

**Independent Review Panel of Building Safety  
Enforcement Powers**

**Final Report**

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## Independent Review Panel of Building Safety Enforcement Powers

### I. INTRODUCTION

In the early morning hours of February 17, 2003, a tragedy occurred at the E2 nightclub (“E2 Club”), located on the second floor of the building at 2347 South Michigan Avenue in the City of Chicago, when 21 people died during a stampede following a disturbance in the nightclub. Our community was shocked by the massive loss of life. In July 2002, more than six months before the tragedy, the City, acting through its Corporation Counsel, had obtained a “mandatory order not to occupy” the second floor at 2347 South Michigan Avenue from the Circuit Court of Cook County. Subsequent reports and anecdotal information disclosed that the E2 Club had been routinely operating for months after the entry of the July 2002 Order.

In response to the E2 tragedy, Mayor Richard M. Daley appointed this Panel to review the City of Chicago’s existing building code and safety enforcement policies and procedures and to make recommendations to improve those policies and procedures in order to protect public safety.

It should be noted that this Panel was not appointed to conduct an investigation into the details of the E2 Club tragedy, nor has it done so. The Chicago Police Department’s lengthy and detailed investigation of the E2 tragedy has been shared with the Cook County State’s Attorney Office, which is currently conducting a criminal grand jury investigation. Additionally, numerous civil lawsuits have been filed through which additional detailed review of the events of that morning is being conducted. This Panel’s work has

focused on the City's building code and safety enforcement policies and procedures. In particular, the Panel focused on those policies and procedures with respect to large public facilities, such as nightclubs, taverns, concert halls and theaters. Such facilities are referred to in the Building Code as Large Assembly Units, which typically are licensed as Public Places of Amusement (PPA's). We believe that recommendations for change will have the greatest impact on these facilities. The Panel did not consider residential buildings in general or the recent porch collapse in Lincoln Park in particular.

The City's building and safety regulatory scheme is complex, involving numerous ordinances and multiple City agencies. In certain respects, such as the initial business licensing process and the enforcement of the food safety regulations by the Public Health Department, the procedures appear to be operating effectively. However, gaps do exist in enforcement policies and procedures regarding building codes and safety for existing businesses and in particular PPA's. Prioritization in work and case loads, stronger coordination and communication between responsible agencies, and more clearly defined responsibility in regards to the handling of high-risk facilities will improve the City's effectiveness. We believe the recommendations we are making will enable the City to close gaps in its enforcement efforts and to identify and quickly address problems with high-risk facilities.

## II. PANEL MEMBERS AND ACTIVITIES

Our Panel consisted of five members: Co-Chairs, Andrea L. Zopp, Senior Vice President, General Counsel, Sears (former First Assistant State's Attorney Cook County State's Attorney Office) and Honorable William

Cousins, Jr., Retired Illinois Appellate Court Justice, and attorneys Vincent Connelly, Cynthia Giacchetti and Lawrence Oliver II. Attorneys Frank M. Adams and Erick Harris have ably and substantially assisted the Panel in its work. The Panel also appreciates the very helpful work performed by law student Cristina Lane.

Recognizing that there is significant public interest and concern about building code and safety enforcement and that we are dealing with issues of public safety, the Panel has attempted to work efficiently and with reasonable speed to gather information and develop recommendations. We have met weekly since the first week of March, shortly after our appointment.

The Panel met with representatives from all City agencies involved with building code and safety enforcement policies and procedures, including the Corporation Counsel's Office, the Department of Buildings, the Police Department, the Fire Department, the Public Health Department, the Liquor License Commission, Department of Business and Information Services, the Office of Emergency Management and Communications, the Department of Revenue and Alderman Bernard Stone, Chair of the Chicago City Council's Building Committee. The Clerk of the Circuit Court of Cook County also met with the Panel. Additionally, the Panel spoke to two outside consultants, one of whom specializes in safety and crowd control while the other's specialty is code enforcement. The Panel spoke to officials responsible for building code and safety enforcement in Los Angeles and New York City and spoke to four representatives from the business community, who own or operate PPA's or

represent PPA owners and operators. The names and titles of those who appeared before the Panel are set out in Appendix A.

In addition to interviews, several Panel members toured the building at 2347 South Michigan Avenue. Also, the Panel reviewed numerous documents, including relevant provisions of the City's Building Code and provisions of the National Model Building Code. The Panel also reviewed relevant portions of municipal ordinances dealing with liquor and business licenses. (Appendix B.) The Panel reviewed transcripts and court orders entered in the building code violation case pending against the owners of the building located at 2347 South Michigan Avenue, City of Chicago v. Lesly Motors, Inc., No. 02 M1 402899 (Appendix C), as well as reports of inspections at 2347 South Michigan Avenue by the Building, Police, and Fire Departments (Appendix D).

