

April 28, 2010

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Seattle-King County Department of Public Health File No. **2009-03-4323-105**

**MAJLES CAFE**

Tobacco Prevention Enforcement Appeal

Location: 912—12th Avenue, Suite C, Seattle

Appellant: Majles Cafe  
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## EXAMINER PROCEEDINGS:

Pre-hearing Conference:	December 3, 2009
Hearing opened:	April 20, 2010
Hearing closed:	April 20, 2010

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

## FINDINGS OF FACT:

**A. Procedural Background**

1. On June 18, 2009, the Seattle-King County Department of Public Health (Health Department) issued a notice of violation and correction order (notice and order) to Majles Cafe located at 912—12th Avenue, Suite C, Seattle, Washington 98122. Majles was cited for alleged violations of the Washington Clean Indoor Air Act (Chapter 70.160 RCW) and the Health Department's implementing regulations (BOH Chapter 19.03) in failing to prohibit smoking in a public place and a place of employment. Issuance of the notice and order followed upon two inspections of the Majles premises conducted by Health Department Tobacco Prevention Program personnel.
2. Majles through its attorney filed a timely appeal of the notice and order on July 2, 2009. The appeal request avers that Majles is neither a public place nor a place of employment, as follows:

“First, Majles is a non-profit organization whose membership is limited to those who have been invited to join. The facility is maintained, in part, to provide a social atmosphere for the members. Within the private facility as part of the social atmosphere members are allowed to smoke.

"Second, Majles has no employees and provides no monetary compensation to anyone for any services. While Majles does provide tobacco for its members, the distribution of tobacco is assisted by members who are uncompensated and are merely acting in accordance with the membership rules.”
3. BOH Chapter 1.08 provides for an informal administrative conference to be held between the department and the appellant prior to authorization of a formal appeal hearing. Within a letter dated August 28, 2009, Tony Gomez, a Health Services Administrator, provided the department's summary of the informal administrative conference held on August 25, 2009 with the Majles representatives. The letter concluded that Majles had failed to provide new information that warranted withdrawing or modifying the June 18, 2009 notice and order. The letter also provided a further description of Majles' contentions:

“During the informal hearing, you indicated that Majles is a private club and allows only members to enter and that the membership criteria are that a person must be 18 years of age and pay a one time membership fee of \$5. You stated that you do not have any employees, but do have members who volunteer to help out and indicated that this help consists of checking ID's and collecting membership fees at the door, assisting with setting up hookahs for other less experienced members, and also conducting transactions at the counter.”

