



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

Date: November 21, 2018
Case No.: **2016-010348CUA**
Project Address: **1233 POLK STREET**
Zoning: Polk Street Neighborhood Commercial District (NCD)
65-A Height and Bulk District
Block/Lot: 0670/004
Project Sponsor: Jeremy Paul
584 Castro Street, #466
San Francisco, CA 94114
Staff Contact: Andrew Perry – (415) 575-9017
andrew.perry@sfgov.org
Recommendation: **None – Informational Only**

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BACKGROUND

On March 22, 2018, the Planning Commission (“Commission”) reviewed Case No. 2016-010348CUA and authorized a Conditional Use Authorization pursuant to Planning Code Sections 303 and 723 to permit the operation of a nighttime entertainment use with electronic amplification seven days per week until 2 a.m. for the business (d.b.a. “Mayes Oyster House”) located at 1233 Polk Street, within the Polk Street NCD and a 65-A Height and Bulk District. As a condition of approval set forth in Motion No. 20146, the Commission requested a written performance update six months following approval; this memo serves as the written performance update.

Prior to and during the hearing, public comment was received in opposition to the proposal, with concerns particularly about weeknight entertainment hours. Lower Polk Neighbors eventually gave their support for the proposal, provided the project sponsor would fully carry out the recommended noise attenuation and soundproofing recommendations made by a professional consultant.

The project sponsor has diligently worked toward completion of all recommended soundproofing measures, as documented through Building Permit Application Nos. 2018.10.12.3120, 2018.02.23.2161, and 2017.10.25.2251. As a result, amplified entertainment is occurring within the levels that have been permitted by the Entertainment Commission and the San Francisco Noise Control Ordinance.

In preparing this memo, staff has reached out to the Entertainment Commission, Lower Polk Neighbors, and members of the public that were previously in opposition to the application. Since the hearing, there have been no complaints or citations issued against the subject business by the Entertainment Commission, nor have complaints been referred to the Entertainment Commission by SFPD. In general, feedback about the business’ operations since the soundproofing work has been completed has been positive. An adjacent neighbor across Fern Alley, who was perhaps the most vocal opponent of the application and who had a prior complaint history with the business back in 2014, has indicated that the

installed soundproofing and/or other measures that have been taken by the business over the last several months has made a dramatic improvement, as they have not heard any excess noise emanating from the premises. In an email from another neighbor, a similar observation has been made with positive feedback about the soundproofing results, however, this neighbor also notes occasional issues with security and patron noise outside the club, primarily on weekends as patrons wait along Polk to enter the establishment. This is a common issue that many of the bars and entertainment venues along this portion of Polk Street contend with simply due to the increased volumes and concentration of pedestrian and nightlife activity in this area, and is not necessarily symptomatic of the subject authorization for extended entertainment hours.

REQUIRED COMMISSION ACTION

This is an informational update memo only; therefore, no Commission action is required.

Attachments:

Motion No. 20146

Post-Hearing Email Correspondence



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other

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Planning Commission Motion No. 20146

HEARING DATE: MARCH 22, 2018

Case No.: 2016-010348CUA
Project Address: 1233 POLK STREET
Zoning: Polk Street Neighborhood Commercial District (NCD)
 65-A Height and Bulk District
 Lower Polk Street Alcohol Restricted Use District
Block/Lot: 0670/004
Project Sponsor: Jeremy Paul
 584 Castro Street #466
 San Francisco, CA 94114
Staff Contact: Andrew Perry – (415) 575-9017
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ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 303 AND 723 TO PERMIT THE OPERATION OF A NIGHTTIME ENTERTAINMENT USE WITH ELECTRONIC AMPLIFICATION SEVEN DAYS PER WEEK UNTIL 2 A.M., AND TO MODIFY THE EXISTING CONDITIONS OF APPROVAL OF PLANNING COMMISSION MOTION 13572, WITHIN AN EXISTING BUSINESS (D.B.A. MAYES OYSTER HOUSE) AUTHORIZED FOR RESTAURANT AND OTHER ENTERTAINMENT USES WITHIN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT (NCD) AND A 65-A HEIGHT AND BULK DISTRICT.

