



# CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

# C-6

333 West Ocean Blvd • Long Beach, California 90802

October 23, 2012

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

Refer to Hearing Officer the business license revocation appeal by John W. Mitchell, located at 1742 E. Broadway, Long Beach, CA 90802. (District 2)

## DISCUSSION

On September 21, 2012, the Department of Financial Management revoked the business license issued to John W. Mitchell, located at 1742 E. Broadway, Long Beach, CA 90802 (Attachment A), due to violations of the Long Beach Municipal Code (LBMC) and state law.

On July 26, 2012 and August 16, 2012, a business license revocation hearing was conducted, in compliance with LBMC Section 3.80.429.1. On September 20, 2012, the hearing officer recommended the Director of Financial Management revoke business license number BU07048000 (Attachment B).

Pursuant to LBMC Section 3.80.429.5, a licensee can appeal the revocation of a business license to the City Council. The licensee lodged its written request for appeal on September 27, 2012 (Attachment C). 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 Section 2.93.050(A).

This matter was reviewed by Deputy City Attorney Kendra Carney on October 2, 2012.

## TIMING CONSIDERATIONS

If referred, upon selection of a hearing officer, the matter will be heard not less than thirty (30) days thereafter.

## FISCAL IMPACT

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

HONORABLE MAYOR AND CITY COUNCIL  
October 23, 2012  
Page 2

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



JOHN GROSS  
DIRECTOR OF FINANCIAL MANAGEMENT

JG:ES:smc  
K:\EXEC\COUNCIL LETTERS\BUSINESS RELATIONS\HEARING LETTERS\10-23-12 CCL - JOHN W MITCHELL REFER TO HO.DOC

ATTACHMENTS

APPROVED:



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PATRICK H. WEST  
CITY MANAGER



# 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

September 21, 2012

John W. Mitchell  
P.O. Bo 2225  
Palm Springs, CA 92263

RE: Notice of Business License Revocation  
Business License Number: BU07048000

Dear Sir or Madam:

Please be advised that **business license number BU07048000**, issued to John W. Mitchell, located at 1742 E. Broadway, Long Beach, C A 90802 **has been revoked**, pursuant to Long Beach Municipal Code ("LBMC") section 3.80.429.1, subsection (b), **effective September 21, 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 October 1, 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. October 1, 2012**. Should you have any questions, please contact me at (562) 570-6663.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik Sund".

Erik Sund  
Manager, Business Relations Bureau

I have received notification of the above:

\_\_\_\_\_  
Name/Title

**Attachments**

ES:smc

cc: Kendra Carney, Deputy City Attorney  
Council District 2

**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).*

RECEIVED  
CITY CLERK  
September 20, 2012, CA.

12 SEP 20 PM 2: 31

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

Attn: Irma Heinrichs

Re: Report of Hearing Officer  
Matter of City of Long Beach Business License Number BU07048000 issued to John W. Mitchell

Dear Mr. Herrera:

On July 26, 2012, and on August 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 July 26, 2012, hearing was recorded. The recording is in your possession. The August 16, 2012, event was basically an informal effort to resolve the issues involving the license. As such, I believe it was not recorded.

This letter constitutes my report and recommendation. It supplements my August 2, 2012, report to you, a copy of which is attached to this report.

### **1. INTRODUCTION**

In this report:

- A. The City of Long Beach is referred to as "the City."
- B. The Director of Financial Management for the City is referred to as "the Director."
- C. John W. Mitchell is referred to as "the Licensee."
- D. The improved real property commonly known as 1742 East Broadway, Long Beach, is referred to as "the Premises."
- E. City of Long Beach Business License Number BU07048000 is referred to as "the License."

THOMAS A. RAMSEY - A PROFESSIONAL CORPORATION - LAWYER

## ATTACHMENT A

Report and Recommendation of Hearing Officer  
Matter of City of Long Beach Business License Number BU07048000 issued to John W. Mitchell  
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- F. Mark Rosebush, doing business as The Giving Tree, a tenant/lessee of the Licensee occupying a portion of the Premises, is referred to "Rosebush."
- G. A restaurant/bar, another tenant/lessee of the Licensee occupying the remaining portion of the Premises, is referred to as "The Brit."
- H. All references to titles, chapters and sections, without an accompanying reference to a specific code, and those to "the Code" are to the Long Beach Municipal Code.

