



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

H-1

333 West Ocean Blvd • Long Beach, California 90802

November 13, 2007

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Adopt the Hearing Officer recommendations and instruct staff to deny entertainment permit application number BU20711580, issued to JAB Entertainment, Inc., DBA Sugarwalls, 1811 W. Anaheim Street. (District 1)

DISCUSSION

This matter is before the City Council to review the Hearing Officer Report of Martin J. Kotowski regarding the denial of entertainment permit application number BU20711580 for JAB Entertainment, Inc., DBA Sugarwalls, 1811 W. Anaheim Street (Attachment A).

At the direction of the City Council, an administrative hearing commenced August 23, 2007, and concluded September 17, 2007, following a lengthy history of Long Beach Municipal Code violations and un-permitted activity occurring at the business location.

Based on the evidence presented, the Hearing Officer determined the City met its burden of proof to support denial of entertainment permit application number BU20711580. Among other things, the Hearing Officer's Report concluded that:

- The permit applicant and its principals were "profoundly" involved in providing adult and non-adult entertainment without requisite permits;
- The applicant and its principals, on a regular and substantial basis, offered adult entertainment;
- The adult entertainment promoted direct physical contact with patrons of a sexual nature;
- The applicant and its principals knowingly applied for a regular non-adult entertainment permit while maintaining and facilitating adult entertainment;
- The business failed to ensure that entertainers obtain independent City of Long Beach business licenses as required by this City Council; and

- The applicant's ineffective business management, its "built-in financial disincentives" for code compliance, and the "criminal draw presented by the cash nature of its business" render any "realistic expectation" that the business will be conducted in a lawful manner "impossible."

Based on the evidence presented, the Hearing Officer recommended denying entertainment permit application number BU20711580.

This matter was reviewed by Deputy City Attorney Cristyl Meyers on October 31, 2007.

TIMING CONSIDERATIONS

City Council action on this matter is not time critical.

FISCAL IMPACT

There is no fiscal impact associated with this item.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

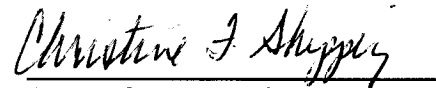


LORI ANN FARRELL
ACTING DIRECTOR OF FINANCIAL MANAGEMENT

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ATTACHMENT

APPROVED:



PATRICK H. WEST
CITY MANAGER



BEFORE THE CITY OF LONG BEACH

<p>IN RE PROCEEDINGS RE PROPOSED DENIAL OF THE APPLICATION OF:</p> <p>JAB ENTERTAINMENT, INC. FOR A PERMIT TO CONDUCT ENTERTAINMENT ACTIVITY (ENTERTAINMENT WITH DANCING BY PERFORMERS) AT 1811 WEST ANAHEIM STREET, LONG BEACH, CA 90813</p>	<p>) Entertainment Permit Application No. 20711580</p> <p>) Hearing Dates: August 23, 2007 August 30, 2007 September 17, 2007</p> <p>) Hearing Officer: Martin J. Kotowski, Esq.</p> <p>) REPORT OF HEARING OFFICER PURSUANT TO LONG BEACH MUNICIPAL CODE § 2.93.050 (6)</p>
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This matter was assigned for hearing by the Long Beach City Council to Hearing Officer Martin J. Kotowski. Applicant JAB Entertainment, Inc. is applying for a non-adult entertainment permit with dancing.

The hearing officer, having heard and reviewed the evidence and arguments presented by various departments of the City of Long Beach (hereinafter the "City"), including its police department and the department of its city attorney, as well as the applicant, its witnesses, and its

1 attorney, now presents his report pursuant to Long Beach Municipal Code § 2.93.050 (6). (All
2 section citations hereafter will be to the Long Beach Municipal Code unless otherwise specified.)
3

4 **The hearing officer recommends that the application be denied.**
5

6 **A. APPLICABLE LAW**
7

8 The City regulates entertainment locales and adult entertainment locales through various
9 sections of its municipal code (hereinafter the "Code"). In particular, it restricts adult
10 entertainment businesses to on-stage entertainment only, and separates entertainers and patrons by
11 six feet and prohibits physical contact between them. For the sake of a more understandable
12 presentation of the report, the relevant provisions are set out as an appendix to this report that can
13 be separated and read alongside this report.
14

15 **B. FINDINGS OF FACT**
16

17 Based on the evidence set forth below, the Hearing Officer makes the following findings of
18 fact:
19

20 *1) Background Facts.* The pre-existing business at 1811-15 West Anaheim Street (the
21 "location") was an adult entertainment restaurant with alcohol, owned by a corporation by the
22 name of Ruffrider Entertainment Inc. dba Sugarwalls. In June 2006, the real estate in which this
23 business was being conducted was purchased by either the applicant, JAB Entertainment, Inc., or
24 one of its principals, George Garcia. The evidence was somewhat in conflict although it is more
25 likely that the purchaser was George Garcia, JAB Entertainment, Inc.'s manager of all of its
26 business affairs and spouse to Melinda Garcia, JAB Entertainment, Inc.'s sole officer, director, and
27

1 stockholder. Melinda Garcia is only nominally involved in the running of the business, and has
2 been at the location only a few times. She devotes her time to what she considers her full time job,
3 namely being a mother to three children.
4

5 On August 29, 2006, Detective Anderson met with the Garcias at the location, and fully
6 explained to them their need to apply for their own City licenses and permits as the license and
7 permit of the old owner was not transferrable to them. The Garcias listened to Detective
8 Anderson's explanation with interest and obtained a City license for a bar with food in September
9 2006. They picked up the application package for an entertainment permit as well, but did not turn
10 in that application until March 19, 2007.
11

12 On March 15, 2007, the escrow closed on the sale of the Sugarwalls nightclub business as
13 such, which was purchased by the instant corporate applicant, JAB Entertainment, Inc.. Despite
14 the protestations of the applicant that the Garcias that before March 15, 2007, they were merely
15 involved as students of the business and should therefore not be charged with any conduct
16 occurring at the location, the Hearing Officer finds that the Garcias were deeply involved in the
17 running of the Sugarwalls nightclub business between at least the end of August, 2006 and March
18 15, 2007, and that their pre-escrow involvement in the business and the conduct of the business
19 during that time is profoundly relevant to the current permit application. Under the Code, the
20 police department is obligated to investigate the character, fitness, and qualifications of every
21 person whose name appears on the application (§ 5.72.120 (A) (5)), and both Garcias, either as
22 plenipotentiary manager or as owner and president, appear on the application in addition to JAB
23 Entertainment, Inc., the corporate applicant which they have in their exclusive possession and
24 control. If in fact their sole capacity during this period was that of being students, then their
25 conduct at this time is relevant to how they learned the business should be run. But the evidence
26 presented at the hearing shows them presenting themselves as the new owners in sole control of
27

1 this business during this time, and taking responsibility for the running of the business during this
2 time to the point of Melinda Garcia pleading no contest to running an entertainment business
3 without a City permit in February 2007. The Hearing Officer finds the applicant's testimony
4 regarding their limited role as students unpersuasive. That testimony came from the nominal
5 principal uninvolved in the day to day running of the business, Melinda Garcia, and was a simple
6 protestation of non-involvement without being backed up by specific facts. The Hearing Officer
7 finds that had the applicant been in possession of facts demonstrating non-involvement, it certainly
8 should have been able to present them through the testimony of the fully involved principal,
9 George Garcia, the plenipotentiary manager, or through the testimony of the old owner and his
10 managers. It is a basic, common sense principle of jurisprudence that the weak testimony of a
11 party who is in the position of being able to present much stronger evidence is to be distrusted.

