



LEGISLATIVE ANALYSIS

TO: HONORABLE MEMBERS OF THE BOARD OF SUPERVISORS

FROM: Carol Roos, Sr. Legislative Analyst

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FILE: 992076

SUBJECT: NIGHTTIME ENTERTAINMENT: REGULATION

EXECUTIVE SUMMARY

SUMMARY OF REQUESTED ACTION

On November 22, 1999, the San Francisco Board of Supervisors requested that the Office of the Legislative Analyst report on what policies selected United States cities have in place that regulate the location, hours and activities of late night eating and drinking and entertainment establishments. Cities of interest include New York and Chicago and other urban centers known for their night life.

SUMMARY

There are a variety of types of late night eating and drinking and entertainment establishments, ranging from corner bars, to late night restaurants, to after hours clubs. In most jurisdictions contacted for this report, while some problems were associated with smaller, neighborhood venues, after hours entertainment establishments, or clubs, are the most problematic, primarily in proximity to residential uses. Most cities prohibit these intensive uses in residential districts, and conflict generally occurs in mixed use districts. The current national trend in urban areas, in which former industrial use areas are experiencing reuse as mixed use districts, becoming both residential and entertainment centers, has given rise to the greatest conflict primarily related to noise, parking, and nuisance factors. Most jurisdictions have controls in place to address these issues, although they vary as to their nature, level of enforcement, and success. A number of jurisdictions have recently revised, or are currently reassessing their controls and policies. (Attachment B, provides a comparison of the jurisdictions, in a table.)

ANALYSIS

Current Law and Practice in San Francisco

According to San Francisco Police Department (SFPD) staff, San Francisco, a geographically small city, experiences a disproportionate share of problems related to extended hours premises, particularly night clubs. According to SFPD, most cities in the state, including the rest of the Bay Area, do not allow operation after

2 a.m. For example, even a large city such as San Jose prohibits such uses. As a result, beside patrons who live in the City and visitors/tourists, there are additional pressures on these establishments as destination entertainment for patrons from the north, east and south Bay area. These patrons often drive to the City after patronizing clubs in other parts of the Bay Area up to their 2 a.m. closing times.

After hours eating and drinking and entertainment establishments are regulated in San Francisco, under Article 15.2 of the Police Code, Entertainment Regulations for Extended-Hours Premises. Article 15.2, Section 1070 defines Extended Hours Premises as “every premise to which patrons or members are admitted or which allows patrons or members to remain on the premises between the hours of 2:00 a.m. and 6:00 a.m. which serves food, beverages, or food and beverages, including but not limited to, alcoholic beverages, for consumption on the premises or wherein entertainment as defined in Subsections (b) and (c) is furnished or occurs upon the premises.” Thus, in the City establishments such as after hours restaurants, coffee shops, doughnut stores, and convenience stores are regulated along with after hours entertainment establishments. The former uses give rise to few complaints and little concern compared with the latter. There are currently a total of about 86 extended hours premises permits in the City, including 38 restaurants (establishments that serve food for on-site consumption) and 48 establishments that include entertainment.

After hours entertainment uses require a Police Permit, under Article 15.2, as well as review and sign off by the following departments: Health; Fire; Building Inspection (building, electrical, plumbing code compliance); Planning; and the Police Department Noise Abatement section.

Police Permit stipulations address adequate security; maintenance of adequate usable sidewalk width so as not to block pedestrian traffic due to the patron line, noise, community liaison, hours of operation, the good neighbor policies described below, and special events. Section 1070.26, Moratorium on the Granting of Permits, established an area in which no extended hours premises permits may currently be granted. The area is bounded by Bush, Taylor and O’Farrell Streets and Van Ness Avenue (not including properties fronting Van Ness Avenue). The moratorium expires at the end of August 2000.

The Planning Department regulates where these uses may be located, through zoning controls. After hours entertainment uses (such as dance clubs, billiard parlors and places of adult entertainment) are not permitted in residential districts in the City, except in the RC-4 (Residential-Commercial Combined Districts, High Density) districts, which are generally composed of buildings with ground floor commercial use with dwelling units above, located primarily in the North of Market and Tenderloin areas. RC-4 district controls set no limits on hours of operation for nighttime entertainment establishments. Late night, non-entertainment uses, (primarily restaurants, pizza parlors, coffee shops and so on), are generally not permitted in residential districts and are allowable under applicable zoning controls in commercial, including neighborhood commercial, districts.