Accompanying this report is a copy of the exhibits introduced on July 26 and on August 16, 2012.

- A. Those introduced by the City are numbered 1-12.
- B. Those introduced by the Licensee are lettered A – D and F.
- C. That introduced by Rosebush is lettered E.

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

- A. 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.
- B. Following such a hearing and receipt of the hearing officer's report, the Director may revoke or suspend the license.
- C. 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 LOCATIONS AND DATES***

Pursuant to written notice, the matter was first heard at Long Beach City Hall, 333 West Ocean Boulevard, Seventh Floor Large Conference Room, on July 26, 2012, commencing at 11:30 a.m.

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The matter was again heard on August 16, 2012, commencing at 9:00 a.m. As outlined above, this hearing was, in reality, an informal effort to resolve the issues involving the License.

Written notice of each hearing date was served upon the Licensee. A copy of each notice is found as Exhibit 1.

### ***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 Richard Brakefield.

Rosebush was represented by Lee Durst.

The Brit did not appear and was not represented by counsel.

### ***4. STATEMENT OF THE ISSUE BEFORE THE HEARING OFFICER***

The issue in this matter is as follows: Is the Licensee operating his rental business at the Premises outside the scope of those activities authorized by the business license issued to him by the City?

### ***5. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY THE CITY ON JULY 26, 2012***

Eric Sund, City of Long Beach Business Relations Manager and Brett Yakus, City of Long Beach Customer Service Representative Lead, testified on the City's behalf.

Exhibits 1-10, introduced by the City, were placed into evidence.

The evidence, based on the testimony of the City's witnesses and the content of the City's exhibits, is as follows:

- A. The Licensee is the owner of the Premises, according to the records of the Los Angeles County Assessor (Exhibit 4).

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September 20, 2012

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- B. The Licensee holds a business license by which he is authorized to operate a commercial/industrial space rental business at the Premises (Exhibits 2 and 3). The business license permits such a business as long as the lessees/tenants leasing/renting a space on the Premises operate a business in compliance with federal, state and local laws and regulations.
- C. Prior to March 8, 2012: The City determined that Rosebush operated a business selling marijuana on the Premises.
- D. March 8, 2012: The City, through the City Attorney, served the Licensee and Rosebush, by certified mail, return receipt requested, and by first class mail, an Administrative Citation Warning Notice that Rosebush's marijuana sale business on the Premises was in violation of the Long Beach Municipal Code (Exhibit 5). The notice was also personally served on Rosebush. The notice advises the Licensee that if Rosebush's marijuana sale business does not cease its operations at the Premises, an administrative citation will be issued against the Licensee.
- E. Following the March 8, 2012, Administrative Citation Warning Notice, and between March 13, 2012, through June 21, 2012: Business license compliance inspections were conducted at the Premises. During each inspection it was determined that Rosebush was selling marijuana at the Premises, with the Licensee's permission, in violation of the Long Beach Municipal Code. On each occasion, an Administrative Citation was issued (Exhibit 6).
- F. No business license of any kind has been issued to Rosebush. Prior to the issuance of any business license by the City, the proposed business premises must be inspected by the City's building department to assure no violations of the City's building code exist and by the Fire Department to assure the fire safety of the premises. None of these inspections has been sought or completed.

### **6. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY THE LICENSEE ON JULY 26, 2012**

The Licensee testified as follows:

- A. The activities covered by the License include leases to The Brit and to Rosebush.
- B. The lease to The Brit has been in place for many years.
- C. To the Licensee's knowledge, there are no issues between the City and the operators of The Brit.



## ATTACHMENT A

Report and Recommendation of Hearing Officer  
Matter of City of Long Beach Business License Number BU07048000 issued to John W. Mitchell  
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- D. Following receipt of the notice from the City (Exhibit 5), the Licensee initiated an unlawful detainer action against Rosebush in the South District of the Los Angeles Superior Court (*Mitchell v. Rosebush*, Case No. 12U01099), referred to below as "the Lawsuit." Rosebush was served with the Summons and Complaint. He filed and served an answer to the Licensee's Complaint. The matter was tried in Department South "B", before Patrick T. Madden, on July 26, 2012, prior to the commencement of the July 26, 2012, administrative hearing. The court did not rule from the bench. Its ruling was not known by the time the July 26, 2012, administrative hearing took place. However, prior to the August 16, 2012, administrative hearing the court issued its judgment in favor of the Licensee. A copy of the minute order was introduced at the August 16, 2012, hearing as Exhibit F, and placed into evidence.

