



CITY OF OAKLAND

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July 13, 2006

**FINDINGS AND DECISION OF HEARING OFFICER
ON HEARING REGARDING CABARET PERMIT ISSUED TO
AFI MARKETING, C/O ANDY IVEY, TO OPERATE A CABARET
UNDER THE NAME OF MINGLES, AT 370 EMBARCADERO**

BACKGROUND

In February of 2005 the Alcoholic Beverage Action Team (ABAT) Unit of the Oakland Police Department (OPD) requested a public hearing on the cabaret permit issued to Mingles Nightclub. The request stated that, since January of 2004 there were at least seven violence related crime reports associated directly or indirectly with the club, including an attempted murder, in which a club employee was the main suspect. The request also cited complaints from patrol officers and an excessive amount of OPD time due to rowdy crowds in and around the club, especially at closing. The requesting officer stated that the same type of activity occurred at Bluesville when under the management of John Ivey, the current manager of Mingles.

ABAT cancelled their hearing request after meeting in March of 2005 with Mr. Ivey, the ABC District Administrator, and the Neighborhood Law Corps Attorney for the area in which the nightclub is situated. In May of 2005, ABAT again requested a hearing on Mingles cabaret permit. The request explained that, although recommendations that should have helped with the problems had been made at the March meeting, ABAT continued to receive complaints from patrol officers about rowdy crowds near the club during and after cabaret activity and overly intoxicated people being served in the bar. On May 27, 2005, a notice of public hearing, scheduled for June 8, 2005, was sent to Mingles.

City Council Member Nancy Nadel contacted the Hearing Officer, and requested the opportunity to negotiate a mutually agreeable resolution to the alleged problems prior to resorting to a hearing. The Hearing Officer agreed. Neighborhood Law Corps Attorney, James Anthony, submitted notes on the meeting, which took place in June, 2005. The notes indicate that a number of voluntary action items were agreed upon, the most significant of which was that Mingles would attempt to obtain Port (of Oakland) approval to use the parking lot adjacent to the nightclub and to “assure that the former Spaghetti Factory parking lot owned by the Port should have an attendant until 2 am.”

In an email dated November 3, 2005, Council Member Nadel provided follow-up information, explaining, “Unfortunately, the parking solutions have not worked out. The Port wouldn’t let Mingles use their lot next door because it was leased to long term parkers. The other lots Jim Falaschi looked into weren’t available for the same reason. The Port did open up their Village lot for later hours and with more staff but they had a lot of trouble and vandalism of the entry arm equipment, so they are closing it again earlier.”

FIRST HEARING – JANUARY 11, 2006

ABAT re-instituted its previous hearing request, and on December 9, 2005 a hearing was scheduled for December 20, 2005. Mingles attorney, George Holland, requested additional time to prepare for the hearing, and it was rescheduled to January 11, 2006.

At the hearing Carletta Starks, aide to Council Member Nadel, stated that the Council Member wanted to ensure that the hearing focus on a compromise that addresses both the residential and business issues that are involved in this hearing. The Council Member wants to be sure that problems that are synergistic with the other entertainment venues in the area are not being attributed to one business. Ms. Starks submitted and distributed the agreements that had been reached in the June 2005 meeting.

Sgt. Kyle Thomas testified that, the problems he observes include drinking, smoking marijuana, fights, and sideshow activity at and around Mingles and the 2nd Street and Webster area. The police set up barricades to prevent the looping by cars that occurs starting between 1:30 and 1:45 when the club lets out and all of the people are in the street. They also station officers at 2nd and Webster to prevent fights from breaking out when the patrons leave and to assist people to their cars.

Sgt. Thomas additionally testified that Mingles has the best security of the clubs, but they have not addressed the issue of the large crowds that hang out on 2nd St. between Webster and Embarcadero. He also testified that this activity affected many residents, as the patrons and hangers-on are pushed further and further into the neighborhoods east of the 2nd and Webster area, due to closed parking lots. He expressed his concerns with the amount of police resources are required in the Mingles area, their unavailability to answer other calls for service and the unfairness of all the citizens of Oakland paying for resources that are at one area on a regular basis.