Various controls regulate nighttime entertainment in the Neighborhood Commercial zoning districts. Generally the use requires Conditional Use (CU) authorization, including a public hearing and conditions regarding hours of operation; hours vary by district. Individual Neighborhood Commercial Districts (NCD’s) include specific district controls. For example, the West Portal NCD controls prohibit entertainment uses. In the Broadway NCD these establishments require CU authorization, and include extended hours of operation from 2 am - 6 am. In the NC-3 (Moderate -Scale Neighborhood Commercial) districts and in most districts South of Market there

are no limits on hours of operations. However, in some South of Market districts, such as SLI (Service/Light Industrial) the use is not permitted. Late night entertainment is allowable without restrictions in light and heavy industrial, and commercial-industrial districts (M-1, M-2, and C-M) generally located in the southeastern part of the City. Section 805.3 (g), Additional Provisions Governing Uses in Mixed Use Districts, Good Neighbor Policies for Nighttime Entertainment Activities in South of Market Districts, sets forth conditions, “to insure that the quiet, safety and cleanliness of the premises and vicinity are maintained.” These conditions are specific. (They are attached at the end of this document.) The conditions address noise, litter and parking issues in particular.

The intent of the zoning controls has been to prohibit late night entertainment in residential districts, and require Conditional Use authorization in commercial areas that include, or are near, areas of residential use. The Conditional Use process includes a public hearing, as noted, at which neighbors may have input, and conditions may be imposed relating to hours of operation, noise, litter, and security.

In the City, nighttime entertainment establishments are mainly clustered South of Market, in the Tenderloin/Polk street area, and on Broadway, with individual establishments scattered throughout the City, on Lombard Street, Geary Street, Mission Street and the Mission district, and the Western Addition. The Planning Department has mapped these establishments.

As indicated, primary concerns with late night entertainment establishments relate to parking, noise and nuisances, and the controls attempt to address these. Solutions may be difficult, however. For example, the San Francisco Noise Ordinance, Article 29 of the Police Code is enforced by the SFPD. And Title 24 of the California Code of Regulations requires noise insulation for residences and hotel uses, and energy conservation, including, for example, requiring double-paned windows. However, live/work units are classified as commercial uses in the City’s Planning and Building Codes, and therefore are not subject to residential construction requirements. In addition, existing housing stock, especially South of Market, is old and predates noise insulation and energy conservation requirements. In the case of one club on Eleventh Street that requested a permit to expand, the club building was old and opponents were residents in an abutting building constructed in 1908. Clubs can be effectively retrofitted to reduce noise in a number of ways; however, operators do not always have control over the building they occupy, and noise – like air – “leaks out” of an unsealed structure. Nighttime noise is experienced as more disturbing because background noise levels are much lower, compared to daytime hours.

Current Law and Practice in Other Jurisdictions

City of New York

Controversy associated with late night entertainment, as in other jurisdictions, is associated with destination entertainment uses, with conflict between the patrons who frequent the clubs and residents who live near them.

The state of New York regulates alcohol, and thus regulates this aspect of late night entertainment in the New York City, including hours of operation.

The Department of Consumer Affairs regulates, under cabaret provisions, large clubs where people congregate. After hour clubs *per se*, are not separately distinguished. In New York City, eating or drinking establishments (such as restaurants and bars), including those with entertainment with a capacity of 200 persons or less, are allowed as-of-right in most commercial and manufacturing districts.

Eating or drinking establishments with entertainment and a capacity of more than 200 persons, or those of any capacity with dancing, are allowed in C6 (high-density, centrally located), C8 (widely mapped in all boroughs, generally as strips along major roads, and permitting automotive, trucking service uses) and most Manufacturing districts. They are prohibited in C1, Local Retail Districts and C5, Restricted General Commercial Districts (centrally located, mapped mostly in Manhattan and downtown Brooklyn, for example, in Manhattan: Fifth Avenue, Grand Central, Madison Avenue, portions of the downtown financial district). In C4 Districts (regional shopping mapped in each of the five boroughs), they are allowed not less than 100 feet from a Residence District, or by special permit. A special permit is required in C2, Local Service Districts, and in “mixed” manufacturing districts that allow dwellings (SOHO, NOHO, Tribeca). In C6-1 through C6-4 districts, such uses, while allowed as-of-right, must also have an indoor waiting area based on capacity of the establishment; the entrance to the establishment must be no less than 100 feet from the nearest Residence District boundary.