### **7. CLOSING ARGUMENTS ON JULY 26, 2012**

Counsel for the City and counsel for the Licensee presented oral closing arguments.

### **8. FINDINGS OF FACT**

The findings of fact are as follows:

- A. The Licensee is the owner of the Premises.
- B. The Licensee holds business license number BU070348000 by which he is authorized to operate a commercial/industrial space rental business at the Premises to lease/rent space to lessees/tenants who operate businesses at the Premises in compliance with federal, state and local laws and regulations
- C. One lessee/tenant of the Licensee is The Brit, which appears to be operating in compliance with the Code.
- D. A second lessee/tenant of the Licensee is Rosebush.
- E. No inspection of the Premises by the City's Fire Department or its building department, a condition precedent to the issuance of a business license, was sought by Rosebush.
- F. Rosebush has no business license of any kind issued by the City.
- G. Rosebush sells marijuana from the Premises, in violation of the Code.

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- H. The Licensee is aware of the business of Rosebush.
- I. This hearing was conducted pursuant to the written notice served on the Licensee.

### **9. THE STIPULATION BETWEEN THE PARTIES ON JULY 26, 2012**

Although the evidentiary process (with the exception of two exhibits introduced on August 16, 2012) was completed on July 26, 2012, the parties, through counsel, stipulated that the hearing officer would make no recommendation while awaiting the outcome of the Lawsuit.

### **10. EVENTS SUBSEQUENT TO JULY 26 AND PRIOR TO AUGUST 16, 2012**

Between July 26 and August 16, 2012, the following occurred:

- A. A judgment was rendered in the Lawsuit in favor of the Licensee and against Rosebush. The court determined that the lease under which Rosebush holds the Premises is forfeited.
- B. Following receipt of a copy of the court's judgment, Licensee applied to the Superior Court for the issuance of a Writ of Possession to obtain possession of the Premises.
- C. On August 9, 2012, in response to an *ex parte* application by Rosebush, the court issued an order to stay the issuance of the Writ of Possession. The court also calendered a status conference for **November 8, 2012**.

### **10. THE AUGUST 16, 2012, HEARING**

Pursuant to the stipulation of the parties, the hearing reconvened on August 16, 2012, at Long Beach City Hall, 333 West Ocean Boulevard, Fifth Floor Large Conference Room, commencing at 9:00 a.m.

At this hearing, the Lawsuit documentation supporting the unlawful detainer judgment against Rosebush and the order, issued *ex parte*, against the enforcement of the judgment were introduced into evidence as Rosebud's Exhibit E and the Licensee's Exhibit F.

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### **11. THE STATUS OF THE MATTER FOLLOWING THE AUGUST 16, 2012, HEARING**

Following the conclusion of the August 16, 2012, hearing, the factual setting was as follows:

- A. Although the Licensee has a judgment in the Lawsuit to recover the Premises from Rosebush, the court has issued a stay on the enforcement of the judgment.
- B. Unless the stay is reversed, no further action in the Lawsuit will occur until November 8, 2012.
- C. If the City moves ahead and revokes the Licensee's License, the revocation will probably affect the validity of the lease between the Licensee and The Brit inasmuch as the Licensee would have no license to lease any portion of the property, including the portion to The Brit.
- D. The Brit has no involvement in this matter.
- E. In all likelihood, Rosebush will continue to operate his unlicensed business.

### **12. THE HEARING OFFICER'S OBSERVATIONS**

The hearing officer's observations are as follows:

- A. There is no doubt that the leasing/renting of a portion of the Premises by the Licensee to Rosebush is outside the activities permitted by the License.
- B. However, upon becoming aware that the License was in jeopardy because of Rosebush's activities on the Premises, the Licensee took action to terminate Rosebush's tenancy.
- C. The Licensee obtained a favorable court judgment in the Lawsuit against Rosebush, terminating the tenancy. The Licensee immediately took steps to enforce the judgment.
- D. Subsequently, Rosebush applied *ex parte* to the court in the Lawsuit and obtained a stay on the enforcement of the judgment against him, seemingly on the basis that his patients would otherwise face hardship. Apparently, in its process of balancing competing hardships, the court did not consider the hardship on the Licensee (loss of all income) and The Brit (an innocent tenant who will face financial ruin if he loses his lease and his ability to continue his business). Whether the elements of this balance were brought to the court's attention is unknown inasmuch as the application for the stay was not introduced at the August 16, 2012, hearing.