PREAMBLE

On September 9, 1993, the Planning Commission adopted Motion No. 13572 authorizing an Other Entertainment use within the existing Restaurant use, with electronic amplification permitted until midnight on Fridays and Saturdays only.

On November 20, 2009, the Entertainment Commission granted a Place of Entertainment permit to the owners of Mayes Oyster House at the 1233 Polk Street location.

On April 20, 2016, the Planning Department issued an Enforcement Notification to the property owner for a complaint alleging that the Restaurant and Other Entertainment establishment (d.b.a. Mayes Oyster House) on the property is operating as a Nighttime Entertainment use with electronic amplification in excess of what was previously permitted under Planning Commission Motion No. 13572. In order to correct the violation, the property owner and/or business would either need to limit the hours of

amplified entertainment to Fridays and Saturdays only until midnight, as per Condition No. 2 of Motion No. 13572, or apply for a new Conditional Use Authorization in order to modify the previous conditions of approval. Additionally, in order to correct the violation, the property owner and/or business must demonstrate that they are storing garbage and waste containers within the building until collection times, as per Condition No. 8 of the aforementioned Motion, and provide evidence that any required soundproofing or insulation was completed as necessary in order that fixed source equipment noise complies with the San Francisco Noise Control Ordinance, as per Condition No. 4 of the Motion.

On August 10, 2016, Jeremy Paul (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section(s) 303 and 723 to permit the operation of a Nighttime Entertainment use with electronic amplification seven days per week until 2 a.m., and to modify the existing conditions of approval of Planning Commission Motion No. 13572, within the existing business (d.b.a. Mayes Oyster House) authorized for Restaurant and Other Entertainment uses within the Polk Street Neighborhood Commercial District (NCD) and a 65-A Height and Bulk District.

On December 14, 2017, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2016-010348CUA. Without hearing the item, the Planning Commission continued the Project to the public hearing on February 22, 2018, and then further continued the item to the public hearing on March 22, 2018.

Per CEQA Section 21065 and CEQA Guidelines Section 15378, the proposed legalization of the existing use is not considered a "project" under CEQA, as it would not result in a direct physical change, or a reasonably foreseeable indirect physical change in the environment.

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 requested in Application No. 2016-010348CUA, 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. **Site Description and Present Use.** The subject property is located on the west side of Polk Street, between Sutter and Bush Streets, on the northwest corner of Polk and Fern Streets, Lot 004 in Assessor's Block 0670 (District 3). The subject property is located within the Polk Street Neighborhood Commercial District ("NCD") and the 65-A Height and Bulk District. The property is developed with a two-story mixed use building with full lot coverage at approximately 3,300 square feet of lot area, 30 feet of frontage along Polk Street, and 110 feet of frontage along Fern

Street. The second story is occupied by a Residential Hotel use with 13 guestrooms, over the ground floor commercial use, currently authorized for Restaurant and Other Entertainment uses.

3. **Surrounding Properties and Neighborhood.** The area surrounding the project site is mixed-use in character. A variety of commercial establishments are located within ground floor storefronts in the Polk Street NCD, including restaurants, bars, apparel stores, convenience stores, and other types of retailers. The neighborhood is particularly well-trafficked and known for its nightlife destinations. Buildings in the vicinity typically range from one to five stories in height. Upper floors of buildings are generally occupied by offices or residential units. Larger scale retail uses, tourist hotels, and residential uses are situated along the Van Ness Corridor, outside of the Polk Street NCD to the west.
4. **Project Description.** The project sponsor proposes to legalize the operation of a Nighttime Entertainment use with electronic amplification until 2 a.m., 7 days per week, within the existing establishment (d.b.a. "Mayes Oyster House"). The subject property is currently authorized for Restaurant use and Other Entertainment use, the latter for which was authorized as part of Case No. 93.422C and Planning Commission Motion No. 13572. Pursuant to the conditions of approval of Motion No. 13572, electronic amplification was authorized only on Fridays and Saturdays until midnight. Planning Enforcement Case No. 2016-000434ENF was subsequently opened and is active due to the business' current operation with electronic amplification beyond those hours previously authorized. Therefore, the subject application seeks to modify the previous conditions of approval, and abate the violation. The project sponsor has made additional soundproofing improvements based on the recommendations of a sound study, but no other physical expansion or exterior modifications are proposed as part of this project.
5. **Public Comment.** To date, the Department has received 24 communications in opposition to the proposal, and 5 communications in support. Those in opposition appear to be most concerned with the expansion of entertainment hours until 2 a.m. on weeknights. One neighbor in opposition, who lives along Sutter Street with the rear of their property facing Fern Street, has also provided the Department with emails from 2014 that they had with an Entertainment Commission inspector regarding excessive sound coming from Mayes at the time.

