

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

Thursday, **March 28 @ 4:00**
Murphy Briefing Room
215 E. Figueroa St.

REGULAR MEETING

1. CALL TO ORDER/ROLL CALL:

Present: Commissioners: Lennon, Rodriguez, Torell, and Torres-Santos.

Staff Present: Deputy Police Chief Frank Mannix, Fire Chief Pat McElroy, Police Technician Holly Perea, Councilmember Bendy White, Captain Gil Torres, Police Officer Jaycee Hunter, and Secretary Barbara Sansone

2. APPROVAL OF MINUTES:

MOTION: Torell to approve minutes of **February 28, 2013**. Torres-Santos seconded.

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.

None.

4. SUBCOMMITTEE REPORTS

None

5. OLD BUSINESS:

None

6. NEW BUSINESS:

None.

7. NIGHTCLUB DANCE PERMIT REVIEW – WHISKEY RICHARDS – 435 STATE ST

RECOMMENDATION:

Consequently, it is the recommendation of the Police Department that the Nightclub Dance Permit held by William Clayton for the premise at 435 State Street, dba Whiskey Richards, be suspended for a period of six (6) months, effective immediately. It is also recommended that, 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. The latter recommendation applies only to citations issued as a result of criminal activity or violations uncovered by officers, and shall not include any self-reporting (proactive reports by premise security or staff alerting the SBPD about activity which subsequently results in patron citations).

Present: Owner William Clayton; Broker Matt Olufs

Technician Perea read staff's recommendation.

Mr. Clayton introduced himself to the Commission.

- Has a good working relationship with the Police Department; communication and cooperation
- Whiskey Richards is his only business and takes the premise security very seriously
- More popular and open more hours than nearby competitors which allows a greater window of opportunity to minors; need to stop every minor from entering and they take this very seriously. Security personnel who fail in the screening duties are terminated
- Since opening in 2009 ABC has recognized only 1 violation on the premise in 2012 paid a substantial fine for this violation; ABC stated in a letter that since this issue Whiskey Richards has operated with no record of disciplinary action;
- In almost every citation on this premise the Security team acted and relied on bona fide and valid ID; minors who were using a friend's valid ID were guilty of violating Section 25661, a misdemeanor.
- Reviewed the Dance Permit Ordinance; as of February 4th only 1 violation on record with the ABC
- Acknowledged prior issues on the premise and corrections have been made in every case
- All security has LEEDS training and guard cards
- To be cited for alcohol related offenses that ABC doesn't recognize is unfair
- Security policy is zero tolerance
- Excellent relationship with Officer Cruz of NET
- Since September they have turned in 6 false identifications directly Officer Cruz
- Employees are rewarded for turning in false identification

Mr. Clayton asked the Commissioners to take these points into consideration before rendering a decision.

Public Comment:

Kay Morter – General Manager, Holiday Inn Express. Kay stated that Whiskey Richards has a history of not complying with the conditions on their Dance Permit. Many guest complaints. Back door is often open. Kay stated that she didn't think they have been cooperative. She recommends the Commissioners suspend the Dance Permit.

Gail Zannon – Resides and works at 407 State St. She felt that if the operator of a club needs to be on top of things in that area with the day to day operations. She was complaining at the Savoy regarding their super bass.

Mr. Clayton responded to Kay Morter. He said he met with Kay in her office in 2008 to discuss her concerns. Kay explained about the noise and late night activity in the back alley. She didn't contest the Dance Permit to the Commissioners when they first applied.

After the first 5 months Mr. Clayton closed down the business and renovated it completely. Windows were taken out in the back, two interior walls were added. Interior walls were fully insulated and sheer paneled to make things more quiet and make good on his promise to Kay Morter. Kay Morter felt the super bass was unfixable. Mr. Clayton said there are no bass speakers allowed in the club. No complaints with neighbors about noise in the last 4 years. All neighbors have direct contact with him. Security present 7 days a week with strict policies on the rear door. There have been issues with the back door being open.

