

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: Tom Hui, Director, Department of Building Inspection
Sonya Harris, Secretary, Building Inspection Commission

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight
Committee, Board of Supervisors

DATE: January 13, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following legislation, introduced by Supervisor Breed on December 16, 2014:

File No. 141298

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) 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 POE's 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 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 specified state agencies upon final passage.

The proposed ordinance is being transmitted pursuant to Charter Section D3.750-5 for public hearing and recommendation. It is pending before the Government Audit and Oversight Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection

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

3 **Ordinance amending the Building, Administrative, Planning, and Police Codes to**
4 **require attenuation of exterior noise for new residential structures and acoustical**
5 **analysis and field testing in some circumstances; to provide that a Place of**
6 **Entertainment (POE) permitted for 12 months not become a public or private nuisance**
7 **on the basis of noise for nearby residents of newly constructed or converted**
8 **residential structures; to authorize the Entertainment Commission to hold a hearing on**
9 **a proposed residential use near a POE, and require the project sponsor's participation**
10 **in the hearing; to authorize the Entertainment Commission to measure noise**
11 **conditions at such project sites and provide comments and recommendations**
12 **regarding noise to the Planning Department and Department of Building Inspection; to**
13 **require lessors and sellers of residential property to disclose to lessees and**
14 **purchasers potential noise and other inconveniences associated with nearby POE's**
15 **and authorize civil penalties for not providing disclosure; to require that such**
16 **disclosure requirements be recorded against a residential property in a Notice of**
17 **Special Restrictions; to require the Planning Department and Commission to consider**
18 **noise issues when reviewing proposed residential projects; and to specify factors**
19 **concerning noise for the Entertainment Commission to review when considering**
20 **granting a POE permit; and making environmental findings, and findings of**
21 **consistency with the General Plan, and the eight priority policies of Planning Code,**
22 **Section 101.1, and findings of local conditions under California Health and Safety**
23 **Code, Section 17958.7; and directing the Clerk of the Board of Supervisors to forward**
24 **the Ordinance to specified state agencies upon final passage.**
25

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

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

9 Section 1. Environmental and Other Findings.

10 (a) The Planning Department has determined that the actions contemplated in this
11 ordinance comply with the California Environmental Quality Act (California Public Resources
12 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
13 Supervisors in File No. 141298 and is incorporated herein by reference. The Board hereby
14 affirms this determination.

15 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
16 findings that the actions contemplated in this ordinance are consistent, on balance, with the
17 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
18 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
19 Board of Supervisors in File No. 141298, and is incorporated herein by reference.

20 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
21 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
22 in Planning Commission Resolution No. _____ and the Board incorporates such reasons
23 herein by reference.

24 (d) At a duly noticed hearing held on _____, the Building Inspection
25 Commission considered this ordinance, pursuant to San Francisco Charter § 4, Appendix
D.3.750-5.

1
2 Section 2. Findings of Local Conditions Under California Health and Safety Code
3 Section 17958.7.

4 (a) San Francisco is a small and unusually dense city, in which residential,
5 commercial, and industrial uses are often located close to each other. San Francisco is
6 approximately 49 square miles, located on a peninsula and bounded on three sides by water.
7 Therefore, the opportunities for new development are largely limited to vertical development.
8 To accommodate all desirable uses, San Francisco has many mixed use zoning districts.
9 Modification of the State Building Code is necessary to maximize the compatibility of those
10 diverse uses.

11 (b) San Francisco is currently experiencing a high demand for housing. Residential
12 vacancy rates are approximately 7%. As a result, in recent years there has been a significant
13 increase in residential development in the City, including in areas that traditionally have not
14 had substantial residential development.

15 (c) Due to the unusual density and topography of San Francisco's built environment,
16 including the proximity of residential, commercial, and industrial uses, as well as the design
17 and zoning of San Francisco's neighborhoods, new residential developments may be located
18 close to existing Places of Entertainment, which may generate nighttime noise.

