



Agenda Item No. _____

File Code No. 520.01

CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: July 29, 2008

TO: Mayor and Councilmembers

FROM: Chief's Staff, Police Department

SUBJECT: Appeal Of The Fire And Police Commission's Denial Of The Dance Permit For Bricks Café

RECOMMENDATION:

That Council deny the appeal of Wallace A. Ronchietto, thereby upholding the Board of Fire and Police Commissioners' decision to deny the dance permit for Bricks Café at 509 State Street.

EXECUTIVE SUMMARY:

On April 24, 2008, the Board of Fire and Police Commissioners ("the Commission") denied a dance permit application for Bricks Café. Prior to making their decision, Commissioners considered the conflict with the current ABC license, comments from members of the public in opposition to the permit, comments from members of the public in support of the permit, information provided by Police Department staff, including premise-specific incidents over the past two years, current status of ABC conditions, and the input of the applicant as to why Bricks Café should be granted a dance permit.

DISCUSSION:

The subject appeal involves the denial of a dance permit for Bricks Café at 509 State Street. On April 24, 2008, the Commission denied the dance permit application based on crime statistics for the area, the current concentration of dance permits on that specific block, a possible conflict with the ABC license condition, and an incident on April 6, 2008. The applicant, Wallace A. Ronchietto, appealed the decision to deny the permit. (See Attachment 1)

BACKGROUND:

On February 19, 2008, a dance permit application for 509 State St. was submitted to the Police Department. The business at 509 State Street is owned by Milonga Inc., represented by Wallace A. Ronchietto, dba "Bricks Café." Mr. Ronchietto received all the necessary approvals from Community Development, and submitted a site plan

indicating where the dance floor will be located. All requirements of the application process were met satisfactorily.

On March 11, 2008, Police Department staff conducted a walkthrough of Bricks Café at 509 State St. The following premise-related facts were verified during that visit:

- There are four speakers currently installed; two speakers mounted over the front door, and two mounted on the wall over the rear dining area;
- Five security cameras are utilized; three in the main room and two in the kitchen;
- Front and rear doors of the premises are usually kept closed;
- The establishment is located across from a residence on Fig Avenue.

During the visit, Mr. Ronchietto provided the following business plan information:

- Full food service will be available during hours of dancing;
- Dancing is expected to take place only until midnight;
- Nights of dancing will vary, but will not be nightly;
- Music during dancing is expected to be live entertainment only;
- Music selection may stay the same as is currently offered, although there is a discussion among management to bring in new music to attract more patrons;
- Owner stated that he initially had live music in the restaurant, but that it didn't attract business as he'd hoped, so he had to change the business plan to include the type of music that would attract more patrons;
- Owner is currently losing significant money each month on the business, and if patronage doesn't increase significantly, he may have to sell the business.

In June 2006, Milonga, Inc. was issued an Alcohol Beverage Control (ABC) license that included a number of conditions from the previous owner due to noise concerns. Among them were the following:

- "There shall be no amplified music on the premises at any time, with the exception of background music."
- "Live Entertainment will be restricted to an unamplified quartet of musicians. The placement of said entertainment will be restricted to the front of the premises, which is defined for this condition to be from the front entrance facing State Street, thirty-five (35) feet to the beginning of the fixed bar as depicted on the ABC-257 dated 2-2-06 and designated in red as the "Live Entertainment Zone."

On January 23, 2008, the Police Department was notified by ABC that Milonga, Inc. requested the above two conditions be removed from the ABC license. Initially, the Police Department did not protest the removal of the conditions given the minimal crime statistics for the premise, but later learned that a citizen protest was filed.

On April 6, 2008, Nightlife Enforcement (NET) officers contacted the business manager, and a short time later, Mr. Ronchietto, when during a premise check, they discovered patrons dancing to a disc jockey in Bricks Café. According to the incident report,

approximately one week prior to this incident, Officer Ruiz observed a large group of people dancing inside Bricks Café to a disc jockey playing music. Follow-up by Officer Ruiz determined that Bricks Café did not have a dance permit, so he conducted a premise check on April 6, 2008 and again saw patrons dancing to a disc jockey. Officer Ruiz contacted Mr. Ronchietto, who apologized and told Officer Ruiz that he knew he did not have a dance permit and that he was in the process of attaining one. He stated that the manager organized the dancing without his approval. The incident was documented by Officer Ruiz and forwarded to ABC for further review.

