



# CITY OF LONG BEACH

**C-4**

DEPARTMENT OF CITY CLERK

333 West Ocean Boulevard • Long Beach, California 90802 • (562) 570-6101 • FAX (562) 570-6789

January 16, 2007

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

Recommendation to set the date of hearing for Tuesday, January 23, 2007, at 5:00 p.m., to review and consider the report of the hearing officer on the suspension/revocation of Entertainment Permit No. BU99041410 issued to Mariposa Restaurant Group LLC, dba Mariposa, 100 W. Broadway, Long Beach 90802. (District 2)

## 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 8, 2006. 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

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1. On October 27, 1999, Respondent Mariposa Restaurant Group, LLC, d/b/a Mariposa applied for an entertainment permit for a 25 table Mexican cuisine restaurant, without dancing, located at 135 Pine Avenue, Long Beach, California 90802. Mariposa stated

that indoor entertainment would be provided Monday through Sunday from 6:00 p.m. to 10:00 p.m. without a cover charge or security. (Exhibit 1) At that time, Mariposa was owned by five individuals identified as Tony Guillen, Lyle Sardie, Therese Sardie, Marge Kennedy and Bill Kennedy. (Exhibit 1). Mariposa is located at 135 Pine Avenue, Long Beach, California 90802. Mariposa is within the jurisdiction of the Long Beach Police Department South Division. (RT:777:15-19).

2. On February 16, 2000, Lyle Sardie, on behalf of Mariposa, submitted a revised permit application requesting a 10'x10' carpeted dance floor for patrons, outdoor entertainment and extended entertainment hours to 11:00pm on Thursdays, and 1:00am on Fridays and Saturdays. Mariposa also submitted a floor plan showing the restaurant floor plan, including the dance floor dimensions and location. (Exhibit 2).

3. On May 11, 2000, the Long Beach Police Department recommended approval of Mariposa's application for entertainment permit with dancing (Exhibit 3), subject to eleven conditions, summarized as follows:

(a) The operation of the establishment shall be limited to those activities and elements expressly indicated on the permit application and approved by the City Council. Any change in the operation will require a new permit application.

(b) Mariposa agrees to reimburse the City wherever excessive police services are required as the result of any incident or nuisance arising out of or in connection with the Mariposa's operations.

(c) Mariposa shall employ its own discretion in determining the level of security necessary to prevent violations of law and other disturbances. In the event of substantial increase in calls for service, Mariposa shall increase security as directed by the Chief of Police.

(d) If any noise, disturbance complaints or trash left in the parking lot and surrounding area of the business is attributed to operation of the business, the Police Department can determine and impose requirements for security officer presence to handle these problems.

(e) Mariposa shall not convert the restaurant into a dance/night club. All entertainment activities shall be conducted with regular dining or banquet activities.

(f) Entertainment shall not be offered on any day that the restaurant is closed.

(g) The doors shall be kept closed at all times during operation of the business except in cases of emergency and to permit deliveries.

(h) No sound shall be audible from any area outside of the business.

(i) All promoters must have or obtain a City of Long Beach Business License prior to conducting entertainment activities governed by this permit.

(j) Mariposa must provide all promoters conducting entertainment activities with a copy of the approved permit, including a copy of the approved conditions of operation.

(k) In the event that Mariposa's restaurant ceases operations, the entertainment permit becomes null and void.

4. On June 22, 2000, the Long Beach City Council approved Mariposa's revised application and issued a permit for entertainment with dancing by patrons. The permit incorporated the eleven conditions recommended by the Police Department. The permit also added a twelfth condition requiring Mariposa to remain in compliance with all applicable provisions of the Long Beach Noise Ordinance, and added a preemption clause, providing that in the event that any conditions of the permit or license conflicted, Mariposa shall adhere to the strictest applicable conditions. (Exhibit 4).

5. As of May 8, 2001, Mariposa's ownership changed. Therese and Lyle Sardie became full owners. The ownership change required a new permit application. On May 8, 2001, Lyle Sardie, on behalf of Mariposa, submitted a new application for entertainment permit, identifying Therese Sardie and Lyle Sardie as full owners. The application requested entertainment for a Mexican cuisine restaurant with 30 tables; stated 4 security officers will be provided from 10:00 p.m. to 2:30 a.m. on Fridays and Saturdays, and 6:00 p.m. to 10:00 p.m. on Sundays; increased hours of entertainment on Thursdays to 1:00 a.m., Fridays and Saturdays to 1:30 a.m. and added entertainment on Mondays and Tuesdays from 6:00 p.m. to 10:00 p.m.; expanded the type of entertainment to include dancing by performers, disc jockeys and karaoke; and revised the dance floor surface type from carpet to tile. (Exhibit 5).