19 (d) In San Francisco, current California building standards for new residential
20 development often do not adequately attenuate interior noise created by or associated with
21 nearby Places of Entertainment.

22 (e) The City's Entertainment Commission and Department of Public Health have
23 received numerous complaints from residents who have moved into new developments near
24 existing licensed Places of Entertainment about nighttime noise created by or associated with
25 those Places of Entertainment.

1 (f) Because of San Francisco's topography, the modifications to the California Building
2 Code contained in this ordinance are reasonably necessary to increase compatibility between
3 existing Places of Entertainment and new residential development, and to promote the health,
4 safety, and welfare of the residents of San Francisco.

5
6 Section 3. Legislative Findings.

7 (a) During evening and nighttime hours, noise generated by or associated with
8 permitted Places of Entertainment may sometimes be heard by nearby residents in their
9 homes, and, from time to time, levels of interior noise may reach undesirable levels for some
10 residents.

11 (b) Even so, many residents of San Francisco wish to live close to commercial uses,
12 including Places of Entertainment, and the City's zoning regulations allow for mixed uses in
13 the same zoning district in many areas.

14 (c) Places of Entertainment are an important part of the City's cultural fabric and
15 provide an important amenity to its residents.

16 (d) In addition, according to a 2012 report by the Office of the Controller, "The
17 Economic Impact of San Francisco's Nightlife Businesses," Places of Entertainment and other
18 nightlife businesses are a major source of employment, economic activity, and tax revenue for
19 San Francisco, as well as an economic driver, drawing new visitors and spending to San
20 Francisco. In 2010, nightlife establishments, including live music venues, nightclubs,
21 restaurants, bars, live theater and other performance venues, and art galleries, generated
22 \$4.2 billion in spending within San Francisco. Furthermore, in 2010, live music venues,
23 nightclubs, bars, and theaters hosted approximately 16 million customers and generated \$820
24 million in spending within San Francisco; 43% of Bay Area residents who visited the City did
25

1 so primarily to patronize live music venues, nightclubs, bars, and theaters; and 47% of tourists
2 from outside the Bay Area visited the City for that reason.

3 (e) Some Places of Entertainment have been the subject of numerous noise
4 complaints and as a result have been required to undertake costly noise attenuation
5 measures. The imposition of these requirements may impose a significant financial burden on
6 those Places of Entertainment, threatening their continued operation.

7 (f) Developers of residential projects routinely communicate with and perform
8 outreach to neighbors and neighborhood groups prior to construction of the projects, but do
9 not always similarly engage with or about neighboring Places of Entertainment.

10
11 Section 4. The Building Code is hereby amended by adding new Sections 1207.4
12 through 1207.8, to read as follows:

13 **SECTION 1207.4. Definitions.**

14 *The following definitions apply to Sections 1207.4 through 1207.8 of this Code.*

15 **COMMUNITY NOISE EQUIVALENT LEVEL (CNEL)** *is a metric similar to the Ldn, except*
16 *that a 5 dB adjustment is added to the equivalent continuous sound exposure level for evening hours (7*
17 *p.m. to 10 p.m.) in addition to the 10 dB nighttime adjustment used in the Ldn.*

18 **DAY-NIGHT AVERAGE SOUND LEVEL (Ldn)** *is the A-weighted equivalent continuous*
19 *sound exposure level for a 24-hour period with a 10 dB adjustment added to sound levels occurring*
20 *during nighttime hours (10 p.m. to 7 a.m.).*

21 **NORMALIZED A-WEIGHTED SOUND LEVEL DIFFERENCE (Dn)** *means for a specified*
22 *source room sound spectrum, the difference, in decibels, between the average sound levels produced in*
23 *two rooms after adjustment to the expected acoustical conditions when the receiving room under test is*
24 *normally furnished.*

