



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 14, 2013

TO: Mayor and Councilmembers

FROM: Chief's Staff, Police Department

SUBJECT: Appeal Of The Fire And Police Commission's Sixty (60) Day Suspension Of The Nightclub Dance Permit For Whiskey Richards

RECOMMENDATION:

That Council deny the appeal of William (Bill) Clayton, owner of Whiskey Richards nightclub, upholding the Fire and Police Commission's decision to suspend the nightclub dance permit for Whiskey Richards for a period of 60 days.

DISCUSSION:

The subject appeal involves the 60-day suspension of the nightclub dance permit for the establishment known as Whiskey Richards at 435 State Street, imposed by the Fire and Police Commission on March 28, 2013. The applicant, Bill Clayton, subsequently appealed the Fire and Police Commission's decision to suspend the dance permit and the imposition of the suspension was suspended pending the Council's decision on the appeal. (See Attachment 1)

BACKGROUND:

Bill Clayton ("Applicant"), owner of Whiskey Richards, was originally issued a nightclub dance permit in January 2008. The following month (February 2008), City Council ("Council") approved an update to Santa Barbara Municipal Code Chapter 5.20, the City ordinance pertaining to dance permits. In accordance with the revised ordinance, all dance permit holders are required to renew their dance permits annually with the Santa Barbara Police Department ("SBPD"). This renewal process provides the City the opportunity to review each permitted premise annually to ensure that permit holders continue to operate in a responsible manner, and to allow for the opportunity to address any concerns involving the public health, safety, and welfare. Furthermore, in conjunction with the revised ordinance, a Penalty Matrix was created to provide a set guideline for corrective action against nightclubs found to be operating in violation of their dance permit, conditions of approval, or of any local or state laws. (See Attachment 2.)

In 2010, upon the first annual renewal of the Whiskey Richards dance permit, conditions of the permit were listed using the standard conditions established for CBD area dance permits:

- Music and/or entertainment shall not be audible beyond 50 feet from the premise;
- Rear doors and front windows must be closed but unlocked during dancing;
- No patrons shall enter or exit through the rear doors;
- Minimum of 3 security guards must be on duty during dancing;
- No live entertainment, dancing, or amplifying system or device permitted on any patio area;
- Permittee must police surrounding area once an hour to prevent loitering, particularly in rear alleyway;
- Permittee must maintain an orderly line of patrons awaiting entry.

In early 2012, during the annual renewal process for the Whiskey Richards dance permit that expired January 31, 2012, City staff discovered that in the previous 1-year period of operations, from January 31, 2011 through January 31, 2012, two citations were issued on separate dates to patrons whom officers witnessed openly using cocaine in the restroom area of the premise. During this same time period, there were four additional citations issued to individuals under the age of 21 whom officers discovered inside Whiskey Richards. This occurred despite Whiskey Richards establishment holding a "Type 48" ABC liquor license which prohibits anyone under the age of 21 years from entering the premise at any time.

Due to the number and frequency of the aforementioned violations, staff at the Santa Barbara Police Department used the Penalty Matrix as a guideline for the subsequent actions taken to curb the trend of violations at the premise. Accordingly, the Police Department approved the 2012 renewal of the nightclub dance permit for Whiskey Richards, but imposed four additional conditions on the permit to mitigate concerns regarding public health, safety, and welfare at the premise through increased on-premise monitoring and mandatory training for security guards:

- A restroom attendant must be stationed at the restroom area nightly from 9:00 pm until close. The restroom area must be checked often to ensure no illegal activity is occurring;
- All security guards must complete LEADS and Responsible Beverage Server (RBS) Training;
- All security guards must be currently licensed with the California Department of Consumer Affairs as a Proprietary Security Officer;
- The individual, partnership, corporation, or LLC must possess a Proprietary Private Security Employer's License issued by the California Department of Consumer Affairs.

On April 25, 2012, a SBPD letter was sent to owner Bill Clayton, notifying him of the additional conditions placed on the permit, as well as the reasons for the imposition of those conditions. The letter also stated "Furthermore, because the above citations indicate a concerning trend at your nightclub, should there be one more citation for

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drugs and/or patrons under the age of 21 years on premise within the next year, your Nightclub Dance Permit will be brought before the Fire and Police Commission with the recommendation that it be suspended and/or revoked.”

Additionally, and in accordance with the terms of the Penalty Matrix, the letter included an invitation for owner Bill Clayton to take part in an “Intervention” meeting to identify ways to prevent future violations. Per the letter: “The meeting would include you, Police Department representatives, a Fire and Police Commissioner, and a member of the Bar and Restaurant Committee who does not have any personal interest in your business.”

Mr. Clayton opted not to take part in the proposed intervention meeting.

Bill Clayton's most recent (renewal) application for the nightclub dance permit occurred in December 2012. A review of the crime statistics at the premise (for the 14-month period beginning one year prior to submission of renewal application through the permit expiration from December 2011 through January 2013) revealed a total of 8 citations issued to persons under 21 on the premises and a total of 3 drug-related offenses issued to patrons of the premises.

More specifically, and within the one-year period of the most recent permit's validity, from January 31, 2012 through January 31, 2013 five citations were issued to minors on premise, one citation issued to a patron found in possession of cocaine, and one citation issued to a patron openly handling marijuana in the premise:

- February 9, 2012: a 19-year-old individual who showed no identification to security guards was able to enter the premise undetected when the security guard on duty left his post temporarily. According to the report, when notified of the incident, the security guard apologized to SBPD officers for leaving his post.

