Hon. William H. Wise, ret.
ADMINISTRATIVE HEARING PROGRAM
110 West C Street, Ste. 2002
San Diego, CA 92101
Administrative Hearing Officer

ADMINISTRATIVE HEARING PROGRAM

FOR THE CITY OF SAN DIEGO

In the Matter of the Revocation of the Tobacco Permit of Anis Mohammed Abdulkerim, dba. Crown Coffee & Hookah Lounge (7059 El Cajon Blvd.) Tobacco Permit No. 2011008326 Appellants/Applicants v. City of San Diego, San Diego Police Department, Complainant.	AHP Case No. 2011008326 **ADMINISTRATIVE ENFORCEMENT DECISION AND ORDER** Date: August 8,2013 Time: 1:00 p.m. Hearing Officer: ☒ Hearing by Personal Appearance ☐ Hearing by Written Declaration

ADMINISTRATIVE HEARING DECISION

I. STATEMENT OF THE CASE

Hon. William H. Wise, Ret., was assigned as the Administrative Hearing Officer for this matter, in accordance with the San Diego Municipal Code (SDMC) § 12.0405.

On August 8, 2013 and October 22, 2013, evidence was received, testimony was presented, the record was closed, and the matter submitted.

The Pride Law Firm, Dante T. Pride, appeared for applicant and appellant, Anis Mohamed Abdulkerim, dba. Crown Coffee and Hookah Lounge's (Crown Hookah). Merrill Jacobson, Colin Smith, and Saul Vareda appeared as witnesses for applicant appellant. Anis Mohammed Abdulkerim was not present.

Linda L. Peter, Deputy, appeared in her official capacity as Deputy City Attorney on behalf of the San Diego Police Department (SDPD). Also appearing on behalf of the San Diego Police Department were: Cindy Meyer, Vice Administration-Custodian of Records; Officer Bruce Getz; Officer Luis A. Roman, Community Liaison Officer; Detective Sergeant Kevin Monya, Vice Administration; Tracy Wherry-Phillips, Compilation of Statistics and Service Calls; Maurizo Bouchard Rios, Community Council Representative for College Area and Vice Chair of El Cerrito Community Council; Dr. Clark Kelly, local resident and business owner; Charles Schwimmer, local business owner; Bruce Nolan, local resident; Godfrey Quiachon, local resident; Jennifer Finnegan, College Area Business Maintenance District. All appeared as witnesses for complainant, City of San Diego.

Appellant and complainant submitted written witness declarations and exhibits.

The Pride Law Firm, Dante T. Pride, appealed the San Diego Police Department's revocation of Crown Hookah's tobacco permit #2011008326.

II. ISSUE STATEMENT

1. Whether the revocation of Police Regulated Tobacco Permit #2011008326 should be reversed?

2. Whether the reapplication for renewal of Crown Hookah's police regulated tobacco permit should be granted?

III. FACTUAL FINDINGS

A. Application and Procedural History

1. On June 13, 2013 the police regulated tobacco permit #2011008326 of Crown Hookah's was revoked.

2. Pursuant to this revocation the renewal application of Crown Hookah was not acted upon and revocation remains in full force and effect.

3. The permit was revoked for the following reasons:

(a) Numerous police service calls resulting in arrests and citations;

(b) SDPD denied access for compliance inspections;

(c) Providing live entertainment/dancing without a valid permit;

(d) Failure to provide adequate security.

4. Crown Hookah has appealed the revocation and non-action on its renewal application.

B. General Facts

5. Crown Hookah is located at 7059 El Cajon Blvd., San Diego, California 92115.

6. Crown Hookah was issued a police regulated tobacco retailer permit, April 30, 2011, permit #2011008326. The permit expired April 30, 2012.

7. On April 30, 2012 Crown Hookah's renewal application was extended to April 30, 2013.

8. On May 31, 2013 Crown Hookah's renewal application was extended to May 31, 2014.

9. On September 21, 2011 Crown Hookah applied for and was granted an entertainment permit conditional upon no alcohol consumption or dancing on the premises. It was also conditional on security guard personnel at a ratio of one for every 75 or lower patrons, and one security guard to actively monitor and conduct roving patrols throughout the venue and premises parking lot. This permit expired September 30, 2012.

10. On November 16, 2012, and other occasions, SDPD officers requested and were denied admittance to Crown Hookah to perform compliance inspections.

11. On May 4, 2013 SDPD officers conducted a compliance inspection after numerous complaints of large crowds, loud music, fights, excessive noise, and inadequate security. Notice of violations issued for: staff not wearing attire that easily identified them; providing live entertainment/dancing without a valid permit; inadequate emergency exits; inability to provide an accurate account of patrons inside the establishment; and security failing to check patron identification prior to admittance.

