

**HERMOSA BEACH FIRE DEPT.
BLUE 32**

DR #07-4347 CITATION # H377125

**1332 HERMOSA AVENUE, #A, HERMOSA BEACH CA 90254
DECEMBER 29, 2007 0041 HOURS**

HAZARDOUS CONDITIONS / OVERCROWDING INVESTIGATION REPORT

SUMMARY OF INCIDENT

On December 29, 2007, at 0041 hours, Hermosa Beach Police Officers Sellan, Kansaku, and Fire Investigator D. Powers responded to Blue 32 bar for a Nighttime Life Safety Inspection. From the exterior of the business and upon entering the premises, we observed overcrowding conditions present. A citation was issued for violation of California Fire Code sections 2501.16.3 and 103.4.4, overcrowding and maintaining a hazardous condition. **This citation is the sixth overcrowding citation issued to Blue 32 in twenty-nine months of operation.**

DETAILS

In the course of conducting Nighttime Life Safety Inspections, our attention was drawn to Blue 32, by the long line of patrons waiting to enter the bar and the loud music coming from the establishment.

Prior to entering the business, I identified myself to the security / doorman [REDACTED] KITCHEN and asked for the current occupant load count. Kitchen produced a mechanical counter (clicker) that I observed as reading 126. Kitchen then stated to me, **"126 on the nose, but I'm not controlling the back door."** I advised Kitchen that Officer Sellan and I would be conducting an interior fire prevention inspection and occupant load count.

Prior to entering the bar, I observed the majority of the security staff present on-site standing at the front door conversing with patrons.

INTERIOR EXAMINATION & OCCUPANT LOAD COUNT

Upon entering Blue 32, based on my numerous visits to this bar in the course of my employment with the Hermosa Beach Fire Department and having previously observed the bar at their posted maximum legal occupant load of 126 patrons, I observed what I considered to be occupant overcrowding, creating a hazardous condition and posing a serious menace to the lives of patrons and employees.

Officer Sellan and I conducted the interior occupant load count by using mechanical counters (clickers). We began our count by walking in opposite directions inside the bar and upon completion we met on the exterior of the business.

As we attempted to walk through the bar, I observed hazardous conditions present when patrons blocking aisles and exit pathways stopped our forward movement. Additionally, I observed a large number of patrons using the West and North exit pathways and aisles for dancing, completely stopping our forward movement towards the posted exit doors.

After counting the patrons in the bar, Officer Sellan and I met outside to review our counts. **Officer Sellan provided a count of 157 persons and I counted 153 persons inside the bar. This first count did not include working employees or patrons waiting for and/or inside the restrooms.** At my direction, Officer Sellan immediately conducted a second occupant load count including "all" persons inside the bar, while I remained at the main entrance on Hermosa Avenue.

While Officer Sellan was conducting the second occupant load count, I observed and counted with my counter, fifteen patrons leaving the bar through the Hermosa Avenue exit. **Upon completing the second occupant load count; Officer Sellan advised that he counted 167 occupants total inside the bar.**

Based on occupant load counts obtained by Officer Sellan and myself, we determined Blue 32 to be in violation of their posted maximum occupant load of 126 persons by forty-one patrons (33% over). The California Fire Code does not make a distinction between "classifications" of persons inside the bar. Therefore, the second count of 167 occupants by Officer Sellan is to be considered the true and accurate count at the time of our inspection. Additionally, Doorman Kitchen and Owner [REDACTED] LOWE both admitted during interviews, that **security personnel were not controlling entrance through the rear door.**

Upon completing the occupant load count, I directed Doorman Kitchen to locate the manager / owner on-duty and bring him to my location outside Blue 32, for issuance of an overcrowding citation. Additionally, I ordered Kitchen to immediately bring the occupant load count down to or below, the allowable maximum of 126 occupants.

Approximately twenty minutes after the last occupant load count of 167 persons by Officer Sellan, he and Blue 32 Manager [REDACTED] Hurtado conducted a subsequent count. This last count, after security had denied entry to any further patrons and reduced the number of patrons inside the bar was 113 occupants, 13 patrons under the posted maximum allowable occupant load. At 113 occupants, Officer Sellan related to me that he could walk freely and unimpeded to the posted exit doors.

INTERVIEW (S)

Outside Blue 32, Doorman Kitchen introduced me to the manager on duty, [REDACTED] HURTADO, [REDACTED] CALIFORNIA I.D. [REDACTED] Blue 32 owner [REDACTED] LOWE, DOB [REDACTED] and Blue 32 owner [REDACTED] LOWE, DOB [REDACTED]. Manager Hurtado, the recipient of this citation, verbally provided his identification information when requested to do so.

I advised Hurtado, D. Lowe and M. Lowe, of the hazardous overcrowding conditions present in Blue 32 at the time of our count and advised Hurtado that he would be receiving a citation for failure to abate a hazard and permitting overcrowding, both misdemeanor violations of the California Fire Code.

