

Date: Oct. 13, 2009

Item No. 3
File No. 09054

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Robert Garcia v Entertainment Commission**
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Completed by: Chris Rustom

Date: Oct. 6, 2009

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2009 SEP -8 PM 4:47

BY PC

SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Entertainment Commission

Name of individual contacted at Department or Commission _____

- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section _____
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

See attached letter

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹ Name Robert B. Garcia Address 866 Post st. apt 6

Telephone No. (415) [REDACTED] E-Mail Address _____

Date 9/8/09 Robert B. Garcia
Signature

I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

September 8, 2009
Robert G. Garcia
866 Post St. apt. 6
San Francisco, Ca. 94109
Telephone (415) [REDACTED]

City and County of San Francisco
Sunshine Ordinance Task Force
1 Dr. Carlton B Goodlett Place Room 244
San Francisco, Ca. 94102

Sunshine Ordinance Complaint
Re. Hawthorne Group LLC, McWilliams Pub
and Via

The residents of the area did not see the posting for Entertainment and extended hours at 449 Powell St. and 521 Sutter St. The reason for not seeing it is that it was posted in a deceptive way, see photographs. The 449 Powell posting was on a door four feet back from the property line. Posting on a door is not a conspicuous place, doors are always in use and often left open. The door at 449 Powell is a trade entrance for Walgreens which is open 24 hours a day and receives deliveries day and night. 521 Sutter is also next to Walgreens delivery door. The posting at 521 Sutter is also on a door and set back four feet.

Captain James Dudley, Central Station, wrote a letter to the Entertainment Commission protesting the posting and also stated his case at a Commission meeting June 2, 2009.

The Hawthorne group was ordered to repost for 10 days. It was posted 8/7/09 and my protest had to be in by 8/12/09 which is 5 days. It was posted on a Friday afternoon and we didn't see it until Monday evening or we were at a Council of Supervisors meeting all day Monday and as before it was posted just got back into the building. On Tuesday I asked to see the file and was told there was nothing in it because it was being amended and would not be squished until Wednesday the 12th which was the last day to protest. After about five phone calls I was told the file was ready it was 4:30 P.M. I went back to look at the file and it had a photo of their poster - not where it was posted.

I complained again about the posting and was told by Robert Davis they would have to repost.

I received a call that it had been posted again in the same place and again just before a long holiday week-end. Posted 9/13/09 with a deadline for protesting by 9/19/09. They were ordered to post for 10 days but they have a rule that you can't protest 10 days before a hearing.

The Hawthorne Group has been given
three chances to post properly, each time
they are deceptive. Enough is enough!

Don't sure they had a lot to do with
Andrey Joseph as her company is working
for them

Thank you
Sincerely

Robert G. Brucia

Item 7.(b) Hawthorne Enterprises Group, 449 Powell Street. I have several concerns regarding this application. I do not believe it was posted appropriately. Regarding MPC 1060.5 (c), I saw that there was a sign inside a street side steel door on another door four feet or more from the street. There are three hotels adjacent or across the street who may object or otherwise have input on their sound system and after hours entertainment. My permit officer called the Sir Francis Drake Hotel, Chancellor Hotel and the Marriott Union Square today. Two of the three hotels were not aware of the application and they think it would be a bad idea for hotel guests to experience the added sound.

No community or neighborhood outreach has been done to my knowledge, outside of a Union Square Association meeting.

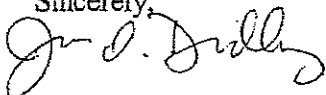
Several answers on the application are blank, in error or misleading. Section E of the Letter of Intent is not filled out. Their sound proofing answer is not clear. Traffic related answers do not mention the area tow away zones or Street Cleaning restrictions on Sutter and Powell.

The building at 449 Powell Street is currently an empty shell. It has been vacant for an estimated 10 years. There is no public assembly permit. Their application estimates capacity at an "estimate of 400." Other City officials who have inspected the premises have estimated 700-800. The building is yet to be inspected by the SFFD and other City agencies. A security plan is therefore baseless. The answers on the security questionnaire are speculative. It states "Security Plan attached." Yet we received none.

Due to the speculative nature of this proposal, it is not possible for the Police, Fire, Public Health or other City Agency, in my opinion, to comply with provisions of MPC 1060.5 (b).

I would ask that this application be denied. I would not object to re-posting and filling out the application in its entirety and postponing the matter until questions are answered.

