# Memo to the Planning Commission <br> HEARING DATE: OCTOBER 25, 2018 <br> Continued from the September 13, 2018 Hearing 

1650 Mission St.
Suite 400

| Date: | October 24, 2018 |
| :--- | :--- |
| Case No.: | 2017-015181CUA |
| Project Address: | 412 BROADWAY |
| Zoning: | Broadway NCD (Neighborhood Commercial) Zoning District <br> 65-A-1 Height and Bulk District |
| Block/Lot: | 0144/033 <br> Project Sponsor: <br>  <br>  <br>  <br>  <br>  <br>  <br> Jeremy Paul <br> 854 Castro Street, \#466 <br> San Francisco, CA 94114 |
| Staff Contact: | Andrew Perry - (415) 575-9017 <br> andrew.perry@sfgov.org |

## BACKGROUND

On September 13, 2018, the Planning Commission conducted a hearing and heard public testimony on Conditional Use Authorization Application No. 2017-015181CUA, requesting an extension of operating hours until 4 a.m. for the existing Restaurant and Nighttime Entertainment business (d.b.a. The Penthouse Club and Restaurant). The Department's recommendation was for disapproval of the subject application; however, upon receipt of public testimony at the hearing (which was largely in support of the proposal), the Commission directed Department staff to prepare an approval motion for consideration. At the hearing, the Commission also requested additional information on the following:

1. Status of California 4 a.m. alcohol bill, and local implications (if known);
2. Current pending MCD/Cannabis Retail applications in the vicinity and permitted hours for such businesses;
3. Studies referenced by the project sponsor and others during public comment, regarding reductions in crime, noise and other nuisances from staggered bar and entertainment closing times.
4. Police calls-for-service data in the immediate area surrounding the Hustler Club at 1031 Kearny;
5. Suggested metrics to evaluate whether extension of hours is successful if Commission requests a 6 -month check-in hearing.

## CURRENT PROPOSAL AND ADDITIONAL INFORMATION

The project description and request for extension of hours until 4 a.m., 7 days per week has not changed since the last hearing. The additional information, as requested by the Commission, will be detailed below.

## California 4 a.m. Bill

Senate Bill 905 (the "Bill"), introduced by Senator Scott Wiener, would have allowed for a pilot program in 9 cities across California to allow existing alcohol-serving businesses to continue serving alcoholic beverages during the 2 a.m. to 4 a.m. range, starting in 2021. Within the 9 qualifying cities, the Bill included a provision for local control, stating "The determination of the necessity for, and types of, local licensing and local permitting shall be made by the local governing body."

The Bill was passed in the State Assembly and State Senate on August 29 and August 30, 2018, respectively. However, on September 28, 2018, Governor Jerry Brown vetoed the Bill, returning it to the State Senate without signature. At this time, it is unclear whether this bill or another similar bill may move forward again in the future.

## Pending Cannabis Applications

There are no existing Medical Cannabis Dispensaries (MCDs) or approved Cannabis Retail uses within the Broadway NCD or within a quarter-mile of the project site at 412 Broadway. There are four (4) pending Cannabis Retail applications within a quarter-mile of the project site. The four pending applications are located at the following sites:

1. 580 Green Street ( $0116 / 020 A$ ) - North Beach NCD
2. 1335 Grant Avenue $(0131 / 004)$ - North Beach NCD
3. 1234 Grant Avenue ( $0145 / 044$ ) - North Beach NCD
4. 312 Columbus Avenue (0145/013) - Broadway NCD

In order to proceed, all four pending applications would require Conditional Use Authorization for a Cannabis Retail use within either the North Beach or Broadway NCD. During any of those individual hearings, the Commission could restrict individual hours of operation as a condition of approval; however, hours of operation are principally permitted between 6 a.m. and $2 \mathrm{a} . \mathrm{m}$. for the subject NCDs, requiring conditional use authorization only for those hours between $2 \mathrm{a} . \mathrm{m}$. and $6 \mathrm{a} . \mathrm{m}$., as seen with the subject application. The overall potential for Retail Cannabis uses along Broadway, east of Columbus Avenue, is low due to the location of John Yehall Chin Elementary School at 350 Broadway; a 600-foot buffer around the school limits potential dispensaries to that area west of Kearny, and then primarily to the northwest along Columbus Avenue within the North Beach NCD.

## Staggered Closing Times

The Project Sponsor has provided 2 example studies to support a claim that staggered closing times for bars and entertainment venues helps to reduce crime, noise, and other nuisance activities. While these studies do not specifically focus on more localized nuisance behaviors within a geography around a particular establishment, they do generally support the idea that staggered bar closing times can lead to reductions in assaults and other socially disorderly crimes. From the Bieler and Roman study, "The presence of large crowds lingering outside after bars close is associated with larger numbers of assaults as groups compete for transportation or incompatible social groups are forced to mingle... By reducing the number of people on the street at any given time, the possibility of motivated offenders coming into contact with other motivated offenders or potential victims is greatly reduced." Additionally, a letter was submitted by a Senior Research Scientist at the Prevention Research Center in Berkeley, California who
has been conducting research on health and social risks of young adults due to overuse of alcohol and drugs, physical and sexual aggression, and drinking and driving. Their letter provided data with regard to blood alcohol content (BAC) in individuals after four hours of drinking, and how their BAC would be lowered with an additional two hours of non-alcoholic consumption. Their research suggests that a reduction in BAC levels may also result in a reduction of aggression and other public nuisance activities.

## Police Data

The Department received a response to the data request on Monday, October $22^{\text {nd }}$, after the time of packet publication and delivery for today's hearing. The data appears as an attachment to this memo. Staff has discussed the data with Officer Steve Matthias, SFPD Central Station. In general, the data appear to show that incidents/calls to the police remain high after 2 a.m. along the 1000 block of Kearny Street, and in many cases to the Hustler Club (1031 Kearny) in particular. The data also appear to indicate higher incidences of physical crime issues - assault, robberies, weapon possession - associated with the Broadway NCD corridor than elsewhere within Central District.

Lastly, in speaking with Officer Matthias, he notes that Central Station on average experiences a $60 \%$ nightly reduction in the number of on-duty officers after 2 a.m.

## Suggested Metrics

Staff has not received formal suggestions for metrics from the project sponsor or the surrounding neighborhood groups. In potentially evaluating whether the extension of hours has or has not been successful, staff generally recommends data collection and analysis for a broader geography than simply the subject establishment itself. Data collection should include information on not only the number of incidents/calls reported, but the types of crimes/incidents, and the times at which they occur. Staff believes information on the numbers of police officers needed to respond to incidents along the Broadway corridor after 2 a.m. may also be illustrative.

## REQUIRED COMMISSION ACTION

In order for the project to proceed, the Commission must grant Conditional Use Authorization to allow for an extension of hours until 4 a.m. within the Broadway NCD. If the Commission wishes to request a 6 month check-in hearing or limit the extension of hours in any way (e.g. extended 4 a.m. closing time only on Thursday, Friday and Saturday nights), these should be specified as conditions of approval in the Commission's motion.

Attachments:<br>Revised Draft Approval Motion - Conditional Use Authorization<br>Original Draft Disapproval Motion - Conditional Use Authorization<br>Project Sponsor Submittals and Studies<br>SF Department of Emergency Management Police Call Data

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Planning Commission Draft Motion HEARING DATE: OCTOBER 25, 2018 <br> Continued from September 13, 2018 <br> | Case No.: | 2017-015181CUA | Fax: |
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| Project Address: | 412 BROADWAY | 415.558 .6409 |
| Zoning: | NCD (Broadway Neighborhood Commercial District) | Planning |
|  | 65-A-1 Height and Bulk District | linformation: |
| Block/Lot: | 0144/033 |  |
| Project Sponsor: | Jeremy Paul |  |
|  | 854 Castro Street, \#466 |  |
|  | San Francisco, CA 94114 |  |
| Property Owner: | 408-412 Broadway LLC |  |
|  | 250 Columbus Avenue, \#207 |  |
|  | San Francisco, CA 94133 |  |
| Staff Contact: | Andrew Perry - (415) 575-9017 |  |
|  | andrew.perru@sfoov.org |  |

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1650 Mission St.
Suite 400 San Francisco,

ADOPTING FINDINGS RELATING TO APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 303 AND 714, TO PERMIT AN EXTENSION OF OPERATING HOURS UNTIL 4 A.M. DAILY FOR AN EXISTING RESTAURANT AND NIGHTTIME ENTERTAINMENT USE (D.B.A. THE PENTHOUSE CLUB \& RESTAURANT), WITHIN THE BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT (NCD) AND 65-A-1 HEIGHT AND BULK DISTRICT.

## PREAMBLE

On November 29, 2017, Jeremy Paul of Quickdraw Permit Consulting (hereinafter "Project Sponsor") filed Application No. 2017-015181CUA (hereinafter "Application") with the Planning Department (hereinafter "Department") for a Conditional Use Authorization pursuant to Planning Code Sections 303 and 714, to permit an extension of operating hours until 4 a.m. daily for an existing Restaurant and Nighttime Entertainment use (d.b.a. The Penthouse Club \& Restaurant) (hereinafter "Project") at 412 Broadway, Block 0144 Lot 033 (hereinafter "Project Site").

The Planning Department Commission Secretary is the custodian of records; the File for Case No. 2017015181CUA is located at 1650 Mission Street, Suite 400, San Francisco, California.

On June 14, 2018 and August 30, 2018, the San Francisco Planning Commission (hereinafter "Commission") continued this Project without public comment or hearing to September 13, 2018. On September 13, 2018 the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application No. 2017-015181CUA and continued the hearing to October 25, 2018.

The project is not subject to the California Environmental Quality Act ("CEQA") as the extension of hours is not considered a "project" under CEQA.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use Authorization as requested in Application No. 2017-015181CUA, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. Project Description. The Project is a request for Conditional Use Authorization to permit the extension of operating hours until 4 a.m. daily for an existing Restaurant and Nighttime Entertainment use (d.b.a. The Penthouse Club \& Restaurant) within the Broadway Neighborhood Commercial District (NCD) per Planning Code Section 714. As state law currently prohibits the sale of alcohol past 2 a.m., the business would not allow for the sale of alcohol during the additional hours of operation. No other changes are proposed to the uses on-site, or to physical aspects of the building itself.
3. Site Description and Present Use. The Project is located at 412 Broadway, Lot 33 in Assessor's Block 144, within Supervisor District 3. The lot measures 137.5 -feet deep with 69.5 feet of frontage along Broadway for a total area of approximately 9,556 square feet. The site is developed with a two-story building built circa 1968, and which contains approximately 15,000 square feet. A Restaurant and Entertainment use has been in existence at the site dating back at least to 1999, with the current tenant (d.b.a. The Penthouse Club \& Restaurant) having occupied the subject space since March 2012.
4. Surrounding Properties and Neighborhood. The Project Site is located within the Broadway Neighborhood Commercial District (NCD), which primarily extends along Broadway for roughly 3 blocks, starting just west of Columbus Avenue and extending east to Osgood Place. The immediate context along Broadway is mixed in character, with buildings typically ranging between two and four stories, although the street is zoned for heights up to 65 feet. There are also several vacant lots along the NCD used for automobile parking. The Broadway corridor is recognized as a citywide and regional entertainment district, with a concentration of nightclubs, cabaret venues, adult theaters, bars and restaurants, and the Broadway NCD is one of only a few neighborhood commercial districts in the city that may allow adult businesses with a Conditional Use Authorization. Above the ground floor uses are typically nonconforming office uses, tourist hotels, or residential uses including several residential hotels.

Beyond the immediate context, the Broadway corridor is part of a larger commercial area which includes Chinatown to the west and southwest, North Beach to the northwest, and the Jackson Square area to the immediate south, and which subsequently extends into the Downtown Financial District. Just over a quarter-mile from the project site to the east lies the Embarcadero, and to the immediate north of Broadway is the predominantly residential neighborhood of Telegraph Hill. On the immediate subject block, there is a large change in grade of approximately 100 feet between Broadway and Vallejo (the next parallel street to the north), with one large lot at the top of the hill containing forty-five residential condo dwelling units.
5. Public Outreach and Comments. The Project Sponsor held a Department-facilitated preapplication meeting on September 26, 2017 prior to filing the current application. The Project Sponsor subsequently sent an email on January 22, 2018 to those meeting attendees and interested neighborhood groups to inform them that the application would be moving forward, also offering to meet at any upcoming neighborhood meetings. Lastly, the Project Sponsor has held two open houses at the subject property prior to business hours on May 8 and May 15, 2018; invitations were again sent to pre-application meeting attendees, registered neighborhood groups, and all owners and occupants within 300 feet, as per the Project Sponsor.

The Department has received opposition to the proposal from one individual, and has received a joint letter of opposition on behalf of the Telegraph Hill Dwellers, Barbary Coast Neighborhood Association, Golden Gateway Tenants Association, and the 455 Vallejo Street Homeowners Association.

The Department has also received one letter of support for the proposal from the Top of Broadway Community Benefit District, and one letter of support for a 6 -month trial extension of the hours from the North Beach Business Association. The Department has received 25 emails of support for the proposal, including from employees of the business.
6. Planning Code Compliance. The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
A. Hours of Operation. Planning Code Section 714 states that a Conditional Use Authorization is required within the Broadway NCD for maintaining hours of operation from 2 a.m. to 6 a.m., as defined by Planning Code Section 102.

