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October 22, 2015

Jordan S. Kushner
Law Office of Jordan S. Kushner
431 7th Street South
Suite 2446
Minneapolis, MN 55415

Re: In the Matter of the Class E On Sale Liquor License and Special Late Hours Food Licenses held by La Que Buena, Inc. and Juan and Maria Sanchez d/b/a La Que Buena. OAH Docket No. 80-6010-32335.

AMENDED NOTICE OF LICENSE HEARING

Dear Mr. Kushner:

The Community Development & Regulatory Services Committee of the Minneapolis City Council will conduct a license hearing on **Tuesday, December 1, 2015** (rescheduled upon your request from the original date of November 10, 2015) to hear arguments from the parties and to consider the Findings of Fact, Conclusions of Law, and Recommendation issued by Administrative Law Judge LauraSue Schlatter on October 7, 2015 in the above-entitled matter. The hearing will take place during the regularly-scheduled meeting of the Community Development & Regulatory Services Committee in the City Council chambers, Room 317 Minneapolis City Hall which commences at **1:30 p.m.**



The Licensee is further notified that counsel may represent it at the hearing and that written exceptions to the ALJ's Findings, Conclusions and Recommendation may be filed with the City Clerk (c/o: Irene Kasper, City Clerk's Office, Rm. 304, 350 5th Street S., Minneapolis, MN 55415) **on or before 4:30 p.m. on November 13, 2015**, with a courtesy copy to be provided by electronic mail to Joel.Fussy@minneapolismn.gov.

Sincerely,



JOEL M. FUSSY
Assistant Minneapolis City Attorney
(612) 673-2939
Joel.Fussy@minneapolismn.gov

cc: Irene Kasper, City Clerk Committee Coordinator
Grant Wilson, Licensing Official



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Assistant Minneapolis City Attorney
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Grant Wilson, Licensing Official

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF MINNEAPOLIS

In the Matter of the Class E Liquor and
Special Late Hours Food Licenses held
by La Que Buena, Inc., and Juan and
Maria Sanchez d/b/a La Que Buena

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-entitled matter came before Administrative Law Judge Laura Sue Schlatter (ALJ) for an evidentiary hearing on June 22-25, 2015, at the Office of Administrative Hearings in St. Paul, Minnesota. The city of Minneapolis submitted a post-hearing brief on August 13, 2015. The Licensee submitted a post-hearing brief on August 28, 2015. The hearing record closed on September 4, 2015, with the filing of the Parties' reply briefs.

Joel M. Fussy, Assistant Minneapolis City Attorney, appeared on behalf of the City of Minneapolis (City). Jordan S. Kushner, Law Office of Jordan S. Kushner, appeared on behalf of La Que Buena, Inc., and Juan and Maria Sanchez d/b/a La Que Buena (La Que Buena or Licensee).

STATEMENT OF THE ISSUES

Whether the City has demonstrated by a preponderance of the evidence that renewal of La Que Buena's Class E on-sale liquor and special late hours food licenses is not in the public interest and whether good cause exists to refuse to renew or otherwise take adverse license action against La Que Buena's licenses.

SUMMARY OF CONCLUSIONS

The City has demonstrated by a preponderance of the evidence that good cause exists to deny renewal of La Que Buena's special late hours food license. The City has demonstrated by a preponderance of the evidence that good cause exists to refuse to renew or otherwise take adverse licensing action against La Que Buena's Class E liquor license; however, the City has not demonstrated by a preponderance of the evidence that it is in the public interest to refuse to renew La Que Buena's Class E liquor license. Therefore, the Administrative Law Judge respectfully recommends that the City refuse to renew La Que Buena's special late hours food license. The Administrative Law Judge further respectfully recommends that the City renew La Que Buena's Class E liquor license subject to strict conditions.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background

1. La Que Buena is a family-owned and operated Mexican restaurant and bar, located at 1609-11 East Lake Street in Minneapolis.¹

2. Juan and Maria Sanchez are a married couple and the sole owners, officers, and agents of La Que Buena, Inc., which owns and operates La Que Buena restaurant.²

3. La Que Buena opened as a restaurant in December 2002.³ It serves authentic Mexican dishes and caters primarily to the local Latino community.⁴

4. In 2000, when Mr. Sanchez purchased the building where the restaurant is located, it was an abandoned building. He wanted to open a Mexican restaurant because at the time there were no similar restaurants in the neighborhood. He invested over \$200,000 to renovate the building, in addition to the cost of the building itself. The City provided a \$40,000 loan as Mr. Sanchez proceeded with the renovation. He initially went into the restaurant venture with several family members, but they withdrew much of their support when they realized how costly the renovation would be. Mr. Sanchez persevered, doing as much of the work as he could himself, but hiring contractors for the work he lacked the training to do.⁵

5. When the restaurant initially opened, the neighborhood had a higher level of criminal activity than it does now. There were frequent robberies at the restaurant; often at night the windows were broken.⁶

6. In 2003, La Que Buena obtained a Class E on-sale liquor license.⁷ A Class E license is the most restrictive level of the five classes of entertainment the City assigns to on-sale alcoholic beverage licenses.⁸ The Class E entertainment license permits an establishment to have televisions and pre-recorded music, such as radios, stereos, jukeboxes or karaoke, but no amplified music, live entertainment, musicians, dancing, or disc jockeys.⁹

7. In 2004, La Que Buena obtained a Special Late Hours Food license, allowing it to remain open for food service until 5:00 a.m.¹⁰ Pursuant to state law and

¹ Testimony (Test.) of Juan Sanchez; Test. of Alexander Sanchez at 515.

² Exhibits (Ex.) 1 and 2; Test. of Julie Casey at 32; Test. of J. Sanchez at 379-80. (When La Que Buena first opened, Juan Sanchez's brother-in-law held a ten percent ownership interest. By 2006, however, Juan and Maria Sanchez were the sole owners of La Que Buena, Inc.)

³ Test. of J. Sanchez at 382-385; Ex. 2.

⁴ Test. of Cindy Leon at 557; Test. of Carlos Aguilar at 629-631.

⁵ Test. of J. Sanchez at 382-384.

⁶ Test. of J. Sanchez at 384.

⁷ Test. of J. Casey at 36-38; Ex. 2.

⁸ Test. of J. Casey at 36.

⁹ Test. of J. Casey at 36-37.

¹⁰ Test. of J. Casey at 35-38; Ex. 2.

consistent with the terms of its license, La Que Buena was required to stop sales of alcoholic beverages by 2:00 a.m. and to remove all alcohol from patron areas by 2:30 a.m.¹¹

8. In 2007, La Que Buena added an outdoor patio area with seating behind the building and upgraded its License to a Class C-2 On-Sale Liquor License.¹² A Class C-2 license permits the restaurant to have up to three musicians but no dancing. In order to allow patron dancing, a Class A or B license is needed. The licensing process for a Class A or B license is more rigorous, requiring a public hearing, city council approval, and a higher fee.¹³ La Que Buena never applied for a Class A or B license.¹⁴

9. The owners and management of La Que Buena see the restaurant as an important part of their neighborhood's culture. The restaurant does not sell inexpensive fast food. Many menu items range from \$20-\$30. La Que Buena makes an effort to offer dishes from various regions of Mexico that are not commonly offered at other Mexican restaurants.¹⁵

10. La Que Buena requires that patrons who come in at night must sit down and eat food before they start drinking. That means that customers must have money to pay for food, not just alcoholic beverages. This policy has been in effect for about two years.¹⁶

11. Between 2004 and 2013, the City annually renewed La Que Buena's on-sale liquor and special late hour food licenses. La Que Buena's on-sale liquor license and late hours food license were most recently renewed on April 1, 2014, and expired on March 31, 2015.¹⁷ La Que Buena has been permitted to continue to operate during the pendency of this licensing matter.

12. Cindy Leon, who has a background in accounting and who has been the manager of La Que Buena for four years, believes the restaurant would not survive if it lost its liquor license because its customers want to be able to have wine or other alcoholic beverage with the kind of food La Que Buena serves.¹⁸ For similar reasons, and because other nearby Mexican restaurants have liquor licenses, Mr. Sanchez also believes that La Que Buena would close if it loses its liquor license.¹⁹

¹¹ *Id.* at 37; Ex. 5. See Minn. Stat. § 340A.504, subd. 2 (2014) (State law precludes the sale of intoxicating liquor on licensed premises between the hours of 2:00 a.m. and 8:00 a.m. on any day that alcohol may be served.).

¹² Ex. 2.

¹³ Test. of J. Casey at 36-38.

¹⁴ Ex. 2.

¹⁵ Testimony of Cindy Leon at 616-617.

