

# CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

# H-4

333 West Ocean Blvd • Long Beach, California 90802

November 16, 2010

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 revoke entertainment permit number BU20656240 for CNR Holdings, LLC, dba Evo Lounge, located at 5300 East 2<sup>nd</sup> Street. (District 3)

## DISCUSSION

The Long Beach Municipal Code (LBMC) requires a hearing be held before the City Council whenever revocation of an 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. In its discretion, the City Council may adopt, reject or modify the recommended decision, and 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 the Hearing Officer's October 29, 2010 report, including a summary of testimony, documentary evidence and arguments of the parties. The Hearing Officer recommended that entertainment permit number BU20656240, issued to CNR Holdings, LLC (CNR), be revoked based in part on the following findings:

- CNR is comprised of two members: Full House Enterprises, Inc., with Gary Roth as CEO, and Belmont Station, Inc., with Jerome Chiaro as CEO.
- CNR misrepresented facts on its November 20, 2006 entertainment permit application, which was signed under penalty of perjury.
- The application identified 16 dining tables and 122 seats in the restaurant when in fact the number was significantly less.
- The application also stated there would be no admission fee, when in fact a "cover charge" was imposed for the past three years.
- CNR removed dining floor space to create a bar and enlarge the dance floor without permits.

- CNR failed to disclose that its member, Belmont Station, Inc., had been suspended by the Secretary of State. CEO Jerome Chiaro confirmed this fact during testimony.
- CNR's random use of patrons to function as "Bartender for a Night" constituted an "unsafe practice," and was conducted without authorization from the Department of Alcoholic Beverage Control (ABC).
- On April 3, 2007, when City Council granted the herein permit, it was not advised of a large fight which occurred at CNR on February 17, 2007, and resulted in multiple arrests, injury to Mr. Roth, and a victim lying unconscious in a pool of blood.
- Since April 3, 2007, CNR incidents requiring police services included a violent fight involving a CNR security guard who was arrested and convicted of felony assault, drunken patrons, public urination, fights, loitering, and after hour entertainment.
- Due to increased calls for service, the Police Department elevated patrol.

This matter was reviewed by Deputy City Attorney Cristyl Meyers on November 4, 2010.

#### TIMING CONSIDERATIONS

The hearing date of November 16, 2010, has been posted on the business location, and the property owner has been notified by mail.

#### FISCAL IMPACT

The following fees will no longer be collected if the application is revoked: Business License \$320.70 and Regulatory \$958 (Financial Management Department).


#### SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

  
LORI ANN FARRELL  
DIRECTOR OF FINANCIAL MANAGEMENT/CFO

APPROVED:

  
PATRICK H. WEST  
CITY MANAGER

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6  
7 LONG BEACH CIVIL SERVICE COMMISSION

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9 APPEAL OF ENTERTAINMENT PERMIT )  
10 NO. BU20656240 REVOCATION ISSUED )  
11 TO CNR HOLDINGS, LLC LOCATED AT )  
5300 E. 2<sup>ND</sup> STREET, LONG BEACH, CA )  
90803 )

**STATEMENT OF DECISION AND  
RECOMMENDATION RE.  
ENTERTAINMENT PERMIT  
REVOCATION**

12 ) Hearing Officer: Linda Guthmann Krieger

13 ) Hearing dates: Sept. 27 & 30, 2010  
14

15 **BACKGROUND**

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17 On June 3, 2010, CNR Holdings, LLC was notified by Erik Sund, Business Relations  
18 Manager for the City of Long Beach, that pursuant to Long Beach Municipal Code Chapters 2.93,  
19 5.06 and 5.72, a request to refer an Entertainment Permit Revocation Hearing, for entertainment  
20 permit number BU20656240, to a qualified hearing officer had been placed on the June 15, 2010  
21 Council Agenda. On June 15, 2010, the Long Beach City Council voted to refer this matter to a  
22 hearing officer.

23 The above entitled appeal of entertainment permit revocation came regularly for hearing,  
24 after proper written notice, on September 27, 2010 and September 30, 2010, Linda Guthmann  
25 Krieger, hearing officer, presiding. Appellant, CNR Holdings, LLC was represented by Gary Roth,  
26 majority owner of CNR Holdings, in pro per, and Appellee, the City of Long Beach, was  
27 represented by Cristyl A. Meyers, Deputy City Attorney., City of Long Beach. The administrative  
28 hearing was conducted pursuant to the City of Long Beach Municipal Code, Chapter 2.93, et. seq.

