

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
2007 APR -5 PM 4:42

TO: Office of the City Administrator
ATTN: Ms. Deborah Edgerly
FROM: Administrative Hearing Officer
DATE: April 17, 2007

RE: A Public Hearing on the Appeal of the Administrative Hearing Officer's Decision to Deny the Application of Oakland Partners Group LLC for a Permit to Operate a Cabaret Under the Name Club O (Application Submitted to Operate a Cabaret Under the Name Tycoons) and Adopting a Resolution Affirming Hearing Officer's Denial of the Permit

SUMMARY

On November 30, 2006, the Administrative Hearing Officer conducted a public hearing on the application of Oakland Partners Group LLC for a permit to operate a cabaret under the name Tycoons at 1731 San Pablo Avenue. Because Oakland Municipal Code (OMC) Section 5.12 020 requires that the proposed location of a cabaret not be within three hundred (300) feet of a public school, the Building Department produced a map showing the properties within 300 feet of the applicant property as part of the application process. The map revealed that the proposed location was within 300 feet of the Oakland School for the Arts, which is located at 1800 San Pablo Avenue.

At the administrative hearing the applicant requested an opinion from the Office of the City Attorney on the issue of whether the distance requirement was waivable. Upon advice from that office, the OMC, as written, does not provide discretion regarding the 300 feet requirement. On December 6, 2006, the application was denied on the basis of proximity to a school.

Following the denial, the applicant requested reconsideration of the original decision, tolling of the appeal period, and opportunity to review any other substantive issues that would affect the approval of a permit. The Hearing Officer granted the request, subsequently met with the applicant, and continued the investigation of the application, as authorized by OMC Section 5.02.090.

On March 7, 2007, following post-hearing investigation and based upon the preponderance of the evidence, the Hearing Officer denied the application. The Hearing Officer's decision is attached herewith as Exhibit 1¹ (Decision). Oakland Partners Group timely appealed the denial and requested City Council to direct that a permit be issued. The appeal is attached as Exhibit 2.

¹ The Hearing Officer's Decision contains exhibits A and B, so the exhibits to the Appeal will be numbered to avoid confusion.

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This report addresses the appeal and sets forth the analysis as to why the appeal should be denied.

FISCAL IMPACT

There is no direct fiscal impact of denying this permit, other than the annual cabaret license renewal fee of \$300. Although there may be a savings in the cost of police resources allocated to the cabaret, it is likely that these resources would be deployed elsewhere, resulting in a financial zero sum.

BACKGROUND

- Background of 1731 San Pablo Avenue

Records in the City Administrator's file show that, as early as 1990, Mr. Jimmie Ward received approval to operate a cabaret named Jimmie's on the property that is the subject of the current application. Mr. Ward also owned the property until he sold it in the summer of 2006. At that time, Mr. Ward's son, David, notified the Hearing Officer that the property had been sold, the cabaret was closed, and the property was going to be redeveloped, with the existing structures razed to create a residential mixed use development.

At the time of the sale Jimmie's cabaret, which, by then, was known as Jimmie's, was under an agreement that had been reached with the Oakland Police Department (OPD) and the City Administrator's office. The agreement was brokered after OPD requested a hearing to revoke the cabaret permit due to six occasions, over a nine-month period in 2005, in which between eleven and twenty-seven police officers were required to control and disperse crowds, redirect traffic, quell sideshow activity, and protect the safety of pedestrians. On all occasions, the cabaret had employed reputable, licensed private security in excess of the minimums required by the City. The attempts by the private security forces to control the traffic by coning off some of the streets, to disperse the crowds, and to maintain order were unsuccessful.

A key component of the agreement was that the cabaret would limit its music format primarily to rhythm and blues, jazz, zydeco, oldies jukebox, dance and disco. If the cabaret wished to conduct an activity that would be classified as a Special Event², including rap or hip hop artists, the cabaret would notify OPD at least 2 weeks in advance and would confer with OPD regarding the need for private security, OPD resources, traffic control, and crowd control. Implicit in this agreement, because it is a condition of issuing a Special Event permit, was the understanding that, if the projected police resources were not available, the event would not occur. Rap and hip hop events were specifically listed because OPD had observed that the evenings requiring

² OMC Section 9.52.040 provides the definition of "Special Event" that is applicable to this case. "For-profit entertainment activities of persons, entities and businesses who or which are currently licensed to regularly provide specified entertainment activities at fixed locations in the city but which holds an event that will foreseeably result in impacts on public safety, health, welfare, and police resources." To clarify when those impacts would be foreseeable, the agreement with Jimmie's defined a Special Event as one that is "expected to draw a crowd greater than the maximum occupancy level."

excessive police services occurred when these music formats were featured, particularly if @17th Club, located at 510 17th Street, held a similar event the same night. After the agreement was signed, the cabaret held no events that qualified as Special Events, and there were no requirements for police resources at the cabaret, other than the regular patrol officers and the “club detail³”.

In September 2006, a representative of Oakland Partner Group LLC called the Hearing Officer about having Jimmie’s cabaret permit transferred to them. The Hearing Officer explained that cabaret permits are not transferable⁴ and that new owners must apply anew for a permit. The Hearing Officer also provided the representative with a copy of the agreement that Jimmie’s had signed with the City. In October 2006 Oakland Partner Group, LLC submitted their application for a cabaret permit.

- OMC sections applicable to cabarets and to the denial of this permit

1. Non-transferability of permits

Cabarets fall within a group of businesses for which a special activity permit is required⁵, in addition to the Business Tax Certificate required of all businesses. Permits for these businesses are not transferable, and OMC Chapter 5.02, which controls issuance of the permits, emphasizes that the character of the applicant shall be considered in regard to all pertinent acts which may concern the health, safety, and general welfare of the public.⁶ OMC Chapter 5.12, which deals specifically with cabaret permits, reiterates that, “in granting or denying the [permit] the City Manager shall give particular consideration to the peace and order and moral welfare of the public.”⁷

2. Cabarets not permitted within 300 feet of specified sensitive uses

OMC section 5.12.020 requires cabaret applicants to set forth the fact that “the proposed location of such cabaret is not within three hundred feet of any church or synagogue or any building in use as a place of public worship or public school or public library.

3. Cabarets not allowed to breach the peace or to operate after 2 a.m.

OMC section 5.12.030, titled “Regulations” mandates:

It is unlawful for any person operating a cabaret . . .to permit any breach of peace therein or any disturbance of public order . . . or to remain open, or patrons to

³ This is a group of six to twelve officers and a sergeant who have regularly worked overtime for the past two years on Friday and Saturday nights. They monitor the downtown clubs, constantly assessing what is going on, with an eye to preventing sideshows, cruising, and reckless driving. They maintain regular contact with the club owners, responding quickly to their needs for assistance. They have dispersed multitudes of crowds and have de-escalated numerous violent situations involving fights with knives and guns. (Decision, page 12, paragraph 3.)

⁴ Oakland Municipal Code section 5.02.070

⁵ Other businesses within the group include Massage Establishments, Bingo Halls, Pool Rooms, and Carnivals.

⁶ OMC Section 5.02.060.

⁷ OMC Section 5.12.020.

remain upon the premises, between the hours of two a.m. and six a.m. next ensuing.

This application has brought to light some potential or actual conflicts between the current requirements of the OMC and the purported objectives of the City and plans for specific projects. It is the intent of this report to present for the consideration of the City Council some of the OMC sections that, in their current form, 1) preclude the permitting of this cabaret, 2) prevent the amelioration of the foreseeable problems with its operation, and 3) may also stand in the way of the City's plans for the overall growth of the area.

KEY ISSUES AND IMPACTS

The denial of Oakland Partner Group's cabaret permit application was based upon four primary grounds: 1) the proposed location is less than 300 feet from the Oakland School for the Arts, in violation of OMC Section 5.12.020; 2) the City has made a Zoning Determination that a Major Conditional Use Permit is required to sell alcoholic beverages at this location; 3) the history of one of the principals of Oakland Partner Group, who is planned to be the manager of the cabaret, includes a San Jose nightclub that created problems of nuisance and violence for that city between October 2004 and August 2005; and these factors combined create 4) a significant risk to peace, order, and public safety, should a permit be granted to this applicant.

The Administrative Hearing Officer does not have jurisdiction over either of the first two grounds.

- Distance of less than 300 feet from a public school

OMC section 5.12.020 states, "The application for such [cabaret] permit shall set forth . . .the fact that the proposed location of such cabaret is no within three hundred feet of any church or synagogue or any building in use as a place of public worship or a public school or public library." (Emphasis added.) No provision is made for exceptions.

Oakland Partner Group asserts 1) that the 300 foot prohibition conflicts with the City's general encouragement of an entertainment district, 2) that plans for the Fox Theatre include housing a cabaret as well as the Oakland School for the Arts, which would definitely be within 300 feet of each other, 3) that the School for the Arts moved to the location when Jimmie's was an operating cabaret, and 4) that when the school moves into the Fox Theatre, they believe it will be more than 300 feet from the cabaret.

This prohibition, without provision for exceptions, may conflict with the City's general encouragement of an entertainment district, and, a definite conflict will arise if the Oakland School for the Arts and a cabaret are co-located in the Fox Theatre. At some point City Council will have to address this conflict, and appellant requests that it be done now.

It should be noted, however, that the Oakland School for the Arts moved to its location in 2004, prior to the problems at Jimmie's that resulted in the OPD request for revocation of their cabaret permit and their agreement to change their music format.

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- Requirement for a Conditional Use Permit to sell alcoholic beverages

Prior to issuing any permit involving land use, the City Administrator's Office requires a zoning clearance. A letter, dated December 28, 2006, notifying Oakland Partner Group of the requirement for a Major Conditional Use Permit is attached as Exhibit 3. Oakland Partner Group's response, dated January 22, 2007 was included with their appeal and is part of Exhibit 2. They argue that a full service restaurant has been operating on the site and selling alcoholic beverages continuously for over twenty years and is, therefore, Deemed Approved for the sale of alcohol. The City's answer, dated March 27, 2007, from Administrative Analyst and Planner Jacob Graef, is attached as Exhibit 4. It states that, based upon their testimony at the November 30, 2006 hearing, Tycoons does not currently function as a restaurant or plan to operate as one. Therefore a Major Conditional Use Permit is required to sell alcohol.

The remaining two grounds for denial involve issues that arise in the evaluation of all cabaret permits.

- History of the applicant

Oakland Partner Group's appeal states:

The denial report inaccurately states certain facts concerning problems at a club in San Jose. Mr. Pope operated this club for a number of years with no difficulty. He then entered into a contract to allow others to operate the club, called "Ambassadors" with a primarily Hip Hop theme. That operator did have trouble with crowds and fights in the parking lot. Although it took a little time after it became clear that the new operator could not control the crowds, Mr. Pope did terminate the agreement and reopened the club with a different format that has had no trouble at all.

Although the appeal claims there are inaccuracies in the denial report, it fails to specify what they are. However, even assuming as true all of the information presented in the appeal, the Administrative Hearing Officer maintains that it took more than "a little time" for Mr. Pope to remedy the disruptive situation in San Jose. In addition to Mr. Pope's admission of a serious shooting incident (Decision, page 5, paragraph 3), according to reports provided by the San Jose Police Department to the Oakland Police Department, there were thirteen incidents at Ambassadors that required police services to break up fights, disperse crowds and assist battery victims during the ten month period between October 29, 2004 and August 21, 2005. As the Decision points out, all of these incidents occurred in the club's parking lot between the hours of midnight and 2:00 a.m. on evenings of the club's operation. Although police were assigned to Ambassadors as part of an Entertainment Zone Detail in five of the incidents, they reported being unable to break up the fights or disperse the crowds of several hundred people without resorting to the use of pepper spray. A ten-month response to similar situations in Oakland could prove disastrous.

- Four factors that combine to create an unacceptable risk to peace, order, and public safety are; 1) target market and music format, 2) venue size, 3) geographical location, and 4) police resources

It is important to understand that no single one of these four factors, with the exception of police resources, would be grounds for denying a cabaret permit. Combining, as they do in this case, and being exacerbated by lack of adequate police resources, they create a foreseeable risk of violence and a threat to public safety that would make permitting at this time an irresponsible act.

➤ **Peace, Order, and Public Safety Risk Factors**

1. Target Market and Music Format

Common sense dictates that the deployment of police resources should be done in response to the experiences that call for their deployment. Club O plans to target a youthful market, through widespread public advertising of events combining Top 40 artists and dance. Oakland's experience has been that such venues, to a greater extent than other music venues and older audiences, attract people who have no intention of entering the club, but are hoping for the possible 'action' that may occur outside the club during cabaret hours and for the possibility of mixing with the patrons exiting the cabarets. At a popular event, these 'hangers on' can add hundreds to the number of people around the club as it is closing and afterwards. As the Decision points out, "The younger crowd attracted to these events is not ready to call it a night, which accounts for the post-cabaret side-show activity. Additionally, alcohol-fueled fights frequently break out, often punctuated by gunfire." (Decision, page 6, paragraph 2.) When private security is unable to control the crowds, the Oakland Police Department must respond. When Jimmie's was operating, 27 officers were needed one evening to effect crowd dispersal, quell sideshows and other dangerous driving, break up fights and protect the safety of the patrons and others in the area.

Oakland Partners Group, in their appeal, states that:

This [targeting a youthful market through widespread advertising of events combining popular Top 40 artists and dance] is precisely what any operator of a cabaret will want to do in an entertainment area. To suggest to the contrary is either to totally misunderstand the operation of cabarets or to unconstitutionally discriminate against Top 40 music or youthful audiences or both. This ground almost argues that cabaret permits should only be approved for cabarets that have no hope of success.

This argument ignores the fact that there are numerous cabarets in Oakland that target different audiences and seem to be successful. It also ignores the fact that there are cabarets that target the same audiences but are smaller or are in a location where there is not another large similar venue in close proximity, and that these cabarets require far fewer police resources.

The factor of target market and music format is part of the basis for denial only because, in combination with the size of the facility and its geographic locations, Oakland's experience has been that police resources have been needed on a regular basis to protect people and to maintain order. Dedicated police resources are not available for this function, and the informal "club detail", because it is trying to cover the entire Downtown area, has, unfortunately, not always been at cabarets when violence has erupted - with tragic results. It is not the factor of target market and music format but, rather the foreseeability of violence, based upon the confluence of all four factors, augmented by the City's lack of adequate resources to prevent that violence, that mandated the Hearing Officer's denial of the permit.

2. Large occupant load

Club O's occupant load is 553 persons. The appeal states:

The venue has two main music areas. . . They will not necessarily have the same music and cannot have the same artists at the same time. The report by the hearing officer in affect creates a new rule that cabarets can only hold 400 or fewer patrons.