4. The jurisdiction of the King County Hearing Examiner's Office to entertain Health Department appeals is specified both at KCC 20.24.080 and at BOH Section 1.08.140. KCC 20.24.080.A(3) directs the examiner to conduct an open record public hearing on "appeals of citations, notices and orders, notices of non-compliance and stop work orders issued pursuant to KCC title 23 or title 1.08 of the rules and regulations of the King County board of health." Language to similar effect appears at BOH 1.08.140. In addition, the two provisions display an interesting symmetry with respect to the examiner's authority to modify a notice and order. KCC 20.24.080.B provides in pertinent part that "The examiner may grant the...appeal with such conditions, modifications and restrictions as the examiner finds necessary to...carry out applicable state laws and regulations" and county plans and codes. BOH 1.08.140.D, on the other hand, provides that the examiner, after hearing, "shall affirm or modify the order previously issued if he finds that a violation has occurred." In other words, the county procedural code authorizes the examiner to modify the terms of the notice and order if the appeal is granted, while the BOH rules authorize the terms of the notice and order to be modified if the appeal is denied.
5. A pre-hearing conference was held by the King County Hearing Examiner's Office for the Majles Health Department appeal on December 3, 2009, and a pre-hearing order was issued on January 28, 2010. The pre-hearing order identified the "public place" and "place of employment" issues central to this proceeding and provided for a limited discovery process. The public hearing on the Majles appeal under Health Department file no. 2009-03-4323-105 was opened on April 20, 2010 and completed on the same day.
6. Although not a procedural matter in the strict sense, the legal structure of Majles is a formality that bears mention at the outset because it relates to some of the issues discussed below and to the examiner's order. Majles is incorporated under the Washington Non-profit Miscellaneous and Mutual Corporation Act (RCW Chapter 24.06). Three corporate documents were submitted to the hearing record:
  - An incomplete and unsigned draft of an articles of incorporation for the Hookah Club tentatively dated March 2006;
  - Articles of amendment for Majles approved April 1, 2009 and filed with the state on June 9, 2009; and
  - A second unsigned document entitled "Bylaws of Hookah Club" also dated March 2006. Of these the only one that has any actual legal status is the articles of amendment, which is mostly identical with the earlier Hookah Club document except for the name change and the specification of five individuals as Class A members of the corporation. The articles state that the principal purpose of the corporation is to "promote the enjoyment of Middle Eastern smoking and culture by and among its members." The articles further provide that although no capital stock issuance is authorized, accumulated funds may be distributed to the Class A members who shall also be entitled to distribution of assets at dissolution.
7. The examiner takes official notice that RCW Chapter 24.03 is a broad catch-all corporate category that neither involves review of the legitimacy of the stated charitable purpose nor restricts profit-taking by the controlling members. Any serious substantive effort to qualify for non-profit status inevitably necessitates meeting the requirements of Section 501(c)3 of the federal Internal Revenue Code. We note that the purpose statement for Majles as presently configured would likely not meet Section 501(c)3 standards and the ability of a corporation's Class A members to take profits from business operations and to receive assets at dissolution is completely at odds with Section 501(c)3 requirements. Thus, what is relevant for our purposes is

simply that Majles is a registered corporation that is allowed to conduct business for a profit notwithstanding its having filed under a state non-profit category.

## **B. Public Place**

8. The statutory definition of “public place” provided at RCW 70.160.020(2) and adopted within BOH Chapter 19.03 is broad and inclusive. The relevant provisions describe “that portion of any building...used by and open to the public, regardless of whether the building...is owned in whole or in part by private persons or entities,...and regardless of whether a fee is charged for admission.” A second paragraph of the definition provides a lengthy list of typical public place examples, including retail stores and retail service establishments. The definition section closes with a couple of exclusions from the chapter’s regulatory purview. One is for a private residence and the second states somewhat awkwardly that the chapter “is not intended to restrict smoking in private facilities which are occasionally open to the public except upon occasions when the facility is open to the public.”
9. The relevant possibilities for Majles are that it is a retail service establishment under the statutory scheme unless it qualifies as a private club. Majles argues that it is a private club exempt from the public place definition because it restricts admission to members who have paid a five dollar membership fee, demonstrated that they are at least 18 years of age, and whose names appear ultimately on a computerized membership log. The principal owner of Majles, Adel Abud, estimates that it currently has between 4,000 and 6,000 paid members. The employees of the Health Department’s Tobacco Prevention Program take the position that these membership requirements are trivial and insubstantial, amounting to little more than a sham designed to avoid the operation of the statute and the Health Department’s implementing regulations.
10. There is no serious doubt that the Majles membership requirements exist solely for the purpose of attempting to remove the business from the ambit of RCW Chapter 70.160 and its restrictive smoking regulations. But intent is not a consequential part of the regulatory scheme beyond the provisions of RCW 70.160.070 which penalize intentional smoking in a public place or place of employment and removing or defacing a required sign. Thus Mr. Abud’s intent to create a club structure that places his business outside the scope of the public place definition is not a fatal disqualification, *per se*.
11. The Health Department case relies primarily on a series of eight inspections that were conducted between May 23, 2009 and January 23, 2010. Seven of these inspections were performed by Sarah Ross-Viles, while John Bennett did the inspection dated September 2, 2009. One fact that emerges from the department report sheets and the supporting hearing testimony by the inspectors is that whatever the theoretical merits of the Majles membership system, it was erratically implemented. Regarding the eight inspection dates, only on four occasions there was someone posted at the Majles entry door to check memberships and IDs; on four other occasions entry was unimpeded. Ms. Ross-Viles’ second inspection report for June 10, 2009 contained the following narrative description:

“As I approached, a party of men entered and I did not see anyone stop them at the door, these men did not proceed to counter but sat down at a hookah with friends....I entered without anyone checking membership or ID.”

