

MANHATTAN COMMUNITY BOARD FIVE
COMMITTEE ON PUBLIC SAFETY AND QUALITY OF LIFE
REPORT OF THE MORATORIUM TASK FORCE

WHEREAS, In 1997 the Committee on Public Safety and Quality of Life of Manhattan Community Board Five passed a resolution (as amended, the "Moratorium Resolution") requesting that the New York State Liquor Authority institute a moratorium on new liquor licenses on 20th, 21st, and 22nd Streets between Fifth and Sixth Avenues (the "Moratorium Area"), in order to address serious problems of extreme noise, vehicular and pedestrian congestion, litter, traffic problems, and belligerent crowds, as well as vandalism and incidents of violence; and

WHEREAS, In 1999, the Board reaffirmed the Moratorium Resolution, adding some clarifying parameters: establishments with public space of less than 3,000 feet that included a full, constructed kitchen were to be exempted, in order to attract dining establishments in this area rather than nightlife operations; and

WHEREAS, In 2010, the PSQL Committee established the Moratorium Task Force (the "MTF") to evaluate the results of Moratorium Resolution, and to determine their relevance at the present time; and

WHEREAS, The MTF's mandate was to gather information with particular emphasis on residents' input, to then identify and use those findings to form the basis for a report with recommendations to the PSQL Committee and CB5; and

WHEREAS, Over a period of six months, the MTF gathered information by meeting with the State Liquor Authority, block associations, neighborhood groups, police detectives, and building owners, as well as performing direct community outreach and surveying residents on the streets; and

WHEREAS, An email address list of over fifty residents in the neighborhood was created, establishing direct communication with these contacts, and monthly email alerts went out in advance of committee meetings, providing the entire list with the expected agenda for the upcoming committee meeting; and

WHEREAS, During the six months of research by the MTF, all applications for liquor licenses in and around the Moratorium Area (whether original or renewals) were assigned to members of the MTF and used as "case studies" to determine: (a) appropriate criteria for approving or denying applications, (b) current and relevant input from the public, and (c) the success of the Moratorium Resolution over the course of the last several years; and

WHEREAS, The report of the MTF (attached hereto, the "MTF Report") was circulated to the PSQL Committee and adopted unanimously by the Committee after discussion took place at the PSQL Committee meeting on March 2, 2011, with comments and input taken from the public; and

WHEREAS, The MTF Report made various recommendations, including revising the Moratorium Resolution to:

1. Expand the Moratorium Area to include (a) 19th Street between Fifth and Sixth Avenues, and (b) 20th and 21st Streets between Broadway and Park Avenue South;
2. Increase the maximum size of a permitted operation in the Moratorium Area from 3,000 square feet to 4,000 square feet;
3. Restrict the hours of operation and method of operation for new establishments to be appropriate and consistent with the special circumstances present in the Moratorium Area; and
4. Discontinue use of the term “moratorium” in favor of a term more appropriate and supportable by the SLA; and

WHEREAS, The PSQL Committee unanimously adopted the findings of the MTF Report and accepted the recommendations set forth in the MTF Report; and therefore be it

RESOLVED, That, in furtherance of the foregoing, Community Board Five hereby adopts the Policy on the Restricted Licensing Area attached hereto, which policy shall heretofore supersede and replace the Moratorium Resolution; and be it further

RESOLVED, That Community Board Five urges the New York State Liquor Authority to review the MTF Report and its findings and to support the restrictions contained in the Policy on the Restricted Licensing Area as applied to applications relevant thereto.