Oakland's experience has been that the larger events, marketing to a young crowd, are those that attract a large number of 'hangers on', as there is more excitement associated with these events and more opportunities for 'action.' Although Oakland Partners Group states that the two music areas won't necessarily have the same music, they object to being limited in any way, so we must assume that the two venues will have the same music whenever they desire.

There is no rule regarding maximum cabaret size. However, due to Oakland's past experiences, proposals for larger venues will always be scrutinized more thoroughly. As the Decision pointed out, even successful cabaret operators have become discouraged at the magnitude of problems they experience conducting events in larger venues. (Decision, page 6 paragraph 3.)

The appeal also notes that:

The [hearing decision] report demonstrates an absolutely unacceptable double standard. The @17th club was approved when Sweet Jimmie's was in full operation.

Club O's proximity to @17th Club could generate crowds of well over 1000 patrons and several hundred more hangers-on. Prior to the concurrent operations of @17th and Jimmie's, the City had little, if any, experience dealing with cabaret crowds of this size when patrons are exiting, the most dangerous time for club patrons, as well as others in the area. (Decision, page 6, paragraph 2.) Only when both clubs were operating with popular entertainers did violence and crowd control issues threatening public safety arise on a regular basis.

The City worked extensively with both clubs. Jimmie's altered their format, prior to closing when the Wards sold the property, and @17th Club established security and crowd control

procedures and standards that exceeded those for other clubs at the time. Some of these procedures have become standard cabaret conditions. @17th Club informs OPD of their event schedule and, on more than one occasion, has cancelled a planned event due to OPD concerns of inadequate police resources to protect public safety. The closure of Jimmie's and @17th's security and crowd control changes and willingness to work with OPD has vastly improved the situation that existed when both were operating. However, there is no double standard. If Jimmie's had remained open, @17th had closed, and a new applicant was applying to operate @17th, the new applicant would face denial if their application presented the same factors upon which the denial of Oakland Partners Group's application was made.

3. Geographic location

There are three problems with Club O's location:

a) Its site is formed by the intersection of several streets, which makes control of the area difficult and foot and automobile access easy and attractive, thereby creating a perfect environment for sideshow activity. Sideshows occurred regularly during the last years that Jimmie's was open, despite attempts by the club to restrict automobile flow by the placement of cones. As stated in the appeal, Club O has presented plans to control this problem through use of guards and blockage of lanes. They correctly state that this is acceptable to OPD. The problem is that it has been tried and, without uniformed police monitoring, has proven ineffective.

b) There is no on-site parking. The appeal correctly states that this is also the case for clubs @17th and Uptown. The problem here is that permitting Club O, with its planned entertainment format, would likely bring in excess of 500 additional patrons and a couple hundred more hangers-on to the area. When both Jimmie's and @17th were operating, the Hearing Officer received numerous complaints of noise and litter in the neighborhoods. These complaints have ceased, not because the club patrons are quieter or litter less, but because, with only a single club in operation, they are not being pushed as far into residential neighborhoods to find parking.

c) The proposed cabaret is within short walking distance of @17th Club. As discussed above, the effect of this proximity is that, after the clubs close, the crowds combine. With well over 1,000 patrons, many of whom are not interested in going home at that time of day, spurred on by a few hundred more who never entered the clubs and who now have the opportunity to 'get some action', and protected by the anonymity of large crowds, Oakland's experience has been that mayhem results in the form of sideshows, gunshots, fights, and crowds that are difficult to disperse.

Although it is not mentioned in the appeal, Mr. Pope's hope was to establish staggered hours with @17th Club. (Hearing Testimony, page 6, paragraph number 35.) He pictured staying open after 2 a.m., serving no alcohol, but serving food and continuing entertainment until the patrons of clubs that closed earlier had left the area. Club O and @17th could alternate between closing late and closing at the normal hours. Although OPD staff hold mixed views on the workability of 'after hours clubs' (Decision, page 11, paragraphs 3 – 4.), other cities, notably San Francisco

and New York, successfully permit such operations. In Oakland, as these hours are currently the lowest staffed shift, the recurrent question arises as to whether regular staffing for such a plan could occur, even if the clubs involved were willing to pay for the coverage. Additionally, OMC Section 5.12.030 currently prohibits cabarets from remaining open or patrons remaining on the premises past 2 a.m.

4. Police Resources

Notwithstanding the presence of the preceding three factors, the Hearing Officer could approve the cabaret permit were it not for inadequate police resources. Oakland Partners Group's appeal points out that this was not a basis for denying @17th or Uptown clubs and should not be a basis for their denial. As discussed above, at the time of the approval of @17th Club, the cumulative effects of two large venue, similar format clubs, in close proximity to each other, were unknown to the City. This is also true of Uptown, but it has a different target market and entertainment format and an occupant load of under 300, factors that dramatically decrease the projected police resources required.

Oakland Partner Group's appeal states that:

The Club O applicants have presented plans for adequately addressing security, including far more guards for events where crowds are likely to gather than the other clubs approved by the City.

The City's minimal security requirement for cabarets is one licensed security guard per 50 patrons. Club O's plan stated they would provide "two security persons for every 100 guests," the same ratio required, at a minimum by the City. At the public hearing they clarified that those guards would be assigned to the interior of the club and that they would also hire whatever number of guards was required to handle the problems outside the club.

Existing and former cabarets, including @17th Club, Mingles, Café Axe, Jimmie's, and Geoffrey's have made the same commitment. OPD has worked extensively with these clubs to ensure that they had security forces in numbers that all parties hoped would be adequate to control the problems of excessive people loitering outside the clubs and to curb the nuisance and violence of exiting crowds. Café Axe, Jimmie's, and Mingles all found that private, unarmed security was no match for large crowds of people who did not respect their authority. @17th and Geoffrey's have increased their security forces. Geoffrey's has limited its large venue events to once a month and @17th cancels events at OPD's request, based upon police staffing concerns. These actions have greatly reduced the need for excessive police resources at these two clubs. The closure of the other three clubs has reduced the level of club-related problems such that the "club patrol" can respond effectively to those clubs that are having problems, thereby increasing the safety of both club patrons and other Oakland residents and visitors.

Oakland Partner Group's appeal states:

If the City is going to succeed in developing the Uptown area as an active 24/7 it will have to solve the stated lack of police resources.

The Hearing Officer totally agrees. Unfortunately, that is not where the City is today. Oakland is still short of the number of police officers authorized, officers are not signing up for voluntary overtime⁸, and regular staffing of cabarets by police officers, which may be the only effective resolution for the problems that are the subject of this denial, has never been done in Oakland.

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. In any event, according to the applicant, the cabaret is planned as only a temporary business on this property, until the necessary permits can be obtained to redevelop the property into a housing/mixed use property.

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 facilities to make the second floor of the proposed cabaret accessible to the disabled or seniors. This floor accounts for a significant portion, if not half, of the occupant load of the cabaret. The ground level portion of the proposed cabaret appears to be accessible.

RECOMMENDATION AND RATIONALE

Regarding the issues of distance from the school and requirement for a Conditional Use Permit, the Administrative Hearing Officer does not have the authority to grant a cabaret permit until and unless these are resolved. If the distance and CUP issues are resolved, OMC Chapter 5.02 establishes the framework for granting specific categories of business permits, including cabaret permits.

Cabaret permits are not transferable due to exactly the types of issues raised by this application. The OMC recognizes that cabarets, like the other businesses that are the subject of Title 5 of the Oakland Municipal Code may generate problems that affect the health, safety, and general welfare of the public,⁹ and that cabarets, in particular, can affect the peace and order and moral welfare of the public.¹⁰

⁸ Although Oakland Partners Group has voiced their willingness to hire off-duty officers from either San Francisco or Oakland, it is questionable whether such officers would be effective, as they would not be armed or in uniform and could face the same resistance experienced by the private security firms.

⁹ OMC Section 5.02.060.

¹⁰ OMC Section 5.12.020.

These OMC sections require consideration of the characteristics of both the applicant and the site. In this regard the histories of both the applicant and the site are relevant. The Hearing Officer must also consider the changes in the City that affect the site and the City's past experiences and the lessons learned.

The appeal emphasizes that other cabarets, such as @17th and Uptown, have received permits despite having some or all of the four factors that are one of the grounds for denial of this permit. What the appeal ignores is that, prior to the permitting of @17th, the City had not experienced the impact of two clubs the size of @17th and Jimmie's, in close proximity and offering the same format. The City had not previously experienced unsuccessful attempts, via numerous other methods of mitigating problems, including additional private security, coning off streets, attempts to disperse the hangers-on throughout cabaret hours prior to patrons leaving. Nor had the City experienced the ineffectiveness of private security in dealing with uncooperative crowds in excess of a thousand people.

Oakland Partners Group is not willing to limit their events to formats that experience has shown would be manageable in combination with the other existing cabarets in the area. Nor do they agree that they should be required to cancel events if OPD determines those events require dedicated police resources and the resources are not available. To issue a permit under the conditions desired by Oakland Partners Group would be turning a blind eye to the City's experiences and knowledge and to the changes in the area that have occurred over the past two years.

The City's experience and knowledge of these past years has been that, when two large clubs, with popular events that generate overflow crowds of young people, are operating in close proximity to each other, private security has proven a) ineffective in dispersing the crowds, particularly at exiting time, b) unable to control dangerous driving, and c) they do not possess the arms or force needed to prevent or quell shootings and other violence. It has also been the experience of the City over the past several years that there are insufficient police officers available to regularly staff cabarets on a dedicated basis. While the "club detail" may be capable of maintaining order most of the time (especially with some of the more problematic clubs currently closed) they have not always been present when violence, including fatal shootings, has occurred.

Dedicated staffing of cabarets by officers volunteering to work overtime could conceivably prevent or handle the problems that private security is not capable of handling. However, OPD's Special Events Unit, which is responsible for obtaining such overtime officers, reports that they are unable to get officers to sign up. Until OPD is at full staffing levels and cabaret duty is part of regular staff assignments, it appears unlikely that there will be police resources available to deal with large post-cabaret crowds, other than on a reacting-after-the-fact basis. Additionally, the OMC section prohibiting cabaret activity after 2 a.m. precludes the opportunity to reduce the crowd size by closing the clubs at different times.

Considering a) the experience that Oakland has had over the past two years with cabaret activity of the proposed type in the proposed area, b) the foreseeability of a recurrence of the same problems under the proposal presented by the applicant, c) lack of adequate police resources to prevent recurrences of these problems, and d) the serious, sometimes fatal, consequences that result from these foreseeable problems, it would be irresponsible to issue a cabaret permit at this time.

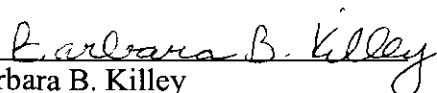
The Hearing Officer is not asking the City to abandon its goal of establishing a vibrant nightlife in the Entertainment Area. Instead, it is hoped that the City will address the problems raised by the limitations imposed by the OMC, deciding whether these limitations are still required in their existing form. If not, can the limitations be eliminated? Or, if the purposes underlying these limitations are still valid, can they be achieved in a different way. When the police department is fully staffed, there will still be no officers assigned to cabaret duty unless staffing priorities are changed. The City would then have to deal with the valid question of whether that staffing should be funded by the businesses that utilize the services or from City resources, as a legitimate expense of promoting a vibrant nightlife.

Until these issues are resolved however, cabaret applications that present foreseeable problems of violence, dangerous driving, and disorder require that the Hearing Officer choose the protection of public safety and the preservation of peace and order over the expansion of nightlife venues.

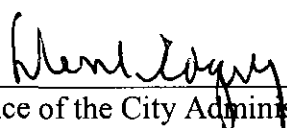
ACTION REQUESTED OF THE CITY COUNCIL

The Administrative Hearing Officer requests that the City Council move to affirm the Hearing Officer's decision and uphold the denial of the cabaret permit.

Respectfully submitted,

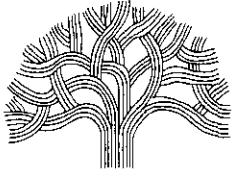

Barbara B. Killey
Administrative Hearing Officer
Office of the City Administrator

APPROVED AND FORWARDED TO THE
CITY COUNCIL:


Office of the City Administrator

Item: _____
City Council
April 17, 2007

EXHIBIT 1



CITY OF OAKLAND

1 FRANK H. OGAWA PLAZA – OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Barbara B. Killey
Assistant to the City Administrator

Phone: (510) 238-2257
Fax: (510) 238-7084
Email: bkilley@oaklandnet.com

March 7, 2007

**DECISION, AFTER RECONSIDERATION, OF HEARING OFFICER
ON APPLICATION OF OAKLAND PARTNER GROUP LLC
FOR A PERMIT TO OPERATE A CABARET UNDER THE NAME
TYCOONS AT 1731 SAN PABLO AVENUE**

Upon the submission of an application by Oakland Partner Group LLC for a permit to operate a cabaret under the name Tycoons at 1731 San Pablo Avenue, a public hearing on the application was scheduled for November 30, 2006. Oakland Municipal Code Section 5.12 020 requires that the proposed location of the cabaret not be within three hundred (300) feet of a public school. As part of the application process, the Building Department produces a map showing the properties within 300 feet of the applicant property. The map, which the Hearing Officer received the day before the hearing, revealed that the proposed location was within 300 feet of the Oakland School for the Arts, which is located at 1800 San Pablo Avenue.

This information was conveyed to the applicant at the November 30 hearing¹. The applicant requested an opinion from the Office of the City Attorney. Upon advice from that office, the OMC, as written, does not provide discretion regarding the 300 feet requirement. Therefore, on December 6, 2006, the application was denied on the basis of proximity to a school. The denial did not otherwise address the merits of the application.

Pursuant to OMC section 5.02.100, applicants have 14 days to appeal adverse decisions. The applicant requested to meet with the Hearing Officer to discuss, assuming that the school proximity issue was resolved, whether there were additional substantive issues that needed to be addressed. Meeting with applicant's counsel on December 8, 2006, the Hearing Officer raised several other issues and agreed to meet with the applicant further to determine if they could be resolved. The applicant then formally requested reconsideration of the original decision, and the Hearing Officer agreed, thus staying the appeal period and providing time to investigate the other substantive issues.

¹ The summary of testimony from the November 30, 2006 hearing is attached as Exhibit A.

Permit Application Decision
Oakland Partner Group, LLC
Tycoons - 1731 San Pablo

The applicants for the permit are John Thomas Cook, James Welsh, Ed Pope, and Hanny Kaiser Bekhit. Mr. Welsh, Mr. Pope, and Mr. Bekhit attended the hearing. The entertainment plan proposed in the application stated the following:

Current plan is: Thursday – Latin music; Friday and Saturday – Top 40; Sunday – Comedy, Gospel, Sports, Private Parties and Fundraisers; Monday through Wednesday – Occasional entertainment, including private parties. This programming plan is subject to change based on market and availability of talent.

