



SUBCOUNCIL 16

1. **ITEM NUMBER :** 16 SUB 15/08/19

2. **SUBJECT**

APPLICATION FOR EXTENSION OF LIQUOR TRADING HOURS IN RESPECT OF: CUBANA GREEN POINT, 9 SOMERSET ROAD, GREEN POINT: ON CONSUMPTION: 02:00-04:00

3. **PURPOSE**

To decide on an application for extension of liquor trading hours in terms of Section 6(1) of the City of Cape Town: Control of Undertakings that Sell Liquor to the Public By-Law, 2013

4. **FOR DECISION BY**

SubCouncil in terms of Delegation 4(2)

To approve, refuse or vary applications for extension of trading hours on premises where liquor licences have been granted.

5. **EXECUTIVE SUMMARY**

The City of Cape Town: Control of Undertakings that Sell Liquor to the Public By-Law, 2013, was promulgated on 17 January and coming into effect on 01 February 2014.

An application for extension of liquor trading hours in terms of Section 6 (1) of the By-law was submitted to the Health Directorate and circulated to the relevant departments for comment. The fully signed application, including all required comments was submitted to the SubCouncil 16 Manager, and was then circulated to abutting neighbours, all organisations included on the Ward 115 database and ward committee members for comment.

Clause 9 of the By-law requires that the City must, before approving an application for the extension of trading days and hours, reasonably and fairly consider further factors which must include, inter alia-

- (a) the validity of the liquor licence;
- (b) where applicable, the validity of a business licence issued in terms of the Businesses Act of 1991 (Act No. 71 of 1991);

- (c) location category as per the Schedule;
- (d) previous suspension, amendment or revocation of extended trading days and hours including previous records of complaints investigated and confirmed in respect of the last twelve months preceding a current application for extension;
- (e) the proximity of the licensed premises to surrounding residential zoned area, cultural, religious and educational facilities;
- (f) outcome of community consultation and the recommendation of the relevant ward;
- (g) the potential impact on the surrounding environment;
- (h) whether it is in the public interest to approve and grant an extension of trading days or hours; or
- (i) a motivation from the applicant dealing with the impact of –
 - (i) the risks to and nuisances on the surrounding community;
 - (ii) mitigation measures to assist the control of risks and nuisances; and
 - (iii) possible benefits of extended liquor trading hours and days on the surrounding community.

(10) The basis and rationale behind all decision-making must be recorded.

6. DISCUSSION

6.1 Section 6 (1) of the By-Law reads as follows:

6(1) Subject to subsection (5), (6) and (7) a licensee may upon payment of the required fee, submit a written application to the City to extend the liquor trading days and hours of licensed premises.

6.2 The following application for extension of liquor trading hours in terms of Section 6 (1) of the By-law has been received by the SubCouncil

6.2.1 Details of application (see attached Annexure A):

- **Cubana Green Point**
- Liquor Licence No: WCP/011927
- ON Consumption
- 9 Somerset Road, Green Point
- Extension of trading hours: 02:00 until 04:00.

6.2.2 SubCouncil Manager confirmation: Advertising extent (Community participation) - Notices served on and received the following Comments/Concerns:

- Ward Councillor: 2019/06/18
❖ No response received.

- Abutting Neighbours: 2019/06/24
 - ❖ No response received.
- Community Organizations: 2019/06/18: (See attached Annexure B)
 - ❖ Mark Wuger: De Waterkant Civic Association: Not supported
- Comments from Residents: (See attached Annexure B)
 - ❖ Manuel & Martin Theisen: Objection
 - ❖ Werner Leitner: Objection
 - ❖ Mr SA Roux: Objection
 - ❖ Enrico Tarantino: Objection
 - ❖ Samantha Gouveia: Cape Quarter: Objection
 - ❖ Kirsten Sullivan: Objection
 - ❖ Max Nutall: Objection
 - ❖ Kristino Sullivan: Objection
 - ❖ Alison Bannister: The Sun Trust: Objection
 - ❖ Donald Cameron: Objection
 - ❖ Heather Parker: Objection
 - ❖ H.L. Merklings: Objection
 - ❖ Peter Botha: Objection
 - ❖ Basson van der Westhuizen: Objection
- **Internal departments:**
 - ❖ Town Planning:
Compliant – see attached Annexure A.
 - ❖ Health Department:
Compliant – see attached Annexure A
 - ❖ Law Enforcement Squad
Compliant – see attached Annexure A

RECOMMENDATION

That Subcouncil 16 considers the application for the extension of liquor trading hours submitted by **Cubana Green Point**, 9 Somerset Road, Green Point, as well as the various comments received, and resolve to approve, refuse or vary the application for extension of trading hours until 04:00.

ANNEXURES:

- A. Application submitted by **Cubana Green Point**, including comments by Health, Planning and Safety and Security.
- B. Comments received from Community Organisation and Residents, objecting to the application;
- C. Comments from the applicant on the objections received.

FOR FURTHER DETAILS CONTACT:

NAME	Marius Coetsee
CONTACT NUMBERS	021 487 2055
E-MAIL ADDRESS	Marius.coetsee@capetown.gov.za
DIRECTORATE	URBAN MANAGEMENT AREA 1 - NORTH



M Coetsee
SUBCOUNCIL 16 MANAGER

Comment: _____

DATE

19/07/2019

Comment: _____



SUBCOUNCIL 16
CHAIRPERSON
Cllr Matthew Kempthorne

Date

18/07/2019

ANNEXURE A

0222



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

CITY HEALTH

Sarah Domingo

T: 0214006513

F:

E: sarah.domingo@capetown.gov.za

13/06/2019

Confirmation of receipt of application in terms of Section 6(5)A of the City of Cape Town Liquor Trading Days and Hours By-law 2013 as amended.

Liquor Licence Reference Number: 184715
Liquor Licence Number: WCP/011927
Licensee Name: Stanley Giger
Premises Name: Cubana Greenpoint
Premises Address: 9 Somerset Road
Greenpoint
Cape Town CBD
8001

Date of Application Submission:

Date Application captured: 2019/06/13

Disclaimer

1. Submission of this application does not grant the right to extend liquor trading hours. Approval to be first obtained from the relevant Sub-Council.
2. The application fee is non-refundable.



