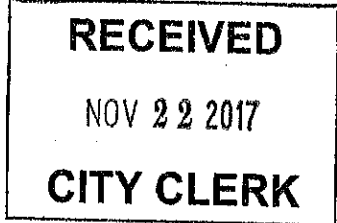


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Attorneys for Respondent:
O'Malley's Sports Bar

**BEFORE THE
CITY OF MOUNTAIN VIEW
DEPARTMENT OF ZONING**

In the Matter of the Zoning Permit for:

Florence Martin O'Sullivan,
dba O'Malley's Sports Bar
2135 Old Middlefield Way
Mountain View, California 94043

Application No.: PL-207-309
Assessor's Parcel No.: 147-12-040
Zone: CS
**RESPONDENT'S NOTICE OF
APPEAL**

Pursuant to the City of Mountain View Municipal Code Section 36.56.50, the Respondent/Appellant hereby submits the following as and for his Notice of Appeal of the decision of the City of Mountain View Zoning Administrator, Stephanie Williams, Acting Current Planning Manager:

INTRODUCTION

On or about October 13, 2107, Respondent and Appellant, Florence Martin O'Sullivan, dba O'Malley's Sports Bar received notice of a public hearing where the Zoning Administrator would review the conditional use permit on or about October 25,

1 2017, at 4:00 p.m., at the Mountain View Civic Center, 500 Castro Street, Mountain
2 View.

3 At any time prior to October 13, 2017, the Respondent/Appellant did not apply
4 for a modification, change or expansion of the pre-existing conditional use permit for
5 the property located at 2135 Old Middlefield Way, Mountain View, California 94043,
6 Assessor's Parcel No.: 147-12-040; Zone: CS.

8 At the hearing on or about October 25, 2017, Florence Martin O'Sullivan
9 appeared to speak on the issue. He inquired what the issue which was the subject of
10 the hearing and was told that he could not address the board that he had already
11 spoken. At that time Florence Martin O'Sullivan had no knowledge of the basis of the
12 "application" nor the basis, justification or reason for the hearing as the notice never
13 reasonably and fully informed him of the reason or purpose for the hearing.
14

15 On or about November 15, 2017 a post marked notice was mailed to him which
16 contained the City of Mountain View's Findings Report/Zoning Permit which contains a
17 7-page Findings of Approval and over 51 restrictive conditions. A copy of said findings
18 report is attached hereto and incorporated herein as **Exhibit A**. The
19 Respondent/Appellant, objects, contests, disapproves and appeals this decision as
20 follows:
21

22
23 **LEGAL BASIS OF APPEAL:**

- 24 1. Denial of due process under California and federal constitutions;
- 25 2. Unfair hearing under common law;
- 26 3. The order is not substantiated by the record or sufficient evidence;
- 27 4. The findings and the order are predicated upon information which was
28 not divulged to the appellant.

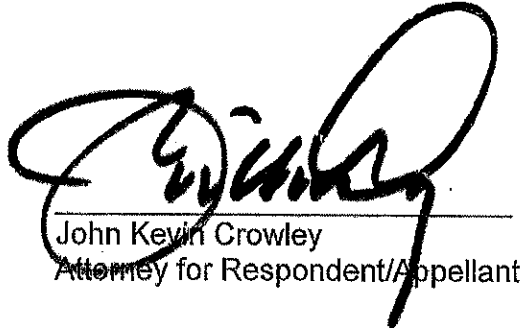
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5. The appellant did not apply for a modification of the conditional use permit.
6. The definition of "live entertainment" was not the one used in the original CUP, and is a unilateral retroactive change in the conditions and terms of the original CUP.
7. The definition of "live entertainment" is constitutionally overbroad and uncertain.
8. The imposition of new conditions are overly restrictive and deny the Respondent/Appellant equal protection under law.

CONCLUSION

Based upon the foregoing, it is respectfully requested that the findings of the City of Mountain View Zoning Administrator be set aside, quashed and be deemed void ab initio. The Respondent/Appellant requests a further hearing for the reasons stated herein above.

