

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF JANUARY 3, 2013
REFERRED FROM: COUNSEL'S OFFICE

2013-00077

REASON FOR REFERRAL
REQUEST FOR DIRECTION

APPLICATION OF 200' LAW FOR
PREMISES LOCATED AT:

41 EAST 11TH STREET, MANHATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on JANUARY 3, 2013 determined:

TO: Chairman Dennis Rosen, Commissioner Jeanique Greene, Special Counsel Thomas Donohue

FROM: Joseph R. Levey, Esq.

DATE: December 11, 2012

RE: Baha'i Center, 53 East 11th Street, New York, N.Y.

BACKGROUND

My client, Analogue LLC, is negotiating to lease a commercial space at 41 East 11th Street, New York, N.Y., where they plan to apply for an on-premises liquor license. This space is located within the bounds of Manhattan Community Board 2. He plans to operate as a jazz club with a very low-key atmosphere and no amplification – a concept that the community has embraced. However, there is a structure that is well under 200 feet away called the Baha'i Center (hereinafter the "Center"). This complex appears to be a church, community center, independent performance space, concert hall, and many other things all under one roof.

My client does not wish to move forward with this particular space if the 200 Foot Rule will limit him to obtaining a license to serve only beer and wine. Additionally, the landlord of my client's prospective location is unwilling to provide any relief in the form of a contingency or a "Good Guy Guaranty" as my client explores the likelihood that a full liquor license could be issued here. Therefore, it is important to obtain a decision on this 200 Foot Rule issue from the Authority before the lease is signed.

My position is that this community Center has lost its exclusivity as a church. This Center regularly rents itself out to outside promoters that run events that are completely and totally unaffiliated with the Center. These outside promoters run everything from concerts to karaoke nights to theater performances. It is also listed as a concert venue on several websites.

RULE

A building will still be considered a school or a place of worship within the meaning of the 200 Foot Law as long as any use is incidental to, and not inconsistent with or detracting from, the predominant character of the building as a school or place of worship (ABC Law Sec. 64(7)(d-1)).

The following would be considered inconsistent with the use of a school/church: "renting/use of space for commercial activities when there is no benefit to the school/church other than the profit from the use of the space; and

meetings/activities by not-for-profit groups for the purpose of promoting the groups' ideology, politics, etc." (2006 Taskforce for the Review of On-Premises Licensure, New York State Liquor Authority (hereinafter the "Authority").

CASELAW IN FAVOR OF NON-EXCLUSIVITY

The Second Department found that the use of the building on a regular basis for a number of nonreligious activities that the church had no control over, including a commercial theatre group, private teaching program and concerts, did *not* meet the occupied exclusively standard (Declaratory Ruling 2011-02878 (hereinafter "2011 Decl. Ruling"), p. 2, quoting *Le Parc Gourmet Inc. v. SLA*, 95 A.D.2d 855 (1983)).

A synagogue which functioned simultaneously as a place of worship, library and office space was *not* operated exclusively as a church (2011 Decl. Ruling, p. 3).

Parish house wherein Sunday school and Wednesday released-time classes for religious instruction, graduation services for unaffiliated nursing school, and social functions were held meant the location was *not* used exclusively as a church (*Le Parc Gourmet*).

A church that is renting out its auditorium for baseball card shows, jewelry shows, oriental rug sales as well as renting out another portion of the building as an embassy was *not* "occupied exclusively" as a place of worship (2011 Decl. Ruling, p. 2).

APPLICATION TO THE BAHA'I CENTER

Worship Activities

A quick look at the Center calendar on their website shows that regularly scheduled worship activities are held only once per week. *See Exhibit 1*. This cuts against the space being used exclusively as a church. In *Rose Group Park Avenue LLC v. SLA* (2012 Slip Op 00310, Jan. 19, 2012), one factor that cut against exclusivity was the fact that worship activities were limited to specific designated times (Sunday mornings, Wednesday evenings, Christmas Eve, and Thanksgiving). The present case differs in that the church in that specific case was limited to those times by virtue of their lease. There are a myriad of other churchlike activities that happen at unscheduled times throughout the week. *See Exhibit 2*. However, it seems that only one day per week is scheduled worship time.