This same individual was found to be in possession of cocaine. (SBPD 2012-10077) and was arrested and booked for both charges.

- May 4, 2012: a 20-year-old intoxicated individual was cited just outside of Whiskey Richards. Officers discovered he possessed a fake ID which he admitted he used to gain access into Whiskey Richards. Once inside, the minor was served by Whiskey Richard's staff two alcoholic drinks. The minor was arrested and booked for the offense. (SBPD 2012-31225)
- August 4, 2012: a 19-year-old minor used an out-of-state ID to gain entry into the premise. According to Police officers, the facial features of the person and the person pictured on the ID were noticeably different. Owner Bill Clayton was contacted by officers at the time of this incident. The individual was issued an arrest citation for the offense. (SBPD 2012-56524)

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- September 20, 2012: a 19-year old individual used a friend's ID to enter the premise. She later left Whiskey Richards and attempted to use the ID to get into another nightclub. Staff at that nightclub recognized the ID as a fake and seized it, denying the minor entry. The minor then returned to Whiskey Richards without an ID and was allowed by security staff to re-enter the premise. Officers spoke with security staff at the time of the incident. The minor was cited for two misdemeanor charges for the incident. (SBPD 2012-69862)
- September 27, 2012: a 17-year-old individual, working with ABC officials in a decoy operation, was able to enter the premise. When asked for ID, she showed the bartender her real ID (showing that her age was 17) and was still served alcohol. The on-duty bartender at Whiskey Richards was issued an arrest citation for the incident. (SBPD 2012-71472)
- December 23, 2012: a patron was observed by Police officers openly using marijuana inside the premise. The patron was issued an arrest citation for the incident. (SBPD 2012-93605)

Of the above incidents, five occurred following the April 25, 2012 letter from the Santa Barbara Police Department to owner Bill Clayton warning that even one more drug-related citation or any citation issued to minors on premise would result in the premise's dance permit being brought before the Fire and Police Commission with a recommendation for suspension or revocation.

On March 28, 2013, the nightclub dance permit renewal request was heard at the Fire and Police Commission ("the Commission") meeting.

Fire and Police Commission Action:

At the Commission meeting on March 28, Police Department staff recommended that the nightclub dance permit for Whiskey Richards be suspended for 6 months effective immediately. It was further recommended that, within the 12-month period following the suspension, should a citation be issued for a violation of the dance permit or dance ordinance, or for a minor discovered on premise, or for any drug-related offense in which a patron is observed by SBPD officers to be selling or using narcotics or marijuana within the premise, Whiskey Richards' nightclub dance permit will be brought before the Fire and Police Commission no later than the next annual review with a recommendation that the Nightclub Dance Permit be permanently revoked.

Owner Bill Clayton and business broker Matt Olufs spoke on behalf of Whiskey Richards in opposition to staff's recommendation. They presented the Commission a letter highlighting the premise's security policies, noting the actions and policies of the Department of Alcoholic Beverage Control (ABC), and asserting that premise security staff relied up on bona fide ID when permitting persons under 21 to enter the premise. They disagreed with the crime statistics presented by City staff and stated that they

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have a positive relationship with the Santa Barbara Police Department's Nightlife Enforcement Officer. The appellant further claimed that he was not personally notified at the time of the citations.

Two members of the public, Kay Morter, general manager of the Holiday Inn Express, and Gail Zannon, a resident in the 400 block of State Street, spoke in support of the suspension recommended by the Police Department. The primary concerns expressed by the members of the public were the general failure of Whiskey Richards to adhere to dance permit conditions, and the noise from Whiskey Richards being arguably louder than other nightclub premises closer to the concerned establishments.

Following a lengthy discussion, which included confirmation from multiple SBPD reports that Whiskey Richards staff was notified at the time citations were issued, a motion to suspend the permit for 30 days was made but was not seconded. The Commission then voted 3 to 1 to suspend the Whiskey Richards nightclub dance permit for a period of 60 days, effective immediately.

Additionally, the Commission voted 3 to 1 to approve the Police Department's subsequent recommendation as written: "...Within the 12-month period following the end of the suspension, should a citation be issued for a violation of the dance permit or dance ordinance, or for a minor discovered on premise, or for any drug-related offense in which a patron is observed by SBPD officers to be selling or using narcotics or marijuana within the premise, Whiskey Richards' Nightclub Dance Permit will be brought before the Fire and Police Commission no later than the next annual review with a recommendation that the Nightclub Dance Permit be permanently revoked."

On April 11, 2013, Chief of Police Camerino Sanchez issued a letter to Bill Clayton notifying him that due to the time it would take to schedule the appeal before Council, both he and City Administrator's office agreed to stay the Commission's decision until the appeal can be heard by City Council. (See Attachment 3)

Appellants' Position:

On April 4, 2013, Applicant, owner Bill Clayton, filed an appeal protesting the suspension imposed by the Commission. In summary, the appellant appealed on the basis of the following allegations:

- The Commission did not make any written findings nor have adequate evidence to support the suspension.
- Police Department staff presented an incorrect number of violations to the Commission.
- ABC has only recognized one citation in the time period in question.
- Whiskey Richards' staff is trained to recognize fake IDs.
- No nightclub premise can guarantee that minors will not successfully use false IDs to gain access to the premise and/or consume alcohol.

