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Via E-mail (sfranklin@atlanta.gov) and Federal Express

Mayor Shirley Franklin
City of Atlanta
Office of the Mayor
Executive Offices
55 Trinity Avenue
Atlanta, Georgia 30303

Re: Application for Liquor Licenses by Michael Gidewon for a combined 20,000 square foot nightclub located at 1021 & 1029 Peachtree Street, Atlanta, Georgia

Dear Mayor Franklin:

The undersigned represents Steve Brodie, a resident and citizen of Midtown, Atlanta. Mr. Brodie is concerned about, and has asked us to bring to your attention, certain serious irregularities regarding those certain applications (the "Applications") for five liquor licenses by Michael Gidewon (the "Applicant") for two adjacent nightclubs with at least a combined 20,000 square feet of floor space at 1021 & 1029 Peachtree Street, between 10th Street and 11th Street (collectively, the "Premises").

SECTION I - BACKGROUND

Applicant has applied for the Application for the Premises for over eighteen (18) months. During that time period, Applicant faced opposition from the surrounding community, including Midtown Atlanta's largest commercial stakeholders regarding the approval of the Application for the Premises. Notwithstanding the vehement opposition, on or around October 6, 2009, the Atlanta License Review Board ("LRB") sent you a recommendation to approve the Applications. It is also our understanding and belief that you have not received at least one other legal requirement that must be satisfied prior to your consideration of the Applications, and before the commencement of the 60-day period within which you must act upon a recommendation from

the LRB.

City of Atlanta Code of Ordinances (the "City Code"), specifically Chapter 10, Article II, Section 10-66, provides in pertinent part as follows:

The Mayor shall deny, grant, or remand to the license review board any alcoholic beverage license application within 60 calendar days of receipt of a recommendation from the license review board as well as . . . a letter issued by the City of Atlanta Department of Community Development, Bureau of Buildings, setting forth that the proposed licensed Premises has been approved to operate its proposed business.

It is our understanding that the required letter from the City of Atlanta's Bureau of Buildings has not been issued, and will not be issued, unless and until a Special Administrative Permit ("SAP") is issued by the City of Atlanta's Bureau of Planning. It is also our understanding from discussions with a representative of the Bureau of Planning that an SAP has not been issued with respect to the Applications. Therefore, at this time, you are not authorized by applicable law to grant any licenses requested by the Applicant for the Premises, and the 60-day period within which you must act upon the Applications has not yet begun to run. Furthermore, to our knowledge you have not yet received letters from the Atlanta Department of Fire and the Fulton County Health Department, each of which are also pre-requisites to consideration of the Applications under Section 10-66.

SECTION II – CITY ORDINANCE VIOLATIONS

If and when the Applications ever properly come before you with the requisite letters from the Bureau of Buildings, Atlanta Department of Fire and Fulton County Health Department, the Applications should be denied, because the Premises for which the Applications were made are not in compliance with legal requirements for the issuance of liquor licenses for the following reasons, among others:

(1) City Code, Chapter 10, Article II, Section 10-57, provides that an application should be denied if "the applicant . . . does not furnish evidence of adequate parking for a nightclub, as defined by section 10-1, available to the applicant's patrons for the term of the license applied for and within 400 feet of the proposed licensed premises." Section 10-1 defines "adequate parking for a nightclub" as "one (1) lawful parking space for each seventy-five square feet of floor area within the licensed premises." In the Applications, the Applicant has represented to the LRB that the Premises have 20,000 square feet of floor space. Assuming Mr. Gidewon's representation is accurate, Sections 10-1 and 10-57 provide that the Applications should be denied unless there are at least 267 parking spaces "exclusively available to the nightclub's patrons" and "within 400 feet of the proposed licensed Premises." Mr. Gidewon represented to the LRB that the parking lot adjacent to the Premises has only 232 parking spaces. Assuming Mr. Gidewon's representation is accurate, the Premises fails to meet the minimal legal

requirement by 35 spaces. Mr. Gidewon represented to the LRB that his patrons would have access to a parking deck at 930 Juniper Street, but that parking cannot fulfill the legal requirement of at least 267 parking spaces, because the parking deck on Juniper Street is not within 400 feet of the Premises as required by Section 10-57.