Her narrative for August 19, 2009 report was similar: “There was no security at the door, we walked in and up to counter without anyone talking to us.”

The entry for her October 26, 2009 report read as follows: “No one was working security and I entered without anyone intervening. I did not attract any attention as a non-member until I got Adel’s attention at the counter.” And John Bennett’s narrative entry for his September 2, 2009 inspection was to the same effect: “Front door was propped open no security.”

12. On the other hand, the department was unable to point to any specific instance where a known non-member entered the Majles premises. The closest we came to that was Ms. Ross-Viles’ entry on June 10, 2009 quoted above describing a party of men coming in and going directly to a hookah where their friends were congregated. As Mr. Abud described and the evidence clearly supported, a cohort exists of 20 to 30 people who regularly visit Majles, are friends of the owner, and occasionally help out in running the hookah operation. Most likely the group of men described within the June 10, 2009 inspection report were part of this group; and it hardly seems reasonable to expect the regular members in attendance on a daily basis to have to go through some sort of ID check every time they walk through the door. Some feeling for the role of the regular member group can also be derived from the former Majles website, which as offered into evidence by the department featured photographs from October 29, 2008 through February 14, 2009. Of the eighteen customer shots on the website, nine are identified to specific persons, with some of the photographed subjects appearing three or four times. One can infer that these identified customers are regular Majles members who attend on a frequent basis.
13. The problem for Mr. Abud is that his couple dozen regular members only constitute a small fraction of the thousands on his membership roll. Mr. Abud testified that his membership roll scans appear in chronological order. Thus one can get some sense of the membership and attendance trends from looking at the early entries and comparing them with the later ones. For example within exhibit no. 18, the membership list dated June 19, 2009, both the first and last pages have 26 separate entries. On page 1, ten of the names entered are clearly Arabic, Middle Eastern or South Asian in origin and cover a fairly wide age span: two of the birth dates are from the 1960’s, four from the 1970’s, 13 from the 1980’s and seven from 1990. Turning to the last sheet in the exhibit, page 149, we find both fewer Middle Eastern names and also, more critically, a much younger population of members. Of the 26 names, 12 have birth dates in either 1990 or 1991, and the oldest birth date on the page is January 10, 1986, meaning that this relatively senior member had attained the ripe old age of 23 and one-half years on the date the list was compiled. What this shows is not only that the attraction of Majles has expanded well beyond the Arabic community but also that the clientele contains ever larger numbers of adolescents and young adults. This fact increases the risk that children under the age of 18 will attempt to gain entry to Majles.
14. In terms of actual membership practices, a second area of concern disclosed by the Health Department inspection reports involves the inconsistent and somewhat ambiguous use of signage on the premises. It is difficult to draw firm general conclusions from the inspection reports because all eight checklisted, without further explanation, that signage was in regulatory compliance. Even so, four of the eight reports also contained narrative descriptions that appeared to identify signage problems. One possibility is that there may have been compliant interior signs but ambiguous or deficient outer signs. The record seems to suggest a concern on the part of the department that the exterior signage for Majles may not have been sufficient to clearly apprise members of the public of the nature of the interior business.
15. Mr. Abud also offered considerable testimony describing the Arabic cultural context of Majles and how it both offered a comfortable and familiar setting for members of the Arab community to socialize as well as an amenity for communicating Arab culture to a Western audience. While

there is no reason to doubt the accuracy of these representations, neither Mr. Abud nor his attorney made any attempt to relate them to the regulatory process outlined in RCW Chapter 70.160.