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

ON-CONSUMPTION EXTENDED TRADING

CITY HEALTH

APPLICATION IN TERMS OF SECTION 6 OF THE CITY OF CAPE TOWN: CONTROL OF UNDERTAKINGS THAT SELL LIQUOR TO THE PUBLIC BY-LAW, 2013, FOR EXTENSION OF LIQUOR TRADING HOURS FOR ON-CONSUMPTION PREMISES

All fields must be filled in

DETAILS OF LICENCEE

1. Liquor license number: WCP/011927

2. Full name of licensee: STANLEY GIGER. IDENTITY NUMBER: 511201 5117 086

3. If the licensee is not a natural person, state the name, identity number and address of each shareholder, member or partner. (use an annexure if required)

STANLEY GIGER, IDENTITY NUMBER: 511201 5117 086

9 SOMERSET ROAD DE WATERKANT

GREENPOINT

8001

4. Name and address of the licensed premises

CUBANA - GREENPOINT

ERF 4551

9 SOMERSET ROAD

GREENPOINT, 8001

5. Provide details of the premises where the licensed business is conducted with reference to the number of the erf, street(s), apartment, shop(s) or farm, as the case may be

ERF No. 4551

CUBANA GREENPOINT

9 SOMERSET ROAD

GREENPOINT

8001

6. Contact number

Office: 021 9138545, Fax: 086 660 8933, Email: admin@alfiecrous.co.za / liquor@alfiecrous.co.za

7. State reason(s) why licensee is applying for extension of trading hours (use an annexure if required)

DETAIL AS PER ANNEXURE "A"

8. What is the licensee's current permitted hours of trading

11:00 TO 04:00 Mondays to Sundays

I declare that the information furnished in this application and in any documents attached to it, is true.

Signature: [Signature] Date: 16/05/2019

(written authorization to sign on behalf of licensee to be attached)

Name (printed): ALFRED CROUS

Postal address: 35 ALLEN DRIVE

LOEVENSTEIN

7530

Application prepared by: ALFRED CROUS

Physical address: 35 ALLEN DRIVE

LOEVENSTEIN

7530

Worktel: 021 913 8545

Fax: 086 660 8933

Signature: [Signature] Date: 16/05/2019

(written authorization to sign on behalf of licensee to be attached)

Name (printed): ALFRED CROUS

Cell: 082 577 1853

Email: admin@alfiecrous.co.za / liquor@alfiecrous.co.za

224

Form 1

Liquor licence number

WCP/011937

FOR OFFICIAL USE ONLY
LAND USE

To certify valid category

Category 3 yes ☒ no ☐
 Category 4 yes ☐ no ☐
 Category 5 yes ☐ no ☐

Name of official

R. Bestler

Signature:

Date

24/05/19

(If the premises does not fall into one of these three categories, the application will not be considered any further)

SAFETY AND SECURITY

Comment or state history of nuisance(s) and/or any complaints received or action taken in respect of the premises or licensee.

PERTAINING TO THE MENTIONED PREMISES, NAMELY, CUBANA GREEN POINT, SITUATED AT, 9 SOMERSET ROAD, GREEN POINT IT WAS ASCERTAINED THAT THE APPLICANT DID RENEW HIS LIQUOR LICENSE FOR 2019. NO COMPLAINTS WERE RECEIVED BY THE LIQUOR UNIT WITH REGARDS TO THIS ESTABLISHMENT. THIS APPLICATION WAS SUBMITTED TO THE PROVINCIAL OFFICE OF SAPS' LIQUOR CONTROL FOR COMMENTS, HOWEVER, NO FEEDBACK HAS BEEN RECEIVED.

Name of official

Marilyn Holdings

10001005

Signature

M. Holdings

Date

13 JUN 2019

Safety and Security

LAW ENFORCEMENT

(The applicant must now pay the non refundable application fee of R8070.18 (Vat inclusive) and hand the application and receipt in at the designated Environmental Health Office. The fee is payable at any cash office into Profit Centre 18070172)

Application fee

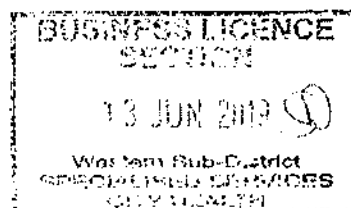
SEE ATTACHED

Receipt number

SEE ATTACHED

Payment date

6 JUNE 2019



View Payment



Name	City Of Cape Town	Execution Date	06 Jun 2019
Open Account	Current Account - 62103501458	Total	8,070.18
Folder		Thumbprint	N1c0Us2qkeUhDA/JCTu3rw==
Your recipient details			
Recipient	Account	Reference	Amount Reason
City Of Cape Town	4058584559	192131688WCP011927	8 070.18

ANNEXURE A

REPRESENTATION AND REASONS INSUPPORT OF THE APPLICATION THE APPLICATION FOR EXTENSION OF LIQUOR TRADING HOURS FOR ON – CONSUMPTION PREMISES

This representation for an application in terms of SECTION 6 OF THE CITY OF CAPE TOWN: CONTROL OF UNDERTAKINGS THAT SELL LIQUOR TO THE PUBLIC BY-LAW, 2013 FOR EXTENSION OF LIQUOR TRADING HOURS FOR ON – CONSUMPTION PREMISES in respect of a premises to be known as CABANA LATINO CAFFE, ERF 4551, 9 SOMERSET ROAD, DE WATERKANT, GREEN POINT 8001 under the Municipal Sub Council of CITY OF CAPE TOWN.

Please Note!!

This is a renewal application for abovementioned premises, extended trading hours that was approved by council for the period till 12 October 2019.

We here reapply for the current status of affairs for a ongoing concern and to extend the period for an additional year.

There was no aspects in contradiction of section 6(9)(d) of the By Laws relating Suspension, amendments or revocation of extended trading hours or any days and hours including previous records of complaints investigated and confirmed in respect of the last twelve months preceding a current application for extension.

Introduction

SECTION 6 of the CITY OF CAPE TOWN: CONTROL OF UNDERTAKINGS THAT SELL LIQUOR TO THE PUBLIC, 2013 provides the Council with the discretion to grant extensions in trading hours in terms of this By-Law. Under Section 6 of the CITY OF CAPE TOWN:CONTROL OF UNDERTAKINGS THAT SELL LIQUOR TO THE PUBLIC, 2013 *"the Council has an absolute discretion to grant or refuse an application in inter alia of SECTION 6(9), 10, 11 and 12 of this BY-LAW."*

The information the applicant provide in this application with the understanding that the applicant undertook responsibility for assessing the relevance and accuracy of its contents.

We will herby represent all possible facts and information in terms of *SECTION 6(9), 10, 11 and 12 of this BY-LAW."*

We will motivate and outline how the extension for trading hours for an On – Consumption premises from 02:00 till 04:00 will impact the surrounding community, provide an outline of how the applicant will manage any impact to be in direct line with the requirement and expectations in terms of abovementioned sections of the By-Laws and with Reasonable Fair and Constitutional Foundation Principles, and motivate every relevant sections of the By-Laws in terms of public interest.

