

**SFGate**.com

## State goes after legendary all-ages music clubs

Marisa Lagos, Chronicle Staff Writer

Saturday, April 11, 2009



A teenager's first concert is a rite of passage of sorts, and in San Francisco, that rite often is undertaken at one of the city's inexpensive, small, all-ages music clubs - a type of business that owners warn might not survive much longer because of new enforcement efforts by state alcohol officials.

Bay Area natives probably can recall their first show at the Fillmore, one of San Francisco's most famous music halls and the site of performances that span generations of music - from Jimi Hendrix to The Roots. These days, music fans might go to Potrero Hill's Bottom of the Hill club, the Tenderloin's Great American Music Hall or Cafe du Nord in the Castro.

Those venues could be forced to close, owners say, if the state Department of Alcoholic Beverage Control, better known as ABC, continues to impose rules that club attorneys argue are legally questionable and often unrelated to booze or safety issues.

Some of the clubs say they only recently learned about the new rules, which are not written into state law and haven't been enforced in the past.

For example, ABC has decreed that at least half of the clubs' revenue must come from food sales. The agency also is taking issue with minor operating changes, such as one club's decision to open an hour later.

In almost every case, the San Francisco clubs who have been battling ABC have the support of neighbors and local leaders.

ABC officials, meanwhile, won't comment on most pending cases but insist that they are not overstepping their authority. A spokesman said the agency is taking appropriate action to protect the public.



Yet the ABC rules have some in the industry worried about where local bands will get their first break and where young people will go to experience live music if the clubs cease to exist.

"Without these businesses, there's no local music scene - it's that simple," said Jordan Kurland, co-owner of San Francisco's Noise Pop music festival. "It's such a special experience when you are young to see a band you love in an intimate place ... where they are able to charge a more reasonable ticket price. These small-capacity venues are very generous about paying bands, and, like any club in the world, they predominantly make their money off the bar, not off ticket sales."

### **Not an eating place**

All of the clubs fighting the ABC - Bottom of the Hill, Slim's, Cafe Du Nord and Great American Music Hall - are licensed to operate as all-ages venues because they serve food. Historically, however, they have made most of their income from alcohol and ticket sales.

According to state law, businesses with that type of license must regularly serve meals - but the code makes no mention of a minimum sales requirement. Still, some clubs have conditions set on their license by the ABC, such as a requirement that food sales exceed alcohol sales.

But that wasn't the case at the Great American Music Hall, a storied 38-year-old venue where the Grateful Dead recorded "One From the Vault." There were no conditions on the permit, which was last issued six years ago when the ownership changed, but the venue is being targeted by the ABC anyway.

ABC spokesman John Carr said the scrutiny has come because the club has "had a substantial change to its operation from that represented in their license application." He said the agency determined that the legendary venue is not operating as a "bona fide public eating place."

"Instead, they have altered the character of their business and are operating more like a club," he wrote in an e-mail to The Chronicle.



Carr said a change matters because any ABC license - and public input on it - is based on a club's business plan.

Club owners and their lawyers counter that the "business plan" the ABC is referring to is a state form filled out before a license is issued and that the form requires only that the agency be notified if the physical premises change.

Dawn Holliday, who owns a small stake of Slim's and the Music Hall and manages both venues, vehemently disagreed with Carr's assertion that the business has changed.

If anything, she said, the Music Hall might serve more meals now than it did in years past. But it has always been a music club, Holliday said.

"The Great American Music Hall hasn't changed since 1971 - I know because I've been going there since then," Holliday said. "I want to sell food, and not just because we're dictated to do it. I don't think bands should play without eating ... (but) it's not a majority of our income."

Bottom of the Hill also has come under fire for the minimum food requirement, though in that case it was a condition of the license.

"Thirty or 35 percent of our sales come from food on our best days," said Tim Benetti, co-owner of Bottom of the Hill, which has been around for 18 years. "If ABC gets what they want, we will go out of business. Can you imagine San Francisco without Slim's, Bottom of the Hill or Cafe Du Nord? I can't."

Carr said Bottom of the Hill's license has required the club's alcohol sales to be less than its food sales since 2001, when the ownership changed slightly and it had to reapply for a liquor license. Benetti acknowledged that the club agreed to the condition but said the owners felt pressured. The company immediately afterward hired a lawyer to challenge the agency's authority to set such a requirement.

Carr said generally the agency imposes conditions in response to community complaints or adds them after a "disciplinary process."



## **Authority questioned**

John Hinman, the attorney representing Cafe Du Nord, said his club was chastised by the ABC for opening to the public at 7 p.m. instead of 5 p.m., the hour owners put on their application form more than 15 years ago.

The owners explained that they open at 5 to feed the bands, Hinman said, but the ABC still challenged their state liquor license. The agency also demanded that the club start selling at least as much food as alcohol, he said, even though that condition was never on the license.

The case was dismissed by an ABC judge, but Hinman said he expects the agency to refile the complaint. He argued that there is no statutory basis for the rules, which he contends are being made up by the ABC without any communication to club owners.

"I don't know if we're supposed to call the Dionne Warwick psychic hot line or what," added Holliday.

The fight has caught the attention of neighbors, the music industry and elected officials, including San Francisco Supervisor Sophie Maxwell and state Sen. Mark Leno, who in February sent a letter to the attorney general's office asking for a legal opinion on the ABC's authority. The office this week declined to weigh in, Leno said, because some of the matters are still in litigation with the ABC.

Leno said he will meet with ABC officials on Monday to express his concerns. He noted that tourism is one of the city's biggest job generators and said he hasn't heard of similar restrictions in other cities.

"I believe the ABC has a job to do - of course enforcing the current law and protecting public safety, but also protecting the well-being of businesses," he said. "In San Francisco, we're doing very well at working out our differences locally, and when you have this outside force that has the power to issue and revoke license and put small businesses out of business, I take it very seriously."

Some San Franciscans, including Maxwell and Bottom of the Hill neighbor Kepa Askenasy, said they are baffled by the attention since the clubs in question have always had good



reputations locally. Maxwell said she has received no complaints about Bottom of the Hill and noted that it is seen as a family venue.

"It's part of our culture," Askenasy said.

E-mail Marisa Lagos at [mlagos@sfgate.com](mailto:mlagos@sfgate.com).

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/04/11/MNK217038L.DTL>

*This article appeared on page A - 1 of the San Francisco Chronicle*