Sgt. Thomas played a video showing the loitering and noise outside of Mingles and the crowds dispersing into the neighborhoods, and noted that it currently takes three patrol cars to keep the activity under control. The nexus between the loiterers and Mingles, according to Sgt. Thomas, is that the loiterers are there to talk to the people as they are leaving the club. He believes that Simones, the club next to Mingles, is not the draw, as the crowds are there when Simone’s is not open.

ABAT Officer Ron Ward testified to the history of ABAT’s attempts to obtain Mingles’ compliance on the issues of capacity, over-selling of alcohol, and dress code to address the violent crime and calls for service associated with Mingles. After reaching agreement on the issues, Officer Ward received reports that nothing had changed. A second round of meetings and agreements also had no long-term effects. When his research produced four recent police report

involving violent crimes and numerous calls for service associated with Mingles, ABAT requested this hearing.

Terry Collins, counsel for Mingles questioned the contribution of the other clubs in the area to the problems outlined by Sgt. Thomas and Officer Ward. Sgt. Thomas answered that the majority of the people they contact at 2nd and Webster come for Mingles or, to a lesser extent Simone's, although many only hang out and do not patronize the club.

Mr. Collins questioned OPD's pro-activity in response to illegal activity, and Sgt. Thomas responded that his unit does little enforcement because they are responsible for all of the downtown clubs but that they do not maintain a presence at Mingles, chaos breaks out.

George Holland, Mingles lead counsel, stated that we need to discuss the effect of the closed parking lots. Closing the parking lots gave rise to the overflow into the neighborhoods and the people loitering in the area, because they have no place to park their cars.

Mr. Collins stated that Mingles would be happy to work with OPD to develop a plan for people to travel down Broadway to get to the freeway rather than go through the residential areas. Mr. Collins stated he has seen no effort on the part of OPD to facilitate this type of solution by a discussion with all of the clubs involved.

George Holland stated that, regarding a dress code, that their patrons' dress did not give rise to any bad behavior. Officer Ward responded that his experience has been that clubs who enforce a strict dress code don't have the same kind of problems that clubs who don't have.

A member of the audience asked what would be the effect of closing the club earlier. Sgt. Thomas said he personally would like the clubs to stay open later so that, by 4 or 5 a.m., their patrons would be tuckered out.

A member of the audience stated that there should be a concerted effort between the club and OPD to let people know where to go when they have blocked off streets. She has gotten stuck and unable to get home because the police are unwilling to talk with people and direct them.

There were eleven members of the community who appeared at the hearing.

A resident of the Sierra, played a video that he shot from the Sierra showing dangerous driving on the Embarcadero. The sound track was filled with loud car noise. Several residents confirmed they had experienced all of the problems noted by the police. Most expressed hope a compromise could be reached and that the parties could work together.

Ed Dillard, President of the Oakland Black Board of Trade and Commerce, spoke in support of Mingles, citing the efforts they have made to resolve the problems and their contributions to the community in the areas of employment opportunities and their charitable donations.

One speaker did not live in the area, but said she had walked through it on Saturday nights and never seen any illegal activity. She was concerned because she had OPD friends who told her they were supposed to shut down African American clubs.

In regard to the question of what was done since the agreement reached at Council Member Nadel's office, Mr. Holland stated that Mr. Ivey had done everything he could think of and that some of the problems they were hearing for the first time tonight. Mr. Holland does not think there is a master plan to integrate the housing with the Jack London Square clubs and businesses.

John Ivey, manager of Mingles expressed that the closure of the parking lots was a major problem and that the Port had been unresponsive to his attempts to work with them to re-open the lots. Regarding the issue of dress code, Mr. Ivey believes it is not the dress code, it's the attitude, and he controls that when they come to his establishment. He does not believe that all of the loiterers are coming there for Mingles.

