

# CITY OF JERSEY CITY

Department of Housing, Economic Development & Commerce

Division of City Planning

Memorandum

DATE: 4/3/2024  
TO: Planning Board Commissioners  
FROM: Matt Ward, PP AICP  
RE: P2024-0060  
Amendment to Powerhouse Arts District Redevelopment - Staff Comments

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## INTRODUCTION

Pursuant to council resolution 24-155, the Planning Board is to study and prepare an amendment (the "Amendment") to the Powerhouse Arts District Redevelopment Plan ("Redevelopment Plan" or "Plan"). The Amendment attached to the council resolution would remove Nightclubs and Cabarets as a permitted principal use in the Redevelopment Plan. The Amendment in the Council Resolution did not recommend any other changes to the Redevelopment Plan. It is not clear from the resolution what precipitated the study of the Amendment. Staff assumes Nightclubs and Cabarets may be considered a nuisance raising concerns about noise, safety, and decency.

Staff recommends that the Board review and discuss the proposed Amendment in two ways.

- One, the proposed Amendment in a form that is thorough and acceptable for adoption.
- Two, whether Nightclubs and Cabarets should be permitted within an Arts District and whether those uses are consistent with the Master Plan and further the goals and objectives of the Redevelopment Plan.

The contents of this memo are organized into the following headings:

- Definitions and local licensing
- Existing Redevelopment Plan language
- Thoroughness of proposed amendment language
- Master Plan Consistency
- Summary Recommendation
- Addendum
  - Other Land Use Definitions
  - List of Entertainment Licenses
  - Map - Where Nightclubs are Permitted, Downtown Jersey City

## DEFINITIONS AND LOCAL LICENSING

What first comes to mind for a Nightclub is a venue where patrons dance to music, either performed live or played and mixed by a DJ. Nightclubs also include a line out front, bouncer, cover at the door, and a bar with alcohol service. A Cabaret is often associated with burlesque, drag shows, or live performance led by a M.C. or master of ceremonies. These characterizations, however, are narrower than what is defined and regulated locally in the Municipal Ordinance.

Per Chapter 345-6 of the Land Development Ordinance ("LDO"), Nightclub is defined as "An establishment in which music, dancing, and/or live entertainment is conducted and which may also dispense liquor and/or food." Cabaret is not defined in the LDO, in which case, the Webster's English Dictionary shall be referenced. Per merriam-webster.com, Cabaret is defined as "(a) a restaurant serving liquor and providing entertainment (as by singers or dancers), or (b) the show provided at a cabaret."

The definitions of Nightclubs and Cabarets are broad and could be applied to many types of businesses. It is reasonable to conclude that a piano bar, jazz club, karaoke bar, or a comedy club could all be classified as a Nightclub. Then there is the issue of Nightclub-adjacent and Cabaret-adjacent uses like Theaters, which are permitted and even required in certain overlays of the Plan. Per 345-6, a Theater is defined as “Space for live or screen performances including movies, plays, and concerts.” Therefore, it is not always clear when a business is a nightclub, cabaret or theater.

In our Zoning, the City makes no distinction between Restaurants with or without entertainment in the LDO. All restaurants, pursuant to Chapter 157 of the Municipal Code, are able to seek and/or obtain entertainment licenses. This lack of distinction is on purpose. Music makes the experience of shopping, eating, coffee, and elevators more enjoyable. We don’t require every last business playing music to have a license to do so. Instead, the City regulates Entertainment Licenses for the express purpose of addressing disturbances and other occurrences associated with entertainment and dance venues such as “riots, disorderly groups, public consumption of alcohol, and public urination” (Chapter 157-A.(1)). That list are extreme cases. Often, live entertainment is simply a way to provide a special experience for patrons of a restaurant. Nonetheless, City Planning has been questioned on the existence of live entertainment at restaurants and bars before. So much so that City Planning incorporated clarifying language into some zones, like the RC-2, Residential Commercial 2 District, which makes it clear that restaurants can have entertainment licenses. In order for a restaurant to obtain an entertainment license they must apply and meet the qualifications of Chapter 157. In addition, there are standards set for safety, noise, buffers, times, content, setting, and operation. The ordinance also gives the Director of Public Safety the ability to suspend licenses on an emergent basis. Licensing is a stronger and more flexible tool to permit and regulate entertainment than land use controls.