6. Due to the change in ownership, the City of Long Beach issued a temporary entertainment permit on May 8, 2001 pursuant to LBMC section 5.72.125. (Exhibit 6). Lyle Sardie signed and dated the temporary permit acknowledging Mariposa's agreement to "comply with these conditions" stated in the temporary permit.

7. On May 23, 2001, during the pendency of the temporary permit, Mariposa's application was approved as a "permitted accessory use to an existing restaurant/bar." (Exhibit 19).

8. On June 1, 2001, Lyle Sardie, on behalf of Mariposa, submitted another revised permit application requesting outdoor entertainment. (Exhibit 7).

9. On July 10, 2001, Lyle Sardie, on behalf of Mariposa, submitted a letter to Long Beach Business License supervisor Jeannine Montoya, requesting a modification to its existing entertainment permit, to allow Mariposa to keep its front doors open while entertainment is provided. (Exhibit 15). The request was denied, and in a letter sent to Jim Goodin dated August 20, 2001, Mariposa withdrew its application. (Exhibit 18).

10. On August 20, 2001, Lyle Sardie, on behalf of Mariposa, submitted another application for entertainment permit. This application contained a request for outdoor entertainment, a 10'x 30' tile dance floor and stated that admission fees would be charged on Friday and Saturday. Mariposa also submitted a floor plan showing the restaurant floor plan, including the revised dance floor dimensions and location. (Exhibit 9). Exhibit 9 reflects the most current entertainment permit application by Mariposa.

11. Lyle Sardie signed and dated the Release Form at page 8 of the August 20, 2001 application, acknowledging Mariposa's agreement that "full compliance will be made with all applicable State laws and City ordinances governing the conduct of the particular type of business activity for which a business license is requested;" that "[t]he applicant by signing this application understands that any incomplete or false information may constitute grounds for denial;" and that Mr. Sardie "read the foregoing application and that all information and statements made by the undersigned/applicant regarding this application are true and correct."

12. On August 22, 2001, due to the August 20, 2001 application, another temporary permit was issued by the City of Long Beach, pursuant to LBMC section 5.72.125. (Exhibit 11). The temporary permit stated that Mariposa must comply with the present conditions, which were the twelve conditions of the June 22, 2000 permit shown in Exhibit 4. Jim Goodin testified that the June 22, 2000 permit for entertainment with dancing by patrons (Exhibit 4) was attached to the temporary permit reflected in Exhibit 11. Lyle Sardie signed and dated the temporary permit acknowledging Mariposa's agreement to "comply with these conditions."

13. On September 14, 2001, Long Beach Police Sergeant Ernie T. Kohagura wrote a memorandum for J. Craig Jacobs, Commander, Patrol/South Division, to Albert George, Commander, Special Investigations Division. (Exhibit 23). The memorandum recommended that Mariposa's August 20, 2001 application for entertainment permit be denied. Sergeant Kohagura testified that he reviewed the calls for service to prepare the memorandum.

14. On November 29, 2001, Pamela Wilson-Horgan, Manager, Commercial Services Bureau, sent a letter to Lyle Sardie of Mariposa, to inform him that the hearing on Mariposa's August 20, 2001 application for entertainment with dancing would be held on December 11, 2001 in the City Council Chambers. The letter referred to attachments from the police department, planning and building, fire and health and human services departments, which were filed with the Commercial Services Bureau. (Exhibit 46).

15. On December 3, 2001, Bob Torrez, Director of Financial Management, sent a staff recommendation letter to Henry Taboada, City Manager, recommending that Mariposa's August 20, 2001 application for entertainment with dancing by patrons be denied. (Exhibit 45). James Goodin testified that unless all the departments recommend approval (such as police, fire, planning and building, zoning and health and human services), it is customary, but not mandatory, that the staff recommends denial, without conducting an independent investigation. In this instance, of all the departments, the police department

recommended denial, which resulted in the Director of Financial Management recommending denial. (RT:1209:5-1211:9).

16. On December 11, 2001, the City Council approved Mariposa's application for a restaurant with entertainment permit with dancing, and issued permit BU9941410. (Exhibit 12). Mr. Sardie was present at the December 11, 2001 City Council meeting. Although issued on December 11, 2001, the permit was mailed to Mariposa on or about May 22, 2002. Exhibit 12 reflects the current approval and conditions for Mariposa's entertainment permit. The entertainment permit listed 12 conditions that were written by the Police Department and approved by the Long Beach City Council. The December 11, 2001 conditions tracked the May 11, 2000 and June 22, 2000 conditions, with the following modifications:

- (a) Condition 3 was revised to require Mariposa to provide a minimum of three security guards during all times that entertainment activities are being conducted.
- (b) A new condition 7 required Mariposa to keep its panel roll up (the roll up windows) down during the hours of entertainment.
- (c) Condition 8 was revised to state that no sound shall be audible from the exterior of the premises in any direction.
- (d) Condition 11 was expanded to require Mariposa to be maintained as a full service restaurant providing an assortment of full meals normally offered in such establishments.
- (e) A new condition 12 stated that Mariposa shall remain in compliance with all applicable laws, ABC laws, ordinances and stated conditions.