Brandon Ivey, General Manager of the club reiterated the importance of parking to the resolution of these problems, since their security staff can't control patrons four blocks away. They are talking with other clubs to get a shuttle together to shuttle patrons from the clubs to their cars. But that is a long term solution. He mentioned that in Berkeley, they have resident parking passes for certain areas that have this kind of problem.

In response to a resident's question why people aren't cited and arrested, Officer Ward responded that for every person who thinks they should cite loiterers, there is another person who thinks that no one should be arrested for loitering. They cite and tow one to two hundred cars a weekend for sideshow activity, they do prostitution stings and DUI checkpoints. But OPD has responsibility for the entire City, and any given night there may be only 60 officers on the street, so they can't all be a Jack London Square.

The Hearing Officer invited all parties to submit creative solutions that could create the compromise that several people have talked about. The Hearing Officer stipulated that Mingles is not the sole cause of the problems at Jack London Square and that it is a complex problem with no simple answers.

The hearing lasted approximately three hours. The names of individual speakers and greater detail regarding their testimony is Attachment A.

AFTER THE HEARING

February 2, 2006 meeting

Because there appeared to be a consensus at the hearing that a compromise would be the best result, the Hearing Officer met twice with Mingles after the hearing. On February 2, 2006, John Ivey, George Holland, Sergeant Thomas, Brandon Ivey, and the Hearing Officer met at City Hall. John Ivey proposed something that he said had been very effective a year and a half ago: Between 1:00 and 2:00 a.m., a squad car was parked outside the club with a spotlight and its lights flashing, and another car was driving around. Sgt. Thomas explained that the units were not operating the same as they had been at that time and that some had been disbanded. It was discussed that there are currently two to three police cars around Mingles, but that it is less effective, perhaps because the crowds are much larger.

Sgt. Thomas expressed his disappointment and concern that Mingles security guards were uncooperative regarding a January 19, 2006 shooting of two Mingles patrons that occurred at

Webster and Embaradero after one of the men had left Mingles and the other was driving by Mingles. A security guard who witnessed the shootings refused to give his name or a written statement. John Ivey said that was totally unacceptable and said he would make sure it never happened again. Sgt. Thomas also questioned whether Mingles was using guards with Oakland guard cards, as required by the conditions of the cabaret permit. One of Mingles guards had been arrested and had felony warrants, which would make it unlikely he had an Oakland guard card. Mr. Ivey had been unaware of that condition but said he would make sure it was done in the future.

Mr. Ivey said he maintains 10 to 15 guards on Fridays and Saturdays, 2 to 3 in back, 1 who does ID checks, 1 female and 1 at the door. Sgt. Thomas suggested 2 to 3 guards were needed from 10 p.m. to closure to strictly walk Webster and the alley, where most of the hanging out goes on, to prevent the crowds from accumulating. Mr. Ivey agreed to do this.

Another suggestion was that 2nd Street be lighted between Webster and Franklin. The question of Zazoo's blocking traffic from turning onto Embarcadero was left open, as the traffic that proceeds up Oak when Embarcadero is blocked causes problems for the residents of the area around Zazoo's.

The issues of dress code and parking were at an impasse. Mr. Ivey and Mr. Holland continue to be adamant that jeans, t-shirts, and tennis shoes are standard dress for their patrons, who will just go elsewhere if they have to change the dress code. Brandon Ivey didn't see the implementation of the shuttle idea as something that could occur in less than a year, and there was no progress in locating other nearby parking.

March 13, 2006 meeting

Sgt. Thomas reported to the Hearing Officer that there had been little if any change in the activity and nuisance effects of the crowds drawn to Mingles. A meeting was called for March 13, 2006, and Tim, the head of Mingles security attended in addition to those who had participated in the February meeting. Sgt. Thomas said that the traffic control had been more proactive but that security was not walking the block or breaking up the crowds. Tim stated that they tried to assign security to that area, but admitted that they had not hired additional staff for that purpose and so they really didn't have enough security staff to handle that area. Mingles was concerned that Simones was running events on Tuesdays through Saturdays and letting their crowd out on 2nd Street and that Simones security was not helping with the crowds. The events they were having were hip hop release parties.