MANHATTAN COMMUNITY BOARD FIVE
POLICY ON THE RESTRICTED LICENSING AREA

1. Manhattan Community Board Five hereby establishes the "RESTRICTED LICENSING AREA" to include:
 - a. 19th, 20th, 21st, and 22nd Streets between Fifth and Sixth Avenues; and
 - b. 20th and 21st Streets between Broadway and Park Avenue South;

2. Any new application for an on premises liquor license within the Restricted Licensing Area may only be approvable provided that:
 - a. The premises contains not more than 4,000 square feet of space for patron use;
 - b. The premises includes a full kitchen;
 - c. The premises shall never be used as a cabaret;
 - d. Hours of operation of the premises shall not be later than:
 - i. Sunday through Wednesday nights: last seating no later than 12 AM; and
 - ii. Thursday through Saturday nights: last seating no later than 1 AM;
 - e. The PSQL Committee finds the proposed "method of operation" of the premises compatible with the nature of the Restricted Licensing Area;
 - f. In cases where the PSQL Committee specifically approves an applicant's request to use promoters, at all times (i) the licensee shall remain responsible for and in complete control of the premises and its patrons and (ii) all material positions of operation shall be the employees of the licensee at all times;
 - g. The applicant shall execute and deliver a legally-binding affidavit, whereby the applicant shall:
 - i. Represent (a) the square footage of the premises, (b) the capacity of the premises, (c) the "method of operation" of the premises, (d) the number and location of all patron bars and service bars in the premises;
 - ii. Agree to all conditions and stipulations as required by the PSQL Committee as a condition to approval of the application;
 - iii. Agree to incorporate all of the foregoing into the "Method of Operation" included as part of the liquor license application submitted by applicant to the New York State Liquor Authority, a copy of which shall be simultaneously submitted to CB5.

3. These requirements shall apply to all new on premises liquor license applications reviewed by the PSQL Committee after the adoption of this policy. Existing

establishments in good standing with Community Board Five that became licensees prior to the adoption of this Policy shall be required to maintain their current method of operation. Notwithstanding the foregoing, any existing establishment that has community complaints, police reports, or that attracts violence, illegal activity, and/or creates a public nuisance, shall not benefit from this "grandfather" clause and may be subjected to these restrictions or even stricter scrutiny, and possibly referred to the State Liquor Authority for enforcement action.

4. This Policy shall be reviewed every two years by a working group of the PSQI Committee, to ensure that these restrictions remain relevant to the Restricted Licensing Area and current over the course of time. Recommendations shall be made by the PSQI Committee to CB5 for consideration.
5. Additional areas that share similar circumstances and concerns as the Restricted Licensing Area may be added to the Restricted Licensing Area from time to time if found necessary and appropriate by the PSQI Committee. Recommendations shall be made by the PSQI Committee to CB5 for consideration.

Part I Overview and History

Part II Distinguishing Factors

Part III Findings on the Effectiveness of the Moratorium

Part IV Recommendations

Appendix A: Map of Study Area: Licensees and Residents

Appendix B: Map of Study Area: Zoning Code

Appendix C: Hours of Operation of Licensees

Appendix D: Demographic Information

Part I: Overview and History

The Public Safety and Quality of Life (PSQL) Committee of Manhattan Community Board Five, responsible for, among other things, reviewing liquor license applications in the district, passed a resolution in October of 1997 requesting that the State Liquor Authority institute a moratorium on new liquor licenses on the blocks of 20th, 21st and 22nd Streets between 5th and 6th Avenues, in order to address serious problems that accompanied the saturation of this increasingly residential area with licensed establishments: extreme noise, vehicular and pedestrian congestion, litter, traffic problems, and belligerent crowds, as well as vandalism and incidents of violence.

In 1999, concerned that the problems continued to worsen, the Board reaffirmed the resolution, adding some clarifying parameters: establishments with public space of less than 3,000 feet that included a full, constructed kitchen were to be exempted, in order to attract dining establishments in these properties rather than nightlife operations.

In 2010, Board Chair Vikki Barbero and PSQL Committee Chair Nicholas Athanail convened the Moratorium Task Force to evaluate the results of these resolutions, and to determine their relevance in the neighborhood at the present time. This report outlines the task force's findings and sets out recommendations for moving forward. Additionally, the task force hopes their findings will serve as a guide for potential applicants before the Board, so they may better understand what type of operations are appropriate for this area as they consider locations for opening new businesses in Community Board Five.