Mr. Clayton said he is fairly close to Doug Anderson from the Holiday Inn Express and they openly discuss any concerns with the business operations. He said Doug Anderson's speaking against the club at February's meeting was motivated by people higher up.

Mr. Clayton said he read from the last Commission minutes that Kay Morter said that he was as bad as the owners of Kennedy's. He said Kennedy's ended in 1999. There have been 3 owners of that business since 2009 and he feels Kay Morter is grouping all of the previous owners' issues into Mr. Clayton's ownership. He has had zero complaints with respect to noise, fighting, litter, loitering.

Mr. Clayton said he chases the vagrants out of the alley when he gets there in the morning. He cares about the alley and the hotel.

Captain Torres asked about a letter that was sent that said the "business owner" was not notified and he asked Mr. Clayton what that meant. Mr. Clayton said he has gotten no notification. Captain Torres asked if there was an onsite manager and Mr. Clayton said there was. Captain Torres wanted to know if the police were inside arresting people why wasn't this brought to his attention. Mr. Clayton said in 4 years there was only 1 time when his manager was pulled by Officer Cruz saying they were arresting someone for using drugs in the bathroom. He said a lot of times people are pulled out and when asked if it is their issue Officer Cruz said it is not.

Matt Olufs said they were surprised by the amount of the citations noted at the last Commission meeting but when they pulled the police records a lot of the issues were not recognized by the ABC and Bill Clayton was not aware of these and he is hoping this can be factored into the Commissioners decision. Oftentimes valid ID's were used but they did not belong to the person using them. This person is committing an identity crime.

Matt Olufs said that Bill Clayton's business is strictly entertainment based and taking away his Dance Permit is effectively ending his business. He said there were some factual inconsistencies presented in the last meeting. Matt Olufs read from a report which stated that 8 citations were issued for minors on the premises (double the number from the previous review period). When the citation matrix is pulled up, there are only 3 minors on the premises and not 8. There were 5 the year before so this is a 25% reduction and not "double the amount." He feels that Bill is one of the more diligent owners out there. Matt said it seems unfair to crucify him for historical issues that are happening downtown.

Sergeant Kushner stated that part of the reason they are here today is due to a letter that was sent last year on April 25. This letter notified Mr. Clayton of the violations. The letter stated

“should there be one more citation for drugs or patrons under the age of 21 on premise within the next year your nightclub dance permit will be brought before the Fire & Police Commission with the recommendation that it will be suspended or revoked.” The letter also offered an intervention at that point which was not accepted.

Sergeant Kushner stated that on 8/3/12 there was a minor on premise who was cited and Officer Cruz notified Mr. Clayton who could offer no reason why this was so. He was notified that security procedures needed to be modified. Sergeant Kushner stated another citation on 9/20/12 where a 19 year old minor left Whiskey Richards and went to another bar where the ID was recognized by security as false and taken away, the minor then returned to Whiskey Richards with no identification and was let back in the club, which led to her being identified and cited.

Commissioner Torell said last month when he recommended to suspend the Dance Permit for 6 months it was because the owner of the business wasn't present. However, he then found out that Mr. Clayton was not notified. Torell was reviewing the penalty matrix and it states that the first time the business is brought before the Commission a suspension of up to 15 days is recommended, the second appearance before the Commission it is recommended to suspend for up to 30 days and a third time a 6 month suspension or permit revocation is recommended. Torell stated that this is the first time the business has been before the Commission. Torell does not want to put anyone out of business but wants to get the attention of the business owner. Torell felt that to do anything more than a 30 day suspension at the first appearance before the commission would close the business and he doesn't want to put Mr. Clayton out of business.

MOTION: Torell to suspend the Nightclub Dance Permit for 30 days; Lennon seconded
VOTE: Ayes – 2 votes; (Torell and Lennon) No – 2 vote. Rodriguez and Torres-Santos
Motion failed.

