



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

333 West Ocean Blvd • Long Beach, California 90802

January 22, 2013

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive the supporting documentation into the record, conclude the hearing and adopt the hearing officer's recommendation to revoke business license number BU07029111 issued to Oceansider IV, LLC, located at 745 East 4th Street. (District 1)

DISCUSSION

Oceansider IV, LLC, holds a commercial/industrial business license issued to the property located at 743 East 4th Street, Long Beach, CA 90802 (Parcel/Tax ID #: 7281-006-035 and 3,750 square footage). The commercial business license was issued in accordance with Long Beach Municipal Code (LBMC) Section 3.80.236 – Tax on Rental of Nonresidential Property. This commercial business license governs multiple business addresses on the parcel, which are currently vacant, except for 745 East 4th Street. The 4th Street Collective, a medical marijuana dispensary and cultivation site, has been operating at 745 East 4th Street since at least June 2010. In accordance with LBMC Chapter 5.89, adopted on February 14, 2012, this type of activity is prohibited. In February 2012, the City initiated enforcement measures to seek compliance, including mailing and posting cease and desist letters to the property owner, issuing administrative citations, criminal citations and compiling liens. To date, the City has issued 47 administration citations, totaling over \$22,800. Due to non-compliance, the citation amounts have become property liens.

Due to the on-going violations, the City began the business license revocation process to revoke business license number BU07029111, in accordance with LBMC Section 3.80.429.1.

The following is a chronology of the process to date:

- On May 16, 2012, a business license revocation hearing was conducted, in compliance with LBMC Section 3.80.429.1. On May 30, 2012, the hearing officer recommended to the Director of Financial Management to revoke business license number BU07029111 (Attachment A).

HONORABLE MAYOR AND CITY COUNCIL

January 22, 2013

Page 2

- On June 6, 2012, the Department of Financial Management revoked the business license issued to Oceansider IV, LLC, located at 745 East 4th Street (Attachment B), due to violations of the LBMC and state law.
- The licensee lodged its written request for appeal on June 13, 2012 (Attachment C). Pursuant to LBMC Section 3.80.429.5, a licensee can appeal the revocation of a business license to the City Council. Whenever it is provided that a hearing shall be heard by the City Council, the City Council may, in its discretion, conduct the hearing itself or refer it to a hearing officer, in accordance with LBMC 2.93.050(A).
- On July 10, 2012, the City Council referred the appeal of the business license revocation for Oceansider IV, LLC, to a second hearing officer.
- On October 17, 2012, the revocation appeal hearing was held. The hearing officer randomly assigned by the City Clerk's Office to hear the matter was Cynthia S. Floyd, Esq.
- On December 3, 2012, the hearing officer recommended that the business license issued to Oceansider IV, LLC, be revoked due to violations of LBMC Section 3.80.429.1 (Attachment D).

LBMC Section 2.93.050 requires that the City Council set a hearing to review and consider the hearing officer's report and recommendation. After review of the hearing officer's report, the City Council may adopt, reject or modify the recommended decision.

This matter was reviewed by Deputy City Attorney Kendra Carney on January 7, 2013.

TIMING CONSIDERATIONS

The hearing date of January 22, 2013, has been posted on the business location, and the property owner has been notified by mail.

FISCAL IMPACT

There is no fiscal or local job impact associated with this recommendation.

HONORABLE MAYOR AND CITY COUNCIL
January 22, 2013
Page 3

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT

ES:smc
K:\Exec\Council Letters\Business Relations\Hearing Letters\01-22-13 ccl - Oceansider IV LLC - Hearing Officer Recommendation.doc

ATTACHMENTS

APPROVED:



PATRICK H. WEST
CITY MANAGER

ATTACHMENT A

INITIAL HEARING:

**HEARING OFFICER'S REPORT
AND RECOMMENDATION**

MAY 30, 2012

RAMSEY

May 30, 2012

Larry G. Herrera,
City Clerk
City of Long Beach
333 West Ocean Boulevard
Long Beach, CA 90802

Attn: Irma Heinrichs

Re: Report and Recommendation of Hearing Officer
Matter of City of Long Beach Business License Number BU07029111 issued to Oceansider LLV IV

Dear Mr. Herrera:

On May 16, 2012, I conducted an administrative hearing to show cause why the captioned business license should not be revoked pursuant to Long Beach Municipal Code §3.80.429.1.

The hearing was recorded. The recording is in your possession.

The hearing has been completed.

This letter constitutes my report and recommendation.