Sgt. Thomas said that two additional dedicated security guards were needed. The option of a manned patrol car was discussed but Mr. Ivey asked to have a chance to try the dedicated patrols since the cost of the patrol car with two officers was estimated at \$600 per night. Mr. Ivey continued to resist any implementation of a dress code. The Hearing Officer provided Mr. Ivey with a copy of the conditions that are currently the standard conditions for cabarets obtaining permits and explained that these conditions were also being added to existing cabaret permits, as cabarets came to the City's attention.

Post-March 13, 2006 events

According to an Oakland Tribune report, on March 17, 2006, early in the morning a man was shot. At the hospital the victim told OPD he had been shot while leaving Mingles. Mingles security staff said the shooting occurred several blocks away. John Ivey said the police found no evidence to support the victim's story. In the article John Ivey said he was implementing a new dress code. "It starts tonight, a new dress code. We'll be more conscientious. . . baggy jeans, T-shirts, that's gonna be out. I'm trying my best."

The police report for that shooting also contains a separate incident in which a woman reported to OPD that on March 17, 2006 at approximately 1:30 a.m. she and her fiancé were leaving Mingles when they heard two gunshots in front of the club. They dropped to the ground, then ran behind her car. A few seconds later a car drove by and fired 5 shots into her car. The woman and her fiancé were not hurt but she reported that someone was shot in the first gunshots and that a couple of Mingles security guards were in front of the club when it happened.

On April 17, 2006, at approximately 1:40 a.m. an eighteen year old man was shot and killed. The friend who drove him to the hospital told police that they had been sitting in a car outside of Mingles Nightclub in the 200 block of Webster when a fight erupted among a group of male blacks. They heard gunshots and he told his friend to get down, but when he looked over he saw that his friend was bleeding.

As a result of the April 17 homicide, the Hearing Officer received several emails requesting that Mingles hearing be re-opened. Additionally, the ABAT unit of OPD requested a hearing on the basis of the April 17 incident and ten other police reports that spanned August 2004 through January 2006. A hearing was scheduled for May 15, 2006

SECOND HEARING – MAY 15, 2006

Forty-seven people signed the sign-in sheets at the hearing held at 5:30 p.m. in Hearing Room 2 at City Hall, and there were likely considerably more than that in attendance as it was a standing-room-only crowd. Three residents spoke, reiterating the problems of Sunday morning trash, public urination, insults and menacing gestures, patrons seen drinking between leaving their vehicles and entering the club, and being awakened between 2:00 and 3:00 a.m when patrons are leaving the club.

Rhonda Hirata, Director of Marketing and Communications for Jack London Square, testified that they are closing their parking lots on the south side of Embarcadero at 10:00 p.m. due to the increased costs of maintenance, the costs of replacing broken gates, and the security problems they experienced when their lots were open later. She requested that the City consider parking availability when issuing cabaret licenses in the Jack London district because parking is at a premium due to the amount of new housing, and this has already placed an undue burden of noise and traffic on the residential neighborhoods.

Joyce Washington, Manager of Commercial Real Estate for the Port of Oakland testified that, because of problem activities that appear correlated with Mingles closing time, they have had to shut down a 500-stall parking lot and they have trouble hiring employees to work at night. She asked the City to take this issue seriously because Jack London Square generates \$29 million in

revenue per year, all subject to sales tax, and the port generates \$9 million for Jack London Square.