Deputy City Attorney John Doimas spoke and said that the matrix states that the Commission has the prerogative to take any appropriate action they feel affects the health, safety and welfare of the community. The matrix is there to provide a guideline. It should be more about the violations then the appearances before the Commission.

Torell stated that his problem is that this issue is coming before the Commission for the very first time. He said he hates to put someone out of business the very first time they are brought before the Commission.

Doimas said these are all reasonable points to bring out and he is not guiding their decision. He wanted the Commission to look at the violations more than the number of appearances before the Commission.

Commissioner Lennon brought up the fact of the April 25th letter being sent and ignored. And that there were 5 violations listed in the letter. Matt Olufs asked how many of those citations were approved by the ABC.

Commissioner Torell said again that the license should be suspended for 30 days and that it is the Commissioners decision to decide how long to suspend the Dance Permit.

Commissioner Torres-Santos asked why the intervention meeting wasn't held. Matt Olufs stated that the Dance Permit renewal and the letter arrived within a week of each other. They disagreed with the factual basis of the citations listed in the letter. Matt said that since they had already received the renewal they did not want to "stir the pot" and to make sure they would be diligent from then on. In retrospect he realized they should have appeared before the Commission and hashed it out.

Mr. Clayton stated that the statistics in the letter were inaccurate and they have gone through all of the service calls at the business and there is no possible way to come up with 8 minors. He stated that Holly's facts were inaccurate. He said that Officer Cruz pulled up to Whiskey Richards on March 23rd and spoke to Mr. Clayton. Officer Cruz said he is just learning about this situation and wanted Mr. Clayton to know that he is not against Mr. Clayton. Officer Cruz told him that they were doing a better job than the rest of the bars on State St. He said that they are the only bar on State St. that have all of their Staff guard carded. Officer Cruz said that only the managers at the other bars have guard cards. He stated they are the only bar consistently turning in false identifications. Officer Cruz said the entire staff of Whiskey Richards goes to RBS training where the other bars only send one or two employees. Officer Cruz said Whiskey Richards is the example.

Mr. Clayton said that the 8 violations mentioned is not the case. He said they were closed in 2010 from January 1st to May 5th. When they pulled the records there were issues listed at 435 State St. even though they were boarded up and closed. He said it is apparent that officers use that address when something happens in that vicinity. He wanted Officer Cruz to attend the meeting but Officer Cruz said he was not allowed to attend the meeting. He said he takes the job very seriously.

MOTION: Rodriguez to suspend the Dance Permit for 60 days; Torell seconded
VOTE: Unanimous voice vote: Motion Passed.

Holly Perea then stated that it was a two part recommendation and that the second part of the recommendation stated that during the next 12 month period, following the end of the suspension, if there was a violation of the Dance Permit or Dance Ordinance or minor on premise or drug related offense where a person is observed by an Santa Barbara Police Officer, Whiskey Richards would be brought before the Commission no later than the next annual review and the permit be permanently revoked. (See Recommendation above.)

MOTION PART TWO: To follow the second part of the recommendation
VOTE: Ayes 3 (Rodriguez, Torres-Santos and Lennon) No 1 (Torell)

Mr. Clayton wished that there could have been some substantiating of facts from Holly. The suspension is effective today, March 28, 2013.

Matt Olufs asked for the opportunity to appeal before the suspension goes into effect. Commissioner Torell wanted to "stay the execution" and allow the appeal process to take place before the suspension went into effect. Deputy Chief Mannix said it would be fine with the Police Department if the appeal be heard and a decision made before the suspension takes place. After further discussion, Commissioners Rodriguez, Lennon and Torres-Santos voted to suspend the Dance Permit immediately.

MOTION PART THREE: MOTION REOPENED: To have the suspension of the Dance Permit effective immediately.

VOTE: Ayes 3 (Rodriguez, Torres-Santos, Lennon) No 1 (Torell)

8. REVIEW OF PROPOSED RULES AND REGULATIONS FOR TOW COMPANIES ON THE CITY'S TOW ROTATION LIST

Commissioner Torell spoke regarding the proposed Rules and Regulations for Tow Companies on the City's Tow Rotation List. Torell commended Officer Hunter for his assistance in this process.