ABC is handling the request for a change of conditions at Bricks Café and confirmed that based on the citizen protest and the April 6th incident, Mr. Ronchietto's request for a change of conditions was denied.

In addition to the incident on April 6, 2008, there have been three reported criminal offenses at this specific location over the past two years: one instance of trespassing; one a report of patrons leaving without paying the complete bill; and one, an ABC violation involving a minor in possession of liquor.

Fire and Police Commission Action:

First action by the Commission occurred on March 27, 2008, when the permit request was first presented. At that meeting, Tamara Erickson, Susie Thompson, and Gene Zannon were present and expressed opposition to the dance permit. Mr. Ronchietto was not present at that meeting even though notices of the meeting were sent to both the mailing address on the application, and to the Bricks Café address. Given Mr. Ronchietto's absence, the Fire and Police Commissioners voted to continue the Bricks Café dance permit to the April 24th meeting. However, Mr. Ronchietto later explained that he was out of town at the time, and did not receive the notices until the day after the meeting.

At the continued Commission meeting held on April 24, 2008, two members of the public, Tamara Erickson and Gene Zannon, spoke in opposition to the dance permit. In addition, Susie Thompson submitted a letter in opposition. 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 area; noise issues; undue stress on Police Department resources; and the fact that issuance of a dance permit would conflict with ABC license conditions.

Mr. Ronchietto addressed the Commissioners with the following points:

- The manager allowed the disc jockey and dancing without Mr. Ronchietto's authorization, and he has since fired that manager;
- On the night of April 26, 2008, Mr. Ronchietto was not present when the officers first arrived, but came to the premise once they were already there;

- He owns other restaurants in town and believes he operates good establishments;
- He is extensively involved in the community.

Three patrons from Bricks Café addressed the Fire and Police Commissioners and spoke favorably about Mr. Ronchietto and Bricks Café.

Following the discussion, the Commission voted three to one to deny the dance permit.

Appellant's Position:

On May 9, 2008, Mr. Ronchietto filed an appeal. In summary, the appellant appealed on the basis of the following claims:

- The denial was based on the assumption that having a dance permit at Bricks Café would increase crime and police involvement in the area;
- It originally appeared that the vote would be favorable until one of the Commissioners changed his mind;
- Appellant's commitment to provide a safe and crime-free environment at Bricks Café should be given consideration.

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. Granting this dance permit will increase the number of dance permits in the Entertainment District, and specifically in the 500 block of State Street, where there are already five dance establishments. The area does require considerable Police resources on most evenings from approximately 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 and 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 arrests. However, from 2005 – 2007, the City's Entertainment District experienced a 35% reduction in reported criminal offenses, which indicates that enforcement, prevention, and education efforts may be successful in reducing some of the negative aspects of this area.

Police Department staff noted that granting this dance permit would again increase the number of dance permits in the 500 block of State Street. 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. Staff proposed three options to the Commission; two options for approval with conditions which may arguably mitigate some of the concerns of adding another dance permit to this area, or the option to deny.

The Commission chose the third option to deny the permit. The decision was made based on crime statistics for the area, the current concentration of dance permits in the 500 block of State Street, and the April 6th incident in which patrons were dancing to amplified music from a disc jockey – a clear violation of both the ABC license and the Municipal Code. It was also noted that granting a dance permit under the conditions requested by the appellant would be in conflict with present ABC license conditions.

CONCLUSION:

Staff recommends that the Council deny the appeal and uphold the decision of the Fire and Police Commission to deny the dance permit.

- ATTACHMENTS:**
1. Letter by appellant
 2. Minutes from the April 24, 2008 Fire and Police Commission meeting
 3. Copy of Bricks Café ABC license

PREPARED BY: Robert Lowry, Police Captain

SUBMITTED BY: Camerino Sanchez, Chief of Police

APPROVED BY: City Administrator's Office

Santa Barbara, May 8, 2008

City of Santa Barbara

City Clerk:

RECEIVED

MAY 09 2008

1:05 p.m. / BA

CITY CLERK'S OFFICE
SANTA BARBARA, CA

Pursuant to Santa Barbara Municipal Code Section 1.30.050, I wish to appeal the decision of the Fire and Police Commission to deny my application for a dance permit at Bricks Café.

