



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Conditional Use

HEARING DATE: 09/13/2018

Record No.: **2017-015181CUA**
Project Address: **412 BROADWAY**
Zoning: NCD (Broadway Neighborhood Commercial District)
65-A-1 Height and Bulk District
Block/Lot: 0144/033
Applicant: Jeremy Paul
854 Castro Street, #466
San Francisco, CA 94114
Staff Contact: Andrew Perry – (415) 575-9017
andrew.perry@sfgov.org
Recommendation: **Disapproval**

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION

The Project requests Conditional Use Authorization 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). Sale of alcohol would cease before 2 a.m., as per state law, and no other changes are proposed to the use or physical building.

REQUIRED COMMISSION ACTION

In order for the Project to proceed, the Commission must grant a Conditional Use Authorization to allow for hours of operation between 2 a.m. and 6 a.m. within the Broadway NCD.

ISSUES AND OTHER CONSIDERATIONS

- **Public Comment & Outreach.** The Project Sponsor held a Department-facilitated pre-application 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.

BASIS FOR RECOMMENDATION

The Department finds that the Project is, on balance, inconsistent with the Objectives and Policies of the General Plan. Although the Project would enhance an existing Restaurant and Nighttime Entertainment business located within an entertainment-oriented neighborhood commercial district, it may also result in detrimental effects to the surrounding residential neighborhood and character. Currently, nearby residents report nuisance activity, particularly on weekends, centered around the 2 a.m. closing of nearby bars and entertainment businesses. By extending the hours of operation beyond 2 a.m., it may result in a longer period of time, and later into the evening, in which these nuisance activities would likely occur.

While there are six existing businesses in the vicinity that are permitted to operate past 2 a.m., the majority of these are non-entertainment food establishments, and have extended hours limited to weekends only; only one similar entertainment business has an extended hours permit (1031 Kearny).

Lastly, the General Plan acknowledges that late-night hours may be appropriate in the Broadway NCD under carefully regulated conditions. While it is possible that the current operator may operate in the neighborhood without negative effects on nearby residents, a future operator may not operate to that same standard, and it is difficult to see how this type of land use could be appropriately conditioned in that regard so as to meet the intent of the General Plan. Additionally, there have been recent legislative efforts at the state level to extend hours for the sale of alcohol until 4 a.m. in certain California cities; these potential legislative changes warrant close consideration in light of the current application. The Department does not find the project to be necessary, desirable, and compatible with the surrounding neighborhood, and finds that it may be potentially detrimental to persons or adjacent properties in the vicinity.

ATTACHMENTS:

Draft Motion – Conditional Use Authorization
Exhibit A – Plans
Exhibit B – Land Use Data
Exhibit C – Maps and Context Photos
Exhibit D - Public Correspondence
Exhibit E - Project Sponsor Brief



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Motion

HEARING DATE: SEPTEMBER 13, 2018

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Case No.: **2017-015181CUA**
Project Address: **412 BROADWAY**
Zoning: NCD (Broadway Neighborhood Commercial District)
65-A-1 Height and Bulk District
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.perry@sfgov.org

ADOPTING FINDINGS RELATING TO THE 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. 2017-015181CUA 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.

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 pre-application 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.

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 a.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 in 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 fixed-source 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 draw 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 Broadway 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. Lastly, although alcohol could not be served at present between the hours of 2 a.m. and 4 a.m., this may change in the future as a result of recent legislation at the state level.

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.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on September 13, 2018.

Jonas P. Ionin
Commission Secretary

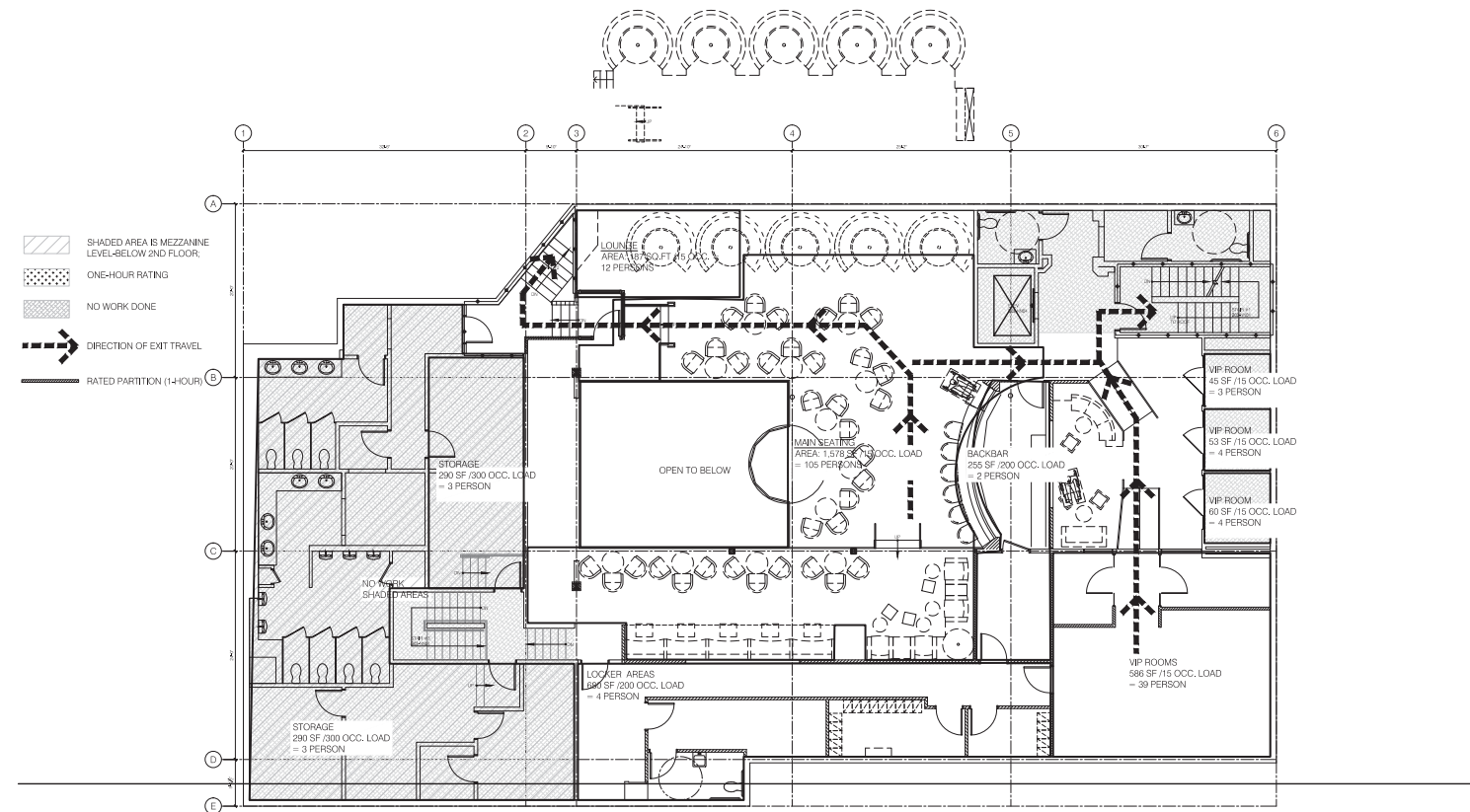
AYES:

NAYS:

ABSENT:

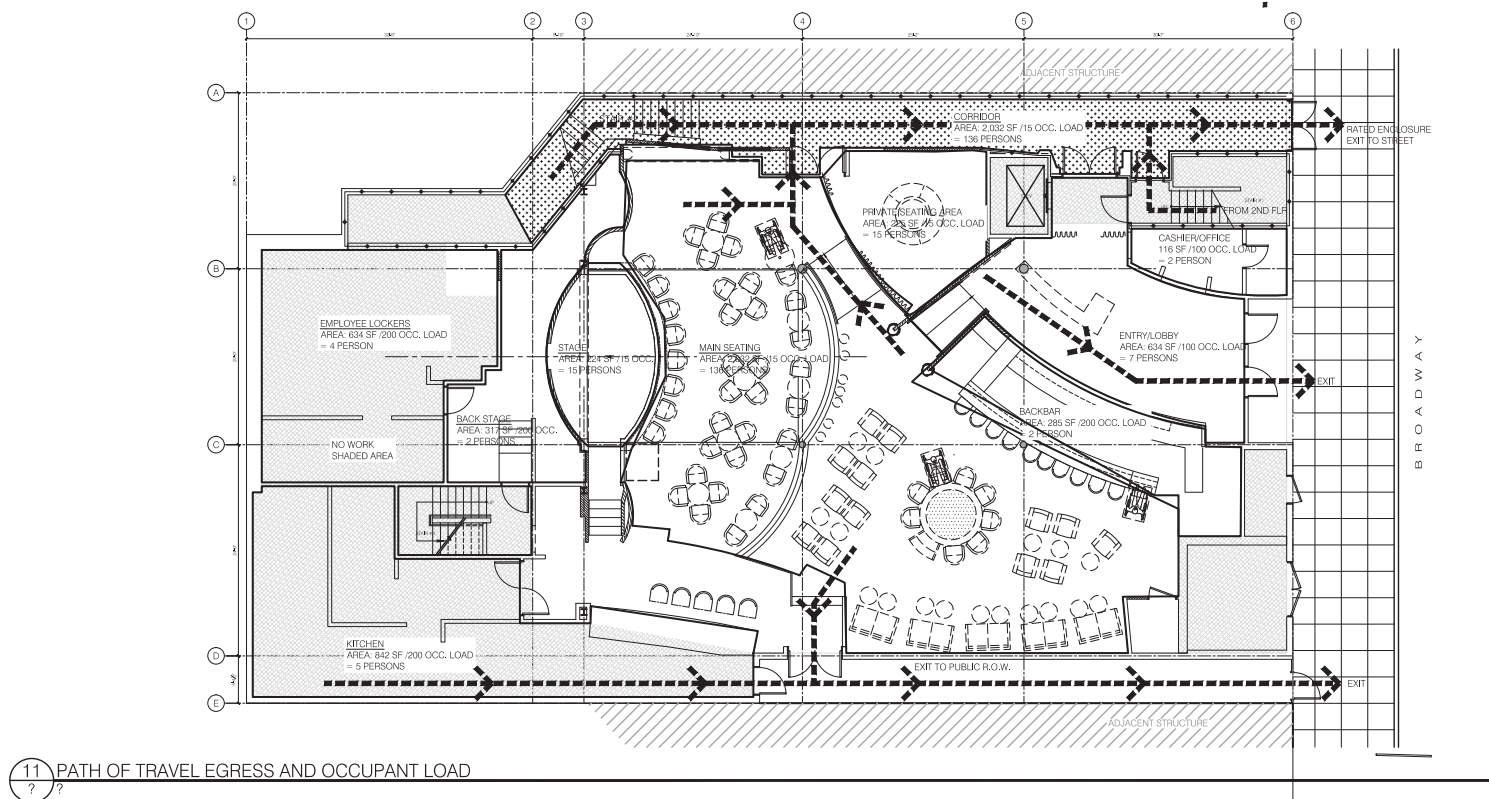
ADOPTED: September 13, 2018

SECOND LEVEL MAXIMUM OCCUPANCY SCHEDULE FOR EGRESS								
	ROOM NAME	OCCUPANCY TYPE	FLOOR AREA IN SQ.FT. PER OCCUPANT (TABLE 10.4.1)	FLOOR AREA	ACTUAL NUMBER	NUMBER BY AREA	FIXED SEATING IF APPLICABLE (TABLE 10.4.7)	LARGEST NUMBER COMPUTED
	MAIN LOUNGE	UNCONCENTRATED	15 NET	1336	74 PERSONS	89 PERSONS	21 PERSONS	110 PERSONS
	UPPER LOUNGE	UNCONCENTRATED	15 NET	891	19	62	10	72
	BACK OF HOUSE/LOCKERS	KITCHEN	200 GROSS	680	-	4	-	4
	BACK BAR	KITCHEN	200 GROSS	225	-	2	-	2
					93			188



13 PATH OF TRAVEL EGRESS AND OCCUPANT LOAD

GROUND LEVEL MAXIMUM OCCUPANCY SCHEDULE FOR EGRESS								
	ROOM NAME	OCCUPANCY TYPE	FLOOR AREA IN SQ.FT. PER OCCUPANT (TABLE 10.4.1)	FLOOR AREA	ACTUAL NUMBER	NUMBER BY AREA	FIXED SEATING IF APPLICABLE (TABLE 10.4.7)	LARGEST NUMBER COMPUTED
	LOUNGE	UN-CONCENTRATED	15	225	6 PERSONS	15 PERSONS	-	15
	MAIN DINING	UN-CONCENTRATED	15 NET	2032	68	136	16	136
	LOBBY	UN-CONCENTRATED	100 NET	634	-	7	-	7
	KITCHEN/BOH	KITCHEN	200 GROSS	842	-	5	-	5
	BACKBAR	KITCHEN	200 GROSS	285	-	2	-	2
	LOCKERS		200 GROSS		-			4
	STAGE		15	224	-	15	-	15
					74			174



11 PATH OF TRAVEL EGRESS AND OCCUPANT LOAD

[illegible]

