



CITY OF LONG BEACH

C-11

DEPARTMENT OF FINANCIAL MANAGEMENT

333 West Ocean Blvd • Long Beach, California 90802

July 1, 2008

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Refer to Hearing Officer the consolidated appeal to business license and entertainment permit suspension/revocation by the Broadlind Lounge, LLC, DBA The Basement, 149 Linden Avenue B-100. (District 2)

DISCUSSION

On April 14, 2008, the Long Beach Chief of Police recommended that the Department of Financial Management suspend/revoke the business license (BU20515230) and entertainment permit (BU20522200) of the Broadlind Lounge, LLC, DBA The Basement, 149 Linden Avenue (Attachment A). The business violated the Long Beach Municipal Code (LBMC) and demonstrated a pattern of unabated criminal activity creating serious nuisance conditions. On June 9, 2008, the business owners and operators agreed to consolidate the business license and entertainment permit appeals (Attachment B).

Pursuant to the LBMC, a licensee/permittee can appeal the suspension/revocation of a business license and/or entertainment permit 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.

This matter was reviewed by Deputy City Attorney, Cristyl Meyers on June 9, 2008.

TIMING CONSIDERATIONS

If referred, upon selection of a hearing officer, the matter will be heard not less than 20 days thereafter.

FISCAL IMPACT

There is no fiscal impact associated with this item.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

LORI ANN FARRELL
DIRECTOR OF FINANCIAL MANAGEMENT/CFO

APPROVED:

PATRICK H. WEST
CITY MANAGER

ATTACHMENTS



Date: April 14, 2008
To: Lori Ann Farrell, Director of Financial Management
From: Anthony W. Batts, Chief of Police
Subject: **REQUEST FOR CONSIDERATION FOR SUSPENSION/REVOICATION
THE BASEMENT LOUNGE – 149 LINDEN AVENUE**

The Broadlind Lounge LLC, dba The Basement, has been in business at 149 Linden Avenue since June of 2005. The Corporate Officers are listed as, Jim Najah, Mark Akhvain and Michael Vidal. Their business license (BU20515230) is for a restaurant with alcohol. The licensee holds a permit for Entertainment with Dancing (BU20522200), and an Alcoholic Beverage Control license (47-351799) to operate as an On Sale General Eating Place.

The Basement was originally issued a one-year short-term Entertainment with Dancing Permit on November 23, 2005. On July 27, 2006, The Basement re-applied for an Entertainment With Dancing permit, which includes live amplified music, a disc jockey, and karaoke music. On December 12, 2006, Long Beach City Council approved their Entertainment Permit with conditions. For further details, see attached conditions of operation.

Since receiving their entertainment permit, the Police Department and City Council have received complaints regarding loud and unruly patrons leaving the business at closing time. Some of these complaints were related to the following condition violations:

Condition #4 - Patrons must exit the establishment through the first floor onto Broadway beginning at 1:30 a.m. on a permanent basis.

Condition #11 - There shall be no "queue" allowed after 10 p.m. Sunday thru Thursday night, and 11 p.m. Friday and Saturday nights. All persons gathering outside after the allowed hours shall be considered to be loitering.

Condition #13 - The permittee shall take reasonable measures to prohibit and prevent the loitering of persons immediately outside any of the entrance/exit doors and the parking lot, at all times open for business. This should be done by use of security guards and/or signage indicating, words to the effect of, "Please respect our neighbors."

Condition #14 - At the conclusion of each event, the permittee shall take reasonable measures to ensure that exiting patrons walk directly to their vehicles, and not loiter in the parking lot or the immediate area. This should be done by use of security guards and/or signage indicating, words to the effect of, "Please respect our neighbors."

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Detectives had several meetings with the owners to discuss problems related to condition violations and offered solutions to mitigate the problems. During these meetings, owners were given copies of their conditions of operation, and each condition was read and discussed. Because of the owners' involvement and efforts to manage problems, many of the problems have since been mitigated.

On the night of March 15, 2008, Vice Detectives responded to The Basement for a compliance inspection regarding past complaints. Upon arrival at the club, detectives discovered there was a swinger's party inside the club. Detective Castellanos was allowed inside the establishment. Upon his entry to the club, he observed adult entertainment and sexual activity in plain view of the patrons and employees.