My understanding is that the denial was based on the assumption that having a dance permit at Bricks Café would increase crime and Police involvement.

Because, during the meeting of the commission, it appeared that the vote was going to be favorable until one of the commissioners changed his mind, I believe there is reason for an appeal.

I am hopping I will be granted this appeal to try to convey to the City Council my commitment to provide a safe and crime free environment at Bricks Café.

Sincerely,



Wallace A. Ronchietto

(805) 455-6556
955 A. CIENEGUITAS Rd
S.B. CA 93110



Fire and Police Commission

City of Santa Barbara

215 EAST FIGUEROA
MAIL: P.O. BOX 539
SANTA BARBARA
93102

April 30, 2008

Bricks Café
c/o Wallace A. Ronchietto
509 State St.
Santa Barbara, CA 93101

RECEIVED

MAY 09 2008

RE: Dance Permit – Bricks – 509 State St.

CITY CLERK'S OFFICE
SANTA BARBARA, CA

Dear Mr. Ronchietto:

This letter is to officially notify you that at their regular meeting of April 24, 2008, the City of Santa Barbara Fire & Police Commission voted 3 - 1 to deny your application for a dance permit at Bricks.

Pursuant to Santa Barbara Municipal Code §1.30.050 (copy attached), if you wish to appeal the decision of the Commission to the City Council, you have ten (10) days from the date of this letter to file such appeal, in writing, with the City Clerk's Office.

FIRE & POLICE COMMISSION

Barbara Sansone
Secretary to the Commission

Cam Sanchez
Chief of Police

Attachment

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

Chapter 1.30

APPEALS FROM ADMINISTRATIVE DECISIONS AND TIME LIMITS FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

Sections:

1.30.010	Purpose.	1.30.040	Finality of Administrative Decisions.
1.30.020	Applicability of Code of Civil Procedure §1094.6.	1.30.050	Appeals from Administrative Decisions.
1.30.030	Does Not Expand or Extend Statute of Limitations.		

1.30.010 Purpose.

Code of Civil Procedure §1094.6 authorizes municipalities to establish a ninety (90) day time limit for filing a petition for a writ of mandate to challenge decisions of the City and its Council, commissions, boards, officers and agents. (Ord. 4013, 1979.)

1.30.020 Applicability of Code of Civil Procedure §1094.6.

Code of Civil Procedure §1094.6 is hereby made applicable to adjudicatory administrative decisions of the City Council and City commissions, boards, committees, officers, employees and agents made, after hearing, suspending, demoting, or dismissing an officer or employee, revoking or denying any application for a permit or a license or denying an application for any retirement benefit or allowance. As used here-in, permit shall include applications for modifications, variances or conditional use permits filed pursuant to Chapters 28.92 and 28.94 of this Code. A petition for writ of mandate challenging said decisions must be filed no later than the ninetieth (90th) day following the day on which the decision becomes final. Notice of this limitation shall be given to the affected party at the time the decision becomes final. (Ord. 4013, 1979.)

1.30.030 Does Not Expand or Extend Statute of Limitations.

Nothing contained in this chapter shall expand the scope of judicial review or extend any applicable statute of limitations for the filing of any judicial action. (Ord. 4013, 1979.)

1.30.040 Finality of Administrative Decisions.

Unless another effective date for an action or decision is provided in this Code, the adjudicatory and administrative decisions of the City commissions, boards, committees, officers, employees and agents made pursuant to their duties and responsibilities are final on the day such decision is voiced, or, if a written decision is issued, the day such decision is issued in writing. (Ord. 4751, 1992.)

1.30.050 Appeals from Administrative Decisions.

Where appeals under this Section are authorized by this Code, an appeal from the decision of a City commission, board, committee, officer, employee or agent may be made to the City Council as follows:

A. A written notice of appeal, stating the grounds claimed for the appeal and identifying in particular all significant issues, facts and affected parties shall be filed with the City Clerk within ten (10) days after the day such decision is voiced, or, if a written decision is issued, within ten (10) days after the day such decision is issued in writing. The City Clerk shall require the payment of a fee for such appeal as is provided by resolution of the City Council or as may be ordered by the City Council for the matter.