17. The December 11, 2001 entertainment permit (Exhibit 12) also incorporated as part of the conditions the type of entertainment and hours requested by Mariposa listed on page seven of the August 20, 2001 application for entertainment permit (Exhibit 9). (RT:1127:2-1128:9).

18. James Goodin, Business Services Officer for Long Beach Commercial Services Bureau testified that the Exhibit 12 conditions modified the conditions set forth in page seven of Mariposa's August 20, 2001 application (Exhibit 9) in two main respects:

Condition 6: "The doors shall be kept closed at all times . . ." was an additional condition imposed;

Condition 8: "No sound shall be audible from the exterior of the premises in any direction" essentially denied Mariposa's request to have outdoor entertainment.

No entertainment would be allowed outdoors if it caused any noise at all, except two or less non-amplified Mariachis or other entertainers, which are not considered to be entertainment and are not subject to an entertainment permit. (RT:1137:4-1139:9).

However, even if two non-amplified entertainers were performing on the Mariposa patio, they would still be required to abide by condition number 13 of Exhibit 12, which requires compliance with the Long Beach Noise Ordinance (LBMC Chapter 8.80) (RT:1199:15-18).

19. Mariposa holds business license BU99041410 for its restaurant business. The Mariposa business license for its restaurant is separate from its entertainment permit, and is not at issue in this hearing.

20. Mariposa holds an on-sale general eating place license under the Alcoholic Beverage Control Act, license number 47-361466. This is a Type 47 license that requires restaurant food services. (RT:513:4-16). On January 16, 2002, Lyle Sardie and Therese Sardie filed a Petition for Conditional License on behalf of Mariposa with the Department of Alcoholic Beverage Control. The ABC license sets forth nine conditions, including condition 7 which states that "Entertainment provided in the patio area shall not be amplified in any way, including no amplified music." Condition 8 provides that "Entertainment provided in the patio area shall only be allowed until 10:00 p.m. each day of the week." (Exhibit 31).

21. During May 2003, Lyle Sardie submitted Mariposa architectural floor plans to the Long Beach City Fire Department for plan check review to ensure facility compliance with applicable California Building and Fire Codes. (Exhibit 27). Mariposa's August 20, 2001 application described a dance floor of 10' x 30' (Exhibit 9). The May 2003 plans submitted to the Fire Department indicated a dance floor area of 10' x 40'. Mariposa also stated in the May 2003 plans that Mariposa's interior square footage was 2000 square feet. The plans were the basis used by the Fire Department to determine occupancy loads, to ensure public safety. The floor plans identify the maximum occupancy capacity at 133 persons for dining only, 164 persons for dining combined with dancing, a separate capacity of 159 persons on the patio, and a maximum of 57 dancers for the dance floor, based on the 10' x 40' dance floor dimensions.

22. The Fire Department issued maximum occupant load certificates to Mariposa for 133 persons for dining only, 164 persons for dining combined with dancing, and a separate capacity of 159 persons on the patio. (Exhibit 44). Lyle Sardie, signed an Occupant Load Certificate dated April 2, 2004, in which he acknowledged, on behalf of Mariposa, that "I, the undersigned, have read completely and fully understand the requirements of this form which apply to the Fire Department regulations." (Exhibit 44).

23. David Zinnen, a civilian fire plan checker with inspection duties for the City of Long Beach, testified that the California Building Code sets an occupant load factor of fifteen square feet per person for the restaurant and patio, which takes into account tables and chairs. The California Building Code sets an occupant load factor of seven square feet per person for the dance floor, which contemplates removal of certain tables and chairs. The dance floor occupancy is determined by the square feet of the dance floor, divided by seven. Thus, the 400 square foot dance floor submitted by Mariposa to the Long Beach Fire Department allows a maximum of 57 dancers. The 300 square foot dance floor

submitted by Mariposa in its application for entertainment permit, and approved by the City Council, allows a maximum of 43 dancers. (RT:429:18-435:14).

