

February 18, 2014

Mary Ann Wallace  
Committee Consultant Secretary  
City of San Diego  
202 C Street, MS10A  
San Diego, CA 92101

***Re: Appeal to Public Safety and Livable Neighborhoods Committee Concerning  
the Revocation of Crown Coffee & Hookah Lounge's Tobacco Retailer's Permit  
No. 2011008326***

Greetings:

This firm represents Crown Coffee & Hookah Lounge ("Crown") and its owner, Anis Abdulkerim, in the above-listed matter. This letter is Mr. Abdulkerim's formal, but brief, request that the Committee take into consideration substantial issues when making its decision of whether or not to hear Mr. Abdulkerim's appeal. After review of the City's written correspondence dated January 14, 2014 to this Committee, we were compelled to respond so that the Committee can make a decision based on the evidence actually received at the underlying hearing.

As the Committee is now well aware, Mr. Abdulkerim, the owner of Crown Coffee & Hookah Lounge, Tobacco Retailer's Permit was revoked by the San Diego Police Department ("SDPD"). As a result of said revocation, Mr. Abdulkerim filed his timely appeal as required by the San Diego Municipal Code ("The Code"). This request for appeal has to do with the decision of the Honorable William H. Wise, (retired) after the hearing of this matter. This letter contemplates inclusion by reference to Mr. Abdulkerim's original request to the Committee dated November 22, 2013.

Three truths necessitate an appeal hearing for Mr. Abdulkerim:

1. Mr. Abdulkerim has NEVER been accused of conduct detrimental to the aim and/or purpose of the Tobacco Retailer's Permit;
2. "Numerous violations" of the Code alleged to have been committed by Mr. Abdulkerim are in actuality only three violations;

3. Mr. Abdulkerim has a constitutionally-protected interest in his Tobacco Retailer's Permit.

Conduct Detrimental to Tobacco Retailer Permit

According to § 35.4501 of the Code, "it is *the purpose and intent* of this Division to provide for the 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.**" [*emphasis added.*] This intent is buttressed by the San Diego Chief of Police's report to *this very committee* on July 10, 2012. (See Attachment A: "Report to the City Council, Report No. 12-088"; dated July 10, 2012, entered into evidence in the lower hearing.)

In pertinent part, this report reads: "On November 15, 2007, the San Diego City Council added Sections 33.4501 through 33.4519 to the [Code] regarding the permits for Tobacco Product sales. The purpose was to regulate and license businesses that sold or distributed tobacco products. The permit fees would be used to enforce the laws aimed at discouraging the sales of tobacco products to juveniles." Clearly the purpose of the ordinance – as understood by both the SDPD and this Committee – is to regulate the sale of tobacco to minors. Mr. Abdulkerim has **never** been accused of distributing tobacco to minors. Officer Cindy Meyer of SDPD Vice Permits and Licensing even presented testimony that undercover operations conducted at Crown attempting to illegally purchase tobacco were unsuccessful. Absolutely no other evidence was presented that Mr. Abdulkerim ever sold tobacco products to minors.

Mr. Abdulkerim's violations of the Code

Despite "copious" amounts of "evidence" presented by SDPD related to Mr. Abdulkerim's violations of the Code, Mr. Abdulkerim was found guilty of having violated the Code a grand total of THREE times. One violation for failing to post the proper permit<sup>1</sup> one substantiated noise complaint, and one violation for failing to allow entry to police officers to check his permit on one occasion<sup>2</sup>.

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<sup>1</sup> Hearing transcript will demonstrate that just the day before the citation, May 16, 2012, Mr. Abdulkerim's permits were checked and he was found to be in compliance. Mr. Abdulkerim forgot to put his permits back up after the inspection on the previous day. Yes, Mr. Abdulkerim was inspected for the same permit again on May 17, 2012.

<sup>2</sup> The City alleges another instance where SDPD claims it was "hindered" in checking the permits, but the evidence below demonstrates that a new security guard at Crown was unsure of SDPD's right to entry and once Mr. Abdulkerim was summoned to the front within minutes, SDPD was allowed entry without incident.

Mr. Abdulkerim has NEVER been convicted of providing entertainment without a permit. This fact alone should negate the reliance of both the SDPD and the hearing officer on this fact as a basis for revocation of Mr. Abdulkerim's Tobacco Retailer's Permit. Unless and until Mr. Abdulkerim is convicted of providing entertainment without a permit, said "violation" cannot and must not be used against him to revoke his Tobacco Retailer's permit. Mr. Abdulkerim's prior Entertainment Permit – which oddly allowed a DJ but no dancing – expired on September 30, 2012. Mr. Abdulkerim never renewed the permit because the permit was not required to be renewed when Mr. Abdulkerim could simply play music for the business as allowed by the Code. Yet SDPD claims that Mr. Abdulkerim was providing *illegal* entertainment since *prior to* the expiration of his Entertainment Permit, yet as of today Mr. Abdulkerim has still not been convicted of any violation of the law in this regard.