### III. OBSERVATIONS

In our review of the City's building code and safety enforcement procedures, the Panel examined all aspects of the process from initial business/liquor license application and renewals to inspections and the handling of violations. We reviewed the functions of the various agencies involved in the City's enforcement scheme. We examined communications and the flow of information between the various entities involved in the enforcement process and also between those entities and the business and consuming public. We looked for shortcomings in the effectiveness of the current processes and procedures and in execution of those processes and procedures by the various entities involved. While we considered the City's building code and safety enforcement policies and procedures generally, our focus was on those

buildings and businesses which are classified under the Building Code as Large Assembly Units and have Public Place of Amusement (or PPA) business licenses. These are buildings and businesses such as assembly halls, banquet halls, nightclubs, restaurants and theaters that have an occupancy of more than 300 persons. Our review generated observations about the City's building code and safety enforcement policies and procedures and about specific enforcement issues involving the E2 Club and the building at 2347 South Michigan Avenue that are set out below.

#### A. Description of 2347 South Michigan Avenue

As noted, the Panel used the premises at 2347 South Michigan Avenue as a starting point for identifying issues in the City's building code and safety enforcement policies and procedures. A brief description of the premises is set out here.

##### 1. The E2 Ground Floor Entrances and Exits

The primary entrance and exit of the E2 nightclub is on Michigan Avenue and is located South of the entrance to the Epite Restaurant. Upon entering the E2 nightclub's Michigan Avenue entrance, there is a stairway leading to the Second Floor. Immediately to the North of the Michigan Avenue entrance to E2 and west of the stairway, is a doorway on the South wall of the Epite restaurant.

## 2. Stairways Dividing the Ground Floor and Second Floor

Three stairways lead from the ground floor of E2 to the second floor where the assembly area is located: (i) the stairway accessible from the Michigan Avenue entrance; and (ii) the two stairways leading from the rear (Easternmost portion) of the second floor area of E2 to the ground floor.

## 3. The Second Floor and the V.I.P. Boxes

At the top of the stairway connecting the Michigan Avenue ground floor entrance to E2 to the second floor is one doorway leading to a small corridor which, in turn, leads to the assembly area of E2. Prior to reaching the doorway, at the top of the stairs and to the left of the stairway landing to the second floor is a ticket booth. Significantly, the stairway connecting the second floor of E2 with the Michigan Avenue entrance is the only stairway leading to and from that entrance/exit of E2.

There are two exit signs identifying the Michigan Avenue stairway. First, within the second floor corridor dividing the door leading to the stairway that leads to the ground floor's Michigan Avenue entrance, on the South Wall is an exit sign that faces the door leading from the assembly area into the corridor. Likewise, there is an exit sign above the doorway within the assembly area that leads to the corridor leading to the staircase.

With respect to the location of the exit sign identifying the exits leading to the rear staircases of the assembly area, there is one exit sign hanging from the ceiling facing the assembly area. This exit sign has arrows

on both sides directing viewers to the stairways leading to the ground floor and the two rear Easternmost exists.

Also on the second floor are two additional stairways – adjacent to the stairways leading to the ground floor – leading upward to the “V.I.P.” sections of the nightclub. These sections are elevated and located on the South and North sides of the assembly area and can only be accessed from the stairways at the front and rear of the nightclub. There is no stairway leading from the VIP boxes to the ground floor exit. In other words, to leave the V.I.P. area, an individual has to first descend to the assembly area, and from the assembly area walk to one of the stairways which lead to the ground floor of E2.

#### B. The Licensing and Renewal Process

The City’s initial business license review process is extensive and thorough and involves numerous agencies. An application for a business license must be approved by the Department of Buildings, which reviews the building plans and conducts inspections of the electrical, and ventilation systems and the physical layout before issuing a certificate of occupancy. A license application must also be approved by the Department of Public Health and the Chicago Fire Department. The Chicago Police Department conducts a criminal background check on any individual who has at least a five percent ownership interest in the business. If the business intends to serve or sell alcohol the application must also be approved by the Liquor License Commission.

Any commercial business serving the public in the City must be licensed. The types of licenses required will be determined by the nature of the business. The owner of the businesses operating at 2347 South Michigan Avenue, which was an entity identified as La or Le Mirage, Studio, Ltd., held a Public Place of Amusement license, a retail establishment license, a tavern license and a late-hour liquor license. (Appendix E.) Currently, promoters such as the group who put on the event held at E2 on February 16-17, 2003 are not required to be licensed.

Business licenses are renewed annually and liquor licenses are renewed semi-annually. The license renewal process does not involve any review of a business' compliance with building code or safety regulations and is simply a mechanism to ensure payment of all required fees and taxes. If the licensee has paid all due City fees and State and City taxes, then the license will be renewed. If fees or taxes are outstanding, then a hold is placed on the license until those fees are paid.