12. Service calls for SDPD have resulted in numerous notices of violation and/or warning letters issued to Crown Hookah.

13. Between September 16, 2011 and March 16, 2013 numerous arrests and citations were issued. These included: assault; weapons (gun on premises); minors in possession of alcohol and false identification; disorderly conduct; excessive noise; loitering; possession of controlled substances; and failure to post permits/licenses.

14. A July, 2012 meeting was held with Jennifer Finnegan, College Area and Business Heights Maintenance District, to discuss keeping the area around Crown Hookah clean

of vomit, urine, feces, condoms, and used syringes. Recommendations to accomplish this were suggested.

15. A mediation agreement was reached between Crown Hookah's owner, Anis Mohammed Abdulkerim, and Maurizo Bouchard Rios, College Area Community Service Representative, November 2, 2012. The conditions enumerated therein were to be instituted by Crown Hookah.

16. SDPD held meetings with Crown Hookah February 20, 2013 and April 11, 2013 to mitigate problems and to establish better rapport with neighbors and the business community.

17. During the February 20, 2013 meeting Crown Hookah indicated it no longer provided entertainment.

18. Crown Hookah provided patron dancing and DJ entertainment after its entertainment permit expired.

19. Crown Hookah's Tobacco Retailer Permit was revoked June 13, 2013.

20. Crown Hookah's reapplication for permit has resulted in non-action by SDPD and the revocation remains in full force and effect.

IV. DETERMINATION OF ISSUES AND LEGAL CONCLUSIONS

1. SDMC section 33.4501 reads as follows.

> It is the purpose and intent of this Division 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. It is also the intent that all costs associated with the administration and enforcement of this Division be borne by tobacco retailer applicants and permittees. It is further the intent that recoveries hereunder shall be used to pay the costs of administering and enforcing this Division.

2. SDPD has free access to regular inspections of all police regulated businesses during normal working hours. SDMC § 33.0103(a)

3. It is unlawful for any permitee or employee to prevent or hinder any Peace Officer from conducting an inspection. SDMC § 33.0103(a)

4. SDMC section 33.0103(a) reads, "It is unlawful for any person to provide or permit entertainment which is open to the public without a public permit."

5. SDMC section 33.1502 reads as follows.

> "Entertainment" or "Entertainment Establishment" means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business to which the public is invited or allowed to watch, listen, or participate, or is conducted for the purposes of amusing guests or patrons, including:
>
> . . .
>
> (b) DANCING to live or recorded music.
>
> (c) The presentation of recorded music which is played on equipment which is operated by an agent or contractor of the establishment, commonly known as "DJ" or "Disc Jockey"

6. SDMC section 33.0101(c) reads, "It is a misdemeanor for any person to operate a business or engage in an occupation regulated by this article without a police permit.

7. SDMC section 33.0403(a) reads as follows.

> (a) In addition to other penalties provided by law, any PERMITEE who does any of the following is subject to regulatory action by the Chief of Police against his or her Police Permit.
>
> 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.
>
> 2. Negligently fails to supervise the business resulting in a pattern of violations described by patrons, employees, or both.
>
> 3. Manifests an inability to properly perform the duties relating to the police regulated activity as evidenced by the omission of an act or series of acts.

8. Crown Hookah is a police regulated business because it sells tobacco.

9. Crown Hookah, by affixing its signature to the Tobacco Retailers Permit Application, expressly agreed to the right of reasonable inspection as a condition of granting said permit.

10. Crown Hookah's Tobacco Retailers Permit only authorizes the sale of tobacco products, but it engaged in entertainment and provided the functions of an entertainment establishment on multiple occasions after it's entertainment permit had expired in violation of the SDMC.

11. Crown Hookah also prevented the SDPD from carrying out its inspection of the premises in violation of the SDMC.

12. Therefore, the preponderance of the evidence clearly indicates violations of provisions of the SDMC as described above. The revocation of Crown Hookah's tobacco permit as well as the denial of its reapplication for Police Regulated Tobacco Permit is warranted.

V. ORDER

THEREFORE, the following order(s) are made:

1. The revocation of Crown Coffee and Hookah's Police Regulated Tobacco Permit #2011008326 is affirmed and remains in full force and effect.

2. Administrative Hearing Officer hereby relinquishes jurisdiction in this matter.

Hon. William H. Wise, Ret.

DATED: November 12, 2013, 2013

BY:_____

Hon. William H. Wise, Ret.
Administrative Hearing Officer