



CITY ATTORNEY DENNIS HERRERA

NEWS RELEASE

FOR IMMEDIATE RELEASE
WEDNESDAY, AUGUST 19, 2009

CONTACT: MATT DORSEY
(415) 554-4662

'Heaven' Ordered to Close by S.F. Superior Court

Notorious North Beach Strip Club, Alleged Prostitution Venue is Ordered to Immediately Shut Down

SAN FRANCISCO (Aug. 19, 2009) -- Superior Court Judge Charlotte Walter Woolard this morning granted City Attorney Dennis Herrera's motion to shutter a notorious North Beach strip club that has operated for more than a year in defiance of repeated notices of violation, cease and desist orders, and police citations for prostitution. In issuing the preliminary injunction to immediately close the illicit enterprise, Judge Woolard found that Herrera's motion established sufficient probability that the City would prevail on the merits of its cross-complaint against Heaven Mini Theatre at 1054 Kearny Street. The court additionally held that Heaven failed to demonstrate that it would suffer irreparable harm if the injunction were granted.

"Today's ruling should send a message to other would-be operators of illegal businesses that even 'Heaven' is subject to temporal laws here in San Francisco," said Herrera. "I'm grateful to Judge Woolard for her thorough analysis of the facts, and to the Police and Planning Departments for their efforts to enforce the law and help us build our case. It's regrettable that this business chose to expend so much effort to flout the law rather than to follow it, and that a preliminary injunction was necessary to shut it down."

Herrera's successful motion today represented a procedural counter-attack in a case that improbably originated with Heaven's lawsuit against the City for allegedly violating the illicit venue's constitutional rights by attempting to enforce state and local laws. Heaven's operators stubbornly persisted in their lawless enterprise despite being lawfully served with a Cease and Desist Order by the San Francisco Planning Department, despite reports of prostitution from the Police Department, and despite repeated warnings by the City Attorney's Office. Heaven's constitutional claims remain to be adjudicated.

The case is *1054 Kearny, LLC, DBA Heaven Mini Theatre v. City and County of San Francisco*, San Francisco Superior Court No. CGC 08 479-624, filed Sept. 9, 2008. Major pleadings from the case are available on the City Attorney's Web site at <http://www.sfcityattorney.org>.

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**ENDORSED
FILED**
San Francisco County Superior Court
AUG 19 2009
GORDON PARK-LI, Clerk
BY: JHULLEROCUE
Deputy Clerk

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 ALEX G. TSE, State Bar #152348
Chief Attorney
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FRANK BRASS, State Bar #160022
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7
8 Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO
9 Attorneys For Cross-Complainants
10 CITY AND COUNTY OF SAN FRANCISCO AND
PEOPLE OF THE STATE OF CALIFORNIA

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

13 1054 KEARNY, LLC, DBA HEAVEN
MINI THEATRE,
14
15 Plaintiff,

16 vs.

17 CITY AND COUNTY OF SAN
FRANCISCO and DOES 1 to 25,
18
19 Defendants.

20 CITY AND COUNTY OF SAN
FRANCISCO, a Municipal Corporation,
and the PEOPLE OF THE STATE OF
CALIFORNIA, by and through DENNIS
21 J. HERRERA, City Attorney for the CITY
AND COUNTY OF SAN FRANCISCO,

22 Cross-Complainants,

23 vs.

24 ALYCE D K CRAFT TRUST; 1054
KEARNY, LLC, DBA HEAVEN MINI
25 THEATRE; PETER LAMBERTSON; and
DOES 1 through 100,
26

27 Cross-Defendants.
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Case No. CGC 08 479-624

[Proposed]
PRELIMINARY INJUNCTION

Hearing Date: August 19, 2009
Hearing Judge: Charlotte Walter Woolard
Time: 9:30 a.m.
Place: Dept. 302

Date Action Filed: September 9, 2008
Trial Date: Not Yet Set

1 Pursuant to this court's findings, after submission by the parties of all their relevant evidence
2 and argument, this Preliminary Injunction (the "Order" or "Injunction") was presented to the above
3 captioned court, the Honorable Charlotte Walter Woolard, judge presiding. Cross-Complainants,
4 the City and County of San Francisco, a municipal corporation, and the People of the State of
5 California, ("Cross-Complainant" or the "City") were represented by their attorney, DENNIS J.
6 HERRERA, City Attorney, appearing through FRANK BRASS, Deputy City Attorney. Cross-
7 Defendants, ALYCE D K CRAFT TRUST; 1054 KEARNY, LLC, DBA HEAVEN MINI
8 THEATRE; and PETER LAMBERTSON were represented by their attorney, GREGORY
9 WALSTON, OF WALSTON & CROSS.