The project sponsor has conducted outreach to the adjacent neighbors and interested community groups, including the Lower Polk Neighbors (LPN). The sponsors held a formal pre-application meeting on November 28, 2016, and have made their contact information available on the exterior of the establishment for anyone who may have potential concerns or issues regarding the business. The applicant also notes regular attendance at LPN meetings in order to discuss the subject business and its role in the context of an improved Polk Street entertainment district.

Just prior to the scheduled hearing on December 14, 2017, Lower Polk Neighbors requested a continuance of the case until February to allow their organization a chance to review additional documentation and discuss the project at their regular February meeting in order to take a formal position on the application. At the time of the requested continuance, LPN acknowledged that they would not be in a position to support legalization of the expanded entertainment hours. At the time of publication of this staff report, LPN has not submitted further communication to the Department, however, has indicated that a formal position is forthcoming. On March 20, 2018,

after reviewing additional sound mitigation efforts undertaken by the Project Sponsor, LPN submitted a letter in support of the proposal, on condition that the item could return to a Planning Commission hearing in six months for reconsideration if two or more citations were issued by the Entertainment Commission.

Lastly, the project sponsor notes the business' direct involvement with maintaining cleanliness in the surrounding area, and particularly along Fern Street, coordinating as well with the SFPD and the Homeless Outreach Team in these efforts. The business also notes their active involvement in many local charity efforts and events, as evidence of their good standing within the community.

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. **Use Size.** Planning Code Sections 121.2 and 723 state that a Conditional Use Authorization is required for individual non-residential uses that are 2,500 square feet or larger within the Polk Street NCD.

The existing non-residential use on the property occupies the ground floor of the building with full lot coverage and approximately 3,300 square feet of floor area. This existing use size is considered a permitted conditional use and is authorized to continue as it has legally existed pursuant to Planning Code Section 178(b). The Project does not propose any expansion either to the exterior building envelope or to the individual non-residential subject use.

- B. **Floor Area Ratio.** Planning Code Sections 124 and 723 state that the basic Floor Area Ratio is limited to 2.5 to 1 within the Polk Street NCD.

The existing building has a Floor Area Ratio of approximately 1 to 1, and so complies with the basic FAR limit as set forth in Code. The residential uses at the second floor do not apply toward the FAR limits within this District, and so is only based on the non-residential ground floor use, which has full lot coverage. The Project does not propose any expansion either to the exterior building envelope or to the individual non-residential subject use.

- C. **Hours of Operation.** Planning Code Section 723 states that hours of operation between 6 a.m. and 2 a.m. are principally permitted within the Polk Street NCD, and that Conditional Use Authorization is required for maintaining hours of operation after 2 a.m., until 6 a.m.

The subject business currently maintains hours of operation until 2 a.m. as is principally permitted under Code. The Project does not propose to include any hours of operation past 2 a.m., therefore no Conditional Use Authorization is needed in this regard.

- D. **Entertainment Use.** Planning Code Section 723 states that a Nighttime Entertainment use requires Conditional Use Authorization within the Polk Street NCD.