PROJECT NAME:
SHOWGIRLS

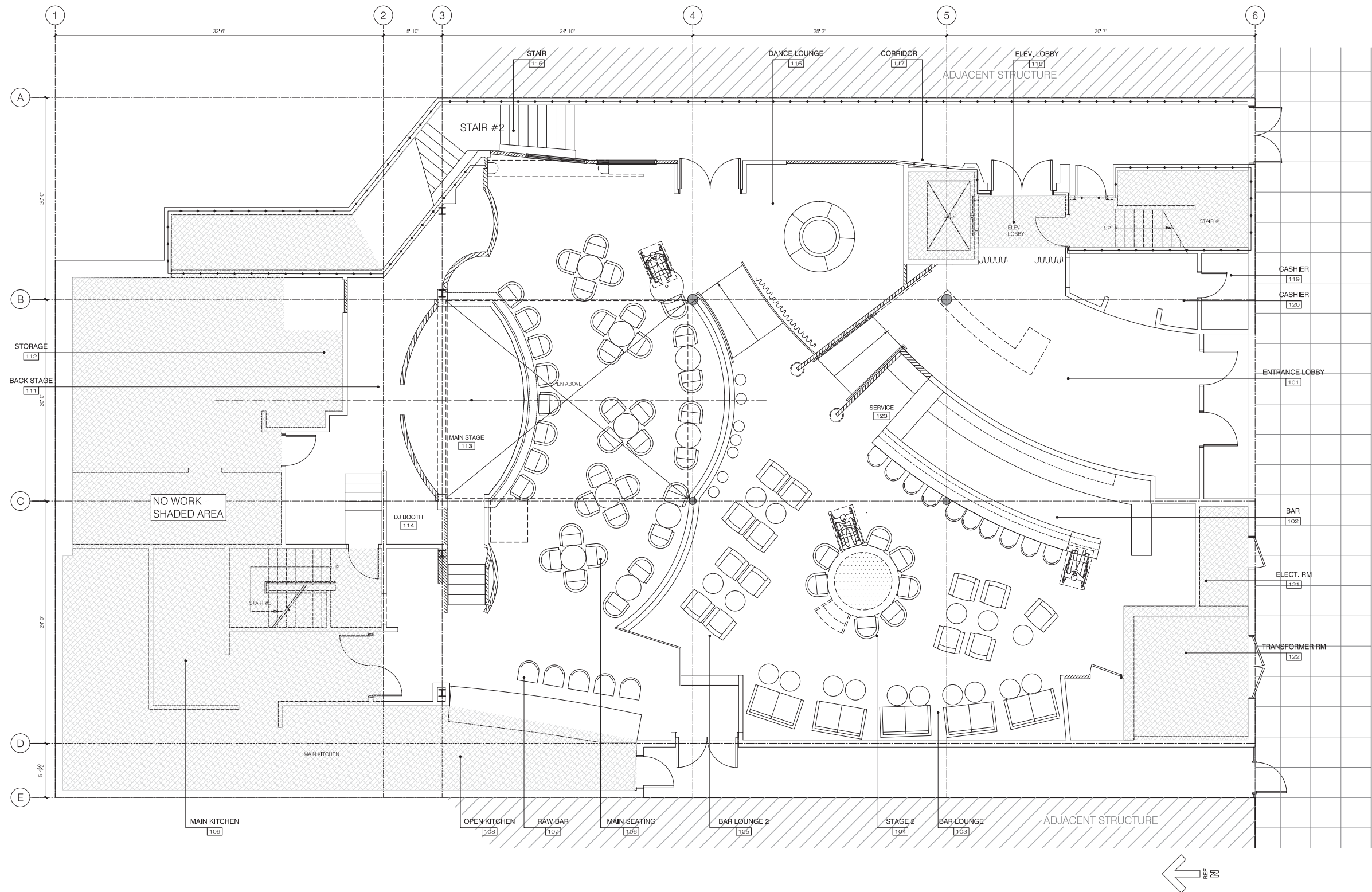
412 BROADWAY
SAN FRANCISCO CA

SHEET TITLE:
**PATH OF TRAVEL EGRESS AND
OCCUPANT LOAD**

PROJECT NUMBER: 11042
DRAWN BY: LMM CHECKED BY: -
DATE: 9/15/2011
SCALE: As Noted
THIS SHEET IS 30" X 42"

G-003

SHEET - OF -



BROADWAY

[illegible]

These drawings and specifications and the concepts embodied in them are the original unpublished work of COLLINS HENDERSON, INC and may not be disclosed or duplicated without written consent of COLLINS HENDERSON, INC, whether the project for which they were made is executed or not, unless by contract.

PROJECT NAME:
SHOWGIRLS

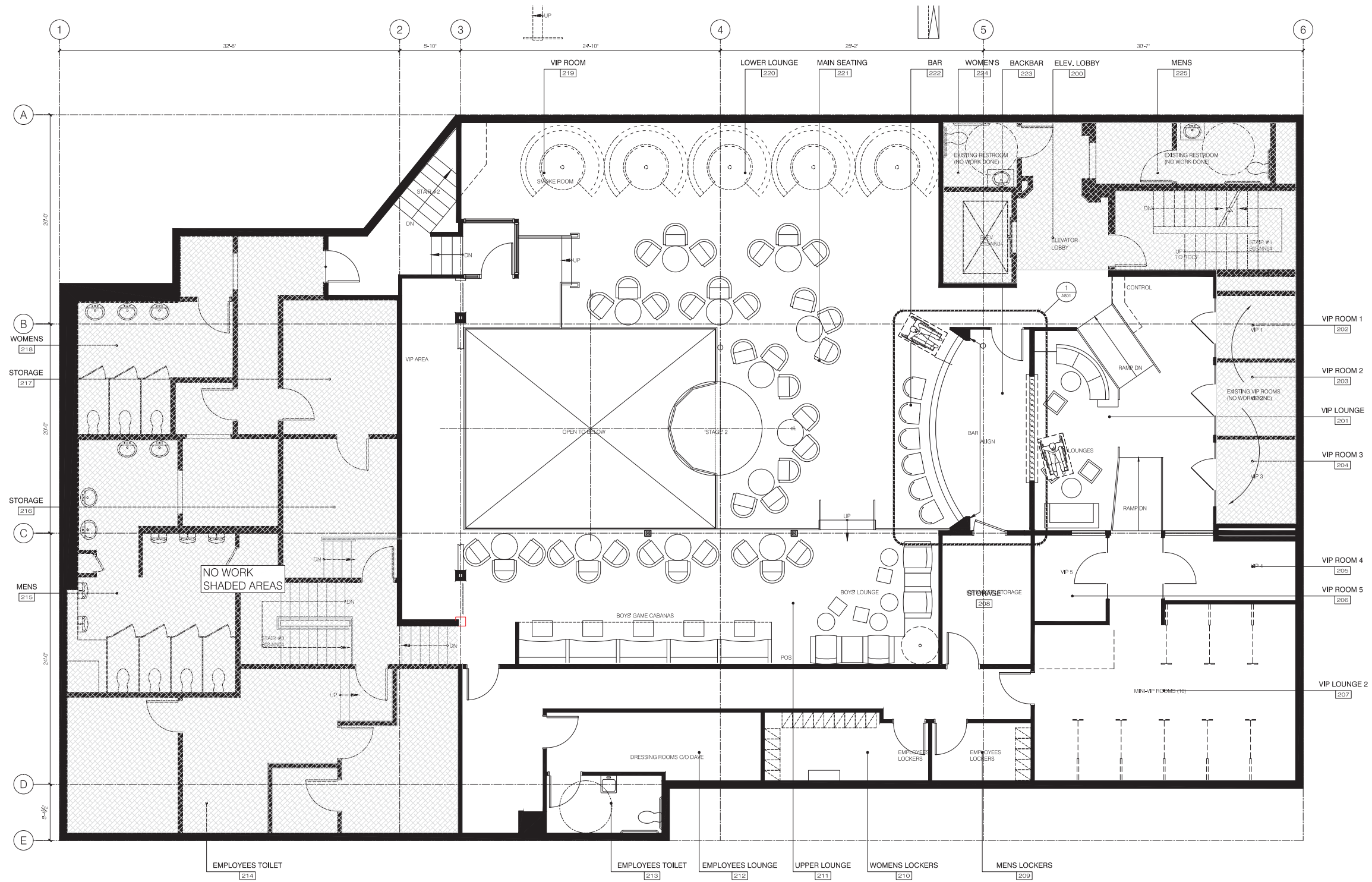
412 BROADWAY
SAN FRANCISCO CA

SHEET TITLE:
**GROUND FLOOR FURNITURE
PLAN**

PROJECT NUMBER: 11042
DRAWN BY: LMM CHECKED BY: -
DATE: 9/15/2011
SCALE: As Noted
THIS SHEET IS 30" X 42"

A-103

SHEET - OF -



2 FURNITURE PLAN
A-104 1/4" = 1'-0"

MARK	REVISIONS	BY/DATE
-	BOOTH SEATING AT EAST WALL.	LMM 11/15/2011
-	" "	" "
-	" "	" "
-	" "	" "
-	" "	" "
-	" "	" "
-	" "	" "
-	" "	" "
-	" "	" "
-	" "	" "
-	" "	" "

FOR PERMIT

These drawings and specifications and the concepts embodied in them are the original unpublished work of COLLINS HENDERSON, INC and may not be disclosed or duplicated without written consent of COLLINS HENDERSON, INC, whether the project for which they were made is executed or not unless by contract.

PROJECT NAME:
SHOWGIRLS

412 BROADWAY
SAN FRANCISCO CA

SHEET TITLE:
SECOND FLOOR FURNITURE
PLAN

PROJECT NUMBER: 11042
DRAWN BY: LMM CHECKED BY: -
DATE: 9/15/2011
SCALE: As Noted
THIS SHEET IS 30" X 42"