1. INTRODUCTION

In this report:

- The City of Long Beach is referred to as "the City."
- The Director of Financial Management for the City is referred to as "the Director."
- Oceansider LLV IV is referred to as "the Licensee." The form of the Licensee is not known. It is not listed as either a corporation or a limited liability company on the California Secretary of State website.
- The improved real property commonly known as 745 East Fourth Street, Long Beach, is referred to as "the Premises."
- City of Long Beach Business License Number BU07029111 is referred to as "the License."

THOMAS A. RAMSEY - A PROFESSIONAL CORPORATION - LAWYER

NINETEENTH FLOOR 111 WEST OCEAN BOULEVARD LONG BEACH, CALIFORNIA 90802-4632
VOICE 562-436-7713 FACSIMILE 562-436-7313 E-MAIL bizlawwiz@aol.com

ATTACHMENT A

Report and Recommendation of Hearing Officer
Matter of City of Long Beach Business License Number BU07029111 issued to Oceansider LLV IV
May 30, 2012
Page Two

- All references to titles, chapters or sections, without an accompanying reference to a specific code, are to the Long Beach Municipal Code.

Accompanying this report is a copy of the exhibits introduced by the City at the hearing. They are numbered 1-8.

The basis for this hearing is found in §§3.80.429.1 and 3.80.429.5, which provide as follows:

- The belief that a licensee has failed to comply with applicable ordinances or statutes empowers the Director to notice a hearing at which the licensee may show cause why the license should not be revoked.
- Following such a hearing and receipt of the hearing officer's report, the Director may revoke or suspend the license.
- In the event the license is revoked by the Director, the licensee has the right to file a written appeal to the Long Beach City Council.

2. HEARING LOCATION AND DATE

Pursuant to written notice (Exhibit 1), the matter was heard at Long Beach City Hall, 333 West Ocean Boulevard, Seventh Floor Large Conference Room, on May 16, 2012, commencing at 10:55 a.m.

3. PARTIES AND COUNSEL

The City was represented by the Long Beach City Attorney, through Kendra L. Carney, Deputy City Attorney.

The Licensee appeared through Mark Milan, identifying himself as the "managing member" of the licensee.

4. STATEMENT OF THE ISSUE BEFORE THE HEARING OFFICER

The issue in this matter is as follows: Is the Licensee operating its commercial rental business at the Premises outside the scope of the authorized business activities identified in its business license?

ATTACHMENT A

Report and Recommendation of Hearing Officer
Matter of City of Long Beach Business License Number BU07029111 issued to Oceansider LLV IV
May 30, 2012
Page Three

5. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY THE CITY

Eric Sund (City of Long Beach Business Relations Manager), Lori Voss (City of Long Beach License Inspector) and Gene Rodriguez (City of Long Beach License Inspector) testified on the City's behalf.

Exhibits 1-8, introduced by the City, were placed into evidence.

The testimony of Eric Sund was as follows:

- The Licensee holds title to the Premises (Exhibit 3).
- Business license number BU07029111, issued to the Licensee, permits the Licensee to lease all or any portion of the Premises to others (Exhibit 2).
- On various visits to the Premises, it was determined that one of the Licensee's lessee operates a medical marijuana collective, apparently under the name "The 4th Street Collective."
- At the conclusion of each visit to the Premises which resulted in the discovery of the operation of a medical marijuana collective on at least a portion of the premises, an administrative citation was issued to the collective and posted on its portion of the Premises. Additionally, written notice was sent to the Licensee, advising it that the collective is operating in violation of Long Beach Municipal Code Chapter 5.89 (Exhibit 4).
- Written notice of this hearing, in the form of Exhibit 1, was mailed to the Licensee.

Lori Voss testified that she had visited the Premises on various occasions, during which customers reported to her that they were purchasing marijuana from the collective.

Gene Rodriguez testified that he had visited the Premises on various occasions, during which he smelled marijuana at the site of the collective.

6. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY THE LICENSEE

Although the Licensee appeared through its apparent manager, it did not introduce any evidence.

Instead, the apparent manager engaged in cross-examination of the City's witnesses and presented a closing argument at the conclusion of the hearing.

