



# CITY OF LONG BEACH

**C-3**

DEPARTMENT OF CITY CLERK

333 West Ocean Boulevard • Long Beach, California 90802 • (562) 570-6101 • FAX (562) 570-6789

January 15, 2008

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

Recommendation to set the date of hearing for Tuesday, January 22, 2008, at 5:00 p.m., to review and consider the report of the Hearing Officer of the administrative appeal to denial of business license for Mexicatessen Express LB, LLC, 3768 Atlantic Avenue. (District 7)

## DISCUSSION

In accordance with Section 2.93.050, of the Long Beach Municipal Code, please find enclosed the final findings and recommendations of the Hearing Officer, from the hearing concluded on December 20, 2007. The Hearing Officer has submitted his report for review. In accordance with Section 2.93.050 (7), the City Council shall set a date of hearing to review and consider the report. All evidence submitted at the evidentiary hearing is available for review by City Council upon request.

## FISCAL IMPACT

None.

## SUGGESTED ACTION:

Approve recommendation

Respectively submitted,

Handwritten signature of Larry G. Herrera in black ink.

LARRY G. HERRERA  
CITY CLERK

Prepared by:  
Irma Heinrichs

1 Bruce Bartram, Attorney at Law  
2 State Bar Number 94825  
3 2 Seaside Circle  
4 Newport Beach, CA 92663  
5 (949) 650-8682

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Hearing Officer

**ADMINISTRATIVE APPEAL  
FOR THE CITY OF LONG BEACH**

IN THE ADMINISTRATIVE APPEAL OF  
THE DENIAL OF BUSINESS LICENSE  
FOR MEXICATESSEN EXPRESS LB, LLC  
LOCATED AT 3768 ATLANTIC AVENUE,  
LONG BEACH

**HEARING OFFICER'S REPORT AND  
RECOMMENDATION**

**Hearing Officer: Bruce Bartram**

**Hearing Date: December 20, 2007**

**I. PRELIMINARY STATEMENT**

The Administrative Appeal pursuant to Long Beach Municipal Code § 3.80.421.6 from a denial of a business license to Mexicatessen Express LB, LLC was heard on December 20, 2007 at approximately 9:00 am, Hearing Officer Bruce Bartram, Esq., presiding. Deputy City Attorney Cristyl Meyers was present on behalf of the City of Long Beach and offered testimony from Richard Bartlett, City of Long Beach Business Services Officer and Roy Bromold, City of Long Beach Building Inspection Services Officer.

At 9:00 am no appearance had been made by a representative of Appellate Mexicatessen Express. The Hearing Officer and Deputy City Attorney Meyers agreed to continue the taking of testimony until 9:20 am to provide Appellant additional time to appear. During the period Deputy City Attorney Meyers provided the Hearing Officer with three Proofs of Service of the Notice of

1 Hearing of Administrative Appeal to the Mexicatessen Express c/o Carlos Aquirre  
2 Owner/Manager. The Notice was contained in a letter dated November 27, 2007 and sent via  
3 personal service and first class US Mail from Deputy City Attorney Meyers to Mexicatessen  
4 Express c/o Carlos Aquirre Owner/Manager at three addresses. The letter stated that the  
5 administrative appeal regarding the rejection of Mexicatessen Express' business license  
6 application had been rescheduled for December 20, 2007 at 9:00 am at the Long Beach City Hall,  
7 City Council Chambers located on the ground floor level of 333 West Ocean Blvd., Long Beach.  
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9 Deputy City Attorney Meyers explained to the Hearing Officer that in addition to the 3768  
10 Atlantic Avenue Long Beach, CA 90807 address personal service on Mexicatessen Express c/o  
11 Carlos Aquirre Owner/Manager was made at two other addresses that had been requested by  
12 Carlos Aguirre that notice be sent to. Deputy City Attorney Meyers stated that she had been in  
13 prior contact with Mr. Aguirre and that he had requested the continuance of original hearing date  
14 of December 4, 2007 to which the City of Long Beach had agreed. In the presence of the Hearing  
15 Officer, Deputy City Attorney Meyers made telephone calls to Carlos Aguirre and Anthony Lam  
16 General Manager and Owner of the Mexicatessen Express to remind them of the Hearing. Ms.  
17 Meyers stated that in the phone calls she had not made personal contact with the individuals but  
18 instead had left voice mail messages reminding them of the Hearing and informing them to contact  
19 the City Attorneys' Office.  
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23 By 9:20 am no appearance or telephone contact by Appellant Mexicatessen Express had  
24 yet been made. It was agreed by the Hearing Officer and Deputy City Attorney Meyers to delay  
25 taking testimony until 9:30 am to give Appellant additional time. During this period, City Attorney  
26 Meyers made additional telephone calls to Carlos Aguirre and Anthony Lam to remind them of the  
27 Hearing. As before, Ms. Meyers was able only to leave voice mail messages to these individuals.  
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1 Finally, at 9:30 am no appearance or telephone contact by Appellant Mexicatessen Express  
2 had occurred and it was decided to proceed with testimony by the City of Long Beach's witnesses.