1 **SECTION 1207.5. Exterior sound transmission control.**

2 **1207.5.1 Application.** *Residential structures located in noise critical areas, such as in*
3 *proximity to highways, county roads, city streets, railroads, rapid transit lines, airports, nighttime*
4 *entertainment venues, or industrial areas, shall be designed to prevent the intrusion of exterior noises*
5 *beyond levels prescribed by the Municipal Code. Proper design to accomplish this goal shall include,*
6 *but not be limited to, orientation of the residential structure, setbacks, shielding, and sound insulation*
7 *of the building.*

8 **1207.5.2. Allowable interior noise levels.** *Interior noise levels attributable to exterior sources*
9 *shall not exceed 45 dB in any habitable room. The noise metric shall be either the day-night average*
10 *sound level (Ldn) or the community noise equivalent level (CNEL), whichever is higher.*

11 **1207.5.3. Other noise sources.** *Residential structures to be located where the Ldn or CNEL*
12 *exceeds 60dB shall require an acoustical analysis showing that the proposed design will limit exterior*
13 *noise to the prescribed allowable interior level. The Planning Department's map titled Areas*
14 *Potentially Requiring Noise Insulations, and similar maps and guidance produced by the Planning*
15 *Department, shall be used where possible to identify sites with noise levels potentially greater than 60*
16 *dB.*

17
18 **SECTION 1207.6. Compliance.**

19 **(a)** *Evidence of compliance with Section 1207.5 shall consist of submittal of an acoustical*
20 *analysis report, prepared under the supervision of a person experienced in the field of acoustical*
21 *engineering, with the application for a building permit. The report shall show topographical*
22 *relationships of noise sources and dwelling sites, identification of noise sources and their*
23 *characteristics, predicted noise spectra and levels at the exterior of the proposed dwelling structure*
24 *considering present and future land usage, the basis or bases for the prediction (measured or obtained*
25 *from published data), noise attenuation measures to be applied, and an analysis of the noise insulation*

1 effectiveness of the proposed construction showing that the prescribed interior noise level requirements
2 are met.

3 (b) If interior allowable noise levels are met by requiring that windows be unopenable or
4 closed, the design for the structure must also specify a ventilation or air-conditioning system to provide
5 a habitable interior environment. The ventilation system must not compromise the dwelling unit or
6 guest room noise reduction.

7
8 **SECTION 1207.7. Field testing.**

9 (a) When inspection indicates that the construction is not in accordance with the approved
10 design, or that the noise reduction is compromised due to sound leaks or flanking paths, field testing
11 may be required. A test report showing compliance or noncompliance with prescribed interior
12 allowable levels shall be submitted to the building official.

13 (b) Field measurements of outdoor sound levels shall generally follow the guidelines prepared
14 by the American Society for Testing and Materials (ASTM) in ASTM E 1014.

15 (c) Field measurements of the A-weighted airborne sound insulation of buildings from exterior
16 sources shall generally follow the guidelines prepared by the American Society for Testing and
17 Materials (ASTM) in ASTM E 966.

18 (d) For the purpose of this Section 1207.7, sound level differences measured in unoccupied
19 units shall be normalized to a receiving room reverberation time of one-half second. Sound level
20 differences measured in occupied units shall not be normalized to a standard reverberation time.

21
22 **SECTION 1207.8. The Department of Building Inspection shall consult with the Planning**
23 **Department to ensure that notice to sponsors of residential development projects affected by Sections**
24 **1207.4 through 1207.7 are provided with notice of the requirements of this Section as soon as**
25 **practicable in the project approval process.**

1
2 Section 5. The Administrative Code is hereby amended by adding new Chapter 116,
3 consisting of Sections 116.1 through 116.10, to read as follows:
4

5 **CHAPTER 116: COMPATIBILITY AND PROTECTION**
6 **FOR RESIDENTIAL USES AND PLACES OF ENTERTAINMENT**
7

8 **SECTION 116.1. DECLARATION OF POLICY.**

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

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

21 **SECTION 116.2. DEFINITIONS.**

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

23 *“City” means the City and County of San Francisco.*
24
25

1 "Development Permit" means any land use permit or entitlement, including but not limited to
2 any building permit, site permit, Conditional Use authorization, variance, or decision based on
3 discretionary review of a proposed project.