Foundation Principles

Public choice "Public Interest" is also globally described as "politics without romance." The wishful thinking it displaced presumes that relevant participants aspire to promote the common or greater good. In the conventional "public interest" view, public officials are portrayed as benevolent "public servants" who faithfully carry out the "will of the people." In tending to the public's business, voters, politicians, and public officials are supposed somehow to rise above their own parochial concerns.

As for "Reasonable Fair and Constitutional Foundation Principles" is due to the fact that the By Laws do not made provision for applicants or representatives to be able to make replications to the outcome of community consultations and the recommendation of the relevant ward if negative in terms of section 6(9)(f), raised enormous concerns.

Purpose of the applicant's goal with this application:

To extend the current business's trading hours to be able to trade from 02:00 to 04:00 for another year till 12 October 2019.

To effectively manage the growth of licensed premises in Hume.

To support the role that his licensed liquor store play in his business and residential surrounded community and to serve them.

To assist Council in preventing and managing possible harms associated with alcohol consumption within the community in terms of section 6(9)(i)(2), 11 and 12 of this By-Law. (Evidence of commitment and responsibility the applicant is taking to the Responsible Serving of Alcohol is also attached and will be discussed in detail in this motivation)

The Applicant's Objective is:

Manage growth and development of licensed premises. (Security measures, noise and complaints precautions taken by the applicant is also attached and will be discussed in detail later in this motivation)

Maximise night time trade to 04:00 and active street frontages.

Maximise mix and diversity of uses if any, particularly in his business and residential surrounded community.

Protect economic viability of his business and residential surrounded community.

Protect and enhance reasonable commercial opportunities for licensed his liquor store.

Minimise adverse impacts on in his business and residential surrounded community uses if any, and maintain the positive character, image and function of his business and residential surrounded community by taking all necessary steps and precautions to the safety of patrons and to avoid disturbances, to minimise negative cumulative impacts due to abovementioned steps and precautions as can be seen later in this motivation.

SECTION 6(9)(a): the validity of the liquor licence:

The applicant has a valid liquor licence for the consumption on the premises, WCP/011927, in terms of Section 33(1)(b) of the **WESTERN CAPE LIQUOR ACT, 4 of 2008**, as amended by the **Western Cape Liquor Amendment Act**, The Renewal fees of R4360 for 2019 has been paid. The renewal notice (Form 21A) and proof of payment is attached Annexure "D"

SECTION 6(9)(b) where applicable, the validity of a business licence issued in terms of the Businesses Act of 1991 (Act No. 71 of 1991)

Please refer to Annexure "C" a copy of the applicant's Business and Entertainment licence, to show good will that the applicant do comply with the Businesses Act of 1991 (Act No. 71 of 1991)

SECTION 6(9)(c) Location category as per the Schedule

The applicant's venue is located on **CABANA LATINO CAFFE**, ERF 4551, 9 SOMERSET ROAD, DE WATERKANT, GREEN POINT 8001 and rezoning is **Mix Usage 2** which made provision for "Business Premises" and a place of "entertainment" as a primary use, which entitle the applicant's nature of his business? See Attached a printed Zoning map of ERF 4551 that indicate that the applicant's location are Zoned as **Mix Usage 2** as per Annexure "E".

SECTION 6(9)(d) previous suspension, amendment or revocation of extended trading days and hours including previous records of complaints investigated and confirmed in respect of the last twelve months preceding a current application for extension

There is no previous suspension, amendment or revocation of extended trading days and hours including previous records of complaints investigated and confirmed in respect of the last twelve months preceding a current application for extension of trading hours.

Not the applicant, or Law Enforcement, or the Designated Liquor Officer have reported any matters relating section 6(9)(d) of the By-Law.

SECTION 6(9)(f) outcome of community consultation and the recommendation of the relevant ward

As we mentioned "Reasonable Fair and Constitutional Foundation Principles" under the Foundation Principles in the "Introduction" of this motivation, section 6(9)(f) raised enormous concerns, due to the fact that the By Laws do not made provision for applicants or representatives to be able to make replications to the outcome of community consultations and the recommendation of the relevant ward, if negative in terms of section 6(9)(f).

Due to above concerns we need to Pre – Replicate to input for any numbers of people whose welfare will not actually be affected by the action that might object. **The purpose for the Pre – Replication** are to cover all aspects and facts that the Council might take into consideration by negative public input and if any applications needs to go on appeal or presented to Supreme Court.

THE RELEVANT PUBLIC'S INPUT.

The whole of the public must be eligible for consideration in respect of a matter which is asserted to be of public interest, by its very nature. However, as a practical point, there will be large numbers of people whose welfare will not actually be affected by the action.

Public opinion must be relevant in considering what is required in the public interest. However, different people arrive at decisions applying different sets of values and perspectives and there will not be a uniform view.

THE RELEVANT PUBLIC

There are a huge difference with what the public wants ,what the public needs, and what they find interesting. "For the greater good.

The public interest is an abstract notion.

Other terms can be used, largely interchangeably. Examples include public benefit, the public good, and the common good –

In most societies there is a basic presumption that people should be able to go about their own business in their own interests. In the course of this they will interact with other people and influence and be influenced by their activities. However, there are further influences on people's activities: when governments, regulators and others seek to intervene in the public interest.

Invoking the public interest requires justification of an ability and right to decide what is for the greater good,

The Council needs to take into consideration are the surrounding residents and population:

Our motivation is based around the key issues that need to be addressed

- consideration of who the relevant public are,
- implementation of the desired action.

The liquor industry is a market, in which everyone makes rational decisions, assumes: rational behaviour; no transaction costs; perfect information; enough decision makers and goods that one decision does not distort the market; and freedom of decision making and market entry. In practice these conditions rarely apply,

However, the public may:

- Lack of full understanding
- not have all the facts;
- be swayed by emotion rather than logic; and/or
- have been influenced by individual charisma.

Thus there has to be a concern that individuals may not be able to take the 'right' decision for themselves, even if considering only their personal perspective in objections..

Mayor Patricia de Lille recommended that the council support the draft by-law and that it be authorised for public participation. Public participation was held in April and May 2013 and these responses were analysed.

It was found that more than 90 percent of respondents were in favour of extended trading hours and Sundays. The first round of public participation revealed that the majority of respondents felt that off consumption-licences should trade on Sundays and that would have a positive effect on neighbourhoods.

