



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

H-1

333 West Ocean Blvd • Long Beach, California 90802

January 22, 2008

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive the supporting documentation into the record, conclude the hearing and adopt the recommended decision to deny the appeal of the denial of the business license application for the Mexicatessen Express LB, LLC, DBA Mexicatessen Express, located at 3768 Atlantic Avenue. (District 7)

DISCUSSION

The Long Beach Municipal Code (LBMC) requires a hearing be held before the City Council whenever a denial of a business license application is appealed.

The LBMC also requires the City Council to 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 to the hearing officer with instructions to consider additional evidence.

Attached for your review is Hearing Officer Bruce Bartram's December 26, 2007 written report. Attorney Bartram recommended that the appeal of the denial of business license application number BU20703330 for the Mexicatessen Express LB, LLC, located at 3768 Atlantic Avenue, be denied. The Hearing Officer's findings included:

- On-site inspections resulted in the issuance of correction notices for building, plumbing, electrical and health code violations, with instructions for appellant to timely correct the deficiencies.
- Appellant was issued a conditional business license contingent upon compliance.
- As a result, appellant submitted plans for tenant improvements. City staff reviewed the plans, found them to be incomplete, and notified the appellant.
- Although appellant retrieved the incomplete plans, corrective measures have not occurred.

This matter was reviewed by Deputy City Attorney Cristyl Meyers on January 15, 2008.

HONORABLE MAYOR AND CITY COUNCIL

January 22, 2008

Page 2

TIMING CONSIDERATIONS

The hearing date of January 22, 2008 was set by the City Council on January 15, 2008 to review and consider the Hearing Officer report.

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

CM: RIB
K:\Exec\Council Letters\Commercial Services\Hearing Letters\01-22-08 ccl - Mexicatessen Express - Hearing Officer Findings.doc

Attachment

APPROVED:


for _____
PATRICK H. WEST
CITY MANAGER



CITY OF LONG BEACH

DEPARTMENT OF CITY CLERK

~~C-3~~

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,

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

6 Hearing Officer

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

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

**HEARING OFFICER'S REPORT AND
RECOMMENDATION**

Hearing Officer: Bruce Bartram

Hearing Date: December 20, 2007

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16 **I. PRELIMINARY STATEMENT**

17 The Administrative Appeal pursuant to Long Beach Municipal Code § 3.80.421.6
18 from a denial of a business license to Mexicatessen Express LB, LLC was heard on December 20,
19 2007 at approximately 9:00 am, Hearing Officer Bruce Bartram, Esq., presiding. Deputy City
20 Attorney Cristyl Meyers was present on behalf of the City of Long Beach and offered testimony
21 from Richard Bartlett, City of Long Beach Business Services Officer and Roy Bromold, City of
22 Long Beach Building Inspection Services Officer.

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24 At 9:00 am no appearance had been made by a representative of Appellate Mexicatessen
25 Express. The Hearing Officer and Deputy City Attorney Meyers agreed to continue the taking of
26 testimony until 9:20 am to provide Appellant additional time to appear. During the period Deputy
27 City Attorney Meyers provided the Hearing Officer with three Proofs of Service of the Notice of
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1 Hearing of Administrative Appeal to the Mexicatessen Express c/o Carlos Aguirre
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 Aguirre 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 Aguirre 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.

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16 C. On January 30, 2007 City of Long Beach Department of Planning and Building
17 personnel conducted a combined inspection of the premises of 3768 Atlantic
18 Avenue Long Beach for compliance with applicable building, health and other
19 regulations. On that date Building Inspector Wendy Goetz prepared a Notice of
20 Inspection which listed a number of corrective measures needed to be made. The
21 Notice, given to and signed by Carlos Aguirre who was present at the site,
22 instructed that plans for Tenant Improvements needed to be submitted to correct the
23 deficiencies. A reinspection date for the premises of February 14, 2007 was
24 contained in the Notice. Also prepared by Inspector Goetz and given to and signed
25 by Mr. Aguirre was a Notice of Non-Operation. This Notice is required to be posted
26 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.
5 (Exhibits 8, 10); Testimony of Roy Bromold.
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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);
16 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 Bartlett.
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H. On or about July 11, 2007 Mr. Bartlett prepared and sent a letter to the Mexicatessen Express 3768 Atlantic Ave. Long Beach, CA 90807. The letter advised that their application to operate an eating-place business could not be approved due to noncompliance with applicable laws and regulations pursuant to Long Beach Municipal Code § 3.80.421.1 B. The letter explained that the Department of Planning and Building had recommended that the business license application be denied and attached a copy of the May 1, 2007 Report which contained the reasons for the Department's denial recommendation. The letter advised the Mexicatessen Express to cease operation within 10 days of the receipt of the letter and that any appeal of the denial of the business license application to the Long Beach City Council must be done so filing an appeal with the Director of Financial Management within ten days of the receipt of the letter. (Exhibits 3, 4); Testimony of Richard Bartlett.

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

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,

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