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

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

9 "Project Site" means the lot or lots on which a Project is located.

10 "Residential Use" means the use of any real property as a dwelling unit or units, regardless of
11 whether it is a primary residence or a mixed use property.

12 "Transfer" means sale or lease.

13 "Transferor" means an owner of a Project who sells or leases all or any portion of the Project
14 to a Transferee, and includes but is not limited to the owner's agents, partners, employees, assigns,
15 successors, representatives, and heirs.

16 "Transferee" means a purchaser or lessee of all or any portion of a Project, and includes but is
17 not limited to the owner's agents, partners, employees, assigns, successors, representatives, and heirs .

18
19 **SECTION 116.3. EXEMPTIONS AND NONAPPLICATION.**

20 (a) This Chapter 116 does not supersede or limit any other provision of the Municipal Code,
21 including but not limited to the Police Code, Building Code, Health Code and Planning Code,
22 regarding the regulation and control of Nighttime Entertainment Uses as defined in the Planning
23 Code.

24 (b) This Chapter 116 does not authorize a change in use or uses where such is otherwise
25 controlled or prohibited by the Municipal Code or state or federal law.

1 (c) This Chapter 116 does not authorize the continuation or expansion of a nonconforming use
2 where such is otherwise controlled or prohibited by the Municipal Code.

3
4 **SECTION 116.4. PROTECTION FOR EXISTING PLACES OF ENTERTAINMENT.**

5 No establishment that has held a permit to operate as a Place of Entertainment within 300
6 radial feet of a building constructed or converted for Residential Use within the past 10 years shall be
7 or become a public or private nuisance on the basis of noise for that resident, if the Place of
8 Entertainment operates in compliance with the Municipal Code and the terms of its permits.

9
10 **SECTION 116.5. PLANNING DEPARTMENT NOTIFICATION TO PROJECT**
11 **SPONSORS.**

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

15 (b) When a Project sponsor submits an application for Development Permit for a Project, the
16 Planning Department shall notify in writing the Place(s) of Entertainment and the Entertainment
17 Commission of the Project application, and shall provide the Project sponsor with a copy of the
18 provisions of this Ordinance.

19
20 **SECTION 116.6. ACOUSTICAL MEASUREMENTS BY ENTERTAINMENT**
21 **COMMISSION STAFF.**

22 (a) In addition to any acoustical analysis required by the Building Code, prior to any hearing
23 by the Entertainment Commission on a Project pursuant to Section 116.7, Entertainment Commission
24 staff may take exterior acoustical measurements of conditions at the Project site, to determine normal
25 daytime conditions, normal nighttime conditions when no performance is taking place at any Place of

1 Entertainment within 300 radial feet of the proposed Project, and conditions during a performance at
2 any Place of Entertainment within 300 radial feet of the proposed Project. The property owner shall
3 provide Entertainment Commission staff with reasonable access to the Project Site for this purpose.
4 This information may be made available to the Entertainment Commission to inform the Entertainment
5 Commission's consideration of the Project pursuant to Section 116.7.

6 (b) The acoustical measurements required by this Section 116.6 shall not constitute
7 determinations or findings of the Entertainment Commission.

8 (c) A report of the acoustical measurements required by this Section 116.6 shall be forwarded
9 to the Department of Public Health within five business days after the measurements are take, and at
10 least five business days prior to any Entertainment Commission hearing on the Project.

11
12 **SECTION 116.7. ENTERTAINMENT COMMISSION HEARING.**

13 (a) After receiving notice from the Planning Department of an application for a Development
14 Permit for a proposed Project pursuant to Section 116.5 of this Code, and prior to the City's issuance
15 of any Development Permit, the Entertainment Commission shall hold a hearing on noise issues related
16 to the proposed Project and any Place of Entertainment within 300 radial feet of the proposed Project.
17 The Entertainment Commission, or its staff as delegated by the Entertainment Commission, may, in its
18 discretion, determine that a hearing is not required, if the available evidence indicates that noise from
19 the Place of Entertainment is not likely to create a significant disturbance for residents of the Project.