12
13 It rather appears that the only reason for the delay of the legal transfer of the nightclub
14 business as such were delays generated by the transfer of the liquor license. On the basis of the
15 evidence presented, the Hearing Officer finds that the Garcias, principally through George Garcia,
16 were profoundly involved in the running of the business prior to March 15, 2007.

17
18 Detective Anderson knew JAB Entertainment, Inc. had obtained a business license and
19 followed up with the business license department to see whether the entertainment permit had been
20 applied for. When that application had not been turned in, the Vice Unit of the police department
21 commenced an undercover investigation that continued until at least August 2007. As a result of
22 this investigation, Melinda Garcia was criminally charged with running an entertainment business
23 without a permit. As aforesaid, she plead no contest to this infraction in February 2007.

24
25 On March 19, 2007, the currently pending non-adult entertainment permit with dancing for
26 a restaurant with food was turned in. On March 22, 2007, the various City departments conducted
27

1 a team inspection at the location on which basis JAB Entertainment, Inc. was issued a temporary,
2 probationary permit. On April 2, 2007, the Garcias made certain amendments to JAB
3 Entertainment, Inc.'s application. On May 29, 2007, the police department turned in its report
4 recommending denial of the pending permit application. On that basis, on June 29, 2007 the
5 applicant was notified of a City Council hearing on its permit application by physical delivery of
6 the notice and posting of the notice at the location, as well as delivery of all four of the City
7 department's reports, including the one from the police department recommending denial. At the
8 hearing, a further extension of the temporary, probationary entertainment permit was granted with
9 19 specific conditions, and the matter was referred to this hearing officer for a neutral hearing.

10
11 This hearing officer was selected by use of the City's blind, random selection process,
12 which prohibits this hearing officer from being again selected by the same blind, random selection
13 process until all other hearing officers on the City's list have served.

14
15 ***2) The applicant, JAB Entertainment, Inc., and its principals, the Garcias, have been***
16 ***conducting an adult entertainment business at the 1811-15 West Anaheim Street location.***

17 Under the Code, whoever conducts a business with activities defined as adult entertainment
18 conducts an adult entertainment business, whether he or she chose to call it something else or not.
19 The Hearing Officer finds that the applicant and its principals on a regular and substantial basis
20 offered entertainment that simulated sexual intercourse, in particular "lap dances" (as discussed in
21 greater detail below) as well as some of the stage dancing, and that performers regularly performed
22 in attire commonly referred as a G string. Under §§ 21.15.110 and 5.72.115, this makes the
23 business of the applicant adult entertainment, even though the applicant applied for a non-adult
24 entertainment permit.

25 //

26 //

1 **3) The adult entertainment business conducted by the applicant includes on a daily basis**
2 **direct physical contact sexual entertainment activities not permitted under the Code, as well as**
3 **on-stage an off-stage unpermitted exposure of breasts and buttocks.** As the applicant is
4 conducting an adult entertainment business, it must conduct such business in conformity with the
5 Code, but that is not the case. § 5.72.121(B) (2) (b), (c) and (d) prohibit the owner, operator, or
6 manager of an adult entertainment facility from allowing any performer to show the nipples or
7 areolas of the female breast, or permitting direct, intentional physical contact between the
8 performer and a patron, or to perform off-stage. On every occasion of the numerous undercover
9 visits by the police department these rules were violated, with such frequency that the only
10 reasonable conclusion is this occurs on a daily basis. This is particularly the case with the so-
11 called off-stage “lap dances”, which typically involve a scantily clad female performer grinding
12 her buttocks into the groin of a seated male patron, if not even more direct physical conduct aimed
13 at the physical arousal of the male patron. The evidence for on-stage unpermitted nudity was
14 somewhat more limited, but still enough to conclude that it occurs regularly.

15
16 **4) The financial structure and the cash basis nature of the Sugarwalls nightclub**
17 **business is such that it incentives unpermitted sexual entertainment activities aimed at the**
18 **sexual arousal of the male patrons.** The Sugarwalls nightclub is in an industrial section of the
19 northern part of Long Beach, and appears to be the only restaurant, bar, or nightclub business in
20 the immediate area. This location is not exactly a draw for a nightclub that can afford to put on
21 sophisticated adult entertainment that draws a paying clientele just by an elegant class act that
22 stays within the limits set by the Code. It is undisputed that the adult entertainment activities at
23 this location are what draws the clientele, particularly the lap dances. In fact, what drew the police
24 department’s initial attention were advertisements in a local newspaper for lap dance specials, i.e.
25 two for one. While there was no evidence that the advertisements persisted after the police
26 department confronted the Garcias with them, it is undisputable that the lap dancing as well as
27

1 other unpermitted sexual entertainment aimed at the physical arousal of the male patrons
2 continues. The manner in which the business raises and distributes the revenue raised by its
3 activities, and the manner of obtaining the services of its performers, unfortunately incentivises
4 unpermitted sexual entertainment activities.

5
6 Although applying as a bona fide eating place regularly serving meals for compensation,
7 little, if any, revenue is raised by the sale of foods, let alone regularly cooked meals, by the
8 admission of Melinda Garcia herself. The undercover investigation revealed no consumption of
9 food at all during its entire duration. This is the case even though under its liquor license, the
10 business cannot take in more revenue from the sale of liquor than it does from the sale of meals.

11
12 The revenue to the business is strictly from the \$ 5 cover charge and the sale of drinks,
13 overwhelmingly alcoholic drinks. The revenue to the performers are the cash tips of male patrons
14 as well as the \$ 20 charge per lap dance. This charge is apparently set by the management, but the
15 business does not get any part of the tips or the lap dance charges. These are all kept by the
16 performers as their sole remuneration for their services, as the business does not charge them a fee
17 for the privilege of performing either.

18
19 The Hearing Officer finds that the principal if not only reason for the Sugarwalls
20 nightclub's draw on its clientele are the sexual entertainment activities. There is no other reason
21 for the male patrons to go out of their way to an otherwise exclusively industrial area to have their
22 evening drinks, particularly since the snack food menu really does not give them the opportunity to
23 have a nourishing evening meal. The business thus has little, if any incentive to curtail and police
24 the entertainment activities of its performers. The business has problems retaining its performers;
25 in the words of its president "they come and go." There is no regular schedule; each day's
26 entertainment is put on with the performers that happen to show up, sometimes just a few,

1 sometimes as many as 20. Undoubtably many women will find these activities personally
2 degrading; Melinda Garcia testified that some of them do not come back after an audition. The
3 business pays them nothing, so the performers' only interest is pleasuring the male patrons so that
4 these patrons will part with their cash. If that takes a little physical contact - \$ 20 dollars is good
5 pay for a six minute lap dance. There is no reason to think that the performers have any loyalty to
6 the business, or that they look beyond that evening's tips. They have no incentive to follow the
7 rules set by the Code - Melinda Garcia testified that when it is explained to a performer that she
8 needs a City business license, that performer usually does not come back. The business clearly
9 does not have an incentive to do much such explaining.

10
11 The labor status of the performers is so unclear that it is impossible to think that
12 management could effectively introduce controls to eliminate unpermitted activities. Although
13 apparently some employee waitresses are also performers, their lap dance income certainly does
14 not flow through the business and most performers are not employees. One is even hard put to call
15 them independent contractors since the business pays them nothing. Perhaps their legal status is
16 best described as licensees who have permission to conduct their adult entertainment business on
17 premises since it conveys a crucial business benefit to the business.