### **C. Place of Employment**

16. The second fundamental element of the RCW Chapter 70.160 regulatory scheme centers on the term “place of employment” defined at RCW 70.160.020(3). The core definition is that this term “means any area under the control of a public or private employer, which employees are required to pass through during the course of employment.” The subsection then offers a list of examples, including entrances and exits, plus a 25 foot buffer from entrances and exits, opening windows and ventilation intakes; work areas; and employee common areas such as restrooms, conference rooms and cafeterias. Specifically excluded from the “place of employment” definition are private residences and home-based businesses.
17. This definition is not devoid of problems. For example, in King County an exempt home-based business under KCC Chapter 21A.30 is allowed to have as many as four employees who reside offsite and come to the property to work. Under this definition these employees are unprotected within their workplace against even egregious exposure to second-hand smoke. The definition also does not deal specifically with the question of locations that are places of employment occasionally but not around the clock. Does the fact that a building is a place of employment during daytime hours also control its designation during the evening when regular employees are absent?

One clarification that the Washington Supreme Court made in its decision in *American Legion Post No. 149 vs. Washington State Department of Health*, 164 Wn 2d 570 (2008), was that the “public place” and “place of employment” definitions operate entirely independently of one another. Thus, a building that is not a public place under the statute may still qualify as a regulated place of employment.

18. The tasks associated with operating the Majles cafe that Mr. Abud as owner testified to performing exclusively include handling the cash, arranging for the ATM to be serviced, and after hours cleanup and preparation. This includes getting the hookahs ready for the next day’s business. It is clear, however, that during business hours Mr. Abud delegates some of the operational responsibilities to his inner circle of friends. These delegated tasks include preparing hookahs for customers, checking IDs, selling memberships, and performing door security. The cafe’s counter is often staffed by individuals other than Mr. Abud. On those infrequent occasions when he needs to be absent from Majles during working hours to attend to an emergency, Mr. Abud may leave one of his friends in charge. The eight inspection reports submitted by the Health Department all described observing at least one person other than Mr. Abud performing tasks at Majles, most often two and on one occasion four helpers.
19. In addition to providing a lounge for hookah smoking, Majles on some occasions provided entertainment as well. This endeavor can involve a DJ to operate sound and music equipment and belly dancer performances on the weekend. Mr. Abud described the belly dancers as being club members who are *aficionados* of Arab culture and sometimes volunteer to perform. Mr. Abud described them as receiving tips from customers, but unpaid by him beyond providing water or soda pop and an occasional free hookah. The State Department of Labor and Industries (L&I) auditor who reviewed Majles’ records, and the absence thereof, concluded that on at least a few occasions Mr. Abud had made \$50 payments to individual dancers.

20. Even though the statutory definition of “place of employment” relies specifically on determinations of employer control and employee presence, none of the key employment-related terms are defined. This poses a particular problem in a situation like this one where the line between a formal employment relationship and friendly volunteer help is vague and the evidence is sketchy. Karol Bakamus, the L&I auditor, concluded that for industrial insurance purposes Majles was an employer and Mr. Abud’s various helpers were employees. But it is hard to give much weight to her ultimate findings because she was operating within a different statutory scheme and many of her conclusions were default assumptions based on Majles’ incomplete record-keeping.
21. It is clear that Mr. Abud’s inner circle helps out in running Majles, sometimes purely out of friendship, but also often in exchange for a free hookah and other minor privileges. Now and then the Health Department inspection reports described a doorman wearing a shirt with a security legend on it. That certainly suggests more than a casual and spontaneous relationship to the business. Inspection reports also noted the presence at the front counter of a tip jar, but in the absence of information about where the money ends up, any conclusions about its role remain speculative. One argument that might have been made by Mr. Abud but was not is that to the extent that his inner circle helpers may also be Class A members of the corporation, they may be entitled to be regarded as employers rather than employees.

