

Analysis and Comments Regarding the Mayor's Proposed Nightlife Premises License Ordinance

Summary

The Mayor's proposal to regulate nighttime drinking establishments does not meet the stated goal of creating reasonable operating standards which promote public safety and increase predictability for nightlife businesses and their neighbors. Rather it creates an onerous regulatory regime with excessively severe penalties for minor violations of new standards which are unreasonable and unenforceable. It appears that the legislation seeks to target specific types of establishments, yet provides no findings or other pertinent data to justify their reason for imposing additional regulations on such establishments.

The Mayor's proposal will dramatically reduce investment in the nightlife industry and will impair Seattle's international image as a music and entertainment capital. At a time when other cities and states are spending hundreds of thousands of dollars trying to convince the "creative class" (educated 25 to 35 year olds) that they have a vibrant night life in order to entice them to live in their cities and states¹, the Mayor's office is proposing that Seattle squander its advantage. Attracting the creative class before they are in their mid-thirties and married is the key to any city's economic future. Seattle has been successful in doing this because its nightlife businesses know what the creative class wants and has and will (if permitted) continue to deliver this to them. The Mayor's proposal assumes that the nightlife industry is only a source of problems; it is inherently flawed in that it fails to recognize that the nightlife industry is the key to this City's economic future.

The Mayor's proposal could result in a less professionalized, less safe nighttime industry. This ordinance will likely drive the best nighttime business operators out of the business. Because the proposed license is so conditional and subject to political whim, those individuals who are interested in making a long-term investment in our community will not do so. A business person will not invest in creating and then building a business if there is little likelihood that she will be able to retain her license, realize on her investment, and then sell the equity she has built. Even a "good" operator can lose his license for rather minor infractions, for conduct of the public on City streets away from her establishment, or because the neighborhood around her has changed. In the zealous pursuit of an easy means of getting rid of "bad establishments" the Mayor's office has created a system that will get rid of the good establishments because of this lack of attention to business fundamentals. Those individuals who would choose to invest in the nightlife industry under such regulation would more likely to be fly by night operations investing on a shoe string rather than for the long-term; exactly the type of establishments that are likely to become "bad establishments."

¹ Michigan for example has a "Cool Cities Initiative" in which the State pays for an Entertainment Express trolley to take partiers from bar to bar. The "creative class" is a term coined by Richard Florida, a public policy professor at George Mason University.

Background

In October of 2005, Mayor Nickels created a Nightlife Advisory Task Force, charged with finding “solutions to some of the problems and challenges in our mixed use neighborhoods.” The goals of the task force were explicitly “promote the growth” of the nightlife industry and “protect the public safety.” Representatives from the nightlife and music industry were led to believe that it would be fair and balanced process and that their concerns and interests would be taken into account and reflected in the final outcome. The ordinance submitted to you by the Mayor’s office was not endorsed by the Nightlife Advisory Task Force. While the neighborhood representatives, downtown association representatives and nightlife representatives were united in their desire to resolve problems of litter and noise and to promote public safety most, if not all, of the suggestions offered by the task force were dismissed. The final meeting of the task force ended with all of its members united in their concerns that this ordinance does not solve the problems they came to address. The task force unanimously concluded that the only way regulation would be effective in resolving the issues raised by residents was if a forum existed where the nightlife community and residents were represented (similar to San Francisco’s entertainment commission) and had real authority to work with “problem establishments.” Unfortunately, forces within the executive branch that do not want to encourage nightlife prevailed over the many great ideas of the Task Force and what was submitted to you is an ordinance designed to discourage investment in nightlife businesses.