Sgt. Kyle Thomas, of the Oakland Police Department, testified that the primary problem is the large crowd that is attracted to Mingles, does not actually patronize Mingles, but conducts illegal and nuisance activity while the cabaret is operating. When the cabaret patrons exit, this crowd mixes with them, and the combined crowds create traffic problems, conducting sideshows and other dangerous driving. Sargent Thomas praised Mingles security, and said that they tried to disperse the crowd, but that the result was to only push them across the street, closer to the residential neighborhood. He indicated that the problem, at this point, was probably beyond the control of Mingles security and required dedicated OPD resources. He sends four to six officers to the Mingles area every Friday and Saturday. However, he did not feel it was fair for the citizens of Oakland to fund excessive OPD security of private venues.

Twenty-three people spoke either in support of Mingles or in favor of continuing to work to find solutions other than revocation of Mingles' cabaret permit. Timothy Wiley, manager of security for Mingles, testified that the security staff goes beyond the call of duty to ensure the safety of their patrons and that they also assist the City by providing traffic control. Mr. Wiley believes that revoking Mingles' cabaret permit would create even greater problems, as the crowds would still come to the area, it will put youth and their problems back on the street, and the traffic problems will continue, but there will be no more Mingles security to assist. Mr. Wiley stated that the club was willing to do even more to support the community, extending their staff and services as far as necessary. He suggested residents call the police and describe the people who are conducting illegal activity, even if it meant barring them from the club, as that would remove the problem makers from the community. He believes that the City needs to staff OPD correctly, and suggested that a police officer close to Mingles would prevent the violence that has occurred.

Brandon Ivey, manager of Mingles, testified that they have been trying to work with the Port to secure parking near the club, which would prevent the dispersal of patrons into the neighborhoods, where they have been forced to find parking. However, the Port has been unwilling to consider their ideas, even when they offered to staff the parking lots with their own security staff. He understands the concerns of the residents, is willing to do more to address the problems, and feels they should at least be given the chance to implement their proposed solutions.

Community members who spoke on behalf of Mingles cited the opportunities and support that Mingles, and John Ivey in particular, has provided them in employment, personal growth and development of musical talents. Community members testified to Mingles' safe, comfortable and friendly entertainment environment and to the relaxation and friendship they provide to people whose lives are hard.

Several community members discussed their belief that eliminating cabaret activity at Mingles would solve none of the problems; that JLS is a gathering place and would continue to be one, and that the problems could actually increase if Mingles closed. They cited the vandalization of Oakland swimming pools that occurred upon their closure, the sideshows that started after many publicly sponsored youth activities were withdrawn, and the increase in the problems at Mingles when other clubs did close. They suggested that there are other ways of handling the nuisance problems.

Several community members expressed their concern that more opportunities, not less, were needed for youth programs, for “partying” and for release. Several expressed their belief that the problems being discussed were the responsibility of OPD, not the responsibility of the nightclubs, and certainly not the responsibility of one single nightclub.

The basis on which OPD requested the hearing included the police reports of the shootings they believed were associated with Mingles. The police did not discuss these reports at the hearing because they had not been provided to Mingles counsel. However, one of the shooting victims spoke in support of Mingles, saying that he had not been at the club before he was shot but went there for protection after the shooting and that Mingles had saved his life.

The hearing lasted over two hours. The names of individual speakers and greater detail regarding their testimony is attached as Appendix B.

In addition to the testimony, prior to the hearing, the Hearing Officer received nine emails from community members who did not speak at the hearing. Eight were from JLS area residents and one was from a JLS district business owner. All discussed their experience with noise, litter, and violence that they believed was associated with Mingles. Additionally, both ABAT and two residents provided the Hearing Officer with a copy of a flyer, distributed by Mingles, offering free drinks to those who would come to the hearing. Not only is this an ethically questionable tactic, it is, according to ABAT staff, a violation of ABC rules and of Mingles ABC permit.

AFTER THE MAY 15, 2006 HEARING

Following the hearing, the Hearing Officer received an email from a resident who had spoken at the hearing. In the email, the resident stated, “On my way out a woman said to me, ‘You better fuc*ing leave’ in a pointedly threatening manner.” Two residents who had not attended the hearing submitted emails expressing their concern regarding the negative impact of Mingles on the neighborhood.

