

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

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Thursday, **July 11, 2013 @ 4:00**  
Police Department Murphy Room  
215 Garden St.

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**REGULAR MEETING**

**1. CALL TO ORDER/ROLL CALL:**

Present: Commissioners: Lennon, Rodriguez and Torell. Santos-Torres arrived after the meeting had begun (Christensen excused absence)

Staff Present: Police Chief Cam Sanchez, Captain Gil Torres, Sergeant Kenny Kushner, City Administrator Jim Armstrong, Assistant City Attorney John Doimas, Secretary Barbara Sansone, and Police Technician Holly Perea. Councilmember Bendy White excused himself from the proceedings due to a conflict

**2. 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.

**3. KILLER SHRIMP – 416 State St. – Nightclub Dance Permit**

Present: Steven Dougherty, Kevin Michaels and Broker Matt Olufs

**RECOMMENDATION:**

It is the recommendation of the Santa Barbara Police Department that a dance permit be issued to Killer Shrimp with the following conditions:

1. No live entertainment, dancing, or amplified music permitted on any patio or outdoor area.
2. Noise from the premise, including but not limited to recorded music, radio, television, and live entertainment, must not be audible beyond 50 feet of the premise in any direction.
3. A minimum of 3 uniformed security guards required:
  - a. nightly during hours of dancing
  - b. after 9:00 pm on Thursdays, regardless of entertainment or dancing.
4. A minimum of 5 uniformed security guards required:
  - a. after 9:00 pm on Friday, and Saturday, regardless of dancing or entertainment, and
  - b. after 9:00 pm nightly when patrons under the age of 21 are on premise.
5. All security guards must complete LEADs and Responsible Beverage Server (RBS) training.

6. Every security guard must be currently licensed with the California Department of Consumer Affairs as a Proprietary Security Officer, and the premise must possess a current Proprietary Private Security Employer's License issued by the California Department of Consumer Affairs.
7. Rear doors may not be used for public entry or exit except in the case of emergency.
8. Staff must maintain an orderly line of patrons awaiting entry into the premise. The queue of patrons must not block passage of pedestrians on the walkway, nor may it extend into any nearby street.
9. Dancing shall be prohibited after midnight nightly when any patron under the age of 21 years of age is on premise.
10. When patrons under age 21 years are on premise after 9 pm, a distinct physical and spatial barrier must be used to separate patrons under age 21 from those ages 21 and over.

Steven Doherty, one of the 4 owners of Killer Shrimp, gave a description and history of their business to the Commissioners; Killer Shrimp is primarily a restaurant, famous for a singular dish, "Killer Shrimp;" Have been in business for 25 years; Currently have a restaurant in Marina Del Rey; The main focus of their business is dining and food will be served during all hours of operation; Live entertainment is not the driving force of the overall business but is part of the business plan to accommodate for the higher rent to be paid on State St; They have had a long history of responsible operation; Planning on opening restaurants in Hermosa Beach and San Francisco; Community based restaurant; Give to local charities; Deep roots in the Santa Barbara community

Tamara Erickson of the Hotel Santa Barbara spoke during public comment; Her family has spent significant money over the years to make improvements to their hotel; Their concern is that there are already 19 other nightclubs in the area that create noise and crowd control problems for the police and there is only 1 police officer assigned to that area at night; She is concerned that the conditions on all the other nightclub permits are not enforced; Noise is their greatest concern and don't believe that this condition is enforced; guests are concerned with lines of police cars in the area; There are successful restaurants in the area that don't have nightclub permits – Joe's, Holdren's; Tamara's asking that the noise be contained within the building; Concerned that every time a dance permit is proposed it is granted; Asking to please consider the impacts that these permits have on the community.

Gail Zannon, resident in the 400 block of State St. spoke as part of public comment. She says that it gets out of hand in the area; windows have been put in for doors and she is concerned that the sound will come through the glass; asked about the size of the dance floor and the owner said that tables and chairs will be removed to create a dance floor.

Ms. Zannon was asked not to direct questions to the representatives of Killer Shrimp during public comment.

Commissioner Torell said there is no restriction on the size of the dance floor and the main focus is the level of noise and the 50' containment rule. Commissioner Torell stated that this is not a residentially zoned district and that Ms. Zannon should not expect it to be as quiet as a residential area.

Ms. Zannon said she has higher criteria for what her needs are and that is why she came to the meeting. Sharkeez (previous owners at 416 State St.) had a velvet rope and people out on the street drinking; This activity creates a lot of noise and Sharkeez did not keep their doors shut;

She spoke to Officer Cruz and he said that the additional officers at night can only get through the clubs once in an evening. Ms. Zannon would like some assurance that the Commissioners come to the area in the evening to experience this.

