for their visit one third of the time. They also spent, on average, three times what a San Francisco resident would spend on a similar visit. A 2016 Controller's Office study also notes the sector's growth as a source of employment in the City. Employment in entertainment venues/nightclubs grew by 40% between 2010 and 2015, as did the number of entertainment venues/nightclubs.

These figures support the notion that the nightlife and entertainment sector is integral to the City's economy. In this light, it is reasonable that the City take measures to assure the continued success of this sector. These measures may include making procedural amendments to existing permitting processes to reduce potential conflicts with other competing land uses.

Forthcoming Hotel and Motel Development

In October 2016 the Planning Department surveyed submitted hotel and motel applications and found 26 applications in various stages of review. These stages range from Preliminary Project Assessment (PPA) to CEQA review to entitlement submission. The median sized project contains 156 hotel units and projects range from 2 to 500 hotel units. The map in Exhibit B shows where these proposals are located.

The map also shows the location of existing POEs. There are 17 hotel or motel development applications within 300 feet of an existing POE. Given this magnitude, it is important to be cognizant of compatibility considerations between these competing land uses during project review and approval.

Compatibility of Entertainment and Hotel uses

San Francisco is a land constrained and built out city surrounded by bodies of water on three sides. This fact dictates that new development will locate into existing and occupied neighborhoods. The introduction of new land uses or activities into a neighborhood has the potential to create disturbances for the existing uses or activities. Likewise, existing uses or activities may, by the nature of their operation, prove disagreeable to the new land use or activity. This can be the case between nighttime entertainment and hotel or motel uses.

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[2] The Economic Impact of San Francisco's Nightlife Businesses. Office of the Control- Office of Economic Analysis. March 5, 2012
http://sfcontroller.org/sites/default/files/FileCenter/Documents/2953-Economic%20Impact%20of%20San%20Francisco%27s%20Nightlife%20Businesses.pdf

Nightlife Industries in San Francisco: 2016 Update. Office of the Control- Office of Economic Analysis. September 8, 2016
http://nightlifesf.org/wp-content/uploads/2016/09/2016-Nightlife-Update.pdf

As a guest of a hotel, it is reasonable to expect a certain level of quiet, especially during sleeping hours. It is also reasonable for established nighttime entertainment operators in good standing to expect to continue in business despite the arrival of new hotels uses. Under these circumstances it is important that the City has a process to lessen the potential concerns and complaints of both parties. A notification process to alert hotel and motel developers of their proximity to a nighttime entertainment venue is one way to achieve this. Through discussions with stakeholders and the Entertainment Commission, design changes may come about that involve the addition of noise attenuation features or the reorientation of entries. This would serve the interests of both hotel operator and guest by ensuring a more pleasant guest stay. This is also in the interest of the nighttime entertainment venue operator because it could potentially reduce complaints and improve neighbor relations.

Hotel/Motel Permit Process Benefits

A related benefit of an early outreach and notification process is the saved time during the entitlement review. In certain instances time spent resolving community concerns with new development can be extensive. Creating a process and forum to meet earlier in the development stage can help speed review times later on. This may also result in garnering community support for the project, which is a consideration for project approval.

Exempting Projects Far Along in the Review Process

Other than projects with an issued building permit, new land use regulations apply to all applications under review upon their effective date. This means that even development projects holding an entitlement for multiple years are required to comply with the new land use regulation. For projects in the earlier stages of post-entitlement review this may not be difficult. In earlier development phases programmatic changes may be more easily accommodated. For example, pedestrian and automobile entries or windows may be relocated or different exterior materials specified and budgeted; however, for projects much further along complying with new regulations may be impractical and overly burdensome. This is the case for projects far along the Department of Building Inspection (DBI) or Fire Department review and/or close to having a building permit issued. In these cases, relocating hotel ingress and egress may be near impossible, for example. Special consideration for these types of projects seems reasonable and could include an exemption from the proposed ordinance based on the introduction date of this proposed Ordinance, October 4, 2016.

Basing the exemption on the introduction date makes sense for a couple of reasons. The first reason is that the introduction date is public record and provides a measure of notice to hotel and motel project sponsors of impending regulatory changes. The second reason is that the time between the introduction date and the Ordinance's effective date is approximately six to seven months. Projects with entitlements older than six to seven months are likely far enough along permit review that making design changes becomes increasingly burdensome. Conversely, changes to projects just having received an entitlement are much more easily accommodated.

RECOMMENDATION

The Department recommends that the Commission recommend ***approval with modifications*** of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Modify the grandfathering clause in the Administrative Code Section 116.11 to exclude hotel and motel projects that have secured an approval from the Planning Commission by October 4, 2016. The modification would read as follows:

   (f) This Section 116.11 shall not apply to Hotel or Motel projects that have received a Planning Commission approval by October 4, 2016.