Sincerely,



Captain James I. Dudley
Central Station
766 Vallejo Street
San Francisco, CA 94133

SEC. 1060.5. DETERMINATION OF APPLICATION.

- (a) When an application is filed for a new permit under this Article, the Entertainment Commission shall fix a time and place for a public hearing thereon to determine whether issuance of the permit would result in any of the conditions set forth in Subsection (e). The hearing must be held within 45 working days of the date the completed application is received.
- (b) At the time of filing of an application, the applicant shall notify the Entertainment Commission of any outstanding requests for permits or approvals from other City departments relating to the premises of the proposed place of entertainment. The Entertainment Commission shall notify those departments of the filing of the application. Those departments shall complete all necessary inspections and report their determinations to the Entertainment Commission within 20 working days of the filing of the application.
- (c) Not less than 30 days before the date of such hearing, the Entertainment Commission shall cause to be posted a notice of such hearing in a conspicuous place on the property in which or on which the proposed place of entertainment is to be operated. Such notice shall set forth the specific type of entertainment which the applicant intends to conduct. Such posting of notice shall be carried out by the Entertainment Commission, and the applicant shall maintain said notice as posted the required number of days. Notice of such hearing shall be mailed by the Entertainment Commission at least 30 days prior to the date of such hearing to any person who has filed a written request for such notice.
- (d) At the hearing, the applicant and any other interested party, including the Police Department or any other public agency, shall be allowed to introduce evidence and present argument. The Entertainment Commission shall make a final decision upon the application at a public hearing, and shall notify the applicant, and any other interested party who has made a written request, of the final decision by first class mail.
- (e) No time limit shall commence running until the submission of a completed application. Upon the applicant's request, the Entertainment Commission shall continue the hearing to allow the applicant opportunity to comply with the requirements of this Article or any other state or local law. Notice of the date of any continuance of the hearing shall be posted in the same place and manner as the original notice for not less than seven (7) days. Upon the applicant's request, the Entertainment Commission shall also issue a conditional approval of the permit application, pending approval of the permit by other City agencies, if sufficient information has been provided to allow for adequate evaluation of the proposal and if grounds for denial, as set forth in Subsection (f), are not present.
- (f) The Entertainment Commission shall grant a permit pursuant to this Article unless it finds that:
- (i) The building, structure, equipment or location of the proposed place of entertainment does not comply with or fails to meet all of the health, zoning, fire and safety requirements or standards of all the laws of the State of California or ordinances of the City and County of San Francisco applicable to such business operation; or
 - (ii) The building, structure, equipment or location of the proposed place of entertainment cannot adequately accommodate the type and volume of vehicle and pedestrian traffic anticipated; or
 - (iii) The building, structure, equipment or location of the proposed place of entertainment lack adequate safeguards to prevent emissions of noise, glare, dust and odor that substantially interfere with the public health, safety and welfare or the peaceful enjoyment of neighboring property; or
 - (iv) The building, structure, or location of the proposed one night event does not have an adequate security plan as required by this Section.
- (g) An applicant whose application for a permit has been denied pursuant to this Section may seek immediate judicial review pursuant to Code of Civil Procedure Section 1085 or Section 1094.5. The applicant is not required to exhaust his or her administrative remedies before the Board of Appeals.

Copy

BELGRAVIA HOMEOWNERS ASSOCIATION
795 SUTTER STREET
SAN FRANCISCO, CA 94109

August 11, 2009

Mr. Robert Davis, Executive Director
S.F. Entertainment Commission
City Hall, Room 453
San Francisco, CA 94102

RE: APPLICATION FOR EXTENDED HOURS PERMIT
521 SUTTER STREET

Dear Sir:

I write on behalf of the Board of Directors of the Belgravia Homeowners Association. We are an 18-unit condominium association located at Sutter and Jones Streets. Our downtown neighborhood is composed of commercial and residential properties. For each group to thrive, each must respect the rights and responsibilities of the other. An essential right of residents is the peaceable occupation of their homes, especially during late evening and early morning hours.

For this reason, we wish to oppose the application for an extended hours permit for the premises located at 521 Sutter Street. It is entirely unjust for residents to have commercial business transacted after 2 A.M. in our neighborhood. We presently experience a great deal of street noise, rowdiness, and drunkenness on Friday and Saturday nights. Residents feel a genuine threat to their persons and their property. It is unreasonable for the City to expand the hours for such behavior.