To gather information, the task force met with block associations, neighborhood groups, police detectives, and building owners, performed community outreach and surveyed residents on the streets. Over a period of six months, the task force used applications before the committee as case studies with which to evaluate the success of these resolutions over the course of the last several years.

Part II: Distinguishing Factors

There are three fundamental factors specific to this area which the task force believes warrant heightened scrutiny for liquor license applications on these blocks.

Residential Character

The neighborhood has attracted residents for decades, as manufacturing long ago left the area. Some residents have lived in the neighborhood for over thirty years. Since the passing of the Community Board's resolutions in the late 1990s, it has grown even more residential, with families moving into new residential buildings even at the time of this writing. The characteristics of the neighborhood, which warranted the passing of the resolutions in 1997 and 1999, have only become more pertinent as the neighborhood has evolved.

Zoning Profile

Generally (see *Map 2* for detailed zoning boundaries), 19th and 22nd Streets west of Fifth Avenue are zoned for high-density commercial activity, with residential use allowed under Use Groups 1 and 2. East of Fifth Avenue, these blocks are zoned for light manufacturing, with a special permit granted for residential use.

Since this permitted residential use began, the area has grown far more residential. Zoning that allows for mixed-use neighborhoods such as these can foster a vibrant and healthy neighborhood, given that there is an appropriate balance between commercial and residential concerns. But even among mixed-use neighborhoods, the characteristics of this one are distinctive: the commercial spaces available for lease on these blocks are very large (in some cases exceeding 10,000 square feet), and are often immediately adjacent. The number of these large lots with ground floor commercial space has no comparison in other residential neighborhoods—a characteristic that weighs heavily on the task force's consideration of what methods of operation are appropriate there.

The other major factor specific to these blocks from a zoning standpoint is their classification for cabaret use. The city's zoning regulations originally allowed for these large commercial spaces to be designated as Use Group 12, due to their lot size and capacity. Cabaret licenses fall under Use Group 12, whose original intent was that clubs and restaurants offering dancing were only to be allowed in certain manufacturing and commercial zones, but not in residential areas. As the neighborhood has evolved, zoning has been adapted: in 2004, the existing zoning of the blocks from 17th Street to 23rd Street between 5th and 6th Avenues was changed from M1-6M (no as-of-right residential development) to C6-4A (allowing some as-of-right residential development). A requirement for a special permit from the Board of Standards and Appeals for any new eating and drinking establishment in the area with a capacity of over 200, as well as for any eating and drinking establishment of any size with dancing, was retained from the prior zoning.

Nevertheless, despite this change, the zoning code of this area still allows for Use Group 12, leaving an area full of residents and families who are living directly above, across and next to buildings that are legally zoned for cabaret use. Nightlife operators are understandably drawn to commercial spaces with this zoning, but the task force believes it is the role of the Community Board to weigh this interest with the context into which these businesses might open—the task

force's primary reason for believing a special set of restrictions is necessary for this neighborhood.

History

Many residents convey extreme concern about a return to the situation of years past when nightlife operations dominated commercial spaces on their blocks. Although the SLA does not specifically take into consideration problems with past operations when reviewing current license applications, the task force believes that the experience of the people who have lived in the neighborhood throughout its evolution is pertinent to the ongoing process of its taking shape. To this end, we consider residents' experience of past years critical as we determine that nightlife operations are no longer appropriate for this neighborhood.

Moving Forward

At the same time, residents seem welcoming of appropriate businesses in the neighborhood, given that reasonable restrictions are in place. In recent months, residents have voiced support for several dining operations that have been approved in the neighborhood. The task force believes the PSQL committee should continue to meet with residential groups and solicit input from residents via street postings and email alerts, in addition to their presence and comments at PSQL committee meetings. An increased presence on social media sites would help establish lines of communication with stakeholders in the neighborhood.