The Planning Code defines Nighttime Entertainment as a Retail Entertainment, Arts and Recreation Use that includes dance halls, discotheques, nightclubs, private clubs, and other similar evening-oriented entertainment activities which require dance hall keeper police permits or Place of

Entertainment permits, and which are not limited to non-amplified live entertainment, including Restaurants and Bars which present such activities. This definition is now applicable throughout the Planning Code and all Zoning Districts. However, prior to the Article 7 reorganization that occurred under Ordinances 129-17 and 130-17, Article 7 of the Planning, as applicable to Neighborhood Commercial Districts, did not contain a definition for Nighttime Entertainment, but rather included a definition for "Other Entertainment" under previous Section 790.38 that largely matches the current definition for Nighttime Entertainment. Uses that were previously considered Other Entertainment in these Districts are therefore now considered Nighttime Entertainment uses.

The subject property was previously authorized for Other Entertainment use under Planning Commission Motion No. 13572, as part of Case No. 93.422C. This authorization included a condition of approval which limited amplified entertainment on the premises to Fridays and Saturdays only, until midnight. Other Entertainment use has continued at the subject property since that approval, such that the use was not considered discontinued as per Planning Code Section 178(d). Therefore, the Project does not require Conditional Use Authorization to establish a new Nighttime Entertainment use at the subject property, as this is a continuation of the previously permitted conditional (Other Entertainment) use, per Section 178(b). Rather, the subject application seeks a modification to the conditions of approval of the previously granted Conditional Use Authorization under Motion No. 13572, as per Planning Code Section 303(e).

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does 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 provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The proposed Project does not include any physical expansion to the existing building envelope or business area, nor would it be adding a new use that is not already authorized on the property. The Project would slightly increase the intensity of activity at the site, by allowing for amplified entertainment to occur on additional days of the week, and later into the evening; however, the business is already permitted to remain open until 2 a.m., so there is also no increase to overall hours of operation. Although the total number of entertainment-hours would increase under the Project proposal, the property's location along Polk Street is well-suited to accommodate this additional activity and is compatible with the existing neighborhood context. Polk Street, and in particular this lower stretch below California Street, is an established entertainment and nightlife District, with a number of bars, restaurants and entertainment venues. Within 1,000 feet of the project site, the subject business is one of ten licensed Places of Entertainment, some of which also already permit amplified entertainment until 1:30 or 2 a.m.

Additionally, the subject establishment previously obtained a permit from the Entertainment Commission to provide entertainment until 1:30 a.m. and has previously operated under those assumed conditions. This application to legalize this activity then in some ways has even less overall net impact to the neighborhood, and the opportunity to bring the use into compliance, and bring consistency between the Planning Commission and Entertainment Commission's authorizations is

generally seen as desirable. Provided that the business can comply with soundproofing recommendations made by the noise consultant and Entertainment Commission, and that it would be operated in a manner to minimize noise and disruption to surrounding residences, as is consistent with Planning Code and General Plan requirements, the business is seen as an economic asset to the neighborhood and San Francisco nightlife generally. The Project Sponsor has demonstrated efforts to fully comply with the consultant's noise containment recommendations, and the consultant's letters acknowledge that the Polk Street noise environment at the intersection of Fern Street was affected not only by the operation of the subject establishment, but also by the adjacent businesses, d.b.a. Lush Lounge at 1217 Polk Street, and McTeague's Saloon at 1237 Polk Street, neither of which are considered Places of Entertainment.

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:

i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The height and bulk of the existing building will remain the same and will not alter the existing appearance or character of the project vicinity.

ii. 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 parking or loading for the subject business, or for the proposed Project to extend the hours of amplified entertainment. The property is well-served by transit, and the Project should not substantially increase the volume of trips to and from the site.

iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

As the Project does not involve any physical expansion of the building envelope and only minor work related to soundproofing of the business, it is unlikely that the Project would result in any noxious or offensive emissions related to glare, dust, and odor. The Project's proposed expansion of amplified entertainment hours certainly contains the potential for increased noise and associated nuisances to extend beyond the immediate project site. To address these possible concerns, the Project Sponsor has hired Charles M. Salter Associates, Inc. to conduct environmental noise measurements and sound isolation testing for the subject business. As a result of this testing and study, the consultant made a number of recommendations. The Project Sponsor then filed Building Permit No. 2017.10.25.2251 to implement some of these recommendations, and brought the consultant back to the project site to inspect the progress, who made further recommendations to the project team in order to fully satisfy City noise requirements.