18
19 Unfortunately the male clientele is by now so conditioned to unpermitted sexual
20 entertainment activities that the business would most likely lose most or all of its clientele were it
21 to put an effective stop to the unpermitted sexual entertainment activity. This is demonstrated by
22 the applicant's choice of the type of permit applied for. When Detective Anderson explained to
23 the Garcias that an adult entertainment permit allowed on-stage dancing only and a distance of at
24 least six feet between entertainer and patron, they were immediately put off by it. The only
25 conclusion one can draw is that they realized that would put an end to lap dancing, and an end to
26 their business. The reason they applied for a non-adult entertainment permit with dancing is

1 because Detective Anderson, in response to their questions, did frankly acknowledge that off-stage
2 dancing would be permitted, albeit without physical contact and unpermitted nudity.

3
4 ***5) The business does not provide the supervision required by the Code for the control of***
5 ***unpermitted entertainment activities, nor security reasonably necessary to control the draw to***
6 ***criminal types presented by the cash nature of its business.*** § 5.72.121 (B) (2) (g) requires an
7 adult entertainment business to have a security guard on duty at all times charged exclusively with
8 suppressing unpermitted entertainment activities, and not involved in other activities such as door
9 person or cover charge collector. Throughout the police department's extensive undercover
10 investigation was any such person in evidence, nor were any such suppression activities on the part
11 of management or other employees. As already noted, the business would have little if any
12 incentive to engage in such suppression efforts.

13
14 Additionally, there was evidence that the cash nature and late night conduct of the business
15 draws robbers. A dancer will not stop to take a credit card from a patron, it must be cash. There is
16 a bank ATM up the road a bit, and the local hoodlums have observed patrons stopping there before
17 going to the club. There have been robberies. In addition, some patrons react negatively when
18 their request for an after hours tryst is rejected. There has been a stabbing, fortunately without
19 permanent injury. The Hearing Officer finds that this business simply does not provide sufficient
20 security to its patrons, and given that the ATM is up the road a bit, may not be able to do so.

21
22 ***5) The police department report was timely turned in within the 60 day limit required by***
23 ***§ 5.72.120 (C), and in any event the police department was justifiably delayed in the completion***
24 ***of its report.*** At the hearing, the applicant objected to the consideration of the police department
25 recommendation of denial, in fact to the conduct of the entire proceedings, on the basis that the
26 police department turned in its report on May 29, 2007, more than 60 days after March 19, 2007,

1 when the original permit application was turned in. But § 5.72.120(C) requires the report to be
2 turned in within 60 days of the application unless justifiably delayed.

3
4 The Hearing Officer finds that the appropriate date to be counted from is April 2, 2007,
5 because this is when the applicant submitted revisions to its application. These revisions were
6 significant in that they were aimed at preserving applicant's perceived ability to offer off-stage lap
7 dancing. Were applicant's argument that these amendments must necessarily be deemed to relate
8 back to the original March 19, 2007 date accepted, this would effectively cut off 21 days from the
9 police department's 60 day period for investigating the whole application, including significant
10 amendments thereto. This would deny due process to the City.

11
12 In any event, the Hearing Officer finds that the police department's delay was justified.
13 The police department took care and time to explain the permit requirements to applicant's
14 principals in the first instance, they also took care and time in ascertaining that their
15 recommendation of denial was justified. And they have to do so with limited personnel resources.
16 It appears the extra time was used to confirm that the violations were in fact regular and
17 substantial, as they proved to be. In any event, it was a minor delay of days, not months, that did
18 not result any prejudice shown or argued by the applicant. If anything, it resulted in a financial
19 benefit to the applicant, as it was able to earn profit resulting from its unpertmitted entertainment
20 activities.

21
22 **C. SUMMARY OF THE RELEVANT EVIDENCE**

23
24 **1) The representations made on the entertainment permit application by the applicant**

25
26 The application for the entertainment permit required by the Code was introduced and
27

1 credibly verified by Jeannine Montoya, the City's Business License Supervisor in charge of
2 business license applications including entertainment permits. She testified that a business license
3 application for JAB Entertainment, Inc. dba Sugarwalls was received by the City on September 5,
4 2006. On that application Melinda Garcia was represented as the 100% owner and president of
5 JAB Entertainment, Inc. The type of business was stated to be "Bar with Food." The query
6 whether food would be sold or served was answered in the affirmative, as was the query whether
7 there would be amplified music. The reason for the application was listed as ownership change,
8 and it was stated there would be 5 employees. The query whether there would be dancing was left
9 unanswered. George Garcia signed the application as JAB Entertainment, Inc.'s authorized agent
10 and attested to the veracity of the representations under penalty of perjury.

11
12 The previous business at the location was Ruffrider dba Sugarwalls with a permit as
13 restaurant with alcohol and adult entertainment. That permit was set to expire on October 5, 2006.

14
15 Based on a team inspection by the building, fire, and health departments, a conditional
16 business license was issued to JAB Entertainment, Inc. on September 14, 2006.

17
18 The City received an application for a permit for entertainment with dancing by performers
19 on March 19, 2007, now signed by Melinda Garcia with an attestation as to its veracity under
20 penalty of perjury. It was now represented there would be no employees. The authorized
21 agent/manager/contact person was stated to be George Garcia. It was represented JAB
22 Entertainment, Inc. rented or leased the building facility from its owner, George Garcia. Melinda
23 Garcia was stated to be the only officer of the corporation. The business was represented to be a
24 "bonafide eating place", expressly defined as "a place which is regularly used for serving meals for
25 compensation, which has suitable kitchen facilities containing conveniences for cooking an
26 assortment of foods for ordinary meals other than fast foods, sandwiches, or salads." The types of

1 foods to be sold were listed as chicken, pizza, tacquitos, and egg rolls. "Entertainment -
2 Restaurant" was checked, rather than "Entertainment - Tavern (bar)" or "Entertainment - Other."
3 It was represented there would be two security officers and a doorman, and a private security firm
4 by the name of D.C. Network would be used. An admission fee of \$ 5 was currently charged after
5 8 PM, with plans to raise it to \$ 10 in the future. The entertainment by performers was described
6 as "Bikini Stage Dancing." The application expressly disavowed that there would be adult
7 entertainment as defined by §§ 21.15.110 and 5.72.115 (B). The stage was described as an area of
8 about 200 square feet elevated to a 2 ft. 8 in. height. The application disavowed any other
9 entertainment not specifically checked off in the application. The section completed by the City's
10 personnel indicates that the prior owner had in the meantime renewed his license until October 5,
11 2007. That extended expiration date was confirmed by evidence submitted by the applicant,
12 showing that this renewal for the prior owner's permit was obtained on February 23, 2007.

13
14 The City subsequently received on April 2, 2007 revisions to the March 19, 2007
15 entertainment application. Now there would be no private security firm, the description of the
16 entertainment by performers was changed to "Bikini Dancing", and karaoke entertainment was
17 added. Based on these applications, a probationary permit valid until August 1, 2007 was issued
18 by the City on April 4, 2007.

19
20 **2) Detective Anderson's testimony**

21
22 Detective Chris Anderson was the lead detective in charge of the police department's
23 investigation. He has been with the police department over 24 years, and with its vice
24 administration section over 4 years. He testified in a credible manner, and this hearing officer has
25 no reason to disbelieve any of the specifics of his testimony.

1 His first visit to the business was on August 29, 2006. The business was closed at the time,
2 as it had not opened yet. He was there during the day, and the business' typical hours were in the
3 evening. He had contacted George Garcia previously phone because of an ad for Sugarwalls he
4 saw in a local paper, the Long Beach Press Telegram. The ad indicated lap dance specials. At the
5 time there was still a valid permit by the prior owner, but one of the conditions of the adult
6 entertainment permit is that there can be no lap dances. The entertainer cannot leave the stage.

