



SAN FRANCISCO PLANNING DEPARTMENT

Certificate of Determination EXCLUSION/EXEMPTION FROM ENVIRONMENTAL REVIEW

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Case No.: 2015-000451ENV
Project Title: Board of Supervisors File No. 141298; Amendments to Building, Administrative, Planning and Police Codes Relating to Residential Uses near Places of Entertainment
Zoning: Various
Block/Lot: Various
Project Sponsor: Supervisor London Breed, District 5, San Francisco Board of Supervisors
Staff Contact: Chris Thomas – (415) 575-9036
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PROJECT DESCRIPTION:

The proposed legislation, introduced to the San Francisco Board of Supervisors (Board) by Supervisor Breed on December 16, 2014, would amend the San Francisco Building, Administrative, Planning and Police Codes to address noise-related issues arising when the City considers development proposals that would place either residential land uses or Places of Entertainment (POEs) in close proximity to one another. The amendments would provide for the evaluation of noise associated with existing and new POEs, disclosure of potential noise to lessors and sellers of residential property, and attenuation of exterior noise for new residential structures.

(Continued on next page.)

EXEMPT STATUS:

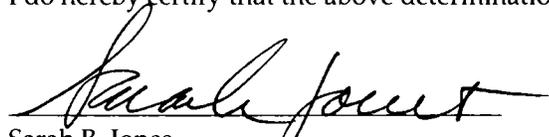
General Rule Exclusion (State CEQA Guidelines, Section 15061(b)(3)) and Categorical Exemption, Class 8 (State CEQA Guidelines Section 15308).

REMARKS:

Please see next page.

DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.


Sarah B. Jones
Environmental Review Officer

February 25, 2015
Date

cc: Diego Sanchez
Board of Supervisors

Distribution List
Virna Byrd, M.D.F

PROJECT DESCRIPTION (CONTINUED):

More specifically, the amendments would include the following provisions:

- Requires attenuation of exterior noise for new residential structures, acoustical analysis and, in some circumstances, field testing;
- Provides that a 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 if the POE is in compliance with the municipal code and the terms of its permits;
- Authorizes the Entertainment Commission to hold a hearing on a proposed residential use within 300 feet of a POE and requires the project sponsor's participation in that hearing;
- Authorizes 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;
- Requires lessors and sellers of residential property to disclose to lessees and purchasers potential noise and other inconveniences associated with nearby POE's, and authorizes civil penalties for not providing disclosure;
- Requires that such disclosure requirements be recorded against a residential property in a Notice of Special Restrictions;
- Requires the Planning Department and Planning Commission to consider the compatibility of uses when approving residential uses adjacent to or near existing permitted POEs; and
- Specifies factors concerning noise for the Entertainment Commission to review when considering the granting of a POE permit.

PROJECT APPROVALS:

The Planning Department will present the legislation to the Planning Commission. The Planning Commission will make a recommendation to the Board of Supervisors. The Land Use Committee of the Board will then hear the legislation, followed by a hearing before the full Board. If the Planning Commission recommends approval of the proposed legislation, that approval would constitute the Approval Action pursuant to Chapter 31 of the Administrative Code. The Approval Action date establishes the start of the 30-day appeal period for this CEQA exemption determination pursuant to Section 31.04(h) of the San Francisco Administrative Code.

REMARKS:

Background and Legislation Applicability

San Francisco is a dense city in which residential, commercial, and industrial uses are often located near each other. In order to accommodate housing in more locations, a number of policies in the City's General and Area Plans encourage the establishment of neighborhoods that provide an appropriate mix of commercial, office and residential use. One consequence of these policies has been residential development near POEs such as restaurants, bars, nightclubs, live theater, and music venues.¹ Noise

¹ Article 15.1, Section 1060(k) of the Police Code defines a Place of Entertainment as follows: "Every premises to which patrons or members are admitted which serves food, beverages, or food and beverages, including but not limited to alcoholic beverages, for consumption on the premises and wherein Entertainment as defined in Subsection (g) is furnished or occurs upon the premises."

(particularly during evening and nighttime hours) from permitted POEs may affect the quality of life for nearby residents in their homes. The proposed legislation thus addresses the numerous noise-related complaints received by the San Francisco Entertainment Commission and Department of Public Health from residents who have moved into new developments near existing licensed POEs.²

Although POEs may produce unwanted noise for some residents, they also provide an important amenity to many San Franciscans and visitors to the City, adding to its artistic and cultural vibrancy while making substantial contributions to its economy. A 2012 report by the Office of the Controller found that POEs and other nightlife businesses “are a major source of employment, economic activity, and tax revenue for San Francisco, as well as an economic driver, drawing new visitors and spending to San Francisco.”³ In 2010, nightlife establishments, including live music venues, nightclubs, restaurants, bars, art galleries, live theater, and other performance venues, generated \$4.2 billion in spending within San Francisco.