There was another Public participation in November 2013 with also a positive result towards extended trading hours.

To make a sensible decision for the council, people have to have knowledge of an issue and understanding of the consequences. Public participation occurred twice and the general public do have the knowledge of an issue and understanding about the Sunday Trading for off consumption liquor licensed businesses.

Visitors to the surrounding area already experienced the use to the applicant's late trading hours till 04:00, as the Municipality already approved the application for extended hours from 02:00 – 04:00 . Please refer to Annexure "H", previous approval to extended trading hours.

SECTION 6(9)(e) and (g) the potential impact on the surrounding environment, the proximity of the licensed premises to surrounding residential zoned area, cultural, religious and educational facilities

The potential impact on the surrounding environment refers to both positive and negative impacts that can result from clustering a particular land use or type of land use.

We intent to show good will to the council that we took the proper precautions to avoid any negative impacts in the surrounding area which will be relevant impact of the extended trading hours to 04:00 in the surrounding area within at least a 300 metre radius of the proposed venue. Unless there is another logical boundary that takes into account relevant features, which is not in the applicant's case.

Locality

The term "locality" in the applicant's case refers to the area surrounding the proposed licensed premises of 300 metres. As attached Annexure "B" is a Locality Map indicating all businesses and residential area in a 300 metres radius. The Locality Map will provide a better perception on the outline of how the location of the applicant's premises will have a impact on the immediate area.

This locality will be the area most likely to be affected by the granting of an application in relation to amenity issues if any. However, depending on the nature of the applicant's business the applicant's business is located in a 100% business immediate area on **ERF 4551, 9 SOMERSET ROAD, DE WATERKANT, in GREEN POINT**, which are totally surrounded by business areas and are located in the main road, Somerset Road, C/O Somerset Road and Dixon Street, leading from Cape Town through Green Point, Sea Point Camps Bay & Clifton. This route is very popular route for the travelling business and private sector to the all areas surrounding Green point. As can be seen on the locality plan the applicant's business is located in a fully business area surrounded by business and we clearly indicated that there are dwelling located only at the rear of the building approximately +- 100 metres at the rear in Dixon Street. This business area with the late night trade is a convenience area and used by the public & specially tourists for the last few decades and the community grown accustomed to it, as well as trading hours till 04:00 up to 24 November 2016 from the applicant's premises. The Applicant's liquor licence was granted in terms of the old liquor Act of 1989 and was also approved till 04:00 on two occasions in the new By Laws and also in the old liquor Act, and the whole of the CITY BOWL, Green Point & community are already used to extended trading hours for from the applicant's venue. As per Annexure "C" we clearly attached the applicant's business licence, his entertainment licence, population certificate & his fire & safety certificate. The applicant has shown good will which he ensured that no noise activity's can be heard from outside the premises which caused a music noise problem the last year of any nature. The applicant also showed good will and proof without a reasonable doubt that all necessary safety and safety methods are in place as we discussed in detail in Security and safety measures in this application.

Specification of "Locality"

When determining the "locality" affected by an application under section 6 of the CITY OF CAPE TOWN:CONTROL OF UNDERTAKINGS THAT SELL LIQUOR TO THE PUBLIC, 2013 APPROVED BY COUNCIL: 4 DECEMBER 2013, C58/12/131992 The term "Location" is not defined in the By Laws, but according to Oxford Dictionary the terms:

"locality", as: "a district or neighbourhood; the site or scene of something in relation to the

surroundings"; and "vicinity", as: "a surrounding district; nearness or closeness of place or relationship".

As we mentioned above, it can be seen on the locality plan the applicant's business is located in a fully business area surrounded by business and we clearly indicated that there are dwellings located only at the rear of the building approximately +/- 100 metres at the rear in Dixon Street. This business area with the late night trade is a convenience area and used by the public & specially tourists for the last few decades and the community grown accustomed to it, as well as trading hours till 04:00 up to 12 October 2019 from the applicant's premises. The Applicant's liquor licence was granted in terms of the old liquor Act of 1989 and was also approved till 04:00 on two occasions in the new By Laws and also in the old liquor Act, and the whole of the CITY BOWL, Green Point & community are already used to extended trading hours for from the applicant's venue. As per Annexure "C" we clearly attached the applicant's business licence, his entertainment licence, population certificate & his fire & safety certificate. The applicant has shown good will which he ensured that no noise activity's can be heard from outside the premises which caused a music noise problem the last year of any nature. The applicant also showed good will and proof without a reasonable doubt that all necessary safety and safety methods are in place as we discussed in detail in Security and safety measures in this application.

There are business buildings surrounding the applicant's premises and there are several liquor outlets in the same area. There are a nightclub located "Crew Bar, located 150 metres from the applicant's premises. As we indicated on the site plan all the visitors to all the late night restaurants and clubs mainly park in the Parking building opposite the applicant's premises. This parking building from Cape Quarter has two exits, one in Dixon Street opposite the applicant's premises, and one exit in Napier Street. We indicated clearly that there are currently roadworks in progress in Napier Street which results that the exit in Napier Street cannot be used. This caused a totally misconception of the clientele of the applicant. Dixon Street is currently the only exit from the parking building. This traffic will decrease the moment the roadworks is completed. We trust that the road works will be completed by end of November. As can be further seen on the locality map, the nearest school is located 180 meters from the applicant's premises, but the applicant's premises is not in any direct view of the school, and no school activities is occurring during 02:00 and 04:00. The nearest place of religion is located 140 meters away from the applicant in Napier Street and not in any direct view of the applicant's premises. The no church activities is active during 02:00 and 04:00. The surrounding community in the nearest residential areas and upper class population and are mostly the white South African community.

There are various licensed premises located in a 350 m radius of the applicant's premises which are both on and off consumption licences.

- There are no places of worship near the applicant's premises meaning the church located in Napier Street will not be prejudicial in any way to any person whatsoever due to all the safety precautions made by the applicant which we discussed in full under Security and safety measures in this application and the fact that the church is not in direct view or is active during the hours of 02:00 and 04:00
- The granting of the extension in trading hours does not prejudice –
- Any parties whatsoever in the immediate location of the applicant's premises and it is respectfully submitted that applicant's business is a on consumption business" and the issue of late night trading will not be prejudicial in any way to any person whatsoever due to all the safety precautions made by the applicant which we discussed in full under Security and safety measures in this application
- The granting of the extension in trading hours does not prejudice –
- the residents of a residential area; As we mentioned earlier that applicant's previous applications for extension of trading hours has already been approved twice, and the applicant is currently trading till 04:00 legally till 24 November 2016. The applicant implement the necessary safety and strategy precautions' we mentioned in "Security and safety measures" later in this application, that will ensure that no inconvenience will be caused to any residents. The last 12 months there were noise complaints on record against the applicant.
 - the residents of an institution for the aged or frail; There are no residents of an institution for the aged or frail located near the applicant's premises.
 - the learners of an educational institution who are under the age of eighteen 18 years; and the hours between 02:00 and 04:00 is not during school activities. The nearest school is located more than 180 metres away, not in direct view and as we mentioned earlier no there are no school activities during 02:00 and 04:00

- (the patients of an institution for drug or alcohol related dependencies; There are no patients of an institution for drug or alcohol related dependencies located near the applicant's premises.

