



SAN FRANCISCO PLANNING DEPARTMENT

March 23, 2015

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 2015-000180PCA:
Noise Regulations Relating to Residential Uses Near Places of Entertainment
Board File No. 141298
Planning Commission Recommendation: Approval with Modification**

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

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415.558.6378

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Planning
Information:
415.558.6377

Dear Ms. Calvillo and Supervisor Breed,

On March 19, 2015, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed amendments to the Noise Regulations Relating to Residential Uses Near Places of Entertainment Ordinance introduced by Supervisor Breed. At the hearing, the Planning Commission recommended approval with modification.

The Commission recommended modifications are:

1. Refine the universe of residential projects subject to the new Entertainment Commission outreach process.

The following would amend proposed Section 116.2 of the Administrative Code:

“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 of a structure from non-residential use to residential use

2. Require sponsors of residential projects subject to the new Entertainment Commission outreach process to conduct it prior to submitting a development application to the Planning Department.

The following would amend proposed Section 116.5 of the Administrative Code:

Section 116.5 Planning Department Notification to Project Sponsors and Acceptance of Development Permits

~~(b) When a Project sponsor submits an application for Development Permit for a Project, Based on the list described in subsection (a), the Planning Department shall notify ~~in writing the a sponsor of a proposed Project that the Project is within 300 radial feet of a Place(s) of Entertainment at the earliest practicable time, and the Entertainment Commission of the Project application, and shall provide the Project sponsor with a copy of the provisions of this Ordinance.~~~~

~~(c) 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.~~

3. Reduce the timeframe for the Planning Department to receive comments or recommendations from the EC from 45 days to 30 days, in most cases.

The following would compose the proposed Section 116.7 of the Administrative Code:

Section 116.7 Entertainment Commission Hearing

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

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

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

(d) For any such hearing:

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

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

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

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

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

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

(g) The Project sponsor shall include with its application for a Development Permit any date(s) on which an Entertainment Commission hearing on the proposed Project was held, and shall include a copy of any comments and recommendations provided by the Entertainment Commission regarding the proposed Project.

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

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

The proposed amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15061(b)(3) and 15308.

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

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

Sincerely,



Aaron D. Starr
Manager of Legislative Affairs

cc:
Victoria Wong, Deputy City Attorney
Conor Johnston, Aide to Supervisor Breed
Andrea Ausberry, Board of Supervisors

Transmittal Materials

**CASE NO. 2015-000180PCA
Noise Regulations Relating to Residential Uses
Near Places of Entertainment**

Attachments:

Planning Commission Resolution

Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: MARCH 19, 2015

Project Name: **Noise Regulations Relating to Residential Uses Near Places of Entertainment**

Case Number: 2015-000180PCA [Board File No. 141298]

Initiated by: Supervisor Breed / Introduced December 16, 2014

Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082

Reviewed by: Aaron Starr, Manager Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

Recommendation: **Recommend Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Building Code to require attenuation of exterior noise for new residential structures and acoustical analysis and field testing in some circumstances.

The proposed Ordinance would amend the Administrative Code to provide that a Place of Entertainment (POE) shall not become a public or private nuisance on the basis of noise for nearby residents of newly constructed or converted residential structures if that POE has had permits to operate for 12 months or longer; to authorize the Entertainment Commission to hold a hearing on a proposed residential use near a POE and require the sponsor's participation in the hearing; to authorize the Entertainment Commission to measure noise conditions at such project sites and provide comments and recommendations regarding noise to the Planning Department and Department of Building Inspection; to require lessors and sellers of residential property to disclose to lessees and purchasers potential noise and other inconveniences associated with nearby POEs and authorize civil penalties for not providing disclosure; and to require that such disclosure requirements be recorded against a residential property in a Notice of Special Restrictions.

The proposed Ordinance would amend the Planning Code to add a Section 314 to require the Planning Department and the Planning Commission to consider the compatibility of uses when approving residential uses near existing POE.

The proposed Ordinance would amend the Police Code to specify additional considerations for the Entertainment Commission when granting or amending a POE permit.

The Way It Is Now:

1. The Planning Department does not notice the Entertainment Commission (EC) of proposed residential projects located within 300 feet of a POE.