Staff's Position:

In addition to holding a Nightclub Dance Permit issued by the City of Santa Barbara, Whiskey Richards, located at 435 State Street, is also licensed by the California Department of Alcoholic Beverage Control with a Type 48 liquor license, ("Bar or Night Club"). Therefore, no one under the age of 21 years is permitted to enter the premise at any time. However, for the two-year period in which the premise's two most recent Nightclub Dance Permits were valid, from January 31, 2011 through January 31, 2013, a review of crime statistics for Whiskey Richards reveals not only multiple citations for illegal use of narcotics and or marijuana at the premise, but also multiple citations issued to minors on premise.

At various times throughout 2011 and 2012, the Santa Barbara Police Department attempted to mitigate the premise's problem areas by using progressive measures as suggested by the Penalty Matrix. Those measures included verbal warnings to Whiskey Richards staff, management, and owner; the imposition of additional conditions relating to premise security and staff training; written notice of the Police Department's intention to seek suspension or revocation for any further citations issued for minors and/or drug use on premise; and an invitation for the owner to take part in an "intervention meeting" involving Whiskey Richards representatives, Police Department staff, a Fire and Police Commissioner, and a member of the Bar and Restaurant Committee to identify ways to prevent future violations. Bill Clayton opted not to accept the offer of the intervention meeting.

The actions of the Fire and Police Commission to suspend the Whiskey Richards dance permit are appropriate in light of the multiple steps taken to curb the citations at the premise, culminating with the letter issued to the applicant by the Santa Barbara Police Department on April 25, 2012 stating in part: "... because the above citations indicate a concerning trend at your nightclub, should there be one more citation for drugs and/or patrons under the age of 21 years on premise within the next year, your Nightclub Dance Permit will be brought before the Fire and Police Commission with the recommendation that it be suspended and/or revoked." Following issuance of that letter, there were no fewer than 5 citations issued for the named offenses within the remaining 9-month period of validity of the permit (see the above list of relevant citations).

In Bill Clayton's appeal letter to Council, although he critiques the number of citations represented by the Police Department, he nonetheless acknowledges that there were multiple applicable citations during the review period, stating "In truth, there were only three citations issued for minors on premise in the subject period, which is a 25% reduction from the previous review period." This number (3) is still three times the number listed in the letter issued that warned Whiskey Richards that even one more citation for minors on premise would result in potential suspension and/or revocation of the premise dance permit.

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Bill Clayton further argues (in his appeal letter) that because the California Department of Alcoholic Beverage only penalized the premise for one violation in the relevant time frame, the City should narrow its focus to only that one violation in making its decision. However, it is important to note that the Santa Barbara Police Department has authority to take corrective action for a variety of issues and concerns within the City that fall outside the purview, authority, or concern of ABC. Specific to the issue at hand is the fact that the City's dance ordinance allows the City local control and regulation of nightclubs through the issuance of dance permits. As a separate entity, the State regulates all establishments holding liquor licenses issued by the California Department of Alcoholic Beverage Control. Premises holding both a dance permit and liquor license must therefore comply with the laws, terms and conditions of both the City and State agencies. The letter sent to Mr. Clayton by the City, which notified him of the City's position on future violations at the premise, and warning of the action that would be sought with continued violations, was applicable only to the City-issued dance permit. The 60-day suspension imposed by the Commission does not affect the premise's State-issued ABC liquor license. Therefore, this argument that the City is restricted by the actions of the ABC is improper.

In the appeal letter, the appellant asserts that Municipal Code §5.20.150 Grounds for Suspension or Revocation, subsection (E)(3), which pertains to ABC violations, should be considered for this suspension. However, subsection (E)(1) allows for suspension or revocation when "...one or more of the following circumstances has occurred with respect to the operation of the establishment holding the dance permit: (1) That the Permittee has allowed repeated violations of any provision of this Chapter, the Municipal Code, or any statute, ordinance, or regulation relating to his or her permitted business activity to occur."

Although the Police Department received no reports by security staff at Whiskey Richards notifying the Police Department of minors attempting to use fake IDs at the premise within the two-year period from January 2011 through January 2013, the applicant states in his appeal letter that Whiskey Richards staff has recently "turned over" up to seven confiscated IDs to the Police Department's Nightlife Enforcement Team. (Of the seven listed, only three are applicable to the period in question, through January 31, 2013.) While this would appear to be conflicting information, it isn't. To clarify: the Police Department statistics are based on incidents in which officers are called to the scene of a premise where the minor attempting to use false identification is present or nearby. In these instances officers are able to make contact with the minor, confirm circumstances, and, when warranted, cite the minor. A report is generated for each such proactive incident, and the report reflects positively on the premise. There are no records of any such reports in the 2-year period of review at Whiskey Richards.

However, sometimes nightclub staff take it upon themselves to confiscate false IDs, but do not notify the Police Department immediately. Later, when the officers happen to visit or pass the premise, staff will turn the confiscated ID's over to the Police. In these instances the IDs are booked as property and no crime report is created because no

officers were present when the incidents occurred. While the Police Department does not dispute the applicant's assertion that Whiskey Richards staff may have confiscated three IDs and later turned them over to Police Officers, the Police Department has no records of Whiskey Richards staff contacting officers to report a minor currently in the act of attempting to use a false ID to gain entry into the premise.