Noise impacts may arise not only from the amplified entertainment directly, but also due to patron activity outside in the vicinity of the project site. The Project Sponsor has submitted a security

plan for the business, demonstrating the presence of multiple security personnel, including dedicated staff to control and monitor entry of all patrons into the establishment, and staff to help control queues for entry in order to help keep sidewalk space clear for pedestrian traffic, and noise disruptions or unruly behavior to a minimum. Lastly, the subject business engages in power washing of the sidewalks along both Polk and Fern Streets on Fridays and Saturdays, fifteen minutes prior to closing, which helps to maintain the overall cleanliness of the immediate area, as well as to discourage patrons from loitering following the close of the business at 2 a.m.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The Project does not require consideration of treatments with respect to landscaping, screening, open spaces, parking and loading, service areas, lighting, or signs. As part of the complaint filed against the subject business, there were concerns with the business keeping trash, recycling and compost receptacles along the Fern Street sidewalks in the public right-of-way. The submitted plans for this application show dedicated space in the kitchen for these receptacles; storage of these bins inside the business is required as a standard condition of approval, and failure to comply with said condition could lead to the revocation of the Conditional Use Authorization.

- 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 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.

The proposed Project is consistent with the stated purpose of the Polk Street NCD in that the intended use is located at the ground floor and permitted within the allowable zoning controls. Furthermore, the character description of the Polk NCD acknowledges the presence of bars and entertainment venues which keep the district active into the evening, and for which this project is compatible. This Project does not propose any new or additional entertainment, bar, or eating/drinking use, but rather seeks to amend previous conditions associated with the entertainment use dating back to the early 90s, and legalize the expanded entertainment activities that have been occurring at the property under the assumed permission of a Place of Entertainment permit.

- 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).

- i. With respect to Conditional Use Authorization applications for Adult Business, Nighttime Entertainment, and General Entertainment uses, such use or feature shall:
- a. If the use is an Adult Business, it shall not be located within 1,000 feet of another such use; and/or

The use is not an Adult Business, 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 not propose to operate between the hours of 2 a.m. and 6 a.m. and therefore complies with this requirement.

- c. Not use electronic amplification between midnight and 6 a.m.; and

The Project does propose to extend the hours of electronic amplification past midnight, until 2 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.

- 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 will be soundproofed and insulated for noise as per the recommendations of the Charles M. Salter Associates, Inc. study and report, which is intended to comply with the requirements of the San Francisco Noise Control Ordinance and the soundproofing requirements of the Entertainment Commission's Place of Entertainment permit review procedure.

- ii. 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.

Based on the soundproofing recommendations of the consultant-prepared noise study, and the Project Sponsor's efforts to comply with all such recommendations, along with their submittal of a security plan to address potential patron and crowd disruptions, these facts establish that the use will be operated in such a way as to minimize disruption to surrounding residences in the district. That said, even with the Project Sponsor's best efforts in this regard, there may still be ambient noise disruptions to the immediately surrounding area, resulting from the operation of other bars in the vicinity.

- iii. 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

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The Project does not propose any new or additional uses not already in existence at the project site, and which conform to the generalized land use plan for the District. The expanded entertainment offerings would be required to adhere to City noise control requirements and standards, and the business will be operated in a manner so as to minimize disruption to surrounding residential uses. The Project will benefit the economic activity of the Polk Street corridor, and help maintain San Francisco's entertainment and nightlife activities.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

The Project will retain and enhance an existing commercial activity, and will legalize the business' amplified entertainment activities after midnight, thus also bringing consistency between previous Planning Commission and Entertainment Commission actions. Conversely, a denial of the Conditional Use application would disrupt the existing economic activity for the subject business.