**B. Events Leading Up To This Hearing**

24. On January 9, 2004, William Bramble, a Mariposa security officer was hit in the head with a beer bottle while attempting to break up an altercation between two male patrons. Mr. Bramble received 17 stitches. (TR:923:13-24)(Exhibit 41; Exhibit 41A; Exhibit 48).

25. On January 30, 2004, an incident report filed by Officer George Nogueira, states that an altercation occurred at Mariposa, when a male grabbed a woman's behind and hit her in the face with a beer bottle. (Exhibits 42, 47 47 and 49). William Bramble, the Mariposa security guard, testified that he escorted the woman and her two male companions out the door of Mariposa that evening between approximately 12:30 a.m. to 1:00 a.m. Mr. Bramble also testified that the woman did not explain to him how she received her injuries. (RT:1295:10-1297:3).

26. An April 17, 2004, an incident report was prepared by Officer Ronald Quarn, at the request of Long Beach Police Sergeant Max Jones, based on Sergeant Jones' observation that Mariposa was not using a hand counter to track the number of customers on the patio of Mariposa. Upon reviewing the hand counter at the restaurant entrance, Sergeant Jones determined that Mariposa had 44 customers over capacity in the restaurant. (Exhibit 28). At the hearing, Officer Jones testified that he did not conduct a hand count of the Mariposa customers to determine overcapacity, and he acknowledged that hand counters are not a condition of Mariposa's December 11, 2001 entertainment permit.

27. At some point, Lyle Sardie initiated a police internal affairs complaint against Officer Ronald Quarn. In response, Officer Quarn filed a small claims action against Mr. Sardie, and obtained a \$5000 judgment against Mr. Sardie, which was overturned on appeal. Officer Quarn filed a second small claims action against Mr. Sardie, which settled before the small claims court date.

28. On March 25, 2005, Long Beach Police Officer William R. Wendt filed an incident report in which he described a fight that occurred at Mariposa. It appears that a male patron, while attempting to get an engagement ring back from an ex-girlfriend, hit another male patron in the head with a beer bottle for dancing with his ex-girlfriend. (Exhibit 34A).

29. On June 3, 2005, Long Beach Police Officer James A. Mondragon was dispatched to an Orange County hospital, where he interviewed a person who stated that he was the friend of a person who was the victim of a fight at Mariposa. (Exhibit 35; Exhibit 35A). At the hearing, Officer Mondragon testified that he interviewed the friend of the victim only, not the victim. The statement from the victim's friend was the only evidence submitted to indicate whether or not the incident occurred at Mariposa. Officer Mondragon also testified that this was the first time in his two years on the Long Beach Police force that he had to go outside of Long Beach to conduct an investigation.



30. On September 24, 2005, Long Beach Police Officers were flagged down by a Mariposa private security guard to assist with a large fight at Mariposa. Sergeant Ernie Kohagura wrote a September 24, 2005 letter to William Blair, Commander, Patrol South Division, describing his impressions of the disturbance as an officer on the scene, and what he believed were contributing factors to the incident. (Exhibit 24).

31. In a letter dated November 1, 2005, the Long Beach Police Department, through Anthony W. Batts, Chief of Police, recommended to the City of Long Beach, through Michael A. Killebrew, Director of Financial Management, that the City of Long Beach take administrative action to revoke or suspend Mariposa's entertainment permit number BU9941410. (Exhibit 22).

32. The November 1, 2005 letter (Exhibit 22) was written by Long Beach Detective Chris Anderson, Vice Administration Detail. Detective Anderson testified that he wrote the November 1, 2005 letter at the request of Sergeant Schillig. RT:834:4-18. Sergeant Schillig requested Detective Anderson to prepare the November 1, 2005 letter, after Sergeant Schillig became aware of, among other elements, the September 24, 2005 incident at Mariposa, through Sergeant Ernie Kohagura's September 24, 2005 letter to William Blair, Patrol South Division (Exhibit 24). RT:1353:9-1356:12).

33. Sergeant Schillig described six incidents occurring since 2001 that he believed justified a recommendation to revoke or suspend Mariposa's entertainment permit: (T:3182:5-1409:25).

(a) June 2000: A patron seen leaving Mariposa was involved in a traffic collision that killed another driver. The blood alcohol was .14 and the subject had parked his vehicle in front of Mariposa. Sergeant Schillig testified that there was no factual basis for attaching what the subject did to Mariposa. (RT:1384:2-1385:24).

(b) July 20, 2003: Fight at Mariposa. Victim was hit in the face, causing lacerations. Another victim was punched in the face, causing a swollen eye. Victim identified two subjects who kicked him in the face. Victim and his friend were leaving Mariposa, when a skirmish erupted in connection with a subject who resembled a female salsa dancer from Mariposa. Sergeant Schillig testified that the police report did not state that any employee of Mariposa failed to do something or caused something to happen in connection with the event.