B. Within twenty-one (21) days of receiving the written appeal, the City Clerk shall place a recommendation before the City Council for a decision to either:

(i) set a date for hearing on the appeal before the City Council, or

(ii) refer the appeal to another agency, officer, commission or committee for action. A copy of the report of the City Council action, mailed to the appellant and to the City commission, board, committee, officer, employee or agent affected may serve as notice of such hearing or referral.

C. At the time and place of the hearing, the City Council or the agency, officer, commission or committee designated to hear the appeal, shall hear and receive any relevant information and documents, which may include such hearsay or other evidence which ordinary persons could be expected to consider in the conduct of business affairs.

D. The City Council or the agency, officer, commission or committee designated to hear the appeal may continue the hearing from time to time as may be required, or may grant or deny the appeal, in whole or in part.

E. Unless otherwise provided by the City Council, the decision of the City Council, or of the agency, officer, commission or committee designated by the City Council to hear the appeal, shall be final on the day such decision is issued. (Ord. 4751, 1992.)

ATTACHMENT 2

**CITY OF SANTA BARBARA
FIRE & POLICE COMMISSION MINUTES**

Thursday April 24, 2008 @ 4:30
Santa Barbara Police Department
215 E. Figueroa St.

REGULAR MEETING

1. CALL TO ORDER/ROLL CALL:

Present: Commissioners: Rodriguez, Lennon, Lauritsen, Atkins (Signor excused absence)

Staff Present: Chief Sanchez, Captain Bob Lowry, Assistant City Attorney Michelle Montez, Councilmember Iya Falcone, Fire Chief Ron Prince, Police Technician Holly Michels, Acting Secretary, Lieutenant Martel, Sergeant Baker, Officer Ruiz, Officer Benson

2. APPROVAL OF MINUTES:

MOTION: Lauritsen to approve minutes of March 27, 2008
VOTE: Unanimous voice vote: Motion passed

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.

Tamara Erickson requested update on validity of Madison's Dance Permit. Capt. Lowry explained that the investigation is complete and the owners of Madison's have been given a letter stating that the permit is invalid. In terms agreed upon jointly by Chief Sanchez, the City Administrator and the City Attorney's Office, the owners will have until May 1, 2008 to submit a new dance permit application and the matter will be heard at the May 22, 2008 Fire & Police Commission meeting. Dancing will be allowed at Madison's until the issue is heard.

4. SUBCOMMITTEE REPORTS:

None

5. OLD BUSINESS:

None

6. NEW BUSINESS:

None

7. DANCE PERMIT – Bricks Café– 509 State St.

Present: Wally Ronchietto, owner.

Allen Schnurr, Jacques McKalen and Jason Locicero spoke in support of the permit. Tamara Erickson and Gene Zannon spoke in opposition of the permit.

Officers from NET spoke regarding dancing taking place at Brick's without a dance permit; a warning was issued to Mr. Ronchietto

MOTION: Atkins to approve Option 2 of the police department recommendations with the addition of 2 conditions on the ABC license that pertain to music and amplification.

VOTE: This motion was seconded by Lauritsen; Commissioners Lennon and Rodriguez voted nay; motion died

NEW MOTION: Rodriguez to deny permit

VOTE: Motion passed; 3 – 1 vote (Rodriguez, Lennon, Lauritsen voted aye to deny permit/Atkins voted nay against denying permit)

8. FIRE CHIEF'S REPORT

Points of Discussion:

- May 12th 6 candidates will attend the academy
- Construction contract approved by Council
- Arson fire & apartment fire in the last week
- Teen CERT class at high school, 20 participants
- Busy fire season ahead; pack test must be taken by all firefighters; firefighters must carry 45# pack 3 miles and complete the course in 45 minutes
- Phone scam happening targeting seniors regarding collecting money for the fire department; fire department has put this scam out to all media warning residents

9. POLICE CHIEF'S REPORT:

Points of Discussion:

- Captain Lowry spoke regarding Footbath Massage Center/Tommy Ung; case went to trial and the jury came back with a guilty for prostitution
- June 27th there will be 6 cadets graduating in Camarillo; June 26th @ 3:00 in Jury room there will be a swearing in ceremony; all Commissioners are invited to attend either or both ceremonies
- Candidates are being interviewed; Council has given permission to over-hire due to several upcoming retirements
- Promotional tests happening in the next few months for Captain, Lieutenant & Sergeant due to retirements
- Gang issues still a priority; more updates at next Fire & Police Commission meeting regarding summer projects for at-risk youth

11. ADJOURN: 5:33

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

In the Matter of the Application of:

MILONGA INC
509 State Street
Santa Barbara, CA 93101

File: 47-438165

Reg:

PETITION FOR
CONDITIONAL
LICENSE

For issuance of an On Sale General Eating Place License

Under the Alcoholic Beverage Control Act

WHEREAS, petitioner(s) has/have filed an application for the issuance of the above-referred-to license(s) for the above-mentioned premises; and,

WHEREAS, Pursuant to Section 23958 of the Business and Professions Code, the Department may deny an application for a license where issuance would result in or add to an undue concentration of license; and,

WHEREAS, the proposed premises are located in Census Tract 0009. where there presently exists an undue concentration of licenses as defined by Section 23958.4 of the Business and Professions Code; and,

WHEREAS, the petitioner(s) stipulate(s) that by reason of the aforementioned over-concentration of licenses, grounds exist for denial of the applied-for license(s); and,

WHEREAS, issuance of the license without the below-described conditions would interfere with the quiet enjoyment of the property by nearby residents and constitute grounds for the denial of the application under the provisions of Rule 61.4, of Chapter 1, Title 4, of the California Code of Regulations; and,

WHEREAS, the City of Santa Barbara Police Department has expressed an objection to the issuance of the applied-for license based on police problems which exist within the vicinity of the applicant premises; and,

WHEREAS, the City of Santa Barbara Police Department has expressed an objection to the issuance of the applied-for license without the below listed conditions; and,

WHEREAS, the petitioner in order to allay the concerns of the City of Santa Barbara Police Department; and,

WHEREAS, the issuance of an unrestricted license would be contrary to public welfare or morals;

NOW THEREFORE, the undersigned petitioner(s) do/does hereby petition for a conditional license as follows, to-wit:

1. There shall be no amplified music on the premises at any time, with the exception of background music.
2. Loitering is prohibited on or around the premises or the area under the control of the licensee as depicted on the ABC-257 dated 2-2-06 and ABC-253 dated 2-2-06.
3. The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot. Additionally, the position of such lighting shall not disturb the normal privacy and use of any neighboring residence.
4. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee as depicted on the ABC-257 dated 2-2-06 and ABC-253 dated 2-2-06.
5. The petitioner shall be responsible for maintaining free of litter the area adjacent to the premises over which he has control, as depicted on the ABC-257 dated 2-2-06 and ABC-253 dated 2-2-06.
6. Live entertainment will be restricted to an unamplified quartet of musicians. The placement of said entertainment will be restricted to the front of the premises which is defined for this condition to be from the front entrance facing State Street, thirty-five (35) feet to the beginning of the fixed bar as depicted on the ABC-257 dated 2-2-06 and designated in red as the "live entertainment zone."
7. Entertainment provided shall not be audible beyond the area under the control of licensee as defined on the ABC-257 dated 2-2-06 and ABC-253 dated 2-2-06.
8. Bottles and cans shall not be emptied into outside trash containers between the hours of Midnight and 7:00 a.m., daily. Outside containers shall be equipped with plastic lids in order to decrease the noise.
9. There shall be no coin operated games or video machines maintained upon the premises at any time.

10. The subject alcoholic beverage license shall not be exchanged for a public premises type license nor operated as a public premises.
11. No more than one pool or billiard table may be maintained on the premises.

This petition for conditional license is made pursuant to the provisions of Sections 23800 through 23805 of the Business and Professions Code and will be carried forward in any transfer at the applicant-premises.

Petitioner(s) agree(s) to retain a copy of this petition on the premises at all times and will be prepared to produce it immediately upon the request of any peace officer.

The petitioner(s) understand(s) that any violation of the foregoing condition(s) shall be grounds for the suspension or revocation of the license(s).

DATED THIS 27th DAY OF JUNE, 2006



APPLICANT/PETITIONER