None of above institutions are located in the immediate are of the applicant's premises or in any direct view of the applicant's venue.

Under the Underlying Principles the applicant ensures that the extended trading hours till 04:00 do not identify any potential 'at risk' groups who may travel through or resort to the locality of the proposed premises, or who may be impacted by the proposed premises. This also includes the people not situated within the boundaries of the area in which the proposed premises' is located.

Every positive impact, every step by step, every percentage plus percentage, in the absence of any adverse or negative impact, must be seen as being beneficial of the relevant social and economic indicators in the Green Point community and the economy.

The applicant did take every possible security measures, noise and complaints precautions as also attached and will be discussed in detail later in this motivation.

Due to the extreme precautions and measures the applicant took, it can be concluded that there is no evidence that the applicant indicates any negative impact to the community, but the positive impact by one further business being able to provide a service for business on during 02:00 and 04:00, and the precedent by implication for like businesses to do so is clearly of positive benefit.

The independent businesses like the applicant should be allowed more freedom, otherwise we risk the death of the small business; we risk corporate takeovers, a bland and boring Brave New World where we all work for the giant companies.

One quarter of the public already visit Long Street and other venues with late trading hours at least once a month. And a recent Comers poll for late night trading found that 72 percent of customers think they should be able to visit venues whenever is convenient. So why should we deny them?

There are no grounds for thinking that public interests would be served by the preventing later trading hours which was already approved in the previous liquor Act. It's a good thing that this legal prohibition is coming to an end.

The risks to and nuisances on the surrounding community - Section 6(9)(i)(1) and 6(9)(i)(2) Mitigation measures to assist the control of risks and nuisances

The true measure of 'The public interest' is this regard lies in the confidence of those with a legitimate interest in the matter, not those making the pronouncements. Therefore, the need for the public interest needs to be considering actual and perceived threats to fitness to decide, and the application of relevant safeguards, will apply throughout the process.

The relevant safeguards the applicant put in place will be discussed in detail in this same section of the motivation.

Safeguards (every possible security measures, noise and complaints precautions) will help with future acceptance and implementation.

The applicant **implement various safety measures and strategies** the licensee to minimise the risks to and nuisances on the surrounding community as well as mitigation measures to assist the control of risks and nuisances which will generally include measures to improve process and accountability.

- The applicant has Spotlights on the outside providing the necessary lightning at all times on the pavement area that will ensure the safety of his clients accordingly to section 11(c) of this By-Law to all customers.

Security and safety measures:

- The applicant has the necessary camera system installed inside and outside. There are 16 cameras inside the premises and 4 facing outside the premises. One camera in particular is covering wide range of more less 200 metres, in Dixon Street for the benefit of not only the applicant but also the community. The Green Point CID have full access to this camera as well as the police. (Which had positive results in solving a robbery in the

past that occurs during daylight in Dixon Street. This camera is at the expense of the applicant, and his goodwill. The applicant and staff also have access to a panic buttons for emergencies if a situation will acquire. The applicant and manager can view the camera from his office at all times.

- The applicant has his own security personnel inside outside the premises for safety of the patrons. He has 3 security guards patrolling the street surrounding the building and 6 security personnel inside the venue.
- The applicant further hires from Stagnet Security and additional 5 – 6 security guards. 1 guard with a dog Wednesdays to Sundays to [patrol not only in front of the shop but also the surrounding area around the building for one whole block radius that also keep clientele from Cape Quarter's venues safe.
- The applicant also belongs to the Armed Response "Avenue" which assists him in emergencies. They also patrol the area on a 24 hour basis.
- There is adequate lighting outside, the applicant's premises as well as a spotlight on the whole parking area.
- The applicant also hires 100 parking bays in the Cape Quarter building parking area for his regular customers.
- Also attached as per Annexure "G" A letter from the applicant taking responsibly and to ensuring that reasonable safety and security measures are in place to prevent cause a danger to the safety of patrons inside the premises, there is adequate lighting on the outside of the premises where patrons and staff access and exit the licensed premises, by taking reasonable steps to ensure that the residents of the surrounding community are not unreasonably affected and inconvenienced by noise or other nuisances emanating from the premises.

Legalizing nightlife and localizing in some certain and appropriate place could also bring a positive impact in security's matters in which the ability to control a spreading of forbidden drugs and illegal activities by closely check most of people involved in the industry.

As a conclusion, since it is a normal social activity and there always be a need for it, the nightlife activities need to be legalized, localized and put into heavily control to create some abundance advantages from it. But there is a need to the Government to form a law and regulation to make it possible and executable, which the By Laws makes provision for.

'A distinguishing mark of liquor licence holder's profession is its acceptance of the responsibility to act in the public interest.

The public interests and the maintenance of professional standards is the applicant's be the primary consideration' The applicant showed the council good will and signed on paper that he takes responsibility in all aspects that area required from him.

- by implementing ethical and professional rules and standards;
- The public will benefit from this rules the rules and standards;
- For affective public protection, reservation of work to standards and disciplines, security measures and responsibility where needed for.

'A applicant is making a distinguishing mark for a liquor licence holder's profession by his acceptance of the responsibility to act in the public interest.

The public interests and the maintenance of professional standards will be the primary consideration of the applicant.

The public also needs to have taken the time or effort to understand his neighbour's business or to consider the written submission in favour of the application

GREENPOINT is not a low socio-economic area, but a civilised middle class community. The impact that trading hours will be on a extended trading hours will not be negative as in low socio-economic area like Khayelitsha. In regard to social health indicators, there are no negative factors according to the applicant.

Written confirmation has been given and good will shown that all requirements have been met to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor during extended trading hours as well as current hours to provide a flexible system or any acceptable way, as may be practicable, for the administration of this By-Law Should this application be approved, it will still be inside the parameters set by the Western Cape Liquor Act, Nr 4 of 2008 as amended in Section 49 of the Act. Proposed regulations published by the National Liquor Authority also calls for uniform trading hours

throughout the Republic of South Africa.