#### **D. Site Expansion and Reconfiguration**

22. Without question the biggest surprise at the public hearing was Mr. Abud’s announcement that as of two days earlier, April 18, 2010, he had expanded and reconfigured the Majles space to address some of the problems discussed within this hearing and underlying the notice and order. Mr. Abud has rented the space adjacent to the existing Majles cafe directly to the south and remodeled it for cafe use. The construction work on the new area occurred during the previous few weeks and the cafe was closed on the 18th to complete the needed renovations. The expansion allows Majles to essentially triple its space and segregate the smoking area from the cafe entry, which will now also serve as a retail tobacco shop.
23. This new layout has the potential to solve a number of problems. It enables the front half of the existing cafe to be walled off from the back half and to become a smoke-free business area where employees can work, membership services can be provided, and the public can freely gather. The overwhelming defect of the prior cafe arrangement was that the entire premises was a smoking area and members of the public entering the building were automatically exposed to second-hand smoke independent of whether they became, or even qualified to become, members.
24. The new layout also facilitates controlling access more effectively into the smoking lounge. A door from the tobacco shop into a smoke free hallway will lead to another door entering the lounge. The hallway is designed to provide the statutorily mandated 25-foot smoke-free entrance buffer. Mr. Abud testified that the lounge would possess its own independent ventilation system and have access to the existing restrooms on the backside of the original cafe. This of course forces employees working in the tobacco shop area to seek bathroom services elsewhere, which Mr. Abud said could be obtained by an arrangement for limited use of facilities within the unleased commercial space adjacent to and west of the new leasehold area.
25. The Health Department’s Tobacco Prevention Program administrators have had no opportunity to investigate the new leasehold area and assess whether it can realistically function as described by Mr. Abud. Scott Neal, the Tobacco Prevention Program Manager, identified as concerns that were immediately apparent the ability of Mr. Abud to take care of the needs of the expanded lounge area all by himself, the adequacy of the buffer provisions (especially with respect to air

intake facilities) and potential effects on the adjacent space to the west. Since the adjacent space appears to be presently unoccupied, it is hard to see why that would be a matter of present concern. Mr. Neal also expressed a high degree of skepticism as to whether any hookah bar could ever be regarded as a facility exempt from the smoking prohibition stated in RCW Chapter 70.160, no matter what arrangements were made to regulate and contain its impacts.

#### CONCLUSIONS:

1. The easy part of this exercise is deciding whether before April 18, 2010 Majles cafe was a public place within the meaning of RCW 70.160.020(2). While the evidence may be a bit fragmentary, the burden of proof rides to our rescue. Section XI.B.8 of the Hearing Examiner Rules of Procedure places the burden of proof on the appellant, subject to a requirement in an enforcement proceeding that the agency “present a *prima facie* case based upon competent evidence demonstrating that the legal standard for imposing” a penalty has been met.
2. The Health Department demonstrated that the entire original Majles cafe consisting of a single room was a smoking area into which the members of the public could enter if not actively prevented. The department also demonstrated that entry screening procedures at Majles were unevenly applied, with no screening at all occurring on four of the eight inspection occasions. The record also demonstrated an element of heightened public policy risk to the extent that the Majles membership roles contain a large number of clients who are barely over the age of 18. It is reasonable to infer that without consistent and rigorous entry screening of potential customers, there is a strong likelihood that, not only would non-member elements of the public enter the premises, but underage minors as well. These facts and reasonable inferences are sufficient to satisfy the department’s burden to present a *prima facie* case for enforcement.
3. With the burden of proof now shifted back to Majles, the Appellant failed to demonstrate by a preponderance of the evidence that its admittedly minimal membership policies would operate effectively to exclude non-members and juveniles in the absence of vigilant door enforcement of membership and age ID requirements. Thus, based on the evidence, Majles cafe prior to April 18, 2010 was a public place within the meaning of RCW 70.160.020. Since it is not disputed that smoking occurred within the Majles cafe, the notice and order citation for smoking in a public place as prohibited by BOH 19.03.050 and RCW 70.160.030 must be upheld.
4. While the Majles membership requirements are rather rudimentary and serve no obvious social purpose beyond attempting to effect compliance with the RCW Chapter 70.160 exemptions, we are not persuaded that they would be legally and operationally insufficient if they were to be consistently and rigorously enforced. The adequacy of membership provisions needs to be evaluated within the context of the purpose of the statute, which is to prevent uncontrolled and unwanted exposure to second-hand tobacco smoke. There is no reason to conclude that a simple membership mechanism based on adequate age documentation and an unequivocal declaration of intent to enter a smoking environment cannot achieve that purpose. Nothing within the statute mandates the imposition of elaborate or exclusive membership requirements beyond those necessary to achieve the essential legislative purpose.
5. Because the notice and order can be upheld based on a finding of smoking in either a public place or a place of employment, it is not necessary to wander deeply into the thicket of assessing what facts may or may not sustain a finding of an employment relationship and what standards legally defining employment should be applied in the absence of guidance from the tobacco control statute itself. Since both the L&I and Employment Security statutes generally exclude occasional entertainers from being designated as employees, it seems likely that the Majles members who now and then dance for tips and a bottle of pop or water and maybe an occasional free hookah do



