



Legislation Text

File #: 17-0338, **Version:** 1

Recommendation to receive supporting documentation into the record, conclude the hearing and approve the Hearing Officer's recommendation and Planning Commission determination to revoke Business Licenses Nos. BU21338610, BU21338620, and BU21338630, issued to Enaid's Way, Inc., dba Miko's Sports Lounge, located at 710 West Willow Street; and

Approve the Hearing Officer's recommendation to allow the commercial/industrial Business License No. BU90057720, issued to the Mark, Ronald, and Colleen Mackey (Property Owners), to remain and be modified by adding a condition to the Business License requiring the Property Owners not operate or lease the premises to any tenant engaging in the sale of alcohol for the property located at 710-714 West Willow Street. (District 7)

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

On November 3, 2016, the Planning Commission voted to revoke the Business Licenses and Conditional Use Permit (CUP) issued to Miko's and the Property Owners after an eight hour long public hearing. Both Miko's and the Property Owners appealed the revocation of their respective Business Licenses. Neither party appealed the Planning Commission's decision to revoke the CUP.

On December 20, 2016, the City Council referred the appeals of the Business License revocations to Hearing Officer Richard Terzian and the joint appeal hearing was held on March 15, 2017. When the City Council appoints a Hearing Officer to conduct the appeal proceedings, the LBMC also requires the City Council to review and consider the Hearing Officer's written determination. The City Council may adopt, reject or modify the recommended decision. The City Council has the discretion to take additional evidence at the hearing or refer the matter back to the Hearing Officer with instructions to consider additional evidence.

Attached for your review is Hearing Officer Attorney Richard R. Terzian's written determination (Exhibit A).

Background

Relevant background for this matter includes a series of events related to the operation of Miko's at the property:

On October 23, 1990, the Property Owners were issued a Business License for

commercial/industrial space rental.

On June 15, 1995, the Property Owners were granted a CUP and a Standards Variance for the property located at 710-714 W. Willow Street to allow the operation of a bar.

In December 2013, Miko's was issued a Business License to operate a bar at the property. This Business License was issued conditionally for a period of six months and later a regular license was issued. Since Miko's has been in operation, there have been numerous nuisances occurring at the location. Between January 2014 and May 2016, there were approximately 250 calls for police service attributed to Miko's. There have also been unpermitted entertainment activities and Health Code violations. Below is a summary of testimony and evidence presented at the previous hearings, organized by category. More detail regarding these matters can be found in the Hearing Officer's report, the transcripts of the Planning Commission hearing (Attachment A), and the subsequent hearing conducted by the Hearing Officer (Attachment B).

Noise

- The largest number of complaints from neighbors resulted from undue noise, primarily late on Friday and Saturday nights.
- The greatest impact was to residents on Maine Avenue.
- Noise came from a bar jukebox and sometimes from a live DJ.
- Noise from the bar jukebox could be heard in the neighborhood, but Miko's would not lower the volume despite being asked by neighbors and City officials to do so.
- Noise could have been mitigated by Miko's keeping its rear door closed (as requested by LBPD). However, Miko's failed to consistently implement this practice, which resulted in noise related nuisances.
- Noise was constantly generated by patrons as they left Miko's to reach cars in the parking lot, which is located in the back and along adjacent side streets (primarily Maine Avenue).
- Noise from patrons' car radios while parked in the Miko's parking lot was a constant issue.
- Additional security would have helped curtail noise in the neighborhood, but sufficient security was not provided by Miko's.
- Noise became so intolerable that a resident across the alley from Miko's back parking lot sold his home at a loss and left the neighborhood with his family.

Defecation and Other Activities in Public

- Video evidence depicted people relieving themselves on nearby residential and commercial properties.

- Residents along Maine Avenue reported witnessing sex acts by Miko's bar patrons in public.
- Video and other evidence depicted Miko's patrons drinking in cars behind Miko's and the surrounding streets and neighborhood.
- Neighbors testified as to liquor bottles and cans strewn around the neighborhood by Miko's patrons (photos provided by residents).

Intimidation

- Neighbors testified being intimidated by Miko's patrons, and that there was insufficient security to address these issues, particularly in the parking lot behind Miko's and along Maine Avenue.
- When residents complained to patrons regarding nuisance activity, they were met with tirades of obscenity and threats of bodily harm (testimony of Maine Avenue residents).
- Residents testified to being fearful of harm to themselves or their families by patrons of Miko's.
- Residents testified to being afraid to go out late at night due to the activity and conduct of Miko's patrons in the neighborhood.