As part of the license renewal process, licensees are required to confirm that "there have been no material changes to the licensed premises since issuance of the current license except those changes approved by the local Liquor Control Commissioner." (Appendix F.) Licensees are not required to make any confirmations regarding successful completion of required annual building inspections. Renewal applicants must also reaffirm their original license application. Penalty for a material misstatement or omission can be either license non-renewal or suspension. The liquor license renewal process is largely pro forma and is not currently

used in any meaningful way as an affirmative tool to assist in building code and safety enforcement. However, the renewal process offers an opportunity to enhance enforcement in these important areas.

### C. Building Code and Safety Enforcement Policies and Procedures

#### 1. Inspections

Under the City's building code and safety enforcement scheme set out in the municipal ordinances, several agencies have authority to conduct inspections of businesses operating in the City. Certain types of buildings and businesses are required to be inspected at regular intervals. The Building Code requires, for example, that the Fire Commissioner or the Commissioner of the Department of Buildings make annual inspections in all theaters, churches, schools, and public assembly units. Section 113-20-020. (Appendix B.) The Municipal Ordinance also requires that the Department of Health inspect "all food establishments at least once every six months." Section 7-42-010. (Appendix B.)

Primary responsibility for conducting building code inspections has been assumed by the Department of Buildings. Annual building inspections are handled by the Conservation Bureau of the Department of Buildings. The Conservation Bureau is further sub-divided into sections focusing on residential or occupied, public place of amusement and institutions. The Public Place of Amusement Section in the Conservation Bureau focuses on buildings that have an occupancy of 100 or more persons. The Section has one chief and two inspectors to cover the approximately 6,000 buildings in the City with occupancy of 100 or more persons.

The Conservation Bureau also conducts inspections based on complaints which come in from a variety of sources, including other agencies and citizens. These complaints are compiled into a daily list, reviewed by a supervisor and graded from minor-to-severe.

The Building Department inspectors conduct inspections only during regular daytime business hours and do no nighttime or weekend inspections. At times, particularly with businesses such as nightclubs and other facilities that are only open in the evening, inspectors often are unable to gain access to the facility to conduct annual inspections. There does not currently appear to be any penalty or cost to a business owner or licensee for failure to successfully complete an annual building inspection. In the ten years between 1993 and 2002, for example, the inspection history at 2347 South Michigan Avenue disclosed that in three of the ten years no entry to the building was obtained and no inspections occurred. In three of the years, entry was obtained to both floors of the facility and a full inspection was undertaken; and in three of the years, entry was obtained only to the second floor and the first floor was not inspected. (Appendix D.)

The Bureau of Fire Prevention within the Chicago Fire Department also conducts inspections of buildings and businesses for fire code enforcement. The Fire Department inspectors conduct inspections during daytime, evening and weekend hours. Fire Inspectors, while not primarily focusing on building code violations, will refer potential violations to the Building Department. Last year, the Fire Department referred 700 violations

to the Building Department. There are over 600,000 buildings that fall within Fire Department's coverage including industrial buildings, public places of amusement, institutions, daycare facilities, jails, and high rises.

During 2002, the Fire Prevention Bureau conducted inspections at 2347 South Michigan Avenue on January 25th, April 19th, May 17th, August 9th, and October 4th. All of those inspections were conducted between the hours of 4:00 pm and midnight. No violation notices were written during any of the inspections and the inspectors noted at each inspection that there was no indication that the second floor was open for business.

The Chicago Department of Public Health also conducts regular inspections of businesses serving and selling food. The Department of Public Health focuses on food safety and looks at staff hygiene, equipment, product temperature, food handling practices, pest control and building violations as they relate to food safety. The Department of Public Health has 54 sanitarians and 8 supervisors who conduct inspections. They conduct approximately 15,000 inspections annually. The Department of Public Health schedules inspections by appointment for facilities that are not open during normal business hours.

## 2. Violation Enforcement

The three agencies that conduct building code and safety enforcement inspections handle violations in similar ways. All three rank violations from minor-to-serious-to-critical. Minor and serious violations are typically

handled administratively with the issuance of citations. In the case of critical violations which involve imminent or serious threat to health or safety, the Health Department and the Bureau of Fire Prevention will close facilities until the issue is addressed. Under the Building Code, the Commissioner of Buildings, the President of the Board of Health, the Fire Commissioner and the Superintendent of Police have the authority to close any building where there is a violation of the Building Code which "imperils life, safety or health." Section 1 (13-12-120). (Appendix B.) The Building Department has taken emergency action in the case of abandoned buildings or structurally damaged buildings. In the case of businesses with serious Building Code violations, those matters are typically referred to the Corporation Counsel's Office for court action.

