

February 3, 2009

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive the supporting documentation into the record, conclude the hearing and adopt the recommendation to deny the appeal and revoke business license number BU92006270 and entertainment permit number BU20345190 for Guadalupe Perez, DBA Mariscos Brite Spot, located at 1616 E. Anaheim Street. (District 2)

DISCUSSION

The Long Beach Municipal Code (LBMC) requires a hearing be held before the City Council whenever a revocation of a business license and/or entertainment permit is appealed.

The LBMC also requires the City Council review and consider a hearing officer's written report, when the Council appoints a hearing officer to conduct the appeal proceedings. The City Council may adopt, reject or modify the recommended decision. In its discretion, the City Council may take additional evidence at the hearing or refer the case back to the hearing officer with instructions to consider additional evidence.

Attached for your review is Hearing Officer George Zugsmith's November 24, 2008 written report. Hearing Officer Zugsmith recommended that the business owner's appeal of the revocation of business license number BU92006270 and entertainment permit number BU20345190, issued to the Guadalupe Perez, d.b.a. Mariscos Brite Spot located at 1616 E. Anaheim Street, be denied. The Hearing Officer's findings determined that:

- The business had 11 Department of Alcoholic Beverage Control license violations since 1992 for after-hour sales, overcrowding, loud music, possession of a slot machine and sales to a minor.
- The location was the source of many police calls including two homicides, knife fights, fist-fights, and public intoxication.
- The variety of police service calls often necessitated law enforcement response from multiple patrol districts.

- The excessive police calls caused a reduction in law enforcement services respecting other geographical areas within the City of Long Beach.
- The granting of business licenses and entertainment permits confer privileges, not rights, to conduct specified business activities, and if the privileges are not honored or abused, they may be revoked.
- The appellant licensee/permittee was negligent in supervising the business.
- The appellant licensee/permittee did not conduct his business in compliance with State law, the rules and regulations of the Department of Alcoholic Beverage Control, the Long Beach Municipal Code, or the conditions or operation attendant to business license and entertainment permit.

This matter was reviewed by Deputy City Attorney Cristyl Meyers on December 11, 2008.

TIMING CONSIDERATIONS

City Council action on this matter is not time critical.

FISCAL IMPACT

There is no fiscal impact associated with this item.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



LORI ANN FARRELL
DIRECTOR OF FINANCIAL MANAGEMENT/CFO

LAF:RB:JM
K:\Exec\Council Letters\Commercial Services\Hearing Letters\02-03-09 ccl - Mariscos Brite Spot - HO Findings.DOC

ATTACHMENT

APPROVED:



PATRICK H. WEST
CITY MANAGER



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ROBERT E. SHANNON
City Attorney

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Chief Assistant City Attorney

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Christina L. Checel
Randall C. Fudge
Charles M. Gale
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Monte H. Machii
Barbara J. McTigue
Barry M. Meyers
Cristyl Meyers
Howard D. Russell
Tiffany L. Shin
Linda Trang

January 7, 2009

VIA FACSIMILE (818) 884-3774 & FIRST CLASS U.S. MAIL

Guadalupe Perez
c/o Armando Chavira, Esq.
20700 Ventura Blvd. #227
Woodland Hills, CA 91364

RE: City Council Hearing Regarding Revocation of
Business License BU92006270 and Entertainment
Permit BU20345190 for Guadalupe Perez, d.b.a.,
Mariscos Brite Spot 1616 E. Anaheim Street

Dear Mr. Chavira,

Please be advised that the City Council Hearing previously scheduled for January 20, 2009, has been rescheduled for February 3, 2009. A message was left with your office on Monday January 5, 2009 to this effect. The Council will render a final decision during these proceedings. If there are questions regarding this matter, you may contact me directly at (562) 570-2231.

Sincerely,

ROBERT E. SHANNON, City Attorney

By:

CRISTYL A. MEYERS
Deputy City Attorney

**CITY OF LONG BEACH HEARING ON
APPEAL RESPECTING THE REVOCATION
OF A BUSINESS LICENSE AND ENTERTAINMENT PERMIT**

**GUADALUPE PEREZ d.b.a. MARISCOS
BRITE SPOT, 1616 E. ANAHEIM
STREET, LONG BEACH, CA,**

Appellant,

vs.