The current hours of operation for the subject business extend until 2 a.m. daily. The subject application requests Conditional Use Authorization to allow for the extension of operating hours until 4 a.m. daily.
B. Use. Planning Code Section 714 states that both Restaurant and Nighttime Entertainment uses are principally permitted within the Broadway NCD.

The existing business is legal and has been permitted as both a Restaurant and Nighttime Entertainment use, which are principally permitted in the subject District. There is no proposed change of use, or further addition of uses as part of the proposal.
C. Use Size. Planning Code Section 714 states that a Conditional Use Authorization is required for use sizes 3,000 square feet and above within the Broadway NCD.

The existing commercial space contains approximately 15,000 square feet and is considered a legal, permitted conditional use, in existence prior to enactment of the Broadrway NCD controls. No further expansion is proposed as part of the project, therefore the use size is permitted to continue in its existing configuration.
7. Conditional Use Findings. Planning Code Section 303 establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use authorization. On balance, the project complies with said criteria in that:
A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The proposed project involves an extension to the hours of operation for an existing Restaurant and Nighttime Entertainment business located in the Broadway NCD, which is a District characterized by a number of bars, entertainment venues, and nighttime-oriented activity. In a quarter-mile vicinity of the site, there are six businesses authorized for late-night hours past 2 a.m., including one similar entertainment establishment at 1031 Kearny Street (d.b.a. "Larry Flynt's Hustler Club") with extended hours on weekends. The requested extension of hours is therefore compatible with the existing entertainment-oriented nature of the Broadway NCD. Additionally, the existing entertainment venue is thoroughly soundproofed, whereby this intensification to hours of entertainment will not be detrimental to surrounding residential areas. Although neighboring residents have concerns about ongoing nuisance impacts during late-night hours, the existing club has demonstrated a commitment to quality in their operation of the venue, and management of crowds, noise, and disruptive behavior. Lastly, the proposed extension of hours is viewed as necessary and desirable for many members of the community, particularly those employees of the club that would be able to supplement their current earnings with a few extra hours of work each week. From a public health perspective, this proposal may also be viewed as desirable as it reduces the number of patrons that might otherwise be forced out onto the street at the regular 2 a.m. bar closing time; large gatherings of patrons around bar closing times have been linked to increased incidents of violence and other socially disruptive behavior.
B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:
(1) Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

There are no changes proposed to the existing building envelope, nor any other physical alterations proposed to the space.
(2) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Planning Code does not require any off-street parking or loading for an extension of hours, and the proposal is not likely to be detrimental to existing parking or transit operations in the vicinity. The proposal would likely result in fewer patrons exiting onto the Broadway corridor and surrounding areas immediately at 2 a.m. when most establishments are closing; however, this may also mean that patrons are remaining along the Broadway corridor even later into the evening.
(3) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The existing building would not be physically modified in any way, so there are no potential noxious or offensive emissions that would be linked to construction activity. Additionally, the existing building is currently soundproofed and insulated adequately in order to prevent the direct transmission of noise or odors beyond the premises. In an effort to provide crowd control and noise management, the current operator employs security personnel to patrol the block and discourage loitering by patrons, regardless whether they originated at the subject establishment.
(4) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The proposed project would not require any additional treatments related to landscaping, screening, open spaces, parking and loading areas, service areas, lighting or signs.
C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code, and is, on balance, consistent with the objectives and policies of the General Plan as detailed below.
D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed project is generally consistent with the stated purpose of the Broadway NCD, in that the proposal would enhance the existing Restaurant and Nighttime Entertainment use and generally promote late-night activity in the District, which are characteristics of this NCD. The Broadway NCD does have some limitations on proposed late-night activity in order to help protect the livability of the area; however, the operator has an excellent track record in the neighborhood, which suggests that they will continue to employ security personnel and measures that will help protect the livability of the surrounding area. White broad extension of hours for bars and entertainment venues in the District may result in negative impacts to the surrounding residential areas, the extension of hours for a single establishment should cause minimal detrimental effect. The staggering of closing times for bars and entertainment venues in the area overall could lead to reduced conflicts and nuisance incidents as nightlife patrons would not all empty onto the street at a single designated closing time; an extension of hours for the subject business would provide for increased variability among closing times.
E. That the use as proposed would satisfy any criteria specific to Adult Business, Nighttime Entertainment, and General Entertainment uses, as required under Planning Code Section 303(p).
(1) Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;
a. If the use is an Adult Business, it shall not be located within 1,000 feet of another such use; and/or

The existing use at the subject property is Restaurant and Nighttime Entertainment. There is no proposed change or addition of use to the property; therefore, this requirement does not apply to the project.
b. Not be open between 2 a.m. and 6 a.m.; and

The business does propose to operate past 2 a.m. until 4 a.m.; however, the Planning Commission may still authorize such a Conditional use that does not satisfy this criterion, as described below.
c. Not use electronic amplification between midnight and 6 a.m.; and

The subject business currently uses electronic amplification during their existing hours of operation until 2 a.m. As part of the proposed extension of hours, the project would include the use of electronic amplification until the requested closing time of 4 a.m. The Planning Commission may still authorize such a Conditional Use that does not satisfy this criterion, as described below.
d. Be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

The subject establishment has been soundproofed and insulated to prevent noise transmission beyond the premises. The current establishment has been evaluated by the Entertainment Commission and meets the standards of the San Francisco Noise Control Ordinance for fixedsource equipment noise. The Project Sponsor has also submitted a report from Charles M. Salter Associates, Inc. who evaluated the property for sound isolation, and finds that it complies with the ordinance.
(2) Notwithstanding the above, the Planning Commission may authorize a Conditional Use which does not satisfy the criteria set forth in (b) and (c) above, if facts presented are such to establish that the use will be operated in such a way as to minimize disruption to residences in and around the district with respect to noise and crowd control.

Evidence has been presented that the existing building is adequately soundproofed, and that the current operator has a security and operational management plan in place that is sufficient to
control crowd behavior and discourage loitering in front of the establishment. Due to the building's existing soundproofing, it seems unlikely then that additional hours of amplified entertainment would have a direct impact on surrounding building occupants. Likewise, due to the business' security plan and positive track record in the neighborhood, it seems unlikely that patrons would cause disruptions to the immediately adjacent properties along Broadway, provided the existing operator remains. As operators may change over time, a comparable security plan should be required of all future operators so as to minimize the possibility for disruptions to the adjacent residential area. Additionally, should disruptions occur in the future as a result of either this or a future operator, the Commission retains the right to consider revocation at a future hearing.
(3) The action of the Planning Commission approving a Conditional Use does not take effect until the appeal period is over or while the approval is under appeal.

In the event the Planning Commission approves a Conditional Use for the proposed expansion of amplified entertainment hours, the decision will not take effect until the conclusion of any relevant appeal period.
8. General Plan Compliance. The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

## COMMERCE AND INDUSTRY ELEMENT

## Objectives and Policies

## OBJECTIVE 6: <br> MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

## Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

Approval of the proposed extension of hours will help to preserve and enhance an existing Restaurant and Nighttime Entertainment business that has been in operation at the subject location since 2012. The proposed extension of hours could encourage more patronage of the Broadway entertainment district generally, and would specifically help to increase the wage earning potential of this particular business' employees. Particularly for this class of entertainment, the earning potential during late-night hours is far greater than a proposal that would extend the business' hours by two hours earlier in the day. While there are nearby residential areas which could be impacted by the proposed extension of hours, it is unlikely that a change to a single venue's closing time would be significantly detrimental to neighborhood character or livability, particularly given the positive track record of the subject business in the neighborhood with regard to security operations, noise and crowd control. Lastly, the Broadway NCD is recognized as a nightlife and entertainment hub within the City, and the subject application strengthens and encourages this specific characteristic which provides diversity among districts.
9. Planning Code Section 101.1(b) establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project complies with said policies in that:
A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

Through the addition of operating hours, the project will provide for increased resident employment opportunities and work hours. However, the existing use is not neighborhood-serving, rather drawing patrons from throughout the City and broader region.
B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The project will not result in the physical expansion of the existing building, and the existing uses at the project site are consistent with the character of the Broadway Neighborhood Commercial District. While increased late-night activity past 2 a.m. has the potential to result in increased nuisance activities to nearby residential neighborhoods, the subject business has an effective security and operations plan that should minimize disruption to adjacent areas.
C. That the City's supply of affordable housing be preserved and enhanced,

The project does not propose any affordable housing, nor would have any effect on existing affordable housing.
D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The project is not likely to have any effect on commuter traffic, MUNI transit service, or the availability of neighborhood parking due to the hours associated with the proposal. Extending hours of operation past the closing times of other nearby bars and places of entertainment, the proposal may help alleviate transportation demands around 2 a.m. when patrons are forced to leave other establishments.
E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The project does not include commercial office development, and helps to enhance service sector employment by providing the option for additional working hours.
F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The project will not include any physical alteration of the building and will therefore have no effect on this policy.
G. That landmarks and historic buildings be preserved.

The project would not have any effect on City Landmarks or historic buildings.
H. That our parks and open space and their access to sunlight and vistas be protected from development.

The project will have no effect on parks and open spaces.
10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
11. The Commission hereby finds that approval of the Conditional Use Authorization would promote the health, safety and welfare of the City.

## DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby APPROVES Conditional Use Authorization Application No. 2017-015181CUA subject to the following conditions attached hereto as "EXHIBIT A", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed (after the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives NOTICE that the 90 -day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90 -day approval period has begun for the subject development, then this document does not re-commence the 90 -day approval period.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on October 25, 2018.

Jonas P. Ionin
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: October 25, 2018

## EXHIBIT A


#### Abstract

AUTHORIZATION This authorization is for a conditional use to allow an extension of operating hours until 4 a.m. daily for an existing Restaurant and Nighttime Entertainment use (d.b.a. The Penthouse Club \& Restaurant) located at 412 Broadway, Assessor's Block 0144 and Lot 033, pursuant to Planning Code Sections 303 and 714 within the Broadway Neighborhood Commercial District (NCD) and a 65-A-1 Height and Bulk District and subject to conditions of approval reviewed and approved by the Commission on October 25, 2018 under Motion No XXXXXX. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.


## RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on October 25, 2018 under Motion No XXXXXX.

## PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. XXXXXX shall be reproduced on the Index Sheet of construction plans submitted with the site or building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

## SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

## CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

## Conditions of Approval, Compliance, Monitoring, and Reporting

 PERFORMANCE1. Validity. The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
2. Expiration and Renewal. Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
3. Diligent pursuit. Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
4. Extension. All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
5. Conformity with Current Law. No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

## MONITORING - AFTER ENTITLEMENT

6. Enforcement. Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction. For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, urww.sf-planning.org
7. Monitoring. The Project requires monitoring of the conditions of approval in this Motion. The Project Sponsor or the subsequent responsible parties for the Project shall pay fees as established under Planning Code Section $351(\mathrm{e})(1)$ and work with the Planning Department for information about compliance.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, wwwo.sf-planning.org
8. Revocation due to Violation of Conditions. Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

## OPERATION

9. Eating and Drinking Uses. As defined in Planning Code Section 202.2, Eating and Drinking Uses, as defined in Section 102, shall be subject to the following conditions:
A. The business operator shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Street and Sidewalk Maintenance Standards. In addition, the operator shall be responsible for daily monitoring of the sidewalk within a one-block radius of the subject business to maintain the sidewalk free of paper or other litter associated with the business during business hours, in accordance with Article 1, Section $\underline{34}$ of the San Francisco Police Code.
For information about compliance, contact the Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, http://sflpw.org.
B. When located within an enclosed space, the premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building, and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance of fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org.
For information about compliance with construction noise requirements, contact the Department of Building Inspection at 415-558-6570, wwwosfdbi.org.

For information about compliance with the requirements for amplified sound, including music and television, contact the Police Department at 415-553-0123, www.sf-police.org.
C. While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.
For information about compliance with odor or other chemical air pollutants standards, contact the
Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367),
wwwo.baaqma.gov and Code Enforcement, Planning Department at 415-575-6863, www.sfplanning.org
D. Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.
For information about compliance, contact the Bureau of Street. Use and Mapping, Department of Public Works at 415-554-.5810, http://sfdpw.org.
10. Community Liaison. Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator and all registered neighborhood groups for the area with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator and registered neighborhood groups shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
11. Notices Posted at Bars and Entertainment Venues. Notices urging patrons to leave the establishment and neighborhood in a quiet, peaceful, and orderly fashion and to not litter or block driveways in the neighborhood, shall be well-lit and prominently displayed at all entrances to and exits from the establishment.
For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.orglentertainment
12. Other Entertainment. The Other Entertainment shall be performed within the enclosed building only. The building shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance. Bass and vibrations shall also be contained within the enclosed structure. The Project Sponsor shall obtain all necessary approvals from the Entertainment Commission prior to operation. The authorized entertainment use shall also comply with all of the conditions imposed by the Entertainment Commission.
For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.org/entertainment
13. Lighting. All Project lighting shall be directed onto the Project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, woww.sf-planning.ors
14. Hours of Operation. The subject establishment is limited to the following hours of operation: Sunday through Saturday (i.e. 7 days per week) from 6:00a.m. to 4:00a.m.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

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# Planning Commission Draft Motion HEARING DATE: OCTOBER 25, 2018 <br> Continued from September 13, 2018 

1650 Mission St.
Suite 400 San Francisco,

| Case No.: | 2017-015181CUA | Fax: |
| :---: | :---: | :---: |
| Project Address: | 412 BROADWAY | 415.558.6409 |
| Zoning: | NCD (Broadway Neighborhood Commercial District) 65-A-1 Height and Bulk District | Planning information: 415.558 .6377 |
| Block/Lot: | 0144/033 |  |
| Project Sponsor: | Jeremy Paul <br> 854 Castro Street, \#466 |  |
|  | San Francisco, CA 94114 |  |
| Property Owner: | 408-412 Broadway LLC <br> 250 Columbus Avenue, \#207 |  |
|  | San Francisco, CA 94133 |  |
| Staff Contact: | Andrew Perry - (415) 575-9017 andrew.perry@sfgov.org |  |


#### Abstract

ADOPTING FINDINGS RELATING TO DISAPPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 303 AND 714, TO PERMIT AN EXTENSION OF OPERATING HOURS UNTIL 4 A.M. DAILY FOR AN EXISTING RESTAURANT AND NIGHTTIME ENTERTAINMENT USE (D.B.A. THE PENTHOUSE CLUB \& RESTAURANT), WITHIN THE BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT (NCD) AND 65-A-1 HEIGHT AND BULK DISTRICT.