#### **EXISTING REDEVELOPMENT PLAN LANGUAGE**

The Powerhouse Arts District Redevelopment Plan was first adopted in 2004 in compliance with the 2000 Master Plan. A primary objective of the Plan was and is to “Replace the WALDO Zoning District [Work and Live District Overlay] regulations with standards that encourage a variety of uses to transform this section of Jersey City into a vibrant neighborhood with primary emphases on the arts, entertainment and culture, while providing for a broad range of retail, restaurant and personal service uses that will help create a dynamic and economical sustainable community.” Other similar stated objectives that apply to the Amendment include:

- Provide for and encourage a mix of land uses that will generate a community that is active twenty-four / seven, and populated by residents, business workers and support personnel.
- Support the arts centric business incubator elements and nature of the PAD.
- Provide cultural, arts, entertainment and retail amenities to the nearby waterfront office and residential districts.
- Attract new and additional economic benefits to the city from residents, workers and visitors of the waterfront office and residential districts.

The Powerhouse Arts District is to stand out from the rest of downtown as a locus of activity generated by the Arts and entertainment and a diverse list of permitted uses.

The existing list of permitted **principal uses** are as follows, emphasis added:

1. Work/Live Unit or Work/Live Artist Studio
2. Artist Work-Only Studio
3. Art Gallery
4. **Hotel**
5. Retail and Restaurant, only as provided by the following terms, as the Jersey City Land Development Ordinance: Retail Sales; Retail Services; Restaurant, Category 1; Restaurant, Category 2, Specialty Grocery Store not to exceed 30,000 s.f.

6. Manufacture, assembly, and/or repair of artifacts, including, but not limited to: art, crafts, and stage sets or scenery. This use shall be restricted to 20,000 square feet per tax block. The areas available for these uses are limited to the building interior only.
7. Civic Space.
8. **Theaters:** Movie, **stage** or multi-purpose (Typo: multi-purpose) facilities.
9. Offices: A limited amount of office uses per building shall be permitted. The amount of office space permitted in any single property shall not exceed 50% of the gross floor area of such building and shall not be permitted on the ground floor.
10. Personal health, recreation, or improvement services or instruction, such as a gym, yoga or Pilates studio, alternative therapy center, or **dance or music instruction space, but excluding medical offices.**
11. **Bar**
12. Museum
13. **Nightclub or cabaret for all properties except the Powerhouse building in tax block 11609).**
14. The 100'x100' parcel at the northeast corner of tax lot 1 within block 11611 shall be permitted PATH system power or switching station equipment.
15. **Mixed Uses:** Mixed uses of any of the above permitted principal uses shall be permitted. Similar uses within any building shall be clustered and if necessary, **shall be separated by sound barriers in floors and walls wherever potentially conflicting uses are adjacent.**
16. Shared usage of the parking structure by all tenants and residents of the PAD may be arranged by the redeveloper with Planning Board approval. Parking spaces shall be provided for users and visitors of the district only.
17. Residential uses, limited to the High Rise, Arts Theater Residence Overlay and Powerhouse Arts Residence Districts, and Block 11611, Lot 1 (f/k/a Block 107, Lot B) 335-341 Washington Street, Jersey City, NJ, of the Rehabilitation Zone with building rehabilitation as required within this plan.
18. Self storage facilities as an adaptive reuse of an existing building limited to Block 11503, Lot 1 (f/k/a Block 142, Lot A), 133 Second Street, Jersey City (also known as 142-144 First Street, Jersey City) provided such self storage facilities are in combination with at least three separate corner-oriented first floor commercial spaces and that the total area of all such first floor commercial space is at least 12 percent of the gross floor area of the first floor of the entire building. Provided further that 30 percent of the linear ground floor street frontage of the building shall be commercial space, exclusive of ground floor street frontage necessary for building support services, such as lobbies, garage entrances, utilities and loading areas. For the purposes of this section, commercial space may consist of art galleries, retail sales and services, restaurants, personal health, recreation, or improvement services or instruction, and bars all as otherwise permitted in the Rehabilitation subdistrict.
19. Dormitories, limited to the Rehabilitation Zone. A dormitory shall be defined as a building or portion of a building providing sleeping and living accommodations with sanitary and general living facilities designed and used to accommodate students of a university or college.
20. Educational Uses