CITY OF LONG BEACH,

Appellee.

**RECOMMENDATION AFTER HEARING
RESPECTING REVOCATION OF
BUSINESS LICENSE AND
ENTERTAINMENT PERMIT**

INTRODUCTION

This request for revocation hearing relates to business license number BU92006270 and entertainment permit number BU20345190 issued to appellant.

This hearing, having been duly noticed, was held on November 20 and 21, 2008 at City Hall, 333 West Ocean Blvd., Long Beach CA. The appellant was represented by Armando H. Chavira, Attorney At Law. The appellee was represented by Cristyl Meyers Deputy City Attorney. George Zugsmith acted as the hearing officer pursuant to stipulation of the parties.

Also present on November 20 was Pedro Osegueda, Certified English - Spanish Interpreter. On November 21, Jorge Olivo, Certified Court Interpreter was present. Detective Chris Anderson, vice investigations, Long Beach Police Department was present on both days during the hearing.

The appellee, as the moving party and having the burden of proof, introduced 34 exhibits. Eleven witnesses testified, including a district supervisor from the California Department of Alcoholic Beverage Control, as well as six officers from the Long Beach Police Department. The appellant also testified.

At the commencement of the hearing, the appellant made a motion to exclude from the hearing, except when testifying, all police officers and the district supervisor from the Department of Alcoholic Beverage Control. The motion was granted, with the exception of Detective Chris Anderson, who served as the investigating officer.

STATEMENT OF FACTS

Having read and considered the documentary evidence and having heard and considered the testimonial evidence the following facts are found to exist:

On February 3, 1992, appellant applied for a business license to operate the Brite Spot Restaurant at 1616 E. Anaheim Street, Long Beach, Ca. Subsequently, business license BU92006270 was issued.

On July 27, 2003, appellant applied for an entertainment permit. Subsequently, entertainment license number BU20345190 was issued.

Both the business license and entertainment permit had conditions attached. While the restaurant could operate 24 hours a day, one of the conditions of the entertainment permit restricted operation on Monday through Thursday weekly from 6:00 p.m. to 12:00 p.m. On Friday, Saturday and Sunday weekly, the entertainment permit extended the hours until 2:00 a.m.

Appellant also applied to the Department of Alcoholic Beverage Control for an on sale beer and wine license, to sell beer and wine in connection with his restaurant. On March 24, 1992, appellant was issued an alcoholic beverage control license permitting the sale of beer and wine in the restaurant between the hours of 6:00 a.m. to 12:00 p.m. daily. The license restricted sales of alcohol to only those instances when food was also being served to the restaurant customer.

On September 12, 2008, the Chief of Police requested a revocation of appellant's business license and entertainment permit. The request was based upon incidents during the period between January 1, 2006 through September 1, 2008. The request was based, in part, upon the excessive use of police services together with violations of the Penal Code, Business and Professions Code, rules and regulations of the Department of Alcoholic Beverage Control and violations of the Long Beach Municipal Code.

Several arrests had occurred both inside and outside the business including a parking lot contiguous to the business. At the hearing it was determined that additional calls for police services had occurred since September 1.

On October 9, 2008, appellant and appellee executed a written waiver wherein the parties agreed to a waiver of an administrative hearing pursuant to Long Beach Municipal Code Section 3.80.429.1 respecting the revocation of both the business license and the entertainment permit pursuant to Long Beach Municipal Code Section 5.72.145.

The parties further agreed to consolidate for the purposes of a hearing on appeal, (a trial de novo), both the issues respecting revocation of the business license together with the entertainment permit. The appellant accepted this stipulation as written notice of his right to appeal.

On November 11, 2008, the Long Beach City Council referred the recommendation of the Chief of Police to a hearing officer respecting the consolidated appeal.

ISSUE

The issue to be determined is whether or not the Chief of Police recommendation to the City Council respecting appellant's business license and entertainment permit should be revoked.

DISCUSSION

From 1992 until the hearing, there have been approximately 11 violations concerning the license issued by the Department of Alcoholic Beverage Control, including violations of the Penal Code and the Business and Professions Code. These violations have resulted in temporary suspensions of the license, probation periods and fines. The violations have included after hours sales, overcrowding and loud music, a sale to minor (decoy) and possession of a slot machine.