Detective Anderson, upon reviewing the DR, stated that a witness stated that the witness walked out of the rear of Mariposa and observed male Hispanics kicking the victim. According to the report, the event occurred at 2:10 a.m., after closing time for Mariposa, and was not reported until 3:46 a.m. The report does not clarify whether or not the fight occurred on Mariposa property. (RT:1504:7-1509:23).

(c) January 9, 2004: Mariposa security guard William Bramble was hit in the face with a beer bottle while escorting an unruly patron out of Mariposa. A woman subject

was also hit in the head with a bottle. (Exhibit 41). Sergeant Schillig testified that the report did not find that security guard William Bramble did anything that was not reasonable to handle the fight situation.

Detective Anderson referred to a January 30, 2004 incident (Exhibit 42) in which a man grabbed the victim's behind and hit her in the head with a bottle, described in paragraph 25 above. Detective Anderson stated that this incident involved one victim and three officers. One officer went to Mariposa to inquire as to what happened, and two officers went to the victim's home to make the report. (RT:15111:7-1512

(d) March 25, 2005: Victim was hit in the head with a beer bottle from a suspect, for no apparent reason. The police report stated that Mariposa initially removed the suspect from the premises, and then allowed the suspect to reenter Mariposa. (Exhibit 34A and 34B). Detective Anderson stated that this incident involved one victim and 10 officers. (RT:1514:15-1514:24).

(e) June 3, 2005: A victim was punched and kicked in the head resulting in a swollen mouth and three missing teeth. Sergeant Schillig testified that in breaking up the fight, the Mariposa security guard prevented further injury to the victim. The report did not indicate that an employee of Mariposa did anything to cause the fight. (Exhibit 35).

Detective Anderson testified that the police reports describing the events from up to this point, June 3, 2005, and no other factors, did not merit a memorandum to the Chief of Police to recommend suspension or revocation of Mariposa's entertainment permit. (RT:1524:4-19). Detective Anderson believed that the totality of the circumstances justify the suspension or revocation of Mariposa's entertainment permit. Detective Anderson stated that this particular incident involved one victim and two police officers. (RT:1520:24-1521:14).

(f) September 24, 2005: A large fight at Mariposa required 17 police units to handle. Sergeant Schillig stated that a possible contributing factor to the fight was that Mariposa did not provide enough security guards. It was noted that Mariposa's entertainment permit conditions require a minimum of three security guards. (Exhibit 12). This fight was the only event at Mariposa since it opened that required the police to intervene in the nature of quelling the disturbance.

34. Sergeant Schillig stated that the escalation of the violence at Mariposa lead to the decision to recommend suspension or denial of Mariposa's entertainment permit. Based on the events, Sergeant Schillig believed that Mariposa may have contributed to the fights by having insufficient security, along with overcrowding. Although Sergeant Schillig observed what he believed to be overcrowding of patrons at Mariposa, he did not make a physical head count of patrons.

35. Officer Whelen, who was on the scene at Mariposa during the September 24, 2005 incident and filed a report concerning the September 14, 2005 fight (Exhibit 29A), stated that the security staff that he observed at Mariposa was not enough security to handle the crowd that evening. (T:1426:14-1428:9).

36. Since the November 1, 2005 letter written by Long Beach Detective Chris Anderson, Vice Administration Detail (Exhibit 22), constitutes the request by the Long Beach Chief of Police to suspend or revoke the Mariposa entertainment permit, analysis of the grounds set forth in that letter merit review:

**(a) Exhibit 22: Calls for Service**

The November 1, 2005 letter refers to 44 calls for service that Detective Anderson stated were attributable to Mariposa since it received its business license in 1999. Detective Anderson testified that the calls for service were retrieved by conducting a search on the Crystal Report Database. Detective Anderson could not state how many calls for service were attributable to Mariposa for the period of time after December 11, 2001, the date of Mariposa's current entertainment license. (RT:839:11-842:7). Detective Anderson could not state which of the 44 calls for service occurred after December 11, 2001 (RT:883:4-8), or the nature of each specific call for service. (RT:884:3-8).

**(b) Exhibit 22: Arrests**

The November 1, 2005 letter refers to 41 arrests. Detective Anderson testified that the 41 DRs were not in the file, and he could not state how many of those 41 arrests were specifically attributable to Mariposa after December 11, 2001. (RT:842:8-19). Detective Anderson could not recall the nature of each of the 41 arrests described in the letter, except for the September 24, 2005 incident. (RT:884:9-25).