On June 22, 2006, the Hearing Officer was invited to a meeting held by Sandra Sanders-West and Monique Tsang, Neighborhood Services Coordinators for the area. The purpose of the meeting was to organize a Neighborhood Crime Prevention Council in the JLS area. Several of those attending the meeting explained that they had not attended the May hearing because of the intimidation of residents that had occurred in the hallways at the January hearing. Their problems with the Mingles customers were the same exiting noise and littering problems previously expressed. They thought that some of the problems with the hangers-on would be resolved if Mingles admitted 18-21 year olds (but used wristbands or some other distinguishing method for alcohol service). OPD Sgt. Warren Young, who also attended the meeting, said that he had seen no recent change in the dress of Mingles patrons.

An article, “Meet Downtown Oakland”, in the June 28 – July 4, 2006 East Bay Express featured John Ivey and outlined the tension that has developed as both downtown housing and entertainment have increased. The article stated, “A few days after the hearing, however, Ivey announces the end of the hyphy (hip hop) era at Mingles.” The article claimed that he bought a new sound system, painted the women’s bathroom, hired two female bartenders, and hired a new

DJ from South San Francisco, hoping to draw a San Francisco crowd and displace some of the Richmond clientele.

On June 7, the Hearing Officer received an email from a resident who had emailed in favor of revocation of the permit. The June 7 email stated, “the last few weeks have definitely been quieter than average. . .I’m happy to see any improvement!” By June 22 at the NCPC organizing meeting, however, the same resident said that things had returned to normal.

DISCUSSION

Issues Beyond the Scope of the Hearing

At both the February and the May hearings, but especially at the May hearing, community members raised complex, systemic issues. Some of the serious and deep problems discussed were; 1) the poverty and lack of opportunity that are the root causes of crime and violence, 2) methods by which cities determine priorities and funding, 3) the problems of transitioning from a strictly commercial area to an area of mixed residential and commercial use, 4) public vs. private responsibility, and 5) the effect of lack of options for youth. All of these issues are pertinent to the situation on which the request for hearing was based.

Unfortunately, while this forum may provide for the raising and discussion of these issues, it is not the venue that can provide many answers. All of these issues involve long-range solutions and the commitment of elected officials, governmental departments, private enterprises, and all of the citizenry. The Hearing Officer can, however, bring these concerns and the ideas proposed to the attention of the City Council. It is clear, from these hearings, that a master plan is needed, or at the very least, more guidance from City Council, regarding the balance of residential and commercial activities in areas that are changing rapidly, such as Jack London Square.¹

Cabaret Permit Issues

The Hearings also raised very concrete problems that are within the purview of the City Administrator’s authority in issuing permits and conditions. OMC Title 5 regulates a number of business types that have been determined to concern the health, safety, and/or general welfare of the public. Chapter 5.02 specifically regulates the permitting of cabarets, and section 5.12.020 mandates that, in granting or denying such permit, the City Administrator “give particular consideration to the peace and order and moral welfare of the public.”

This concern is reiterated regarding the operation of cabarets. Pursuant to section 5.12.030, “It is unlawful for any person operating a cabaret under the provisions of Section 5.12.020, or any cabaret whatsoever, in the city, or any agent, employee or representative of such person to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, . . .” These provisions extend the responsibility of cabaret owners beyond their doors and into the public arena. To impress upon cabaret owners their responsibility, the standard Conditions of Approval for all Oakland cabaret permits, including

¹ The City of San Francisco has established a seven-member Entertainment Commission to provide such guidance, as well as handle the ongoing issues around entertainment venues. Among their goals are the development of a vibrant late-night entertainment industry and responsible conduct and operation of such establishments. The Commission is funded by permitting fees.