Urban Juke Joint

This is an "open mic night" for poetry, slam poetry, spoken verse. It is open to the public and hosted by an outside promoter. A description appears on the Baha'i website: "A couple of rag-tag brothers trying to run an open mic to help poets

and other artists see their true potential as noble beings/as forward thinking operatives/agents of change/as light houses/leaders/leading the community to a new understanding and way of being" (see description of "Urban Juke Joint" at: <http://bahainyc.org/page/New-York-City-Bahai-Calendar.aspx>).

Topics include politics, war, racism, consumerism, sexual violence, love, and family. In fact, it is billed as being "not a religious event" on a third party website. *See Exhibit 3.*

Although this is a social event, it would be a tough case for the Center to prove that this is "incidental to" the predominant nature of church activities as is the test, since this is billed as a nonreligious "community" event.

Jazz Night

This is a weekly event located in the John Birks Gillespie Auditorium. It is hosted by a professional jazz musician, is open to the public, and involves a \$10-15 cover charge. *See Exhibit 4.*

The phone number that appears on the Center website routes to a third party agency that runs the jazz night out of the Center. It is not the Center itself, but a company called "Jazz Beat"/"Consolidated Artist Productions" (see http://www.jazzbeat.com/jazz_tuesdays.html and http://www.jazzbeat.com/show_events.html)

This is akin to *Le Parc Gourmet*, where concerts were explicitly said to *destroy exclusivity*.

Children's Theater Company

This is a theater company run totally separate from the Center itself. It is a company that was started in 1989 in Los Angeles, CA. According to the company's website, it is a non-profit "educational theater organization and publisher of over fifteen original musicals designed to complement an ethical and social studies curriculum for young audiences." There is a paid membership fee involved, a cover charge in conjunction with each show, and a reservation is required. The shows are open to the public.

Their mission and objectives are not worship-related. *See Exhibit 5.* In addition, from their website, you can see that this company calls the Center its "New York City Flagship Chapter" (<http://www.childrenstheatrecompany.org/contact.htm>).

This is akin to *Le Parc Gourmet*, where the Center has no control over the activities of the theater company and where concerts were said to *destroy exclusivity*.

Film Festival Screenings

The auditorium within the Center is used for film screenings. These events are open to the public and some involve an entry fee. There is a variety of outside hosts. *See Exhibit 6.*

This again cuts against exclusivity where the event can be likened to a concert or theater group.

CONCLUSION

Although the Authority affords every reasonable doubt to the place of worship, we have a situation here where there is presumably scheduled prayer service on only one day per week. In addition, there are concerts and plays held which seem to be out of the control of the Center. For these reasons, my position is that the Center does not operate "exclusively" as a place of worship as defined by the 200 Foot Rule and ABC Law Sec. 64(7)(d-1).

FOR MORE INFORMATION

- Baha'i Center (NYC) Homepage: <http://bahainyc.org/page/New-York-City-Bahai-Center.aspx>
- Children's Theater Company Homepage: <http://www.childrenstheatrecompany.org/>
- Baha'i Center Calendar: <http://bahainyc.org/page/New-York-City-Bahai-Calendar.aspx>

EXHIBIT 1:
(www.bahainyc.org/page/New-York-City-Bahai-Calendar.aspx)

Calendar

We invite you to explore the teachings of our beautiful Faith and to join us in creating a better world one heart, one family, one neighborhood at a time. From the Bronx to Brooklyn, Staten Island to Manhattan and Queens, Baha's are holding study circles, prayer meetings and programs for children and youth that are changing lives and responding to the social and spiritual needs of our fellow New Yorkers.

Learn about events in your neighborhood and discover more about us. We look forward to meeting you and welcoming you to local activities that explore and celebrate the oneness of humanity.

