

**MINUTES OF THE MEETING OF THE JERSEY VILLAGE
BOARD OF ADJUSTMENT
November 15, 2022 – 6:00 p.m.**

The Board of Adjustment of the City of Jersey Village, Texas, convened on November 15, 2022, at 6:00 p.m. in the Civic Center at 16327 Lakeview Drive, Jersey Village, Texas 77040.

A. The meeting was called to order by Chairman Tom G. Simchak at 6:00 p.m. and the roll of appointed officers was taken. Board Members present were:

Thomas G. Simchak, Chairman	M. Reza Khalili, Board Member
Joe Pennington, Board Member	Nester Mena, Board Member
Ken Nguyen, Board Member	Judy Tidwell, Alternate Place 1
Nelson L. Feeney, Alternate Place 2	

Council Liaison, Jennifer McCrea was present at this meeting.

City Staff in attendance: Justin Pruitt, City Attorney; Austin Bleess, City Manager; Lorri Coody, City Secretary; Robert Basford, Assistant City Manager, and Evan Duvall, Building Official Representative.

B. Designate alternate members to serve in place of any absent Board Members.

This item was not needed. All Regular Members of the Board were present.

C. CITIZENS' COMMENTS - Any person who desires to address the Board of Adjustment regarding an item on the agenda will be heard at this time. In compliance with the Texas Open Meetings Act, unless the subject matter of the comment is on the agenda, the City staff and Board Members are not allowed to discuss the subject. Each person is limited to five (5) minutes for comments to the Board of Adjustment.

There were no Citizens' Comments.

D. Consider approval of the minutes for the meeting held on October 17, 2022.

Board Member Mena moved to approve the minutes for the meeting held on October 17, 2022. Board Member Khalili seconded the motion. The vote follows:

Ayes: Board Members Pennington, Mena, Khalili, and Nguyen
Chairman Simchak

Nays: None

The motion carried.

E. Conduct a Public Hearing on Legendary Vibes, LLC d/b/a Cru Lounge's (Cru) appeal of the Building Official's ruling that the applicant's proposed use within District F is a Hookah Bar; and therefore, the applicant is not permitted to sell Hookah at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F.

Chairman Simchak opened the public hearing at 6:04 p.m. in order to receive written and oral comments from any interested person(s) on Legendary Vibes, LLC d/b/a Cru Lounge's (Cru) appeal of the Building Official's ruling that the applicant's proposed use within District F is a Hookah Bar; and therefore, the applicant is not permitted to sell Hookah at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F.

The Board found that the notification requirements for both the City and the Applicant have been met for this public hearing.

Chairman Simchak called upon the Building Official to make his presentation regarding the appeal.

Mr. Duvall told the Board that he was contacted in January of 2022 and the approval email was sent. However, there was a change in the ordinance in April of 2022. He went on to explain that when there is a change in Ordinance, as a practice, he reviews open permits in order to notify any affected requestors of the change. In this case, there was mechanical and water and gas line work being done, but nothing concerning Hookah; therefore, no notice was given or required. After the ordinance change and the second certificate of occupancy permit was received, Mr. Duvall did reach out to the requestor and explained that hookah would not be permitted.

Chairman Simchak then called upon the Applicant to present supporting evidence concerning this appeal.

Mr. Derek Devon, Attorney for the Applicant, 440 Louisiana Street, Suite 900, Houston, Texas 77002 (346) 229-0106 presented evidence in support of the appeal. He passed out a binder for the City Attorney and the voting members of the Board containing his documents in support of the appeal. He stated that he is here because Section 14-5 of the City's Code establishes the definition for "hookah." He read this definition from the City's Code aloud. He stated that his clients are approved for a bar and restaurant and the sale of hookah is just a portion of their sales. He directed the Board to the third page of the binder containing point of sale information that demonstrates that hookah is only 16% of sales at a location in Houston that is similar to that of his clients. He likened the sale of hookah to that of a convenience store selling tobacco. The sale of tobacco does not make the convenience store a smoke shop.

On page 4, there is a letter that also states that the sale of hookah is not a primary sale for this business. There was additional information about hookah sales on page 5.