2. There is no formal process for the Planning Department or the Planning Commission to consider comments and recommendations from the EC about proposed residential projects located within 300 feet of existing POEs.
3. There is no Code requirement for the Planning Department or Planning Commission to consider EC comments or recommendations about proposed residential projects located within 300 feet of existing POEs.
4. The Planning Department does not require the recordation of a Notice of Special Restrictions (NSR) on residential projects that discloses that a POE is located within a 300 foot distance.

The Way It Would Be:

1. The Administrative Code would be amended to require the Planning Department to notice the EC of proposed residential projects located within 300 feet of a POE. Notice would occur upon acceptance of an application for any residential project located within 300 feet of an existing POE. In addition, the Planning Department would notice adjacent POEs of the project application and would provide project applicants with a copy of the proposed Ordinance.
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 residential projects located within 300 feet of existing POEs. The process would occur as follows:
 - a. After noticing the EC of the residential project, the Planning Department would hold the application until the EC provides notice of its decision to hold a hearing on the project. The EC will provide this notice within 14 calendar days after receiving notice of the application from the Planning Department.
 - b. The Planning Department would not approve or deny a project application until it receives written notice from the EC about its decision to hold a hearing. Should the EC decide to hold a hearing, the Planning Department would abstain from providing a project approval or denial until after that hearing. If the EC decides against holding a hearing, the Planning Department would continue its review of the project.
 - c. Should the EC decide to hold a hearing, it would occur within 30 calendar days of notifying the Planning Department of that decision. The EC would also 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 noise attenuation measures be imposed.
3. The Planning Code would be amended to include a new Section 314. This section would require the Planning Department or the Planning Commission to consider comments and recommendations from the EC about proposed residential projects located within 300 feet of an existing POE.
4. The Planning Department would require the recordation of a Notice of Special Restrictions (NSR) on approved projects subject to the proposed Ordinance. The NSR would require transferors to provide a disclosure statement to purchasers or lessees. This disclosure statement would indicate that the

property transferred is adjacent to a POE and note the possibility of associated inconveniences with living in proximity to a POE.

ISSUES AND CONSIDERATIONS

The Importance of the Nightlife and Entertainment Industry to San Francisco

San Francisco owes its allure and reputation as a global destination in part to its storied nightlife and entertainment scene. Over the years, many different social groups have enriched this scene. Since the early 1900's the LGBT community has established famed bars and entertainment venues across the City. These serve as safe havens for the community and to bring LGBT culture into the mainstream. During the 1940's and 1950's the Fillmore District enjoyed a jazz music scene rivaled only by Harlem. The jazz greats of that era played at the numerous Fillmore jazz clubs that supported the scene. North Beach was the location of the beatnik poetry movement and the exploration of other live performance art such as cabaret and striptease. The 1960's and 1970's saw the Haight Ashbury neighborhood take center stage of the popular rock scene. The local bands of that moment emerged playing at a number of entertainment venues throughout the City. The success of those local bands attracted musicians from outside San Francisco, further enriching the entertainment scene and San Francisco's reputation as a locale for such endeavors. Today San Francisco continues to host a number of popular entertainment venues as well as outdoor festivals and events. Taken together, the live performances and the venues that support them add to the character of San Francisco and make the City a desirable location to live, work and play.

The nightlife and entertainment industry is also a significant contributor to the City economy. A recent study by the San Francisco Office of the Controller, Office of Economic Analysis highlights its significant impact.¹ The study found that in 2010 entertainment venues/nightclubs hosted 3,200,000 customers who spent \$220,000,000 in San Francisco. Patronage from outside of San Francisco was also found to be a significant contributor. The study found that tourists from outside of San Francisco made patronizing entertainment venues/nightclubs the reason for their visit approximately one third of the time. These tourists, on average spent three times what a San Franciscan resident would spend on a similar visit.

Without question, the nightlife and entertainment industry is an integral part of the City fabric. This industry makes San Francisco an alluring destination, filled with cultural attractions. These attractions are also financially beneficial to the City.

Compatibility of Uses: Housing and Nighttime Entertainment

San Francisco, like many other major US cities, is experiencing a growth in population that will continue into the coming decades.² However, the amount of land available to develop new housing is constrained by the City's land mass and other land use restrictions. As a result, many new housing projects are being constructed in neighborhoods of the City that were typically reserved for industrial, office and nighttime entertainment uses. Nighttime entertainment venues tend to produce noise from performances and from

¹ [The Economic Impact of San Francisco's Nightlife Businesses](#). City and County of San Francisco, Office of the Controller-Office of Economic Analysis. March 5, 2012.

