

2004 SEP -8 PM 2: 24

CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Office of the City Manager
DATE: September 21, 2004

RE: A Report from the City Administrator Requesting the City Council to Approve the City Administrator's Revocation of the "On Broadway" Cabaret Permit and Deny the Appeal of Charles Clewis

SUMMARY

The City Administrator's Office held a public hearing on July 27, 2004 to determine whether the cabaret permit issued to Charles Clewis for the "On Broadway" should be revoked based upon a violation of his permit conditions and the substandard condition of the building. The Hearing Officer found that Mr. Clewis violated supplemental cabaret permit condition #1 by failing to hire or pay for the police services of two off-duty police officers from October 2002 through July 2004, resulting in an outstanding bill of \$106,979.54 with the City of Oakland. Additionally, the Hearing Officer found that the On Broadway (320 Broadway Street) had outstanding fire and seismic damage creating a serious safety risk for Mr. Clewis, his employees, and patrons of his cabaret. Based upon the above findings and Chapters 5.02 and 5.12 of the Oakland Municipal Code, the Hearing Officer revoked the cabaret permit for the On Broadway on July 27, 2004.

Charles Clewis, cabaret permit holder, filed a timely appeal on August 11, 2004 (copy attached as Attachment A) protesting the revocation of the cabaret permit for the On Broadway. The appellant cited the following grounds in support of his appeal: 1) that the information used in reaching the determination was incomplete, 2) inaccurate, and 3) misleading. The appeal filed by Charles Clewis is without merit as the findings of the Hearing Officer are supported by testimonial evidence, including that of Mr. Clewis. Although Mr. Clewis disputed the total fees owed for police services, the evidence clearly reflected that Mr. Clewis failed to pay the City of Oakland for the police services of two off-duty officers for a substantial period of time. Further the evidence reflected that the building at 320 Broadway Street has significant fire and seismic damage.

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In this instance, the Hearing Officer based his findings and determination on the substantial evidence presented at the hearing. The determination to revoke the cabaret permit of the On Broadway ensures the safety of Mr. Clewis, his employees, and patrons from any harm, caused by an earthquake, fire, or structural failure of the building. The findings and determination are supported by the testimonial evidence presented at the hearing, and are clear, complete, and accurate. Further the Hearing Officer did not commit an error in law or abuse his discretion in this matter. The City Council is requested to approve the findings and determination of the Hearing Officer, and deny the appeal of Mr. Clewis.

FISCAL IMPACT

The cessation of cabaret activities at the On Broadway will result in the undetermined loss of revenue. However, the loss of revenue by Mr. Clewis is acceptable when balanced against the substantial damages or injuries caused by an earthquake, fire, or structural failure of the building. Additionally, Mr. Clewis has the ability to find another safe building to operate a cabaret in the City of Oakland. The fiscal impacts on the Oakland Police Department should be minimal, as Mr. Clewis is currently making payments on the outstanding bill for police services rendered for prior years. The Oakland Police Department is not expected to incur any further fees for police services. Currently, state-licensed private watchmen provide security for cabarets due to the lack of police resources.

BACKGROUND

On August 22, 2000, the City Administrator's Office issued a permit to Charles Clewis to operate a cabaret under the name of the "On Broadway" at 320 Broadway Street. Several conditions of approval were attached to the permit including a condition that Mr. Clewis hire two off-duty police officers to provide police services on Fridays and Saturdays. Additionally, Mr. Clewis was to adhere to the conditions of compliance reflected in the May 3, 2001 letter from Building Services Division to the owner of the building, the Dodwell Company, that allowed temporary occupancy of the building pending corrections of outstanding fire and seismic damage.

On July 14, 2004, the Oakland Police Department submitted a request to the City Administrator's Office to revoke the cabaret permit issued for the On Broadway based on the failure of Mr. Clewis to pay for the two off-duty officers assigned to the cabaret from October 2002 through July 14, 2004. The total amount of fees owed by Mr. Clewis was \$106,979.54. Additionally, the Police Department related that 320 Broadway remained a substandard building and posed a serious public safety risk. The City Administrator scheduled a public hearing on July 27, 2004 to determine whether to revoke the cabaret permit for the On Broadway based upon the violation of the permit conditions to hire two off-duty police officers on Fridays and Saturdays, and the substandard condition of the building.