A-104

SHEET - OF -



SAN FRANCISCO PLANNING DEPARTMENT

Land Use Information

PROJECT ADDRESS: 412 BROADWAY
RECORD NO.: 2017-015181CUA

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

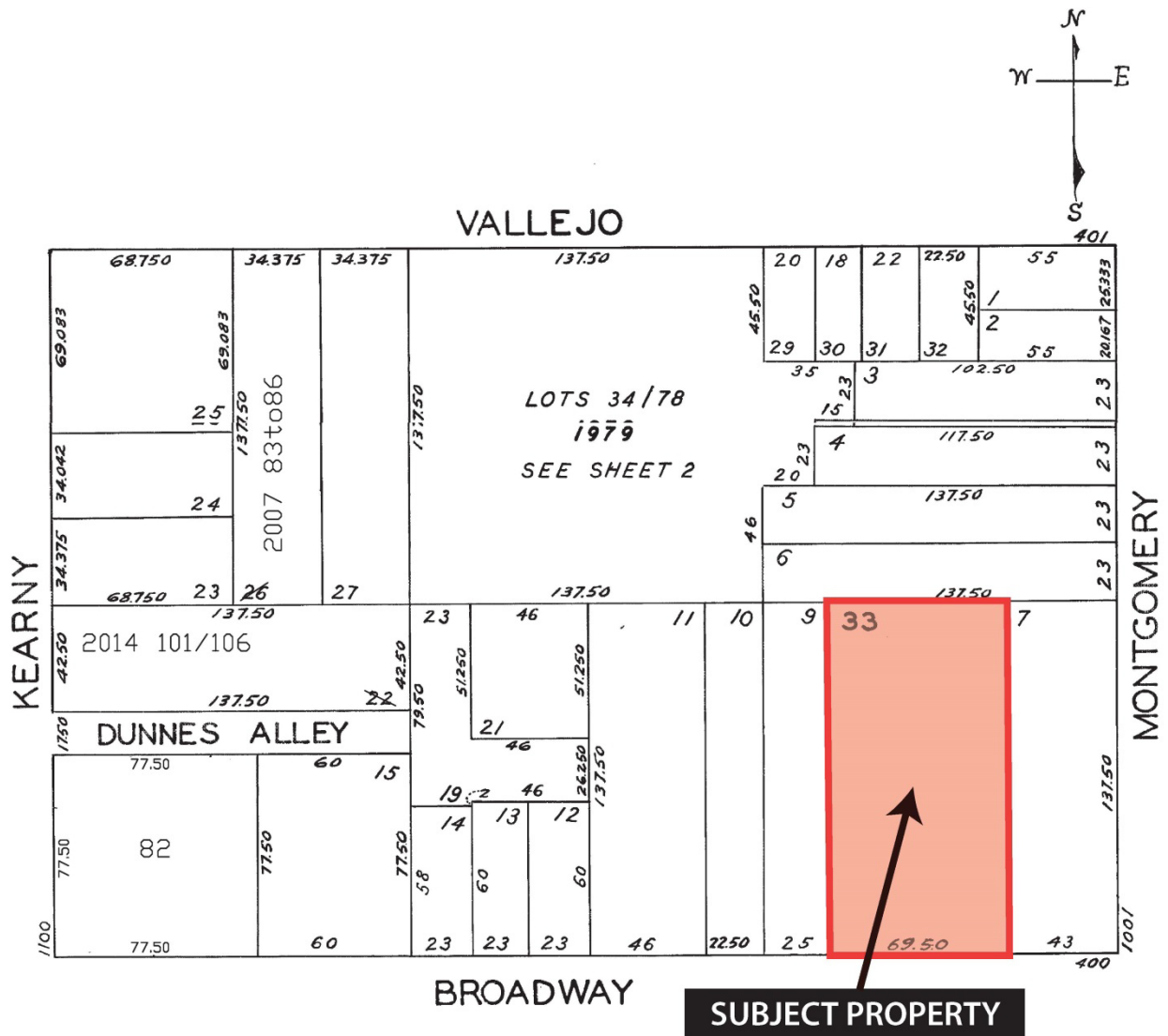
Planning
Information:
415.558.6377

	EXISTING	PROPOSED	NET NEW
GROSS SQUARE FOOTAGE (GSF)			
Lot Area	9556.25	9556.25	--
Residential	--	--	--
Commercial/Retail	15,000	15,000	--
Office	--	--	--
Industrial/PDR <i>Production, Distribution, & Repair</i>	--	--	--
Parking	--	--	--
Usable Open Space	--	--	--
Public Open Space	--	--	--
Other ()	--	--	--
TOTAL GSF	15,000	15,000	--
	EXISTING	NET NEW	TOTALS
PROJECT FEATURES (Units or Amounts)			
Dwelling Units - Market Rate	--	--	--
Dwelling Units - Affordable	--	--	--
Hotel Rooms	--	--	--
Parking Spaces	--	--	--
Loading Spaces	--	--	--
Car Share Spaces	--	--	--
Bicycle Spaces	--	--	--
Number of Buildings	1	1	0
Number of Stories	2	2	0
Height of Building(s)	--	--	--
Other ()	--	--	--

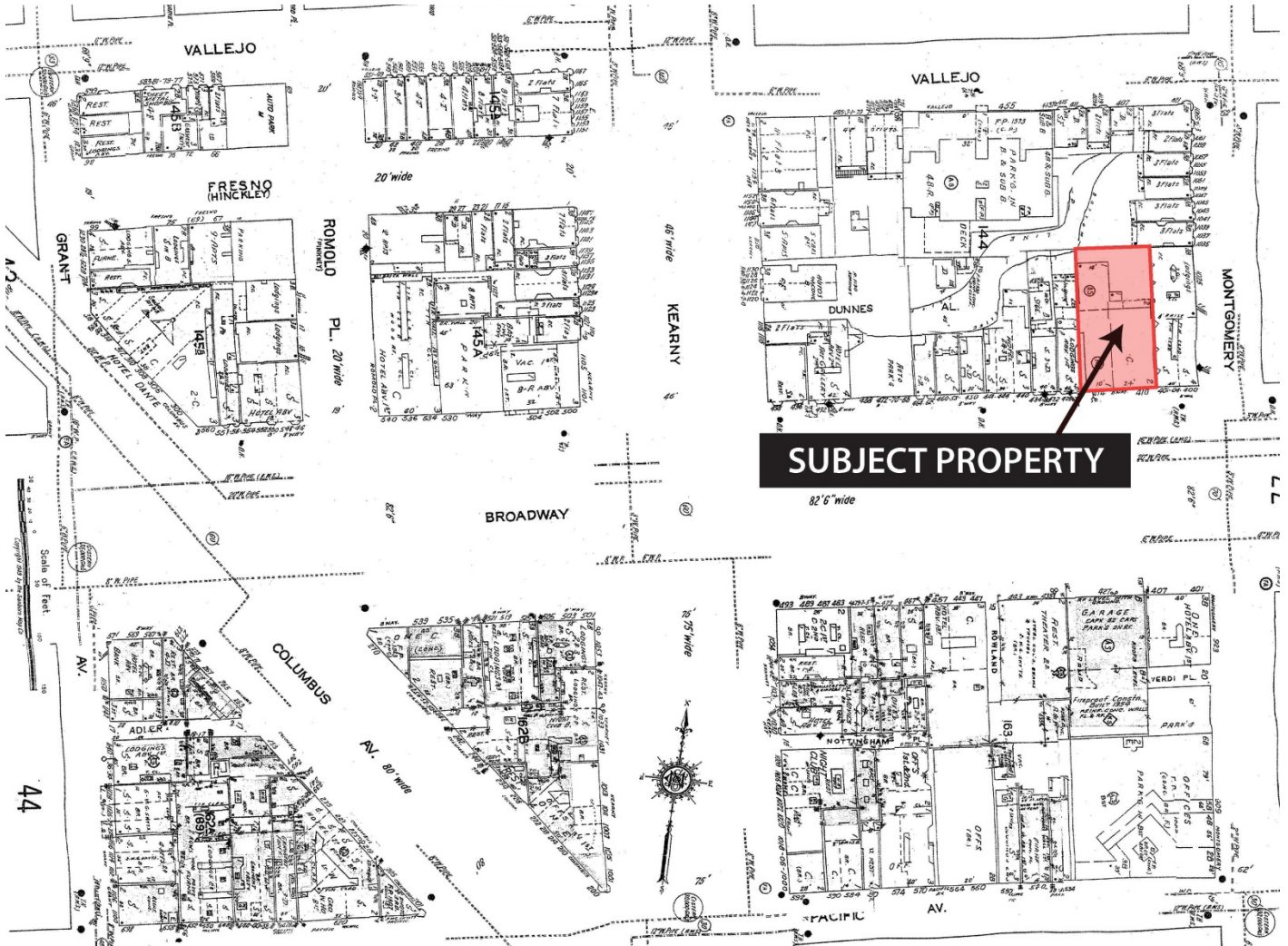
This page intentionally left blank.