The New York Department of City Planning began comprehensive review of its Zoning Resolution, concerning entertainment establishments in order to create an appropriate, up-to-date regulatory framework for controlling such uses. The review was begun after the city received complaints from residents about noise, traffic, parking, sanitation and crowding impacts from clubs. In 1986 and 1988, several successful legal challenges to city regulations were made. During the review period, club owners and operators argued that the special permit process would be time consuming, costly and unpredictable and result in fewer such establishments. Club advocates also made the argument that clubs are essential to new musicians and various segments of the city’s population. In 1989 the planning department proposed amendments, adopted in 1990, setting forth a new framework for regulation of entertainment establishments. The zoning amendments include language which refers to incidental (accessory) music; ease restrictions on clubs with no dancing with capacities of under 200 people; and impose more restrictive regulations on larger entertainment establishments and those with dancing. The noise control section of the administrative code allows musical entertainment in any establishment.

In some commercial districts such establishments must provide a minimum of four square feet of interior waiting area for each person permitted under the occupant capacity under the building code, and their entrance must be a minimum of 100 feet from the nearest residential district boundary. Where a special permit is required certain findings must be made, as follows: That a minimum of four square feet of enclosed waiting area within the zoning lot shall be provided for each person permitted under the occupant capacity as determined by the building code (a plan is required to be provided, to insure that the operation of the establishment will not result in the gathering of crowds or formation of lines on the streets); that the entrance to such use is a minimum of 100 feet from the nearest residential district boundary; that such use will not cause undue vehicular or pedestrian congestion in the local streets; that such use will not impair the character or the future use or development of the surrounding residential or mixed-use neighborhoods; that such use will not cause the sound level in any affected conforming residential use, joint living-work quarters for artists, or loft dwelling to exceed the limits set forth in the city Noise Control Code (generally an interior noise level in nearby residences of 45 dBA); and that the application be made jointly by the owner of the building and the operators of such eating or drinking establishment. In addition, the Board of Standards and appeals is authorized to prescribe appropriate controls to minimize adverse effects on the character of the surrounding area including, but not limited to, location of entrances and operable windows, provision of sound-lock vestibules, specification of acoustical insulation, maximum size of the establishment, kinds of amplification of musical instruments or voices, shielding of flood lights, adequate screening, curb cuts, or parking. The section also provides that any violation of the terms of a special permit may be grounds for its revocation.

A proposed local ordinance to increase the distance between large clubs and residential areas to 200 feet and toughen controls on repeat violators was not passed.

Chicago

In Chicago, the Mayor's License Commission regulates nighttime entertainment establishments, and there is a local liquor control commission. Regulation is currently mainly on a case-by-case basis rather than a citywide policy basis. When an operator applies for a liquor license, registered voters within a 250-foot-radius receive notice. This system works in areas in which, for example, a new tavern is propose in an established, developed area. In developing areas, however, where both the establishment and the residences are under development at the same time, prior notification of potentially affected residents may not be possible. The License Commission is attempting to coordinate with the Department of City Planning regarding areas that are being developed for residential use, and to consult with the Department about use compatibility. One example of a developing location is the South Loop area, planned for residential and commercial mixed use development.

Chapter 4-60 of the Chicago Municipal Code regulates Liquor Dealers. Regulated establishments include late night entertainment establishments that serve alcohol. In Chicago, alcohol may be served until 4 a.m. weekdays, and 5 a.m. on weekends with a late hour license. Liquor licenses are locally regulated, as noted, and according to License Commission staff, subject to a rigorous process. Application requirements include notification of registered voters within 500 feet, and posting notice of the application at the proposed site. The applicant must obtain and file the written consent of a majority of the legal voters registered in the affected area in order for the permit to be granted (Municipal Code section 4-60-130(e)). Thus, criteria for granting a license include a favorable petition signed by a majority of registered voters within 500 feet of the establishment (in residential areas). A petition of consent is not required in a non-residential area or in an area that is more than 50 percent non-residential. Nearby residents may still be concerned, but they do not have recourse to the petition requirement.