There was a woman disc jockey wearing only pasties covering her areolas, lace panties, and furry knee high white boots. There were women pole dancing on the stage exposing their naked breasts. Some women were sucking the naked breasts of other women. Some women were performing cunilingus on other women. There was also a woman performing an act of oral copulation on a man inside the restroom.

The adult entertainment/sexual activity was occurring throughout the location and involved many patrons. Detective Castellanos was inside the club for over an hour and observed several sexual acts taking place. At one point, Detective Castellanos observed Michael Vidal, one of the club owners, standing on the dance floor, watching the sexual activity. He made no attempt to stop the unpermitted activity.

When the owners of The Basement applied for their entertainment permit, they indicated on page #7 of their application there would be no adult entertainment as defined by L.B.M.C. Sections 21.15.110 and 5.72.115 (B). On December 12, 2006, City Council approved their Entertainment Permit with conditions. Condition #2 states, " Unless separately applied for, reviewed and approved, no adult entertainment, as defined by section 5.72.115(B) LBMC shall be conducted on the permitted premises. For further, see attached conditions of operation."

Based on the above information, and the related police report, The Basement has violated their conditions of operation by allowing adult entertainment and sex acts to occur inside their place of business.

The Director of Financial Management is the issuing authority for business licenses issued pursuant to Long Beach Municipal Code Chapter 3.80. The Director is also empowered to suspend, deny, or revoke business licenses, pursuant to §3.80.429.1(A) LBMC, when a licensee has failed to comply with any applicable provision or requirement of law.

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THE BASEMENT LOUNGE – 149 LINDEN AVENUE

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Pursuant to this authority, the Police Department respectfully requests that you examine these violations of law committed by Broadlind Lounge LLC, dba The Basement, and impose a suitable discipline.

If I can be of any further assistance, please contact me, or my Chief of Staff, Commander Jorge Cisneros at extension 8-7301.

AWB:CNA:cna
TheBasementrevocationmemo.doc

1 ROBERT E. SHANNON, City Attorney
2 CRISTYL A. MEYERS, Deputy City Attorney
3 333 West Ocean Blvd., 11th Floor
4 Long Beach, California 90802
5 Phone: (562) 570-2200
6 Fax: (562) 436-1579

7
8 **CITY OF LONG BEACH**
9 **ADMINISTRATIVE APPEAL HEARINGS**

10 CITY OF LONG BEACH,)
11)
12 Appellee,)
13 vs.)
14 MICHAEL VIDAL, MARK AKHAVAIN,)
15 JAMSHID J. NAJAH, BROADLIND)
16 LOUNGE LLC, DBA THE BASEMENT,)
17 LOCATED AT 149 LINDEN B-100,)
18 LONG BEACH,)
19 Appellant.)

20 WAIVER OF LONG BEACH
21 MUNICIPAL CODE § 3.80.429.1
22 HEARING FOR BUSINESS LICENSE
23 BU20515230; AND STIPULATION TO
24 CONSOLIDATE BUSINESS LICENSE
25 BU20515230 AND ENTERTAINMENT
26 PERMIT BU20522200

27 **THE PARTIES ACKNOWLEDGE AND AGREE AS FOLLOWS:**

28 1. Mark Akhavain, Jamshid J. Najah, and Michael Vidal as individuals and
collectively as members, managers, partners, owners, representatives, and business operators of the
Broadlind Lounge, LLC, d.b.a. The Basement, located at 149 Linden Avenue B-100, Long Beach,
California 90802, voluntarily agree to be bound by all terms of this stipulation as follows.

2. Mark Akhavain, Jamshid J. Najah, and Michael Vidal as individuals and
collectively as members, managers, partners, owners, representatives, and business operators of the
Broadlind Lounge, LLC, d.b.a. The Basement, located at 149 Linden Avenue B-100, Long Beach,
California 90802, knowingly, intelligently and voluntarily waive their legal right, and attendant
legal arguments, to convene and participate in an administrative hearing conducted pursuant to
Long Beach Municipal Code (LBMC) section 3.80.429.1 regarding the recommended
suspension/revocation of Long Beach business license number BU20515230.