Finally, although bone fide identification (i.e. the valid identification of a person other than the minor attempting to use it for entry into the nightclub) may have been used in some of the incidents listed in the crime statistics for Whiskey Richards, the physical differences between the minor presenting the ID and the photograph on the identification and/or physical descriptors have been so different as to be immediately distinguished as two separate people by those well-trained to recognize false identification. This fact is substantiated by reports noting that officers and/or staff at other nightclubs were able to determine that the identification presented did not belong to the person presenting the ID. Unfortunately, even after the additional condition requiring mandatory training for Whiskey Richards security staff was imposed by the Police Department, a number of minors were still able to gain access into the premise.

CONCLUSION:

Staff recommends that the Council deny the appeal and uphold the decision of the Fire and Police Commission to suspend the Whiskey Richards Nightclub Dance Permit for a total period of 60 days, the remainder of which is 46 days.

- ATTACHMENTS:**
1. Letter by appellant Bill Clayton
 2. Dance Permit Penalty Matrix
 3. Letter from Chief Sanchez to Bill Clayton staying suspension.

PREPARED BY: Kenneth Kushner, Police Sergeant

SUBMITTED BY: Camerino Sanchez, Chief of Police

APPROVED BY: City Administrator's Office

RECEIVED

April 3, 2013

2013 APR -4 PM 1:03

TO THE HONORABLE MAYOR AND TO THE MEMBERS OF THE CITY
COUNCIL:

CITY OF SANTA BARBARA
CITY CLERK'S OFFICE

Pursuant to Municipal Code §5.20.150(C), Whiskey Richard's herein appeals the March 28, 2013 decision of the Fire & Police Commission to suspend appellant's dance permit for a period of 60 days. Further, pursuant to Municipal Code §520.150(F) appellant Whiskey Richard's herein offers to participate in a private mediation process in order to determine if the concerns with the permit operation can be appropriately addressed by mutual agreement entered into by mediation.

The grounds for suspension or revocation of a dance permit are set forth in Municipal Code §520.150(E) and provide that any suspension or revocation "shall be based on a written finding, supported by adequate evidence" Appellant is informed and believes that the Fire & Police Commission has not made any written findings, and further contends that there is no "adequate evidence" to support any finding of any of the grounds for suspension recognized in §5.20.150(E).

At the Fire & Police Commission hearing the Santa Barbara Police Department, acting as "staff" for the Commission, recommended a suspension of Whiskey Richard's dance permit for a period of 6 months based upon alleged violations relating to minors at the premises. As set forth in the staff report 8 violations were alleged to have occurred in the preceding 12 months. In truth, there were only 3 citations issued for minors on the premises in the subject period, which is a 25% reduction from the previous review period.

Municipal Code §5.20.150(E) provides, in relevant part, that a dance permit may be suspended or revoked when "the permittee has engaged in violations of the state statutes or regulations related to the sale or distribution of alcohol (particularly with respect to the sale of alcohol to persons under 21 years of age) as determined by the ABC." The ABC has recognized only one citation at Whiskey Richard's in the past four years with sufficient grounds to cite the owner for allowing a minor on the premises. Appellant acknowledged responsibility in this case, paid a significant fine in lieu of suspension, and promptly terminated the responsible employee at the business. The attached February 4, 2013 "ABC Offer in Compromise" affirms that Whiskey Richard's has been licensed "since February 17, 2009 with no record of disciplinary action." Thus, under the terms of the dance permit ordinances there has been only one relevant violation "as determined by the ABC."

Further, appellant respectfully submits that Whiskey Richard's maintains a "zero tolerance" security policy, and has made sure that all employees receive updated training through the ABC and all security guards are licensed through the Department of Consumer Affairs. Issues have certainly arisen, and have been responded to in every instance. Since instituting a procedure to track ID seizures by security, Whiskey Richard's has successfully confiscated and reported the following IDs to the PD:

- October 28, 2002, ID confiscated at front door and turned over to Officer Cruz of the Night-Life Enforcement team.
- January 4, 2013 – fake ID confiscated and given to Officer Cruz.
- January 18, 2013 – fake ID confiscated and delivered to Officer Cruz.
- February 21, 2013 – a suspect ID was presented at the front door but was snatched away from security by the person submitting the ID who then ran south on State Street.
- March 7, 2013 – fake ID confiscated at the front door and given to Officer Cruz.
- March 17, 2013 – fake ID was presented. The young woman presenting the ID fled the scene. The security team followed her and Night-Life Enforcement was notified and thereafter took her into custody.
- March 30, 2013 – fake ID was confiscated at the front door and delivered to Officer Cruz.

Photographs of each of the confiscated IDs are available for review and will be presented at mediation. If mediation is unsuccessful in removing the suspension, the fake IDs will be presented to the Council.

The above history reflects the training that appellant's staff has received in recognizing fake IDs and the seriousness with which such IDs are treated when recognized.

