



Agenda Item No. \_\_\_\_\_

File Code No. 520.01

# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** May 6, 2008

**TO:** Mayor and Councilmembers

**FROM:** Chief's Staff, Police Department

**SUBJECT:** Appeal Of The Fire And Police Commission's Approval Of The Dance Permit For The James Joyce

### **RECOMMENDATION:**

That Council deny the appeals of Thomas and Linda Byrne, and Tamara Erickson, thereby upholding the Fire and Police Commission's decision to approve the dance permit with conditions for The James Joyce, at 513 State Street.

### **EXECUTIVE SUMMARY:**

On February 28, 2008, the Board of Fire and Police Commissioners approved a dance permit application with specific conditions for The James Joyce located at 514 State Street. The conditions imposed on the permit were those recommended by the Santa Barbara Police Department to potentially mitigate some area concerns. Subsequent to the Fire and Police Commissioners' decision, two appeals were filed: the applicants, Thomas and Linda Byrne, contesting the decision to impose conditions; and Tamara Erickson of the Hotel Santa Barbara contesting the approval of the dance permit despite the imposed conditions. Staff recommends that both appeals be denied, and that the decision by the Fire and Police Commissioners to approve the dance permit with conditions be upheld.

### **DISCUSSION:**

The subject appeals involve the approval of a dance permit for The James Joyce at 514 State Street. On February 28, 2008, the Fire and Police Commission approved the dance permit with the conditions recommended by the Police Department to mitigate public safety and noise-related issues. The applicants, Thomas Byrne and Linda Byrne of The James Joyce, appealed the Fire and Police Commission's decision to impose conditions on the dance permit. Tamara Erickson, General Manager of the Hotel Santa Barbara, appealed the Commission's decision to grant the permit. (See Attachments 1 & 2.)

**BACKGROUND:**

In January 2007, Linda Byrne submitted a dance permit application to the Santa Barbara Police Department for the property located at 513 State Street. Ms. Byrne is the manager of the corporation at that location, owned by Thomas Byrne, dba "The James Joyce." The Byrnes received all of the necessary approvals from the Community Development Department, and submitted a site plan indicating the location of the proposed dance floor.

In April 2007, the dance permit request was heard at the Fire and Police Commission meeting. The Fire and Police Commission voted to withhold a decision on The James Joyce dance permit application until such time as City Council adopted proposed updates to the City's dance ordinance. On January 29, 2008, City Council voted to adopt ordinance updates. Subsequently, The James Joyce dance permit application was further processed, and was placed on the agenda again to be presented to the Fire and Police Commission. The Police Department acknowledged that since The James Joyce application was initially submitted prior to the adoption of ordinance updates, the previous ordinance applied to this dance permit application.

On February 6, 2008, Police Department staff met with Linda Byrne to conduct a second walkthrough of The James Joyce at 513 State Street. Thomas Byrne was not present. During the walkthrough, the following information was verified by Linda Byrne:

- For the past 9 years, The James Joyce has offered live music to patrons in addition to music from a jukebox. Linda Byrne confirmed that The James Joyce will continue to offer the same musical format if they are granted a dance permit.
- On-premise speakers are used for amplification of the jukebox only. Live musicians provide their own speakers and sound systems.
- The James Joyce planned to staff 3 or 4 security guards during dancing hours.
- According to Linda Byrne, dancing was anticipated to end at 1:00 am, and occur 3 to 5 times per week.

Over the past two years, there were seven reported criminal offenses at this specific location. Of those, three were reported fights/misdemeanor batteries; two were incidents in which security personnel notified the Santa Barbara Police Department (SBPD) of subjects with false identification – a procedure that the Police Department encourages; and one was an Alcoholic Beverage Control (ABC) violation involving a minor on premise. In December 2006, a citation was also issued to The James Joyce management for allowing dancing without a permit.

