



REPORT TO COUNCIL

City of Sacramento

22

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

STAFF REPORT
November 1, 2005

Honorable Mayor and
Members of the City Council

Subject: Entertainment Permit Appeal Hearing

Location/Council District: Council District 2

Recommendation:

Staff recommends that the City Council adopt the attached resolution causing the appeal of the decision to suspend the entertainment permit for The Plantation, located at 1454 Del Paso Boulevard, to be heard by an administrative law judge from the State Office of Administrative Hearings.

Contact: Max B. Fernandez, Director of Code Enforcement, 808-7940

Presenters: Max B. Fernandez, Director of Code Enforcement

Robert Rose, Code Enforcement Manager, 808-5947

Department: Code Enforcement

Division: Business Compliance

Organization No: 4652

Summary:

The City of Sacramento's Entertainment Ordinance (Sacramento City Code 5.108) provides that any applicant aggrieved by the decision of the City Manager or designee, in denying, suspending, or revoking a permit, may appeal the decision to the City Council. In lieu of hearing the appeal itself, the City Council may refer the matter to a hearing examiner designated by the City Council whenever it determines from an examination of the notice of appeal that a hearing on the subject of the appeal may involve a lengthy fact finding process which could be more appropriately accommodated by a formal hearing before a hearing examiner. It is appropriate for the City Council to cause this appeal to be heard by an administrative law judge serving as the hearing examiner.

Committee/Commission Action: None.

Background Information:

The current Entertainment Ordinance (Sacramento City Code 5.108) was adopted by the City Council in October of 2003. The City Council encourages the development of arts and culture in Sacramento, and recognizes that many entertainment venues provide a means for such development. The ordinance requires establishments providing entertainment venues to secure an Entertainment Permit. Additionally, under Section 5.108.190 D,1, a through j, the City Manager may impose conditions relating to the operation of the entertainment establishment.

On January 26, 2005, the Plantation located at 1454 Del Paso Boulevard was issued an Entertainment Permit and corresponding permit conditions. The applicant was allowed an opportunity to review said conditions and provide input prior to their imposition. Due to multiple violations of the Entertainment Permit conditions as reported by the Sacramento Police Department during the time period of May 12 through August 12, 2005, a notice of proposed 90-day suspension of the Entertainment Permit was issued to the Plantation. The circumstances of the proposed suspension are described in the notice of suspension letter dated August 29, 2005, and are included in this report as Attachment A. On September 8, 2005, the applicant filed an appeal of the proposed suspension; a copy of the appeal is included in this report as Attachment B

In the event an Entertainment Permit is suspended, modified, or revoked, the ordinance allows any applicant aggrieved by the decision of the City Manager or designee to appeal the decision to the City Council. In lieu of hearing the appeal itself, the City Council may cause the appeal to be heard by a hearing examiner designated by the City Council whenever it determines from an examination of the notice of appeal that a hearing may involve a lengthy fact finding process which could be more appropriately accommodated by a formal hearing before a hearing examiner

Staff anticipates that the issues raised in this notice of appeal will involve a lengthy fact finding process. Therefore, staff is recommending that the City Council refer the appeal of the Plantation to an administrative law judge, in which case the administrative law judge's decision will be final.

Financial Considerations:

The State Office of Administrative Hearings charges the City of Sacramento for the services of administrative law judges on an hourly basis. The anticipated cost of referring this appeal to be heard by an administrative law judge is not expected to exceed \$5,000.00.

Environmental Considerations:

This report is not considered a project and therefore has no potential for an effect on the environment as stated by the provisions of the California Environmental Quality Act (Section 15061 (b) (3)).

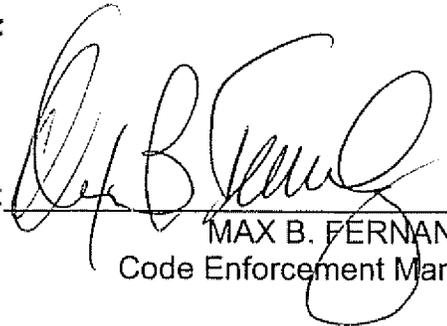
Policy Considerations:

The Code Enforcement Department has an established hearing process with hearing examiners appointed by the City Council. The Entertainment Ordinance allows for aggrieved applicants to appeal to the City Council. The Entertainment Ordinance also allows the City Council to refer appeals to an administrative law judge serving as the hearing examiner.