Part III: Findings on the Effectiveness of the Moratorium

The task force finds that since 1997, the restrictions placed on new licensed businesses in this area, in the form of stipulations agreed to in a legal affidavit, have been effective in discouraging the proliferation of the type of inappropriate operations which brought crime and a decreased quality of life to the area, and encouraging methods of operation that are appropriate for a neighborhood with such a residential make-up: retail and dining establishments.

- Hours of Operation

In the task force's determination, limiting a business's hours of operation is the single most effective restriction in establishing the appropriateness of an application for this area, and should be the primary restriction asked of an applicant. Applicants whose intent is to run a nightlife operation are generally unwilling to agree to this restriction.

To clarify terminology: the task force found that when an operation's management refers to "closing hours," they refer to the time of the last seating and last order placed to the kitchen. When a restaurant closes at 11pm, for example, that is the time of the last seating and last order placed to the kitchen, with clientele leaving the premises and the operation locking its doors for the night typically 45 minutes to one hour later. When the task force uses the term "closing hours," we will adhere to this understanding, and recommend the committee do the same.

The task force found that a business's true hours of operation tend to be earlier than their advertised hours; for example, although Boquéria has advertised that they close at 2am nightly, in practice we found that they typically close by 11:30pm. Requesting restricted hours of operation, then, is not to dictate the precise hours of a dining establishment, but to set the maximum hours of operation that seem appropriate for this method of operation. The task force believes this restriction is especially important given that, unless the operator agrees otherwise, licensed businesses may legally serve liquor until 4am nightly. We believe that an applicant who is willing to adhere to a stipulation restricting hours is testifying to the nature of their method of operation.

To determine appropriate hours to ask of an applicant, task force members surveyed licensed dining operations in the area (see *Appendix C*), and compared this reality on the ground with the requests we have made of applicants over the last several months in regard to their closing hours. It is the task force's finding that a sufficient restriction is 12am last seating on weeknights, and 1am last seating on Thursdays through Saturdays, with last seating implying final orders submitted to the kitchen.

- Method of Operation

The task force believes that an applicant's method of operation is critical: nightlife operations are not appropriate for this neighborhood and cannot be supported. To this end, the task force found it extremely important that the committee continues their procedure of exacting a commitment from applicants not to seek a cabaret license for the duration of their operation. Together with the above-mentioned restriction on hours of operation, these two factors are the most effective way to determine the nature of the method of operation of a potential licensee.

- Square Footage

A restriction on the square footage of establishments has also been used over the last several years, with approvals only permitted if the public space of an applicant's proposed operation was less than 3,000 square feet. While the restriction is important given the extremely large lot sizes in the neighborhood, with some exceeding 10,000 square feet, the task force has found that hours of operation have been a more directly relevant consideration when evaluating the appropriateness of an operation. In the months leading up to this report, the committee heard three applicants who agreed to all of the PSQL committee's restrictions, and who the committee found to be appropriate and desirable applicants, but whose floor plans were very near the 3,000 square foot limit. Furthermore, there are properties around this size that are currently vacant, which the task force expects will be coming before the committee in the future. It is our recommendation that if a proposed method of operation meets the committee's approval, and its applicants are willing to adhere to all restrictions the committee asks of them, the limit should be raised to 4,000 square feet to allow the committee more flexibility in bringing appropriate and compliant operations to the neighborhood.

- Terminology

The task force found that a problematic characteristic of the committee's procedures is in its use of the term "moratorium." The word has caused confusion for applicants as well as residents by encouraging the assumption that there is an absolute ban in place on liquor licenses in this area. The State Liquor Authority does not honor moratoriums in any district in New York City, and never has; and they are emphatic on this point. Community Board Five's original resolution of 1997 was in fact a request to city agencies and elected officials to implement a moratorium on new licenses: although this did not happen, the "moratorium" was established as a formal internal policy of Community Board Five. The task force believes that the efforts made as a result of the moratorium policy have led to the very important and effective procedures that the committee now employs, including the approval of original licenses for the right operations. However, with respect to the potentially misleading term "moratorium", we believe it does both Community Board Five and members of the public a disservice to imply that a legal moratorium is in place, when in fact it is the committee's efforts in furtherance of our internal policy that have established an effective way not to ban new businesses in the area, but to approve and regulate appropriate ones.