10 Whenever the term "Cross-Defendants" is used in this Order, the term includes Cross-
11 Defendants ALYCE D K CRAFT TRUST; 1054 KEARNY, LLC, DBA HEAVEN MINI
12 THEATRE; and PETER LAMBERTSON, as well as their agents, servants, employees,
13 representatives, assigns, tenants, and lessees, and all persons acting in concert or participating with
14 or on behalf of Cross-Defendants, with actual or constructive notice of this Order.

15 This Court hereby orders, and good cause appearing therefore,

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

17 **A. JURISDICTION.** The Court issues this Order pursuant to its authority under Code of
18 Civil Procedure Section 731, Civil Code Section 3491 and Business and Professions Code 17203.
19 The Court expressly retains the jurisdiction to modify this Order as the ends of justice may require.
20 The Court may hear and decide issues regarding the scope and effect of the injunctive provisions,
21 herein. Any party subject to this Order may apply to the Court at any time, after making a
22 reasonable effort to meet and confer with the other parties, for further orders and directions as may
23 be necessary or appropriate for the construction, application or carrying out of the injunctive
24 provisions, herein. The Court can modify any of the injunctive provisions hereof and take such
25 further action as may be necessary or appropriate to carry into effect the injunctive provisions
26 hereof, and for the punishment of violations of same, if any.

- 1 1. CROSS-DEFENDANTS shall "immediately cease and desist all operations and activity
- 2 of the illegal Adult Entertainment Use" as described in Exhibit B.
- 3 2. CROSS-DEFENDANTS and their employees shall not serve solicit or offer any act of
- 4 prostitution, sex in exchange for monetary compensation, to any patron;
- 5 3. CROSS-DEFENDANTS shall pay full cost recovery for any police services reasonably
- 6 necessary, as determined by the Court in a hearing to enforce this Order, to respond to calls
- 7 for service at the Property;
- 8 4. CROSS-DEFENDANTS shall allow inspection of the Property upon demand by City
- 9 inspectors or police officers who believe they have a reasonable suspicion that the terms of
- 10 this Order or of some provision of state or local law are being violated at the Property; and
- 11 5. CROSS-DEFENDANTS shall otherwise comply with all requirements of local and state
- 12 codes governing their operation of the business and maintenance of the Property.

13 **C. ENFORCEMENT.**

- 14 1. Should CROSS-DEFENDANTS violate the terms of this Order, the San Francisco
- 15 Police Department may enter the above described Property to abate the nuisance and require
- 16 or effect the physical closure of the business known as "Heaven Mini Theater", a.k.a. "Club
- 17 Heaven", located on the second floor at 1054 Kearny, a.k.a. 483 Broadway, San Francisco.
- 18 2. In the event that CROSS-DEFENDANTS are found by the Court to have violated any of
- 19 the terms of this Order, CROSS-COMPLAINANTS shall recover their attorney fees and
- 20 costs incurred in enforcing this Order, in addition to any other remedies to which CROSS-
- 21 COMPLAINANTS are entitled as a matter of law, as determined by the Court after notice
- 22 and hearing. CROSS-DEFENDANTS shall also be liable for civil penalties of up to
- 23 \$6000.00 for each violation of this Order, pursuant to Business and Professions Code
- 24 Section 17207, as determined by the Court after notice and hearing. Any fines or penalties
- 25 specified in this paragraph shall be in addition to any other relief or sanctions that the Court
- 26 may order as a matter of law. The Court expressly reserves jurisdiction to take such further
- 27 action as may be necessary or appropriate to carry into effect the provisions of this Order.
- 28

1 3. Violation of this Order also constitutes contempt of Court. The terms of this Order may
2 be enforced through a contempt proceeding, a motion to enforce, or any other proceeding
3 recognized by the Court for enforcement of an Injunction.

4 **D. NO WAIVER OF RIGHT TO ENFORCE.** The failure of Cross-Complainants to enforce
5 any provision of this Preliminary Injunction shall in no way be deemed a waiver of such provision
6 or in any way affect the validity of either the Order. The failure of Cross-Complainants to enforce
7 any such provision shall not preclude Cross-Complainants from later enforcing the same or any
8 other provision of the Injunction. No oral advice, guidance, suggestion or comments by Cross-
9 Complainants' employees or officials regarding matters covered in the Injunction shall be construed
10 to relieve Cross-Defendants of their obligations.

