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**OFFICE OF THE
CITY CLERK**

VALERIE A. BURROWES, CMC/AAE
CITY CLERK

VIRGINIA K. HENRY, CMC/AAE
ASSISTANT CITY CLERK

**CITY OF SACRAMENTO
CALIFORNIA**

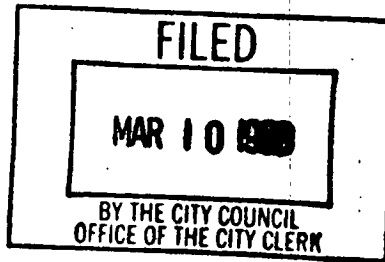
CITY HALL
915 I STREET
ROOM 304
SACRAMENTO, CA
95814-2671

FAX 916-264-7672
HTTP://WWW.SACTO.ORG

ADMINISTRATION
PH 916-264-5799

OPERATIONAL SERVICES
PH 916-264-5426

SPECIALIZED SERVICES
PH 916-264-7200



March 4, 1998

**City Council
Sacramento, California**

Honorable Members in Session:

SUBJECT: Appeal of David M. Camacho from the decision of the City Manager regarding denial of an adult-related business permit for Club Fantasy

LOCATION AND COUNCIL DISTRICT:

The subject address is 851 Richards Boulevard, Sacramento CA 95814, in Council District 1.

STAFF RECOMMENDATION: This report is for information only.

CONTACT PERSON: Carolyn E. Hoover, Phone No. 264-5427
Valerie Burrowes, Phone No. 264-5799

FOR COUNCIL MEETING OF: March 10, 1998

SUMMARY:

Attached is the appeal of David M. Camacho requesting relief from the decision of the City Manager regarding denial of an adult-related business permit for Club Fantasy, as required by Section 28.06.068 of the Sacramento City Code.

COMMITTEE/COMMISSION ACTION: None

BACKGROUND INFORMATION:

This appeal was originally filed on February 3, 1998. At the request of the Council member representing District 1, the appeal was presented to the Council on March 3, 1998 for consideration of hearing said appeal. Following discussion and a vote of the Council, it was determined that this appeal be referred to a hearing officer. The hearing has been scheduled for Monday, March 23, 1998, 9:00 a.m., at the McGeorge School of Law, 3455 Fifth Avenue, Building 23, Sacramento, California, 95817.

FILED
MAY 10 1964
OFFICE OF THE CLERK
BALTIMORE CITY COURTHOUSE

City Council
March 4, 1998
Page Two

FINANCIAL CONSIDERATIONS:

The estimated cost is \$450 and the funds are available from the Planning Department budget.

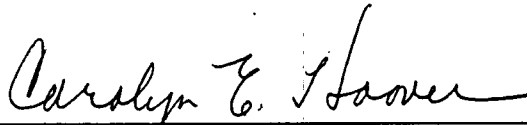
POLICY CONSIDERATIONS:

The current policy regarding administrative appeals is consistent with procedures specified in the Sacramento City Code.

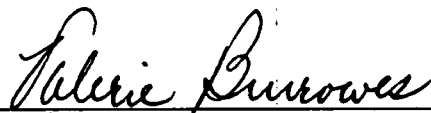
MBE/WBE EFFORTS:

Administrative appeals referred to McGeorge School of Law have no impact on the City of Sacramento's MBE/WBE goals. Hearing Officers are employees of the McGeorge School of Law and not subject to MBE/WBE goals. Pursuant to City Council Agreement No. 87-188, adopted on February 2, 1988, McGeorge School of Law certifies that any goods or services provided and any persons employed pursuant to the Agreement shall be without discrimination based on sex, color, religion, national origin, ancestry, handicap or sexual orientation.

Respectfully submitted,



Carolyn E. Hoover, T.C. III



Valerie Burrowes,
City Clerk

Attachment

cc: Hearing Officer, McGeorge School of Law
Deputy City Attorney Dennis Beaty
Deputy City Attorney Diane Balter
Gary Stonehouse, Planning Director
City Manager William Edgar



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CITY CLERK

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
FIRST CLASS MAIL

March 4, 1998

David M. Camacho
851 Richards Blvd.
Sacramento, CA 95814

SUBJECT: ADMINISTRATIVE APPEAL HEARING

Dear Mr. Camacho:

Following a decision by the City Council and in accordance with Chapter 2.06.450 of the Sacramento City Code, it has been determined that your appeal regarding the denial of a permit for an adult-related business, Club Fantasy, will be scheduled for a formal hearing before a hearing officer.