We also wish to protest the time-frame spelled out in the posted notice re this application. The notice was posted on the door of 521 Sutter Street on August 7, giving a deadline of August 12 -- five days -- to file written support or opposition to the pending application, and announcing a public hearing to take place on August 18. This hardly allows adequate time for interested parties to inform themselves of all aspects of this application.

Sincerely yours,

Donald C. Whitton

cc: Mike Farrah, Director, Mayor's Office of Neighborhood Services
Supervisor David Chiu
Supervisor Bevan Dufty
Supervisor Sean Elsbernd
Captain James Dudley, Central Station

June 2, 2009

**Grant Street, Place of Entertainment.
(correct 4237 Powell Street)**

Jocelyn Kane requested a two week continuance based on issues around the ABC license and the applicant continued to June 16, 2009 meeting.

Public comment

Captain Dudley with Central Police station stated he objected to the application to the Far East Café and asked that the application be denied based on a conflict with the ABC.

Commissioner Alan moved to continue to the call of the chair meeting Commissioner Pred second the motion.

VOTE:

AYES - Commissioner Pred, Commissioner Joseph, Commissioner Raja and Commissioner Alan and Commissioner Calma

NOES - None

Absent - Commissioner Newlin and Commissioner Meko

Chair Joseph recused herself from the meeting due to item B. on the agenda and turned the meeting over to Vice Chair Pred.

**b. McWilliams, Gabriel, Hawthorne
Entertainment Group LLC, dba TBD, 449
Powell Street, Place of
Entertainment/Ext. Hours Premises.**

Deputy Director Jocelyn Kane stated the application was submitted in late April 2009 for a Place of Entertainment and Extended hours premises permit and the location was once a San Francisco Press Club. She added the applicant's submitted a more flushed out

business plan that include a multi-level venue with the second and third floor serving as a lounge and nightclub. She added they have indicated architectural estimates of an occupancy of around 400 pending the Fire Department's final determination. She added the type 48 liquor license was pending and entertainment planning included DJ's and live music and the hours of operation were indicated in the application of 4:00 P.M. to 4:00 A.M. She added it was a permitted use according to the Planning Department and SFPD Central Police Station has recommended a denial for a variety of reasons. She added staff has no recommendation for the Commission at this time.

Mr. Chadwick Baumbach stated he was present with business partners Xavier McMinez and Gabriel McWilliams for the purpose of accruing a Place of Entertainment permit for a space located at 449 Powell Street. He added it was the second and third floors of the building located on the corner of Powell and Sutter above the Walgreen's store. He added they have taken over the second and third floors and signed a lease about a month ago and their intention was to place an upscale lounge inside the second floor level with a ballroom style space on the third level. He added they have been working on the project for some time and they have applied for an ABC license and would post tomorrow. He added they have brought a model of their proposed venue.

Commissioner Alan stated it would be in the applicant's best interest to do public outreach in advance of opening his venue.

SEE PAGE 7

THEY TOOK NO POSITION

Gabriel McWilliams stated the first outreach they did was a meeting with the Union Square Merchants Association. He added a week later they met before the committee and did a presentation of their product and they supported their project. He added they reached out to the general manager of the Sir Francis Drake Hotel and got positive feedback.

Commissioner Alan stated he could not stress enough while meeting with the hotel owners was great idea he had to met with all the neighbors within a radius of his property and using the ABC mailing radius was a great way to do both at the same time.

Vice Chair Pred asked had an outside security company been determined yet.

Mr. Chadwick stated they were looking into a security company.

Public Comment

Mark Rennie stated the applicant's did not mention the venue was the original San Francisco Press Club; this was built right after the earthquake. He added prior to that it hosted large parties and had a previous liquor license. He added it was one of the most beautiful spaces in the city and he thought it was a great project.

