



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

H-4

333 West Ocean Blvd • Long Beach, California 90802

February 12, 2013

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive the supporting documentation into the record, conclude the hearing and adopt the hearing officer's recommendation to revoke business license number BU07066691 issued to Augie Doggie Enterprises LLC, located at 3401 Orange Avenue. (District 7)

DISCUSSION

Augie Doggie Enterprises, LLC, holds a commercial/industrial business license issued to the property located at 3401 Orange Avenue, Long Beach, CA 90807 (Parcel/Tax ID #: 7146-026-021 and 5,362 square footage). The commercial business license was issued in accordance with the Long Beach Municipal Code (LBMC) Section 3.80.236 – Tax on Rental of Nonresidential Property. This commercial business license governs multiple business addresses on the parcel, including 1175 East Wardlow Road. Organic Market Garden (OMG), a medical marijuana dispensary and cultivation site, has been operating at 1175 East Wardlow Road since March 2011. In accordance with LBMC Chapter 5.89, adopted February 14, 2012, this type of activity is prohibited. In February 2012, the City initiated enforcement measures to seek compliance, including mailing and posting of cease and desist letters to the property owner, issuing administrative citations, criminal citations and compiling liens. To date, the City has issued 65 administration citations, totaling over \$32,000. Due to non-compliance, the citation amounts have become property liens.

Due to the on-going violations, the City began the business license revocation process to revoke business license number BU07066691, in accordance with LBMC Section 3.80.429.1.

The following is a chronology of the process to date:

- On May 16, 2012, a business license revocation hearing was conducted, in compliance with LBMC Section 3.80.429.1. On May 30, 2012, the hearing officer recommended to the Director of Financial Management to revoke business license number BU07066691 (Attachment A).

HONORABLE MAYOR AND CITY COUNCIL

February 12, 2013

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- On June 6, 2012, the Department of Financial Management revoked the business license issued to Augie Doggie Enterprises, LLC, located at 3401 Orange Avenue (Attachment B), due to violations of the LBMC and state law.
- The licensee lodged its written request for appeal on June 13, 2012 (Attachment C). Pursuant to LBMC Section 3.80.429.5, a licensee can appeal the revocation of a business license 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, in accordance with LBMC 2.93.050(A).
- On July 10, 2012, the City Council referred the appeal of the business license revocation for Augie Doggie Enterprises, LLC, to a second hearing officer.
- On October 17, 2012, the revocation appeal hearing was held. The hearing officer randomly assigned by the City Clerk's Office to hear the matter was Cynthia S. Floyd, Esq.
- On December 4, 2012, the hearing officer recommended that the business license issued to Augie Doggie Enterprises, LLC, be revoked due to violations of LBMC Section 3.80.429.1(Attachment D).

LBMC Section 2.93.050 requires that the City Council set a hearing to review and consider the hearing officer's report and recommendation. After review of the hearing officer's report, the City Council may adopt, reject or modify the recommended decision. If the license is revoked, the legal and conforming businesses currently occupying the other business addresses will not be affected; however, pursuant to LBMC 3.80.429, any new business license applications will not be accepted for a period of one-year following the revocation.

This matter was reviewed by Deputy City Attorney Kendra Carney on January 7, 2013.

TIMING CONSIDERATIONS

The hearing date of February 12, 2013 has been posted on the business location, and the property owner has been notified by mail.

FISCAL IMPACT

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

HONORABLE MAYOR AND CITY COUNCIL
February 12, 2013
Page 3

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,




JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT

ES:smc
K:\Exec\Council Letters\Business Relations\Hearing Letters\02-05-13 ccl - Augie Doggie Enterprises LLC - Hearing Officer Recommendation.doc

ATTACHMENTS

APPROVED:



PATRICK H. WEST
CITY MANAGER

ATTACHMENT A

INITIAL HEARING:

**HEARING OFFICER'S REPORT
AND RECOMMENDATION**

MAY 30, 2012

ATTACHMENT A

RAMSEY

May 30, 2012

Larry G. Herrera,
City Clerk
City of Long Beach
333 West Ocean Boulevard
Long Beach, CA 90802

Attn: Irma Heinrichs

Re: Report and Recommendation of Hearing Officer

Matter of City of Long Beach Business License Number BU07066691
issued to Augie Doggie Enterprises LLC

Dear Mr. Herrera:

On May 16, 2012, I conducted an administrative hearing to show cause why the captioned business license should not be revoked pursuant to Long Beach Municipal Code §3.80.429.1.