¹⁶ Testimony of Juan Sanchez at 393-394 and 479.

¹⁷ Ex. 2.

¹⁸ Test. of Cindy Leon at 617-618.

¹⁹ Test. of J. Sanchez at 512-513.

Neighborhood

13. La Que Buena is located on East Lake Street between 16th and 17th Avenues in the City's 3rd Police Precinct. The 3rd Precinct is bounded by Interstate 35W on the west, Interstate 94 on the north, the Mississippi River on the east, and Highway 62 Crosstown on the south. Businesses located on East Lake Street between 35W and the Mississippi River are in the 3rd Precinct.²⁰

14. The area where La Que Buena is located has higher levels of crime in comparison to other areas of the city.²¹ In particular, the area around the intersection of East Lake Street and Bloomington Avenue South, which is about one and one-half city blocks from La Que Buena, has a significant history of criminal activity involving prostitution, assaults, and loitering.²² Due to the amount of criminal activity, the Minneapolis Police Department has designated the vicinity a "focus zone" or "directed police patrol area," meaning that the area is targeted for more frequent patrols in an attempt to increase police presence and reduce crime.²³

15. Although La Que Buena is located on the East Lake Street commercial corridor, the neighborhood directly behind and surrounding the restaurant is primarily residential with single-family homes.²⁴

City's Licenses and Consumer Services Division

16. Julie Casey is a Lead License Inspector with the City's Licenses and Consumer Services Division.²⁵ From approximately 2009 until 2015, Ms. Casey oversaw licensed businesses located in the Minneapolis Police Department's 3rd Precinct, including La Que Buena.²⁶

17. The City's Licenses and Consumer Services Division works with the Minneapolis Police Department's License Investigation Division in investigating complaints and enforcing the City's business licensing requirements. Among other duties, the Police Department's License Investigation Division performs criminal background checks on license applicants and conducts youth alcohol compliance checks in an effort to verify that retail-alcohol license holders are not serving alcohol to persons under the age of 21.²⁷

²⁰ Test. of J. Casey at 107.

²¹ Test. of J. Casey at 109; Test. of Michael Sullivan at 267-268.

²² Test. of M. Sullivan at 268; Test. of Karen Notsch at 288-289; Test of C. Leon at 553.

²³ Test. of J. Casey at 109; Test. of M. Sullivan at 268.

²⁴ Test. of J. Casey at 33; Test. of Grant Wilson at 236; Ex. 40.

²⁵ Test. of J. Casey at 29.

²⁶ Test. of J. Casey at 107. (In 2015 Ms. Casey was reassigned to the City's Uptown area. However, she remains the License Inspector assigned to La Que Buena.)

²⁷ Test. of J. Casey at 50-51; Test. of G. Wilson at 222; Ex. 9.

18. The City's Licenses and Consumer Services Division issues several hundred administrative citations annually.²⁸

19. Karen Notsch is a civilian Crime Prevention Specialist (CPS) with the Minneapolis Police Department's 3rd Precinct.²⁹ Ms. Notsch organizes block clubs, attends community meetings, and works with neighborhood associations on livability and crime prevention issues affecting the 3rd Precinct.³⁰

20. Over the last few years, Ms. Notsch has met with Cindy Leon, the manager of La Que Buena, on several occasions to discuss crime prevention strategies and recommendations for enhancing security in and around La Que Buena.³¹ Ms. Notsch has found Ms. Leon to be responsive to her suggestions.³²

Licensing Actions and Compliance Checks

21. On December 9, 2005, Minneapolis Business Licensing Inspector Ken Ziegler visited La Que Buena and observed live entertainment taking place on the premises in violation of its (then) Class E license. The City issued La Que Buena a violation notice and directed it to discontinue live entertainment until a proper license was obtained.³³

22. On June 3, 2007, two City License Inspectors went to La Que Buena to investigate a report of alcohol sales after 2:00 a.m. The inspectors attempted to purchase beer from the restaurant's bar at approximately 2:25 a.m., but were refused service by the restaurant's employee. The inspectors left and returned to the restaurant at approximately 2:55 a.m. The inspectors noticed that several customers had partially full bottles of beer on their tables. The inspectors spoke with Juan Sanchez and reminded him that alcohol was to be removed from patron areas by 2:30 a.m. The inspectors also asked Mr. Sanchez to show them the basement of the restaurant. The inspectors explained that they had received a complaint about alcohol being served from the basement after 2:00 a.m. Mr. Sanchez showed the inspectors the basement. It was decorated with balloons and a few empty beer cans were visible.³⁴ Mr. Sanchez explained to the inspectors that he and his family had had a party in the basement for his son's birthday the day before.³⁵

23. On June 21, 2007, the City's Licenses & Consumer Services Division convened a license settlement conference with La Que Buena to discuss the June 3, 2007, inspection. Juan Sanchez appeared on behalf of La Que Buena along with Luis

²⁸ Test. of G. Wilson at 224.

²⁹ Test. of K. Notsch at 281-282.

³⁰ Test. of K. Notsch at 281.

³¹ Test. of K. Notsch at 282-284.

³² Test. of K. Notsch at 285-286.

³³ Ex. 3.

³⁴ Ex. 4.

³⁵ Test. of J. Sanchez at 408.

Caire. Mr. Caire is a consultant who regularly assists new businesses with licensing application and compliance issues. Mr. Caire speaks fluent Spanish.³⁶

24. Following the settlement conference, the City issued Findings of Fact, Conclusions and Recommendations (2007 Settlement Agreement). The City found that La Que Buena had alcohol on patrons' tables after 2:30 a.m. on June 3, 2007, in violation of Minneapolis Code of Ordinances (M.C.O.) § 364.85. The City also found that the Licensee admitted to using the unlicensed basement space for a private party. The basement does not have the appropriate egress, natural light or ventilation to be used for a gathering. It is not approved to be used for any events.³⁷ In addition, Mr. Sanchez represented on La Que Buena's license application that the basement would only be used for storage.³⁸

25. On June 24, 2007, Juan Sanchez signed the 2007 Settlement Agreement. By doing so, Mr. Sanchez acknowledged that he had read the findings of fact, conclusions, and recommendations and "agree[d] with their content."³⁹ Mr. Sanchez also agreed that La Que Buena would comply with the following conditions in lieu of imposition of adverse licensing action:

- a. Imposition of a \$2,000 sanction, with the understanding that \$1,500 of that amount would be stayed provided La Que Buena has no same or similar violations for one year and pays \$500 due at the signing of the agreement;
- b. Submission and implementation of a plan and policy for closing down alcohol service at the end of the night;
- c. Operation of La Que Buena within the confines of the restaurant's licensed premises with no occupancy of the basement other than permitted use (i.e., storage); and
- d. Provision of alcohol server training for newly hired staff within 30 days of hire and annually for all staff.⁴⁰

26. On May 12, 2008, the City issued a violation notice to La Que Buena for displaying a sign in its window advertising an alcoholic beverage. The notice alleged that the sign was posted facing out the window, rather than facing inside the restaurant in violation of MCO § 360.125, which prohibits the display of signs advertising alcoholic

³⁶ Ex. 5; Test. of J. Casey at 45-46.

³⁷ Test. of J. Casey at 43-45; Ex. 5.

³⁸ Test. of J. Casey at 42.

³⁹ Ex. 5.

⁴⁰ Test. of J. Casey at 43-45; Ex. 5.

beverages on the outside or in windows of buildings located within 300 feet of a church or school.⁴¹ The notice directed La Que Buena to correct the violation by May 16, 2008.⁴²

27. On May 20, 2008, the City issued a second violation notice to La Que Buena for displaying an alcoholic beverage sign in a manner that could be viewed by people outside the restaurant. The notice directed La Que Buena to correct the violation by May 23, 2008.⁴³

28. On May 11, 2009, the City issued an administrative citation to La Que Buena along with a \$200 fine for continuing to post alcoholic beverage signs in its establishment.⁴⁴ The Licensee paid the \$200 fine on June 4, 2009.⁴⁵

29. The sign advertising an alcoholic beverage was not posted on the outside of La Que Buena's building, or even in the window. It was posted on a wall inside the restaurant that could be seen from outside the restaurant, because the entire front of the restaurant has large windows.⁴⁶ Nonetheless, Mr. Sanchez chose to pay the fine because he viewed the citation to be "just a ticket" and he did not realize that the City considered payment to constitute an admission of the violation.⁴⁷

30. The City's violation notices include statements, written in English only, advising licensees that payment of the fine is considered an admission of the violation, as well as providing information detailing how to contest the citation.⁴⁸ The notices also include a statement written in both English and Spanish notifying recipients of the telephone number to call if they need assistance with translation.⁴⁹

31. On June 3, 2010, the Minneapolis Police License Investigative Division conducted an alcohol compliance check at La Que Buena. At the direction of the police, two underage persons entered the restaurant and requested to purchase beer from a server. Despite first checking the underage patrons' identifications (IDs), the server provided each with a bottle beer.⁵⁰ The City issued La Que Buena an administrative citation in the amount of \$500 for failing the alcohol compliance check by furnishing alcohol to minors.⁵¹

32. On June 10, 2011, a City License inspector visited La Que Buena at approximately 2:40 a.m. and noted that music was still being played in the establishment. Pursuant to M.C.O. § 360.370(f), all entertainment, including jukebox music and karaoke, must cease by 2:00 a.m. regardless of the class of on-sale liquor license. The City issued

⁴¹ This ordinance has since been repealed. See Test. of J. Casey at 123.