Mr. Devon then called **Gregory Martin, 27467 Vivace Drive, Spring, Texas (281) 226-3937**, owner and managing partner of Legendary Vibes, LLC d/b/a Cru Lounge (Cru). He stated that his establishment will have hookah for sale, pointing out that having hookah is more of a marketing strategy to draw in clients. It is a specialty, but they will sell more food and liquor than hookah. He is before the Board to ask for the approval of the sale of hookah since it is part of their marketing strategy.

Mr. Devon then called **Henry J. Jordan, Jr., 18419 Westone Creek Drive, Cypress, Texas (832) 797-5242**. Mr. Jordan owns property near Jersey Village and knows this area very well. He thanked the Board for this opportunity. He stated that he has spent almost a year on this establishment. He has spent much time and money on this venture. He stated that this establishment is a franchise. There are 18 across the country. There is one in downtown

Houston. He wants to locate his business in Jersey Village because of the location. He stated that he has done his due diligence and was given approval to sell liquor, food, and hookah in District F and District J in Jersey Village by the City's Building Official. He has followed the permitting process. He believes his business will add value to Jersey Village and wants the Board to permit him to follow their business model. He pointed out that selling Hookah is not the main part of the business.

The Board asked if the establishment is currently opened. Mr. Jordan explained that it is not open yet. He is waiting for his certificate of occupancy.

Mr. Martin came forward and told the Board that he has a building permit. He is vested in the process. He has put in air conditioning and mechanical and has invested in the business since they were given prior approval.

The Board had questions concerning the build out of the establishment. Mr. Martin explained that the hookah portion of the establishment will be separate from the food and liquor sections. The Board asked about the percentage of completion of the establishment. Mr. Martin explained that it is 98% complete.

The Board had questions about copies of the establishment's webpage that had previously been passed out by Council Member McCrea. These pages seemed to represent that Cru franchises are hookah bars. The applicant confirmed that these pages accurately reflect their business model with the exception that the information was for a business located at 311 Travis in Houston, Texas. The City pointed out that the applicant used this location to provide numbers for hookah sales. The applicant stated that his establishment is a separate franchise.

Mr. Deyon stated that his clients actual Instagram page for Cru 290 does not describe it as a hookah bar. He pointed out that the documents discussed earlier were not from their location. Mr. Deyon reaffirmed that his clients' establishment is a restaurant that mainly serves food and liquor with hookah as an offering.

The Board confirmed that these owners do not own or have interest in the bar on Travis Street in downtown Houston. Mr. Deyon referred back to the definition of the City in Section 14-5 which states it is a hookah lounge if it "primarily" sells hookah, but their business primarily sells liquor and food, not hookah.

There was a question for Mr. Duvall concerning the certificate of occupancy status. Mr. Duvall explained where the City is at in approving this certificate of occupancy. He stated that the Fire Marshal had requested that some corrections be made during this process that are still being worked. Mr. Duvall pointed out that once the Fire Marshal approves the requested corrections, the certificate of occupancy will be issued for just a bar and a restaurant. It does not include hookah, as it is not allowed under the Code.

City Attorney Pruitt explained that the Building Official determined that this establishment is a hookah bar and lounge. The Board needs to determine if the Building Official is correct in his interpretation of the ordinance. He further explained that if the Board follows the Building Official's interpretation, the hookah bar is not permitted. If the Board overrules the Building Official, then hookah can be smoked on the premises to be located at 17350 NW Freeway.

The Board confirmed that the Building Official made this determination based upon the application submitted. City Attorney Pruitt explained that the portion of the City’s definition containing the word “primarily” was used by the Building Official to determine it was a hookah bar. The Building Official says “primarily” applies to the first part of the definition and not that second part that follows the word “or”. The Applicant disagrees and believes that “primarily” applies to both portions of the definition.

The Board reviewed the chart presented by the applicant on page 3 of the binder.

City Attorney Pruitt stated that when it comes time to take action, the Board needs to either find that the Building Officials determination was correct or incorrect. He pointed out the following motions for each instance that were included in the meeting packet:

MOTION TO GRANT THE APPEAL:

I move to **GRANT** the appeal of Legendary Vibes, LLC d/b/a Cru Lounge (Cru), finding that the ruling of the City’s Building Official was **INCORRECT** and that the applicant’s proposed use within District F **IS NOT A HOOKAH BAR**; and therefore, the applicant **IS PERMITTED TO SELL HOOKAH** at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F.