Building code violations identified by the Building Inspectors and the Fire Prevention Inspectors are handled by the Corporation Counsel's Office, Building and Land Use Litigation Division. The Division has 35 lawyers and 3 supervisors in addition to the head of the unit and is divided into four sections: Liens, Demolition, Zoning, and Conservation. The latter section handles Building Code violations. The Conservation Unit obtains about 7,000 court orders related to buildings per year. About 500 of those are vacate or "do not occupy" orders and the majority of those relate to residential properties.

When vacate orders are obtained, the Corporation Counsel's Office gives a copy of the order to the Building Department representative assigned to the matter, who may or may not be the inspector who conducted the

inspection. The Corporation Counsel also keeps a copy for his or her records. The Corporation Counsel's Office does not participate in the enforcement of vacate and no-occupancy orders. The focus of the Assistant Corporation Counsels who handle these cases is representing the agencies in court. The attorneys do not currently prioritize their handling of matters based on the severity of the violations.

After receiving a copy of a vacate or no-occupancy order, the Department of Buildings' representative takes the order and enters it into the Department's internal computer system. In the case of residential buildings that need to be vacated, the Building Department will be involved in the execution of the order. For commercial properties, the Department of Buildings' enforcement efforts typically rely on inspections to ensure compliance. Neither the Department of Buildings nor the Corporation Counsel's Office has any organized or systematic approach to enforcement or publication of orders not-to-occupy.

In the case involving the building at 2347 South Michigan Avenue, a court hearing on the filed complaint was held in City of Chicago v. Lesly Motors, Inc., No. 02 M1 402899, on July 19, 2002. The complaint, which was first filed on June 18, 2002, arose from an inspection on April 2, 2002 and alleged 11 separate violations of the Building Code. (Appendix C.) The most serious violations involved structural issues with roof trusses in the building and the construction of "VIP Rooms" on those trusses. On July 19, 2002, the Court heard testimony concerning the alleged violations. During the hearing the Court stated to the parties "Your agreement is no occupancy

of the second floor. You have to keep it vacant.” Transcript, City of Chicago v. Lesly Motors, Inc., No. 02 M1 402899, July 19, 2002, at 9. (Appendix C.) The Court then entered a “Mandatory order not to occupy the 2nd floor.” (Appendix C.)

Status hearings were held in the case on August 9, 2002, September 6, 2002 and October 25, 2002. In connection with the court status hearings, building inspections were conducted on August 8, 2002 and October 24, 2002. An inspection was attempted on September 5, 2002, but the inspectors could not obtain access to the building. On August 8 and October 24, when access to the building was obtained, the building inspectors noted that compliance with the structural violations had not been obtained. Consequently, the Court kept the order not to occupy the second floor in place. At the last hearing on October 25, 2002, the Court set the case on March 7, 2003 for final trial, settlement or dismissal.

Copies of the July 19th Order not to occupy the second floor of E2 were never provided to the Police Department in the 1st District where the E2 Club is located. Failure to notify the police resulted in a significant enforcement gap because the Police Department was well aware that the second floor was used as a nightclub on a regular basis throughout the latter half of 2002 and the early months of 2003.

On January 10, 2003, the operator of the Epitome and E2 businesses at 2347 South Michigan Avenue was served with a Suspension Order, for suspension of its license to serve liquor. The licensee was subsequently

cited by the Chicago Police Department for operating the premises while under suspension in January 2003.

#### D. Liquor License Regulation

The regulations governing liquor licensees in the City are separate and distinct from those relating to building codes and safety. However, there is significant overlap between these two regulatory schemes, particularly for PPA licensees which overwhelming are also liquor licensees. Based on these overlaps the Panel concluded that a review of the procedures in place for enforcement of the liquor license regulations would be constructive and might identify opportunities to enhance enforcement of both the liquor license regulations and the building code and safety regulations.

Regulations governing liquor licensees are enforced by the City's Liquor Commission. Investigations relating to liquor licensees and potential ordinance violations are conducted by the Chicago Police Department. The Police Department identifies violations by liquor licensees and makes a report which is sent to the Commission and reviewed by staff attorneys. If a Liquor Commission staff attorney believes a case is actionable, the matter is sent to the Municipal Division of the Corporation Counsel's Office for filing of a notice of violation and setting of a hearing. At the administrative hearing, the Liquor Commission is represented by an Assistant Corporation Counsel from the Municipal Prosecutions Unit. Following the presentation of evidence, the Hearing Officer makes a finding as to whether or not the violation has been sustained, and in those cases where it has been sustained makes a recommendation to the Liquor Commissioner as to a penalty. The

Liquor Commissioner then can accept or change the penalty. The licensee has the right to present evidence at the hearing and appeal the decision by the Administrative Hearing Officer to the Liquor Appeal Commission. In most cases, the licensee may maintain its license and continue to operate while the appeal is pending.