⁴² Test. of J. Casey at 46-47; Ex. 6.

⁴³ Test. of J. Casey at 47-48; Ex. 7.

⁴⁴ Test. of J. Casey at 48; Ex. 8.

⁴⁵ *Id.*

⁴⁶ Test. of J. Sanchez at 411-412. Ex. 113.

⁴⁷ Test. of J. Sanchez at 413.

⁴⁸ Test. of G. Wilson at 224-225; Ex. 41.

⁴⁹ Test. of J. Casey at 46-47; Ex. 6.

⁵⁰ Test. of J. Casey at 50-51; Ex. 9.

⁵¹ Ex. 9.

La Que Buena a violation notice for this offense.⁵² Mr. Sanchez later explained that employees are supposed to unplug the jukebox at 2:00 a.m., but occasionally they forget or a customer plugs it back in and starts playing a song.⁵³

33. On July 10, 2011, a City License inspector again found music playing at La Que Buena after 2:00 a.m. On July 11, 2011, the City issued La Que Buena an administrative citation with a \$200 fine on July 11, 2011. The restaurant paid the fine on October 26, 2011.⁵⁴

34. On August 20, 2011, a City License Inspector visited La Que Buena at approximately 2:40 a.m. and observed people sitting at a table on the outdoor patio with open bottles of beer. Pursuant to the terms of its license, the restaurant is required to cease service and close the patio to customers at 10:00 p.m. daily. On August 22, 2011, the City issued a violation notice to La Que Buena for allowing alcohol consumption on its outdoor patio after 2:30 a.m. in violation of M.C.O. § 364.85 and in violation of the hours of operation specified by its license.⁵⁵

35. In late 2011 or early 2012, La Que Buena hired Daniel Aguilar to work as a security guard at the restaurant. Mr. Aguilar typically worked from 10:00 p.m. until closing. He would stand near the front entrance of the restaurant and refuse admittance to obviously intoxicated persons, clear alcoholic beverages from patron areas after 2:00 a.m., intervene when patrons became confrontational in order to prevent fights, and escort people out of the restaurant when necessary.⁵⁶ Daniel Aguilar was usually the only security person on staff at the restaurant.⁵⁷

36. On March 12, 2012, the City issued La Que Buena an advisory notice after the restaurant posted photographs of patrons dancing on its Facebook page. Dancing is a form of live entertainment that requires a Class A entertainment license. La Que Buena was operating under a Class C-2 license, which does not permit dancing. The City advised La Que Buena to cease offering or permitting dancing on its premises, unless and until it obtained a Class A license.⁵⁸

37. La Que Buena maintains that the photograph was of a restaurant patron dancing near her table for her husband, rather than the restaurant offering dancing to its customers as a form of entertainment.⁵⁹

38. On March 15, 2013, City License Inspector Julie Casey went to La Que Buena and observed a disc jockey playing records and announcing songs in violation of the terms of the restaurant's Class C-2 Entertainment license. On March 18, 2013, the City issued a citation notice and \$200 fine to La Que Buena for violating M.C.O. § 362.30,

⁵² Test. of J. Casey at 58-59; Ex. 13.

⁵³ Test. of J. Sanchez at 426-427.

⁵⁴ Test. of J. Casey at 60-61; Ex. 14.

⁵⁵ Test. of J. Casey at 63-64; Exs. 16 and 31.

⁵⁶ Test. of Daniel Aguilar at 351-353.

⁵⁷ Test. of D. Aguilar at 351-353, and 370-371.

⁵⁸ Test. of J. Casey at 69-70; Ex. 18.

⁵⁹ Test. of C. Leon at 563-564.

which requires all businesses engaged in activities defined under Class B Entertainment, including live music, dancing, and use of a disc jockey, to first obtain a Class B license. The citation notified Mr. Sanchez of his right to request a hearing to contest the citation. A few days after receiving the citation, Ms. Leon contacted Ms. Casey disputing the citation. Ms. Leon stated that, contrary to the citation, the restaurant had not provided disc jockey entertainment. Instead, Ms. Leon maintained that what Ms. Casey had observed on March 15th was Mr. Sanchez's son calling out customers and their chosen karaoke songs.⁶⁰ Despite the objection voiced by Ms. Leon, Mr. Sanchez did not contest the citation and La Que Buena paid the \$200 fine on June 3, 2013.⁶¹

39. On September 7, 2013, a Minneapolis License Inspector noticed several people sitting outside on the patio at La Que Buena at 12:20 a.m. On September 9, 2013, the City issued a \$200 administrative citation to La Que Buena for operating its outdoor patio at 12:20 a.m. in violation of M.C.O. § 362.120(z). Pursuant to the terms of its license application, La Que Buena was required to close its patio to business at 10:00 p.m. daily. La Que Buena paid the \$200 fine on October 9, 2013.⁶² However, Mr. Sanchez and Ms. Leon maintained that it was only the cook taking a break with his girlfriend out on the patio.⁶³

2014 Failed Alcohol Compliance Checks

40. On May 12, 2014, La Que Buena failed an alcohol compliance check conducted by the Minneapolis Police License Investigation Division. At the direction of the police, two underage persons entered the restaurant and requested to purchase beer from a server. Despite first checking the underage patrons' IDs, the server provided each with a bottle of beer.⁶⁴ The City issued La Que Buena an administrative citation in the amount of \$500 for failing the alcohol compliance check by furnishing alcohol to minors.⁶⁵

41. On July 31, 2014, La Que Buena failed another alcohol compliance check conducted by the Minneapolis Police License Investigation Division. The restaurant employee sold beer to two underage persons without checking their identification. The City issued La Que Buena an administrative citation in the amount of \$1,000.⁶⁶

Incidents Involving Violence or Criminal Activity On or Near the Premises

42. On February 10, 2011 at approximately 11:40 p.m. Minneapolis police responded to a report of gun shots near La Que Buena. The responding police officers observed a man being forcibly ejected from La Que Buena and attempting to fight with other people directly in front of La Que Buena. The police report indicates that Juan Sanchez told the officers that the man had been with a large group of customers who had

⁶⁰ Test of J. Casey at 170-171; Test. of C. Leon at 571-572.

⁶¹ Test. of J. Casey at 78; Ex. 25.

⁶² Test. of J. Casey at 85-86, and 188-190; Ex. 30.

⁶³ Test. of J. Sanchez at 456-457; Test. of C. Leon at 578.

⁶⁴ Test. of J. Casey at 92-93; Ex. 34.

⁶⁵ *Id.*

⁶⁶ Test. of J. Casey at 93; Ex. 35.

been ejected for being intoxicated and engaging in aggressive behavior. The report indicates further that the restaurant's cook saw some members of the ejected group shooting a gun from a green pickup truck while they exited the restaurant's parking lot.⁶⁷ The restaurant's parking lot is a surface lot at the rear of the restaurant, abutting the alley.⁶⁸

43. At approximately 1:00 a.m. on February 20, 2011, a customer at La Que Buena was assaulted and robbed by four men when he stepped outside the rear entrance of the restaurant to move his car. Mr. Sanchez was aware of the assault and told the police officers investigating the crime that he had seen the suspects in the restaurant two times in the last six months, but that he did not know them. According to the police report, Mr. Sanchez indicated that he thought two of the suspects might be gang members.⁶⁹

44. At approximately 1:20 a.m. on May 15, 2011, police officers responded to an assault call at La Que Buena. According to the police report, an intoxicated woman came into the restaurant with several other people and became aggressive and belligerent when the female server refused to sell her any alcoholic beverages. The woman threw a glass at a patron and seriously scratched and clawed at the face and neck of the server when the server attempted to remove her from the building. The woman was arrested for probable cause felony assault.⁷⁰ Ms. Casey acknowledged that the La Que Buena staff acted appropriately in this situation.⁷¹

45. On July 15, 2011, at about 10:25 p.m., Minneapolis police officers were dispatched to La Que Buena in response to a report of a fight. When the officers arrived at the restaurant, they were told by an employee that a man, claiming Juan Sanchez owed him money, intentionally broke the restaurant's large front window. The police officers observed a crack running across the entire pane of the front window. The suspect was later found and arrested for probable cause damage to property.⁷²

46. On July 27, 2012, at about 4:00 a.m., Minneapolis police were notified that an assault had occurred at La Que Buena at about 2:00 a.m. the same morning. Officers interviewed both the victim and a witness at Hennepin County Medical Center, where the victim was treated for his injuries. According to the police report, a customer was assaulted by four other customers in the back of the restaurant and received two lacerations to the top of his head from a glass bottle.⁷³

47. On August 16, 2012, Minneapolis police were dispatched to La Que Buena on a report of another assault in the restaurant. According to the police report, three men entered La Que Buena around 12:30 a.m. and were refused service because they appeared intoxicated. The men became angry, broke a beer bottle and began assaulting

⁶⁷ Test. of J. Casey at 51-52; Ex. 10.