Should this be achieved, there will not be certain retailers that area given preferential treatment.

SECTION 6(9)(h) whether it is in the public interest to approve and grant an extension of trading days or hours

The public interest test is based on the principle that licensed premises must operate within the interests of the local community. The public interest defined as:

"an interest in common to the public at large or a significant portion of the public and which may, or may not involve the personal or propriety rights of individual people"

The public interest provisions enable the licensing authority to consider a broad range of issues specific to each licence or permit application, and flexibility exists to assess each individual application on its merits.

Concepts of the public interest

There are at least two concepts of the public interest:

- One concept applies the words literally: the public interest is thus anything of interest to the public. However, matters that are for the public benefit are not necessarily the same thing as matters which the public finds interesting.

Terms other than 'the public interest' can be used, public welfare, the public good, and the common good – the latter in the sense of the public having a common purpose, rather than goods to which there is common access.

It is **about freedom of choice.** It should be the people's decision if they wants to purchase liquor on Sundays or not, and not the government's decision. This is not a republic anymore but a democracy. **Freedom of choice is public interest.**

The applicant's venue is mostly for the traditional Afrikaans "Lang arm" clientele. They are mostly in their late twenties till 55 years average. This is the Afrikaans people's way of life, this is what they are used to. This also their culture that is, their shared beliefs, customs, values and language or dialect. There are only a few venues of that nature in the northern suburbs.

This venue has a fixed clientele and they clients feel save.

It will be most impropriate for them to have to move to another venue in Long Street if they should have the need to be able to stay later. Long Street or other venues with current later trading hours is not necessary the culture for the applicant's clients. It is also the government's goal to restore the balance within our culture. According to statistics most people feel safe in their local area, with 74% feeling either *safe at all times or nearly always safe.*

Today it is not safe for any clientele to go to different public locations far from their local areas. Convenience is one of the most important aspects of public interest.

Taking responsibility is public interest.

Annexure "G" the applicant took responsibility.

It is the traders that have first hand and intimate contact with those who use alcohol. It is, among others, some tavern owners; some of those who run pubs and clubs as well as some of our bottle store owners, who participate in irresponsible trading, thereby denting the image of the whole industry. The applicant clearly took responsibility in all aspect. Today's launch of this responsible matter is aimed at precisely eliminating those elements who drag in the mud the name of liquor traders. Today's launch is about galvanising all the responsible traders to become a change agent and to lead by example in responsible trading.

As traders like the applicant who derives their livelihood from this industry, is deeply concerned that there is a perception out there, because of a few elements that you do not care about the well-being of our society. The applicant is always asking himself what he can do to improve this liquor industry and to make it an economically viable business which gains the support of communities. The applicant believes that his role through empowerment would be to change behaviour and conduct his business in a responsible manner and to help improve the quality of our lives and our communities.

Job creation also are in public interest

The outcome of this application will also no doubt have an effect on the amount of casual workers accommodated in the retail sector all over City of Cape Town.

For employees who already work later hours, full liberalization opens up the opportunity to work more hours. With extra wages usually carrying an increased rate of pay, this can be an important income source for those who struggle to get enough working hours during the week by allowing later trading hours.

Unemployment issues through examining internet discussion forums of the subject matter are always proponent of the liberalized retail sector when reducing trading hours. Claims such as 'the majority shouldn't be punished for the stupidity of the minority' or 'restricting people's right to purchase products on Sundays is an infringement on their civil liberty' are not uncommon. "However, it does generate more jobs, activities and social solidarities."

In the case of *Bulk Deals 6 CC and another v The Chairperson, Western Cape Liquor Board and others*, 2002 (2) SA 99 (c), an application for a liquor licence for restaurants situated in a shopping centre situated in an upmarket residential neighbourhood in Durbanville was dealt with. It was decided in that case, that it had to be taken into account, when assessing, whether the public interest would be served, what the nature of the shopping centre and the Applicant's operation would be.

It is submitted that when the local authority approved the construction of the shopping centre and zoned it for business purpose, it was obviously intended that a variety of businesses including licensed premises such as restaurants and a sports bar and even a liquor store, could operate from the centre.

The Judge further rules that The residents of Durbanville (GREENPOINT in this case) had always been aware that this is a commercial location and premises which is a famous "Lang arm" dance venue, when they acquired their properties and original licence. Due to the location of the applicant's premises, it is clearly intended that it will minimize the impact of the business operating in it on the neighbourhood, due to the business being located in Somerset Road.

Subsequent to the Bulk Deals case, a further legislative requirement has been enacted in the form of Section 6(9)(i)(1) of the Bylaws, which provides that the granting of such an application should not cause "the risks to and nuisances on the surrounding community" in the surrounding and certain other categories of persons.

The possible prejudice of which the residents possibly might object to is already fully been dealt with abovementioned "Bulk Deals case" and in the applicant's motivation towards his safety measures in place.

In the case *Herbstein J Argus Printing Publishing Mpy Bpk vs Darby's Artware Edms Bpk & Ander* 1952(2) SA 1(c) is deterrent that there need to be looked at the result in the wider aspect "that the public is better served"

In the case *Catharina Wilhelmina Pienaar vs die Drankraad & ander* (t) 15-3-1988 is also deterrent that public interest is also "convenience of the public" and that reasonable facilities need to be available for the public.

In support of this application, I want to refer the Board to the case *Leicester Properties (Ltd) vs Farran* 1976(1) SA 492 (D) whether the public would be better served if the proposed scheme succeeded than by the continuation of the existing state of affairs. The promotion of healthy competition may have a positive spin-off for the public interest

Who are the relevant public?

What the relevant public's normally wants may be incompatible with a public interest outcome for a number of reasons. The overall impact of individual wants may be a sub-optimal outcome through the effect of one person's activities directly affecting another's, or through what the public think they want being distorted by incomplete or wrong information. Common goods and services and other externalities and public goods result in a different marginal cost-benefit to individuals than to society as a whole, especially taking qualitative issues into account. Over-riding values may arise, for example, from seeking to lead a change in attitudes. Finally, when trading current against future effects, people tend to discount the latter very heavily in their minds.

As a result, the relevant public's wants may need to be adjusted. However, the assertion that 'we know better' is rightly open to challenge and there will be an onus on those asserting an action to be in the public interest to explain why they know better

The whole of the public must be eligible for consideration in respect of a matter which is asserted to be of public interest, by its very nature. However, as a practical point, there will be large numbers of people whose welfare will not actually be affected by the action of extending the applicant's trading hours. The relevant public will therefore only be

a sub-set of the whole public: those 'affected'. This will include those whose welfare will be advantaged or disadvantaged, although this is not always a clear-cut; also, others with a legitimate interest, for example GPF, Rates and Taxes Association representative bodies and others with a mandate to speak on behalf of people who are affected. Within the relevant public there will also be degrees of impact, which may be relevant in determining how to weight views.