BACKGROUND

The application property is the site of the former Sweet Jimmies, previously owned by Jimmie Ward and managed, at different times, by Jimmie Ward and his son David Ward. In December 2005 the Oakland Police Department (OPD) requested a cabaret permit revocation hearing for Sweet Jimmies, based primarily upon six occasions between February and October of 2005 that resulted in the generation of Disorderly House² police reports and invoices to Sweet Jimmies for excessive police services.

All of the police reports from these six occasions describe consistent circumstances: Capacity crowds, over 100 additional people in front of the club, the entire crowd of more than 600 lingering and blocking the streets around Jimmies, and private security unable to control or disperse the crowds. On the calmest end of the spectrum of these occasions, the activities reported were blockage of traffic, excessively loud music, and dangerous driving. Eleven police officers were needed to effect orderly dispersal of the crowds, redirect the traffic, quell sideshow activity, and protect the safety of pedestrians. On the other end of the spectrum, 27 officers were required to break up a large fight that broke out in the crowd, as well as handle the traffic blockage, dangerous driving, and pedestrian protection requirements that occur during sideshow activity or when pedestrians fill the streets and drivers ignore the cones that have been positioned to prevent auto access.

On another occasion, the police report indicates that officers responded to 911 calls from club patrons reporting shooting inside the club. They arrived to find crowds stampeding out. While they were inside trying to determine what had happened, the patrons came running back in reporting shooting on the streets. That evening police estimated 500 vehicles driving around the club, including over 100 motorcycles, swelling the crowd size to over 1000. On a fourth occasion, the club's security had coned off the street to protect the pedestrians. The police reported vehicles merely drove over or around the cones, with one drunk driver nearly hitting several patrons and a policeman. On another of these evenings, the nearby Oakland Homeless Project called 911 to report their windows were being broken out by people exiting the club. On all of the occasions private security was no match for the masses of people who did not want to leave the area.

² California Business and Professions Code Section 25601 provides "Every [Department of Alcoholic Beverage Control] licensee, or agent or employee of a licensee, who keeps, permits to be used, or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience, or safety, is guilty of a misdemeanor." (emphasis added.)

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The parties met to determine if the issues could be resolved without a hearing. A written agreement was reached in which Sweet Jimmies agreed to several conditions, including the following:

1. Jimmie's Entertainment Complex agrees to limit its cabaret program format to primarily rhythm and blues, jazz, zydeco, oldies jukebox, dance and disco.
2. Should Jimmie's plan a cabaret activity that would qualify as a Special Event, including an event involving a rap or hip hop artist either through their own scheduling or through that of a promoter, as further outlined in Condition 20, Jimmie's will provide at least 2 weeks notice to the OPD Special Events Unit. OPD will confer with Jimmie's regarding the size and demographics of the expected crowd, in regard for the need for private security, OPD resources, traffic control, and crowd control. A Special Event shall be defined as any event that is expected to draw a crowd greater than the maximum occupancy level of the cabaret.

Sweet Jimmies and the City signed the agreement, effective February 1, 2006 with a term of six months. The Wards also agreed to meet with the Oakland Police Department to discuss and negotiate \$18,772.34 of unpaid invoices for police services.³ Prior to the expiration of the agreement and prior to meeting about the invoices, David Ward called the Hearing Officer and told her that the property had been sold, the cabaret was closed, and the new buyers planned to raze the existing structures and create a residential/mixed-use development.

In September 2006, the Hearing Officer received a call from Bretta Hembree, who stated that she represented a group called Oakland Partner Group LLC, who wished to have Sweet Jimmies cabaret permit transferred to them. The Hearing Officer explained that these permits are not transferrable⁴ and that, if Oakland Partner Group LLC had not already completed their arrangement, it would be in their best interests to apply for the cabaret permit prior to finalization. She said the deal was already completed, and the Hearing Officer advised her to submit the application as soon as possible to ensure that the permit would be granted before additional investments were made. The Hearing Officer provided her with a copy of the agreement that Sweet Jimmies had signed with the City.

On October 25, 2006 Hanny Kaiser Bekhit submitted a cabaret permit application for Oakland Partner Group, LLC. Elizabeth Clark, an attorney with Wendel Rosen Black & Dean, contacted the Hearing Officer to request Sweet Jimmie's file, explaining that their firm was now representing Oakland Partner Group. The Hearing Officer inquired whether, in view of the past problems and police concerns regarding public safety, the applicants were willing to continue an entertainment format that had been agreed upon by Sweet Jimmies and that had been successful in bringing control to the cabaret. Ms. Clark stated that they would not want to be limited.

³ \$13,385.04 was billed for security OPD claims Sweet Jimmies requested for five events. Pursuant to the terms of their cabaret permit, invoices for excessive police services, totaling \$5,387.30 were sent for three of the six occasions on which Disorderly House Reports were written.

⁴ Oakland Municipal Code section 5.02.070

POST-HEARING RECONSIDERATION INVESTIGATION

Request For And Agreement To Reconsideration Of Decision

On December 8, 2006, following the decision to deny the permit on the basis of proximity to the Oakland School for the Arts (OSA), Mr. Wasserman met with the Hearing Officer and Deputy City Attorney Izetta Jackson to request reconsideration of the Hearing Officer's decision. Mr. Wasserman presented several arguments regarding the issue of proximity to the school:

1. The policy prohibiting cabarets within 300 feet of schools is in tension or conflict with other City policies. This is particularly true when both the school and the cabaret are located in what is commonly known as "The Entertainment District," where the City has encouraged the growth of entertainment venues.
2. OSA located in this area in order to be in The Entertainment District.
3. The Fox Theatre, where OSA will be housed after renovation of the theatre is complete, will also be the site for a cabaret, "The Ruins," which will most certainly be closer than 300 feet to OSA
4. When OSA moves into the Fox, it may be more than 300 feet from Tycoons.
5. Uptown Nightclub, which is also within 300 feet of the School for the Arts, received a cabaret permit.

After again explaining that the OMC mandated denial on the basis of school proximity, the Hearing Officer also noted that there were other issues standing in the way of approving a cabaret permit at that location. These issues included Mr. Pope's history of nightclub operation in San Jose, and four factors, the confluence of which, over the past several years has caused the City significant problems of violence and risk to public health and safety: 1) Targeting a youthful market through widespread public advertising, by radio and internet, of events combining popular Top 40 artists and dance, 2) Large occupant load, 3) geographic location, 4) lack of adequate police resources.

Mr. Wasserman requested the opportunity for Tycoons to understand and address those issues and to consolidate them into the permit decision. In that way, if the application was denied, all of the issues would be considered in Tycoons appeal, providing economies of process to the parties and to the City Council. On December 13, 2006, Mr. Wasserman submitted a formal letter requesting reconsideration. The Hearing Officer granted the request.

Meeting With Tycoons To Discuss Other Issues

Operation of Ambassador's Nightclub

On December 21, 2006, the Hearing Officer met with Mr. Pope, Wendell Rosen Black & Dean attorney Elizabeth Clark, OPD Sergeant Kyle Thomas, OPD Special Events Sergeant Pedro Espinoza, and Carletta Starks, Community Liaison for City Council Member Nancy Nadel.

Mr. Pope provided some background information. Although the owners of the property do plan to raze the structures and create a mixed use development, several years may be required to obtain all of the necessary clearances and permits. In the meantime, they are leasing the cabaret portion of the premises to Oakland Partner Group for a monthly rental of \$500 plus payment of

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property taxes. Although they were aware of the non-transferability of cabaret permits, Oakland Partner Group made a substantial investment in improving the appearance and the furnishings of the interior of the club, believing that, because of the long duration of Sweet Jimmies operation, there would be no impediment to continuing cabaret activities there.

Sgt. Espinoza had performed background checks on the principals listed on Tycoons cabaret permit application. From the San Jose Police Department Sgt. Espinoza learned that, under Mr. Pope's ownership, the Ambassador nightclub had been the site of substantial nuisance and violence activity, for which it was shut down.

Mr. Pope explained that he had a history of successfully operating nightclubs, including the Paradise Beach in San Jose. At the Paradise Beach he was approached by some people, who wanted to buy in. They did so and changed the name of the club to Ambassador's. They also changed the format. According to Mr. Pope, performances by stars such as E40 made it extremely popular. But, in Mr. Pope's words, that is when it also "went to hell." In one incident, he said, 37 rounds were fired and a police officer was shot.

Mr. Pope said he then met with Deputy Chief Ferguson of the San Jose Police Department and agreed to switch to a Hispanic format and change the name to Club Miami. Mr. Pope emphasized that, although the San Jose City Council was in the process of enacting an ordinance to deal with the clubs due to the problems caused by his club, he voluntarily made the changes that resolved the problems.

The Other Four Factors That Concern The City

1. Target Market and Music Format

Mr. Pope stated that he plans to utilize a variety of entertainment formats, with Sunday comedy and gospel shows and Thursdays as Spanish night. He acknowledged that his plans for Friday and Saturday nights were to use DJs to play Top 40 hits, which would include hip hop and that he planned to advertise on KMEL. Sgt. Thomas explained that the former combination has frequently resulted in violent incidents and crowds that are out of control, both to this location and others throughout the City.

Mr. Pope protested that everyone plays hip hop these days but he committed to play only mainstream hip hop, not "hyphy, hard core or gang banger" hip hop. He explained that he believed the prior owner advertised in ways that actually attracted bad elements, by such promotions as "five dollar discounts for colors." Tycoons plans to appeal to a much more upscale audience. They believe that their \$25 cover charge will send this message.

Sergeant Thomas explained that other clubs, such as @17th Nightclub, have attempted to accomplish the same thing through a combination of dress code and cover charges. However, if the club is popular, those policies do nothing to discourage the 'hangers on', who either cannot get in because the club is sold out or who have no intention of paying the cover charge. Often numbering in the hundreds, they loiter outside the club looking to associate with those exiting the club and to participate in the post club action, such as sideshows. Factors such as declines in patronage create economic pressures that frequently result in erosion of both the dress code and cover charge policies.

Mr. Pope believes that his security staff will be able to disperse the hangers on. Sgt. Thomas explained that it has not been Oakland's experience that private security staff can accomplish this and that frequently even an OPD unit cannot do so. In these instances, Sgt. Thomas calls for backup, and as many as 27 police officers have been required to effect crowd disbursement, quell sideshows and other dangerous driving, break up fights, and protect the safety of the patrons and others in the area.

Sgt. Thomas added that the most dangerous time is when the cabaret activity concludes at 1:30 a.m. and the cabaret patrons exit onto the street, where they are joined by the hangers on. The younger crowd attracted to these events is not ready to call it a night, which accounts for the post-cabaret side-show activity. Additionally, numerous alcohol-fueled fights break out, often punctuated by gunfire.

2. Large Occupant Load

The occupant load for Tycoons cabaret is 553. Sgt. Thomas explained that his experience has been that the smaller venues, less than 300 to 400 patrons, can successfully host hip hop events if they are well managed. There are fewer hangers on at smaller events and the end of evening crowd dispersal is likely to be more orderly. For example, 2232 MLK Cabaret, with a capacity of 300 and targeting a young crowd, has few difficulties in crowd dispersal. OPD attributes this primarily to size and location, because, although the cabaret manager has a number of years of experience, he has been unable to transfer the successful crowd control of 2232 MLK to the larger venue of Sweet's Ballroom (occupant load of 900), where, in partnership with another experienced club operator, he manages occasional large events.

Zazoo's, with a capacity of 300, has been able to avoid problems of significant violence, while utilizing a 'rhythm and blues'⁵ format. However, even this 'success' is tempered by ongoing complaints of nuisance impacts, such as excessive littering and exiting noise, including blaring radios and squealing tires. Both 2232 MLK and Zazoo's are relatively isolated in relationship to other cabarets.

3. Geographic Location

In addition to being located within 300 feet of a school, there are two other problems with Tycoons geographic location: 1) It sits, as the only property, within the triangle formed by three streets, San Pablo Avenue, 18th Street, and Jefferson Street, and 2) it is within a short block of @17th Nightclub. According to both OPD and the prior owners of Sweet Jimmies, the confluence of the three streets makes automobile and foot access to the area extremely easy and control of the area extremely difficult.

Additionally, because its building occupies the entire property, there is no on-site parking. There is a large parking structure across the street but, as Sgt. Thomas testified, concentrated parking has proven to be very dangerous as cabaret parking. (Summary of Testimony, paragraph 61) If cabaret patrons have scores to settle, they may do so in the parking structure with weapons stored in their cars. The alternative of disbursed parking results in a large

⁵ After nearby residents protested the nuisance effects of their hip hop venue, Zazoo's claims that they converted to a rhythm and blues format. Residents complain that hip hop is still the entertainment format.

number of patrons parking in the surrounding residential areas and, during the operation of Sweet Jimmies, creating noise and littering problems.

Mr. Pope plans to provide enough security staff to ensure that patrons do not create a nuisance in the neighborhoods, regardless of how far they have had to park.

The issue with proximity to @17th Nightclub is that @17th is also a large club that frequently offers hip hop entertainment and dancing, appealing to the same age demographic. When Sweet Jimmie's was operating a similar venue, the combined clubs attracted over 1100 patrons and, on big nights, a couple hundred additional outside each club, creating the effect of a single club with an occupant load of 1500. On many of these occasions, police responded to calls of fighting, gunshots, and out of control crowds. Their experience has been that the magnitude of both the disturbances at these venues and the response required to quell them increases geometrically, not incrementally, as the crowd size increases in excess of 500 or any time that there are a significant number of additional people outside the clubs.

To prevent problems of such crowd sizes, Mr. Pope proposes that the clubs offer music and dancing after 2:00 a.m. and be assigned staggered exiting times. OMC section 5.12.030 currently requires cabaret activity to cease at 2:00 a.m., and none of the clubs has been interested in closing prior to that time. Additionally, early staggered closing times could increase the problems of young adults on the street looking for something to do.

4. Inadequate Police Resources

Although everyone agrees that Tycoons cannot control the availability of police resources, the current understaffing of OPD is the most significant factor in the City's ability to protect the health and safety of its residents and visitors. Sgt. Thomas explained to Mr. Pope that, over the past three years, he has held over those of his third watch officers who are willing to work late Friday and Saturday nights. In this way he has established an unofficial "Club Detail," usually consisting of 10 to 12 officers with six to eight patrol cars. They patrol all of the downtown clubs but do not position permanently at any club, responding to calls for assistance as needed.