7
8 Detective Anderson recorded this initial meeting with the Garcias and their manager Nick
9 Santora in a contemporaneous file report. This report was admitted into evidence at the hearing as
10 Detective Anderson verified its authenticity and mode of preparation. Additionally, the Hearing
11 Officer finds that the specific hearsay exceptions of Evidence Code § 1271 (Business Records) and
12 § 1280 (Public Employee Record) apply to this report and all the other reports prepared by the
13 investigating officers in this matter. This is the sort of evidence on which responsible persons are
14 accustomed to rely in the conduct of serious affairs.

15
16 The Garcias represented themselves as the new owners of the establishment. They
17 represented themselves as now operating the business. Detective Anderson explained to them the
18 necessity to apply for a Long Beach business license and entertainment permit and an alcohol
19 license of their own, and that they could not just run a business owned by someone else. At the
20 time, neither the Garcias nor JAB Entertainment, Inc. had a valid ABC liquor license nor the City
21 business license or entertainment permit, but it appeared they were operating the business,
22 providing entertainment, and serving liquor. However, the police department's policy is to first
23 advise and educate new business owners, trying to be business friendly. They are not required to
24 shut them down immediately. The police department only takes action if it becomes convinced the
25 new business is not acting in good faith.

1 Detective Anderson explained the Code's adult entertainment conditions as there were
2 apparent violations, and explained what they needed to do to get a business license and
3 entertainment permit. He provided copies of the relevant code provisions. He discussed the
4 distinction between an adult entertainment permit application and a non-adult entertainment permit
5 application. In his own words, he explained while a non-adult entertainment permit would allow
6 live music, live amplified music, a disc jockey, karaoke or dancing, while the adult entertainment
7 permit covered entertainment by performers displaying specific anatomical parts of their bodies.
8 The Garcias preferred the non-adult entertainment permit because the dancer could actually come
9 off stage. Also, under an adult entertainment permit the patrons have to be at least six feet away
10 from the stage, and they had chairs lined up along the stage. Further, the adult entertainment
11 permit code sections forbid physical contact between performer and patron, and they wanted that
12 ability. The Garcias agreed to follow the rules and get the necessary permits. To Detective
13 Anderson, the Garcias were receiving new information they had not heard before, and were
14 showing a lively interest in it.

15
16 He did not visit the premises again for more than 6 months, but he followed the Garcias'
17 progress in making the appropriate licence and permit applications by telephone calls to other City
18 departments. When by November 2006 an entertainment permit application had not been
19 submitted, and he was still seeing advertisements in the paper, he suggested to his investigatory
20 team that an ongoing violation for providing entertainment without a permit was occurring, and
21 that the appropriate investigation should be undertaken.

22
23 A November 29, 2006 investigatory report (discussed further in conjunction with Detective
24 Castellanos' testimony) reported lap dances with physical contact between performer and patron
25 suggesting sexual intercourse. The performers were wearing G-strings. Detective Anderson
26 reviewed this official document in the performance of his duties. He concluded that adult
27

1 entertainment was being provided, albeit exceeding the limitations set by the Code, all without any
2 entertainment permit. He directed the undercover officers to go back, which they did in early
3 December. They again found dancers performing in G-strings, and a lap dance with the performer
4 grinding her buttock into a patron's pelvis. They also observed a DJ, again an activity that
5 requires an entertainment permit. He then referred the matter to the City prosecutor for a criminal
6 complaint against the owner, Melinda Garcia. A criminal case was filed. An official court record
7 shows that on February 28, 2007 Melinda Garcia plead no contest to a violation of § 5.72.110 (A),
8 an infraction, and paid a fine of \$ 530. Only after this conviction did JAB Entertainment, Inc.
9 apply for an entertainment permit.

10
11 Further, one police report dated February 3, 2007 reported a robbery as the club closed at 2
12 AM. \$ 250 were forcibly taken from the victim in the parking lot. A February 7, 2007 police
13 report shows a stabbing of a female patron by a male patron in the parking lot, when his advances
14 were rebuffed. A February 27, 2007 police report shows two more forcible robberies of patrons in
15 the vicinity of the club, patrons who were walking to the club from a nearby ATM at about 11:30
16 PM. It is part of Detective Anderson's official duties to consider such incidents in helping prepare
17 the police department's recommendation to the City Council on an application for a permit. These
18 reports suggest lack of security.

19
20 Detective Anderson's next visit to the establishment was during the March 22, 2007 team
21 inspection for the entertainment permit. The Garcias were present. They went over the permit
22 application with them, particularly the type of entertainment that was to be provided. He pointed
23 out to them that if they marked a query into a particular type of entertainment as "no", as they did
24 with karaoke, then that type of entertainment could not be provided. "If you mark no, that's
25 always no." He suggested they make changes now, otherwise they would have to reapply in the
26 future. He also pointed out that the description "Bikini Stage Dancing" would limit dancing to the
27

1 stage. He also explained to them that they had to watch it with the off-stage lap dances. If it was
2 simulated sex or touching of the genitals, it was not okay. If it was simply a person dancing in
3 front of another person without those behaviors, it was okay. The Garcias then made those
4 amendments in early April, 2007.

5
6 But it still appeared entertainment was still currently being provided even though an
7 entertainment permit had not yet been issued. In the regular course of his official business,
8 Detective Anderson was also informed of the conditions that the California Department of
9 Alcoholic Beverage Control ("ABC") had imposed on JAB Entertainment, Inc.'s March 13, 2007
10 liquor license. As a restaurant with alcohol, its sales of liquor could not exceed its sales of liquor,
11 a bona fide restaurant had to be maintained on the premises, and there could not be topless
12 entertainment. During this time he learned that the escrow on the actual Sugarwalls business as
13 such closed on March 15, 2007.

14
15 However, even after the application for the entertainment permit was turned in and a
16 temporary permit was issued, official police reports continued to show adult style entertainment,
17 including physical contact lap dances simulating sex, and baring of the female breast. It is part of
18 Detective Anderson's official duties to consider such incidents in helping prepare the police
19 department's recommendation to the City Council on an application for a permit.

20
21 He then authored the police department's recommendation to deny JAB Entertainment,
22 Inc.'s entertainment permit application, which was subsequently approved and initialed by Chief
23 Anthony W. Batts. The report concludes that the applicant has consistently demonstrated a failure
24 to conduct the business in accordance with the law. He hand carried the report to the Financial
25 Management Department on May 29, 2007.

1 On cross-examination, he was asked what circumstances beyond the City's control justified
2 the delivery of the police department report more than 60 days after the March 19, 2007 permit
3 application filing date, as called for by § 5.72.120 (C). He answered that the department's
4 investigation was still going on and required extra time. Undercover investigations are driven by
5 the limited availability of vice officers for assignment. In this case, the investigation for the police
6 department report was not concluded until May 25, 2007.

7
8 JAB Entertainment, Inc.'s temporary non-adult entertainment permit was extended by the
9 City Council for the duration of these hearing proceedings by letter of July 13, 2007. This letter,
10 which Detective Anderson authored, set out 19 additional conditions that basically reiterated the
11 specific requirements of the law that the applicant and its performers have to observe anyway, and
12 some conditions that were aimed at improving security. Condition 14 required all dancers working
13 as independent contractors to have a business license.