ATTACHMENT A

Report and Recommendation of Hearing Officer
Matter of City of Long Beach Business License Number BU07029111 issued to Oceansider LLV IV
May 30, 2012
Page Four

7. FINDINGS OF FACT

The findings of fact are as follows:


- A. The Licensee is the owner of the Premises.
- B. Business license number BU07029111, issued to the Licensee, authorizes the Licensee to operate a commercial/industrial space rental business at the Premises.
- C. One of the Licensee's lessees is known as The 4th Street Collective.
- D. The 4th Street Collective operates a medical marijuana collective, in violation of Long Beach Municipal Code Chapter 5.89 (Exhibit 4).
- E. Written notice was sent to the Licensee, advising it that one of its lessees, the collective, is operating in violation of Long Beach Municipal Code Chapter 5.89 (Exhibit 4).
- F. The Licensee has knowledge of the nature of the business of the collective.
- G. The collective continues to operate from a portion of the Premises.
- H. Written notice of this hearing was mailed to the Licensee.

8. RECOMMENDATION

The business license issued to the Licensee allows the Licensee to operate a commercial/industrial space rental business at the Premises. By leasing/renting/licensing/permitting an unlicensed medical marijuana dispensary on the Premises, the Licensee is operating outside the scope of the authorized business activities identified in his business license.

In this factual setting, it is recommended that the City of Long Beach Business License Number BU07029111 issued to Oceansider LLV IV be revoked.

Respectfully submitted,



THOMAS A. RAMSEY

TR:dc
Attachments as noted

ATTACHMENT B

LETTER:

**BUSINESS LICENSE
REVOCATION CONFIRMATION
LETTER**

JUNE 6, 2012



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

333 W. Ocean Boulevard, 4th Floor • Long Beach, CA 90802 • (562) 570-6212 FAX (562) 570-6180

BUSINESS RELATIONS BUREAU
BUSINESS LICENSE SECTION

June 6, 2012

Oceansider LLV IV
2901 E. Pacific Coast Hwy.
Signal Hill, CA 90755

RE: Notice of Business License Revocation
Business License Number: BU07029111

Dear Sir or Madam:

Please be advised that **business license number BU07029111**, issued to Oceansider LLV IV, located at 745 E. 4th Street, Long Beach, CA 90802 **has been revoked**, pursuant to Long Beach Municipal Code ("LBMC") section 3.80.429.1, subsection (b), **effective June 6, 2012**. Pursuant to LBMC section 3.80.429.1, you have 10 calendar days from the date of this letter to request an appeal, otherwise the revocation will be final.

Failure to cease operations at this location after June 16, 2012 shall constitute a criminal offense pursuant to Long Beach Municipal Code sections 3.80.429.1, subsection (a) and 3.80.210.

Pursuant to Long Beach Municipal Code section 3.80.429.5, a request to appeal must be in writing, must set forth the specific ground or grounds on which it is based, and must be accompanied by a non-refundable cashier's check or money order, made payable to the City of Long Beach, in the amount of \$1,205. The request for appeal must be submitted to the Office of the Long Beach City Clerk, located at 333 W. Ocean Boulevard, Long Beach, California, not later than 4:00 p.m. June 16, 2012. Should you have any questions, please contact me at (562) 570-6663.

Sincerely,


Erik Sund
Manager, Business Relations Bureau

I have received notification of the
above:

Attachments
ES:smc

cc: Kendra Carney, Deputy City Attorney
Council District 1

Name/Title

3.80.429.1 - Suspension or revocation.

- A. Whenever any person fails to comply with any provision of this chapter pertaining to business license taxes or any rule or regulation adopted pursuant thereto or with any other provision or requirement of law, including, but not limited to, this municipal code and any grounds that would warrant the denial of initial issuance of a license hereunder, the director of financial management, upon hearing, after giving such person ten (10) days' notice in writing specifying the time and place of hearing and requiring him or her to show cause why his or her license should not be revoked, may revoke or suspend any one or more licenses held by such person. The notice shall be served in the same manner as notices of assessment are served under Section 3.80.444. The director shall not issue a new license after the revocation of a license unless he or she is satisfied that the registrant will thereafter comply with the business license tax provisions of this chapter and the rules and regulations adopted thereunder, and until the director collects a fee, the amount of which shall be determined by director in an amount to recover the actual costs of processing, in addition to any other taxes that may be required under the provisions of this chapter.
- B. Any person who engages in any business after the business license issued therefor has been suspended or revoked, and before such suspended license has been reinstated or a new license issued, shall be guilty of a misdemeanor.

(Ord. C-6259 § 1 (part), 1986).

3.80.429.5 - Appeal of license revocation.