(See Attachments 1 & 2)

////

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 3. Mark Akhavain, Jamshid J. Najah, and Michael Vidal as individuals and
2 collectively as members, managers, partners, owners, representatives, and business operators of
3 the Broadlind Lounge, LLC, d.b.a. The Basement, located at 149 Linden Avenue B-100, Long
4 Beach, California 90802, knowingly, intelligently and voluntarily accept this stipulation as written
5 notice of their right to appeal a suspension or revocation of business license number BU20515230
6 pursuant to LBMC section 3.80.429.5 to the Long Beach City Council, and further agree to lodge
7 appeal costs in the amount of \$1,050.00 not later than close of business June 9, 2008, with the
8 Office of the Long Beach City Clerk. (See Attachment 3)

9 4. Mark Akhavain, Jamshid J. Najah, and Michael Vidal as individuals and
10 collectively as members, managers, partners, owners, representatives, and business operators of the
11 Broadlind Lounge, LLC, d.b.a. The Basement, located at 149 Linden Avenue B-100, Long Beach,
12 California 90802, knowingly, intelligently and voluntarily accept this stipulation as written notice
13 of their right to appeal a suspension or revocation of entertainment permit number BU20522200
14 pursuant to LBMC section 5.06.020 to the Long Beach City Council, and further agree to lodge
15 appeal costs, separate and distinct from costs referenced above in paragraph "3," in the amount of
16 \$1,050.00 not later than close of business June 9, 2008, with the Office of the Long Beach City
17 Clerk. (See Attachments 4 & 5)

18 5. Mark Akhavain, Jamshid J. Najah, and Michael Vidal as individuals and
19 collectively as members, managers, partners, owners, representatives, and business operators of the
20 Broadlind Lounge, LLC, d.b.a. The Basement, located at 149 Linden Avenue B-100, Long Beach,
21 California 90802, knowingly, intelligently and voluntarily agree to consolidate the business license
22 number BU20515230 and entertainment permit number BU20522200 appeal hearings to be
23 presided over by one randomly selected independent hearing officer selected by lot from a list of
24 qualified candidates maintained by the Office of the Long Beach City Clerk.

25 6. Mark Akhavain, Jamshid J. Najah, and Michael Vidal as individuals and
26 collectively as members, managers, partners, owners, representatives, and business operators of the
27 Broadlind Lounge, LLC, d.b.a. The Basement, located at 149 Linden Avenue B-100, Long Beach,
28 California 90802, knowingly, intelligently and voluntarily accept this stipulation as written notice

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
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1 that on July 1, 2008, the consolidated appeal will be placed on the Long Beach City Council
2 consent calendar requesting that the City Council refer the consolidated administrative appeal
3 proceedings to a hearing officer pursuant to LBMC Chapter 2.93. (See Attachment 6)

4 7. Mark Akhavain, Jamshid J. Najah, and Michael Vidal as individuals and
5 collectively as members, managers, partners, owners, representatives, and business operators of the
6 the Broadlind Lounge, LLC, d.b.a. The Basement, located at 149 Linden Avenue B-100, Long
7 Beach, California 90802, knowingly, intelligently and voluntarily agree to convene the
8 consolidated appeal hearings on July 23, 2008, at City Hall, 333 West Ocean Boulevard, in the
9 Council Chambers located on the ground level, from 9:00 a.m. to 4:00 p.m. and, if necessary, shall
10 continue the following day, July 24, 2008, at the same location with the same hours. (Hearing
11 dates, times, and venue may be subject to change based on a showing of good cause.)

12 **WHEREAS**, this stipulated agreement may be executed in one or more counterparts, all of
13 which, taken together, shall constitute the same instrument, and shall be governed in accordance
14 with the laws of the State of California. **THEREFORE**, the parties named below acknowledge
15 and agree to abide by the terms of this stipulation.