The liquor license violation process is a lengthy one and can take years to complete. For example, in January 2003, La Mirage Studio, Ltd., the operator of the business at 2347 South Michigan Avenue, was served with a five day suspension of its liquor license. The suspension was based on a violation of serving alcohol to a minor that had occurred in March 2001. La Mirage Ltd. had a significant history of license violation cases with approximately 32 separate reports sent to the Corporation Counsel's Office for action in the 5-year period from June 1996 to March 2001. (Appendix G.) Of those reports only one violation actually was sustained which led to the license suspension in January 2003.

An issue exists as to the scope of the liquor license held by the business operators at 2347 South Michigan Avenue. The license on its face is held by the "La Mirage Studio Ltd. d/b/a Epitome E2." Epitome and E2 are two separate establishments run by the same company and both housed at 2347 South Michigan Avenue. Epitome is a restaurant on the first floor of the location and E2 is a nightclub operating on the second floor. There is no free-flow of traffic between the two clubs and they have separate entrances. Representatives from the Liquor License Commission stated that to the extent there was no free flow of traffic between the two businesses, separate

liquor licenses were required. The only liquor license in the establishment was displayed on the first floor in the restaurant but not upstairs in the E2 Club. The two businesses also had different liquor usage. The liquor service was incidental to the restaurant on the first floor. Liquor service was the primary activity of the nightclub on the second floor. The E2 Club continued to operate despite this lack of clarity about the scope of the liquor license for the premises at 2347 South Michigan Avenue.

#### E. Occupancy

One of the most critical areas to public safety in large assembly units identified by the Panel is occupancy restrictions and the enforcement of maximum occupancy limits. One police estimate is that 1,100 patrons were in the E2 Club on the morning of February 17, 2003. The nightclub was severely overcrowded. This overcrowding was likely one of the factors contributing to the stairwell crush that led to the 21 deaths. An expert in safety and crowd control who appeared before the Panel stressed that the enforcement of occupancy regulation laws was pivotal to effective safety enforcement.

The Building Code requires that the Department of Buildings approve the number of persons permitted to occupy a public assembly unit and that every such facility must conspicuously post a sign indicating the number of persons that can occupy the space. Section 3 (13-84-410;13-84-420). (Appendix B.) There are significant gaps currently in the City's enforcement of its ordinances as it relates to occupancy. Currently, when a business is licensed the license applicant must submit plans to the

Department of Buildings setting out in detail the space for its business and how the space will be configured. Using those plans the Department of Buildings determines, based on a formula set out in the Building Code, the maximum level of occupancy for that space. Currently, there is one individual making these determinations for the entire City. This leads to delays in obtaining an occupancy placard which sets out the maximum occupancy for a particular facility and which are required to be displayed. Applicants are given a receipt indicating they have applied for an occupancy placard. The receipt does not contain any proposed or temporary number of occupants; it simply states that an application has been made. Businesses are allowed to operate with their receipt but have no guidance concerning the maximum number of occupants. Issuance of an occupancy placard can take over a year.

Additional enforcement issues in the occupancy area occur when buildings are modified and/or uses are changed and no new occupancy placard is obtained. Occupancy placards are required to be updated when a facility's space or usage of a space changes. Applicants for updated occupancy placards face the same delays in obtaining the placards as initial applicants.

A significant note in this regard is that there was no occupancy placard for the E2 Club operating on the second floor at 2347 South Michigan Avenue. The only occupancy placard that was displayed in the building was on the first floor and was for 327 people.

F. Communication Between Governmental Departments and Agencies  
Involved In Code and Safety Enforcement

While the City agencies with authority for enforcement of the building and safety codes do communicate and work together, such communication is haphazard rather than coordinated, prioritized and focused. There does not appear to be any clear identification of primary responsibility for enforcement of Building Code violation orders or even for providing notice of the existence of those orders outside of the Corporation Counsel's Office and Department of Buildings.

This lack of communication led to the situation in regard to the premises at 2347 South Michigan Avenue, where two City agencies, the Corporation Counsel's Office and the Department of Buildings had obtained an order preventing occupancy of the second floor of that building, while another City agency, the Chicago Police Department, was unaware of the Order and was, ironically, regularly and routinely active in disputes and issues arising from occupancy of the second floor at 2347 South Michigan Avenue. This lack of communication also led to one arm of the Corporation Counsel's Office (Building and Land Use Litigation) obtaining an Order preventing occupancy of the second floor of the 2347 South Michigan Avenue and another arm of the Corporation Counsel's Office (Municipal Prosecutions), without knowledge of the Order and while it was in effect, obtaining and causing to be served a liquor license suspension of the businesses operating at 2347 South Michigan Avenue.