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- E. At present, Rosebush is allowed, by a court ruling, to continue the operation of his unlicensed business while the Licensee faces revocation of the License and The Brit risks the destruction of his lawful business.
- F. If the License is revoked, the Licensee will be unable to obtain a new license for one year and, in every application for another license, will be required to disclose that the License was revoked.

Unless an approach is found to resolve this matter other than a blanket revocation of the License, the now judicially protected and unlicensed activities of Rosebush will be the basis of financial ruin of the Licensee and the destruction of the lawful business of The Brit.

Hopefully, a logical approach exists to somehow separate the Licensee's activities concerning the unlicensed Rosebush from those concerning The Brit.

One possible solution is the surrender of the License and the issuance of a new license to the Licensee applicable only to his lease to The Brit. This relationship should not be jeopardized by the continued efforts of Rosebush to retain his physical occupancy of the remainder of the Premises.

Unfortunately, this hearing officer has no power to place a hold on the License termination process with regard to the lease to Rosebush, notwithstanding the fact that Rosebush is utilizing the legal process to extend his tenancy as long as possible.

The fact that the Licensee has probably taken all practical steps to end the possession of Rosebush does not alter the conclusion that the Licensee is acting in violation of those provisions in the Code affecting the License.

### **13. RECOMMENDATION**

The recommendation of the hearing officer is as set forth below. It is to be noted that this act of the hearing officer is only a recommendation.

Business license number BU07048000 issued to the Licensee allows the Licensee to operate a commercial/industrial space rental business at the Premises. In this setting, the Licensee may lease/rent the Premises to any lessee/tenant who operates a business in compliance with federal, state and local laws and regulations.

ATTACHMENT A

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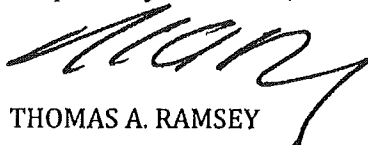
By leasing/renting a portion of the Premises to Rosebush, an unlicensed business, to sell marijuana on the Premises, the Licensee is operating outside the scope of the authorized business activities identified in the License.

Although not a specific requirement for the recommended decision, the Licensee certainly had knowledge of the presence of this unlicensed business, as evidenced by his relationship with Rosebush, and by receipt of a variety of notices from the City.

In this factual setting, the recommended decision is that Business License Number BU07048000 be revoked.

Hopefully, all parties involved will find a solution that will make this recommendation moot.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas A. Ramsey', written in a cursive style.

THOMAS A. RAMSEY

TR:dc  
Attachments as noted

RECEIVED  
CITY CLERK  
September 20, 2012, CA

12 SEP 20 PM 2:31

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

Attn: Irma Heinrichs

Re: Report of Hearing Officer  
Matter of City of Long Beach Business License Number BU07048000 issued to John W. Mitchell

Dear Mr. Herrera:

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In this report:

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- E. City of Long Beach Business License Number BU07048000 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 B

Report and Recommendation of Hearing Officer  
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- F. Mark Rosebush, doing business as The Giving Tree, a tenant/lessee of the Licensee occupying a portion of the Premises, is referred to "Rosebush."
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The basis for these hearings is found in §§3.80.429.1 and 3.80.429.5, which provide as follows:

- A. 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.
- B. Following such a hearing and receipt of the hearing officer's report, the Director may revoke or suspend the license.
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### ***2. HEARING LOCATIONS AND DATES***

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### ***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 Richard Brakefield.

Rosebush was represented by Lee Durst.

The Brit did not appear and was not represented by counsel.

### ***4. STATEMENT OF THE ISSUE BEFORE THE HEARING OFFICER***

The issue in this matter is as follows: Is the Licensee operating his rental business at the Premises outside the scope of those activities authorized by the business license issued to him by the City?

### ***5. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY THE CITY ON JULY 26, 2012***

Eric Sund, City of Long Beach Business Relations Manager and Brett Yakus, City of Long Beach Customer Service Representative Lead, testified on the City's behalf.

Exhibits 1-10, introduced by the City, were placed into evidence.