## PREAMBLE

On November 29, 2017, Jeremy Paul of Quickdraw Permit Consulting (hereinafter "Project Sponsor") filed Application No. 2017-015181CUA (hereinafter "Application") with the Planning Department (hereinafter "Department") for a Conditional Use Authorization pursuant to Planning Code Sections 303 and 714, to permit an extension of operating hours until 4 a.m. daily for an existing Restaurant and Nighttime Entertainment use (d.b.a. The Penthouse Club \& Restaurant) (hereinafter "Project") at 412 Broadway, Block 0144 Lot 033 (hereinafter "Project Site").

The Planning Department Commission Secretary is the custodian of records; the File for Case No. 2017015181 CUA is located at 1650 Mission Street, Suite 400, San Francisco, California.

On June 14, 2018 and August 30, 2018, the San Francisco Planning Commission (hereinafter "Commission") continued this Project without public comment or hearing to September 13, 2018. On September 13, 2018 the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application No. 2017-015181CUA and continued the hearing to October 25, 2018.

The project is not subject to the California Environmental Quality Act ("CEQA") as the extension of hours is not considered a "project" under CEQA.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby does not authorize the Conditional Use Authorization as requested in Application No. 2017-015181CUA, based on the following findings:

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. Project Description. The Project is a request for Conditional Use Authorization to permit the extension of operating hours until 4 a.m. daily for an existing Restaurant and Nighttime Entertainment use (d.b.a. The Penthouse Club \& Restaurant) within the Broadway Neighborhood Commercial District (NCD) per Planning Code Section 714. As state law currently prohibits the sale of alcohol past 2 a.m., the business would not allow for the sale of alcohol during the additional hours of operation. No other changes are proposed to the uses on-site, or to physical aspects of the building itself.
3. Site Description and Present Use. The Project is located at 412 Broadway, Lot 33 in Assessor's Block 144, within Supervisor District 3. The lot measures 137.5 -feet deep with 69.5 feet of frontage along Broadway for a total area of approximately 9,556 square feet. The site is developed with a two-story building built circa 1968, and which contains approximately 15,000 square feet. A Restaurant and Entertainment use has been in existence at the site dating back at least to 1999, with the current tenant (d.b.a. The Penthouse Club \& Restaurant) having occupied the subject space since March 2012.
4. Surrounding Properties and Neighborhood. The Project Site is located within the Broadway Neighborhood Commercial District (NCD), which primarily extends along Broadway for roughly 3 blocks, starting just west of Columbus Avenue and extending east to Osgood Place. The immediate context along Broadway is mixed in character, with buildings typically ranging between two and four stories, although the street is zoned for heights up to 65 feet. There are also several vacant lots along the NCD used for automobile parking. The Broadway corridor is recognized as a citywide and regional entertainment district, with a concentration of nightclubs, cabaret venues, adult theaters, bars and restaurants, and the Broadway NCD is one of only a few neighborhood commercial districts in the city that may allow adult businesses with a Conditional Use Authorization. Above the ground floor uses are typically nonconforming office uses, tourist hotels, or residential uses including several residential hotels.

Beyond the immediate context, the Broadway corridor is part of a larger commercial area which includes Chinatown to the west and southwest, North Beach to the northwest, and the Jackson

Square area to the immediate south, and which subsequently extends into the Downtown Financial District. Just over a quarter-mile from the project site to the east lies the Embarcadero, and to the immediate north of Broadway is the predominantly residential neighborhood of Telegraph Hill. On the immediate subject block, there is a large change in grade of approximately 100 feet between Broadway and Vallejo (the next parallel street to the north), with one large lot at the top of the hill containing forty-five residential condo dwelling units.
5. Public Outreach and Comments. The Project Sponsor held a Department-facilitated preapplication meeting on September 26, 2017 prior to filing the current application. The Project Sponsor subsequently sent an email on January 22, 2018 to those meeting attendees and interested neighborhood groups to inform them that the application would be moving forward, also offering to meet at any upcoming neighborhood meetings. Lastly, the Project Sponsor has held two open houses at the subject property prior to business hours on May 8 and May 15, 2018; invitations were again sent to pre-application meeting attendees, registered neighborhood groups, and all owners and occupants within 300 feet, as per the Project Sponsor.

The Department has received opposition to the proposal from one individual, and has received a joint letter of opposition on behalf of the Telegraph Hill Dwellers, Barbary Coast Neighborhood Association, Golden Gateway Tenants Association, and the 455 Vallejo Street Homeowners Association.

The Department has also received one letter of support for the proposal from the Top of Broadway Community Benefit District, and one letter of support for a 6 -month trial extension of the hours from the North Beach Business Association. The Department has received 25 emails of support for the proposal, including from employees of the business.
6. Planning Code Compliance. The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
A. Hours of Operation. Planning Code Section 714 states that a Conditional Use Authorization is required within the Broadway NCD for maintaining hours of operation from 2 a.m. to 6 a.m., as defined by Planning Code Section 102.

The current hours of operation for the subject business extend until 2 a.m. daily. The subject application requests Conditional Use Authorization to allow for the extension of operating hours until 4 a.m. daily.
B. Use. Planning Code Section 714 states that both Restaurant and Nighttime Entertainment uses are principally permitted within the Broadway NCD.

The existing business is legal and has been permitted as both a Restaurant and Nighttime Entertainment use, which are principally permitted in the subject District. There is no proposed change of use, or further addition of uses as part of the proposal.
C. Use Size. Planning Code Section 714 states that a Conditional Use Authorization is required for use sizes 3,000 square feet and above within the Broadway NCD.

The existing commercial space contains approximately 15,000 square feet and is considered a legal, permitted conditional use, in existence prior to enactment of the Broadway NCD controls. No further expansion is proposed as part of the project, therefore the use size is permitted to continue in its existing configuration.
7. Conditional Use Findings. Planning Code Section 303 establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use authorization. On balance, the project does not comply with said criteria in that:
A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will not provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The proposed project involves an extension to the hours of operation for an existing Restaurant and Nighttime Entertainment business. Although the business is located in the Broadway NCD, which is a District characterized by a number of bars, entertainment venues, and nighttime-oriented activity, if granted, the proposed extension of hours could possibly set a new precedent in the District. Within a quarter-mile of the site, there appear to be six businesses authorized for late-night hours past $2 \mathrm{a} . \mathrm{m}$. with an Extended Hours Permit from the Entertainment Commission. Only one of these establishments, however, is for an entertainment use past 2 a.m.; that establishment is located at 1031 Kearny Street (d.b.a. "Larry Flynt's Hustler Club") and is authorized for operational hours past 2 a.m. only on Thursday, Friday, and Saturday nights, as a continuation of long-standing operational hours in this particular location. The other five businesses are food establishments, the latest of which is open until 3 a.m., and in general, these businesses also only have extended hours around weekends. As noted in the public comment that has been received, noise and other nuisance activity generated by nighttime-oriented uses in the Broadway corridor already spills over into the adjacent residential area; an extension of hours until 4 a.m., and particularly if it results in other entertainment venues and clubs looking to similarly extend their hours, could simply shift those nuisances later into the evening or early-morning hours.
B. The proposed project could be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:
(1) Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

There are no changes proposed to the existing building envelope, nor any other physical alterations proposed to the space.
(2) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Planning Code does not require any off-street parking or loading for an extension of hours, and the proposal is not likely to be detrimental to existing parking or transit operations in the vicinity. As the applicant suggests, the proposal would likely result in fewer patrons exiting onto the Broadway corridor and surrounding areas immediately at 2 a.m. when most establishments are closing; however, it would also mean that patrons are remaining along the Broadway corridor even later into the evening.
(3) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The existing building would not be physically modified in any way, so there are no potential noxious or offensive emissions that would be linked to construction activity. Additionally, the existing building is currently soundproofed and insulated adequately in order to prevent the direct transmission of noise or odors beyond the premises. In an effort to provide crowd control and noise management, the current operator employs security personnel to patrol the block and discourage loitering by patrons. However, these measures cannot completely eliminate nuisance behavior from Broadway patrons, as some still walk north into the surrounding residential areas. Additionally, it is possible that a future tenant with a different approach to operations and security could result in greater noise disruptions than what might be seen from the current operator, as the potential authorization here would run with the property and not a single operator.
(4) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The proposed project would not require any additional treatments related to landscaping, screening, open spaces, parking and loading areas, service areas, lighting or signs.
C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code, however, is not consistent with objectives and policies of the General Plan as detailed below.
D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

Although the proposed project is somewhat consistent with the stated purpose of the Broadway NCD, in that the proposal would enhance the subject Restaurant and Nighttime Entertainment use and generally promote late-night activity in the District, characteristics of the NCD as a whole, the Broadway NCD also has limitations on proposed late-night activity in order to help protect the livability of the area. As this application is potentially precedent-setting, it is therefore possible that the proposed extension of hours could result in other establishments seeking similar extensions. Broad extension of hours in the District likely would negatively impact the overall livability of the area, particularly for the residential hotels along Broadway, and for the adjacent residential neighborhood to the north.
E. That the use as proposed would satisfy any criteria specific to Adult Business, Nighttime Entertainment, and General Entertainment uses, as required under Planning Code Section 303(p).
(1) Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;
a. If the use is an Adult Business, it shall not be located within 1,000 feet of another such use; and/or

The existing use at the subject property is Restaurant and Nighttime Entertainment. There is no proposed change or addition of use to the property; therefore, this requirement does not apply to the project.
b. Not be open between 2 a.m. and 6 a.m.; and

The business does propose to operate past 2 a.m. until 4 a.m.; however, the Planning Commission may still authorize such a Conditional use that does not satisfy this criterion, as will be described further below.
c. Not use electronic amplification between midnight and 6 a.m.; and

The subject business currently uses electronic amplification during their existing hours of operation until 2 a.m. As part of the proposed extension of hours, the project would include the use of electronic amplification until the requested closing time of 4 a.m. The Planning Commission may still authorize such a Conditional Use that does not satisfy this criterion, as will be described further below.
d. Be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

The subject establishment has been soundproofed and insulated to prevent noise transmission beyond the premises. The current establishment has been evaluated by the Entertainment Commission and meets the standards of the San Francisco Noise Control Ordinance for fixedsource equipment noise. The Project Sponsor has also submitted a report from Charles M. Salter Associates, Inc. who evaluated the property for sound isolation, and finds that it complies with the ordinance.
(2) Notwithstanding the above, the Planning Commission may authorize a Conditional Use which does not satisfy the criteria set forth in (b) and (c) above, if facts presented are such to establish that the use will be operated in such a way as to minimize disruption to residences in and around the district with respect to noise and crowd control.

Evidence has been presented that the existing building is adequately soundproofed, and that the current operator has a security and operational management plan in place that is sufficient to control crowd behavior and discourage loitering in front of the establishment. It seems unlikely
then that additional hours of amplified entertainment would have a direct impact on surrounding building occupants. Likewise, it seems unlikely that patrons would cause disruptions to the immediately adjacent properties along Broadway, provided the existing operator remains. However, as public comment has indicated, some patrons of the Broadway corridor choose to park in the residential neighborhood to the north, which could lead to noise and other disruptions later into the evening than they already currently occur; similarly, as loitering in front of the establishment is not permitted, some patrons may then choose to loiter in the adjacent residential area. Lastly, while the current operator may be effective and vigilant with regard to nuisance activity in the area, future operators in this location may not be as responsible. As the authorization for extension of hours runs with the property and not a particular operator, it is not clear how this use in general, is one that would be consistently operated without the possibility for disruptions to the adjacent residential area.
(3) The action of the Planning Commission approving a Conditional Use does not take effect until the appeal period is over or while the approval is under appeal.

In the event the Planning Commission approves a Conditional Use for the proposed expansion of amplified entertainment hours, the decision will not take effect until the conclusion of any relevant appeal period.
8. General Plan Compliance. The Project is, on balance, not consistent with the following Objectives and Policies of the General Plan:

## COMMERCE AND INDUSTRY ELEMENT

## Objectives and Policies

## OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

## Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

Approval of the proposed extension of hours will help to preserve and enhance an existing Restaurant and Nighttime Entertainment business that has been in operation at the subject location since 2012. The proposed extension of hours could encourage more patronage of the Broadway entertainment district, and would encourage patrons in the District to remain for longer periods of time, helping to promote economic activity among other businesses.