During the time of the simultaneous operation of Sweet Jimmies and @17th Nightclub Sgt. Thomas did not feel his unit was capable of preventing out of control crowds and violence. His officers wrote "Disorderly House" police reports on both venues and issued invoices for excessive police services.

According to Sgt. Thomas, @17th Nightclub responded very proactively, significantly increasing their security staff, strengthening their patron screening processes, improving their exiting control, notifying the City of all events and canceling those that the City believed would require additional police resources, and implementing a citizen's arrest procedure for patrons that violate the law. Additionally, their location, mid-block of 18th Street, allows for closure of the street at both Telegraph Avenue and San Pablo Avenue, thus preventing sideshow activity and other dangerous driving in the immediate vicinity of the club and their exiting patrons.

Their actions reduced the number of incidents requiring police intervention, but the most dramatic reduction in the need for police resources occurred after Sweet Jimmies discontinued their hip hop events.

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Mr. Pope indicated his willingness to pay for OPD officers if required to staff his events. Unfortunately, the City can provide no assurances that officers would sign up to work these events. Sgt. Espinoza discussed his difficulties in staffing the events to which the City is already committed, such as Raiders and A's games and other events at the Coliseum. These events have therefore been assigned to OPD's "mandatory overtime" category.

Other Issues Discussed At December 21, 2006 Meeting

Sgt. Thomas questioned how Oakland Partner Group had selected the name Tycoons. Mr. Pope answered that they thought it indicated an upscale type of venue. Sgt. Thomas expressed his concern that 'tycoonin'' is a term coined in an E40 song, and that it has a much different meaning, with negative connotations in the hip hop community.

Mr. Pope expressed his strong desire to be authorized to conduct a New Year's Eve event. Sgt. Espinoza told him, that, because there are so many extra police working New Year's Eve, that would be a possibility, and suggested that Mr. Pope submit a Special Event Permit application. Mr. Pope explained that he had looked into the possibility of a Special Event Permit, but was unable to obtain one, a business license was required. The Business License office told him that, because he was applying for a cabaret permit, there is a special cabaret business license, which is not issued until the approval of the cabaret permit. All of the parties agreed to work together to on this, and Sgt. Espinoza requested that Mr. Pope submit the information requested on the Special Events permit so that he could do the required research to approve the event.

Mr. Pope concluded the meeting by stating that "All nightclubs have problems." He committed that, if Tycoons receives a cabaret permit, they will not have a problem more than once.

Activities Following December Meeting With Tycoons

Issuance Of Temporary Cabaret Permit For New Year's Eve

The Hearing Officer confirmed with the Business License Department that a cabaret business license would not be issued prior to the issuance of the cabaret permit issued by the City Administrator's Office. The Hearing Officer issued a one day permit, and assisted the applicant in obtaining the matching business license. The Special Events Unit approved the event.

Sgt. Thomas reported that New Year's Eve in Oakland was 'completely dead.' He does not know whether crowds did not come to Oakland because they are aware, from prior years, of the size of the police force that evening⁶, or whether other locations offered more attractive options. In any event, with the exception of a fight in the parking lot used by Geoffries, there were no problems with any club that evening. Normal Friday and Saturday nights in Oakland are busier than was New Year's Eve. Sgt. Thomas noted that, because the clubs were authorized to stay open later than 2:00 a.m. that evening, there was no mass exodus or the problems of sideshow and crowd control that accompany the standard Friday and Saturday evening mass exodus.

⁶ On New Year's Eve, there were 180 more officers patrolling the streets of Oakland than the normal number of 60 prior to 12:30 a.m. and 30 to 35 after 12:30 a.m.

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Requirement For Conditional Use Permit

After Jimmie Ward sold the property on which the former Sweet Jimmie's was situated to 577-579 18th Street Partners LLC (18th Street Partners), 18th Street Partners leased the restaurant back to Jimmie Ward, who continues to operate it. 18th Street Partners then leased the cabaret portion of the property to Oakland Partner Group, the current applicants for a cabaret permit to operate Tycoons. Oakland Partner Group then applied to ABC for a transfer of the Type 47 restaurant license⁷ formerly held by Sweet Jimmies. ABC conditionally approved the transfer.

Because Oakland Partner Group is not operating the restaurant, they are viewed by the ABC as having a "food lessee," the restaurant operated by Jimmie Ward. An ABC representative explained to the Hearing Officer that, although Oakland Partner Group had not registered this arrangement with ABC, it would be an approved type of operation. It requires that the alcohol sales be performed by the liquor licensee, the food sales by the food licensee, and that the two types of sales be maintained separately for reporting purposes.

This information triggered a letter, sent December 28, 2006, to Oakland Partner Group from Jacob Graef, Administrative Analyst II and Planner II assigned to the ABAT Unit of OPD. The letter advised Oakland Partner Group of a Zoning determination that a Major Conditional Use Permit is required for the sales of alcohol at this site. Mr. Graef explained to Hearing Officer that the City's prior approval was for a restaurant business and the associated ABC license. The restaurant business is currently owned and operated by Jimmie Ward. Oakland Partner Group, a separate business, operating separate facilities on the property, sells only alcohol, and Major Conditional Use Permits are required for all businesses that sell a preponderance of alcohol.

DISCUSSION OF ISSUES

Prohibition Of Cabarets Within 300 Feet Of Schools

What may or may not occur with the Oakland School for the Arts and the Fox Theatre is not within the scope of consideration of this permit application. Also, the fact that Sweet Jimmies had a permit on the same premises is not relevant. Sweet Jimmies existed prior to the school, but, as there is no provision for transfer of permits, new applicants must meet the requirements of the OMC at the time of their applications. The applicant premises are within 300 feet of the School for the Arts. Therefore, according to the requirements of OMC Chapter 5.12.020, no permit may be granted.

History Of Mr. Pope's Other Cabaret Operations

Mr. Pope testified that he has been in the nightclub business for 29 years and that this experience has taught him how to run clubs. (Summary of Testimony, paragraph 28.) While the bulk of his clubs may have run relatively trouble-free, his most recent involvement was with the Ambassador Club in San Jose, which experienced problems significant enough and protracted enough to cause the City Council to consider changing their ordinance. This occurred in a City

⁷ A type 47 ABC license allows full service restaurants to serve all types of alcoholic beverages, but requires that the sales of food exceed 50 percent of revenues.

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that assigns police officers to actively cover the clubs and that exercises a zero tolerance policy for all law violations around clubs.

According to reports provided by the San Jose Police Department (SJPd) to the Oakland Police Department there were thirteen incidents at Ambassadors between October 29, 2004 and August 21, 2005 that required police services to break up fights, disperse crowds, and assist battery victims. All occurred in the club's parking lot between the hours of midnight and 2:00 a.m. on evenings of the club's operation. In five of the incidents, although police were assigned to Ambassadors as part of an Entertainment Zone Detail, they reported being unable to break up the fights or disperse the crowds of several hundred people without resorting to the use of pepper spray.

The ten-month duration of these incidents does not substantiate Mr. Pope's testimony that "When we have a problem, we fix it, and that's the end of it." (Summary of Testimony, paragraph 40.) Mr. Pope does seem to understand the dynamics of the crowd that is attracted when popular artists are advertised on KMEL, and he testified that, to prevent the problems generated by those who either cannot or don't want to actually enter the club but who want to mix with club patrons, they put security on all of the corners and "don't let the kids stand around." (Summary of Testimony, paragraph 44.) The reports from SJPd indicate that, as has been Oakland's experience, private security was ineffective in dispersing large crowds and ineffective in breaking up large fights.

Mr. Pope claims that he voluntarily changed the format, but only after an incident involving shootings. Mr. Pope appears sincere in his commitment that a problem won't happen more than once. However, the operation of Ambassadors does not match this apparent commitment. Violent incidents are not the kind of problem that any City should countenance occurring even once, and, unfortunately, Oakland's experience has been that fights and shootings are more than occasional at clubs where some or all of the 'four factors' are present, and that injuries and deaths have been directly attributed to this club-related violence. Approving an operation that carries a high probability of violence would be the height of irresponsibility for a Hearing Officer.

Target Market And Music Format

The Hearing Officer acknowledges that Top 40 music entertainment, marketed to the under-40 age group, may be the most lucrative format for a club. Several clubs have applied for cabaret permits with the intention of maintaining jazz or blues entertainment formats, only to learn that the market for that format is already occupied by such clubs as Yoshi's. They also soon learn that a hip hop or rap format, advertised on KMEL, is likely to draw a large crowd.

Disappointingly, the experience of clubs such as Sweet Jimmies, Mingles, and @17th Nightclub has been that these events can also attract rival gangs and crowd sizes that are beyond the ability of private security to control. When OPD is regularly required to provide officers for crowd control, one must question whether these operations would be profitable if they had to bear the cost of police coverage.

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Venue Size

Upon exiting the clubs, the pattern has been for the crowds from the former Sweet Jimmies to converge with the crowd from @17th Nightclub. The authorized occupant loads of Tycoons and @17th Nightclub create the potential for crowds in excess of 1500 persons, including several hundred hangers on. Cabarets Van Kleef and Uptown are much smaller venues, but they are in the immediate vicinity, have the same closing times, and have no dedicated parking. Consequently, upon exiting, their crowds also converge in the area of @17th Nightclub and the proposed Tycoons Nightclub. In crowds of this size, interference with fights can be hazardous to police officers, shooters are nearly impossible to identify, sideshows and other dangerous driving occurs freely, and the best the police hope for is to disperse the crowd with a minimum of injury to persons and damage to property.

Mr. Pope's proposed solution of extending cabaret hours past 2 a.m. and establishing staggered exit times would require a change to OMC section 5.12.030 which prohibits patrons from being on cabaret premises between the hours of 2 a.m. and 6 a.m. Reallocation of police resources may also be required, as, currently, these are the hours of the lowest police staffing levels. Additionally, prior to establishing staggered exit times, the City must consider factors such cut-off times for entry into clubs, methods of assuring that the exiting is truly staggered and not just a later mass exodus, and fair assignment of the times.

OPD opinion on the potential effectiveness of extended hours as a crowd control solution is divided. Sgt. Thomas favors extended hours, on the premise that club patrons will continue to party inside the clubs until they are ready to go home. Activity inside the clubs is much more easily controlled than activity on the street.

Sgt. Michael Poirier does not think the solution is so easy. Until recently, he supervised a Crime Reduction Team in East Oakland, where a club on Hegenberger was involved in an after hours pilot program. Sgt. Poirier does not feel that OPD is staffed to handle crowds dispersing during those hours and believes that extended hours only extend the sideshows and other nuisance activity.⁸

Geographical Location

The confluence of four downtown streets around Tycoons creates traffic and crowd issues that even David Ward, the last manager of Sweet Jimmies, admits are very difficult to control. (A map of the area is included as Exhibit B.) While most club locations could radically reduce traffic and crowd problems by stationing one squad car and two officers outside the club, this location could require one on each corner. Additionally, while the police routinely authorize clubs to cone off the street adjacent to their club to secure pedestrian safety and prevent the startup of sideshow activity, it is extremely difficult to effectively block the streets around Tycoons and to divert traffic without undue disruption.

⁸ It should be noted that the club involved in the pilot program, Ibiza, provided the police with other significant problems involving the use of the rooms in the adjoining motel for illegal activity. Its successor, Wild Card, has eliminated those problems and has been able to manage the exiting crowds. Wild Card is also lobbying for extended hours, explaining that they cannot compete with San Francisco venues unless they offer cabaret activity past 2 a.m.

Although Mr. Pope believes his security staff will be able to disperse the hangers on and effect the orderly exiting of patrons to their cars in the neighborhoods, the experiences of Mingles and Sweet Jimmies have shown that to be impossible in cases where the street crowds exceed a couple hundred persons. Both clubs utilized experienced, licensed security firms, staffing in excess of the minimum cabaret permit requirement. Both security firms reported that they could sometimes move the hangers on but could not disperse them, and both were powerless to control the post-club chaos when club patrons joined the hangers on, continuing the party outside the club and being surrounded by sideshow activity.

Police Resources

Other cities such as San Jose, San Francisco, and New York have resolved the problems associated with club hangers-on and exiting by assigning police officers to regularly work at or near the city's nightclubs. In San Francisco, specific clubs are required to hire off duty officers who disperse crowds and prevent other nuisance effects, mainly outside the clubs. In San Jose, twenty to twenty-five officers regularly sign up to extend their normal 1:00 a.m. ending time by two hours Thursdays through Sundays. They work near the clubs, proactively citing for nuisance activity such as public urination, traffic violations, and even jaywalking. Their overtime costs are covered by the City of San Jose, not by the clubs. Due to the understaffing of OPD, these are solutions not currently available to Oakland.

Oakland has never had police officers regularly assigned to monitor nightclubs.⁹ This enforcement vacuum, and the problems of violence, dangerous driving, and out of control crowds that filled the vacuum, prompted Sgt. Thomas to request his officers to hold over until all of the activity associated with the clubs was cleared. His officers have responded and, for the past two years, have functioned as an unofficial club patrol. They monitor the downtown clubs, constantly assessing what is going on, with an eye to preventing sideshows, cruising, and reckless driving. They maintain regular contact with the club owners, responding quickly to their needs for assistance. They have dispersed multitudes of crowds and have de-escalated numerous violent situations involving fights with knives and guns.

According to Sgt. Thomas, the discontinuance of Mingles, Sweet Jimmies, and Café Axe's weekend cabaret activity has dramatically reduced the level of club-related problems, allowing his officers to respond effectively to those that are having problems and thereby increasing the safety of both club patrons and Oakland residents. His concern is that an increase in this activity by a club of Tycoons' size, location and patronage will tip the balance, preventing the exercise of proactive problem prevention and returning his officers to the damage control mode of the days prior to the closure or curtailing of the three clubs mentioned above.

Assuming, for the sake of argument, that Oakland did have police officers willing to work overtime at the club, the Hearing Officer questions whether the venue would then be profitable for Oakland Partner Group. Although Mr. Pope testified to his willingness to employ police

⁹ Full OPD staffing will not necessarily solve the problem of inadequate club coverage as OPD's staffing plan does not include assigning police personnel to regular nightclub duty or other special events. It could, however, increase the willingness of officers to work overtime on special events.

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officers as needed for crowd control, crowds he acknowledges will be drawn by his planned entertainment format and advertising strategy, he also testified that, “If he gets a bill for eight officers for 3 hours, that almost means he might as well not have been open that night.” (Summary of Testimony, paragraph 43.) Unfortunately, the irregular rectangular shape and openness of the location may require eight officers (two on each corner) and a sergeant to control and disperse the anticipated crowds. Even more unfortunately, SJPD’s experience, like Oakland’s, was that even multiple officers were sometimes unsuccessful in preventing violence.