**(c) Exhibit 22: Crime Reports**

The November 1, 2005 letter refers to 59 reported incidents attributable to Mariposa. Detective Anderson testified that he did not have all 59 crime reports in the file, and that he did not know how many of the crime reports were attributable from December 11, 2001 to November 1, 2005. (RT:842:20-843:2).

Of the 59 crime reports, Detective Anderson identified 6 crime reports by date and the nature of the offense:

- (i) July 20, 2003: Fight. The victim was kicked in the face causing laceration. Another victim was punched in the face causing a swollen eye;
- (ii) January 9, 2004: Fight. A Mariposa security guard trying to break up a fight was hit in the face with a bottle, causing a large laceration, requiring stitches;

(iii) January 30, 2004: Assault with a bottle to the face. The victim was hit in the eye with the bottle causing a severely bruised eye;

(iv) March 25, 2005: Fight where victim was hit in the head with a beer bottle, with a laceration to the head;

(v) June 3, 2005: Fight where victim was punched and kicked in the head resulting in a swollen mouth and three missing teeth; and

(vi) September 24, 2005: Fight, to which 17 police units responded. (Exhibit 29A-G) (RT:885:1-886:23).

Detective Anderson stated that of the above six crime report incidents, he did not find that Mariposa in any way violated its entertainment permit. (RT:892:14-22).

**(d) Exhibit 22: Inspections**

The November 1, 2005 letter refers to 49 uniform and/or undercover inspections of Mariposa. Exhibit 22 further states that 20 of these inspections noted violations such as over capacity, extremely loud music, open doors and not having counters. Exhibit 22 states that four citations were written as a result of these inspections. The Hearing Officer notes that counters are not a condition of Mariposa's entertainment permit, although the use of counters appears to be a practical way of addressing over capacity issues.

**(e) Exhibit 22: ABC**

The November 1, 2005 letter states that ABC has not taken disciplinary action against Mariposa since it received its Alcohol Beverage and Control license. On September 5, 2001, ABC admonished Mariposa for serving alcohol from a portable cart in the patio area. Mariposa corrected the problem by obtaining a license to serve alcohol on the patio and to serve from a portable bar.

**(f) Exhibit 22: Violent Incidents**

The November 1, 2005 letter states that violent incidents occurred at Mariposa, referring to the incidents to which Sergeant Schillig testified in paragraph 33 above.

37. In a letter dated January 5, 2006, Mariposa was advised that the Chief of Police for the City of Long Beach requested that the Long Beach City Council suspend or revoke Mariposa's entertainment permit number BU99041410. The letter also advised Mariposa that the City Council, at its January 10, 2006 meeting, will be asked to refer the matter to a Hearing Officer for a determination. (Exhibit 21).

38. On January 10, 2006, the Long Beach City Council referred this matter for hearing before a Hearing Officer pursuant to Long Beach Municipal Code Chapters 2.93, 5.02,

5.04, 5.06 and 5.72. (Exhibit 21). The November 1, 2005 letter written by Detective Anderson (Exhibit 22) was attached to the January 10, 2006 letter sent to Mariposa.

**C. Additional Issues:**

**Overcrowding (Occupancy Load Certificates)**

William Bramble

39. William Bramble was Director of Security at Mariposa from January 5, 2000 to April 2004. From July 2001 to April 2004, Mr. Bramble worked at Mariposa every Friday and Saturday and supervised Wednesday and Thursday nights and special events. During normal restaurant hours, he would conduct patrols in and out of Mariposa to make sure the bartenders and servers did not need assistance. (RT:1235:5-1236:3).

40. Mr. Bramble testified that on a typical Saturday night, after the first two years, the range of patrons was between 200 and 400 people total, in and out during the night. At any point in time, Mariposa had 200 to 300 people inside. Approximately 50% of those patrons would be on the dance floor, e.g., 100 to 150 plus people would be on the dance floor. (RT:922:8-22) (RT:926:19-927:21) (RT:1282:2-18) (1305:6-1306:9).

Gary Clift

41. Gary Clift worked as a security guard at Mariposa, beginning on March 5, 2005, for a period of time that included September 24, 2005. Mr. Clift worked on Thursday, Friday and Saturday nights, usually between 10:00 p.m. to 2:00 a.m. His primary assignment was watching the front or back doors. He stated that he did not observe patrons walking out of Mariposa with drinks. Mr. Clift was present at Mariposa during the September 24, 2005 fight. Mr. Clift was the security guard who alerted the police that security needed assistance.