It was a residential group that raised this concern with members of the task force, saying that they found the term "moratorium" confusing and misleading, and suggested that the committee use a term that more accurately reflects the evaluation process of applications on these blocks. The task force agrees with this suggestion and recommends that the committee find another term, while reiterating that this recommendation is in no way an attempt to reduce the importance of the restrictions and stipulations that the committee employs.

- Boundaries

The task force finds that 20th-22nd Streets between 5th and 6th Avenues remain an area for which restrictions on operations should be required. As the surrounding area shares many of the same characteristics and concerns, the task force finds that applicants on the following blocks

should also be held to the same level of scrutiny: 19th Street between 5th and 6th Avenues, and 20th and 21st Streets between Broadway and Park Avenue South. These blocks similarly reflect increased residential use and a density of existing licensees, and they should formally be included under the moratorium concept.

Part IV: Recommendations

• Restrictions on Operations

The task force believes the committee's use of restrictions on new licensees has been effective and is critical to the safety and quality of life of this area, and recommends that the committee continue to request the following restrictions uniformly and consistently:

- Premises must include a full kitchen
- Applicant must not apply for a cabaret license at any time
- Hours of Operation:

Sunday through Wednesday nights: last seating no later than 12 A.M.

Thursday through Saturday nights: last seating no later than 1 A.M.

- Area of patron use must be less than 4,000 square feet
- Use of Promoters:
In cases where the committee approves of an applicant's request to use promoters, they will be required to provide detailed information regarding the nature of their usage. Public relations firms, in-house marketing/promotion staff, and/or promoters related to the occasional private event who directly report to the general management of the establishment are considered appropriate types of promotion. In such circumstances, at all times (i) the licensee shall remain responsible for and in complete control of the premises and its patrons and (ii) all material positions of operation shall be the employees of the licensee at all times. The following are examples of inappropriate use of promoters: (i) "Turning the keys over" to a promoter/promotion company, resulting in the licensee and general management not being directly responsible for security and unaware of the marketing strategy the promoter employs; (ii) Allowing the use of a promotion company who subcontracts to individual "promoters" who run their own individual VIP guest lists and are tasked with filling bottle tables and/or paid for per head that they deliver for a certain "club night" or private event.

• Terminology

The task force recommends the committee refer to the area with a term that more accurately reflects the evaluation process of liquor license applications. Possibilities include:

High Scrutiny Special District

Area of High Scrutiny

Area of Restricted Operations

- **Boundaries**

The task force recommends that the committee extend the existing area of high scrutiny, 20th-22nd Streets between 5th and 6th Avenues, to include 19th Street between 5th and 6th Avenues, and 20th and 21st Streets between Broadway and Park Avenue South.

- **Outreach to Building Owners**

In recent months, the committee had great success in dealing with problematic applicants by communicating directly with building owners, and we believe this strategy should continue and broaden. The task force recommends that the committee make a concerted effort to communicate with building owners to raise awareness about appropriate tenants for their properties.

- **Existing Licensees**

It is to be noted that these recommendations apply to applicants coming before the committee from and after the time that this task force's recommendations are accepted. Operations in good standing with Community Board Five that became licensees prior to the enactment of these recommendations will be held to the stipulations necessary to maintain their current method of operation. Notwithstanding the foregoing, current establishments that have a history of police reports, or that begin to attract violence, illegal activity and/or public nuisance will be handled separately, and shall be held to stricter scrutiny and possibly flagged for SLA enforcement action.