Captain Dudley at Central Police station stated he gave a letter to Executive Director Robert Davis enumerating his reason for denial. He added he had several concerns and saw it as a virtual conception piece. He added he did not

think the venue was posted properly. He added Officer Gaines saw it was not posted properly and there were three hotels adjacent across the street that may object or otherwise have input on their sound system and afterhours entertainment. He added his permit officer called the Sir Francis Drake Hotel, The Chancellor Hotel and the Marriott Union Square today and two of three hotels stated they were not aware of the application and thought it would be a bad idea for hotel guest to experience the added sound. He added no community or neighborhood outreach had been done to his knowledge outside of the Union Square Association meeting. He added several answers on the application were blank or in error or misleading. He added their soundproofing was not clear as well as the traffic issues. He added there was no public assembly permit and the building had yet to be inspected by SFFD and other city agencies. He added due to the speculative nature of the permit that the application be denied; however he would not object to reposting and filling out the application in its entirety and postponing the matter until questions were answered.

Vice Chair Joseph Pred asked where the posted was located.

Mr. Chadwick stated it was posted on the front glass door which was very visible.

Commissioner Alan stated out of respect for the concerns raised by the Captain of Central Station they should read into the record line by line the issues.

Mr. Chadwick stated a security plan was forwarded to Dave Falzone on Monday.

Captain Dudley stated there were several discrepancies with the application that included the security plan, sound testing, did they intend to provide valet parking, community outreach and concerns as well as incomplete pages and unanswered questions.

Vice Chair Pred stated in the years the Commission has been functioning they had some blatantly incomplete application and this was the first one where he felt there was some vagueness that called in to question where they drew the line with incomplete application.

Commissioner Alan stated in areas such as occupancy where clearly the occupancy determinations was neither their responsibility nor the police department. He added it was combination of building and fire in accessing the exiting strategy as well as the floor space and its use. He believed there was a concern that a security plan must be reflective of the size and nature of the final venue that would be permitted he added they had some flexibility. He added they were entering a complicated process in keeping historic people, fire code people, neighborhood people and parking and traffic happy. He added it would be a complicated juggling act to move the process forward and he would agree that they would be premature in rubberstamping the permit if they did a couple of things. He added the project was complex enough so they could give the potential business owners a nod that they are on the right track but there were areas of

concern that both have been highlighted by the Commission and SFPD and leave them with a laundry list.

Commissioner Alan stated they satisfied the posting requirements. He requested they come back with a more complete security plan, and proposed they have a drawing of a detail security plan with an understanding of the proposed occupancy.

Captain Dudley stated to his knowledge he the posting was not sufficient based on where it was posted.

Commissioner Alan moved to continue the item to the next scheduled meeting with the request of the following items: 1) the property must be reposted and the reposted independently verified by SFPD or a member of the Entertainment Commission staff, 2) request that a second application be resubmitted that completes answers that are able to be completed and corrects errors that are made and refers to attachments in a way that did not create confusion, 3) indicate the individual buildings and the individuals they did outreach in the community and their responses in their own writing or email or letter 4) Security plan be redrafted to reflect the condition a submission of a floor by floor proposed site plan that will include fixed and roaming post security positions along with estimated occupancy for each of the areas. Commissioner Roja second the motion

VOTE:

AYES - Commissioner Roja, Commissioner Alan, Commissioner Calma and Commissioner Pred

NOES - None

R. Garcia's Copy

August 12,, 2009

David M. Overdorf,
Greater Nob Hill Neighborhood, Inc
P.O. Box 64140
San Francisco, CA 94164

Robert B. Garcia,
Save Our Streets
866 Post Street, #6
San Francisco, CA

94109

San Francisco Entertainment Commission
Attn: Robert Davis, Executive Director
Room 453, City Hall
1 Dr. Carlton B. Goodlett Place,
San Francisco CA 94102

Re: Protest and Petition against the issuance of a Place of Entertainment/Extended Hours Premises Permit to Gabe McWilliams /Hawthorne Entertainment Group at 449 Powell Street/ 521 Sutter Street, San Francisco, CA 94102.

Dear Mr. Davis,

As community organizers and public advocates for the Lower Nob Hill Neighborhood, please be advised that we hereby protest and petition against the issuance of the said permits for the premises at 449 Powell Street and 521 Sutter Street above the current Walgreen's store on the following grounds:

