

SUSPENSION



ERIE COUNTY LEGISLATURE

92 Franklin Street - 4th Floor
Buffalo, New York 14202

TO: Members of the Erie County Legislature

FROM: Karen M. McCarthy, Clerk

DATE: February 3, 2016

SUBJECT Documents Received Regarding Imposing an Earlier Closing Time for Bars

The attached comments were submitted for consideration on imposing an earlier closing time for bars in Erie County.

Thank you.

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Richard L. Taczowski, M.U.P
Community Concepts
Regional Land Planning-Public Policy Analysis
Downtown Buffalo-Upstate New York

January 31, 2016

Erie County Legislature
Honorable John Mills, Chairman
Erie County Hall, 4th Floor
92 Franklin St.
Buffalo, NY 14202

Via email

Re: 2am bar closing proposal; Drinking establishments in county; Flawed process for airing issue

Dear Chairman Mills and Honorable Legislators:

I am choosing to take the time to *write* rather than *speak out* on the 2AM bar closing issue, despite, as some would have us believe, “having a voice” and “being heard” in the halls of government, i.e. Sounding-off before an array of cameras and microphones, is now elevated above every other means of communicating with one’s elected representatives. Although the 1st Amendment right “to petition the Government for a redress of grievances” and the era it was ensconced in the Constitution suggests well-considered *written* submissions, our 24/7 news-cycle and social media-driven, noisy and contentious world practically ensures that the loudest, most aggressive voices are given more weight than those of the thoughtful, though increasingly less silent, majority. Witness this year’s presidential campaigns.

On the closing issue, Buffalo has indeed been called “A Drinking Town with a Sports Problem.” It is true that after major games and concerts, downtown becomes the dumpster and latrine of the region, but if one only reads city alternative weekly papers, one would think the earlier closing would affect - for good or ill - only downtown live venues, particularly those on the Chippewa and Allen strips. While the city holds the majority of breweries, distilleries, sports bistros, gastro pubs, night clubs, bowling lounges, wine bars, beer tents, dance halls, and other self-styled “fine dining restaurants” with “liquor programs” and “hand-crafted cocktails,” in the case of this closing-time debate, only those few citizens from the far flung corners of the county who are willing to trek downtown, find and pay for parking, and go through metal detectors at County Hall, will get to have their voices heard in the grand chamber.

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Those legislators who somewhat self-righteously claim to defend the right of people to be *heard* in a non-mandated public hearing must not believe that *they* were elected to be the voice of their constituents. Apparently, communicating with one's representative via U.S. mail, hand delivery, telephone, fax, email, office visits, community/town hall meetings, or impromptu conversations in the grocery store or barbershop, and now, on social media, do not afford sufficient "voice." One must storm County Hall, or be unheard, in their view. But the Legislature is elected to make decisions for the benefit of nearly one-million residents. Why should the views of a handful (or even a few dozen) of the most *vocal* and mobile residents skew or distort our understanding of the general public will or common good, whatever that may be, simply because they are in the room with the lawmakers? If the Legislators are going to hold non-binding, non-mandated "Listen-Ins," let them host those forums in each of their districts. This would be more democratic and more likely to reflect the true diversity of opinion on the issue than would one meeting downtown. While *public hearings* are sometimes required and desired, if the present body cannot collectively and effectively convey the wishes of their constituents on issues such as the current one, perhaps it is time to revisit a board of supervisors, possessing of a weighted vote. Theoretically, that arrangement would ensure that a broader cross-section of smaller geographic and demographic interests and more *voices* would be represented in every legislative session.

In the meantime, can we please improve the process for researching, analyzing, recommending and enacting county-wide public policy? Perhaps the call for public comment is partly due to the proponents of measure not having adequately responded to those county residents who did attempt to get answers through, what were once considered, customary means. When Legislator Morton rolled out his proposal during last year's campaign season, I called his office with questions, and was assured by his staff member that Mr. Morton would be phoning me the next day. As of the date of this letter, I have yet to hear from him. Late last year, I placed a call to the County Clerk's office and spoke with a deputy county clerk, who was unable to provide some basic information on the issue. I did as much to try to educate myself on one particular item as should reasonably be expected of a citizen.

Not having time to personally research all issues, I simply wanted to ask Mr. Morton (and did ask the deputy clerk) the closing times in other counties and whether towns (which, in the case of Alfred, once declared itself alcohol-free) could instead enact a closing time earlier than the county's. (If this were permissible, municipalities, not wishing drinkers from neighboring counties and dry territories coming in on wide-open rural roads at 2AM, could opt for an earlier closing time than the city, with its 30 MPH speed limits). I also wanted to ask why a 3AM compromise was apparently never been put forward, and when the last time closing was at 2AM. I never got answers to my basic, neutral questions. If this lack of responsiveness can happen to a person who understands government and public policy, how many more questions and concerns, now needing

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to be *listened to* in a public comment session, have been ignored and bottled up in people due to poor a process for constituent service and communication on the part of some officials?