1 ISSUES ON APPEAL

2 The issue on appeal is whether CNR Holdings' entertainment permit number BU20656240  
3 should be revoked. The City's grounds for revoking the entertainment permit are based on LBMC  
4 5.06.020 which provides that any permit to do business in the city may be revoked on the following  
5 grounds: . . . 2. For any grounds that would warrant the denial of the issuance of such permit if  
6 application therefore was being made; 3. The permittee or any other person under his/her control or  
7 supervision has maintained a nuisance as defined in 21.15.1870 of the LB Municipal Code which  
8 was caused by acts committed on the permitted premises or the area under the control of the  
9 permittee; 4. The permittee, his/her employee, agent or any person connected or associated with  
10 permittee as partner, director, officer, stockholder or manager has knowingly made any false,  
11 misleading or fraudulent statement of material fact in the application for the permit required under  
12 the provisions of this Code; or 5. The permittee has failed to comply with any condition which may  
13 have been imposed as a condition of operation or for the issuance of the permit under the provisions  
14 of the Code.

15 The City alleges that the following warrants revocation of the entertainment permit: the  
16 maintenance of a nuisance as defined in 21.15.1870 of the LB Municipal Code, which included  
17 frequents fights and other calls for service to the Long Beach Police Department, disturbance of the  
18 peace, and excessive loud noise. Further, the City claims that this nuisance, among other grounds,  
19 would have warranted the denial the issuance of such permit if known at the time application for the  
20 permit was made. Next, the City claims that false, misleading or fraudulent statements were made  
21 on the permit and business license applications. Finally, the City claims that CNR Holdings has  
22 failed to comply with certain conditions attached to the entertainment permit.

23 CNR Holdings, on the other hand, contends that it has not been cited for any acts by the  
24 Long Beach Police or any other agency. Furthermore, CNR Holdings claims that it has not caused a  
25 nuisance in any way. In regard to statements made in the entertainment permit and business license  
26 applications, CNR Holdings claims that any mistakes were oversights. Finally, CNR contends that  
27 it has abided by all conditions attached to its entertainment permit.  
28

1 EVIDENCE

2 Belmont Station has been an eating establishment serving alcohol since 1979. Belmont  
3 Station acquired an entertainment permit in 1980. In 1996, Gary Roth began running Belmont  
4 Station through CNR Holdings, LLC. On November 20, 2006, CNR applied for a new entertainment  
5 permit for Belmont Station. The application stated that there were 16 tables for seating. **The**  
6 **application further stated that an admission fee would not be charged. It also provides for a**  
7 **dance floor of 225 square feet.** On the same day, Mr. Roth signed a business license application for  
8 the City of Long Beach. **On such document, it states that there are 122 seats for the service of**  
9 **food.** The party who reviewed this license application stated, "No interior change. Only ownership  
10 change."

11 At the hearing, Mr. Roth testified that some of the information on the business license  
12 application was incorrect, that there were never 122 seats for food, and that there were closer to 22  
13 seats for the consumption of food. He did not know how the information was placed on the  
14 application, but acknowledged that it was a mistake.

15 On April 3, 2007, the entertainment permit was approved, and on June 5, 2007, CNR  
16 Holdings, LLC received a letter from Richard I. Bartlett, Business Services Officer, with a list of  
17 conditions upon which the entertainment permit was approved. These conditions included, among  
18 other things, that:

19 1. The operation of the establishment shall be limited to those activities and  
20 elements expressly indicated on the permit application and approved by the City  
21 Council. **Any change in the operation, which exceeds the conditions of the**  
22 **approved permit, will require that a new permit application be submitted to**  
23 **the City Council for their review and approval.**

24 5. Noise emanating from the permittee's premises shall not be audible 50 feet or  
25 more from the property line of the premises. . .

26 9. The permittee shall be responsible for maintaining an adequate security staff to  
27 supervise patrons inside the establishment and those waiting to enter.

28 16. The permittee shall maintain full compliance with all applicable laws, ABC laws,  
ordinances and states conditions. In the event of a conflict between the requirements of this  
permit, our conditional use permit, or your Alcoholic Beverage Control license, the more  
stringent regulation shall apply.

18. The establishment shall remain in compliance with all applicable sections of  
the Long Beach Noise Ordinance (LBMC Chapter 8.80)

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1 It further states, "In the event that any of the recommended conditions attached to any permit or  
2 license is in conflict, the permittee shall adhere to the strictest of the applicable conditions."

3         There have been numerous Long Beach Police Department calls for service (hereinafter  
4 "calls for service") for Belmont Station and later Evo Lounge over the past several years. One  
5 serious call occurred on February 17, 2007 prior to the current entertainment permit being issued.  
6 This incident involved a fight with 10 to 15 subjects. The reporting officer noted a victim laying in  
7 the middle of the roadway with a pool of blood around his head. In this incident, private security  
8 could not control the crowd. Mr. Roth himself was injured during this incident and there were at  
9 least two arrests. Due to the timing, it appears that this incident was not known to those involved in  
10 deciding to grant the entertainment permit a few months later. Lieutenant Rudy Komisza testified  
11 that this could have been the basis for denial of the entertainment permit, if known, but could not say  
12 it would have necessarily caused such denial.