The existing list of permitted **accessory uses** are as follows:

1. Retail sales of art that is produced on premises by the residential occupant.
2. Parking Structure that serves the residents, occupants or patrons of structures in the PAD. The parking structure may only be used by the residents, occupants or patrons of the principal use structure to which it is accessory. A parking accessory use shall be permitted up to one hundred feet (100') from the principal use structure. A parking accessory use to Block 11609 (the Powerhouse) shall be permitted on Block 11612 (the High Rise district).
3. Rooftop facilities as outlined elsewhere in this plan.

4. Common areas, lobbies, swimming pools, and other uses that are customary and incidental to a residential building.
5. Indoor and outdoor public space, and parks.
6. Bus stops.
7. Dog run, provided that it is used no earlier than 7 am and no later than 11 pm, and provided that it is not within sight, nor sound of retail or restaurant uses, and provided that it uses ground cover materials that are approved by the Jersey City Health Officer.
8. Streetscape elements as outlined elsewhere in this plan.
9. Artist workplace in work/live style unit.
10. Any use that is customary and incidental to a hotel use shall be permitted as an accessory use to a hotel, including but not limited to **Banquet facilities, conference rooms**, business center, etc.
11. **Bar** as accessory to hotel, **nightclub**, restaurant or theater.
12. **Restaurant**, Category 1; or Restaurant, Category 2; as accessory to hotel, **nightclub**, theater or museum.
13. One caretaker dwelling unit, retail sales of storage-related products, and management offices, all accessory to self storage facilities in an existing building in Block 11503, Lot 1.

The uses called out from the lists above are done so to highlight uses with similar or greater levels of intensity and/or impacts on the neighborhood. The Plan permits assembly and manufacturing of goods and includes many uses that are intended to attract large numbers of patrons for daytime or evening events. Since restaurants can obtain entertainment licenses and theaters and hotels can have bars, and hotels can have banquet facilities and conference rooms, there does not seem to be much distinction between eliminating Nightclubs and Cabarets versus eliminating any of these other principal or accessory uses. Perhaps the impetus for this amendment is more rooted in past enforcement concerns over noise and safety. But as explained earlier, those performance standards are regulated under Chapter 157 of the Municipal Ordinance which provides greater control for local enforcement than a zoning violation pursuant to Chapter 345.

In addition, land uses and new business ventures are always evolving. Some nightclubs employ headphones for patrons to dance in near silence, called Silent Discos. In between shows, theaters often host events more akin to banquets, conferences, or nightclubs. The Liberty Science Center for example has after dark events for adults and the black box theater, Art House Productions on Marin Blvd rents out its facilities as another revenue stream. While work from home is significantly altering the office landscape we have to cognizant that all commercial businesses are under constant pressure to keep their doors open. We should be more inviting and innovative rather than prohibitive with all non-residential uses and relying licensing allows us to do that.

#### **THOROUGHNESS OF THE PROPOSED AMENDMENT LANGUAGE**

The proposed language of the Amendment is not thorough. First, there is a typographical error in the list of permitted principal uses which should be fixed (mull-purpose facilities to multi-purpose facilities). Second, the Plan still permits nightclub-adjacent and cabaret-adjacent uses like theaters, bars, hotels with banquet facilities or conference rooms. If the nuisance concern is noise and safety, the intensity of permitted uses is minimally impacted and at best the nexus between the land uses and stated Plan objectives is weakened by the prohibition. If the nuisance concern is decency or morals, we suggest the Council clarify their reasons for Planning Board study. In 2018, Jersey City updated our obscenity laws after believing them to be too prudent following the fallout after a local burlesque performer was shutdown. Third, the proposed amendment does not strike the mention of Nightclub from the list of accessory uses, which is causes confusion if the amendment moves forward as proposed in the Council Resolution.