20 (b) For any such hearing, the Entertainment Commission shall invite any Place of
21 Entertainment that is within 300 radial feet of the Project to attend the hearing and submit evidence,
22 including testimony, at the hearing, and the Project sponsor shall present testimony and submit
23 evidence to the Entertainment Commission regarding current noise levels in the area of the proposed
24 Project, including all acoustical analysis conducted to date; the Project's proposed noise attenuation
25

1 features; the projected level of interior noise for residential units in the Project; and the Project
2 sponsor's engagement or plans for engagement with the Place(s) of Entertainment.

3 (c) Within 14 calendar days after the Entertainment Commission receives notice of a
4 Development Permit application for a proposed Project pursuant to Section 116.5 of this Code, the
5 Entertainment Commission shall give written notice to the Planning Department and/or Department of
6 Building Inspection, as appropriate, of whether it intends to hold a hearing on the proposed Project.
7 Within 30 days after providing that notice, the Entertainment Commission shall hold a hearing, if it has
8 elected to do so, and shall provide in writing to the Planning Department and/or Department of
9 Building Inspection, as appropriate, a notice regarding whether the Project sponsor attended the
10 hearing and written comments and recommendations, if any, pertaining to noise issues for the proposed
11 Project, including but not limited to the following:

12 (A) a report of any acoustical measurements taken pursuant to Section 116.6; and
13 (B) any recommendations regarding whether Development Permits should be issued
14 and whether conditions relating to noise attenuation should be imposed.

15 The Entertainment Commission, or its staff as delegated by the Commission, shall extend this
16 30-day period for up to 60 additional days if requested by the Project sponsor.

17 (d) The Planning Department, Planning Commission, and Department of Building Inspection
18 shall not approve any Development Permit until the following has occurred:

19 (1) the Entertainment Commission has provided written notification either that the
20 Entertainment Commission does not intend to hold a hearing, or that it has held a hearing and the
21 Project sponsor attended the hearing; and

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

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

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

5
6 **SECTION 116.8. NOTICE REQUIREMENTS FOR TRANSFER OF REAL PROPERTY**
7 **FOR RESIDENTIAL USE.**

8 **(a) Notice Requirement.**

9 (1) Any Transferor of all or part of a structure for Residential Use within 300 radial
10 feet of a Place of Entertainment, where the Place of Entertainment has been in operation for 12 or
11 more consecutive months prior to the Transfer, shall provide notice to the Transferee as follows:

12 (A) For transfers of all or part of a Project having any Residential Use, the
13 Transferor shall provide the disclosure described in this Section 116.8 on a separate written document.
14 This notice shall be provided as follows:

15 (i) for a lease, prior to the tenant(s) signing the lease; and

16 (ii) for a purchase agreement, at the time required by California Civil
17 Code Section 1102.3.

18 (B) Disclosure.

19 The disclosure shall include a citation to this Chapter 116 and a statement containing
20 substantially the following language in at least 12-point font:

21 "DISCLOSURE OF NEIGHBORING PLACE OF ENTERTAINMENT.

22 You are purchasing or leasing property that is adjacent or nearby to [name and address of the
23 Place(s) of Entertainment]. This venue is an existing Place of Entertainment, as defined in Police Code
24 Section 1060, which includes establishments such as live music venues, nightclubs and theaters. This
25 establishment may subject you to inconveniences or discomfort arising from or associated with its

1 operations, which may include, but are not limited to, nighttime noise, odors, and litter. One or more
2 of the inconveniences or discomforts may occur even if the Place of Entertainment is operating in
3 conformance with existing laws and regulations and locally accepted customs and standards for
4 operations of such use. If you live near a Place of Entertainment, you should be prepared to accept
5 such inconveniences or discomforts as a normal and necessary aspect of living in a neighborhood with
6 mixed commercial and residential uses."