Dated: November 22, 2017



John Kevin Crowley
Attorney for Respondent/Appellant

EXHIBIT A

**CITY OF MOUNTAIN VIEW
FINDINGS REPORT/ZONING PERMIT**

APPLICATION NO.:
DATE OF FINDINGS:
EXPIRATION OF ZONING PERMIT:

Page 1 of 7
PL-2017-309
November 8, 2017

THIS DOCUMENT REPRESENTS THE ZONING PERMIT RECEIVED FOR THE SUBJECT SITE. THIS DOCUMENT DOES NOT WAIVE THE REQUIREMENT FOR SUBSEQUENT CITY APPROVALS AS APPLICABLE, INCLUDING, BUT NOT LIMITED TO, BUILDING PERMITS, EXCAVATION PERMITS, ETC.

Applicant's Name:

Flor O'Sullivan for O'Malley's Sports Pub

Street Address of Property:

Assessor's Parcel No.:

Zone:

2135 Old Middlefield Way

147-12-040

CS

Request:

Modification to Conditional Use Permit 008-13-UPA which conditionally permits a bar and drinking place with live entertainment in an existing commercial building.

APPROVED CONDITIONALLY DISAPPROVED CONTINUED OTHER
APPROVED

FINDINGS OF APPROVAL:

The modification to Conditional Use Permit 008-13-UPA, which conditionally permits a bar and drinking place with live entertainment in an existing commercial building is conditionally approved based upon the conditions contained herein and upon the following findings per Section 36.48.25:

- A. The proposed use is conditionally permitted within the CS Zoning District and complies with all of the applicable provisions of the Zoning Ordinance, including the development standards and parking requirements for the district;
- B. The proposed use is consistent with the General Commercial Land Use Designation of the General Plan;
- C. The location, size, design, and operating characteristics of the proposed use are compatible with the site and building character and environmental conditions of existing and future land uses in the vicinity because the site is located in an area predominantly occupied by commercial and industrial uses which have their main business activity during the day, which is the opposite of the subject establishment, and the operational and security measures required for this establishment, including removal of the outdoor patio which is required with this modification, will minimize disturbances in the evening for neighboring residential uses;
- D. Any special structure or building modifications necessary to contain the proposed use would not impair the architectural integrity and character of the zoning district in which it is to be located because the only modification permitted with this approval is the removal of the back patio which will be removed in compliance with all Building and Fire Codes; and
- E. The approval of the modification to Conditional Use Permit 008-13-UPA complies with the California Environmental Quality Act (CEQA) because the operation of a bar and drinking place with live entertainment in an

Owner Agent File Fire Public Works

existing commercial building qualifies as categorically exempt pursuant to Section 15301 ("Existing Facilities") of the CEQA guidelines.