Staff recommends the amendment draft be redone with these comments in mind.

## MASTER PLAN CONSISTENCY

The removal of Nightclubs and Cabarets as permitted uses in the Powerhouse Arts District Redevelopment Plan is not consistent with the Master Plan or the goals and objectives of the Redevelopment Plan.

The Master Plan Vision for Jersey City promotes diversity and equity and strives for a prosperous and dynamic urban economy with abundant opportunity to live, work, and play. The Guiding Principles of the Master Plan Vision challenge us to:

- “Reconcile barriers to equity, whether physical, economic, or social in nature.”
- “Support the expansion and enhancement of neighborhood centers and their unique character – *‘We are not a bedroom community, we are a vibrant home and destination.’*”
- “Ensure growth leverages economic trends to give the City and its residents the best opportunities for personal and collective success.”

A Key Objective of the Master Plan is to amplify economic opportunity by “Adopting[ing] strategic land use policies to enhance and guide economic opportunities and diversity of industry across the city.” Other applicable objectives, goals, and recommendations of the Master Plan Vision include:

- Promote the development of a diversity economy
- Accommodate a diversity of uses and needs beyond recreation
- Establish 15-minute cities and neighborhood Cores
- Retain and attract small businesses
- Diversify permitted uses to increase site programming
- Repurpose and reuse existing structures

As stated earlier the vision for the Powerhouse Arts District to be the arts and cultural heart of Downtown Jersey City. Nightclubs are permitted in other downtown zones and should not be feared or considered a nuisance without cause. In Downtown, there are six redevelopment plans that permit Nightclubs. Not including the Powerhouse Arts District Redevelopment Plan, Nightclubs are permitted uses on 440 acres or nearly 36% percent of land area in Downtown Jersey City. Only Powerhouse Arts District Redevelopment Plan permits Cabarets. A prohibition against Nightclubs and Cabarets in the Powerhouse Arts District would only serve to prohibit the potential for a diverse set of land uses geared toward arts, entertainment, and culture. The proposed amendment is not consistent with the Master Plan or the objectives of the Redevelopment Plan.

## SUMMARY RECOMMENDATION

Staff recommends the Planning Board not recommend adoption of the Amendment to the Powerhouse Arts District Redevelopment Plan.

Instead, staff recommends that the Council and Planning Board consider amendments to update and broaden the list of permitted uses to align with new land use categories or those use perhaps overlooked in the past. The existing list of permitted uses are overly prescriptive setting caps for certain uses potentially stifling arts-based uses and other non-residential uses. The Board and council should study or remove those use limits. Also, the Powerhouse structure is still in need of redevelopment. Currently, the plan prohibits nightclubs and cabarets on Block 11609 (the block with the Powerhouse structure). Saving the Powerhouse building is a daunting undertaking and we should remove barriers from its redevelopment rather than enact prohibitions of its future use. Staff recommends the Plan be reviewed for any typographical errors or other out-of-date references.

If the amendment is adopted, it is unlikely the prohibition would be long standing. It is even reasonable to think that we will be back here discussing the removal of this prohibition. And if that happens, I recommend that planner quote the movie Footloose and say, “[there is] a time to mourn and a there is a time to dance. And there was a time for this law, but not anymore.”

## **ADDENDUM – OTHER LAND USE DEFINITIONS**

The following definitions of the Land Development Ordinance may be relevant for the review and discussion:

**ARTIST** — A person regularly engaged in the fine arts as a career and not as a hobby. This does not mean that the art the artist creates generates the artist's main source of income, nor does it require that the creation of art occupies the greatest portion of the artist's day. An artist is committed to his or her work, has a body of work that demonstrates the development of that art and intends to pursue that work for the foreseeable future. As used herein, the "fine arts" shall include, but not be limited to, painting, sculpture, choreography and the composition of music.

**ARTIST STUDIO WORKSPACE** — A room or rooms for which the principal use is the making of art by an artist, and from which the artist may sell art as an accessory use to the studio, but which shall not be considered a principal retail use.