Objective 10 of San Francisco’s General Plan Environmental Protection Element provides policies intended to minimizing noise impacts, including incorporation (as needed) of noise insulation materials in new construction (Policy 10.2) and a land use compatibility chart that specifies the need for insulation, studies and avoiding development for various land uses according to certain ambient decibel levels. Mitigation of noise impacts is also required under several of the City’s Area Plans (for example, the Eastern Neighborhoods and Western SoMa Community Plans).

Noise is broadly regulated by Article 29 of the Health Code, which provides the rationale for protection of citizens from adverse health effects associated with noise and specifies definitions, a consistent method for the measurement of noise levels, and the regulation of various sources of noise. Given the breadth of activities which may result in noise impacts, enforcement of Article 29 is delegated to four different City agencies. The Department of Public Health (DPH) enforces provisions related to noise resulting from waste disposal services (Section 2904), noise limits for residential, commercial industrial and public properties (Section 2909), and investigation of noise complaints (Section 2912). The Department of Building Inspection enforces noise provisions related to permitted construction activities on private property, including construction equipment (Section 2907) and construction work at night (Section 2908). The Department of Public Works also regulates noise under Sections 2907 and 2908, but for construction activities on publically-owned property (for example, streets). Finally, each of these agencies may enforce its respective code provisions under Section 2916 (which also provides authority to the Entertainment Commission to enforce noise standards associated with licensed POEs).

Additionally, the Entertainment Commission considers and may approve or conditionally approve permit applications for POEs and may also abate POE noise that interferes with the peaceful and quiet use and enjoyment of property pursuant to Sections 1060.1 and 1060.12, respectively, of the Police Code.

In terms of noise limits, Section 2909 prescribes limits from any source of five and eight dBA above the ambient level at the property plane of residential and commercial/industrial properties, respectively. In particular, Section 2909(b) states:

“With respect to noise generated from a licensed Place of Entertainment, in addition to the above dBA criteria a secondary low frequency dBC⁴ criteria shall apply to the definition above. No noise

² For example, see San Francisco Entertainment Commission Hearing Minutes for August 19, 2014, which includes Commission discussion regarding various resident complaints concerning POE-related nighttime noise. Accessed February 25, 2015 at: <http://www.sfgov2.org/index.aspx?page=4628>

³ City and County of San Francisco, Office of the Controller. *The Economic Impact of San Francisco’s Nightlife Businesses*. May 5, 2012. Accessed January 28, 2015 at: <http://sfcontroller.org/Modules/ShowDocument.aspx?documentid=2953>

⁴ dBA and dBC are standardized approaches to weighting the measurement of sound to correlate with the frequency response of the human ear to different sound levels.

or music associated with a licensed Place of Entertainment shall exceed the low frequency ambient noise level defined in Section 2901(f) by more than 8 dBC.”

Section 2909(d) requires fixed residential interior noise limits of 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. and 55 dBA between the hours of 7:00 a.m. to 10:00 p.m.

However, it is important to note that Section 2909(e) provides the City with the discretion to set other noise limits than those provided in Sections 2909(a) through (d) for noise caused by activities subject to permits from the City and County of San Francisco: “None of the noise limits [i.e., Sections 2909(a) through (d)] set forth in this Section apply to activity for which the City and County of San Francisco has issued a permit that contains noise limit provisions that are different from those set forth in this Article.”

Thus, the proposed amendments do not weaken current noise regulations under Article 29 or any other section of the Municipal Code. Rather, the proposed amendments provide specific processes for the review and evaluation of potential noise impacts from POEs upon residential land uses, and where warranted, noise attenuation in new residential uses, thereby seeking to address compatibility among POEs and residential uses in regards to noise.

POTENTIAL ENVIRONMENTAL EFFECTS:

California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) establishes the general rule that CEQA applies only to projects that have the potential to cause a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This section discusses the potential for the proposed legislation to result in significant environmental effects and demonstrates that there is no reasonably foreseeable possibility of significant effects.

The Class 8 Categorical Exemption (CEQA Guidelines Section 15308) establishes that actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment are, provided the actions do not involve construction or a relaxation of standards that would allow environmental degradation, exempt from further CEQA review. This section demonstrates that the proposed amendments would serve to avoid or reduce potential noise impacts to residential uses from nearby POEs and would not involve construction or a relaxation of standards that would allow environmental degradation.