However, the proposed extension of hours is also largely inconsistent with the above Policy and Objective. First, while the subject business may draw customers from the immediate neighborhood, it is much more likely to draze customers from throughout the City or broader region, and would not be considered a neighborhood-serving use. Second, while the Policy encourages diversity among neighborhood commercial districts, with the Broadrway NCD being oriented toward entertainment and nightlife, the General Plan

Element also requires one to consider the residential community living within and adjacent to the district, and the necessity and desirability of that use to the community. In this regard, the subject application falls short, potentially resulting in nuisances and disruptions to nearby residents even later into the evening, concerns which are documented in public comment submitted for this project. Lastly, this Policy includes guidelines for all uses generally, as well as guidelines for specific uses. Both guideline sections caution that uses, and in particular late-night uses, should not detract from the livability of the immediate district or surrounding residential areas. While later hours may be appropriate in the Broadway district under carefully regulated conditions, the proposed application does not appear to be appropriate in this regard. The majority of authorized late-night (past 2 a.m.) establishments in the vicinity are non-entertainment food-serving businesses, which can assist patrons of the District sober up and disperse in a more gradual manner. While the extended hours for the subject business may include some limited late-night food offerings, this application is primarily seen as an extension to the allowed hours of entertainment.
9. Planning Code Section 101.1(b) establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does not comply with said policies in that:
A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

Through the addition of operating hours, the project may provide for increased resident employment opportunities and work hours. However, the existing use is not neighborhood-serving, rather drawing patrons from throughout the City and broader region.
B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The project will not result in the physical expansion of the existing building, and the existing uses at the project site are consistent with the character of the Broadway Neighborhood Commercial District. However, increased late-night activity past 2 a.m. has the potential to result in increased nuisance activities to the nearby residential neighborhood to the north.
C. That the City's supply of affordable housing be preserved and enhanced,

The project does not propose any affordable housing, nor would have any effect on existing affordable housing. There are a number of residential hotels located along the Broadway corridor, which may be affected by increased late-night activity in the District.
D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The project is not likely to have any effect on commuter traffic, MUNI transit service, or the availability of neighborhood parking due to the hours associated with the proposal. Extending hours of operation past the closing times of other nearby bars and places of entertainment, the proposal may help alleviate transportation demands around 2 a.m. when patrons are forced to leave other establishments.
E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The project does not include commercial office development, and helps to enhance service sector employment by providing the option for additional working hours.
F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The project will not include any physical alteration of the building and will therefore have no effect on this policy.
G. That landmarks and historic buildings be preserved.

The project would not have any effect on City Landmarks or historic buildings.
H. That our parks and open space and their access to sunlight and vistas be protected from development.

The project will have no effect on parks and open spaces.
10. The Project is inconsistent with and would not promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would not contribute to the character and stability of the neighborhood and would not constitute a beneficial development.
11. The Commission hereby finds that approval of the Conditional Use Authorization would not promote the health, safety and welfare of the City.

## DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby DISAPPROVES Conditional Use Authorization Application No. 2017-015181CUA.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed (after the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives NOTICE that the 90 -day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90 -day approval period has begun for the subject development, then this document does not re-commence the 90 -day approval period.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on October 25, 2018.

Jonas P. Ionin
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: October 25, 2018

## Project Sponsor Submittals and Studies

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## Addressing Violence and Disorder around Alcohol <br> Outlets



Sam Bieler
John Roman, Ph.D.

January 2013

DCPI
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The views expressed are solely those of the authors and should not be attributed to the District of Columbia Crime Policy Institute, the Urban Institute, its trustees, or its funders.

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## Reducing Violence in Bar and Entertainment Districts

There is a substantial literature around violence and alcohol outlets. Roman et al. (2008) studied block groups in Washington, DC and found that increased densities of on-and off-premise liquor outlets increase disorder and violence, but that each type of outlet affects only a specific kind of violence: the presence of on-premise alcohol outlets predict increases in aggravated assault, while off-premise outlets predict increases in domestic violence. In response to violence and disorder, particularly around onpremise alcohol outlets, effective programs have been developed to address this problem by combining several strategies. The common thread between these policies is that each addresses at least one of the five key factors contributing to assault, social disorder, and domestic violence in or closely linked to entertainment districts: the availability of alcohol, the time of day at which drinking takes place, the protective or risk-creating physical factors of the area, the social and legal fabric of the neighborhood, and the presence of motivated offenders. This report summarizes the literature on the effectiveness of interventions targeting these five key factors.

## The Relationship between Alcohol Outlets and Violence

In their Washington, D.C. study, Roman et al., 2008 found that the density of on-premise alcohol outlets is highly predictive of violence, particularly aggravated assault (interestingly, these results do not hold for the density of off-premise outlets). The study also found that on-premise outlet density is a strong predictor of violence on weekends and weekend nights, but not on weeknights (Monday through Thursday), while the density of off-premise alcohol outlets is associated with more violence during the weekday period. When disaggregated by type of on-premise alcohol outlets, the density of taverns is positively associated with both more violence and more disorder. However, the densities of nightclubs and alcohol-serving restaurants are not associated with either more disorder or more violence; to the contrary, the density of nightclubs is associated with less disorder.

The impact of off-premise liquor outlets on violence is weaker (Roman, et al., 2008), though there are positive relationships between off-premise liquor outlets and all types of violent crime (Toomey, et al., 2012), and there are associations with higher incidence of overnight hospital stays (Gruenewald \& Remer, 2006). A law change in New Mexico allowing off-premise liquor sales on

## Types of Liquor Outlets

While numerous fine distinctions exist between different types of liquor outlets, this paper uses the distinctions drawn in Roman et al.'s (2008) Washington D.C. study of alcohol outlets:

On-Premise: Outlets that sell liquor with the expectation that it will be consumed largely or entirely on the physical premises of the establishment. Examples include bars, taverns, night clubs and restaurants.

Off-Premise: Outlets that sell liquor with the expectation that it will be consumed largely or entirely off the Sundays created a natural experiment to test the effect of off-premise sales on several measures of crime and disorder. The study found increases in violence and increases in traffic fatalities. However,
localities in New Mexico that maintained or quickly reinstated their bans of off-premise sales on Sundays saw fewer fatalities than the ones that lifted the ban permanently (McMillan \& Lapham, 2006).

These findings have been replicated in other sites. In Australia, Norway, and Los Angeles, areas with higher concentrations of alcohol outlets and liquor stores have higher concentrations of criminal violence (Norstrom, 2000; Yu et al., 2008). In the Australian study, it was found that as the number of liquor licenses increased, the number of assaults per license also increased, suggesting the possibility of a tipping point past which the addition of another bar to the area has a disproportionate effect on violent crime (Livingston, 2008).

## Alcohol Availability

Several different policies have been proposed to reduce the availability of alcohol. The state or local licensing process can be modified to target high-risk bars. Increasing the cost of alcohol will reduce demand. And, reducing the amount of alcohol available for consumption can also decrease demand.

Effective use of the licensing authority can also give a municipal government better control over the activities of drinking establishments. Even if licensing is not used to close problem bars or prohibit the opening of new establishments, it can be used to regulate their activities. Fresno, California uses conditional liquor licenses to regulate how alcohol is served and displayed. This licensing scheme also allows authorities to more easily revoke the licenses of non-compliant businesses (Sampson \& Scott, 1999). This relationship between density of alcohol outlets and violent crime, holds for both on-premise and off-premise liquor outlets.

Decreasing the availability of alcohol by raising the cost of liquor is a controversial tactic that has been proposed in the United Kingdom as a way of reducing drinking violence. Meta-analysis of the variation in alcohol prices has demonstrated that increasing liquor prices reduces consumption (Wagenaar, Salois, and Komro, 2009). Reduced consumption, in turn, lowers various types of violence, including domestic abuse and numbers of college students involved in violence (Markowitz, 1999; Markowitz \& Grossman, 1996; Grossman \& Markowitz, 2001). In England, it was estimated that a $£ 0.50$ pence ( $\$ 0.80$ ) minimum per unit price on alcohol would reduce violence crimes by 2.1 percent, translating to 10,300 fewer violent crimes (Meier et al., 2008). These approaches are particularly effective with young adults, who have an elastic demand for alcohol and thus are very sensitive to price increases. However, raising the price of liquor has provoked opposition from both liquor manufacturers and British political figures, who have resisted attempts to implement the plans. Opponents argue that such changes would not alter the most dangerous drinking behaviors, would unfairly penalize the poor, and could run afoul of competition laws (Owen, 2011).

Far less protest has been provoked by proposals to reduce the serving size of alcohol rather than the price, to reduce violence associated with off-premise alcohol outlets. In 1992, Portland, Oregon focused on 40 and 32 oz . size containers of malt liquor after the effects of a previous ban on fortified wine led many street drinkers to substitute large-container malt liquor drinks. After initial retailer
resistance and an attempt by the alcohol industry to circumnavigate the ban by selling 22 oz. containers, an agreement was reached with most retailers where no beverage larger than 16 oz . would be sold; eventually many retailers even voluntarily pulled 16 oz . bottles from their shelves. Since the inception of this program, Portland has seen a significant decrease in drinking related incidents; from 1992 to 1996 disorderly conduct charges decreased by 25 percent, and detoxification holds decreased from more than 3,000 in 1992, to less than 1,500 in 1996. (Sampson \& Scott, 1999).

Time of Day

Changes to closing times can have significant impacts on violence in bar districts. Studies on bar violence in inner city areas have found that instances of assault at drinking establishments were generally concentrated late at night or early in the morning (Briscoe \& Donnelly, 2001). These findings about the relationship between alcohol-related crimes and time have also been replicated in Australia (Briscoe \& Donnelly, 2003). Some cities have built policies on findings like these to restrict liquor access during the most "dangerous" hours. In the city of Diadema, Brazil, prohibiting the sale of on-premise liquor after 11 p.m. led to a decrease of almost nine murders a month (Duailibi et al., 2007). In Britain, a high percentage of drinking-based violent crime occurs between 9 p.m. and 3 a.m., peaking at around 11 p.m. (the typical closing time for a British pub) and especially on the weekends (Jayne, Holly, and Valentine, 2006). However, when the British Licensing Act of 2003 removed limits on drinking establishment hours, alcohol consumption actually fell, though this could be because few pubs extended their hours significantly (Hough \& Hunter, 2008). Furthermore, when considering changing laws on hours, policymakers should consider the effects of such changes on patron behavior. For example, with a uniform closing it is possible that some patrons will drink heavily just before closing as they will not be able to legally purchase more alcohol (Scott \& Dedel, 2006). Changes to operating hours can be combined with changes and improvements to the entertainment district itself to reduce physical risks and strengthen buffers against criminal activity.

Managing crowds leaving the bar can control would-be offenders without targeting specific individuals. The presence of large crowds lingering outside after bars close is associated with larger numbers of assaults as groups compete for transportation or incompatible social groups are forced to mingle (Berkley \& Thayer, 2000). Part of the Derbyshire police's "Peaks and Dales Safer Pubs and Clubs" program involved liaising with local taxi companies to ensure transportation would be available to quickly break-up crowds at closing time. Bar owners were also informed about the plan to make clubs safer by actively prompting dispersal at the end of the night and were encouraged to direct their staff to assist in this process (Torkington, 2002). One way to prevent the creation of large crowds is to stagger the closing of bars so that the entire population of the entertainment district is not deposited on the street at the same time (Tuck, 1989). By reducing the number of people on the street at any given time, the possibility of motivated offenders coming into contact with other motivated offenders or potential victims is greatly reduced.

## Buffers and Risk Factors

When addressing the risk factors that may increase crime, and the buffers that protect against it, liquor licensing laws prove to be a powerful policymaking tool. In conjunction with law enforcement, a campaign of liquor license registration can be used to encourage code and best practice management compliance from owners of drinking establishments and if necessary, to shut down the most egregious violators, targeting the most serious place-based risks in a district (Sampson \& Scott, 1999). In Green Bay, Wisconsin, police and the city attorney created a "points" system, which were assessed to bars convicted of an alcohol-related offense; municipal courts were able to automatically suspend a license and close a bar for a designated period of time after 12 points were accumulated. As a result, five of the most persistently negligent bars were closed. Subsequently, calls for police service to the neighborhood fell and investment in the area has increased (Wexler et al., 2000). Closures are the most assertive method for targeting place-based risks, but changing the design of the venue and the activities offered at a drinking establishment, a less dramatic method, can also reduce risk and improve safety.

In Hayward, California, the number of calls for service was significantly reduced after the owner eliminated live music and dancing on weekends as part of a bargain to retain his bar's liquor license (Sampson \& Scott, 1999). However, outcomes depend strongly on what type of activities are being removed or added to the environment; the research on best practices in this domain is inconclusive. Certain types of live music and dancing, as well as games have been found to decrease consumption rates; while aggressive music and entertainment, as well as unregulated betting on bar games, have been found to stimulate violent encounters and disagreement (International Center for Alcohol Policies, 2002). Food service has been associated with reduced aggression because food slows the absorption of alcohol, bars that serve food tend to attract less aggressive clientele, and these bars may promote an atmosphere that is not exclusively centered on drinking (Deehan, 1999). A program initiated by the Merseyside Police promoting the use of plastic cups and bottles has also proven effective in reducing injuries from glass; police later convinced the city council to allow them to seize glass containers found outside bars (Merseyside Police, 2001).

