



[via email]

July 7, 2021

Dear Vice-Mayor Bosse and Councilmember Les Friedman,

I would like to bring to your attention (as liaisons to the Planning Commission) the recent extension of Sixty Hotel's operating permits and specifically the rooftop activities that, as conditioned, may continue to midnight on weekdays and 2 a.m. on Friday and Saturday despite the hotel's location in a commercial-residential transition area. I wonder if the city would benefit from a council discussion concerning hotel impacts on nearby residents — and whether the conditions imposed to mitigate impacts should not be more effective and consistent.

I bring this to the liaisons' attention because it raises the question about both residential neighborhood impacts from hotel nighttime outdoor operations and also the consistency with which the Planning Commission conditions such rooftop operations in a transition area.

Perhaps you may see fit to call-up the Planning Commission's action at the next city council meeting (July 15th meeting is the first available opportunity).

### **Overview**

The Sixty Hotel operates in a commercial-residential transition zone at Crescent & Wilshire. The hotel needs both a Conditional Use and Extended Hours permits to operate rooftop activities and events. The Planning Commission renewed both permits. As before, the hotel can feature amplified prerecorded music on the rooftop until midnight from Sunday to Thursday and until 2 a.m. on Friday and Saturday. Also the hotel can hold two additional events on the rooftop on a night other than a Friday or Saturday. The additional weeknight events can continue until 2 a.m. too.

Rooftop occupancy of 165 persons is permitted (exclusive of hotel staff) and rooftop visitors need not be hotel guests. These conditions are all unchanged from the prior renewal in 2017 despite documented complaints about rooftop noise and other impacts from adjacent neighbors.

### **Record of Complaints**

Neighbors in the adjacent multifamily area had complained regularly about noise emanating from the rooftop both before the 10 p.m. hour but also after 10 p.m. hour when such noise is regulated by the Extended Hours Permit. The conditions of approval allow amplified prerecorded music "provided...it is not audible beyond the hotel's property lines." (As Vice-Chair Gordon observed, any time

rooftop music is audible from the residential neighborhood it is evidently a violation.)

Neighbors who live immediately adjacent to the hotel (across the 15' alley) have also alleged numerous non-noise impacts from hotel operations: rideshare pickup/drop-off, additional traffic, deliveries that block the alley and people lingering late-night on sidewalks in the residential neighborhood. These impacts were documented in calls to the city and a record was provided to the commission both by residents, and by staff, prior to the initial May 27th hearing.

Also the office of the city prosecutor had threatened to prosecute the hotel in August 2019 for continued impacts that affected the adjacent residential neighborhood. (The case was closed "without further action," said hotel management.)

### **Conditions Unchanged**

Neighbor complaints ceased after the pandemic lockdown as hotel operations were sharply curtailed; few were received from March 2020 onward. Hotel management told the commission that it has implemented management changes to attenuate the noise and avoid the other impacts. Those assurances proved more persuasive than did the neighbors' complaints and the permit renewals were granted.

At the June 23rd conditions of approval, as adopted, were essentially unchanged from 2017 (although three non-restrictive conditions were added) despite the hotel's problematic record on adherence to past conditions. That disappointed two neighbors with whom I spoke after the hearing. ("I didn't feel heard," said one.) None of the commenters from the initial May meeting contacted the commission again prior to the June 23rd continuation. They may have been disappointed by the direction the discussion was already taking.

### **L'Ermitage Comparison**

L'Ermitage on Burton also has a rooftop area open to visitors and the hotel has a problematic record of adhering to conditions. It is also located in a commercial-residential transition area adjacent to a multifamily (R4). Yet L'Ermitage operates under a much more restrictive set of conditions imposed by the Planning Commission. Take for example these conditions of approval from Resolution 1906 (adopted January 2020):

- "All rooftop functions will cease at 10pm, with all guests vacating the rooftop by 11pm every day of the week";

- "Evening functions [events which do not conclude by 6pm] on the rooftop of the hotel involving more than 25 attendees, excluding persons residing at the hotel, shall not occur more than 52 times during any calendar year";
- "Evening functions on the rooftop are limited to twice per week unless authorized by the director of CDD...";
- "A sound monitor must be stationed at the rooftop" when 25 or more non-hotel guests are in attendance"; and,
- "A traffic & parking plan is required to be submitted in connection with any rooftop function involving more than 25 attendees who are not hotel guests."

L'Ermitage also requires a parking plan when rooftop events will host more than 25 non-hotel guests while Sixty Hotel requires no parking plan at any time.

### **Sixty Hotel Gets a Pass**

As for rooftop sound attenuation at Sixty Hotel, Ryan Gohlich expressed his skepticism that any additional measure would not be effective.... yet he did not advocate for any more restrictive condition such as the occupancy limit or abbreviated hours of rooftop operation (which arguably have proved successful at L'Ermitage). Indeed the owner-representative for Sixty Hotel chafed at the suggestion of either restriction and commissioners agreed.

Instead the Planning Commission will trust the hotel to operate responsibly despite its record and documented impacts on the neighborhood. There are hundreds of households within 500' of the Sixty Hotel.

### **Disparate Treatment?**

If the conditions imposed on L'Ermitage have proved successful in controlling impacts on the adjacent neighborhood, then why not carry any or all of the conditions over to Sixty Hotel's renewal application?

The Planning Commission did briefly reference the L'Ermitage's record, and commissioners did note the effort there to attenuate noise from rooftop activities, but not a single restrictive condition was carried over to Sixty Hotel. (Moreover, planning commissioners at the June 23rd hearing agreed to allow a longer period before commission review — effectively 15-18 months — than was initially agreed by commissioners on May 27th.)

I earlier mentioned three additional conditions imposed on Sixty Hotel:

1. Within three months "nighttime rooftop activities shall be periodically monitored by city staff for compliance";

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2. 2By month six an acoustical engineer will conduct a rooftop noise attenuation study; and,
3. Additional signage will be posted "to inform guests of the hotel's location adjacent to a residential neighborhood."

None of those conditions is restrictive or is likely to reduce any impact. In my comment I called them "phantom mitigations" for the community. Real mitigations would recall the L'Ermitage conditions: some threshold where non-hotel guests on the rooftop could trigger additional sound-level monitoring and where such monitoring would occur at the source of the noise (the rooftop). The Sixty Hotel conditions identify monitoring at ground-level and use a subjective measure: "nuisance or inappropriate" sound levels.

Not least, the commission managed to square the subjective definition ("nuisance or inappropriate") of noise impact with the broader condition that rooftop amplified prerecorded music not be audible at all beyond the hotel's periphery. And in the event of any violation, the Sixty Hotel resolution speaks only of unspecified "actions the city may take" while the L'Ermitage conditions refer to "a clear and escalating penalty structure to encourage compliance."

### **Invitation to Call Up Sixty Hotel Approval**

I wonder if the council will be interested to discuss whether the conditions imposed on Sixty Hotel are sufficient for a commercial-residential transition area generally; and whether, given this hotel's record of impacts and neighbor complaints, those conditions are sufficient specifically in this case.

In light of the Planning Commission's much more restrictive conditions imposed on L'Ermitage, it would seem that a council-level discussion about residential-area impacts from hotel rooftop operations may be overdue.

As always, thank you for your time and consideration!

Mark Elliot