

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Administrative Hearings



October 1, 2007

By Hand Delivery

Jerrily R. Kress
D.C. Board of Zoning Adjustment
441 4th Street, N.W., Suite 200/210-S
Washington, D.C. 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17670

EXHIBIT NO. 18

Re: **BZA Appeal No. 17670**

Dear Members of the Board:

Thank you for your letter of July 25, 2007 to an Administrative Law Judge of the Office of Administrative Hearings ("OAH") regarding the above-referenced appeal of an OAH final order to the Board of Zoning Adjustment ("BZA").¹ The case number and caption before OAH was OAH Case No.: CR-I-05-N100089, "The District of Columbia Department of Consumer and Regulatory Affairs v. Eimaj, Inc. and N. T. Filloramo." The proceedings before OAH were adjudicated case proceedings for which a record was required to be kept, and I have attached an official copy of the OAH record for the BZA's use in the appeal. We have used the format used in transmitting OAH records on appeal to the District of Columbia Court of Appeals, and have included, in addition to all filings and exhibits in the case file, a digital recording of the hearing. (See Tab 7 of the enclosed official record.)

You have also requested that the OAH Administrative Law Judge ("ALJ") who presided over the case appear at the public hearing. As you may be aware, by statute, the ALJs of the Office of Administrative Hearings share the same immunities as judges of the Superior Court of the District of Columbia "relating to actions taken and decisions made in the performance of duties while in office." D.C. Official Code § 2-1831.09(g). Therefore, just as Superior Court judges are not permitted to testify regarding their decisions, OAH ALJs, who adjudicate cases administratively, are not permitted to do so.² This prohibition is also long-established in Supreme Court jurisprudence. *See United States v. Morgan*, 313 U.S. 409, 422 (1941) ("[A]n examination of a judge would be destructive of judicial responsibility.... Just as a judge cannot be subjected to such a scrutiny, so the integrity of the administrative process must be equally

¹ The letter was addressed to Judge Janet Mahon, who was on maternity leave at the time, and did not come to my attention until recently.

² Also, by statute, OAH is not a party to appeals of its orders. D.C. Official Code § 2-1831.16(h). Rather, the parties before OAH are the parties on appeal. *Id.*

respected.” (citation omitted)); *Chicago, B. & Q.R. Co. v. Babcock*, 204 U.S. 585, 593 (1907) (finding that the testimony of the administrative adjudicative body on appeal was “wholly improper.... The [adjudicative body] necessarily kept and evidently was expected by the statutes to keep a record. That was the best evidence, at least, of its decisions and acts.”)

Given that Judge Mahon is not permitted to appear pursuant to controlling statutory and case law, we transmit the complete official record of OAH, which, as stated above, is routinely transmitted for each OAH case reviewed on appeal.

Thank you again for notifying us of this appeal. Please do not hesitate to contact me at 202-724-5477 or at lisa.coleman@dc.gov if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Lisa Coleman". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Lisa Coleman
General Counsel

Enclosures

cc: Jill Stern (via interagency mail and e-mail, w/ partial enclosure)
Alan Bergstein (via e-mail, w/o enclosures)
Jonathan L. Katz (via U.S. mail, w/ partial enclosure)

DISTRICT OF COLUMBIA OFFICE OF ADMINISTRATIVE HEARINGS

OAH Case No.: CR-I-05-N100089

BZA Appeal No.: 17670

Case Caption: Matter of Eimaj, Inc., and Nicholas T. Filloramo, Appellants

RECORD TRANSMITTAL

Enclosed are copies of the following:

- ☒ 1. the Final Order involved;
- ☐ 2. the findings or report on which the order is based;
- ☒ 3. the papers and exhibits filed with the Office of Administrative Hearings;
- ☒ 4. the digital audio recording of any testimony before the agency; or
- ☐ 5. a certified narrative statement of relevant proceedings and evidence.

(Check any or all that apply)


Lisa Coleman
General Counsel


Date

**441 4th Street, N.W., Suite 870N
Washington, DC 20001
(202) 741-5208 (Office) (202) 724-4129 (Facsimile)**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Administrative Hearings



Chronological Index to the Record on Appeal

OAH Case No.: CR-I-05-N100089

BZA Appeal No.: 17670

DOCUMENT TITLE	DATE FILED
1) Notice of Infraction with Attachment	05/09/05
2) Appellant's Response to Notice of Infraction (Fax & Mail)	05/18/05
3) Case Management Order	06/02/05
4) Returned Mail (Appellant's Copy of Case Management Order)	06/09/05
5) Notice of Appearance for Agency's Counsel	07/13/05
6) Exhibit List and Exhibits	07/13/05
7) Digital Audio Recording of Hearing	
8) Order	08/31/06
9) Agency's Reply to Order to Respond	09/20/06
10) Final Order	03/12/07
11) Appellant's Payment	03/23/07
12) Appellant's Second Payment with Attachment (Hand Delivery & Mail)	05/01/07
13) Agency's Request for Copy of Payment	05/09/07

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the Record Transmittal and a copy of the Index to the Record on Appeal by the method indicated and upon the persons listed below:

By First Class Mail (Postage Prepaid):

Jonathan L. Katz, Esq.
Marks & Katz, L.L.C.
1400 Spring Street, Ste. 410
Silver Spring, MD 20910

By Interagency Mail:

Jill Stern, Esq.
General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE, Suite 9400
Washington, DC 20002

Dated: October 1, 2007



Lisa Coleman
General Counsel
Office of Administrative Hearings
441 4th St., N.W., Suite 870N
Washington, D.C. 20001

1

NOTICE OF INFRACTION

Notice No. N 100089

Issuing Agency:

☐ DOH☐ DMH☒ DCRA☒ 1st NOI☐ CFSA☐ FEMS☐ Other _____☐ 2nd NOI (1st NOI No. _____)

Date of Service

5.19.05

7445 GEORGIA AVE. N.W.

Location of Infraction: Type of Location: ☐ Vacant Lot ☐ Construction Site ☐ Occupied ☐ Other _____

Business/Company Name

Charge as Respondent (circle) YES NO

N.T. FILLORAMO

(202) 723-5600

Telephone Number

Individual Name (Last, First, Middle)

Charge as Respondent (circle) YES NO

5225 ROCKS HILL RD

(202) 723-5600

Telephone Number

Mailing Address

BETHESDA

MD

State

20814

Zip Code

Business License/Permit Type _____

Business License/Permit No. _____

You are charged with violating the District of Columbia laws or regulations stated below. You MUST SIGN and RETURN this form WITHIN 15 DAYS of the date of service. You must also indicate below each infraction whether you ADMIT, ADMIT WITH EXPLANATION or DENY. Instructions on back.

If you DENY one or more of the infractions, you must timely sign and return this form as your answer. If you do so, a hearing in your case is pre-scheduled on the 29th day of JUNE, 2005 at 1:00 AM PM at the following location:

Office of Administrative Hearings, 941 North Capitol Street NE, Suite 7100, Washington, D.C.

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction	Statutory Penalty (if applicable)
DC CODE 6-641.07	\$ 500-	\$

Nature of Infraction OPERATING OUTSIDE THE SCOPE OF CERTIFICATE OF OCCUPANCY

Date of Infraction 4/29/05 Time of Infraction 12:30pm Previous Infractions Committed 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction	Statutory Penalty (if applicable)
	\$	\$

Nature of Infraction _____

Date of Infraction _____ Time of Infraction _____ Previous Infractions Committed 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

Total fine amount due for all infraction(s) \$ 500.00

WARNING: Failure to answer (see reverse) each infraction on this Notice within 15 days of the date of service by signing and returning this form will result in assessment of a penalty equal to and in addition to the specified amount of the fine. You also may be subject to other penalties and actions allowed by law including suspension and non-renewal of your license or permit, the sealing of your business, a lien being placed on your property, and attachment of your equipment. If this is your second Notice for the charges, your failure to respond within 15 days of the date of service will result in the assessment of a penalty equal to twice the amount of the fine. For Medicaid-funded facilities: This Notice and information obtained through this proceeding may be used for evaluation under applicable law, including 42 CFR Chs. 442 and 483 and for any proceeding under 42 CFR Ch. 431. For information call (202) 442-9091.

I personally declare under penalty of perjury that I observed and/or determined that the infraction(s) charged have been committed.

Inspector's/Investigator's Signature

Print Name

Date

Badge/Identification Number

I sign my name below to acknowledge receipt of this Notice of Infraction and not as an admission of guilt or liability to the charge(s) listed.

Respondent's Signature

Print Name

Date

OAH (WHITE)

RESPONDENT (YELLOW)

INSPECTOR (PINK)

ENFORCEMENT (GOLDENROD)

**DISTRICT OF COLUMBIA
OFFICE OF CIVIL INFRACTIONS**
941 North Capitol Street NE, Suite 9600
Washington D.C. 20002-4210

Case No(s). N100089

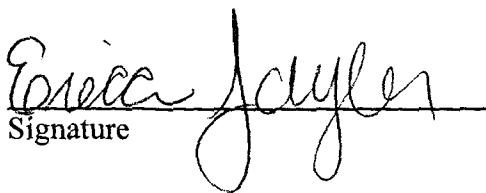
Certificate of Service

Copy to:

Name and Address:

**EIMAJ INC
N.T. FILLORAMO
5225 POOKS HILL ROAD
BETHESDA MD, 20814**

I hereby certify that the attached document was served by first class prepaid mail to the party indicated above: (Method of Service)


Signature

May 9, 2005
Date

Name and Address:

Erica Taylor

**Office of Civil Infractions
941 North Capitol Street, NE
Suite 9600
Washington, DC 20002**

**DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS
2005 MAY -9 P 1:05**

WARNING: SUBMISSION OF A FALSE STATEMENT IS A CRIME PUNISHABLE UNDER D.C. OFFICIAL CODE § 22-2405.

2

HARMON, WILMOT & BROWN, L.L.P.

ATTORNEYS AT LAW
1010 VERMONT AVENUE, N.W.
SUITE 810
WASHINGTON, D.C. 20005
TELEPHONE: 1(202)783-9100
FACSIMILE: 1(202)783-9103

DAVID W. WILMOT (D.C.-PA.)
E-MAIL: DWWDC@aol.com

May 18, 2005

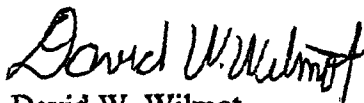
District of Columbia Office of Administrative Hearings
941 North Capitol Street, N.E., 9th Floor
Suite 9600
Washington, D.C. 20002
By Facsimile Transmission
(202) 442-9451

RE: Infraction No.: N100089

Dear Clerk:

Please be advised that Harmon, Wilmot & Brown, LLP, represents EIMAJ, Inc. in connection with Notice of Infraction No.: N100089. The company denies the charges and requests a Hearing. Kindly advise as to the date and time. I have enclosed the Notice of Infraction for your review and information. If additional information is required, kindly contact Ms. Bagwell or me on (202) 783-9100. Thank you for your prompt attention to this matter.

Sincerely,



David W. Wilmot

Enclosure

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS
2005 MAY 18 P 4:50

May 17 05 11:28a

p.1

GOVERNMENT OF THE DISTRICT OF COLUMBIA

NOTICE OF INFRACTION

Notice No. N 100089

Issuing Agency: ☐ DOH ☐ DMH ☒ DCRA ☒ 1st NOI
☐ CFSA ☐ FEMS ☐ Other _____ ☐ 2nd NOI (1st NOI No. _____)

5.19.05
 Date of Service

7445 GEORGIA AVE. N.W.
 Location of Infraction: Type of Location: ☐ Vacant Lot ☐ Construction Site ☐ Occupied ☐ Other
 Business/Company Name: EIMM Inc Charge as Respondent (circle): YES NO Telephone Number: (202) 723-5600
 Individual Name (Last, First, Middle): N.T. FILLORAMO Charge as Respondent (circle): YES NO Telephone Number: (202) 723-5600
 Mailing Address: 5225 Parks Hill RD
 City: Bethesda MD Zip Code: 20814
 Business License/Permit Type: _____ Business License/Permit No.: _____

You are charged with violating the District of Columbia laws or regulations stated below. You MUST SIGN and RETURN this form WITHIN 15 DAYS of the date of service. You must also indicate below each infraction whether you ADMIT, ADMIT WITH EXPLANATION or DENY. Instructions on back.

If you DENY one or more of the infractions, you must timely sign and return this form as your answer. If you do so, a hearing in your case is pre-scheduled on the 29th day of June 2005 at 1:00 PM at the following location:

Office of Administrative Hearings, 941 North Capitol Street NE, Suite 9100, Washington, D.C.

D.C. Official Code AND/OR D.C. Municipal Regulation Citation DC CODE 6-641.07	Fine for Infraction \$ 500.00	Statutory Penalty (if applicable) \$
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Nature of Infraction: OPERATING OUTSIDE THE SCOPE OF CERTIFICATE OF OCCUPANCY
 Date of Infraction: 4/29/05 Time of Infraction: 12:30 PM Previous Infractions Committed: 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☒ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature: _____

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction \$	Statutory Penalty (if applicable) \$
--	---------------------------	---

Nature of Infraction: _____
 Date of Infraction: _____ Time of Infraction: _____ Previous Infractions Committed: 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☒ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature: _____

Total fine amount due for all infraction(s) \$ 500.00

WARNING: Failure to answer (see reverse) each infraction on this Notice within 15 days of the date of service by signing and returning this form will result in assessment of a penalty equal to and in addition to the specified amount of the fine. You also may be subject to other penalties and actions allowed by law including suspension and non-renewal of your license or permit, the sealing of your business, a lien being placed on your property, and attachment of your equipment. If this is your second Notice for the charges, your failure to respond within 15 days of the date of service will result in the assessment of a penalty equal to twice the amount of the fine. For Medicaid-funded facilities: This Notice and information obtained through this proceeding may be used for evaluation under applicable law, including 42 CFR Ch. 442 and 483 and for any proceeding under 42 CFR Ch. 431. For information call (202) 442-9091.

Inspector/Investigator's Signature: _____ Print Name: _____ Date: 5/16/05 Badge/Identification Number: 790

sign my name below to acknowledge receipt of this Notice of Infraction and not as an admission of guilt or liability to the charge(s) listed.

Respondent's Signature: _____ Print Name: _____ Date: _____
 AH (WHITE) RESPONDENT (YELLOW) INSPECTOR (PINK) ENFORCEMENT (GOLDENROD)

HARMON, WILMOT & BROWN, L.L.P.

ATTORNEYS AT LAW
1810 VERMONT AVENUE, N.W.
SUITE 818
WASHINGTON, D.C. 20005



*District of Columbia Office
of Administrative Hearings (OAH)
947 North Capitol Street, N.E., 9th
Floor, Suite 9100
Washington, D.C. 20002-4210*

HARMON WILMOT & BROWN, L.L.P.
Fax: 202-783-9103

May 18 / '05 16:57

P.04

LAW OFFICES

HARMON, WILMOT & BROWN, L.L.P.

1010 VERMONT AVENUE, N.W. • SUITE 810 • WASHINGTON, D.C. 20005
Telephone: 1-202-783-9100 • Facsimile: 1-202-783-9103

Herbert N. Harmon David W. Wilmot Omer F. Brown, II

FACSIMILE TRANSMISSION

DATE May 18, 2005

NUMBER OF PAGES (including cover sheet) 3

TO Clerk, Office of Administrative Hearings (OAH)

FAX NUMBER (202) 442-9451

FROM David W. Wilmot, Esq.

If there are any problems, please call 1-202-783-9100.

Re: Request for Hearing Infraction No. N100089

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS
2005 MAY 18 P 4:47

HARMON, WILMOT & BROWN, L.L.P.

ATTORNEYS AT LAW
1010 VERMONT AVENUE, N.W.
SUITE 810
WASHINGTON, D.C. 20005
TELEPHONE: 1(202)783-9100
FACSIMILE: 1(202)783-9103

DAVID W. WILMOT (D.C.-PA.)
E-MAIL: DWWDC@aol.com

May 18, 2005

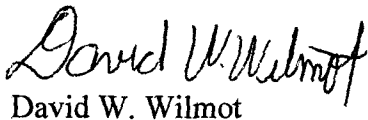
District of Columbia Office of Administrative Hearings
941 North Capitol Street, N.E., 9th Floor
Suite 9600
Washington, D.C. 20002
By Facsimile Transmission
(202) 442-9451

RE: Infraction No.: N100089

Dear Clerk:

Please be advised that Harmon, Wilmot & Brown, LLP, represents EIMAJ, Inc. in connection with Notice of Infraction No.: N100089. The company denies the charges and requests a Hearing. Kindly advise as to the date and time. I have enclosed the Notice of Infraction for your review and information. If additional information is required, kindly contact Ms. Bagwell or me on (202) 783-9100. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Wilmot", is written over the typed name.

David W. Wilmot

Enclosure

GOVERNMENT OF THE DISTRICT OF COLUMBIA

NOTICE OF INFRACTION

Notice No. N 100089

Issuing Agency: ☐ DOH ☐ DMH ☒ DCRA

☒ 1st NOI

5.9.05

Date of Service

☐ CFSA

☐ FEMS

☐ Other

☐ 2nd NOI (1st NOI No. _____)

7445 GEORGIN AVE. N.W.

Location of Infraction: Type of Location: ☐ Vacant Lot ☐ Construction Site ☐ Occupied ☐ Other

Business/Company Name: EIMAJ INC Charge as Respondent (circle): YES NO

(202) 723-5600

Telephone Number

Individual Name (Last, First, Middle): N.T. Filloramo Charge as Respondent (circle): YES NO

(202) 723-5600

Telephone Number

5225 ROCKS HILL RD

Mailing Address

Bethesda

MD

State

20814

Zip Code

Business License/Permit Type

Business License/Permit No.

You are charged with violating the District of Columbia laws or regulations stated below. You MUST SIGN and RETURN this form WITHIN 15 DAYS of the date of service. You must also indicate below each infraction whether you ADMIT, ADMIT WITH EXPLANATION or DENY. Instructions on back.

If you DENY one or more of the infractions, you must timely sign and return this form as your answer. If you do so, a hearing in your case is pre-scheduled on the 29th day of June, 2005 at 1:00 PM at the following location:

Office of Administrative Hearings, 941 North Capitol Street NE, Suite 9100, Washington, D.C.

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction	Statutory Penalty (if applicable)
DC CODE 6-641.09	\$ 500	\$

Nature of Infraction: OPERATING OUTSIDE THE SCOPE OF CERTIFICATE OF OCCUPANCY

Date of Infraction: 4/29/05 Time of Infraction: 12:30pm Previous Infractions Committed: 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☒ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction	Statutory Penalty (if applicable)
	\$	\$

Nature of Infraction

Date of Infraction Time of Infraction Previous Infractions Committed 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☒ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature

Total fine amount due for all infraction(s) \$ 500.00

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I personally declare under penalty of perjury that I observed and/or determined that the infraction(s) charged have been committed.
Inspector's/Investigator's Signature: [Signature] Print Name: Alex T. James Date: 5/6/05 Badge/Identification Number: 796

I sign my name below to acknowledge receipt of this Notice of Infraction and not as an admission of guilt or liability to the charge(s) listed.

Respondent's Signature OAH (WHITE) Respondent (YELLOW) Inspector (PINK) Enforcement (GOLDENROD)

**** Transmit Conf. Report ****

P.1

May 18 2005 16:57

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
2024429451	NORMAL	18,16:57	0'46"	4	# O K	

LAW OFFICES
HARMON, WILMOT & BROWN, L.L.P
1010 VERMONT AVENUE, N.W. • SUITE 810 • WASHINGTON, D.C. 20005
Telephone: 1-202-783-9100 - Facsimile: 1-202-783-9103

Herbert N. Harmon David W. Wilmot Omer F. Brown, II

FACSIMILE TRANSMISSION

DATE May 18, 2005

NUMBER OF PAGES (including cover sheet) 3

TO Clerk, Office of Administrative Hearings (OAH)

FAX NUMBER (202) 442-9451

FROM David W. Wilmot, Esq.