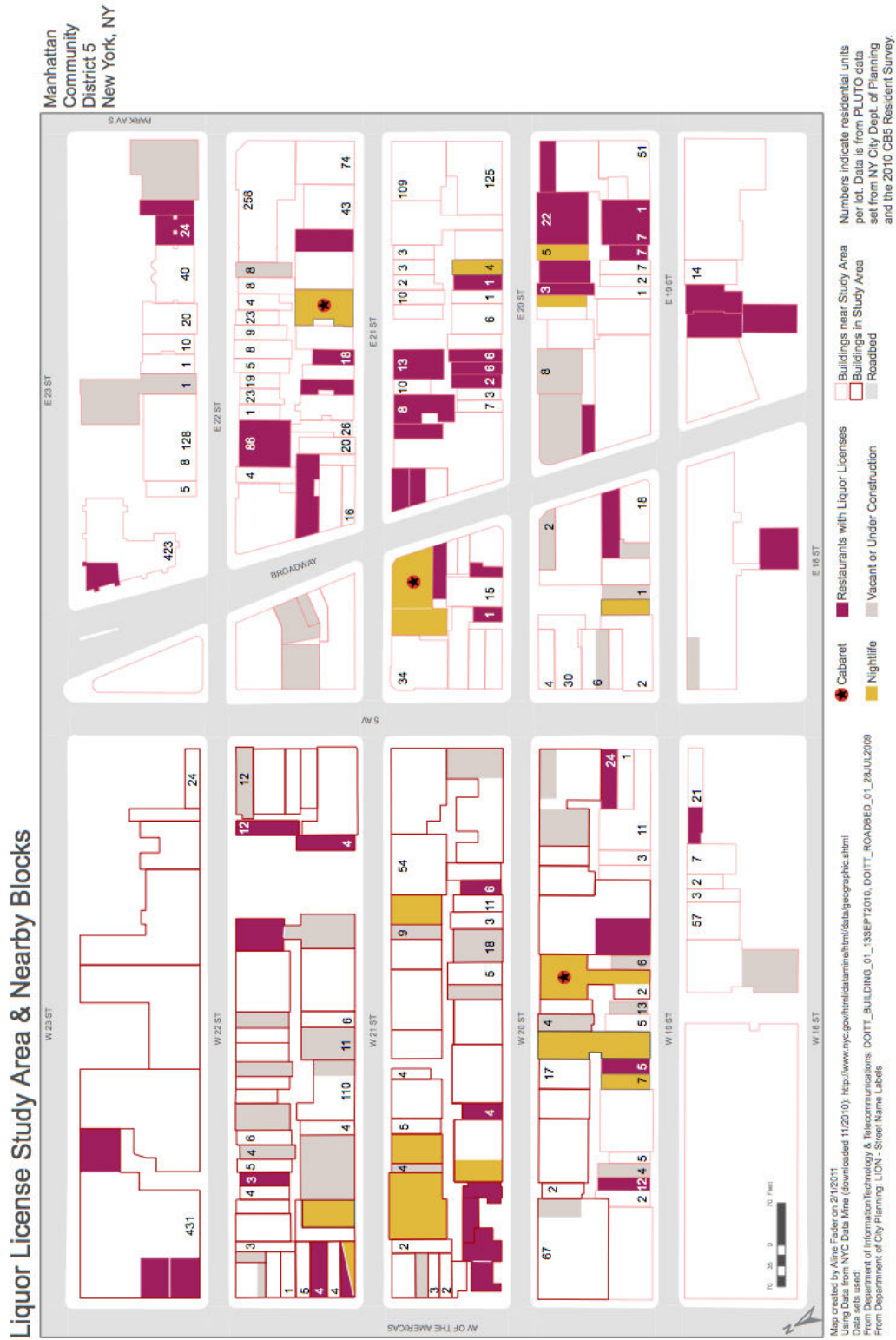
- **Review**

The task force recommends that these restrictions be reviewed every two years by a working group of the committee, to ensure that the review of applications in this area remains relevant to the reality in the neighborhood over the course of time. Reviews should be calendared as part of the committee's schedule.