3 **II. STATEMENT OF THE ISSUE**  
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5 The issue was whether the denial of the business license application of the Mexicatessen  
6 Express for failing to comply with applicable Long Beach Municipal Codes should be affirmed.

7 **III. FACTUAL FINDINGS**  
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9 Prior to testimony, all witnesses were placed under oath pursuant to Long Beach Municipal  
10 Code § 2.93.020. Based upon the evidence presented at the hearing, including the documents  
11 submitted by the city of Long Beach, the Hearing Officer makes the following factual findings:

- 12 A. Appellant Mexicatessen Express received proper notice of the December 20, 2007  
13 hearing. Writing notice was provided by the November 27, 2007 letter referenced  
14 above from Deputy City Attorney Meyers to the Mexicatessen Express c/o Carlos  
15 Aguirre 3768 Atlantic Avenue Long Beach, CA 90807. On the Business License  
16 Application submitted by Carlos Aguirre for the Mexicatessen Express a mailing  
17 address of 3768 Atlantic Avenue Long Beach, CA 90807 is listed. (Exhibit 1). In  
18 addition, personal service of a copy of the November 27, 2007 letter was made  
19 according to one of the Proofs of Service on Mexicatessen Express c/o Carlos  
20 Aguirre on November 28, 2007 at 12:55 pm. At that time Eduardo Mendivil a  
21 Manager of the Mexicatessen Express and authorized to accept service of the notice  
22 was served with a copy of the November 27, 2007 letter at 3768 Atlantic Avenue  
23 Long Beach, CA 90807. Such service is proper personal service under California  
24 Code of Civil Procedure § 416.90 – agent authorized to accept service.  
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1 B. In January, 2007 Carlos Aguirre dba Mexicatessen Express LB, LLC filed an  
2 application for a business license with the City of Long Beach. The business and  
3 mailing address was 3768 Atlantic Avenue Long Beach, CA 90807. Under Long  
4 Beach Municipal Code § 3.80.210 procurement of a business license from the City  
5 of Long Beach is required prior to the conducting of any business or trade within  
6 the City. The type of business was listed as a new business and restaurant with a  
7 start date of February 1, 2007. Carlos Aguirre was listed as owner. The application  
8 given was tracking number 20703330. Pursuant to Long Beach Municipal Code §  
9 3.80.421.1, the application was subsequently referred by the Director of Financial  
10 Management to appropriate departments of the city to investigate and determine  
11 whether the proposed business would comply with applicable fire, building, health  
12 and other regulations. (Exhibit 1); Testimony of Richard Bartlett.

15 C. On January 30, 2007 City of Long Beach Department of Planning and Building  
16 personnel conducted a combined inspection of the premises of 3768 Atlantic  
17 Avenue Long Beach for compliance with applicable building, health and other  
18 regulations. On that date Building Inspector Wendy Goetz prepared a Notice of  
19 Inspection which listed a number of corrective measures needed to be made. The  
20 Notice, given to and signed by Carlos Aguirre who was present at the site,  
21 instructed that plans for Tenant Improvements needed to be submitted to correct the  
22 deficiencies. A reinspection date for the premises of February 14, 2007 was  
23 contained in the Notice. Also prepared by Inspector Goetz and given to and signed  
24 by Mr. Aguirre was a Notice of Non-Operation. This Notice is required to be posted  
25 for the public and states the inspector has found outstanding code-related  
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1 deficiencies. The business license applicant is given 90 days from the date of the  
2 issuance of the Notice to make the necessary corrections or else the application will  
3 be denied. (Exhibit 7); Testimony of Roy Bromold and Richard Bartlett.

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5 D. On February 14, 2007 a second inspection of the Mexicatessen Express 3768  
6 Atlantic Avenue Long Beach by City of Long Beach Department of Planning and  
7 Building personnel was conducted. At that time Inspector Wendy Goetz prepared a  
8 Notice of Inspection containing Tenant Improvements to be made prior to the  
9 issuance of a business license. The Notice stated that licensed contractors were  
10 required to obtain the required electrical and plumbing permits and that the listed  
11 corrections were to be made by March 14, 2007. Otherwise their application for  
12 business license would be denied and business operations would have to cease.  
13 Inspector Goetz also prepared and issued a Conditional Business License  
14 authorized by Long Beach Municipal Code § 3.80.421.1B. This Conditional  
15 License allows the recipient to temporarily conduct business at the location and was  
16 valid for a maximum of 180 days from date of application. During which time the  
17 recipient is to make the corrections contained in the Notice of Inspection by the  
18 date indicated. Both the Notice and Conditional License were given to and signed  
19 by Carlos Aguirre who was present on the site. (Exhibit 2); Testimony of Roy  
20 Bromold and Richard Barlett.