It is important to note that all members of the task force, including the nightlife representatives agreed that professionalization of the industry was a desired goal. All members also agreed that increasing public safety was a desired goal. All members agreed that many of the specific concerns that were identified would be solved by allocating more police resources to the times when the load on the City’s entertainment districts was greatest. One of the most significant conclusions reached was that a significant portion of the issues raised by residents and the public safety concerns raised by the nightlife businesses could be addressed by simply more logically allocating existing City resources. The resident representatives were particularly vocal in their opinion that the City should have more police on duty at times when there are more people in the City (just as there are more police on duty when there are more people in the City for a sporting event). Rather than taking an interest in suggestions such as this, the Mayor’s office elected to propose an ordinance that would solve the “problem” by reducing the number of people coming into the City at night. The Mayor’s proposal is to reduce noise and litter by reducing investment in Seattle’s nightlife. A reduction in Seattle’s vibrancy will eliminate the need to logically allocate the City’s resources.

It is important to note that task force members were never involved in the actual drafting of the proposed ordinance. Rather the Mayor’s office was wholly responsible for the development of the legislation and the task force was only permitted to comment on the proposal once it was presented. This was extremely frustrating and, in our opinion, resulted in a product that is far less effective and fair than something which had been developed in true collaboration.

Impact of State Regulation

The Washington State Liquor Control Board recently proposed new draft legislation that will regulate nightlife businesses as well. There is significant overlap and inconsistency between the proposed ordinance and the state regulation. Further development of this ordinance or the development of a replacement ordinance should be postponed until after the resolution of the State's licensing scheme.

Substantive Concerns

Preamble

Page one of the proposed ordinance outlines the general policy goals of the legislation. Unfortunately, many of them are not reflected in the actual ordinance. For example line 16 states "Whereas a comprehensive plan of assistance to operators of nightlife establishments is needed to address all the issues facing nightlife in Seattle," nowhere in the draft ordinance is there any "plan of assistance to operators" unless the policy concept is that increased regulations with severe penalties constitutes assistance. The document also states that this ordinance will "eliminate the need for individually negotiated good neighbor agreements." Again, while we fully embrace that policy, nowhere in the document does it specifically state in code that the good neighbor agreements will be retired.

6.280.015 Definitions

The definition section is very problematic. First, the proposed ordinance attempts to define a "nightlife premises" and uses a combination of operating hours, square feet, and capacity. This is a somewhat complicated and unique definition of a business to be regulated. If in fact the issue of concern to the city is late night drinking, then why not simply subject all establishments serving alcohol after 11 PM to this proposed regulation? With very few exceptions, almost all of the specific complaints from residents related to the "2 AM push-out." All nighttime businesses that are closing at 2 AM are potential contributors to the "problems" for which the residents have complaints.

The definition section creates a new noise standard with no justification for the new regulation. If noise is the issue, it seems far more appropriate to find better enforcement mechanisms for existing laws first before creating anything new.

Perhaps one of the biggest concerns in the definition section relates to the new concept of "impacted public area" which is defined as "a public place within fifty (50) feet of the nightlife premises where prospective patrons gather." Obviously the concern regarding this definition would be for an establishment having responsibility for other people's property or behavior who may not even have visited an establishment. This essentially conveys public safety responsibilities from the police to bar owners. We feel this is not good public policy.

6.280.020 Nightlife Premises Advisory Board

We strongly support the creation of a commission charged with promoting a safe, vibrant nightlife industry. However, the Mayor's proposal is very disappointing since the board

is given little, if any, authority, is not involved in the licensing process, and has no clear role in resolving issues between neighbors and late night drinking establishments. The board needs to be given more authority, a greater role, and appropriate resources to function properly.

6.280.040 Application for License

As written, the application process has the potential to significantly condition establishments by requiring them to complete a questionnaire (which has yet to be developed) which describes the measures the applicant will implement in order to comply with the Nightlife Premises Operating Standards. Once completed, this questionnaire will be widely circulated to city agencies for comment and recommendation as to whether the license should be denied. This review and comment by city agencies of the questionnaire is in addition to the applicant's need to obtain a state liquor license. This could result in a new or existing establishment - which has a liquor license - being denied a city Nightlife Premises License. This bifurcated approach to licensing such establishments results in redundant and perhaps conflicting policies between the city and liquor board.