Emerging Small Business Development (ESBD):

No goods or services are being purchased.

Respectfully Submitted by:



MAX B. FERNANDEZ
Code Enforcement Manager

Approved by: _____

RICHARD J. RAMIREZ
Deputy City Manager

Recommendation Approved:



ROBERT P. THOMAS
City Manager

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RESOLUTION NO.

Adopted by the Sacramento City Council

November 1, 2005

A RESOLUTION CAUSING THE APPEAL OF THE PROPOSED SUSPENSION OF THE ENTERTAINMENT PERMIT FOR THE PLANTATION LOCATED AT 1454 DEL PASO BOULEVARD TO BE HEARD BY AN ADMINISTRATIVE LAW JUDGE.

BACKGROUND

- A. Sacramento City Code section 5.108.260 provides that any person aggrieved by a decision of the City Manager in denying, suspending, modifying or revoking an entertainment permit may appeal the decision to the City Council.
- B. Sacramento City Code sections 1.24.050 and 1.24.060 provide that in lieu of hearing an appeal itself, the City Council may cause the appeal to be heard by a hearing examiner designated by the City Council whenever it determines from an examination of the notice of appeal that a hearing on the subject of the appeal may involve a lengthy fact finding process which could be more appropriately accommodated by a formal hearing before a hearing examiner.
- C. Appeals from denials, suspensions, modifications or revocations of an entertainment permit are not included in the categories of appeal set forth in current City Council Resolutions
- D. An examination of the notice of appeal filed by Drake Jones regarding the proposed suspension of the entertainment permit for The Plantation located at 1454 Del Paso Boulevard reveals that the subject of the appeal may involve a lengthy fact finding process more appropriately accommodated by an administrative law judge.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Clerk shall refer the appeal filed by Drake Jones regarding the proposed suspension of the entertainment permit for The Plantation located at 1454 Del Paso Boulevard to an administrative law judge.

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- Attachment A: Notice of Proposed Suspension – 4 Pages
- Attachment B: Notice of Appeal – 2 Pages



Attachment A

CODE ENFORCEMENT
DEPARTMENT

CITY OF SACRAMENTO
CALIFORNIA

915 I ST. MC4654
SACRAMENTO, CA
95814

August 29, 2005

Mr. Drake Jones
The Plantation
1454 Del Paso Blvd.
Sacramento, CA 95815

Re: Entertainment Permit# 05-000001

Dear Mr. Jones:

This notice is to inform you that the City of Sacramento proposes to suspend the Entertainment Permit (#05-000001) issued to the business known as The Plantation, located at 1454 Del Paso Blvd., Sacramento, CA 95815. The suspension shall commence on September 9, 2005, and shall remain in effect for a period of ninety (90) calendar days.

The grounds for the suspension are as follows:

- **Condition 2.** Business owner/s, management, and employees will present all events at this establishment. No non-employee, promoter, or presenter shall be permitted to participate in presenting any event. **VIOLATION:** On May 25, 2005, when the Sacramento Police Department responded to a noise disturbance in the parking lot of the Plantation, officers observed posters on the front wall of the building that read, "Goodfellas Records Presents, Jayda + AP.9." Additionally, you advised officers that you had rented out your business to "Goodfella Productions," and that they were throwing a record release party this evening.
- **Condition 3.** Business owner/s, management, and employees will ensure that all publicity regarding events held at this location clearly state that this location is the Plantation. **VIOLATION:** On May 25, 2005, when the Sacramento Police Department responded to a noise disturbance in the parking lot of the Plantation, officers observed posters on the front wall of the building that read, "Goodfellas Records Presents, Jayda + AP.9". These posters publicizing this event did not state that this location was the Plantation.
- **Condition 4.** Business Owner/s, management, and employees will follow all Alcohol Beverage Control guidelines regarding the sales of alcoholic beverages. ABC license (#47-417834 item #3), states that, "Entertainment provided shall not be audible beyond the area under control of the licensee." **VIOLATION:** On August 12, 2005, at approximately 10:30 PM, Investigators from the Department of Alcoholic Beverage Control reported that music coming from the Plantation was

audible all the way from the club, to Wood Lake Park, a distance of approximately 171 feet away.