Fire and Police Commission Action:

At the Fire and Police Commission meeting, held on February 28, 2008, two members of the public, Tamara Erickson of the Hotel Santa Barbara and Kay Morter of the Holiday Inn Express, spoke in opposition to the dance permit, and one letter of opposition, from Suzie Thompson, was read into the record. The primary concerns of those opposing the dance permit pertained to the frequency of crime in the area, the existing high concentration of ABC licenses and dance permits within the Entertainment District, noise issues, and undue stress on Santa Barbara Police Department resources.

The Byrnes spoke in opposition to some of the conditions recommended by the Police Department. Police Department staff recommended the following conditions to the dance permit that could possibly mitigate some public safety and noise-related issues:

- Dancing shall be limited to 3 nights per week. Owners shall choose the three nights, which thereafter may not be changed. Should the owners desire to change the three nights, they may request a change at the time of their annual dance permit renewal;
- Dancing shall cease by 1:00 am each night dancing occurs;
- During hours of dancing, entertainment shall be limited to live music only. The use of a disc jockey shall be prohibited during hours of dancing;
- Music shall not be audible beyond 50 feet from the premise in any direction;
- The rear door must be kept closed, but unlocked, at all times during the hours of dancing;
- Except in the case of emergency, no patrons shall enter or exit the premise through the rear doors;
- A minimum of 3 security guards must be on duty during hours of dancing;
- All staff must attend Responsible Beverage Server (RBS) Training.

The proposed conditions, specifically hours of dancing, nights per week, closure of rear door, and the audible distance of the music, would mitigate some of the impacts associated with approving this dance permit, such as noise and crowd size in the area.

Following the discussion, the Commission approved the permit with the conditions by a unanimous vote (See Attachments 3 and 4.)

Appellants' Position – Thomas and Linda Byrne:

The dance permit applicants, Thomas and Linda Byrne, filed an appeal. In summary, the appellants appealed on the basis of the following claims:

- Unnecessary Restrictions on Rear Door Access – Patrons are accustomed to entering and exiting via the rear door. Patrons use the door to smoke in the back in lieu of smoking in front on State Street. Lastly, during the hot summer months, opening the rear door allows air to flow through the building.

- Unreasonable Limit on Nights Per Week – Limiting dancing to three nights per week would cause confusion among patrons, as the establishment has live music five nights per week at a minimum.

The appellants related that they properly operate their establishment and are conscious of the Noise Ordinance. In addition, they are sympathetic to the noise concerns of the neighbors and hotels in the area.

Appellant's Position – Tamara Erickson:

Following the Fire and Police Commission's approval of The James Joyce dance permit, Tamara Erickson, General Manager of the Hotel Santa Barbara at 533 State Street, also filed an appeal. In summary, the appellant appealed on the basis of the following claims:

- Area Crime – Alcohol and crowd-related crime in the Entertainment District is highest in the City.
- Unenforceable Conditions – Permit conditions are not enforceable.
- Increased Concentration – High concentration of ABC licenses and dance permits in the Entertainment District result in a higher percentage of overall crime and alcohol-related crime.
- Inadequate Review of Area Concerns – The impact of a new dance permit in the 500 block of State Street was not adequately reviewed by the Commission, and the Commission showed favoritism toward the applicant.

Staff's Position:

The Entertainment District does have a high concentration of ABC licenses and dance permits as compared to other areas of the City. As such, it does require considerable Police resources on most evenings from approx 10:00 pm to 3:00 am. Incidents of reported crime and arrests are higher in that area than in other areas of the City. Over the last three years, from the hours of 10:00 pm to 3:00 am, 32% of the City's criminal offenses and 49% of all alcohol-related offenses occurred in the Entertainment District. This area also accounted for 36% of the Police Department's arrests. However, from 2005 to 2007, the City's Entertainment District experienced a 35% reduction in reported criminal offenses, which indicates that enforcement, prevention, and education efforts can be successful in reducing some of the negative aspects.

In addition, staff believes that the new ordinance, through its progressive discipline process, as well as other changes, will hold establishments more accountable when a pattern of violations or violations of conditions occur.