Any licensee whose license is revoked under this chapter shall have the right, within ten (10) days after the date of mailing of the written notice of revocation, to file a written appeal to the city council. Such appeal shall set forth the specific ground or grounds on which it is based. The city council shall hold a hearing on the appeal within thirty (30) days after its receipt by the city, or at a time thereafter agreed upon, and shall cause the appellant to be given at least ten (10) days' written notice of such hearing. At the hearing, the appellant or its authorized representative shall have the right to present evidence and a written or oral argument, or both, in support of its appeal. The determination of the city council on the appeal shall be final.

(Ord. C-6259 § 1 (part), 1986).

ATTACHMENT C

APPEAL REQUEST:

**LICENSEE'S WRITTEN
REQUEST FOR AN APPEAL**

JUNE 13, 2012

Oceansiders IV, LLC

2901 Pacific Coast Hwy, Signal Hill, CA 90755 (562) 983-6700

6/13/2012

Office of the Long Beach City Clerk
333 W. Ocean Blvd.
Long Beach, CA 90802

RECEIVED
CITY CLERK
LONG BEACH, CA
12 JUN 14 AM 10: 31

Appeal of Decision Regarding BU07029111

TO WHOM IT MAY CONCERN:

WRONG FIRM

First and foremost, the City has cited and served the wrong company. The decision against the property located at 743 E. 4th Street was entered into against Oceansiders LLV, IV, which is not the property owner. The Los Angeles County recorder shows that the property is owned by the firm on this letterhead, not the name that the city uses. Also it is fair to mention here that most of the correspondence from the City had been sent via Certified US Mail, and the post office does not deliver Certified Mail to our office. We always request regular mail or personal delivery. Bottom line about the name is that the City has served the wrong party and for this reason alone, the Decision should be vacated and the City lien filed on the property should be retracted.

LACK OF IMPARTIALITY

The second and most troubling issue is that of impartiality. The hearing officer was witnessed to spend a minimum of 30 minutes prior to the start of the hearing in private consultation with the City's Deputy Attorney. This is akin to having one side in chamber with the judge working on the prosecution without the benefit of the defense being involved. The hearing was unfair and the Trier-Of-Fact partial to the outcome. During said private conference prior to the beginning of the hearing all the witnesses for the prosecution were in the hearing room. On its face this proves that the Hearing Officer was partial. In fact, it appears that the witnesses were coached on what to say in the hearing when it began.

ATTACHMENT C

COURT ADMONISHMENT

Erik Sund, Business License Official for the City of Long Beach, who was the key witness in this case was recently admonished by the courts for, according to the judge hearing the case, "using strong arm tactics and performing unwarranted raids". While the City is still to be served in the case for damages regarding the constitutional violations committed by Mr. Sund, this recent comment from the court involving Long Beach's medical marijuana enforcement procedures stresses Mr. Sund's failure to follow State law and deals a severe blow to his creditability. Also to be noted, Kendra Carney is on the hidden video camera assisting in the unwarranted raid.

LACK OF EVIDENCE I

After the Hearing Officer, Prosecutor and Witnesses had conferred about the case in private, the property manager was allowed into the room to be sworn in. (More on that will be discussed under a separate heading.) The booklet of 'evidence' was found to contain several Citations that were issued under a Long Beach Ordinance that the courts had concluded were unconstitutional. Once this was pointed out to the Hearing Officer, he suggested removal of that evidence, which not only took 13 of the 15 pages of evidence out leaving the case on weak legs, but also destroyed the claim that the property was a habitual 'breaker of the law'. However, the case went on because the outcome was pre-ordained. (NOTE: Even though the city law was found to be unconstitutional by the courts, all the threats, harassment, Citations, and other official abuse from the city towards the property owner were never forgiven in writing. There were no apologies. There were no notifications of release or error. The City attacked a local businessman and city native with great abuse and never took one step to ask forgiveness or admit their error.)

LACK OF EVIDENCE II

While the following fact may be a continued proof of the Lack Of Impartiality as designed by the Hearing Officer, it speaks to the *evidence* in the case. The two City of Long Beach employees that were in the private meeting with the Deputy Prosecutor and the Hearing Officer prior to the hearing being started were called up to testify in the case in addition to Erik Sund:

The male witness stated that he issued several citations on the site for being a medical marijuana dispensary. When questioned he stated that he never saw any type of marijuana at the location. Upon further questioning he said that he smelled marijuana. This witness stated that it was not smoked, but raw marijuana he smelled. He stated that he was not trained in the olfactory skills but that he was once on the site of a police action and the smell he remembered was similar to the smell at the property in question and therefore concluded that there must have been marijuana in the building. He swore under oath that he had never smoked marijuana.