- 1 The applicant has failed to provide the facts and findings showing that the proposed establishment will be necessary for, desirable for and compatible with the surrounding community.
- 2 We understand that the applicant has amended the original application today, August 12, 2009 (the posted deadline for any relevant data protesting the said permit is to be filed) and we have not had an opportunity to review the amended application questionnaire.
- 3 The premises are located within the immediate vicinity of the Academy of Art University which has student housing and numerous educational facilities nearby.
- 4 Due to the extreme intensification of use of the premises even without an as yet undetermined occupancy load, we respectfully submit that the proposed operations of a nightclub at the said premises is not necessary, desirable or compatible with the surrounding community as required by the San Francisco Planning code, even if it falls within an as of right permitted use zoning district. If the San Francisco Entertainment Commission nonetheless grants a permit without the applicant securing Conditional Use Authorization permit, the community will certainly appeal. The original application stated occupancy load is TBD (to be determined?) but his architect estimated 400. The community is hearing figures between 400 and 800. This ambiguity is unacceptable.
- 5 The issuance of an additional Place of Entertainment and Extended Hours Premises would result in or add to an undue concentration of such establishments in this census tract. The proposed premises are located in a crime reporting district that has a 20% greater number of reported crimes and calls for service than the average number of reported crimes as determined from all crime reporting districts with the jurisdiction of the San Francisco Police Department. The proposal to add 400-800 club goes 7 days a

week from 4pm to 4am would add to the cost and burden to taxpayers of law enforcement and would create totally unnecessary and unacceptable public safety issues.

- 6 Issuance of the said permits would create a public nuisance as history has shown that it is difficult if not impossible to control who is or who is not drinking alcohol, smoking, engaging in loud and drunken behavior inside a high density residential commercial area (note, for example, the North Beach clubs)
- 7 There are residential units at 435 Powell and the applicant has not demonstrated that they will contain the noise inside the premises so as not to interfere with the neighbors' quiet enjoyment of property. Tons of empty alcohol containers, discarded cigarettes, litter, urination and defecation are picked up and cleaning is done at the expense of local San Francisco residents, property owners, merchants and taxpayers.
- 8 The applicant inaccurately described the parking and stopping restrictions on the 400 block of Powell and the 500 block of Sutter. Currently there is extremely limited on-street and off-street parking in this neighborhood and issuance of the said permits would compound an already aggravated parking shortage for residents, merchants and hotel visitors. There are other red-zone, yellow, white zone issues which we can discuss at the Hearing.
- 9 To date we have not received confirmation from the State ABC Department, the SF Department of Building Inspection, Sound, SFFD, SFPD Inspection, The San Francisco Planning Department, the Department of Health, etc that the proposed establishment will be compatible with the public safety and welfare standards.

It appears that there is a rush to expedite these permits without consideration of the needs of the existing residents, property owners and merchants in the neighborhood. Please do not grant the permits due to the above stated concerns.

Yours sincerely,

David M. Overdorf, Chair, Greater Nob Hill Neighborhoods, Inc Tel 415-441-0896

Robert Garcia, President, Save Our Streets Tenants and Merchants Association
Tel 415-931-4549

CC. Supervisor David Chiu,
Captain James Dudley
Inspector Dave Falzon
SF Entertainment Commissioners
SF Planning Department

PERMIT

Notice is hereby given that McWilliams, Sabr has/have filed with the Entertainment Commission an application as set forth above, at the premises known and designated as V/A City and County of San Francisco, State of California.