**ARTIST WORK-ONLY STUDIO** — See ARTIST STUDIO WORKSPACE.

**BAR** — A place of business, or a defined area accessory to a principal restaurant or nightclub use, primarily devoted to for the sale and on-premises consumption of alcoholic beverages.

**BANQUET FACILITY** — A large room or space in a restaurant or hotel suitable for banquets

**BUSINESS INCUBATOR** - A place where services, space, education, and assistance are provided to new businesses. Incubators include, but are not limited to, office type environments, scientific and research laboratories, kitchens, computer laboratories, and workshops. Incubators are often affiliated with an institution or organization able to provide access to instruction, advice, research facilities, or funding. Sharing of services, spaces, and equipment provides greater economies of scale for the incubator, and creates an entrepreneurial community among its users.

**BUSINESS, TECHNICAL AND ARTS SCHOOLS** — An institution offering training without academic programs.

**HEALTH CLUB** — A meeting place for groups of people for the purpose of engaging in exercise and conditioning of the body for the benefit of physical fitness. All health clubs that are 4,000 square feet or less shall be permitted as Retail Services.

**HOME OCCUPATION** — An occupation or activity carried out for gain by a resident and conducted as a customary, incidental and accessory use in the resident's dwelling unit or accessory structure located on the lot and is in accordance with Supplementary Zoning Regulations § 345-60(1.2(a)).

**LIGHT INDUSTRIAL** — Warehousing, wholesaling, shipping and receiving, manufacturing, assembly, processing, research, laboratory testing service, professional and governmental offices, public and quasi-public uses and other operations which do not include the production of petroleum into fuel, oil or other products or chemical processing and storage. Light Industrial uses shall not produce any corrosive, toxic, noxious fumes, glare, electromagnetic disturbances, radiation, smoke, cinders, odors, dust or waste, undue noise or vibration, or other objectionable features so as to be detrimental to the public health, safety, or general welfare, provided however that existing activities not in violation of City, State or Federal law are exempt.

**NIGHTCLUB** — An establishment in which music, dancing, and/or live entertainment is conducted and which may also dispense liquor and/or food.

OFFICE — A place for the transaction of business where reports are prepared, records are kept and services rendered, but where no retail sales are offered and where no manufacturing, assembly or fabricating takes place.

OFFICE, MEDICAL — A professional office where the services of one or more practitioner can be obtained and where patients are studied or treated on an outpatient basis and where no overnight accommodations are provided. Medical office is permitted wherever Office is a permitted use. Veterinarian offices are considered medical offices. Medical offices are subject to all licensing and code requirements from all relevant government regulations, including but not limited to those from the Department of Health and the State Uniform Construction Code.

RESTAURANT — Any establishment, however designated, at which food is sold for consumption on premises, normally to patrons seated within an enclosed building. However, a snack bar at a public or community playground, playfield, park, or swimming pool operated solely by the agency or group operating the recreation facilities, and for the convenience of patrons of the facility, shall not be deemed to be a restaurant.

RESTAURANT, CATEGORY ONE — A restaurant which is designed for and whose primary function and operation is the preparation and service by employees of meals to a customer or customers seated at the table or bar at which the meal is consumed. A category one restaurant operates without substantial carry-out or delivery service; with no drive-thru, drive-in, or service in vehicles.

RESTAURANT, CATEGORY TWO — A restaurant or mobile food vendor whose primary function is the preparation and service by employees of food to customers as part of an operation designed to include substantial carry-out service; delivery service; self-service, and which may, but is not required to, include on-premises consumption, except that no drive-in, drive-thru, or service in vehicles is permitted.

THEATER — Space for live or screen performances including movies, plays, and concerts.

STUDIO, FILM PRODUCTION AND PERFORMING ARTS — An area utilized for the production and editing of films and/or rehearsal space for actors, musicians, dancers and other similar performers.. Where this use is permitted within any residential district, no equipment or process shall be used that creates noise, glare, fumes, odors, electrical interference or other nuisance factors detectable to the human senses outside the structure in which the studio is located. In addition, where this use is permitted within a residential district, all studio activities shall be permitted to occur only within an enclosed structure.