Exhibit C – Maps and Context Photos

Block Book Map

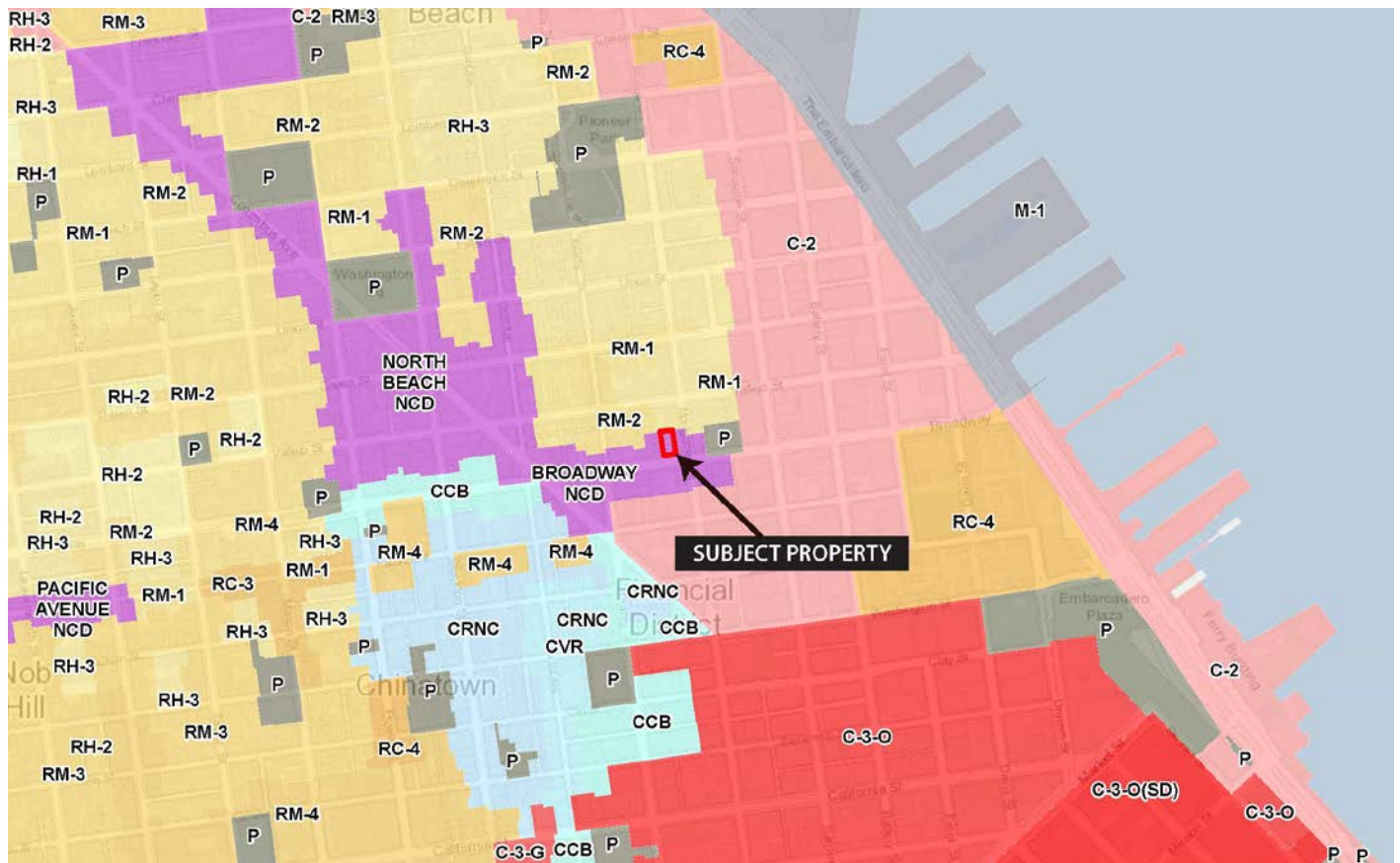


Sanborn Map*

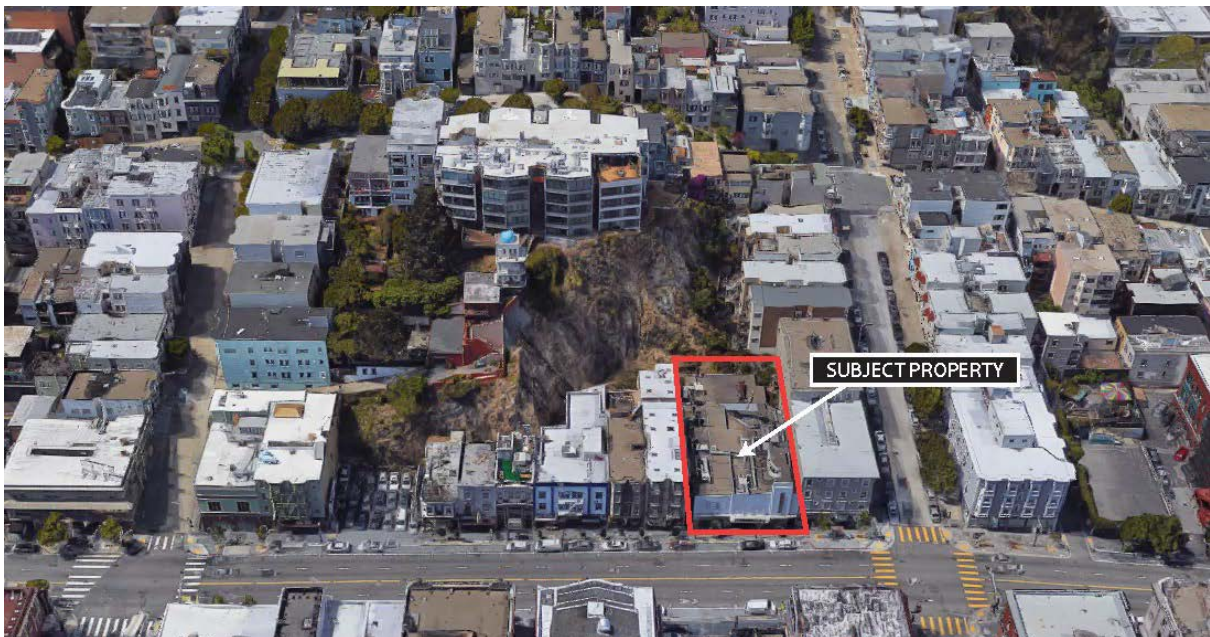
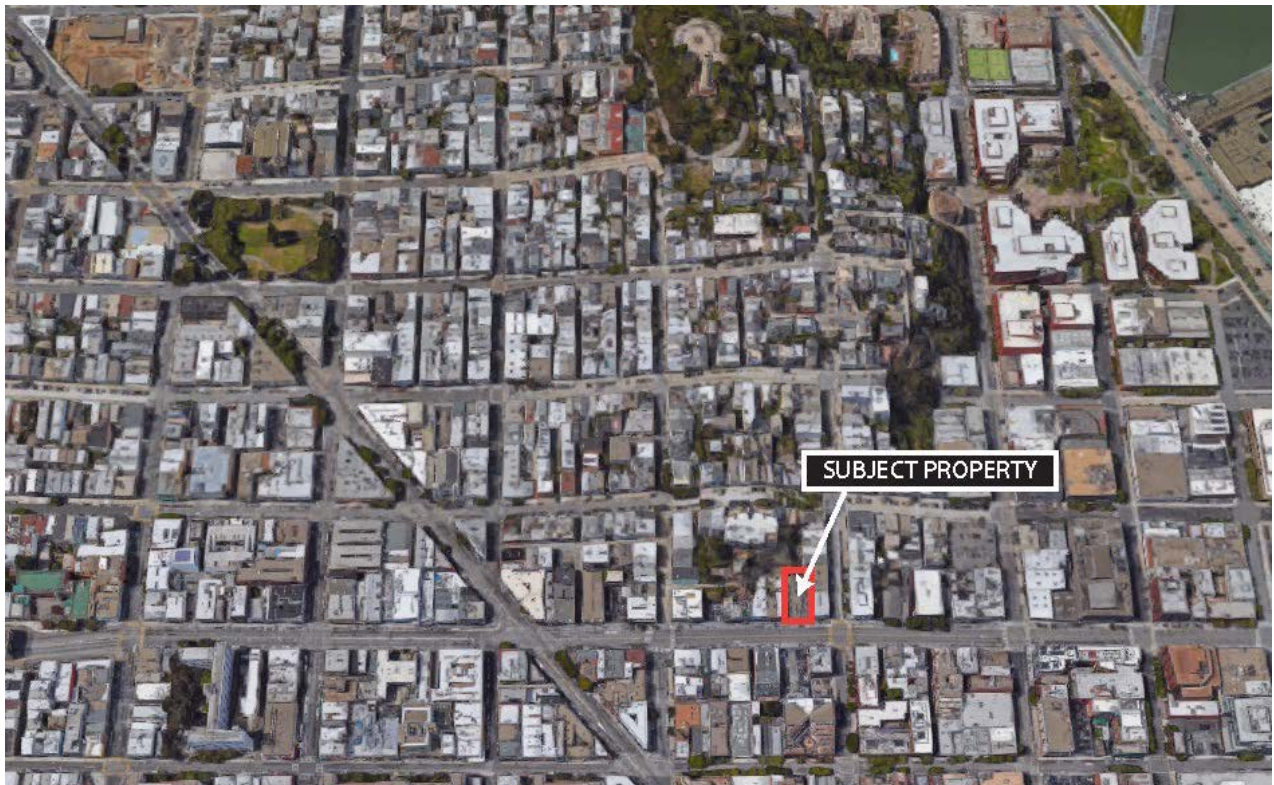