ATTACHMENT C

When asked where and when the police action was so that the defense could determine if there had in fact been marijuana at that site the one and only time the witness claimed that he had smelled what he thought was marijuana in his entire life, the Hearing Officer forbid the questioning. This was meant to stop all efforts to see if the witness was credible and was abhorrent.

How could a witness who never smoked marijuana and had only smelled it once before (maybe?) in his life testify that the smell he witnessed at the subject property was marijuana without seeing it? However, he continued to issue daily citations? What if it wasn't marijuana that one time at the police action? Did he smell it every day? To stop the questioning regarding the skill level of a marijuana novice without any olfactory training and no visual evidence or proof of any type was clearly partial to the prosecution.

LACK OF EVIDENCE III

The City also produced a female witness that posted notices on the property. She stated under sworn testimony that she never saw any marijuana on the site. She stated that she never saw any marijuana leaving the site or anyone smoking marijuana. The female witness testified that she saw a green cross on the building and that represented that it was a dispensary. Does that mean everybody who wears a cross around their neck or has a cross tattoo is a Christian or practices the Christian faith? She concluded that there were marijuana sales based on the green cross on the outside of the building. No evidence was considered regarding where this witness learned about cross symbol awareness.

AMBUSH AND MISREPRESENTATION

The property manager did not know that he needed to be or was even allowed to be, represented by legal counsel. Repeatedly during the hearing the property manager stated that he thought he was coming down to talk to Erik Sund. The notice should have stated that legal representation could or should be at the hearing. How would anyone have known? Clearly an attorney would have not permitted the private meeting between the Hearing Officer, witnesses and the prosecution prior to the start of the hearing. Witnesses should have been kept outside the "in chambers" meeting and perhaps the prosecution and the Trier-Of-Fact shouldn't have been allowed to orchestrate the hearing in advance of its origination.

STARE DECISIS

The current LBMC 5.89 is in the courts. The City's last code (5.87) was determined to be in conflict with the State Constitution. How can, or why should, the City hurt and cause damage to its own citizens when in all fairness any person with a shred of legal knowledge knows that

ATTACHMENT C

courts and the city as a whole. Once this evidence (oral or typed transcript) is provided it will be in the interest of the public good, especially the citizens of Long Beach, that these actions be investigated for these and other unethical actions (including the involvement with unwarranted police raid(s) that can be reviewed on youtube and is not hard to locate).

Perhaps the Deputy City Attorney is too impassioned about this topic to be involved with these kinds of cases and therefore creates prosecution where none is warranted. However, the fabrication of facts is outside the duties of any city prosecutor and should be reviewed for remedial education purposes.

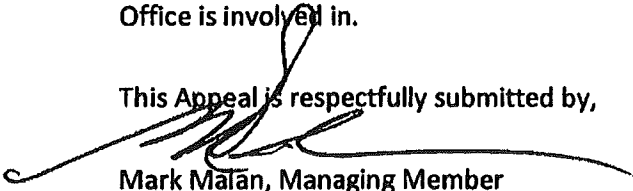
CONCLUSION AND WILLINGNESS TO EVICT

The wrong firm was named in the citations and in all hearing notices. Almost all of the mail was sent Certified and not delivered or served on the property owner. There is no way the Hearing Officer can be considered impartial due to several lapses in judicial fairness. There was no credible evidence presented at the hearing therefore a decision couldn't be intelligently made. The property owner was shocked to understand the process as it lacked civility and reason. There are laws on the books that eliminate the City's actions from even being allowed to take place and yet a decision was recklessly rendered.

That being said, the property owner is willing to cancel the occupancy of the tenant based on two conditions. First and foremost, the City must bear the financial repercussions and indemnify the property owner from damages claimed by the tenant. The tenant has a right in California to be in possession of a store front like the one at the subject building and any claim by the tenant to the detriment of the Landlord must be the responsibility of the City. To be sure, a case for unlawful eviction under these conditions would be eminent. And secondly, the City must pay the monthly rent on the vacant space until a replacement tenant is secured. The property owner should not be damaged by going outside the law to assist the City with their tenancy requests.

The Hearing was a not much more than a Kangaroo Court. The property owner looks forward to his day in court. It is his responsibility to inform the City Council and his fellow citizens of Long Beach about the waste of resources and the violations in State law that the Prosecutor's Office is involved in.