16 Signed: _____ Dated: _____

17 Mark Akhavain

18 Signed: _____ Dated: _____

19 Jamshid J. Najah

20 Signed: _____ Dated: _____

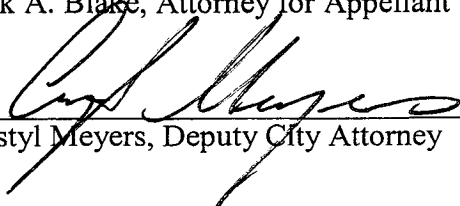
21 Michael Vidal

22 Signed: _____ Dated: _____

23 F. Michael Ayaz, Attorney for Appellant

24 Signed: _____ Dated: _____

25 Rick A. Blake, Attorney for Appellant

26 Signed:  _____ Dated: 6-4-08

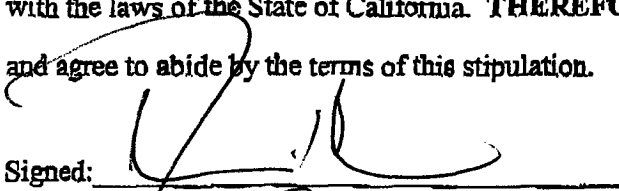
27 Cristyl Meyers, Deputy City Attorney

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4 7. Mark Akhavan, Jamshid J. Najah, and Michael Vidal as individuals and
5 collectively as members, managers, partners, owners, representatives, and business operators of the
6 the Broadbind Lounge, LLC, d.b.a. The Basement, located at 149 Linden Avenue B-100, Long
7 Beach, California 90802, knowingly, intelligently and voluntarily agree to convene the
8 consolidated appeal hearings on July 2~~4~~⁹, 2008, at City Hall, 333 West Ocean Boulevard, in the
9 Council Chambers located on the ground level, from 9:00 a.m. to 4:00 p.m. and, if necessary, shall
10 continue the following day, July 2~~5~~⁸, 2008, at the same location with the same hours. (Hearing
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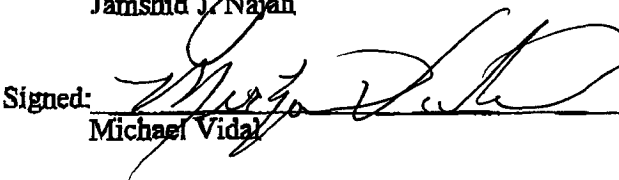
Robert E. Shaumon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

16 Signed: 
17 Mark Akhavan

Dated: 6/9/08

18 Signed: 
19 Jamshid J. Najah

Dated: 6/9/08

20 Signed: 
21 Michael Vidal

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23 F. Michael Ayaz, Attorney for Appellant

Dated: _____

24 Signed: _____
25 Rick A. Blake, Attorney for Appellant

Dated: _____

26 Signed: 
27 Cristyl Meyers, Deputy City Attorney

Dated: 6-4-08

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).



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To: Lori Ann Farrell, Director of Financial Management
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Pursuant to this authority, the Police Department respectfully requests that you examine these violations of law committed by Broadlind Lounge LLC, dba The Basement, and impose a suitable discipline.

If I can be of any further assistance, please contact me, or my Chief of Staff, Commander Jorge Cisneros at extension 8-7301.

AWB:CNA:cna
TheBasementrevocationmemo.doc

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).

A. Noncompliance. Failure to comply with any of the provisions of this chapter 5.72, including any conditions attached to the permit at the time of approval, will constitute grounds for suspension, denial, or revocation of the permit. The suspension or revocation of the permit shall be governed by the provisions of chapter 5.06 of this code.

B. Cease activity. No person shall conduct any business or activity regulated by this chapter during the pendency of a permit application, except as permitted by section 5.72.125, or at any time after permit denial or revocation or during the time a permit therefor has been suspended, except as permitted by subsection 5.72.145.C.

C. In the event that an entertainment permit for an adult entertainment business is suspended, denied, or revoked, the applicant or permittee may file or cause to be filed a petition for writ of mandate in state court regarding the validity of the suspension, denial or revocation. In the event the applicant or permittee files such legal action within fifteen (15) days of the suspension, denial or revocation of the permit, the applicant or permittee shall be permitted to operate its business until a decision is issued by a trial court, notwithstanding provisions to the contrary contained in this chapter. During such time period, the business must be operated in a manner not to create a public nuisance, and such operation must comply with all other state and city laws and regulations. (Ord. C-7747 § 4, 2001; Ord. C-7591 § 2, 1999; Ord. C-7423 § 26, 1996).