Other innovations that can reduce violence target the physical structure of drinking establishments and the neighborhoods they inhabit. In Green Bay's entertainment district, police, in coordination with other city agencies, trimmed foliage that concealed illegal activity, modified benches so that people could not lie on them, eliminated access to the unsecured buildings that people used as hiding places, cleared litter build-up, improved lighting in the rear areas of drinking establishments, and modified the rear doors of such places to permit egress only (Wexler et al., 2000). Poor placement of bathrooms, phones, entry and exit doors, dance floors, and bathrooms, as well as generally smaller venues, lead to crowding, which is, in turn, related to aggressive incidents (Macintyre \& Homel, 1997). Merseyside police had an architechtural liason officer create a checklist of safe design features that was circulated to bar owners, who then paid for the required changes; compliance was ensured by visits from the liason officer (Torkington, 2002). An example of such changes is the provision of adequate lighting, without which it becomes easier for patrons to conceal their activities (Scott \& Dedel, 2006).

All these policies can reduce violent offending, but one of the best buffers against disorder and violence at a bar is the presence of a well-trained staff. Wells, Graham and West (1998) found that a large number of incidents in bars as clubs are the result of interaction with untrained, aggressive or unfair bar staff. Homel and Clark (1994) focused on the problem of untrained bouncers who are "frequently employed straight off the gym floor and have minimal skills in conflict resolution and nonviolent communication." For this reason, improving training among bouncers is a top priority for any program of violence reduction in bars. In addition to training bouncers in non-violent conflict resolution, staff-focused programs of violence prevention should encourage the development of formal policies regarding who is to be permitted entry and the spotting of and denial of service to intoxicated clients (Miller, Holder, and Voas, 2009); these policies have been found to reduce aggression in bar settings, especially physical violence (Haurtiz, et al., 1998). Evidence for the effect of training on service staff is more mixed, with varying reports on the effect of server training on over-serving patrons; bouncers are a more logical focus point if resources are limited (Delewksi \& Saltz, 1990; Stockwell, 2001). Increasing the number of staff is also an effective measure as it reduces patron frustration and the competition for service, and increases staff opportunities to monitor the levels of intoxication and aggression (Scott \& Dedel, 2006). Where server training is effective, it is generally because of the adoption of better practices by bar management that support the enforcement of existing serving liquor to an intoxicated person (SIP) laws.

One common tactic in dealing with problematic bars and nightclubs is to encourage compliance with good serving practices through utilization and enforcement of existing liquor laws and licensing rules. While many jurisdictions (including the District of Columbia), criminalize serving liquor to an intoxicated person, multiple studies have found that these laws are rarely enforced, either formally by police or informally by bar management (Homel \& Clark, 1994). A report from the National Highway Traffic Safety Administration (Mosher et al., 2009) found that SIP enforcement was rare due to lack of will, resource limitations, and statutory provisions that made enforcement difficult. When Washtenaw County, Michigan (where the University of Michigan is located), engaged in dedicated SIP enforcement, refusals of service rose from 17.5 percent to 54.3 percent, and DWI arrest from bars and resturants declined from 31.7 percent to 23.3 percent (McKnight \& Streff, 1994). However, aggressive enforcement of SIP laws requires political willpower and significant resources, as well as a well-written code with clear evidentiary standards, such as a non-inclusive list of behaviors that can be submitted as evidence in legal proceedings. Without these in place, SIP enforcement efforts face significant problems; in 2010, officials in St. Paul Minnesota attempted to enforce SIP laws in bars, but gave up after calling the cases "unwinnable" (Brown, 2010). These laws can work in concert with the creation of liability laws that make it easier for the community and individuals to obtain legal sanctions against irresponsible liquor outlets and drinking establishments.

One key factor in encouraging self-policing by drinking establishments has been the adoption by some states of server liability or "dram shop" laws. Dram shop laws allow people who suffer harms from an inebriated person to seek damages from the party that caused the intoxication, including bars. The District of Columbia does not currently have dram shop legislation, though it is a part of District of

Columbia common law per Jarrett v. Woodward Bros. While dram shop laws have been reduced in their effectiveness as a result of damages caps and the imposition of higher standards of evidence (Mosher, 2011), the implementation of these laws remains an effective method for altering work practices in the liquor industry and has encouraged bars to adopt server training programs. An advantage of dram shop legislation is its self-enforcing nature: there are significant incentives for bar owners to comply without the need for police monitoring because penalties are applied through civil proceedings (Ireland, 1993). Another method of encouraging self-policing, implemented by Redondo Beach, California, is requiring monetary deposits, much like surety bonds, from businesses with high volumes of calls for service to offset the high cost of police services provided to these establishments (Sampson \& Scott, 1999).

## Neighborhood Structure

Although dram shop legislation encourages self-enforcement among establishments, it does not diminish the need for a well deployed police presence in entertainment districts. Increasing police patrol in high crime areas, or "hot spots," is a commonly applied police tactic that has important applications for reducing crime and disorder in bars. Hot spot policing has been found to reduce crime in targeted areas (National Research Council, 2004), and, in some cases, to diffuse the benefits of reduced crime to a broader area (Clarke \& Weisburd, 1994); such tactics can be readily applied to problem areas in entertainment districts. However, for crimes occurring in the drinking establishments themselves the research on the efficacy of police presence is mixed. In two studies, it was found that the presence of uniformed officers in bars actually increased the rate of reported assaults, though this is likely because with a police presence in the bar, crimes that were previously unreported were detected by law enforcement (Stockwell, 1997). Additionally, it is important to note that the policies of the police department and local laws are important in determining the efficacy of police patrols in entertainment districts. Some departments discourage or prohibit uniformed officers from inspecting bars, while others make it a central part of their crime control plan in the district; the police in the CharlotteMecklenburg area of North Carolina had to lobby for legislative changes to allow their officers to inspect licensed premises (Scott \& Dedel, 2006). Outside of law enforcement, the police can improve outcomes by engaging the community in violence prevention and reduction schemes, reducing neighborhood disorganization, and promoting collective efficacy.

In many of the most effective violence prevention schemes, one key facilitative measure has been the creation of public-private partnerships that decrease resistance to the implementation of proposed initiatives and generate positive momentum for reform. Sampson, Raudenbush and Earls (1997) defined collective efficacy as the ability of a neighborhood to maintain common values and effective social controls. Increasing collective efficacy has been a key component of some of the most effective alcohol-related violence prevention strategies. Green Bay's efforts included soliciting the support of public works agencies to improve the physical environment in targeted areas, citizen's groups to encourage municipal authorities to modify their liquor license granting patterns, the media to pressure problem drinkers, and pressuring bar owners to encourage them to adopt best practice service procedures and to exclude problematic customers from their establishments. Community activism at
the city council level led to the closure of several businesses that contributed to criminal activity in one of the central entertainment districts (Wexler et al., 2000).

Businesses can also be potent collaborative partners. These groups have the resources to help sponsor studies and interventions and by doing so, reduce the need to commit public safety resources (Ireland, 1993; Torkington, 2002). Pressure applied by community partnerships can also be effective in encouraging bars to accept a city-approved code of conduct. In Queensland, Australia, a citizen committee met to discuss community standards for entertainment districts and to mediate conflicts over practices between liquor licensing authorities, the police, and drinking establishments. The group was able to preside over a reduction in intoxication through successful reductions in the practice of giving out free drinks and extreme price discounts, as well as generating an improvement in professionalism among security at drinking establishments. Citizen mobilization is an uncontroversial tactic for reducing alcohol-related violence, while other tactics have been met with more resistance.

## Targeting High-Rate Alcohol Offenders

Several cities have developed policies aimed at targeting problem drinkers to either encourage treatment or to remove their access to liquor. During the clean-up of Green Bay, Wisconsin the police identified a core group of habitual problem drinkers and distributed a "No-Serve" list to bar owners in the targeted area. The tactic drew protests from the ACLU, but the city attorney determined that the tactic was supported by Wisconsin statutes that stipulated that liquor not be supplied to "habitual drunkards." The strategy proved to be one of the most effective in Green Bay's bar district policing efforts; individuals who previously generated multiple calls for service had dramatic reductions in police contact (Wexler et al., 2000). Similar tactics are a common part of problem-oriented policing and have been successfully tested in a number of jurisdictions. The Alexandria, Virginia city attorney utilizes similar methods, legally restricting the chronically intoxicated from buying or possessing alcohol (Sampson \& Scott, 1999). Bar-owners in Wahpeton-Breckenridge, Minnesota have established a private collaborative that works similarly; problem drinkers at one bar will be refused service from all the other bars in the collaborative (Roseth, 2012).

Cities have also used treatment programs to target problem drinkers. Cognitive behavioral therapy provided to problem drinkers in Australia reduced the chances of these drinkers committing assault (Sitharthan et al., 1997), while in the U.S., brief interventions and follow-ups with problem drinkers by doctors and nurses were associated with fewer arrests for assault, battery, and child abuse (Fleming et al., 2002).

## Conclusion and Recommendations

These changes are most effective when implemented as part of a larger package of reforms that aim to generate improvements across each of the five contributing factors to violence and disorder. The hallmarks of successful programs are the promotion of collective efficacy among citizen groups to apply pressure to bars and generate support for changes, the formation of partnerships with drinking establishment owners themselves, and the use of these partnerships to facilitate changes to the physical
and operational nature of individual bars and the entertainment districts they inhabit. Addressing these elements through a single coherent policy has the potential to generate large reductions in assaults and other disorderly crimes, stimulate investment in a district, and reduce social and physical disorder in the community.

In Washington, D.C, specifically, there is a strong combination of policing and legislative options available to reduce violence in and around alcohol outlets. Moving to conditional liquor licenses can facilitate many of the other policies described here by giving city authorities significant control over the distribution of alcohol in the District. More control over liquor distribution provides a means by which to reduce the highest concentrations of alcohol outlets in the city and to encourage establishment owners to comply with best practices in management and maintenance. These practices include increasing the number of staff, training security staff in non-violent conflict resolution and mediation, and maintaining establishments with design features, like clear entry and exit lanes, that mitigate the risk of increased aggression. To further encourage owners to adhere to safe practices, D.C. could promulgate more easily enforceable SIP laws or more aggressive enforcement of existing laws.

Given that D.C. has just increased the amount of time bars are permitted to remain open, it is worth undertaking research on what the effect of this will be. While later closing times are often associated with more violence, some D.C. bar owners suggested at the inception of the law that many establishments will not remain open until the 5 a.m. closing time. Because of this, D.C. may have naturally-facilitated staggered closing times and the prevention of heavy drinking at last call in response to a city-wide closing time. If concerns about the effect of late drinking on alcohol prevalence remain, D.C. could reduce the availability of alcohol by either increasing the price of liquor, or decreasing the serving size of alcoholic beverages allowed in D.C.

These city-wide measures could be combined with the targeting of specific problem drinkers for treatment services. Addressing the behaviors of chronic drinkers could provide broadly diffused benefits; restricting these individuals' access to liquor by encouraging bar owners to refuse problem clients service could be similarly effective. Creating public-private partnerships with bar owners and citizen's groups would facilitate both this and other efforts by generating popular support for enforcement and providing a safer experience for D.C. consumers.

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# District of Columbia Crime Policy Institute (DCPI) 

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DCPI is a nonpartisan, public policy research organization focused on crime and justice policy in Washington, D.C. DCPI connects a diverse team of prominent scholars and policy experts. With funding from the Justice Grants Administration (JGA) in the Executive Office of the District of Columbia Mayor (EOM), DCPI was established at the Urban Institute in 2009.

Administered by the Justice Policy Center at the Urban Institute, DCPI's mission involves three tasks: conduct analyses of the costs and benefits of justice policies and programs for the District of Columbia; create a publicly accessible research library of crime and justice research in the District of Columbia; and conduct research and evaluation projects concerning District of Columbia crime and public safety, crime prevention, and crime policy.

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## Submission by WA Nightclubs Association to the Senate Inquiry:

"The need for a nationally-consistent approach to alcohol-fuelled violence"
"Staggered trade is the single best feature of the WA system; NSW and QLD could study this and easily implement what is Australia's best practice licensing system."

WANA President Simon Barwood
"Between 2008 and 2015, Northbridge crime dropped for:

- assaults - down 36 per cent
- threatening behaviour - down 73 per cent
- home burglary - down 44 per cent
- theft - down 25 per cent
- property damage - down 48 per cent."

Premier. Deputy Premier and Minister for Police March 20, 2016

## Introduction

Following is the submission by the WA Nightclubs Association (WANA) to the Senate Inquiry into "The need for a nationally-consistent approach to alcohol-fuelled violence". It includes commentary and research against each of your criteria as detailed. The central premise of the submission is that Western Australia's unique staggered trade system, alongside very effective policing and responsible licensee practices, have led to a substantial decrease in alcohol-fuelled violence (in the context of licensed premises and entertainment districts). WANA commends this model to other jurisdictions.

## a) the current status of state and territory laws relating to:

i. bail requirements and penalties surrounding alcohol-related violence, and liquor licensing, including the effectiveness of lockout laws and alcohol service laws;

Bail Requirements and Penalties
WANA does not offer commentary on "bail requirements" in this submission. It can however, outline that the work of the WA police since 2008, in particular since 2010, has been commendable. This has included a concerted effort to use their powers to arrest and move on offenders on the streets where the majority of offences were occurring. This has had a dramatic effect on turning around the law and order situation in Northbridge and crime statistics have been on a sustained downtrend in recent years. This downtrend was outlined in 2012 by the Minister for Racing \& Gaming (and Liquor), Terry Waldron, and again very recently by the Premier and Deputy Premier / Minister for Police.

Aside from an increase in police presence and the arrest and move-on strategy outlined above, the use of prohibition orders and barring notices has been particularly effective, again as outlined in the Waldron media release of 2012, with immediate, significant and continued decreases in alcohol related anti-social behaviour.

