

Tfd

FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 E. FAYETTE STREET, 8 th FLOOR
	SUBJECT	CITY COUNCIL BILL #08-0163/LIVE ENTERTAINMENT- LICENSING AND REGULATION-HOSPITALITY SERVICES- PROMOTION AND COORDINATION

CITY of
BALTIMORE
MEMO



TO

DATE:
May 18, 2009

The Honorable President and
Members of the City Council
City Hall, Room 400
100 N. Holliday Street

At its regular meeting of May 14, 2009 the Planning Commission considered revised City Council Bill #08-0163, which is for the purpose of allowing live entertainment and dancing, in conjunction with restaurants or taverns, as a conditional use in certain Business Districts; expanding the conditions to be considered before granting a conditional use for restaurants or taverns to provide live entertainment or dancing; requiring the Zoning Board to maintain and periodically provide to the City Council certain information about all pending applications for all conditional uses; and generally relating to the zoning and related requirements for restaurants and taverns providing live entertainment or dancing.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended amendments to and approval of CCB #08-0163. The departmental staff put forth additional suggestions/recommendations regarding the proposed legislation, also found in the staff report. Additionally, the Planning Commission put forth its own additional comments regarding the proposed legislation. These comments are found in Attachment #1, which is part of this submittal to City Council.

Therefore, the Commission adopted the following resolution, nine members being present (eight members in favor and one opposed).

RESOLVE That the Planning Commission concurs with the recommendation of its departmental staff and recommends amendments to and approval of the revised CCB #08-0163 legislation. In addition, the Planning Commission recommends that City Council take into consideration the suggestions/recommendations made by the department staff in the staff report and by the Planning Commission, as identified in Attachment #1.

If you have any questions, please contact Mr. Gary W. Cole, Deputy Director of the Department of Planning, at 410-396-8337.

GWC/ttl

Page 2

Re: CITY COUNCIL BILL #08-0163/LIVE ENTERTAINMENT-
LICENSING AND REGULATION-HOSPITALITY SERVICES-
PROMOTION AND COORDINATION

cc:

Mr. Andy Frank, Deputy Mayor
Mr. Demuane Millard, Chief of Staff
Ms. Angela Gibson, Mayor's Office
The Honorable "Rikki" Spector, City Council Commission Representative
Ms. Nikol Nabors-Jackson, DHCD
Ms. Deepa Bhattacharyya, Law Department
Mr. Larry Greene, Councilmanic Services
Mr. David Tanner, BMZA
Mr. Geoffrey Veale, Zoning Enforcement
Mr. Michael Braverman, DHCD



Favorable Comment

ATTACHMENT #1

ADDITIONAL COMMISSION COMMENTS ON LIVE ENTERTAINMENT BILL MAY 14, 2009

- Enabling Live Entertainment uses to expand into B-1 and B-2 zoning districts can be a very positive outcome for the City, but proper controls and regulation are essential so any potential negative impacts can be minimized or eliminated altogether.
- We expect that the majority of restaurant and tavern owners who choose to pursue BMZA approval to add live entertainment to their businesses will do so in a responsible manner.
- We also know from experience that there will be the occasional irresponsible owner or operator, who uses an approval for live entertainment as a means to conduct large, loud and rowdy gatherings that generate as much revenue as possible, regardless of any negative impacts on surrounding properties or residential neighborhoods.
- If this legislation passes, the City needs to make it crystal clear that such behavior will not be tolerated, and we must have the enforcement personnel and procedures in place to back it up.
- This commission strongly urges the City Council to make sure those procedures and resources are in place, prior to any new live entertainment venues being approved under this legislation.
- Close coordination and ongoing communication among the BMZA, building inspections, the Environmental Control Board and the Liquor Board is essential.
- We offer the following as specific items that need to be addressed:
 - Specific conditional use provisions will need to be included in the use and occupancy permit so that City building inspectors may implement effective enforcement.
 - Designation of the specific City official who will be on call during evening hours to provide on the spot enforcement and citations.
 - A clear external and internal procedure for how this official may be contacted by the public when problems arise, how this official will access the necessary permit information to evaluate the situation, etc.
 - It has been suggested that the public use either 311 or the City Operator as the first point of contact. Specific training of the designated personnel will be required for this system to be effective.
 - We support the recommendation that a probationary period be implemented for these new live entertainment venues as an added means of monitoring and assessment.
 - We endorse the idea of an increased posting period for these conditional uses, live entertainment hearings. The current posting period of 10 days does not offer residents or neighborhood groups sufficient time to fully evaluate and consider these applications.

