
REGULAR MEETING MINUTES
FEBRUARY 8, 2018

1. CALL TO ORDER & ORDERS OF THE DAY

ROLL CALL

PRESENT: Chair David Parker, Vice Chair Ron Cabanayan, Commissioners Timothy Kenny, Karen Parsons, Robyn Shearin and Thomas Skinner.

ABSENT: Elizabethe Chien-Hale

STAFF: Board Secretary Karla Caceres, Senior Deputy City Attorney Rosa Tsongtaatarii.

CALL TO ORDER

Chair Parker convened the Appeals Hearing Board at 6:31 p.m. in the City Council Chambers of City Hall, 200 E. Santa Clara Street, San Jose, CA 95113.

2. OPENING REMARKS AND APPROVAL OF MINUTES

APPROVAL OF MINUTES

Documents Filed: Draft Meeting Minutes from Appeals Hearing Board Regular Meeting on December 14, 2017.

Action: Upon motion by Commissioner Shearin, seconded by Commissioner Parson, the minutes for December 14, 2017 was approved. (6-0-1). Commissioner Chien-Hale was absent.

3. REQUEST FOR DEFERRALS

There was no request for deferrals.

4. CONSENT CALENDAR

There was nothing on the consent calendar.

5. DEFERRED AND/OR CONTINUED ITEMS

There was no deferred and/or continued items.

6. PUBLIC HEARINGS

a. 8 SOUTH 1ST STREET (467-62-017) APPEAL SUSPENSION OF ENTERTAINMENT PERMIT

Vice Chair Cabanayan recused himself due to conflict of interest and left the room. Vice Chair Cabanayan disclosed to the Secretary for the Board that he leases office space in the same building that is the subject of the enforcement action on appeal before the Board.

Documents Filed:

By City of San Jose:

- City of San Jose Letter Brief dated January 12, 2018.
- City of San Jose Hearing Brief dated February 5, 2018, Declarations In Support of City's Brief, and Hearing Transcript dated October 11, 2017.

By Diamond SJ Enterprises dba Studio 8:

- Appellant's Letter Brief dated January 24, 2018.
- Appellant's Objection to the City of San Jose's Hearing Brief and to Declarations in Support of City's Brief.

Action:

Lieutenant Todd Trayer of the San Jose Police Department presented information in support of suspending the Public Entertainment Permit on the grounds that (1) Studio 8 used promoter services from Mr. Embay, an individual that did not have a license or an indemnification contract from Studio 8; and (2) nuisance arising from security conditions following the closing of Studio 8 doors due to overbooking and Mr. Embay shooting at or above the crowd about an hour thereafter. Kendra McGee-Davies, Senior Deputy City Attorney for the City of San Jose, noted Mr. Embay engaged in promoter activities in violation of the Code, and was otherwise compensated for these services from the compensation for booking tables and a cut of the entertainer contract. Moreover, Mr. Embay's actions to promote the event, his presence at Studio 8, and the efforts to address the overbooking gave rise to security issues on the night of the event.

Diamond SJ Enterprise dba Studio 8 owner Jenny Wolfes, was represented by legal counsel, Gill Sperlein. Mr. Sperlein presented information to rebut the basis for suspension: (1) Mr. Embay was retained because he had the contract with the entertainer and was only paid for the contract; (2) Ms. Wolfes did not agree Mr. Embay could separately book tables and receive the revenues from the bookings as compensation for his services; (3) any security issues from closing the door early were quickly addressed; and (4) Ms. Wolfes should not be responsible for the security issues arising out of the shooting because it occurred after Ms. Wolfes had ended her relationship with Mr. Embay.

The Board members closed public hearing, and discussed the different information presented and how the information either supported or did not support the Administrative Decision. The Board voted on two motions.

There was a motion by Commissioner Kenny, seconded by Commissioner Parsons, to order as follows:

To find the Administrative Hearing Officer's decision, to suspend Diamond SJ Enterprise dba Studio 8's public entertainment permit for 30 days because Studio 8 engaged the services of a promoter in violation of the San Jose Municipal Code Promoter License requirement, was based on substantial evidence.

AYES: Parsons, Skinner, Kenny
NAYES: Shearin, Parker
ABSENT: Chien-Hale
ABSTAIN: Cabanayan

This motion failed. The Board makes no determination with respect to this portion of the Administrative Decision.

There was a motion by Commissioner Kenny, seconded by Commissioner Parsons, to order as follows:

To find the Administrative Hearing Officer's decision to suspend Diamond SJ Enterprise dba Studio 8's public entertainment permit for 30 days because of the security issues at or around Studio 8 on or about the night of May 28, 2017, was supported by substantial evidence.

AYES: Parsons, Skinner, Parker, Kenny
NAYES: Shearin
ABSENT: Chien-Hale
ABSTAIN: Cabanayan

7. REQUEST FOR EXCUSED ABSENCE

There was no request for excused absence.

8. OTHER BUSINESS

There was no other business.

9. PUBLIC COMMENT

There was no public testimony on the floor.

10. ADJOURNMENT

Upon a motion by Commissioner Kenny, seconded by Commissioner Shearin, to adjourn hearing. The Hearing was adjourned at 8:35 p.m. (5-0-2) Commissioner Chien-Hale was absent and Vice Chair Cabanayan recused himself from Hearing.