- **Condition 6.** The business owner/s, managers, and employees shall at all times take all necessary action to ensure that the maximum occupancy load is not exceeded in any area of the establishment including but not limited to the use of a counter. **VIOLATION:** On May-25, 2005, Sacramento Police Officers responded to the Plantation due to a noise disturbance in the parking lot. Officers observed approximately 150 to 175 patrons in the upstairs area, and approximately 40 to 50 patrons on the bottom floor of the establishment. When officers made contact with you, you acknowledged that there appeared to be at least 150 persons in the upstairs level alone. The entire establishment is approved for a maximum of 184 persons. When asked what the current total occupancy was, you referenced an unattended manual, mechanical counting device that had been left sitting on the bar. Officers observed that the counting device registered 146. However, in the officers' presence, they noted at least eight subjects entered the bar, and were not counted on the counting device. Officers documented that both floors of the establishment were so crowded with people that the hallways were blocked and moving around inside was very difficult.
- **Condition 8.** Recorded and/or live music and all entertainment events shall end no later than 1:30 AM. **VIOLATION:** On July 15, 2005, Sgt. Hinz of the Sacramento Police Department documented that there was loud music after 2:30 AM, audible outside of The Plantation.
- **Condition 9.** Any noise or sound generated within the premises shall not be audible beyond the area under the control of the licensee. There shall be no exterior public address or other sound amplification system. Doors to premises shall remain closed during all hours of operation. The permittee shall not allow the music or crowd to interfere with the conduct of business at neighboring establishments or disturb the peace and tranquility of area residents. **VIOLATIONS:** On May 15, 2005, there were eight calls for service regarding disturbances at the Plantation. Employees of the Plantation called in stating that there was a large group of people that were refusing to leave. Plantation security reported a large group of juvenile's running around and dancing, and they believed one subject to be armed. 50 to 75 subjects were reported to be in the street partying and blocking the streets. Upon arrival, Sacramento Police Officers reported traffic jams and crowds of people and vehicles dispersing from the area of the Plantation to other nearby businesses and causing disturbances there. Officers had to disperse the crowds of people causing disturbances and refusing to leave the area. On May 21, 2005, police officers had to respond to the Plantation to disperse crowds of people causing disturbances.

On May 28, 2005, there were at least three calls for service at the Plantation. Nearby residents were reporting loud music from eight vehicles in the parking lot, blocking traffic, and public urination on the walls of a nearby apartment complex. Police Officers responded to the Plantation to disperse the crowds of people causing these disturbances. On May 29, 2005, a neighbor called in to report that there had been approximately 20 gunshots fired at the Plantation. There were also reports of subjects throwing bottles in the street, loud music and traffic problems in the area. Upon arrival, officers observed numerous vehicles leaving the Plantation and in the area of Del Paso/Arden Way. They also observed broken glass on the street and sidewalk, and empty bottles of liquor littering the grass near the Plantation. On June 5, 2005, security called in advising that the bar was closing and that over 50 patrons were at the Plantation acting "crazy." A nearby resident also called in a complaint of loud music from vehicles at the Plantation. Police Officers responded to the Plantation to disperse

the crowds of people causing these disturbances

On June 11, 2005, there were at least three calls for service at the Plantation regarding disturbances in the area. Police officers responded to disperse subjects from the area of the Plantation. On June 12, 2005, there were two calls for service regarding disturbances at the Plantation. Police Officers responded to disperse all the subjects from the area. Later this same evening, a nearby resident complained of loud music continuing to be a problem, and that two gunshots had been fired in the area of the Plantation. Police officers responded to the Plantation to check the area and were advised by security officers that they did not hear shots fired and the only music in the area was coming from inside the Plantation.