While this bill will pertain only to live entertainment at restaurants and taverns in B-1 and B-2 there are numerous other live entertainment challenges facing City neighborhoods – night clubs, banquet halls, “bring your own bottle” establishments, etc. We look forward to working with all the stakeholders to address these issues through our TransForm Baltimore Zoning Code Rewrite, now underway.

PLANNING COMMISSION

STAFF REPORT

February 19, 2009

REQUEST: City Council Bill #08-0163/Live Entertainment – Licensing and Regulation – Hospitality Services – Promotion and Coordination

For the purpose of deleting live entertainment and dancing as a zoning use category; requiring the licensing of certain establishments that provide live entertainment or dancing; establishing the Board of Licenses for Live Entertainment and providing for its powers and duties; establishing an Office of Hospitality Services and providing for its powers and duties; defining certain terms; imposing certain penalties; and generally relating to the licensing and regulation of live entertainment and to the promotion and coordination of hospitality services.

RECOMMENDATION: Conceptual approval, subject to the general recommendations outlined in this staff report. Also, with the understanding that the final amendments come back to the Planning Commission for review and consideration.

STAFF: Eric Tiso

PETITIONERS: Introduced by President Rawlings-Blake, and Councilmembers Henry, Young, Curran, Branch, Middleton, Conaway, Spector.

HISTORY

The subject of live entertainment has been studied over the past eight years, in three major efforts. This bill is a continuation of this study of live entertainment. As a follow up to these recommendations, the Planning Department in 2007 hired Responsible Hospitality Institute (RHI) to conduct a nightlife study. This consultant prepared the "Managing an Emerging Nighttime Economy – Roundtable Discussion Summary Report." One of the major recommendations from this report involved creating a system for licensing live entertainment establishments.

CONFORMITY TO PLANS

The Comprehensive Master Plan makes recommendations to focus on enhancing the operation and management of live entertainment venues in Baltimore City through the PLAY Section, Goal 2, Objective 1: Expand access to nightlife.

ANALYSIS

Purpose: City Council Bill 08-0163, introduced by Council President Rawlings-Blake, creates a licensing system for live entertainment. Generally, the bill does the following:

- Deletes all references in the Zoning Code to live entertainment, and relocates definitions of certain terms and uses to Title 15 *Licensing and Regulation*, in a proposed Subtitle 10 *Live Entertainment* of the Baltimore City Code.

- Creates a Board of Licenses for Live Entertainment with five noncompensated members that will include: two Mayoral appointees, the President of City Council or designee, one Councilmember appointed by the President, and the Director of Hospitality who serves as the Chair of the Board. At least one of these members is required to have substantial live entertainment experience. All members serve for four year terms that are concurrent with the Mayor's term.
- The Board may have a staff, must hold hearings, and advertise these hearings in a newspaper of general circulation at least fifteen days before the hearing.
- The Board is to create a system of licensing, with various classes of licenses, for restaurants, taverns and dance clubs in order to provide live entertainment and dancing.
- Creates an application process and fee system for these Live Entertainment Licenses, details who may apply, requires an investigation of the qualifications of the applicant, and creates a hearing process before the Board of Licenses of Live Entertainment.
- Provides for civil fines that may be imposed for violations of the ordinance.
- Provides for judicial review of the decisions of the Board of Licenses of Live Entertainment.
- Creates an Office of Hospitality Services in the Office of the Mayor. The Office of Hospitality Services has a Director, whose powers and duties as defined in the bill include serving as the Chair of the Board of Licenses for Live Entertainment, serving as the principal contact for members of the public with issues involving the hospitality industry, and is the primary coordinator of the activities of the various agencies (The bill specifically lists Police, Fire, Health, Planning, BMZA, BDC, Board of Liquor License Commissioners, City Council, Public Works, Housing, BOPA, and BACVA) that regulate or have oversight of live entertainment.

Recommendations: The Department of Planning is supportive of the concept of creating a licensing system for live entertainment. However, after review of the legislation, we have identified a number of general amendments to the processes and procedures of the proposed legislation.

The following are the recommended changes to the bill:

- Staff recommends retaining live entertainment as a form of land use within the zoning code. Rather than eliminating all references to live entertainment in the various zoning categories, the licensing requirement can simply be added to the existing land use controls. This would be identical to how liquor establishments are controlled – they are permitted in certain zoning districts and they also require a liquor license. The addition of a licensing system will control operational problems that zoning regulations cannot fix in isolation. Following the creation of licensing control, it will then be possible that live entertainment venues could be permitted to expand into additional zoning districts, perhaps differentiated by license type, as may be appropriate to the area. This will reduce the fear of future impacts, since licensure controls operations continuously, where zoning review acts only once, and is not tied to the owner or operator of the venue.