## Liquor Licensing

The overarching position of WANA is that the WA liquor licensing system is the premier system in Australia. This is best evidenced through reviewing WANA's key principles below. In fact WANA believes these principles should be considered as guiding principles for a national approach to liquor licensing reform given their success in WA and the juxtaposition of problems in other jurisdictions such as QLD and NSW.

## WANA's Principles

1. WA's staggered closing time system is superior to that employed in other jurisdictions

- Its central feature is staggered closing (hotels/taverns and then nightclubs).
- This prevents a greater mass exodus of patrons onto the street that would occur under a uniform closing time model.
- Staggered closing acts as a circuit breaker to discourage patrons leaving early closing venues from continuing to consume alcohol.
- Staggered closing minimises pressures on public transport and the taxi industry.
- It is a model that has the support of stakeholders including the government, opposition, police and Taxi Council.
- Broad deregulation has been deployed in other jurisdictions (eastern states and overseas) in recent years and has essentially been a disaster as a regulatory experiment. Interestingly, there have been strong recent calls for a greater emphasis on staggered closing in Ireland and much of continental Europe uses such a model.
- In a submission to the Commonwealth, "Step Back" outlines how on a national basis, deregulation of the liquor industry has resulted in a high level of social cost. It puts the estimated social cost of harmful consumption of alcohol at more than \$15b annually on an overarching basis. "Step Back" also states that:
> "...More attention needs to be given towards amenities and alternatives to alcohol such as live entertainment. This strategy is supported by Assistant Commissioner Jamieson who stated"the reducing of vertical drinking and beer bars would greatly assist in improving public safety".


## The Irish Experience

The Irish Nightclub Industry Association (INIA) cites various public order prosecution figures which demonstrate that between 2006 and 2008, when sequential trading was in place in the Garda B District in the South Central Division of Dublin (which has the highest density of licensed premises and nightclubs in the country), staggered closing had a positive impact on public order (Gurdgiev, 2009).

## The Perth Experience

Most importantly, as outlined in a response to a) above, crime has been in significant decline in Northbridge (between 2008 and 2015), Perth's central latenight entertainment precinct. Directly quoting the joint Premier and Minister for Police media release of 20 March, 2016:
"Between 2008 and 2015, Northbridge crime dropped for:

- assaults - down 36 per cent
- threatening behaviour - down 73 per cent
- home burglary - down 44 per cent
- theft - down 25 per cent
- property damage - down 48 per cent."

As background, it should be noted by the Committee that whenever staggered trade has been subjected to erosion there have been consequences in its effectiveness as a harm minimisation mechanism. Indeed, WANA has long argued within WA that the rolling use by hotels of what are known as "Extended Trading Permits" or ETPs to extend their trading hours on Friday and Saturday has been damaging and should be curtailed. By way of background:

- The legislated closing time for hotels and taverns in WA is 12am.
- The clear intent of ETPs under the Act is for use in special circumstances.
- Currently ETPs allow hotels and taverns in Northbridge to trade until 2am every Friday and Saturday night of the year.
- In parts of the suburban city, those ETPs allow hotels and taverns to trade until 1 am .
- The consequent mass exodus of patrons onto the street at 2am is problematic for police, the transport system and nightclub operators.
- In submissions to DRGL, the Police Commissioner (O'Callaghan, 2010) and the Drug and Alcohol Office (2010) identified that the majority of alcohol related incidents occurred in "Trouble Time" between 11 pm and 3am, which the Liquor Commission had also previously identified. These submissions highlighted that the rolling use of ETPs by taverns and hotels and SFLs during 11 pm to 3 am "Trouble Time" as the leading causes of problems, and called for the restriction of availability of alcohol at these premises during this time.
- The Police Commissioner cited the 2010 Coakes ARIF Report in his submission, which clearly identified that $64 \%$ of incidents occurred in "Trouble Time".
- In addition to their own statistics, the WA police report referred to studies undertaken by the National Drug Research Institute (Chikritzhs, et al., 2007) which found that extended trading hours at hotels and pubs were associated with a $70 \%$ increase in assaults.
- The Police Commissioner and the Alcohol and Drug Office have both called for the curtailing of ETPs in recent years.

It is of course essential to note that what has become known as "Trouble Time" in WA, i.e. 11 pm to 3 am when around two thirds of incidents occur, is before the prescribed "last drinks" legislation which will kick into effect in Queensland.

Finally, it should be noted that in summer 2009/2010 there was a lock-out trial in Perth. It was discontinued after the trial, which was essentially pointless as it did not combat the problems where they lay at the time - being hotels in trouble time trading using ETPs. Unlike other lock-out precincts such as Kings Cross or Newcastle, staggered trade meant that very few problems were occurring past 3am as hotels were shut and nightclubs with their different business model were trading. At this time, the Liquor Commission said the following:
"...extended trading permits (hotels) and special facility licences are more likely to contribute to the alcohol related harm than the applicant's nightclubs, which close at 6am, are smaller, charge door entry fees and control entry and are proactive in reducing the risk of alcohol related harm." WA Liquor Commission 2010 WANA President Simon Barwood was interviewed on this topic recently.

## 2. Nightclubs operate a unique business model - fundamentally different to that

 of hotels- The main point of difference between hotels and nightclubs is that a nightclub's primary purpose is the provision of entertainment; service of alcohol is ancillary to entertainment.
- In the WA context, WANA believes the Liquor Control Act 1988 is explicit and self-explanatory as to this point under section 42:


## And:

Subject to this Act, the licensee of a nightclub licence is, during permitted hours, authorised to sell liquor on the licensed premises, for consumption on the licensed premises only, ancillary to continuous entertainment provided live by one or more artists present in person performing there or by way of recorded music presented personally by a person employed or engaged by the licensee to do so.

WANA believes this is important for the Committee to note for jurisdictions that do not have a "legally defined" licence category as nightclubs; for example in NSW what are colloquially called nightclubs are essentially hotels trading late and playing music. The practical differences of a "true nightclub" compared to a "late trading hotel with music" include:

- Significant revenues are derived from non-alcohol sources, particularly door charges (up to \$25).
- Alcohol is often more expensive in nightclubs.
- Average alcohol consumption at nightclubs is typically less than at hotels and taverns.
- Research published by the Irish Nightclub Industry Association in 2009 revealed that in Ireland $90 \%$ of revenue for traditional pubs arose from direct sales of alcohol, whilst for nightclubs this figure was $66 \%$ (Gurdgiev, 2009).
- As outlined below, the WA experience is very similar.
- Nightclubs are typically themed toward a style or genre of music for dancing.
- A door charge and the provision of entertainment is less likely to attract patrons whose primary purpose is the consumption of alcohol.
- There are less than 50 nightclubs operating in WA and over 1500 hotels and taverns. It does not require many nightclubs to generate an effective staggered system.
- The WA Liquor Commission has clearly supported the effectiveness of nightclub business models in recent years from a harm minimisation perspective.
- Consumers and the broader WA public benefit from this harm minimisation, including on a public cost basis.
- As outlined above, nightclubs offer a fundamentally different product offering (and industry role) to consumers, being entertainment with alcohol as an ancillary, adding choice and value to the WA market.
- Ultimately, this difference underpins WANA's core principle which is that the continued integrity of WA's unique staggered closing times is the most effective tool against alcohol related incidents and therefore should be adopted nationally.


## Primary Research on Alcohol Consumption in WA Nightclubs

In late 2009, surveys were conducted in both Rise (now Air) and Connections. These surveys revealed that for Rise (Coakes 2010 b), 61\% said entertainment (music and dancing) was the reason for visiting the venue, and only $3 \%$ said that consuming alcohol was the prime reason. Only $1 \%$ of Connections' patrons nominated the consumption of alcohol (2010 a). Across the surveys, it was apparent that patrons were consuming around one drink per hour for a three to four hour stay.

Further (as per our principles above), WANA has always maintained that the purpose and format of a venue have a direct role to play in whether patrons abuse alcohol, or consume it as an ancillary to the purchase of entertainment.

In summary, WANA possesses a strong faith in the business model adopted by most nightclub licensees of focusing on entertainment with substantial door charges rather than relying solely on liquor revenue. Indeed, we believe it logical that venues/licence categories specifically designed to sell alcohol ancillary to entertainment should be encouraged to flourish and that the adoption of a legally defined "true" nightclub category in other jurisdictions could be nationally advantageous.

## WANA's Commentary on Small Bars

Following the creation of the small bar licence in 2007, Western Australia has seen an explosion in the amount of small bars trading in Perth; their popularity with the public is unquestionable and they are clearly a policy reform success. WANA is supportive of the growth of small bars and their part in the hospitality and entertainment mix, but does proffer to regulators and legislators the importance of keeping them to core hotel hours and not eroding staggered trade. We are aware that small bars have also prospered in other states and believe that this business model is preferable to "beer barn" establishments, but again wish to highlight to the Committee that clear, un-eroded staggered trade is the premier harm minimisation model. For all its merit, the small bar business model still derives the vast bulk of its revenue from alcohol sales and is generally not equipped with extra security measures such as ID Scanning.

## Other Notable Aspects of the WA Liquor System

We are unable to offer commentary on many aspects of other jurisdictions' laws and policing, however we can say that other effective aspects of the WA liquor laws, as outlined in the separate submission of WANA President Simon Barwood, include:

1. Sensible regulation of licence and outlet density;
2. The avoidance of alcohol being a "loss-leader" for gaming (and therefore heavily discounted
3. The WA Director of Liquor Licensing has a long established set of explicit guidelines disallowing for the utilisation of cheap or discounted drinks.
b. the effectiveness of the current state and territory: training requirements of persons working within the hospitality industry and other related industries, and

As per the Department of Racing, Gaming and Liquor's site, the following training regime exists in WA, with the present support of WANA:

## Mandatory Industry Training

Responsible service of alcohol is one of the most crucial tools in providing consumers with safe, responsible venues that are committed to practising harm-minimisation techniques.

## Licensees and Approved Managers

Unless the Director of Liquor Licensing determines otherwise, each licensee and primary approved manager must complete a course in the Management of Licensed Premises conducted by an approved and accredited training provider.

## Supervisory and Other Staff

All other supervisory and bar staff must complete the Provide Responsible Service of Alcohol course conducted by an approved and accredited training provider.
i. educational and other information campaigns designed to reduce alcoholrelated violence;

As WANA's vice-president, Tim Brown, expressed when giving evidence to the 2010 Health and Education Standing Committee's (WA) "Inquiry into the adequacy and appropriateness of Prevention and Treatment Services for Alcohol and Illicit Drug Problems in Western Australia"; WANA supports a significant increase in the role of education as a tool against alcohol abuse and related social harm.
"...we are not in a position to educate youth on how to behave under the influence of alcohol. All we can do is refuse supply or ask them to leave when that becomes a problem. We need to get it at the front end. "WANA Vice-President Tim Brown
c. the viability of a national strategy to ensure adoption and delivery of the most effective measures, including harmonisation of laws and delivery of education and awareness across the country, and funding model options for a national strategy;

## Education

It is logical that such an initiative as outlined above under "b) educational and other information campaigns" be a national one.

## Laws

As outlined very clearly in our response above to a), WANA believes that there is an overwhelming package of evidence that the Western Australian Liquor Control Act 1988 is the premier Act / system in the country. Packaged with enhanced policing, management practices and security systems, it is why WA has been able to be the only jurisdiction to liberalise its laws and allow for more trading (extension on Sunday nights) in recent years as alcohol fuelled violence has retreated. It would be logical to deploy aspects of this system nationally.

We also believe the WA police approach over the last five or six years has been particularly effective (as outlined above in terms of prohibition notice, barring orders, move on orders and high community presence).

Again, as outlined in Barwood's submission, in WA the Liquor Enforcement Unit (LEU) as a dedicated arm of the WA police to liquor, is responsible for policing licensed premises and licensees. There are wide ranging powers under sections 64 and 95 of the Liquor Control Act 1988 (WA) that police can use to place restrictive conditions on licences including the power to close offending premises in extreme circumstances. In WA this is done through the Director of Liquor Licensing and/or the Liquor Commission. WANA believes that this kind of action can only be taken to the "regular courts", in this case the Supreme Court, upon appeal.

WANA has no comment on national funding models.

## d. whether a judicial commission in each state and territory would ensure consistency in judgments relating to alcohol-related violence in line with community standards; and

Western Australia has the long standing "Liquor Commission" as referenced above which in general terms has broad support of the industry. To the extent other jurisdictions do not have such a commission, WANA believes it may be worthwhile reform.

## e. any other related matter.

## ID Scanning and other effective licensee initiatives

In a widely read recent article by culture blog "Pilerats" ID scanning was raised by WANA President Simon Barwood as another area where WA leads the way:
"The community should also be informed that licensees have been very proactive in WA in addressing harm minimisation. For example, ID scanning has been in operation for around five years here, whereas it's only being mooted now in Kings Cross. "

WANA is a strong advocate of the broad application of ID scanning; its members have found it to be very effective as a deterrent against anti-social behaviour as patrons realise misbehaviour will be captured and they will be held accountable for their actions with significant consequences. The personal submission by WANA President Simon Barwood details the effectiveness of ID scanning in more detail. Amongst many benefits of the system detailed by Barwood is that of a "shared database" where licensees are able to see patrons who have been flagged at other premises, often leading to refusal of entry.

Barwood also touches upon other areas of good practice by licensees including the cooperation with police in regard to CCTV. This combined with the abovementioned "moveon notice" issued by police often results in the avoidance of escalation. Finally, he mentions regular bag searches and the use of polycarbonate drinkware, both of which are effective industry safety practice.