HURTADO INTERVIEW

Hurtado was very cooperative and provided no defense for the overcrowding conditions. Hurtado made no further statements other than to provide identifying information when I issued the citation.

After interviewing Blue 32 owners D. Lowe and M. Lowe, I issued citation # H377125 to Hurtado.

DAVE AND MIKE LOWE INTERVIEWS

Blue 32 Owners [REDACTED] Lowe and [REDACTED] Lowe were not formally interviewed. However, during the time I was attempting to issue Manager [REDACTED] Hurtado a citation, [REDACTED] Lowe became very confrontational and argumentative regarding the occupant load count we had completed.

[REDACTED] Lowe began by asking for "a chance" and tried to persuade me not to right the citation. I explained to [REDACTED] Lowe that on numerous occasions, we had used great discretion and given his bar "chances" to rectify overcrowding situations without issuing a citation. [REDACTED] Lowe responded, "Just give us another chance, you guys do give us a chance, I think you're very fair."

I then explained to [REDACTED] Lowe when we walked through his bar at 1240 and conducted an occupant load count, they were over the maximum allowable occupant load and all the exit aisles were blocked. [REDACTED] Lowe then stated, "I don't feel it was over, there's times literally, at times it wouldn't even be an issue for me because I know for a fact that it's over." [REDACTED] Lowe continued, "Tonight especially, I don't feel that it's over. **There's plenty of times that you give us a chance, and plenty of times we have been over.**" [REDACTED] Lowe later in conversation stated, "The other thing with the aisles, the guys aren't **doing their jobs** and occasionally I'll see the door guys standing here in the front and I have to tell them to go inside and circulate through the aisles."

I reminded [REDACTED] Lowe of the statement made by his doorman [REDACTED] Kitchen prior to us entering the bar to conduct the occupant counts. Kitchen stated, "126 on the nose, but I'm not controlling the back door." [REDACTED] Lowe responded by saying, " If the guys are telling you 126, it's kind of a ridiculous number, it's going to be 128, it's going to be 124, it's never going to be right on, I would be shocked if that's going to be the answer on that deal."

I explained to [REDACTED] Lowe in our experience conducting occupant load counts in his bar, the doorman at the main entrance stops counting at 126, lets a line form at the main entrance and then patrons are allowed to enter through the rear door without being counted and that was the situation creating continual overcrowding violations in his bar. Additionally, I advised [REDACTED] Lowe that when Officer Sellan and I were out one week prior, we witnessed security personnel letting patrons in the back door without being counted, even after we had advised security personnel that the bar was at the maximum capacity. [REDACTED] Lowe then stated, "I was in Colorado last week. Yeah, that's ridiculous, if that's the case then I need to change the policy on that, **no it probably is the case. I know it happens, I know the door guys take cash, we don't take it on the other side. And, I know for a fact that people will take cash if somebody offers them twenty dollars, some way I don't fault them on that.** So, allot of times I will stand there by the back door making sure nobody comes in the back door."

Immediately after acknowledging that his security personnel were allowing "uncounted patrons" to enter the rear exit in exchange for cash, [REDACTED] Lowe made this contradictory statement, "I really take this seriously and would say if you look at us from the last six months to where we are like now, we turn away so many people literally, I mean, you look at the line over here, we turn everyone away. **When we hit the number, I'm adamant about it, I don't let people bring people in the back door, I don't let people exit out the back door, I don't let them push people out the back door when you guys show-up or any of that stuff.**"

My contact with [REDACTED] Lowe ended after he made this last statement, "I don't want you guys to feel like we're out here to cheat the system, because I really take this stuff seriously. It takes me serious money on this stuff, this is money out of my personal account , because ever since we have been dealing with the 12 o'clock closing time, we're losing 50,000 a month, **all this stuff does is add one more log onto the fire, on that deal, so it's a serious deal to me.**"

I commented to [REDACTED] Lowe that throughout our entire conversation, his primary concern was for loss of money by not being able to stay open late or overcrowding his bar. I then told [REDACTED] Lowe that our primary objective for conducting occupant load inspections was to ensure the safety of his employees and patrons. [REDACTED] Lowe acknowledged that he had never thought of the situation that way.

VIOLATIONS OBSERVED

2001 CALIFORNIA FIRE CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 9
SECTION 2501.16.3
PERMITTING OVERCROWDING

2001 CALIFORNIA FIRE CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 9
SECTION 103.4.4
FAILURE TO ABATE HAZARD

PRIOR VIOLATIONS

Review of Blue 32's fire prevention file maintained at the Hermosa Beach Fire Department, revealed that on five previous occasions, citations were issued for overcrowding and maintaining a hazardous condition.