- **Determine an approximate cost for establishing the office/organization to handle this program, and evaluate where the function could be housed within City government in a cost-effective and administratively-responsible manner.** It is important to be able to generally estimate staffing requirements and to determine the physical location for the operation (the Director, inspectors, IT personnel, secretaries, and perhaps others). As a complicating factor, it will be a challenge to determine precisely how many venues will be required to pursue licensure, and how many may be interested as new applicants.
- **Create the classes of live entertainment licenses with this legislation, so that costs, operational concerns, and land use impacts of this bill can be determined.** The bill allows for the Board of Licenses of Live Entertainment to create different classes of live entertainment licenses, but these are not specified. The tiers of live entertainment licenses (LEL) must be determined as part of this legislation, as well as an approximate cost for these licenses. Similar to the above problem, forecasting the cost by license type will be difficult, as knowing approximate numbers and ratios of applicants by license type would be required to ensure the program is cost-neutral and self-sustaining, i.e., not creating an overhead cost.
- **Create a provision to address legally established, existing businesses.** Existing businesses should be granted a reasonable period of time, perhaps up to three years, in which they can either become compliant (i.e. get a license) or to terminate the live entertainment portion of their businesses. Also, businesses that are lawfully in operation, but are located in zoning districts where they would not normally be allowed are known as "nonconforming uses." These types of nonconforming live entertainment establishments will have to be addressed in the legislation.
- **Create a phasing plan to license these establishments.** There may be a significant rush of applications once the legislation is approved. Later, there will be an annual surge in activity when this same initial group goes for annual review and renewal. By establishing a phasing plan, the workload for the new Board can be more reasonably spread out over the course of a year. This would apply both to the licensing of existing businesses, as well as for new applicants. Perhaps a phasing system from most intense to least intense license class for existing establishments could be followed by new applications in a similar descending level of intensity license class.
- **Ensure there is a time gap between the creation of the license and the Office of Hospitality Services.** Related to the phasing plan above, is the concern that the legislation creates a licensing requirement at the same time as it creates the Office of Hospitality Services that manages these new licenses. A reasonable time gap would allow the office to be operational and ready before the licensing requirement is phased in. Otherwise, a volume of technical violations may be created for existing live entertainment establishments, as well as a rush for application submissions that may include new venues.

- **Establish a periodic review and report period.** Because the bill creates an entirely new process for handling live entertainment, the legislation should include a review provision to ensure it is functioning as intended. This could perhaps be accomplished through annual reports and more formal evaluations of the program on a two-year cycle. The formal evaluation should be a fair and objective assessment of the program where major corrective action could be taken if, and as, required.

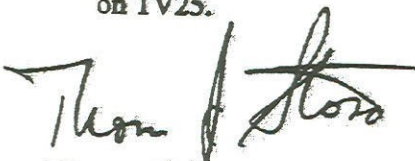
COMMUNITY INPUT

The entirety of the community association directory has been notified of this project, addressed to 781 entities.

Hearing Schedule:

A set of meetings will be held in various places throughout the City in order to gain a wide range of opinions from the public on this bill. Staff will periodically brief the Commission on these suggestions. The Chairman of the Joint Committee, Councilman Kraft, has indicated that during the period between the last two public hearings, commenting agencies should review the suggestions raised through the community input process and provide commentary, as necessary.

- A joint hearing will be held by the Judiciary and Legislative Investigations and the Land Use and Transportation Committees on March 4, 2009 at 5:00 PM in the Du Burns Council Chamber, 4th floor, City Hall. This hearing will also be broadcast live on TV25.
- March 18, 2009 at 6:30PM – First Community Work Session – Southeast. To be held at: Cristo Ray Jesuit High School, 420 South Chester Street, Baltimore, MD 21231
- March 31, 2009 at 6:30PM – Second Community Work Session – Northeast. To be held at: Morgan State University, New Communications Center, Room 101, 5601 Perring Parkway, Baltimore, MD 21239
- April 16, 2009 at 6:30PM – Third Community Work Session – Northwest. To be held at: Baltimore City Community College, Liberty Campus - Auditorium, 2901 Liberty Heights Avenue, Baltimore, MD 21215
- April 23, 2009 at 6:30PM – Fourth Community Work Session – Southwest. To be held at: Federal Hill Preparatory School, 1040 William Street, Baltimore, MD 21230
- A joint hearing will be held by the Judiciary and Legislative Investigations and the Land Use and Transportation Committees on April 29, 2009 at 5:00 PM in the Du Burns Council Chamber, 4th floor, City Hall. This hearing will also be broadcast live on TV25.



Thomas J. Stosur
Acting Director