14
15 **3) Sergeant Lee Debrabander's testimony**

16
17 He is assigned to night field investigations in the Vice unit. He was at JAB Entertainment,
18 Inc.'s business on Anaheim Street for purposes of investigating the business for the entertainment
19 permit application. He was first at the Sugarwalls nightclub in April 2006 when he thinks he
20 remembered observing lap dances, although he admits it was some time ago. He described lap
21 dances as follows:

22
23 "A male patron will pay a female patron ... to perform a dance. The dance is very sexual in
24 nature where the male is seated on a seat. The female comes up and will grind on the male
25 patron's waist, below the waist area, I guess, genitalia area, as well as rub their breasts on
26 the male patron's face. And while that's going on, the maneuvers that they are doing

1 simulate sexual intercourse.”

2
3 He was again at Sugarwalls on December 9th, 2006, conducting an undercover
4 investigation. A dancer on stage was wearing a bra and a G string. Another was performing a lap
5 dance, straddling the patron and grinding her pelvis on his.

6
7 The next investigation was on May 25, 2007. On this occasion he again observed the
8 dancer on stage with a G string and a bra type top. He struck up a conversation with one dancer
9 who told him she was making her money by performing lap dances. She performed one on him,
10 rubbing her covered breasts into his face, straddling him with one leg on the out side of each thigh,
11 and then moving up and down simulating sexual intercourse in the seated position. Upon being
12 asked whether she was allowed to show her breast, she fully bared both of her breasts. Then she
13 turned around and simulated sex from the rear, in the seated reverse cowgirl position. All the
14 while, she moved her hips back and forth, as well as around and around. In every position, she
15 ground her buttock/genitalia into his. Afterward, she pressed her breasts into his face again,
16 alternating from breast to breast. Subsequently, she performed another lap dance even more
17 aggressively. She again bared her breasts, this time without being asked. (The sergeant noted he
18 was careful to keep his hands to himself.) After the dancing, the performer then advertised private
19 shows together with another woman for \$ 200 for two hours. The sergeant also observed other
20 overt sexual behavior, such as a male patron rubbing his fingers over the vagina area of a
21 provocatively positioned performer, and two other performers providing lap dances to patrons.

22
23 The dancer who performed the lap dances on the sergeant was subsequently arrested and
24 criminally charged. The outcome of the charge was still pending at the hearing.

25 //

26 //

1 **4) Detective Armand Castellanos' testimony**

2
3 He conducted an undercover investigation at Sugarwalls on November 26, 2006. He
4 observed a DJ providing music, dancers performing on stage and mingling with the patrons,
5 providing lap dances simulating sex, and pulling the male patrons' faces between their breasts.
6

7 There was a door person collecting the \$ 5 cover charge and checking identification. The
8 door person would also at times search entering patrons for weapons. A bartender took and filled
9 drink orders. A DJ provided music. They counted seven dancers that night. The detective's
10 report of this night's investigation gives graphic details of the sexual nature of the lap dance
11 performances, for all intents and purposes identical to the ones described above by other police
12 officers.
13

14 He conducted an undercover investigation at Sugarwalls on April 25, 2007. What
15 happened that night was essentially the same as what happened on the previous nights, except
16 there was no security at the door. The DJ asked the audience to guess whether the dancer on stage
17 had pink or brown nipples. The dancer then exposed her nipples for a couple of seconds. The
18 same dancer later exposed her breast again during a lap dance on another officer. When the officer
19 asked whether she did anything else on the side, the dancer answered in the affirmative but said it
20 would cost \$ 500/hr. When the officer asked what he would get for that, she answered
21 "Everything." The dancer then put on a bit more hard to get attitude, but left the door open and
22 suggested the officer would have to get a room the next day. The next dancer on stage also
23 exposed her areolas to the crowd. At no time did management, security, or the bartender intervene
24 to stop such behavior.

25 //

26 //

1 He again conducted an undercover investigation earlier in August 2007 and observed the
2 same type of entertainment as on previous occasions.

3
4 He did not observe any food being served any time he was at the location. He never saw
5 silverware, nor condiments like ketchup or mustard or any other food items. On his various visits,
6 the number of dancers varied between 5 and 13. In addition, there usually was a person working
7 the door, a bartender, and someone taking drink orders.

8
9 **5) Detective John Harrigan's testimony**

10
11 He was part of the undercover investigation on April 14 , 2007. The dancer on stage was
12 wearing a thong bottom and simulated sex with the help of a pole. Tip money was being thrown
13 on stage. One of the next dancers exposed her breasts. The dancers wore G strings underneath
14 their bikini bottoms, which they would reveal during a part of their performance. Buttock clefts
15 were observable. Other performers were doing lap dances of the type already described, receiving
16 money for them. On these and the approximately 3 other occasions he was there, he did not see
17 food being served. One of the dancers asked one of the undercover detectives to buy her a drink,
18 which is an ABC violation.

19
20 He was again part of the April 20, 2007 undercover investigation. Again, there was a
21 dancer on stage, and others providing lap dances. He observed at least ten. During one provided
22 to him, the dancer exposed her bare buttock while simulating sex. The security guard did nothing
23 to stop the simulated sex dances. He also observed patrons vanishing into closed rooms with
24 performers. Patrons had direct contact with the dancer on stage when they stuffed money into their
25 bikini bottoms. Nobody did anything to curtail such behavior.

1 He was also part of the April 25, 2007 undercover investigation. On this occasion, a dancer
2 pulled down her bikini top, exposing her bare breasts. Tips were being put on stage. The DJ had
3 asked the audience to guess whether she had pink or brown nipples. He was the other officer
4 already described in Detective Castellanos' testimony, and he verified that testimony. During the
5 lap dance he got from the dancer, she pulled her bikini top to the side and attempted to put her bare
6 breast into his face. On this night, there were two dancers on stage who exposed their breasts.

7
8 He was also part of the August 2007 undercover investigation. The dancers on stage
9 exposed the cleft of their buttocks. One patron smacked a dancer with his bare hand on the back
10 of her buttocks a couple of times, and then placed his head between the cheeks simulating he was
11 smelling.

12
13 On all the occasions he was there, the entertainment activities provided qualified as adult
14 entertainment under the Code.

15
16 **6) Business Services Officer Richard Bartlett's testimony**

17
18 His areas of responsibility are business licenses, entertainment licenses and department
19 citations. He is familiar with JAB Entertainment, Inc.'s business on Anaheim Street. On Friday,
20 June 29, 2007, he went there to drop off paper work regarding the hearing and post a notice of the
21 hearing at the establishment. These papers included the reports from the various City departments,
22 including the one from the police department recommending denial of the application. He
23 dropped it off with a manager by the name of Eddie. There was a dancer on stage. Some dancers
24 were sitting with the customers. Some were performing lap dances. One was sitting in a man's
25 lap and physically rubbing back and forth.

1 He also went there the following Friday regarding the change from entertainment to adult
2 entertainment. He discussed the lap dances with Eddie. Eddie thought the performers were hard
3 to control. When they dance by the mirror, they can see him coming and avoid his supervision.
4

5 He was asked whether any of the performers had come in to apply for a business license,
6 and they had not. If JAB Entertainment, Inc. was instead employing them as employees, such
7 would have had to be disclosed to the City, and additional tax would have to be paid. But no
8 information about additional employees was ever received.
9

10 **7) The Applicant's only witness by choice: Melinda Garcia**
11

12 Applicant JAB Entertainment, Inc. presented as its only witness its president, Melinda
13 Garcia. She is the only officer, director, and shareholder of this corporation. She testified that
14 JAB Entertainment, Inc. acquired the physical real estate located at 1811-15 West Anaheim Street
15 on June 12, 2006 (although elsewhere her husband George Garcia is represented to be the owner of
16 the real estate), that JAB Entertainment, Inc. at that time did not acquire the business that was
17 being conducted at that location. That only occurred on March 15, 2007. She claimed that before
18 March 15, 2007 JAB Entertainment, Inc. had no right to control or operate that business. But she
19 testified she was at the location prior to that date, learning how to run the business.
20

21 She was contacted in August 2007 by Detective Anderson about an ad in the paper to
22 which Detective Anderson took certain exceptions. She claims she did not run the ad, nor did JAB
23 Entertainment, Inc. run the ad. She does not know whether she told that to Detective Anderson,
24 though. She claims she never told Detective Anderson she was the new owner of the business.
25 The owner of the business prior to March 2007 was a corporation by the name of Ruffrider, owned
26 by Randy Yuge. After this meeting, in September she obtained the paperwork for an entertainment
27

1 permit application, filled it out, but did not turn it in until March 2007. But business as usual
2 continued at the location.