Mr. Gidewon argued before the Midtown Neighborhood Association (“MNA”) on or around August 24, 2009 and, upon information and belief, to the LRB that he is only required to have one parking space for each 450 feet of floor space in the Premises, as required by City Code, Chapter 16, Section 16-18P.022. That argument is simply wrong. City Code Sections 10-1 and 10-57 set forth specific requirements that apply to “nightclubs,” defined as entertainment venues having a capacity of at least 100 persons that serve alcohol. City Code Section 16-18P.022 sets forth parking requirements for a more general category of “eating and drinking establishments” without regard to size or service of alcohol. By general principles of statutory construction, the ordinance that more specifically applies to the Premises sets the applicable legal standard, but all doubt is removed by City Code Section 16-31.001, which provides that:

[i]n their interpretation and application, the provisions of this part [Part 16 – Zoning] shall be construed to be the minimum requirements or maximum limitations, as the case may be, commensurate with promotion of the purpose of zoning. Wherever the requirements of these regulations are at a variance with the requirements of any other governmentally adopted statute, rule, regulations, ordinance or code, the most restrictive or that imposing the higher standard shall govern. (Emphasis Supplied)

To the extent that City Code Section 16-18P.022 as to SPI-16 is at variance with City Code Sections 10-1 and 10-57 concerning liquor licenses, the most restrictive and higher standard of City Code Sections 10-1 and 10-57 shall govern.

(2) City Code, Chapter 16, Section 16-18P.021, requires that parking lots in SPI-16 must comply with Chapter 158, Section 158-30, which requires extensive landscaping of the parking lot, including, for example, ten percent of the paved area must be landscaped, there must be one tree for every eight parking spaces, and other requirements. The parking lot adjacent to the Premises is not in compliance with any of the many requirements of Code Section 158-30. Not only is this a legal deficiency in and of itself, but it also increases the deficiency in available parking spaces described above, because compliance with Section 158-30 would result in the loss of more than ten percent of the spaces in the existing non-compliant parking lot, resulting in a total deficiency of more than 58 parking spaces.

(3) According to the presentation Mr. Gidewon made to the MNA on August 24, 2009, the proposed entrance to the nightclub facilities that Mr. Gidewon has named *SPI Lounge* has its main entrance located on the Juniper Street side of the building, and there are no other buildings between SPI Lounge and Juniper Street, which means that the building fronts directly on Juniper Street. Mr. Gidewon has represented to the MNA and the LRB, that SPI Lounge

contains 10,000 square feet of floor space. City Code Section 16-18P.007, however, provides in pertinent part that:

[e]ating and drinking establishments on lots directly fronting Juniper Street and north of 10th Street that are greater than 8,000 square feet of floor area must have a Special Use Permit.

Mr. Gidewon has not even applied for a Special Use Permit, so use of the 10,000 square foot space proposed to be a nightclub named SPI Lounge is illegal unless and until a Special Use Permit is applied for and legally granted.

(4) Furthermore, because the parking for SPI Lounge is located between the building and Juniper Street, SPI Lounge is in violation of City Code Section 16-18P.022, which provides that "off-street surface parking . . . shall not be located between a building and the street without an intervening building."

(5) In essence, the entire proposal behind the Applications is a subterfuge intended to avoid the intent of applicable law. The site of the purportedly two night clubs proposed by Mr. Gidewon is the former site of two different (at least) 20,000 square foot nightclubs. The maximum size for a nightclub at the subject site in SPI-16 has been changed to 10,000 square feet fronting on Peachtree Street and 8,000 square feet fronting on Juniper Street. Those zoning changes were made because a nightclub in SPI-16 larger than now permitted was determined to be detrimental to the people who live, work, eat, drink, and shop in SPI-16. What Mr. Gidewon is trying to do is thwart that determination by taking a 20,000 square foot (or more) nightclub, and purportedly constructing a partition wall down the middle of it, and calling it two 10,000 square foot nightclubs.

Once approved by the City of Atlanta, the actual enforcement of this partition will be virtually impossible, and it is likely that the Applicant will simply allow an opening to be created and will merge the two facilities into one. For the purposes of protecting the character of the neighborhood, there is no practical difference between a 20,000 square foot nightclub, which is clearly illegal in SPI-16, and two adjacent 10,000 square foot night clubs. The parking and traffic consequences are precisely the same, and neither should be allowed.

SECTION III – CONCLUSION

In summary, because all of the requirements of City Code Section 10-66 have not been fulfilled, the Applications are not properly before you, and you do not presently have authority to grant liquor licenses with respect to the Applications. If and when all of the requisite letters have provided in support of the Applications, they should be denied for the reasons set forth above.

Respectfully submitted,


James J. Thomas II

cc: Mr. Steve Brodie
Cary Ichter, Esq.
Patricia A. Roy, Esq.