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At the hearing, the Hearing Officer received testimony from Mr. Clewis, Sgt. Leonard White of the Alcoholic Beverage Action Team of the Oakland Police Department (OPD), Sgt. Serge Babka of the Patrol Division of the OPD, Sgt. Carlos Gonzalez of the Patrol Division of the OPD, Lt. Ed Poulson of the Patrol Division of the OPD, and Marvin Millet of the Building Services Division of the Community Economic Development Agency (CEDA). After reviewing the above testimony, the Hearing Officer revoked the cabaret permit on July 27, 2004 based upon Mr. Clewis' failure to pay for the two off-duty police officers as required under supplemental condition of approval #1 and the substandard condition of the building that posed a serious safety risk.

Mr. Clewis filed a timely appeal on August 11, 2004 wherein he raised the following issues on appeal:

KEY ISSUES AND IMPACT

Appeal Issue #1

Mr. Clewis asserted that the determination of the Hearing Officer is incomplete. This assertion is without merit, as the determination of the Hearing Officer issued on July 27, 2004 reflects a brief summary of the hearing date and those present; 18 findings made by the Hearing Officer, and the determination of the Hearing Officer revoking the cabaret permit issued to Mr. Clewis for the On Broadway. Additionally, the determination contained information regarding appeal procedures. A copy of the Hearing Officer's determination is attached as Attachment B.

Appeal Issue #2

Mr. Clewis asserted that the determination of the Hearing Officer is inaccurate. This assertion is without merit, as the determination of the Hearing Officer issued on July 27, 2004 reflects accurately findings and determination of the Hearing Officer based upon the substantial evidence submitted in this matter. The only error found in the determination is in Finding #4 reflecting the time period that Mr. Clewis did not pay the required services from "October 2004 to the present..." should reflect "from October 2002 to the present." This was a typing error and did not substantially affect the determination, or the interpretation thereof.

Appeal Issue #3

Mr. Clewis asserted that the determination of the Hearing Officer is misleading. This assertion is without merit, as the determination of the Hearing Officer issued July 27, 2004 clearly reflects the findings of the Hearing Officer and the grounds in support of his determination to revoke the cabaret permit issued to Mr. Clewis.

POLICY DESCRIPTION

Chapter 5.02 of the Oakland Municipal Code (OMC) requires that the City Administrator's Office conduct a public hearing for the issuance, suspension or revocation of all business permits covered in Title 5. A cabaret permit is covered and regulated in Chapter 5.12 of the OMC. Chapter 5.02 states that a permit holder must be given notice generally of the reasons for the revocation hearing. In this instance, the Hearing Officer provided Mr. Clewis with timely notice of the hearing and specific reasons for the possible revocation of the cabaret permit.

The basic criterion for the issuance and revocation of a cabaret permit is whether the operation of the cabaret creates a substantial adverse impact on the peace, order, and welfare of the public. Cabaret activities that are not monitored and controlled (by private watchmen or police officers) and cabaret buildings that pose a serious public safety risk fall under the above criterion. The City Administrator also considers City Council goals relating to the retention of existing businesses and the attraction of new businesses to the City of Oakland. In this instance, the Hearing Officer for the City Administrator's Office weighed the continuation of the On Broadway cabaret against the failure of Mr. Clewis to pay for the off-duty police officers to monitor outside cabaret activities and existing substandard condition of the building. Clearly the evidence dictated that the On Broadway cabaret not be allowed to operate under the existing adverse conditions that substantially impacted Mr. Clewis, his employees, patrons, and the general public.

SUSTAINABLE OPPORTUNITIES

Economic

The City of Oakland could lose the tax revenues generated by the On Broadway cabaret, and the cabaret employees could lose their jobs. However, as noted above, this economic impact is far lesser than the potential economic impact caused by acts committed by patrons who are not monitored by security personnel or an earthquake that caused the building to collapse.

Environmental

The enforcement of adequate safeguards on cabarets and Building Code will help provide a healthier environment for Oakland residents and visitors.

Social Equity

A safe and health environment benefits our entire city.

DISABILITY AND SENIOR CITIZEN ACCESS

Deborah A. Edgerly

September 21, 2004

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There are no disability and senior citizen access concerns in this report.