⁶⁸ Test. of J. Casey at 35-36; Ex. 2.

⁶⁹ Test. of J. Casey at 54-57; Ex. 11.

⁷⁰ Test. of J. Casey at 57-58, and 143-145; Ex. 12.

⁷¹ Test. of J. Casey at 145.

⁷² Test. of J. Casey at 62-63; Ex. 15.

⁷³ Test. of J. Casey at 72; Ex. 20.

two patrons who were sitting at the bar. One of the patrons was hit in the face with the bottle and received lacerations above each eye. The other patron was hit in the mouth and suffered a bloody lip.⁷⁴

48. On August 26, 2012, Minneapolis police received a report at about 12:30 a.m. that a car parked in La Que Buena's back parking lot had its tires slashed.⁷⁵

49. At about 3:10 a.m. on November 9, 2012, a Minneapolis police officer working off-duty at La Que Buena had to intervene to break up a physical confrontation between Juan Sanchez and a customer. Mr. Sanchez had accused the customer of not paying for his food order and the two began to argue loudly in the restaurant. When the customer lunged at Mr. Sanchez and attempted to punch him, the police officer intervened and separated the men.⁷⁶

50. In 2012, Juan Sanchez and Ms. Leon met with Officer Frank Kutz, a 3rd Precinct police officer assigned to the Problem Properties Unit, to discuss ways in which the restaurant could reduce its high number of 911 calls for service. In addition to implementing a dress code prohibiting certain gang colors, Officer Kutz recommended that La Que Buena consider hiring police officers to work off-duty on busy nights.⁷⁷ Mr. Sanchez and Ms. Leon were very receptive to this idea and began hiring Minneapolis police officers to work off-duty shortly after meeting with Officer Kutz.⁷⁸

51. On July 1, 2013, at approximately 4:00 a.m., Minneapolis police officers responded to a call from La Que Buena for assistance in breaking up a fight of four individuals outside the restaurant. According to the police report, the four men had been drinking at La Que Buena prior to the fight.⁷⁹

52. On August 25, 2013, at about 2:30 a.m., David Aguilar was working security at La Que Buena when he noticed a patron, who appeared to be intoxicated, bothering other customers and behaving in an aggressive manner. Mr. Aguilar approached the intoxicated patron and began to physically remove him from the restaurant. When Mr. Aguilar had successfully maneuvered the intoxicated patron out the front door and onto the sidewalk, another individual came at Mr. Aguilar from behind and attempted to stab him with a knife. Mr. Aguilar struck that individual in the face with his baton and subdued him outside the restaurant. The Minneapolis police were called and the individual was arrested for felony assault with a dangerous weapon.⁸⁰

53. At approximately 2:30 a.m. on Monday, September 2, 2013, Minneapolis police responded to reports of a large fight involving approximately 30 people and gunfire outside La Que Buena. The fight began inside the restaurant and moved outside to the

⁷⁴ Test. of J. Casey at 73-74; Ex. 21.

⁷⁵ Test. of J. Casey at 74-75; Ex. 22.

⁷⁶ Test. of J. Casey at 76-77; Ex. 24.

⁷⁷ Test. of Frank Kutz at 326.

⁷⁸ Test. of F. Kutz at 326.

⁷⁹ Test. of J. Casey at 80-81; Ex. 27.

⁸⁰ Test. of J. Casey at 81-82; Test. of D. Aguilar at 358-361; Ex. 28.

front of the restaurant when Mr. Aguilar sprayed chemical irritant (mace) in an attempt to break up the fight. The fight then continued to the restaurant's back patio area where Mr. Aguilar exchanged gunfire with a suspect who shot from the alley toward a group of people in the restaurant's rear parking lot. The police ultimately cleared the patio area, apprehended the shooting suspect, and recovered the gun.⁸¹ Mr. Aguilar was the only person working security at La Que Buena on September 2, 2013.⁸²

54. On November 23, 2013, Cindy Leon called 911 just prior to 2:00 a.m. to report that approximately 30 people were fighting in the entryway of La Que Buena. Ms. Leon acknowledged that she exaggerated the number of people because she was hoping for a quicker police response and that there were actually about ten people involved in the fight. Ms. Leon stated that the cook and several customers were trying to assist the security guard (David Aguilar) in keeping the individuals out of the restaurant. Ms. Leon also may have indicated that some of the people involved in the fight were gang members. However, Ms. Leon does not know gang colors or tattoos. Some of the individuals had baggy pants and tattoos and did not look like the kind of people she thought should come into the restaurant.⁸³ Ms. Casey agreed that La Que Buena did nothing wrong and Ms. Leon acted appropriately when she called the police in this situation.⁸⁴

55. On Monday, November 25, 2013, at about 1:35 a.m., an unidentified person shot at four patrons through the front window of La Que Buena. One person died from his gunshot injuries and the three other individuals sustained non-life-threatening injuries.⁸⁵ David Aguilar was the only person working security at La Que Buena on November 25, 2013.⁸⁶

56. On November 15, 2014, Minneapolis Police responded to a report of shots fired outside of La Que Buena. According to the police report, at approximately 2:00 a.m., a 40-year-old patron left the restaurant, followed by an 18-year-old patron. Witnesses in the restaurant, including Mr. Sanchez's son, indicated that both individuals had been drinking alcohol at the restaurant and may have been arguing. Once outside the restaurant, the 18-year-old pulled a gun on the 40-year-old. A struggle over the gun ensued and both patrons sustained injuries when the gun discharged.⁸⁷

57. On December 21, 2014, police responded to a report of a fight at La Que Buena involving a gun at approximately 2:10 a.m. The fight occurred in back of the

⁸¹ Test. of J. Casey at 82-84; Test. of D. Aguilar at 363-364; Exs. 29 and 31.

⁸² Test. of D. Aguilar at 370-371.

⁸³ Test. of J. Casey at 88; Test. of C. Leon at 579-580; Ex. 32.

⁸⁴ Test. of J. Casey at 192-193. Ms. Casey was not aware at the time she endorsed Ms. Leon's actions that Ms. Leon had exaggerated the number of people involved. Therefore, Ms. Casey cannot be said to have approved of that choice on Ms. Leon's part.

⁸⁵ Test. of J. Casey at 89; Test. of D. Aguilar at 367-368; Test. of C. Leon at 582-583; Ex. 31.

⁸⁶ Test. of D. Aguilar at 370-371.

⁸⁷ Test. of J. Casey at 96-99, and 198-205; Test. of A. Sanchez at 523-524; Ex. 37.

restaurant and involved at least three individuals. A restaurant employee who attempted to break up the fight was hit over the head with a gun and sustained injuries.⁸⁸

58. On December 11, 2014, the City Licenses and Consumer Services Division issued a Notice of Adverse License Action Imposition of Stayed Fine and Suspension to La Que Buena. The City notified La Que Buena that, based on the police report of the November 15th incident indicating that an 18-year-old had consumed alcohol at the restaurant, the City was imposing a fine and 30 day suspension that had been stayed pursuant to an October 2014 Settlement Agreement.⁸⁹ The City directed La Que Buena to be closed to the public and to not allow the service or consumption of alcohol on the premises from December 31, 2014 until January 30, 2015.⁹⁰

59. La Que Buena served its license suspension and was closed to the public during the month of January 2015.⁹¹

60. David Menter, a Minneapolis Police Officer assigned to the Problem Properties Unit, worked off-duty at La Que Buena on about 15 occasions between 2012 and 2013. Officer Menter believes most of the problems at La Que Buena occur after 2:00 a.m., and are caused by patrons who have been drinking at other bars prior to coming to La Que Buena for late night food.⁹²

61. Of the 15 incidents described in this section involving violent or disorderly conduct, all but two occurred after 12:30 a.m. Eight of the 15 incidents occurred at 2:00 a.m. or later.