7 _____ (3) The Transferor shall provide each Transferee with a copy of this Chapter 116 in
8 effect when the notice required by this Section 116.8 is given to the Transferee.

9 _____ (4) Affidavit of Disclosure.

10 _____ (A) Contents of Affidavit. The Transferor shall sign, upon penalty of perjury, an
11 affidavit containing the following information, with appropriate terms to be inserted in place of the
12 bracketed language, as specified:

13 _____ (i) the identity of the Transferor, and any entity on whose behalf the
14 Transferor is acting;

15 _____ (ii) the identity of the Transferee;

16 _____ (iii) the address, including unit number, of the portion of the Project
17 being transferred;

18 _____ (iv) whether the Transfer is a sale or lease; and

19 _____ (v) the following language:

20 _____ "I have provided to the [purchaser or lessee] the disclosure required by San Francisco
21 Administrative Code Chapter 116. Attached is a true and correct copy of the notice provided to the
22 [purchaser or lessee].

23 _____ I declare under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct. Executed on [date] in [city and state]."

25 _____ (B) Affidavit Transmitted to Entertainment Commission.

1 The Transferor shall transmit to the Entertainment Commission the Affidavit and a copy of the
2 notice provided to each Transferee; provided, however, that the attachment need not also include a
3 copy of the then-current text of this Chapter 116. Upon request of the Transferee, the Transferor shall
4 also provide a copy of this Affidavit, with an attached copy of the notice referenced in the Affidavit, to
5 the Transferee.

6 (C) Upon request, the Entertainment Commission shall provide a copy of the
7 Affidavit and attached notice to any member of the public, including a representative of a Place of
8 Entertainment.

9 (5) Covenants, Conditions & Restrictions for Condominium Projects. If the Project will
10 be subdivided into condominiums, the requirements of this Section 116.8 must be included as terms of
11 the Covenants, Conditions, & Restrictions ("CC&Rs") that will be filed with the State and that govern
12 owners of the property. Upon request, a copy of the CC&Rs must be provided to the Planning
13 Department.

14 **(b) Failure to Provide Notice.**

15 (1) In addition to any liability for administrative penalties pursuant to the Planning
16 Code due to failure to comply with this Section 116.8, any person who fails to provide the disclosure
17 required by this Section may be liable for a civil penalty of \$500 for each failure to provide said
18 disclosure to a Transferee. This penalty may be assessed and recovered in a civil action brought in the
19 name of the people of the City by the City Attorney in any court of competent jurisdiction. The City
20 Attorney also may seek recovery of the attorneys' fees and costs incurred in bringing a civil action
21 pursuant to this Section 116.8.

22 (2) Any member of the public, including any Place of Entertainment, may file a
23 complaint with the Planning Department regarding a Transferor's failure to provide the notice
24 required by this Section 116.8.

1 **SECTION 116.9. NOTICE OF SPECIAL RESTRICTIONS.**

2 (a) At the time a proposed Project is approved, a Notice of Special Restrictions (NSR) must be
3 recorded with the Assessor-Recorder that states all of the restrictions of Section 116.8 and any other
4 conditions that the Planning Commission or Department places on the property. Pursuant to Article 1.7
5 of the Planning Code, the Planning Department is authorized to enforce the terms of the NSR,
6 including but not limited to enforcement for any failure to comply with the provisions of Section 116.8.

7
8 **SECTION 116.10. NO PRIVATE RIGHT OF ACTION AGAINST CITY.**

9 This Chapter 116 shall not create any private right of action against the City. The City shall
10 have no duty or liability based on any failure to achieve the disclosure required by this Chapter or
11 based on the City's failure to prosecute.