BASIS FOR RECOMMENDATION

The Department is in support of the proposed Ordinance as it furthers the aim of increasing communication and compatibility between competing land uses. Initiating conversations between project sponsors and operators of Places of Entertainment can help identify and resolve potential compatibility issues. This can help result in an agreeable entitlement process as well. Staff believes that including hotel and motel projects into the existing outreach and notification process for residential developments near Places of Entertainment can be done almost seamlessly; however, projects having secured a Commission approval should have special consideration given their progress through the development process and the difficulties accompanying last minute design changes.

Recommendation 1: Modify Administrative Code Section 116.11 to exclude hotel and motel projects that have secured a Planning Commission approval by October 4, 2016. Staff recommends this modification because requiring design changes of projects in the earlier stages of post-entitlement review is less onerous than those further along. Projects in early stages of review can accommodate design changes more easily than a project that is weeks away from having a building permit issued, for example. There is also a certain expectation on the part of project sponsors rapidly nearing building permit issuance that the City will not require significant design changes to their proposal.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

IMPLEMENTATION

The Department determined that this Ordinance will impact our current implementation procedures; however the proposed changes can be implemented without increasing permit costs or review time.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

RECOMMENDATION:	Recommendation of Approval with Modification

Attachments:

Exhibit A:	Draft Planning Commission Resolution
Exhibit B:	Map of Pipeline Hotel and Motel Developments and Adjacent POEs
Exhibit C:	Board of Supervisors File No. 161064

SAN FRANCISCO
OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

November 30, 2016

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 161064 [Administrative Code - New Hotels and Motels Near Places of Entertainment]

Small Business Commission Recommendation to the Board of Supervisors: **Approval**

Dear Ms. Calvillo,

On November 28, 2016, the Small Business Commission voted unanimously (5-0, 2 absent) to recommend that the Board of Supervisors approve BOS File No. 161064.

The Small Business Commission has historically supported the nightlife industry, which is largely made up of small businesses. When the Commission heard BOS File No. 141298 [Various Codes - Noise Regulations Relating to Residential Uses Near Places of Entertainment] in March 2015, it voted unanimously in support. Both pieces of legislation are designed to preempt conflict caused by developing potentially incompatible uses near existing Places of Entertainment, and the Commission extends its praise to Supervisor London Breed and the Entertainment Commission for taking a proactive approach.

Thank you for considering the Commission's comments. Please feel free to contact me should you have any questions.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

cc: London Breed, Board of Supervisors
Conor Johnston, Office of Supervisor London Breed
Jocelyn Kane, Executive Director, Entertainment Commission
Mawuli Tugbenyoh, Mayor's Office
Lisa Pagan, Office of Economic and Workforce Development
Alisa Somera, Land Use & Transportation Committee

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

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

DATE: October 13, 2016

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

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.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

****

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ No Comment

____ Recommendation Attached

_____
Chairperson, Small Business Commission

c: Menaka Mahajan, Small Business Commission

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

October 13, 2016

File No. 161064

Lisa Gibson
Acting Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On October 4, 2016, Supervisor Breed introduced the following proposed legislation:

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.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board
for Ross Mirkarimi
By: Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

October 13, 2016

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On October 4, 2016, Supervisor Breed introduced the following legislation:

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.

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

for

By: Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

c: John Rahaim, Director of Planning
Aaron Starr, Acting Manager of Legislative Affairs
Scott Sanchez, Zoning Administrator

Lisa Gibson, Acting Environmental Review Officer
AnMarie Rodgers, Senior Policy Advisor
Jeanie Poling, Environmental Planning
Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
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TDD/TTY No. 554-5227

MEMORANDUM

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

FROM: 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

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2016 OCT -4 PM 1:5:00
Time stamp or meeting date
BY

I hereby submit the following item for introduction (select only one):

☒ 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)

☐ 2. Request for next printed agenda Without Reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee.

☐ 4. Request for letter beginning "Supervisor [ ] inquires"

☐ 5. City Attorney request.

☐ 6. Call File No. [ ] from Committee.

☐ 7. Budget Analyst request (attach written motion).

☐ 8. Substitute Legislation File No. [ ]

☐ 9. Reactivate File No. [ ]

☐ 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

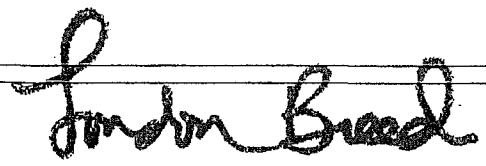
Breed

Subject:

Administrative Code - New Hotels and Motels Near Places of Entertainment

The text is listed below or attached:

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.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: