

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 APR -8 PM 7:22

CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Administrative Hearing Officer
DATE: April 21, 2009

RE: A Public Hearing And Resolution Denying The Appeal Filed By Dawit Mebrahtu And Upholding The Administrative Hearing Officer's Decision To Deny The Application For A Permit To Operate A Cabaret Under The Name "Oasis" At 135 12th Street

SUMMARY

On June 19, 2008, the Administrative Hearing Officer conducted a public hearing on the application of Dawit Mebrahtu for a permit to operate a cabaret under the name "Oasis" at 135 12th Street. Because the Oasis had not passed its fire, building, plumbing, and electrical inspections, no permit could be issued at that time.

On December 9, 2008, following post-hearing investigation and based upon the preponderance of the evidence, the Hearing Officer denied the application. The Hearing Officer's decision is included herewith as *Attachment A* (Decision). Mr. Mebrahtu timely appealed the denial. The appeal is included as *Attachment B*. On March 25, 2009 Mr. Mebrahtu submitted an additional statement explaining the basis for his appeal. The statement is included as *Attachment C*. This report addresses the appeal and sets forth the analysis as to why the appeal should be denied. *Attachment D* is a March 14, 2009 police report on unpermitted cabaret activity at Oasis.

FISCAL IMPACT

There is no direct fiscal impact of denying this permit, other than the annual cabaret license renewal fee of \$300.

BACKGROUND

In his appeal, Dawit Mebrahtu states that he and Fessehay Mebrahtu have run Oasis for 12 years. The following recaps the City Administrator's file on the Oasis.

- 09/17/99 Fessehaye Mebrahtu was issued Temporary Cabaret Permit with requirement to file for Conditional Use Permit (CUP) within 30 days.
- 11/22/99 Temporary Cabaret Permit expired due to failure to file for CUP.
- 04/05/01 Administrative Hearing Officer mailed Oasis a letter ordering them to cease and desist cabaret activity without a permit.
- 04/20/01 Fessehaye Mebrahtu applied for Cabaret Permit.

Item: _____
City Council
April 21, 2009

- 05/08/01 Temporary Cabaret Permit was issued with expiration date of June 30, 2001, to provide time to obtain final clearances of building and electrical inspections.
- 06/18/01 Planning and Zoning Dept. issued a Minor Conditional Use Permit for Group Assembly Commercial Activity at an existing restaurant, Oasis, at 135 12th St.
- 06/30/01 Temporary Cabaret Permit was extended to 09/14/01.
- 12/10/01 Administrative Hearing Officer mailed Mr. Mebrahtu a letter stating that the inspections were approved and the ongoing cabaret permit was attached. The permit is dated September 15, 2001. A note written on the file copy of the permit by the previous Administrative Assistant of the Special Business Permits Unit states, "Closed as of 2002 per Business Tax".
- 04/09/08 Administrative Hearing Officer mailed both the operator and property owner of Oasis a letter ordering them to cease and desist cabaret activity, based upon reports from the Oakland Police Department that they were conducting cabaret activity and the Hearing Officer's confirmation with the Business Tax Unit that 2003 was the last time they had paid their annual cabaret permit fee.
- 04/30/08 Dawit Mebrahtu submitted an application for a cabaret permit.
- 06/19/08 Public hearing on application conducted. No permit issued due to failure to pass fire, building and electrical inspections.
- 10/12/08 OPD undercover officer went to Oasis at 2:15 a.m. and was told that the club will be open until 6:00 a.m. Uniformed officers returned at 2:45 a.m. and found a DJ spinning records on the back patio, 100 -150 people dancing and drinking, and the smell of freshly burnt marijuana. OPD informed Dawit Mebrahtu that he was operating an illegal cabaret and that he had to close immediately. Mr. Mebrahtu stated he would comply, apologized repeatedly, and acknowledged that he understood the cabaret rules, as he had recently been to his own cabaret hearing.
- 11/02/08 Daylight Savings Time ended at 2:00 a.m. ABC rules are that alcohol establishments may be open only up to 2 hours after midnight. Uniformed officers patrolling the Jack London area saw that Oasis was open at 1:30 a.m., which, due to the time change was 2.5 hours after midnight. A DJ was spinning records on the patio, 50 – 75 people were dancing and drinking, and the smell of marijuana was prevalent. Dawit Mebrahtu again apologized repeatedly, agreed to comply, and acknowledged awareness of the rules.
- 12/09/08 Administrative Hearing Officer denied Dawit Mebrahtu's application for a cabaret permit. The decision notes that the building and electrical inspections had still not been passed, but that it was unnecessary to await the results of those inspections as Mr. Mebrahtu's "actions in violation of Oakland laws and ABC license requirement and his continuation of those violations after being cited by the Oakland Police Department do not make him a fit candidate to be awarded a cabaret permit."
- 1/27/09 Dawit Mebrahtu timely appealed the denial of the permit but stated only that his appeal was based upon: "The findings of fact do not support the order, the evidence does not justify the findings, or the evidence is not true." The

Item: _____
City Council
April 21, 2009

- Special Business Permits Unit accepted his appeal, and the Administrative Hearing officer extended the time in which he could provide more information for the basis of his appeal to meet the requirement of Oakland Municipal Code (OMC) section 5.02.100 to set forth “the specific grounds” of the appeal.
- 03/04/08 Hearing Officer attempted to schedule appeal before City Council April 7, 2009, and again explained to Mr. Mebrahtu that he may wish to add more information to his appeal basis. Mr. Mebrahtu stated that he needed more time because he wanted to have the building ready to pass inspection. The Hearing Officer reiterated that, as the decision explains, the permit was denied for the illegal activity of operating without a permit and operating after hours. Mr. Mebrahtu stated he would still like a later date and April 21, 2009 was agreed upon. The Hearing Officer asked him to submit his statement by March 19, 2009 so there would be time to respond to it in the staff report and include it in the published agenda.
 - 03/14/09 OPD officers went to Oasis at 11:00 p.m. Several people were collecting money at the front door to enter. A DJ was on the patio spinning records and 50 –75 people were dancing and drinking. Fifteen to 20 more people were in the bar, where an unattended DJ table was spinning records. No food was being served. Fesehaye Mebrahtu was in charge. He claimed to be unaware that Oasis did not have a cabaret permit. He also claimed that the kitchen had just shut down.
 - 03/20/09 Since Dawit Mebrahtu had not submitted any additional appeal basis, the Hearing Officer called him. He asked for additional time and the Hearing Officer extended the deadline to March 23.
 - 03/25/09 Dawit Mebrahtu submitted a statement outlining the basis for his appeal.

KEY ISSUES AND IMPACTS

The denial of Oasis’ cabaret permit application was based upon several mandates and violations of the Oakland Municipal Code (OMC). OMC Chapter 5.02 establishes the criteria for making decisions on permit applications. Section 5.02.060 requires that in granting or denying such permit, the City Administrator “shall consider the character of the applicant as respects morality, honesty and integrity and all pertinent acts which may concern the health, safety, and general welfare of the public.” Under OMC Chapter 5.12, it is illegal to operate a cabaret without a cabaret permit. Additionally, under OMC section 5.12.030, it is illegal for to operate a cabaret or have any patrons on the premises between 2:00 a.m. and 6:00 a.m. California law also requires ABC licensees to stop serving alcohol no later than 2 hours after midnight.

Violation of Oakland and California Laws

➤ Operating a cabaret without a cabaret permit – OMC section 5.02.020

The Law It is unlawful for any person to own, conduct, operate or maintain, or to participate therein, or to cause or to permit to be conducted, operated, or maintained, any cabaret in the city unless there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02.

Item: _____
City Council
April 21, 2009

The facts The requirement for a cabaret permit is intended to ensure that the health and safety of nightclub patrons is protected and that the quiet enjoyment of the property of nearby residents and businesses is not interfered with.

Dawit Mebrahtu states in his appeal that he and Fessehaye Mabrahtu have operated Oasis for 12 years. He obtained a temporary cabaret permit in 1999 but let it expire. Oasis apparently continued to conduct cabaret activity without a permit; in early 2001 they were ordered to cease and desist. They again applied for a cabaret permit and were granted one commencing September 15, 2001.

The City Administrator's cabaret file on Oasis has no documents after October 17, 2002, but a note attached to the file and to the file copy of the permit states, "The Oasis, 135 12th Street, closed as of 2002, per Business Tax."

In April of 2008, the OPD officers who monitor the downtown clubs observed Oasis conducting cabaret activity and inquired whether Oasis had a cabaret permit. Because the note in the City Administrator's file referred to the Business Tax Division, the Hearing Officer checked and learned that 2003 was the last year Oasis had paid their cabaret permit fee, and that the Business Tax Unit had not sent them invoices for that permit since that time. Neither the Hearing Officer or the Business Tax staff was employed in the City Administrator's Office or Business Tax Office respectively during 2002 and 2003, and there is no documentation in either file regarding how the City would have come to believe that the Oasis was closed.

Since there was no active permit in April of 2008, the Hearing Officer sent a "cease and desist" letter to the Oasis. There was no response to the first letter, but, after a second letter, Mr. Mebrahtu called. He said he thought he had a cabaret permit. He denied ever being closed and confirmed that he had been conducting cabaret activity continuously since obtaining a permit in 2001. Although he acknowledged that he had not recently paid the annual cabaret permit fee, he said that he had not been invoiced for it, so did not realize it was necessary. He agreed to come in and apply for a cabaret permit and did so. On his application Dawit Mebrahtu listed himself as the manager and listed Fessehaye Mebrahtu as the owner.

At the June 19, 2008 public hearing on the Oasis cabaret permit application, the applicant was informed that the permit could not be issued until all inspections were passed, but, that, if he wished to conduct cabaret activity in the interim, he could do so by obtaining Special Event permits from OPD. Mr. Mebrahtu never applied for or obtained any Special Event permits but continued operating cabaret activity. Even after OPD shut the business down on October 12, 2008 for operating an illegal cabaret, Mr. Mebrahtu, who apologized and acknowledged his understanding of the rules, continued to operate cabaret activity. OPD again closed the business on November 2, 2008 for illegal activity and again received an apology from Dawit Mebrahtu and an acknowledgement of his awareness of the rules.

The illegal activity of operating without a permit continued, incredibly, during the time that the Hearing Officer and Dawit Mebrahtu were communicating about the statement he should submit if he wished the City Council to consider granting his appeal. On March 14, 2009, OPD found the Oasis again conducting cabaret activity. This time, however, it was Fessehaye Mebrahtu, not Dawit Mebrahtu, who was operating the club. Fessehaye Mebrahtu denied knowledge that they did not have a permit.

Mr. Mebrahtu's appeal response In his appeal, Mr. Mebrahtu does not address the issue of operating without a cabaret permit. Also, his appeal does not mention the March 14, 2009 police visit and citation of Fessahaye Mebrahtu for operating without a permit, despite the fact that the Hearing Officer told him about it during a communication requesting that he submit his statement if he wished for the City Council to consider his appeal.

Conclusion and recommendation Because there is no documentation in either the City Administrator or Business Tax files to justify both departments considering the Oasis closed, the City must assume responsibility for Oasis' lack of a cabaret permit between 2004 and April of 2008, when it was first reported to the Hearing Officer that they were operating.

The Hearing Officer assumes as true Mr. Mebrahtu's statement in April of 2008 that he thought the Oasis had a cabaret permit. However, there is no excuse for operating without a permit since then, and Mr. Mebrahtu does not offer an excuse in his appeal. At the request of the Hearing Officer, OPD routinely issues Special Event permits to cabaret applicants to encourage them to legalize their venues and to allow them to continue generating revenue as they go through the application process. All applicants are notified of the requirement to obtain Special Event permits if they plan to conduct cabaret activity before their cabaret permit is issued.

The requirement to obtain Special Event permits also provides an opportunity to observe the applicant's willingness to abide by the rules. The application is easy to fill out, it can be faxed to the Special Events Unit, and there is no charge for the permit. After an initial submission, the applicant need merely change the date when faxing requests for subsequent events. Mr. Mebrahtu never applied for a Special Event permit, even after the first and second citations by OPD.

Dawit Mebrahtu's failure to do the simple thing required to legalize his operation during the application period, does not instill confidence that he will abide by the rules and operate legally in the future. Assuming, for the sake of argument, that he may not have understood the requirement after his hearing, it is unfathomable that he would not understand it after his closure by OPD on that basis.

Nor can he claim lack of knowledge of OPD's basis for closure, as the Hearing Officer provided him with copies of the first two police reports so that he could prepare his appeal. Fessehaye Mebrahtu's claim that he did not know their application had been denied and that they did not have a permit is not credible. If true, it would indicate the poorest of ownership and management practices, and would certainly not be a basis for the City awarding additional privileges.

Item: _____
City Council
April 21, 2009

Finally, while continuing to operate illegally, Mr. Mebrahtu made no progress in completing the inspections required to ensure the safety of patrons. After denial of the permit, he continued to operate illegally and requested that the appeal be delayed so that he could complete the required work on the building. While the Hearing Officer was pleased to hear that Mr. Mebrahtu is now working on the violations that prevented the passage of his inspections, he does not seem to be concerned that operating in spite of these clearances jeopardizes all of his patrons. For his intentional multiple violations of the prohibition against operating without a permit, and his blatant disregard for the risk to public health and safety, Mr. Mebrahtu's application for a permit should be denied.

➤ **Operating "after hours" in violation of OMC section 5.12.030 and in violation of the Oasis' ABC license**

The Law It is unlawful for any person operating a cabaret under the provisions of Section 5.12.020, or any cabaret whatsoever, in the city, or any agent, employee or representative of such person to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or otherwise, or to permit such cabaret to remain open, or patrons to remain upon the premises, between the hours of 2:00 a.m. and 6:00 a.m.

Regardless of closing hours, ABC licensees are prohibited from selling alcohol more than two hours after midnight.

The Facts On October 12, 2008, when it was obvious to OPD that the Oasis was open past 2:00 a.m., an undercover OPD officer went to the door of Oasis and was told the club would be open until 6:00 a.m. Uniformed officers returned at 2:45 a.m. and found the club operating cabaret activity, with a DJ, patrons drinking alcohol and dancing, and the smell of marijuana.

On November 2, 2008, OPD again saw that the Oasis was open more than 2 hours past midnight. Again there was a DJ, patrons drinking alcohol and dancing, and the smell of marijuana.

Mr. Mebrahtu's appeal response Regarding the October 12, 2008 police report, Mr. Mebrahtu states it is unlikely the undercover officer heard the club would be open until 6:00 a.m., as "Oasis would never [be] open until 6 a.m." Mr. Mebrahtu admits that the club was open on both occasions but justifies the October 12 occasion on the basis that the club was much busier than the 100 or fewer patrons normal for a third Saturday of the month. He stated that they had 2 security guards, "in accordance to city rules that require one security for every 50 persons. He then states that the one security staff remaining at 2:00 a.m. was "overwhelmed and did not clear the patrons on time." Mr. Mebrahtu stated that, at the time, he was in the office after closing the bar. Mr. Mebrahtu concludes, "This was our mistake in short staffing, and we have made changes, and this mistake has not occurred again."

Regarding the November 2, 2008 police report, Mr. Mebrahtu acknowledges that ABC allows alcohol sales "only two hours after midnight, which is 2:00 a.m." He claims to have thought that "because the time had moved back an hour, we were still in our legal right to stay

open.” He concludes, “If it is established that we were mistaken, we will make the necessary changes for the future.”

Conclusion and recommendation

By his own admissions in his appeal, Mr. Mebrahtu indeed knows the rules. What he does not seem to understand is that there are reasons for the rules, and that perhaps he should consider what the reasons might be if he is in the position of unintentionally (or intentionally) breaking the rules. For example, Mr. Mebratu correctly stated in his appeal that the City rules “require one security for every 50 persons.” He claims to have employed two security guards on October 12, 2008, in anticipation of a crowd of 100 or less. So, when the crowd turned out to be greater than that, why would there be only one security guard on duty at 2:00 a.m.? And, if there was an emergency that called one security guard away, why would Mr. Mebrahtu retreat to his office instead of assisting with emptying the club? Mr. Mebrahtu offers no explanation that would answer these questions. The club was still operating at 2:45 a.m. that morning, and, as the DJ was still spinning records, there was no apparent effort to clear the club occurring when OPD arrived.

Mr. Mebrahtu’s conclusion regarding the November 2, 2008 incident is both shocking on its face and in its implication, and discouraging in terms of the likelihood of expecting better behavior from Mr. Mebrahtu in the future, were a permit to be granted. In stating, “If it is established that we were mistaken. . .” Mr. Mebrahtu denies responsibility for knowing the laws applicable to his ABC permit, and implies that OPD’s interpretation of those laws was incorrect. The Hearing Officer, in a single phone call to ABC, confirmed that two hours after midnight means exactly what it says – it does not provide an extension to three hours past midnight on the day that daylight savings time ends. That Mr. Mebrahtu would not check this himself before writing his appeal is alarming.

Knowing, and then bending or breaking the rules, or not bothering to find out what the rules are, even after being told he was breaking them, seems to be an ongoing pattern with Mr. Mebrahtu. There is no reason to think that this pattern would change upon the awarding of a cabaret permit. The permit should be denied

➤ Criteria the Hearing Officer is mandated to consider in awarding or denying permits – OMC section 5.02.050

The Law The City Administrator, or the investigating official acting thereon, shall deny the granting of any permit applied for if it shall appear to his or her satisfaction that the applicant is not a fit and proper person, either for financial, moral, or other reasons, to conduct or maintain the business, establishment, place, or other thing, to which the application appertains; that the applicant has not complied with the provisions of this code which directly appertain to the maintenance or conduct of the business, establishment, place, or other thing in question or for the violation of any law appertaining thereto; or for any other reason hereinafter in this chapter more specifically set forth.

In granting or denying such permit, and in specifying the conditions, if any, upon which it is granted, the City Administrator or other official acting thereon, shall consider the character of the applicant as respects morality, honesty and integrity, and all pertinent acts which may concern the health, safety, and general welfare of the public, and shall exercise a reasonable and sound discretion in the premises. The City Administrator, or other official acting thereon, in acting upon an application for a permit, shall notify the investigating official to whom such application was referred, of such action.

Additionally, ABC requires that licensees with "Full Service Restaurant" licenses must serve food at all times that they are open.

The Facts In addition to the violations described above, the OPD officers smelled marijuana smoke on both their October 12, 2008 and November 2, 2008 visits. Additionally, the restaurant, which must remain open until the business closes, was not operating at 11 p.m. on Saturday, March 14.

Mr. Mebrahtu's appeal response Mr. Mebrahtu stated that on October 12, 2008 he smelled marijuana before the police entered the club. He stated that he dispatched security to check the back area, but that the offending party had extinguished the marijuana and blended into the crowd. Mr. Mebrahtu claims that he has assigned two security personnel in the back "to make sure there is not smoking of marijuana." He provides no explanation for the marijuana mentioned in the November 2, 2008 police report.

Mr. Mebrahtu did not respond to the early closure of the kitchen noted in the police report.

Conclusion and recommendation Mr. Dawit Mebrahtu and Mr. Fessehaye Mebrahtu have broken multiple laws, the most significant of which have been 1) the ongoing cabaret operation without a permit documented on three occasions by OPD and 2) being open after hours on at least two occasions documented by OPD. Even assuming the unlikely scenario that there have been no other instances of the illegal behavior, the fact that both types of violations occurred after the club had been closed by OPD for the same violations and during the time when the club was applying to legalize their cabaret activity, shows a careless disregard for the law. Their disregard for the law likely carries over to their clientele, who rightfully view the Oasis as a place where you can drink alcohol and dance after hours and publicly smoke marijuana.

Although the early restaurant closure may seem like a small thing, it is important because restaurant licenses are much easier to obtain in Oakland than bar licenses. Bar licenses require Major Conditional Use permits, but full service restaurant licenses do not, as the City wants to encourage additional bonafide restaurants. To ensure that licensees with restaurant licenses function as restaurants and not as bars, ABC requires that 50 percent of sales come from food. Oakland has increased that requirement to 60 percent. Additionally, many ABC restaurant licenses contain a condition prohibiting cabaret activity for the first year of the license, to ensure that the restaurant license is not just a cover for operating a nightclub and bar.

Item: _____
City Council
April 21, 2009

Mr. Mebrahtu's actions also seem to exhibit a complete disregard for the safety of his patrons. Until his application was denied in December of 2008, he continued operating without pursuing completion of the work required to pass fire, building and electrical inspections. Afterwards, he delayed his appeal hearing to remedy his inspection violations, while continuing the cabaret activity.

Mr. Mebrahtu's actions not only violate City and state laws and jeopardize the safety of his patrons, they constitute unfair business practices. His after hours activity and failure to pass building inspections puts competitors who abide by the rules at a disadvantage. Legally operating competitors had to expend funds to create safe entertainment spaces, and their customers know they cannot stay on the premises after hours or smoke marijuana.

The multiple knowing violations of cabaret permit applicant, Dawit Mebrahtu, and Oasis owner, Fessehaye Mebrahtu do not recommend their character "as respects morality, honesty and integrity." In his appeal statement, which he had over three months to research and write, Dawit Mebrahtu did not even deign check the law that applies to his ABC permit at the time of the change to Daylight Savings Time. His conduct of cabaret activity after failing to complete his fire, building and electrical inspections is a pertinent act which may concern the "health, safety, and general welfare of the public."

SUSTAINABLE OPPORTUNITIES

Economic

The revocation of this permit has no substantial economic effect on the City. Cabarets pay a nominal \$300 per year license fee to the City. Additionally, like all businesses, they are subject to the payment of business taxes. The cabaret application process does not request projected income information, so no estimate of this potential loss is available.

Environmental

There are no environmental opportunities involved in the denial this permit.

Social Equity

No social equity issues have been identified.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no disability or senior citizen issues involved in this application or its denial.

RECOMMENDATION AND RATIONALE

The Hearing Officer understands that the City wants to encourage the development of a vibrant nightlife. Oasis cabaret patrons who attended the public hearing testified that the club caters to the diversity of Oakland, that they have a family atmosphere, and that there is no violence. These are characteristics that the City desires in its nightlife venues.

The multiple and ongoing violations of Dawit and Fessehay Mebrahtu, however, show a lack of judgment, disregard for the law, and inability or unwillingness to change their illegal practices until and even after they have been cited and had their cabaret permit denied. In the terms of OMC section 5.020.50, they have "not complied with the provisions of this code which directly appertain to the maintenance or conduct of the business." Whether it is due to financial duress, moral malaise, careless disregard, or simple laziness, they have not acted in ways that show they are "fit and proper person(s), either for financial, moral, or other reasons, to conduct or maintain the business."

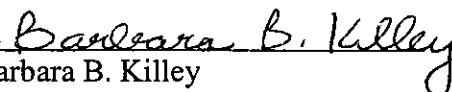
These are not the characteristics that the City can afford to reward by issuing special permits. To do so would send a message to all of Oakland's legitimate cabarets that it is not necessary to obey the rules or to meet the requirements that have been established to protect the public health and safety.

The permit should be denied. Denial of the permit would not prevent the Oasis from operating as a full service restaurant, and it should do so. Oasis would be free to apply for a cabaret permit in the future, after demonstrating, by obtaining appropriate permits, that they can obey the City's rules and regulations and after ensuring that their facility is safe enough for the conduct of cabaret activity.

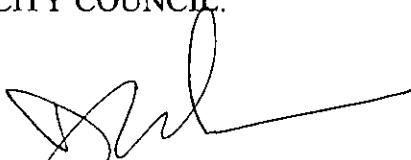
ACTION REQUESTED OF THE CITY COUNCIL

The Administrative Hearing Officer requests that the City Council adopt the Resolution to deny the appeal and affirm the Hearing Officer's decision.

Respectfully submitted,


Barbara B. Killey
Administrative Hearing Officer
Office of the City Administrator

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



Office of the City Administrator

Item: _____
City Council
April 21, 2009



CITY OF OAKLAND

1 FRANK H. OGAWA PLAZA – OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Barbara B. Killey
Administrative Hearing Officer

(510) 238-2257
FAX: (510) 238-7084

December 9, 2008

**FINDINGS AND DECISION OF HEARING OFFICER
ON HEARING REGARDING APPLICATION MADE BY DAWIT MEBRAHTU
TO OPERATE A CABARET UNDER THE NAME OF OASIS,
AT 135 12TH STREET**

BACKGROUND

On September 17, 1999 Fessehaye Mebrahtu was issued a temporary cabaret permit to operate a cabaret under the name Oasis at 135 12th Street. The letter from the Administrative Hearing Officer accompanying the permit, and also dated September 17, 1999, stated that Mr. Mebrahtu was required to file an application for a major conditional use permit within 30 days. A letter to Mr. Mebrahtu from the Administrative Hearing Officer dated November 22, 1999 stated that the temporary cabaret permit expired because Mr. Mebrahtu had not filed for a major conditional use permit.

A letter dated April 5, 2001 from the Administrative Hearing Officer to the owner of the Oasis Restaurant ordered the business owner to cease and desist the unlawful conduct of cabaret activities without a cabaret permit. On April 20, 2001 Mr. Mebrahtu applied for a cabaret permit, and on May 8, 2001, a temporary permit was issued. The permit was issued as a temporary permit due to the lack of final clearances by the building and electrical inspectors and an outstanding decision by the Zoning Division for a minor change in use. A Major Condition It expired on June 30, 2001 and was extended to September 14, 2001, as the clearances had not been obtained by the original expiration date. Although no ongoing permit is found in the file, a letter dated December 10, 2001 states that the inspections were approved and the ongoing cabaret permit was attached.

A hearing was conducted in September of 2002 based upon complaints of noise. The Hearing Officer's decision was that no cabaret activity could be conducted on the patio. Mr. Mebrahtu appealed the decision, but later withdrew his appeal in a letter dated November 4, 2002 that stated, "In light of your letter dated October 17, 2002, in which you have indicated that I can request an amendment of the decision of the City Manger's Office, pertaining to use of the patio area of the Oasis as a cabaret, once I have completed certain measures to reduce noise level, I am hereby withdrawing my appeal of said decision." That is the last correspondence in the file prior to the current application.

After cabarets complete the application process and receive their permits, they are billed an annual \$300 cabaret permit fee. The invoice for that fee is sent by the Business Tax Division. A note in the Oasis cabaret file states "The Oasis, 135 12th Street, Closed as of 2002, per Business Tax." Business Tax Records show that Oasis paid their cabaret permit fee for 2003 but that after that they did not consider Oasis an open cabaret and have not invoiced them for a cabaret permit since then. No one currently in either the Business Tax Division or the City Administrator's office knows where the information that Oasis was closed originated.

In 2008, the Oakland Police Department Unit that monitors downtown clubs reported to the Administrative Hearing Officer that Oasis was conducting cabaret activity and inquired whether they had a cabaret permit. Since they did not, they were sent a letter dated April 9, 2008 ordering them to cease and desist illegal cabaret activity. Mr. Dawit Mebrahtu responded by phone, protesting that they did have a cabaret permit. He acknowledged that he had not recently received the annual cabaret permit invoice, but declared that the Oasis had been in operation continuously and he had no idea how the City would have gotten the idea that they were closed.

On April 30, 2008, Mr. Dawit Mebrahtu submitted an application for a cabaret permit, listing himself as the person in charge of the operation and Fessehaye Mebrahtu as the owner. A public hearing was scheduled for June 19, 2008. The following findings are based upon the evidence and testimony presented at the hearing and through the follow-up inspections and investigations of other City Departments.

FINDINGS

1. Fessehaye Mebrahtu owns and Dawit Mebrahtu operates the Oasis Restaurant.
2. On April 30, 2008 they applied for a cabaret permit to have live entertainment in the form of disc jockeys.
3. The cabaret activity is in the interior of the restaurant and on the patio.
4. They plan to conduct, and have in fact been conducting, cabaret activity between the hours of 10 am and 1:30 am on Wednesdays through Sundays.
5. They have an occupancy of 100 persons and, during cabaret activity, they employ four security guards through the Royal Chamber Brothers Body Guard company.
6. Applicants for cabaret permits must pass fire, building, electrical, and mechanical/plumbing inspections conducted by the City, as well as inspection by the Alameda County Health Department. At the hearing the Oasis had passed none of these inspections. At the public hearing Dawit Mebrahtu testified that they would complete the requirements within 30 days.
7. The City's Permit Tracking System shows that there has been no building, plumbing, or electrical inspections since June and none of these inspections have been passed.
8. The operator of the cabaret must undergo a background check conducted by the Oakland Police Department (OPD). The results of the background check have not been received.
9. At the hearing Sgt. Kyle Thomas testified that, when the Bench and Bar was located near Oasis, there were numerous problems, but that since the Bench and Bar moved the only problems reported have been a couple of drunks.
10. Sgt Thomas also testified that OPD has not recently received noise complaints from nearby residents.
11. Several patrons testified at the hearing that the Oasis is a venue that feels safe, that their security staff is helpful but not oppressive, and that there is no violence.

12. Femenio Caritativo testified that Oasis caters to the diversity of Oakland, bringing people together in a family atmosphere and providing diverse music.
13. Cabaret owner Peter VanKleef testified as to the character of Fessehaye and Dawit, particularly their family values, their honor and their dignity.
14. Cabaret owner Tessfaye Bayene testified that he was inspired by the international flavor of Oasis.
15. Oyenda Chambers testified that the Oasis security staff are holders of Oakland Guard Cards, as is required of cabaret permittees.
16. At the hearing the Administrative Hearing Officer explained to the applicant that, the City wants to encourage businesses to legitimize by applying for the necessary permits. Therefore, they would be allowed to conduct cabaret activity prior to obtaining their cabaret permit if they obtained Special Event permits from the Oakland Police Department for any cabaret activity they planned. Special Event permits for cabaret activities impose the same conditions and operating hours that cabaret permits require.
17. The applicants have not obtained any Special Event permits since the June 19 hearing.
18. On October 12, 2008 officers of the Oakland Police Department were checking downtown clubs for illegal activity. Police report 08-075721 documents that the Oasis was open at 2:15 a.m. and informed an undercover officer that they would be open until 6 a.m. At 2:45 the doors were locked but the bartender admitted uniformed officers, including Sgt. Thomas. Sgt. Thomas' report documents that a DJ was spinning records on the back patio, that between 100 and 150 people were dancing, drinking, and smoking, and that there was a heavy smell of freshly burnt marijuana.
19. Sgt. Thomas informed Mr. Dawit Mebrahtu that he was operating an illegal cabaret and that he had to shut down immediately. Mr. Mebrahtu stated he would comply, apologized repeatedly, and acknowledged that he understood the cabaret rules, as he had just recently been to his own cabaret hearing.
20. Sgt. Thomas notified Mr. Mebrahtu that he would be requesting denial of the cabaret permit application based upon Mr. Mebrahtu's gross disregard for the cabaret rules of continuing activity past 1:30 a.m., violating his ABC license by allowing people to possess alcohol after 2:00 a.m., and allowing smoking of marijuana.
21. On November 2, 2008 Sgt. Thomas and Sgt. C. Bolton were patrolling the Jack London area clubs. On Nov. 2 daylight savings time ended at 2:00 a.m. and clocks are rolled back to 1:00 a.m. ABC rules allow alcohol distributors to sell only 2 hours after midnight, so the change from daylight savings time does not allow establishments to be open for an additional hour.
22. Police report 08-081073 documents that Sgt. Thomas and Sgt. Bolton entered Oasis two and a half hours after midnight, or 1:30 under the change to standard time. A DJ was spinning records on the back patio, and approximately 50 to 75 people were dancing, drinking, and smoking. Again the smell of marijuana was prevalent.
23. Sgt. Thomas spoke with Mr. Dawit Mebrahtu, who again agreed to comply, apologized repeatedly, and acknowledged that he was aware of the rules.
24. Sgt. Thomas again notified Mr. Mebrahtu that he would be recommending denial of the cabaret permit based upon the same violations noted at the October 12 visit.

DISCUSSION

PURPOSE OF PERMIT

Oakland Municipal Code (OMC) Title 5 regulates a number of business types that have been determined to concern the health, safety, and/or general welfare of the public. Chapter 5.02 establishes the criteria for making decisions on permit applications, and section 5.02.060 mandates that, in granting or denying such permit, the City Administrator “shall consider the character of the applicant as respects morality, honesty and integrity and all pertinent acts which may concern the health, safety, and general welfare of the public.”

Regarding the operation of cabarets, pursuant to OMC section 5.12.030, “It is unlawful for any person operating a cabaret under the provisions of Section 5.12.020, or any cabaret whatsoever, in the city, or any agent, employee or representative of such person to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or otherwise, or to permit such cabaret to remain open, or patrons to remain upon the premises, between the hours of two a.m. and six a.m. next ensuing.”

These provisions attempt to balance the rights of citizens to peaceful enjoyment of their residences and safety of their streets with the rights of businesses and the desire of the City to encourage business development and healthy entertainment activities. Some cabaret owners would like to have hours that allow for entertainment past 1:30 a.m., but all understand that under the City’s current law and conditions of their permits, this is not allowed, and it is grounds for revocation of their permits. Because the laws and conditions apply to all, none are unfairly disadvantaged.

Similarly, the rules and hours mandated by ABC licenses are aimed at balancing the growth of businesses with the maintenance of order and at providing a level playing field for all licensees.

After hearing the testimony praising Oasis for their family atmosphere and family values, it is extremely disappointing to see how brazenly Mr. Mebrahtu is willing to disregard the rules that apply to all of his fellow cabarets and alcohol outlets. Particularly after the October 12 incident and Mr. Mebrahtu’s apologies and acknowledgement of wrongdoing, it is shocking that he continue the same illegal activities.

Mr. Mebrahtu has not obtained Special Event permits and has continued conducting cabaret activities without any permits. He has violated the City’s law that cabarets must be closed and no one can be on the premises between 2 am and 6 am. He has violated the terms of his ABC license by remaining open beyond permitted hours and allowing the consumption of alcohol after 2 am. He has allowed patrons to smoke marijuana on his premises in violation of state law.

All of these actions speak against Mr. Mebrahtu’s morality, honesty, and integrity. Additionally, his actions show a disregard for the general welfare of the public by disadvantaging the neighboring bars and cabarets that do abide by the law. Traditionally, applicants are on their best behavior during their application period. There is no reason to think that, if, prior to being awarded a cabaret permit, Mr. Mebrahtu so easily disregards the basic laws regarding these permits that he would behave more legally and responsibly if a permit were granted.

DECISION

Mr. Mebrahtu has not completed the physical requirements to obtain a cabaret permit, including successful passage of inspections and background checks. However, it is not necessary to await

the results of these inspections to make a decision on this application. Mr. Mebrahtu's actions in violation of Oakland laws and ABC license requirements and his continuation of those violations after being cited by the Oakland Police Department do not make him a fit candidate to be awarded a cabaret permit. Operating a cabaret permit is a privilege to be awarded to responsible persons who evidence that they will conduct their businesses legally and that they will not knowingly allow their customers to engage in illegal activity. Mr. Mebrahtu's application for a cabaret permit is therefore denied.

Pursuant to OMC section 5.02.100, Mr. Mebrahtu may appeal this decision to City Council within 14 days of the date of the decision.

Barbara B. Killey
BARBARA B. KILLEY, HEARING OFFICER

12/9/08
DATE

Enclosures:

Proof of Service
Appeal Information

Mailing List

Mr. Dawit Mebrahtu
CAO File

Via Email

Mayor Ron Dellums
Ms. Pat Kernighan, City Council Member
Mr. Dan Lindheim, Acting City Administrator
Mr. Bill Zenoni, Interim Assistant City Administrator
Chief Wayne Tucker, OPD
Capt. Anthony Toribio, OPD
Sgt. Kyle Thomas, OPD
Ms. Carrie Ortler, Deputy City Attorney

JUN/27/2009

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 Dawit Mebrahtu

to Operate a cabaret under the name of OASIS,

located at 135 12th street

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 findings of fact do not support the order,
the evidence does not justify the findings or the
evidence is not true.

Respectfully submitted,

Dawit mebrahtu
(Name)

135 12st
(Address)

94611
(Please include Zip Code)

(510) 228 9657
(Telephone Number)

Permit No.: _____
Date Appeal Received: _____
Filing Fee: _____
Receipt No.: _____

Rec'd 6/27/09

CRIME REPORT

Oakland Police Department
455 - 7th Street
Oakland, CA 94607-3985

ASSIGN TO:

RD #

ROUTING

- CID
- YSD
- VICE
- CSD
- TRAFFIC
- D.A.
- VIC/WIT
- ABAT
-

Outside Reporting Agency	Case No.	Police Beat 4	CP Beat 4Y	Incident No. 1529	09-018788				
VICTIM 1		Last, First, Mid State Of California / City Of Oakland		<input type="checkbox"/> Business Name	<input checked="" type="checkbox"/> Local / State / Federal	Sex	Race	D.O.B.	Age
Home Address		City		<input type="checkbox"/> Oakland	Zip	Home/Msg. Phone			
Business Address / School		City		<input type="checkbox"/> Oakland	Zip	Work Phone			
Occupation	D.L. Number	State	<input type="checkbox"/> Domestic Violence		<input type="checkbox"/> Victim Injured		<input type="checkbox"/> Sex Assault Victim Request Conf.		
Working Hours	<input type="checkbox"/> Victim's Support		<input type="checkbox"/> Resource Info Provided						

ADDITIONAL PERSON	<input checked="" type="checkbox"/> R/P Parent	<input type="checkbox"/> Witness	Last, First, Mid Sgt. K. Thomas, 8069p	Sex	Race	D.O.B.	Age
Home Address 455 7th St		City <input checked="" type="checkbox"/> Oakland		Zip 94607	Home/Msg. Phone		
Business Address / School OPD		City <input type="checkbox"/> Oakland		Zip	Work Phone 510-385-4408		

<input type="checkbox"/> BANK/ATM	<input type="checkbox"/> DOOR	<input type="checkbox"/> FRONT	<input type="checkbox"/> OPEN/UNLOCKED	<input type="checkbox"/> REMOVE DOOR	<input type="checkbox"/> AUTO	<input type="checkbox"/> FIREARM
<input type="checkbox"/> CONVENT MKT	<input type="checkbox"/> WINDOW	<input type="checkbox"/> REAR	<input type="checkbox"/> FORCED SCREEN	<input type="checkbox"/> REMOVE WINDOW	<input type="checkbox"/> RESIDENTIAL	<input type="checkbox"/> CUT/STAB INSTR
<input type="checkbox"/> GAS STATION	<input type="checkbox"/> GARAGE	<input type="checkbox"/> SIDE	<input type="checkbox"/> CUTTING DEVICE	<input type="checkbox"/> POSS. EMPLOYEE	<input type="checkbox"/> COMMERCIAL	<input type="checkbox"/> HANDS, FEET, FIST
<input checked="" type="checkbox"/> OTHER COMM.	<input type="checkbox"/> ADJ. PREM.	<input type="checkbox"/> ROOF	<input type="checkbox"/> BODY FORCE	<input type="checkbox"/> KEY	<input type="checkbox"/> OTHER	<input type="checkbox"/> CHEMICAL
<input type="checkbox"/> RESIDENCE	<input type="checkbox"/> VENT/SKYLIGHT	<input type="checkbox"/> UNK.	<input type="checkbox"/> PRY TOOL	<input type="checkbox"/> WATER METER	<input type="checkbox"/> ALARM RESP	<input checked="" type="checkbox"/> NONE
<input type="checkbox"/> STREET	<input type="checkbox"/> OTHER		<input type="checkbox"/> CHANNEL LOCKS	<input type="checkbox"/> NONE		<input type="checkbox"/> OTHER
<input type="checkbox"/> MISC.			<input type="checkbox"/> ATTEMPT FORCE	<input type="checkbox"/> UNK		

Gang Related Hate Crime Motivated By: Race Ethnicity Religion Sexual Orientation Physical Disability Mental Disability Gender

CRIME	Common Name Disorderly House	Section/Subsection 25601	Code B&P	Pertains To: v: 1
--------------	--	------------------------------------	------------------------	-----------------------------

Location (Address/Block No./Intersection) OHA ABC
135 12th Street

LOSS	<input checked="" type="checkbox"/> None	TYPE OF THEFT	Occurred	Date	Time	Day	VANDALISM
	(CHECK ALL THAT APPLY)		On or From	14-Mar-09	2353	Sat	
			1 <input type="checkbox"/> CURRENCY / NOTES	To	14-Mar-09	2358	
2 <input type="checkbox"/> CLOTHING / FURS.	7 <input type="checkbox"/> HOUSEHOLD GOODS	Reported	14 Mar 09	2353	Sat	<input type="checkbox"/> EGGED	
3 <input type="checkbox"/> JEWELRY / PRECIOUS METAL	8 <input type="checkbox"/> CONSUMABLE GOODS	SOLVABILITY FACTORS (Check All That Apply)				<input type="checkbox"/> BREAK WINDOW	
4 <input type="checkbox"/> FIREARMS	9 <input type="checkbox"/> LIVESTOCK	<input type="checkbox"/> SURVEILLANCE PHOTO	<input checked="" type="checkbox"/> NAMED SUSPECT	<input type="checkbox"/> SHOOT WINDOW			
5 <input type="checkbox"/> OFFICE EQUIPMENT	10 <input type="checkbox"/> MOTOR VEHICLES	<input type="checkbox"/> SERIOUS INJURY	<input checked="" type="checkbox"/> IDENTIFIABLE SUSPECT	<input type="checkbox"/> GRAFFITI			
6 <input type="checkbox"/> TVS, RADIO, STEREO	11 <input type="checkbox"/> MISCELLANEOUS	<input type="checkbox"/> EVIDENCE	<input checked="" type="checkbox"/> R/O REQUESTS INVEST.	<input type="checkbox"/> MAIL BOX			
U.C.R. CODE (LIST MOST EXPENSIVE ITEM ABOVE)		<input type="checkbox"/> SUSPECT IN-CUSTODY		<input type="checkbox"/> KEYING / SCRATCHING			
				<input type="checkbox"/> SLASH TIRES			
				<input type="checkbox"/> OTHER			

The VICTIM / REPORTING PARTY contacted the police department to report the THEFT / LOSS / DAMAGE of the listed property. There are no known suspects. This report is made to alert the police. No narrative was completed.

VICTIM VEHICLE	License No.	State	<input type="checkbox"/> Secured At The Scene	<input type="checkbox"/> Towed	Tow Number
			<input type="checkbox"/> Released To The Owner	<input type="checkbox"/> Fingerprinted	
			<input type="checkbox"/> Hold (Unit)	<input type="checkbox"/> Stolen	

<input type="checkbox"/> Car	Year	Make	Model	Body Type	Color	Vin No.
<input type="checkbox"/> Truck						
<input type="checkbox"/> Other						
<input type="checkbox"/> Stolen Bicycle	<input type="checkbox"/> Mens	<input type="checkbox"/> Mtn.	Color	Brand	Model	Speed
	<input type="checkbox"/> Womens	<input type="checkbox"/> Road				License No.
						Serial No.

PROPERTY NARRATIVE	<input type="checkbox"/> Loss	<input type="checkbox"/> Evidence	<input type="checkbox"/> Safekeeping	<input type="checkbox"/> Recovered	Location When Stolen
					<input type="checkbox"/> Interior <input type="checkbox"/> Exterior <input type="checkbox"/> Garage

AOD and Juvenile Reporting Code (Refer to AOD Code Card)			ADDITIONAL OFFICERS ON SCENE:					
AOD	Setting (2 Digit #)	Juvenile	Officer M. Campos (PSO Area 1)					

Total Number Of:				<input type="checkbox"/> Phone Report	Photos Taken	Evidence Collected	Tech: On Scene	Rec. Value	Loss Value	Page 1 of 3
Vict.	Wit.	Susp.	Arr.		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
1	0	1	0							

Reported By K. THOMAS	Serial No. 8069P	Watch 3	Area 3	Supervisor LT. M. POIRIER	Serial No.	Reviewer	Serial No.
---------------------------------	----------------------------	-------------------	------------------	-------------------------------------	------------	----------	------------



SUSPECT REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD #

09-018788

CRIME Disorderly House 25601 B&P	INCIDENT # 1529	V1	VICTIM LAST, First, Mid. State Of California / City Of Oakland
-------------------------------------	--------------------	----	---

SUSPECT		Number 1	LAST, First, Mid Mebrahtu, Fessehaye			RELATIONSHIP TO VICTIM Club owner	IN CUSTODY THIS OFFENSE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
SEX M	RACE B	D.O.B.	AGE 50	HEIGHT 5-9	WEIGHT 170	HAIR BLK	EYES BRO	DL NUMBER	PFN			
HOME ADDRESS 135 12 th Street			CITY <input type="checkbox"/> OAKLAND Oakland			ZIP 94607	APT. NO.	HOME/MSG. PHONE				
WORK ADDRESS (Name of Business) (School) Oasis Bar And Restaurant			CITY <input checked="" type="checkbox"/> OAKLAND 135 12 th Street			OCCUPATION	WORK PHONE 763-0404					
ADMONISHMENT: ADMONISHED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO REFUSED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO STATEMENT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO						<input type="checkbox"/> PROBATION COUNTY _____ Officer _____						
BY: (OFFICER/DATE/TIME)						<input type="checkbox"/> PAROLE AGENT _____		<input type="checkbox"/> PAL				
DESCRIPTION PROVIDED BY R/O		CLOTHING, SCARS, MARKS, TATOOS, WORDS USED Multi colored shirt, blk pants										
HAIR LENGTH <input checked="" type="checkbox"/> SHORT <input type="checkbox"/> MED. (HALF EAR) <input type="checkbox"/> LONG (COVER EAR) <input type="checkbox"/> COLLAR <input type="checkbox"/> SHOULDER <input type="checkbox"/> BALD/SHAVED <input type="checkbox"/> RECEEDING		HAIR STYLE <input checked="" type="checkbox"/> NATURAL / AFRO <input type="checkbox"/> BRAIDED <input type="checkbox"/> CREWCUT <input type="checkbox"/> CURLY <input type="checkbox"/> PONYTAIL <input type="checkbox"/> PUNK <input type="checkbox"/> CONSERVATIVE		FACIAL HAIR <input type="checkbox"/> NONE <input type="checkbox"/> BEARD <input type="checkbox"/> MUSTACHE <input type="checkbox"/> BEARD & MUSTACHE <input type="checkbox"/> GOATEE <input type="checkbox"/> SIDEBURNS		COMPLEXION <input type="checkbox"/> LIGHT <input checked="" type="checkbox"/> MEDIUM <input type="checkbox"/> DARK <input type="checkbox"/> FRECKLED <input type="checkbox"/> ACNE <input type="checkbox"/> POCKMARK <input type="checkbox"/> RUDDY		APPEARANCE <input checked="" type="checkbox"/> CASUAL <input type="checkbox"/> WELL GROOMED <input type="checkbox"/> UNKEMPT <input type="checkbox"/> RIGHT HANDED <input type="checkbox"/> LEFT HANDED <input type="checkbox"/> BIRTHMARK <input type="checkbox"/> MOLE		SPEECH <input type="checkbox"/> LOW PITCH <input type="checkbox"/> HIGH PITCH <input type="checkbox"/> SLURRED <input type="checkbox"/> STUTTER <input type="checkbox"/> ACCENT TYPE _____ <input type="checkbox"/> OTHER		DEMEANOR <input checked="" type="checkbox"/> CALM <input checked="" type="checkbox"/> POLITE <input type="checkbox"/> APOLOGETIC <input type="checkbox"/> NERVOUS <input type="checkbox"/> PROFESSIONAL <input type="checkbox"/> OFFENSIVE <input type="checkbox"/> HOSTILE <input type="checkbox"/> VIOLENT
OTHER DISTINCTIVE FEATURES <input type="checkbox"/> GOLD TOOTH <input type="checkbox"/> MISSING TEETH <input type="checkbox"/> SILVER TOOTH <input type="checkbox"/> GLASSES			<input type="checkbox"/> BODY ODOR TYPE _____ <input type="checkbox"/> LARGE EYES <input type="checkbox"/> MISSING LIMBS		WEAPON USED CAL. _____ BARREL _____ <input type="checkbox"/> BLUDGEON CLUB <input type="checkbox"/> HANDS/FEET		<input type="checkbox"/> REVOLVER <input type="checkbox"/> SEMI-AUTO PISTOL <input type="checkbox"/> SAWED OFF <input type="checkbox"/> ROCK/BRICK		<input type="checkbox"/> SHOTGUN <input type="checkbox"/> RIFLE <input type="checkbox"/> NICKEL <input type="checkbox"/> BLUED <input type="checkbox"/> CUT/STAB <input type="checkbox"/> VEHICLE			

SUSPECT		Number	LAST, First, Mid			RELATIONSHIP TO VICTIM	IN CUSTODY THIS OFFENSE <input type="checkbox"/> Yes <input type="checkbox"/> No				
SEX	RACE	D.O.B.	AGE	HEIGHT	WEIGHT	HAIR	EYES	DL NUMBER	PFN		
HOME ADDRESS			CITY <input type="checkbox"/> OAKLAND			ZIP	APT. NO.	HOME/MSG. PHONE			
WORK ADDRESS (Name of Business) (School)			CITY <input type="checkbox"/> OAKLAND			OCCUPATION	WORK PHONE				
ADMONISHMENT: ADMONISHED <input type="checkbox"/> YES <input type="checkbox"/> NO REFUSED <input type="checkbox"/> YES <input type="checkbox"/> NO STATEMENT <input type="checkbox"/> YES <input type="checkbox"/> NO						<input type="checkbox"/> PROBATION COUNTY _____ Officer _____					
BY: (OFFICER/DATE/TIME)						<input type="checkbox"/> PAROLE AGENT _____		<input type="checkbox"/> PAL			
DESCRIPTION PROVIDED BY		CLOTHING, SCARS, MARKS, TATOOS, WORDS USED									
HAIR LENGTH <input type="checkbox"/> SHORT <input type="checkbox"/> MED. (HALF EAR) <input type="checkbox"/> LONG (COVER EAR) <input type="checkbox"/> COLLAR <input type="checkbox"/> SHOULDER <input type="checkbox"/> BALD/SHAVED <input type="checkbox"/> RECEEDING		HAIR STYLE <input checked="" type="checkbox"/> NATURAL / AFRO <input type="checkbox"/> BRAIDED <input type="checkbox"/> CREWCUT <input type="checkbox"/> CURLY <input type="checkbox"/> PONYTAIL <input type="checkbox"/> PUNK <input type="checkbox"/> CONSERVATIVE		FACIAL HAIR <input type="checkbox"/> NONE <input type="checkbox"/> BEARD <input type="checkbox"/> MUSTACHE <input type="checkbox"/> BEARD & MUSTACHE <input type="checkbox"/> GOATEE <input type="checkbox"/> SIDEBURNS		COMPLEXION <input type="checkbox"/> LIGHT <input type="checkbox"/> MEDIUM <input type="checkbox"/> DARK <input type="checkbox"/> FRECKLED <input type="checkbox"/> ACNE <input type="checkbox"/> POCKMARK <input type="checkbox"/> RUDDY		APPEARANCE <input type="checkbox"/> CASUAL <input type="checkbox"/> WELL GROOMED <input type="checkbox"/> UNKEMPT <input type="checkbox"/> RIGHT HANDED <input type="checkbox"/> LEFT HANDED <input type="checkbox"/> BIRTHMARK <input type="checkbox"/> MOLE		SPEECH <input type="checkbox"/> LOW PITCH <input type="checkbox"/> HIGH PITCH <input type="checkbox"/> SLURRED <input type="checkbox"/> STUTTER <input type="checkbox"/> ACCENT TYPE _____ <input type="checkbox"/> OTHER	DEMEANOR <input checked="" type="checkbox"/> CALM <input type="checkbox"/> POLITE <input type="checkbox"/> APOLOGETIC <input type="checkbox"/> NERVOUS <input type="checkbox"/> PROFESSIONAL <input type="checkbox"/> OFFENSIVE <input type="checkbox"/> HOSTILE <input type="checkbox"/> VIOLENT
OTHER DISTINCTIVE FEATURES <input type="checkbox"/> GOLD TOOTH <input type="checkbox"/> MISSING TEETH <input type="checkbox"/> SILVER TOOTH <input type="checkbox"/> GLASSES			<input type="checkbox"/> BODY ODOR TYPE _____ <input type="checkbox"/> LARGE EYES <input type="checkbox"/> MISSING LIMBS		WEAPON USED CAL. _____ BARREL _____ <input type="checkbox"/> BLUDGEON CLUB <input type="checkbox"/> HANDS/FEET		<input type="checkbox"/> REVOLVER <input type="checkbox"/> SEMI-AUTO PISTOL <input type="checkbox"/> SAWED OFF <input type="checkbox"/> ROCK/BRICK		<input type="checkbox"/> SHOTGUN <input type="checkbox"/> RIFLE <input type="checkbox"/> NICKEL <input type="checkbox"/> BLUED <input type="checkbox"/> CUT/STAB <input type="checkbox"/> VEHICLE		

SUSPECT VEHICLE		VEHICLE WAS <input type="checkbox"/> SECURED AT SCENE <input type="checkbox"/> RELEASED TO OWNER			<input type="checkbox"/> IOW (#) _____ <input type="checkbox"/> FINGERPRINTED <input type="checkbox"/> HOLD (UNIT) _____		DAMAGE DETAILS, UNIQUE FEATURES		OTHER DESCRIPTION				
OWNER				ADDRESS				CITY <input type="checkbox"/> OAKLAND		ZIP		PHONE	
LIC./STATE/OR PLATE COLORS			YEAR	MAKE	MODEL	STYLE	EXTERIOR COLOR	CONDITION <input type="checkbox"/> CLEAN <input type="checkbox"/> NEW <input type="checkbox"/> DIRTY <input type="checkbox"/> POOR		INTERIOR COLOR		INTERIOR <input type="checkbox"/> CLEAN <input type="checkbox"/> ODOR <input type="checkbox"/> DIRTY <input type="checkbox"/>	
TIRES <input type="checkbox"/> STOCK <input type="checkbox"/> WIDE <input type="checkbox"/> SMALL		RIMS <input type="checkbox"/> STOCK <input type="checkbox"/> CHROME <input type="checkbox"/> MAGS <input type="checkbox"/> SPOKE		LEVEL <input type="checkbox"/> STOCK <input type="checkbox"/> LOWERED <input type="checkbox"/> RAISED <input type="checkbox"/>		ROOF <input type="checkbox"/> VINYL <input type="checkbox"/> LANDAU <input type="checkbox"/> CONV		WINDOWS <input type="checkbox"/> INTYED <input type="checkbox"/> BROKEN		SEATS <input type="checkbox"/> VINYL <input type="checkbox"/> BENCH <input type="checkbox"/> CLOTH <input type="checkbox"/> BUCKET		TRANSMISSION <input type="checkbox"/> AUTOMATIC <input type="checkbox"/> MANUAL	

REPORTED BY K. THOMAS	SERIAL # 8069P	WATCH 3	DISTRICT 3	SUPERVISOR	SERIAL #	PAGE 2 OF 3
--------------------------	-------------------	------------	---------------	------------	----------	-------------

CRIME Disorderly House 25601 B&P	π SUPPLEMENTAL	INCIDENT # 1529	V 1	VICTIM LAST, First, Mid. State Of California / City Of Oakland
SUSPECT LAST, First, Mid. Mebrahtu, Fessehaye	INCIDENT LOCATION 135 12 th Street		DATE OF THIS REPORT 17 Mar 09	ORIGINAL DATE REPORTED

PROPERTY (and/or NARRATIVE)									
ITEM	QNTY	ITEM TYPE	BRAND	MODEL #	SIZE	COLOR	MARKS, ETC	SERIAL #	VALUE

NARRATIVE: On 14 Mar 09, at approximately 2300 hrs. I (8L75) was dressed in full police uniform driving fully marked OPD veh., #1065. I was riding with Officer and Area 1 PSO M. Campos to show him the Jack London Square area and in particular the clubs and bars he would be in charge of policing. I recently conducted a U/C sting operation involving several downtown clubs with Officer F. Shavies, who was visiting several clubs both during regular business hours and several clubs after-hours to look for any illegal activity. Oasis Bar and Grill was one of the clubs, which was operating after hours, and thus I went back to complete another compliance check of the establishment. I also knew that they had recently been denied a cabaret permit for its past illegal activities. See cabaret decision dated 9 Dec 08 by the City Administrators office by hearing Officer Mrs. Barb Killey.

At approximately 2353 hours, myself and Officer Campos went to the Oasis and I looked in the window. I could see several people standing around the bar, talking to the bar tender and drinking beer. I could hear loud music coming from inside the venue from where I was standing as well. I entered the establishment along with Officer Campos. Several people were at the front door collecting money to enter the establishment. Upon entry I first observed a group of 15-20 people drinking at the bar with a DJ table set up and records spinning at a loud volume. I did not observe a D.J. I then went to the back patio and observed a DJ spinning records and approximately 50-75 people dancing, drinking, and smoking on both the open and tented portion of the back patio from another D.J. booth. There was a heavy smell of cigarette smoke in the air and I observed several smoking cigarettes as well.

Based on the recent decision to not issue the Oasis a cabaret permit, I began to look into whether there was food being served as the establishment was supposed to be a full service restaurant. I could not find a single food item out and only observed people drinking alcoholic beverages. I did observe the normal seating area to the right as you enter, was dark and not occupied, which is where normal food service takes place. I contacted the owner Mr. Fessehaye if he was aware that he appeared to be running a cabaret without the proper permits, and he immediately stated that the kitchen had just closed, prior to my arrival. I asked him if he received the recent decision to revoke his cabaret license and he stated that he did not and was unaware that he did not have a cabaret permit.

