

**Administrative Appeal Hearing,
City of Oakland**

City of Oakland,

Case No.: 15-071

vs.

Trial Date: February 2, 2016

David Boyd
Patricia Weigt
1001 Panoramic Way
Oakland, California

Order and Fine for
Violation of O.M.C. §§ 17.13, 1.08

The City of Oakland's requested Exhibits A, C, D, J, K, L, M, N, O, & P and Defendant's requested Exhibits 1, 2, 3, 5, 6, 7, 11, 12, & 13 (attached to "Appellant's Hearing Statement") were considered and entered into evidence. These exhibits are included in the hearing file.

Witnesses for the City of Oakland and Defendant were sworn and gave testimony. This testimony was recorded and is available for both the February 2, 2016 and March

16, 2016 hearings on this matter.

Findings of Fact

On November 18, 2014, Hearing Officer Joel Golub held a hearing on David Boyd's and Patricia Weigt's rental use of their hillside residence at 1001 Panoramic Way in Oakland, California for weddings, conferences, and special events. On November 30, 2014, Hearing Officer Golub issued his decision stating: "The overwhelming presentation of credible evidence supports a finding and decision that the appellant failed to comply with OMC 17.13.030 *et seq.* The activities specified in the Notice of Violation existed prior to and after April 15, 2014. Therefore the Notice of Violation is sustained and the appeal is denied." (Exhibit C).

Hearing Officer Golub's decision dated November 30, 2014 was never appealed.

On August 26, 2015, the City of Oakland issued a "30 day notice to abate" which was signed by Greg Minor, Assistant to the City Administrator.

This notice stated, inter alia: "The subject property is declared a public nuisance pursuant to Oakland Municipal Code (OMC) Chapter 1, Section 1.08 *et seq.*"

It goes on to state: "The nuisance activity reported to occur on your property includes, but is not limited, to the use of the subject property for unpermitted group assembly activity, a violation of OMC 17.13.030, located at 1001 Panoramic Way, Oakland, CA..." The notice warns the property owners of "daily penalties of \$500 should you not

act immediately to abate the activity; and Pursuant to the Oakland Master Fee Schedule section B – 11, you are hereby assessed a \$3529.00 Nuisance Case Fee. Please be advised that thirty (30) days from the date of this letter, the City may impose daily penalty assessments of \$1000.00 a day up to \$365,000 a year (pursuant to OMC Chapter 1, section 1.08*et seq.*, unless the nuisance conditions are abated." This document entitled: **30 Day Notice To Abate** states "You have **Fourteen days** in which to implement remedial measures."

Despite Hearing Officer Golub's decision and the City's August 26, 2015 notice to abate, Defendant David Boyd freely admitted, in his testimony, that he continued to advertise the property for weddings, etc. and that he had had numerous weddings since the notice to abate. He testified that he had more events booked for the rest of 2016. (I found this witness to be extremely evasive, particularly when he was asked how much money he had made from the rentals of the property for weddings etc..) What is clear is that Defendant David Boyd charges \$2500-\$5000 per event. In Exhibit M, the defendants admitted 13 events after the November 30, 2014 decision. Mathematically, this indicates that the defendants grossed somewhere between \$32,500-\$65,000 just for these 13 events, admitted to in Exhibit M.

1001 Panoramic Way in Oakland California is within a "hillside residential zone."

Defendants have advertised and rented this hillside residence commercially as banquet hall for weddings, etc. after November 30, 2014, and continue to do so.

Defendants litigated these issues in the previous hearing, before Hearing Officer Golub, on November 18, 2014. His decision was clear, and final because defendants failed to appeal it.

Despite this, the defendants continue to advertise and use their property for the group commercial activity of weddings etc.. The defendants have continued to use the hillside residence for group commercial activity even after the August 26, 2015 **"30 Day Notice to Abate."**

Discussion

The City has assessed a \$500.00 per day penalty and a \$3529.00 nuisance case fee (under the Oakland Master fee schedule). Defendants have shown no good cause why they should not be assessed the \$500 per day penalty and the \$3529 nuisance case fee. The defendants argue that the \$500 per day penalty should only be assessed on those days where they conducted group commercial activity with a maximum allowable fine of \$8529.00. The defendants are making \$2500-\$5000 per day on the unpermitted group commercial activity, grossing somewhere between \$32,500 and \$65,000 just for the 13 events they have admitted.

A \$500 per event penalty would only reduce the profitability of the activity. The \$500 per day civil penalty is designed to abate the nuisance, not just tax it. Consequently, the penalty must be assessed for every calendar day to be an effective means to abate the activity. If it were assessed merely every day the hillside residence is used for an event, it would not cause the abatement of the nuisance.

The assessment of the \$500 per day administrative penalty has been assessed from 30 days after the August 26, 2015 notice to abate. The City's letter of August 26, 2015 is clearly entitled **30 Day Notice to Abate**; consequently, the letter seems to indicate that if the defendants abated the nuisance within 30 days of the notice, they would only have been assessed the \$3529 Nuisance Case Fee. Instead, they refused to abate the nuisance.

Conclusions of Law

The defendants have violated Oakland Municipal Code §§ 17.13 and 1.08. Defendants' property located at 1001 Panoramic Way in Oakland California is in a "hillside residential zone," and is not permitted by the Oakland Municipal Code for **any** commercial activities. OMC §17.13.030. "Banquet halls" are "group assembly commercial activities" as defined by OMC §17.10.380. The weddings, etc. which the defendant David Boyd has been advertising and conducting are prohibited by OMC §17.13.030.

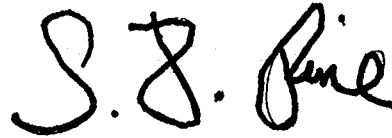
Order

The appeal of defendants is hereby denied. David Boyd and Patricia Weigt, jointly and severally, are assessed and hereby ordered to pay a total fine of \$103,529.00,

**(\$100,000 in daily fines from September 26, 2015 plus \$3529.00 Nuisance Case Fee)
to the City of Oakland.**

Dated: April 13, 2016

By: _____

A handwritten signature in black ink, appearing to read "S. D. Rine". The signature is written in a cursive, flowing style.

S. D. Rine,
City of Oakland Hearing Officer