The hearing was recorded. The recording is in your possession.

The hearing has been completed.

This letter constitutes my report and recommendation.

1. INTRODUCTION

In this report:

- The City of Long Beach is referred to as "the City."
- The Director of Financial Management for the City is referred to as "the Director."
- Augie Doggie Enterprises LLC is referred to as "the Licensee."
- The improved real property commonly known as 3401 Orange Avenue, Long Beach, is referred to as "the Premises."
- City of Long Beach Business License Number BU07066691 is referred to as "the License."

THOMAS A. RAMSEY · A PROFESSIONAL CORPORATION · LAWYER

NINETEENTH FLOOR 111 WEST OCEAN BOULEVARD LONG BEACH, CALIFORNIA 90802-4632
VOICE 562-436-7713 FACSIMILE 562-436-7313 E-MAIL bizlawwiz@aol.com

ATTACHMENT A

Report and Recommendation of Hearing Officer

Matter of City of Long Beach Business License Number BU07066691 issued to Augie Doggie Enterprises LLC

May 30, 2012

Page Two

- All references to titles, chapters or sections, without an accompanying reference to a specific code, are to the Long Beach Municipal Code.

Accompanying this report is a copy of the exhibits introduced by the City at the hearing. They are numbered 1-9.

The basis for this hearing is found in §§3.80.429.1 and 3.80.429.5, which provide as follows:

- The belief that a licensee has failed to comply with applicable ordinances or statutes empowers the Director to notice a hearing at which the licensee may show cause why the license should not be revoked.
- Following such a hearing and receipt of the hearing officer's report, the Director may revoke or suspend the license.
- In the event the license is revoked by the Director, the licensee has the right to file a written appeal to the Long Beach City Council.

2. HEARING LOCATION AND DATE

Pursuant to written notice (Exhibit 1), the matter was heard at Long Beach City Hall, 333 West Ocean Boulevard, Seventh Floor Large Conference Room, on May 16, 2012, commencing at 12:10 p.m.

3. PARTIES AND COUNSEL

The City was represented by the Long Beach City Attorney, through Kendra L. Carney, Deputy City Attorney.

The Licensee was represented by Charles M. Farano.

4. STATEMENT OF THE ISSUE BEFORE THE HEARING OFFICER

The issue in this matter is as follows: Is the Licensee operating its commercial rental business at the Premises outside the scope of the authorized business activities identified in its business license?

ATTACHMENT A

Report and Recommendation of Hearing Officer

Matter of City of Long Beach Business License Number BU07066691 issued to Augie Doggie Enterprises LLC
May 30, 2012

Page Three

5. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY THE CITY

Eric Sund (City of Long Beach Business Relations Manager) and Ray Gehring (City of Long Beach License Inspector) testified on the City's behalf.

Exhibits 1-9, introduced by the City, were placed into evidence.

The testimony of Eric Sund was as follows:

- The Licensee holds title to the Premises (Exhibit 3).
- Business license number BU07066691, issued to the Licensee, permits the Licensee to lease all or any portion of the Premises to others (Exhibit 2).
- On various visits to the Premises, it was determined that one of the Licensee's lessees operates a medical marijuana collective, apparently under the name "OMG."
- At the conclusion of each visit to the Premises which resulted in the discovery of the operation of a medical marijuana collective on at least a portion of the premises, an administrative citation was issued to the collective and posted on its portion of the Premises. Additionally, written notice was sent to the Licensee, advising it that the collective is operating in violation of Long Beach Municipal Code Chapter 5.89 (Exhibit 4).
- Written notice of this hearing, in the form of Exhibit I, was mailed to the Licensee.

Ray Gehring testified that he had visited the Premises on various occasions, during which he observed transactions involving the sale of marijuana by the collective.

6. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY THE LICENSEE

Brian Zanzucchi testified, apparently on behalf of the Licensee, and explained the relationship between the Licensee and the collective.

Mr. Farano submitted a brief on behalf of the Licensee, which has been reviewed. It appears and the Licensee's Exhibit A.