This Appeal is respectfully submitted by,



Mark Malan, Managing Member
Oceansiders IV, LLC

ATTACHMENT D

APPEAL HEARING:

**HEARING OFFICER'S REPORT
AND RECOMMENDATION**

DECEMBER 3, 2012

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**BEFORE THE ADMINISTRATIVE HEARING OFFICER FOR THE CITY OF
LONG BEACH, CALIFORNIA**

**ADMINISTRATIVE HEARING TO
SHOW CAUSE WHY BUSINESS
LICENSE NO BU7029111 ISSUED TO
OCEANSIDER LLC IV, LOCATED AT
745 E. 4TH STREET, LONG BEACH,
CALIFORNIA, SHOULD NOT BE
REOVKED PURSUANT TO LBMC
3.80.429.1**

**REPORT AND RECOMMENDATION OF
ADMINISTRATIVE HEARING OFFICER**

I.

JURISDICTION AND PROCEDURAL HISTORY

Following a business license revocation hearing conducted on May 16, 2012,
Administrative Hearing Officer Thomas A. Ramsey (“Hearing Officer”) recommended that the
Director of Financial Management revoke business license number BU7029111 issued to
Oceansiders IV, LLC located at 745 E. 4th Street, Long Beach, California 90802 (“the premises”)
due to violations of Long Beach Municipal Code (“LBMC”) section 5.89 (Ex. 9). As a result, on
June 6, 2012, the City of Long Beach (“Appellee”) revoked the business license
(Ex. 12, p. 2).

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- a. Eric Sund's testimony lacks credibility since he has allegedly been admonished by a judge in a separate court proceeding concerning Appellant's medical marijuana enforcement procedures.
 - b. 13 pages of citations issued against the Appellant's were withdrawn as evidence.
 - c. The hearing officer stopped the cross-examination of a witness concerning his testimony that he smelled marijuana on the premises.
 - d. Testimony from a female witness that marijuana sales were occurring on the premises because she saw a green cross symbol on the outside of the building is insufficient to prove a violation of LBMC 5.89.
4. Appellant contends that they were unaware of their right to legal representation at the hearing.
 5. Appellant contends that LBMC is unenforceable on the grounds of *stare decisis*.
 6. Appellant contends that Kendra Carney failed to provide a copy of the hearing transcript as promised.
 7. Appellant contends that Kendra Carney misrepresented the status of the LBMC. (Ex. 11, pp. 5-9).

III.

APPLICABLE LAW

LBMC 5.89 prohibits medical marijuana dispensaries and cultivation sites from locating in the City of Long Beach (Ex. 6). Section 5.89.030 (B) provides that it shall be unlawful for any person or entity to own, manage, conduct, establish, operate or facilitate the operation of any Medical Marijuana Dispensary or Cultivation Site, or to participate as an employee, contractor,

1 agent, or volunteer, or in any other manner or capacity, in any Medical Marijuana Dispensary or
 2 Cultivation Site in the City. The term "facilitate" shall include, but not be limited to, the leasing,
 3 renting or otherwise providing any real property or other facility that will in any manner be used
 4 or operated as a Medical Marijuana Dispensary or Cultivation Site in the City. Section 5.89.040
 5 declares establishment, maintenance, or operation of medical marijuana dispensaries a public
 6 nuisance. Additionally, Section 5.89.050 provides that no existing medical marijuana dispensary
 7 operations shall be deemed a legally established use or a legal non-conforming use under the
 8 provisions of the LBMC.
 9

10 Additionally, LBMC 3.80.429.5 provides, in pertinent part, that any licensee whose
 11 license is revoked shall have the right, within days after the date of mailing of the written notice
 12 of revocation, to file a written appeal to the city council. Such appeal shall set forth the specific
 13 ground or grounds on which it is based. The city council shall hold a hearing on the appeal
 14 within 30 days after its receipt by the city, or at a time thereafter agreed upon, and shall cause the
 15 appellant to be given at least 10 days' written notice of such hearing. At the hearing, the
 16 appellant or its authorized representative shall have the right to present evidence and a written or
 17 oral argument, or both, in support of its appeal. The determination of the city council on the
 18 appeal shall be final.
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IV.

DISCUSSION

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 24 For all the foregoing reasons, the revocation of business license number
 25 BU07029111 should be upheld.
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1 A. Appellant's Argument That Service of the Administrative Citations Was Not Proper
2 is Frivolous.