* The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.

Zoning Map

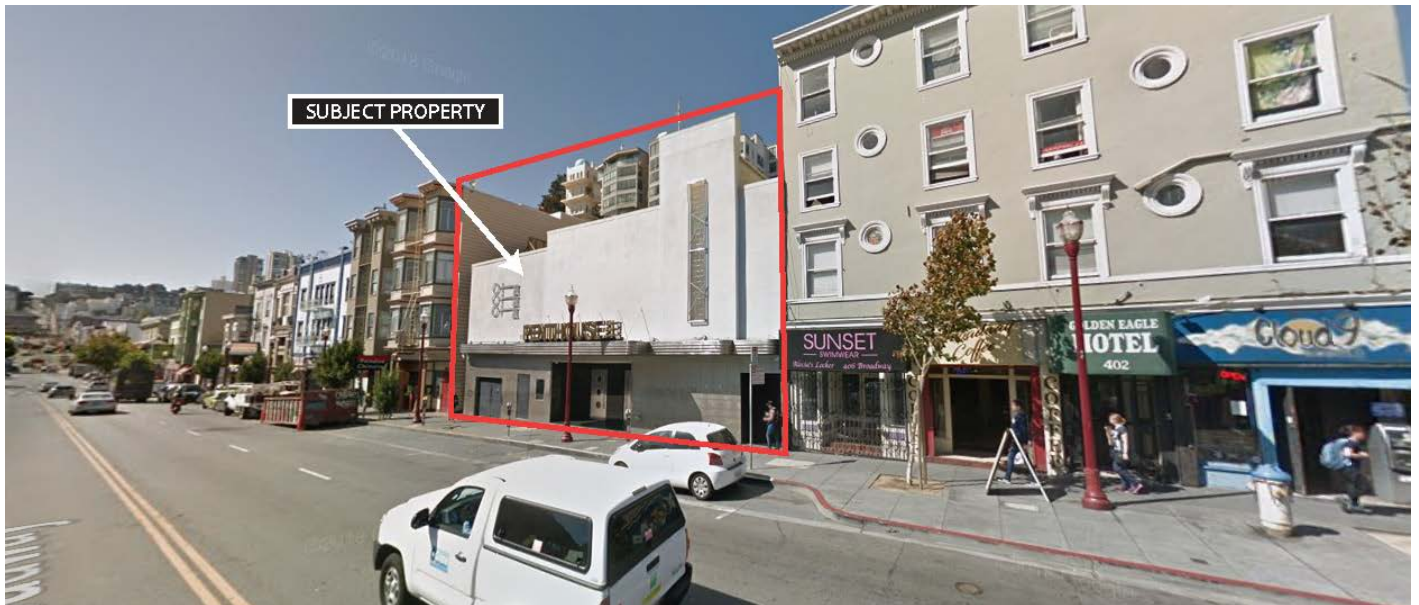


Aerial Photos (oriented north)



Context Photos

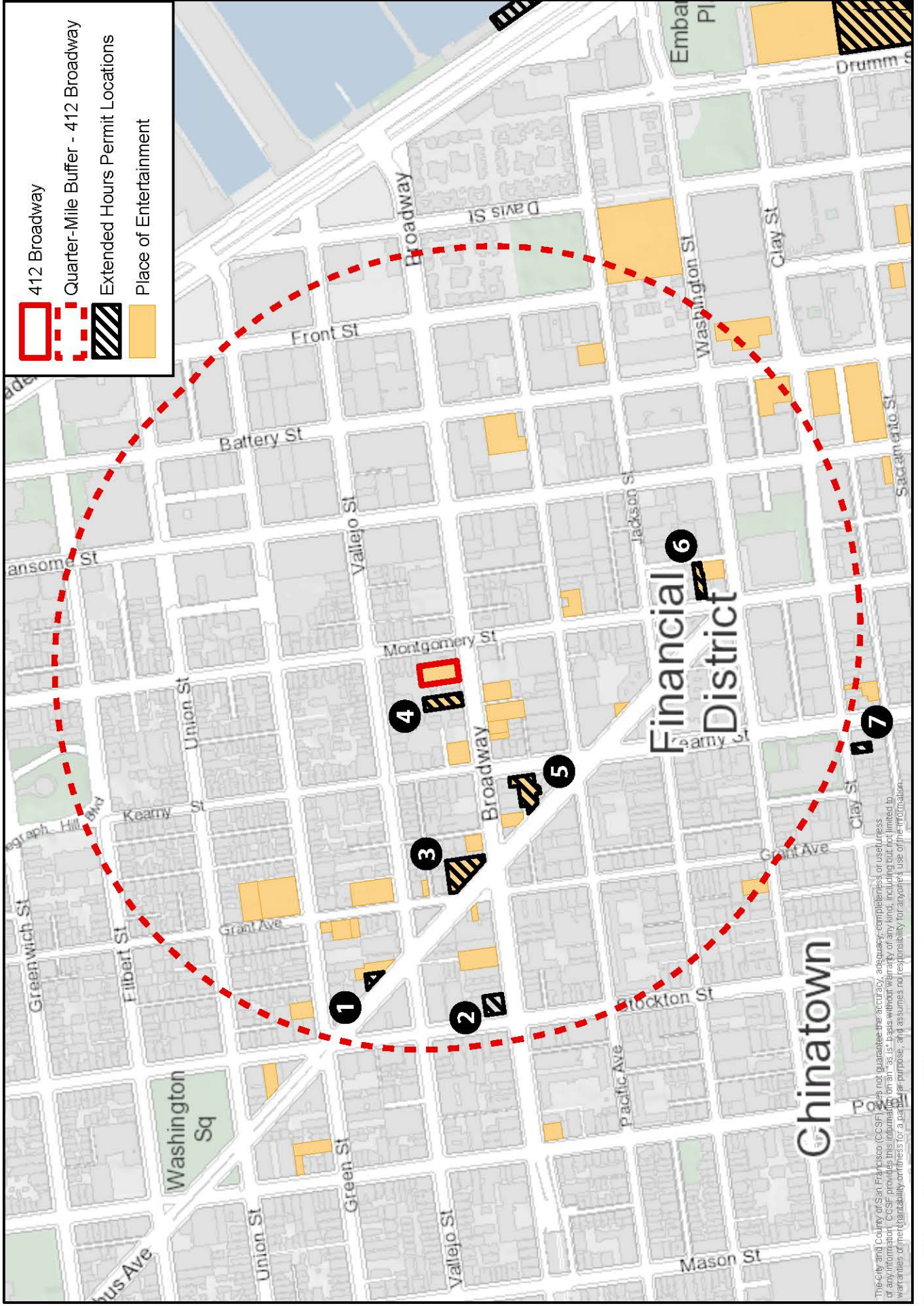
(Along Broadway, oriented west)



(Along Broadway, oriented east)



Entertainment and Late-Night Hours in Proximity to 412 Broadway



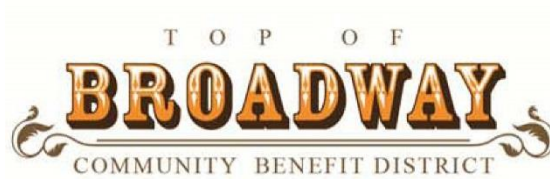
The City and County of San Francisco (CCSF) does not guarantee the accuracy, adequacy, completeness or usefulness of any information. CCSF provides this information on an "as is" basis without warranty of any kind, including but not limited to warranties of merchantability, fitness for a particular purpose, and assumes no responsibility for anyone's use of the information.

