



## Legislation Text

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**File #:** ORD. 2024-016, **Version:** 1

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To authorize the conditional use of the property known as 309 East Broad Street for the purpose of authorizing a nightclub, upon certain terms and conditions. (6<sup>th</sup> District)

WHEREAS, the owner of the property known as 309 East Broad Street, which is situated in a B-4 Central Business District, desires to use such property for the purpose of a nightclub, which is currently allowed only by approval of a conditional use permit by City Council pursuant to section 30-440.2 of the Code of the City of Richmond (2020), as amended; and

WHEREAS, in accordance with section 30-1045.5 of the Code of the City of Richmond (2020), as amended, it has been made to appear that, if granted pursuant to the terms and conditions set forth in this ordinance and Chapter 30, Article X, Division 5.1 of the Code of the City of Richmond (2020), as amended, the conditional use permit granted by this ordinance will not be contrary to the general purposes of Chapter 30 of the Code of the City of Richmond (2020), as amended, as stated in section 30-100 of the Code of the City of Richmond (2020), as amended; will not be in conflict with the objectives and policies of the master plan for the City; will conform with all applicable sections of Chapter 30, Article X of the Code of the City of Richmond (2020), as amended, and other applicable requirements of the district in which it is proposed to be located; will not substantially diminish or impair the established property values in the neighborhood in which it is proposed to be located; will not have an undue adverse effect on the public health, safety or general welfare; will not adversely affect the character of the surrounding area or the continued use and development of surrounding property in a manner consistent with applicable zoning regulations or master plan objectives; will not cause undue traffic congestion on public streets or significantly increase traffic volumes on minor residential streets; will be adequately served by essential public services and facilities and will not cause an undue burden on such services and facilities; will not cause the destruction, loss or damage of significant natural, scenic or historic

features to any greater degree than development of the property for uses permitted by right in the district; will ensure compatibility with surrounding property through existing and proposed landscaping, screening and buffering and the location, arrangement and character of existing and proposed buildings, structures, open spaces, parking areas, vehicular circulation, driveways, signage and lighting; and will not cause or result in any significant increase in negative cumulative impact when considered in conjunction with other conditional uses in the neighborhood in which it is proposed to be located; and

WHEREAS, (i) the City Planning Commission has conducted a public hearing to investigate the circumstances and conditions upon which the Council is empowered to authorize such use, (ii) the City Planning Commission has reported to the Council the results of such public hearing and investigation and its recommendations with respect thereto, and (iii) the Council has conducted a public hearing on this ordinance at which the person in interest and all other persons have had an opportunity to be heard;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. **Finding.** Pursuant to section 30-1045.5 of the Code of the City of Richmond (2020), as amended, the Council hereby finds that the conditional use set forth in and subject to the terms and conditions of this ordinance will not be contrary to the general purposes of Chapter 30 of the Code of the City of Richmond (2020), as amended, as stated in section 30-100; will not be in conflict with the objectives and policies of the master plan for the City; will conform with all applicable sections of Chapter 30, Article X of the Code of the City of Richmond (2020), as amended, and other applicable requirements of the district in which it is proposed to be located; will not substantially diminish or impair the established property values in the neighborhood in which it is proposed to be located; will not have an undue adverse effect on the public health, safety or general welfare; will not adversely affect the character of the surrounding area or the continued use and development of surrounding property in a manner consistent with applicable zoning regulations or master plan objectives; will not cause undue traffic congestion on public streets or significantly increase traffic

volumes on minor residential streets; will be adequately served by essential public services and facilities and will not cause an undue burden on such services and facilities; will not cause the destruction, loss or damage of significant natural, scenic or historic features to any greater degree than development of the property for uses permitted by right in the district; will ensure compatibility with surrounding property through existing and proposed landscaping, screening and buffering and the location, arrangement and character of existing and proposed buildings, structures, open spaces, parking areas, vehicular circulation, driveways, signage and lighting; and will not cause or result in any significant increase in negative cumulative impact when considered in conjunction with other conditional uses in the neighborhood in which it is proposed to be located.