3 Appellant contends that they were not properly served with any administrative
4 citations because the name appearing on the citations is "Oceansider, LLV IV" rather than
5 Oceansiders IV, LLC and because the U.S. Postal Service does not deliver certified mail to their
6 office. (Ex. 8). Citation No. C-20000 and Citation C-2029 show "Oceansider, LLV, IV" (Ex. 8).
7 The appearance of "LLV" rather than "LLC" on the citations appears to be nothing more than a
8 harmless clerical error that would not cause any reasonable person to believe that an entity other
9 than the Appellant was the intended recipient. In fact, the same clerical appears on the
10 Appellant's business license. (Ex. 2, p. 2 and Ex. 12, Attachment A, p. 1).
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13 Relative to Appellant's contention that the U.S. Postal Service does not deliver certified
14 mail to their office is inconsequential as Mr. Sund testified that the Appellee also posted a copy
15 of the citations at the premises and sent a copy via first class mail as is the Appellee's regular
16 practice. (Ex. 10, p. 36, lines 24-25, p. 37, lines 2-6, p. 40, and p. 44, lines 15-20). Appellant
17 does not deny that they received the posted citations and the copies sent via first class mail.
18

19 B. Appellant's Contention That The Hearing Officer Was Impartial and Unfair Because
20 He Engaged in Ex parte Communication Prior to Commencing the Hearing is
21 Unsupported by the Record.

22 Appellant essentially contends that the hearing officer engaged in an *ex parte*
23 communication with the Appellee's attorney and witnesses. However, there is no evidence to
24 show that any *ex parte* communication occurred prior to the start of the hearing. Even assuming
25 *arguendo* that it in fact occurred, Appellant failed to state their objection on the record or even
26 mention that it had occurred, despite having an opportunity to do so. In fact, just prior to the
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1 close of the hearing, the hearing officer asked the parties if there was "anything more?"
2 However, Mr. Malan did not reply. (Ex. 10, p. 68, line 13). Thus, Appellant's assertion that the
3 hearing officer was impartial or unfair for this reason is unsubstantiated.

4 C. There was Sufficient Evidence To Support the Business License Revocation
5 Pursuant to LBMC 5.89.
6

7 Testimony from Eric Sund, Lori Voss, and Gene Rodriguez provide persuasive evidence
8 to show that a medical marijuana dispensary was operating on the premises. Ms. Voss testified
9 that she is a license inspector who investigates medical marijuana dispensaries in the City. The
10 evidence shows that License Inspector Lori Voss issued Administrative Citation No. C-2000 on
11 March 13, 2012 to Appellant for violation of LBMC 5.89. (Ex. 8F, p. 1). Subsequently,
12 Administrative Citation No. C-2029 was issued by License Inspector Gene Rodriguez on April
13 23, 2012 also for violation of LBMC 5.89. (Id., p. 2).
14

15 Ms. Voss testified that she issued Citation No. C-2000 on March 13, 2012 for violation of
16 LBMC 5.89 because she observed medical marijuana dispensing activity at the location,
17 observed people coming and going out of the location with paper bags, and told by people
18 leaving the location that they had marijuana inside the paper bags, and that they did not want the
19 location shut down. (Ex. 10, p. 46, lines 22-24). Additionally, when questioning Ms. Voss,
20 Appellant refers to the people she observed leaving the premises as "patients" and referred to the
21 premises as "the collective." (Ex. 10, p. 48, line 3, p. 4). He later asks, "And these patients that –
22 take this prescribed drug, did – they told you that they didn't want to have their dispensary
23 closed down?" (Id., p. 46, lines 8 – 11). In response, Ms. Voss replied "yes." Ms. Voss further
24 testified that she has seen a green cross on the front of the premises which is a symbol commonly
25 used to identify a medical marijuana dispensary. (Id., p. 46, line 25 and p. 47, lines 1 – 5). In
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1 light of her job duties, experience, and observations as License Inspector, it is not unreasonable
2 for her to conclude that seeing a green cross in front of a building is indicative of a medical
3 marijuana dispensary, especially when she has been told by patrons leaving the place that it is in
4 fact a medical marijuana dispensary. Furthermore, Appellant's own choice of words when
5 questioning Ms. Voss presupposes that a medical marijuana dispensary or "collective" was
6 operating on the premises. In any event, Ms. Voss' testimony is generally credible and provides
7 persuasive evidence in support of the business license revocation.
8