Numerical Key to Establishments with Extended Hours Permits

1. Calzone's Restaurant (430 Columbus Ave.) – current operation only until 1 a.m., daily
2. Yuet Lee Restaurant (1300 Stockton St.) – 3 a.m. close, Friday and Saturday only
3. Taqueria Zorro (308 Columbus Ave.) – 3 a.m. close, Friday and Saturday only
 *Note – Place of Entertainment on same Block/Lot is for separate business (d.b.a. The Condor Club, 300 Columbus Ave.)
4. Paris Pizza & Grill (448 Broadway) – 3 a.m. close, daily
 *Note – Place of Entertainment on same Block/Lot is for separate business (d.b.a. The Cosmo Bar and Lounge, 440 Broadway)
5. Larry Flynt's Hustler Club (1031 Kearny) – 4 a.m. Thursday night, 5 a.m. Friday & Saturday
6. Barbarossa Lounge (714 Montgomery) – current operation only until 2 a.m. Thurs. – Sat.
7. Sam Wo Restaurant & Bakery (713 Clay St.) – 3 a.m. close, Friday and Saturday only

Exhibit D – Public Correspondence

This page intentionally left blank.



February 14, 2018

To: City Officials of San Francisco

SUBJECT: Proposed Extension of Penthouse Conditional Use Permit from 2 AM to 4 AM
Penthouse, 412 Broadway, San Francisco, CA. 94133

This letter is to acknowledge that the Land Use Committee of the Top of Broadway Community Benefit District heard the proposal from Penthouse Club & Restaurant representatives to extend the hours of operation from 2:00 AM to 4:00 AM on July 26th, 2016 and fully endorsed the application to amend their conditional use permit.

We believe the extension of hours for Penthouse will increase general public safety on Broadway as the application is intended to provide a venue for local patrons to safely recover from earlier nightlife festivities before said patrons return to their place of residence. The Land Use Committee understands that the application does not extend Penthouse's ability to serve alcohol past 2:00 AM and believes the owners are acting in good faith with regards to area presentation and safety.

We fully support their application to extend Penthouse hours of operation to 4:00 AM and wish them the best of luck in their entrepreneurial endeavors.

Sincerely,

Marco Li Mandri
Executive Director
Top of Broadway CBD

Cc: Supervisor Aaron Peskin
Board of Directors, Top of Broadway Community Benefit District

From: Daniel Macchiarini
To: [Perry, Andrew \(CPC\)](#)
Cc: [Fady Zoubi](#); [SFPD Central Station, \(POL\)](#)
Subject: Support for Penthouse Conditional Use Authorizations for Extension of Hours
Date: Tuesday, June 12, 2018 1:06:03 PM
Attachments: [PastedGraphic-1.png](#)

NORTH BEACH BUSINESS ASSOCIATION



Post Office Box 330187
San Francisco CA., 94133
www.sfnbba.com

June 12, 2018
Andrew Perry, Planner
San Francisco Planning Department 1600 Mission Street, Suite 400
San Francisco, CA 94103
(Via email: andrew.perry@sfgov.org)
Re: 412 Broadway. (The Penthouse Club)
Support for Condition Use Authorizations for Extension of Hours

Dear Mr. Perry,

We have no objection and support a 6 month trial of the extension of opening times at the Penthouse Club because, as indicated by Central Police Station, there have been no safety problems caused by this clubs operations in the past and by all appearances they have an effective security plan in place both inside and directly outside their club at this time ”

Thank You,
Dan Macchiarini
President
NB Business Association

May 29, 2018

Andrew Perry, Planner
San Francisco Planning Department
1600 Mission Street, Suite 400
San Francisco, CA 94103
(Via email: andrew.perry@sfgov.org)

**Re: 412 Broadway (The Penthouse Club)
Opposition to Conditional Use Authorizations for Extension of Hours**

Dear Mr. Perry,

On behalf of the Telegraph Hill Dwellers, Barbary Coast Neighborhood Association, Golden Gateway Tenants Association, and the 455 Vallejo Street Homeowners Association, we are writing in opposition to the application to extend the hours for the Penthouse Club (412 Broadway) from 2:00 AM to 4:00 AM. We do not believe that the Commission can make the findings required by the Planning Code to approve a Conditional Use Authorization in this case.

Extending the hours to 4:00 AM will further intensify the negative impacts on the health, safety, and general welfare of those who live and work in the vicinity and will not provide a development that is “necessary or desirable” for the community.

Even within the currently permitted hours of operation, the activity on Broadway impacts the health, safety, and general welfare of the residents and businesses in the vicinity. Families and individuals living nearby, especially those residents along Broadway, are negatively affected by the noise generated by the clubs and the high-speed traffic down Broadway, which quiets down only after 2:00 AM. Because of violent incidents that have occurred, such as those associated with the HUE club, many residents are afraid to walk in the area at night, and some have experienced intrusive and intimidating encounters. Patrons leaving the Broadway businesses late at night spill into the surrounding residential and business areas – onto the Vallejo Steps where they come to continue drinking and making noise, and onto Grant Avenue where fights break out and property (*i.e.* shop window glass) is often damaged or destroyed.

Extending the hours of operation for the Penthouse Club to 4:00 AM will further intensify these negative impacts on those who live and work in our community and will set a dangerous precedent for others to follow, further intensifying impacts.

The project sponsor’s argument that extending hours of operation to 4:00 AM will somehow reduce these negative impacts is simply unfounded. They have provided no evidence for their claim that keeping the club open until 4:00 AM will allow patrons to “sober up” before leaving.

As organizations representing the residents and businesses that will be most affected, we respectfully urge the Commission to reject the Conditional Use application to extend the hours of the Penthouse Club.

Judy Irving, President
Telegraph Hill Dwellers
president@thd.org

Diana Taylor, President
Barbary Coast Neighborhood Association
folbergtaylor@comcast.net

Lisa Crikos
455 Vallejo Street Home Owners Association
455vallejosthoa@sbcglobal.net

Tatjana Eggert-Reich, President
Golden Gateway Tenants Association
Tatereich@gmail.com

cc: Captain Paul Yep, SFPD, Central Station paul.yep@sfgov.org
Supervisor Aaron Peskin, District 3 aaron.peskin@sfgov.org
Jeremy Paul, The Penthouse Club jeremy@quickdrawsf.com

From: nancy@nplmft.com
To: [Perry, Andrew \(CPC\)](#)
Subject: 412 Broadway project
Date: Monday, May 28, 2018 9:57:31 AM

Hello Andrew –

I am writing to ask that you present my objections to this project to the Planning Commission. There is absolutely no benefit to the neighbors in granting the Conditional Use permit. The crime and disturbances to the surrounding neighborhood will only increase if it is granted. My neighbors already pay for private security to keep the Vallejo Steps free from intruders – the police can't even patrol this area. I don't believe the additional income the project may produce is worth the trouble.

Nancy Lewis
466A Vallejo Street
San Francisco, CA 94133

From: Andrew Diamond
To: [Perry, Andrew \(CPC\)](#)
Subject: 412 Broadway - proposal to extend operating hours
Date: Tuesday, July 17, 2018 12:27:33 PM

Dear Andrew,

My family and I live at 2 Rowland Street #1, which is across the street from the Penthouse Club at 412 Broadway.

I am writing to let the Planning Commission know that I am strongly opposed to the club's request to extend their operating hours from 2 am to 4 am.