There are numerous potential ways that these communication issues can be addressed. The City has an extensive newly created 911 system which has the capacity to include information related to court orders closing businesses. Such information could be relayed to police officers when an emergency call is made to that building. The City already has plans underway through its Department of Business and Information Services to post notices of orders closing businesses on its website and to electronically collect information from various relevant agencies relating to problem buildings and/or businesses. This information would be used to create a document that would be distributed to all related agencies identifying those buildings and the current violations pending from the various agencies involved. (See Appendix H.)

Also, the Clerk of the Circuit Court currently electronically tracks all court activity on a daily basis. The Clerk has advised the Panel that her office would work with the City to prepare and transmit electronically reports of certain housing court orders to City officials charged with administering the Building Code. A weekly report of all housing cases in which the court issued an order vacating the premises or similar injunctive order could be created and electronically distributed to the Building Department, the Department of Law, the Chicago Police Department, the Chicago Fire Department and any other relevant agencies.

#### G. Other Municipalities

The Panel looked at building code and safety enforcement in other municipalities and found two different approaches. In Los Angeles, there is

a Department of Building and Safety that conducts approximately 40,000 building code inspections annually, based primarily on complaints.

Enforcement in Los Angeles is based on voluntary compliance. After the complaints are investigated and building code violations are found, property owners are notified via a Notice to Comply and given a time period in which to comply. Over 95% of the violations are corrected voluntarily. Those cases where there is no voluntary compliance are prosecuted as criminal misdemeanor actions. The annual safety inspections of Public Places of Assembly are conducted in Los Angeles by the Fire Department.

In New York, they have created what they call a Multi-Agency Response to Community Hotspots programs or "MARCH".

Representatives from all relevant agencies, including Buildings, Fire, Police and Health are represented on the MARCH Team. Complaints from the public or generated by police are compiled in the precincts. The MARCH Team then identifies specific businesses or "Hot Spots" for a SWAT team like inspection. The MARCH Team inspections are conducted during weekends and nighttime hours. When violations are found they are sent to a centralized coordinator who reviews and then determines where and how a formal violation should be filed.

#### H. Commitment To Improvement

The Panel has noted in its review that the City and the agencies responsible for building code and safety enforcement have begun to undertake improvement efforts. An ordinance has been proposed requiring the posting of Closure Orders on buildings. As we have noted, efforts are

underway to enhance communication between various agencies. Additionally, the Panel met with representatives from the business community who have themselves made extensive recommendations for improved code and safety enforcement. (Appendix I.) Also, legislation proposed by State Senator Barack Obama, which, among other safety measures, includes limits on the use of pyrotechnics and pepper spray and enhances penalties was recently passed in Springfield and is awaiting the Governor's signature. (Appendix J.)

We are heartened by the growing recognition that change is needed. However, a recognition that change is needed and a commitment to make change are different things. Critically important to meaningful improvement is the exercise of coordinated leadership in areas of building code and safety enforcement by the Corporation Counsel's Office and the Department of Buildings. Currently, both agencies construe their responsibilities narrowly, leading to gaps in enforcement. Both agencies need to work better together and with other City departments with responsibilities in the area of public safety enforcement to ensure effective enforcement of the building and safety codes.

#### IV. RECOMMENDATIONS

##### A. Licensing and Application

Although the Department of Revenue requires an initial building inspection prior to issuing a business license, it does not condition renewal of the license on subsequent satisfactory annual inspections. Also, if the use of a particular business is changed after the initial business license is issued,

there is no procedural mechanisms to make the Department of Revenue aware of such change. Similarly, the City's current governmental structure requires that liquor licensees renew their licenses with the Liquor License Commission twice a year. As a part of this renewal process, licensees must receive clearance from the Department of Revenue before receiving a renewal. The Department of Revenue looks at a number of requirements on the IRIS system (such as whether the licensee's utility bills are paid in full) before granting clearance. Currently, satisfactory building inspections are not part of these requirements.

It would not be difficult to add the satisfactory completion of the annual building inspection as a requirement for clearance from the Department of Revenue. It would also alleviate some of the problems that stem from the Building Department's inability to force public place of amusement licensees to make themselves accessible for annual inspections.

***Recommendations:***

1. Upon issuance of a vacate order or an order not to occupy a business with a liquor license, the license should automatically be suspended.
2. No business license should be issued without a determination of a maximum occupancy level for the building. The current Building Department practice of providing a receipt for the occupancy placard application without setting any occupancy limit and then taking months to determine the maximum level while allowing the business to operate should cease. Instead, the Building Department should implement procedures so that an occupancy level can be determined and the business license issued without significant delay.