ATTACHMENT A

Report and Recommendation of Hearing Officer
Matter of City of Long Beach Business License Number BU07066691 issued to Augie Doggie Enterprises LLC
May 30, 2012
Page Four

7. FINDINGS OF FACT

The findings of fact are as follows:

- A. The Licensee is the owner of the Premises.
- B. Business license number BU07066691, issued to the Licensee, authorizes the Licensee to operate a commercial/industrial space rental business at the Premises.
- C. One of the Licensee's lessees is known as OMG.
- D. OMG operates a medical marijuana collective, in violation of Long Beach Municipal Code Chapter 5.89 (Exhibit 4).
- E. Written notice was sent to the Licensee, advising it that one of its lessees, the collective, is operating in violation of Long Beach Municipal Code Chapter 5.89 (Exhibit 4).
- F. The Licensee has knowledge of the nature of the business of the collective.
- G. The collective continues to operate from a portion of the Premises.
- H. Written notice of this hearing was mailed to the Licensee.

8. RECOMMENDATION

The business license issued to the Licensee allows the Licensee to operate a commercial/industrial space rental business at the Premises. By leasing/renting/licensing/permitting an unlicensed medical marijuana dispensary on the Premises, the Licensee is operating outside the scope of the authorized business activities identified in his business license.

In this factual setting, it is recommended that Long Beach Business License Number BU07066691 issued to Augie Doggie Enterprises LLC be revoked.

Respectfully submitted,



THOMAS A. RAMSEY

TR:dc
Attachments as noted

ATTACHMENT B

LETTER:

**BUSINESS LICENSE
REVOCAION CONFIRMATION
LETTER**

JUNE 6, 2012



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

333 W. Ocean Boulevard, 4th Floor • Long Beach, CA 90802 • (562) 570-6212 FAX (562) 570-6180

BUSINESS RELATIONS BUREAU
BUSINESS LICENSE SECTION

June 6, 2012

Augie Doggie Enterprises LLC
2901 E. Pacific Coast Hwy.
Signal Hill, CA 90755

RE: Notice of Business License Revocation
Business License Number: BU07066691

Dear Sir or Madam:

Please be advised that **business license number BU07066691**, issued to Augie Doggie Enterprises LLC, located at 3401 Orange Avenue, Long Beach, CA 90807 **has been revoked**, pursuant to Long Beach Municipal Code ("LBMC") section 3.80.429.1, subsection (b), **effective June 6, 2012**. Pursuant to LBMC section 3.80.429.1, you have 10 calendar days from the date of this letter to request an appeal, otherwise the revocation will be final.

Failure to cease operations at this location after June 16, 2012 shall constitute a criminal offense pursuant to Long Beach Municipal Code sections 3.80.429.1, subsection (a) and 3.80.210.

Pursuant to Long Beach Municipal Code section 3.80.429.5, a request to appeal must be in writing, must set forth the specific ground or grounds on which it is based, and must be accompanied by a non-refundable cashier's check or money order, made payable to the City of Long Beach, in the amount of \$1,205. The request for appeal must be submitted to the Office of the Long Beach City Clerk, located at 333 W. Ocean Boulevard, Long Beach, California, not later than 4:00 p.m. June 16, 2012. Should you have any questions, please contact me at (562) 570-6663.

Sincerely,

Erik Sund
Manager, Business Relations Bureau

I have received notification of the above:

Attachments
ES:smc

cc: Kendra Carney, Deputy City Attorney
Council District 7

Name/Title

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).

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).

ATTACHMENT C

APPEAL REQUEST:

**LICENSEE'S WRITTEN
REQUEST FOR AN APPEAL**

JUNE 13, 2012

Augie Doggie Enterprises, LLC

2901 Pacific Coast Hwy, Signal Hill, CA 90755 (562) 983-6700

6/13/2012

Office of the Long Beach City Clerk
333 W. Ocean Blvd.
Long Beach, CA 90802

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LONG BEACH, CA
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Appeal of Decision Regarding BU07066691

TO WHOM IT MAY CONCERN:

Denied Access

The Official Transcripts of the Hearing should reflect that as the Property Manager I was denied access to the Hearing. It was boggling to me that the Hearing Officer didn't want me in the room. Perhaps it was due to the contentious hearing on the previous property were the City was shown to be corrosive, inaccurate, unfair, and just plain wrong that strained the Hearing Officer's ability to be impartial.