If there are any problems, please call 1-202-783-9100.

Re: Request for Hearing Infraction No.: N100089

HARMON, WILMOT & BROWN, L.L.P.

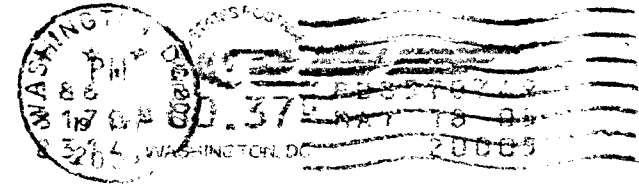
ATTORNEYS AT LAW
1010 VERMONT AVENUE, N.W.
SUITE 810
WASHINGTON, D.C. 20005

UNITED STATES POSTAL SERVICE
186 81708 00.37 MAY 18 05
8374 WASHINGTON, DC 20005

*District of Columbia Office
of Administrative Hearings (OAH)
941 North Capitol Street, N.E., 9th
Floor, Suite 9100
Washington, D.C. 20002-4210*

HARMON, WILMOT & BROWN, L.L.P.

ATTORNEYS AT LAW
1010 VERMONT AVENUE, N.W.
SUITE 810
WASHINGTON, D.C. 20005



DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2005 MAY 25 A 7 53

*District of Columbia Office
of Administrative Hearings (OAH)
941 North Capitol Street, N.E., 9th
Floor, Suite 9100
Washington, D.C. 20002-4210*

20002/4259



3

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 N. Capitol Street, NE, Suite 9100
Washington, DC 20002

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2005 JUN -2 PM 12:40

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

Petitioner,

v.

EIMAJ INC.

Respondent

Case No.: CR-I-05-N100089

CASE MANAGEMENT ORDER

On May 18, 2005, Respondent answered the Notice of Infraction (No. N100089) in this matter with a plea of Deny.

Therefore, upon Respondent's answer, its request for a hearing, and the entire record in this case, it is hereby, this 1st day of June, 2005:

ORDERED, that the prescheduled hearing date and time must be changed, and all parties and any counsel shall appear for a hearing on July 13, 2005, at 3:00 PM at the Office of Administrative Hearings, 941 N. Capitol Street, NE, Suite 9100, Washington, DC. All parties and any counsel shall at that time be prepared to proceed with an evidentiary hearing on the merits and shall have available to them at that time all witnesses and evidence they may offer; and it is further

ORDERED, that copies of any documents or other items in reproducible form, such as photographs, that any party may seek to offer into evidence at the hearing shall be filed, if not already filed, with the docket clerk of the Office of Administrative Hearings and sent, if not

already sent, to all other persons listed on the certificate of service no later than 10 days prior to the date of the hearing; and it is further

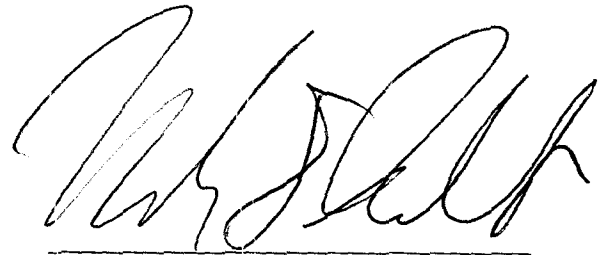
ORDERED, that a list of the names and the business or residential addresses of all witnesses that a party may offer at the hearing shall be filed with the docket clerk of the Office of Administrative Hearings and sent to all other persons listed on the certificate of service no later than 10 days prior to the date of the hearing; and it is further

ORDERED, that the appearance of David W. Wilmont, Esq., is entered as counsel for Respondent; and it is further

ORDERED, that before filing any motion (a request for the presiding administrative law judge to take some action), a party shall seek the consent of the opposing party to the action requested in the motion. The motion shall state when and by what means consent was requested and whether or not consent was given and by whom; and it is further

ORDERED, that all parties shall comply with all applicable rules set forth in the Title 1 of the District of Columbia Municipal Regulations (DCMR), Chapter 28; and it is further

ORDERED, that because timely compliance with this Order is necessary to ensure a fair, just, prompt, and orderly trial on the merits, should the Government, as prosecuting agent, fail to timely comply with the requirements of this Order, this case shall be subject to dismissal for want of prosecution for the Government's failure to indicate the existence and availability of evidence through which it can meet its burden of proof and burden of going forward with the evidence under the Civil Infractions Act of 1985 and other applicable law. *See* D.C. Official Code § 2-1802.03(a); 1 DCMR 2818.1.

A handwritten signature in black ink, appearing to read 'Mark D. Poindexter', written over a horizontal line.

Mark D. Poindexter
Principal Administrative Law Judge

Certificate of Service:

By U.S. Mail (Postage Paid):

Eimaj Inc.
5225 Pooks Hill Road
Bethesda, MD 20814

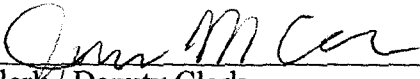
David W. Wilmont
Harmon, Wilmont & Brown, L.L.P.
1010 Vermont Avenue, NW
Suite 810
Washington, DC 20005

By Inter-Agency Mail:

James Aldridge
Department of Consumer and Regulatory Affairs
941 North Capitol Street NE
Washington, DC 20002

Julie Lee, Esq., General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street NE, Suite 9400
Washington, DC 20002

I hereby certify that on 6/2,
2005 this document was caused to be served
upon the parties named on this page at the
addresses listed and by the means stated.


Clerk / Deputy Clerk

4

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 N. Capitol Street, NE, Suite 9100
Washington, DC 20002

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2005 JUN -2 PM 12:10

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

Petitioner,

v.

EIMAJ INC.

Respondent

Case No.: CR-I-05-N100089

CASE MANAGEMENT ORDER

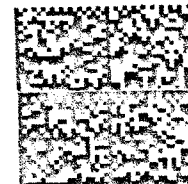
On May 18, 2005, Respondent answered the Notice of Infraction (No. N100089) in this matter with a plea of Deny.

Therefore, upon Respondent's answer, its request for a hearing, and the entire record in this case, it is hereby, this 1st day of June, 2005:

ORDERED, that the prescheduled hearing date and time must be changed, and all parties and any counsel shall appear for a hearing on July 13, 2005, at 3:00 PM at the Office of Administrative Hearings, 941 N. Capitol Street, NE, Suite 9100, Washington, DC. All parties and any counsel shall at that time be prepared to proceed with an evidentiary hearing on the merits and shall have available to them at that time all witnesses and evidence they may offer; and it is further

ORDERED, that copies of any documents or other items in reproducible form, such as photographs, that any party may seek to offer into evidence at the hearing shall be filed, if not already filed, with the docket clerk of the Office of Administrative Hearings and sent, if not

District of Columbia
Office of Administrative Hearings
825 North Capitol Street, Suite 4150, NE
Washington, DC 20002



NEOPOST

\$0.37

JUN 03 2005

US POSTAGE

FIRST CLASS

MAILED FROM 20001

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DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
JUN - 9 9:23

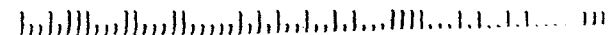
Eimaj Inc.
5225 Pooks Hill Road
Bethesda, MD 20814

NIXIE 208 1 08 05/07/05

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

20814+2032 18
20002%4210

BC: 20002421099 *0931-02319-03-41



5

DISTRICT OF COLUMBIA
Office of Administrative Hearings
441 4th Street, NW, Suite 408 COLUMBIA
Washington, DC 20004 OFFICE OF
ADMINISTRATIVE HEARINGS

Dept. of Consumer and
Regulatory Affairs
Petitioner(s),
v.
ELIMAS, INC
Respondent(s)

2005 JUL 13 P 3:03

Case No(s).: _____

Notice of Appearance

The Clerk of the Office of Administrative Hearings will please enter the appearance of the undersigned counsel:

J. Sinclair Long
Name
DCRA
Firm/Office
941 N. Capitol
Address

City State Zip Code
442-8403
Telephone / Facsimile Number

Attorney for: ☒ Petitioner ☐ Respondent

43332
Bar Number (if applicable)

Respectfully Submitted,

J. Sinclair Long
Signature

6

DISTRICT OF COLUMBIA
Office of Administrative Hearings

hearing room 3

Exhibit List

CASE NO: CR-I-05-N100089

PETITIONER: DCRA

ATTY: _____

RESPONDENT: EIMAJ, INC

ATTY: David W. Wilmot

JUDGE: JJM

CLERK: n/a

TYPE OF CASE: BLRA

DATE: Wednesday July 13, 2005 @3 p.m.

EX #	PET.	RESP.	ITEMIZED DESCRIPTION (INCLUDING MAKE, MODEL, ETC.)	MARK FOR ID	OFF	W/D	ADM	NOT ADM
100	X		Photo	X				
101	X		Photo	x				
102	X		Photo	X				
103	X		Photo	X				
104	X		Photo	X				
105	X		NOI	X				
106	X		Memo	X				
107	X		Certificate of Occupancy	X				
108	X		Application	X				
109	X		2 Year Report	X				
110	X		Certificate	X				

Reviewed and Certified by: _____

ALJ/Clerk/Deputy Clerk

Date: _____

Prepared by: *Kathleen*

Clerk/Deputy Clerk

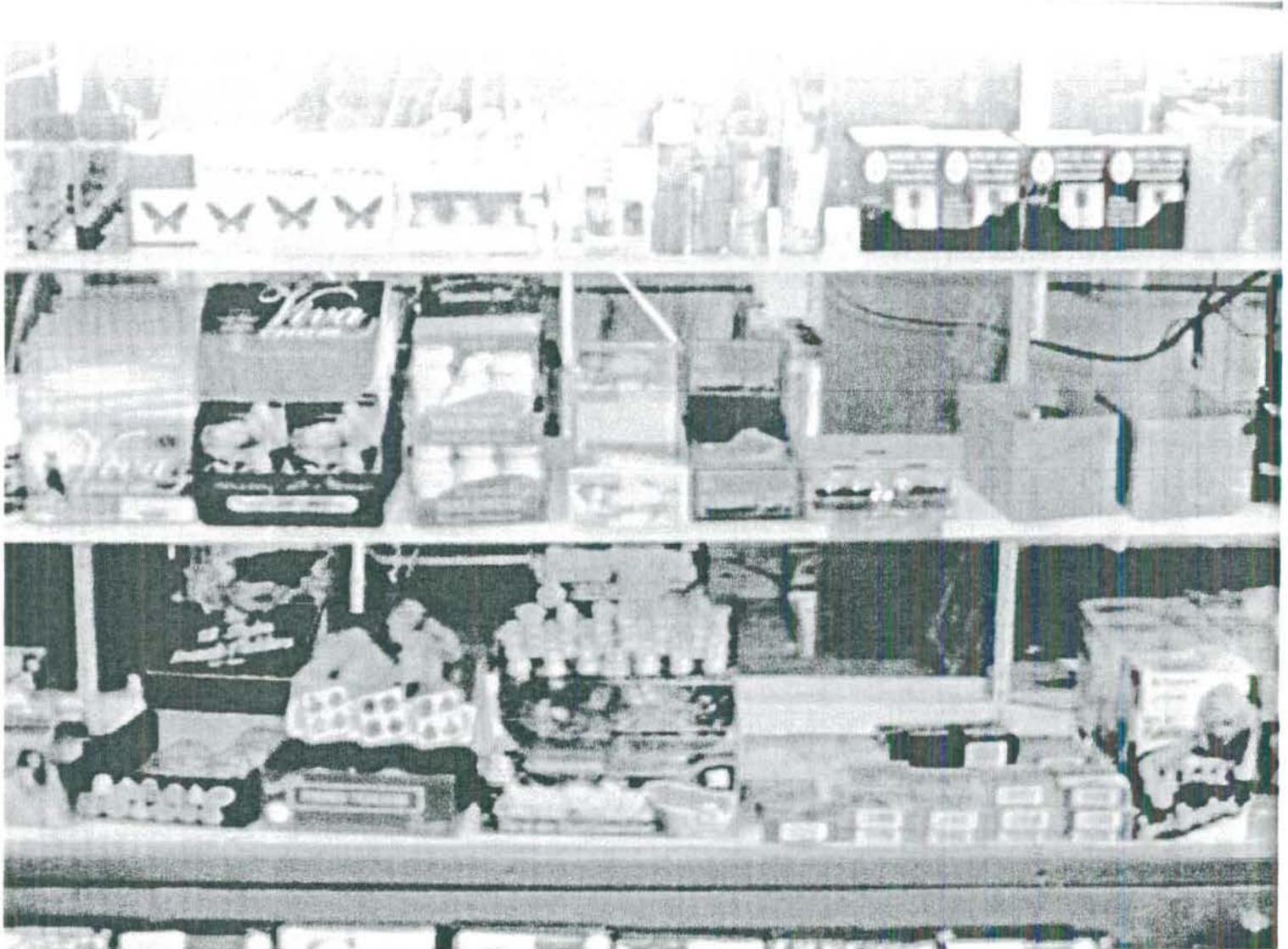
Date: 7/11/05

EX #	PET.	RESP.	ITEMIZED DESCRIPTION (INCLUDING MAKE, MODEL, ETC.)	MARK FOR ID	OFF	W/D	ADM	NOT ADM
200		X						
201		X						
202		X						
203		X						
204		X						
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206		X						
207		X						
208		X						
209		X						
210		X						

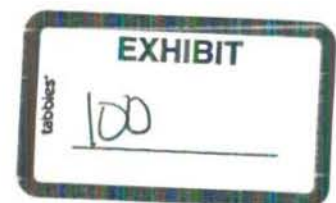
111	X		Photo	X				
112	X		Photo	X				
113	X		Photo	X				
114	X		Photo	X				
115	X		Photo	X				
116	X		Photo	X				
117	X		Photo	X				
118	X		Photo	X				
119	X		Photo	X				
120	X		Photo	X				

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2005 MAY -9 P 1:05



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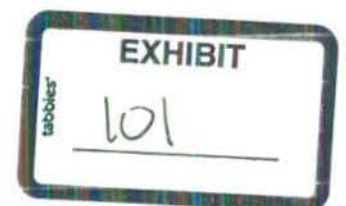


DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2005 MAY -9 P 1: 05



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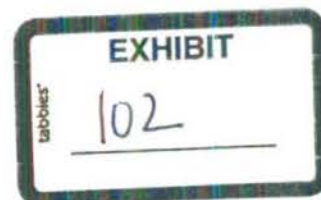


DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2005 MAY -9 P 1:05



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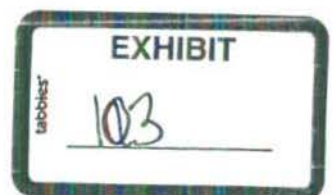


DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2005 MAY -9 P 1: 05



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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2005 MAY -9 P 1: 06



DSC5385.jpg



NOTICE OF INFRACTION

Notice No. **N 100089**

Issuing Agency: ☐ DOH ☐ DMH ☒ DCRA ☒ 1st NOI
☐ CFSA ☐ FEMS ☐ Other _____ ☐ 2nd NOI (1st NOI No. _____)
Date of Service _____

Location of Infraction: 7445 GEORGIA AVE. N.W.
Type of Location: ☐ Vacant Lot ☐ Construction Site ☐ Occupied ☐ Other _____
Business/Company Name: EIMAJ INC Charge as Respondent (circle): YES NO Telephone Number: (202) 723-5600
Individual Name (Last, First, Middle): N.T. Filloramo Charge as Respondent (circle): YES NO Telephone Number: (202) 723-5600
Mailing Address: 5225 ROCKS HILL RD
City: BETHESDA State: MD Zip Code: 20814
Business License/Permit Type: _____ Business License/Permit No.: _____

You are charged with violating the District of Columbia laws or regulations stated below. You MUST SIGN and RETURN this form WITHIN 15 DAYS of the date of service. You must also indicate below each infraction whether you ADMIT, ADMIT WITH EXPLANATION or DENY. Instructions on back.

If you **DENY** one or more of the infractions, you must timely sign and return this form as your answer. If you do so, a hearing in your case is pre-scheduled on the _____ day of _____, _____ at _____ AM / PM at the following location:

Office of Administrative Hearings, _____, Suite _____, Washington, D.C.

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction	Statutory Penalty (if applicable)
<u>DC CODE 6-641.07</u>	<u>\$ 500-</u>	\$

Nature of Infraction: OPERATING OUTSIDE THE SCOPE OF CERTIFICATE OF OCCUPANCY
Date of Infraction: 4/29/05 Time of Infraction: 12:30pm Previous Infractions Committed: 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction	Statutory Penalty (if applicable)
	\$	\$

Nature of Infraction: _____
Date of Infraction: _____ Time of Infraction: _____ Previous Infractions Committed: 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

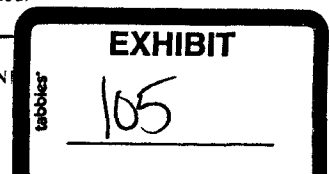
Total fine amount due for all infraction(s) \$ _____

WARNING: Failure to answer (see reverse) each infraction on this Notice within 15 days of the date of service by signing and returning this form will result in assessment of a penalty equal to and in addition to the specified amount of the fine. You also may be subject to other penalties and actions allowed by law including suspension and non-renewal of your license or permit, the sealing of your business, a lien being placed on your property, and attachment of your equipment. If this is your second Notice for the charges, your failure to respond within 15 days of the date of service will result in the assessment of a penalty equal to twice the amount of the fine. For Medicaid-funded facilities: This Notice and information obtained through this proceeding may be used for evaluation under applicable law, including 42 CFR Chs. 442 and 483 and for any proceeding under 42 CFR Ch. 431. For information call (202) 442-9091.

I personally declare under penalty of perjury that I observed and/or determined that the infraction(s) charged have been committed.
Inspector's/Investigator's Signature: [Signature] Print Name: ALICE T. JAMES Date: 5/10/05 Badge/Identification Number: 790

I sign my name below to acknowledge receipt of this Notice of Infraction and not as an admission of guilt or liability to the charge(s) listed.

Respondent's Signature _____ Print Name _____ Date _____
OAH (WHITE) RESPONDENT (YELLOW) INSPECTOR (PINK) EN



April 29, 2005

MEMORANDUM

To: Toye
From: Allen James
Re: Royce Video
 (EIMAJ, Inc.)

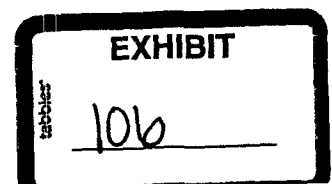
On Thursday, April 28, 2005, a zoning inspection at the above captioned property (7445 Georgia Avenue, N.W.) revealed that the business does have a certificate of occupancy to operate as a "Rental of video cassettes and electronic equipment."

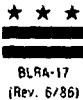
An inspection was necessitated because of allegations from the community that the facility was a "sexually oriented business." One of the mechanisms employed to determine if a business is a sexually oriented business is to determine the percentage of merchandise sold depicting sexual activity.

Our inspection determined that the business is approximately 45'X42' (1,494 Square Feet). The standard used to determine whether a business is a sexually oriented business is to determine how much of the facility used exclusively for the sale of sexually oriented items.

My determination after the inspection concluded that approximately 50% is sexually oriented business.

Accordingly, a citation was issued for five hundred (\$500.00) for operating outside the scope of the certificate of occupancy and forwarded the Office of Administrative Hearing.