Analysis

As discussed in the project description and remarks, the proposed amendments would add provisions to the Building, Administrative, Planning and Police Codes pertaining to the evaluation of noise impacts upon residential uses from POEs with the goal of increasing compatibility between existing POEs and new residential development, and promoting the health, safety, and welfare of the residents of San Francisco. The proposed amendments are summarized as follows:

New Sections 1207.4 through 1207.8 of the Building Code would provide definitions related to the measurement of noise and requirements to ensure that interior noise in residential structures attributable to exterior sources not exceed 45 decibels.

New Sections 116.1 through 116.10 of the Administrative Code would protect existing POEs that are operated and maintained in accordance with all applicable regulations from being a nuisance on the basis of noise. In turn, disclosure of possible noise impacts to future residents in neighborhoods where POEs operate would be required. These amendments to the Administrative Code would also provide for an Entertainment Commission public hearing process when residential uses are proposed within 300 feet of a POE.

A new Section 314 of the Planning Code would require that the Planning Department and Planning Commission consider the compatibility of residential uses proposed adjacent to or near existing permitted POEs, taking into consideration a proposed project's consistency with applicable design guidelines and any comments and recommendations provided to the Planning Department by the Entertainment Commission.

Amendments to Sections 1060.5, 1060.15 and 1060.24.1 of the Police Code would require an applicant for a POE permit to "conspicuously and continuously" post a notice for the permit hearing at least 30 days before the hearing on the premises of the proposed POE. The proposed amendments would also provide the Entertainment Commission with the discretion to require a POE permittee to comply (by imposing reasonable time, place and manner conditions on the permit) with noise limits that are lower or higher than those set forth in Article 29 of the Police Code, and the authority to require sound tests to ensure compliance with allowable noise limits or any alternative limits set by the Commission. Again, and as discussed above, these amendments are consistent with the discretion already granted to the City in Section 2909(e) of the Health Code.

The proposed amendments are procedural in nature and would not have a direct or indirect significant impact upon the environment. Some of the procedural requirements would involve minor physical activities that could have, at most, negligible effects upon the environment. For example, any acoustical testing that may be required would be similar to the many field studies that may be required during the project approval process. Any additional insulation that may be required for a residential structure to reduce a potential noise impact would be installed with standard materials and construction techniques.

NEIGHBORHOOD CONCERNS

A "Notification of Project Receiving Environmental Review" was mailed on February 6, 2015, to community organizations and potentially interested parties. No comments were received.

CONCLUSION

The proposed legislation would provide procedures to evaluate and reduce noise from POEs that may affect nearby residential land uses, and processes to disclose their presence to developers and occupants of residential land uses. Adoption of the proposed legislation would not facilitate growth in either residential or POE land uses but would reduce the potential for direct, indirect and cumulative noise conflicts by requiring their evaluation, disclosure and, if necessary, additional measures to reduce the level of interior noise in residential structures coming from POEs. At the same time, the proposed legislation clarifies the existing authority of the City to protect permitted, lawfully operating POEs and the substantial economic and amenity values they provide. Therefore, the procedures and requirements provided by the proposed legislation would not result in any direct, indirect or cumulative impact upon the environment.

Further, and as discussed above, Section 2909(e) currently provides the City with the ability to set alternative noise limits than those prescribed in Section 2909(a) through (d) for activities subject to permits. Given this existing discretion, the proposed legislation would not relax any existing standard such that degradation to the environment would occur with respect to noise or any other physical effect. For these reasons, it is determined with certainty that the proposed legislation would result in no significant environmental effects.

CEQA Guidelines Section 15061(b)(3) provides an exemption from environmental review where it can be seen with certainty that a proposed project would not have a significant impact on the environment. As the proposed Ordinance amending the Building, Administrative, Planning and Police Codes would have no significant environmental effects, it is appropriately exempt from environmental review under the General Rule Exclusion (CEQA Guidelines Section 15061(b)(3)).

A Class 8 exemption (CEQA Guidelines Section 15308) provides that “actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment” are categorically exempt from further environmental review under CEQA. The amendments to the Building, Administrative, Planning and Police Codes would be implemented by their respective agencies with the intent of enhancing and protecting the noise environment for residential land uses from noise which may occur from nearby POEs. As the proposed amendments serve to maintain and protect the noise environment for residential uses near POEs, and as the proposed amendments would not involve construction or relaxed standards that could degrade the environment, the proposed Ordinance amending the Building, Administrative, Planning and Police Codes is appropriately exempt under Class 8.

CEQA State Guidelines Section 15300.2(c) states that an environmental exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. No unusual circumstances surrounding the current proposal exist that would suggest a reasonable possibility of a significant effect. The proposed project would be exempt under the above-cited classifications. For the above reasons, the proposed project is appropriately exempt from environmental review.