3
4 She explained her no contest plea on February 28, 2007 as "the best thing to do at that
5 time." Since she was in escrow to purchase the business, she would just pay the fine, move on,
6 and be in good standing with the City in which the business was located. It was the easier way to
7 go. She did not disclose the conviction on the entertainment permit application. She
8 acknowledged that before entering into the plea, the judge advised her she could have an attorney,
9 and advised her of the consequences of a no contest plea, and that she entered the plea voluntarily,
10 knowingly, and intelligently.

11
12 Between August 2006 and March 2007, she was at Sugarwalls just one time. She is the
13 new owner, but she personally does not run the business. She was at the business altogether maybe
14 about five times, when they were considering buying it, when they bought the land in 2006, but
15 since the close of escrow, only once. She was not present when the City conducted its inspection,
16 and does not know who represented JAB Entertainment, Inc. for that inspection. She is not at the
17 business because her main job in life is being a full-time mother to three children. Her husband
18 George Garcia runs the business. He is there just about every day. She stated they filled out the
19 entertainment permit application together, are good citizens, and would run the business in a
20 lawful manner.

21
22 She testified there are two security guards at the business on a daily basis, to check ID and
23 to make sure people were behaving. She stated neither she nor JAB Entertainment, Inc. would
24 ever knowingly permit a performer to knowingly expose her breasts or her buttocks, engage in
25 activities that simulated sexual intercourse, solicit sexual activity or the purchase of drinks. They
26 have a list of rules posted in the dressing room, and speak with the dancers every week about what

1 is expected of them. Those rules prohibit the exposure of breasts or the cleft of buttocks, which is
2 reinforced at the weekly meetings. The same goes for activities simulating sexual intercourse, or
3 soliciting either sex or alcoholic beverages. This is done at her direction. Between March 2007
4 and these proceedings, no one from the City contacted her about there being a problem on these
5 counts. She was not aware of any.

6
7 The business is open seven days a week for more than eight hours a day. She does not have
8 an approximation about how many performers are there on average. "Sometimes a lot of girls
9 show up to work. Sometimes there's auditions, girls say they're gonna show up, they never show
10 up again." JAB Entertainment, Inc. does not have a specific number of dancers under contract
11 who are required to show up for a shift on pain of being terminated. "They come and go." There
12 could be three dancers, there could be twenty. She was unable to answer the question whether the
13 dancers were employees, independent contractors, or lessees, although some employees apparently
14 also dance. Her management advised her that the non-employee dancers who were asked to go to
15 the City to get their own business license typically do not come back to perform at Sugarwalls.
16 She acknowledged that the business does not insure that non-employee dancers get business
17 licenses from the City.

18
19 Sugarwalls features alcoholic drinks and an appetizer menu. There is a functioning kitchen
20 with refrigeration and cooking facilities. But she admits they do not sell much food. The primary,
21 majority source of revenue is from the sale of alcohol. She acknowledged this was a violation of
22 the conditions of her ABC license. JAB Entertainment, Inc. does not derive any revenues from the
23 dancers, the dancers keep all the money they receive from doing dances. JAB Entertainment, Inc.
24 does not charge the dancers a fee to be there. She admitted, however, that the dancing attracted
25 patrons.

1 Asked why they did not apply for an adult entertainment permit as was held by the previous
2 business, she explained that after the meeting with Detective Anderson where they went over the
3 differences between the two types of permits, they thought it better to go with regular rather than
4 adult entertainment. "We wanted to have legitimate, clean business, and we wanted to have a little
5 room for anything going wrong, bad things happen." They did not intend to have adult
6 entertainment. She does not think a dancer exposing her breast is a regular course of conduct at
7 the business. If it happened, a dancer would be warned not to do it again. If she persisted, she
8 would not be able to come back.

9
10 On cross-examination, she showed herself to be uninformed about the prior corporate
11 history of JAB Entertainment, Inc., which had different officers and directors, including her
12 husband, prior to her becoming sole officer, director and shareholder. She acknowledged she
13 appointed her husband not only as agent for purposes of entering contracts on behalf of JAB
14 Entertainment, Inc., but as manager as well.

15
16 "I am the owner, I do participate in some of the decision making, and I kind of know
17 what's going on there."

18
19 She demonstrated a lack of familiarity with how the corporate finances were handled,
20 including but not limited to the number of employees for who taxes were withheld, or the handling
21 of tax documentation. She does not know the names of the managers who work under George,
22 and is unsure of how many of them there are. The incident observed by Detective Harrigan, where
23 he saw dancers and patrons entering a room, she explained as visits to the on-site office:

24
25 "No, but my husband does have friends who come by frequently, and they know that's
26 where he is most of the time. So where Detective Harrigan may have thought he saw

1 patrons entering a room with dancers, it was most likely friends of my husband's going in,
2 saying hi, sitting down, and that's what it was."

3
4 She acknowledged that in the August 2006 meeting with Detective Anderson, he was very
5 clear with them as to what would be required, what the distinctions between adult and non-adult
6 entertainment were. She acknowledged that he explained up front there were certain prohibitions,
7 no exposed breasts, no direct contact with patrons, no simulated sex acts,
8

9 **D. STATEMENT OF THE ISSUES**

10
11 *1) Was the appropriate permit applied for?* No. This is an application for a non-adult
12 entertainment permit with dancing, but the business is an adult entertainment business. As
13 discussed above, the reason for this was to preserve the mistakenly believed ability to present the
14 lap dance entertainment, which as done here is necessarily adult entertainment. The application
15 should be denied on this basis.
16

17 *2) If the application is changed to the appropriate adult entertainment permit*
18 *application, does the City have a realistic expectation that the business will be conducted in a*
19 *lawful manner in accordance with its municipal code?* No. § 5.72.120 (D) (4) requires the City
20 Council to determine that the persons the persons interested in the ownership and the operation of
21 the applicant entity and the officers and trustees of the entity are law abiding persons and persons
22 who will operate and conduct the business or activity in a lawful manner; and that the public
23 peace, welfare and safety will not be impaired. Based on the actual conduct of the business by the
24 Garcias, the built-in financial disincentives for all its participants to comply with the Code, and the
25 criminal draw presented by the cash nature of its business, such an expectation is unrealistic, and
26 the application should be denied on that basis as well.
27

1 3) *Is the conduct of the applicant's principals in conjunction with the Sugarwalls*
2 *nightclub business at 1811-15 West Anaheim Street prior the legal acquisition of that nightclub*
3 *business on March 15, 2007 relevant and can it be used to show the applicant is not likely to*
4 *conduct an entertainment business that conforms with the Code?* Yes.