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 Project would help to encourage the retention of an existing local business that provides an entertainment locale for the immediate and other surrounding neighborhoods. Although there are number of other places of entertainment in the vicinity, expanded entertainment hours for the subject business is appropriate, acknowledging the role of Lower Polk Street within the City's overall entertainment landscape. This business helps to strengthen the overall continued viability of the Polk Street corridor. Although entertainment uses have the potential to disrupt surrounding residential areas, the proposed establishment will be adequately soundproofed and operated in a manner so as to minimize that disruption, and entertainment will not extend beyond 2 a.m.

HOUSING

Objectives and Policies

OBJECTIVE 11:

SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

Policy 11.8:

Consider a neighborhood's character when integrating new uses, and minimize disruption caused by expansion of institutions into residential areas.

The Project does not propose any new or additional uses not already in existence at the project site, but rather an expansion to the amplified hours of entertainment use already permitted at the property, and in conformance with the general land use plan. Additionally, the immediate neighborhood context has an established landscape of entertainment and nightlife uses, such that the proposed expansion of entertainment hours will be well integrated into this context and result in minimal additional nuisance or disruption to surrounding residences. The expanded entertainment offerings would be required to adhere to City noise control requirements and standards, and the business will be operated in a manner so as to minimize disruption to surrounding residential uses.

ARTS

Objectives and Policies

OBJECTIVE VI-1:

SUPPORT THE CONTINUED DEVELOPMENT AND PRESERVATION OF ARTISTS' AND ARTS ORGANIZATIONS' SPACES.

Policy VI-1.4:

Preserve existing performance spaces in San Francisco.

The subject business is an existing Place of Entertainment, and with a small overall capacity, provides a space for less well-known and up-and-coming DJs and other artists.

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 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.

The Project would allow for the continued operation and viability of a local restaurant and entertainment venue.

- 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 would align with the existing neighborhood character of Lower Polk Street, and the business would be soundproofed and operated in such a manner so as to minimize disruption to surrounding residences.

- C. That the City's supply of affordable housing be preserved and enhanced,

No housing is removed for this Project.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The site is located on Polk Street and is well-served by transit. The Project's expansion of entertainment hours only is not likely to generate large increased demand for public transit or neighborhood parking.

- 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 will not displace any service or industry establishment. The Project would allow for the continued operation of a restaurant and entertainment venue that provides service-sector employment opportunities.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

This proposal will not impact the property's ability to withstand an earthquake, and any soundproofing or other interior improvements would be reviewed under current seismic Building Code requirements.

- G. That landmarks and historic buildings be preserved.

A landmark or historic building does not occupy the Project site, and the Project will not impact any other landmark or historic building in the vicinity.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The project will have no negative impact on existing 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

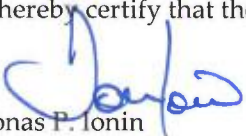
That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2016-010348CUA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated July 7, 2016, and stamped "EXHIBIT B", 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 No. 20146. 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 March 22, 2018.


Jonas P. Ionin
Commission Secretary

AYES: Melgar, Johnson, Koppel, Moore, Richards

NAYS: None

ABSENT: Hillis, Fong

ADOPTED: March 22, 2018

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to permit the operation of a Nighttime Entertainment use with electronic amplification seven days per week until 2 a.m., and to modify the existing conditions of approval of Planning Commission Motion No. 13572, within the existing business (d.b.a. Mayes Oyster House) authorized for Restaurant and Other Entertainment uses located at 1233 Polk Street, Lot 004 in Assessor's Block 0670, pursuant to Planning Code Section(s) 303 and 723 within the Polk Street Neighborhood Commercial District and a 65-A Height and Bulk District; in general conformance with plans, dated July 7, 2016, and stamped "EXHIBIT B" included in the docket for Case No. 2016-010348CUA and subject to conditions of approval reviewed and approved by the Commission on March 22, 2018 under Motion No 20146. 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 March 22, 2018 under Motion No 20146.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 20146 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

PERFORMANCE

1. **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

DESIGN

6. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the architectural addenda. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

7. **Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

MONITORING

8. **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, www.sf-planning.org

9. **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

10. **Written Performance Update.** A written performance update shall be provided to the Planning Commission six months following the approval of the Conditional Use Authorization. The update memo shall include any complaints or citations issued against the subject business and any other general feedback from neighbors with regard to the operation of the amplified nighttime entertainment use. The Planning Commission may request a full hearing at their discretion.