Problems, such as those described in the Sweet Jimmies Disorderly House reports, impact police resources in the neighborhoods, as well as the effectiveness of the ‘club patrol.’ When police response is needed at the levels indicated in those reports, up to a third of the beat officers have been pulled out of their beats to address the club’s problems. This contributes to the inability of Oakland residents to get a timely response to other calls for police service.

OMC section 5.02.060 instructs the Hearing Officer to consider “all pertinent acts which may concern the health, safety, and general welfare of the public.” When OPD is not staffed to adequately control conditions that have consistently created situations involving gun violence, knife fights, dangerous driving, and property damage, the health and safety of club patrons and citizens alike is jeopardized. Although Mr. Pope may have responded appropriately after the fact, his most recent nightclub experience did not employ methods of preventing the dire problem of violent fights, fights that could have, but fortunately did not, result in any deaths. Oakland has not been so fortunate in this regard.

DECISION

The location of the proposed Tycoons nightclub at 1731 San Pablo Avenue is not more than 300 feet from the Oakland School for the Arts, a requirement of OMC section 5.12.020. The application for a cabaret permit must be denied on that basis. Even if denial was not mandated by the express language of the OMC, the Hearing Officer would deny the application on the grounds discussed below.

Tycoons location and plans to provide Top 40 music and dancing to over 500 patrons would create conditions that have proven numerous times to require the intervention of OPD to prevent violence, sideshows and property damage and to restore order. When a San Jose club owned by applicant Ed Pope switched to a hip hop format, they experienced sustained problems of significant violence, ultimately resulting in Mr. Pope’s decision to discontinue that format.

The two solutions proposed by the applicant to proactively deal with this potential are not currently available to the City. The first solution, cabaret hours past two a.m., would allow for staggered exiting, thereby minimizing the risk of crowds, well in excess of 1000 people, congregating and continuing “party” activity between Tycoons and @17th Nightclub. This solution is prohibited by OMC section 5.12.030.

The second proposed solution, the assignment to Tycoons of OPD officers, working overtime, on Friday and Saturday nights, when their planned entertainment format would draw large young

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crowds and many hangers on, could enable OPD to disperse the hangers on and increase the likelihood of orderly exiting, thereby reducing potential violence, sideshow activity, and property damage. However, OPD is not currently able to obtain volunteer officers for the extra activities the City must cover. Until more officers are available and willing to work overtime at cabarets, it is not possible to implement this option.¹⁰ Additionally, there is the question of whether it would be cost-effective for the club to pay for the level of policing required to maintain order.

The preponderance of the evidence shows that the planned operation of Tycoons cabaret would likely create negative impacts on the health, safety, and general welfare of the public. The preponderance of the evidence also shows that the Oakland Police Department is not staffed to proactively prevent or minimize these impacts and that other proposed mitigating solutions are not currently available to the City. Additionally, because a zoning determination has been made that a Conditional Use Permit is required for the operation, a zoning clearance would be needed prior to the issuance of a cabaret permit. The application of Tycoons to operate a cabaret at 1731 San Pablo Avenue is therefore denied.

This decision may be appealed to the City Council within fourteen (14) days of the decision being posted in the mail. An appeal form and instructions are enclosed.

Barbara B. Killey
BARBARA B. KILLEY, HEARING OFFICER

3/7/07
DATE

¹⁰ Should the City, in the future, reconsider police staffing assignments for cabarets, An alternative method of providing staffing would be the assignment of OPD officers to specific cabarets as part of their normal work shifts. This deployment of police personnel in this manner may be possible after OPD reaches their full allocation of officers but is unlikely when regular police beats go uncovered and citizens regularly complain of inadequate police response to burglaries, drug dealers, and other crimes that affect the safety of their neighborhoods. Additionally, this method requires a determination by the City whether cabaret activity is important enough to the City that the cost of policing it should be covered by all of the citizens, or whether the clubs that require the police resources should bear the cost.

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Enclosures:

Proof of Service
Appeal Information

Mailing List

Hanny Kaiser Bekhit
Zack Wasserman, Wendell, Rosen, Black, & Dean

Via Email

Mayor Ron Dellums
Ms. Nancy Nadel, City Council Member District 3
Ms. Deborah Edgerly, City Administrator
Mr. Niccolo De Luca, Deputy City Administrator
Ms. Joyce M. Hicks, Esq., CPRB
Ms. Izetta Jackson, Deputy City Attorney
Chief Wayne Tucker, OPD
Lt. Paul Berlin, OPD
Sgt. Robert P. Crawford, OPD, ABAT
Sgt. Pedro Espinoza, OPD, Special Events
Sgt. Kyle Thomas, OPD
Ms. Yolanda Denson, Revenue - BTCSU
CAO File

EXHIBIT A

**SUMMARY OF TESTIMONY
TYCOONS CABARET HEARING**

November 30, 2006

Prior to the hearing, the applicants passed all required building inspections, and the County Health Department approved the facility. A fire inspection was scheduled the week following the hearing.

Prior to the Hearing the Hearing Officer had received several emails from area residents, who stated that they could not attend the hearing and requested a continuance to an evening session to allow for their comments. The Hearing Officer stated that she normally granted such requests, whether made by residents to allow for greater participation or by the applicant to allow for greater preparation, but that the testimony of those assembled currently would be taken today.

The Hearing Officer also stated that mapping the applicant's location showed that the proposed cabaret was within 300 feet of the Oakland School for the Arts, in violation of Oakland Municipal Code section 5.12.020. The Hearing Officer had requested, but not yet received, an opinion from the City Attorney's office regarding this issue.

Zack Wasserman stated that he was the attorney for the applicant. He stated that he was not aware of the school proximity issue and noted that there had been a cabaret on the site for a number of years and that the School for the Arts had moved to the site knowing this. He stated there was no indication there had been difficulties with the school and that, on the merits, that would not be a basis for denial.

Mr. Wasserman stated that he understood there was a desire to give the neighbors an opportunity to be heard, but that the application had already been subject to long delays and he would hope any continuance would be expeditious.

In response to the Hearing Officer's question whether the applicant was willing to commit to the entertainment plan listed on the application, Mr. Wasserman stated that obviously things get changed due to the market and availability of talent. However, he said, the variety listed there would occur.

The Hearing Officer explained that, even existing cabaret permittees are being required to go through the Special Events process when they plan to have events that have historically caused the need for what OPD considers excessive police resources. These events have typically involved hip hop, hyphy, or rap DJs and artists.

Mr. Wasserman stated that they were not prepared to eliminate any kind of music and that doing so would be discriminatory and not fair to this operator and to the citizens of Oakland. They recognize that, with some types of music there is a higher degree of risk, but they have very experienced operators and they are prepared to talk about that and what they believe is a very well thought out security plan. They would not object to a notification, but the Special Events

process would give the City veto power over events, which they believe would be discriminatory and not lawful.

The Security Plan submitted by the applicant contained the statement, "As a Type-47 ABC licensed establishment, persons over 18 will be admitted; but no person under 21 will be served liquor at any time. The Hearing Officer questioned whether this meant that minors would be admitted to the restaurant or to the cabaret. Mr. Wasserman stated that this application addressed only the cabaret operation. He explained that, although there is a single ABC license, the restaurant is a separate entity and is separately operated. The Hearing Officer explained that, with restaurants that also function as cabarets, there is always an issue of separation of minors and queried what the need for including 18 to 21 years olds was.

Mr. Ed Pope testified that the building is situated such that the front banquet room could be shut off so that no alcohol would be served and the back section can be separated as well so that there can be two different parties occurring. The building is designed as two clubs in one, with separate restroom facilities. These sections are separate from the restaurant. Mr. Pope stated that he wasn't planning on underage events but wanted the option, in case there were teen events that he would like to do. He agreed that these events could be completely non-alcoholic, and Mr. Wasserman stated that they could modify their Security Plan to clarify that minors would not be in areas where alcohol is served.

Sgt. Kyle Thomas asked whether the restaurant was owned by the group that is applying for the cabaret license. Mr. Pope answered that it was not, that it was owned by Linda Ward, Jimmie Ward's wife. Sgt. Thomas asked whether there were separate ABC permits for the cabaret and the restaurant. Mr. Pope answered that there was not. Sgt. Thomas asked what the restaurant hours were, and Mr. Pope answered 11:00 a.m. to 2:00 a.m. Mr. Pope explained that they had sublet the restaurant to the Wards, which is permitted with a restaurant type (47) license. He stated that they also had ABC permits for two portable bars, type 68. Mr. Wasserman explained that the primary license is a temporary one. Sgt. Thomas inquired into the smoking plan, and Mr. Pope stated that patrons would be allowed to smoke in the interior patio, which is open to the air.

Sgt. Kyle Thomas testified as follows in paragraphs one through 25:

1. He has been with the Oakland Police Department for about ten years and a sergeant for the past two. As a sergeant, he has been assigned primarily to West and North Oakland.
2. Several years ago third watch, which worked from 2:00 or 3:00 p.m. to 12:30 or 1:30 a.m., began being held over mandatorily every Friday and Saturday night to deal with sideshow activity. Sideshow activity is large gatherings of people and cars, people drinking and spinning doughnuts with their cars, a phenomenon that has been going on for twenty years in Oakland. The activity, which took place in downtown and East Oakland, occurred mainly upon the closure of nightclubs.
3. Two years ago, when he was promoted to Sergeant, he began taking a more proactive approach to the clubs. He never believed it was fair for all of the citizens of Oakland to pay for the services used by a few, the few being a group of clubs that were using the majority of the police services in downtown Oakland.

4. He began meeting with the club owners and City representatives. He also began writing Disorderly House crime reports. He and the officers would observe and videotape the activity, and would write a crime report when they believed that the club was requiring excessive police services. A bill would then be generated and presented to the club for the services.
5. The location which the subject of the application was one of the primary recipients of the bills. He wrote approximately seven disorderly house reports on Sweet Jimmies.
6. He tried working with the clubs and had numerous meetings with club owners and City representatives and Police Department, informal round tables in which they tried to come up with solutions to the problems, which were not exclusive to Sweet Jimmies.
7. He has continued this approach for the past two years, working with a core group of officers that is held over every Friday and Saturday night. Their area of responsibility was only downtown Oakland, primarily clubs, as there was a separate group mandatorily assigned to East Oakland sideshows.
8. He is neither for or against this club but has numerous concerns because of his past experience. One of these concerns is the effect of rap and hip hop type music. He understands the right of free speech, but the reality is that in Oakland, for the past several years, clubs that have gone to that format have created a tremendous strain on police resources.
9. Jimmies was one of the clubs that caused the majority of the problems downtown. Jimmies started probably twenty plus years ago as a longshoremens' bar. About the time Sgt. Thomas came on, the son started taking over the bar. He began having rap and hip hop type parties. When that happened, the dynamic of the club completely changed. There was drug dealing, vandalism, sexual assault, fighting, shooting, a whole gamut of issues that had not occurred prior to that.
10. It was an eye-opening experience dealing with several hundred people coming out of a club, with shooting going on in front. There were murders across the street before the school came in.
11. The location is a tough place to have a club, primarily because it is open to so many streets, Jefferson, Clay, the four-lane San Pablo, and 17th. One of the problems they dealt with the previous owner was traffic control, as there would be traffic gridlock and sideshows taking over around 17th and San Pablo. The prior owner brought up how difficult the area is to control because of the openness of the streets.
12. The City worked with Jimmies for about eight months before Jimmies closed down. He believes the primary reason they closed is that they did not think they could keep the venue going with the kind of music they were having that was attracting so many problems. Mr. Pope interjected that they closed because they sold the property for three million dollars. Sgt. Thomas said that he still owes the City some of that money.
13. The issue is that the type of venue he created created these problems for the City and it is not really fair for the citizens of Oakland to pay for the services of a club, and, even if it were fair, or even if the club owner agreed to pay for all of the police needed, the City has very limited police resources. It is very difficult to get officers to work overtime for any event, and it has been particularly true in obtaining officers for club events. Times when clubs have asked for resources, they are definitely not always available, because there are so many demands placed on the officers, including mandatory overtime, which means they must work their time off mandatorily for special events such as Raiders' games, Warrior games, special

- events, and regular patrol. Everyone in patrol is now mandated to work overtime to cover uncovered patrol beats.
14. The issues that first arose at Jimmies were the sideshow issues. Club 17 [17th] is nearby so there were two clubs, within a hundred yards of each other that attract well over a thousand people. Club 17 can hold about 700 and Jimmies was at four or five hundred.
 15. Within the clubs, the problems have been relatively minor. With almost all clubs, the issues are the problems that occur outside. Whenever the City meets with owners, they ask how they can be responsible for what happens two blocks down. Sgt. Thomas understands their concern but always asks, if your club was not here, would we have these problems?
 16. The affect of the presence or absence of one club can be dramatic. After the third club-associated murder in a year, a club at 2nd and Webster closed. Within two weeks it's beautiful. There are no cars doing doughnuts, no alcohol bottles, no fifty kids running amuck in the neighborhood. The closure of that club has made a tremendous impact on the people who live in that neighborhood. His goal was never to close them down. His goal was for them and all clubs to be responsible for themselves, because the police have much better things to do than to police clubs. That club attracted a similar crowd to the crowd that was attracted to Jimmies before it closed, primarily rap and hip hop, relaxed dress code, similar patrons.
 17. Tycoons plan to allow 18 to 21 year olds is of particular concern to Sgt. Thomas. Recently Café Axe provided events for the under 21 set and, until their cabaret permit was curtailed, there were weeks and weeks of chaos every Friday and Saturday night, with vandalism, car windows broken, a shooting almost every weekend. That club did not serve alcohol, they had a security plan in place and tried to implement it with several different security firms, and there are not other clubs around them. None of these things prevented the problems.
 18. The problems that almost all of the clubs have outside and around them are loitering, drinking, fighting, violence, and sideshow.
 19. The agreement that finally prevented Jimmies from being out of control included thirty-four conditions. The primary one was the music they played, limiting it to primarily rhythm and blues, jazz, zydeco, oldies jukebox, dance and disco, clearly 180 degrees opposite of what had created the trouble in the first place.
 20. Another provision addressed the cabaret's security requirements and their responsibility to pay for any excessive police services. Another condition required security cameras, primarily outside of the club looking up and down the street. That's typically where the violence of shooting and stabbings, loitering, and sideshows occur. When there's video, everyone agrees about what happened.
 21. Dress code is another factor. Clubs without dress codes typically have more problems, and Jimmies agreed to this.
 22. Sgt. Thomas uses from six to twelve officers as a Club Detail every Friday and Saturday night, paid for by the citizens of Oakland. The sole focus is to monitor the clubs. They assess where they think police services may be most needed, based upon the intelligence of expected entertainers and crowd sizes.
 23. Because of the closure or change in operation of some large clubs, they are now at a point where the downtown is almost manageable with the current police resources. Jimmies and Mingles closed and Café Axe is not having activities after 8 p.m. on weekends. It has been a long road getting there.