2013/2014 License Settlement Conferences

62. On October 24, 2013, the City's Licenses and Consumer Services Division convened a license settlement conference with La Que Buena to discuss the restaurant's recent history of police calls and license violations and to determine what steps the restaurant could take to reduce such incidents. Juan Sanchez and Cindy Leon appeared on behalf of La Que Buena. Grant Wilson, the City's Business License Manager and Lead License Inspector Julie Casey appeared on behalf of the City, along with Lieutenant Amelia Huffman and Officers Chris Leum and Frank Kutz of the Minneapolis Police Department.⁹³

63. During the October 24, 2013, license settlement conference, the City identified the following "documented events of concern:"

- a. Allowing alcohol on the premises after 2:30 a.m. in violation of M.C.O. § 364.85 and use of the basement space for an event (June 2007);

⁸⁸ Test. of J. Casey at 101-122; Ex. 39.

⁸⁹ October 2014 Settlement Agreement described at paragraph 70, below.

⁹⁰ Test. of J. Casey at 99-100; Ex. 38.

⁹¹ Test. of J. Casey at 211; Ex. 38.

⁹² Test. of David Menter at 293 and 323.

⁹³ Test. of J. Casey at 86-87; Ex. 31.

- b. Posting alcoholic beverage signs in violation of M.C.O. § 125 (May 2009);
- c. Allowing sale of alcohol to minor in violation of M.C.O. § 370.10 (June 2009);
- d. Playing music at 2:40 a.m. in violation of M.C.O. § 360.370 (f) (June 2011), and playing live music after 2:00 a.m. (July 2011);
- e. Operating patio at 2:40 a.m. with patron consuming alcohol (August 2011);
- f. Advertising dancing entertainment on restaurant's Facebook page and providing disc jockey entertainment in violation of M.C.O. § 362.30 (March 2012);
- g. Operating outdoor patio after 10:00 p.m. (August and September 2013).⁹⁴

64. Due to the events that occurred at La Que Buena on November 23 and 25, 2013, the City's Licenses & Consumer Services Division reconvened a license settlement conference with La Que Buena. Juan Sanchez and Cindy Leon appeared on behalf of La Que Buena, along with attorneys Tammera Diehm and Ann Steingraeber of Winthrop and Weinstine, P.A. Grant Wilson and Julie Casey appeared on behalf of the City's Licenses and Consumer Services Division, along with Lt. Amelia Huffman, Officer Chris Leum, Officer Frank Kutz, Lt. Giovanni Velez, and Lt. Dan May with Minneapolis Police Department's License Investigation Division, and Crime Prevention Specialist Karen Notsch.⁹⁵

65. Following the settlement conference, the City issued Findings of Fact, Conclusions and Recommendations (April 2014 Settlement Agreement). The City concluded that incidents of criminal activity have occurred on or near the premises of La Que Buena and that the restaurant has on occasion exceeded the limits of its C-2 entertainment license, allowed alcohol on the premises after 2:30 a.m., operated its outdoor patio after 10:00 p.m., and allowed entertainment after 2:00 a.m.⁹⁶

66. At the top of the first page of the Settlement Agreement is a notice written in English, Spanish, Somali, and Hmong that states the following: "If you need this material in an alternative format, have questions, are deaf or hard-of-hearing, please call 612-673-3000." The notice is highlighted by a border around the text.⁹⁷

67. On April 14, 2014, Juan Sanchez executed the Settlement Agreement on behalf of La Que Buena. By doing so, Mr. Sanchez acknowledged that he had read and understood the findings of fact, conclusions and recommendation and agreed with their content. Mr. Sanchez also acknowledged the license violations identified in the

⁹⁴ Test. of J. Casey at 86-87; Ex. 31.

⁹⁵ Ex. 31.

⁹⁶ Ex. 31.

⁹⁷ Ex. 31.

Settlement Agreement and agreed that, in addition to the license conditions imposed under the 2007 Settlement Agreement, La Que Buena would comply with the following conditions in lieu of imposition of adverse license action:

- a. Suspension of its All Night Special Food license from the date of approval of this agreement by the Minneapolis City Council to September 3, 2014;
- b. Reduction of its class of license from a Class C-2 license to a Class E license with the understanding that it may reapply for a Class C-2 license after one year;
- c. Suspension of its business licenses for three consecutive days, including a Friday and Saturday;
- d. Gating the restaurant's rear parking lot at 10:00 p.m. daily;
- e. Installing additional lighting in the restaurant's rear parking area as advised by the 3rd Precinct Crime Prevention Specialist;
- f. Maintaining three surveillance cameras in the rear parking area and supplying the Minneapolis Police with surveillance recordings within one day of a request should such recordings be needed to investigate reports of criminal activity;
- g. Installing "panic hardware" on the rear door to the parking area and closing the rear entrance to patron entry after 10:00 p.m. each day;
- h. Posting a security guard in the rear parking area and at the front door when more than 25 patrons are in the restaurant and restricting entrance to any person appearing overly intoxicated;
- i. Participating in a security review with the Minneapolis Police Third Precinct Crime Prevention Unit and, as part of that review, agreeing to post "No Trespassing" signs and to follow trespass procedures outlined by the Minneapolis Third Precinct;
- j. Establishing, posting and enforcing, in cooperation with the Minneapolis Police Third Precinct, a dress code to discourage gang activity from occurring on its premises;
- k. Within 30 days, writing and enforcing a policy to prevent loitering on the restaurant's premises, and making the policy available to the Minneapolis Police and Business License Departments on request; and
- l. Within 30 days, writing and enforcing a policy regarding the safe service of alcohol to prevent persons who are overly intoxicated from being allowed on

the premises, and making the policy available to the Minneapolis Police and Business License Departments on request.⁹⁸

68. La Que Buena complied with all the requirements of the April 2014 Settlement Agreement, except for the requirement that it install "panic hardware" due to the larger unforeseen costs involved in retro-fitting the rear door.⁹⁹ Mr. Sanchez installed additional lighting in the alley and parking lot, added three security cameras in the rear parking lot, hired additional security for Friday and Saturday nights to guard the rear parking area, posted "no trespass" signs, established and enforced a dress code to discourage gang activity, and implemented an alcohol sales training program for his employees.¹⁰⁰

69. When a business fails two alcohol compliance checks in one year, the City License Division, along with the Minneapolis Police Department License Investigation Division, schedules a license settlement conference to discuss with the business measures it can take to improve compliance.¹⁰¹

70. On September 10, 2014, the City's Licenses & Consumer Services Division and Minneapolis Police License Investigation Division convened a license settlement conference with La Que Buena to discuss the restaurant's two alcohol compliance check failures. Juan Sanchez and Cindy Leon appeared on behalf of La Que Buena. Grant Wilson and Julie Casey appeared on behalf of the City's Licenses and Consumer Services Division, along with Lt. Amelia Huffman and Officer Chris Leum with the Minneapolis Police Department's License Investigation Division.¹⁰² The conference resulted in another settlement agreement (October 2014 Settlement Agreement), which was signed by Juan Sanchez on behalf of La Que Buena.¹⁰³

71. Pursuant to the terms of the October 2014 Settlement Agreement, La Que Buena agreed to purchase an identification card scanner to prevent sales of alcohol to persons under the age of 21 and to train all of its employees in all aspects of alcohol service, including the verification of patrons' identification cards.¹⁰⁴ La Que Buena also agreed to conduct self-checks of its employees four times per year to ensure compliance with its policies to prevent alcohol sales to minors. The City assessed La Que Buena a \$1,500 penalty and a 30 day suspension for the violations. However, \$1,000 of the penalty and the 30 day suspension were stayed pending no same or similar violations for a period of two years. La Que Buena was required to pay \$500 of the sanction within one month of signing the agreement.¹⁰⁵

⁹⁸ Test. of J. Casey at 88-92; Ex. 31.

⁹⁹ Test. of J. Casey at 192; Test. of J. Sanchez at 461-464; Test. of C. Leon at 594-598.

¹⁰⁰ Test. of J. Sanchez at 462-465; Test. of C. Leon at 594-598.

¹⁰¹ Test. of J. Casey at 94.

¹⁰² Test. of J. Casey at 94-95; Ex. 36.

¹⁰³ *Id.*

¹⁰⁴ Ex. 36; Test. of C. Leon at 603-605.

¹⁰⁵ Ex. 36.