## Closing notes on WANA

WA Nightclubs Association (WANA) is not affiliated with the AHA or any other industry body either in WA or interstate. It represents around 55 holders of a nightclub licence across the state (around 45 of which are presently trading). Its fundamental concern is the integrity of the WA licensing system, based upon its unique staggered closing arrangement and its very clear distinction between the services and roles offered by hotels and nightclubs. It believes this structure is the premier system in Australia.

## Appendices

## www.irishtimes.com

The Irish Times - Tuesday, December 16, 2008

## Calling time on the nightclub?

## KITTY HOLLAND

It was meant to reduce alcohol abuse, but nightclub owners say the Intoxicating Liquor Act 2008 is threatening the future of the industry and has led to an increase in trouble on the streets.

IT'S A SATURDAY night in Dublin in the lead-up to Christmas. At 1.30 am the Kings of Leon can be heard blaring from the Gaiety Nightclub on South King Street. A steady stream of stylish, well-groomed young things make their way from the adjoining box office to the club front door, having paid $€ 15$ for their tickets.

The night should only be starting. For their $€ 15$, however, the revellers will get just one hour in the venue, with its two bands, several bars and a number of DJs, until they are asked to leave at 2.30 am. The night is, in reality, almost over.

Until July 31 st these clubbers would have been able to stay dancing until 3.30am. However, the enactment of the Intoxicating Liquor Act 2008 changed all that.

Under the terms of the Act, which aims to restricts the "availability and visibility" of alcohol and to provide "for more effective enforcement to deal with the consequences of alcohol abuse", nightclubs and late bars must close their doors at 2.30am from Monday to Saturday and at 1am on Sunday.

Before the change in the law, venues with live music or a DJ (whether clubs or bars) could apply for an annual theatre licence for $€ 270$ per year, and serve alcohol until 3.30 am seven nights a week. With drinkingup time, it could be 4 am or later when people poured on to the streets. Now the clubs, like late bars, have to apply for each individual extension to 2.30am to serve drink, something which a costs in the region of an annual €150,000, (€410 a night) in legal fees.

The new legislation followed various reports over the years showing that Ireland has a spiralling alcoholabuse problem. A Government-appointed Alcohol Advisory Group study found an increase of 76 per cent in the hospitalisation of intoxicated people between 1997 and 2002 (when alcohol consumption peaked) and an increase of almost 70 per cent in the number of off-licences and mixed-trading premises authorised to sell alcohol between 2001 and 2007.

Those opposed to restrictive club hours argue that the changes have done nothing to reduce alcohol abuse and that the new law is killing nightclubs. They also claim that earlier closing has led to an increase in public order issues, with everyone leaving clubs and late venues at the same time.

Before the new legislation, those in the late bars left at 2.30am and those in the clubs left at 3.30am, staggering the impact on the streets. It is argued that the new law won't stop people who want to abuse alcohol. The will do so at home or in a pub rather than pay a door fee into a club.
According to figures from the Irish Nightclub Industry Association (INIA), the average per-capita consumption in nightclubs is two and a half drinks. Barry O'Sullivan, chief executive of the INIA, predicts hefty job losses and nightclub closures across the State in the New Year.

David Morrissey, owner of one of Dublin city centre's most popular nightclubs, Lillie's Bordello, says that all a club now offers, over and above a late bar, is a dancefloor and a better lighting system. And punters are being asked to pay up to $€ 20$ for that.

David Carroll, junior manager of the Sugar Club on Leeson Street, also laments the earlier closing times. "Town isn't what is was a year ago," he says. "It has lost something".

ON SATURDAY NIGHT, Dublin lacks the buzz one might expect in a European capital in the run-up to Christmas, though matters are not helped by the sub-zero temperatures and the recession. Penelope Martin (23), from Co Laois, on her way into the Gaiety club, is "disgusted" by the earlier closing.
"It messes up my whole regime," she says. "We're used to staying at home until 11.30pm and then going out. We expect to get a night out of it. You used to be able to stay out dancing until 4am, a proper night out. Now you're kicked out just as you're getting going. You wouldn't come into town to go to a club as often now."

Erica Southern, from Dublin, is in her 30s and is smoking a cigarette outside Renards at about 2am. She feels that the new laws are the wrong way to try and curb drinking.
"We are responsible adults who have good jobs, who work hard and want to just go out and have some fun at the weekend," she says. "We're in our 30s and we respect these clubs."

The clubs visited by The Irish Times are busy but not jammed, though a number of people who spoke to this reporter were obviously intoxicated, swaying and slurring their speech.

Out on the streets, dancing Santas, young women telling a group of tourists they "love, love, love the Brits", and a giggly row between two girls outside Burger King over who ended up with the most beer in their hair, sets the tone for some of the post-club life.

There are a few ugly scenes, including a punch-up involving about six men on Middle Abbey Street at about 2.45 am , which ends only when a Garda van arrives on the scene. There is also the sight of a young man lying on his side on Westmoreland Street at 3am, making one worry that if he isn't moved soon he will die of hypothermia.

A group of three men shove a fourth up against the shutters of a shop on Westmoreland Street. Fast-food outlets are very busy, with long queues at branches of McDonalds, Rick's and Supermacs. There are a lot of gardai on duty and fleets of Nightlink buses lined up around College Green and Westmoreland Street.

At the taxi rank at College Green, a group of about 60 people queue in sub-zero temperatures shortly after 3am.

By 4am the streets are almost clear, the busiest being Leeson Street, where a large crowd seem to be involved in one big conversation as they drift off gradually in twos and threes towards the taxis that are on their way back into town for the last few fares of the night.

Robbie Fox, owner and manager of Renards, says the new Act has "destroyed" Sunday-night trading to such an extent that he no longer opens on Sunday night, while business overall is down about 50 per cent.

The manager of the Gaiety nightclub, Seán O'Connor, says business is down about 40 per cent since July. While he acknowledges the impact of the economic downturn, he insists that the Act had an "immediate" effect.

Like Fox, he says the hour between 2.30am and 3.30am used to be the "most profitable" in terms of drink sales and that it is not matched by sales between 1.30am to 2.30am.
"In any industry, to reduce trading hours by 25 per cent is going to be a serious matter. In practice, customers will be in a bar until it stops serving and will drink up until about 1am. They don't get to us until about 1.30am."

Falling takings at the door and the bar have already led to job losses in the industry, and O'Connor predicts more in the new year.
"We can't pay people for doing nothing," he says.

Fox says tourists are "absolutely flabbergasted" and cannot believe that the entire country is restricted to going home at 2.30 am . This, he adds, will inevitably hurt the weekend tourism industry.

Sunil Sharpe, spokesman for the Give Us the Night lobby group, representing workers in the music industry, says DJs, visual artists, dancers and promoters have all "felt the pinch" with many staff losing shifts, and DJs on reduced fees.

As a rationale for pulling back licensing hours, the Alcohol Advisory Group cited a fourfold increase in criminal proceedings for abusive and threatening behaviour in the decade between 1996 and 2006. It argued that if the streets were cleared sooner, there would be less scope for trouble.

However, Supt Joe Gannon, of Pearse Street Garda Station in Dublin, who oversees weekend-night policing in the busiest night-life district in the State, says he has seen no reduction in levels of disorder since the new Act came into force.
"The difference is the streets are cleared earlier," he says. "When we had the theatre licences one lot were coming out of bars at 2.30am and another lot coming out of the late clubs at 3.30am, so there were people on the streets until about 5am.
"Now they are all coming out together at 2.30am. The fast-food places don't have the capacity for them all, so a lot head straight home.
"If it is staggered, there is less volume at once, which is easier to deal with. There is less potential for volatility on the streets."

Tommy Gorman, president of the National Taxi Drivers' Union, says the change has also led to the old problem of people not being able to get taxis. His members are getting maybe two fares in the rush at 2.30am before it all dies down. Previously, they could have been busy until about 5 am . BARRY O'SULLIVAN, of INIA, is hoping the forthcoming Sale of Alcohol Bill, due before the Oireachtas early in the new year, according to the Department of Justice, will include a specific nightclub licence to differentiate his members' establishments from pubs.
"If it leaves club closing hours at 2.30am though, it will do nothing to address our concerns about jobs and the industry as a whole," he says. "I think a closing time of 3.30 am or 4 am is realistic."

## Intoxicating Liquor Act: main provisions

Pubs can open until 11.30pm from Sunday to Thursday and until 12.30am on Friday and Saturday nights.
Special exemption orders allow a bar to stay open until 2.30am. Theatre licences, which previously allowed a club where there was a live performance to remain open until 3.30am, have been abolished.

Alcohol can be sold in off-licences between 10.30am and 10pm from Monday to Saturday and between 12.30 pm and 10pm on Sundays. On St Patrick's Day, Sunday hours are applicable.

The Act empowers gardaí to seize alcohol from minors and to take drink from people if they feel there is a risk of public disorder.

There are increased fines for those who break the law on alcohol sales. Publicans or off-licences found selling alcohol to minors face orders for closure.

There is now a special court application process for those seeking a licence to sell wine.

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## Appendix



Hon Terry Waldron MLA

## Barring notices prove their worth

## Wednesday, 20 June 2012

- 270 barring notices issued by WA Police
- 37 people charged for contravening barring notices

Eighteen months after barring notices came into effect the latest figures for Northbridge are showing a drop in all key indicators of antisocial behaviour.

Racing and Gaming Minister Terry Waldron said the State Government had given considerable attention to the issue of alcohol-fuelled antisocial behaviour, particularly in our entertainment district.
"That led to the introduction of police barring notices in January 2011, enabling us to directly target troublemakers rather than penalise the vast majority who enjoy alcohol responsibly," Mr Waldron said.

The Minister said the introduction of prohibition orders three years ago had served as a tool to remove the worst offenders from licensed premises with more than 130 prohibition orders issued to the worst offenders, including those involved in serious glassing assaults.
"Prohibition orders require show cause proceedings and therefore take time to put in place so in 2010, I introduced legislation to establish police barring notices as a less harsh and more efficient means of targeting the less serious incidents of antisocial behaviour," he said.

As at the end of April this year, a total of 270 barring notices had been issued by WA Police.
A comparison of crime statistics in Northbridge for the 12 months prior to the introduction of barring notices, with the 12 -month period after their introduction show there has been a considerable reduction in the number of offences for common assault, threatening behaviour, disorderly conduct and other liquor licensing offences.
"These are significant improvements. While it would be naive to solely credit barring notices for these outcomes, this evidence suggests they have had a very positive impact," Mr Waldron said.
"Police have, to date, laid 37 charges for persons entering licensed premises in contravention of a barring notice. So this is a great result from a good policy and this Government will continue to explore effective policies that contribute to a healthier and safer community."

## Fact File

- Comparing the 12 months prior to barring notice introduction with the 12 months since they were introduced
- Common assault (non-domestic) down by 9\%
- Threatening behaviour down by $37 \%$
- Disorderly conduct down by $44 \%$
- Liquor licensing offences down by $\mathbf{8 2 \%}$

Minister's office - 65526100

## Appendix

## Pedal patrols back as Northbridge crime drops

Sunday, 20 March 2016

- Marked reduction in key crime areas in Northbridge
- Dedicated WA Police Bicycle Patrol Group formed for Northbridge and CBD

The State Government today announced Western Australian police officers will reintroduce dedicated pushbike patrols to the CBD and Northbridge to help continue drive down crime.

Premier Colin Barnett said there had been a significant reduction in key crime areas in Northbridge since 2008 and declared the hospitability and entertainment precinct was once again a desired destination for West Australians.
"People and families are coming to Northbridge in droves thanks to the State Government's investment in policing, activating public space and encouraging a fantastic range of restaurants and bars to open up in the area," Mr Barnett said.
"Events like the Fringe World Festival had brought Northbridge to life."
Deputy Premier and Police Minister Liza Harvey said this change in culture would now be built on with a dedicated Bicycle Patrol Group.

Mrs Harvey said the Bicycle Patrol Group could bypass traffic issues to respond quicker, easily access areas where vehicles could not go, would be highly visible helping deter crime and would help promote greater community engagement.
"Not only are local police keen to conduct bike patrols, this has been something which has consistently been raised at our community forums and by local businesses as something they'd like to see," she said.

Mrs Harvey said the bike patrols would help continue to reduce crime in Northbridge.
Between 2008 and 2015, Northbridge crime dropped for:

- assaults - down 36 per cent
- threatening behaviour - down 73 per cent
- home burglary - down 44 per cent
- theft - down 25 per cent
- property damage - down 48 per cent.
"These figures are particularly encouraging considering the substantial population growth we have had since 2008," Mrs Harvey said.
"We won't ever stop trying to further reduce crime in the area, we built the $\$ 93$ million Perth Police Centre based in Northbridge and now these bike patrols will enhance police engagement with the local community."


## Fact File

- Bike patrols will start by the end of April 2016
- The state-of-the-art \$93m Perth Police Centre was opened in Northbridge in July 2013

Premier's office - 65525000
Deputy Premier and Police Minister's office - 65525900

## Appendix

## That time Perth trialled lockout laws and decided against it

A look back at Perth's brief dalliance with lockout laws, and why they never came to pass.
Posted By Troy Mutton 22 days ago
2016 has been the year that lockout laws have really come under fire following a plethora of sobering pieces on the subject, musician backlash, the introduction of the laws in Queensland, and one very ill-advised foray into the world of Facebook from Sydney Premier Mike Baird.