24. Sgt. Thomas is concerned that, although Tycoons plans look good on paper, his experience has been that, in order to pay the bills, clubs change from what they plan to do [in this case application lists "top 40" music on weekends] to a hip hop and rap format. Having a club with the 500 plus people, if that crowd is not a mature, adult, responsible crowd, who can have a good time, then go to their cars and go home, his role will be to do what is necessary to keep order, including revocation of the club's permit. Large clubs going to a hip hop or rap format have brought on a whole host of problems, and he does not want to see that here.
25. Sgt. Thomas would like to see the conditions that were place on Jimmies placed on this cabaret. Specific conditions include security cameras, music format, dress codes, exclusion of 18 to 21 year olds, smoking restrictions and requirements for cleaning up the surrounding area.

Sgt. Pedro Espinoza testified as follows in paragraphs 26 through 27.

26. He is with the Oakland Police Department's Special Events Unit.
27. He agrees with Sgt. Thomas' concerns and he wants to stress that, even with a permit, they need a condition to come to his office for a special event permit when they are doing anything other than their normal DJ. This is because, in his experience clubs have KMEL or other radio station advertised after-parties, or performers such as Too \$hort or E40, they need to know about it so that they can research and prepare. When they don't know about it, and they have to send extra resources, the club gets billed. Sometimes they don't have the resources that they think the club would need, and they have a good relationship with the club owners, who work with them in these situations.

Mr. Ed Pope testified as follows in paragraphs 28 through 52.

28. He has been in the club business 29 years and he is 47 years old. He has been involved in some of the bigger clubs around the bay.
29. He researched Sweet Jimmies before they went into this, looking at their website and flyers. He noticed that when Jimmie ran the events, there were a lot less problems and when David took over the club, a lot of the flyers stated, "Biker groups welcome. Colors are \$5 off." He thought, that's a mix for trouble, everybody in their leathers with their Harleys cruising around the block.
30. They have spent a lot of money on the club, redesigning it very upscale. It is going to be \$20 to \$25 a night just to come into the club. There will be a dress code. They will never allow white t-shirts.
31. They want a diversified format because not one group goes out any one night. Hispanic night is Thursday. Friday is a little slower, more relaxed. They may allow tennis shoes because nowadays everyone wears tennis shoes and they are more expensive than dress shoes. Jeans cost \$250 and you can still get Dockers for \$50.
32. Saturday is more of a date night, for couples to dress up and go out to a club.
33. They don't have to do the 18 to 21 age group if that is a problem. They don't spend any money at the bar, and if it creates a problem where the police have to come back and he gets a \$5000 bill, he hasn't made any money. They would be happy to forgo that if it is a sore spot for the police.
34. They have a detailed security plan because they have done this a lot. They would like to get the cooperation of the police to shut the streets down around the club and put security guards on them so that there can be no sideshows or access, other than to residents.

35. They would propose staggered closing so that they or the other nearby club [17th] would be cleared before another 500 people come out on the street. They wouldn't serve alcohol during this time but would stay open. They would also release their own crowd in smaller groups of about 200 each. They would have 25 guys moving people to their cars and others controlling the traffic.
36. He understands the problem with hip hop music, but, Top 40 and culture means you have to play some hip hop – not every song or hard core rap about shooting, violent sex, etc. But mainstream hip hop on top 40, Beyonce, E40, it is today's music. Even 30 and 40 year olds listen to it and they do plan to play it. But they plan on mixing it with older stuff like Brickhouse. Not a format to attract 19 or 20 year olds or more of a hardcore element. Those people aren't going to pay \$25, dress up and come to their club.
37. Their problems will be outside, and they are very aware that they need to put enough guys outside. He knows that, in the club business, club owners don't want to spend the money on security. He doesn't look at it that way. He looks at the long picture of being there for years with a huge investment. They spend a lot of extra money on security because he knows that he needs to worry about thing six or seven blocks away, not just in front of his club. He puts guys in patrol cars and continuing to move people out until 3:00 a.m. He would also accept as a condition of his permit that he has to pay for four Oakland police officers and two police cars to patrol until 3 a.m.
38. San Jose used to allow clubs to pay for dedicated officers but they stopped about 5 years ago, replacing it with an entertainment detail that the clubs did not pay for. It worked much better when the clubs paid for the police because it gave the city a lot of extra resources. If a club did have a problem, there were already four or six officers, and if there was a nearby club with similar resources, there were eight officers taking the call.
39. In response to Sgt. Espinoza's request to run anything different through the Special Events Unit, Mr. Pope commented that could really tie his hands in running his business. He does not have a problem informing the Unit a couple of weeks in advance of a booking and asking what they want him to do or what they think about it. But to get a permit every time – one week he may have a Latin act, another week a gospel group, another week Jamie Fox doing an after-party, Anita Baker, E40, etc. So every week he would be applying for a Special Events Permit. He would prefer providing a schedule several weeks ahead of time, with Special Events responding when they had concerns that would require extra security or cancellation of the event.
40. The last thing he wants is for the police to call him to their office because something wrong is going on. That's not the way he does business. "When we have a problem, we fix it, and that's the end of it." Some things are out of his control, but he knows which acts make it harder to deal with the crowds. When you get these acts at the Coliseum, you put five times as many officers out there, have special routings to get them out to their cars and onto the freeway. They do the same thing. If they have an act that they know is going to sell out and is skewed toward a younger crowd, they double the security guys. They know that if they don't monitor them to their cars they are going to create fights and problems.
41. It does him no good to get a bill [for police services], have a problem, or get a nick on his ABC license for a disorderly house. He does not win in this game unless he stays in business.
42. He has seven kids, was born and raised in the Bay Area, and this is strictly business. There's no drugs going on, no funny business. The City can come into any area of the business at

- any time. He is open to anything the City wants as long as it doesn't control his business so that he can't make money.
43. He doesn't want the problems any more than the City does. If he gets a bill from the City for eight officers for 3 hours, that almost means he might as well not have been open that night. He can get his security guards for much less and have 25 guys for the entire night.
 44. They know that, if they have KMEL [doing the advertising], that is going to bring an element that is not going to go into the club, but wants to hang out because he has someone like E40 there. They think if they hang out. at 2:00 a.m. they may be able to pick up on some drunk chicks that are rolling out of there. They are very aware of this and they put security on the corners blocks away and don't let the kids stand around. They keep moving them and it ruins their party. Same thing with sideshows – if they can keep the cones out and get cooperation of the police, they can at least control the sideshows within three or four blocks of the club and hopefully dump them onto the freeway.
 45. He has been doing this 27 years and has had problem clubs and not-problem clubs. When he has had a problem club, that club either got shut down by him or corrected by him.
 46. In response to the Hearing Officer's question, where in the security plan does it address control of an outer perimeter, Mr. Pope responded that it specifies 200 feet, and he was figuring 65 to 70 feet per block.
 47. He would like to meet with the City and the @17th folks to coordinate staggered closing and mixed use of security. He does not use the same kind of security they do. He prefers his outside guys to be in full uniform and his inside people to also be in some identifiable clothing that says 'security' or have a badge. If he has 15 to 25 guys and they have the same amount, that's 40 to 50. If you put them out on the street and position them correctly, they should be able to move the crowd very effectively, shut the streets down, and get them in their cars and home safe.
 48. In response to the Hearing Officer's question whether they were currently functioning, Mr. Pope answered that they were currently functioning as a restaurant and, they thought they would get this permit months ago, so they are just in limbo.
 49. In response to the Hearing Officer's question whether Oakland Partner Group is the same group that owns the property, Mr. Pope responded that the developer is a friend of his, Brown Company. The developer plans to develop the property in five years. This is a test run for Oakland Partner Group. If they have a good rapport and relationship with Oakland, then they would like to move the operation to another location.
 50. In response to the Hearing Officer's question where they expect their patrons to park, Mr. Pope responded that they are trying to cut a deal with the multi-level, kitty-corner garage. They would then police the garage, allow only Tycoons patrons, charge for parking but rebate it on the entry charge, make sure they get in their cars. If there is anyone drinking, they will send them on their way. They will clean up the surrounding streets of the bottles and glass. He has been in the area since Jimmies has been closed and there are still a lot of people hanging out on the side streets at 2 or 3 in the morning. It seems that, after @17th lets out, they hang out on the side streets and there's quite a bit of bottles and glass and things going on. Having the security presence may alleviate those problems.
 51. In response to the Hearing Officer's comment that their security plan's term of two security staff for every 100 patrons was Oakland's minimum standard for cabaret permits and that at larger formats, they end up with many more than that because that is the ratio for inside the club, Mr. Pope responded that their number was intended as the inside ratio also, because

there are typically not a lot of problems inside the club. People don't want to get ejected after paying \$25 to \$50 and buying a \$12 drink. Most of the problems occur when you take this whole mass of people and put them out on the street. So you need the guys on the outside of the building, who aren't figured into that.

52. San Francisco does after-hours very well, allowing clubs to stay open until 4:00. They have an idea of staying open until 2:30 or 3:00 doing an after-hours buffet breakfast. No alcohol, obviously, and light music. Let them slowly go out. They don't want to get into the problem of two big clubs letting out and trying to figure out whose customer caused the brawl. They would be staying open as a restaurant, not as a club. A lot of big cities allow after-hours and they find that it takes less police resources.

Sgt. Espinoza stated that he would like to learn more about the operation of Mr. Pope's San Jose club.

Mr. Wasserman suggested that, while waiting for a response from the City Attorney on the school issue, there be a discussion in the next few days regarding those all other issues the City wants to follow up on. They would like to hammer out specific conditions and determine what the City and the applicant could and could not agree on.

The Hearing Officer explained that submission of the cabaret calendar in advance of each month is now a standard condition of cabaret permits. Mr. Pope doesn't object to doing this but doesn't want to have to fill out a form every week. The Hearing Officer explained that the definition of a Special Event is one that is likely to require more than normal police resources. Special Events does not veto an event but presents the results of their research, which may include a finding that, in order to conduct the event safely, a specified number of police officers would be required. If the officers are not available, it can have the effect of canceling an event, on the basis of safety risk.

Mr. Wasserman, in response to some of Sgt. Thomas' concerns, explained that there is a tension not only between first amendment issues and police concerns but also in fulfilling different functions for the City. Mingles was obviously a problem that could not be controlled. On the other hand, going down the streets and seeing streets that are empty, with no nightlife going on, is not the goal either. There needs to be a balance, and the clubs, including some element of hip hop and rap, meet a significant market and need for the City and its citizens to be entertained and to enjoy. It has a place in the City, but we need to make it as safe as possible with the least burden possible on City services. The City has to operate on a 'trust but verify' basis.

In response to Mr. Pope's testimony Sgt. Thomas testified as follows in paragraphs 53 through 63.

53. He appreciates Mr. Pope's club experience, but, having been in cities such as San Jose and San Francisco, Oakland is a very different animal, club-wise, primarily because of lack of police resources. You leave a club in San Francisco and there are four patrol cars out in front. You leave a club in San Jose and there are 50 patrol cars. When problematic clubs have opened in those cities, the cities have been very proactive in shutting them down. They have resources that Oakland only dreams of.

54. He would like to have a vibrant downtown, but one that does not require excessive police services, because, in Oakland, even when you want the cops, you can't always get them due to staffing shortages. Clubs hiring police officers is a great idea, but the problem is that the City can't always provide them when requested. So his goal is to provide clubs with the tools and for them to provide resources to be as self-contained and self-controlled as possible.
55. The 18 and up age group is a concern that is fresh in his mind because of recent problems with the club that has since had to limit their hours to before 8 p.m. on weekends. When you mix the under 21s with patrons who are adults who have been drinking, it has been a recipe for disaster.
56. He is in favor of after-hours clubs and would like them to be open all night so that, when patrons do leave they will be tuckered out and go home. They also won't be drunk when they leave. If you close the club at 1:30 there are 1000 people at 17th and San Pablo who have just been drinking, and then you have issues that he has already discussed.
57. Regarding traffic control, he has authorized every club, who has ever asked, to set up a variety of cone patterns to control the traffic around their club. The location of Jimmies makes this somewhat difficult because of the wide area, but he could draw a map of the points that OPD previously blocked off every weekend to create successful exiting and prevent the people who haven't come to the club from driving into the area mixing with the patrons.
58. Regarding the Special Events permits, there needs a mechanism where the club knows that, if they book certain acts, they will have 500 people inside and 500 people outside. That is where a Special Events permit would be needed. The problem with Sweet Jimmies was that they consistently booked these kinds of acts, and, based upon OPD's experience with the effects of these acts, an agreement was reached that any time there was rap or hip hop a Special Event permit was needed.
59. The Top 40 includes a balance of music, with about eight of the Top 40 artists being hip hop and rap musicians and most are not hard-core rappers. Some of the hard-core rappers that have come to Oakland have been problematic for the reasons that were previously discussed. The police have no issue with a blended and balanced music format, but clubs in the past have said the same thing, and the reality has been different to pay the bills. They attracted a ton of people, but the events then led to problems.
60. The alternative to clearing a big event with the Special Events Unit is that the club is billed for the police needed to respond. For example, when Snoop was recently at a club, the entire third watch was held over, and the club ended up with a very large bill.
61. Regarding parking structures, they have sometimes been more problematic than street parking, because, at the end of the night, you have several hundred intoxicated people going to their cars, which have not been searched. People want to settle scores that have arisen inside the clubs, and OPD has seen a tremendous amount of violence in these contained, enclosed structures. @17th has been offered that structure several times and has not taken it. He is not advising them to take it or not take it, but they will have to deal with the issue of several hundred people that they have much less control over than in the club. There may be compromises, such as allowing only cars of women, so that they don't have to walk far to their cars. If you go to the parking structures currently being used by clubs at 1:30 or 2:00 you will see hundreds of people, hear radios blaring, and see people being shot – this is all very recent and very real. So it is a real security concern.

62. Oakland is a different animal than either San Francisco or San Jose when it comes to the amount of violence associated with the clubs. He has never seen the level of violence that he sees with the clubs in Oakland.
63. If they have a big event, people will come. Thousands of people have come to the bigger events in this area, and, in the past, the clubs have not been able to take control of all of the issues.

Mr. Pope requested that, before conditions are imposed, they would like to sit down and agree upon them to make sure it is economically feasible for the club to live with those conditions. He also questioned the necessity for another hearing to get residents' concerns since we know what their concerns are. His concern is that the process has been delayed so long that a cost effect is occurring. The development company spent \$3 million on the property, and his company has spent six to seven hundred thousand on the inside. They would like to open before Christmas.