## **ADDENDUM – EXISTING ENTERTAINMENT LICENSE LIST**

### **Nightclub Licenses**

1. 211 Washington Street t/a Zeppelin Hall (88 Liberty View Drive)
2. Marin Blvd. Enterprises LLC t/a Surf City (345 10th Street)
3. Murtosa Inc., t/a Ringside (475 Tonnele Avenue)
4. Old Bailey Corporation t/a Phebe Reborn (646.5 Newark Avenue)

### **Restaurant Class 1 = Seating Capacity of more than 100 people**

1. 116 Newark Avenue t/a Boots & Bones (116 Newark Avenue)
2. 145 Restaurant Inc., t/a The Ashford (145 Newark Avenue)
3. 512 Quantum Sound LLC t/a 512 Quantum Sound (512 Paterson Plank Road)
4. Czech Please LLC t/a Hudson Hall (364 Marin Blvd.)
5. DD76 LLC t/a The Boil (8 Erie Street)

6. Eight O'Clock LLC t/a South House (149 Newark Avenue)
7. Hutton Street LLC t/a The Hutton (225 Hutton Street )
8. Lighthouse Tavern LLC t/a The Lighthouse Tavern (199 Washington Street )
9. Low Frequency LLC t/a Low Fidelity (328 Palisade Avenue)
10. May Ryan LLC t/a Battello (502 Washington Blvd.)
11. MH Jersey City Operator LLC t/a The Hyatt Regency (2 Exchange Place)
12. Porta Pizza at Jersey City LLC t/a Porta Pizza (135 Newark Avenue)
13. The Factory Restaurant t/a The Factory Restaurant & Lounge (451 Communipaw Avenue )
14. Tommy's Bright Street Tavern LLC t/a Tommy's Bright Street Tavern (141 Bright Street)
15. Ward E Entertainment LLC t/a The Pet Shop (193 Newark Avenue)
16. WEH Presents LLC t/a White Eagle Hall (335-337 Newark Avenue)
17. VB3 LLC t/a VB3 (475 Washington Blvd.)

RESTAURANT CLASS 2 = Seating Capacity of less than 100 people

1. 12 Coles Street LLC t/a Gringo's (12 Coles Street)
2. 172 First LLC t/a O'Hara's (172 - 1st Street )
3. El Mister LLC t/a Dullboy (364 Grove Street)
4. Elene Food t/a Pianist Envy (100 York Street)
5. Emro Inc., t/a Bill & Ruth's Tavern (189 Monticello Avenue)
6. Erani LLC t/a The Corkscrew (61 Congress Street)
7. Greene Hook LLC t/a The Greene Hook (70 Greene Street)
8. HHJC 1 LLC t/a The Hudson Hound (8 Erie Street)
9. Italy Gourmet LLC t/a Green Pears Heights (93 Franklin Street)
10. JCBO Entertainment LLC t/a Paulie's Brickhouse (264 Central Avenue)
11. Jersey City BBQ Company LLC t/a Caraveo (682-686 Bergen Avenue)
12. Jersey Gold LLC t/a The Golden Cicada (195 Grand Street)
13. LaFayette Café LLC t/a Harry's Daughter (339 Communipaw Avenue)
14. LAL Entertainment LLC t/a Abbey's Pub (326 - 3rd Street)
15. Davenport Liquors t/a Liberty Prime Steakhouse (111 Montgomery Street)
16. Markes Inc., t/a Marjais (370 Communipaw Avenue)
17. Mervel Corporation t/a Cherry's Lounge (102 Martin Luther King Drive)
18. Newark Avenue Pub LLC t/a Grace O'Malley's (140 Newark Avenue)
19. O'Abbey's Corner Pub & Grill LLC t/a O'Abbey's (60 Fisk Street )
20. Palooka Group LLC t/a The Archer (176 Newark Avenue )
21. Square Two Holdings LLC t/a Grove Square (116 Newark Avenue )
22. The Red Duke LLC t/a Ed & Mary's (174 Coles Street)
23. WA Golf LLC t/a Liberty National (100 Caven Point Road )
24. YY Inc. t/a Halftime Bar & Grill (746 West Side Avenue)