DATE: 10/20/07
DR#: 07-3590
COUNT: 178 (126 POSTED)-52 PERSONS OVER
ARRESTING
OFFICER: INVESTIGATOR D. POWERS
DEFENDANT: [REDACTED] WEYRICK (MANAGER)
DISPOSITION: CASE PENDING-COURT DATE 01/09/2008

DATE: 06/19/06
DR#: 06-2283
COUNT: 153 (91 POSTED)-62 PERSONS OVER
ARRESTING
OFFICER: FIRE CAPTAIN M. GAROFANO
DEFENDANT: [REDACTED] (OWNER)

DATE: 12/17/05
DR#: 05-4887
COUNT: 169 (126 POSTED)-43 PERSONS OVER
ARRESTING
OFFICER: FIRE CAPTAIN M. GAROFANO
DEFENDANT: [REDACTED] LOWE (OWNER)

DATE: 12/04/05
DR#: 05-4734
COUNT: 227 (126 POSTED)-101 PERSONS OVER
ARRESTING OFFICER: FIRE CAPTAIN M. GAROFANO
DEFENDANT: [REDACTED] LOWE (OWNER)

DATE: 07/03/05
DR#: 05-1004
COUNT: 130 (91 ALLOWED, SIGNS NOT POSTED)-39 PERSONS OVER
ARRESTING OFFICER: FIRE CAPTAIN M. GAROFANO
DEFENDANT: [REDACTED] KLUTKA (OWNER)

ATTACHMENTS

1. Maximum Occupant Load sign – (Copy)
1. Photograph Thumbnail Sheet - (1 each) - # 1-2 (Building exterior for ID purposes)
3-13 (Interior overcrowding conditions)
2. Overcrowding Photos - (3 each)
3. Citation # H377125 - (Copy)

DISPOSITION

This case is being submitted to the Hermosa Beach City Prosecutors' Office for prosecution of the previously stated misdemeanor violations of the 2001 California Fire Code, California Code of Regulations, Title 24, Part 9.

It is further requested that the exact charges are filed by way of complaint against Blue 32 owners [REDACTED] and [REDACTED] Lowe, who were also both present during the overcrowding conditions, but chose to have their Manager [REDACTED] Hurtado receive the citation because they were not "in-charge" at the time of our inspection.

D. POWERS, ID # 185
INVESTIGATOR
HERMOSA BEACH FIRE DEPARTMENT

CC: Hermosa Beach Fire Chief J. Gomez

City of Hermosa Beach. NOTICE TO APPEAR
 Traffic Nontraffic Misdemeanor **H 377125**
 DATE OF VIOLATION: 12/29/07 TIME: 0941 P.M. DAY OF WEEK: SATURDAY CASE NO: 00-4347
 NAME (First, Last, Initial): **MURTA DO**

CITY: STATE: JUVENILE / Phone No:

VEHICLE INFORMATION: **CRUISE**
 YEAR: 1985 MAKE: VV
 VEH. LIC. NO. & STATE: 6C1185 WA
 YR. OF VEH. MAKE MODEL BODY STYLE COLOR
 EVIDENCE OF FINANCIAL RESPONSIBILITY POLICY NUMBER
 REGISTERED OWNER OR LESSEE: SAME AS DRIVER
 ADDRESS: SAME AS DRIVER
 CITY: STATE: ZIP CODE

Correctable Violations (Veh. Code § 40510):
 103.4.4.C.F.C. 19.29.010 HOME CO
 MAINTAINING HAZARDOUS COND
 2.901.16.3.S.F.C.
 OVERCROWDING
 Location of Violation: **BLVD 32, 1332 HERMOSA 72-41**
 Dry Wet Fog Heavy MISTLE TOILET

Violations not committed in my presence, declared on information and belief.
 Declared under penalty of perjury under the laws of the State of California for foregoing in true and correct.
 Executed at (Print): **D. POWERS** Violation location: **185**
 Date: **12 29 07** Arresting of Citing Officer: Serial No: Detain Off:

Date: Name of Arresting Officer, if different from Citing Officer: Serial No: Detain Off:
 WITHOUT ADMITTING GUILT, I AGREE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW:
 X Signature: *[Signature]*

WHEN: ON OR BEFORE THE DATE: **1 13 08** 09:15 AM
 WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.
 WHERE:
 625 Maple Ave., Torrance 90503 (213) 746-9999
 Columbia Street 508 St. Century City Plaza 90039 (213) 746-1999
 Juvenile Traffic Court, Avenue 67, 6700 Ave of C, 1:30 PM at 3224 Torrance Blvd., Torrance, CA 90504 (310) 228-4999
 Other:
 To be notified: You may arrange with the clerk to appear at a night session of the court.



Judicial Council of California Forms **SEE REVERSE**
 Rev. 09-29-06 (Veh. Code §§ 40510(a), 40613(b), 40522, 40600; Pen. Code, § 853.9) TR-130
COURT COPY
 BUSINESS SYSTEMS CORP. (800) 969-9700