Finally, as a matter of law no dance permit holder, including Whiskey Richard's, is a guarantor that no false IDs will ever be successfully used by a minor to gain access to the premises and consume alcoholic beverages. Business & Professions Code §25660(b) provides that "[p]roof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon bona fide evidence in any transaction, employment, use, or permission . . . shall be a defense to any criminal prosecution therefor *or to any proceedings for the suspension or revocation of any license based thereon.*"

The Fire & Police Commission has made no written findings based on adequate evidence that Whiskey Richard's is not aggressively addressing the issue of minors on the premises. The ABC has made a written finding of only such violation. The Fire & Police Commission made no finding that Whiskey Richard's did not demand, was not shown, or otherwise failed to act in reliance upon bona fide evidence as described in B&P §25660 in allowing any minor into the premises.

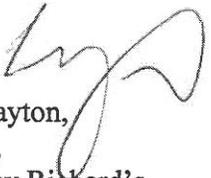
To the Honorable Mayor
& City Counsel Members

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April 3, 2013

For each of these reasons Whiskey Richard's requests a finding by the City Council that its dance permit will not be suspended on the evidence presented.

Respectfully,



Bill Clayton,
Owner,
Whiskey Richard's

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE ACCUSATION AGAINST:

POUR HOUSE INC
WHISKEY RICHARDS
435 STATE ST
SANTA BARBARA, CA 93101-2304

ON-SALE GENERAL PUBLIC PREMISES - LICENSE

Respondent(s)/Licensee(s)
under the Alcoholic Beverage Control Act.

VENTURA DISTRICT OFFICE

File: 48-474183

Reg: 13077860

**ORDER GRANTING
OFFER IN COMPROMISE**

The above-entitled matter having regularly come before the Department of Alcoholic Beverage Control pursuant to Section 23095 of the Alcoholic Beverage Control Act, the following order is adopted;

The petition of the licensee(s) to make an offer in compromise is granted and the payment of the sum of \$3,000.00 is hereby accepted, receipt number #13072406.

ORDER

The suspension heretofore ordered by the Department shall be permanently stayed effective immediately.

CERTIFICATION

It is hereby certified that on February 4, 2013, the Department of Alcoholic Beverage Control adopted the foregoing as its order in this proceeding effective immediately.

Sacramento, California
Dated: February 4, 2013



Matthew D. Botting
General Counsel

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

POUR HOUSE INC

DBA: WHISKEY RICHARDS

PREMISES: 435 STATE ST
SANTA BARBARA, CA 93101-2304

LICENSE(S): On-Sale General Public Premises

File: 48-474183

Reg:

**ACCUSATION UNDER
ALCOHOLIC BEVERAGE
CONTROL ACT AND
STATE CONSTITUTION**

I hereby complain and accuse the above respondent(s), holding the above license(s), based on the following statement of facts:

COUNT 1

By reason of the following facts, there is cause for suspension or revocation of the license(s), in accordance with Section 24200 and Sections 24200(a) and (b) of the Business and Professions Code. It is further alleged that the continuance of the license would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and Sections 24200(a) and (b) of the Business and Professions Code. The facts which constitute the basis for the suspension or revocation by the Department are as follows:

On or about September 26, 2012, respondent-licensee's through their agent or employee, Douglas Alfred HEDGER sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to wit: beer to Nadia B., a person under the age of 21 years, at the premises, in violation of Business and Professions Code Section 25658(a).

Licensee(s) Previous Record: Licensed as above since February 17, 2009, with no record of disciplinary action.

WHEREFORE, I recommend that a hearing be held on this accusation.

Dated this 17 day of Dec, 2011



District Administrator
Department of Alcoholic Beverage Control

Reviewed:

Pursuant to Government Code Section 11507.6 discovery is requested to be provided to: Dept. of Alcoholic Beverage Control, 12750 Center Court Drive, Suite 700, Cerritos, CA 90703 (562) 402-0659.

STATEMENT TO RESPONDENT(S)

Unless a written request for a hearing, signed by you, or on your behalf, is delivered, or mailed, to the Department of Alcoholic Beverage Control within fifteen (15) days after the foregoing accusation was personally served on you or mailed to you, the Department of Alcoholic Beverage Control may proceed upon the accusation without a hearing to take action thereon as provided by law. The request for a hearing may be made by delivering or mailing the enclosed form entitled: "Notice of Defense", or by delivering or mailing a Notice of Defense to the Department of Alcoholic Beverage Control, 12750 Center Court Dr., Ste 700, Cerritos, CA 90703, as provided by Section 11506 of the Government Code. The "Notice of Defense" forwarded herewith, if signed and returned to the Department of Alcoholic Beverage Control, shall be deemed a specific denial of all parts of the accusation, but you will not be permitted to raise any objection to the form of the accusation, unless you file a further Notice of Defense as provided, in Section 11506 of the Government Code within said 15 days after service of said accusation upon you. At any or all stages of these proceedings, you have the right to be represented by counsel at your own expense or to represent yourself without legal counsel. You are not entitled to the appointment of an attorney to represent you.

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify this agency within 10 working days after you discover the good cause. Failure to notify this agency within 10 days will deprive you of a postponement.