THIS REQUEST IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

Community Development Department – 650-903-6306

1. **PREVIOUS APPROVALS:** This modification to Conditional Use Permit 008-13-UPA incorporates and updates conditions of approval from prior permit; Permit No. 008-13-UPA. All property and operational conditions for the bar and drinking place with live entertainment on the property are contained in this Findings Report.
2. **APPLICABILITY OF THIS PERMIT:** This Permit shall apply to any business entity whose use and operational characteristics match those of the approved use. Intensification of the approved use shall require an amendment to this Permit. A change to a different permitted use shall require a new Permit.
3. **ABANDONMENT OF USE:** The approved use shall be considered abandoned if the approved use in this tenant space (or building) ceases for a period of six months or more, at which point this Permit shall have expired and a new Permit shall be required. Determination of the abandonment of the use shall be based on the best available data, which may include business license, tax, and utility records.
4. **OPERATIONAL CRITERIA:** In the event that problems with the operational criteria of the business arise, including, but not limited to, parking shortages, delivery truck issues, hours of operation, or noise, the Zoning Administrator may hold a public hearing to review the situation and impose new or modified conditions of approval in response to the information received. The public hearing shall be conducted and noticed in accordance with Chapter 36, Article XVI, Division 6, of the City Code.
5. **TENANT IMPROVEMENTS:** Details of the patio removal are to be shown on building permit drawings and shall be reviewed for consistency with the operational characteristics of the use and approved by the Zoning Administrator prior to building permit issuance.
6. **PUBLIC REVIEW:** The Zoning Administrator shall hold a public review meeting in six months and as needed thereafter to obtain public input and applicant testimony on any problems that have arisen regarding the operation. The meeting shall be conducted as a public hearing and shall be noticed in accordance with Chapter 36, Article XVI, Division 6, of the City Code. The Zoning Administrator may impose new or modified conditions of approval or revoke the permit in response to the information received.
7. **APPROVED USES:** Approval is granted to operate an approximately 3,100 square foot bar and drinking place seven (7) days a week, from 10:00 a.m. to 2:00 a.m., with additional approval to have live entertainment as noted in Condition of Approval No. 8. The live entertainment and music part of the operation is limited to patrons who are 21 years of age and older. Ancillary food service as part of the bar shall be allowed on a limited basis and shall not be construed as a restaurant use. Use of the premises as a restaurant is not permitted. Any proposed change to the approved hours of operation will require review and approval by the Zoning Administrator and shall require a modification to this permit.
8. **LIVE ENTERTAINMENT HOURS:** Permitted live entertainment and music shall be limited to Thursday, Friday, and Saturday between 5:00 p.m. and 1:30 a.m. Live entertainment is classified as any live person (paid or unpaid) on-site entertaining with or without amplified sound, and/or the use of amplified sound at all. Event (equipment) take-down may extend until 2:00 a.m., as needed, but shall not include continuation of the live entertainment activities. The applicant can apply for a Temporary Use Permit, subject to Zoning Administrator and Police Chief approvals, no less than 30 days prior to any special event(s) that is outside of the approval days or hours of the Live Entertainment Permit.
9. **ADULT ENTERTAINMENT:** This approval does not allow any part of the premises to be used for a "taxi dance hall," as described in Section 26.25 of the Municipal Code; or any type of adult entertainment establishment, as

described in Chapter 26, Article V, of the Municipal Code.

10. **POLICE DEPARTMENT APPROVALS:** The applicant is required to obtain an annual Live Entertainment Permit from the Police Department. This permit approval is subject to compliance with all conditions and requirements imposed on the Live Entertainment Permit issued by the Police Department as may be amended from time to time. Live Entertainment Permit conditions are hereby incorporated by reference. Violation or noncompliance with said conditions can be enforced as a violation of this permit and administrative penalties may apply.
11. **DANCING:** No dancing is permitted in conjunction with the live entertainment approval. The addition of dancing will require modification to the Conditional Use Permit, Live Entertainment Permit with the Police Department, and approval of a building permit for compliance with building codes for occupant load and exiting for such use.
12. **OUTDOOR PATIO:** The bar and live entertainment use shall be conducted entirely within the building and no outdoor patio use shall be allowed. The property owner or tenant is required to remove the existing outdoor patio within 60 days of this permit and is required to obtain a building permit for its removal. Failure to remove the outdoor patio is considered a violation of this Conditional Use Permit and may trigger revocation of the Conditional Use Permit, pursuant to Section 36.56.70 of the City of Mountain View Municipal Code.
13. **CUSTOMER ACCESS:** The primary customer entrance and exit shall be from the front door along Old Middlefield Way.
14. **SMOKING:** The approved uses shall be operated in compliance with the City's Smoking Ordinance. No smoking shall be permitted in the rear parking lot area adjacent to the rear property line at 788 North Rengstorff Avenue.

SITE DEVELOPMENT AND BUILDING DESIGN

15. **OUTDOOR STORAGE:** There is to be no outdoor storage without specific Development Review approval.
16. **SITE AND PARKING LOT MAINTENANCE:** The site and parking lot shall be kept clean of trash and debris and regular parking lot trash pickups shall be performed. No trucks, equipment, or abandoned vehicles shall be stored in the parking lot area that is designated for the bar use.
17. **PARKING SPACE DESIGN:** All parking spaces (except parallel spaces) must be double-striped. Double stripes shall be 12" apart, from outside edge to outside edge of the stripe. The 8-1/2' parking space width is measured from the center of one double stripe to the other, such that the space between stripes is 7-1/2'. For parallel parking spaces, only single-striped is required. Single stripes shall be measured from interior edge to interior edge of the stripe, such that the space between stripes is 24'.
18. **PARKING SHORTAGE:** Should a parking shortage arise at this site, the Zoning Administrator may hold a public hearing to review the parking problem and require the applicant to implement appropriate means to resolve the shortage. The public hearing shall be in accordance with Chapter 36, Article XVI, Division 6, of the City Code.