The evidence, based on the testimony of the City's witnesses and the content of the City's exhibits, is as follows:

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- B. The Licensee holds a business license by which he is authorized to operate a commercial/industrial space rental business at the Premises (Exhibits 2 and 3). The business license permits such a business as long as the lessees/tenants leasing/renting a space on the Premises operate a business in compliance with federal, state and local laws and regulations.
- C. Prior to March 8, 2012: The City determined that Rosebush operated a business selling marijuana on the Premises.
- D. March 8, 2012: The City, through the City Attorney, served the Licensee and Rosebush, by certified mail, return receipt requested, and by first class mail, an Administrative Citation Warning Notice that Rosebush's marijuana sale business on the Premises was in violation of the Long Beach Municipal Code (Exhibit 5). The notice was also personally served on Rosebush. The notice advises the Licensee that if Rosebush's marijuana sale business does not cease its operations at the Premises, an administrative citation will be issued against the Licensee.
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- F. No business license of any kind has been issued to Rosebush. Prior to the issuance of any business license by the City, the proposed business premises must be inspected by the City's building department to assure no violations of the City's building code exist and by the Fire Department to assure the fire safety of the premises. None of these inspections has been sought or completed.

### **6. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY THE LICENSEE ON JULY 26, 2012**

The Licensee testified as follows:

- A. The activities covered by the License include leases to The Brit and to Rosebush.
- B. The lease to The Brit has been in place for many years.
- C. To the Licensee's knowledge, there are no issues between the City and the operators of The Brit.

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September 20, 2012  
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- D. Following receipt of the notice from the City (Exhibit 5), the Licensee initiated an unlawful detainer action against Rosebush in the South District of the Los Angeles Superior Court (*Mitchell v. Rosebush*, Case No. 12U01099), referred to below as "the Lawsuit." Rosebush was served with the Summons and Complaint. He filed and served an answer to the Licensee's Complaint. The matter was tried in Department South "B", before Patrick T. Madden, on July 26, 2012, prior to the commencement of the July 26, 2012, administrative hearing. The court did not rule from the bench. Its ruling was not known by the time the July 26, 2012, administrative hearing took place. However, prior to the August 16, 2012, administrative hearing the court issued its judgment in favor of the Licensee. A copy of the minute order was introduced at the August 16, 2012, hearing as Exhibit F, and placed into evidence.

### **7. CLOSING ARGUMENTS ON JULY 26, 2012**

Counsel for the City and counsel for the Licensee presented oral closing arguments.

### **8. FINDINGS OF FACT**

The findings of fact are as follows:

- A. The Licensee is the owner of the Premises.
- B. The Licensee holds business license number BU070348000 by which he is authorized to operate a commercial/industrial space rental business at the Premises to lease/rent space to lessees/tenants who operate businesses at the Premises in compliance with federal, state and local laws and regulations
- C. One lessee/tenant of the Licensee is The Brit, which appears to be operating in compliance with the Code.
- D. A second lessee/tenant of the Licensee is Rosebush.
- E. No inspection of the Premises by the City's Fire Department or its building department, a condition precedent to the issuance of a business license, was sought by Rosebush.
- F. Rosebush has no business license of any kind issued by the City.
- G. Rosebush sells marijuana from the Premises, in violation of the Code.

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- H. The Licensee is aware of the business of Rosebush.
- I. This hearing was conducted pursuant to the written notice served on the Licensee.

### **9. THE STIPULATION BETWEEN THE PARTIES ON JULY 26, 2012**

Although the evidentiary process (with the exception of two exhibits introduced on August 16, 2012) was completed on July 26, 2012, the parties, through counsel, stipulated that the hearing officer would make no recommendation while awaiting the outcome of the Lawsuit.

### **10. EVENTS SUBSEQUENT TO JULY 26 AND PRIOR TO AUGUST 16, 2012**

Between July 26 and August 16, 2012, the following occurred:

- A. A judgment was rendered in the Lawsuit in favor of the Licensee and against Rosebush. The court determined that the lease under which Rosebush holds the Premises is forfeited.
- B. Following receipt of a copy of the court's judgment, Licensee applied to the Superior Court for the issuance of a Writ of Possession to obtain possession of the Premises.
- C. On August 9, 2012, in response to an *ex parte* application by Rosebush, the court issued an order to stay the issuance of the Writ of Possession. The court also calendered a status conference for **November 8, 2012**.