42. Mr. Clift stated that on the Saturday nights that he worked at Mariposa, he observed 100 people or more on the dance floor. Mr. Clift also observed what he believed was in excess of 200 to 250 patrons inside the restaurant. (RT:940:6-941:5). Mr. Clift stated that the greatest influx of patrons occurs between 9:30 p.m. -11:00 p.m. (RT:945:9-17). He also stated that Mariposa had a fight approximately once or twice a month, but that they were mostly non-violent verbal altercations, not requiring police assistance. (RT:951:15-952:10).

Lyle Sardie

43. Lyle Sardie testified that there were more than 43 dancers on the dance floor for each year from 2002 through 2006. (RT:1909:2-1913:11). Mr. Sardie also stated that he did not try to limit the number of people on the dance floor to 44 dancers. He stated that he did not know that the limit was 44 dancers. (RT:1985:5-11).

Lisa Torres

44. Lisa Torres, one of the Managers at Mariposa, testified about the Mariposa floor plan shown in Mariposa's August 20, 2001 application (Exhibit 9) and described the number of tables that are removed for the dance floor during hours of entertainment, as follows: Four tables within the rectangle that delineates the dance floor are removed; three tables to the west of the perimeter of the rectangle are removed; two tables to the north of the perimeter are removed; and two tables near the double doors to the patio area are removed. The Hearing Officer notes that while the removal of the seven tables beyond the dance floor perimeter may be practical due to their proximity to the dance floor, it also expands the dance floor area beyond the approved 10' x 30' dimensions.

Will Salao / Police Officers

45. Will Salao, Supervising Superior for the California Department of Alcoholic Beverages Control, stated that he was at Mariposa on a Saturday night between 11:00 p.m. and midnight in August 2006 working an enforcement shift. His "guesstimate" was that there were at least over 200-250 patrons in the interior of Mariposa. Mr. Salao did not conduct a physical head count. Various police officers also estimated what they believed were overcrowding conditions in Mariposa. Because the police officers and Mr. Salao did not conduct an actual count of the patrons, the Hearing Officer gives greater weight to the testimony of Mariposa's security guards William Bramble and Gary Clift, Ms. Torres, a Mariposa manager, and Lyle Sardie on this issue.

Officer Max Jones

46. Officer Max Jones requested Officer Ronald Quarn to file an Incident Report for an April 17, 2004 incident (Exhibit 28) in which Officer Jones stated that he checked the Mariposa hand counters and determined that there were 44 patrons over capacity.

**Windows and Doors Open**

Mariposa Security Guard Gary Clift

47. Mariposa security guard Gary Clift stated that he frequently saw the Mariposa roll-up windows open and the doors open when amplified music was provided. (RT:950:5-14).

ABC Inspector Will Salao

48. Will Salao stated that during a minor decoy operation in 2006, he heard music coming from open windows with amplified music from Mariposa. (RT:522:8-23).

Sergeant Ernie Kohagura and Officer Christopher Ignacio

49. Sergeant Ernie Kohagura stated that he observed Mariposa's doors open and he observed Mariposa's windows open during hours of entertainment, and that he had discussions with Lyle Sardie of Mariposa on these topics on many occasions. Officer Ignacio observed Mariposa's windows open during hours of entertainment and requested security to close the windows.

Citations to Mariposa for Doors Open

50. Mariposa was cited for having its doors open on March 26, 2004 (Exhibit 43). Mariposa was cited for doors open with music playing on January 25, 2002 (Exhibit 43). Detective Anderson testified about additional Vice Inspections forms (Exhibit 43) which referenced incidents of doors open at Mariposa on March 24, 2004, August 23, 2003 and April 11, 2003. No citations were issued for those three incidents.

Mariachis-Entertainment on the Patio

51. William Bramble stated that he observed three to four mariachis on the Mariposa patio. (RT:1285:25-1286:10). Officer Christopher Ignacio observed more than two mariachis performing on the Mariposa patio. Long Beach Municipal Code Section 5.72115 defines an "Entertainment Activity" as one that is "carried on by more than two persons or whenever amplified." One or two mariachis, non-amplified are not considered entertainment by the City of Long Beach and would not fall under condition number 8 of Mariposa's entertainment permit (Exhibit 12), which prohibits audible sound from the Mariposa exterior. (RT:1121:7-1122:4). Mariposa could attempt to apply for an entertainment permit allowing more than two mariachis. (RT:1129:22-24).

**III. Summary of Relevant Evidence**

52. The City has met its burden of proof to establish overcrowding conditions at Mariposa, with patrons that exceed the maximum capacity set forth in the Occupancy Load Certificates for patrons in the restaurant and on the dance floor, in violation of condition twelve of Mariposa's entertainment permit. Mariposa has expanded the area of its dance floor beyond the approved 10' x 30' dimensions, by removing additional tables to create more space for dancers.