The relevant public will not include those whose interest merely lies in finding something interesting. That is a different meaning of interest altogether.

First, by its nature, the relevant public in a public interest matter will be broadly based. Second, what people want is complicated: it usually revolves around happiness, which is a subjective notion built around a whole series of factors that often conflict with each other, those of other people and those of other cultures, wants therefore tend to conflict. Third, interests can coincide with those of others and interest groups will be created. Inevitably some will have a public interest perspective and some not. Some are more articulate or otherwise better at making themselves heard than others and expressed opinion will not necessarily be the same as actual opinion. Having sought out representative opinion from the relevant public, it can be helpful to apply a sense check. A rational imputation of wants will consider: what would we expect the relevant public to want standing in their shoes? The applicant showed intelligence and creativity and showed an important role to be played in making the motivation too. Sometimes it may be difficult or impossible to gather opinion and a theoretical good motivation and facts presented by the applicant will be the only option. This does impose a greater burden of proof of ability and right to decide, as the motivation and facts presented by the applicant might inevitably be challenged by those with different views.

6(9) (i) (3) possible benefits of extended liquor trading hours and days on the surrounding community.

Economic impacts

The economic impacts of alcohol can usually be split into 2 categories; benefits and costs. The economic benefits alcohol brings to society can be measured by the revenues generated in both the on and off-trade from the sales of alcoholic beverages locally, which in turn the Treasury receives a proportion of by taxation of company profits. They are also represented in the number of jobs created within any region where alcoholic beverages are produced and also indirectly for those who distribute alcohol as a commodity.

These benefits may be more straightforward to calculate than some of the costs. Sunday alcohol sales could bring in tax revenue to the state, which could be used to uplift the poor.

Legislation that has extended licensing hours for other drinking establishments has restore the industry's main competitive advantage, which the applicant needs to survive.

Furthermore, a lot of people or even the Government itself, has taking an advantages to the existence of nightlife-activities, i.e. tax, economic impact especially in informal sector or any other social impact, legally or not legally. The Government also has learnt the successful of the Government of nearest country which successfully organizing and legalizing the night-life activities and could bring the positive impact to the economy and social life of the nation. As been said above that the primary advantages of the existence of nightlife are its positive impact to the economy. The nightlife-activities centre could be organized as a profitable business activities in term of restaurants, bars, and music entertainment, developed to become a tourism object, and could provide many job-opportunities to decrease unemployment rate, and at the end of the story: there is a huge tax paid by the nightlife-industries which makes a strong impact to the economics of the nation.

Conclusion

The applicant shown good cause towards complying in terms of taking responsibility and all safety measures possible to assist Council in preventing and managing possible harms associated with alcohol consumption within the community in terms of section 6(9)(i)(2), 11 and 12 of this By-Law by:

- ensuring that reasonable safety and security measures are in place to prevent cause a danger to the safety of patrons inside the premises,
- there is adequate lighting on the outside of the premises where patrons and staff access and exit the licensed premises,

- by taking reasonable steps to ensure that the residents of the surrounding community are not unreasonably affected and inconvenienced by noise or other nuisances emanating from the premises.
- provide good cause identifying the strategies the applicant intends to implement to address these matters and take responsibility.

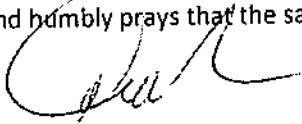
The applicant also Presented:

- Site plan, showing location in relation to adjoining uses, sensitive uses
- and other licensed premises.
- Management of premises (security, noise, complaints procedure).
- Evidence of commitment to the Responsible Serving of Alcohol.

The applicant showed the council in all aspects that his objective is to balance the need for **Extended Trading hours** to create an equal playing field for all liquor licensees with retail Stores across the City of Cape Town with the need to ensure that the general amenity in suburban areas is not unduly affected.

The applicant motivated all Public interest aspects and all advantages relating to the extension of the trading hours from 02:00 till 04:00 on Sundays, and the Municipality already approved the application for extended hours from 02:00 to 04:00 from 12 October 2018 to 12 October 2019 , as they already experienced the used to the applicant's trading hours till 04:00. The applicant merely applies for another extension from 02:00 to 04:00 for an additional year

The applicant respectfully submits that the proposed application for Sunday trading is reasonable required in the public interest and humbly prays that the same be granted by the Council.



