

Guidelines for Entertainment Commission Review of Residential Development Proposals Under Administrative Code Chapter 116

Background

Chapter 116 of the Administrative Code, "Compatibility and Protection for Residential Uses and Places of Entertainment," was approved by Ordinance 70-15 on May 21, 2015. Chapter 116 creates a review process at the Entertainment Commission ("Commission") for proposed new residential construction and conversion projects within 300 radial feet of a permitted Place of Entertainment ("POE"). As part of that process, the Commission has the discretion to determine whether a hearing is required for a particular project. Specifically, the Commission, "or its staff as delegated by the Commission," may determine that a hearing on a proposed residential project is not required "if the available evidence indicates that noise from the [POE] is not likely to create a significant disturbance for residents" of the proposed project. (Admin. Code § 116.7(b).)

The Commission adopts these Guidelines to (1) delegate to Commission staff the Commission's authority to determine whether a hearing is required under Administrative Code Section 116.7(b), and (2) establish the criteria that Commission staff shall use in making such a determination.

Criteria for Staff Determination Regarding Whether to Hold a Hearing

Pursuant to Administrative Code Section 116.7(b), the Commission hereby delegates to its staff its authority to determine whether a hearing is required under that subsection. Within five (5) business days of receiving notice of the proposed project pursuant to Section 116.7(a), the Commission Director or designated staff shall review the project proposal and determine whether a Commission hearing is required based on the factors below.

A hearing on a proposed residential project is not required "if the available evidence indicates that noise from the [POE] is not likely to create a significant disturbance for residents" of the proposed project. (Admin. Code § 116.7(b).) In determining whether noise from the POE is "not likely to create a significant disturbance" for residents, staff shall consider each of the following criteria:

1. Size of POE: Is the POE's occupancy capacity larger than 270 people?
2. Size of residential development: Does the proposed project include seven (7) or more residential units?
3. Complaint History: Has the Entertainment Commission, Police Department, and/or Department of Public Health received noise complaints related to the POE's operations on three (3) or more separate occasions within the last 12 months?
4. POE Density: Do two (2) or more POEs exist within 300 radial feet of proposed project?
5. POE Hours of Operation: Does the POE operate after 10:00 p.m.?

An affirmative answer to one or more of the above listed factors shall weigh in favor of holding a hearing. Similarly, the absence of one or more of the above factors shall weigh against holding a hearing.

In addition, staff may consider any exterior acoustical measurements of conditions at the project site taken by staff pursuant to Section 116.6 when determining whether a hearing is required. Further, staff

may consider any other factors that, based on the facts and circumstances pertaining to a particular project, are relevant to the determination.

Hearing by Residential Development Review Committee

If staff determines a hearing is required under Section 116.7, the hearing must be held within 30 calendar days after the Commission receives notice of the proposal from the project sponsor. (Admin. Code § 116.7(c). The Commission hereby delegates to staff its authority under Section 116.7(c) to extend the 30-day hearing deadline for up to an additional 15 days to accommodate scheduling conflicts.

The Commission hereby authorizes the Commission President to appoint a “Residential Development Review Committee” (“Committee”) to conduct hearings on projects subject to Chapter 116. The Committee shall consist of three Commissioners and shall include the President or Vice President of the Commission, and the Commission’s Urban Planning Representative. Appointments to the Committee shall be renewed on an annual basis by the Commission President.

The Committee hearings shall include the review of any relevant sound measurements conducted by Commission staff and/or the project sponsor, as well as any existing or anticipated noise attenuation efforts by the POE and the project sponsor. At the hearing, the Committee shall prepare proposed written comments and recommendations on the project to be forwarded to the full Commission for consideration. At the first Commission meeting following the Committee hearing, the Commission shall consider the Committee’s recommendations and adopt written findings to be transmitted to the Planning Department and/or DBI.

Projects For Which A Hearing Is Not Required

If staff determine that a hearing is not required, staff may decide to convene a meeting with the Project Sponsor and any affected POEs to discuss noise concerns and any existing or anticipated noise attenuation efforts by the POE and the Project Sponsor.

If staff determines that neither a hearing nor a staff meeting is required, staff shall require the project sponsor to meet with affected POE permit holder(s) to discuss noise concerns and any existing or anticipated noise attenuation efforts by the POE and the project sponsor. Following such a meeting, the project sponsor must submit to Commission staff a signed statement detailing whether the parties reached any agreement related to sound attenuation or other noise issues. Commission staff shall review the submitted statement and reference the statement, as appropriate, in the Commission’s written recommendations to the Planning Department and/or DBI regarding the project.

Transmission of Written Comments and Recommendations to the Planning Department and/or DBI

The Commission shall provide in writing to the Planning Department and/or DBI, as appropriate, (1) a notice regarding whether a hearing was held and whether the project sponsor attended the hearing, and (2) written comments and recommendations, if any, pertaining to noise issues for the proposed project.

The timing for transmission of such comments is as follows:

- If a hearing is held: Within two (2) business days of the hearing
- If no hearing: Within 30 calendar days after the Commission receives notice of the project pursuant to Section 116.7(a)

TIMELINE																																	
Day	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	
Project Sponsor Submits	█																																
Hearing determination		█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	
Sound inspection		█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	
Hearing/Meeting		█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	
Written Recs and submitted to Planning																																	

Adopted by the Entertainment Commission: July █, 2015

AYES: _____; NAYS: _____

Executive Director Jocelyn Kane

Attachments: Appendix A "Review Form"

DRAFT