Gang Affiliation

72. Officer Menter believed that some of the violence at La Que Buena was because the restaurant "was a friendly place" for a gang known as the Sureños 13.¹⁰⁶ He recalled that one of his very first interactions with the restaurant property was when he was called to a fight occurring in an apartment above the restaurant. The people involved included suspected gang members and individuals from rival gangs whose territory is somewhat south of La Que Buena. Officer Menter recalled that one of Mr. Sanchez' sons was present during the incident, going "back and forth between upstairs and downstairs." But Officer Menter could not recall whether Mr. Sanchez' son was upstairs in the apartment or not when he arrived.¹⁰⁷

73. Officer Menter also based his opinion that the Sureños were welcome at La Que Buena from his time working at the restaurant as an off-duty security officer. He recalled seeing gang colors, tattoos, and clothing.¹⁰⁸ However, Officer Menter acknowledged that he was not actually at the restaurant very often and stopped doing off-duty work there in 2013.¹⁰⁹

74. Officer Menter's concerns about gang members being welcome at La Que Buena was fueled in part by his belief that one of the Sanchez sons was an affiliate or member of the Sureños 13.¹¹⁰ Officer Menter believed the Sanchez' son was affiliated with or a member of the gang because of "who he hung out with and who the people I would see him on the avenue with" along with the connection that he drew between the son and the people involved in the altercation on the night of the apartment fight.¹¹¹

75. When Officer Menter asked Mr. Sanchez' son directly, he denied any affiliation with a gang. Officer Menter could not name any specific gang member he recalled having seen with the Sanchez' son or a specific place he had seen the son with gang members. Nor did he recall the Sanchez' son having any gang tattoos.¹¹²

76. Alexander Sanchez (Alexander), the Sanchez' youngest son, is 16 years old. He attends a military high school, participates in baseball activities and works daily helping his parents at the restaurant.¹¹³ Alexander denied ever having been affiliated with any gang, stating he is unlike gang members because he is a hard worker.¹¹⁴

¹⁰⁶ Test. of David Menter at 294.

¹⁰⁷ Test. of D. Menter at 296, 310-311.

¹⁰⁸ Test. of D. Menter at 296.

¹⁰⁹ Test. of D. Menter at 297.

¹¹⁰ Test. of D. Menter at 316. Officer Menter described a gang affiliate as "somebody that tends to hang out with them, maybe provides them some type of support" but who has not gone through the required rituals to become a full-fledged member of the gang, or who may be ineligible to become a member. See Test. of D. Menter at 307.

¹¹¹ Test. of D. Menter at 318-319.

¹¹² Test. of D. Menter at 318-319.

¹¹³ Test of Alexander Sanchez at 519-520.

¹¹⁴ Test. of A. Sanchez at 521.

77. James Sanchez (James), Sanchez' middle son, is 19 years old. He works at the restaurant when he is able to, and he works construction. The construction company he works for is City Brothers. City Brothers is owned by John Sanchez, the Sanchez' oldest son. During construction season James is generally helping at the restaurant in the evenings and on Sundays. In the wintertime, he is at La Que Buena all the time. He is also enrolled in school. At La Que Buena, he helps his mother with the bills and he helps Ms. Leon with organizational work. He is also concerned that his mother not be left unguarded at night, so he makes sure that either he or Alexander is there.¹¹⁵

78. The day after the homicide at La Que Buena, James stopped by the restaurant to eat lunch and check in on the situation. A police officer who was present at the time stated that James was "gang related." James asserted that he is not gang related in any way. He is not interested in dying young or going to jail. James wants to make progress in his life, to "[m]ake something big for [his] family" and to make his family happy. James wants to live a long, happy life.¹¹⁶

79. James denied that he was present at the apartment above La Que Buena on the night Officer Menter was called to intervene in the fight there. James guessed it was Alexander whom Officer Menter saw that night.¹¹⁷

La Que Buena's Security Efforts

80. Following the 2013 settlement conferences, Cindy Leon and other La Que Buena employees met with Minneapolis Police to draft a dress code to discourage gang activity on the restaurant's premises pursuant to the terms of the 2014 Settlement Agreement.¹¹⁸

81. Over the last couple of years, Cindy Leon has met with Ms. Notsch on several occasions to discuss possible security improvements and crime prevention strategies that La Que Buena could implement.¹¹⁹ Ms. Leon was very responsive to Ms. Notsch's recommendations. For example, at Ms. Notsch's urging, Ms. Leon drafted an employee manual and training program regarding alcohol sales compliance that Ms. Notsch described as "excellent."¹²⁰ Ms. Leon also created posters written in both English and Spanish that explained the restaurant's dress code policy and its requirement that patrons' show identification.¹²¹ Ms. Notsch was so impressed with Ms. Leon's poster regarding the dress code policy that she asked to share it with other businesses in the neighborhood.¹²²

¹¹⁵ Test. of James Sanchez at 526-530.

¹¹⁶ *Id.* at 537.

¹¹⁷ *Id.*

¹¹⁸ Test. of J. Casey at 143.

¹¹⁹ Test. of K. Notsch at 282-283; Test. of C. Leon at 584.

¹²⁰ Test. of K. Notsch at 285; Ex. 117.

¹²¹ Test. of K. Notsch at 285-286; Test. of C. Leon at 584-586, 591-594; Exs 116 and 119.

¹²² Test. of C. Leon at 584; Ex. 116.

82. Ms. Leon also began presenting an alcohol sales compliance training program based on the manual she developed to new employees at the time of their hire, and again to all employees as a refresher course approximately once every 12-18 months.¹²³ Ms. Leon developed the program based on a class she took on-line through the University of Minnesota on alcohol sales compliance and risk management.¹²⁴ After she completed the course, Ms. Leon contacted the University of Minnesota and arranged to have the instructor present the information to staff at La Que Buena.¹²⁵ Ms. Leon also shows new employees a training video on alcohol sales compliance that she obtained off the internet. The video is in Spanish, and Ms. Leon tests the new employees on the content afterwards.¹²⁶

83. In addition, in compliance with the terms of the 2014 Settlement Agreement, Mr. Sanchez installed additional lighting in the alley and parking lot, added three security cameras in the rear parking lot, hired additional security for Friday and Saturday nights to guard the rear parking area, and posted "no trespass" signs.¹²⁷

84. Beginning sometime in 2013, Minneapolis Police Inspector Michael Sullivan refused to allow police officers assigned to the Problem Properties Unit, like Officer Menter, to work off-duty at La Que Buena. Inspector Sullivan believed it was not appropriate for these officers to work off-duty at La Que Buena when La Que Buena was identified as a problem property.¹²⁸

85. In 2015, Inspector Sullivan expanded the off-duty work ban as it applied to La Que Buena. After consulting with Assistant Chief Matt Clark, Inspector Sullivan prohibited all off-duty work at La Que Buena while the restaurant's license renewal was under review.¹²⁹

86. When Minneapolis police officers from the 3rd Precinct were no longer allowed to work off-duty at La Que Buena, the restaurant requested to hire officers from the 5th Precinct to work off-duty, but that request was likewise denied.¹³⁰

87. In February of 2015, La Que Buena hired Jermaine Battles to provide security on weekends, from 9:00 p.m. until closing, which is usually around 2:30 or 3:00 a.m.¹³¹ In May of 2015, Mr. Battles added Luke Han Jin Smeby to work with him.¹³² In addition to checking patrons' ID cards and preventing obviously intoxicated people from entering the restaurant, Mr. Smeby and Mr. Battles patrol the entire block in front of the restaurant, the alley and the area behind the restaurant. They discourage loitering to

¹²³ Test. of J. Sanchez at 414-415; Test. of C. Leon at 585-586.

¹²⁴ Test. of C. Leon at 589-590.

¹²⁵ *Id.*

¹²⁶ Test. of C. Leon at 585-587; Ex. 118.

¹²⁷ Test. of J. Sanchez at 462-465; Test. of C. Leon at 594-598.

¹²⁸ Test. of M. Sullivan at 276-280; Test. of F. Kutz at 331.

¹²⁹ Test. of M. Sullivan at 276-280; Test. of F. Kutz at 331.

¹³⁰ Test. of Kasey Khatib at 345; Test. of C. Leon at 599.

¹³¹ Test. of Jermaine Battles at 633-634.