Police Department staff noted that granting this dance permit would increase the number of dance permits in the Entertainment District. However, during the dance ordinance update process, the Ordinance Committee and City Council did not want to place a moratorium on dance permits within the Entertainment District, but instead preferred to consider all new dance permits on a case-by-case basis. The proposed conditions, specifically hours of dancing, nights per week, and rear door access, would mitigate some of the negative impacts of adding another dance permit to this area.

**CONCLUSION:**

Staff recommends that the Council deny the appeals and uphold the decision of the Fire and Police Commission to approve the dance permit with conditions.

- ATTACHMENTS:**
1. Letter by appellants Thomas & Linda Byrne
  2. Letter by appellant Tamara Erickson
  3. Minutes from the February 28, 2008 Fire and Police Commission meeting
  4. Copy of the James Joyce Dance Permit

**PREPARED BY:** Robert Lowry, Police Captain

**SUBMITTED BY:** Camerino Sanchez, Chief of Police

**APPROVED BY:** City Administrator's Office

RECEIVED

ATTACHMENT 1

MAR 10 2008  
11:10am JAL  
CITY CLERK'S OFFICE  
SANTA BARBARA, CA

Linda Byrne  
Thomas Byrne  
C/O the James Joyce  
513 State St

Re : Dance Permit Appeal The James Joyce 513 State St

Madam Mayor and Members of City Council.

At our Dance permit hearing on Feb 28th the Police and Fire commission voted to approve our Dance Permit with the following Eight conditions.

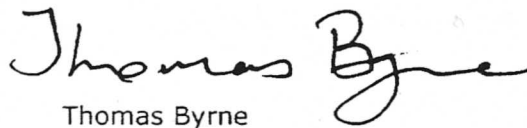
1. Dancing shall be limited to Three nights a week only
2. Dancing shall cease by 1am
3. All staff shall be R.B.S trained
4. Entertainment shall be limited to Live music and no D.J.
5. Music shall not be audible from Fifty feet from the premises in any direction.
6. Except in the case of emergency no patrons shall exit or enter through the rear door.
7. The rear door must remain closed during the hours of dancing.
8. A minimum of Three security guards must be on duty during dancing hours.

We feel that some of these conditions are excessive and would greatly hamper the smooth running of our business. First and most importantly, A lot of our Patrons have become accustomed to entering and exiting through the rear entrance for the past Twelve years , Also It is much more convenient to allow our patrons to smoke out the back instead of having up to Ten people smoking out the front on state St blocking the sidewalk and making the Front door security guards job much more difficult . Second, It gets very hot during the Summer months and its nice to have the back door open to allow an air flow through the building, we like to be able to monitor the activities of those patrons out back also. And lastly by only allowing Dancing on Three nights a week. This would cause great confusion as we have Live music five nights a week Minimum.

We like to think that we run a well run establishment and are very conscious of the noise ordinance and we provide an atmosphere where our patrons can carry on a conversation as well as listen to the music . We are also sympathetic of the concerns of the hotels and neighbors in regards to noise and do keep our bands in check so as not to become a contributor to the problems they have been having .

We hope that this appeal meets with your favorable consideration.

Respectfully Submitted,

  
Thomas Byrne

  
Linda Byrne

Business (805) 9622688  
cell (805) 2528239

## ATTACHMENT 2



### Notice of Appeal

To: Santa Barbara City Council  
Submitted by: Tamara Erickson  
Date: March 10, 2008  
Re: Dance Permit at 513 State Street  
Body Granting Permit: Police & Fire Commission  
Date Permit Granted: February 28, 2008

Please accept this appeal of the Police & Fire Commission's decision to grant a Dance Club Permit to applicant Thomas Byrne, owner of Dance Club currently known as 'The James Joyce' at 513 State Street.

### Grounds for Appeal

- Adds a **new full dance permit** to an already highly impacted area
- The impact of a new dance permit in the 500 block was not adequately reviewed by F& P Commission
- 21 additional dance permitted businesses exist in immediate area – no public convenience or necessity
- Conditions are not enforced or enforceable
- Creates undue stress on already stretched SBPD resources
- Alcohol and crowd-related crime rate in the area is highest in the City
- Fire & Police Commission process showed favoritism toward applicant

Respectfully submitted,

A handwritten signature in black ink that reads "Tamara".