ACTION REQUESTED OF THE CITY COUNCIL

The City Council is requested to accept the determination of the City Administrator's Hearing Officer revoking the cabaret permit for the On Broadway, and deny the appeal of Charles Clewis.

Respectfully submitted,


LARRY CARROLL

Prepared by: Larry Carroll
Administrative Hearing Officer
Special Activity Section

APPROVED AND FORWARDED TO THE OAKLAND CITY COUNCIL:



OFFICE OF THE CITY ADMINISTRATOR

- Attachments: A. Copy of Charles Clewis Appeal
B. Copy of July 27, 2004 Hearing Officer's Determination

Item: _____
City Council
September 21, 2004

Date: 8/2/04

TO THE HONORABLE CITY COUNCIL
Oakland, California 94612

An appeal is hereby taken from the decision of the City Manager in

() granting denying

the application of CABERET

to CHARLES CREWS

located at 320 BROADWAY

Pursuant to Section 5-2.08 of the Oakland Municipal Code

"Any person excepting to any denial, suspension or revocation of a permit applied for or held by him pursuant to the provisions of this Chapter, or pursuant to the provisions of this Code where the application for said permit is made to, or the issuance thereof is by the City Manager, or any person excepting to the granting of, or to the refusal to suspend or revoke, a permit issued to another pursuant to the provisions of this Chapter, or issued to another by the City Manager pursuant to the provisions of this Code, may appeal in writing to the City Council by filing with the City Clerk a written notice of such appeal setting forth the specific grounds thereof."

The appeal is based upon the following: THE INFORMATION
USED IN COMING TO THIS DECISION IS INCOMPLETE,
IN ACCURATE, AND MISLEADING.

Respectfully submitted,

CHARLES CREWS
(Name)

320 BROADWAY
(Address)

OAKLAND 94612
(Please include Zip Code)

(510) 663-7777
(Telephone Number)

Permit No.: _____
Date Appeal Received: 8/10/04
Filing Fee: \$125.00
Receipt No.: paid

CITY OF OAKLAND



SEP -8 PM 2:24

CITY HALL – 1 FRANK H. OGAWA PLAZA – OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Deborah A. Edgerly
City Administrator

(510) 238-3301
FAX: (510) 238-2223
TDD: (510) 238-2007

Corrected Copy

July 27, 2004

**FINDINGS AND DETERMINATION OF ADMINISTRATIVE HEARING OFFICER
REGARDING THE CABARET PERMIT ISSUED TO CHARLES CLEWIS FOR
THE ON BROADWAY CABARET LOCATED AT 320 BROADWAY STREET,
OAKLAND, CALIFORNIA**

A public hearing was held on July 27, 2004 at 10:00 a.m. in Hearing Room #2, City Hall, 1 Frank H. Ogawa Plaza, Oakland, California to determine whether the cabaret permit issued to Charles Clewis should be revoked for violation of supplemental permit condition #1 requiring the hiring of two off-duty Oakland police officers on Fridays and Saturdays, and/or on the ground that 320 Broadway is an unsafe public building. Present at the hearing were Charles Clewis (permit holder), Lt. Ed Poulson (OPD/Patrol), Sgt. Serge Babka (OPD/Patrol), Sgt. Carlos Gonzalez (OPD/Patrol), Sgt. Leonard White (OPD), Mr. Jacob Graef (OPD/ABAT), and Marvin Millet (Building Services Division/CEDA).

Presented below are the findings and determination of the Administrative Hearing Officer:

FINDINGS

1. That the City Administrator's Office issued Charles Clewis a permit on August 22, 2000 to operate a cabaret under the name of the "On Broadway" at 320 Broadway Street, Oakland, California.
2. That several conditions of approval were attached to the cabaret permit, including the requirement of Mr. Clewis to hire two off-duty police officers on Fridays and