District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

No.B 160889

CERTIFICATE OF OCCUPANCY

5/13/91

(date)

Permission is hereby granted to Eimaj, Inc.
to use suite(s) _____ on the 1st floor(s)
of the building located on lot(s) 22 square 2962
known as premises 7445 Georgia Ave., N.W. for the following
purpose(s) Rental Of Video Cassets, & Electronic Equipment.
Not Sexually Oriented. []
su

BZA #:

EXPIRATION DATE:

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES
AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY
for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT
TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE
in the type of business, ownership of business, or part of premises used therefor, will
render this Certificate VOID and a NEW Certificate must be obtained.

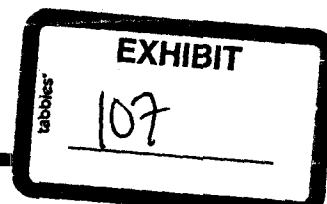
ZONE C/2/A FEE \$ 27.00

Donald G. Murray, Director

By Joseph G. Peters
Designee

86-P-3601 wd112

OFFICE COPY





(PRINT OR TYPE WITH BLACK INK ONLY — DO NOT WRITE IN SHADED AREAS)

INTAKE

9:00 - 3:00

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

APPLICATION FOR CERTIFICATE OF OCCUPANCY

CRA-5
Rev. 8/20/83

MARK OUTS & WHITE OUTS NOT ACCEPTED

APPLICATION FEE OF \$20.00 IS NON-REFUNDABLE

(22) Receipt # 39735

(23) Trans. # 28194012

Date 5.13.91

INFORMATION
ON PROPOSED
BUSINESS

(1) Address of Business 7445 Georgia Avenue N.W. Suite/Room # NA
(2) Telephone No. of Business 202-723-5600 Lot 22 Square 2962
(3) Trade Name of Business Royces Rentals
(4) Is Business Incorporated? ☐ No ☒ Yes (Attach Letter of Good Standing and complete Line 5)
(5) President N.T. Filloramo Vice President Jamie Johns Secretary/Treasurer Roslyn A. Gordon
(6) Is Business a Partnership? ☒ No ☐ Yes
(7) Business Owner Nicholas T. Filloramo / EIMAT, INC. 202-723-5600
(See instructions) Tel. No. (days) 202-723-5600
(8) Business Owner's Home Address 5225 Books Hill Rd Bethesda Md Zip Code 20814

INFORMATION
ON
OCCUPANCY

(9) ☐ Ownership Change ☐ Partial Occupancy ☐ New Bldg. ☒ Use Change ☐ Load Change BZA No. ☐
(10) Proposed Use of Business Rental of Video Cassettes, Electronic Equipment
(11) Is Business Sexually Oriented According to D.C. Zoning Regulations? ☒ No ☐ Yes
(12) Proposed Occupancy Load (25) N/A Square Feet Occupied 2,520
(13) Which Floors to be Occupied 1st Basement? NO
(14) Prior Use Convenience Store (7-Eleven)

INFORMATION
ON ENTIRE
BUILDING

(15) Building Owner Capital Building Tel. No. (day) 951-9115
(16) Building Owner's Address 4400 East West Hwy Bethesda Md Ste 26 Zip Code 20814
(17) Materials of Building Cinder Block/Brick
(18) Square Feet Occupied 2,520 No. of Floors 1 Basement? NO

ATTESTATION
AND
SIGNATURE

I certify that all of the statements on this application are true to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia.
(19) IF OWNER OF BUSINESS [Signature] Signature Date 5.10.91
IF AUTHORIZED AGENT FOR OWNER OF BUSINESS (Attach Authorization)
(20) Name of Agent Roslyn A. Gordon Signature [Signature] Date 5.10.91
PRINT CLEARLY
(21) Address of Agent 1223 Harvard St. N.W. Washington D.C. Zip Code 20009

INFORMATION
DESK

(24) Premises Condemned ☐ No ☐ Yes Cleared By [Signature] Date 5.10.91
(25) Building in RLA Zone ☐ No ☐ Yes Cleared By [Signature] Date 5.10.91
(26) Residential ☐ No ☐ Yes Smoke Det. Info. Given By [Signature] Date 5.13.91

LICENSE
BRANCH

(27) Licenses Required NO license required
(28) Reviewed By [Signature] Date 5.13.91

ZONING
OFFICE

(29) Zone C-2-A BZA No. 8
(30) Prior Use 7-Eleven Food Store Retail - 1st fl.
(31) Certificate # B153850 Date Issued 5/25/88 BZA No. 8 ☒ Approved ☐ Disapproved
(32) Accepted for Filing by [Signature] Date 5/13/91

EXAMINER'S
USE

(33) Prior Use Code 8 Proposed Use Code 8
(34) Use Change ☐ No ☒ Yes Inspect. Required ☒ No ☐ Yes By [Signature] Date 5/13/91
(35) Inspection Fee \$ 27.00 Issuance Fee \$ 27.00
(36) Approved for Issuance by [Signature] Date 5/13/91

INSPECTION
BRANCH

(37) Date of Scheduled C/O Inspections 5/13/91 AM/PM AM
(38) Inspection Status ☒ Approved ☐ Disapproved ☐ By [Signature] Branch 8 Date 5/13/91
(39) Inspector's Signature [Signature] Printed Name [Signature]
(40) Reason for Disapproval [Signature]

OCCUPANCY
PERSONNEL

(41) ☐ Approved ☐ Denied ☐ Cancelled
By [Signature]
(42) Reason for Cancellation/Denial B160889
(43) Certificate of Occupancy No. B160889 Date of Issuance 5-13-91
(44) Bldg. 8 Elec. 8 Plumb. 8 Fire 8 Zoning 8

EXHIBIT

108

GOVERNMENT
OF THE
DISTRICT OF COLUMBIA**TWO YEAR REPORT FOR FOREIGN AND DOMESTIC BUSINESS CORPORATIONS****Due by April 15th, 2005**Filing Fee \$ **250.00**

Penalty _____

Interest _____

Total \$ _____

RETAIN A COPY FOR YOUR RECORDS

SEE REVERSE SIDE FOR FILING INFORMATION

MAKE CHECK PAYABLE TO D.C. TREASURER

MAIL REPORT TO: DEPT. OF CONSUMER AND REGULATORY AFFAIRS

BUSINESS & PROFESSIONAL LICENSING ADMINISTRATION

CORPORATIONS DIVISION

P.O. BOX 92300, WASHINGTON, D.C. 20090

Indicate if Corporation is

- ☒ Dom. Business
☐ Dom. Professional
☐ For. Business
☐ For. Professional

1. Name of Corporation

EIMAJ, INC.

4. Name of registered agent and address of registered office in the District of Columbia (Do not make change of agent or address on this form).

Nelson Deckelbaum**7445 Ga Ave., N.W.****Washington DC 20006**

2. Organized under the laws of (insert District of Columbia, State or Country).

DISTRICT OF COLUMBIA

5. Brief statement of business or affairs conducted in the District of Columbia.

Sales & Rentals

3. If a foreign corporation, the address of its principal office in the state or country where organized.

6. If a domestic profit corporation, the address including street and number, of principal office in the District of Columbia.

*7445 Georgia Ave. N.W.
Washington D.C. 20012*

7. Name and address, including street and number of directors and officers.

	NAME	ADDRESS
Director	<i>Nicholas J. Fillorvum</i>	<i>5225 Pooks Hill Rd #16015 Bethesda MD 20814</i>
Director	<i>CHEN Fillorvum</i>	<i>12907 Pinnock Dr #303 Germantown MD 20874</i>
Director	<i>Nicholas J. Fillorvum</i>	<i>5225 Pooks Hill Rd #16015 Bethesda MD 20814</i>
President	<i>Nicholas J. Fillorvum</i>	<i>5225 Pooks Hill Rd #16015 Bethesda MD 20814</i>
Vice President	<i>Nicholas J. Fillorvum</i>	<i>12907 Pinnock Dr #303 Germantown MD 20874</i>
Secretary	<i>Nicholas J. Fillorvum</i>	<i>5225 Pooks Hill Rd #16015 Bethesda MD 20814</i>
Treasurer	<i>Nicholas J. Fillorvum</i>	<i>5225 Pooks Hill Rd #16015 Bethesda MD 20814</i>

DOMESTIC PROFIT CORPORATIONS ANSWER ARTICLES 8 AND 9 (Foreign corporations disregard articles 8 and 9)

8. Aggregate number of shares corporation has authority to issue.

NO. OF SHARES	CLASS	SERIES	PAR VALUE PER SHARE OR WITHOUT PAR
------------------	-------	--------	--

100 Shs Com @ no par

9. Aggregate number of shares issued.

NO. OF SHARES	CLASS	SERIES	PAR VALUE PER SHARE OR WITHOUT PAR
------------------	-------	--------	---------------------------------------

*100 Shs Com @ no par***FOREIGN PROFIT CORPORATIONS ANSWER ARTICLES 10 THRU 12 (Do not apply to domestic corporations)**

10. Date organized

11. Term of existence authorized.

☐ Perpetual

Limited to _____ years

12. Is corporation in good standing in state in which organized?

Yes ☐No ☐**SEE INSTRUCTIONS ON REVERSE SIDE**Date *3-03-05*By *[Signature]* (signature)☒ Pres.☐ Vice Pres.☐ Sec'y☐ Asst. Sec'y☐ Treas.A fee of \$50.00 will be charged
for dishonored checks

FILED

By _____

CORPORATE SEAL

EXHIBIT

109

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



C E R T I F I C A T E

THIS IS TO CERTIFY that there were received and accepted for record in the Department of Consumer and Regulatory Affairs, Corporations Division, on the **4th** day of **December , 1990** *Articles of Incorporation of:*

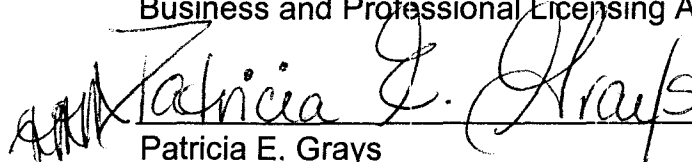
EIMAJ, INC.

WE FURTHER CERTIFY that the above named corporation is in **Good Standing** and duly incorporated and existing according to the records of Corporations Division, having filed all reports as required by the District of Columbia Business Corporation Act.

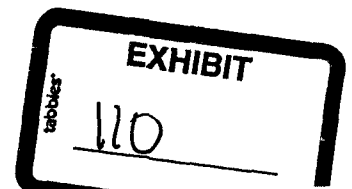
IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of this office to be affixed this **29th** day of **April , 2005 .**

Patrick J. Canavan, Psy. D.
Acting Director

John T. Drann
Administrator
Business and Professional Licensing Administration


Patricia E. Grays
Superintendent of Corporations
Corporations Division

Anthony A. Williams
Mayor



EXHIBIT

111

tabbles

ROYCES VIDEO RENTALS

NOVELTY STORES • BOOKS • RECORDS • CDS • VHS • DVD • BLU-RAY

Free MEMBERSHIP!



EXHIBIT
112

ROYCES



RENTALS

ALL RATINGS

MOVIES - MOVIES

ADULT TOYS - VIDEO GAMES

MOVIES - MOVIES

OPEN 7 DAYS A WEEK

FRIDAY & SATURDAY

2:00 a.m.

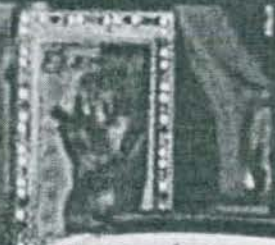
Free MEMBERSHIP

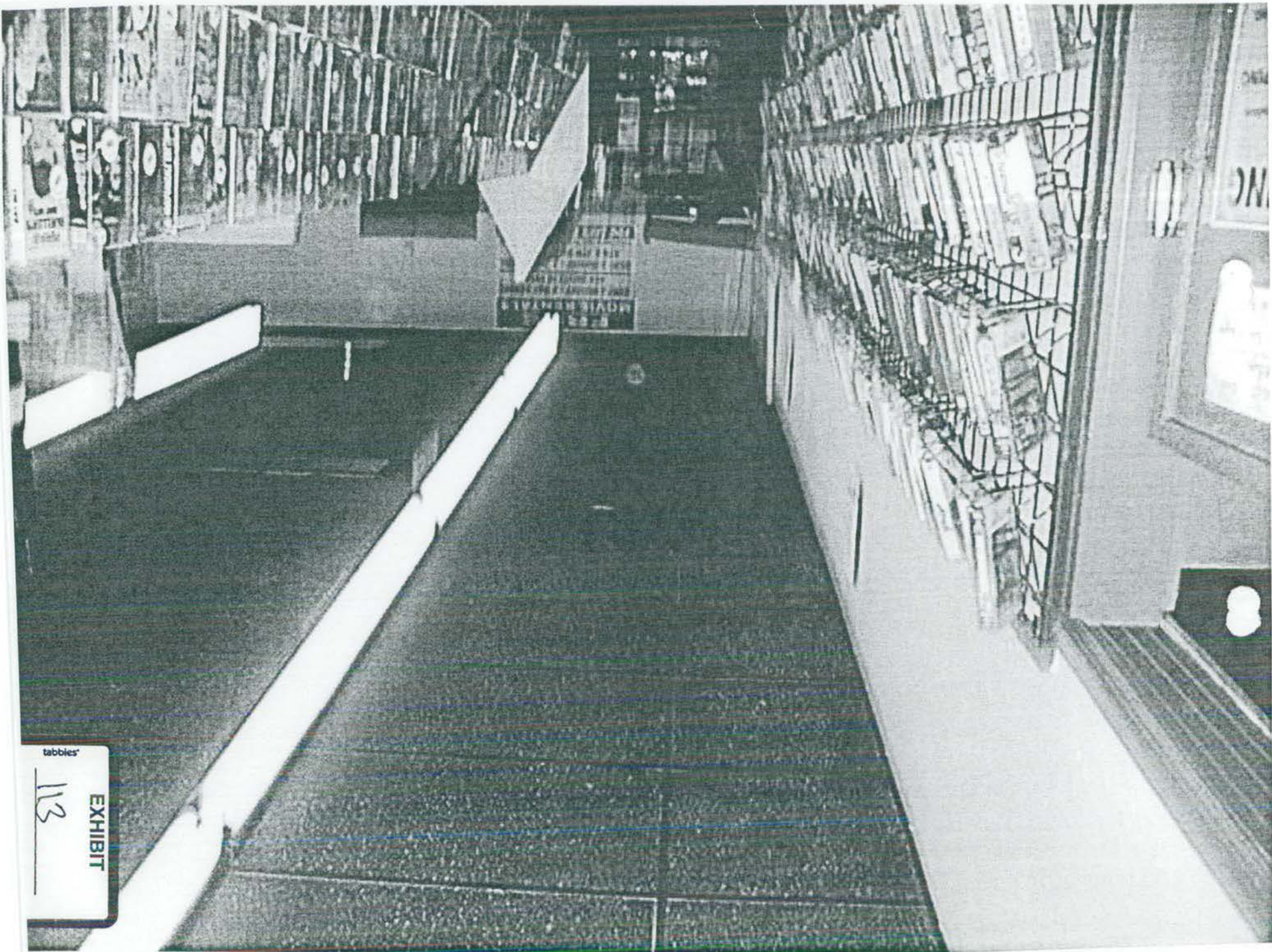
*With Approved Credit Card

Ecstasy
NOW!

ADULT DVD
SALE
MOVIES

7445





tabbles

113

EXHIBIT





EXHIBIT

116

Labbies



EXHIBIT

Tabbles



tabbles®
EXHIBIT
117



EXTRA LITERARY
TERRA MAGNA HALL - JEROME &
JEROME & HALL
EXTRA LITERARY JEROME & HALL - JEROME &
JEROME & HALL
EXTRA LITERARY JEROME & HALL - JEROME &
JEROME & HALL
JEROME & HALL
JEROME & HALL

tabbles
118
EXHIBIT

Bachelor & Bachelorette PARTY HEADQUARTERS

EXHIBIT

119

tabbles





DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

941 North Capitol Street, NE • Suite 2000 • Washington, DC 20001 • ☎ 202-442-4460

NOTICE OF VIOLATION AND NOTICE TO ABATE

ADDRESS OF VIOLATION 7445 GEORGIA AVE. N.W.		CONTROL NUMBER
BUSINESS NAME ROYCES VIDEO		TYPE OF INSPECTION ☐ CONSTRUCTION ☐ ELECTRICAL ☐ FIRE PROTECTION ☐ PLUMBING ☒ OTHER ZONING
OWNER'S NAME EIMAJ. TACC		
DATE OF INSPECTION 6/3/04	TIME OF INSPECTION 1:30 PM	

An inspection of the ☐ Construction ☐ Electrical ☐ Fire Protection ☐ Plumbing ☒ **ZONING** features at the above address was performed on the above date. The inspection revealed the violation(s) cited hereafter. The owner is required to abate the violation(s) by taking the corrective action(s) specified below:

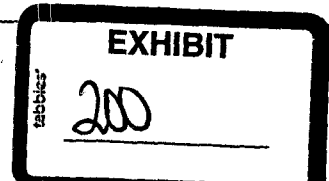
CODE SECTION	VIOLATION	REQUIRED CORRECTIVE ACTION
52209	DCMR11 3204.4	(REMOVE 40% OF ADULT VIDEO)
		OPERATING 50% OF STORE FOR ADULT VIDEO RENTALS/SALES

The cited violation(s) must be abated as ordered within ☒ **(5) FIVE DAYS** ~~from~~
☐ **6/9/04** days from receipt of this notice. Failure to comply will result in this notice being forwarded to the Office of Compliance for enforcement action.

NAME OF PERSON NOTIFIED (PLEASE PRINT) Deanna Collins		DATE OF RECEIPT OF NOTICE 6/3/04
SIGNATURE OF PERSON RECEIVING NOTICE Deanna Collins		POSITION manager
INSPECTOR (PRINT) ALEX T. JAMES		TELEPHONE 202-723-5600
		INSPECTOR'S TELEPHONE 2/442-4592
INSPECTOR'S BADGE # 790	DATE OF NOTICE 6/3/04	TIME OF RECEIPT OF NOTICE 1:45 PM

TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICE
OR OFFICIAL, CALL THE INSPECTOR GENERAL AT 1-800-521-1639.
ALL CALLS ARE CONFIDENTIAL.

Respondent Exhibit 736



**DISTRICT OF COLUMBIA
OFFICE OF CIVIL INFRACTIONS**
941 North Capitol Street NE, Suite 9600
Washington D.C. 20002-4210

202724 8120

Case No(s). N100089

Certificate of Service

Copy to:

Name and Address:

**EIMAJ INC
N.T. FILLORAMO
5225 POOKS HILL ROAD
BETHESDA MD, 20814**

I hereby certify that the attached document was served by first class prepaid mail to the party indicated above:
(Method of Service)

Signature

Erica Taylor

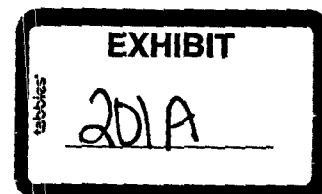
May 9, 2005
Date

Name and Address:

Erica Taylor

**Office of Civil Infractions
941 North Capitol Street, NE
Suite 9600
Washington, DC 20002**

Nick
301 4230067



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Ressand... F#4

GOVERNMENT OF THE DISTRICT OF COLUMBIA

NOTICE OF INFRACTION

Notice No. N 100089

Issuing Agency: ☐ DOH ☐ DMH ☒ DCRA ☒ 1st NOI
☐ CFSA ☐ FEMS ☐ Other _____ ☐ 2nd NOI (1st NOI No. _____)

Date of Service

7445 GEORGIA AVE. N.W.
 Location of Infraction: Type of Location: ☐ Vacant Lot ☐ Construction Site ☐ Occupied ☐ Other _____
 Business/Company Name: EIMAJ INC Charge as Respondent (circle): YES NO Telephone Number: (202) 723-5600
 Individual Name (Last, First, Middle): N.T. Filloramo Charge as Respondent (circle): YES NO Telephone Number: (202) 723-5600
 Mailing Address: 5325 ROCKS HILL RD
 City: BETHESDA State: MD Zip Code: 20814
 Business License/Permit Type: _____ Business License/Permit No.: _____

You are charged with violating the District of Columbia laws or regulations stated below. You MUST SIGN and RETURN this form WITHIN 15 DAYS of the date of service. You must also indicate below each infraction whether you ADMIT, ADMIT WITH EXPLANATION or DENY. Instructions on back.