Tamara J. Erickson  
General Manger  
Hotel Santa Barbara  
533 State Street  
957-9300 ext 1255  
[terickson@hotelsantabarbara.com](mailto:terickson@hotelsantabarbara.com)

CITY OF SANTA BARBARA  
FIRE & POLICE COMMISSION MINUTES

\*\*\*\*\*  
Thursday February 28, 2008 @ 4:30  
Santa Barbara Police Department  
215 E. Figueroa St.

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REGULAR MEETING

1. CALL TO ORDER/ROLL CALL:

Present: Commissioners: Rodriguez, Atkins, Lennon, Signor, and Lauritsen

Staff Present: Chief Cam Sanchez, Lieutenant Armando Martel, Assistant City Attorney Michelle Montez, Fire Marshall Joe Poire, Police Technician Holly Michels, and Secretary Barbara Sansone

2. APPROVAL OF MINUTES:

MOTION: Signor to approve minutes of January 24, 2008

VOTE: Unanimous voice vote: Motion passed (After the name of establishment receiving the Dance Permit in Item 7 typo was changed to Whiskey Richard's)

3. PUBLIC COMMENT:

Any member of the public may address the Fire & Police Commission for up to one minute on any subject within the jurisdiction of the Commission that is not scheduled for a public hearing before the Commission. The total time for this item is 10 minutes. If you wish to address the Commission under this item, please complete and deliver to the Commission Secretary before the meeting is convened, a "Request to Speak" form, including a description of the subject you wish to address.

4. SUBCOMMITTEE REPORTS:

None

5. OLD BUSINESS:

None

6. NEW BUSINESS:

None

7. DANCE PERMIT – Mynt – 519 State St.

Present: Matt Fraser and Mark Olufs

MOTION: Lauritsen to approve dance permit

VOTE: Unanimous voice vote, motion passed

8. DANCE PERMIT – James Joyce – 513 State St.

Present: Thomas & Lynda Byrne (owners)

MOTION: Lauritsen to approve dance permit

VOTE: Unanimous voice vote, motion passed with the addition of the condition that all staff attend RBS training



A lengthy discussion preceded this vote. Thomas Byrne was not satisfied with the conditions placed upon this dance permit. Specifically, that dancing be limited to 3 nights per week, that dancing shall cease by 1:00 a.m., that except in an emergency, no patrons shall enter or exit the premise through the rear door and that the rear door be kept closed, but unlocked, at all times during hours of dancing. Mr. Byrne will most likely appeal to Council regarding the conditions placed upon this permit.

Tamara Erickson of the Hotel Santa Barbara and Kay Morder of the Holiday Inn Express were also present at this meeting and stated their concerns regarding granting a dance permit to "Mynt" and also regarding the addition of a new dance permit in the downtown area to the James Joyce.

## **9. PRIVATE PATROL UNIFORM APPROVAL UPDATE**

- Michelle Montez presented to the Commissioners that the "Private Patrol Uniform Approval" will now be turned over to the Police Department. Title 5, which mostly focuses on business licenses, is being overhauled by Brenda Monser and the Finance Dept. and it was thought that this would be a more efficient way of granting approval. It is rare that this particular issue comes before the Commission. After a short discussion/explanation the Commissioners agreed that this was best.

## **10. FIRE CHIEF'S REPORT**

- There will 6 cadets starting the Fire Academy on 4/28/08
- New Deputy Fire Chief appointed, current Captain Don Levasheff; Captain Levasheff is a 30 year veteran with the department and will be shadowing the current Deputy Chief Mitch Vaughn starting 3/17/08
- Deputy Fire Chief Mitch Vaughn will retire 3/22/08
- Training Battalion Chief John Ahlman will retire 3/31/08
- OES, Fire Prevention and Admin personnel have moved to temporary quarters at 925 De La Vina St for the next 2 years during the retrofitting/remodel of Fire Station 1.
- Hard hat opening of the Granada theater on April 4<sup>th</sup>