Dance Permit Penalty Matrix

VIOLATIONS		
Santa Barbara Municipal Code Violations	ABC Violations (Business & Professions Code)	Miscellaneous Violations
<ul style="list-style-type: none"> ➤ Noncompliance with Fire Code, including overcrowding (Uniform Fire Code) ➤ Noncompliance with Noise Ordinance (SBMC Chapter 9.16) ➤ Noncompliance with Dance Ordinance (SBMC Chapter 5.20) 	<ul style="list-style-type: none"> ➤ Serving minors ➤ Minors on premises ➤ Serving intoxicated patrons ➤ Other violations of B&P statutes, regulations, or conditions of ABC permit 	<ul style="list-style-type: none"> ➤ Misdemeanor or felony convictions related to the operation and management of a dance establishment

PENALTIES AND REPERCUSSIONS	
1 st Violation	- Verbal Warning
2 nd Violation	- Written reprimand and/or - Intervention meeting with interested parties
3 rd Violation	- Written reprimand, and/or - “Intervention” meeting with interested parties or - Fire & Police Commission Review <ul style="list-style-type: none"> ▪ Imposition of special conditions, and/or ▪ Suspension up to 15 days
4 th Violation	- Fire & Police Commission Review <ul style="list-style-type: none"> ▪ Imposition of special conditions, and/or ▪ Suspension up to 30 days
5 th Violation	- Fire & Police Commission Review <ul style="list-style-type: none"> ▪ Imposition of special conditions, and/or ▪ Suspension up to 6 months, and/or ▪ Revocation

- The above lists are not exhaustive and are to be regarded as guidelines. The Fire and Police Commission has the discretion to review any/all incidents and take appropriate action to ensure the public’s health, safety, and welfare.
- In assessing penalties and repercussions of violations, penalties imposed by other regulatory agencies, including fine(s), suspension(s), or revocations(s) will be considered.
- Only violations that result in a final disposition including a conviction, a plea of nolo contendere, civil compromise, or administrative action are to be considered violations.
- An “intervention” meeting shall consist of: dance permittee, Police Department representatives, including the Nightlife Enforcement Team Sergeant, a Fire and Police Commissioner, and a disinterested member of the Bar and Restaurant Committee. The purpose of this “intervention” is to work with the dance permittee to identify ways to prevent future violations and to make the dance permittee aware of the next phases in the matrix.



City of Santa Barbara

Police Department

www.sbpd.com

Camerino Sanchez

April 11, 2013

William Clayton
Whiskey Richards
435 State St.
Santa Barbara, CA 93101

Chief's Office
805.897.2395

Dear Mr. Clayton:

General Information
805.897.2300

On March 28, 2013, the Santa Barbara Police and Fire Commission suspended your dance permit for a period of 60 days effective immediately. On April 4, 2013, the City Clerk's Office received your request for an appeal of your suspension to the Santa Barbara City Council. On April 10, 2013, I discussed your pending appeal of your dance permit suspension with the City Administrator, Jim Armstrong. Unfortunately, the upcoming schedule for the Santa Barbara City Council does not allow for the necessary time for your appeal to be heard. Mr. Armstrong has agreed to stay your Dance Permit suspension until a date can be set up with the Santa Barbara City Council to hear your appeal.

Animal Control
805.963.1513

Business Office
805.897.2400

Community Services
805.897.3717

Effective immediately, your dance permit is reinstated under the following conditions:

- By April 20, 2013, you must complete the scheduling of your appeal date by contacting the City Clerk's Office, Gwen Peirce or Deborah Applegate, and schedule an appeal of your dance permit suspension to the Santa Barbara City Council. Your dance permit suspension will be stayed until the Santa Barbara City Council has heard your appeal.
- Should you fail to complete the scheduling of your appeal by April 20, 2013, your dance permit suspension will be reinstated as of April 21, 2013 and will remain in effect for the remainder of your 60 day suspension (46 days).

Dispatch
805.897.2410

Office of Emergency Services
805.897.3725

Should you have any questions regarding this letter or your dance permit, please contact Captain Gil Torres (805) 897-3722 or gtorres@sbpd.com for more information.

Parking
805.897.2360

Patrol
805.897.2392

Sincerely,

Camerino Sanchez
Chief of Police

Records
805.897.2355

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Appeal of the Fire and Police Commission's Decision to Suspend the Whiskey Richards Dance Permit



Presented to: CITY COUNCIL
May 14, 2013



Overview:

- ◆ Whiskey Richards dance permit history
- ◆ Police review of the Whiskey Richards Nightclub Dance Permit renewal application
- ◆ Fire and Police Commission Action
- ◆ Appellant's Position



History of the Whiskey Richards Dance Permit

- ◆ Nightclub Permit issued in 2008
- ◆ First renewal due in January 2010
- ◆ Conditions on the permit in 2010 were similar to those of other nightclubs in the immediate area