My parents owned a tavern/family restaurant/small residential hotel in the Southtowns much before and while I was on the village and town boards in the 1990s. I recall that the closing time was extended from 3AM to 4PM, with a half hour grace period, sometime in the early-mid 1970s. I think one would have to go back a half a century or more to find a 2AM closing time in the county.

If the issue is excessive drinking and alcoholism in Erie County (there is evidence for that claim) shouldn't there be a comprehensive multi-disciplinary, multi-agency, cross-county approach to this problem, instead of expecting a closing time to be the panacea for what ails the community? We had a fancy term at UB's Department of Urban and Regional Planning: *Disjointed Incrementalism*. I see the closing issue and other policy-making attempts falling victim to that kind of thinking.

The opinions of small drinking establishments on the fringes of the county should be taken into consideration. I recall that our family business dwindled due to the raising of the drinking age to 21; increased DWI enforcement; Dram Shop liability laws; smoking bans, health and building codes and other regulations and taxes. Purchased by my Great Depression- surviving immigrant grandparents in 1945, we auctioned off the historic railroad-era inn built at the turn of the last century for pennies on the dollar during the Great Recession of 2007-08. I say this not out of any bitterness, but to illustrate the effects policy and economic decisions at all levels have on family farms and small businesses throughout the county.

Increasingly, only establishments with high volumes, prime locations, and major investments to create "destinations" can survive today. While there were five or six taverns (more earlier, most serving food) when I was growing up in my small village, there is one now. In the town outside the village, there were five taverns, some with rooms or apartments. There is only one today. The closing of isolated country inns and pubs, once served by railroads and stage coaches, is to be expected. However, unable to reinvent their model, their closures are indicators of general economic decline and dearth of "third places" of social interaction that trained urban and regional planners like me, and anyone with basic sense, see as signs of life in a community.

Until I see answers to the questions I asked the two officials and in this letter, I'm not sure how I stand. One size doesn't fit all municipalities of the county, but if a 3AM compromise would get us past all the showboating that has gone on to date, maybe that's the lesser of the evils here. What this constituent does want to see is an approach to public policy that is orderly, data-driven, inclusive and transparent. In my view, the process we've been witnessing, for months now, has been unprofessional and a disservice to the taxpayers and residents of Erie County.

Respectfully yours, *Richard L. Taczkowski*

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McCarthy, Karen

From: Brenden · [=l.com>](#)
Sent: Wednesday, January 27, 2016 1:27 AM
To: Miller-Williams, Barbara; Grant, Betty; Savage, Peter; Hardwick, Hon. Kevin; Loughran, Thomas; Rath, Hon. Edward; Burke, Hon. Patrick; Morton, Hon. Ted; Dixon, Hon. Lynne; Lorigo, Joseph; Mills, Hon. John; McCarthy, Karen
Subject: Upcoming Legislation

Dear Legislators,

I am choosing to write this email because I will not be able to attend next Tuesday's upcoming public forum regarding the issue of moving bar closing times in the county to 2am.

I am absolutely against changing the closing time of bars to 2am.

I am a 29 year old lifelong resident of Buffalo, and an active customer at many local establishments that stay open until 4am. I live in the city, and have never been arrested, let alone for a DWI or drinking related incident.

I have spent the last 13 years working hard in WNY Kitchens as a cook, chef, and now small business owner. I personally, as well as many former coworkers, and current employees, work long hours that often end between 12 and 1am. I do not have the option of simply going out earlier. Because of buffalos close nature, I would estimate that 25% of patrons at bars past 2am are employed in service industries. To cut us off would be a devastating blow to the businesses that we frequent during these hours. It would also be an infringement on my right to enjoy what tens of thousands of Buffalonians enjoy weekly; a cold drink after work with friends.

As a small business owner, my mobile food truck, The Whole Hog, made it through its first 3 winters almost solely by relying on sales from weekend vending on Allen St. Hours of operation were 11-4, and at least half of my sales came from 3:30-4.

The problems that arise from someone drinking too much, will always be due to their personal inability to control themselves.

Placing an unnecessary restriction will not alleviate these problems.

At a time when buffalo is experiencing a type of growth we haven't seen in decades, now is not the time to start cutting into the sales and rights of businesses that are driving this Renaissance.

Thank you,

Brenden Haggerty

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McCarthy, Karen

From: A. G. Smythe <ag@buffalo.gov>
Sent: Monday, February 01, 2016 8:31 PM
To: McCarthy, Karen
Subject: 4 AM close

Hello Ms McCarthy

Subject- Potential Change in Closing Time Thanks for taking the time to speak with me today. Below are my thoughts on the subject issue.

Erie County and the City of Buffalo have observed a well deserved, strong, and widely envied resurgence over several years. Money, legislator insight and benign developer input are some reasons for the resurgence and the welcome change in the City and County. However, legislators and the public must be sure any proposed change generally benefits all, and will not undermine the resurgence.

It is my opinion a change in the existing closing time (4 AM) after which establishments (pubs, bars, restaurants etc.) can serve drinks

(alcohol) will negatively impact the resurgence. I propose any legislation to change the 4 AM close be voted down.