5
6 Either George Garcia or the applicant, JAB Entertainment, Inc., (the evidence was
7 somewhat in conflict although it likely was George Garcia) acquired the physical real estate on
8 which the Sugarwalls nightclub business is being conducted, 1811-15 West Anaheim Street, in
9 June 2006. The prior owner conducted an adult entertainment business at the premises, with the
10 appropriate permit from the City. However, even though the building had been transferred, the
11 transfer of the business being conducted at those premises was more complicated because it
12 involved the transfer of the liquor license, which was time consuming. The escrow required for
13 the transfer of that license did not close until March 15, 2007. The applicant argued at the hearing
14 that because of that fact, all evidence of events occurring before March 15, 2007 should not be
15 considered at all in conjunction with this application. The relevant events are 1) an August 29,
16 2006 meeting between the Garcias and the lead detective, Detective Anderson, in which he
17 reviewed in detail the permit requirements of the City, 2) the failure of the applicant or the Garcias
18 to apply for an entertainment permit even though they were issued a business license in September
19 2006 and picked up the paperwork for the entertainment permit application, 3) a November 26,
20 2006 undercover investigation that revealed lap dances, 4) a November 29, 2006 undercover
21 investigation that revealed unpermitted adult entertainment activities and resulted in 5) a criminal
22 infraction citation issued to Melinda Garcia for conducting unpermitted entertainment activities to
23 which 6) Melinda Garcia knowingly and intelligently plead no contest on February 28, 2007, 7) a
24 December 9, 2006 undercover investigation revealing a lap dance and G string attire, as well as 8)
25 February 2007 police reports showing that the cash entertainment business of the Sugarwalls night
26 club was drawing robbers, resulting in crimes, including a stabbing.

1 The applicant's only evidence was its president Melinda Garcia's testimony, already held to
2 be of questionable credibility, that they were mere students of the business at that time and that
3 others were responsible for its conduct. As discussed above, even if this were so, it would be
4 relevant to show what they learned as such students. But in fact they were deeply involved in the
5 running of the business, and taking responsibility for running it to the point of a personal, criminal
6 no contest plea to an infraction of running an entertainment business without a permit.

7
8 *4) Was the applicant's due process rights impermissibly compromised by the City's*
9 *purported delay in providing discovery?* No.

10
11 The applicant contends that it requested full discovery of all factual allegations against it on
12 July 6, 2007, and that the City did not comply with the request until August 10, 2007, and then
13 imperfectly. This means that the City did not produce what is included as Exhibit A to the
14 proceedings. The applicant contends that this unconstitutionally deprived it from preparing for the
15 August 23, 2007 commencement of the hearing 13 days later.

16
17 Not so. The applicant does not mention that the crucial police department report
18 recommending denial was physically delivered to the applicant's location on June 29, 2007. That
19 report discusses the basis for the recommendation of denial, including unpermitted nudity and lap
20 dancing. Besides that report, most of the documentation in Exhibit A was documentation equally
21 available to the applicant, either documentation submitted by the applicant with the application, or
22 documentation in the public record that the applicant knew about anyway, such as Melinda
23 Garcia's no contest plea, or copies of relevant municipal code provisions, which are readily
24 available on the City's website any time of day. The only thing the applicant did not have were
25 the specific police reports discussed in the police department's report in summary form. It is hard
26 to know what benefit the applicant would have drawn from the specific police reports, as it is not

1 in evidence that the applicant keeps a written record of its performers; they just “come and go” and
2 are not even scheduled for shifts. The Hearing Officer is not persuaded that it could have located
3 the dancers involved unless these dancers just happened to show up. But in that case, it could have
4 asked these performers about their conduct and asked them to testify and disavow their alleged
5 conduct.

6
7 Further, while the City started putting on its case on August 23, 2007, the applicant’s turn
8 to put on its case did not come until September 17, 2007, 38 days after the production of Exhibit
9 A. Applicant thus had substantial time to conduct an investigation of the specific allegations
10 against it, with the benefit of on-going discovery of the City Attorney’s case by virtue of cross-
11 examination of his witnesses in the two hearings on August 23 and 30 prior to the presentation of
12 its case. Yet it chose to put on the weakest possible evidentiary case, presenting only the
13 testimony of the nominal principal of its business uninvolved in the running of day to day affairs.
14 If there had been evidence contradicting even one of the police reports or even a portion of it,
15 surely it could have been presented by then, with an argument that more such exculpatory evidence
16 could be found if given more time. The Hearing Officer concludes that applicant chose to make
17 such a weak evidentiary showing because it concluded that the cross-examination of witnesses
18 more directly involved in the business, such as performers, doormen, or the plenipotentiary
19 manager, would have been far too damaging to its case. Unless the applicant had clearly
20 exculpatory evidence to even a portion of the police testimony, the Hearing Officer is hard put to
21 think of what evidence, if any, could have excused the physical contact lap dancing and the
22 unpermitted nudity.

23
24 At the hearing, the Hearing Officer denied the applicant’s motion to dismiss conditionally
25 because the applicant argued prejudice in the abstract, without a specific demonstration of
26 particular prejudice. During the course of three hearings over almost a month, the applicant failed

1 to demonstrate any such particular prejudice.

2
3 Further, the relief applicant requested, namely to dismiss the City's case, is simply not
4 available. While this hearing officer serves in a quasi-judicial function, that does not make him a
5 judge of the superior court. What the applicant was requesting was in essence that the Hearing
6 Officer grant summary judgment in its favor. But that is completely outside this hearing officer's
7 authority. This hearing officer is appointed to save the City Council's limited time by taking the
8 time necessary for a careful and detailed review of all the evidence the parties choose to present,
9 and by providing a neutral buffer between that evidence and the City Council, which is necessarily
10 a political body. After completing the duty of taking evidence, the hearing officer's only other
11 charge is to make a recommendation to the City Council. Thus, all the hearing officer could do in
12 granting applicant's motion to dismiss is to recommend to the City Council to either start the
13 process all over again, or to find itself estopped from denying the requested entertainment permit.
14 In light of the overwhelming evidence that this is an adult entertainment business inherently
15 incapable of controlling its unpermitted entertainment activities, the failure of the applicant to
16 demonstrate actual prejudice, and the very weak and unpersuasive case presented by the applicant,
17 apparently out of necessity, this Hearing Officer finds there was no actual prejudice to the
18 applicant.

19
20 That said, this Hearing Officer thinks the City's compliance with disclosure requirements
21 was not perfect and could stand improvement. Timely disclosure is important. This Hearing
22 Officer did exclude from evidence, and from consideration for this report, two late produced police
23 reports. Although this Hearing Officer concludes that in the overall picture this nonetheless does
24 not prevent a fully and appropriately considered recommendation of denial, this Hearing Officer
25 recommends that timely disclosure be given a greater priority in the future, and that appropriate
26 policies be enacted to insure a more timely disclosure.

1
2 ***5) Is the City's hearing officer selection process constitutionally random and unbiased?***

3 Yes. The applicant rightfully pursued an inquiry into the fairness of the City's hearing officer
4 selection process. This Hearing Officer made additional disclosures at the commencement of the
5 hearing showing that the City's selection process did not provide him with an expectation of repeat
6 business that would bias him in favor of the City. The City's selection process from its panel of
7 128 qualified hearing officers is random and blind, and this hearing officer has no realistic
8 expectation to be selected again by this random and blind selection process for years to come.
9

10 **E. CONCLUSION AND RECOMMENDATION**

11
12 For the foregoing reasons, this Hearing Officer recommends that JAB Entertainment, Inc.'s
13 application permit for entertainment with dancing be denied.
14

15 Dated: October 28, 2007

Respectfully Submitted,

16
17
18 _____
19
20 Martin J. Kotowski
21
22
23
24
25
26
27
28

1 **APPENDIX OF RELEVANT LONG BEACH MUNICIPAL CODE PROVISIONS**

2

3 **5.04.030 Application--Rejection.**

4

5 In the event that a particular department of the city rejects an application for the reason that such

6 business or the location at which it is proposed to be conducted will not comply with applicable

7 laws and ordinances, no permit shall be issued, and the application shall be denied.