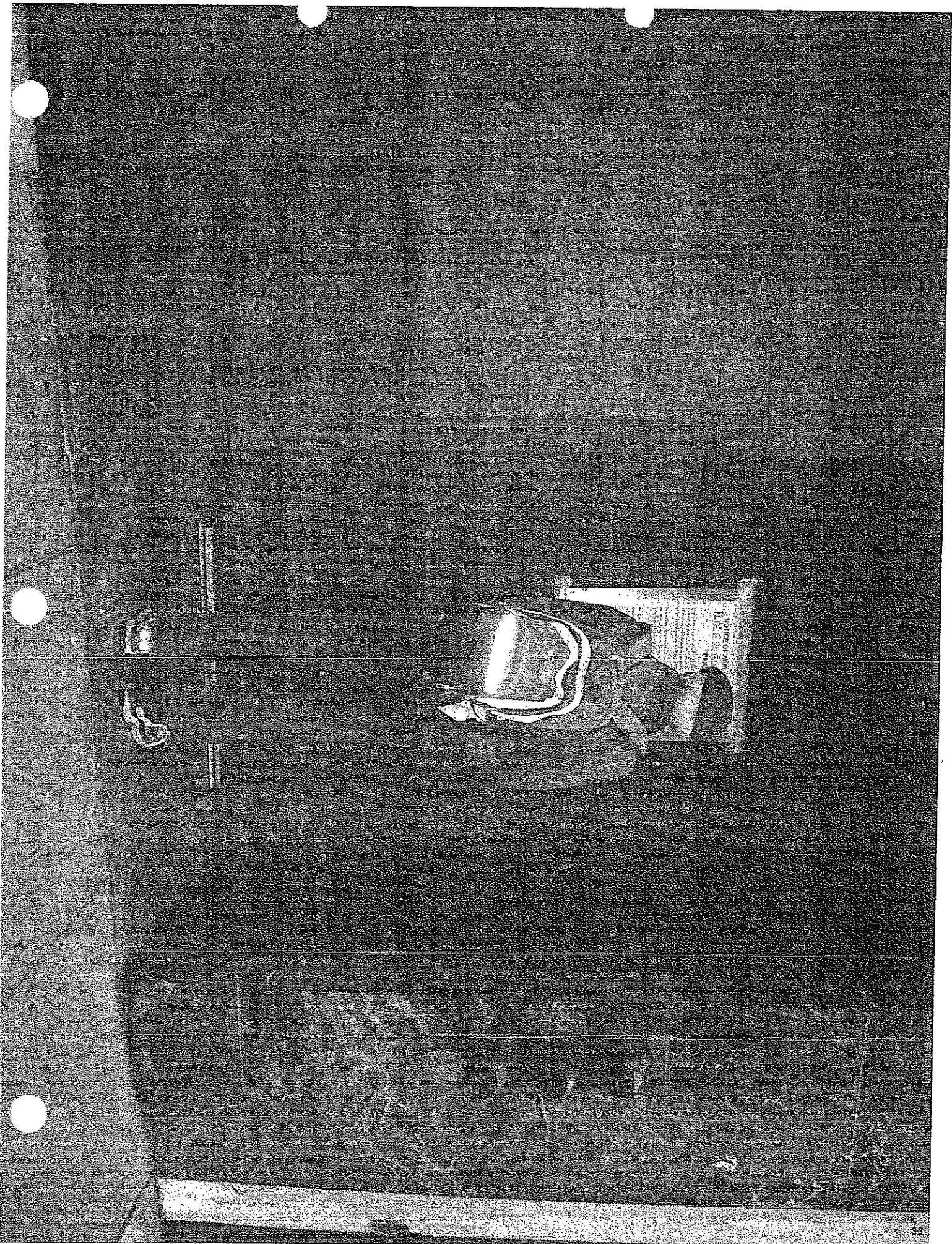
Any relevant data professing or supporting the granting of said permit must be filed at the Entertainment Commission Room 453, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 on or before the 12th day of August, 2009.