²<http://www.bayareacensus.ca.gov/counties/SanFranciscoCounty70.htm>;
<http://quickfacts.census.gov/qfd/states/06/06075.html>; "San Francisco at 1 million: City's population is booming once again." Dan Schreiber. San Francisco Examiner. Dec 29, 2013.

existing patrons at levels atypical for wholly residential areas. When residential uses locate in close proximity to nighttime entertainment venues noise complaints and conflicts often arise.

It is understandable for those having recently purchased or leased a residence to expect a certain quality of life, irrespective of their proximity to a nighttime entertainment venue. It is also reasonable for an established nighttime entertainment operator in good standing to expect to continue in business despite the concerns of new neighbors. One method for potentially lessening noise complaints and conflicts is an outreach and notification process. Informing prospective developers that they are adjacent to an existing nighttime entertainment venue can help shape the design of the project and persuade them to include noise mitigating features. Informing purchasers or lessees of residential property that they are purchasing or renting a unit in close proximity to a nighttime entertainment use can help better inform prospective residents before they invest significant sums into a property that may not be right for them. And informing venue operators of a new residential development would provide them with an opportunity to fine tune their crowd control and community relations policies.

Residential Permit Review and Outreach

Another, related benefit of an early outreach process is the potential time saved during the entitlement process. Time devoted to resolving community concerns about forthcoming development during Planning review and prior to entitlement can be significant. In certain instances it may add months to an already lengthy process. As of the date of this report, a small residential project may need five months to secure entitlements. Providing a forum for airing concerns prior to the Planning Department's review can result in a project the community can support through the entitlement process. This can reduce the time a project spends securing land use entitlements.

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.

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. **Refine the universe of residential projects subject to the new Entertainment Commission outreach process.** The Department proposes limiting the types of projects that are subject to this new process to residential projects that are 1) subject to the Department's Preliminary Project Assessment (PPA) process (projects with seven or more units), 2) residential projects subject to the Department's pre-application meeting requirement for new construction, and 3) converting a building from a non-residential use to a residential use. This would specifically exclude projects that are adding dwelling units to existing residential buildings, and which are likely to be approved over the counter.

The following would amend proposed Section 116.2 of the Administrative Code:

“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 of a structure from non-residential use to residential use*

2. **Require sponsors of residential projects subject to the new Entertainment Commission outreach process to conduct it prior to submitting a development application to the Planning Department.** The following would amend proposed Section 116.5 of the Administrative Code:

Section 116.5 Planning Department Notification to Project Sponsors *and Acceptance of Development Permits*

~~(b) When a Project sponsor submits an application for Development Permit for a Project, *Based on the list described in subsection (a),* the Planning Department shall notify ~~in writing the~~ a *sponsor of a proposed Project that the Project is within 300 radial feet of a* Place(s) of Entertainment *at the earliest practicable time,* and the Entertainment Commission of the Project application, and shall provide the Project sponsor with a copy of the provisions of this Ordinance.~~

~~(c) *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.*~~

3. **Reduce the timeframe for the Planning Department to receive comments or recommendations from the EC from 45 days to 30 days, in most cases.** The following would compose the proposed Section 116.7 of the Administrative Code:

Section 116.7 Entertainment Commission Hearing

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

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

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

(d) For any such hearing:

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

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

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

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

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

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

(g) The Project sponsor shall include with its application for a Development Permit any date(s) on which an Entertainment Commission hearing on the proposed Project was held, and shall include a copy of any comments and recommendations provided by the Entertainment Commission regarding the proposed Project.

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

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

BASIS FOR RECOMMENDATION

The Department supports the proposed Ordinance because it helps initiate communication between neighbors and project sponsors at an early stage in the development process. This can help identify potentially problematic issues and allows ample time for all parties to address concerns. It is expected that such a process will help reduce complaints, conflicts and misunderstandings between residential and entertainment uses. The preservation and expansion of both of these uses is paramount to the health and vibrancy of the City. Promotion of processes that allow these competing uses to coexist is therefore an important endeavor.