Providing entertainment without the proper permit is criminal conduct. In order to have his Tobacco Retailer's Permit revoked based upon criminal conduct, it naturally follows that Mr. Abdulkerim should have needed to have been convicted of said criminal conduct; not just accused. The hearing below contains zero evidence of any conviction of Mr. Abdulkerim for criminal conduct related to providing entertainment without a permit. As such, the Hearing Officer's reliance on Mr. Abdulkerim's alleged criminal conduct is unfounded and arbitrary.

The three violations outline above, alone, are insufficient to justify revocation of Mr. Abdulkerim's Tobacco Retailer's Permit. Instead of standing on those violations, SDPD used evidence which ostensibly amounted to personal gripes with Crown's customers. Such comments as "those people" and "they're bringing down the property value" and "I'm scared to get out of my car" were terms used to describe Crown's largely college student and African or African-American customer base<sup>3</sup>. Further, review of the record will demonstrate that the majority of the testimony having to do with Crown patron "issues" occurred on 71<sup>st</sup> street, some 300-500 feet away from Crown and beyond Crown's responsibility as required by § 33.1509 of the Code.

The City is correct. There was "evidence" presented at the hearing below, but the evidence was not of the nature that demonstrated "continuing violations" of the Code nor was the evidence of a substantial enough nature to justify the revocation of Mr. Abdulkerim's Tobacco Retailer's Permit.

Constitutionally-protected interest in the Tobacco Retailer's Permit.

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<sup>3</sup> One of the City's witnesses, Godfrey "Pete" Quiachon even went as far as to say that he witnessed a DJ with DJ equipment set up and perform in Crown; from the portion of the lounge that unbeknownst to "Pete" was the kitchen and the cash register. Never has there been an allegation of a DJ performing in the kitchen. Apparently "Pete" was trying to help the cause in any way possible.

The City contends that Mr. Abdulkerim does not have a constitutionally-protected interest in his Tobacco Retailer's Permit. This is an odd assertion considering the procedural due process rights of Mr. Abdulkerim, including his right to an administrative hearing and a review by this Committee prior to any revocation becoming active. The California court agrees with me. In *Korean Am. Leg. Advoc. Found. v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 392-393, the Court held:

Once a licensee has acquired a conditional use permit, or has "deemed approved" status, a municipality's power to revoke the conditional use is limited. (*Trans-Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal.App.2d 776, 783, 194 P.2d 148.) If the permittee has incurred substantial expense and acted in reliance on the permit, the permittee has acquired a vested property right in the permit and is entitled to the protections of due process before the permit may be revoked. (*Id.* at p. 795, 194 P.2d 148.) "In determining that a permit, validly issued, should be revoked, the governing body of a municipality acts in a quasi-judicial capacity. In revoking a permit lawfully granted, due process requires that it act only upon notice to the permittee, upon a hearing, and upon evidence substantially supporting a finding of revocation." (*Ibid.*)

Evidence presented in the hearing below demonstrates this is true for Mr. Abdulkerim. Mr. Abdulkerim expended upwards of \$60,000 of his own money and savings completely renovating Crown. The City's witness "Pete" testified to seeing major construction at Crown, Mr. Abdulkerim submitted a declaration to that effect, and the owner of the building also testified that Mr. Abdulkerim made a major monetary investment in construction at Crown.

The law is well settled that where a permit or license has been granted and the successful applicant has thereafter acted upon the grant to his or her detriment, the applicant has acquired a vested right. (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791.) Said property right may not be revoked without constitutional rights of due process. (*Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 366.) But when a city flexes its powers unfairly and oppressively and infringes upon a person's fundamental right to the protection of his property, the city violates constitutional due process. (*Hale v. Morgan* (1978) 22 Cal.3d 388, 398.)

Here, as more fully set forth above and as also set forth in Mr. Abdulkerim's request for an appeal hearing, the City, by its capricious and overbroad use of the Code to revoke Mr. Abdulkerim's permit without his having violated the purpose or intent of said permit, violates Mr. Abdulkerim's constitutional right to due process. This claim is

# The PRIDE LAW FIRM

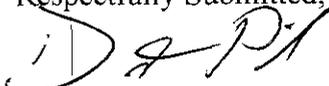
buttressed by the fact that under the Code, Mr. Abdulkerim had no choice but to obtain the permit in order to operate his business. The City's position that ANY violation of the Code is sufficient for revocation of Mr. Abdulkerim's required permit is untenable and undermines the purpose of a specific conditional use permit. Under the City's interpretation of section 33.0403(a)(1) of the Code, SDPD need only issue a generic "police permit" and that single permit would be sufficient for every different type of business in the City, regardless of the purpose that a permit is required to be obtained.