Your appeal is scheduled for Monday, March 23, 1998 at the hour of 9:00 a.m. at McGeorge School of Law, 3455 Fifth Avenue, Sacramento, California (in Building 23). You have the right to bring an attorney or other representatives to assist you at the hearing.

Under Chapter 2.06.480 of the Sacramento City Code, the decision of the Hearing Officer is final and no appeal may be taken to the City Council.

If you have any questions on this matter, you may call me at 264-5427.

Sincerely,

Carolyn E. Hoover
Typist Clerk III

cc: Hearing Officer, McGeorge School of Law
Deputy City Attorney Dennis Beaty
Deputy City Attorney Diane Balter
Gary Stonehouse, Planning Director
City Manager William Edgar
Matthew C. Jaime, Matheny Poidmore Linkert & Sears



RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO

FEB 3 3 19 PM '98

NOTICE OF APPEAL
PLEASE PRINT

DATE: 2/03/98

Pursuant to Section 2.320, City Code, I wish to appeal the decision of City of Sacramento
made on or about 1/28/98 regarding DENIAL OF ADULT-BUSINESS Application as required
by Chapter 28.04 City Code.

MY REASON FOR APPEALING IS AS FOLLOWS:

SEE ATTACHED

NAME: DAVE CAMACHO

ADDRESS: 851 RICHARDS

CITY: SACRAMENTO STATE CA ZIP 95814

TELEPHONE NUMBER: (916) 447-4475

SIGNATURE: Dave Camacho

The City should be estopped from denying an adult related permit. At all times, CFI has acted in good faith to thoroughly investigate the site intended for its cabaret. This included investigating compliance of the site with the applicable 1000 foot setback requirement of the Sacramento City Zoning Ordinance, and obtaining written confirmation of compliance from defendant CITY OF SACRAMENTO over one year ago. Only after the CITY's repeated written confirmation of zoning compliance did CFI begin to invest a substantial amount of money in preparing the Richards Blvd. facility for its intended use. This included paying application fees and procuring services for interior and exterior maintenance and repair. It also included a sizable amount of money dedicated to compliance with the multiple and sometimes conflicting requirements of the CITY Building Department. Once the CITY issued a Certificate of Occupancy to CFI on January 22, 1998, the only delay in opening the cabaret stemmed from the CITY's delay in granting a permit. Despite its written confirmations of zoning compliance in late 1996, the CITY recently denied CFI's permit application based on the existence of a previously undisclosed oriented business within 1000 feet of CFI's cabaret.

Additionally, the zoning ordinance and/or City code as applied to CFI is unconstitutional for the following reasons:

1. Enforcement will deny CFI and opportunity to open and operate its enterprise within the CITY, due to CFI's heavy financial investment in the Richards Blvd. site.
2. Although the City Code contains time limitations for investigating and denying a permit based on a zoning violation, the code as applied to CFI contains an unconstitutional de facto veto.
3. The zoning ordinance as applied unconstitutionally allows the CITY too much discretion in defining a sensitive use for purposes of measuring the 1000 foot radius of the setback requirement.
4. There is no evidence to support any substantial government interest in denying CFI the exercise of its First Amendment rights in operating its cabaret.
5. The method of measuring the 1000 foot radius is more restrictive than necessary to further any government interest.
6. Denying a permit after the CITY's inexcusable delay in discovering a setback violation will deny CFI any meaningful alternative channel of communication.



OFFICE OF THE
CITY MANAGER

CITY OF SACRAMENTO
CALIFORNIA

CITY HALL
ROOM 101
915 I STREET
SACRAMENTO, CA
95814-2684

January 28, 1998

PH 916-264-5704
FAX 916-264-7618
TDD (ONLY) 916-264-7227

David M. Camacho
851 Richards Blvd.
Sacramento, CA 95814

RE: Club Fantasy - Adult Related Business Permit

Dear Mr. Camacho:

This letter is your formal notification that your application for an Adult Related Business Permit for 851 Richards Boulevard has been denied.

The denial is based on the fact that Planning and Development Services has determined 851 Richards Boulevard is within 1,000 feet of a child care/preschool facility with an outdoor playground and thus the location is not in compliance with Sacramento Zoning City Code. Attached is a copy of that determination.

The permit requirements for Fire and Building City Code were met. The required background check did not result in any basis for denial.

In accordance with Sacramento City Code Section 28.^{06,070}~~04,050~~, you may appeal this decision to the City Council by filing a written notice with the City Clerk. The appeal must be filed with the City Clerk, 915 I Street, Room 304, accompanied by a \$250.00 appeal fee, no later than ten (10) days after the date of this letter. A copy of the applicable City Code is attached.

Sincerely,

William H. Edgar

William H. Edgar
City Manager

Attachment

c: Valerie Burrows, City Clerk

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