NOISE

19. **NOISE GENERATION:** All windows and doors shall remain closed when the bar is in operation to reduce noise transmission from within the building. All noise-generating activities (i.e., entertainment or amplified sound) are limited to interior areas only, and the heating, ventilation, and air conditioning system shall be maintained to ensure that all windows and doors can remain closed when the bar is in operation.
20. **NOISE:** Noise from the bar business shall not exceed a maximum noise level of 65 decibels at any property line. The noise emitted by any mechanical equipment (including music emitted by speakers or other amplification equipment) shall not exceed a level of 55 dB(A) during the day or 50 dB(A) during the night, 10:00 p.m. to 7:00 a.m., when measured at any location on the adjoining residentially used property. If verified noise complaints are

received in the future, the Zoning Administrator may hold a public hearing to review the operation in compliance with Condition of Approval No. 4.

21. **CONSTRUCTION NOISE REDUCTION:** The following noise reduction measures shall be incorporated into construction plans and contractor specifications to reduce the impact of temporary construction-related noise on nearby properties: (a) comply with manufacturer's muffler requirements on all construction equipment engines; (b) turn off construction equipment when not in use, where applicable; (c) locate stationary equipment as far as practical from receiving properties; (d) use temporary sound barriers or sound curtains around loud stationary equipment if the other noise reduction methods are not effective or possible; and (e) shroud or shield impact tools and use electric-powered rather than diesel-powered construction equipment.

CONSTRUCTION PRACTICES AND NOTICING

22. **WORK HOURS:** No work shall commence on the job site prior to 7:00 a.m. nor continue later than 6:00 p.m., Monday through Friday, nor shall any work be permitted on Saturday or Sunday or any holiday unless prior approval is granted by the Chief Building Official. At the discretion of the Chief Building Official, the general contractor or the developer may be required to erect a sign at a prominent location on the construction site to advise subcontractor and material suppliers of the working hours. Violation of this condition of approval may be subject to the penalties outlined in Section 8.6 of the City Code and/or suspension of building permits.

Building Inspection Division—650-903-6313

23. **BUILDING PERMITS:** A building permit is required for this project. This review by the Building Inspection Division is preliminary and only attempting to identify critical or significant code concerns. Building plan check review will be part of a separate permit application process that can be applied for once the Planning approvals have been obtained and any appeal period has passed. To submit for building permits, please refer to the Building Inspection Division's "Submittal Requirements" for document requirements and project review times online at www.mountainview.gov/submitbuildingpermit.

No construction work can commence without the appropriate building permit(s) and no new occupancy shall commence without a Certificate of Occupancy. Please visit City of Mountain View - Building & Fire Division online at www.mountainview.gov/building or by phone at 650-903-6313 to obtain information and submittal requirements.

24. **BUILDING CODES:** Construction plans will need to meet the current codes adopted by the Building Inspection Division upon submittal. Current codes are the 2016 California Codes: Building, Fire, Electrical, Mechanical, Plumbing, CALGreen, CALEnergy, in conjunction with the City of Mountain View Amendments, and the Mountain View Green Building Code (MVGBC).

Fire Department—650-903-6343

FIRE PROTECTION SYSTEMS AND EQUIPMENT

25. **SPECIAL EFFECTS:** Events with pyrotechnics/special effects are prohibited without Mountain View Fire Department (MVFD) permit approval. Plans and paperwork from a State-licensed professional for the proposed pyrotechnics/special effects shall be provided at least thirty (30) days prior to each event and a prevent facility inspection is required prior to MVFD approval.
26. **ONGOING MAINTENANCE:** All fire- and life-safety features of the building (including, but not limited to, fire extinguishers, exit signs, exit illumination, exit doors and hardware, draperies, and furnishings) shall be maintained in operational condition. All emergency lighting and exit signs shall be tested quarterly. A log of this quarterly testing shall be maintained on the property and made available at the request of the Fire Department. Any needed repairs or replacement of these devices shall be made immediately.