Recommendation 1: Refine the universe of residential projects subject to the new Entertainment Commission outreach process.

Applying the new outreach process only to projects that are of a larger scope or currently require an outreach process is in line with Mayor Lees Executive Directive 13-01, which he issued on December 18, 2013. This Directive orders City departments with authority over the permitting of new housing to prioritize the development of all new housing. Included in this prioritization is the implementation of policies that provide incentives to foster the development of small scale, infill rental units.

In compliance with Directive 13-01, the Planning Code was amended to facilitate the production of dwelling units in residential buildings. Amendments were made to three Planning Code Sections. The first section amended was Planning Code Section 207.3. This Section provides a formalized route to add secondary units to the City's supply of affordable housing. Planning Code Section 311 was the second section amended. This section was amended to expedite the production of new units in existing residential buildings. The third section amended was Planning Code Section 715, the Castro NCD. The amendment allows the addition of in-law units within the Castro NCD and generally 1,750 feet around it, irrespective of a zoned maximum density. These units must also be within an existing residential building envelope.

Recommendation 2: Require sponsors of residential projects subject to the new Entertainment Commission outreach process to conduct it prior to submitting a development application to the Planning Department.

An early outreach process allows project sponsors ample time to refine proposals in response to community concerns. It also provides an opportunity for project sponsors to build relations with existing neighbors, which can help build support for their project. Projects that have community support tend to complete the planning process faster and encounter fewer delays at the Planning Commission.

Further, conducting this outreach process prior to submitting an entitlement application reduces the time the project is under Planning Department review. Reducing this is especially critical given the current timeframe experienced in residential permit review. As mentioned previously, Planning review for smaller residential projects can last five months. For larger residential projects that timeframe can easily reach 12 to 14 months. Increasing public outreach while reducing Planning Department review timeframes is a worthy goal that satisfies multiple aims.

Recommendation 3: Reduce the timeframe for the Planning Department to receive comments or recommendations from the EC.

The proposed Ordinance provides the EC with a total of 45 days to provide the Planning Department with written comments or recommendations on a project with the option of a 60-day extension. The length of this timeframe was discussed with Supervisor Breed's office and the EC. All parties agreed that a total of 32 days would be sufficient to provide the Planning Department with comments. It was also agreed that a 15 day extension to the 32 day period would provide sufficient time to accommodate scheduling conflicts with Project Sponsors.

This new timeframe is acceptable for two reasons. First, the EC believes that they are provided with sufficient time. This is key because they are the agency that will lead the new outreach process. Second, the new timeframe allows the Planning Department review to begin at an earlier date. This may help

expedite the total time spent securing entitlements and is in conformance with Mayoral direction to expedite the production of housing.

ADDITIONAL CONSIDERATIONS

Forthcoming Substitute Legislation

Since introduction of the proposed Ordinance the Office of Supervisor London Breed has proposed revisions to original amendments to the Administrative Code. The majority of these amendments do not have implications for the Planning Department or its procedures. The changes that do affect Planning Department procedures include:

- A refinement in the types of residential projects that are subject to the new Entertainment Commission outreach process
- A requirement that the Planning Department not consider an application for a project subject to the new outreach process as complete until the Project Sponsor has contacted the Entertainment Commission and the Entertainment Commission has provide comments, if any, about the project.
- A reduction in the time allotted for the Entertainment Commission to provide comments, if any, to the Planning Commission on a project subject to the new outreach process

For reference, the forthcoming substitute legislation is included as an exhibit to this Executive Summary.

ENVIRONMENTAL REVIEW

The proposal to amend the Building Code, Administrative Code, Planning Code and Police Code to address noise related issues arising when considering development proposals that would place either residential land uses or Places of Entertainment (POEs) in close proximity to one another is exempt from environmental review under Sections 15061(b)(3) and 15308 of the CEQA Guidelines.