According to city staff, because the license process is rigorous and the license subject to being revoked, the number of applicants is not high. A majority of the legal voters residing within 500 feet of the licensed premises may file a petition requesting the local liquor control commissioner to suspend or revoke a late-hour privilege. (Municipal Code Section 4-60-130 (h), which provides for published notice and a hearing among other provisions). Upon a finding there is due and just cause to discontinue the late-hour privilege, the local liquor control commissioner may either revoke the privilege permanently or suspend the privilege for a period of not more than 30 days. (Section 4-60-130(j)). Tavern owners must comply with noise laws enforced by the city Department of the Environment. An additional application is required for a public place of amusement license. Chicago has a community meeting process which may be used in cases where a license may be legally granted but there are nuisance issues. Then, the Director of the Liquor Commission serves a mediator between the two parties after the license has been issued. According to License Commission staff this program has been successful in resolving conflicts.

While there is no dispersion or concentration policy regarding late-night establishments, permits are generally more easily obtained in centrally located, non-residential areas. Geographically, there is a concentration of late night entertainment establishments in the Rush Street and Division Street area and the North Halsted and North Broadway area; other late night establishments are dispersed throughout the city.

New Orleans

Late night entertainment uses are regulated in New Orleans, although the City has been criticized as weak in the area of enforcement. Local regulations include a noise ordinance, restrictions on hours of operation, and the ability to shut down establishments with a history of continuous, repetitive problems with litter, noise, other nuisance factors, patron activity or owner neglect.

The city, by zoning ordinance, created one main entertainment district, in the French Quarter, including a seven-block-long strip along Bourbon Street and a five-block area along Decatur and South Peter's Streets, in which most uses, including adult entertainment, are allowed on an unrestricted basis. In other areas, zoning controls generally restrict live entertainment to a maximum of five musicians, and regulate amplified music. Related ordinances address parking and noise. Parking may be required, for example, special event parking, and sound proofing is also required. Major new development is taking place in the French Quarter entertainment district, including new large-scale entertainment establishments such as the House of Blues, including larger concert halls than existing halls. Much of the downtown side of the French Quarter is almost wholly commercial in character. Expansion of commercial use into surrounding residential streets is not allowed. Enforcement has proved problematic, however. Other than the designated entertainment district, late night entertainment is permitted only in the regional commercial zoning district.

The city has not been wholly successful in regulating smaller music venues in residential areas. For example, corner bars are legal non-conforming uses with the right to continue operation. In a number of instances city controls and action to close establishments, based on neighborhood opposition, have been successfully appealed to the state.

Philadelphia

Philadelphia does not regulate hours of operation under the zoning code, except for certain uses such as laundromats. Liquor-serving establishments are under the purview of the Liquor Control Board of the State of Pennsylvania, which may impose conditions. Based on underlying zoning, nighttime entertainment is not considered an appropriate use in residential districts. Nighttime entertainment establishments, are not allowable as a matter of right, in the city and require an applicant to request a zoning adjustment, similar to a Variance authorization in San Francisco. The owner/operator must show hardship to obtain the adjustment, such as inability to otherwise use the property. The zoning board has great latitude in granting adjustments, and may impose provisions to minimize impacts on surrounding development. So-called "end of row" bars or "tappies" have caused some problems in neighborhoods, as well. The liquor control board conducts inspections with the authority to shut down establishments, and it exercises that authority.

Philadelphia has established a complaint nuisance task force, made up of representatives from the City, state liquor control board, the city district attorney, and the state attorney general, with additional representation from offices of state representatives and senators. The task force has authority to shut down establishments.

Two relatively new entertainment districts have developed in the city, along its waterfronts: the Manayunk district along the Schuylkill River, and a second district along the Delaware River. The Manayunk district includes a former industrial area with a commercial strip abutted by high-density, older residential development predating autos and, therefore, without off-street parking. Residential development consists of about 70 houses per block on 11-foot-wide lots. With 18 feet required to park a car, there is an existing parking shortfall, even conservatively assuming one car per household. The area has developed into a magnet for restaurant uses in particular. To address parking issues the city created a zoning overlay and moratorium on new restaurants. The Main Street Manayunk District controls include parking requirements for these uses including provision of

parking within a specified distance from the establishment. Dance halls are prohibited; existing non complying uses may remain.

