[Residential and Industrial Compatibility and Protection.]

Ordnance amending the Administrative Code to add Chapter 35 to provide that certain industrial uses shall not be considered a nuisance due to changed circumstances on adjacent property, with certain exceptions; to require notice regarding adjacent industrial uses to be provided prior to the transfer of real property for residential uses; to provide for civil penalties; to provide for a private right of action; and making environmental findings.

Note: Additions are single-underline italics Times New Roman; deletions are strikethrough italics Times New Roman. Board amendment additions are double underlined. Board amendment deletions are strikethrough normal.

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

Section 1. Environmental Findings. The Planning Department has determined that the actions contemplated in this Ordinance are exempt from the California Environmental Quality Act (California Public Resources Code section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 060265 and is incorporated herein by reference.

Section 2. Findings.

(a) It is in the public interest to recognize industrial businesses as an important component of San Francisco’s economic base. Accordingly, the City seeks to develop and implement focused policies and programs that encourage the retention and expansion of industrial businesses. This effort is consistent with and furthers the Commerce and Industry Element of the General Plan, which calls for a balanced local economy where good paying jobs are available to the widest breadth of the San Francisco labor force.

(b) Industrial businesses such as printing services, restaurant supply, and janitorial
services provide vital support services to San Francisco’s leading industries. Moreover,
because they are strategically located near the City’s major areas of business and commerce
and near major freeway corridors, industrial businesses provide support services to leading
downtown and regional businesses and industries in a timely and cost-efficient manner.

(c) Industrial businesses such as auto repair services, contractors, building supply
companies, and landscaping companies provide direct services to city residents, creating
easy access to services and enhancing the residents’ quality of life.

(d) Industrial businesses are a key element in ensuring employment opportunities to all
San Franciscans. Industrial businesses pay higher wages and offer entry-level workers more
opportunity for advancement than service sector employment, and are an important source of
employment for people of all skill and educational levels. Industrial businesses provide
important employment opportunities for new immigrants, including those for whom English is a
second language. Studies have shown that the loss of industrial jobs has a disproportionate
impact on minorities and immigrants.

(e) Industrial businesses generate substantial tax revenue each year that helps to fund
vital City services.

(f) Industrial businesses are a stable sector of the City’s economic base and support
the economy when other sectors experience slowed growth or decline. A sustainable San
Francisco economy depends on a diverse economic base.

(g) The economic importance of industrial businesses to cities like San Francisco is
demonstrated by an independent analysis of Boston’s industrial businesses, which found that
such businesses provided one-fifth of the city’s jobs, were mostly held by city residents, and
generated approximately $30 million annually in city tax revenue.

(h) The continuing importance of industrial businesses to San Francisco is highlighted
by the projection of the Association of Bay Area Governments (ABAG) that there will be approximately 18,000 new industrial jobs created in San Francisco from 2000 to 2025.

(i) San Francisco’s zoning code currently permits residential uses in areas traditionally reserved for industry. In addition, the Planning Department’s proposed zoning for the city’s eastern neighborhoods would establish mixed-use districts comprised of both residential and industrial uses. As a result of both historical and proposed zoning controls, an increasing number of San Francisco’s businesses operate in close proximity to residential developments.

(j) It is in the public interest to notify potential future residents of these industrial and mixed-use districts of the types of impacts such industrial uses may have, including, among others, impacts related to noise and odors. Notice of possible impacts is one component of a strategy to provide for compatible adjacent uses and to protect residents from potentially unknown consequences of moving to an industrial or mixed-use neighborhood.

(k) The protection of industrial businesses from nuisance actions generated by new residential developments is an important component of an economic development strategy for the retention of San Francisco’s industrial sector.

Section 3. The San Francisco Administrative Code is hereby amended by adding Chapter 35 to read as follows:

CHAPTER 35. RESIDENTIAL AND INDUSTRIAL BUSINESS COMPATIBILITY AND PROTECTION

SEC. 35.1. SHORT TITLE.

This Chapter may be referred to as the Residential and Industrial Compatibility and Protection Ordinance.

SEC. 35.2. DECLARATION OF POLICY.
It shall be the policy of the City and County of San Francisco to protect its existing and future industrial businesses from potentially incompatible adjacent and nearby development provided that such industrial businesses are conducted and maintained in a manner consistent with proper and accepted customs and standards and in accordance with all applicable federal, state, and local laws and regulations. The City and County of San Francisco encourages the use of best available control technologies and best management practices whenever possible to further reduce the potential for incompatibility with other uses, including residential.

Furthermore, it shall be the policy of the City and County of San Francisco to protect the future residents of industrial and mixed-use neighborhoods by providing for a notification process so that such residents are made aware of some of the possible consequences of moving to an industrial or mixed use neighborhood and by encouraging and, if possible, requiring, features in any new residential construction designed to promote the compatibility of residential and adjacent or nearby industrial uses.