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- Saturdays, and the requirement that Mr. Clewis adhere to the conditions of compliance reflected in the May 3, 2001 letter from Building Services Division to The Dodwell Company (owner of the 320 Broadway building).
3. That the Building Services Division sent a letter to the Dodwell Company on March 17, 2003 informing them that the 320 Broadway Street building remained in violation of conditions of compliance that allowed temporary re-occupancy of the ground floor (for the On Broadway cabaret). Further, the letter indicated that the agent for the Dodwell Company (R.C. Croop) related that the remedial work was not economically feasible for the owner. Additionally, the letter related that the Building Permit for the fire repairs has expired on May 2, 2002, without final approval.
 4. That on July 14, 2004, the Oakland Police Department submitted a request to the City Administrator's Office to revoke the cabaret permit issued to Charles Clewis based upon his failure to pay the City for the two off-duty police officers from October 2002 to the present (Mr. Clewis owes the City of Oakland \$106,979.54 for police services), and the fact that 320 Broadway remains a substandard building and a serious public safety risk.
 5. That the City Administrator's Office scheduled a public hearing on July 27, 2004 as cited above to determine whether the cabaret permit issued to Charles Clewis for the On Broadway should be revoked or not. Further that the hearing was scheduled in Hearing Room #2, City Hall, 1st Floor, 1 Frank H. Ogawa Plaza, Oakland, California.
 6. That on July 16, 2004, the City Administrator's Office sent notice via the United States mail to Mr. Clewis, appropriate OPD personnel, James Anthony of the Office of the City Attorney, Marvin Millet of the Building Services Division, and the Dodwell Company c/o E.B. Filed Co/ Richard C. Croop, 435-14th Street, Suite 305, Oakland, California 94612-2701.
 7. That on July 19, 2004, Mr. Clewis submitted a written request to the City Administrator's Office requesting a revision to the cabaret permit conditions deleting the requirement that he hire two off-duty police officers.
 8. That the Hearing Officer administered an affirmation to Mr. Clewis, Lt. Poulson, Sgt. Babka, Sgt. White, Sgt. Gonzalez, Sgt. White, and Mr. Millet.
 9. That Lt. Poulson of the Oakland Police Department presented credible testimony reflecting that Mr. Clewis has not paid for the police services provided by two off-duty police officers from October 2002 to the present; that the 320 Broadway Building was declared substandard and poses a serious safety risk to the occupants and patrons of the cabaret; that the OPD would like to see the On Broadway Cabaret closed for the reasons cited above; and that the OPD is opposed to Mr. Clewis' request to eliminate the condition requiring the hiring of two off-duty police officers, as the two off-duty officers lessen the adverse impact on police resources during nighttime hours. Lt. Poulson also related that the OPD usually assigns two units on Sundays to help control the area and person around the On Broadway with no extra cost to Mr. Clewis.
 10. That Sgt. Babka presented credible testimony corroborating the testimony of Lt. Poulson; and noted that the OPD had corrected the communication problem

internally that caused Mr. Clewis' outstanding bill to reach in excess of \$100,000.00.

11. That Sgt. Gonzalez presented credible testimony reflecting that off-duty officers are needed to help monitor and control the patrons and area outside of the On Broadway cabaret. Further he related that the On Broadway has a hip/hop venue and attracts a large crowd of young persons to the area; that police services are required to control the crowd; that the two off-duty officers assigned to the On Broadway had to get help from the security personnel to control a drunk patron recently; that three (3) homicides have occurred in or around cabarets recently; and that public safety requires the presence of the off-duty hours to lessen the impact on normal police resources.
12. That Sgt. White presented testimony indicating his agreements with the statements of Lt. Poulson, Sgt. Babka, and Sgt. Gonzalez. Further he related that if the off-duty were not present, there would be a greater strain on police resources in the area of the On Broadway. Sgt. White stated that hip/hop venues attract young persons to the area who are too young to enter cabarets, but remain in the area creating problems that require police action.
13. That Marvin Millet presented credible testimony reflecting that the Building Services Division declared 320 Broadway Street a public nuisance and substandard building; that the owner, Dodwell Company, entered into a compliance plan to abate the fire and seismic damage on the second floor; that Dodwell Company has not taken any corrective action and the building violations remains outstanding; that a letter was sent to Dodwell Company in March 2003 and no action was taken in response to the letter; that R.C. Croop, agent for Dodwell Company, indicated to the Building Services Division that it was not economically feasible for the owner to correct the damage on the second floor; that the Building permit for repairs to 320 Broadway has expired; and that he would have to speak with the Chief Building Official regarding what action shall be taken next regarding 320 Broadway Street.
14. That Mr. Clewis presented credible testimony reflecting that the person responsible for the payment of police services left in January 2004; that he recently became aware of the outstanding balance and paid \$5,000.00 on July 15, 2004 to the City; that he will meet with the City on the outstanding balance for police services as he believes it is less than \$106, 979.54; that he has a legal action pending against Dodwell Company for failing to make building improvements as promised; that his capacity is 300 persons; that his average nightly crowd is 100-150 persons; that his private watchmen are very efficient and the City should delete the requirement of two off-duty police officers on Fridays and Saturdays during cabaret hours; that the police officers have been present during the last quarter for 10 hours, 20 hours, and 40 hours and are not required every Friday and Saturday night; and that it was his understanding that the building had undergone seismic work. Mr. Clewis further related that he has six (6) Private Watchmen on duty during cabaret operating hours.
15. That Supplemental Cabaret Condition #1 required Charles Clewis to hire two off-duty police officers to monitor outside activities at the On Broadway cabaret on Fridays and Saturdays. Further that Charles Clewis failed to hire or pay for the