27. **FIRE SPRINKLER SYSTEM TENANT IMPROVEMENT:** The automatic fire sprinkler system shall be altered as necessary to accommodate interior improvements. Three (3) sets of shop-quality drawings shall be submitted for review and approval prior to installation. All new and/or existing water flow indicators and system control valves shall be monitored by a central station monitoring alarm company. All work shall conform to NFPA 13 (2016 Edition), NFPA 72 (2016 Edition), and Mountain View Fire Department specifications. Call the Building Inspection Division at 650-903-6313 for a copy of specifications and submittal requirements or visit online at www.mountainview.gov/firerequirements.
28. **FIRE EXTINGUISHERS:** Install one 2-A:10-B:C fire extinguisher for every 50'/75' of travel or every 3,000 square feet. Fire extinguisher locations shall be indicated on the architectural floor plans. (California Code of Regulations, Title 19, Chapter 3 and California Fire Code, Section 906.)
29. **FIRE EXTINGUISHERS (COOKING AREAS):** Install Class K fire extinguishers in the commercial cooking equipment areas. (California Code of Regulations, Title 19, Chapter 3, and California Fire Code Section 904.12.5.)
30. **FIRE EXTINGUISHING SYSTEMS:** Modifications to the cooking line and/or hood require a separate permit. Submit three (3) sets of shop-quality drawings for the cooking appliance fire extinguishing system(s). Call the Building Inspection Division at 650-903-6313 for a copy of specifications and submittal requirements. (California Fire Code Section 904.2.2.)

EGRESS AND FIRE SAFETY

31. **EXIT ILLUMINATION:** Exit paths shall be illuminated any time the building is occupied with a light having an intensity of not less than one footcandle at floor level. Power shall normally be by the premises wiring with battery backup. Exit illumination shall be indicated on the Electrical Plans. (California Building Code Section 1008.)
32. **EXIT SIGNS:** Exit signs shall be internally or externally illuminated and provided with battery backup per Uniform Building Code Chapter 10. Exit signs shall be posted above each required exit doorway and wherever otherwise required to clearly indicate the direction of egress. (California Building Code Section 1013.)
33. **EMERGENCY EXITS:** All emergency exits shall be kept clear and unobstructed at all times.
34. **EXIT DOORS IN GROUPS A, E, H, AND I OCCUPANCIES:** Exit doors shall be provided with approved panic hardware. (California Building Code Section 1010.1.10.)
35. **OUTDOOR STORAGE:** No outdoor storage is permitted with this approval.
36. **POSTING OF ROOM CAPACITY:** Any room used for assembly purposes shall have the capacity of the room posted in a conspicuous place near the main exit from the room. (California Building Code, Section 1004.3.) The posted room occupancy shall not be exceeded.

EXTERIOR IMPROVEMENTS

37. **PREMISES IDENTIFICATION:** Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Address signs shall be a minimum of 6" in height. (City Code, Section 14.10.19.)

Police Department -- 650-903-6350

38. **LIVE ENTERTAINMENT PROMOTION:** The applicant/operator shall not promote live entertainment, music, and dancing operations or events through an outside promoter without direct on-site management overview and Police Department approval.
39. **POLICE DEPARTMENT APPROVALS:** The applicant is required to obtain a Live Entertainment Permit from the

Police Department. This permit approval is subject to compliance with all conditions and requirements imposed on the live entertainment issued by the Police Department as may be amended from time to time. Live Entertainment Permit conditions are hereby incorporated by reference. Violation of noncompliance with said conditions can be enforced as a violation of this permit leading to revocation or administrative penalties.

40. **POLICE CALLS FOR SERVICE:** The cost of Police and Fire Department personnel for calls for service to the facility shall be incurred by the applicant. The City will invoice the applicant for these costs and the applicant shall pay the invoice in full within 30 days. Failure to pay any invoice within 30 days shall suspend the portion of this permit applicable to the music, DJ included, until paid. The applicant may appeal the amount of the invoice to the City Manager, whose decision shall be final.