SEC. 35.3. DEFINITIONS.

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

(a) "Adjacent Property" means all real property inside or within 150 feet of an Industrial Use Zoning District.

(b) "Eligible Industrial Use" means any legally existing, including legally non-conforming, or future Industrial Use, as defined in this Section, conducted or maintained for industrial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar industrial uses in the same neighborhood if such uses exist, and in accordance with all applicable federal, state, and local laws and regulations.

(c) "Industrial Use" means any industrial use as defined in the Planning Code, including, but not limited to, Automotive as defined in Planning Code Section 223, Animal Services as defined in
Planning Code Section 224, Wholesaling, Storage, Distribution and Open Air Handling of Materials and Equipment as defined in Planning Code Section 225, Manufacturing and Processing as defined in Planning Code Section 226, Other Uses as defined in Planning Code Section 227, and Light Manufacturing, Wholesale Sales, Storage as defined in Planning Code Section 890.54. Upon adoption of the permanent Eastern Neighborhoods Zoning Controls, “Industrial Use” shall also include Production, Design, and Repair Uses (“PDR Uses”), as defined in the zoning controls, including, but not limited to, Publishing, Audio/Visual, Arts, Fashion, Transport, Food/Event, Interior Design, Construction, Equipment, Motor Vehicles, and Other PDR uses.

(d) “Industrial Use Zoning District” means a zoning district designated C-M (Heavy Commercial), M-1 (Light Industrial), M-2 (Heavy Industrial), SPD (South Park), RSD (Residential/Service Mixed Use), SLR (Service/Light Industrial/Residential Mixed Use), SLI (Service/Light Industrial), SSO (Service/Secondary Office), or MB-Cl (Mission Bay-Commercial Industrial). Upon adoption of the permanent Eastern Neighborhoods Zoning Controls, “Industrial Use Zoning District” shall also include a zoning district within the Eastern Neighborhoods Plan Area in which PDR is a principally permitted use, including, but not limited to, zoning districts designated PDR Zone, Employment and Business Development Zone, or Urban Mixed Use Zone.

(e) “Residential Use” means the use of any real property as a dwelling unit or units, regardless of whether it is a primary residence.

(f) “Transfer” means, but is not limited to, the following: sale or lease.

SEC. 35.4. PROTECTION OF INDUSTRIAL USES.

No Eligible Industrial Use shall be or become a public or private nuisance due to any changed condition in Adjacent Property after the Industrial Use has been in operation for more than two years if it was not a nuisance at the time it was established.

SEC. 35.5. EXEMPTIONS AND NONAPPLICATION.

Supervisor Maxwell
BOARD OF SUPERVISORS
(a) The provisions of Section 35.4 shall not apply whenever a nuisance results from the
negligent, improper, or illegal operation of any Industrial Use.

(b) This Chapter is not intended to supersede or limit any other provisions of the Municipal
Code with regard to the regulation and control of Industrial Uses, including, but not limited to, Article

(c) This Chapter shall not authorize a change in use or uses where such is otherwise controlled
or prohibited by the Municipal Code or any state or federal law.

(d) This Chapter shall not authorize the continuation or expansion of a nonconforming use
where such is otherwise controlled or prohibited by the Municipal Code.

SEC 35.6. NOTICE REQUIREMENTS FOR TRANSFER OF REAL PROPERTY FOR
RESIDENTIAL USE.

(a) Notice Requirement. The transferor of Adjacent Property for Residential Use must provide
one of the following notices to the transferee as follows.

(1) For all transfers of Adjacent Property having any Residential Use, transfers
subject to Civil Code Section 1102 et seq. For transfers of Adjacent Property for Residential
Use subject to the disclosure requirements of California Civil Code Section 1102 et seq., the
transferor shall provide the notice described in Subsection 35.6(a)(3) on the Local Option Real
Estate Transfer Disclosure Statement provided for in California Civil Code Section 1102.6a.

(2) Transfers Not Subject to Civil Code Section 1102 et seq. For transfers of Adjacent
Property for Residential Use not subject to the disclosure requirements of California Civil
Code Section 1102 et seq., the transferor shall provide the notice disclosure described in
Subsection 35.6(a)(3) on a separate written document. This notice shall be provided for a lease
prior to the tenant(s) signing a lease or for a purchase agreement for the transfer of the Adjacent
Property at the time required by California Civil Code Section 1102.3.
Notice Disclosure. The notice disclosure shall include a copy of the then-current text of this Chapter, as an addendum, citation to this Section 35.6 and a written statement containing substantially the following language in at least 12-point font:

"NOTICE DISCLOSURE OF ADJACENT INDUSTRIAL USES

You are purchasing or leasing property that may be adjacent to an existing industrial use. Industrial uses may subject you to inconveniences or discomfort arising from industrial operations, which may include, but are not limited to: noise, odors, dust, chemicals, smoke, operation of machinery, and loading and unloading operations. One or more of these types of inconveniences may occur even if the industrial use is operating in conformance with existing laws and regulations and locally accepted customs and standards for operations of such use. If you live near industrial uses, you should be prepared to accept such inconveniences or discomfort as normal and a necessary aspect of living in a neighborhood with mixed industrial and residential uses. Transferor shall maintain a copy of this disclosure in the transferor’s records for not less than two years, and a copy shall be provided to the City or the transferee upon request."