Everyone is well aware of the issues on the Broadway Corridor, and extending the hours at the Penthouse Club will only make matters worse by encouraging people to stay out on Broadway all night long.

Would you please keep me in the loop if there is any future action on this matter? Please let me know if you have any questions.

Thanks,
Andrew Diamond
2 Rowland Street #1

Exhibit E – Project Sponsor Brief

This page intentionally left blank.

CONDITIONAL USE PERMIT APPLICATION UNDER THE CITY PLANNING CODE

APPLICANT: Jeremy Paul
Quickdraw Permit Consulting
584 Castro Street #466
San Francisco, CA 94114

ON BEHALF OF: BT California, LLC. dba "The Penthouse Club and Restaurant"

PROPERTY IDENTIFICATION:

412 BROADWAY, North side between Kearny and Montgomery Street; Lot 33 in Assessor's Block 0144. Is located within the Broadway NCD and a 65-A-1 height and bulk district. The project site is occupied by a two-story commercial building with a single tenant bar, restaurant & entertainment use (dba "Penthouse Club") of approximately 15,000 square feet.

DESCRIPTION OF AUTHORIZATION SOUGHT:

CONDITIONAL USE SOUGHT: the proposed project is to extend the hours of operation of the existing bar, restaurant & entertainment establishment. The business is currently permitted to remain open until 2 AM, this proposal is to extend the hours of operation until 4 AM. There will be no physical expansion, or alteration of the existing building or commercial space. The proposed use is not a formula retail as defined in section 703.3 of the Planning Code

Pursuant to Planning Code Section 303(c), before approving a conditional use authorization, the Planning Commission needs to find that the facts presented are such to establish the findings stated below.

(1) That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community;

The Broadway Neighborhood Commercial District has undergone major transformation in the last several years. Past problems associated with nighttime entertainment such as traffic, noise, drunken and disorderly behavior have subsided significantly.

As patron safety and security have always been the top management priorities of the subject business, 412 Broadway specifically has not been a source or substantial contributor to nightlife related problems in this district during the past decade. Strictly enforced policies regarding dress and behavior, and prohibition of any loitering outside the club have ensured that "The Penthouse Club and Restaurant" patrons have a positive impact on the community.

Several factors have contributed to recent improvements along the Broadway corridor, and management changes at key nightclub properties in the district has had noticeable positive impacts on these concerns especially on weekend nights.

Most critical to these improvements has been formation of an effective Top of Broadway Community Benefit District ("ToBCBD"). This CBD has contributed to these improvements by providing a means for cooperation and coordination of local businesses, neighbors and law enforcement. BT California and its associated entity BSC Management have been the primary financial contributors and business leaders of this very successful CBD.

(2) That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

(a) The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

i. The size and shape of the building will not change. No increase to the commercial space is proposed.

(b) 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;

ii. The accessibility and traffic patterns for the area will not be affected due to the change of hours of the project. Most extended hours patronage will be retention of existing patrons, with some pedestrians from area bars and minor taxi and limousine service.

The proposed project will not significantly impact traffic circulation any more than the pre-existing use. The hours concerned are not times of high demand for street parking.

The subject property is well-served by the large passenger zone designated by SFMTA.

(c) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

- iii. The Project will not create substantial noxious or offensive emissions, such as noise, glare, dust or odor.

(d) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

- iv. No change is proposed to such aspects as landscaping and screening as the existing building covers the entire lot.

(3) That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the Master Plan.

Under the provisions of Code Section 303, the Commission may authorize a Conditional Use after finding that the proposed use will provide a development that is necessary or desirable for and compatible with the neighborhood or the community; that such use will not be detrimental to the health, safety, welfare, convenience or general welfare of persons residing or working in the vicinity; and that such use will not adversely affect the General Plan.

Planning Code Section 303(p)(1) specifically addresses Conditional Uses for “Nighttime Entertainment” such as the subject business, and requires the following findings

(A) If the use is an Adult Business, it shall not be located within 1,000 feet of another such use;

- v. Not applicable. 412 Broadway is not an “Adult Business”, this is a “Nighttime Entertainment” venue as defined by section 102 of the Planning Code and section 1060 of the San Francisco Police Code.

(B) Not be open between two a.m. and six a.m.;

- vi. This application is permitted under 303(p)(2)

(C) Not use electronic amplification between midnight and six a.m.;

- vii. This application is permitted under 303(p)(2)

(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.

- viii. The premises at 412 Broadway are exceptionally well soundproofed and have been insulated to prevent noise transmission beyond the premises.

This has been verified by Charles M Salter Associates Inc. in their Club Acoustical Measurements Report of October 5, 2016 (attached)

(2) Notwithstanding the above, the Planning Commission may authorize a Conditional Use which does not satisfy the criteria set forth in (p)(1)(B) and/or (p)(1)(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.

- ix. The Penthouse Club and Restaurant has consistently operated in a manner which minimizes disruption to residences in and around the district with respect to noise and crowd control.

This business has been the industry leader in sponsoring direct practical measures to reduce the impact of the upper Broadway nightlife venues on the surrounding neighborhoods. Through its activities creating, managing and funding the Top of Broadway Community Benefit District and maintaining a close working relationship with SFPD, The Penthouse Club and Restaurant has led the way to a cleaner, safer and quieter Broadway.

From the 1970s through the 1990s 412 Broadway was the home of the notorious "The Stone Nightclub" which created some of the worst crowd problems in San Francisco. The Stone was a favorite on the Heavy Metal and Punk scene. The loud music and raucous behavior could often be heard for blocks. Rowdiness and drunkenness were an essential part of the show and the crowd often took that behavior out of the club and into the street.

As a live entertainment venue The Penthouse Club and Restaurant operates under the same permits required for The Stone's type of show, but the patrons and the standard of decorum could not be more different. The Penthouse Club and Restaurant has a zero-tolerance policy for drunkenness or any loud or aggressive behavior. The dress code is strictly enforced, ensuring that only well mannered guests expecting high quality food and entertainment are welcomed.

With the extension of hours our professional security team will be on duty patrolling the block for two additional hours every night.

Our guests leave quietly, predominantly by taxi or car service and are not permitted to loiter nearby; and those guests who leave after 2 AM will have had additional time since their last alcoholic beverage to better prepare for a safe journey home.

The Project complies with the criteria of Section 303 of the Code in that:

The Project will be compatible and in keeping with the character of the neighborhood in that there are existing after hours uses in the district which have operated until 4AM for decades with no discernable negative impacts in the neighborhood. SFPD has no record of any disruptive or criminal activity at or connected with the extended hours entertainment venue in the district.

The Project is consistent with Objective 6, and Policy 1 of the Neighborhood Commerce section of the Commerce and Industry Element of the General Plan, in that it encourages stability and sobriety in a popular entertainment district at a time when bar patrons are often pushed out of area businesses and onto the sidewalks and streets; often while under the influence of “last call” alcohol.

This C.U. Authorization will permit patrons and employees to remain safely indoors, drinking nonalcoholic beverages as the 2AM Broadway crowds thin out, and as they sober up for the trip home.

PROP M:

City Planning Code Section 101.1 establishes eight priority planning policies and requires review of permits for consistency with said policies. The project is consistent with the said policies, in that:

1. The Project will provide a service to the neighborhood by providing enhanced employment opportunities for neighborhood residents at all skill and experience levels.
2. The Project will not change the existing housing and neighborhood character, as it involves an existing nighttime entertainment venue.

The Project will serve to reduce the impact on area housing from the existing nighttime entertainment district uses by containing 2AM noise and activity.

3. The Project will not affect the supply of affordable housing as it is a commercial tenant.
4. The Project will not significantly impact traffic or create new demand for parking spaces. New after hours patron activity is expected to be very limited and primarily pedestrian with occasional taxi and limousine service.
5. The Project will not displace or alter any elements of the City’s industrial or service sectors.
6. Earthquake safety requirements will be considered during review of building permit applications.

7. The Project will have no adverse impact on landmarks or historic buildings
8. The Project will have no adverse impact on parks or open space, or their access to sunlight or vistas.

The project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1 in that, as designed, the project would contribute to the character and stability of the neighborhood and would constitute a beneficial use of this commercial space during critical early morning hours.