3. The Building Department should increase the number of persons determining the maximum level of occupancy so that occupancy placards can be issued at the same time the business license is issued.
4. The Building Department should provide a procedure for determining occupancy levels on a temporary basis. For example, the business license applicant could provide the information required to calculate the maximum occupancy level pursuant to the building code formula along with a proposed occupancy number, which would be self-certified and/or certified by an architect. A temporary occupancy placard should be issued with this occupancy level to be effective until the final official maximum occupancy level is determined by the Building Department.
5. The Building Department should obtain or develop a computer program for calculating occupancy using the Building Code formula. The Department should then use the information certified by the licensee or architect to produce a temporary maximum occupancy level or, ideally, could use the program to promptly calculate the official maximum occupancy level and issue the final occupancy placard with the business license.
6. At the time of license renewal, Public Place of Amusement licensees should certify that:
  - a. No material changes to the business property have been made, including but not limited to an increase or decrease of floor area for patrons.
  - b. They have complied and are complying with the provisions of the Chicago Building Code Section 3 (13-84-410; 13-84-420) governing occupancy.

The penalty for false statement should be up to and including loss of the license.

7. The City should formulate an educational campaign to educate business licensees and the public about the importance of complying with occupancy restrictions. The campaign should include the provision of educational materials with a business license application package. The materials should explain the procedure for obtaining an occupancy placard and defining what constitutes a “material change” to the property and “knowingly” exceeding the occupancy limit.
8. Upon liquor license renewal the Department of Revenue should request, or search, whether the building where a public place of amusement is located has had any court orders entered against it. If a court order has been entered against it, the PPA licensee should present proof of compliance with the court order. If the PPA licensee fails to do so, depending on the severity of the violation, it should be:
  - a. Precluded from renewing its license until it has provided evidence that it has rectified the problem; or
  - b. Referred to the Liquor License Commission to determine whether, in spite of the court order, the license should be renewed and, if so, according to what conditions.
9. Promoters who produce events with attendance by more than 100 persons should be licensed.

#### **B. Inspection and Enforcement**

The Building Department currently has a force of 3 inspectors responsible for inspecting Chicago’s roughly 6,000 PPA’s on a yearly basis. These inspections are conducted within the hours of (approximately) 8:30 a.m. to 5:00 p.m., Monday through Friday; there are currently no “after

hours” inspections. This limited inspection schedule is incompatible with the schedules of most PPA’s, which operate “after hours” and oftentimes do not have representatives on the property during the times that building inspectors are available to inspect.

Limiting inspection times to a 9-to-5 schedule is neither required nor practiced by all City departments. For example, the Department of Public Health routinely dispatches supervisors to inspect PPA’s at night.

The current procedure for Building Department inspections places the emphasis for rescheduling building inspection on the PPA’s. Failure to reschedule does not lead to any penalty or potential liability for the PPA. As a result, every year many PPA’s do not receive their annual inspections. Some PPA’s go years without an inspection.

In addition, the inspection procedures in the Building Department and Bureau of Fire Prevention differ. While the two departments may be looking for similar problems part of the time, the overlap is not great enough to ensure a comprehensive safety rating for a PPA.

***Recommendations:***

1. The Building Department should have a staff of inspectors to inspect PPA’s that operate exclusively at night or on weekends.
2. The number of inspectors who inspect PPA’s should be increased.

3. Representatives of agencies and departments involved in building and safety code enforcement, including the Police, Fire, Health and Building Departments should conduct coordinated inspections of “hot spots.”
4. The Fire Department should continue its practice of conducting night and weekend inspections of PPA’s and of reporting potential Building Code violations to the Department of Buildings.
5. The Building and Fire Departments should establish better communication regarding inspections and Building Code violations. In particular, both departments should communicate information concerning priority areas and Building Code violations affecting public safety.
6. Notice of court vacate orders or orders not to occupy should be visibly posted on the property and transmitted to the Police and Fire Departments. Appropriate penalties should be imposed for removal of posted notice.
7. All building inspectors should be properly trained and should receive continuing education on Building Code enforcement and other safety/fire prevention issues.
8. The Corporation Counsel’s Office and the Building Department should prioritize cases on Building Code violations based on severity and potential risk to public safety before, during, and after court action. Responsibility for enforcement of orders not to occupy or vacate should be clearly assigned between the departments. The Corporation Counsel should consider criminal penalties for enforcement in addition to civil penalties.
9. The City should review the impact of exempting certain buildings (via the practice of “grandfathering”) when new legislative and ordinance provisions for public safety are enacted.