Mingles, state that the permit may be suspended or revoked if the operation of the cabaret creates a public nuisance.

The recurring themes of the Mingles hearings were:

1. Noise of exiting patrons and the crowds that have gathered to associate with them
2. Litter
3. Public urination
4. Illegal activity of patrons going to and from the club
5. Noise of vehicles
6. Dangerous driving of vehicles
7. Illegal activity of non-patrons congregating around the club
8. Vandalism of property
9. Violence

Possible Solutions

Parking

Mingles' owner and staff admit that their patrons have been forced to park in the residential areas due to the Port's closure of parking lots that had previously been available to them. The first four problems listed above would not be apparent to the residents if the patrons were not parking in their neighborhoods. The Port representative at the hearing expressed that they believe there is a correlation between the parking lot problems and Mingles patrons. They have been unwilling to consider re-opening the lots, even if Mingles provides the security. The City does not control these lots and cannot require the Port to cooperate with Mingles.

However, because appropriate parking could resolve half of the issues raised by the community, it is incumbent upon Mingles to implement a parking solution that is under their control and out of the neighborhoods. The idea of shuttling patrons to and from the club, proposed by at the first hearing, was a good one. However, in the discussions between the first and second hearings, Mingles' manager dismissed it as not being a short-term solution. Perhaps there are private parking lots which Mingles could rent and staff. There may be other ideas for parking. But it is Mingles responsibility to deal with this issue, and it should be dealt with in weeks or months, not years.

Litter Control

Prior to effecting a parking solution, litter in the neighborhoods will continue to be a problem. At the hearing Cherie Ivey, offered the services of the Fruitvale Elementary School children for litter pickup. Another suggested additional litter bins. After the hearing, the City Administrator suggested changing the garbage pickup and street sweeping day for the area. Mingles security manager has expressed willingness to do take on additional tasks, and they could extend the area in which they perform litter clean-up. All of these ideas can and should be implemented.

Dedicated Police Officers and Patrol Car

All parties seem to agree that the assignment of officers and a patrol car specifically to the Mingles area could address several of the issues. Citations and/or arrests for illegal activity would be a priority, and, depending on the severity, all nine issues listed above may involve

illegal activity. Additionally, as Mr. Wiley testified at the hearing, the presence of OPD alone could reduce the violence that has occurred during cabaret hours.

At the hearing Dexter Vizinou suggested San Francisco's "10B program" as a model for improving these kinds of problems at nightclubs. The 10B program provides for private parties to utilize San Francisco police officers for law enforcement purposes. The Hearing Officer spoke with SFPD Sgt. Carrington, who supervises the program. He explained that the service is available to anyone, but that nightclubs frequently utilize it. They utilize overtime officers, who work only outside, not in, the clubs. They typically deal with screeching cars, breaking up exiting problems, and gatherings of people that are just hanging out because the club is there, problems identical to those that are the subject of this hearing. The club pays for the service at the overtime rate plus an administrative fee and other hard costs. They have had contracts with two clubs for fifteen years.

The question is who should pay for the policing. Peace, order and the moral welfare of the public are a basis for denying a cabaret permit under Oakland's ordinance. This concern and the owner's responsibility for maintaining it is reiterated in the standard conditions attached to cabaret permits. In 'attractive nuisance doctrine,' the owners of properties are responsible for the nuisances that occur because they are attracted to that property. In rental properties that responsibility is passed on to the tenant through standard lease clauses. Mr. Ivey's lease requires his nightclub to be in compliance with "all applicable laws, rules, ordinances and regulations" at all times. San Francisco's model also places the burden on owners for controlling activity outside as well as inside the club. Finally, as Sgt. Thomas pointed out, the cost of providing Oakland police services to deal with chronic problems created by private venues should not be borne by the citizens of Oakland.