¹³² Test. of J. Battles at 637 and Luke Smeby at 435-437.

reduce incidents of drug trafficking, prostitution and vandalism.¹³³ Mr. Smeby and Mr. Battles took videos using body cameras to demonstrate how they provide security for La Que Buena.¹³⁴

88. La Que Buena currently has two security guards working Friday, Saturday, and Sunday nights from approximately 9:00 p.m. until closing time.¹³⁵

Community Impacts

89. Between 2007 and 2014, the City held three settlement conferences with La Que Buena and has spent many hours working with Mr. Sanchez and Ms. Leon on ways to improve security and reduce criminal activity and number of police calls for emergency assistance at La Que Buena. According to Grant Wilson, the Manager of the City's Licenses and Consumer Services Division, it is extremely rare for the City to spend this much time and effort on one business.¹³⁶

90. Neighbors and community groups representing areas near La Que Buena, such as the Powderhorn Park and Standish neighborhood associations, have complained to the Minneapolis Police Department and the City's Licenses and Consumer Services Division about the violence and noise occurring at La Que Buena.¹³⁷

91. La Que Buena serves as an important gathering spot for members of the Latino community and has loyal customers who appreciate the restaurant's authentic Mexican dishes. It also financially supports the local public high school (Minneapolis South) by sponsoring athletic teams, and it works cooperatively with other local businesses on crime prevention efforts.¹³⁸

92. La Que Buena sometimes applies to the City for outdoor music permits. When it does so, as a condition of receiving the permit, it sends a flier to each of the households in the surrounding neighborhood, notifying them of the event. In August, 2013, nearby residents were invited to attend such an event, which occurred from noon until 9:00 p.m. and included free music and free food.¹³⁹

93. Carlos Aguilar owns a business called "Just Promotions" which is located immediately next door to La Que Buena. Just Promotions has been at that location for five years and provides embroidering and printing for shirts and t-shirts. Mr. Aguilar is typically at his store Monday through Friday from 10 a.m. through 7 p.m., but he also frequently works on the weekends as well. Sometimes, when his workload requires it, he works in the evenings, as late as midnight.¹⁴⁰

¹³³ Test. of L. Smeby at 435-537 and J. Battles at 643-646.

¹³⁴ Test. of J. Battles at 646; Exs. 100-112.

¹³⁵ Test. of L. Smeby at 431-432 and J. Battles at 633.

¹³⁶ Test. of Grant Wilson at 221 and 235-236.

¹³⁷ Test. G. Wilson at 241-244; Test. of K. Notsch at 283-284.

¹³⁸ Test. of C. Leon at 608-609; Test. of Carlos Aguilar at 629-631; Test. of George Pineda at 676.

¹³⁹ Test. of C. Leon at 614. Ex. 122.

¹⁴⁰ Test. of C. Aguilar at 628.

94. Mr. Aguilar feels that La Que Buena helps his business by providing security when they have events going on in the afternoons. He eats lunch at La Que Buena a couple of times a month and occasionally has dinner there. He feels that the restaurant is a safe and well-run place.¹⁴¹

95. George Pineda lives with his family around the corner and about five houses up the block from La Que Buena. He has lived there for about four-and-one-half years, but has been eating at the restaurant for many more years. He has six children, including a one-year-old. Mr. Pineda eats there with his wife, children and his sister, in the afternoons and in the evenings. He has never had any problem with security at the restaurant. Sometimes he goes there as late as 2:00 a.m., if he has been out dancing.¹⁴²

96. Mr. Pineda has observed that, as long as La Que Buena is open and the restaurant's security personnel are around, especially in the later evening and early morning hours, people engaged in prostitution and drug dealing stay away. There are other parts of the nearby neighborhood including unlit parking lots, abandoned buildings, and garages where he believes criminal activity continues to occur. Mr. Pineda believes that La Que Buena helps to keep the neighborhood safer, at least until 2:00 or 3:00 a.m., because their staff watches the area while the restaurant is open.¹⁴³

97. On March 11, 2015, the City issued a Notice and Order for Hearing. The City issued an Amended Notice and Order for Hearing on June 4, 2015. Since the March 2015 Notice and Order for Hearing, there have been no police calls for service and no incidents requiring police response at La Que Buena.¹⁴⁴

98. During the years she has worked with La Que Buena on licensing issues, Lead License Inspector Julie Casey has found Juan Sanchez and Cindy Leon to be cooperative and willing to comply with the City's recommendations.¹⁴⁵

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Minneapolis City Council have authority to consider the allegations against the Licensee and the action to be taken pursuant to Minn. Stat. §§ 14.50, 14.55, 340A.412, subd. 2, .415 (2014), and the Minneapolis City Charter and Code of Ordinances.¹⁴⁶

¹⁴¹ Test. of C. Aguilar at 629-631.

¹⁴² Test. of G. Pineda at 667-671.

¹⁴³ *Id.* at 671-673 and 676-677.

¹⁴⁴ Test. of J. Casey at 103.

¹⁴⁵ *Id.* at 102.

¹⁴⁶ Minneapolis Charter Ch. 4, § 5; Minneapolis Code of Ordinances §§ 259.250, 362.100, 362.260, 362.300, 362.365 and 362.510.

2. The City has complied with all relevant substantive and procedural legal requirements.

3. The Licensee received adequate and timely notice of the hearing and of the charges against it.

4. The City has the burden of proving by a preponderance of the evidence that adverse action is warranted against the licenses held by La Que Buena.¹⁴⁷

5. Pursuant to Minn. Stat. § 340A.412 (2014), the City may not renew La Que Buena's Class E on-sale liquor license if renewal would not be in the "public interest."

6. Minneapolis Code of Ordinances § 259.250 provides that failure to comply with any specified "standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation or suspension of said license or license permit." The Ordinance further provides, in relevant part, that:

(1) It shall be the responsibility of the licensee to take appropriate action to prevent further violations following conduct by any persons on the business premises, including parking areas, in violation of any of the following statutes or ordinances:

...

g. Minnesota Statutes, Sections 97B.021, 97B.045, 609.66 through 609.67, and 624.712 through 624.716, and Section 393.40, 393.50, 393.70, 393.80, 393.90 and 393.150 of this Code, which prohibits the unlawful possession, transportation, sale or use of a weapon.

h. Minnesota Statutes, Section 609.72 and Section 385.90 of this Code, which prohibits disorderly conduct.

...

i. Any other criminal activity arising out of the conduct of the business.

(2) It shall be the responsibility of the licensee to maintain and operate the business in compliance with all applicable laws and ordinances, including the zoning, fire, environmental health, environmental management, license, food, liquor, housing and building codes.

(3) The licensee is directly and vicariously responsible for any violations on the premises, including parking areas, by any employees, independent contractors, other persons hired by the licensee, or otherwise under the supervision or management of the licensee.

¹⁴⁷ Minn. R. 1400.7300, subp. 5 (2015).

(4) It shall be the responsibility of the licensee to provide adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, including parking areas.

...

(9) It shall be the responsibility of the licensee to fully comply with all conditions of license or other operational specific requirements duly imposed by the licensing authority or agreed to by the licensee.

...

(13) The provisions of this section are not exclusive. Adverse license action, inclusive of, but not limited to, revocation, may be based upon good cause at any time upon proper notice and hearing. This section shall not preclude the enforcement of any other provisions of this Code or state and federal laws and regulations.¹⁴⁸

7. Minneapolis Code of Ordinances § 360.55 requires businesses licensed to sell alcohol to monitor and be responsible for the activity of employees and patrons so as to prevent negative secondary effects directly attributable to the existence of the business. License holders shall, among other duties, monitor nuisance activities and criminal activities occurring on the premises, so as to protect the safety, repose, and welfare of residents, businesses and other uses near the establishment.

8. Minneapolis Code of Ordinances § 360.70(e) provides that the City Council may deny, revoke, suspend or refuse to renew a special late hours food license for any of the following reasons:

- (1) The existence of special later hours disturbs the peace, quiet or repose of surrounding residential or commercial areas;
- (2) The existence of special later hours contributes to crime, disorderly behavior, noise, traffic, litter or parking problems in the area near the establishment;
- (3) Any violation of the laws relating to sale or service of alcoholic beverages;
- (4) Any violation of the terms of this section;
- (5) Any other good cause related to the operation of the establishment.

9. Violations of the Minneapolis Code of Ordinances or other laws admitted to by a licensee by satisfaction of the citation, or findings issued regarding violations that are adjudicated by a district, state or federal court of law, or a neutral administrative hearing officer, shall be deemed to constitute a sufficient basis for the City Council to impose reasonable conditions or other adverse license action on any license, including

¹⁴⁸ M.C.O. § 259.250.

but not limited to a reduction in hours of operation, a reduction in bar area, a reduction in the levels of live entertainment allowed, amendments to security plans, or a reduction in the size of outdoor premises.¹⁴⁹

10. A license to sell liquor only permits the sale of liquor in the premises designated in the license application. An application to expand the licensed premises shall be submitted before the licensee sells liquor in the expanded area.¹⁵⁰

11. Minn. Stat. § 340A.504, subd. 2, precludes the sale of intoxicating liquor between the hours of 2:00 a.m. and 8:00 a.m., on days when alcohol may be sold.