If you DENY one or more of the infractions, you must timely sign and return this form as your answer. If you do so, a hearing in your case is pre-scheduled on the _____ day of _____ at _____ AM / PM at the following location:

Office of Administrative Hearings, _____, Suite _____, Washington, D.C.

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction	Statutory Penalty (if applicable)
DC CODE 6-641.07	\$ 500-	\$

Nature of Infraction: OPERATING OUTSIDE THE SCOPE OF CERTIFICATE OF OCCUPANCY
 Date of Infraction: 4/29/05 Time of Infraction: 12:30 PM Previous Infractions Committed: 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature: _____

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction	Statutory Penalty (if applicable)
	\$	\$

Nature of Infraction: _____
 Date of Infraction: _____ Time of Infraction: _____ Previous Infractions Committed: 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature: _____

Total fine amount due for all infraction(s) \$ _____

WARNING: Failure to answer (see reverse) each infraction on this Notice within 15 days of the date of service by signing and returning this form will result in assessment of a penalty equal to and in addition to the specified amount of the fine. You also may be subject to other penalties and actions allowed by law including suspension and non-renewal of your license or permit, the sealing of your business, a lien being placed on your property, and attachment of your equipment. If this is your second Notice for the charges, your failure to respond within 15 days of the date of service will result in the assessment of a penalty equal to twice the amount of the fine. For Medical-funded facilities: This Notice and information obtained through this proceeding may be used for evaluation under applicable law, including 42 CFR Chs. 442 and 483 and for any proceeding under 42 CFR Ch. 431. For information call (202) 442-9091.

I personally declare under penalty of perjury that I observed and/or determined that the infraction(s) charged have been committed.
 Signature: [Signature] Print Name: HERE T. JAMES Date: 5/16/05

I sign my name below to acknowledge receipt of this Notice of Infraction and not as an admission of guilt or liability to the charge(s) listed.

Respondent's Signature
 H (WHITE)

Print Name
 RESPONDENT (YELLOW)

Date
 INSPECTOR (PINK)

ENFOR

EXHIBIT

201B

YOUR ANSWER MUST BE RECEIVED BY THE 15TH DAY AFTER THE DATE OF SERVICE TO AVOID THE ASSESSMENT OF ANY ADDITIONAL MONETARY PENALTIES REQUIRED BY LAW. YOU HAVE THE RIGHT TO REQUEST A HEARING. YOU MAY ANSWER EACH INFRACTION IN ONE OF THE FOLLOWING WAYS:

TO ADMIT THE INFRACTION(S) AND PAY THE FINE(S):

On this Notice and within 15 days of the date of service:

- **CHECK** the "ADMIT" box under the infraction(s) listed on this Notice and sign your name on the **SIGNATURE** line(s).
- Make a personal check, cashier's check, or money order payable to the **D.C. TREASURER** (no cash accepted by mail) for the total amount of fines and penalties due for the infraction(s) you are admitting. Note that there will be a fee for all returned checks. Write the **NOTICE NUMBER** (upper right corner of this Notice) on the front of your check or money order. Make a photocopy of this Notice for your records.
- Complete all information requested below in **SECTION A** and **SECTION B** and complete and sign the declaration in **SECTION B**.
- After completing all required information, enclose full payment with this Notice in an envelope with required postage and mail to:

Infraction Clerk, Office of Administrative Hearings, P.O. Box 77718, Washington, DC 20013-8718 (202) 442-9091

TO ADMIT THE INFRACTION(S) WITH EXPLANATION AND REQUEST A HEARING BY MAIL:

On this Notice and within 15 days of the date of service:

- **CHECK** the "ADMIT WITH EXPLANATION" box under each infraction(s) listed on this Notice and sign your name on the **SIGNATURE** line(s).
- Complete all the information requested below in **SECTION A** and **SECTION B** below and sign the declaration in **SECTION B**.
- Although a plea of Admit with Explanation is an admission of liability, you must prepare and submit any written explanation, affidavits, or other evidence explaining the circumstances surrounding the infraction that you believe justify a reduction of the fine. An Administrative Law Judge will review the evidence in your case and issue a ruling in writing. Failure to submit sufficient relevant evidence of mitigating circumstances will result in a failure to obtain any reduction or suspension of the fine. Write the **NOTICE NUMBER** on the front of any document submitted. Make a photocopy of this Notice for your records.
- After providing all required information, enclose this Notice together with any explanation, affidavits, or other evidence you wish to submit in an envelope with required postage and mail to following address:

Infraction Clerk, Office of Administrative Hearings, P.O. Box 77718, Washington, DC 20013-8718 (202) 442-9091

TO DENY THE INFRACTION(S) AND REQUEST TO APPEAR IN PERSON FOR A HEARING:

On this Notice and within 15 days of the date of service:

- **CHECK** the "DENY" box under the infraction (s) listed on this Notice and sign your name on the **SIGNATURE** line(s).
- Your hearing date and time are pre-scheduled and appear on this Notice and will be confirmed in writing upon timely receipt of your plea of Deny. If you fail to appear at your scheduled date and time after you request a hearing in person, the hearing may proceed to a final decision in your absence. You may be required to submit a copy of all evidence prior to the hearing date. Make a photocopy of this Notice for your records. You will be notified by mail if your hearing date and time are changed.
- Provide all the information requested below in **SECTION A**. You do not need to fill-in and sign below in **SECTION B** unless you have also **Admitted** or **Admitted with Explanation** one of the charged infractions.
- After providing all required information, enclose this Notice in an envelope with required postage and mail to following address:

Infraction Clerk, Office of Administrative Hearings, P.O. Box 77718, Washington, DC 20013-8718 (202) 442-9091

TO FILE A RESPONSE IN PERSON:

Alternatively, you may submit this Notice and any documentation in person with the required information at the location on the front of this Notice or at any of OAH's filing locations weekdays, 9:00 A.M. - 5:00 P.M. For a list of locations, please call (202) 442-9091 or visit OAH's web site at [HTTP://WWW.OAH.DC.GOV](http://www.OAH.DC.GOV)

SECTION A: TO BE COMPLETED BY ALL RESPONDENTS

Name (print) _____ Telephone: _____ Fax: _____
Street Address _____ City _____ State _____ Zip _____

SECTION B: TO BE COMPLETED BY ALL RESPONDENTS ADMITTING OR ADMITTING WITH EXPLANATION

I hereby declare under penalty of perjury that I have received this Notice, answered each infraction as indicated on the reverse side, and **CORRECTED** or **NOT CORRECTED** (circle only one) all the infraction(s) listed on this Notice that were **ADMITTED** or **ADMITTED WITH EXPLANATION**.

Signature _____ Date _____

WARNING: SUBMISSION OF A FALSE STATEMENT IS A CRIME PUNISHABLE UNDER D.C. OFFICIAL

[HTTP://WWW.OAH.DC.GOV](http://www.OAH.DC.GOV)



GOVERNMENT OF THE DISTRICT OF COLUMBIA
 DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
 BUILDING AND LAND REGULATION ADMINISTRATION



Opinion of the Zoning Administrator

Determining Whether a Retail or Wholesale Video Store Selling or Renting Sexually Oriented Materials is a Sexually Oriented Business

Background

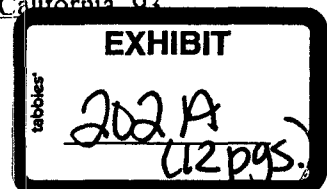
In response to letters and complaints received by the Department of Consumer and Regulatory Affairs alleging that certain retail video stores are, or are intended to be operated as, sexually oriented business establishments as that term is defined in the zoning regulations (Title 11 of the District of Columbia Municipal Regulations, Section 199.1), the Zoning Administrator finds it necessary to interpret the zoning regulations in regards to video stores which sell or rent both general interest¹ and sexually oriented materials.²

Unless a business has grandfathering rights, sexually oriented business establishments may, with approval by the Board of Zoning Adjustment, be located only in C-3-B, C-3-C, C-4, C-M and M zoning districts. These districts provide ample locations for sexually oriented business establishments, and, accordingly, there is no constitutional requirement that sexually oriented business establishments be allowed in any other zoning district. Businesses and the public, however, have a right to know, in more concrete terms, how many sexually oriented materials, if any, may a mixed use video store offer for sale and/or rental before it must obtain a certificate of occupancy as a sexually oriented business establishment and therefore be prohibited from operating in districts other than those listed above.³ It is within the Zoning Administrator's

¹General interest videos are videos which are not sexually oriented. Stores which carry only general interest videos are "general interest" stores, while stores that carry both general interest and sexually oriented videos are referred to as "mixed use" stores.

²"Sexually oriented materials" are those materials which can be characterized by their emphasis on matters depicting, describing, or related to specified sexual activities and specified anatomical areas, as defined at 11 DCMR § 199.1.

³ The zoning regulations do not apply an obscenity standard in defining sexually oriented businesses. The Zoning Administrator, therefore, does not believe that in a zoning context it is appropriate to apply a "community standards" test as described in Miller v. California, 93 S.Ct. 2607 (1973.)



Respondent's J

interpretive authority to provide such clarification. Pursuant to Reorganization Order No. 555, III. F (D.C. Code Ann. Title 1.-Administration, Appendix at 182, 185 (1973)), the Zoning Administrator "shall be responsible for administratively interpreting and enforcing the zoning regulations." The District of Columbia Court of Appeals has repeatedly recognized this authority, often stating, as it did in Kalorama Citizen's Association v. District of Columbia Board of Zoning Adjustment, 640 A.2d 179 (D.C. App. 1994), that:

we give "great deference" to the agency's interpretation of its regulations, which we may not reverse unless it is clearly erroneous or inconsistent with the regulations.

It is the purpose of this Opinion to interpret the zoning regulations of the District of Columbia so as to provide standards by which proprietors of mixed use video stores and the public may determine whether a video store is a sexually oriented business establishment.

Discussion

1. Sexually Oriented Business Establishments; Definitions

The zoning regulations at 11 DCMR § 199.1 define a sexually oriented business establishment as follows:

[A]n establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals, films, materials and articles or an establishment that presents as a substantial or significant portion of its activity, live performances, films or other material which are distinguished or characterized by their emphasis on matters depicting, describing, or related to specified sexual activities and specified anatomical areas.

The terms "substantial," "significant," and "stock in trade" are not defined in the zoning regulations. When a specific word is not defined in the zoning regulations, the Zoning Administrator relies on Webster's Unabridged Dictionary (3rd Edition), to provide clarity.⁴ In considering these definitions, the Zoning Administrator concludes that "substantial" means "to a large degree" but not necessarily a majority of a business's stock in trade. This is especially so because "substantial" is used in conjunction with the word "significant." "Significant" is not synonymous with "predominant" or other majoritarian terms, and therefore it is clear to the Zoning Administrator that the Zoning Commission set a standard of less than 50%. In examining a business's stock in trade, the Zoning Administrator will assess "the aggregate of things necessary to carry on the business,"⁵ which, in addition to inventory items, includes advertising and promotion activities and signage.

⁴See the Appendix to this opinion which carries the full definition of each term, with the relevant portions highlighted in bold italic.

⁵ Webster's, *supra*.

2. Secondary Effects

The United States Supreme Court has made it clear that the application of zoning restrictions to sexually oriented businesses may be "designed to combat the undesirable secondary effects of such businesses." However, such restrictions must do so "without violating the government's paramount obligation of neutrality in its regulation of protected communication," City of Renton v. Playtime Theatres, Inc., 106 S.Ct. 925 (1986). Undesirable secondary effects "contribute to neighborhood blight," *id.*, and include "increased crime rates, depreciation of property values, deterioration of community character and the quality of urban life".⁶ In addition, in Baltimore Boulevard, Inc. v. Prince George's County of Maryland, 684 F.Supp 884 (1988), while some sections of the county's zoning regulations for adult bookstores⁷ were found to be unconstitutional, the section of the regulations that defined adult book stores as having more than 25%⁸ of their stock in trade in sexually oriented materials passed constitutional muster.

In sum, it is clear that through zoning, the District may restrict the placement of sexually oriented businesses to protect its citizens from the undesirable secondary effects of such establishments. Furthermore, it appears that in addition to clearly described standards regarding how a business promotes itself, combined with percentage-based formulae will give all the parties concerned clear guidelines. Moreover, the use of numerical standards will serve as a protection against unfair or arbitrary enforcement. Understanding the foregoing, the question then becomes what percentage of sexually oriented materials may a mixed use video store carry or display and what other activities may it engage in without creating undesirable secondary effects. In that regard, to learn what other governments have determined in this respect, and to assess video retailing industry norms, the Zoning Administrator considered the zoning regulations for adult businesses

⁶From the 1995 resolution of the City Planning Commission of the City of New York. In addition to conducting its own study, New York based its findings on research done by the Town of Islip, New York, Los Angeles, California, Indianapolis, Indiana, Whittier, California, Austin, Texas, Phoenix, Arizona, Manatee County, Florida, New Hanover, North Carolina, and the State of Minnesota, all of which concluded that adult uses tended to produce adverse secondary effects.

⁷At the time the suit in Baltimore Boulevard began, an "adult book store" in Prince George's County was defined as:

Any commercial establishment that has twenty-five percent (25%) of its stock in books, periodicals, photographs, drawings, sculpture, motion pictures, films or other visual representations which depict sadomasochistic abuse, sexual conduct or sexual excitement as defined by Article 27 Section 416A of the Annotated Code of Maryland and does not otherwise qualify as a theatre or nonprofit free lending library.

⁸While Baltimore Boulevard was pending, the county lowered the threshold to 5%, and in 1997, it raised the threshold to 10% of a store's inventory. This change went into effect in January of 1998.

promulgated by the City of New York and Prince George's County, Maryland, as well as a recent national survey conducted of approximately 4,000 video stores by the publication Adult Video News.⁹

3. Regulations in Other Jurisdictions and Industry Practices

A. New York City Regulations:

In 1995, in case # N 950384 ZRY, the Planning Commission of the City of New York amended the City's zoning regulations concerning "Adult Establishments." In the amendments, New York defined an adult establishment as follows:

[A] book store which has a "substantial portion" of its stock in trade in any one or more of the following...video cassettes,¹⁰ or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

In the resolution enacting the zoning amendments, the New York City Planning Commission advised that if more than 40% of a store's stock in trade or retail space was devoted to sexually oriented material, the business would be considered an adult establishment. In addition, New York established a cap of 10,000 square feet of retail space for the display of sexually oriented materials regardless of how much total retail space a store occupies.

B. Prince George's County Regulations:

The County Council has revised inventory percentages twice since Baltimore Boulevard was filed. First, the county lowered its inventory threshold to 5% (from 25%) and then raised the threshold to 10% in late 1997. Regardless of the percentage amount, however, Prince George's County has used inventory percentages to define sexually oriented businesses for at least 10 years.

C. Video Industry Survey:

From 1996 through 1997, Adult Video News conducted a survey of more than 4,000 video

⁹ "The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence is relied upon is reasonably believed to be relevant to the problem that the city addresses." In addition, "the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems." Renton, supra. See also FW/PBS, Inc. v. City of Dallas, 110 S.Ct. 596 (1990). It is the Zoning Administrator's opinion that this reasoning also applies to the administrative interpretation of regulations.

¹⁰ Because the New York City Regulations were updated, video tapes were included in its definition of materials. While video tapes are not specifically mentioned in the District's zoning regulations, they certainly fall within the category of "other material."

stores. In its annual publication, "AVN's 1998 Adult Entertainment Guide," the magazine revealed that in stores which carry both adult and general release titles, the adult titles comprise, on average, 18.5% of a store's inventory. In addition, in the Northeast region of the country, the "adult percentage of the video market" is 36%, while the in the Southeast and Mid-South regions the percentages are 11.7% and 9.9%, respectively. The survey also discovered that in the Northeast the average number of adult videos in stores which carried both adult and general interest videos was 700. In the Southeast and Midsouth, the average inventory of sexually oriented video tapes in mixed use video stores was 267 and 279 items, respectively.

4. Survey of Video Stores in the District Which Carry Sexually Oriented Materials

Beginning in November of 1997, the Department of Consumer and Regulatory Affairs conducted a survey (see Appendix II), of all of the 25 mixed use video stores in the District.¹¹ The purpose of the survey was to determine the percentage and actual number of sexually oriented materials in the respective businesses, as well as the percentage and actual square footage of floor space used in each store for the sale and display of sexually oriented materials. The Department did not include video stores which carried no sexually oriented materials, nor did it survey establishments which have the authority under the zoning regulations to operate as sexually oriented businesses.

As regards the percentage of the inventory represented by sexually oriented materials, the survey showed a broad division into two segments: a high end, beginning at 28%, and a low end, beginning at 6% and reaching no higher than 19%. There were no stores in a middle segment ranging from 20% to 27%. Of the fifteen stores in the high end, nine would exceed New York's 40% standard. Of those, five went beyond 50%, and four of the latter five also offered "sex toys" for sale.¹² All of the fifteen businesses would meet any reasonable interpretation of a "sexually oriented business establishment," as sexually oriented materials are a significant and substantial portion of their stock in trade. In contrast, ten stores at the lower end, which run the gamut from single-store operations to a local chain and a national chain, carried sexually oriented materials in an average of 13% of their total stock.

5. Other Factors

In determining whether sexually oriented materials are a significant or substantial part of a business's stock in trade, the Zoning Administrator thinks it is also appropriate to look at how extensively a video store promotes and/or advertises the sexually oriented materials it has for sale or rental, because advertising and/or promotion are among "the aggregate of things necessary to carry on a business." If a video store expends a substantial effort in advertising or promoting sexually oriented materials, it will likely be perceived as a sexually oriented business, and attract or cause the undesirable secondary effects, such as diminution of property values, and altering

¹¹ The Department used the telephone directory, advertisements, and site visits to identify the video stores.

¹² "Sex toys" are further discussed in this opinion under Standards For Determining Whether a Business is Sexually Oriented, Subsection B(1).

neighborhood character, which the zoning regulations are designed to prevent. Furthermore, in addition to using percentages of retail space and inventory as guidelines, it is appropriate to establish numerical standards. Numerical standards are required, because at some point, even following the percentage guidelines, a business could have such a large number of sexually oriented materials that the store would generate undesirable secondary effects.

In addition, if a video store also sells sexually oriented magazines or books, the Zoning Administrator will determine whether said books or magazines are a substantial or significant portion of all of the magazines and books offered for sale by the business. Similarly, if the sexually oriented materials for sale are new, then the general interest items of the same category which are offered for sale should also be new. This comparison will be made so that video stores will not be able to feign compliance with the Zoning Regulations by carrying used or undesirable general interest items while stocking new, more merchantable, sexually oriented materials.

Conclusions

In assessing the facts, it is clear that there is a significant range between the inventory percentages set by Prince George's County and the City of New York. In addition, the volume of business done in adult videos in mixed use video stores varies dramatically region by region. The Zoning Administrator, however, cannot agree with Prince George's County that if a video store has as little as 10% of its stock in trade in sexually oriented materials it will cause undesirable secondary effects. Nor, on the other hand, can the Zoning Administrator agree that the 40% figure promulgated by New York City will provide an adequate bulwark against undesirable secondary effects.