Hours of Operation

At the hearings, both later and earlier hours of closing were proposed. Either option would provide the advantages of separating Mingles patrons from those of other clubs and reducing the mob effects that occur when all clubs exit simultaneously. However, OPD staff has conveyed to the Hearing Officer that, under the current staffing plan, there would not be adequate staff to handle later closing times, and earlier closing times would definitely have a negative financial effect on Mingles.

Dress Code and Music Format

These are the items that Mingles has been most reluctant to change. The Hearing Officer acknowledges that there is nothing inherently wrong with any form of dress or music. However, the experience of OPD has been that the most problems occur around clubs that have no dress code and clubs that have a hip hop entertainment format. Mr. Ivey claims to have implemented a dress code and changed the music format. He is to be complemented on his efforts to displace patrons that he apparently believes are detrimental to his business. It remains to be seen how effective the changes are and how long it takes for them to have a positive effect on the extended area.

DECISION

Credible testimony and evidence was presented that the residents of the Jack London Square area are experiencing significant nuisance effects from both the patrons of Mingles and those who are

attracted to but do not patronize Mingles. Credible evidence was presented that excessive Oakland Police resources have been committed to maintain order in the area of Mingles, particularly when the clubs' patrons are exiting.

Credible evidence was also presented that Mingles security staff is, with the exception of cooperation in investigations, doing most of what private security can do to control both their patrons and those attracted to their venue. That John Ivey is widely loved and admired by his customers and many other members of the community was evident.

The Hearing Officer agrees that revocation of the cabaret permit would not only be a financial hardship to the club, but also may only push the problem elsewhere in Oakland by eliminating a popular venue for young people. However, the current situation is a drain on police resources and therefore a financial hardship to the City. Therefore, the following conditions shall be immediately imposed on Mingles' cabaret permit.

1. Within two weeks of this decision, Mingles shall meet with the Administrative Hearing Officer to establish a plan and a time frame for providing parking that is under the control of Mingles and does not negatively impact the nearby residential neighborhoods.
2. Within two weeks of this decision, Mingles shall meet with the Administrative Hearing Officer to establish litter control measures and areas for which Mingles will assume responsibility. It is Mingles responsibility to contact Cherie Ivey if they wish to involve her in this plan
3. Within two weeks of this decision, Mingles shall meet with the Administrative Hearing Officer and the Oakland Police Department to discuss the parameters of contracting for dedicated OPD resources for law enforcement purposes on Friday and Saturday nights.

These provisions attempt to balance the rights of citizens to peaceful enjoyment of their residences and safety of their streets, the rights of businesses, the need for the City to provide police resources City-wide, and the desire of the City to encourage business development and healthy entertainment activities. Changes in hours, dress code, and music format shall not be imposed at this time. One month after the implementation of dedicated OPD resources, the Administrative Hearing Officer will solicit the input of OPD and community and residents' organizations for objective examples of proof of whether there has been a reduction of the eight problems at which this requirement is directed. The Hearing Officer will also ask the Oakland Police Department to provide reports of what actions have been taken by the assigned officers. If it appears that additional changes or conditions are necessary, they may be imposed at that time. Mingles may also request release from responsibility for litter control over an extended area and/or for utilization of dedicated police resources at any time. The basis for release will be a showing that either these conditions are no longer needed or the responsibility for them has shifted.

The City Administrator's Office will look into the possibility of changing the garbage pickup and street sweeping day for the area around Mingles. The City Administrator's Office will also look into the placement of additional City trash receptacles in the area.

The above conditions are effective immediately and shall be incorporated into Mingles Cabaret Permit Conditions of Approval. Additionally, the Conditions of Approval that have become standard on newly issued cabaret permits shall be incorporated into Mingles Cabaret Permit

Conditions of Approval. Mingles shall meet with the Hearing Officer no later two weeks from the date of this decision to review and sign the Conditions of Approval.

BARBARA B. KILLEY, HEARING OFFICER

DATE

Enclosures:

Summary of Testimony From January Hearing
Summary of Testimony From May Hearing
Proof of Service

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Community members who requested copy at hearing