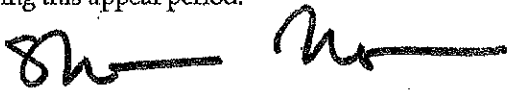
Additionally, the applicant will reimburse the actual costs to include overtime costs for Police Department personnel if the Police Department determines that increased staffing is required due to the activity associated with the applicant's music/restaurant operations. The cost of personnel shall be incurred by the applicant. The City will invoice the applicant for these costs and the applicant shall pay the invoice in full within 30 days. Failure to pay any invoice within 30 days shall suspend the portion of this permit applicable to the music until paid. An example of this would be a live entertainment event that draws a significant crowd above the restaurant occupancy, has a potential and/or history of Police-related issues and/or incidences of crime, or Police intelligence suggests that additional Police staffing is required to safely monitor the event.

41. **SECURITY PLAN:** The applicant shall maintain a detailed security plan which can be amended from time to time, that is approved by the Police Chief or designee.
42. **SECURITY CAMERA SYSTEM(S):** The applicant/operator shall maintain an operational security camera system, at a minimum, focusing on the front entrance and rear door, front/side/rear parking lots, and common areas of the interior. The camera system shall record 24 hours a day; and security tapes shall be kept for a period of at least 30 days at a minimum of HD 1080p quality.
43. **24-HOUR CONTACT PERSON:** The business management shall provide 24-hour contact information of individuals who are capable of making decisions that affect the day-to-day business operations.
44. **CITY COORDINATION:** The applicant is required to comply with the following meeting and notification requirements to ensure adequate coordination with the Mountain View Police Department for live entertainment uses/events:
- Business management shall inform Police Department staff of promotional event and/or appearances by anyone other than a typical "deejay" no later than ten (10) business days prior to the event.
 - Business management shall provide the Police Department with a monthly calendar of planned live entertainment, music, and dancing events.
45. **OLD MIDDLEFIELD WAY SECURITY:** For every live entertainment event, there shall be, at a minimum, one clearly identifiable security guard with the words "SECURITY" printed in bold white letters on the front and back of a black shirt or dressed in a security uniform, posted on Old Middlefield Way who is responsible for prevention of problems and to maintain a smooth pedestrian flow if the customer line extends to the public right-of-way (sidewalk/street).
46. **REAR PARKING LOT SECURITY:** For every live entertainment event, there shall be, at a minimum, one clearly identifiable security guard with the words "SECURITY" printed in bold white letters on the front and back of a black shirt or dressed in a security uniform, assigned to the parking lot from the start of the event until one hour after the end of the event.
47. **REAR DOOR SECURITY:** For every live entertainment event, there shall be, at a minimum, one clearly identifiable security guard with the words "SECURITY" printed in bold white letters on the front and back of a

black shirt or dressed in a security uniform, posted at the rear door who is responsible for the rear door remaining closed.

48. **SIDEWALK CLEARANCE:** The sidewalk shall be kept clear for pedestrian traffic and clear of all debris during all hours of operation. There shall be no stacking of patrons outside the bar.
49. **ADDITIONAL SECURITY:** At the recommendation of the Police Chief, the applicant shall be required to employ additional trained security personnel as may be specified when deemed necessary by the Police Chief. The cost of additional security shall be incurred by the applicant.
50. **EMPLOYEE TRAINING:** The applicant/operator shall provide alcohol-awareness and crowd-control training for employees prior to their starting work at the facility.
51. **DRESS CODE:** During the live entertainment, a dress code shall be enforced, subject to approval by the Police Department.

NOTE: Decisions of the Zoning Administrator may be appealed to the City Council in compliance with the Zoning Ordinance. An appeal shall be filed in the City Clerk's Office within 10 calendar days following the date of mailing of the findings. Appeals shall be accompanied by a filing fee. No building permits may be issued or occupancy authorized during this appeal period.



STEPHANIE WILLIAMS, ACTING CURRENT PLANNING MANAGER/ZONING ADMINISTRATOR

SW/CP/5/EDG
PL-2017-309