MOTION TO DENY THE APPEAL:

I move to **DENY** the appeal of Legendary Vibes, LLC d/b/a Cru Lounge (Cru), finding that the ruling of the City’s Building Official was **CORRECT** and that the applicant’s proposed use within District F **IS A HOOKAH BAR**; and therefore, the applicant **IS NOT PERMITTED TO SELL HOOKAH** at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F.

He stated that we needed to come back to rehear this application because last time the finding of the Board was not clear.

City Attorney Pruitt asked the applicant that if the Board denies the application, meaning that the applicant would not be able to sell hookah, would the franchise still permit you to sell just liquor and food or would they demand that you close the establishment?

Keith Redmond, appearing on behalf of the applicant, addressed the Board. He stated that he is responsible to the franchise to sell hookah. He went on to say that the City does not have a smoking ordinance and as a result, he feels that they should be able to sell hookah. He further stated that it is required by the franchise.

There was a question about how long the downtown location was open. One year. It was pointed out by the Board that the financial information presented represents July 1 thru Sept 30 of 2022. The Board wanted to know if these numbers are representative for the other quarters that they were open. Mr. Redman stated that it is a good representation.

Council Member McCrea wanted to know if hookah sales are required by the franchise how is hookah not the primary part of the business. Mr. Redman stated that the franchise has not said specifically that they cannot operate without hookah, but while a small part of the brand, it is an important part of the brand, so the franchise is pushing for the sale of hookah. Given the response, the Council Member felt that it seems that the sale is an important part of the business.

There was further discussion about the process before the Board and what is at issue in this appeal.

With no other comments, Chairman Simchak called upon those in favor of or those opposed to the granting of this application to come forward and present their evidence and arguments. No one other than those already addressing the Board came forward.

The Board wanted to know the hours of operation. The applicant explained their hours as well as the approval of their neighboring businesses. Their hours will be 7 p.m. to 2 a.m.

The Board wanted to know about any police calls for service or crimes in connection with a business of this type. Mr. Deyon called upon Gregory Martin and Henry Jordan who gave information about their due diligence that included information about the area. Mr. Jordan lives in this area. He does not know about locations outside of Texas. He visits the downtown location, and they have a security officer on location while open. He stated that the location in Jersey Village is a safe location. Mr. Martin also has visited downtown, stating that it is a great location just off Travis Street and there have not been any issues when he visited this location. Mr. Martin likes Jersey Village because it is a safe location. Mr. Redman stated that as far as around the country, Mr. Martin has visited several locations and while the menu and offerings are the same, the size of the establishments and the types of environment differ.

There were further questions by the Board concerning activities that happen inside these type of establishments. There was concern that this type of establishment will attract a criminal element. The applicant responded by giving examples of locating a MacDonalds at high crime areas and low crime areas, pointing out the possibility of criminal activity to be greater in a high crime area, which is why they want to locate their business in the low crime area of Jersey Village. The applicant also pointed out that they will regulate the crowd and will dedicate their franchise to an older crowd.

The Board wanted to know the owners' prior business experience in selling alcohol. Mr. Martin stated he has 10 years of experience. Mr. Jordan gave information about his experience with restaurants. Mr. Redman also gave information about his business experience.

Before closing the public hearing, Chairman Simchak called upon the application for rebuttal comments. There were no further comments by the applicants.

With no other comments, Chairman Simchak closed the public hearing on Legendary Vibes, LLC d/b/a Cru Lounge's (Cru) appeal of the Building Official's ruling that the applicant's proposed use within District F is a Hookah Bar; and therefore, the applicant is not permitted to sell Hookah at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F at 7:00 p.m. and called the next item on the agenda, item G1.

(1) Discuss and take appropriate action concerning Legendary Vibes, LLC d/b/a Cru Lounge's (Cru) appeal of the Building Official's ruling that the applicant's proposed use within District F is a Hookah Bar; and therefore, the applicant is not permitted to sell Hookah at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F.

There was discussion about this application for appeal. City Attorney Pruitt pointed out the two actions outlined in the packet on page 29. He explained the two motions and what they mean.

The City Attorney stated that for either motion to carry, it will take a vote of at least four (4) members of the Board.