13         Throughout the last three years, as testified to by Long Beach Police Services Specialist,  
14 Kymberly Cloughesy, there have been a series of additional calls for service to the Long Beach  
15 Police Department as well as complaints from neighbors regarding the noise, fighting, and related  
16 incidents stemming from the Belmont Station/Evo Lounge. In fact, it appears that the numbers of  
17 calls during this time period increased as compared to the three (3) years prior to 2007. While the  
18 number of calls and visits have been large, some were found to have been unfounded, many were not  
19 substantiated, and many were caused by regular visits due to the heightened status (LBPD priority  
20 watch list) of the Belmont Station/Evo Lounge. There have been a few fairly violent acts that  
21 occurred both on the premises of Belmont Station/Evo Lounge and others that occurred nearby,  
22 including in the adjacent public parking lot. One citation was issued to Belmont Station/Evo Lounge  
23 on August 12, 2009 related to a music disturbance, particularly music being heard beyond a 50 foot  
24 distance.

25         In regard to noise complaints, there have been many, particularly from nearby residents.  
26 However, when the police tried to listen for themselves from 50 feet away, they could not hear any  
27 noise from Belmont Station/Evo Lounge. In fact, Detective Armand Castellanos testified that he  
28 could not hear noise from Belmont Station/Evo Lounge from an alley three feet away. Furthermore,

1 because two neighbors, John Forstrom and Catherine Jones each testified that they each made  
2 numerous noise complaints, it is unclear that any neighbors besides those two had issues with noise  
3 from Belmont Station/Evo Lounge.

4 While Belmont Station/Evo Lounge serves food including full meals, their food service  
5 ceases as of 9:00 p.m. each night. At that time, they stop allowing minors onto the premises, and  
6 shortly thereafter, at around 10:00 or 11:00 p.m., begin charging an admission fee (cover charge) for  
7 entry. The cover charge began approximately three years ago, according to the testimony of Mr.  
8 Roth.

9 In December 2009, the fictitious name of the establishment at issue was changed to Evo  
10 Lounge, and in January 2010, the business began functioning as Evo Lounge. The dance floor was  
11 apparently expanded, at that time, to approximately 300 square feet (this figure was provided by Mr.  
12 Roth who nevertheless denied that the dance floor had been expanded.) At the same time, the bar  
13 was extended, and other changes were made to the property, pursuant to Chris Nicholls of the Long  
14 Beach Development Services Department. According to neighboring residents, there has been more  
15 noise associated with Evo Lounge than there was with Belmont Station, including music continuing  
16 beyond 1:30 a.m. at times.

17 In order to increase business, CNR Holdings contracted with Pure Evolution Productions to  
18 bring more patrons into the business. As a result, CNR Holdings instituted a "guest bartender"  
19 program where a person who was not a trained Belmont Station/Evo Lounge bartender could bartend  
20 for 30 minutes and serve drinks to their friends.

21 On April 10, 2010, an incident occurred at Belmont Station/Evo Lounge in which a bouncer  
22 for this institution inflicted bodily harm on patrons, resulting in the bouncer's arrest and prosecution.  
23 Such bouncer was convicted of felony assault regarding this incident on July 22, 2010.

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25 **FINDINGS OF FACT**

26  
27 1. CNR Holdings previously operated as Belmont Station. In late 2009/early 2010, it began  
28 operating as Evo Lounge, and made changes to the property at that same time.

1           2. While stating on its application for business license dated November 20, 2006 that there  
2 are 122 seats in the restaurant, neither Belmont Station nor Evo Lounge has or had that many seats.  
3 The information was incorrect when it was written. It also appears that the dance floor has been  
4 enlarged from 225 square feet to 300 square feet. The size of the dance floor, particularly for a  
5 restaurant serving alcohol, might affect whether the entertainment permit would have been granted.  
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8           3. While the application for entertainment permit dated November 20, 2006 states that no  
9 admission fee will be charged to enter the facility, an admission fee has been charged for the past  
10 three years. An admission fee, also known as a "cover charge" is more indicative of a bar than a  
11 restaurant, and might affect whether the entertainment permit would have been granted.  
12

13           4. Based upon numbers 2 and 3 above, Evo Lounge has been operating outside the scope of  
14 its authorized entertainment permit activities.  
15

16           5. While neighbors have been inconvenienced by the Belmont Station/Evo Lounge, it is not  
17 clear that it has risen to the level of a nuisance. Further, while there have been noise complaints, it is  
18 not apparent that noise has been heard 50 feet or more from the Belmont Station/Evo Lounge or that  
19 noise ordinances have been violated.  
20

21           6. Due to the number and nature of incidents that have occurred at the Belmont Station/Evo  
22 Lounge, including at least one violent crime by the security staff themselves, it is not clear that  
23 adequate security has been provided to support the entertainment permit at this facility.  
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26           7. The use of guest bartenders by Belmont Station/Evo Lounge may violate Alcoholic  
27 Beverage Control ("ABC") laws, and is not a safe practice.  
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