On June 25, 2005, police officers responded to the Plantation due to a noise disturbance in the parking lot. Upon arrival, officers confirmed that there was loud noise/music coming from inside the Plantation. The noise/music was clearly audible from the front of the business on the sidewalk and for a distance of one city block in each direction. Another call later this evening documented the reports of 150 people in a fight, unruly crowds, and two armed vehicles seen in the area of the Plantation. Upon arrival, officers observed large groups of reckless drivers leaving the area and reported two shots being fired by unknown subjects. Officers stopped a vehicle seen leaving the Plantation and arrested one subject for possession of a loaded firearm. A second vehicle was Located/stopped in the area of Canterbury and Lochbrae Rd. The vehicle matched the description of an armed vehicle seen leaving the Plantation. One subject was arrested for possession of a stolen/loaded weapon. The occupants were all identified as gang members and advised officers that they had just left the Plantation. Approximately 90 minutes later, Police Officers responded to a shooting call at 228 Cookingham Way. Officers reported that the shooting victim was one of the occupants released from one of the earlier vehicle stops near the Plantation

On July 10, 2005, Sacramento Police Officers conducted a traffic stop across the intersection from the Plantation. While at this location, officers observed loud audible music coming from the establishment. They also noted that the doors on the west side of the building were propped open. On July 15, 2005, police officers responded to the Plantation due to a 911 call regarding shots being fired in the area of the Plantation. Upon arrival, the officers observed several vehicles leaving the Plantation, blocking the roadway and interfering with traffic. Patrons leaving on foot were seen walking in and out of traffic, socializing with occupants of the vehicles causing further problems with traffic in the area. Other patrons were seen by officers to be involved in physical confrontations directly in front of the Plantation. Stragglers exiting the premises until 3 00 AM, and patrons refusing to leave had to be dispersed by the responding officers. Plantation security made no attempts to assist in controlling and/or dispersing these patrons from the area.

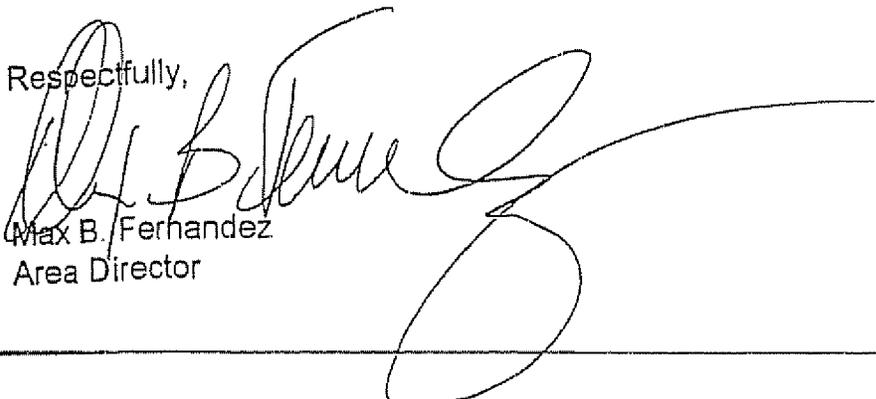
On July 24, 2005, Police Officers responded to the Plantation due to several complaints of disturbances at the Plantation. Officers reported that due to the disturbances and disorderly conduct of the patrons dispersing from the Plantation, the Shell station (1600 Arden Way) was forced to close. On July 30, 2005, at approximately 1:00 AM, police officer Trimpey was in the area of the Plantation and reported that music coming from the Plantation was audible for a distance of approximately 25 feet away from the club. On August 12, 2005, at 1030 PM, Investigators from the Department of Alcoholic Beverage Control reported that music coming from the Plantation was audible all the way from the club, to WoodLake Park, a distance of

approximately 171 feet away. Investigators also reported that the doors to the club were left open during this time period.

- **Condition 11.** A minimum of two (2) state licensed uniformed security guards will be on duty from half an hour prior to all dancing events commencing until crowd and traffic have dispersed at the close of the event. Security shall, at a minimum, be responsible for patrolling the parking lots and adjacent areas including sidewalks and streets to prohibit loitering, excessive noise from individuals; vandalism and other disruptive or illegal acts. Security shall ensure an orderly dispersal of the crowd from the area, including street, on-site and off-site parking lots, promptly at the end of the event. **VIOLATIONS:** On May-25, 2005, police officers responded to the Plantation due to a noise disturbance in the parking lot. You advised responding officers that there were eight security guards to fulfill "Condition 11." One of the officers documented that none of these eight guards were wearing a uniform at this time. During a return call for service, after shots being fired while officers were on scene, two security guards were present at the scene, however, they did not assist in clearing subjects loitering in the parking lot or nearby areas. Consequently it took approximately two hours to clear people out of the business after it closed. On July 15, 2005, police officers responding to the area regarding disturbances observed several vehicles leaving the Plantation, blocking the roadway, and interfering with traffic. Patrons leaving on foot also were walking in and out of traffic, socializing with occupants of the vehicles that were interfering with traffic. Other patrons were seen by officers to be involved in physical confrontations directly in front of The Plantation. Stragglers exiting the premises up to 3:00 AM, and patrons refusing to leave had to be dispersed by the police officers. Plantation security made no attempts to assist in controlling and/or dispersing patrons from the area.