The District's survey shows that a majority (fifteen) of the mixed use video stores in the District have close to 30% or more of their inventory in sexually oriented materials, with more than half of those stores exceeding even New York City's standards. All fifteen are clearly sexually oriented because sexually oriented materials are a substantial and significant portion of their stock in trade. All fifteen may be expected to cause the negative secondary effects that have been found in the studies and cases referred to above. That these stores already operate in the District in no way implies a contrary finding concerning secondary effects. Rather, the fact is that the District in recent years, due to budget constraints, loss of personnel, restructuring, and other factors, has lacked the resources to enforce all aspects of the zoning regulations, let alone conduct studies to document the effect of such businesses on the surrounding neighborhoods. In addition, neither the Constitution nor the applicable cases require the District to conduct such a study. The concerns raised by residents of at least two neighborhoods about alleged sexually oriented video stores beginning operations provide sufficient basis for the Zoning Administrator to act to interpret the zoning regulations and to devote still-scarce resources to enforce them, before additional businesses commence operations and before existing businesses expand sexually oriented operations without effective regulation.

After considering the measures taken in other jurisdictions, and examining mixed use video stores in the District, the Zoning Administrator believes that a standard approximating the national average of 18.5% of a store's inventory (as reported in Adult Video News), is appropriate.

Therefore, while taking other factors into account, the Zoning Administrator believes that if more than 15% of a store's inventory is comprised of sexually oriented materials, it is a sexually oriented business establishment. This standard accommodates the District's legitimate mixed use video stores which have an average of 13% of their stock in sexually oriented materials, and limits the sale and rental of such items to the kind of accessory or incidental use contemplated by the zoning regulations.

Standards For Determining Whether a Business is Sexually Oriented.

Based upon the foregoing, the Zoning Administrator interprets the District of Columbia Zoning Regulations, 11 DCMR §199.1, as is set forth below.

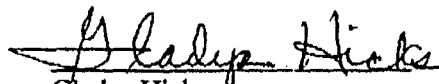
- A. A retail or wholesale business has a substantial or significant portion of its stock in trade in sexually oriented materials, and is therefore a sexually oriented business, when any of the factors set forth below in paragraphs 1, 2, 3, or 4 applies:
1. More than 15% of its inventory on display, in areas open to the public,¹³ counted piece-by-piece,¹⁴ are sexually oriented.
 2. It devotes more than 15% of any one of its advertisements (in column inches for print advertising and in air-time seconds for radio and television advertisements) to the sexually oriented materials it sells or rents. For print advertising, the words or pictures describing sexually oriented materials cannot be the only words or pictures in the advertising, and cannot be larger than the smallest pictures and/or typeface advertising non sexually oriented materials. In addition, the Zoning Administrator will consider the use of color, type size, layout or other graphic devices used in the store's advertising to determine whether a disproportionate emphasis has been placed on the store's sexually oriented materials.
 3. Looking at each individual promotional activity separately (which includes but is not limited to contests, guest appearances, discounts, coupons or web site information), the store gives disproportionate emphasis to the sexually oriented materials in its inventory. Factors such as the use of color, type size, layout and other graphic devices will also be considered.
- B. Irrespective of the applicability of the factors set forth above, a business establishment is sexually oriented as set forth in either of paragraphs 1 or 2 below:

¹³ "Open to the public" means those areas of the business establishment where customers are ordinarily allowed. Areas that are restricted to minors are considered "open to the public" for this calculation.

¹⁴ Materials in a storeroom or other areas that cannot be seen by customers, whether general interest, or sexually oriented, shall not be counted.

1. The Zoning Administrator makes the determination that the sale of merchandise such as three dimensional reproductions of human genitalia, and other items which are commonly known as "sex toys," are sexually oriented because such merchandise either "depicts" human genitals and other specified anatomical areas, or are related to specified sexual activities, and that the sale or display of such items is not a customary accessory use to a mixed use video store in the District of Columbia. A business that sells or displays such merchandise is a sexually oriented business.
 2. Furthermore, the presence or operation of booths or other apparatuses through which sexually oriented video tapes may be viewed on the premises of a video store, and for which consideration of any kind is charged, is not a customary accessory use to a mixed use video store. A business that provides or operates such apparatuses is a sexually oriented business.
- C. After obtaining a certificate of occupancy as a non-sexually oriented business, a business may still be determined to be operating as a sexually oriented business establishment based on the source of its revenues. In making an assessment after a business has opened, the Zoning Administrator may consider, in addition to the other factors discussed herein, the percentage of business, in dollar volume, generated by the establishment's sexually oriented materials, and apply the 15% standard.

In order to ensure that this interpretation of the zoning regulations meets with the approval of the Zoning Commission, a copy of this opinion shall be sent to the Commission for review.


Gladys Hicks,
Acting Zoning Administrator
January 29, 1998

APPENDIX

The terms "substantial", "significant" and "stock in trade" are defined below. The portions of the definitions which the Zoning Administrator believes are relevant to this issue have been highlighted in bold italics.

1. ¹ **substantial** \sebz'tanchel, -b'lt-, -taan-\ adj [ME *substancial*, fr. LL, fr. *substantial*, fr. L *substantia* substance + *alis* -al -- more at SUBSTANCE] **1 a** : consisting of, relating to, sharing the nature of or constituting substance : existing as or in substance : MATERIAL (<~life> <the~ realities> <most ponderous and~ things -- Shak.) **b** : not seeming or imaginary : not illusive : REAL, TRUE <the~ world> <a mere dream neither~ nor practical> **c** : being of moment : IMPORTANT, ESSENTIAL **2 a** : adequately or generously nourishing : ABUNDANT, PLENTIFUL <set a ~ table> <after that too~ dinner> **b** : Possessed of goods or an estate : moderately wealthy : WELL-TO DO <a~ man>; *often* : having a good and well maintained income producing property <a~ farmer> <the more~ tradesman> **c** : considerable in amount, value, or worth <made a~ gain on the transaction> **3 a** : having good substance : firmly or stoutly constructed : STURDY, SOLID, FIRM <a~ house> <~ cloth> **b** : having a solid or firm foundation : soundly based : carrying weight <a~ argument> <~ evidence> **4 a** : being that specified to a large degree or in the main <a~ victory> <a~ lie> **b** : of or relating to the main part of something syn see MASSIVE
- ² **substantial** \\' n -s [ME *substancial*, fr. *substancial*, adj.] : something that is substantial as **a** : something having substance or actual existence **b** : something having good substance or actual value **c** : *something of moment : an important material matter, thing, or part*
2. ¹ **significant** \kent\ adj [L *significant-*, *significans*, pres. part. of *significare* to signify -- more at SIGNIFY] **1** : having meaning; esp : full of import : SUGGESTIVE, EXPRESSIVE <the painter's task to pick out the ~ details -- Herbert Read> <~ anecdote> **2 a** : suggesting or containing some concealed, disguised, or special meaning : standing as a sign or token <perhaps her glance was~> **b** : INDICATIVE <his actions were more~ of his real purpose than were his words> **3 a** : having or likely to have an influence or effect : deserving to be considered : **IMPORTANT, WEIGHTY, NOTABLE** (*even though the individual results may seem small, the total of them is -- F. D. Roosevelt*) **b** : characterized by conveyance of an idea, though, or feeling <transform what would otherwise be meaningless juxtapositions or sequences of sensations into~ entities -- Vernon Lee> **c** : probably caused by something other than mere chance <~ decrease in average yearly growth> <statistically~ correlation between vitamin deficiency and disease> **d** : characteristic and essential to the determination of some larger element of a language : DISTINCTIVE <a~ grammatical form> <every language . . . moves within a clearly definable range of ~ speech sounds -- R. A. Hall b. 1911> <the difference between the initial of keel and cool is not~ in English> syn see EXPRESSIVE
- ² **significant** \\' N-S : something that has or conveys significance : SIGN, TOKEN, SYMBOL

3. **stock-in-trade** \sɒk-ɪn-ˈtreɪd/ *n* 1: the equipment necessary to or used in the conduct of a trade or business: as **a** : the goods kept for sale by a shopkeeper **b** : the fittings and appliances of a workman **c** : *the aggregate of things necessary to carry on a business* 2 : something held to resemble standard equipment of a tradesman or business (the light and frivolous charm which was her *stock-in-trade* --S. H. Adams) (its civic beauty, its *stock-in-trade*, is being ruined by parked cars -- Janet Flanner) (this motive had been a *stock-in-trade* of medieval art -- Verena Trudel)

Store Name	Address	Zoning District	C of O #	Total Square Feet of Retail Space	Square Feet of Retail Space for Sexually Oriented Materials	Percentage of Retail Space Used for Sexually Oriented Materials	Total Number General Interest Items	Total Number Sexually Oriented Materials	Percentage of Materials Which are Sexually Oriented	Sexual Accessories Sold
Tower Video	2000 Pennsylvania Avenue, N.W.	C-3-C	B-157551	1,656	192	12%	19,287	3,536	15%	NO
Video Corner	2311 Clavert Street, N.W.	C-2-B	B-156671	531	126	24%	3,058	3,889	56%	NO
Video Corner	3222 N Street, N.W.	C-2-A	B-163357	1,231	165	13%	3,403	2,184	39%	NO
Video Entertainment	905 H Street, N.E.	C-2-A	B-177591	520	72	14%	1,987	392	16%	NO
Video King	1845 Columbia Road, N.W.	C-2-B	B-162133	1,020	84	8%	5,748	1,175	17%	NO
Washington Video	1511 17th Street, N.W.	C-2-B	B-145356	1,387	1,152	83%	1,990	1,871	48%	NO
Washington Video	1653 Wisconsin Avenue, N.W.	C-2-A	B-158804	550	130	24%	2,325	1,151	33%	NO
Washington Video	2012 S Street, N.W.	C-3-B	B-140483	508	224	44%	3,104	2,228	42%	NO
Washington Video	401 M Street, S.W.	UR	B-159667	856	208	24%	1,763	1,152	40%	NO

Store Name	Address	Zoning District	C of O #	Total Square Feet of Retail Space	Square Feet of Retail Space for Sexually Oriented Materials	Percentage of Retail Space Used for Sexually Oriented Materials	Total Number General Interest Items	Total Number Sexually Oriented Materials	Percentage of Materials Which are Sexually Oriented	Sexual Accessories Sold
Capitol Video Sales	2028 P Street, N.W.	C-2-B	B-158531	987	406	41%	2,335	2,177	48%	NO
Capitol Video Sales	1729 Connecticut Avenue, N.W.	C-3-B	B-170134	1,563	875	56%	3,302	5,596	63%	YES
Capitol Video Sales	514 8th Street, S.E.	C-2-A	B-137377	3,920	480	25%	4,642	8,370	65%	YES
Capitol Video Sales	201 Massachusetts Avenue, N.E.	C-2-A	B-148182	1,012	312	31%	5,049	2,060	29%	NO
Discount Magazines & Video	750 6th Street, N.W.	C-4	B-1891525	338	130	38%	5,015	1,993	28%	YES
Fun Fair	919 5th Street, N.W.	C-2-C	B-176169	243	1,155	93%	898	2,924	77%	YES
Lamont Video	3171 Mt. Pleasant Street, N.W.	C-2-A	B-160478	1,116	216	19%	4,843	661	12%	NO
Penn Video	645 Pennsylvania Avenue, S.E.	C-2-A	B-167198	600	58	58%	2,476	2,176	47%	NO
Potomac Video	3408 Idaho Street, N.W.	C-2-B	B-167024	1,600	90	5%	10,790	686	6%	NO
Potomac Video	3418 Connecticut Avenue, N.W.	C-2-A	B-149814	1,216	209	17%	9,457	2,198	19%	NO
Potomac Video	4301 Connecticut Avenue, N.W.	C-3-A	B-167328	1,029	169	16%	6,876	762	10%	NO
Potomac Video	4828 Connecticut Avenue, N.W.	C-3-A	B-150747	1,918	168	9%	12,330	890	7%	NO
Potomac Video	5536 Wisconsin Avenue, N.W.		B-175850	5,322	760	14%	15,550	1,821	11%	NO
Royce's Video Outlet	7445 Georgia Avenue, N.W.	C-2-A	1920161	1,311	665	51%	1,823	6,081	61%	YES
Stage One Video	3748 10th Street, N.W.	C-2-A	B-177060	3,747	370	10%	5,256	1,171	18%	NO
Tape Headz Video	1709 17th Street, N.W.	C-2-B	B-172514	386	170	44%	1,719	1,052	38%	NO



LINDA W. CROPP
Chairman

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20001

February 3, 1998

Mr. W. David Watts
Director
Department of Consumer
and Regulatory Affairs
614 H Street, N.W., Room 1120
Washington, D.C. 20001

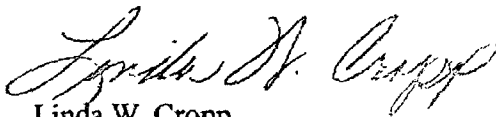
Dear Mr. Watts:

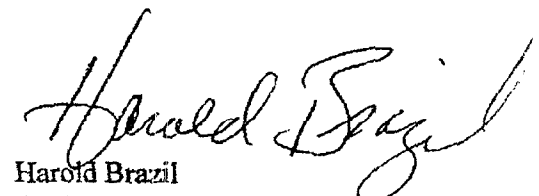
It has come to my attention that the Department of Consumer and Regulatory Affairs ("DCRA") has issued an opinion defining the standards for determining whether a business is sexually oriented and has begun to implement these new standards. This new definition was in response to complaints received by DCRA alleging that certain retail video stores are operating as sexually oriented business establishments.

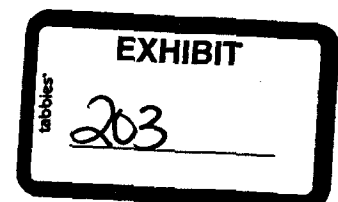
After a preliminary review of these regulations, I am concerned that these new standards may have an adverse impact on many existing businesses which have not been the subject of complaints from residents. I am not certain what, if any, input was received from the affected communities and businesses in developing this standard. I am therefore requesting that DCRA delay the implementation of these regulations on existing businesses that have been operating without any complaints, until there has been an opportunity for the affected businesses and communities to comment on these newly established standards.

If you should have any questions or concerns, please contact me or Christopher Murray of my staff at 724-8032.

Sincerely,


Linda W. Cropp
Chairman


Harold Brazil
Chairman, Committee on Consumer
& Regulatory Affairs



Respondent # 3

**Gay & Lesbian
Activists Alliance of Washington**

**P.O. Box 75265
Washington, DC 20013-5265
(202)667-5139**

Friday, January 30, 1998

URGENT

MEMO FOR: Video store owners and managers operating in DC
FROM: Rick Rosendall, President, GLAA
SUBJECT: New DCRA regulations on sexually oriented videos

Rick Rosendall

You may have seen the story in today's *Washington Post* (see attached) reporting that a new regulation promulgated by the DC Department of Consumer and Regulatory Affairs (DCRA) defines video stores as sexually oriented businesses if more than 15 percent of their inventory on display is sexually oriented. (The story in the *Post* concerns the non-gay-oriented MVC Latenight video store located on upper Wisconsin Avenue in Tenleytown.) I am writing this memorandum to alert you to the new regulation and to suggest what you can do to protect your business while continuing to serve your gay and other customers.

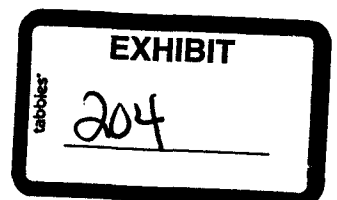
Also attached is a copy of the "Opinion of the Zoning Administrator" signed yesterday by DCRA Acting Zoning Administrator Gladys Hicks.

A footnote in the new regulation explaining the reference to "inventory on display" appears to offer a loophole. The footnote (see page 7 of the attached) states, "Materials in a storeroom or other areas that cannot be seen by customers, whether general interest, or sexually oriented, shall not be counted." Thus, it would appear that store managers could keep on display only a representative sampling of their sexually oriented videos in stock in order to stay under the 15 percent threshold, while keeping a catalog listing of available titles on the front counter for reference. Customers could then choose titles from the catalog and the store's staff could retrieve the requested titles from the storeroom.

MVC Latenight in Tenleytown has its own lawyers, and is being assisted by the local chapter of the ACLU. You, I expect, will want to run all of this past your own lawyers. Please note that I am a civil rights activist and not an attorney, so you will have to rely on your own interpretation of the attached regulations — and that of your attorneys — in determining what course of action to take. I am merely seeking to defend the interests of gay consumers by alerting you to this matter and passing on to you a suggestion as to how you might continue serving those customers while remaining in compliance with the new DCRA regulations.

It is, frankly, outrageous that responsible commercial licensees in the District should have to go through such changes because of the puritans among us who wish to prevent other consenting adults from exercising their right to the pursuit of happiness as they see fit. In the meantime, let us do what we can to thwart them. Please call us at the above telephone number if you would like to discuss this further. Best wishes for your continued success.

Attachments



web: www.glaa.org

email: equal@glaa.org

Fighting for Equal Rights Since 1971

The Washington Post

D.C. Pursues Issue Of Sexual Material With Video Store

Friday, January 30, 1998; Page B03

Metro Articles
Front Page Articles

Neighborhoods
Traffic
Community
Resources
High School Sports
Metro

A D.C. agency issued an opinion yesterday defining what constitutes a sexually oriented business and had a copy delivered to the MVC Latenight video store on upper Wisconsin Avenue that is the target of complaints from neighbors and other businesses.

Also dispatched to the store were two representatives of the agency, the Department of Consumer and Regulatory Affairs, who were assigned to examine the inventory to determine whether the store is such a business and therefore not permitted in the Tenleytown area.

The opinion -- an interpretation of zoning regulations -- was signed by Gladys Hicks, the acting zoning administrator. It defines a sexually oriented business, in part, as one where more than 15 percent of displayed inventory is sexually oriented or one that devotes more than 15 percent of its advertising to such material.

MVC Latenight, at 4809 Wisconsin Ave. NW, has drawn the wrath of many of its neighbors, who object to its stock of sexually oriented videos and other merchandise. The video store's owners have said it is a general video business that stocks best-selling books and newspapers, as well as sex toys and lingerie.

Yesterday's opinion expands on regulations that define a sexually oriented business as one with a "substantial or significant portion of its stock" devoted to sex.

Once the stock count at MVC Latenight is completed, the agency said, it will decide whether the store will be allowed to remain open. Officials said the store may be given a chance to adjust its stock to conform with the guidelines in the opinion.

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District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

No. B 160889

CERTIFICATE OF OCCUPANCY

5/13/91

(date)

Permission is hereby granted to Kimaj, Inc.
to use suite(s) _____ on the 1st floor(s)
of the building located on lot(s) 22 square 2962
known as premises 7445 Georgia Ave., N.W. for the following
purpose(s) Rental Of Video Cassetts, & Electronic Equipment.
Not Sexually Oriented. [su]

BZA #: _____ EXPIRATION DATE: _____

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES
AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY
for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT
TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE
in the type of business, ownership of business, or part of premises used therefor, will
render this Certificate VOID and a NEW Certificate must be obtained.