### **10. THE AUGUST 16, 2012, HEARING**

Pursuant to the stipulation of the parties, the hearing reconvened on August 16, 2012, at Long Beach City Hall, 333 West Ocean Boulevard, Fifth Floor Large Conference Room, commencing at 9:00 a.m.

At this hearing, the Lawsuit documentation supporting the unlawful detainer judgment against Rosebush and the order, issued *ex parte*, against the enforcement of the judgment were introduced into evidence as Rosebud's Exhibit E and the Licensee's Exhibit F.

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### **11. THE STATUS OF THE MATTER FOLLOWING THE AUGUST 16, 2012, HEARING**

Following the conclusion of the August 16, 2012, hearing, the factual setting was as follows:

- A. Although the Licensee has a judgment in the Lawsuit to recover the Premises from Rosebush, the court has issued a stay on the enforcement of the judgment.
- B. Unless the stay is reversed, no further action in the Lawsuit will occur until November 8, 2012.
- C. If the City moves ahead and revokes the Licensee's License, the revocation will probably affect the validity of the lease between the Licensee and The Brit inasmuch as the Licensee would have no license to lease any portion of the property, including the portion to The Brit.
- D. The Brit has no involvement in this matter.
- E. In all likelihood, Rosebush will continue to operate his unlicensed business.

### **12. THE HEARING OFFICER'S OBSERVATIONS**

The hearing officer's observations are as follows:

- A. There is no doubt that the leasing/renting of a portion of the Premises by the Licensee to Rosebush is outside the activities permitted by the License.
- B. However, upon becoming aware that the License was in jeopardy because of Rosebush's activities on the Premises, the Licensee took action to terminate Rosebush's tenancy.
- C. The Licensee obtained a favorable court judgment in the Lawsuit against Rosebush, terminating the tenancy. The Licensee immediately took steps to enforce the judgment.
- D. Subsequently, Rosebush applied *ex parte* to the court in the Lawsuit and obtained a stay on the enforcement of the judgment against him, seemingly on the basis that his patients would otherwise face hardship. Apparently, in its process of balancing competing hardships, the court did not consider the hardship on the Licensee (loss of all income) and The Brit (an innocent tenant who will face financial ruin if he loses his lease and his ability to continue his business). Whether the elements of this balance were brought to the court's attention is unknown inasmuch as the application for the stay was not introduced at the August 16, 2012, hearing.

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- E. At present, Rosebush is allowed, by a court ruling, to continue the operation of his unlicensed business while the Licensee faces revocation of the License and The Brit risks the destruction of his lawful business.
- F. If the License is revoked, the Licensee will be unable to obtain a new license for one year and, in every application for another license, will be required to disclose that the License was revoked.

Unless an approach is found to resolve this matter other than a blanket revocation of the License, the now judicially protected and unlicensed activities of Rosebush will be the basis of financial ruin of the Licensee and the destruction of the lawful business of The Brit.

Hopefully, a logical approach exists to somehow separate the Licensee's activities concerning the unlicensed Rosebush from those concerning The Brit.

One possible solution is the surrender of the License and the issuance of a new license to the Licensee applicable only to his lease to The Brit. This relationship should not be jeopardized by the continued efforts of Rosebush to retain his physical occupancy of the remainder of the Premises.

Unfortunately, this hearing officer has no power to place a hold on the License termination process with regard to the lease to Rosebush, notwithstanding the fact that Rosebush is utilizing the legal process to extend his tenancy as long as possible.

The fact that the Licensee has probably taken all practical steps to end the possession of Rosebush does not alter the conclusion that the Licensee is acting in violation of those provisions in the Code affecting the License.

### **13. RECOMMENDATION**

The recommendation of the hearing officer is as set forth below. It is to be noted that this act of the hearing officer is only a recommendation.

Business license number BU07048000 issued to the Licensee allows the Licensee to operate a commercial/industrial space rental business at the Premises. In this setting, the Licensee may lease/rent the Premises to any lessee/tenant who operates a business in compliance with federal, state and local laws and regulations.

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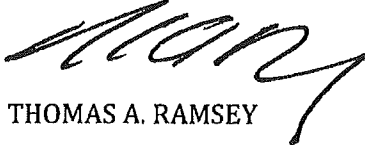
By leasing/renting a portion of the Premises to Rosebush, an unlicensed business, to sell marijuana on the Premises, the Licensee is operating outside the scope of the authorized business activities identified in the License.