8 ...

9

10 **5.06.020 Suspension/ Revocation/ Denial.**

11

12 A. Any permit to do business in the City issued pursuant to this Title 5 may be suspended, revoked

13 or denied in the manner provided in this Section upon the following grounds:

14 1. The permittee or any other person authorized by the permittee has been convicted of violation of

15 any provision of this Code, State or Federal law arising out of or in connection with the practice

16 and/or operation of the business for which the permit has been granted. A plea or verdict of guilty,

17 or a conviction following a plea of nolo contendere is deemed to be a conviction within the

18 meaning of this Section. ...

19 ...

20 5. The permittee has failed to comply with any condition which may have been imposed as a

21 condition of operation or for the issuance of the permit required under the provisions of this Code;

22 ...

23 //

24 //

25 //

26 //

1 **5.72.110 Permit required and prohibited uses.**

2
3 A. No person shall carry on, maintain or conduct any entertainment activity in the city without first
4 obtaining a permit therefor from the city.

5 ...

6
7 **5.72.115 Definitions.**

8
9 A. "Entertainment activity" means any activity conducted for the primary purpose of diverting or
10 entertaining a clientele in a premises open to the general public. Such activity shall include, but
11 shall not be limited to, dancing, whether by performers or patrons of the establishment, live
12 musical performances, instrumental or vocal, when carried on by more than two persons or
13 whenever amplified; musical entertainment provided by a disc jockey or karaoke, or any similar
14 entertainment activity involving amplified, reproduced music.

15 B. "Adult entertainment activity" means the presence of any performer, dancer, employee, agent,
16 model or other person in any place of entertainment who engages in any specified sexual activity
17 (as that term is defined in Section 21.15.110 of this code), who exposes any specified anatomical
18 part (as that term is defined in Section 21.15.110 of this code), or who performs in attire
19 commonly referred to as pasties or a g-string, or any other opaque covering which does not expose
20 the areola or nipples of the female breast, and/or covering the natal cleft and covers one inch or
21 less on either side of the entire length of the natal cleft and two inches or less across the pubis from
22 the end of the natal cleft to the top of the pubic bone.

23 //

24 //

25 //

26 //

1 **5.72.120 Permit application filing and process.**

2 ...

3 (A) 5. The chief of police shall investigate the character, fitness and qualifications of every person
4 whose name appears on the application subsequent to each person submitting to fingerprinting for
5 that purpose.

6 ...

7 (D) 4. ... [I]f the city council determines that the application is complete and truthful; that where
8 the applicant is an entity, it is a bona fide entity, organized and conducted for a lawful purpose;
9 that the applicant, the persons interested in the ownership and the operation of the entity and the
10 officers and trustees of the entity are law abiding persons and persons who will operate and
11 conduct the business or activity in a lawful manner; and that the public peace, welfare and safety
12 will not be impaired, then either: (a) the application shall be approved, (b) a short-term permit, as
13 described in section 5.72.126 below, shall be approved, or (c) the application shall be denied..

14 (Emphasis added)

15 ...

16 **5.72.121 Permit application filing and process for adult entertainment.**

17 ...

18 B. Issuance of permit—Investigation.

19 ...

20 2. Standards for approval of permit. The city manager or designee shall approve and issue an
21 entertainment permit if the application and evidence submitted demonstrates that:

22 ...

23 b. No owner, operator or manager shall permit any entertainer or employee on the premises of the
24 adult entertainment business to engage in a showing of the human male or female genitals, pubic
25 hair, anus, cleft of the buttocks, or vulva with less than a fully opaque covering, and/or the female
26 breasts with less than a fully opaque covering over any part of the nipple or areola and/or covered

1 male genitals in a turgid state. This provision may not be complied with by applying an opaque
2 covering simulating the appearance of the specific anatomical part required to be covered.

3 c. No owner, operator or manager shall permit any entertainer or employee on the premises of the
4 adult entertainment business to have intentional physical contact with any patron.

5 d. No owner, operator or manager shall permit any person to perform for patrons any entertainment
6 except upon a stage at least eighteen inches (18") above the level of the floor which is separated by
7 a distance of at least six feet (6') from the nearest area occupied by patrons, and no patron shall be
8 permitted within six feet (6') of the stage while the stage is occupied by an entertainer.

9 ...

10 f. All indoor areas of the place of entertainment in which patrons are permitted, except restrooms,
11 will be open to plain view, unaided by mirrors, electronic monitoring devices or other devices at
12 all times from all public portions of the establishment.

13 g. At least one permitted, authorized security guard shall be on duty within the premises at all
14 times while the adult entertainment business is open for business. The security guard shall be
15 charged with preventing violations of the law and enforcing compliance by patrons with the
16 requirements of this chapter. No security guard required pursuant to this subsection shall act as a
17 door person, ticket seller, ticket taker, or attendance person while acting as a security guard. (See
18 also § 5.72.140 C 1,2,3,5,6)

19 ...

20 **5.72.135 Permit nontransferable.**

21
22 A. Any permit issued pursuant to this chapter 5.72 shall not be transferred or assigned to another
23 person for any purpose. Any change in ownership shall require a new permit.

24 ...

25 //

26 //

1 **5.72.145 Suspension, denial or revocation.**

2
3 A. Noncompliance. Failure to comply with any of the provisions of this chapter 5.72, including
4 any conditions attached to the permit at the time of approval, will constitute grounds for
5 suspension, denial, or revocation of the permit.
6

7 ...
8 **21.15.110 Adult entertainment business.**

9
10 "Adult entertainment business" refers to any use defined in this section.
11 ...

12 E. "Cabaret" means a nightclub, theater or other establishment which features live performances
13 by topless and/or bottomless dancers, exotic dancers, strippers, wrestlers, or similar entertainers,
14 and where such performances are distinguished or characterized by an emphasis on specified
15 sexual activities or display specified anatomical areas.
16 ..

17 I. For the purpose of this section, "specified anatomical areas" include:

- 18 1. Less than completely and opaquely covered human genitals, pubic region, buttock, and female
19 breast below the point immediately above the top of the areola; and
20 2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

21 J. For the purpose of this section, "specified sexual activities" include:

- 22 1. Actual or simulated sexual intercourse, anal intercourse, oral or anal copulation, bestiality,
23 pedophilia, necrophilia, direct physical stimulation of unclothed genitals, flagellation or torture in
24 the context of sexual relationship, or the use of excretory functions in the context of a sexual
25 relationship; or
26 2. Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or
27

- 1 3. Use of human or animal masturbation, sodomy, oral copulation, coitus, ejaculation; or
- 2 4. Fondling or touching of nude human genitals, pubic region, buttocks or female breast; or
- 3 5. Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or
- 4 6. Erotic or lewd touching, fondling or other contact with an animal by a human being; or
- 5 7. Human erection, urination, menstruation, vaginal or anal irrigation.

6 K. For the purpose of this section, "regular and substantial basis" means presenting such material
7 on four (4) or more days within any calendar month. Presenting such material on three (3) or fewer
8 nonconsecutive days within a calendar month with at least seven (7) days between the days the
9 material is presented shall be deemed occasional or incidental and not a violation. However,
10 presenting such material on consecutive days or with less than a seven (7) day interval between
11 showings is a violation. An establishment under one ownership or management at one location
12 shall be considered one "business" even though there may be more than one screening room or
13 viewing room at that location.