ZONE C/2/A FEE \$ 27.00

Donald G. Murray, Director

By

Donal G. Murray
Designer

86-P-3601 wd112

OFFICE COPY

EXHIBIT

tabbies

206

Respondent's AL



(PRINT OR TYPE WITH BLACK INK ONLY — DO NOT WRITE IN SHADED AREAS)

INTAKE

9:00 - 3:00

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

APPLICATION FOR CERTIFICATE OF OCCUPANCY

Date 5.13.91

CRA-5
Rev. 5/20/83

MARK OUTS & WHITE OUTS NOT ACCEPTED

(22) Receipt # 39735

(23) Trans. # 28194012

APPLICATION FEE OF \$20.00 IS NON-REFUNDABLE

INFORMATION
ON PROPOSED
BUSINESS

(1) Address of Business 7445 Georgia Avenue N.W. Suite/Room # NA
(2) Telephone No. of Business 202-723-5600 Lot 22 Square 2962
(3) Trade Name of Business Royces Rentals
(4) Is Business Incorporated? ☐ No ☒ Yes (Attach Letter of Good Standing and complete Line 5)
(5) President N.T. Filloramo Vice President Jamie Johns Secretary/Treasurer Roslyn A. Gordon
(6) Is Business a Partnership? ☒ No ☐ Yes
(7) Business Owner Nicholas T. Filloramo (See instructions) Tel. No. (days) 202-723-5600
(8) Business Owner's Home Address 5225 Books Hill Rd Bethesda Md Zip Code 20814

INFORMATION
ON
OCCUPANCY

(9) ☐ Ownership Change ☐ Partial Occupancy ☐ New Bldg. ☒ Use Change ☐ Load Change BZA No. ☐
(10) Proposed Use of Business Rental of Video Cassettes, Electronic Equipment
(11) Is Business Sexually Oriented/According to D.C. Zoning Regulations? ☒ No ☐ Yes
(12) Proposed Occupancy Load (25) N/A Square Feet Occupied 2,521
(13) Which Floors to be Occupied 1st Basement? NO
(14) Prior Use Convenience Store (7-Eleven)

INFORMATION
ON ENTIRE
BUILDING

(15) Building Owner Capital Building Tel. No. (day) 951-9115
(16) Building Owner's Address 4400 East West Hwy Bethesda Md Ste 36 Zip Code 20814
(17) Materials of Building Cinder Block/Brick
(18) Square Feet Occupied 2,520 No. of Floors 1 Basement? NO

ATTESTATION
AND
SIGNATURE

I certify that all of the statements on this application are true to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia.
(19) IF OWNER OF BUSINESS [Signature] Signature Date 5.10.91
IF AUTHORIZED AGENT FOR OWNER OF BUSINESS (Attach Authorization)
(20) Name of Agent Roslyn A. Gordon RAGordon Signature Date 5.10.91
PRINT CLEARLY
(21) Address of Agent 1223 Harvard St. N.W. Washington D.C. Zip Code 20009

INFORMATION
DESK

(24) Premises Condemned ☐ No ☐ Yes Cleared By [Signature] Date 5/13/91
(25) Building in RLA Zone ☐ No ☐ Yes Cleared By [Signature] Date 5/13/91
(26) Residential ☐ No ☐ Yes Smoke Det. Info. Given By [Signature] Date 5-13-91

LICENSE
BRANCH

(27) Licenses Required NO license required
(28) Reviewed By [Signature] Date 5-13-91

ZONING
OFFICE

(29) Zone C-2-A BZA No. 7-ELEVEN Food Stores Retail - 1st fl.
(30) Prior Use 7-ELEVEN Food Stores Retail - 1st fl.
(31) Certificate # B153850 Date Issued 5/25/88 BZA No. [Signature] ☒ Approved ☐ Disapproved
(32) Accepted for Filing by [Signature] Date 5/13/91

EXAMINER'S
USE

(33) Prior Use Code [Signature] Proposed Use Code [Signature]
(34) Use Change ☐ No ☒ Yes Inspect. Required ☐ No ☐ Yes By [Signature] Date 5/13/91
(35) Inspection Fee \$ 27.00 Issuance Fee \$ 27.00
(36) Approved for Issuance by [Signature] Date 5/13/91

INSPECTION
BRANCH

(37) Date of Scheduled C/O Inspections [Signature] AM/PM
(38) Inspection Status Approved ☐ Disapproved ☐ By [Signature] Branch [Signature] Date [Signature]
(39) Inspector's Signature [Signature] Printed Name [Signature]
(40) Reason for Disapproval [Signature]

OCCUPANCY
PERSONNEL

(41) ☐ Approved ☐ Denied ☐ Cancelled
By [Signature]
(42) Reason for Cancellation/Denial [Signature]
(43) Certificate of Occupancy No. B160889 Date of Issuance 5-13-91
(44) Bldg. [Signature] Elec. [Signature] Plumb. [Signature] Fire [Signature] Zoning [Signature]

EXHIBIT

tabbies

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SHEPHERD PARK CITIZENS' ASSOCIATION

7600 Georgia Avenue, Northwest, Suite 404, Washington, D.C. 20012

1 June 2004

Mr. Nicholas Fillaramo
Royce's Video Club
7445 Georgia Avenue, Northwest
Washington, DC 20012

Dear Mr. Fillaramo:

On behalf of the Shepherd Park Citizens' Association, we write to solicit your donation to our second annual community picnic. This year's picnic will be held on Sunday, June 27th, between 1:00 and 5:00 p.m. at the Lowell School, 1640 Kalmia Road, Northwest. In addition to a barbeque, the picnic activities will include hula-hoop, jump-rope, hop-scotch, horseshoe, neighborhood-history-trivia contests, three-legged races, softball, and board games.

The Shepherd Park Citizens' Association represents 1900 home owners in an area of the northwest quadrant of the District of Columbia enclosed on the east by Georgia Avenue, Eastern Avenue to the north, Rock Creek Park to the west and on the south by Aspen Street. Our association is in the process of incorporating as a non-profit organization and is seeking a federal charitable-organization status. In addition to Shepherd Park residents, the picnic will include residents from Colonial Village and North Portal Estates. Residents from all three communities regularly patronize Royce's.

Our community picnic presents an opportunity for you to improve your good will. We are in need of prizes for the picnic-game winners, food and paper products for the barbeque and money to help offset the costs of the event. We urge you to donate prizes, food, plastic and paper products or a monetary contribution. We also encourage you, as a commercial resident of our community, to send your representative to the picnic. At the picnic, signs acknowledging the generosity of donors will be posted. We would like to see Royce's on one of them.

If you would like to further discuss this opportunity with a member of our Picnic Solicitation Committee, do not hesitate to contact Ms. Tucker at (202) 291-1179 or Ms. Coleman Hall at (202) 882-4170.

Cordially yours,
SPCA Picnic Committee

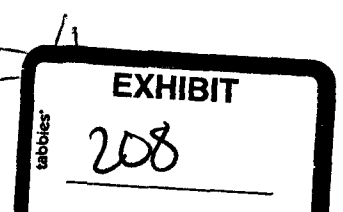
Cheryl Coleman Hall
CHERYL COLEMAN HALL

Vivian Tucker

VIVIAN TUCKER

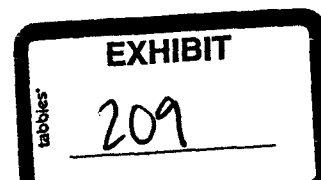
CV 12384
h B-11-07
h 100

Respondent's



ROYCE'S RENTAL		
2005 INVENTORY		
ADULT CATEGORY		
	ADULT MOVIES	8,034
	ADULT TOYS	435
	ADULT MAGAZINES	216
	ADULE MISCELLANEOUS ITEMS	733
	TOTAL ADULT INVENTORY	9,418
GENERAL CATEGORY		
	GENERAL MOVIES	8,566
	POSTERS	30
	MAGAZINES	6,540
	BATTERIES	380
	BLANK VHS TAPES	0
	BLANK DVD DISKS	200
	VCR HEAD CLEANERS	96
	HARD PLASTIC CASES FOR VIDEOTAPE	3,534
	DIAMOND CASES FOR DVD	10,157
	DVD CLEANERS	76
	DVD REPAIR MACHINES	12
	DVD LENS CLEANERS	24
	VHS PLAYERS	2
	DVD PLAYERS	1
	TOTAL GENERAL INVENTORY	29,618
	TOTAL INVENTORY	39,036
	PERCENTAGE OF ADULT INVENTORY	24%
	PERCENTAGE OF GENERAL INVENTOI	76%

Respondent's # 27





WASHINGTON, D.C. OFFICE:

7826 Eastern Ave., NW.
Suite 300
Washington, D.C.
20012-1324
202-291-2400
202-291-5006 (f)

**SILVER SPRING, MD
OFFICE:**

8035 13th Street
Suite 2
Silver Spring, M.D.
20910-4870
301-562-1400
301-562-5945 (f)

E-Mail
gatewaycdc@aol.com
WebSite
www.gatewaycdc.com

June 14, 2004

Mr. Nick Filleramo, Owner
Royce Video
7435 Georgia Avenue, NW.
Washington, D.C. 20012

Dear Mr. Filleramo:

I am writing on behalf of Gateway Georgia Avenue Revitalization Corporation (hereafter "Gateway") to explore the feasibility of purchasing 7435 Georgia Avenue. Gateway is interested in finding permanent space for our activities along the upper Georgia corridor. The location at 7435 has interested the Gateway Board of Directors.

Gateway is a 5 year old community based organization committed to revitalizing the upper Georgia corridor as a vibrant community for a variety of small business. Since 2000, Gateway has accomplished the following on upper Georgia:

- Installed 29 lamppost banners;
- Completed 30 storefront façade improvements;
- Successfully lobbied the District government to have a Parking Needs Analysis Study completed (expected October '04)
- Landscaped treeboxes twice annually with community volunteers;
- Won a 5 year D.C. Main Street grant.

Gateway is led by a 9 member Board of Directors, one full time Executive Director, and a part-time administrative assistant. All of the Gateway officers, and most of the Gateway Board live near the upper Georgia Avenue corridor. I would appreciate an opportunity to meet with you to further discuss Gateway's interest in 7435 Georgia Avenue.

Thanks in advance for your assistance. You may reach me at 202-409-8340 (cell), or 202-291-2400 (office).

Sincerely,

A handwritten signature in black ink that reads "Marc D. Loud".

Marc D. Loud/Executive Director



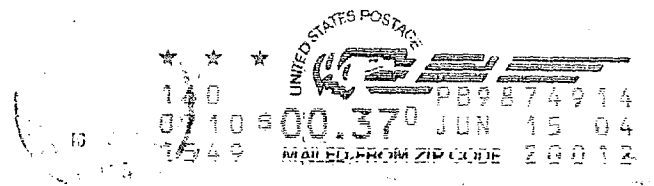
Response to # 29



7826 Eastern Ave., NW.
Suite 300
Washington, D.C.
20012-1324

Mr. Nick Fillarano
Owner
Royce Video
7435 Georgia Avenue, NW.
Washington, D.C. 20012

20012+1721 03



Gesperdon / #23

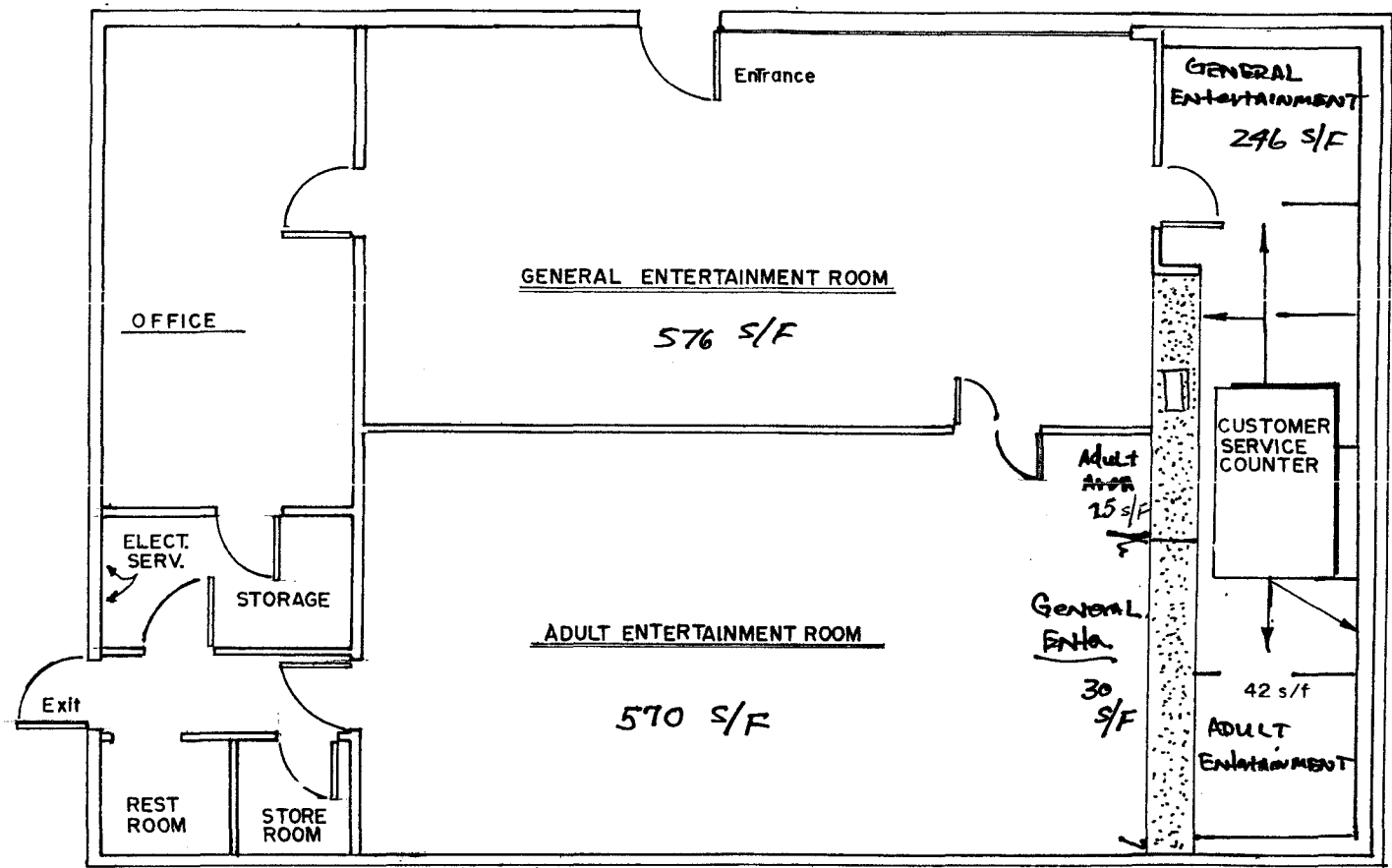
EXHIBIT
all



Reporter #29



EXHIBIT
23



852 S/F
GENERAL

637 S/F
ADULT

ROYCES VIDEO		
7445 GEORGIA AVE. N.W.		
EXISTING FLOOR PLAN		
SCALE 3/16" = 1'-0"	CHECKED BY	DRAWN BY
DATE JUNE 21, 2005		W. WINDER
SIZE	DRAWING NO. 1	

Responsible # 26

Sc # 180000000

**ADULT MOVIE
ROOM**
**NO ONE
UNDER 18**
**PLEASE
CHECK-IN
BAGS AT
COUNTER**

WARNING
These cameras
protected against
burglary, theft and vandalism.
**VIDEO/AUDIO TAPING
IN PROGRESS**
SECURITY & SURVEILLANCE, INC.
P.O. BOX 1000

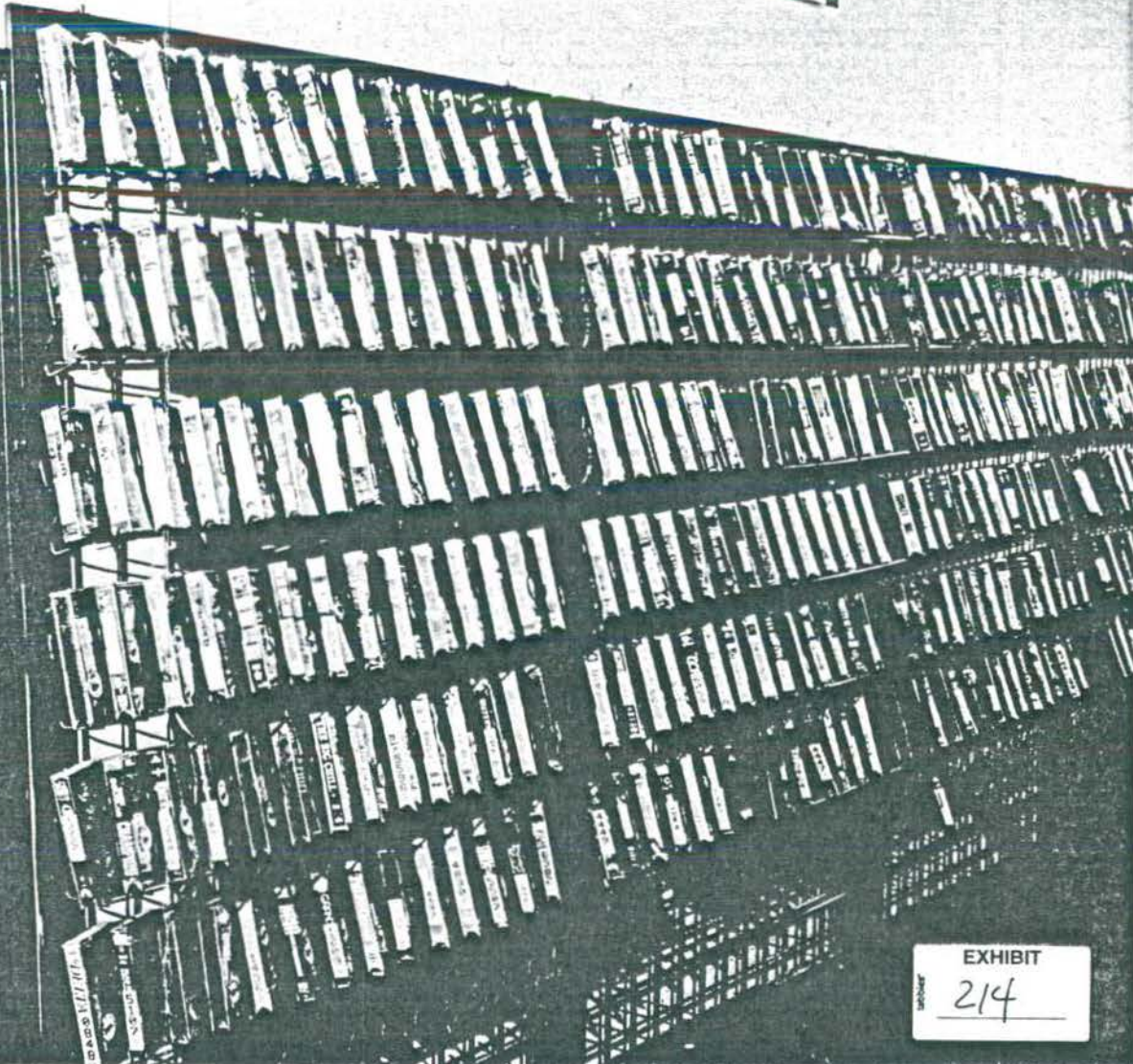


EXHIBIT
214

Kassamabuth # 25

7

CASE 17670

EXHIBIT 18

TAB 7

HAS UNPLAYABLE CD

8

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE Suite 9100
Washington, DC 20002-4210

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS
2006 AUG 31 A 10:31

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS
Petitioner

Case No: CR-I-05-N100089

v.

EIMAJ, INC. AND N.T. FILLORAMO
Respondent

ORDER

This case involves a Notice of Infraction served by the Government on Respondents Eimaj, Inc and N.T. Filloramo alleging a violation of D.C. Official Code § 6-641.09 for operating beyond the scope of a certificate of occupancy. The Notice alleges that the violation occurred April 19, 2005 at Royce Video located at 7445 Georgia Ave, N.W, which is operated by Respondents. The Government seeks a fine of \$500 for the violation. Respondents denied the violation and a hearing was held on July 13, 2005.

Respondent Eimaj, Inc. was issued a certificate of occupancy in May 1991 authorizing it to use the premises at 7445 Georgia Ave, N.W for the purpose of rental of videos, cassettes and electronic equipment "Not Sexually Oriented." The Government's basic contention is that it is operating beyond the scope of that certificate because it is operating a sexually oriented business.

The zoning regulations at 11 DCMR 199.1 define a sexually oriented business establishment as follows:

[A]n establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals, films, materials, and articles, or an establishment that presents as a substantial or significant portion of its activity, live performances, films, or other materials, that are distinguished or characterized by their emphasis on matters depicting, describing, or related to specified sexual activities and specified anatomical areas.