The Hearing Officer explained that the Special Event process is open to them prior to obtaining a cabaret permit. It is a way of getting started prior to getting a permit for an extended period of time.

Mr. Pope said that he has talked with prior patrons who have asked him to bring back Zydeco and salsa, that David Ward had discontinued. He believes that the crowd David was marketing to is a crowd that no city would want. It doesn't surprise him that there was chaos for the past two years.





The Hearing Officer explained that the main reason for continuing the hearing is for Oakland Partner Group to explain what they are planning, which may relieve the residents' concerns. Mr. Pope stated that he had no problem with explaining and even with meeting with the residents on a monthly basis. He just doesn't want to drag the opening out any longer.

In response to the Hearing Officer's question whether they had a planned calendar of events, Mr. Pope responded that they had some private parties lined up and they planned to do a big New Year's Eve event with a \$100 price tag. Hopefully, at the beginning of the year they can start with their Spanish nights and Sunday gospel events. The Hearing Officer asked Mr. Pope to outline their projected schedule and we could review it at the round table meeting.

The Hearing Officer explained that in the past couple of years the City has issued temporary six month permits to new cabarets as a trial period to determine whether the cabaret's plans and their actual operation match. Dependent upon the resolution of the school issue, it may be possible to award this type of permit.

Carletta Starks of Council Member Nadel's office testified that she was glad to hear some of the conditions that Tycoons was willing to agree to and she would like to see them in the permit conditions of approval; specifically, willingness to forgo the 18 to 21 year age group, staggered closing, and cleaning of surrounding areas. Those are the types of complaints their office has received regarding Jimmies and about the possibility of this happening at the new club.

EXHIBIT B

-  Libraries
-  Public Schools
-  Streets
-  Parcels

**1731 San Pablo Ave
300' Radius**

**Oakland School for the Arts
(1800 San Pablo Ave)**

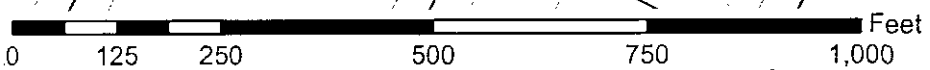
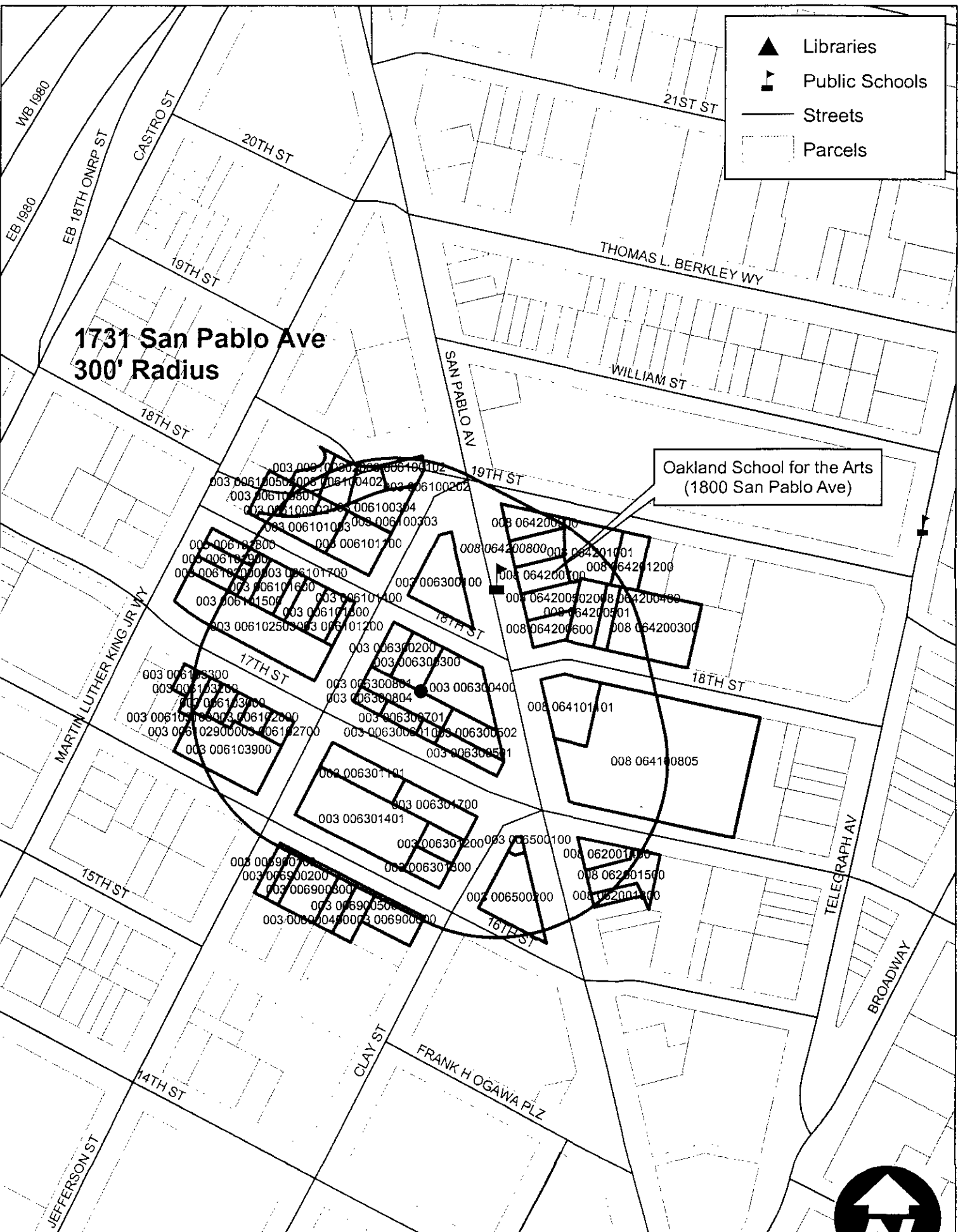
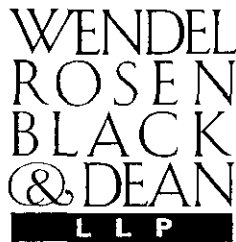


EXHIBIT 2



ATTORNEYS AT LAW

1111 Broadway, 24th Floor
Oakland, CA 94607-4036

Post Office Box 2047
Oakland, CA 94604-2047

Telephone: (510) 834-6600
Fax: (510) 834-1928
zwasserman@wendel.com

March 19, 2007

VIA HAND DELIVERY

Oakland City Council
c/o City Manager's Office
City Hall
One Frank Ogawa Plaza, 11th Floor
Oakland, CA 94612

Re: Application of Oakland Partners Group, LLC to operate a Cabaret under the name Club O at 1731 San Pablo Avenue

Dear City Council:

We represent the Oakland Partners Group, LLC regarding the above noted application. This is an appeal of the denial of the application to operate a Cabaret dated March 7, 2007. There are several stated bases for the denial of this application in the statement by the City Hearing Officer, each of which is addressed below. We submit that all of the stated bases for denying this application are invalid, some are unlawful and that the denial is contrary to the policy and practices of the City regarding this area of the City. The application was submitted under the name "Club O" but the applicant has determined to change the name to "Club O."

The core of the City denial is based on the following summary in the denial report:

"[F]our factors, the confluence of which, over the past several years has caused the City significant problems of violence and risk to public health and safety: 1) Targeting a youthful market through widespread public advertising, by radio and internet, of events combining popular Top 40 artists and dance, 2) Large occupant load, 3) geographic location, 4) lack of adequate police resources."

There are three additional factors cited in the report: 1) Ed Pope's history as of nightclub operation in San Jose, the fact that the location is within 300 feet of the temporary location of the School for the Arts, and the assertion that the operation of a cabaret at this location requires a new conditional use permit.

BACKGROUND: The applicant proposes to operate a cabaret at 17th and San Pablo in a building that has been a cabaret for twenty years or more – operating as Sweet Jimmie’s. It is in the area that the City Council has designated as an Entertainment Area.

Target Market and Music Format. The denial states: “Targeting a youthful market through widespread public advertising, by radio and internet, of events combining popular Top 40 artists and dance.” This is precisely what any operator of a cabaret will want to do in an entertainment area. To suggest to the contrary is either to totally misunderstand the operation of cabarets or to unconstitutionally discriminate against Top 40 music or youthful audiences or both. This ground almost argues that cabaret permits should only be approved for cabarets that have no hope of success. It also ignores the applicant’s written and stated intention to market to a wide market with Latino music on some nights, Rhythm and Blues on some nights, Top 40 on some nights and comedy, special events, salsa lessons and church and nonprofit events on Sundays. It is very clear that the “target” that the City objects to is Top 40 music because a significant amount of Top 40 music is labeled “hip-hop” music. This objection is plainly unconstitutional and renders the denial invalid on its face.

“Large Occupant Load”. There are two elements to this “objection”. One is the size of the venue itself which can hold a maximum of 553 people. The venue has two main music areas, one can reasonably hold and the other can reasonably hold. The will not necessarily have the same music and cannot have the same artists at the same time. The report by the hearing officer in affect creates a new rule that cabarets can only hold 400 or fewer patrons. The second “objection” is that the proposed club is within two blocks of @17, which can hold over 500 people. The report contrasts this with clubs that are isolated from each other – 2232 MLK Cabaret and Zazoo’s. The report totally ignores the City policy of developing the Uptown area as an Entertainment District.

Perhaps more importantly the report demonstrates an absolutely unacceptable double standard. The @17 club was approved when Sweet Jimmies was in full operation. So @17 could increase the Occupant Load in the area but the operator trying to revive Sweet Jimmie’s cannot. This is clearly unfair discrimination.

Geographic Location. There are several issues involved in this “objection.” One is that the area is at the intersection of several streets. The applicant has presented plans, through use of guards and blocking of lanes (which the police department said was acceptable) that will control this issue. Indeed, to some extent, the openness of the site can make control easier if properly carried out. An additional issue is parking, but both @17 and Uptown have the same problem. This is no basis to deny this application.

This “objection” implicitly includes the fact that the location is within 300 feet of the temporary location of the Oakland School for the Arts. The area surrounding the Oakland School for the Arts is an area that the City has been encouraging as an entertainment district as part of its effort to create a 24/7 environment in downtown Oakland. It is our understanding that one of the reasons the Oakland School for the Arts moved to this location was to be part of this *entertainment district*. Indeed, the plan for the Oakland School for the Arts to move into the Fox

Theater Building is integral to the School's development plans. The plan for the Fox Theater itself, which the City of Oakland owns and has supported with a significant amount of money, will include a cabaret located in the same building as the School. In this regard we believe it is important to note that the plan for the School is to move into the Fox Theater building, which we believe is more than 300 feet distance from the location of Club O.

We also believe it is relevant that the Oakland School for the Arts moved into this district – into temporary buildings – to a location is within 300 feet of Sweet Jimmy's Cabaret, which has been in that location for more than 20 years and which Club O is replacing. To now assert that Club O cannot obtain a cabaret license because the Oakland School for the Arts moved into this district – which contained Sweet Jimmy's, @17 and now Uptown, seems disingenuous at best and clearly unfair. This is particularly true when the City has expended very significant funds to develop the Fox Theater including the "Ruins" which will be a Cabaret as part of the formal plans for the Oakland School for the Arts. If the City has any intention to grant a waiver or change of the 300 foot restriction regarding the Oakland School of the Arts and the Ruins – as we believe it must - the City must be willing to grant a waiver of this limitation for Club O. We would also note that Tycoon's location has a much more current active history as a venue for a Cabaret than the Fox Theater.

Inadequate Police Resources. The sufficiency of police resources is of concern to the applicant and the City. However, this was not a basis for denying @17 or the Uptown Club and should not be a basis for denying this applicant. The Club O applicants have presented plans for adequately addressing security, including far more guards for events where crowds are likely to gather than the other clubs approved by the City.

If the City is going to succeed in developing the Uptown area as an active 24/7 it will have to solve the stated lack of police resources. While this may be addressed in part by the City's current efforts to hire additional police officers, it makes sense to create a new shift that matches the needs in this entertainment area – as other cities have done. However, lack of police services – or additional costs for police services which are passed on to the cabaret operator – should not be a basis for denying a cabaret permit at this location, which has historically been a successful cabaret. The lack of police services was not used as a basis to deny @17 or Uptown when Sweet Jimmies was already operating. Unless the City is going to discriminate against Top 40 Music, including as it does Hip Hop music, this cannot be used as a basis to deny this permit. Particularly when the applicant has indicated a willingness and commitment to hire well trained guards in greater numbers than the other clubs and – if they are available – off-duty police officers from Oakland or other jurisdictions.

Other Issues. The denial report inaccurately states certain critical facts concerning problems at a club in San Jose. Mr. Pope operated this club for a number of years with no difficulty. He then entered into a contract to allow others to operate the club, called "Ambassadors" with a primarily Hip Hop theme. That operator did have trouble with crowds and fights in the parking lot. Although it took a little time after it became clear that the new

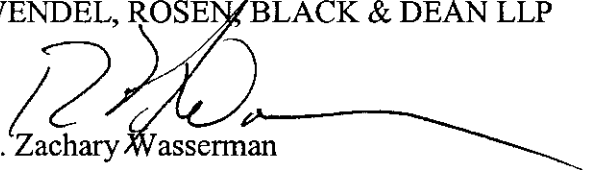
operator could not control the crowds, Mr. Pope did terminate the agreement and reopened the club with a different format that has not had trouble at all.

Regarding the alleged requirement for a conditional use permit, I attach a copy of our response to the zoning department submitted on January 22, 2007, to which we have not yet received a response. That letter sets forth why a new conditional use permit to sell alcohol is not required at this location where alcohol has been continually served as part of its operations for over 20 years.

For all of these reasons, we ask that you overturn the denial of the application by Club O and direct that a caberet permit be issued.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP


R. Zachary Wasserman

RZW:pq

Enclosure

cc: Ms. Barbara B. Killey
Oakland Partners Group, LLC

WENDEL
ROSEN
BLACK
& DEAN

LLP

ATTORNEYS AT LAW

1111 Broadway, 24th Floor
Oakland, CA 94607-4036

Post Office Box 2047
Oakland, CA 94604-2047

Telephone: (510) 834-6600
Fax: (510) 834-1928
zwasserman@wendel.com

January 22, 2007

VIA FACSIMILE AND U.S. MAIL

Mr. Jacob Graef
Administrative Analyst II/Planner II
Oakland Police Department
ABAT Unit
Police Administration Building
455 7th Street
Oakland, CA 94607-3985

Re: Oakland Partner Group LLC

Dear Mr. Graef:

We are in receipt of your letter dated December 28, 2006, advising our client Oakland Partner Group LLC ("OPG"), that its pending application for a Cabaret Permit for the property located at 577 18th Street in Oakland requires a Major Conditional Use Permit pursuant to OMC Section 17.102.210(B). For the reasons stated below, no conditional use permit is required to sell alcohol at this property.