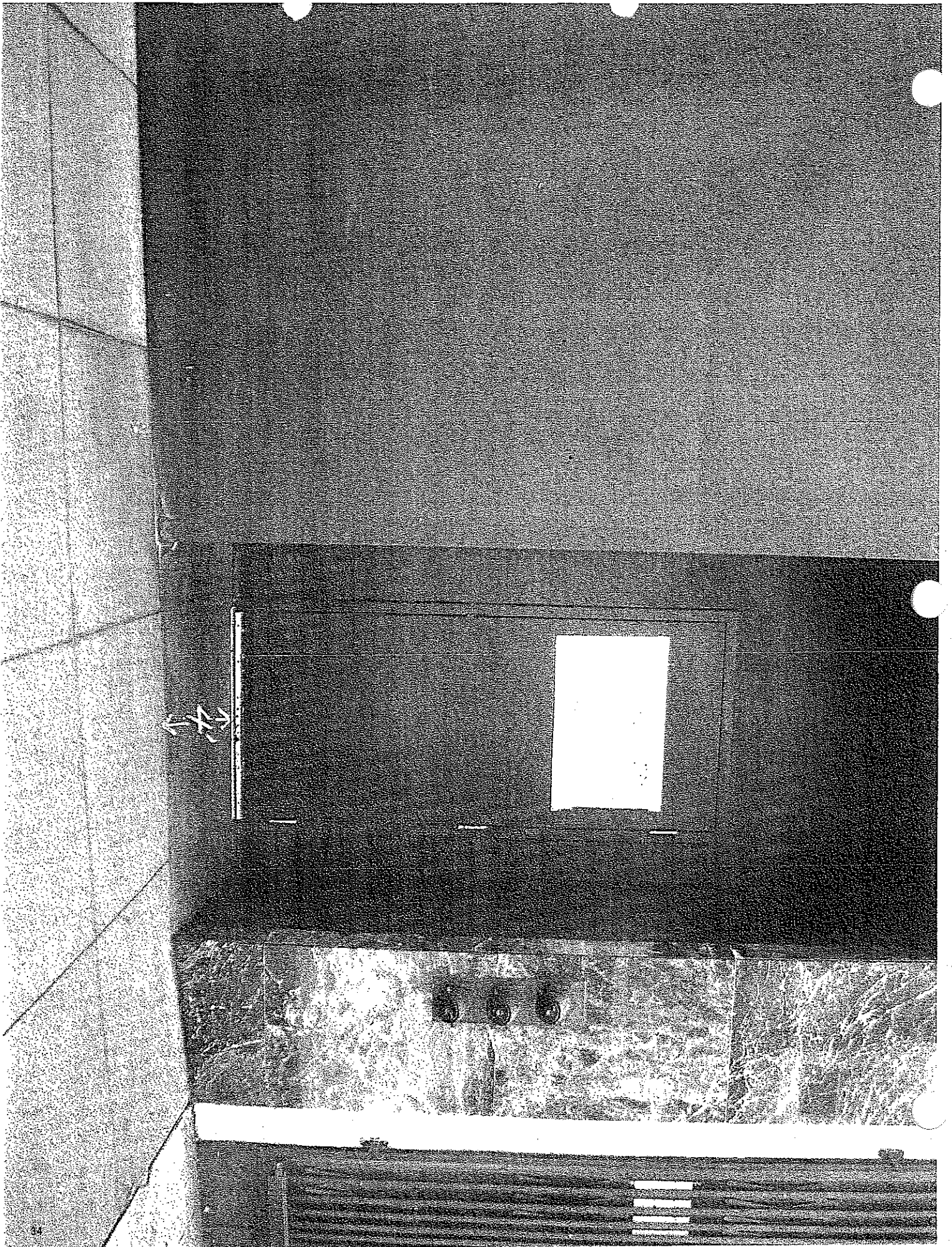
All submitted material along with any testimony pertaining to the application for said permit will be heard at an Entertainment Commission Hearing to be held on the 18th day of August, 2009 at 7PM in Room 406 City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco.

By order of Robert Davis, Exec Director

POSTED
5/17/09
San Francisco Entertainment Commission
Room 453, City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