In January 1998, the Zoning Administrator issued an opinion that sets out criteria for determining whether a video store that sells or rents both general audience and sexually oriented materials is a sexually oriented business for the purposes of the zoning regulations. (Attached) The opinion was issued pursuant to the Zoning Administrator's authority to interpret and enforce the zoning regulations. The District of Columbia Court of Appeals have repeatedly held that such an interpretation is to be accorded great deference and not reversed unless clearly erroneous or inconsistent with a regulation. *Kalorama Citizens Association v. District of Columbia Board of Zoning Adjustment* 620 A. 2d 179 (D.C. App. 1994)

The opinion of the Zoning Administrator enunciates several standards for determining whether a video sale or rental business has a substantial and significant portion of its stock in trade in sexually oriented materials and states that a business that meets any of the standards is a sexually oriented business. One of the standards for finding a business sexually oriented is that it has more than 15% of its inventory on display in areas open to the public.¹

¹ For the purpose of this calculation, materials in storerooms or there areas that cannot be seen by customers are not counted, but areas restricted to minors are considered "open to the public" and are counted.

The opinion of the Zoning Administrator was issued following a survey by the Department of Consumer and Regulatory Affairs of 25 mixed use video stores in the District of Columbia, none of which had authority under the zoning regulations to operate as sexually oriented businesses. The survey found that only five of the twenty-five store had less than 15% sexually oriented material.

Research of cases decided since the opinion was issued in 1998 has found no Board of Zoning Adjustment, District of Columbia Court of Appeals, or District of Columbia Superior Court case that addresses the zoning of mixed use video stores or discusses or applies the opinion of the Zoning Administrator. Although the opinion indicates that it was being sent to the Zoning Commission for review to ensure that this interpretation of the zoning regulation meets with the Commission's approval, no further reference to the opinion could be located in public documents.

Respondent Mr. Filleromo testified that after the opinion was issued in 1998, he and other owners of mixed use video stores met with Mr. Watts, who was the Director of DCRA, and was advised that the existing businesses would not be impacted by the opinion.

In the light of the above, it is unclear whether the criteria in the opinion have ever been applied and whether it represents the Zoning Administrator's current interpretation.

Before ruling on this case, I will therefore direct DCRA to file a written statement that addresses the following issues:

- (1) Is the interpretation of the Zoning Administrator issued in January 1998 the current interpretation for determining whether a mixed use video store is sexually oriented
- (2) Did the Zoning Commission ever review the opinion, and if not, is the Zoning Administrator's opinion nevertheless owed deference under the D.C. Court of Appeals opinion in Kalorama Citizens, *supra*.
- (3) Is there any opinion, Board ruling or other authority to support the proposition that the opinion does not apply to mixed use videos that were in existence at the time the opinion was issued in 1998.

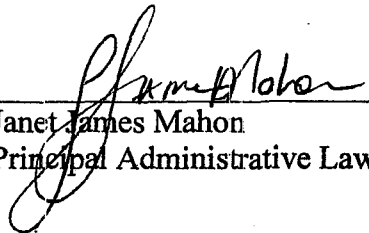
Accordingly, it is, this 31st day of August, 2006

ORDERED, that, on or before September 20, 2006, the Government shall file a written statement addressing the issues set out above or any other argument in support of finding a violation in this case; and it is further

ORDERED, that Respondents may file a written statement in reply to any statement filed by the Government on or before fourteen (14) days after that statement has been served by the Government; and it is further

ORDERED, that the Government shall mail a copy of any statement it files to both this Administrative Court at the above address and Respondents and that Respondents shall mail a copy of any statement it files to both this Administrative Court at the above address and the Government representatives listed below on the certificate of service, and it is further

ORDERED, that the failure of the Government to comply with the terms of this order without good cause may result in dismissal for want of prosecution pursuant to OAH Rule 2818.



Janet James Mahon
Principal Administrative Law Judge

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DISTRICT OF COLUMBIA
Office of Administrative Hearings
941 North Capitol Street N.E., Suite 9100
Washington D.C. 20002

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

DISTRICT OF COLUMBIA DEPARTMENT OF
CONSUMER AND REGULATORY AFFAIRS,

Petitioner,

v.

EIMAJ, INC

Respondent

2006 SEP 20 P 4: 56

Case No.: CR-I-05-N100089

PETITIONER'S REPLY TO ORDER TO RESPOND

In an order dated August 31, 2006, the tribunal directed petitioner to respond to several interrogatories propounded upon petitioner by the tribunal in order to assist the tribunal in the resolution of the case. The questions presented and responses thereto are as follows:

Interrogatory 1:

Is the interpretation of the Zoning Administrator issued in January 1998 the current interpretation for determining whether a mixed-use video store is sexually oriented.

Answer: Yes.

Interrogatory 2:

Did the Zoning Commission ever review the opinion, and if not, is the Zoning Administrator's opinion nevertheless owed deference under the D.C. Court of Appeals opinion in *Kalorama Citizens*....

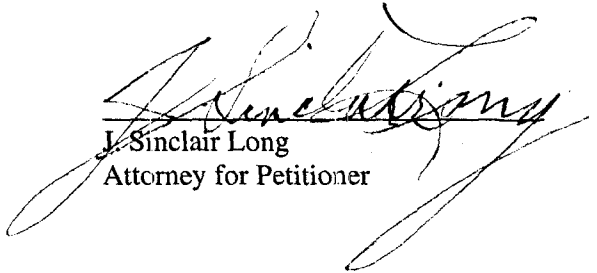
Answer: To petitioner's knowledge, information, and belief, the Zoning Commission did not review the opinion. Nevertheless, it is owed deference under *Kalorama Citizens*.

Interrogatory 3:

Is there any opinion, Board ruling or other authority to support the proposition that the opinion does not apply to mixed use videos that were in existence at the time the opinion was issued in 1998.

Answer: To petitioner's knowledge, information, and belief, there is no opinion, Board ruling or other authority to support the proposition that the opinion does not apply to mixed use videos that were in existence at the time the opinion was issued in 1998.

Respectfully Submitted:



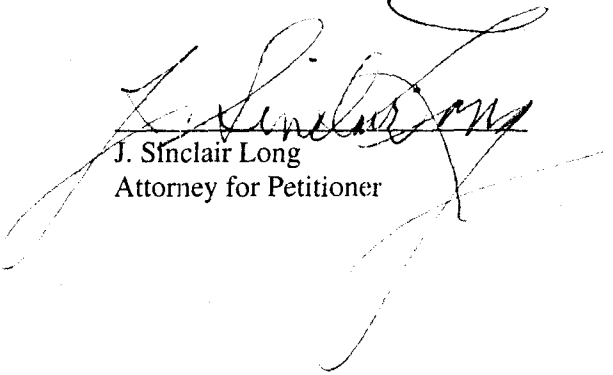
J. Sinclair Long
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify, this 20th day of September 2006, that the forgoing document was served by first class mail, postage prepaid, to the following:

Andrea Bagwell, Esquire
Harmon, Wilmot, & Brown, LLP
1010 Vermont Ave. N.W.
Washington, D.C. 20005

Respectfully Submitted:



J. Sinclair Long
Attorney for Petitioner

10

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

941 North Capitol Street, NE Suite 9100
Washington, DC 20002-4210

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2007 MAR 12 A 11: 54

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS
Petitioner

Case No: CR-I-05-N100089

v.

EIMAJ, INC. AND N.T. FILLORAMO
Respondents

FINAL ORDER

I. Introduction

This case involves a Notice of Infraction served by the Government on Respondents Eimaj, Inc. and N.T. Filloramo alleging a violation of D.C. Official Code §6-641.09 for operating beyond the scope of a certificate of occupancy. In the Notice, the Government alleged that the violation occurred on April 29, 2005 at Royce Video located at 7445 Georgia Ave, N.W., and sought a fine of \$500.

Respondents denied the violation, and a hearing was held on July 13, 2005. At the hearing, J. Sinclair Long, Esq., appeared for the Government, and Allen James, the charging inspector, testified for the Government. Andrea Bagwell, Esq., appeared for Respondents. Respondents' witnesses were Nicholas Filloramo, the named Respondent and owner of Royce Video, and Mr. Gilliam, who operates another business in the neighborhood.

The Government contends that Respondents were operating beyond the scope of the certificate of occupancy because they were operating a sexually oriented business with a certificate of occupancy for a business that is not sexually oriented.¹

The principal issue in this case is whether the nature and amount of sexually oriented materials that Respondents' video store displays for sale exceeds the amount that a video store with both general interest and sexually oriented merchandise (called a "mixed use" video store) may display without a certificate of occupancy for a sexually oriented business.

Based on the entire record in this matter, I hereby make the following findings of fact and conclusions of law:

II. Findings of Fact

Nicholas Filloramo has operated Royce Video at 7445 Georgia Ave, N.W. since 1991. On May 13, 1991, Eimaj., Inc, a company that Mr. Filloramo owns, obtained a certificate of occupancy to use the premises for the purpose of renting videos, cassettes, and electronic equipment "Not Sexually Oriented." Respondent's Exhibit "RX" 6. The

¹ D.C. Official Code § 6-641.09, the statute Respondent is charged with violating, provides in pertinent part:

Building permits; certificates of occupancy

(a) ... In the event that ...[regulations adopted under provisions of this subchapter] provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained. It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections...

application for the certificate of occupancy states that the proposed use of the premises is for the rental of video cassettes and electronic equipment. There is no place on the application form where an applicant is asked to state whether the business is sexually oriented. RX 6.

On April 29, 2005, Inspector Allen James inspected Royce's Video as a result of a complaint that a sexually oriented business was being operated on the premises.² The inspector measured the interior space in the store with a tape measure to determine its total square footage. His measurements indicated that the total square footage of the store open to the public was 1494 square feet. Then, based on his visual observations of the areas in the store with sexually oriented merchandise, he estimated that approximately 50% of the floor area of the store was used for the sexually oriented materials. The balance of the store contained videos for a general audience and other general merchandise. The inspector did not count items on display in the store.

A drawing of the floor plan of the store provided by Respondents shows that the portion of Respondent's store where inventory is on display in areas open to the public used for retail sales totals 1489 square feet.³ RX 26. This space is comprised of 825 square feet that contains general entertainment videos and other general merchandise, and 637 square feet that contains adult entertainment videos and other sexually oriented merchandise. Based on Respondent's floor plan drawing, 42.7% of the store area where

² The inspector does not know the identity of the complainant. Mr Filloramo believes that an organization that wishes to occupy the building where his store is located made the complaint. However, I find that the evidence is inadequate to establish the identity of the complainant and it is not relevant to this case.

³ This figure does not include the portions of the establishment that are used as office, restroom, or storage.

inventory is on display and open to the public contains adult entertainment and sexually oriented material. Since the Inspector's determination that 50% of the store contained sexually oriented material was based on visual observations and not actual measurements, I will credit the measurements on the drawing submitted by Respondents and find that the floor area containing sexually oriented material was 42.7%.

The portion of the store containing sexually oriented material is in the rear of the store and is separated from the rest of the store by a wall with a door. A sign on the door says "Adult Movie Room – No One Under 18." RX 25 and 26. Although most of the adult entertainment room contains videos, there is also a display case that contains approximately ten items of merchandise that are commonly known as sex toys.

A report on Royce Video's 2005 inventory submitted by Respondent shows a total of 39,036 items. RX 27. The total number of items in the adult category shown on the inventory report is 9,418, consisting of 8,034 adult movies, 435 adult toys, 216 adult magazines, and 733 adult miscellaneous items. The total number of items shown on the general inventory category in the inventory report is 29,618.⁴ Thus, based on this report, 24% of the total inventory in the store is "adult inventory." It is undisputed that all the items categorized as adult inventory are all sexually oriented.

Respondent's store is located in a free-standing building. There is an advertising display covering a significant portion of the front of the building. The advertising

⁴ The Government did not question the categorization of any of the entries on the inventory report or the accuracy of the inventory report. The general inventory total includes over 10,000 diamond cases for DVD's and over 3,000 cases for video tapes as general merchandise items. There was no evidence about whether these cases were display items or carried as inventory for routine sale.

includes the names and posters for some general audience movies, but does not include the names and posters for adult movies. Although almost all of the display advertising on the front of the store relates to general interest materials, there is a reference to adult toys in prominent lettering. RX 23, RX 29.

In addition to the complaint that led to the Notice of Infraction in this case, there was a previous complaint in 2004. That complaint led to an inspection and the issuance of a Notice of Violation and Notice to Abate on June 3, 2004. That Notice required the removal of 40% of the adult videos as corrective action. Mr. Gilliam, who operates a business in the same neighborhood, is not aware of any neighborhood complaints about Royce Video.

On January 28, 1998, the Acting Zoning Administrator, Gladys Hicks issued a signed opinion entitled “Determining Whether a Retail or Wholesale Video Store Selling or Renting Sexually Oriented Materials is a Sexually Oriented Business.” The Administrator stated that she was issuing the opinion to give notice to businesses and the public about how many sexually oriented materials a mixed use video store may offer for sale and/or rental before it must obtain a certificate of occupancy as a sexually oriented business establishment restricted to operating only in the limited zoning districts where sexually oriented businesses are permitted.⁵

⁵ The Administrator’s Opinion indicates that a sexually oriented business establishment, with the approval of the Board of Zoning Adjustments, could be located only in C-3-B, C-3-C, C-4, C-M and M zoning districts unless a business has grandfathering rights.

The Zoning Administrator's Opinion (the "Opinion") contains a report of a survey conducted in 1997 of the twenty-five mixed use video stores in the District of Columbia. The survey did not include establishments that carried no sexually oriented material or that have authority to operate sexually oriented businesses. The survey found that fifteen of the stores, including Royce Video, had more than 28% material that is sexually oriented. The Opinion states:

All of the fifteen businesses would meet any reasonable interpretation of a 'sexually oriented business establishment' as sexually oriented materials are a significant and substantial portion of their stock in trade.

The Zoning Administrator then adopted an interpretation which sets out several criteria for determining whether a business is a "sexually oriented business," as that term is used in 11 DCMR 199.1. One of the criteria for determining whether a mixed use video store is sexually oriented is whether more than 15% of inventory on display is sexually oriented.⁶ Twenty of the twenty-five mixed use video stores surveyed had more than 15% of sexually oriented materials.

On February 3, 1998, the Chairman of the Council of the District of Columbia, Linda Cropp, and the Chairman of the Committee on Consumer and Regulatory Affairs, Harold Brazil, wrote a joint letter to David Watts, the Director of the Department of Consumer and Regulatory Affairs stating that they were "concerned that these new standards may have an adverse impact on many existing businesses which have not been the subject of complaints from residents." RX 3. They requested that DCRA "delay implementation of these regulations on existing businesses that have been operating

⁶ The Zoning Administrator's Opinion contains several other standards for determining whether a business is sexually oriented, which are discussed below.

without complaints, until there has been an opportunity for the affected businesses and communities to comment on these newly established standards.” RX 3.

Mr. Filloramo and other video store owners who were concerned about the impact of that opinion on their businesses then met Mr. Watts. Mr. Filloramo testified that Mr. Watts told them that the criteria set out in the Opinion would not be applied to existing businesses, and that they could continue operations as long as they kept their sexually oriented inventory under 50%. I am crediting that testimony for the following reasons: 1) there was no conflicting testimony; and 2) Members of the Council had urged DCRA to reconsider the criteria in the Opinion as applied to existing business, making it plausible that Mr. Watts gave assurances to the owners of existing businesses that the criteria in the Opinion would not be applied to them.

III. Conclusions of Law

The zoning regulations at 11 DCMR 199.1 define a sexually oriented business establishment as follows:

[A]n establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals, films, materials, and articles, or an establishment that presents as a substantial or significant portion of its activity, live performances, films, or other materials, that are distinguished or characterized by their emphasis on matters depicting, describing, or related to specified sexual activities and specified anatomical areas.

The Opinion interpreting the regulation as applied to mixed use video stores was issued pursuant to the Zoning Administrator’s authority to interpret and enforce the zoning regulations. This authority was conferred by a provision that makes the Zoning

Administrator “responsible for administratively interpreting and enforcing the zoning regulations.”⁷ The District of Columbia Court of Appeals has held that an agency’s interpretation of its regulation is to be accorded great deference and not reversed unless clearly erroneous or inconsistent with the regulation. *Kalorama Citizens Association v. District of Columbia Board of Zoning Adjustment*, 640 A.2d 179, 180 (D.C. 1994); *Wallick v District of Columbia Board of Zoning Adjustments*, 486 A.2d 1183, 1184 (1985).⁸ Since there is no basis for finding the interpretation clearly erroneous, this tribunal is required to defer to the interpretation unless it has been withdrawn or modified.

Current Status of the Administrator’s Opinion

Since the Opinion of the Zoning Administrator was issued in 1998, there have not been any reported decisions by the Board of Zoning Adjustment, District of Columbia Court of Appeals, or District of Columbia Superior Court that address the zoning of mixed use video stores or discuss the Opinion of the Zoning Administrator. In addition, no revisions of the Zoning Administrator’s opinion could be located. Because of this, and Mr. Filloramo’s credible testimony that the Director of DCRA told owners of existing

⁷ Reorganization Order No. 55, II F (D.C. Code Ann. Title 1- Administration, Appendix at 182, 185 (1973))

⁸ In these cases, the court deferred to interpretations of the Board of Zoning Adjustments. Cases decided by this administrative court involving infractions of zoning laws and regulations may be appealed to the Board of Zoning Adjustments D.C. Official Code § 2-1831.16(b). It is nevertheless appropriate for this tribunal to defer to interpretations of the Zoning Administrator because deference is paid to an agency’s interpretations of its regulations primarily because of the special expertise of each agency in its field. *Diebold, Inc. v. Marshall*, 585 F.2d 1327, 1334 n. 10 (6th Cir. 1978). If the interpretations of a regulation by the Zoning Administrator and the Board differ, it is within the province of the court that reviews the decision of the Board of Zoning Adjustment to determine which interpretation merits deference. *Martin v OSHRC*, 111 S.Ct. 1171 (1991)

video stores in 1998 that they were not subject to the Opinion, it was unclear whether the Opinion had been rescinded or modified.

Consequently, this administrative court issued an Order on August 31, 2006 directing DCRA to file a statement about whether the 1998 Opinion is DCRA's current interpretation for determining whether a mixed use video store is sexually oriented and whether there was any opinion or other authority that exempts mixed use video stores in existence at the time the Opinion was issued. In response, counsel for DCRA submitted a statement indicating that the Opinion has not been rescinded or modified and that there is no ruling or modification exempting businesses that were operating at the time the Opinion was issued. Respondents were afforded the opportunity to reply, but have not done so.⁹ As the Opinion has not been revoked or revised, it is the agency's interpretation of its own regulation that we must defer to in resolving this case.

The Zoning Administrator's Opinion

The Opinion first notes that zoning laws may be used to restrict the location of sexually oriented businesses. The Supreme Court has sanctioned the use of zoning restrictions to combat the undesirable secondary effects, such as increased crime and reduced property values, which sexually oriented businesses can have on surrounding neighborhoods. The Court has said, however, that such restrictions must do so "without violating the government's paramount obligation of neutrality in its regulation of

⁹ Counsel for DCRA inexplicably treated our request for legal argument on these issues as interrogatories, and provided extremely terse responses. However, as he is acting as counsel for DCRA, we must assume that he is accurately representing the status of the Administrator's Opinion.

protected communication.” *City of Renton v. Playtime Theatres, Inc.*, 106 S.Ct. 925 (1986) (quoting *Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 70 (1975).

