

**LEGISLATIVE DIGEST**

*(Substituted 4/14/2015)*

[Various Codes - Noise Regulations Relating to Residential Uses Near Places of Entertainment]

**Ordinance amending 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) not become a public or private nuisance on the basis of noise for nearby residents of residential structures constructed or converted on or after January 1, 2005; 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 POE's; to require that such disclosure requirements be recorded against all newly approved residential projects 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; making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of local conditions under California Health and Safety Code, Section 17958.7; and directing the Clerk of the Board of Supervisors to forward the Ordinance to the State Building Standards Commission upon final passage.**

Existing Law

Under the Police Code, a Place of Entertainment (POE), such as a live music venue or nightclub, may obtain a permit to operate, which includes maximum allowable noise levels due to the POE's operation. The Entertainment Commission issues these permits after a public hearing. (Police Code § 1060.5.)

Applications for the construction and conversion of residential buildings are reviewed by the Department of Building Inspection and Planning Department, as appropriate. Neither the Building Code nor the Planning Code specifically addresses conflicts related to noise between POEs and nearby residential uses.

Under the Planning Code, residential development is permitted in certain mixed use (commercial and residential) zoning areas. The Building Code does not include an upper limit for interior noise levels in habitable rooms of residential units, although it did contain such a provision in the past.

Amendments to Current Law

This ordinance would amend various codes, including the Building, Administrative, Planning and Police Codes, to address noise associated with POEs that impacts nearby residents of newly constructed or converted residential buildings.

First, the ordinance would amend the Building Code to set a 45-decibel limit for interior noise levels, based on a weighted average measurement. In addition, for projects where average exterior noise levels exceed 60 decibels, the ordinance would require an acoustical analysis and report regarding interior noise levels, to demonstrate how interior noise limits would be satisfied. (Building Code §§ 1207.5-1207.8.) The ordinance would require the Department of Building Inspection, in consultation with the Planning Department, to notify project sponsors of these requirements as soon as practicable. (Building Code § 1207.9.)

Second, the ordinance would create a new Administrative Code Chapter 116. Chapter 116 would provide 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. Chapter 116 would also create a hearing process at the Entertainment Commission for new residential construction and conversion within 300 feet of a permitted POE, which a project sponsor would be required to attend; would authorize the Entertainment Commission to measure noise generated by such POEs; and would prohibit the issuance of development permits until the Entertainment Commission hearing process has been completed and the Entertainment Commission has submitted its comments and recommendations, if any, to the Planning Department and Department of Building Inspection. However, for proposed projects for which a development permit application has been submitted before the effective date of the ordinance, any previously scheduled hearing on the permit application shall not be delayed by the Entertainment Commission's consideration of whether to hold a hearing, or its holding of a hearing. In addition, Chapter 116 would require that all owners of residential property within 300 feet of a POE provide a disclosure notice to new purchasers and lessees that the nearby POE may subject them to inconveniences such as noise, odor and litter. A notice of special restriction shall be recorded against newly approved residential developments containing this notice requirement.

Third, the ordinance would direct the Planning Commission and Planning Department 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 Places of Entertainment and the future residents of the new development. Such considerations may include, among other things, the proceedings before the Entertainment Commission and any recommendations or comments by the Entertainment Commission based on those proceedings. (Planning Code § 314.)

Fourth, the ordinance would clarify that, pursuant to Police Code Section 2909(e), the Entertainment Commission, when issuing a permit to a POE, may set noise limits that are

higher or lower than those provided in Police Code Article 29, taking into account a number of factors, and may test for compliance with those limits. (Police Code §§ 1060.5 & 1060.15.) In addition, the ordinance would clarify that a permitted POE may request an increase in its permitted noise level. (Police Code § 1060.24.1.)

#### Background Information

As residential development increases in areas that formerly were predominantly commercial in character, there has been an increase in conflicts between POEs and new residents, based on nighttime noise associated with POEs. The City has received numerous noise complaints from these residents, and POEs have undertaken costly noise attenuation measures in response to complaints.

The State Building Code, which is part of the City's Building Code, formerly included a 45-decibel interior noise limit. However, that provision was removed from the most recent version of the State Building Code and thus is not part of the current City Building Code. This ordinance would reinstate that provision at the local level, while adding a new provision that interior noise levels shall be established using the higher result of two standard methods of calculating interior noise levels.

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