A Major Conditional Use Permit may be required for a new Alcoholic Beverage Sales Commercial Activity. However, alcoholic beverage sales have been a part of the activities at 577 18th Street continuously for more than twenty years. These uses include a full service restaurant, which has been continuously (and is currently) operating on the site and selling alcoholic beverages under a California Type 47 License (On-Sale General for Bona Fide Public Eating Place) for over twenty years. Moreover, additional activities, including but not limited to, private birthday and bachelor parties, Monday night football parties, a luncheon for Mayor Dellums and a New Year's Eve party have been conducted on the premises in the past year. Accordingly, Alcoholic Beverage Sales Commercial Activities at 577 18th Street are a Deemed Approved Activity pursuant to OMC Section 17.156 et seq., and the requirements of OMC Section 17.102.210(B) do not apply. Moreover, this Deemed Approved Activity is automatic, and has never been revoked by the City in the over twenty years of operation and sales of alcoholic beverages under a Type 47 License at this location. OMC Section 17.156.110.

Because the sale of alcoholic beverages at 577 18th Street is a Deemed Approved Activity, no Major Conditional Use Permit for the sale of alcohol at this site is needed. Thus, we

Mr. Jacob Graef
January 22, 2007
Page 2

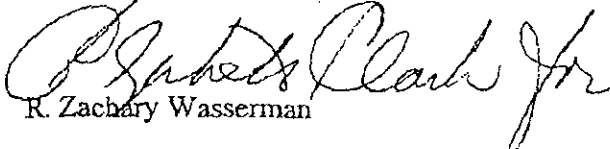
WENDEL, ROSEN, BLACK & DEAN LLP

respectfully request that you rescind your December 28, 2006 letter and provide any required zoning clearance for the City to issue the Cabaret Permit and any other required permits for the premises, including notification to the City Administrator's Office of the zoning clearance.

Thank you for your attention to this matter.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP


R. Zachary Wasserman

RZW:ser

cc: Oakland Partner Group, LLC

LYCOBINS

July
2006

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

HYCOONS

August
2006

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
		1 Tracy's Tuesday Purse Party	2	3	4	5 L. Stewart 39 th Birthday party
6	7	8	9	10	11	12
13	14	15 Tracy's Tuesday Purse Party	16	17 Yoli's & Dallia's Birthday Party Reggaeton	18	19
20	21	22	23	24 A Delta Sigma Theta Birthday Celebration	25	26
27 Darren Bachelors Party	28	29	30	31		

September 2006

TRACY'S

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
					1	2
3	4	5 Tracy's Tuesday Purse Party	6	7 Thursday Night Football Pittsburgh, Miami	8	9
10	11 Monday Night Football Double Header	12	13	14	15	16
17	18 Monday Night Football	19 Tracy's Tuesday Purse Party	20	21	22	23
24	25 Monday Night Football	26	27	28	29	30

TRACY'S

October
2006

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
1 Ro Lofton Birthday Party	2 Monday Night Football	3 Tracy's Tuesday Purse Party	4	5	6	7
8	9 Monday Night Football	10	11	12	13	14 Open House employee training party
15	16 Monday Night Football	17 Tracy's Tuesday Purse Party	18	19	20	21
22	23 Monday Night Football	24	25	26	27	28
29	30 Monday Night Football	31				

TRACY COURTS

November

2006

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
5	6 Monday Night Football	7 Tracy's Tuesday Purse Party	8	9	10 3 Open House employee training party	11
12	13 Monday Night Football	14	15	16	17	18
19	20 Monday Night Football	21 Tracy's Tuesday Purse Party	22	23	24	25
26	27 Luncheon For Ron Dellums	28	29	30		

December

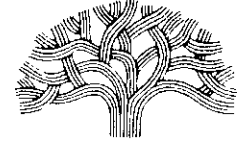
2006



<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
3	4 Monday Night Football	5	6	7	8	9 2 Birthday Celebration for TALMESHA
10	11 Monday Night Football	12	13	14	15	16
17	18 Monday Night Football	19	20	21	22	23
24	25 Monday Night Football	26	27	28	29	30
31 New Years Eve Party						

EXHIBIT 3

CITY OF OAKLAND



POLICE ADMINISTRATION BUILDING • 455 - 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

Police Department

Telephone Device for the Deaf (510) 238-3227

Patrol Desk (510) 238-3455

Fax (510) 238-2251

December 28, 2006

Oakland Partners Group LLC
Attn: Mr. Hanny Bekhit
DBA: Tycoons
577 18th St.
Oakland, Ca 94612

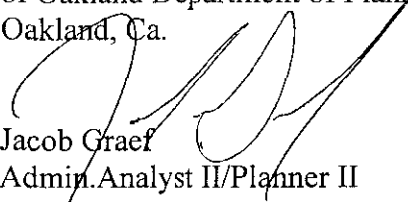
Re: ABC License Application located at 577 18th Street.

Dear Mr. Hanny Bekhit,

This letter is to advise you of a Zoning determination regarding the pending application for Alcoholic Beverage Sales Commercial Activity associated with the restaurant and night club of the property located at 577 18th Street.

In accordance with OMC Section 17.102.210 (B), the sale of alcoholic beverages cannot be conducted at this site unless the Oakland Planning Commission grants a Major Conditional Use Permit for the activity after a duly noticed public hearing, and the Department of Alcoholic Beverage Control (ABC) authorizes a license at that location.

If you have any questions regarding this determination, please contact me at 777-8672. An application for a Major Conditional Use Permit can be filed at the City of Oakland Department of Planning and Zoning located at 250 F. H. Ogawa Plaza Oakland, Ca.


Jacob Graef
Admin. Analyst II/Planner II
OPD-ABAT Unit

cc:

Mrs. Jamie Taylor Licensing Supervisor, Department of ABC

Mr. Scott Miller, Department of Planning and Zoning

Mrs. Barbara Killey, City Administrators Office



**California Department of Alcoholic
Beverage Control**
*License Query System Summary
as of 12/28/2006*

License Information	
License Number: 444597	Status: PENDING
Primary Owner: OAKLAND PARTNER GROUP LLC	
ABC Office of Application: OAKLAND	
Business Name	
Doing Business As: TYCOONS	
Business Address	
Address: 577 18TH ST Census Tract: 4028.	
City: OAKLAND County: ALAMEDA	
State: CA Zip Code: 94612-1546	
Licensee Information	
Licensee: OAKLAND PARTNER GROUP LLC	
Company Officer Information	
Officer: BEKHIT HANNY KAISER, MANAGING MEMBER	
Officer: COOK JOHN THOMAS, MANAGING MEMBER	
License Types	
1) License Type: 47 - ON-SALE GENERAL EATING PLACE	
License Type Status: PENDING	
Status Date: 13-SEP-2006	Term: Month(s)
Original Issue Date:	Expiration Date:
Master: Y Duplicate: 0 Fee Code: P40	
License Type was Transferred On:	From: 251303
2) License Type: 68 - PORTABLE BAR	
License Type Status: PENDING	
Status Date: 13-SEP-2006	Term: Month(s)
Original Issue Date:	Expiration Date:
Master: N Duplicate: 0 Fee Code: P40	
License Type was Transferred On:	From: 251303
3) License Type: 30 - TEMPORARY PERMIT	
License Type Status: ISSUE	
Status Date: 21-SEP-2006	Term: Month(s)
Original Issue Date:	Expiration Date:
Master: Duplicate: 0 Fee Code: NA	
Current Disciplinary Action	

EXHIBIT 4

CITY OF OAKLAND



POLICE ADMINISTRATION BUILDING - 455 - 7TH STREET - OAKLAND, CALIFORNIA 94607-3985

Police Department

Telephone Device for the Deaf (510) 238-3227
Patrol Desk (510) 238-3455
Fax (510) 238-2251

March 27, 2007

Mr. Zachary Wasserman
1111 Broadway, 24th Floor
Oakland, Ca 94607

Re: ABC License Application located at 577 18th Street.

Dear Mr. Wasserman,

I am in receipt of your letter dated January 22, 2007 claiming 577 18th Street is a Deemed Approved premise. Unfortunately, the proposed business DBA: Tycoons does not meet the requirements of a Full Service Restaurant under 17.156.070 OMC.

"Full-Service Restaurant" means a place which is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals. The sale or service of sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or snack foods shall not constitute a full-service restaurant. To be considered a Full Service Restaurant under the Deemed Approved Program, the establishment must meet the following criteria:

- 1. A "full service restaurant" shall serve "meals" to guests at all times the establishment is open for business. An establishment shall not be considered a "full-service restaurant" if it served alcohol without "meal" service being provided with the exception that alcohol sales to restaurant patrons may continue for up to two hours after meal service has ceased to allow guests to comfortably complete their meals.*
- 2. There shall be a real offer or holding out to sell "meals." Premises shall make an offer or holding out of sales of "meals" to the public by maintaining and displaying a printed menu and/or a menu board. A two-thirds majority of the items offered on the menu shall be available at any given time the establishment is open. The mere offering of "meals" without actual sales shall not be deemed sufficient.*
- 3. The "offer" of "meals" is not adequate to meet the above criteria. A "full service restaurant" shall make actual and substantial sales of "meals" to guests for compensation. Substantial sales shall mean that no less than sixty (60) percent of total revenue shall be generated from food service and no more than forty (40) percent of revenue from the sales of alcohol.*
- 4. "Meals" means the usual assortment of foods commonly ordered at various times of the day for the cuisine served. The service of snack foods and/or appetizers alone shall not be deemed compliance with this requirement. "Meals" shall be prepared on the premises. Heating of food prepared elsewhere shall not constitute a meal for the purposes of this policy.*

5. Premises shall be equipped for meal service and maintained in good faith. Premises must possess and maintain appliances for the cooking of a variety of foods such as stoves, ovens, broilers, or other devices, as well as pots, pans, or containers that can be used for cooking. Premises shall possess the necessary utensils, table service, and condiment dispensers with which to serve "meals" to the public.

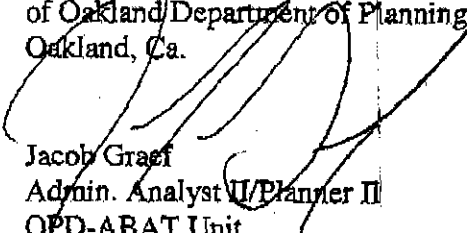
6. A full service restaurant shall comply with all local health department standards.

7. A full service restaurant may have a separate lounge or bar area provided that the restaurant and bar/lounge area operate as a single entity. The physical layout, entry location(s), spatial connection between the areas, and operational characteristics, among other factors, shall be used to determine compliance. Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.

8. To the extent that ABC regulations do not conflict with the above criteria, a full service restaurant shall comply with all State Department of Alcoholic Beverage Control regulations related to "Bona fide public eating place, meals."

Based upon the hearing testimony provided by Tycoons representatives at the public hearing conducted November 30, 2006, Tycoons is not functioning, nor do they plan to function, as a full service restaurant. Therefore, in accordance with 17.102.210 (B) OMC, the sale of alcoholic beverages cannot be conducted at this site unless the Oakland Planning Commission grants a Major Conditional Use Permit for the activity after a duly noticed public hearing, and the Department of Alcoholic Beverage Control (ABC) authorizes a license at that location.

If you have any questions regarding this determination, please contact me at 777-8672. An application for a Major Conditional Use Permit can be filed at the City of Oakland Department of Planning and Zoning located at 250 F. H. Ogawa Plaza Oakland, Ca.



Jacob Graef
Admin. Analyst II/Planner II
OPD-ABAT Unit

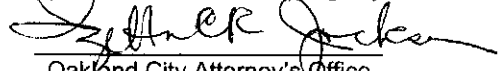
cc:

Mrs. Jamie Taylor Licensing Supervisor, Department of ABC
Mr. Scott Miller, Department of Planning and Zoning
Mrs. Barbara Killey, City Administrators Office
Ms. Carolyn Ortler, City Attorney's Office

OFFICE OF THE CITY CLERK
OAKLAND

2007 APR -5 PM 4:42

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

**RESOLUTION DENYING THE APPEAL FILED BY OAKLAND PARTNERS
GROUP AGAINST THE ADMINISTRATIVE HEARING OFFICER'S DECISION TO
DENY THEIR APPLICATION FOR A PERMIT TO OPERATE A CABARET
UNDER THE NAME CLUB O**

WHEREAS, pursuant to Oakland Municipal Code Section 5.12.010, a cabaret may not be located within three hundred (300) feet of a public school; and

WHEREAS, the proposed location of the cabaret is within 300 feet of the Oakland School for the Arts, which is a public school; and

WHEREAS, although a cabaret previously operated at the same location as the proposed Club O, pursuant to Oakland Municipal Code Section 5.02.070, cabaret permits are not transferable except by written permission of the City Administrator, granted upon written application made in the same manner as the original application for such permit; and

WHEREAS, in evaluating the application Oakland Municipal Code 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, based upon the City's recent experience of two cabarets located near one another, with occupant loads of over 500 persons each, it is foreseeable that private security alone will be unable to maintain peace and order in either the immediate area or in the surrounding neighborhood; and

WHEREAS, the crowd deduction plan proposed by the applicant, which would stagger the closing hours of the two large cabarets, is precluded by Oakland Municipal Code Section 5.12.030, which requires cabarets to close and patrons to be off the premises between the hours of 2 a.m. and 6 a.m.; and

WHEREAS, the Oakland Police Department does not currently have the resources to designate officers dedicated to any one cabaret to maintain peace and order; and

WHEREAS, pursuant to Oakland Municipal Code Section 5.02.060, the Hearing Officer is required to consider the character of the applicant as to pertinent acts which may concern the health, safety, and general welfare of the public; and

WHEREAS, one of the principals of Oakland Partners Group was slow to act in abating a pattern of violence at a cabaret for which he was recently responsible, to the detriment of the health, safety, and general welfare of the public; and

WHEREAS, the applicant plans to sell alcoholic beverages at the proposed cabaret; and

WHEREAS, a zoning determination has been made that a Major Conditional Use Permit is required for the sale of alcoholic beverages at the proposed cabaret; and

WHEREAS, the applicant has not obtained a Major Conditional Use Permit; and

WHEREAS, the Hearing Officer is not authorized to issue a permit for a cabaret business if the business is within 300 feet of a school or if the business is not either permitted outright or has not received a zoning clearance to operate; 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 March 7, 2007, decision to deny the application of Oakland Partners Group for a permit to operate a cabaret is hereby affirmed.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2007

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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