Development along the Delaware River, another former industrial area, was originally located farther from residential uses than the Manayunk district although, driven by market forces, the district has expanded northward reducing the existing buffer and introducing residential/entertainment conflicts. As in the Manayunk district, parking controls were developed based on number of seats allowed as lawful occupancy under the building code. Problems arose related to valet parking, with valet attendants parking cars in the neighborhoods. Regulations now require the applicant to produce a signed parking contract specifying location of parking lots. According to city staff, development in the Delaware River district has stabilized and development pressure is not currently evident.

San Diego

San Diego, like the other jurisdictions contacted, has experienced problems related to noise, parking and nuisance associated with the clubs. Nuisance and crime issues include drug use and noise primarily. Proximity to the border with Mexico, where drugs are sold legally, results in drugs walked across the border and used in San Diego clubs. Enforcement is difficult, especially as current drugs such as GHB and Rohipnyl are clear, colorless liquids easily transported in cosmetic or water bottles. Related problems include overdoses, assault including sexual assault, and fights. Club operators have joined police in enforcement efforts including use of undercover security personnel.

Noise problems result from patrons smoking outside clubs and other patron activities. Noise is experienced as more disturbing at night when background noise levels (such as traffic, including busses and trucks) drop, magnifying even normal patron and club noise.

In San Diego, Divisions 15 and 16 of the Police Code regulate, respectively, Cabarets and Dance Halls which serve alcohol and Commercial Recreation establishments which do not serve alcohol. The city is in the process of combining the two divisions into a single, Entertainment Ordinance. Currently, establishments must close by 2 a.m., or obtain an after hours permit. San Diego has about six (6) after hours entertainment establishments, compared with about 48 in San Francisco which is much smaller in area, and generally densely built-out. After hours establishments are prohibited within 300 feet of residential development in San Diego.

San Diego, like Philadelphia, has a thriving historic entertainment district, the Gaslamp corridor. The district is downtown, in a formerly blighted area that has been redeveloped; previously, residential use in the area consisted mainly of residential hotels. This area has become a magnet for development and now includes expensive lofts along with the entertainment uses. While young residents were initially attracted to the area by the club scene, use conflicts subsequently developed. According to police staff, in one case a club preceded residential development, residents moved in and complained, and the city revoked the club's permit. The city was successfully challenged in court by the club.

San Diego is revising its regulations such that a club permit cannot be issued without resident support. At the same time, club owners and operators, and associated groups would like to establish a defined entertainment district with fewer controls on late night eating and drinking establishments.

CONCLUSION

As indicated in this report, cities regulate late night eating and drinking and entertainment establishments in various ways, and with varying degrees of success. In most cities, the most intensive uses have become concentrated in certain areas, by market forces as well as local regulation. The problems the controls address are similar, and mainly result when a late night entertainment enterprise is located in close proximity to residential uses. Problems generally are related to parking, noise, litter, and nuisance, or crime issues. The relatively new trend of reuse of former industrial areas as mixed use residential and entertainment centers has brought these issues newly into focus, and a number of jurisdictions are reassessing or revising their controls and policies, as a result. The experiences of the cities described above provides some examples that may be of use as San Francisco continues to address these issues.

ATTACHMENT A (San Francisco Planning Code Section 803.5g))

g) Good Neighbor Policies for Nighttime Entertainment Activities in South of Market Districts. Within South of Market Districts where nighttime entertainment activities, as defined by Section 102.17 of this Code, are permitted as a principal or conditional use shall not be allowed except on conditions which, in the judgment of the Zoning Administrator or City Planning Commission, as applicable, are reasonably calculated to insure that the quiet, safety and cleanliness of the premises and vicinity are maintained. Such conditions shall include, but not be limited to, the following:

(1) Notices shall be well-lit and prominently displayed at all entrances to and exits from the establishment urging patrons to leave the establishment and neighborhood in a quiet, peaceful, and orderly fashion and to please not litter or block driveways in the neighborhood; and