PUBLIC COMMENT

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

RECOMMENDATION:	Recommendation of Approval with Modification
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
Exhibit B: Board of Supervisors File No. 141298
Exhibit C: Submittal from the Office of Supervisor London Breed



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution 19336

HEARING DATE MARCH 19, 2015

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Project Name: Noise Regulations Relating to Residential Uses Near Places of Entertainment
Case Number: 2015-000180PCA [Board File No. 141298]
Initiated by: Supervisor Breed / Introduced December 16, 2014
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE BUILDING, ADMINISTRATIVE PLANNING AND POLICE CODES TO REQUIRE ATTENUATION OF EXTERIOR NOISE FOR NEW RESIDENTIAL STRUCTURES AND ACOUSTICAL ANALYSIS AND FIELD TESTING IN SOME CIRCUMSTANCES; TO PROVIDE THAT A PLACE OF ENTERTAINMENT (POE) PERMITTED FOR 12 MONTHS NOT BECOME A PUBLIC OR PRIVATE NUISANCE ON THE BASIS OF NOISE FOR NEARBY RESIDENTS OF NEWLY CONSTRUCTED OR CONVERTED RESIDENTIAL STRUCTURES; TO AUTHORIZE THE ENTERTAINMENT COMMISSION TO HOLD A HEARING ON A PROPOSED RESIDENTIAL USE NEAR A POE, AND REQUIRE THE PROJECT SPONSOR'S PARTICIPATION IN THE HEARING; TO AUTHORIZE THE ENTERTAINMENT COMMISSION TO MEASURE NOISE CONDITIONS AT SUCH PROJECT SITES AND PROVIDE COMMENTS AND RECOMMENDATIONS REGARDING NOISE TO THE PLANNING DEPARTMENT AND DEPARTMENT OF BUILDING INSPECTION; TO REQUIRE LESSORS AND SELLERS OF RESIDENTIAL PROPERTY TO DISCLOSE TO LESSEES AND PURCHASERS POTENTIAL NOISE AND OTHER INCONVENIENCES ASSOCIATED WITH NEARBY POES AND AUTHORIZE CIVIL PENALTIES FOR NOT PROVIDING DISCLOSURE; TO REQUIRE THAT SUCH DISCLOSURE REQUIREMENTS BE RECORDED AGAINST A RESIDENTIAL PROPERTY IN A NOTICE OF SPECIAL RESTRICTIONS; TO REQUIRE THE PLANNING DEPARTMENT AND COMMISSION TO CONSIDER NOISE ISSUES WHEN REVIEWING PROPOSED RESIDENTIAL PROJECTS; AND TO SPECIFY FACTORS CONCERNING NOISE FOR THE ENTERTAINMENT COMMISSION TO REVIEW WHEN CONSIDERING GRANTING A POE PERMIT; AND MAKING ENVIRONMENTAL FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1 AND DIRECTING THE CLERK OF THE BOARD OF SUPERVISORS TO FORWARD THE ORDINANCE TO THE STATE BUILDING STANDARDS COMMISSION UPON FINAL PASSAGE.

WHEREAS, on December 16, 2014, Supervisor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 141298, which would amend the Building, Administrative, Planning and Police Code to require attenuation of exterior noise for new residential structures and acoustical analysis and field testing in some circumstances; to provide that a Place of Entertainment (POE) not become a public or private nuisance on the basis of noise for nearby residents of newly constructed or converted residential structures; to authorize the Entertainment Commission to hold a hearing on a proposed residential use near a POE, and require the project sponsor's participation in the hearing; to authorize the Entertainment Commission to measure noise conditions at such project sites and provide comments and recommendations regarding noise to the Planning Department and Department of Building Inspection; to require lessors and sellers of residential property to disclose to lessees and purchasers potential noise and other inconveniences associated with nearby POEs and authorize civil penalties for not providing disclosure; to require that such disclosure requirements be recorded against a residential property in a Notice of Special Restrictions; to require the Planning Department and Commission to consider noise issues when reviewing proposed residential projects; and to specify factors concerning noise for the Entertainment Commission to review when considering granting a POE permit; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code Section 101.1, and directing the Clerk of the Board of Supervisors to forward the Ordinance to the State Building Commission upon final passage;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 19, 2015; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15061(b)(3) and 15308; 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 modification**, the proposed ordinance.