Chapter 5.06 CANCELLATIONS, SUSPENSIONS, REVOCATIONS, DENIALS AND APPEALS

5.06.010 Identification of controlling procedures.

5.06.020 Suspension/ Revocation/ Denial.

5.06.025 Cancellation.

5.06.030 Appeals from permit denial.

5.06.010 Identification of controlling procedures.

A business permit may be suspended, revoked or denied for any reason stated in Section 5.06.020 of the Long Beach Municipal Code or within the specific section of this Title 5 pertaining to the business. (Ord. C-7423 § 14, 1996; Ord. C-6325 § 13 (part), 1986; Ord. C-6260 § 1 (part), 1986).

5.06.020 Suspension/ Revocation/ Denial.

A. Any permit to do business in the City issued pursuant to this Title 5 may be suspended, revoked or denied in the manner provided in this Section upon the following grounds:

1. The permittee or any other person authorized by the permittee has been convicted of violation of any provision of this Code, State or Federal law arising out of or in connection with the practice and/or operation of the business for which the permit has been granted. A plea or verdict of guilty, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this Section. The City Council may order a permit suspended or revoked, following such conviction, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the California Penal Code allowing such a person to withdraw his/her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment;
2. For any grounds that would warrant the denial of the issuance of such permit if application therefore was being made;
3. The permittee or any other person under his/her control or supervision has maintained a nuisance as defined in 21.15.1870 of the Long Beach Municipal Code which was caused by acts committed on the permitted premises or the area under the control of the permittee;
4. The permittee, his/her employee, agent or any person connected or associated with permittee as partner, director, officer, stockholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for the permit required under the provisions of this Code;
5. The permittee has failed to comply with any condition which may have been imposed as a condition of operation or for the issuance of the permit required under the provisions of this Code;
6. The permittee has failed to pay any permit fees that are provided for under the provisions of this Code within sixty days of when the fees are due.

B. Upon receipt of satisfactory evidence that any of the above grounds for suspension or revocation of said permit exist, the permittee shall be notified in writing that a hearing on suspension or revocation shall be held before the City Council, the grounds of suspension or revocation, the place where the hearing will be held, and the date and time thereof which shall not be sooner than ten days after service of such notice of hearing.

C. All notices provided for in this Section shall be personally served upon the permittee or left at the place of business or residence of such permittee with some person over the age of eighteen years having some suitable relationship to the permittee. In the event service cannot be made in the foregoing manner, then a copy of such notice shall be mailed, postage fully prepaid, addressed to the last known address of such permittee at his/her place of business or residence at least ten days prior to the date of such hearing.

D. Whenever a business permit has been revoked/or denied under the provisions of this Section, no other application by such permittee for a business permit to conduct a business or operate in the City shall be considered for a period of one year from the date of such revocation or denial. (Ord. C-7423 § 14, 1996; Ord. C-6325 § 13 (part), 1986; Ord. C-6260 § 1 (part), 1986).

5.06.025 Cancellation.

*Any permit issued pursuant to an application made under this Title 5 may be cancelled by the Director of Financial Management, without hearing, if:

A. The permittee permanently discontinues business operations under the permit; or

B. The permittee requests cancellation; or

C. The business operated under the permit is abandoned for a period in excess of six months. Cancellation pursuant to this Subsection shall be made only after notice of cancellation has been mailed to the permittee at the address shown on the most recent permit application, thirty days has elapsed from the date of such mailing and permittee has failed to respond to said notice with a statement setting forth a valid reason why such permit should not be cancelled. (Ord. C-7423 § 14, 1996).

5.06.030 Appeals from permit denial.

An applicant for a business permit whose application for such permit has been denied shall be notified of the denial in writing. Within ten days after such denial, the applicant may appeal therefrom to the Council by filing with the Director of Financial Management a notice of such appeal setting forth the decision and the grounds upon which he/she deems himself/herself aggrieved thereby. Said applicant shall pay to the Director of Financial Management at the time of filing said notice of appeal a filing fee in an amount to be set by resolution of the City Council. The Director of Financial Management shall thereupon make a written report to the Council reflecting such determination denying the permit. The Council shall, within thirty days following the filing of said appeal, set said appeal for hearing to be held not less than ten days nor more than thirty days thereafter and such hearing may for good cause be continued by the order of the Council. Upon the hearing of the appeal the Council may overrule or modify the decision appealed from and enter any such order or orders as are in harmony with this Title 5, and such disposition of the appeal shall be final. (Ord. C-7423 § 14, 1996: Ord. C-6325 § 13 (part), 1986: Ord. C-6260 § 1 (part), 1986).