For information about compliance, contact the Case Planner, Planning Department at 415-575-9017, www.sf-planning.org.

OPERATION

11. **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 with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator 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

12. **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 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://sfdpw.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, www.sfdbi.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),

www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.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>.

13. **Sidewalk Maintenance.** The Project Sponsor 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 Streets and Sidewalk Maintenance Standards. *For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>*

14. **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.org/entertainment

15. **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

16. **Hours of Operation.** The subject establishment is limited to the following hours of operation, including for amplified entertainment: Monday through Sunday until 2 a.m.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

From: [Rob Lescoe](#)
To: [Perry, Andrew \(CPC\)](#)
Subject: Re: 1233 Polk - Mayes
Date: Monday, October 29, 2018 3:29:49 PM

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

Andrew Perry,

Thanks for checking in.

The soundproofing that they installed must have worked as I have not heard any excess noise emanating from Mayes.

Robert Lescoe

On Mon, Oct 29, 2018 at 11:37 AM Perry, Andrew (CPC) <andrew.perry@sfgov.org> wrote:

Hi Robert,

Hope all is well. We have reached 6 months from the date of the Mayes Conditional Use Authorization to legalize the additional hours of amplified entertainment, and as was included as a condition of approval, I am preparing a 6-month update memo for the Commission about this matter. I have not heard from you since the hearing, nor have I been made aware of any issues involving the business by either Lower Polk Neighbors, the Entertainment Commission or SFPD, so I hope that that perhaps means things have been running more smoothly of late. If you have anything you would like to update me on, please send me a reply as soon as possible, however, no later than the end of this week (11/2).

Thank you,

Andrew Perry, Planner
Northeast Team, Current Planning Division

San Francisco Planning Department
1650 Mission Street, Suite 400 San Francisco, CA 94103
Direct: 415.575.9017 | www.sfplanning.org

[San Francisco Property Information Map](#)

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From: [Adam Mayer](#)
To: [Chris Schulman](#); [Perry, Andrew \(CPC\)](#)
Subject: Re: 1233 Polk - Mayes Update
Date: Sunday, November 04, 2018 2:05:54 PM

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

Hi Chris & Andrew,

The acoustic improvements to their space has been effective in keeping noise from inside Mayes from seeping out.

The issue that remains though is the noise from their patrons standing outside of Mayes and in the line to get in. This is primarily an issue on Friday and Saturday night.

I would also like to tell Mayes management to please instruct their security staff out front on Polk to stop shouting "GO GO GO" and "MOVE" to people walking by on the sidewalk. I understand they are just trying to control the crowd in front of their establishment but I would say that the loud booming voices of the bouncers yelling at people walking by on Polk is a bigger nuisance than anything else at the moment. It also creates a hostile environment out on Polk Street.

Thanks,
Adam

On Mon, Oct 29, 2018 at 12:23 PM Chris Schulman <chris.schulman@gmail.com> wrote:
Feedback. You are the best equipped to inform us.

----- Forwarded message -----

From: Perry, Andrew (CPC) <andrew.perry@sfgov.org>

Date: Mon, Oct 29, 2018 at 11:32 AM

Subject: 1233 Polk - Mayes Update

To: Chris Schulman <chris.schulman@gmail.com>

Hi Chris,

Hope all is well. I am quickly checking in with you regarding Mayes Oyster House, to see whether LPN has received any complaints directly or is aware of any ongoing neighbor issues about Mayes Oyster House's legalization of the additional hours of amplified entertainment. I have not received any further communication from neighbors directly, but would appreciate any feedback you may have as I prepare a brief update memo for the Commission as we have now reached 6 months past the authorization hearing.

Cheers,

Andrew Perry, Planner
Northeast Team, Current Planning Division

San Francisco Planning Department
1650 Mission Street, Suite 400 San Francisco, CA 94103
Direct: 415.575.9017 | www.sfplanning.org

San Francisco Property Information Map

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