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November 22, 2013

Elizabeth Maland, City Clerk

Office of the City Clerk

202 C Street, 2nd Floor

San Diego, CA 92101

Re: Administrative Hearing Case No. XXXXXXXX; Crown Coffee & Hookah Lounge Appeal Hearing Request with Committee on Public Safety and Neighborhood Services

Greetings Ms. Maland,

This firm represents Crown Coffee & Hookah Lounge and its owner, Anis Abdulkerim, in the above-listed matter. This letter is Mr. Abdulkerim's formal request for an appeal of the hearing officer's decision to the Committee on Public Safety and Neighborhood Services. While Mr. Abdulkerim has yet to receive personal service of the decision, this firm received electronic notice on November 12, 2013. As such, this request is being made - in an abundance of caution - within the 10-day time period as provided in the San Diego Municipal Code ("the Code").

Briefly, Mr. Abdulkerim's Tobacco Retailer's Permit was revoked by the San Diego Police Department ("SDPD"). As is his right under the Code, Mr. Abdulkerim timely filed an appeal to said revocation. At the appeal hearing - the written and/or recorded transcript of which is available to you from the hearing officer - various "evidence" and testimony was presented related to noise complaints and some unruly and noisy patrons leaving Mr. Abdulkerim's business. Also, evidence was presented related to Mr. Abdulkerim possibly providing entertainment on the premises, possibly without the necessary entertainment permit. Throughout the hearing, Mr. Abdulkerim attempted to elicit testimony of any violation of a tobacco control law, as it relates to his Tobacco Retailer's Permit. Mr. Abdulkerim was unable to elicit such testimony from any of the SDPD officers or witnesses who testified against Mr. Abdulkerim. Even the hearing

officer noted that there did not seem to be any allegation of a violation of a tobacco control law as it relates to the Tobacco Retailer's Permit.

The purpose of the Tobacco Retailer's Permit, as outlined by the Code is:

"...to provide for local regulation of tobacco retail businesses by requiring police permits. The ***intent is to discourage violations of law prohibiting the sale or distribution of tobacco products to minors to protect their health, welfare, and safety***..."

(*S.D.M.C. section 33.4501*; ***emphasis added.***) As more fully set out in the underlying hearing, Mr. Abdulkerim obtained a constitutionally-protected property right in the Tobacco Retailer's Permit by virtue of his monetary investment in obtaining the business to use the permit and also by virtue of SDPD's requirement that Mr. Abdulkerim obtain the permit in order to engage in his profession. Mr. Abdulkerim did not violate the letter nor the intent of the Tobacco Retailer's Permit. A quick read through this section of the Code supports this assertion. This point was very clearly made and agreed with by the hearing officer.

Instead, the SDPD relied upon an obviously constitutionally overbroad section of the Code, stating that they could revoke a conditional use permit of any person who:

section 33.0403(a)(1): "Violates or allows the violation of ***any section of this Article***, any law or regulation pertaining to the business, or violates any condition imposed on the permit;" (***emphasis added.***)

Even the hearing officer opined something to the effect that "the City Council should be informed about this section of the Code because the City is definitely going to have some constitutional issues as it relates to this section." As argued by the SDPD, and as apparently supported by the Code, ANY violation of ANY portion of the Code can be the basis for the revocation of a special use permit, even if the purpose and intent of the special use permit has NOTHING to do with any alleged violations. This is how Mr. Abdulkerim's permit was unconstitutionally revoked.

According to the Code, the Committee on Public Safety and Neighborhood Services has the authority to accept appeals when it finds that certain conditions exist. (*S.D.M.C. section 33.0505(d).*) In this instance, the following conditions exist:

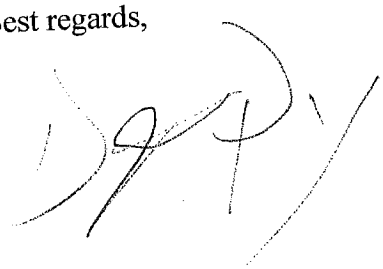
(3) The hearing officer's decision was arbitrary because no evidence was presented to the hearing officer that supports the decision.

(4) The appeal presents a city-wide issue on which guidance of the Committee on Public Safety and Neighborhood Services is required and the matter is of city-wide significance.

Here, as mentioned above, ZERO evidence was presented that Mr. Abdulkerim violated any tobacco control laws as they relate to his Tobacco Retailer's Permit. As such, the hearing officer's decision is arbitrary. As well, because of the obvious constitutional issues with the provision of the Code relied upon by the SDPD, this appeal presents an issue which has city-wide applicability and importance. This issue will be one that will be revisited by permit-holders throughout the City, if not addressed now. The money which the City will expend to defend both this and future constitutional claims, based on the specific provision outlined above will be better used in other services and areas of the City's operating budget.

Based on the foregoing, the original appeal and the recorded and/or written transcript of the appeal hearing, Mr. Abdulkerim requests an appeal hearing to the Committee on Public Safety and Neighborhood Services to determine the validity of SDPD's revocation of his Tobacco Retailer's Permit.

Best regards,



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