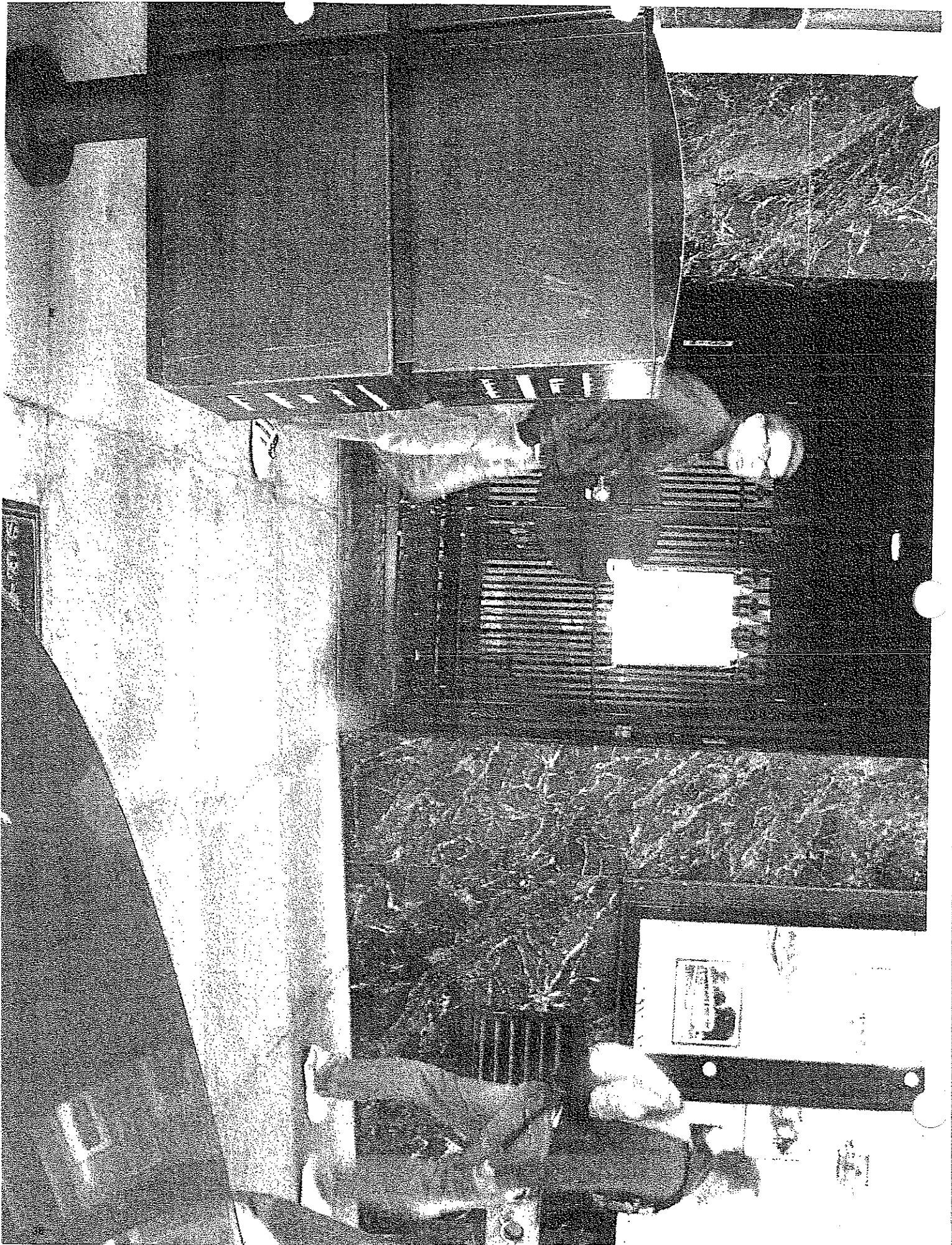
This notice is to be posted in a conspicuous place on the premises described in the application above referred to.





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Entertainment Commission



September 16, 2009

Honorable Members
Sunshine Ordinance Task Force
Office of the Clerk, Board of Supervisors
(Attention: Chris Rustom)
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Complaint #09054, Robert Garcia v. Entertainment Commission

Dear Task Force Members:

We are responding to the above complaint. The Task Force does not have jurisdiction over the complaint because the complaint does not allege a violation of the Sunshine Ordinance, the Brown Act, or the Public Records Act. Rather, it involves interpretation and application of a discrete provision in the Police Code regarding Place of Entertainment permits. Accordingly, following consideration of the jurisdictional issue by the Complaint Committee at the Committee's October 13 hearing, the Task Force should dismiss the complaint.

The complaint asserts that the applicant for a Place of Entertainment permit or permits has not posted notice of the hearing on the application as required by Section 1060.5 of the Police Code, which governs hearings on such permit applications. Specifically, Mr. Garcia complains that the notice has not been conspicuously posted as required by that Police Code provision. Section 1060.5(c) states in part, "the Entertainment Commission shall cause to be posted a notice of such hearing in a conspicuous place on the property in which or on which the proposed place of entertainment is to be operated."

Under that Police Code provision, the Entertainment Commission is given ultimate responsibility to determine whether the conspicuous posting requirement has been met. Sometimes in specific cases there is a question whether that requirement has been met. The Commission considers that issue, when it is raised, in the context of determining whether to grant the permit application. Members of the public have the right, through the public comment process at a Commission hearing on the permit application, and through other communications with the Commission or Commission staff prior to the hearing, to express their views as to whether the requirement has been met in a particular case. Indeed, in response to complaints that the conspicuous posting requirement has not been met, the Commission on occasion has required that the permit applicant re-post the notice so as to effect compliance with that requirement.

The Task Force has no legal authority to make determinations as to whether a City body has exercised its duties under the Police Code. It is not the Task Force's role to determine whether in a particular case the notice of a hearing on a Place of Entertainment permit application was posted in a location and manner that conforms to the conspicuous posting requirement of Section 1060.5. Rather, the Task Force oversees compliance with the Sunshine Ordinance and related California laws. Accordingly, the Task Force has no jurisdiction to hear this complaint and therefore should dismiss the complaint.

Sincerely,

Robert Davis, Executive Director
San Francisco Entertainment Commission