Officer Hunter spoke regarding a 3 hour meeting he had with all of the companies on the City's Tow Rotation List.

Officer Hunter spoke regarding the infrequency of the tow companies needing a heavier duty truck for tows and the prohibitive cost of purchasing one of these vehicles. It was decided that the heavier light duty trucks could tow most of the RV's with no problem. In 2012 the Police Department towed 2803 vehicles and only 3 of them were RV's (1/10 of a percent). There are other companies on the list that have heavier duty trucks if needed.

It was decided that 20,000 sq. feet is a reasonable and acceptable minimum number of square feet. It was also decided that the 20,000 sq. feet could be achieved by combining a maximum of 2 properties.

According to the Municipal Code, 5.30.030 (b) it is stated that the office for the tow company must be located on the storage property.

There is no point of contention for any of the other terms on the Proposed Tow Rules and Regulations.

Commissioner Torell asked about the maximum number of tow companies and how the department felt. Deputy Chief Mannix said the department's only concern is that they have prompt service.

Officer Hunter said the only factor to consider in this is with fewer companies on the list, the tow companies on the list would make a little more money.

Chuck Love spoke about reducing the number of tow companies to 5 immediately and not "grandfathering" the other 2 companies in and also that the two newest companies do not qualify according to the new rules and regulations. Commissioner Torell stated all of the companies had been approved and placed on the list by the Commission and he does not want to "throw people off the list" because of a new rule change. Commissioner Torell stated they would just not use the term "grandfathered in."

Officer Hunter said he would make the minor changes and send to the City Attorney's Office.

MOTION: Torell to approve the draft of Proposed Rules and Regulations with minor changes discussed, and will send to the City Attorney's Office.

VOTE: Unanimous Voice Vote; Motion Passed.

9. FIRE CHIEF'S REPORT

From Fire Chief McElroy, who provided handouts on incident statistics.

- Provided handouts on monthly response times/average 3 min/7 sec; 93.4% under 5 minutes
- Provided handouts on alarm incidents
- Art Studio fire/professor lost 50 years' worth of priceless paintings
- Condor Express fire
- Fatal motorcycle accident on Foothill
- Neighborhood "Chipping" program moving along
- Battalion Chief test starting on April 10th
- Brad Waters has been promoted to Captain
- Bob Kendall will be promoted to Captain filling spot vacated by Battalion Chief promotion
- Academy starts April 8, 2013
- SBFPA ratified 1 year extension of their MOU no changes

9. POLICE CHIEF'S REPORT

From Deputy Police Chief Mannix

- Response times: Priority 1 calls: 5.1 minutes, yearly average for 2011: 6.4 minutes; 2012: 6.2 minutes. Priority 2 calls: 11.8 minutes; 2011: 14.1 minutes; 2012: 13 minutes. Priority 3 calls: 25.4 minutes; 2011: 31.1 minutes; 2012: 28.7 minutes. Priority 4: 37.5 minutes; 2011: 44.8 minutes 2012: 39.3
- Experiencing an uptake in residential burglary; weekly burglary rate of 6.3 per week. 2009 there were 7.2 per week; 2012 5.2 per week; 2011 5.5 per week. In 1988 there was a high of 13.0 per week. Personal has been shifted to give investigators more staffing.
- CIT put together to help with career type criminals from AB109 – early release program
- Academy graduation April 4th in Camarillo. 7 Officers/Cadets will be sworn-in in the Grand Jury Assembly Room at 4:00 on April 3rd.
- 5 Cadets will be sent to the upcoming academy starting on April 29th. 2 will "over-hires."

Commissioner Lennon asked about hiring hourly officers. DC Mannix said this has been done in the past for assistance in the downtown corridor. Retired Officer Bob Casey was an hourly.

John Kattai is the most senior employee in the department.

10. ADJORN: 5:38 PM