6.280.050 Timing of Renewal Application

This section requires an establishment to resubmit a new application for renewal every year 90 to 45 days prior to the expiration of the current license. A much simpler process would be for the city to mail a renewal notice and invoice to the licensee, similar to how a typical business license is renewed. Why should a business be required to resubmit a detailed plan each year if their operations are not changing? The "renewal" process is particularly troublesome because it creates significant uncertainty about the ability of a person investing in creating a nighttime business to realize on his or her investment. If a condominium ends up being built next to a nighttime business, the City can opt to not renew the nighttime business' license and the nighttime business owner will lose his investment and the equity he has built in his business. In any ordinance that is proposed, there must be a balance between the need for the City to shut down the truly bad operator and the need for the business community to know that their investment is not subject to capricious political whims. The Mayor's proposed ordinance constantly tips the scales too far to the wrong side and if passed as is, would inhibit investment in any business covered by the ordinance. Likewise, landlords would not lease to businesses covered by this ordinance because of the precarious nature of its existence. Finally, we firmly believe that this ordinance will drive the best operators out of the business. These regulations would discourage long-term investment in the community.

6.280.070 Grant or Denial of a Nightlife Premises License

This section allows the "Division Director" to deny any license if they feel the applicant's responses to the questionnaire are not "reasonably adequate" to prevent one or more violation of the Nightlife Operating Standards. This appears to be an extremely subjective standard which could result in the denial of most any application.

6.280.75 Interim Nightlife Premises License

This section requires any Nightlife Premises to apply for an interim license within sixty days of the effective date of the ordinance. The license is good for only 12 months. The City has 12 months to review the establishment's application. This approach is problematic for a two main reasons. One, the city has yet to even develop the application materials, including the detailed questionnaire a potential licensee would need to submit within 60 days of passage of the legislation, making it very unlikely that any establishment could meet such a deadline. Second, it is conceivable that after a full year of review by the city of an applicant's questionnaire, they could simply deny an applicants license. It is important to understand that most nightlife premises lease their space from the building owners for periods of 5 to 10 years. To be an existing business with several years left on your lease, and the city having the power to deny you your ability to continue to operate your business one year after the passage of this ordinance places the fate of literally hundreds of established business in the hands of the Director of Executive Administration. This not only harms existing businesses due to the uncertainty from year to year, but severely restricts additional investments in the music industry in Seattle. New music venues will in fact not open in Seattle due to the uncertainty created by this legislation.

6.280.080 Nightlife Premises Operating Standards

This section defines certain standards which establishments are obligated to meet. SeattleNMA does not object to establishing reasonable standards for all late night establishments. In fact, several of the listed standards (violence, occupancy limits, noise, liquor violations, reporting criminal activity) are ones which most, if not all establishments try to meet and which there are existing regulations and penalties which the city or state can enforce. New standards such as preventing litter 50 feet from your business are excessive. Further, per our comments above in the Definitions section, we believe such standards should be met by all establishments that serve liquor after 11 p.m.

6.280.100 and 6.280.120 Penalties and Periods of Suspension

The penalties and periods of suspension are extremely excessive and will result in the establishments being put out of business for minor transgressions. Again, there are already established penalties for all of the standards which either the city or liquor control board can impose. In fact the penalty for a liquor violation under the city's standard is more excessive than that impose by the state which has actual authority for liquor violations. This can result in an establishment being penalized twice for the same infraction. While we recognize that some sort of enforceable mechanism should be in place to ensure compliance with the operating standards, the ones proposed by the Mayor are extremely harsh. A more reasonable set of penalties – perhaps fine based - need to be developed.

Conclusion

While we understand that the motivation of this legislation was to find a way to regulate problem nightclub owners, the practical effect of the ordinance creates new cumbersome regulatory requirements that will adversely impact the nightlife industry in Seattle, most of which are well-run establishments which seek to be good neighbors and provide a safe

nightlife experience for Seattleites. SeattleNMA is prepared to work with the City Council, WSLCB and others to craft a reasonable approach to ensuring a safe and vibrant nightlife.