The calls for police service have included but, have not been limited to, two homicides, several knife fights, some involving serious injury, fist fights and numerous incidents of public intoxication. The variety of calls has often necessitated the response of several police officers

simultaneously from separate patrol districts. These incidents have caused a reduction in law enforcement services respecting other geographical areas within the city.

The appellant testified that:

- 1) he has owned the business for 18 years,
- 2) he had received a copy of the specific conditions of operation in connection with both the business license and the entertainment permit, as set forth in a memorandum from the Chief of Police, dated September 24, 2003,
- 3) he was aware of alcoholic beverage and control violations but said he believed that the last of violation was in 2002 for an after-hours sale,
- 4) he had no knowledge of other after hours sales violations. He said that sometimes customers bring their own bottles to the restaurant,
- 5) he said that from time to time he had learned from some employees that the police had been at the restaurant during the night. He thought that since the police had already been there, that there were no further problems,
- 6) he is at the business during the day, but not there at night,
- 7) he was unaware that loud music, which could be heard outside the restaurant, was a problem and he didn't know of any problems concerning fighting,
- 8) he didn't recall whether or not he spoke to or discussed problems with any employees between 2002 and 2006,
- 9) an employee told him in 2008 that there was a problem and he decided to hire a security guard. He didn't know whether or not the security guard was licensed or whether or not he worked for a company which was licensed. The security guard has not filled out an employment application, but appellant was going to ask him to do it,
- 10), the security guard has worked on Fridays, Saturdays and Sundays from 1:00 a.m. to 5:00 a.m.

No further witnesses were called by the appellant. Each attorney was provided with the opportunity to address the hearing officer respecting the evidence.

It should be noted that Mr. Chavira is a knowledgeable and well-trained attorney. The issues he raised and addressed were relevant. It was apparent from his presentation that he is experienced and has excellent trial skills. He was courteous and respectful to the witnesses, to the deputy city attorney and to the hearing officer.

Younger, less experienced attorneys could learn much from how he represents a client and from how he conducts himself during a hearing. The appellant was fortunate to have Mr. Chavira as his attorney.

The granting of business licenses and entertainment permits confer privileges, not rights, to licensees to conduct specified business activities. If the privileges are not honored or abused, they may be revoked.

The evidence indicates that the appellant has not conducted his business in compliance with State law, the rules and regulations of the Department of Alcoholic Beverage Control, the Long Beach Municipal Code, or the conditions of operation which were issued and attendant to both

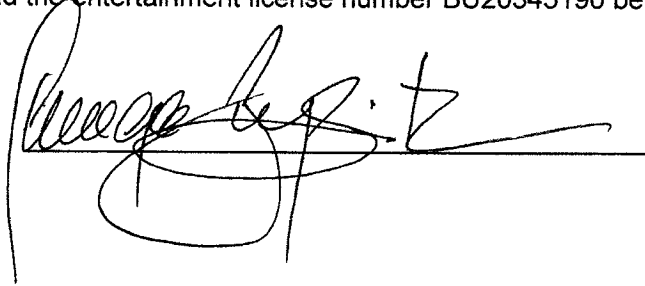
the business license and the entertainment permit.

The appellant has been negligent in supervising the business. By his absence, during nighttime hours, the business has not been properly managed. Unfortunately, the business has become a nuisance as defined by Long Beach Municipal Code Section 21.15.1870.

RECOMMENDATION

It is the recommendation of this hearing officer that both the business license number BU 92006270 and the entertainment license number BU20345190 be revoked.

George Zugsmith
Hearing Officer

A handwritten signature in black ink, appearing to read "George Zugsmith", is written over a horizontal line. The signature is stylized and cursive.

11/24/08
Dated



OFFICE OF THE CITY ATTORNEY

ROBERT E. SHANNON, City Attorney

333 West Ocean Boulevard, 11th Floor

Long Beach, CA 90802-4664

Telephone: (562) 570-2200

Facsimile: (562) 436-1579

Fax Cover Sheet

DATE: January 7, 2009

TO: Armando Chavira, Esq.

FAX NO.: (818) 884-3774

FROM: Cristyl Meyers

SUBJECT: Guadalupe Perez, d.b.a. The Mariscos Brite Spot

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