Rationale:

- 1 The legal closing-time for decades (pre the resurgence, and for at least one since its initiation) is 4 AM, the timing has served us well, and it attracts more people to certain (old and resurging) areas after sports, theater events etc.;
- 2 However, close-time prior to 4 AM is common for many establishments since it meets their business interests and appropriate to their target clientele;
- 3 New York City is cosmopolitan, sophisticated, and attracts tourists and business, its legal close time is also 4 AM, but a la item 2, their establishments close earlier if it meets their business plan (similar in other resurging cities, e.g., New Orleans);
- 4 The Erie County 4 AM close time has worked for decades, Buffalo strives to be cosmopolitan like NYC, a jewel in NYS, and wants more tourism and business, so it makes no sense to risk the county/city resurgence-image and change the 4 AM close;
- 5 It is suspected the push to change the 4 AM close time is driven by a few self-serving developers and others intent only on improving their own profits, not the future of the city;
- 6 They blame the need for a time-change on red-herrings-issues such as noise and drunk driving;
- 7 However, regardless of being red-herrings, enforcing existing laws would fully ameliorate such issues, even if they existed, and most proprietors take steps to eliminate problems.

Garry Smythe

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McCarthy, Karen

From: Judi Phillips · _____
Sent: Tuesday, February 02, 2016 9:52 AM
To: McCarthy, Karen
Subject: Change

The bar closing time of 2am is very partial for the safety of us who are travelling the streets enroute to work on Saturday and Sunday at 4-5am.

I've seen my share of erratic drivers (presumably drunk) while driving to work. It's somewhat of a "danger time" for us.

Thank you for your time in reading this perspective.

Regards,
Judith Phillips

Sent from my T-Mobile 4G LTE Device

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TIMOTHY B. HOWARD
SHERIFF

MARK N. WIPPERMAN
UNDERSHERIFF



SHERIFF OF ERIE COUNTY

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February 2, 2016

The Honorable
Erie County Legislature
92 Franklin Street
Buffalo, New York 14202

Honorable Members:

I have long taken the stance for personal responsibility and fewer government restrictions on businesses and I am advocating discretion from this body when considering changing the closing time from 4 a.m. to 2 a.m. and I believe this issue is in its proper and final place - a public hearing.

I commend County Clerk Chris Jacobs and his passion for this issue and I respect Legislator Morton for introducing the resolution as well as everyone's efforts to generate a community discussion. However, when this discussion started, it revolved around a quality of life issue and a movement to enhance Buffalo's image, now it has grown into a public safety issue and with that, I offer DWI statistics and my personal philosophy to this body.

I have nearly fifty years of law enforcement experience and have witnessed numerous alcohol-related incidents and when this issue came to light, I was presented stats that now contradict the belief that an earlier closing time would reduce the number of DWI incidents. Over the past three years, data collected from the Sheriff's Office and other law enforcement agencies demonstrate high occurrences of DWI arrests during and shortly after the traditional "Happy Hour" time period and later during the hours of Midnight to 2 a.m.

Some people asked why I would not be supportive of a measure that would reduce DWI incidents and increase public safety and I offered a statistical rebuttal.

My Deputies made 239 DWI arrests in 2015 – 48 during the three hours following "happy hour", 51 during the three hours after 2 a.m., and 21 arrests after 4 a.m., with the highest number of

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arrests, 87, occurring between Midnight and 2 a.m.; these stats do not support the closing time proponents' theories.

If the goal is to reduce the number of alcohol-related incidents and arrests by restricting bar hours then the stats indicate this measure will have a limited effect on the number of DWI incidents after 2 a.m., therefore, I would offer a theory that an earlier closing time would only change the time period in which after-hour DWI arrests would occur.

I strongly believe the most effective way to change a community standard is with increased public awareness, law enforcement resources and offer fewer leniencies for those convicted of DWI offenses.

Also, I do not believe that this business restriction will ultimately change one's behavior or level of self-responsibility. Rather, the continued awareness and enforcement steps I spoke of will prove to be leading factors in changing the community's behavior and attitudes. In addition to those measures, we can achieve a greater reduction in DWI arrests by mandating interlock device installation for all DWI offenders and less lenient sentences for DWI convictions.

I am aware the New York State Troopers PBA and my own office's PBA have publicly supported this proposal and we do share the philosophy of making our streets safer during all times of the day, however, we differ on the method to achieve this goal. The reality is that an earlier closing time will not restrict an individual's access to alcohol or deter whether intoxicated individuals will drive, but increased police presence, additional resources for enforcement and continued public awareness will change community standards.

I have spoken to bar owners and asked how their staff is trained in identifying and dealing with patrons who appear intoxicated and their responses were encouraging. It appears bar owners and management are empowering staff to stop serving individuals who appear intoxicated and to facilitate a safe ride home for the individual. Universally, these actions would have a greater effect in reducing DWI incidents; not the closing time of bars.

My office practices a zero tolerance policy for DWIs and has a public awareness unit that collaborates with our community partners. Together we work tirelessly in raising public awareness of the dangers and consequences of driving while impaired and I encourage this body to increase their support of these initiatives and efforts to produce lasting measures in battling intoxicated drivers.

Very truly yours,



TIMOTHY B. HOWARD
SHERIFF OF ERIE COUNTY