12
13 Section 5. The Planning Code is hereby amended by adding new Section 314, to read
14 as follows:

15 **SECTION 314. REVIEW OF RESIDENTIAL PROJECTS.**

16 In addition to any other factors appropriate for consideration under the Planning Code, the
17 Planning Department and Commission shall consider the compatibility of uses when approving
18 Residential Uses adjacent to or near existing permitted Places of Entertainment and shall take all
19 reasonably available means through the City's design review and approval processes to ensure that the
20 design of such new residential development projects takes into account the needs and interests of both
21 the Places of Entertainment and the future residents of the new development. Such considerations may
22 include, among others:

23 (a) The proposed project's consistency with applicable design guidelines;
24
25

1 (b) any proceedings held by the Entertainment Commission relating to the proposed project,
2 including but not limited to any acoustical data provided to the Entertainment Commission, pursuant to
3 Administrative Code Section 116.5; and

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

7
8 Section 6. The Police Code is hereby amended by revising Sections 1060.5, 1060.15,
9 and 1060.24.1, to read as follows:

10
11 **SEC. 1060.5. DETERMINATION OF APPLICATION FOR A PLACE OF**
12 **ENTERTAINMENT PERMIT.**

13 * * * *

14 (b) (1) The applicant shall cause a notice of the hearing to be conspicuously and
15 continuously posted for at least 30 days before the scheduled hearing date on the premises of
16 the Business. Where the Business is located in a neighborhood-commercial or mixed
17 residential district, as defined in Article 7 and 8 of the ~~San Francisco~~-Planning Code, the
18 applicant shall also make a good faith effort to distribute leaflets at each residence located
19 within 150 feet of the Business, unless the Entertainment Commission finds that a Business
20 located in a district is not likely to significantly generate nighttime noise and traffic to the
21 detriment of residences located in that immediate area. Applicants subject to the requirement
22 of distributing leaflets shall do so at least 30 days before the scheduled hearing date and the
23 distribution shall be done in compliance with the provisions of Article 57 (beginning with
24 Section 184.69) of the ~~San Francisco~~-Public Works Code. The Director shall provide notice of
25 the hearing at least 30 days before the hearing to any Person who has filed a written request

1 for such notice, which notice may be given electronically if the Person has provided electronic
2 contact information, or by mail.

3 * * * *

4 (d) (1) The Entertainment Commission shall hold a hearing and determine whether to
5 grant or deny the permit within 45 City business days of the date that the applicant has
6 submitted a complete application under Section 1060.5(a), except that this 45 day period shall
7 be extended for such period or periods of time that apply under the following circumstances:

8 (A~~ii~~) If the Entertainment Commission finds that an extension of time is
9 necessary to obtain additional information for its review of the application under the standards
10 set forth in Subsection (f) of this Section, the time period shall be extended for an additional
11 amount of time as the Commission determines appropriate, up to 15 additional days; and

12 (B~~ii~~) Upon the applicant's request, the Entertainment Commission shall
13 continue the hearing for an additional period of time to allow the applicant an opportunity to
14 comply with the requirements of this Article, in which case the time period is extended for that
15 additional period; and

16 (C~~iii~~) If the applicant fails to post or maintain notice of the hearing, or
17 make a good faith effort to distribute leaflets to residences, as required by Subsection (b) of
18 this Section, the Director shall have the hearing before the Entertainment Commission
19 continued for such period or periods of time that the Director determines necessary for the
20 applicant to comply with the posting requirement, in which case the time period is extended
21 for that additional period or periods of time; and

22 (D~~iv~~) If the Director finds that the Commission is unable to meet during
23 the 45 day time period or any permitted time extension due to exigent circumstances, the time
24 period shall be extended until the Commission is able to meet; the Commission shall consider
25 the matter at the first meeting that it conducts following such circumstances.

1 * * * *

2 (g) Conditions on Permits.

3 (1) When the Commission grants or conditionally grants a permit, it shall require
4 the applicant as a condition of the permit to comply with the Security Plan that has been
5 approved as provided under this Article.