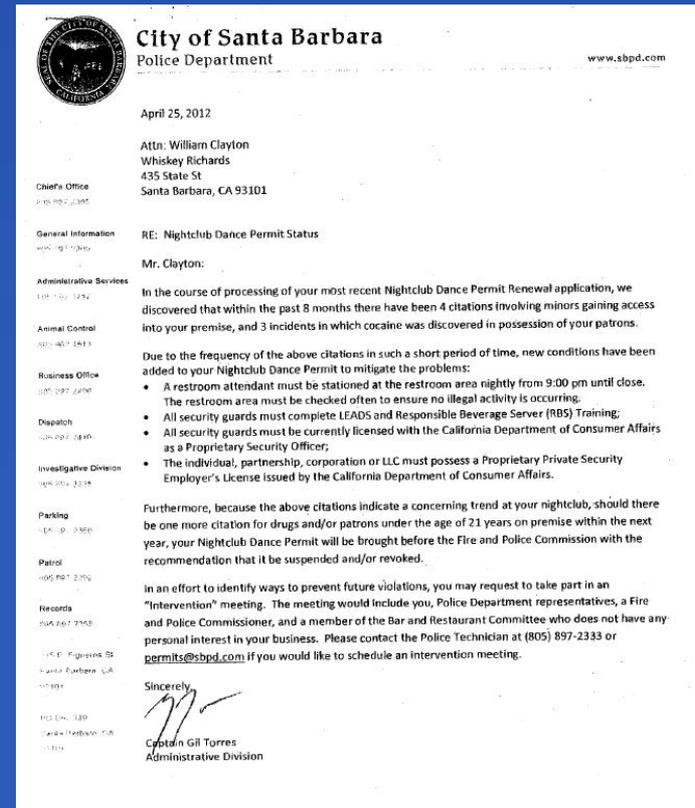
A photograph showing several police officers in uniform and tactical gear at an outdoor scene. One officer is sitting on a motorcycle, and another is standing nearby. A sign with the word "ROAD" is visible in the foreground. The background shows a street scene with other vehicles and buildings.

Police Review of 2012 Renewal Application

- ◆ During renewal process in 2012, staff discovered 6 concerning incidents at the premise:
 - 2 arrests for cocaine use inside premise
 - 4 citations issued to minors inside premise
- ◆ Whiskey Richards has a Type 48 (“Bar Nightclub”) liquor license, prohibiting minors under age 21 years on premise

SBPD's Proactive Measures to Curb Violations

- ◆ Additional conditions
- ◆ Invitation to attend an “Intervention Meeting”
- ◆ Warning that one more citation to minors or for a drug-related offense would result in recommendation of suspension or revocation





New Conditions Added to the Whiskey Richards Dance Permit

- ◆ A restroom attendant to ensure no illegal activity;
- ◆ All security guards must complete LEADS/RBS Training;
- ◆ All security guards must be currently licensed;
- ◆ The business must possess a Proprietary Private Security Employer's License issued by the California Department of Consumer Affairs.



Intervention Invitation

April 25, 2012

“In an effort to identify ways to prevent future violations, you may request to take part in an “Intervention” meeting. The meeting would include you, Police Department representatives, a Fire and Police Commissioner, and a member of the Bar and Restaurant Committee who does not have any personal interest in your business.”

A photograph of police officers at a street scene. One officer is sitting on a motorcycle, another is standing next to a sign that says "ROAD". There are other officers and vehicles in the background.

Warning Regarding Future Violations

“Furthermore, because the above citations indicate a concerning trend at your nightclub, should there be one more citation for drugs and/or patrons under the age of 21 years on premise within the next year, your Nightclub Dance Permit will be brought before the Fire and Police Commission with the recommendation that it be suspended and/or revoked.”

2013 Renewal Application - SBPD Review of Crime Statistics

2-year Crime Stats re: Minors & Narcotics for Whiskey Richards (435 State St): Jan 31, 2011 - Jan 31, 2013

DATE	CASE	DESCRIPTION	COMMENTS
Jan-31-2013	2013-7223	11359 HS MARIJUANA, PFS	Subj in alley behind WR sold marijuana to undercover cop. NOT INCL IN COUNT: outside
Dec-23-2012	2012-93605	11357 (B) HS POSS UNDER OUNCE	Patron openly rolling marijuana cigarette inside premise.
Sep-27-2012	2012-71472	25658 (A) BP LIQ MINOR SALES	ABC decoy op: 17 yo showed bartender real ID, served anyway. (Fined by ABC)
Sep-20-2012	2012-69862	25658 (B) BP LIQ MINOR PURCHAS	19 yo used friend's ID to enter. Later attempted to get into Sandbar where ID was seized by security as fake. She returned to WR & security allowed her to enter w/o ID check.
Aug-04-2012	2012-56524	25665 BP LIQ MINOR ON PREMISES	19 yo used Pennsylv ID to enter. Facial features differed from photo. Owner contacted.
Aug-01-2012	2012-55490	11350 (A) HS COCAINE, POSS	Subj in alley behind WR openly handling cocaine. NOT INCL IN COUNT: outside
May-04-2012	2012-31225	14610 (A)(3) VC DSPLY ANTH LIC	20 yo cited outside WR. He was overly-intoxicated & had fake ID which he admitted he used at Whiskey Richards to gain access. Once inside he was served 2 drinks.
Feb-09-2012	2012-10077	25665 BP LIQ MINOR ON PREMISES	19 yo showed no ID, but entered undetected when guard left his post. Patron was later found to possess cocaine. Guard confirmed facts w/PD & apologized.
		11350 (A) HS COCAINE, POSS	
1/31/12 - 1/31/13: 5 minors & 2 narcotics citations			