9 Appellant also complains that the hearing officer stopped the cross-examination of a male
10 witness concerning his testimony that he smelled marijuana on the premises. Apparently, the
11 Appellant is referring to the cross examination of License Inspector Gene Rodriguez
12 (Ex. 10, pp. 49-60). He testified that he posted Citation No. 2029 on the premises due to a
13 violation of LBMC 5.89 because he observed overt medical marijuana dispensing activity on the
14 premises, stating that a marijuana collective was operating there. He said that this conclusion
15 was based upon his observations and familiarity with other medical marijuana collectives in the
16 City of Long Beach. Mr. Rodriguez further testified that he has smelled marijuana while
17 standing inside the location which he called a dispensary and that people leaving the location
18 commented to him and Ms. Voss that it was a medical marijuana dispensary (Ex, 10, pp. 49-60).
19 He added that he has previously seen and smelled marijuana elsewhere.
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22 Contrary to the Appellant's assertion, a thorough review of the hearing transcript shows
23 that the hearing officer afforded Appellant full opportunity to complete his cross-examination
24 and re-cross examination of Mr. Rodriguez, including questioning him regarding his experience
25 with the smell of marijuana. (*Id.*) In any event, Mr. Rodriguez testimony was generally
26 credible concerning the medical marijuana dispensary activity he observed on the premises to
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1 warrant the issuance of a citation for a violation of LBMC 5.89. Thus, this witness testimony
2 provides further evidentiary support for the business license revocation.

3 Appellant further contends that the testimony of Eric Sund lacks credibility since he has
4 allegedly been admonished by a judge in a court proceeding concerning medical marijuana
5 enforcement procedures. However, the Appellant fails to identify with specificity what portion
6 of Mr. Sund's testimony is less than fully credible. In any event, an administrative hearing
7 officer has wide latitude in assessing and weighing witness testimony and there is no indication
8 that the Hearing Officer abused his discretion by relying in part on Mr. Sund's sworn testimony
9 in forming the basis of his Report and Recommendation (Ex. 9).

10
11 The Appellant also argues that there is insufficient evidence to uphold the business
12 license revocation because 13 pages of citations issued against the Appellant's were withdrawn
13 as evidence. The hearing transcript shows that while several citations issued in connection with
14 violations of LBMC 5.87 were withdrawn by the Appellee, the remaining two citations were
15 issued for violation of LBMC 5.89 and were admitted into evidence (Exs. 8 and 10, pp. 19-24).
16 These two remaining citations along with a Notice of Lien dated April 24, 2012 provide
17 persuasive evidence in support of the Appellee's decision to revoke the business license (Ex. 8).
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21 D. Appellant contends that they were unaware of their right to legal representation at the
22 hearing.

23 The record does show in fact, that Claimant was informed of a right to legal
24 representation at the hearing. Specifically, in a letter dated April 19, 2012 Eric Sund notified
25 Appellant of the business license revocation hearing scheduled for May 16, 2012 (Ex. 1, pp. 6-7).
26 Mr. Sund attached pertinent sections of the LBMC, including section 3.80.429.5 which provides
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1 that "At the hearing, the appellant or its authorized representative shall have the right to present
 2 evidence and written evidence and a written or oral argument, or both, in support of its appeal."

3 (Id.)

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6 E. Appellant's Argument that *Stare Decisis* Renders LBMC 5.89 Unenforceable Is
 7 Meritless.

8 *Stare Decisis* generally stands for the concept that government entities are free to change
 9 the positions taken in prior cases, but, they must explain when they have done so and why. They
 10 are not at liberty to simply ignore prior precedents without explanation.

11 The City Council of the City of Long Beach clearly explains why they have added
 12 Chapter 5.89 as set forth in Ordinance No. ORD-12-0004 (Ex, 6). Therefore, *stare decisis* does
 13 not bar its enforcement.
 14

15 F. Appellant Was Provided a Copy of the Hearing Transcript

16 During the hearing on October 17, 2012, Mr. Malan indicated at the hearing on October
 17 17, 2012, that after paying a fee for its preparation, he in fact, received a copy of the May 16,
 18 2012 hearing transcript (Exs. 10 and 11, pp. 1-4).
 19

20 G. Appellant's Contention That Kendra Carney Misrepresented the Status of the
 21 LBMC Is Unsubstantiated.

22 The hearing transcript does not reflect any misrepresentation of the status of the LBMC
 23 by Kendra Carney (Ex. 10).
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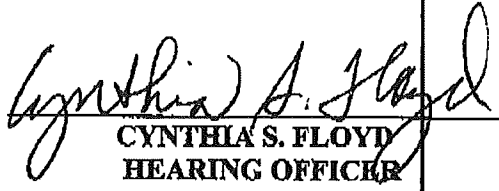
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V.

RECOMMENDATION

For all of the foregoing reasons, IT IS RECOMMENDED that the revocation of business license No. BU07029111 issued to Oceansiders IV, LLC be upheld.

Dated: December 3, 2012


CYNTHIA S. FLOYD
HEARING OFFICER