(b) Affidavit of Notice Disclosure. The transferor shall make and sign, upon penalty of perjury, an affidavit stating that the transferor provided the notice disclosure required by this Section and shall attach a copy of the notice actually provided; provided, however, that the attachment need not also include a copy of the then-current text of this Chapter. This affidavit, with the attached notice provided, shall be maintained in the transferor’s records for not less than two years, and a copy shall be provided to the City or the transferee upon request.

(c) Civil Penalty for Failure to Provide Notice. Any person who fails to provide the notice disclosure required by this Section may be liable for a civil penalty— not to exceed of not less than $500 for each failure to provide notice said disclosure. This penalty may be assessed and recovered in a civil action brought in the name of the people of the City by the City Attorney in any
court of competent jurisdiction. The City Attorney also may seek recovery of the attorneys' fees and

 costs incurred in bringing a civil action pursuant to this Section.

 (d) Private Right of Action. The current or former transferee of the Adjacent Property

transferred for Residential Use may institute a civil proceeding for money damages, not to exceed of
not less than $500 for each failure to provide notice the disclosure required by this Section 35.6,

 and whatever other relief the Court deems appropriate. The prevailing party shall be entitled to
reasonable attorney's fees and costs pursuant to order of the Court. The remedy available under this
 subsection shall be in addition to any other existing remedies that may be available to the transferee.

 (c) This Chapter shall not create any private right of action against the City. The City shall

 have no duty or liability based on any failure to achieve the disclosure required by this Chapter or
 based on the City's failure to prosecute.

 SEC 35.7. PLANNING DEPARTMENT AND COMMISSION REVIEW OF RESIDENTIAL

 PROJECTS.

 The Planning Department and Commission shall consider, among other considerations, the
 compatibility of uses when approving Residential Uses adjacent to or near existing Industrial Uses and
to take all reasonably available means through the City's design review and approval processes to
ensure that the design of such new residential development projects is sensitive to both the existing
Industrial Uses and the future residents of the new development. Such considerations may include,
among others:

 (a) The proposed project's consistency with the Industrial Area Design Guidelines;

 (b) The proposed project's overall design, acoustical treatment, and ventilation to achieve
interior noise levels and ventilation compatible with residential standards; and

 Supervisor Maxwell

 BOARD OF SUPERVISORS
(c) The location of non-habitable spaces or spaces such as closets, bathrooms, kitchens, and/or landscaping so that such spaces may provide a buffer between the proposed habitable residential areas and any common property line with Industrial Uses.

SEC 35.8. SEVERABILITY

In the event that a court or agency of competent jurisdiction holds that a federal or state law, rule, or regulation invalidates any clause, sentence, paragraph, or section of this Chapter or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph, or section so that the remainder of this ordinance shall remain in effect.

Section 4. Within one year of the effective date of this ordinance, the Planning Department shall present a report to the Board at a public hearing, which report may include recommendations for modifications to this legislation to fulfill its purpose. In anticipation of changes to the Planning Department's definitions of "Industrial Use" and "Industrial Use Zoning District" due to the Eastern Neighborhoods planning process, the report shall focus on Section 35.3 of this legislation. In addition, the report shall inform the Board of the Planning Department's incorporation of the requirements of Section 35.7 of this legislation into its project review procedures.

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

By: Marlena G. Byrne
Deputy City Attorney

Supervisor Maxwell
BOARD OF SUPERVISORS
Ordinance amending the Administrative Code to add Chapter 35 to provide that certain industrial uses shall not be considered a nuisance due to changed circumstances on adjacent property, with certain exceptions; to require notice regarding adjacent industrial uses to be provided prior to the transfer of real property for residential uses; to provide for civil penalties; to provide for a private right of action; and making environmental findings.

August 1, 2006 Board of Supervisors — PASSED ON FIRST READING
Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin
Excused: 1 - Sandoval

August 8, 2006 Board of Supervisors — FINALLY PASSED
Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
Absent: 1 - Ma
I hereby certify that the foregoing Ordinance was FINALLY PASSED on August 8, 2006 by the Board of Supervisors of the City and County of San Francisco.

8/11/06
Date Approved

Gloria L. Young
Clerk of the Board

Mayor Gavin Newsom