(2) Employees of the establishment shall be posted at all the entrances and exits to the establishment during the period from 10:00 p.m. to such time past closing that all patrons have left the premises. These employees shall insure that patrons waiting to enter the establishment and those existing in the premises are urged to respect the quiet and cleanliness of the neighborhood as they walk to their parked vehicle or otherwise leave the area; and

(3) Employees of the establishment shall walk a 100-foot radius from the premises some time between 30 minutes after closing time and 8:00 a.m. the following morning, and shall pick up and dispose of any discarded beverage containers and other trash left by area nighttime entertainment patrons; and

(4) Sufficient toilet facilities shall be made accessible to patrons within the premises, and toilet facilities shall be made accessible to prospective patrons who may be lined up waiting to enter the establishment; and

(5) The establishment shall provide outside lighting in a manner than would illuminate outside street and sidewalk areas and adjacent parking, as appropriate; and

(6) The establishment shall provide adequate parking for patrons free of charge or at a rate or manner that would encourage use of parking by establishment patrons. Adequate signage shall be well-lit and prominently displayed to advertise the availability and location of such parking resources for establishment patrons; and

(7) The establishment shall provide adequate ventilation within the structures such that doors and/or windows are not left open for such purposes resulting in noise emission from the

premises; and

(8) Any indoor and/or outdoor activity allowed as a principal or conditional use and located within 100 feet of a residential or live/work unit shall, during the period from 10:00 p.m. to 6:00 a.m., insure that sound levels emanating from such activities do not exceed the acceptable noise levels established for residential uses by the San Francisco Noise Ordinance; and

ATTACHMENT B: Nighttime Entertainment: Regulation Table

| <u>NIGHTTIME ENTERTAINMENT REGULATION</u> | SAN FRANCISCO | NEW YORK CITY | CHICAGO | NEW ORLEANS | PHILADELPHIA | SAN DIEGO |
|---|---|---|--|--|--|---|
| Location | DCP/zoning. Some use of moratoria. | DCP/zoning | DCP/zoning Some use of moratoria. | DCP/zoning Some use of moratoria | DCP/zoning restricts location; however, a zoning variance may be sought, to locate anywhere in the city. | Zoning. |
| Designated Entertainment Districts | No. Although Individual NCD controls are more permissive for some districts; clusters occur on Broadway, SOMA, Tenderloin/ Polk | No. Clusters such as SOHO, NOHO, West Chelsea, as well as dispersed throughout city. | No. Clusters such as Rush-Division Sts., N. Halsted-N. Broadway. | Yes: primarily, French Quarter-Bourbon St, specific controls apply. Establishments also located throughout city, per zoning, e.g., light industrial districts. | No. Not official entertainment districts. Clusters developed, resulting in code changes to include some overlay districts to regulate community impacts. E.g, Manayunk and along Delaware R. specific controls apply | No. Cluster includes: Gaslamp corridor redevelopment area; not a designated district. |
| Hours of Operation - Regulated by: | State: Alcohol Beverage Control Board. Local: after 2 am: DCP (Conditional Use) SFPD | State: if alcohol served, State liquor Authority/ NYC Alcohol Beverage Control Bd. If no alcohol: Dept. of Consumer Affairs | Local: License Comsn.; and local Liquor Control Comsn, | Local: Admin. Code. Also, as part of Conditional Use process | State: Liquor Control Bd. Interagency nuisance task force for liquor license issues. | State: Alcohol Beverage Control Board. Local: after 2 am: SDPD |
| Activities, such as eating, entertainment, e.g., music, dancing. Regulated by: | local: SFPD DCP/zoning & Conditional Use. | Zoning resolution; enforced by Dept. of Bldgs. | Zoning and Mayor's License Comsn. | Zoning ord. Enforcement: Safety and Permits Dept., Dept. of Finance, and local Alcohol | Zoning Code. Most city codes are enforced by the Dept. of Licenses and Inspections, | Police Dept. |

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|--------------|-------------------|---|----------------------|---|---|--|
| | | | | Beverage Control Board.. | with certain sections under jurisdiction of agencies, e.g. Fire and Health. | |
| Noise | Police Code: SFPD | Admin. Code: Dept. of Environmental Protection. | Dept. of Environment | Police, and Safety and Permits department | Health Dept. | Neighborhood Code Enforcement Dept. with assistance from Police Dept. if needed. |

Source: Office of the Legislative Analyst, based on information from the cities.