not fall within the employment definition. It also seems likely that the other Class A members of the Majles corporation besides Mr. Abud who also have some ownership interest in the enterprise could work there on some basis without crossing over into the employee category.

6. RCW Chapter 70.160 is a very strict statute with broad application, but the fact remains that it does not undertake (as it might have) to prohibit tobacco smoking absolutely. So we are reluctant to read into the statute requirements that convert it in effect into an absolute prohibition, no matter how socially desirable that outcome may appear to be. Smokers who congregate together are exposed to both first-hand and second-hand smoke, and no one attempted to establish that the health effects of the latter are worse than the former. Thus it hardly makes sense to say that the restrictions placed on the exposure of smokers to second-hand smoke should be more stringent than those applicable to first-hand smoke. This recognition leads inexorably to the conclusion that efforts to prohibit exposure to second-hand smoke must be necessarily directed toward the non-consensual exposure of non-smokers and those smokers who choose not to smoke at a particular time and place. It is hard to see how enforcement of a statute based on preventing exposure to second-hand smoke can logically be viewed as extending to protect smokers who are actively smoking.
7. What this all adds up to is that this appeal decision will provide to Mr. Abud an opportunity to devise a hookah club plan that effectively limits second-hand smoke exposure to other adult smokers who themselves are willingly engaged in the act of smoking. If properly regulated, the reconfigured and expanded floor plan described by Mr. Abud appears to have a reasonable chance of complying with regulatory requirements, if such requirements are sensibly interpreted. But because the regulatory scheme requires interpretation of terms that have not been adequately defined within the legislative scheme, this office will retain jurisdiction of this appeal as provided below for a sufficient period of time to resolve any disputes over interpretation that may arise in the future review of Mr. Abud's proposal.
8. The Majles appeal is denied based on evidence of smoking within a public place prior to April 18, 2010, but the Appellant will be given an opportunity to implement a plan which is appropriately responsive to regulatory requirements. As provided below, accumulated fines and penalties may be deferred or excused based on successful future resolution of regulatory issues.

#### DECISION:

The appeal is denied.

#### ORDER:

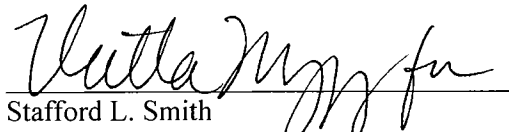
No fines or penalties shall be assessed against Majles, its owners, or property pursuant to this proceeding if the compliance requirements contained in the conditions below are met.

1. The Office of the Hearing Examiner will retain jurisdiction over this proceeding subject to the terms stated below.
2. No later than June 1, 2010, Majles shall submit a plan to the Health Department for its review that meets the following requirements:
  - A. The plan shall provide for a smoke-free work area (the tobacco shop) within the western one-half of the original cafe space. The plan shall include provision for employee access to smoke-free restroom facilities. If such restrooms are located outside the Majles leasehold area, written documentation authorizing their use by Majles shall be submitted.