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24 E. According to Department of Planning and Building records a contractor on behalf  
25 of the Mexicatessen Express filed on February 13, 2007 filed an application for  
26 Tenant Improvements and submitted plans for plumbing improvements at the  
27 Department's counter. The plumbing plans were reviewed, judged incomplete and  
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1 were returned with Outstanding Plan Check Comments prepared by a Department  
2 Plan Checker. On March 8, 2007 a representative of the applicant retrieved the  
3 plans along with the Plan Comments. Thereafter, as of November 12, 2007 there  
4 had been no resubmittal of plumbing plans by the Mexicatessen to the Department.  
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6 (Exhibits 8, 10); Testimony of Roy Bromold.

7 F. On or about May 14, 2007 a Report was prepared by Planning and Building  
8 Department Building Inspection Officer Bill Gatoff and sent to the Director of  
9 Financial Management. The Report recommended that the Department deny the  
10 business license application submitted by Carlos Aguirre dba Mexicatessen Express  
11 Lb, Inc. 3768 Atlantic Avenue Long Beach, California. The denial was based upon  
12 the applicant's failure to comply with the applicable laws and regulations pursuant  
13 to Long Beach Municipal Code § 3.80.421.1 B. Specifically, the business owner  
14 had failed to make the corrections listed in the Notice of Inspection dated February  
15 14, 2007 issued by Inspector Goetz and received by Carlos Aguirre. (Exhibits 2, 4);  
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17 Testimony of Richard Bartlett.

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19 G. Thereafter, the Report was referred to Richard Barlett, Business Services Officer  
20 for the Department of Financial Management, and the designee of the Director of  
21 Financial Management for action. Under Long Beach Municipal Code § 3.80.421.5  
22 should a particular city department reject an application for a business license for  
23 failure to comply with applicable laws and ordinances, the Director of Financial  
24 Management is barred from issuing a license. (Exhibit 4); Testimony of Richard  
25  
26 Bartlett.  
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1 H. On or about July 11, 2007 Mr. Bartlett prepared and sent a letter to the  
2 Mexicatessen Express 3768 Atlantic Ave. Long Beach, CA 90807. The letter  
3 advised that their application to operate an eating-place business could not be  
4 approved due to noncompliance with applicable laws and regulations pursuant to  
5 Long Beach Municipal Code § 3.80.421.1 B. The letter explained that the  
6 Department of Planning and Building had recommended that the business license  
7 application be denied and attached a copy of the May 1, 2007 Report which  
8 contained the reasons for the Department's denial recommendation. The letter  
9 advised the Mexicatessen Express to cease operation within 10 days of the receipt  
10 of the letter and that any appeal of the denial of the business license application to  
11 the Long Beach City Council must be done so filing an appeal with the Director of  
12 Financial Management within ten days of the receipt of the letter. (Exhibits 3, 4);  
13 Testimony of Richard Bartlett.

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17 I. On July 20, 2007 the City of Long Beach Department of Financial Management  
18 received a letter from Anthony Lam General Manager/Owner of the Mexicatessen  
19 Express appealing the denial of their business license application. On or about  
20 August 7, 2007 Michael Killebrew Director of Financial Management submitted a  
21 Report to the Mayor and City Council. The Report recommended that the appeal of  
22 the denial of the business license for the Mexicatessen Express 3768 Atlantic Ave.  
23 be referred to a hearing officer as authorized under Long Beach Municipal Code §  
24 2.93.050 A. At its regular meeting on August 7, 2007 the City Council voted to  
25 approve the recommendation that the appeal of the denial of the business license for  
26 the Mexicatessen Express be referred to a hearing officer for action. (Exhibits 5, 7);  
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1 Testimony of Richard Bartlett.

2 J. On December 19, 2007 at approximately 10: 25 am Roy Bromold and Jerry McKay  
3 inspected the premises of the Mexicatessen Express 3768 Atlantic Ave. Long  
4 Beach. The restaurant was closed but produce boxes stored in the back appeared to  
5 be of recent origin. Photographs taken of the premises indicated outstanding  
6 building code violations particularly electrical wiring deficiencies. (Exhibit 9);  
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8 Testimony of Roy Bromold.

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10 **IV. CREDIBILITY OF WITNESSES**

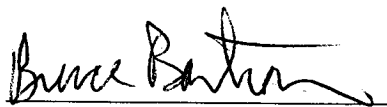
11 All of the City's witnesses appeared truthful and without any bias or motivation to give  
12 false testimony.

13 **V. RECOMMENDATION**

14 I recommend that the denial of Business License Application No. 20703330 submitted by  
15 the Mexicatessen Express be affirmed pursuant to Long Beach Municipal Code § 3.80.421.5. The  
16 evidence presented indicated applicant failed to make the necessary corrections listed in the  
17 February 14, 2007 Notice of Inspection to bring the facility into compliance with the applicable  
18 laws and regulations as required Section 3.80.421.1 B.  
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22 DATED: December 26, 2007

Respectfully submitted,

23  
24 By:   
25 BRUCE BARTRAM, ESQ.  
26 Hearing Officer  
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