10. An ordinance should be enacted requiring announcement of emergency evacuation procedures in PPA's, including staff training. Announcements should be made 1) at the beginning of any event, 2) before any live entertainment, and 3) at intervals not exceeding two hours in any building that has a fire marshal rating capacity of 300 or more persons.
11. The City should require diagrams showing front and rear exit locations to be posted and conspicuously displayed on the front and rear of PPA's.
12. The minimum safety requirement provisions of the Chicago Building Code should be no less than the minimum safety requirements of the International Code Council's Model International Building Code.
13. Security personnel should be required to monitor occupancy.

### C. Communication

The City currently uses a number of electronic dissemination systems, such as CLEAR, IRIS and CAD, to convey information from one City department or agency to another. While these systems are effective, they are limited by their lack of overall integration. For example, information disseminated through the IRIS system cannot move onto the CLEAR system without additional data entry, and vice versa. Regarding Building Code reporting and enforcement, there is no system that transmits information such as a vacate order or an order not to occupy a PPA to the agencies and officials charged with enforcing such an order. The Mayor's office is in the process of implementing a system-wide integration of the City's databases. While the outlines for this system are promising, there are still some

potential sources of information and issues of protocol that need to be addressed to maximize the integrated system's effectiveness.

No City department has been designated to have the primary responsibility for dissemination and enforcement of Building Code orders that affect public safety, nor has any City agency taken such responsibility. As a result, there is a gap in the dissemination and enforcement of these orders.

***Recommendations:***

1. All agencies having responsibility for administering and/or enforcing ordinances relating to public safety, including the Police Department, Fire Department, Department of Public Health, Liquor License Commission, Building Department, Corporation Counsel, and the Department of Revenue, should receive copies of vacate orders or orders not to occupy.
2. Responsibility for disseminating notice of court orders should be clearly assigned. It is the panel's view that responsibility could appropriately be assigned to Corporation Counsel. However, it is most important that responsibility be assigned. Even if the CAD and/or CLEAR systems are eventually used to disseminate court orders, responsibility for disseminating notice should be assigned without delay. A protocol should be established to facilitate rapid data entry/preparation for dissemination.
3. The City should implement the Clerk of the Circuit Court of Cook County's proposal, or any similar proposal, to perform the analysis and programming necessary to prepare and electronically transmit reports of certain housing orders to officials charged with administering and/or enforcing the

Building Code, including the Corporation Counsel's Office, the Police Department, and any other identified agency.

- a. The listing could include the following data elements: case number, plaintiff name, name of the defendant subject to the order, date of the order, address of the location under the order, and the text associated with the Clerk's office code for the activity.
  - b. The Clerk's office can work with interested recipients to ensure that the report includes all the necessary information to assist in decision-making and/or send certified hard copies of the court orders to vacate premises or similar injunctive orders to the Police Department, the Corporation Counsel's Office, and any other relevant agency.
4. The CAD (911) and/or CLEAR systems should be used to transmit information on unsafe buildings to the Police and Fire Departments.
  5. The City should make better use of CAPS in its building safety enforcement efforts, including use of the program to facilitate information flow to and from the community regarding potentially unsafe buildings and from the court system regarding court proceedings.
  6. The Panel endorses the Department of Business and Information Services flow chart model for an information technology system and recommends that implementation be prioritized and accelerated.
  7. Current information regarding best practices in building safety is available nationally, including monthly telephone conferences and associations focused on this topic. The City should participate in these activities regularly and use this information in its building safety enforcement efforts.

8. The Department of Revenue should provide site plans received from business license applicants to the Fire Department or Building Department.

The Panel is mindful that the implementation of some of the recommendations requires modification and additions to the Building Code, licensing ordinances and other regulatory provisions governing building and public safety as well as additional personnel or reallocation of present personnel or both. Also, additional funds should be earmarked to effectuate the analysis, programming and electronic transmittal of court orders affecting public safety to all agencies having responsibility for administering and/or enforcing ordinances relating to public safety. What needs to be done must be done to ensure that our City never experiences another E2 tragedy.

## APPENDICES

**Appendix A** – Names and titles of those who appeared before the Panel

**Appendix B** – List of Chicago Building Code and Municipal Ordinances reviewed by the Panel

**Appendix C** – Transcripts and orders entered in City of Chicago v. Lesly Motors, Inc.

**Appendix D** – Reports of Building Department, Fire Department, Police Department, and Liquor Commission contacts with 2347 South Michigan Avenue

**Appendix E** – Computer printouts of La/Le Mirage, Studio, Ltd.'s Public Place of Amusement license, retail establishment license, tavern license and late hour liquor license

**Appendix F** – Liquor license renewal application

**Appendix G** – License violation reports against La Mirage Ltd. between June 1996 and March 2001

**Appendix H** – Department of Business and Information Services proposed electronic information distribution system chart

**Appendix I** – Recommendations made by representatives from the business community

**Appendix J** – Legislation proposed by State Senator Barack Obama