53. The City has met its burden of proof to establish that Mariposa has kept its doors open and its windows open during hours of entertainment, in violation of conditions six and seven of its entertainment permit. Mariposa has also allowed more than two Mariachis to perform on its patio, which violates condition eight of its entertainment permit.

54. The City submitted testimony and documents to demonstrate the occurrence of fights and disturbances taking place at Mariposa. However, the November 24, 2005 fight incident is the only incident that required the police to intervene to quell the disturbance,

since 1999. It appears that the magnitude of the November 24, 2005 event was an isolated event. There was no evidence that Mariposa was the cause of the November 24, 2005 fight incident, or the other fight incidents described in this decision.

55. There was no definitive testimony on whether or not Mariposa stopped serving food before the close of entertainment, which would be a violation of condition eleven of its entertainment permit. Lyle Sardie wrote a letter dated July 10, 2001 to Long Beach Business License supervisor Jeannine Montoya in which he stated, among other topics, that Mariposa serves food until 12:00 midnight. (Exhibit 15).

56. Hand counters are not required under the entertainment permit, but they appear to be the most practical way of determining occupancy, other than conducting a physical head count. Mariposa stated that it voluntarily moved its entrance in the evening from its usual Pine Street entrance, to the rear door to the west side. This was done in accordance with a suggestion from Sergeant Ernie Kohagura, who stated that the line from Mariposa's patrons in the evening was interfering with King's Fish House. Mariposa stated that maintaining an accurate patron count became more difficult after this change of entrance occurred, because it must determine which patrons enter the restaurant, separate from the patio area.

#### **IV. Recommendations**

57. The Hearing Officer recommends that Mariposa's entertainment permit be suspended for six days, comprised of three weekends (Friday and Saturday), as follows: two consecutive weekends, with the third weekend within 30 days of the second suspension weekend, for the entertainment permit violations of overcrowding, keeping the doors open, having windows open during hours of entertainment and for having more than two Mariachis on the patio. Further acts of non-compliance should result in additional suspension dates.

58. Mariposa must limit dancing to the permitted 300 square foot dance floor with no more than 43 patrons on the dance floor at any one time.

59. Mariposa must submit a revised floor plan to be approved by Building and Safety, to accurately reflect the permitted dimensions of Mariposa, and to state the correct size of its dance floor approved in Mariposa's entertainment permit as 10'x 30,' instead of the current incorrect statement on file with Building and Safety as 10'x 40.' To the extent that Mariposa's occupancy load certificates are incorrect, Mariposa must obtain accurate occupancy load certificates from the Fire Department based on the permitted dimensions.

60. Ms. Torres, one of Mariposa's managers, testified that Mariposa conducts a patron occupancy check every half-hour and records that information into a notebook. The Hearing Officer recommends that Mariposa maintain the occupancy notebook logs in its possession for a period of three years, so that such logs are available for inspection, if necessary.



61. Mariposa should seek advice from Building and Safety, ABC and/or a professional venue/security consultant to determine the best system to maintain an accurate count of its patrons. An additional possible area to explore is whether Mariposa should be permitted to utilize its entrance on Pine Street, by allowing its evening patrons to form a roped-off line going south on Pine Street, and into the walkway between Mariposa and Allegria Restaurant. This may enable Mariposa to maintain an accurate count, by having one main entrance and one main exit.

62. Lyle Sardie testified that Mariposa maintains three security guards for slower nights with approximately 25-30 patrons, and he maintains six security guards for the busy Friday and Saturday nights. The Hearing Officer recommends that Mariposa maintain a minimum of six licensed security guards for Friday and Saturday nights at all times while entertainment is provided. It is anticipated that Mariposa's compliance with the occupancy load certificates will make six security guards sufficient for the weekends.

63. Mariposa introduced a security guard time sheet into evidence. (Exhibit D). The Hearing Officer recommends that Mariposa maintain the security guard time sheets in its possession for a period of three years, so that such time sheets are available for inspection, if necessary.

64. To ensure that Mariposa is in compliance with entertainment permit condition eleven to "be maintained as a full service restaurant providing an assortment of full meals normally offered in such establishments," the Hearing Officer recommends that Vice conduct undercover investigations on this topic from time to time.

65. The Hearing Officer recommends additional suspensions for future violations of Mariposa's entertainment permit for the corresponding day of the week that any such future violation occurs, subject to proof.

Sent by U.S. Mail this date to City Clerk Larry Herrera, City of Long Beach.

Date: January 3, 2007

A handwritten signature in black ink, appearing to read "Michael R. Diliberto", written over a horizontal line.

Michael R. Diliberto  
Hearing Officer