While the above argument is true; Mr. Abdulkerim's constitutional argument is also firmly couched in the fact that Mr. Abdulkerim does in fact have a constitutionally-protected interest in his Tobacco Retailer's Permit, and his permit is currently being revoked for what amounts to the un-convicted criminal conduct. The City's main argument in the below hearing was that Mr. Abdulkerim illegally provided entertainment without a license. The Hearing Officer's decision refers to this basis as the major and motivating factor as well. Because of the increased protections related to constitutional property interests as set forth above, Mr. Abdulkerim should be required to be found guilty of said conduct on which the City relies before the City is allowed to divest him of his constitutionally-protected property right.

Allowing the City to move forward with this conduct is an issue of city-wide importance because not only will a civil injunction and writ follow this hearing, costing taxpayers, but future businesses will make the same arguments and continue to force the City to use precious resources to fight a losing battle.

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.

Respectfully Submitted,



Dante T. Pride, Esq.

# **ATTACHMENT A**



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: July 10, 2012 REPORT NO. 12-088  
ATTENTION: Public Safety and Neighborhood Services Committee  
Agenda of July 18, 2012  
SUBJECT: Informational Report from the San Diego Police Department  
Regarding the Tobacco Retailer Ordinance Update

SUMMARY

THIS IS AN INFORMATION ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE COMMITTEE OR THE CITY COUNCIL.

BACKGROUND

On November 15, 2007, the San Diego City Council added Sections 33.4501 through 33.4519 to the San Diego Municipal Code regarding the permits for Tobacco Products sales. The purpose was to regulate and license retail businesses that sold or distributed tobacco products. The permit fees would be used to enforce laws aimed at discouraging the sales of tobacco products to juveniles. It was the intent of this section to have all costs associated with the administration and enforcement to be borne by the retailer applicants and permit holders.

Part of the ordinance states that the San Diego Police Department will present a report to the committee on the status of the Tobacco Ordinance upon request.

ADMINISTRATION INFORMATION

The San Diego Police Department has identified 1,207 businesses that sell or distribute tobacco products in the City of San Diego. (California State Board of Equalization)

Since our last reporting out (June, 2011) the Department has been able to gain compliance from 1,090 of the businesses within the City of San Diego. The Department has continued to work with the other 117 business owners to confirm their status and gain compliance. In the continuing efforts to maintain compliance, the Department has simplified the application by reducing it from four pages down to two pages.

## INSPECTIONS AND ENFORCEMENT

The San Diego Police Department's Vice Permits and Licensing office conducted 276 overt field inspections from January, 2011 to January, 2012. These inspections were used as an opportunity to educate and gain voluntary compliance from the business owners.

In addition to the overt inspections, the San Diego Police Department the Vice Permits and Licensing Police Officers also conducted five undercover juvenile decoy operations in the City of San Diego. A total of 91 covert (undercover) inspections were completed during these operations. All of these inspections were used to educate the business owners. The results are as follows:

Date	Number of Inspections	Results	Council Districts
02/17/11	20	1 Arrest	5,6
04/26/11	15	3 Arrest	8,4
08/11/11	15	1 Arrest	2
09/27/11	19	0 Arrest	6
12/22/11	22	1 Arrest	7

Note: The arrests resulted in guilty pleas for 415(2) PC (infraction) and a fine.

The location of the inspection sites were randomly selected by Council District and included all types and sizes of stores selling tobacco products. Four of the operations were educational and resulted in one warning. One of the operations was zero tolerance enforcement and resulted in one misdemeanor citation being issued.

In an effort to lower our operational cost, we conducted all of our inspections during normal working hours and used volunteers for the decoy operations. Therefore we did not incur any overtime.

### ESTIMATED ILLEGAL SALES RATE

Based on the 91 undercover inspections that resulted in 6 violations, the estimated rate of illegal sales to juveniles is 6.5%.

### FEES AND FINES

In 2010, the Police Department Permit and Licensing Unit collected \$110,052 in regulatory fees and \$18,928 in application fees for a total of \$128,980. This is consistent with the fees collected last year. All monies were sent to the City's general fund.

Respectfully submitted,

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William M. Lansdowne  
Chief of Police