Although not a specific requirement for the recommended decision, the Licensee certainly had knowledge of the presence of this unlicensed business, as evidenced by his relationship with Rosebush, and by receipt of a variety of notices from the City.

In this factual setting, the recommended decision is that Business License Number BU07048000 be revoked.

Hopefully, all parties involved will find a solution that will make this recommendation moot.

Respectfully submitted,



THOMAS A. RAMSEY

TR:dc  
Attachments as noted

ATTACHMENT C

Law offices of  
**Richard E. M. Brakefield**  
655 South Vista Oro  
Palm Springs, California 92264  
Tel: (760) 325-3102/(760) 774-2882  
**MAILING ADDRESS**  
**611 So. Palm Canyon Dr., Ste. 7-438**  
**Palm Springs, CA 92264**

**REQUEST FOR APPEAL**

TO: The City of Long Beach  
Long Beach City Council  
Long Beach City Clerk  
Erik Sund, Manager Business Relations Bureau  
Kendra Carney, Deputy City Attorney  
333 W. Ocean Blvd.  
Long Beach, CA 90802

Re: Request For Appeal of Revocation of Business License No. BU07048000

This office represents John W. Mitchell whose business license, number BU07048000 has been revoked as stated in the letter from the City Business Relations Bureau dated 9/21/2012, a copy of which is attached hereto.

PLEASE TAKE NOTICE that John W. Mitchell hereby requests, pursuant the procedure noted in the aforesaid letter, an appeal to the City Council, the grounds for which are:

1. LBMC § 5.89, alleged violation of which is the basis for revoking the license, is itself in violation of the CUA and California State Law.
2. Although Dr. Mitchell was awarded judgment in the unlawful detainer action he brought to evict the offending tenant, the Court imposed a Stay of Execution of that Judgment until removed by motion or the Court itself. Dr. Mitchell is therefore barred by law and the Order of the Court from evicting the tenant until the Court rules otherwise. (Dr. Mitchell has brought a motion before the Court seeking removal of the Stay. The Court has taken the matter under submission and a ruling is expected before this appeal will be heard.)
3. Dr. Mitchell entered into an agreement with the City which would have bifurcated the license upon surrender of the license thus avoiding the necessity of revocation and would have allowed the innocent business next door to continue operating without interruption. The City Attorney's office, after agreeing to put the terms of the agreement in writing refused to do so and thus sabotaged the agreement and proceeded to revocation even while the Motion to set aside the

ATTACHMENT C

Court imposed Stay was pending in court.

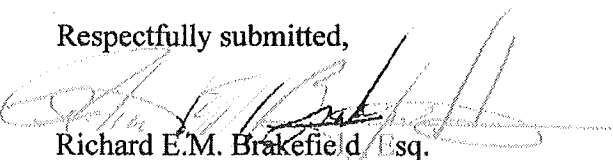
4. The law upon which the license revocation is based (LBMC § 3.80.429.1) is not regulatory but tax law related and is improperly used as a basis for revocation in this matter.

5. Bias against Dr. Mitchell permeated the entire hearing process despite the fact that Dr. Mitchell had at all times been proceeding as is required by law to evict the offending tenant.

6. The revocation of the license violates the due process rights of the innocent and totally unrelated business which operates at a different address but in the same building as the offending tenant.

Pursuant the requirements for this Request for Appeal, a cashier's check in the amount of \$1205.00, made payable to the City of Long Beach accompanies this letter.

Respectfully submitted,



Richard E.M. Brakefield Esq.

Attorney for Dr. John W. Mitchell





# 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

September 21, 2012

John W. Mitchell  
P.O. Bo 2225  
Palm Springs, CA 92263

RE: Notice of Business License Revocation  
Business License Number: BU07048000

Dear Sir or Madam:

Please be advised that **business license number BU07048000**, issued to John W. Mitchell, located at 1742 E. Broadway, Long Beach, C A 90802 **has been revoked**, pursuant to Long Beach Municipal Code ("LBMC") section 3.80.429.1, subsection (b), **effective September 21, 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 October 1, 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. October 1, 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:

\_\_\_\_\_  
Name/Title

**Attachments**

ES:smc

cc: Kendra Carney, Deputy City Attorney  
Council District 2