New York City Bahai Center Calendar

Today: **December 2012** Print Area Month: **April 2012**

Su Mo Tu We Th Fr Sa Su

Jan 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

Jan 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

Jan 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

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Jan 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

Jan 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

Jan 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

Event Start Time: 12:00 PM

Enter search term

SEARCH



EXHIBIT 2:
(<http://bahainyc.org/page/Activities.aspx>)

Activities



Baha'is believe social change starts with spirituality—individuals unlocking their soul's desire for service and working alongside others for the good of their neighborhoods and communities. Baha'i communities are a workshop open to all for hands-on learning about the process of spiritual community building. Specifically, we focus on the following activities:

“ *Prayer* ”

“ *Study Circles* ”

“ *Service Projects* ”

“ *Workshops* ”

Together, these activities in a neighbourhood drive a community building process that promotes a way of thinking, studying, and acting in which all people consider themselves as treading a common path of service – supporting one another and advancing together, respectful of the knowledge that each one possesses at any given moment. They contribute to the well-being of society as a whole, demonstrate optimism in the future of humanity, and reinforce the oneness and unity of the human family.

EXHIBIT 3:

(<http://www.meetup.com/AMBW-NYC/events/44069672/?action=detail&eventId=44069672>)

Every last Friday of the month, the Bah'ai Center at Union Square hosts a community event known as "The Urban Juke Joint" in which it invites musicians and spoken word artists from around the country to educate and inspire the community with their talent. ***THIS IS NOT A RELIGIOUS EVENT. IT'S JUST LIKE EVERY OTHER SPOKEN WORD EVENT, MINUS THE SWEARING.***

The event is **FREE** to both performers and audience members. If you wish to perform, contact them ahead of time, or come early to put your name on the list. The audience will start arriving after 8pm, most arriving closer to 9. But, it's a small space--so if you want to sit together (or at all), I recommend arriving early. There are also **FREE REFRESHMENTS**: bread, chips, cookies, fruit, tea, etc.

All subject matter is permitted, though generally tends towards politics/war, racism, consumerism, sexual violence, love, and family. The only restriction is there can be **NO SWEARING OR CURSING**. It is a family show and there are often small children present.

I suggest that we get together for **dinner beforehand**--say 6:30 at Vapiano's? The show usually goes on past midnight, but we could leave after the discussion at intermission, depending on how people feel.

EXHIBIT 4:
(<http://bahainyc.org/page/page/Jazz-Night.aspx>)

The John Birks Gillespie Auditorium, dedicated to the late jazz great Dizzy Gillespie, who was a Baha'i, is located within the New York City Baha'i Center. Beginning on January 6, 2004, the anniversary of Dizzy's death, his former pianist and musical director, Mike Longo, is presenting weekly jazz concerts every Tuesday evening at 8:00 and 9:30 PM.

You will literally be transformed by the thundering swinging sound of The New York State of the Art Jazz Ensemble. You won't want to miss their next performance on Tuesday, June 5 when acclaimed jazz and blues singer Dee Daniels joins the band with some new compositions and arrangements.

The NYSAJE will be featured on some Tuesday nights, and other major jazz artists such as Charlie Persip, Warren Chiasson, Chip White, Freddie Hendricks, Benny Powell, Annie Ross, Jimmy Owens, Daoud David Williams and many others will headline on other Tuesdays. Check the schedule below for the exciting lineup of upcoming shows.

Admission is \$15.00 per show, \$10.00 for students. Tickets will be sold at the door. Advance tickets may be purchased by credit card only by calling **212-222-5159**.

EXHIBIT 5:

(<http://www.childrenstheatrecompany.org/about-mission.htm>)

PROCESS, PROGRAM, PEDAGOGY, PRACTICE

Artistic Process

CTC exists to create, adapt and present professionally written musical theater works that explore socially relevant and challenging issues which face youth and children in a global community. CTC's process involves perceiving and interpreting the significance of current events in light of an appropriate historical perspective- and in parallel with Learning Standards in Social Studies and Language Arts Curriculum, finding an artistic expression of that perspective through a multi-disciplinary approach utilizing drama, dance, music and art. Forming a common vision of a desirable collaborative presentation based on shared values and principles, and articulating this in a way that inspires and challenges the work both artistically and intrinsically.