The Administrator then surveyed relevant case law, the regulations of mixed use video stores in other jurisdictions, and the results of DCRA’s survey of twenty-five mixed use video stores in the District. Based on this review, the Administrator formulated several standards for determining when a mixed use video store is sexually oriented. The standards enunciated in the Opinion are based upon the following factors: the percent of sexually oriented inventory on display; the amount of a store’s print, radio and TV advertising that is sexually oriented; whether promotional materials place a disproportionate emphasis on sexually oriented materials; whether the business sells sex toys; whether there are booths or other apparatus for viewing sexually oriented material; and, the percentage of revenues generated by sexually oriented merchandise.

In this case, there is evidence relating only to two of the standards: the percentage of sexually oriented inventory, and the sale of sex toys. We will address each of these standards in turn.

Inventory on Display

Under the Administrator’s interpretation, a business is a sexually oriented business if more than 15% of its inventory on display in areas open to the public, counted piece-by-piece, is sexually oriented. Specifically, the Opinion states:

.... the Zoning Administrator interprets the District of Columbia Zoning Regulations, 11 DCMR 199.1, as is set forth below.

A. A retail or wholesale business has a substantial and significant portion of its stock in trade in sexually oriented materials, and is therefore a

sexually oriented business, when any of the factors set forth below in paragraphs 1,2,3,or 4 applies:

1. More than 15% of its inventory on display, in areas open to the public, counted piece-by-piece, are sexually oriented.¹⁰

As noted above, Respondents' floor plan shows that the floor area containing sexually oriented material was 42.7%. However, the Administrator's interpretation contains no standard based on the percentage of floor area that contains sexually oriented material. Rather, inventory is to be counted "piece-by-piece."

The only evidence showing inventory counted piece-by-piece is Respondents' inventory listing. In that listing, Respondents categorize 24% of their inventory as adult.¹¹ While this list shows total inventory, it does not show the percent of "inventory on display, in areas open to the public, counted piece-by-piece" that is sexually oriented. It is possible, for example, that only a small number of the sexually oriented items in Respondents' inventory were on display in public areas.

Since the Government presented no evidence on what items in Respondents' inventory list were on display, I cannot conclude that more than 15% of the inventory on display in areas open to the public was sexually oriented.

¹⁰ The Administrator's opinion indicates that for the purpose of this calculation, materials in storerooms or other areas that cannot be seen by customers are not counted, but areas restricted to minors are considered "open to the public" and are counted.

¹¹ The total inventory listed for the store is 39,036 items. Respondents have categorized 29,618 items as "general inventory." Nearly half of the general inventory items are cases for DVD's and videotapes (DVD cases 10,157; Videotape cases 3,534). The Administrator's Opinion does not indicate whether items such as DVD cases, which do not have either sexually oriented or general interest content, should be counted for the purpose of determining the percent of inventory that is sexually oriented. If the cases are not counted, the percent of Respondents total inventory that is sexually oriented would be much higher than 15%.

Sale of Sex Toys

Even if the percentage of sexually oriented inventory is less than 15%, a mixed use video store may also be found to be a sexually oriented business under the Opinion if it sells merchandise commonly known as sex toys. The Opinion states:

B. Irrespective of the applicability of the factors set forth above, a business establishment is sexually oriented as set forth in either paragraphs 1 or 2 below:

1. The Zoning Administrator makes the determination that the sale of merchandise such as three dimensional reproductions of human genitalia, and other items which are commonly known as "sex toys," are sexually oriented because such merchandise either "depicts" human genitals and other specified anatomical areas, or are related to specified sexual activities, and that the sale or display of such items is not a customary accessory use to a mixed use video store in the District of Columbia. A business that sells or displays such merchandise is a sexually oriented business.

It is undisputed that Royce Video was offering sex toys for sale at the time of the inspection. Consequently, Royce Video was a sexually oriented business by virtue of its sale of sex toys.

Respondents maintained that even if Royce Video is a sexually oriented business as defined in the Opinion, it should not be found in violation because businesses in existence at the time the Opinion was issued were grandfathered. Respondents point to the following statement in the Opinion in support of this position.

Unless a business has grandfathering rights, sexually oriented business establishment may, with approval of Zoning Adjustment, be located only in C-3-B, C-3-C, C-4, C-M and M zoning districts.

This statement does not support Respondents' position. It states only that sexually oriented businesses may be located in certain restricted districts unless grandfathered. It

does not indicate that the twenty-five mixed use video stores surveyed (none of which had authority to operate as sexually oriented businesses) are grandfathered. Indeed, as noted above, the Opinion explicitly states that fifteen of the twenty-five businesses surveyed “would meet any reasonable interpretation of a ‘sexually oriented business establishment’ as sexually oriented materials are a significant and substantial portion of their stock in trade.”

Respondent also argues that it was grandfathered because the Director of DCRA told the owners of mixed use video stores in 1998 that the Opinion did not apply to them. While the Director of DCRA may have told the owners of existing businesses that they would be exempt, DCRA took no action to revise the Opinion or exempt existing businesses. When an agency changes its course, it must supply a reasoned analysis demonstrating that its prior standard is being deliberately changed, and not simply ignored. *Brentwood Liquors v. District of Columbia Alcoholic Beverage Control Board* 661 A.2d 652, 656 (D.C. 1995); *Greater Boston Television Corp. v. FCC* 444 F. 2d 841, 852 (D.C. Cir. 1970). The only reasoned analysis enunciating DCRA’s standards for determining when a mixed use video store is a sexually oriented business is the 1998 Opinion, which clearly does not exempt existing businesses. While DCRA could modify the Opinion and provide a reasoned analysis exempting existing businesses, it has not done so.

Finally, Respondents maintain that they should not be found in violation because there have been few complaints about their operation. While the number of neighborhood complaints is a factor that elected officials and zoning officials can and should take into account in developing zoning regulations, it is not a factor that this tribunal can take into account in deciding whether a regulation that has been adopted has been violated.

The Government has established that Respondents were operating beyond the scope of the certificate of occupancy in violation of D.C. Official Code §6-641.09 because they were operating a sexually oriented business without a certificate of occupancy for a sexually oriented business. At the time of the violation, the authorized fine for a violation of D.C. Official Code § 6-641.09 was \$500. *See* 16 DCMR 3231.1; 16 DCMR 3201.1(b). As the violation has been established, a fine of \$500 will be imposed.

IV. Order

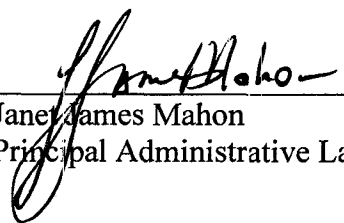
Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is, hereby, this 9th day of March, 2007:

ORDERED, that Respondents shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within 20 calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting 20 days from the date of mailing of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that appeal rights of any person aggrieved by this Order are set forth below.



Janet James Mahon
Principal Administrative Law Judge

PAYMENTS

If a payment is required by this Order, to be properly credited to your case(s) the payment must be sent to the attention of the Clerk of the Office of Administrative Hearings. Payments are only accepted by check or money order and must be made payable to “D.C. TREASURER.” More detailed information on how and where to make payments are included on the enclosed payment instruction sheet.

IMPORTANT: Please do not call the D.C. Court of Appeals with questions about how to make any payments required under this Order. If you have questions, please call the Clerk’s Office at the Office of Administrative Hearings on 202-442-9094.

APPEALS OF VIOLATIONS OF THE DISTRICT OF COLUMBIA ZONING LAWS OR REGULATIONS

Any party suffering a legal wrong or adversely affected or aggrieved by a determination involving infractions of the District of Columbia Zoning Laws or Regulations, including Title 11, Chapter 32 of the D.C. Municipal Regulations, may appeal such determination to the District of Columbia Board of Zoning Adjustment (the “Board”) pursuant to D.C. Official Code § 2-1831.16(b) by filing a Notice of Appeal to the Board at the following address:

District of Columbia Board of Zoning Adjustment
441 4th Street, N.W., Suite 210 South
Washington, DC 20001
202-879-2700

IMPORTANT NOTICES:

- 1. By law, the amount of a lawfully imposed fine cannot be modified or reduced on appeal. D.C. Official Code § 2-1831.16(g).**
- 2. In accordance with D.C. Official Code § 2-1802.04(a), this Order shall become final 15 calendar days after the date of service. Filing of an appeal does not stay (stop) the requirement to comply with a Final Order, including any requirement to pay a fine, penalty or other monetary sanction imposed by a Final Order. If you wish to request a stay, you must first file a written motion for a stay with the Office of Administrative Hearings. If the presiding Administrative Law Judge denies a stay, you then may seek a stay from the Board.**

Certificate of Service

By U.S. Mail (Postage Paid):

Eimaj, Inc
N.T. Filloramo
5225 Pooks Hill Road
Bethesda, MD 20814

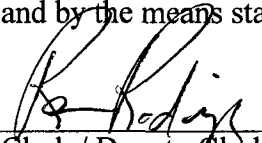
Andrea Bagwell, Esq.
Harmon, Wilmot, & Brown, LLP
1010 Vermont Ave, N.W.
Suite 810
Washington, D.C. 20005

By Inter-Agency Mail:

Sinclair Long, Esq.
Department of Consumer and
Regulatory Affairs
941 North Capitol Street NE
Washington, DC 20002

Jill Stern, Esq.
Acting General Counsel
Department of Consumer and
Regulatory Affairs
941 North Capitol Street NE, Suite 9400
Washington, DC 20002

I hereby certify that on March 12,
2007 this document was caused to be
served upon the parties listed on this
page at the addresses listed
and by the means stated



Clerk / Deputy Clerk

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2007 MAR 23 P 12:49

GUARDIAN'S SAFETY
©CLARKE AMERICAN
INKTIDES

EIMAJ INC.
T/A ROYCES VIDEO RENTALS
PH: 202-723-5600
7445 GEORGIA AVE. NW
WASHINGTON, DC 20012

PAY
AMOUNT
OF

Five Hundred

EXPLANATION	AMOUNT
<i>CR-1-05-1100089</i>	<i>500.00</i>

500 DOLLARS

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NUMBER
<i>3-23-07</i>	<i>D.C. Treasurer</i>		<i>13505</i>

\$ *500*

PNC Bank, N.A. 040
Washington DC

[Signature]

MP

CHECK
AMOUNT

13505
15-3/540
508

 Security features
are included.
Details on back.

MARKS & KATZ, LLC
ATTORNEYS AT LAW DISTRICT OF COLUMBIA
1400 SPRING STREET OFFICE OF
SUITE 410 ADMINISTRATIVE HEARINGS
SILVER SPRING, MARYLAND 20910
(301) 495-4300
FAX (301) 495-8815
www.markskatz.com
justice@markskatz.com

2007 MAY -1 P 1:35

JAY S. MARKS (MD, DC, IL)
JONATHAN L. KATZ (MD, DC, VA)

May 1, 2007

BY HAND DELIVERY

Clerk
Office of Administrative Hearings
941 North Capitol Street, NE
Suite 9100
Washington, DC 20002-4210

Re: DCRA v. EIMAJ, INC., et al., DC OAH Case No. CR-1-05-N100089

To the Office of Administrative Hearings:

My clients are the Respondents in the above-listed matter; i.e., EIMAJ, Inc. and Nicholas Filoramo. I have taken over representation of said parties from their prior counsel.

Out of an abundance of caution, enclosed is a duplicate \$500 fine payment for this case. As confirmed in the attached Declaration of Nicholas Filoramo - who is the owner of Respondent EIMAJ - he timely paid the \$500 fine on or about March 20, 2007. However, he misplaced the date-stamped copy of his payment check that he hand-delivered to the Office of Administrative Hearings, and he found that his check has not yet cleared (I plan to update you with the check number he used after obtaining it from his accountant).

Consequently, please treat the \$500 fine as having been timely paid. Moreover, please assure that any overpayment of the fine is returned directly to me, as the lawyer for the Respondents.

Thank you.

Very truly yours,

Jonathan L. Katz

cc: Jill Stern, Esquire, DCRA, 941 N. Capitol St., NE, No. 9400
WDC 20002

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

DCRA	)	
	)	
v.	)	Case No. CR-1-05-N100089
	)	
EIMAJ, INC. & FILLORAMO	)	
	)	
	)	
Respondents.	)	

DECLARATION OF NICHOLAS T. FILLORAMO

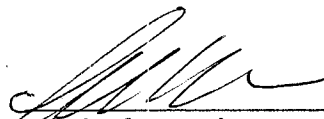
I HEREBY DECLARE AS FOLLOWS under the penalties of perjury:

1. My name is Nicholas Thomas Filloramo. I am over the age of eighteen and am competent to testify to the following:
2. I am the sole owner of Respondent EIMAJ, Inc., and have been its sole owner at all times.
3. On or about May 20, 2007, I timely paid the \$500 fine in this matter, by hand-delivering a \$500 check to the District of Columbia Office of Administrative Hearings, with a check drawn through PNC Bank checking account number 5300733233 (check number to be provided, after I obtain it from my accountant).
4. When I asked for a receipt, a woman at the reception area of the OAH told me that receipts are not given, but that I would be provided a stamped copy of my check (which I was provided).
5. Unfortunately, I misplaced my stamped copy of my check. My lawyer Jonathan L. Katz subsequently spoke with the

OAH's Rena Rodriguez in early April 2005, and he asked her during said phone conversation for a copy of the proof of payment of the \$500 fine. Mr. Katz informs me that he did not hear back thereafter from Ms. Rodriguez. On April 30, 2007, Mr. Katz, in my presence after the end of the business day left Ms. Rodriguez a voice mail at (202) 478-9134 asking the status of this request.

6. Because the check was not shown as having cleared when I looked online on April 29, 2007, out of an abundance of caution, I am making this duplicate fine payment.

I hereby swear that the foregoing is true and correct under the penalties of perjury.



Nicholas Thomas Filloramo
c/o Royce's Video (Work)
7445 Georgia Avenue
Washington, DC 20012

April 30, 2007

MARKS & KATZ, L.L.C.
Escrow Account
1400 Spring Street, Suite 410
Silver Spring, MD 20910
(301)495-4300

Eaglebank
Bethesda, MD 20814

12165

65-329 / 550

PAY TO THE
ORDER OF

DC Treasurer
FIVE HUNDRED 20/10

4/30/07 \$ 500 —

MEMO

FIVE IN DCRB v. ELMATJ FLORANTO, CA 4 #
CR 7-05-110054

AUTHORIZED SIGNATURE

MARKS & KATZ, LLC
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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS
2007 MAY - 7 1 P 3 22

JAY S. MARKS (MD, DC, IL)
JONATHAN L. KATZ (MD, DC, VA)

May 2, 2007

Ms. Rena Rodriquez
Office of Administrative Hearings
941 North Capitol Street, N.E.
Suite 9100
Washington, D.C. 20002-4210

Re: DCRA v. Eimaj, Inc., et al., DC OAH Case No. CR-1-05-N100089

Dear Ms. Rodriquez:

Because I did not receive a response to my phone call~~s~~ to you late in the evening of April 30, 2007, I am enclosing documentation showing repayment of the \$500.00 fine in the above-listed case.

Please be so kind as to confirm to me that the payment is listed as timely satisfied. My client's original check is not shown to date as having cleared from his bank. I trust that any overpayment will be returned to my client through me.

To clarify the attached letter and declaration, Mr. Filloramo confirmed with his accountant that the \$500.00 check was dated March 20, 2007 and was check number 13505.

Very truly yours,

Jonathan L. Katz

JLK/av

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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2007 MAY -1 P 1:34

JAY S. MARKS (MD, DC, IL)
JONATHAN L. KATZ (MD, DC, VA)

May 1, 2007

BY HAND DELIVERY

Clerk
Office of Administrative Hearings
941 North Capitol Street, NE
Suite 9100
Washington, DC 20002-4210

Re: DCRA v. EIMAJ, INC., et al., DC OAH Case No. CR-1-05-N100089

To the Office of Administrative Hearings:

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Out of an abundance of caution, enclosed is a duplicate \$500 fine payment for this case. As confirmed in the attached Declaration of Nicholas Filoramo - who is the owner of Respondent EIMAJ - he timely paid the \$500 fine on or about March 20, 2007. However, he misplaced the date-stamped copy of his payment check that he hand-delivered to the Office of Administrative Hearings, and he found that his check has not yet cleared (I plan to update you with the check number he used after obtaining it from his accountant).

Consequently, please treat the \$500 fine as having been timely paid. Moreover, please assure that any overpayment of the fine is returned directly to me, as the lawyer for the Respondents.

Thank you.

Very truly yours,

Jonathan L. Katz

cc: Jill Stern, Esquire, DCRA, 941 N. Capitol St., NE, No. 9400,
WDC 20002

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS
2007 MAY -1 P 1:35

DCRA

v.

EIMAJ, INC. & FILLORAMO

Respondents.

)
)
) Case No. CR-1-05-N100089
)
)
)
)
)

DECLARATION OF NICHOLAS T. FILLORAMO

I HEREBY DECLARE AS FOLLOWS under the penalties of perjury:

1. My name is Nicholas Thomas Filloramo. I am over the age of eighteen and am competent to testify to the following:

2. I am the sole owner of Respondent EIMAJ, Inc., and have been its sole owner at all times.

3. On or about May 20, 2007, I timely paid the \$500 fine in this matter, by hand-delivering a \$500 check to the District of Columbia Office of Administrative Hearings, with a check drawn through PNC Bank checking account number 5300733233 (check number to be provided, after I obtain it from my accountant).

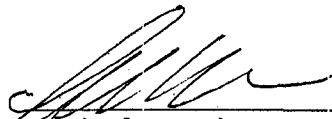
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Nicholas Thomas Filloramo
c/o Royce's Video (Work)
7445 Georgia Avenue
Washington, DC 20012

April 30, 2007

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Escrow Account
1400 Spring Street, Suite 410
Silver Spring, MD 20910
(301) 495-4300

Eaglebank
Beltsville, MD 208

12165

PAY TO THE
ORDER OF

DC Treasurer
Five Hundred and no/100

65-329 DISTRICT OF COLUMBIA
OFFICE OF THE CLERK
ADMINISTRATIVE HEARINGS
2007 MAY 1 P 1:35

500

MEMO

FIVE IN DERA v. EIMAJ & KLOKANO, GAH #
CR-1-05-10059

AUTHORIZED SIGNATURE

MARKS & KATZ, L.L.C.

12165

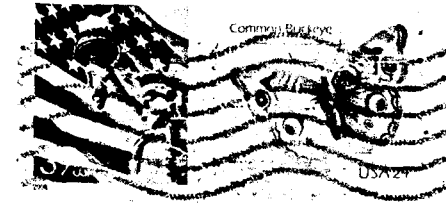
MARKS & KATZ, L.L.C.

12165

MARKS & KATZ, LLC
ATTORNEYS AT LAW
1400 SPRING STREET
SUITE 410
SILVER SPRING, MARYLAND 20910

SUBURBAN MD 208

02 MAY 2007 PM 4 T



Ms. Rena Rodriguez
Office of Administrative Hearings
941 North Capitol Street, N.E.
Suite 9100
Washington, D.C. 20002-4210

2007 MAY -1 P 3 22
ADMINISTRATIVE HEARINGS
OFFICE OF
DISTRICT OF COLUMBIA

200024239



DISTRICT OF COLUMBIA DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS OFFICE OF
941 North Capitol Street N.E. ADMINISTRATIVE HEARINGS
Washington, DC 20002 2007 MAY -9 P 5: 01

DCKA

Petitioner(s),

v.

ELMAS, Inc. and N.J. Fillorand

Respondent(s)

BLANK SUBMISSION FORM

Case No(s) CR-I-05-N100089

Date: 5/9/07

Please provide a copy of endorsed checks

Contact Shakira Pleasant - 2/442-8557

Petitioner(s)/Attorney or Representative for Petitioner(s)		Respondent(s)/Attorney or Representative for Respondent(s)	
Name		Name	
Address		Address	
Phone No.	Bar No.	Phone No.	Bar No.
Signature		Signature	