Commissioner Torell said he goes to that area to experience the noise and the nightlife.

Commissioner Rodriguez stated that he thought this was a good idea for the Commissioners to go to the area and experience the atmosphere. He also suggested that Ms. Zannon and Ms. Erickson go to Council and ask for funding for additional officers in that area.

Sergeant Kushner stated that there is 1 officer assigned to the downtown area. He said that various patrol officers are assigned to work with Officer Cruz on weekend nights. This is a good experience for the officers and a benefit for them to see what happens in the nightlife area. Sgt. Kushner is aware of a business in this 400 block that just had their alcohol permit suspended for 10 days. So while there were some general statements made about not following the rules, enforcement is being taken and there are repercussions. ABC imposes this but it is based on the work of the police department.

Commissioner Lennon asked what business was previously at this location. Sgt. Kushner told him Sharkeez.

Ms. Zannon asked about the speakers at the business.

Assistant City Attorney John Doimas stated that public comment is not a question and answer period. This is strictly a time provided to make your statement and that is all.

Commissioner Torell asked about the speakers outside. Mr. Doherty stated that the outside speakers are for low ambient music, classic rock and roll at a moderate level to deflect the street noise. If there is dancing, the speakers will not be used and will be shut off.

Kevin Michaels said they will have happy hour from 9:00 to midnight and will be serving food. His father, Lee Michaels is a rock musician so they have music ties and want to have some great bands there on weekends. Everything they do is based around food and Killer Shrimp is a food driven concept.

Mr. Doherty said their happy hours are food driven, serving food at reduced prices; Serving shrimp, mussels, clams, etc.

Holly Perea stated that the occupancy at the restaurant is 166 people with furniture and 195 without furniture.

**MOTION:** Torell to approve Nightclub Dance Permit

**VOTE:** 3 Aye's (Rodriguez, Lennon, Torell) 1 Abstain (Santos-Torres)

Matt Olufs asked to speak to the Commissioners and stated that in the conditions "regardless of entertainment or dancing," security guards were required on site. He asked there be no restrictions on the permit regarding having security guards when Killer Shrimp is operating as a restaurant only.

Commissioner Torell asked why the Police Department was recommending they have security guards when the business was operating as a restaurant.

Police Technician Holly Perea stated that these were the same conditions that were on Sharkeez and SB Cantina (which never opened). These conditions were initially applied to Sharkeez because of the incidents that were happening there. Holly stated that if it proves that the restaurant operates responsibly they can come back and request a change when their permit is up for renewal in 1 years' time. Holly Perea reviewed the times and numbers required in the staff report re security guards.

Kevin Michaels said that they would not be removing tables for a dance floor until 10:00 at night. He said he thought that having security guards during dinner time would make his guests uncomfortable.

Commissioner Torell asked the Police Department to give this issue some independent thought rather than "this is the way it was done for the last owner."

Assistant City Attorney John Doimas asked the Commissioners if they were considering the vote right now. He said there has to be a reconsideration of the previous vote and they can then go back and amend the motion.

Commissioner Rodriguez said that the Commissioners needed to reconsider the vote. He said the previous vote needed to be cancelled and adjust the motion with recommendations.

John Doimas said the meeting was out of order. There was a vote and it was decided. This is the problem when there are questions and answers during public comment. After hearing comments from Commissioner Torell about the Police Department submitting a different recommendation at another time, Assistant City Attorney John Doimas suggested making a motion to reconsider the vote.

Holly Perea said that modifications historically are made when the permit is up for renewal (annually).

The Chief stated that the applicants can ask for modifications during the process. Just because this hasn't been done before doesn't mean that it can't be done now.

Captain Torres stated that the condition was made re the security guards because historically, businesses with Type 47 licenses have had issues with serving minors and that the Police Department would be open to evaluating this at a later time. Captain Torres said it is easier to remove something than to add it later.

John Doimas stated that according to the Municipal Code 5.20.090, any conditions imposed on the application may be appealed to the City Council by the applicant. If the permit is approved and the Commissioners want to reconsider the vote modifying the conditions, then it's done, or the applicants have to go to Council or the vote can be reconsidered right now.

City Administrator Jim Armstrong stated that he thought that it would be fine for the applicants to come before the Commission in a few months and ask that the conditions be amended or they can appeal to Council.