You may appeal the proposed suspension by submitting an appeal, in writing, to the undersigned, Code Enforcement Director Max Fernandez, 915 I St. MC4654, Sacramento, CA. 95814, within 10 days service of this notice. Failure to appeal this notice of suspension will constitute a waiver of all right to an appeal hearing, and the suspension will be final.

Respectfully,


Max B. Fernandez
Area Director

cc: Scott LaCrosse, Police Captain
Robert Rose, Code Enforcement Manager

LAW OFFICES OF
JOHNNY L. GRIFFIN, III

1010 F STREET, SUITE 200
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 444-5557
FACSIMILE (916) 444-5558

Attachment B

September 8, 2005

VIA FACSIMILE AND HAND DELIVERY

Max B. Fernandez
Area Director
City of Sacramento
Code Enforcement Department
915 I Street, MC4654
Sacramento, CA 95814

Re: Entertainment Permit Number 05-000001

Dear Mr. Fernandez:

This will confirm our telephone discussion this morning wherein I advised you that I have been retained to represent Drake Jones ("The Plantation") in connection with your August 29, 2005 notice of 90 day suspension of the above referenced permit. Further, this will confirm my statement that we disagree with the proposed 90 day suspension and hereby request an appeal. The appeal is requested because there is specific, material and credible evidence that explains and/or contradicts the information that you rely on in support of your allegations of violations.

In sum, we intend to present evidence of the following:

Condition 2. The event occurring on May 25, 2005 was not "presented" by Goodfellas Records, and Goodfellas Records did not participate in "presenting" the event. Instead, the evidence will show that The Plantation presented and sponsor the event completely.

Condition 3. The publicity surrounding the May 25, 2005 event did clearly state that the location was "The Plantation." The posters were not "posted" on the property publicizing the event

Condition 4. The music within The Plantation on August 12, 2005 was not audible from its location to Wood Lake Park. Instead, the evidence will show that the music that may have been heard was from vehicles parked and driving in the park area.

LAW OFFICES OF
JOHNNY L. GRIFFIN, III

Condition 6. The number of patrons within The Plantation on May 25, 2005 did not exceed the approved maximum of 184. The evidence will show that the counter used to count the patrons was accurate and being used appropriately.

Condition 8. The recorded and/or live music and entertainment ended at 1:30 AM on July 15, 2005. The "loud music" alleged to be heard by Sgt. Hinz after 2:30 AM was not coming from within The Plantation. The evidence will show that there were individuals in the area, not associated with The Plantation, that were playing music in their cars.

Condition 9. The disturbances occurring between May 15, 2005 and July 30, 2005 were not as a result of The Plantation's violation and/or breach of any conditions of its permit. Instead, the individuals involved and responsible for the disturbances were from outside the area and not in anyway affiliated with The Plantation. Moreover, credible evidence (e.g., a videotape) will show the individuals involved in several of these disturbances were not patrons of The Plantation and were not parked on The Plantation's property. Additionally, it is our belief that law enforcement has documented that the individuals involved in the disturbances "cruise" various areas (starting in Old Sacramento) looking for parks and parking lots (e.g. gas stations) to congregate and hang out. The evidence will also show that The Plantation's owners and security personnel contacted law enforcement seeking assistance on solving this cruising problem within the area.

Condition 11. There were in excess of two licensed uniformed security guards on duty on May 25th and July 15th 2005. Personnel and pay records will show the number of guards on duty on these dates. Additionally, the evidence will show that each guard was in uniform consisting of a black shirt with the word "security" imprinted on it. Further, the evidence will show that on both May 25th and July 15th, security guards did in fact provide assistance to law enforcement.

Accordingly, I request an appeal of your proposed 90 day suspension. Please contact me upon your review so that we may set up a mutually convenient date and time to meet to further discuss this matter.

Very truly yours,


JOHNNY L. GRIFFIN, III
Attorney at Law

cc: Drake Jones