The Commission recommended modifications are:

- 1. Refine the universe of residential projects subject to the new Entertainment Commission outreach process.** The following would amend proposed Section 116.2 of the Administrative Code:

“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 of a structure from non-residential use to residential use*

2. Require sponsors of residential projects subject to the new Entertainment Commission outreach process to conduct it prior to submitting a development application to the Planning Department. The following would amend proposed Section 116.5 of the Administrative Code:

Section 116.5 Planning Department Notification to Project Sponsors *and Acceptance of Development Permits*

~~(b) When a Project sponsor submits an application for Development Permit for a Project, Based on the list described in subsection (a), the Planning Department shall notify ~~in writing~~ a sponsor of a proposed Project that the Project is within 300 radial feet of a Place(s) of Entertainment at the earliest practicable time. ~~and the Entertainment Commission of the Project application, and shall provide the Project sponsor with a copy of the provisions of this Ordinance.~~~~

~~(c) 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.~~

3. Reduce the timeframe for the Planning Department to receive comments or recommendations from the EC from 45 days to 30 days, in most cases. The following would compose the proposed Section 116.7 of the Administrative Code

Section 116.7 Entertainment Commission Hearing

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

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

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

(d) For any such hearing:

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

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

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

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

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

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

(g) The Project sponsor shall include with its application for a Development Permit any date(s) on which an Entertainment Commission hearing on the proposed Project was held, and shall include a copy of any comments and recommendations provided by the Entertainment Commission regarding the proposed Project.

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

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

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. San Francisco enjoys a storied nighttime entertainment industry. It is an industry with a long history and broad participation from various social groups. It forms part of the City's social and cultural fabric and is indispensable to the City's identity.
2. 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. Live music venues and nightclubs are also a large attractor of visitors from outside of San Francisco. The San

Francisco Office of the Controller-Office of Economic Analysis reports that approximately one third of visits to San Francisco from tourists were to patronize the City's live music venues and nightclubs.

3. San Francisco is also a city without vacant lands to develop new residential neighborhoods. As a result, many new housing projects are being constructed in neighborhoods of the City that were typically reserved for industrial, office and nighttime entertainment uses.
4. It is common that nighttime entertainment venues produce noise from performances and from exiting patrons at levels atypical for wholly residential areas. When residential uses locate in close proximity to nighttime entertainment venues noise complaints and conflicts often arise.
5. One method for potentially lessening noise complaints and conflicts is an outreach and notification process. Informing prospective developers that they are adjacent to an existing nighttime entertainment venue can help shape the design of the project and persuade them to include noise mitigating features. Informing purchasers or lessees of residential property that they are purchasing or renting a unit in close proximity to a nighttime entertainment use can help better inform prospective residents before they invest significant sums into a property that may not be right for them. And informing venue operators of a new residential development would provide them with an opportunity to fine tune their crowd control and community relations policies.
6. **General Plan Compliance.** The proposed amendments to the Planning Code are not addressed in the General Plan; the Commission finds that the proposed Ordinance is not inconsistent with the 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 residential 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 residential development. The outreach process will allow these owners and operators to meet with residential 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 two competing land uses – residential 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 residential 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.

7. **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 an effect upon neighborhood retail serving uses as the proposed Ordinance concerns itself with increasing the compatibility of residential uses with Places of Entertainment.

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 help conserve and protect neighborhood character through the implementation of an outreach process between residential developers and existing Places of Entertainment.

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

The proposed Ordinance can help preserve and enhance the City's supply of affordable housing by requiring an outreach process between forthcoming residential development and existing Places of Entertainment.

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

The proposed Ordinance would not cause impediments to MUNI transit service or would it cause an overburdening of City streets or neighborhood parking because the propose Ordinance concerns itself with increasing the compatibility of residential uses with Places of Entertainment.

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 as the proposed Ordinance concerns itself with increasing the compatibility of residential uses with Places of Entertainment.

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 impact on City's preparedness against injury and loss of life in an earthquake because the proposed Ordinance concerns itself with increasing the compatibility of residential uses with Places of Entertainment.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an impact on the City's Landmarks and historic buildings because the proposed Ordinance concerns itself with increasing the compatibility of residential uses with Places of Entertainment.

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 impact on the City's parks and open space and their access to sunlight and vistas because the proposed Ordinance concerns itself with increasing the compatibility of residential uses with Places of Entertainment.

- 8. 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 as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 19, 2015.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Antonini, Fong, Hillis, Moore, Richards, Wu

NOES:

ABSENT: Commissioner Johnson

ADOPTED: March 19, 2015