Parking

- Miko's lacked required parking (a violation to their CUP conditions), causing patrons to park on nearby residential streets. This activity was particularly acute on weekends.
- Patrons of Miko's frequently took up available street parking in the residential neighborhood (such as Maine Avenue), particularly on weekends, resulting in a lack of parking for neighborhood residents.

Police Activities

- Miko's owner, Ms. Yancey, refused to allow the Police Department real time access to security cameras, even after the Police Department informed her that this would help curtail nuisance-related issues.
- There was a shooting of a patron from Miko's in December 2015.
- A stabbing occurred outside of Miko's in March 2016.
- The Police Department reported approximately 250 calls for Police service attributed to Miko's between January 2014 and May 2016.

Entertainment

- Various entertainment activities were advertised for Miko's on social media for which entertainment permits had not been issued.
- Occasional Entertainment Permits (OEPs) were denied by the City because of frequent noise complaints lodged by neighborhood residents.
- The Police Department discovered, twice, that Ms. Yancey chose to operate without an OEP. As a result, she was convicted of a misdemeanor violation for operating without an appropriate permit.

Food

- Food was provided from a non-approved catering service and Miko's failed to operate within the scope of the Health Permit approved for the business.
- Miko's was cited by the City's Health Department for health and safety-related reasons.

Chronology

In June 2016, the Development Services Department and the Police Department recommended the revocation of the CUP and the Business Licenses associated with the property. The continued violations of the terms of the CUP, ongoing nuisance activities, and public safety concerns formed the basis for the revocation of the property entitlements and the right to operate a business at the property.

On August 9, 2016, the City Council referred to the Planning Commission the consolidated public revocation hearing of the CUP and the BLs issued to the Property Owners and Miko's.

On November 3, 2016, the Planning Commission voted to revoke the CUP associated with the property and the Business Licenses issued to the Property Owners and Miko's after an eight- hour long public hearing, wherein:

- Both Miko's and the Property Owners were given timely and adequate notice of the Planning Commission Hearing on November 3, 2016.
- Both Miko's and the Property Owners were represented by counsel.
- All witnesses testified under oath and were subject to cross-examination.
- A written record of the hearing was made available to the parties.

On November 10, 2016, Miko's filed an appeal of the Business License revocation, but did not appeal the revocation of the CUP (Attachment C).

On November 11, 2016, the Property Owners filed an appeal of the commercial/industrial Business License revocation, but did not appeal the revocation of the CUP (Attachment D). On March 15, 2017, a six-hour long consolidated public appeal hearing for the revocation of

Business License Nos. BU21338610, BU21338620, BU21338630, and BU90057720 was held. The presiding hearing officer, assigned by the City Clerk's Office, was Attorney Richard R. Terzian.

On April 4, 2017, Hearing Officer Terzian submitted his written conclusions of law and recommendations, which are as follows:

Conclusions of Law

- Miko's has been, and is operating in violation of Section 5.06.020(1), (3) and (5) of the LBMC and the conditions of the CUP.
- Miko's has been operating in violation of Section 5.72.110 of the LBMC.
- The operation of Miko's at the property is a public nuisance within the meaning of Section 9.37.090(G), (H), (M), (O), and (U) of the LBMC.
- The Property Owners exercised inadequate control over their tenant at the property, but such lack of control does not justify prohibiting lease of the property for any purpose aside from dispensing of alcohol on site.

Recommendations

- Business License Nos. BU21338610, BU21338620 and BU21338630 held in the name of Enaid's Way, Inc., dba Miko's Sports Lounge, be revoked.
- Business License No. BU90057720 held by Mark, Ronald and Colleen Mackey with respect to the property be modified by adding a condition to said BL that the property may not be leased to a tenant dispensing alcoholic beverages on site.
- That both the operation of Miko's and lease of the property to Miko's be deemed a public nuisance to be abated forthwith and both licensees jointly and severally be ordered to pay costs of abatement to the City.

Therefore, staff requests that the City Council uphold the recommendations of the Hearing Officer and Planning Commission and revoke Business License Nos. BU21338610, BU21338620 and BU21338630 held in the name of Enaid's Way, Inc., dba Miko's Sports Lounge, and reverse the City's decision to revoke Business License No. BU90057720 held by Mark, Ronald and Colleen Mackey and add a condition onto the business license stating that **the property may not be leased to any tenant dispensing alcoholic beverages on site.**

This matter was reviewed by Deputy City Attorney Art D. Sanchez on April 17, 2017.

The hearing date of May 9, 2017, has been posted on the business location, and the property and business owner has been notified by mail.

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

Approve recommendation.

JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT

APPROVED:

PATRICK H. WEST
CITY MANAGER