Stephen Doherty then stated that it was their intention as part of their presentation to say that it would be a financial hardship for them to have security on nights when they do not have entertainment and are acting as a restaurant only.

Kevin Michaels stated that security guards cost \$150 to \$200 per person per evening and this would be a hardship during restaurant hours when there are children on the premises after 9:00. The conditions state that this would have to be even on a Monday or Tuesday night when there is no entertainment.

Commissioner Rodriguez suggested that they “scrub” the motion previously made and have a revote and restate the new motion on security. Commissioner Torell said he would support this.

Stephen Doherty spoke and said he certainly saw the need for security during hours of entertainment. He is asking that they limit the security only to days that they have dancing/entertainment. It is realistic that they would have minors in the restaurant for dinner after 9:00 every night. They fully support having security on premise during entertainment but would like to restrict the requirement and have security only when entertainment takes place. He feels it is a great hardship for a new business to be required to have security on nights they are serving just as a restaurant.

The Chief than said that the discussion needed to stop because the Commissioners had not made a decision to revote.

City Administrator Jim Armstrong said that if the Commission does make a decision to reconsider and the applicants make a presentation than public comment needed to be reopened.

Commissioner Rodriguez said they were going to “scrub” the motion and the previous motion is no longer. Chief Sanchez then stated there needed to be a Motion to Reconsider, have it seconded, take a vote and then continue.

**MOTION TO RECONSIDER:** Torell to make a motion to reconsider; Santos-Torres Second  
**VOTE:** Unanimous voice vote; motion passed

John Torell proposed a motion to grant the permit with all of the conditions in the Police Department’s staff report except for the security. He asked for direction from the Police Department on what their security needs would be on nights they were acting as a restaurant only.

Sergeant Kushner thought that the conditions that the department has used in the past should be fairly consistent. He stated that this particular block (400 block) is not typically an area where people flock to eat food. There are a lot of intoxicated people in the area. He feels that even though the security guards may be an inconvenience they are there for public safety. Sergeant Kushner thought the 10:00 pm time is reasonable instead of the 9:00.

Commissioner Torell then asked if they would just need security on weekend nights. Sergeant Kushner said that he personally feels that the 9:00 time could be substituted with the 10:00 time. Torell said he is willing to go along with that.

John Doimas said that it was now time for public comment. He stated that public comment should just be that. People have a right to speak and once public comment is closed, it is closed.

Tamara Erickson stated that a dance permit is a valuable gift to a restaurant and a dance permit creates a different environment. You don't get to pick who comes in your door. Tamara wants the Commissioners to be very aware of the conditions on the permit.

Gail Zannon spoke about inconsistent conditions on dance permits.

Stephen Doherty stated that they are keenly aware of the types of businesses in the area and they support security during times of entertainment. They will typically have entertainment on Thursday, Friday and Saturday. The one thing they want the Commissioners to consider is having 5 uniformed security guards regardless of entertainment on nights they are operating as a restaurant only. He felt it unreasonable and burdensome for them to have 5 security guards on a Tuesday night when they might only have 30 to 40 people in the restaurant.

Commissioner Rodriguez asked if they were planning on having entertainment Sunday through Wednesday and Mr. Doherty said it is not part of their plan.

Captain Torres said the previous owners had some of their worst nights on weeknights.

Kevin Michaels said they are building their brand as a restaurant and he is well aware that Sharkeez was not. He mentioned other restaurants in the area, Casa Blanca, etc. which creates more of a "dining vibe." He said they would be forced to close at 9:00 every night of the week if the security requirements were not adjusted.

Commissioner Torell asked if the Police Department would amend their recommendations regarding security when Killer Shrimp is operating solely as a restaurant.

Capt. Torres said the alcohol portion itself needs security. He feels the department would be willing to compromise on some of the demands. The department is planning for "worse-case scenario."

Commissioner Torell asked if the Commission could grant the permit with the provision that they would hear from the Police Department as to what they feel is appropriate on the security.

Commissioner Rodriguez said that they were there to make a decision and he was going to close public comment.

John Doimas told the Commissioners that they have the ability to modify the conditions.

**MOTION:** Rodriguez to make a motion to approve the dance permit for Killer Shrimp with changes to the security requirements. Security will be required, per the Police Department's recommendations on Thursday, Friday and Saturday during hours of entertainment/dancing from 10:00 pm until 2:00 am. Security will only be required, per the Police Department's recommendations, Sunday through Wednesday if entertainment/dancing is taking place. Motion seconded

**VOTE:** Unanimous Voice Vote; motion passed

## **9. ADJORN: 5:09 PM**