**§ 2. Grant of Conditional Use Permit.**

(a) Subject to the terms and conditions set forth in this ordinance, the property known as 309 East Broad Street and identified as Tax Parcel No. W000-0036/003 in the 2024 records of the City Assessor, hereinafter referred to as “the Property,” is hereby permitted to be used for the purpose of authorizing a nightclub, hereinafter referred to as “the Conditional Use,” substantially as shown on the plans entitled “309-311 E Broad St,” prepared by Walter Parks Architects, dated June 3, 2022, and last revised September 27, 2022, hereinafter referred to as “the Plans,” a copy of which is attached to and made a part of this ordinance.

(b) The adoption of this ordinance shall constitute the issuance of a conditional use permit for the Property. The conditional use permit shall inure to the benefit of the owner or owners of the fee simple title to the Property as of the date on which this ordinance is adopted and their successors in fee simple title, all of which are hereinafter referred to as “the Owner.” The conditions contained in this ordinance shall be binding on the Owner.

**§ 3. Special Terms and Conditions.** This conditional use permit is conditioned on the following special terms and conditions:

(a) Pursuant to section 30-457.3 of the Code of the City of Richmond (2020), as amended, the use of the Property shall include a nightclub, substantially as shown on the Plans.

(b) Operation of the nightclub use permitted by this conditional use permit shall be conducted strictly in accordance with the document entitled “Ember Music Hall Management Plan,” prepared by 309 Broad Street, LLC, dated May 22, 2023, and last revised July 14, 2023, a copy of which is attached to and made part of this ordinance.

(c) The hours of operation of the nightclub use permitted by this conditional use permit shall be from 12:00 a.m. until 2:00 a.m., and the nightclub use shall not operate between the hours of 2:00 a.m. and 6:00 a.m.

(d) During the hours of operation of the nightclub use, patron queuing on the exterior of the building shall only be permitted directly adjacent to the building wall on the Property and without any improvements, temporary or otherwise, unless said improvements are approved according to the applicable provisions of the Code of the City of Richmond (2020), as amended, and all future amendments to such laws.

(e) Operation of the nightclub use permitted by this conditional use permit shall not constitute an exemption to providing sound control. The nightclub use shall be conducted strictly in accordance with Chapter 11, Article II of the Code of the City of Richmond (2020), as amended.

§ 4. **Supplemental Terms and Conditions.** This conditional use permit is conditioned on the following supplemental terms and conditions:

(a) Facilities for the collection of refuse shall be provided in accordance with the requirements of the Director of Public Works. Such facilities shall be located or screened so as not to be visible from adjacent properties and public streets.

(b) Any encroachments existing, proposed on the Plans or contemplated in the future shall require separate authorization and shall be subject to the applicable provisions of the Code of the City of Richmond (2020), as amended, and all future amendments to such laws.

(c) In all other respects, the use of the Property shall be in accordance with the applicable underlying zoning regulations.

§ 5. **General Terms and Conditions.** This conditional use permit is conditioned on the following general terms and conditions:

(a) No permit implementing this conditional use permit shall be approved until satisfactory evidence has been presented to the Zoning Administrator that any delinquent real estate taxes applicable to the Property have been paid.

(b) The Owner shall be bound by, shall observe and shall comply with all other laws, ordinances, rules and regulations applicable to the Property, except as otherwise expressly provided in this ordinance.

(c) Words and phrases used in this ordinance shall be interpreted to have the meanings ascribed to them by section 30-1220 of the Code of the City of Richmond (2020), as amended, unless the context clearly indicates that a different meaning is intended.

(d) Notwithstanding any other provision of law, this conditional use permit is being approved due, in part, to the mitigating effects of each and every condition attached hereto; consequently, if any portion of this ordinance is determined to be invalid for any reason by a final, non-appealable order of any Virginia or federal court of competent jurisdiction, the invalidity shall cause the entire ordinance to be void and of no further effect from the effective date of such order.

(e) The privileges granted by this ordinance may be revoked pursuant to the provisions of sections 30-1045.14 through 30-1045.17 of the Code of the City of Richmond (2020), as amended, and all future amendments to such laws. Failure to comply with the terms and conditions of this ordinance shall constitute a violation of section 30-1080 of the Code of the City of Richmond (2020), as amended, and all future amendments to such law, or any other applicable laws or regulations.

(f) When the privileges granted by this ordinance terminate and the conditional use permit granted hereby becomes null and void, whether as a result of the Owner relinquishing this conditional use permit in a writing addressed to the Director of Planning and Development Review or otherwise, use of the Property shall be governed thereafter by the zoning regulations prescribed for the district in which the Property is then

situated.