Jan-01-2012	2012-45	11350 (A) HS COCAINE, POSS	Patron openly snorted cocaine in men's restroom
Dec-30-2011	2011-89925	25661 BP POSS/USE FALSE ID	18 yo used fake Pennsylvania ID to enter; lamination wrinkled, shiny; clearly fake.
Dec-30-2011	2011-89680	25661 BP POSS/USE FALSE ID	20 yo used brother's ID to enter. Facial features differed from photo on ID.
Dec-22-2011	2011-88092	25665 BP LIQ MINOR ON PREMISES	20 yo let inside by WR staff; Sandbar security notified WR & PD of fake ID
Aug-07-2011	2011-55606	11350 (A) HS COCAINE, POSS	Patron openly snorted cocaine in line for restroom
Feb-17-2011	2011-12448	25665 BP LIQ MINOR ON PREMISES	20 y/o used friend's ID to enter. Eyes/height/weight diff than ID.
1/31/11 - 1/31/12: 4 minors & 2 narcotics citations			

Chart of Crime Statistics

January 31, 2011 – January 31, 2013



Dance Permit Penalty Matrix

VIOLATIONS		
Santa Barbara Municipal Code Violations	ABC Violations (Business & Professions Code)	Miscellaneous Violations
<ul style="list-style-type: none">➤ Noncompliance with Fire Code, including overcrowding (Uniform Fire Code)➤ Noncompliance with Noise Ordinance (SBMC Chapter 9.16)➤ Noncompliance with Dance Ordinance (SBMC Chapter 5.20)	<ul style="list-style-type: none">➤ Serving minors➤ Minors on premises➤ Serving intoxicated patrons➤ Other violations of B&P statutes, regulations, or conditions of ABC permit	<ul style="list-style-type: none">➤ Misdemeanor or felony convictions related to the operation and management of a dance establishment

Penalty Matrix (cont)

PENALTIES AND REPERCUSSIONS	
1 st Violation	-Verbal Warning
2 nd Violation	-Written reprimand and/or -Intervention meeting with interested parties
3 rd Violation	-Written reprimand, and/or -“Intervention” meeting with interested parties or -Fire & Police Commission Review <ul style="list-style-type: none">▪Imposition of special conditions, and/or▪Suspension up to 15 days
4 th Violation	-Fire & Police Commission Review <ul style="list-style-type: none">▪Imposition of special conditions, and/or▪Suspension up to 30 days
5 th Violation	-Fire & Police Commission Review <ul style="list-style-type: none">▪Imposition of special conditions, and/or▪Suspension up to 6 months, and/or▪Revocation



Fire and Police Commission Meeting

- ◆ Matter brought before Commission on March 28, 2013
- ◆ Police Department staff recommended suspension for a period of 6 months
- ◆ Additional recommendation: One more violation for minors or drugs in the 12 months following suspension will result in a recommendation for revocation of the Whiskey Richards Nightclub Dance Permit



Fire and Police Commission Meeting (cont.)

- ◆ Applicants argued against suspension based on security policies, actions of ABC, staff's reliance on bona fide ID, claim that they weren't informed of citations, and a disagreement with crime statistics
- ◆ Two members of the public spoke in support of the suspension, expressing concerns that Whiskey Richards has failed to adhere to permit conditions, and is arguably louder than other area nightclubs

A collage of images showing police officers, a dog, and a 'ROAD CLOSED' sign. The background is a dark blue gradient with faint white lines.

Fire and Police Commission (Cont.)

- ◆ Commission voted 3 to 1 to suspend the dance permit for a period of 60 days, effective immediately
- ◆ Commission voted 3 to 1 to approve subsequent recommendation for the Police to recommend revocation for one more citation for related violation
- ◆ Chief of Police stayed suspension after 14 days, pending Council appeal



Appellant's Position

Appeal filed April 4, 2013

Appellant's Position:

- ◆ The Commission didn't make written findings nor have adequate evidence to support a suspension
- ◆ Police Department staff presented an incorrect number of violations
- ◆ ABC has only recognized one citation in the time period in question
- ◆ Whiskey Richards staff is trained to recognize fake IDs
- ◆ No nightclub can guarantee that minors won't gain access or consume alcohol after presenting false ID

A photograph showing several police officers in uniform and tactical gear at a street scene. One officer is kneeling on the ground, while others stand nearby. A sign with the word 'ROAD' is visible in the foreground. The background shows a street with parked vehicles and buildings.

Police Department's Position

- ◆ Whiskey Richards has a Type 48 ABC liquor license which prohibits minors at any time
- ◆ The Police Department has taken multiple progressive measures to curb the violations at Whiskey Richards
- ◆ Applicant admits to multiple citations during the review period, despite receipt of the letter warning of possible suspension with even one more citation
- ◆ A suspension of the dance permit will not affect the business's liquor license, nor their ability to have entertainment at the premise

Police Department's Position (cont.)

- ◆ Security staff may occasionally confiscate IDs and turn them over later, but there are no records of security contacting SBPD at the time a minor attempts entry.
- ◆ Fake IDs were clearly not those of the people attempting to use them, or were easily distinguishable as falsified.
- ◆ SBMC §5.20.150(E)(1), allows for suspension or revocation when “...the Permittee has allowed repeated violations of any provision of this Chapter, the Municipal Code, or any statute, ordinance, or regulation relating to his or her permitted business activity to occur.”

A photograph showing several police officers in uniform and tactical gear at an outdoor scene. One officer is kneeling on the ground, possibly interacting with a dog. There are signs and equipment visible, including one that says "ROAD" and another that says "POLICE".

Police Department's Recommendation

Staff recommends that Council deny the appeal, thereby upholding the Fire and Police Commission's decision to impose a 60-day suspension on the nightclub dance permit for Whiskey Richards.