I advised Mr. Fesasehaye that I believed his establishment was a cabaret based on the following;

- Door cover charge with people collecting money to enter the establishment.
- 2 D.J. tables set up and playing very loud music, with people actively dancing on the back patio.
- No food service appeared present.

I also explained to Mr. Fessehaye that I would be forwarding a report to the city administrators office to request nuisance abatement action be taken against his venue based on his gross disregard for the cabaret rules. Specifically Mr. Fessehaye violated the cabaret decision by the City Administrators office by hearing officer Mrs. Barb Killey and dated 9 Dec 2008.

Reported By K. THOMAS	Serial No. 8069P	Watch 3	Area 3	Supervisor	Serial No.	Page 3 of 4
--------------------------	---------------------	------------	-----------	------------	------------	-------------

OPD

ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD #
09-018788

CRIME Disorderly House 25601 B&P	π SUPPLEMENTAL	INCIDENT # 1529	V 1	VICTIM LAST, First, Mid. State Of California / City Of Oakland
SUSPECT LAST, First, Mid. Mebrahtu, Fessehaye	INCIDENT LOCATION 135 12 th Street		DATE OF THIS REPORT 17 Mar 09	ORIGINAL DATE REPORTED

PROPERTY (and/or NARRATIVE)
ITEM QNTY ITEM TYPE BRAND MODEL # SIZE COLOR MARKS, ETC SERIAL # VALUE

Narrative Cont: Based on my above observations The Oasis bar and Restaurant at 135 12th St was in violation of being a disorderly house, section 25601 of the Business and Professions Code. The Oasis Bar and Restaurant was in violation of several local, city, state ordinances and laws and grossly disregarded the conditions of no cabaret activity by the city of Oakland. Also, based on my observations and the Oasis Bar and Restaurant's actions of intentionally operating an illegal cabaret, and repeatedly violating the states ABC regulations and the city cabaret and smoking ordinances, I request nuisance abatement action be taken against the establishment.

Reported By K. THOMAS	Serial No. 8069P	Watch 3	Area 3	Supervisor	Serial No.	Page 4 of 4
--------------------------	---------------------	------------	-----------	------------	------------	-------------

This letter is in response to the findings and decision on hearing officer on application made by me Dawit Mebrahtu to operate a cabaret under the name Oasis, at 135 12th street. There were two incidents in the report we wish to address. The complaints are in Police Reports 08-07572, and police report 08-081073.

In report 08-07572, there are three issues brought up in the police report. The first is that an undercover officer overheard that the club was open to 6am. This is highly unlikely because Oasis would be never open until 6am. When the officer arrived at 2:15am we were in the process of closing the club. The officer also mentioned that he smelled freshly burnt Marijuana. Before the police entered the venue, I did smell the burnt Marijuana. We dispatched our security to check the back area. When they arrived in the back area, the offending party had extinguished the marijuana, and blended into the crowd. Our security stayed back there for the rest of the night to make sure there was no smoking of marijuana. The marijuana had been burnt already so it lingered in the air making it possible for the officers to smell it when they entered the venue. The third issue in Police Report 08-07572 is that when the officers entered the club at 2:45am it was still open. The third Saturday at Oasis is usually a slow night. We usually get 50 people on a regular night and 100 at the most. We staff that night with two security personnel in accordance to city rules that require one security for every 50 persons. To our surprise that night was a full house, at the end of the night we only had one security left at 2:00am. I was in the office after closing the bar, and doing the bar, and door tallies for the night. The security person was overwhelmed, and did not clear the patrons on time. This confusion might have lead the officers to think we were going after-hours. This was our mistake in short staffing, and we have made changes and this mistake has not occurred again.

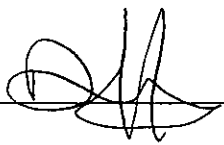
What changes have we made? Our security personnel make sure the Djs stop playing records at 1:40am, and the crowd is out of the venue, by 1:50am. We have assigned two security personnel in the back to make sure there is not smoking of Marijuana, and cigarettes. This has dramatically dropped the temptation of patrons to light up in the back. Those caught breaking the rule, are immediately escorted out of the club.

As regards to Police Report 08-081073, the police officers enter Oasis at 1:30am the day of Daylight Savings, when the clock moved back an hour. The bar was closed at 1:20am. There were a couple of patrons finishing up their drinks as the club was closing down. According to ABC rules they allow alcohol distributors to sell only 2 hours after midnight, which is 2:00am. We thought because the time had moved back an hour we were still in our legal right to stay open. When the officers showed up we had shut the bar down at 1:20am. If it is established that we were mistaken, we will make the necessary changes for the future.

In conclusion I Dawit Mebrahtu and Fessehayle Mabrahtu have run Oasis for 12 years. We have run the establishment to the best of our abilities in accordance with The Oakland Municipal Code Title 5. The two incidents mentioned in the police reports represent the rare, and not the norm of how we run our establishment. Our establishment represents the diversity of Oakland. We have Roots, Reggae every Wednesday. We have dancehall and African music every Friday. On

Saturdays we have House, Disco, and Funk. Every third Sunday during the day we have a party called Butter, that caters to the Lesbian Community. Our club attendance also reflects the diversity of Oakland. That has been our goal as immigrants in this country, and city to add to the great melting pot. We have acknowledged our missteps, and have come up with a game plan to address them. We look forward to working with the City Council, and the Police Officers in the Special Events Department to make sure we are on the same page on all issues, and we are running a respectable establishment.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing statement is true and correct.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Date:

3/25/09

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 APR -8 PM 7:22

Approved as to Form and Legality

DRAFT

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

**RESOLUTION DENYING THE APPEAL FILED BY DAWIT
MEBRAHTU AND UPHOLDING THE ADMINISTRATIVE HEARING
OFFICER'S DECISION TO DENY THE APPLICATION FOR A
PERMIT TO OPERATE A CABARET UNDER THE NAME "OASIS"
AT 135 12TH STREET**

WHEREAS, in evaluating the application for a cabaret permit, Oakland Municipal Code (OMC) Section 5.12.020 requires the Hearing Officer designated by the City Administrator to give particular consideration to the peace and order and moral welfare of the public; and

WHEREAS, OMC Section 5.12.030 requires that cabarets be closed and patrons off the premises between 2:00 a.m. and 6:00 a.m. and the State's Alcohol Beverage Control (ABC) Licensees are required to stop serving alcohol two hours after midnight; and

WHEREAS, these rules were established to maintain peace and order; and

WHEREAS, during the Oasis' application process, the Oakland Police Department (OPD) has documented one instance in which Oasis was conducting cabaret activity with numerous patrons drinking and dancing after 2:00 a.m. and another instance, on the night of the change from Daylight Savings Time to Pacific Standard Time, when Oasis was serving alcohol more than two hours past midnight; and

WHEREAS, the Oakland Police Department should not be required to monitor any one cabaret to ensure that they are obeying the laws regarding maintaining peace and order; and

WHEREAS, pursuant to OMC Section 5.02.060, the Hearing Officer is required to consider the character of the applicant as respects morality, honest and integrity and all pertinent acts which may concern the health, safety, and general welfare of the public; and

WHEREAS, the applicant has jeopardized the safety of Oasis patrons by conducting cabaret activity prior to completion of fire, building and electrical inspections; and

WHEREAS, the applicant has further jeopardized the safety of Oasis patrons by failing to obtain the Special Event Permits, which are required prior to issuance of ongoing cabaret permits and which are issued only if the Building and Fire Departments concur that

the premises meets the minimal safety requirements for temporary conduct of the planned activities; and

WHEREAS, the applicant continued to conduct cabaret activity illegally without said permits after being cited and admonished by OPD and after admitting that the applicant understood the law and had agreed not to violate it in the future; and

WHEREAS, the applicant continued to conduct cabaret activity illegally without permits after his cabaret permit was denied due to ongoing violations of the law; and

WHEREAS, in regard to his morality, honesty, and integrity, the applicant's actions do not recommend the applicant as a person who keeps his commitments or who may be trusted to obey the law in the future; now, therefore, be it

RESOLVED: That the City Council finds and determines that the Administrative Hearing Officer's decision was made in accordance with the requirements of Oakland Municipal Code Chapters 5.02 and 5.12; and be it

FURTHER RESOLVED: That the Administrative Hearing Officer's December 9, 2008, decision to deny the application of Oakland Partners Group for a permit to operate a cabaret is hereby affirmed.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: **DRAFT**

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California