police services of two off-duty Oakland police officers from October 2002 to the present. Additionally, that Mr. Clewis paid \$5000.00 on the outstanding bill for police services of \$11,979.54 on July 15, 2004 resulting in a current outstanding bill of \$106,979.54.

16. That the Building Services Division declared 320 Broadway Street a public nuisance/substandard building on May 3, 2001 allowing for temporary re-occupancy of the building; and the City Administrator reinstated the cabaret permit on May 11, 2001. Further that the owner entered into a compliance plan to correct the outstanding fire and seismic damage on the second floor on 320 Broadway. Additionally, that the owner failed to correct the outstanding damage, which remains outstanding as of the date of this hearing. The outstanding fire and seismic damage on the second floor creates a serious safety risk for Mr. Clewis, his employees, and patrons of the On Broadway cabaret.
17. That the substantial evidence in this matter reflects that the cabaret permit for the On Broadway should be revoked.
18. That the California Environmental Quality Act (CEQA) of 1970 did not apply to this hearing, as this act was considered during the major conditional use permit review process conducted by the Planning and Zoning Division.


DETERMINATION

Based upon the substantial evidence presented in this matter, the cabaret permit issued to Charles Clewis for the On Broadway is hereby revoked. Mr. Clewis is directed to surrender cabaret permit #S2000-117 to the City Administrator's Office within seven days of the receipt of this determination.

APPEAL INFORMATION

Any person dissatisfied with this determination may file an appeal in writing to the City Council by filing with the Office of the City Clerk within 14 days after this determination has been deposited in the United States mail. The appeal should reflect the grounds or reasons why the decision of the Administrative Hearing Officer should be approved. The appellant must pay the \$125.00 appeal fee at the City Administrator's Office, 11th Floor, City Hall, 1 Frank H. Ogawa plaza, Oakland, California, and provide a copy of the appeal. *The appeal must then be filed with the Office of the City Clerk, 2nd Floor, City Hall, 1 Frank H. Ogawa Plaza, Oakland, California.* Thereafter, a public hearing on the appeal will be scheduled before the City Council, and at least five (5) days notice provided to the appellants and adverse parties.

The filing of an appeal shall automatically stay the execution of the above determination. The findings of the City Council on the appeal shall be final and conclusive in the matter.



LARRY CARROLL, ADMINISTRATIVE HEARING OFFICER

8/26/04

DATE

Mailing List

Mayor Jerry Brown
Council Member Nancy Nadel
Ms. Deborah A. Edgerly, City Administrator
Ms. Joyce M. Hicks, Executive Director, CPRB
Chief Richard Word, OPD
Lt. Ed Poulson, Patrol Div, OPD
Sgt. Serge Babka, Patrol Div, OPD
Sgt. Carlos Gonzalez, Patrol Div, OPD
Sgt. Leonard A. White, ABAT, OPD
Mr. Jacob Graef, ABAT, OPD
Mr. James Anthony, Office of the City Attorney
Mr. Marvin Millet, Building Services Div/CEDA
Ms. Marcie Griffin, Department of Alcoholic Beverage Control, State of California,
1515 Clay St., Ste. 2208, Oakland, CA 94612
Mr. Charles Clewis, 1325-66th Street, Berkeley, CA 94702
Mr. Charles Clewis, On Broadway, 320 Broadway St, Oakland, CA 94607
Dodwell Company, c/o E.B. Field Co/Richard C. Croop, 435-14th Street,
Ste. 305, Oakland, CA 94612-2701
City Administrator's Office File