There was discussion about the definition outlined in Section 14-5. Some felt that the ordinance does not distinguish between the sale or the consumption. Some felt that the Ordinance was split into two different pieces.

City Attorney Pruitt pointed out that the applicant also agrees that it is not two separate issues, but the decision also has to be made concerning the word “primarily.” In this case, the Building Official has ruled that hookah is a primary sale of the business.

It was discussed that hookah is allowed in District H with an Specific Use Permit. The rezoning was done on April 18, 2022. The process of due diligence began in January of 2022 and the zoning was changed April 18, 2022. City Attorney Pruitt explained that prior to April, hookah was not listed in the City Code; and therefore, was not allowed anywhere in the City. The use was authorized in the City in April of 2022. There was an application for the certificate of occupancy for just a bar and restaurant in August. The certificate of occupancy has not yet been approved.

With no further discussion on the matter, Board Member Mena moved to **DENY** the appeal of Legendary Vibes, LLC d/b/a Cru Lounge (Cru), finding that the ruling of the City’s Building Official was **CORRECT** and that the applicant’s proposed use within District F **IS A HOOKAH BAR**; and therefore, the applicant **IS NOT PERMITTED TO SELL HOOKAH** at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F. Board Member Nguyen seconded the motion. The vote follows:

Ayes: Board Members Mena and Nguyen

Nays: Chairman Simchak and Board Members Pennington and Khalili

The motion failed because the concurring vote of four (4) members of the Board is necessary to reverse an order, requirement, decision, or determination of an administrative official. The Board did not consider any further motion regarding the Applicant’s appeal, so the Board failed to deny or approve the Applicant’s appeal, and the decision of the Building Official remains in force and the Applicant is not permitted to sell hookah at the Site.

The Board’s Original Order No. 2022-08 is attached as Exhibit A and made a part of these minutes.

F. Adjourn

With no other business before the Board, Chairman Simchak adjourned the meeting at 7:16 p.m.



Lorri Coody, City Secretary



**CITY OF JERSEY VILLAGE - BOARD OF ADJUSTMENT
ORDER NO. 2022-08**

WHEREAS, on September 30, 2022, Legendary Vibes, LLC, d/b/a Cru Lounge (Cru) (the “Applicant”), filed an appeal of the City of Jersey Village Building Official’s (the “Building Official”) ruling that the Applicant’s proposed use within District F is a Hookah Bar/Lounge; and therefore, the Applicant is not permitted to sell Hookah at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F (the “Site”); and

WHEREAS, the Board of Adjustment of the City of Jersey Village (the “Board”) conducted a Public Hearing and received information from the Public and from the Applicant on November 15, 2022 (the “Hearing”); and

WHEREAS, after closing the Hearing and discussion on the matter, the Board made its findings; and **NOW THEREFORE**,

THE BOARD OF ADJUSTMENT OF JERSEY VILLAGE, TEXAS HEREBY ORDERS:

SECTION 1. THAT, in consideration of the information before the Board regarding the Applicant’s appeal of the Building Official’s ruling that the Applicant’s proposed use at the Site is a Hookah Bar/Lounge, and therefore, the Applicant is not permitted to sell hookah at the Site, the Board considered the following motion:

“I move to **DENY** the appeal of Legendary Vibes, LLC d/b/a Cru Lounge (Cru), finding that the ruling of the City’s Building Official was **CORRECT** and that the applicant’s proposed use within District F **IS A HOOKAH BAR**; and therefore, the applicant **IS NOT PERMITTED TO SELL HOOKAH** at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F.”

Board Member Mena made the motion and Board Member Nguyen seconded the motion. The vote followed:

Ayes: Board Members Mena and Nguyen

Nays: Chairman Simchak and Board Members Khalili and Pennington

The motion failed because the concurring vote of four (4) members of the Board is necessary to reverse an order, requirement, decision, or determination of an administrative official. The Board did not consider any further motion regarding the Applicant’s appeal, so the Board failed to deny or approve the Applicant’s appeal, and the decision of the Building Official remains in force and the Applicant is not permitted to sell hookah at the Site.

ORDERED this 15th day of November 2022.

ATTEST:

s/Lorri Coody, City Secretary

FOR THE BOARD:

s/Thomas G. Simchak, Chairman