Program

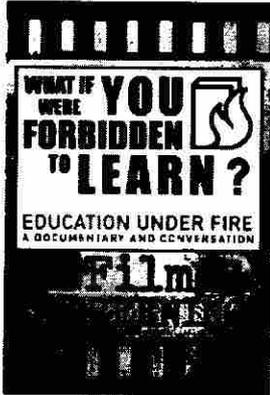
Four age groups (5-19 years old) participate in full theatrical productions produced and performed for the general public. Experiential learning through the incomparable magic of theatre allows each production team to develop a keen sense of citizenship alongside their artistic achievements. CTC promotes theater as a tool for active and analytical learning (rather than prescribed and passive). By exploring socially relevant and challenging issues which face a global community, a CTC theater residency allows children and youth to develop their interpersonal and critical thinking skills, while considering the world which they will someday inherit. CTC's process involves perceiving and interpreting the significance of current events in light of an appropriate historical perspective- and finding an artistic expression of that perspective.

THE MISSING LINK: Events, Educate and Schedule

CTC has successfully integrated its ethical education theater residencies with the State Learning Standards for Social Studies and Language Arts. Placing the SEVEN C's at the center of learning, CTC theater residencies are designed to fill the gap in academic education through: *Character building, Collaboration, Creativity, Community Service, Current Affairs, Critical thinking and Citizenship*. By combining CTC's unique musical-theater catalogue with a multi-disciplinary theater-arts program that includes a robust ethical education curriculum, a CTC residency creates a culture of inclusivity, learning, service and social action through arts.

EXHIBIT 6:

(<http://www.facebook.com/events/515515558477005/?ref=nf>)



EDUCATION UNDER FIRE - Special Film Screening & Information Session

Run by: Mark Bareford, Claudie Meredith, Goujen and Carl Murrell

Sunday, October 14, 2012 3:00pm until 5:00pm

Interested in learning more about the Education Under Fire national campaign? The Local Assembly is sponsoring a special screening of the film on Sunday October 14th at 3pm at the Baha'i Center. The screening is free and open to anyone who would like to attend.

Following the screening there will be an information session for anyone interested in possibly organizing their own screening or just learning more about the national campaign.

Free DVD's and other resources will be on hand including representati...

Going (23)



Maybe (12)



Invited (360)

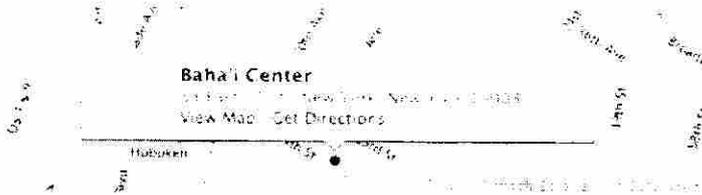


EXHIBIT 6 (CONTINUED)

(<http://www.pbs.org/independentlens/getinvolved/cinema/?past=true&city=52&film=&month>)



Screening Schedule

ITVS, the co-presenter of *Independent Lens*, presents Community Cinema, a free monthly screening series, offered in over 90 cities throughout the U.S.

Previews of *Independent Lens* films are shown from September to May, followed by lively panel discussions that connect communities with relevant organizations, resources, and opportunities to get involved in some of today's key social issues.

Community Cinema 2012-2013

Screenings take place from two weeks to two months prior to the national television broadcast. Event listings are updated throughout the *Independent Lens* season. Choose from the menus below to find screenings by film, city, and month.

- Show all Films

: [SEE CURRENT EVENTS](#)

- New York, NY

- Show all Months

[Reset search](#)

April 23, 2008

A DREAM IN DOUBT

New York, New York

Wednesday, April 23, 2008 at 4:30 PM

New York Baha'i Center

53 East 11th St.

[Event website](#)

[Request more info](#)