Or was it that the Hearing Officer knew that he had been partial in allowing a poorly balanced agenda to be completed in the case just prior to the Augie Doggie hearing. The hearing was starting over an hour behind schedule due to the private consultation with witnesses and the Deputy Prosecutor in advance of the previous hearing. The Hearing Officer was rude and unprofessional. He stated that he wanted me to leave. I never got past the door jam. City staff was outside the door where I was attempting to enter telling me I had to leave.

This was an embarrassment to all judicial proceedings. Proof of this should be in the transcripts that were requested by the property manager from Erik Sund (Business License Officer), Kendra Carney (Deputy City Prosecutor), and Robert Shannon (City Prosecutor). To date, no transcripts have been made available.

Due to the lack of transcripts from the meeting it is hard to know what to specifically appeal to. However, there is evidence that the pre-concluded hearing would have repeated heresy,

ATTACHMENT C

innuendo, false evidence, etc. Suffice to say, the main reason for the appeal is that the Hearing Officer didn't want the property manager in the room.

I felt threatened from both his actions toward me (tape recording will reveal the veracity and intonation) and the seventh floor staff outside the door telling me to leave the area. Not wanting to get into legal trouble I left the building. Fifteen minutes later when the Hearing Officer realized he had made an error by not letting the property manager enter the hearing, he didn't reschedule the hearing. That would have been the correct and fair thing to do.

However, realizing that he had made a mistake by excluding the 'noticed' property manager from the hearing, the Hearing Officer asked for the tenant who was allowed to sit at the hearing table to call the property manager's assistant. The assistant was unable locate the property manager to request him to return to for the hearing.

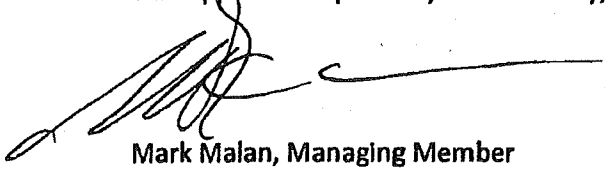
CONCLUSION

So, after the property manager was excluded from the hearing by the Hearing Officer, that decided to conduct the hearing anyway. I have no knowledge of what was said or presented. It is inexcusable to have the 'noticed' party forced from the hearing and to continue to conduct the hearing in his absence. This wasn't a failure to appear. This was trial after refused admission.

If this isn't evidence of the Hearing Officer being partial to the prosecution I don't know what is.

I ask that the Decision be vacated and that a transcript of the past hearing to be made available for further litigation purposes. It is a public record and I was promised a copy. This Decision flies in the face of fairness and can't be presumed to be fair or accurate.

This Appeal is respectfully submitted by,



Mark Malan, Managing Member
Augie Doggie Enterprises, LLC

ATTACHMENT D

APPEAL HEARING:

**HEARING OFFICER'S REPORT
AND RECOMMENDATION**

DECEMBER 4, 2012

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**BEFORE THE ADMINISTRATIVE HEARING OFFICER FOR THE CITY OF
LONG BEACH, CALIFORNIA**

**ADMINISTRATIVE HEARING TO
SHOW CAUSE WHY BUSINESS
LICENSE NO BU07066691 ISSUED TO
AUGIE DOGGIE ENTERPRISES LLC,
LOCATED AT 3401 ORANGE AVE,
LONG BEACH, CALIFORNIA, SHOULD
NOT BE REVOKED PURSUANT TO
LBMC 3.80.429.1**

**REPORT AND RECOMMENDATION OF
ADMINISTRATIVE HEARING OFFICER**

I.

JURISDICTION AND PROCEDURAL HISTORY

Following a business license revocation hearing conducted on May 16, 2012,
Administrative Hearing Officer Thomas A. Ramsey ("Hearing Officer") recommended that the
Director of Financial Management revoke business license number BU07066691 issue to Augie
Doggie Enterprises LLC located at 3401 Orange Avenue, Long Beach, California, 90802 ("the
premises") due to violations of Long Beach Municipal Code ("LBMC") section 5.89 (Ex. 9). As
a result, on June 6, 2012, the City of Long Beach ("Appellee") revoked the business license (Ex.
12, p. 2).

IV.

DISCUSSION

For all the foregoing reasons, the revocation of business license number BU0766691 should be upheld.