- B. The smoke-free work area shall comply with the presumptive 25-foot buffer requirements stated at RCW 70.160.075 unless Majles submits to the Health Department clear and convincing evidence that at a specific location the public health and safety will be adequately protected by a lesser buffer distance.
- C. A checkstand shall be installed at the entrance leading from the tobacco shop into the entry hallway to the hookah lounge. This checkstand shall be actively staffed during all business hours, and all persons outside the corporate ownership group entering the lounge shall be required to produce a valid Majles membership card and, as necessary, proof of age. A single employee may staff both the tobacco stop and the checkstand only if the tobacco shop workstation is located within five feet of the hallway entry door.
- D. A premises signage plan shall be submitted to and approved by the Health Department. This plan component shall include a requirement that a sign be prominently posted and maintained at the entrance between the tobacco shop and the hallway to the lounge that warns of entry into a smoking area and prohibits such entry to minors under the age of 18 and persons who are not Majles members in good standing.
- E. A staffing plan shall be submitted to the Health Department for review and approval. It shall assign locations and describe responsibilities for hookah lounge supervision, including those occasions when music and live entertainment are provided; tobacco shop and other retail operations; cleaning, maintenance, and ATM servicing; entry security; membership services and record keeping; and hookah preparation.
- F. No one shall be permitted to work in the lounge area except Class A members of Majles whose names are registered as such with the Washington Secretary of State's Office; provided that, if at any time the number of Class A members shall exceed eight, Majles shall submit to the Health Department a list containing not more than eight Class A members designated as owners/workers. The names of any Class A members to be currently authorized as lounge workers shall be submitted to the Health Department as a part of the initial plan required by this order. These Class A members shall be issued badges by Majles identifying their ownership status, which shall be worn at all times when they are working on the Majles premises.
- G. Majles memberships shall be based on the following membership requirements:
  - i. Proof that the applicant is at least 18 years of age as documented by either a valid driver's license or a passport;
  - ii. Payment by the applicant of an annual membership fee in an amount not less than five dollars per year;
  - iii. A signed statement by the applicant on a form approved by the Health Department that he/she understands and accepts the health risks attendant to exposure to second-hand smoke. The signed statement shall be required only of new Majles members admitted after approval of the compliance plan required hereunder.
- H. Majles shall maintain current membership records documenting the information specified above in paragraph G, which shall be updated at least monthly. Such records shall be made available for Health Department inspection within seven days after a written inspection request therefor has been received.

3. The required Majles operating plan shall be reviewed for compliance with RCW Chapter 70.160 as described within this order. If such plan has not been approved by the Health Department as compliant by July 15, 2010, either the Health Department or Majles may request in writing that the Hearing Examiner resolve any outstanding questions or disputes and either approve or deny the plan. Such requests for further Hearing Examiner review may also include proposals to modify the terms of this order. The Hearing Examiner may reinstate some or all of the fines and penalties suspended pursuant to this order upon a finding that Majles has not made a good faith attempt to effect compliance with its terms. Evidence that a minor under the age of 18 has been permitted to enter the smoking area of Majles may be deemed conclusive proof of a lack of good faith and result in the revocation of compliance plan approval and the reinstatement of all fines and penalties.
4. Unless extended by further written order, Hearing Examiner jurisdiction over this proceeding shall terminate on the earliest of the following dates:
  - A. Twenty-one days after Health Department denial of the compliance plan required from Majles pursuant to this order, if neither Majles or the Health Department has requested in writing further Hearing Examiner review as authorized above.
  - B. Upon issuance of a final Hearing Examiner order denying a Majles proposed compliance plan.
  - C. One year after the date of approval by the Health Department or Hearing Examiner of a Majles compliance plan. During the year following plan approval, either the Health Department or Majles may request in writing that the Hearing Examiner review and interpret plan terms and requirements.
5. After approval of a Majles compliance plan the Health Department may issue new notices and orders to Majles alleging non-compliance with the approved plan or new violations of RCW Chapter 70.160 and/or BOH Chapter 19.03. A notice and order alleging non-compliance with the approved plan issued during the period of retained Hearing Examiner jurisdiction may be filed at Health Department discretion as a further enforcement action within this proceeding, in which case a request may also be included for the reinstatement of the fines and penalties suspended by this order. A notice and order issued outside the scope of the instant appeal proceeding shall be subject only to those fines and penalties accruing after the date of the new alleged violation.

ORDERED this 28th day of April, 2010.