## **11. POLICE CHIEF'S REPORT:**

### **Points of Discussion:**

- 6 cadets at the Academy
- 2 recent graduates now in their entry phase
- Missing 86 year old woman, Clara Seed, with Alzheimer's from Shoreline Dr.; Search and Rescue dogs, helicopter all presently searching for her
- Budget issues; public safety is a priority; If budget cuts become necessary we will most likely not fill positions that are vacant; May have to hold off on some equipment until next year
- Working very hard on gang issues; Gang unit is enhanced; Bike patrol still in effect; all patrol officers, including those outside the gang unit, have had training on gang identification and gang crime investigation
- One homicide still not solved, however an arrest is imminent
- Two stabbings in the last few weeks; still working those diligently; Victims are uncooperative in identifying the perpetrator

## **11. ADJOURN: 5:50**

## ATTACHMENT 4

March 4, 2008

Linda Byrne  
Thomas Byrne  
2535 Chapala St  
Santa Barbara, CA 93105

RE: Dance Permit Approval, James Joyce, 513 State Street, Santa Barbara, CA 93101

Dear Lynda and Thomas Byrne:

Your application for a Dance Permit at **513 State Street** has been approved by the City of Santa Barbara Fire & Police Commission at its regular meeting held on February 28, 2008, and is issued with the following conditions:

- Dancing shall be limited to 3 nights per week. Owners shall choose the three nights, which thereafter may not be changed. Should the owners desire to change the three nights, they may request a change at the time of their annual dance permit renewal
- Dancing shall cease by 1:00 a.m. each night dancing occurs
- All staff must attend RBS training
- During hours of dancing, entertainment shall be limited to live music only. The use of a disc jockey shall be prohibited during hours of dancing
- Music shall not be audible beyond 50 feet from the premise in any direction
- Except in the case of an emergency, no patrons shall enter or exit the premise through the rear door
- The rear door must be kept closed, but unlocked at all times during hours of dancing
- A minimum of 3 security guards must be on duty during hours of dancing

This permit is strictly limited to allow only the occupant load for the premises as is approved by the Santa Barbara City Fire Department. Business shall be conducted in a manner that will not violate any provisions of the California Alcoholic Beverage Control Act, providing against the sale of alcohol to minors (§25658) maintaining the public health, morals, convenience and safety (§25601); and taking reasonable steps to correct any objectionable conditions on the premises and immediately adjacent to the premises (§24200).

For the protection of public health and safety, no dancing shall take place in or upon any location, area or surface other than those locations, areas and surfaces that have been approved for occupancy load/dancing by the Fire Department or Building and Safety

Department. Dancing in or upon an unapproved location, area or surface shall be deemed a violation of the terms and conditions of the permit and cause for the review, suspension, amendment or revocation of this permit at the discretion of the Fire & Police Commission Board. If a change in the location of approved dancing areas is desired, the applicant must re-apply to the Fire and Police Commission for approval of these changes. Such application shall require approval of the Fire Department and Building and Safety prior to being accepted for review by the Fire and Police Commission Board.

Any complaints about noise, litter, traffic problems, disturbances, damage to property, injuries to persons, or failure to cooperate with peace officers under circumstances related to the operation of this business will subject this permit to review, amendment, suspension, or revocation, at the discretion of this Commission. If the business changes ownership or address, a new permit must be obtained from this Commission and a new permit must be obtained from the Tax and Permit Office at City Hall. This permit may not be transferred to any successor interest in the business. Any other change must be reported in writing to the Commission.

This permit is issued under the authority of the Santa Barbara Municipal Code, Chapter 5.20, § 5.20.010 through §5.20.090, inclusive, and subject to all other applicable City, County and State laws, ordinances, rules, and regulations.

FIRE & POLICE COMMISSION

APPROVED

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Barbara A. Sansone  
Secretary to the Commission

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Camerino Sanchez  
Chief of Police

cc: Tax & Permit Office  
City Attorney  
Police Special Investigations  
Fire & Police Commissioners