A. The Hearing Officer was Fair and Impartial

Standards of due process entitle Appellant to oppose revocation of his license, including the right to a fair and impartial decision maker. (*Linney v. Turpen* (1996) 42 Cal.App.4th 763, 770, 49 Cal.Rptr. 2d 813. Due process rights to a fair tribunal apply to administrative hearings, as well as to court proceedings. The California Supreme Court “construes the state Constitution's due process guaranty of a fair and impartial administrative decision maker in the same manner as the federal courts have interpreted parallel provisions in the federal Constitution.” (*Burrell v. City of Los Angeles* (1989) 209 Cal.App.3d 568, 582, 257 Cal.Rptr. 427.) However, “[d]ue process does not require a perfectly impartial hearing officer for, indeed, there is no such thing.” (*Linney, supra*, at pp. 770-771, 49 Cal.Rptr.2d 813.) Due process requires only a “‘reasonably impartial, noninvolved reviewer.’” (*Linney, supra*, at pp. 770-771, 49 Cal.Rptr.2d 813.) However, “[d]ue process does not require a perfectly impartial hearing officer for, indeed, there is no such thing.” (*Burrell, supra*, at p. 576, 257 Cal.Rptr. 427.) (*Linney v. Turpen* (1996) 42 Cal.App.4th 763, 770, 49 Cal.Rptr.2d 813; *Burrell, supra*, at p. 577, 257 Cal.Rptr. 427.)

In the instant matter, Appellant asserts that the Hearing Officer was not an impartial and unbiased hearing officer. However, no compelling evidence of impartiality or bias has been presented. Appellant Mark Malan alleges that the Hearing Officer was rude and unprofessional

ATTACHMENT D

1 (Ex. 11, p. 5). He further asserts that the Hearing Officer did not want him in the room during
2 the hearing. (Id.). However, this is not evident upon review of the hearing transcript. (Ex. 10).
3 Moreover, witness testimony provided at the hearing on October 17, 2012 fails to provide any
4 factual basis for these accusations. Consequently, there is insufficient evidence to find that the
5 Appellant was deprived of right to a fair and impartial hearing officer or deprived of any other
6 due process right. Accordingly, the Appellant's request to vacate the business license revocation
7 and to schedule a re-hearing on this ground is not warranted
8

9
10 B. The Record Demonstrates that Appellant Exercised the Right to Present Evidence and
11 Cross Examine Witnesses.
12

13 The record reflects that appellant Mark Malan was represented by legal counsel, Mr.
14 Farano on May 16, 2012. The transcript conclusively demonstrates that Mr. Farano, on behalf of
15 appellant, presented witness testimony and entered exhibits into the record for the hearing
16 officer's consideration. Mr. Farano cross-examined the Appellee's witnesses in behalf of the
17 appellant as well. Mr. Farano was present on behalf of appellant, stated that on the record,
18 presented the case, and did not contradict any of that at the appeal hearing on October 17, 2012.
19 As a result, the case law provided by appellant is not on point, as it related only to cases in which
20 the determining board obtained evidence outside of the presence of the party involved or his
21 attorney.
22

23
24 In contrast, Appellant's attorney was present and actively involved in asserting
25 appellant's rights at the hearing on May 16, 2012. The City has no authority to force a business
26 license holder to attend. Additionally, when a business license holder is appropriately noticed
27
28

ATTACHMENT D

1 and represented by an attorney at an administrative hearing, the City has met all procedural due
2 process requirements.

3 V.

4 CONCLUSION

5 Ultimately, the administrative proceedings of May 16, 2012 were fundamentally fair.
6 Appellant was not deprived of any due process right to a fair hearing.
7

8
9 RECOMMENDATION

10 The City provided Augie Doggie Enterprises, LLC with a fair administrative hearing that
11 complied with all the requirements of due process. Appellant was properly notice and appeared
12 at the hearing on May 16, 2012 by representation of his counsel Mr. Farano. Mr. Farano
13 presented witness testimony and exhibits, and cross examined the Appellee's witnesses.
14 Therefore, the undersigned recommends that Appellant's request for a rehearing be denied and
15 that the revocation of business license BU07066691 issued to Augie Doggie Enterprises LLC be
16 denied.
17

18
19
20 Dated: December 4, 2012

21 
22 **CYNTHIA S. FLOYD**
23 **HEARING OFFICER**
24
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