  
Stafford L. Smith  
King County Hearing Examiner *pro tem*

#### **NOTICE OF RIGHT TO APPEAL**

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within 21 days of the issuance of this decision. The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.

MINUTES OF THE APRIL 20, 2010, PUBLIC HEARING ON THE TOBACCO CODE  
ENFORCEMENT APPEAL OF MAJLES CAFE, SEATTLE-KING COUNTY PUBLIC HEALTH  
DEPARTMENT FILE NO. 2009-03-4323-105.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Jane McKenzie, Scott Neal, Sarah Ross-Viles and John Bennett representing the Department; Douglas Wilson representing the Appellant, Adel Abul the Appellant and Karol Bakamus.

The following Exhibits were offered and entered into the record:

- Exhibit no. 1      Seattle-King County Public Health (Public Health) Inspection Form for inspection on May 23, 2009
- Exhibit no. 2      Public Health Inspection Form for inspection on June 10, 2009
- Exhibit no. 3      Public Health Notice of Violation and Correction Order case no. 2009-03-4323-88 issued June 18, 2009
- Exhibit no. 4      Public Health Inspection Form for inspection on July 9, 2009
- Exhibit no. 5      Public Health Inspection Form for inspection on August 19, 2009
- Exhibit no. 6      Public Health Inspection Form for inspection on September 2, 2009
- Exhibit no. 7      Public Health Inspection Form for inspection on September 22, 2009
- Exhibit no. 8      Public Health Inspection Form for inspection on October 26, 2009
- Exhibit no. 9      Public Health Inspection Form for inspection on January 23, 2010
- Exhibit no. 10     Photograph of signs posted at Majles Cafe communicating rules of conduct
- Exhibit no. 11     Washington State Department of Labor & Industries Field Audit Results Report dated August 31, 2009 for audit period February 2008 through February 2009
- Exhibit no. 12     Majles Cafe website screen shots
- Exhibit no. 13     Letter from Tony Gomez, Health Services Administrator of Public Health, to August 28, 2009 regarding administrative conference on August 25, 2009
- Exhibit no. 14     Email dated September 14, 2009 from Ijaz Khan, representing Adel Abud, appealing Notice of Violation
- Exhibit no. 15     Public Health Notice of Violation to Majles Cafe dated Thursday May 28, 2009
- Exhibit no. 16     Appeal Request of Public Health violation 2009-03-4323-105, dated July 2, 2009
- Exhibit no. 17     Majles Cafe membership list
- Exhibit no. 18     Majles Cafe Membership List: Database Report, dated June 16, 2009
- Exhibit no. 19     Floor plan of Majles Cafe including expansion, annotated by Appellant
- Exhibit no. 20     Draft Articles of Incorporation of Hookah Club
- Exhibit no. 21     Articles of Amendment for Majles Cafe, filed with Secretary of Washington State on June 9, 2009
- Exhibit no. 22     Draft Bylaws of Hookah Club
- Exhibit no. 23     Deposition of Adel Abud, taken on March 24, 2010
- Exhibit no. 24     Form letter from Public Health to business owners regarding smoking prohibitions, dated June 22, 2009
- Exhibit no. 25     Photograph of door to club
- Exhibit no. 26     Majles Café policy
- Exhibit no. 27     Photograph of interior private club
- Exhibit no. 28     Photograph of interior private club
- Exhibit no. 29     Photograph of newly constructed 25 foot hallway separating smoke shop and private club
- Exhibit no. 30     Photograph of friends/members/customers in new private club area
- Exhibit no. 31     Photograph of friends/members/customers Darren and girlfriend in new private club area
- Exhibit no. 32     Photograph of friends/members/customers smoking hookah in new private club area
- Exhibit no. 33     Photograph of Appellant behind counter in new private club area

- Exhibit no. 34 City of Seattle Electrical Permit Inspection Report for inspection performed on April 15, 2010
- Exhibit no. 35 City of Seattle Building Permit Field Inspection Report dated April 19, 2010
- Exhibit no. 36 City of Seattle Building Permit Field Inspection Report dated April 12, 2010

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2009-03-4323-105 RPT