6 (2) Pursuant to its authority under subsection (e) of Section 2909 of this Code, when the
7 Commission grants, conditionally grants, or amends a permit, it may require the Permittee as a
8 condition of the permit to comply with noise limits that are lower or higher than those set forth in
9 Article 29 of this Code. In considering whether to impose noise limits that are different from those in
10 Article 29, the Commission may consider any or all of the following factors:

11 (A) Noise generated by licensed Places of Entertainment generally Citywide, as
12 determined by Commission staff;

13 (B) Noise generated by the Place of Entertainment in the evening and nighttime;

14 (C) In the case of an amendment to an existing permit, the length of time the
15 Place of Entertainment has operated, either under the current operator or prior operators;

16 (D) In the case of an amendment to an existing permit, whether the Commission,
17 Police Department, and/or Department of Public Health have received noise complaints related to the
18 operation of the Place of Entertainment;

19 (E) The proximity of the Place of Entertainment to other Places of
20 Entertainment or commercial uses;

21 (F) The proximity of the Place of Entertainment to existing residential buildings;
22 and

23 (G) In the case of an amendment to an existing permit, whether the Place of
24 Entertainment's operations preceded the construction or current use of the buildings in which
25 complainants reside or work.

1 (3) The Commission may impose additional reasonable time, place and manner
2 conditions on the permit. In considering whether to impose said conditions, the Commission
3 shall consider where relevant the circumstances surrounding any previous denial of a permit
4 application or previous suspension or revocation of a permit, under this Article or Article 15.2,
5 for the same permit applicant or Permittee.

6 * * * *

7 (i) The Entertainment Commission shall maintain an updated list of all currently permitted
8 Places of Entertainment, and shall provide that list, with updates as appropriate, to the Planning
9 Department.

10
11 **SEC. 1060.15. SOUND TEST.**

12 As a condition of any permit issued under this Article, the Commission or the Director
13 shall have the authority to require a sound test to ensure compliance with the allowable noise
14 limits under Section 49 and Article 29 of the San Francisco Police Code or any alternative noise
15 limits set by the Commission in the permit as authorized by subsection (e) of Section 2909 of this Code.

16
17 **SEC. 1060.24.1. COMPLIANCE WITH CONDITIONS; AMENDMENT OF PERMIT TO**
18 **CHANGE CONDITIONS.**

19 No Permittee shall operate a Business in any manner inconsistent with any condition
20 imposed on the permit. A Permittee may request an amendment to a permit to remove or
21 change a condition, including but not limited to an amendment to increase the noise limits contained
22 in the permit as authorized by subsection (e) of Section 2909, by filing a request with the Secretary
23 of the Commission and paying the fee for an Amendment to a Permit required under Police
24 Code Section 2.26. The Entertainment Commission shall conduct a hearing and determine
25 whether to approve the application to amend the permit according to the procedures

1 governing the initial application as set forth in Section 1060.5 and the standards set forth in
2 Section 1060.5(f).

3
4 Section 7. Effective Date; Inapplicability to Pending Building Permit Applications.

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

9 (b) This ordinance shall not apply to any complete application for a building or site
10 permit that was submitted to the Department of Building Inspection before the effective date of
11 this ordinance.

12
13 Section 8. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 Section 9. Undertaking for the General Welfare. In enacting and implementing this
21 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
22 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
23 is liable in money damages to any person who claims that such breach proximately caused
24 injury.

1 Section 10. Directions to Clerk of the Board. The Clerk of the Board of Supervisors is
2 directed to forward this ordinance to the State Building Standards Commission after final
3 passage, as required by Health and Safety Code Section 17958.7. The Clerk is further
4 directed to send a copy of the finally-passed ordinance to the California Department of
5 Housing and Community Development for informational purposes, as required by Health and
6 Safety Code Section 19165.

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: 
11 VICTORIA WONG
12 Deputy City Attorney

13
14
15
16
17
18
19
20
21
22
23
24
25
n:\legana\as2014\1500201\00977858.doc