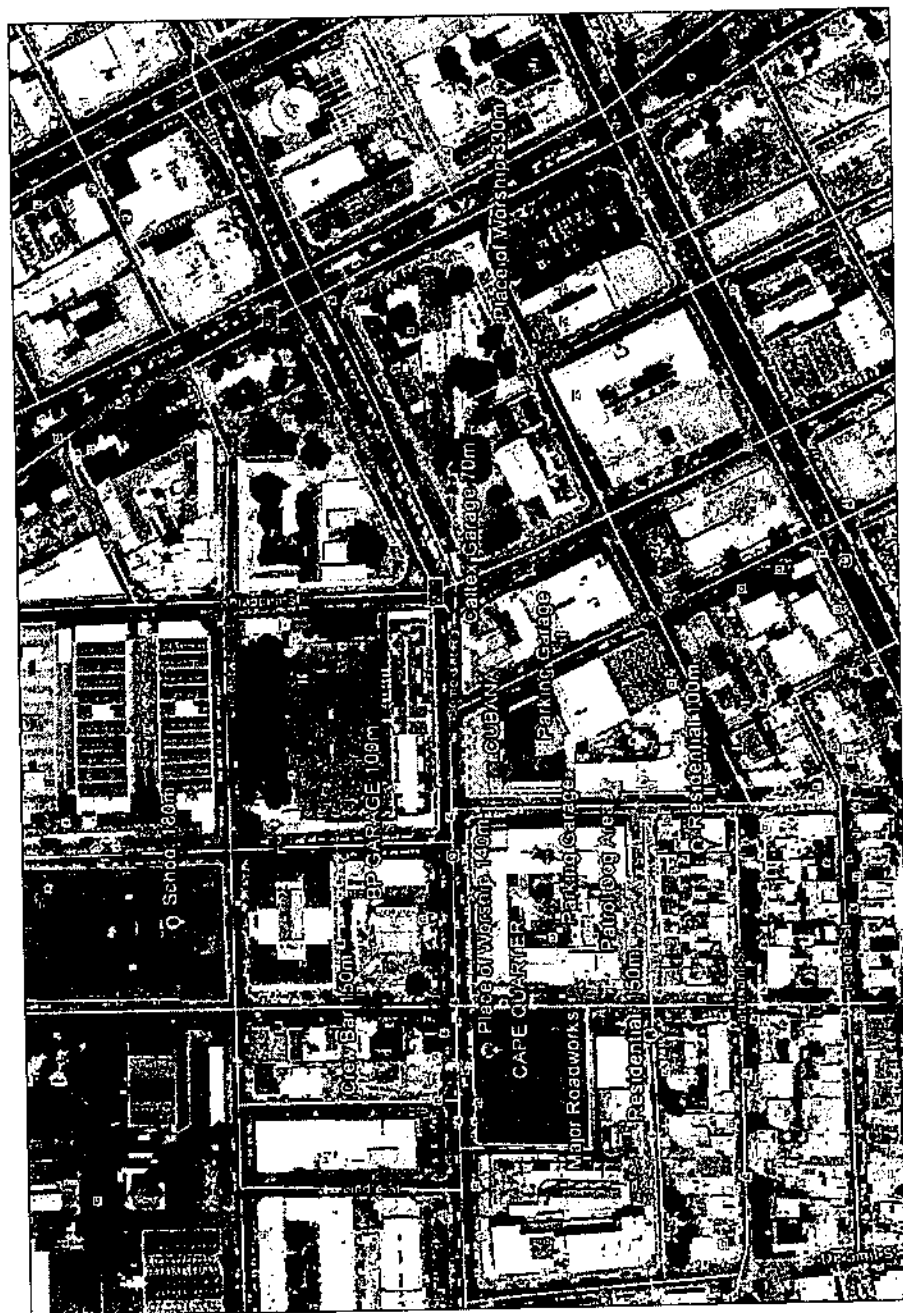
A Crous

ANNEXURE B
Locality Map

This drawing is for Business license and for Liquor license application. It is consequently not to be used for submission to municipality as a working drawing or to be used for construction purposes.

Date 24 September 2016
Drawn by van Driel
Checked C. de Bruin
PRACT. 10459
Tel 020 5554412
Cell 06-52501774
H. Wageningen Marine Centre
Luchtvaartlaan 110

DWG. NO. 936-1/1



LOCALITY MAP

0239

ANNEXURE C

Copy of Entertainment / Business licence.

0240

Mrs L Symes

Enquiries Telephone 400-6513

CITY OF CAPE TOWN / WILLEM BAARDEKAP / STAD KAAPSTAD
CITY OF CAPE TOWN / WILLEM BAARDEKAP / STAD KAAPSTADLICENCE
TO CARRY ON BUSINESS

LICENCE NUMBER	STA197
FILE NUMBER	926/2010
NAME/DESIGNATION OR TITLE UNDER WHICH BUSINESS IS TO BE CARRIED ON	STANLEY GIGER T/A CUBANA LATINO CAFFE
TYPE OF BUSINESS	HEALTH AND ENTERTAINMENT: NIGHTCLUB OR DISCOTHEQUE
FULL NAMES OF HOLDER/PARTNERS/DIRECTOR/PRINCIPAL (AS PER ATTACHED ID/PASSPORT DOCUMENT)	STANLEY GIGER 5112015117086
FULL NAME OF MANAGER/ESS (AS PER ATTACHED ID/PASSPORT DOCUMENT)	STANLEY GIGER
STREET ADDRESS OF BUSINESS	ERF 4551 9 SOMERSET ROAD DE WATERKANT CENTRE, GREEN POINT 8001
POSTAL ADDRESS	9 SOMERSET ROAD DE WATERKANT CENTRE, GREEN POINT 8001
CONDITIONS WHICH APPLY TO THIS LICENCE 9. "When the DJ plays any music the doors and front glass façade must be kept closed at all times". 10. "The PA system limiter is to remain locked so that the maximum sound pressure level is 87dB only"	1. This Business Licence must be prominently displayed in a conspicuous place in or on the premises so as to be visible to patrons, public and council officials at all times; 2. This Business Licence is not transferable from person to person or from business to business; 3. The premises to comply with the requirements of the Tobacco Products Control Act 1993 at all times; 4. The Executive Director City Health reserves the right to call for any other requirements that may be deemed necessary; 5. The approval of this licence does not exempt the holder from compliance with any other licences, conditions or statutory requirements; 6. The premises to comply with the requirements of the Noise Control Regulations R627/1998 at all times. 7. No noise emission from the building to a public space or street. Clients entering or leaving the premises to comply with section 3.a of the By-Law relating to Streets, Public Places and the Prevention of Nuisances; 8. Compliance with the Fire Requirements, at all times.

Manager : Environmental Health
Western - Sub-District
For Executive Director City Health

WESTERN SUB DISTRICT
CITY OF CAPE TOWN:

13 JUN 2011

Manager Environmental Health

D. Flammable Substance Certificate

[illegible]

B. Population Certificate

For official use only		CITY OF CAPE TOWN	
Temporary			
Application No. 1425.....			
File No.			
Population Certificate			
This Population Certificate is issued in terms of Section 21 of the Community Fire Safety By-Law			
Name of Certified Owner: Mr Stanley Giger		Telephone No. (021) 421-1109	
		Cell No. -	
Name of Business: Cubana Restaurant		Telephone No. -	
		Cell No. -	
Type of business: Café			
Erf No. -			
On what floor of the building is the Venue situated?			
Street Address: 9 Somerset Road			
Suburb: Green Point		Code: 8001	
Details of Premises			
Number of floors in building		Number of floors occupied by venue	
1		1	
Square metres of usable area per floor of venue		Approved Population	
		320	
Number of Exits per floor			
Floor	Floor	Floor	Floor
()	()	()	()
693		6	
Maximum Population per floor			
Floor	Floor	Floor	Floor
()	()	()	()
1. The Certificate is issued in terms of Section 21 of the Community Fire Safety By-Law and is valid only for the premises for which it is issued.			
2. If the Occupancy or Ownership of the premises change, the owner or person in-charge must apply for a new Certificate.			
3. The Certificate must be displayed in a clearly visible and conspicuous position in the premises for which it is issued.			
For Controlling Authority: (Signature)			
Print Name:		Signature:	
Print Name of issuing Official: G J Hendricks		Rank: Station Officer	
Date: 2006-10-16			

0243

ANNEXURE D

Copy of current Liquor Licence & Proof of Renewal Fees paid