§ 6. **Implementation.** The Commissioner of Buildings is authorized to issue a certificate of occupancy substantially in accordance with the Plans for the Conditional Use subject to the terms and conditions set forth in this ordinance. An application for the certificate of occupancy shall be made within 730 calendar days following the date on which this ordinance becomes effective. If either the application for the certificate of occupancy is not made within the time period stated in the previous sentence or the certificate of occupancy terminates under any provision of the Virginia Statewide Building Code, this ordinance and the conditional use permit granted hereby shall terminate and become null and void.

§ 7. **Effective Date.** This ordinance shall be in force and effect upon adoption.

## City of Richmond

### Intracity Correspondence

#### O&R Transmittal

**DATE:** October 24, 2023

**TO:** The Honorable Members of City Council

**THROUGH:** The Honorable Levar M. Stoney, Mayor (by request)

(This in no way reflects a recommendation on behalf of the Mayor)

**THROUGH:** J.E. Lincoln Saunders, Chief Administrative Officer

**FROM:** Kevin J. Vonck, Director of Planning & Development Review

**RE:** To authorize the conditional use of the property known as 309 East Broad Street for the purpose of authorizing a nightclub, upon certain terms and conditions.

**ORD. OR RES. No.**

**PURPOSE:** The applicant is requesting a Conditional Use to authorize a nightclub for hosting ticketed music

events in a restaurant establishment. The proposed entertainment activities, hours of operation, and alcohol sales at certain times of day within a restaurant are considered, by the Zoning Ordinance, to be nightclub activities. A conditional use permit is therefore required.

**BACKGROUND:** The property consists of a 11,666 sq. ft. (0.27 acre) parcel of land occupied by an existing 3-story mixed-use building (309-315 Broad St) containing office and retail uses at ground level. The scope of the proposal is limited to the ground floor unit with street addresses of 309-311 E Broad Street, which contain a restaurant space. The Applicant plans to provide amplified music, dedicated floor space for entertaining patrons and seeks to extend the hours of operation to 2 a.m. The proposed entertainment, activities, and hours of operation past 12:00 a.m. (midnight) are considered, by the Zoning Ordinance, to be nightclub activities. A conditional use permit is therefore required.

The property is part of the City Center area in the Downtown District, situated on a block bounded by E Broad St, E Grace St, N 3rd St and N 4th St. City Center neighborhood is generally made up of commercial uses including retail and office as well as multifamily and mixed-use buildings.

The City's Richmond 300 Master Plan designates a future land use for the subject property as Downtown Mixed-Use, which is defined as, "Central business district of the Richmond region features high-density development with office buildings, residential buildings, and a mix of complementary uses, including regional destinations in a highly-walkable urban environment." "Intensity: Buildings typically a minimum height of five stories. Primary Use: Retail/office/ personal service, multi-family residential, cultural, institutional, government, and open space." (p. 66) The current zoning designation for this property and surrounding properties is B-4 - Central Business District. The subject property is fronting a priority street and has a street oriented commercial frontage.

**COMMUNITY ENGAGEMENT:** The Downtown Neighborhood Association was notified of the application; additional community notification will take place after introduction.

**STRATEGIC INITIATIVES AND OTHER GOVERNMENTAL:** Richmond 300 Master Plan; Will be considered by Planning Commission on February 5, 2024 (tentative)

**FISCAL IMPACT:** \$1,500 application fee.

**DESIRED EFFECTIVE DATE:** Upon adoption

**REQUESTED INTRODUCTION DATE:** January 8, 2024

**CITY COUNCIL PUBLIC HEARING DATE:** February 12, 2024

**REQUESTED AGENDA:** Consent

**RECOMMENDED COUNCIL COMMITTEE:** None

**AFFECTED AGENCIES:** Office of Chief Administrative Officer  
Law Department (for review of draft ordinance)

**RELATIONSHIP TO EXISTING ORD. OR RES.:** None

**ATTACHMENTS:** Draft Ordinance, Application Form, Applicant's Report, Plan, Survey, Map

**STAFF:** Matthew J. Ebinger, Planning Supervisor - Land Use Administration 804-646-6308

James Dealaman, Planner Associate - Land Use Administration 804-646-0455