- **Template for other Areas**

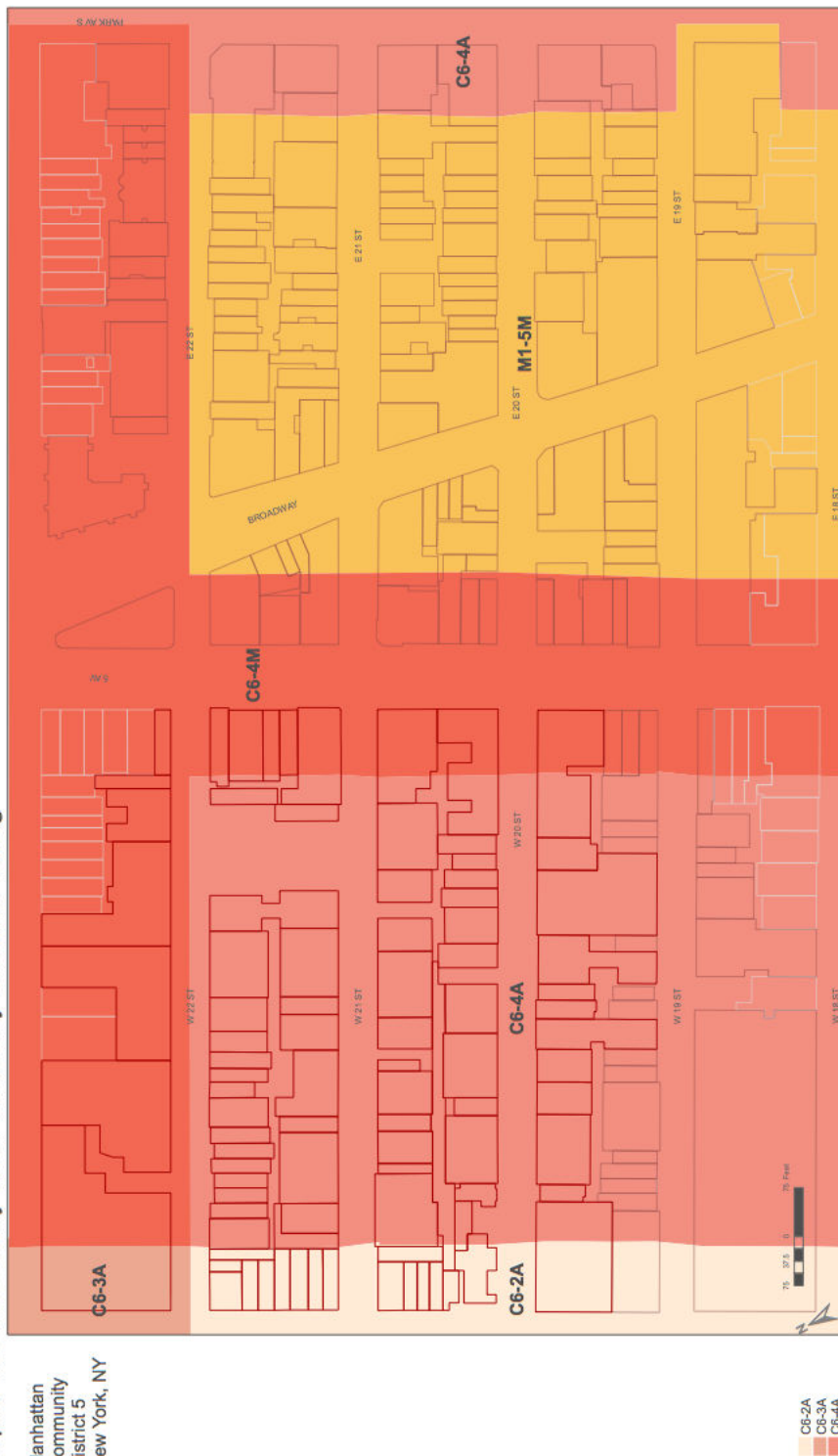
The task force recognizes that similar circumstances may exist in other areas within Community District Five over time, and we recommend that these restrictions be considered as a possible template for evaluating applications in other high scrutiny areas in the future.