[<< previous](#) | [next >>](#)

2.93.010 Applicability.

This chapter applies to the conduct of all hearings, appeals or investigations held by the city council, the planning commission or the board of examiners, appeals and condemnation pursuant to this code or any other applicable law where oral evidence or testimony is received and where personal or property rights are involved. This chapter does not apply to and is not intended to infringe upon the right of a citizen to petition his government for redress. This chapter applies to all city personnel who testify or present evidence in a hearing. (Ord. C-5232 § 1 (part), 1976: prior code § 2780).

2.93.020 Oath or affirmation.

A. All oral evidence or testimony shall be taken only on oath or affirmation. The presiding officer, the city clerk or the secretary of the respective board or commission may administer the oath. In a given case where many witnesses are expected to testify, the presiding officer has the discretion to have all prospective witnesses rise and be sworn at the same time at the outset of the proceedings.

B. The oath or affirmation may be administered as follows, the person who swears or affirms expressing his assent when addressed in the following form:

You do solemnly swear (or affirm, as the case may be), that the evidence you shall give in this issue (or matter), pending before this body, shall be the truth, the whole truth, and nothing but the truth, so help you God.

(Ord. C-5232 § 1 (part), 1976: prior code § 2780.1).

2.93.030 Rules of evidence.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded. (Ord. C-5232 § 1 (part), 1976: prior code § 2780.2).

2.93.040 Examination of witnesses.

In a contested proceeding each side shall have these rights: to call and examine witnesses; to introduce exhibits; to cross examine opposing witnesses on any matter relevant to the issues; to impeach any witness and to rebut the evidence against him. The presiding officer has the discretionary authority to: limit the number of witnesses to testify for each side where their testimony would be cumulative or repetitive in nature; require each side to appoint one spokesman for purposes of cross examination; limit or curtail any abusive, argumentative, repetitive, or otherwise irrelevant cross examination; and in conformance with other rules in this code place reasonable time limits on the right to cross examine and the presenting of evidence. (Ord. C-5232 § 1 (part), 1976: prior code § 2780.3).

2.93.050 Hearing procedure--City council.

A. Whenever it is provided that a hearing governed by this chapter shall be heard by the city council, the council may, in its discretion, either conduct the hearing itself or appoint a hearing officer to conduct the hearing.

B. If a hearing officer conducts a hearing the following procedures shall apply:

1. Upon selection of a hearing officer, the city clerk shall set the time and place for the hearing. Notice of hearing shall be sent to interested parties at least twenty (20) days before the hearing.

2. Any party may be represented by counsel; the hearings shall be public and shall be conducted pursuant to the provisions of this chapter; and the city clerk shall provide necessary tape recordings as may be reasonably required by the hearing officer.

3. The hearing officer shall determine the order of proceedings and shall afford all parties a reasonable opportunity to present any relevant evidence. If a party is absent, the hearing officer may proceed with the hearing in that party's absence if due notice was given and no explanation for the absence was given.

4. Other than at the hearing, there shall be no direct communication between the parties and the hearing officer on any matter related to the hearing. All oral or written communication from the parties shall be directed to the city clerk for transmittal to the hearing officer.

5. The hearing officer shall render his decision not later than fifteen (15) days after the hearing is closed and shall immediately file a report with the city council. At the request of the hearing officer, the city council may extend this reporting period.

6. The report shall be in writing and shall include findings of fact, a summary of the relevant evidence, a statement of the issues, a resolution of the credibility of witnesses where there is conflicting testimony and a recommended decision. A copy of the report shall be served on all parties.

7. Upon receipt, the city council shall set a time for a hearing to review and consider the report. Notice of hearing shall be sent to all interested parties at least ten (10) days before the hearing.

8. After review of the hearing officer's report, the city council may adopt, reject or modify the recommended decision. In its discretion, the city council may take additional evidence at the hearing or refer the case to the hearing officer with instructions to consider additional evidence.

9. Notice of the city council's decision shall be served on all interested parties by the city clerk and the decision takes effect upon such service. If notice is mailed, service is complete when mailed. Unless otherwise provided, this notice provision shall apply to all hearings including those not conducted by a hearing officer. (Ord. C-6003 § 1, 1983).