Sitting over here in WA it's been heartbreaking to watch - plenty of us in the office have a strong affinity for Sydney's nightlife, and of course being in this industry it's been sad to watch a once-incredible nighttime vibe reduced to a ghost town.

One of our writers went along to the massive Keep Sydney Open rally last weekend, but we wanted to find some meaningful way to contribute to the conversation beyond sharing words from people more involved than us, and petitions trying to help the cause.

And then it occurred to us - hadn't Perth gone through this before?
And it turns out we did, in 2009, when a six-month lockout trial was implemented that called for nightclubs to shut an hour earlier (from 6 am to 5 am ), and stop letting people in an hour before close i.e. 4 am .

With this in mind, we reached out to Simon Barwood, head of the WA Nightclub Assocation, to get a bit more history on how and why Perth hasn't joined states like NSW and QLD in bringing in lockout laws.

For reasons those of us that haven't forgotten what it's like to enjoy going out for a few drinks with your friends, why they didn't go beyond a trial stage are pretty obvious: "The lockout trial was ineffective firstly because blanket lockouts are bad policy. Most alcohol related incidents do not occur on licensed premises premises are highly regulated and scrutinised and licensees are highly incentivised to take harm minimisation measures to prevent assaults and other alcohol related incidents on their premises," Barwood explains.

In addition, due to WA's staggered approach to licensing (more on that later), only a few venues were actually affected: "The lockouts, as imposed, were ineffective because they only applied to a small number of premises (i.e. nightclubs) at a time [of the night] when very few alcohol related incidents were taking place (i.e. after 4 am )..."


Look, it's no Oxford Street in its heyday, but it's people on the street at night having a good time.

Around the same time, WA police had begun a "concerted effort to use their powers to arrest and move on against offenders on the streets, where the vast majority of offences were occurring. This had a dramatic effect on turning the situation around in Northbridge. Subsequently crime statistics in Northbridge have continued on a sustained down-trend.
"This is a very good news story for WA, Northbridge and WA Police, one that rarely gets told, and the statistics are readily available."

But to understand why we aren't currently going to war with our government over lockout legislation, it's important to recognise that WA "has a very different starting point from NSW and QLD due to our licensing regime, specifically staggered closing of premises," says Barwood.
"De-regulation of liquor licensing in eastern states' jurisdictions saw all premises trading all night. In WA, taverns and hotels (which account for the vast majority of licensed premises) are legislated to close by midnight."

These venues can apply for an Extended Trading Permit (ETP) to trade later, which were originally introduced to allow for special occasions like New Year's, "but in the early 2000s hotels and taverns aggressively sought these permits for every Friday and Saturday and achieved initially a one-hour extended period, that was followed a few years later by extending to two hours (i.e. 2am closing) in Northbridge.
"Nightclubs (around 45 operating licensed premises in WA) are a separate license category with the purpose of providing entertainment for patrons, with alcohol sales ancillary. The intention of the WA Liquor Act was that nightclubs would exclusively provide entertainment for patrons after midnight."


Increased barriers to entry may mean you line up for longer, but it also weeds out lesser elements.

In addition to providing entertainment (bands, DJs etc.), there is a stronger focus on barriers to entry (ID scanners, door charges, dress codes), something that Barwood says, "naturally filters patrons and does not simply provide the next place to continue consuming alcohol.
"The hotel/tavern business model of low barriers to entry (no door charge), generic entertainment (if provided at all) and $100 \%$ focus on profit generation from bars is simply not appropriate for late night trading."

What it essentially means for WA is that there are a whole bunch of small bars that open til midnight, some venues that open til 2am, and then nightclubs open until 5am around the Northbridge and Perth city area. This verses the "all venues trading all night" model adopted elsewhere.
"NSW and QLD are essentially now paying the price for de-regulation of their liquor licensing system. Unwinding a system that allows all premises to trade all night is going to be problematic..." says Barwood, "It's interesting that alternative solutions now being proposed include staggered closing and the introduction of ID scanning. In this circumstance WA is, for once, years ahead of the eastern states. The conditions that are requiring such a heavy-handed approach in NSW and QLD are simply not present in WA.
"Staggered trade is the single best feature of the WA system; NSW and QLD could study this and easily implement what is Australia's best practice licensing system."

Even with all this in place for WA, lockout legislation is still a very real possibility to expand outside of NSW and QLD and into other states: "I'm confident that lockouts are not required in WA, however a senate inquiry into the need for a nationally-consistent approach to alcohol-fuelled violence has been announced. WANA will be making a submission but I'm not as confident that WA's voice will be heard strongly enough. It would be ridiculous if WA was forced to adopt policies like lockouts because other states have issues resulting from adopting an inferior licensing system...
"WA really ought to be promoting our licensing system, venue management and entertainment precinct policing strategies as the best in the country."

And assuming we don't re-visit the world of lockout laws once again, what's the future of Perth's nightlife? "Venues tailored to specific markets. We have seen this occurring very successfully with small bars. The days of the old-fashioned generic beer barn are over, patrons now prefer more intimate venues with a high standard of service in precincts where they feel safe. An increasing diversity of premises and experiences creates a rich and varied nightlife that is attractive to visitors and adds interest and sophistication to our city."

Please don't take this article as us Perthites bragging about our amazing nightlife - it's still got a long way to go, and we're still shaking the dreaded 'dullsville' tag. But hopefully it serves to show that you don't need to shut down entire nightlife districts to solve the problem of "alcohol-fuelled violence"; there are far better strategies out there that can help preserve our right to party. And we dearly hope the continued questioning of current methods in New South Wales and soon-to-be Queensland can arrive to similar solutions.

## Prevention Research Center

October 9, 2018

Rich Hillis
Commission President
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Dear President Hillis:

For the past 15 years, I and my colleagues have been conducting research funded by the National Institutes of Health (NIH). Our work focuses on young adults in nightclubs and the health and social risks that they encounter due to overuse of alcohol and drugs, physical aggression, sexual aggression, and drinking/driving. This work has predominantly been conducted in the San Francisco Bay Area although we have also conducted research in Washington, D.C. and Brazil. We have worked with patrons, security staff, medical experts, promoters, and owners to provide a comprehensive understanding of the issues related to safety. Our most recent work involved creation of a Nightlife Safety Program for social groups who patronize clubs, and NSP was effective at increasing safety within groups and lowering blood alcohol levels based upon a rigorously designed research study.

I've been asked by Mr. Terrance Alan to provide some scientific data related to the expected reductions in the BAC that would occur if an individual, who has consumed enough alcohol to become intoxicated (defined as $B A C=.08 \%$ or higher), refrains from drinking for two hours.

These data serve as a guide for a typical person. Individual variations in alcohol metabolism may result in slight differences across the population.

- For a 215 lb . person who has reached a BAC level of . $0865 \%$ after consuming 7 shots ( 1.5 oz per shot of $40 \%$ alcohol) over 4 hours, an additional 2 hours without alcohol consumption would be expected to lower the BAC to 0565 .
- For a 155 lb . person who has reached a BAC level of . 085 after consuming 5 shots (1.5 oz per shot of $40 \%$ alcohol) over 4 hours, an additional 2 hours without drinking would be expected to lower the BAC to 055 .

These calculations are based upon a BAC calculator linked to the National Institutes of Health, National Institute of Alcohol Abuse and Alcoholism website:
http://www.clevelandclinic.org/health/interactive/alcohol calculator.asp

A National Center for the Study of Environmental Approaches to Prevention of Alcohol-Related Problems

In addition, it is worth pointing out that research studies indicate that reduction in BAC levels may result in a reduction of aggression:

1. There is a correlation between higher BAC levels and acts of physical aggression (e.g., Hyder, S., Comber, K., Pennay, A., et al., 2018).
2. There is a relationship between high BAC levels and being a victim of aggression, including sexual aggression (e.g., Miller, Bourdeau, Johnson, \& Voas, 2015).

Thus, lowering alcohol BAC levels may be expected to reduce issues related to public nuisance, legal liabilities for the clubs, and patrons' perpetration and experiences of aggression.

Please let me know if I can address any additional questions or concerns.

Sincerely,


Brenda A. Miller, PhD.
Senior Research Scientist
NIH Principal Investigator

# SF Department of Emergency Management 

## Police Call Data

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Radio Code Modifiers

10-1 Receiving Poorly

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Out of Service (Court)
Out of Service (End of Watch)

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Marked Units stay out of area

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Division of Emergency Communications－Custodian of Records 1011 Turk Street

San Francisco，CA
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Department of Emergency Management
Division of Emergency Communications－Custodian of Records 1011 Turk Street San Francisco，CA

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Department of Emergency Management
Division of Emergency Communications－Custodian of Records 1011 Turk Street San Francisco，CA （415）558－3826

## LOCATION

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| 6／9／18 | 0：11：58 | 7：42：48 | C | 415 | 3A15A | GOA |
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| 6／24／18 | 2：13：28 | 2：28：24 | C | 909 | 3 A32 | HAN |
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| 7／3／18 | 0：14：46 | 1：10：26 | C | 488 | 3A14E | UTL |
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| 7／29／18 | 0：06：53 | 0：21：26 | C | 415 | 3A14E | HAN |
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| 8／12／18 | 1：47：17 | 1：59：59 | A | 240 | 3A12E | UTL |
| 8／19／18 | 1：00：17 | 1：20：15 | B | 418 | 3A14E | GOA |
| 8／20／18 | 2：15：00 | 3：37：19 | A | 221 | 3A15E | HAN |
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From:
Sent:
To:
Subject:
adjustbill@aol.com
Wednesday, October 24, 2018 1:18 PM
Jardines, Esmeralda (CPC)
Case \# 2016-012474MAP and 2016-012474CUA

This message is from outside the City email system. Do not open links or attachments from entrusted sources.

Esmeralda,
I'm the property owner of 23011 th Street which is contiguous to the subject property.
I left you a voicemail message earlier today, indicating my vehement opposition to the above referenced matters.
I'm unable to attend the hearing tomorrow because I will be out of town, but wanted my position known for the record.
Further, if either of these requests are approved, please be advised that I will seek legal counsel to represent my interest to whatever extent possible. My property value will be adversely affected if either of these items are approved and I will do whatever it takes to prevent that from happening.

Please confirm receipt of this email.
Regards,
William Hedden

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Harry O'Brien
D415.772.5723
hobrien@coblentzlaw.com

October 23, 2018

## VIA ELECTRONIC MAIL

San Francisco Planning Commission
1650 Mission Street, Suite 400
San Francisco, CA 94103
Re: Proposed Planning Code Text Amendment Regarding Employee Cafeterias (Item 14 on October 25, 2018 Agenda, Case Number 2018-010552PCA)

President Hillis and Commissioners:
This firm represents First Republic Bank. As you may recall, the City approved a building permit for First Republic's employee cafeteria at One Front Street in 2016. After the facility was constructed and occupied, however, the Planning Department (incorrectly, in our view) determined that the permit had been issued in error, and that a conditional use was required for operation of this use on the ground floor. In July of this year, the Commission disapproved First Republic's initial application for conditional use for the facility as constructed. First Republic expects to file a revised conditional use application that would convert a portion of the facility along the Market Street frontage into a restaurant serving the general public.

The proposed ordinance before the Planning Commission would prohibit Employee Cafeterias, as defined in the Health Code, within office space, across all zoning districts. The proposed ordinance contains a grandfathering provision classifying Employee Cafeterias "lawfully existing or finally approved as of July 24, 2018," as legal nonconforming accessory uses.

While First Republic Bank does not support an outright prohibition on employee cafeterias, if the legislation does move forward, the Bank requests that the Planning Commission recommend amendments to the proposed ordinance to add an expanded grandfathering and legitimization provision to cover employee cafeterias that existed as of July 24, 2018. Such a provision would provide an opportunity for existing employee cafeterias to achieve legal nonconforming status, even if they had not, as of July 24, 2018, obtained all required permits, including permits from the Planning Department and the Department of Public Health, or had obtained permits as another type of food service facility. This expanded grandfathering and legitimization provision could be modeled on similar provisions included in prior Code amendments, such as Planning Code Section 179.1, which provided for legitimization of office and residential uses in the Eastern Neighborhoods, and prior Planning Code Section 177, which allowed certain existing Massage Establishments to seek and obtain permits. In particular, First Republic requests that the amendment establish procedures for a Zoning Administrator determination of eligibility,

## Coblentz Patch Duffy <br> \& Bass LLP

San Francisco Planning Commission
October 23, 2018
Page 2
similar to the procedures in Planning Code Section 179.1, and allow relocation of legal nonconforming employee cafeterias.

First Republic Bank is committed to working with the City to find a compromise solution to the difficult situation at One Front Street. If the City were, in the meantime, to move forward with a prohibition on employee cafeterias, this could have the unintended effect of precluding a compromise that is in the best interest of all concerned. For this reason, First Republic respectfully requests that the Planning Commission recommend an amendment to the proposed ordinance with an expanded grandfathering and legitimization provision that includes a Zoning Administrator eligibility determination procedure.

Respectfully submitted,

cc:
Diego R Sánchez, Legisłative Affairs, Planning Department
Dan Sider, Director of Executive Programs, Planning Department
Corey Teague, Assistant Zoning Administrator, Planning Department
Laurel Arvanitidis, Director of Business Development, Mayor's Office of Economic and Workforce Development
Kate Stacy, Deputy City Attorney
Judith A. Boyajian, Deputy City Attorney
Crystal Bryant, First Republic Bank
David Noyola