11 So, ordered.

12 Dated: 08-19-09

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15 By: 
16 Honorable Judge Charlotte Walter Woolard
17 Judge of the Superior Court
18 City and County of San Francisco
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INDEX TO EXHIBITS

Exhibit **Description**

- A Property Description for 1054 Kearny Street, aka 483 Broadway Street
- B Planning Department Cease and Desist Order dated October 30, 2008

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EXHIBIT A

Property Address:

1054 Kearny Street, aka 483 Broadway Street

All that certain real property situated in the City and County of San Francisco, State of California, described as follows:

COMMENCING at the point of intersection of the southerly line of Broadway and the Easterly line of Kearny Street; running thence southerly and along said line of Kearny Street 46 feet; thence at a right angle Easterly 68 feet 9 inches; thence at a right angle Northerly 46 feet to the Southerly line of Broadway; thence at a right angle Westerly along said line of Broadway 68 feet 9 inches to the point of commencement. BEING part of 50 Vara Lot 38.

Commonly known as 483, 487 and 493 Broadway Street, San Francisco, County of San Francisco, State of California, being Block Number 163, Lot 22 of the Property Assessor's Rolls.



SAN FRANCISCO PLANNING DEPARTMENT

CEASE AND DESIST ORDER

October 30, 2008

TO: CRAFT ALYCE D K TRUST
% ALYCE D K CRAFT
P O BOX 3598
INCLINE VILLA, NV 89450

TO: Heaven Mini Theater
1054 Kearny Street
San Francisco, CA 94133

TO: Peter Lambertson
483 Broadway
San Francisco, CA 94133

RE: Violation of Planning Code Sections 714.47 (Unauthorized Adult Entertainment Business)
Site Address: 483 Broadway (A.K.A 1054 Kearny Street "Heaven")
Assessor's Block/Lot: 0163/022
Zoning District: Broadway Neighborhood Commercial District
Complaint Number: 9494

Attention Business Operator and Property Owners:

1. On October 15, 2008, the Board of Appeals upheld the Notice of Violation issued by the Zoning Administrator on April 14, 2008.
2. As stated in the April 14, 2008 Violation Notice, the establishment known as Heaven Mini Theater, located on the 2nd floor at 483 Broadway, **is required to cease and desist all business operations immediately.**

The failure to immediately cease and desist all operations and activity of the illegal Adult Entertainment Use known as Heaven Mini Theater will result in the immediate assessment of penalty fees of no less than \$200.00 a day and the request for assistance by the Office of the City Attorney on to maintain an action for injunction or to restrain or abatement to cause correction or removal of this violation and for the assessment and recovery of a civil penalty for such violation as well as any attorney fees or costs, including but not limited to expert witness fees, incurred in maintaining such an action as authorized by Planning Code Section 176(b)(2).

1650 Miss
Suite 400
San Franci
CA 94103

Reception:
415.558.

Fax:
415.558.

Planning
Informatio
415.558.

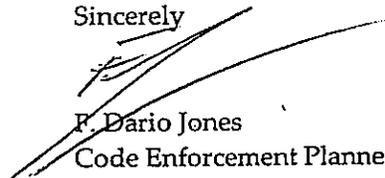
October 30 2008
Cease and Desist Order
Heaven Mini Theater
483 Broadway

In addition, other enforcement methods and penalties authorized by the Planning Code include:

1. Planning Code Section 176(b) (3) authorizes the Zoning Administrator to call upon the District Attorney to institute criminal proceedings for the failure to cease and desist the operation of the illegal Adult Entertainment Use.
2. Planning Code Section 176(b) (4) authorizes the Zoning Administrator to call upon the Chief of Police and authorized agents to assist in the enforcement of the Planning Code.
3. Planning Code Section 176(c) 1 sets forth civil penalties for violations of the provisions of Planning Code, no less than \$200 for each day such violation is committed or permitted to continue. The pending violation would also prevent the approval of any new building permits and other applications that you may wish to pursue in the future.
4. Additionally, Planning Code Section 350(c)(1) of the Planning Code allows the Planning Department to charge time and materials to recover costs of correcting code violations and violations of Planning Commission and Department conditions of approval of use if such costs are not covered by any permit or application fees collected as part of the legalization of such violations.

Should you have any questions, please contact me by phone at (415) 558-6477 or e-mail at:
Frank.Jones@sfgov.org

Sincerely



F. Dario Jones
Code Enforcement Planner

Enclosures:
Notice of Violation, dated April 14, 2008

Cc (w/o enclosures):
Lawrence Badiner- Zoning Administrator-Planning Department
Alex Tse, Deputy City Attorney- Office of the City Attorney
Frank Brass, Deputy City Attorney Office of the City Attorney
Supervisor Aaron Peskin-Board of Supervisors-District
Captain James Dudley- Central Police Station
Officer Fred Crisp #174 - Central Police Station
Brendan Hallinan - Attorney for Appellant- 819 Eddy Street, SF, CA 94109