Appendix A: Map of Study Area: Licensees and Residents



Liquor License Study Area & Nearby Blocks: Zoning

Manhattan
Community
District 5
New York, NY



Map created by Mike Fisher on 2/1/2011
Using Data from NYC Data Mine (downloaded 11/20/10): <http://www.nyc.gov/html/dam/html/metadata/geographic.shtml>
Data sets used:
From Department of Information Technology & Telecommunications: DOITT_BUILDING_01_13SEPT2010_DOITT_ROADBRED_01_28JUL2009
From Department of City Planning: LIDN - Street Name Labels, DCP_zoning/ingfeatures

Appendix C: Hours of Operation of Licensees

Dining Operation	Address	Weeknight Closing Hours (in practice)	Weekend Closing Hours (in practice)
Bazaar Bistro	4 W 19th St	11:00pm	12:00am
Sala	35 W 19th St	11:00pm	12:00am
Boqueria	53 W 19th St	11:00pm	12:00am
DBRB (yet to open)	11 W 19th St	12:30am	1:00am
Aleo	7 W 20th St	11:00pm	12:00am
Spoon	17 W 20th St	n/a	n/a
Periyali	35 W 20th St	11:00pm	11:30pm
Grimaldi's (yet to open)	47 W 20th St	2:00am close, 11:00pm last serve	2:00am close, 11:00pm last serve
Menashe (yet to open)	47 W 20th St	12:30am (indoors)	1:00am (indoors)
Home's Kitchen	22 E 21st St	10:30pm	10:30pm
Giorgio's	27 E 21st St	11:00pm	11:30pm
Via Emilia	47 E 21st St	11:00pm	11:30pm
Sagaponack	4 W 22nd St	10:00pm	11:00pm
Allegretti (closed)	46 W 22nd	10:30pm	10:30pm
Cafe 50 West	50 W 22nd St	10:00pm	12:00am
Nightlife Operations:			
<i>Flatiron Lounge</i>	<i>37 W 19th St</i>	<i>2:00am (Thursdays 3:00am)</i>	<i>4:00am</i>
<i>VIP Club</i>	<i>20 W 20th St</i>	<i>4:00am</i>	<i>4:00am</i>
<i>Boxers</i>	<i>37 W 20th St</i>	<i>2:00am</i>	<i>2:00am</i>
<i>The Yard</i>	<i>55 W 21st</i>	<i>4:00am</i>	<i>4:00am</i>
<i>Studio 21</i>	<i>59 W 21st</i>	<i>4:00am</i>	<i>4:00am</i>
<i>Slate</i>	<i>54 W 21st</i>	<i>2:00am or 3:00am</i>	<i>4:00am</i>
<i>Taj</i>	<i>48 W 21st</i>	<i>2:00am</i>	<i>4:00am</i>
<i>Society</i>	<i>12 E 21st</i>	<i>3:00am</i>	<i>4:00am</i>
<i>Crimson</i>	<i>915 Broadway (@ 21st)</i>	<i>11:00pm</i>	<i>4:00am</i>
<i>Tens</i>	<i>35 E 21st St</i>	<i>2:00am or later</i>	<i>4:00am</i>
<i>Metropolitan Room</i>	<i>34 W 22nd St</i>	<i>12:00am</i>	<i>1:00am</i>

Appendix D: Demographic Information

From <http://www.city-data.com/> and Onboard Informatics © 2010

Zip Code: 10011

County: 61 - New York

Zip code population (2000): 46,669

Zip code population (2009): 48,598

Estimated Population 48,996

Zip Code: 10010

County: 61 - New York

Zip code population (2000): 26,408

Zip code population (2009): 27,500

Estimated Population: 27,805

2000 Households: 14,985

2008 Households: 15,937

Population Change Since 1990 +1%

Population Change Since 2000 +7%