



OFFICE OF THE CITY AUDITOR  
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**C-9**

GARY L. BURROUGHS, CPA  
City Auditor

April 4, 2005

Phil T. Hester, Director  
Department of Parks, Recreation and Marine

We have performed a review of Lease Number 20968, entered into on August 18, 1989, between the City of Long Beach (City) and Berton J. Simon and James A. Brennan, owners of the Belmont Brewing Co. In 1991, an assignment of the lease was made between Berton J. Simon and James A. Brennan (Assignors) and Charles H. Hansen, Jr., and Eleanor E. Hansen, as trustees for the Hansen Family Trust (Assignee). The purpose of our review was to determine whether all payments to the City received from the Belmont Brewing Co. (Tenant) were in conformity with the terms of the Lease and that other contractual obligations were fulfilled in compliance with the Lease.

Our review procedures included:

- Obtaining an understanding of the lease and its provisions.
- Discussions with Parks, Recreation and Marine Department and other City personnel.
- Discussions with the President of the Belmont Brewing Co.
- Review of Belmont Brewing Co. monthly and annual rent reports.
- Review of Belmont Brewing Co. payments to the City as recorded in the City's financial system (FAMIS).

Based on the results of the audit procedures performed, we determined that Belmont Brewing Co. owed the City approximately \$7,000 in additional revenue and interest. This amount has been paid by Belmont Brewing Co.

The attached report presents background information on the lease along with details of the rent under payment. We would like to thank the Parks, Recreation and Marine Department and the Belmont Brewing Co. for their cooperation during this review.

Sincerely,

Gary Burroughs, CPA  
City Auditor

By:



Sam A. Joublat, CIA, Deputy City Auditor

Audit Staff:

John C. Coon, Audit Manager

cc: Janet Day-Anselmo, Business Operations Bureau Manager, Parks,  
Recreation and Marine  
Gwendolyn Parker, Superintendent, Contract Management and Revenue  
Development, Parks, Recreation and Marine

Background

The City Council approved a lease with Belmont Brewing Co. on August 8, 1989, with a commencement date of October 1, 1989, and ending on September 30, 2014. The lease authorizes Belmont Brewing Co. to use the premises (patio) solely for outdoor seating in connection with the tenant's restaurant and brewpub operation. Belmont Brewing Co. may provide food and beverage service, including properly licensed alcoholic beverage service, on the patio. No other use of the patio is authorized or permitted.

The lease requires minimum annual rent of \$15,865.56, payable at a monthly rate of \$1,322.13. In addition to the minimum annual rent, the Belmont Brewing Co. must pay percentage rent if the percentages of gross receipts exceed the minimum annual rent for the same period. The gross receipts percentages are as follows:

- Food: 5%
- Beverages: 3%
- All other receipts: 10%

The total of the percentages of gross receipts attributable to the leased patio is determined by (1) dividing the patio square footage by the total square footage of the tenant's restaurant/brewpub operation, including the patio and (2) multiplying said quotient by the total percentages of annual gross receipts for tenant's restaurant/brewpub operations. The Tenant is required to furnish the City no later than forty-five (45) days following the annual reporting period<sup>1</sup> a statement showing the annual total gross receipts from the premises. The annual percentage rent payment is due no later than sixty (60) days following the annual reporting period.

The City is entitled annually to audit the tenant's records, books of account and other pertinent data limited to the determination of gross receipts. If the audit shows a deficiency in any percentage rent payment, Belmont Brewing Co. must pay the City the amount of the deficiency with interest, at the rate of 12% per annum, since the date the payment was originally due.

During 2001 to 2004, Belmont Brewing Co. made the following annual rent payments to the City:

2001	\$28,931.36
2002	30,367.48
2003	30,254.03
2004	<u>31,059.13</u>

Total Payments: \$120,612.00

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<sup>1</sup> Annual reporting period (twelve months) is from June 1 through May 31.

**ISSUE AND RECOMMENDATION**

**No. 1 – Gross Receipts were Under Reported**

The Belmont Brewing Co. was using 28% as the ratio of the patio to the total square footage of the restaurant and the patio. Based on our analysis of the 1991 "as built survey" drawing<sup>2</sup> of the patio area, we determined that the correct ratio of the patio area to the total restaurant and patio area is 29.3%.

Based on our analysis of the past four years (2001 to 2004), we have determined that the Belmont Brewing Co. under paid the City, including interest, \$7,003.92 as follows:

<u>Year</u>	<u>Additional Rent Due</u>	<u>Days<sup>3</sup> Late</u>	<u>Daily<sup>4</sup> Interest</u>	<u>Interest Due</u>	<u>Total Due</u>
2001	\$1,340.72	1,327	.000329	\$ 584.92	\$1,925.64
2002	1,408.35	962	.000329	445.42	1,853.77
2003	1,400.94	597	.000329	274.97	1,675.91
2004	<u>1,439.29</u>	231	.000329	<u>109.31</u>	<u>1,548.60</u>
	<u>\$5,589.30</u>			<u>\$1,414.62</u>	<u>\$7,003.92</u>

**Recommendation**

We have discussed this issue with the Belmont Brewing Co. President. He agreed with our finding and on March 18, 2005, paid the City \$7,003.92 and agreed to the 29.3% ratio. The Belmont Brewing Co. should be instructed to use 29.3% as the ratio when computing their annual percentage rent payment due the City.

<sup>2</sup> A State of California licensed land surveyor prepared the "as built survey" drawing.

<sup>3</sup> Through March 18, 2005.

<sup>4</sup> Annual Interest Rate is 12%.