12. Upon finding good cause, the City Council has authority to impose reasonable conditions or restrictions when renewing a liquor license. The City Council may impose such conditions and restrictions to preserve the public peace and protect and promote good order, livability and security. Reasonable conditions or restrictions may pertain to:

- (1) A limitation as to the hours when intoxicating liquor may be sold or consumed on the licensed premises.
- (2) A limitation and restriction as to the exact location within a building where intoxicating liquor will be served, sold or consumed.
- (3) A limitation and restriction as to the means of ingress to or egress from the licensed establishment.
- (4) A limitation as to the patron occupancy level of the entire premises or portions thereof.
- (5) A limitation or restriction as to the admittance of persons under the age of twenty-one (21) years to those areas of the premises where alcohol is not sold, possessed or consumed; or a prohibition on the admittance of any persons under the age of twenty-one (21) years except for those purposes expressly recognized pursuant to Minn. Statute Section 340A.503.
- (6) Reasonable conditions limiting the operation of the licensed premises so as to ensure that the licensed business will comport with the character of the district in which it is located or to prevent the occurrence and establishment of public nuisances.

The authority granted to the City Council pursuant to this section is in addition to any other authority otherwise provided by this Code and applicable law.¹⁵¹

¹⁴⁹ M.C.O. § 360.150.

¹⁵⁰ M.C.O. § 362.20.

¹⁵¹ M.C.O. 362.365.

13. No license shall be issued in violation of any Minnesota state law, and any violation of Minnesota state law relating to the sale and distribution of liquor shall be considered a violation of the Minneapolis Code of Ordinances.¹⁵²

14. Pursuant to M.C.O. § 362.520, "no person shall mix, consume, or display liquor in any place frequented by the public unless such place is licensed under this chapter. . . . This applies to any room or other place in a business establishment not licensed under this chapter, where the public at large is invited or permitted and which is not reserved or designated for any use of a private nature."

15. Pursuant to M.C.O. § 364.85(b), an establishment that has obtained a permit from the commissioner of public safety under Minn. Stat. § 340A.505, subd. 7 (2014), may not allow consumption of liquor, wine or beer, including the licensee and his or her employees and agents, on the premises between 2:30 a.m. and 8:00 a.m.

(c) During said hours, no person shall be allowed to be or remain upon or within such room, place or premises for any purpose whatever, except that the owner or licensee, his or her agents, servants or employees may remain therein for the purpose only of cleaning, preparation of meals, necessary repairs or other work therein and in connection therein, or as guards.

(d) During said hours, beverage alcohol must be removed from all public areas of the establishment including tables and bar areas.

16. No person licensed under M.C.O. Chapters 362, 363, or 366, or such licensee's agents or employees, shall serve, authorize another to serve or dispense upon the licensed premises any liquor or beer to any person under the age of 21 years; nor shall such licensee, or the licensee's agent or employee, permit any person under the age of 21 years to be furnished with any liquor or beer on the licensed premises.¹⁵³

17. As the party proposing that certain action be taken, the City has the burden of proving by a preponderance of the evidence that renewal of La Que Buena's liquor license is not in the public interest or, alternatively, that good cause exists to impose conditions on La Que Buena's liquor license.

18. The City has demonstrated, by a preponderance of the evidence, that La Que Buena has failed to comply with standards and conditions set forth in M.C.O. § 259.20. Specifically, the City has demonstrated that La Que Buena violated M.C.O. § 259.20 by failing to take necessary action and provide adequate security to prevent disorderly conduct and other criminal activity from occurring on the business premises and by failing to comply with all conditions and requirements of its licenses.

19. The City has demonstrated by a preponderance of the evidence that good cause exists to refuse to renew La Que Buena's liquor and special late hours food

¹⁵² M.C.O. § 362.500.

¹⁵³ M.C.O. § 370.10.

licenses. The City has demonstrated that the existence of La Que Buena's special late hours food license contributes to crime, disorderly conduct and noise at or near the restaurant in violation of M.C.O. § 360.70(e).

20. The City has not shown by a preponderance of the evidence that renewal of La Que Buena's class E liquor license would not be in the public interest.¹⁵⁴

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the City refuse to renew La Que Buena's special late hours food license further, and that the City renew La Que Buena's Class E liquor license subject to strict conditions.

Dated: October 7, 2015


LAURASUE SCHLATTER
Administrative Law Judge

Reported: Kirby Kennedy & Associates
Transcript Prepared (Four volumes)

NOTICE

This Report is a recommendation, not a final decision. The Minneapolis City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Pursuant to Minn. Stat. § 14.61 (2014), the City Council will not make its final decision until after it has provided each party adversely affected an opportunity to file exceptions and present argument to the Minneapolis City Council. Parties should contact the City Clerk, Council Information Division, 350 South Fifth Street, Room 304, Minneapolis Minnesota 55415-1382; telephone number 612-673-3135 to find out the process for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1 (2014), the City is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

¹⁵⁴ Minn. Stat. § 340A.412.

MEMORANDUM

The issues in this case are whether the City has demonstrated by a preponderance of the evidence that renewal of La Que Buena's liquor license and special late hours food license are not in the public interest and whether good cause exists to refuse to renew or otherwise take adverse license action against La Que Buena's licenses.

Parties' Positions

The City argues that the ongoing pattern of criminal and nuisance activity occurring on or connected to La Que Buena, coupled with numerous license and code violations, constitutes adequate legal grounds to find that renewal of the restaurant's liquor and special late hours food licenses is not in the public interest pursuant to Minn. Stat. § 340A.412. The City maintains that the lengthy enforcement and violation history of La Que Buena sets it apart from other businesses in terms of the sheer quantity of time and resources expended on it by the city's police department and licensing staff. The City asserts that La Que Buena has been on notice since at least 2007 that the continuation of its liquor license was predicated on its duty to prevent continuing criminal and nuisance activity and licensing violations on its premises. Because La Que Buena has demonstrated it is unable to prevent serious, significant and ongoing criminal and nuisance activity at its establishment, the City contends that continued licensure will not serve the public interest and that good cause exists to refuse to renew or otherwise take adverse action against La Que Buena's licenses.

La Que Buena argues that the substantive evidence presented in this case fails to demonstrate that renewal of its liquor license is not in the public interest or that there is good cause to revoke its late hours food license. La Que Buena asserts that the City relied substantially on hearsay evidence, namely police and inspection reports, with respect to most of the alleged criminal conduct and license violations. In particular, La Que Buena disputes the City's claim that it served alcohol to the 18-year-old who was involved in the November 15, 2014, assault with a gun outside the restaurant. La Que Buena insists that the only evidence the City presented to support its contention that the restaurant served alcohol to the 18-year-old minor was hearsay statements. In addition, La Que Buena contends that the City has failed to show that it acted improperly with respect to the majority of the situations that required police intervention. La Que Buena also argues that many of the incidents involving police calls for service occurred off its premises and not within La Que Buena's control.

La Que Buena also points out that there have been no complaints of any sort since it reopened after its one month suspension at the end of January 2015, and it asserts that it has earnestly and diligently implemented almost all of the recommended remedial measures set forth in its settlement agreements with the City. La Que Buena contends that the City is attempting to make it a scapegoat for what are longstanding problems with crime in the East Lake Street area. La Que Buena maintains that renewal of its licenses is in the public interest because Juan Sanchez and his family, along with Cindy Leon, have worked hard and made valiant efforts in the face of adversity to operate a restaurant in a high crime neighborhood.

Applicable Legal Standards

It is well established that, under Minnesota law, there is no property right to a liquor license.¹⁵⁵ Nor does a licensee have a right to renewal of a liquor license.¹⁵⁶ Municipalities have broad discretion in determining "the manner in which liquor licenses are issued, regulated, renewed, and revoked."¹⁵⁷ The Minneapolis Code of Ordinances provides that a licensee's violation of an ordinance or other law relating to the conduct of the licensee's business is sufficient basis for the City to take adverse license action on any license.¹⁵⁸ In addition, Minnesota courts have upheld adverse actions against licensed businesses based on actions occurring in the licensed business's parking lot, alley, or surrounding area.¹⁵⁹ However, a municipality's decision not to renew a liquor license may not be made arbitrarily and must "be based on articulable and legally sufficient reasons."¹⁶⁰

Pursuant to Minn. Stat. § 340A.412, subd. 2(b), no liquor license may be renewed if the "results" of an "investigation" show "to the satisfaction of the governing body that ... renewal would not be in the public interest."¹⁶¹ That is, the City has a duty to ensure that renewal of the business operations of the license will not be "detrimental to the public good."¹⁶²

In addition to the "public interest" requirement, M.C.O. § 259.250 provides that failure to comply with specific minimum "standards and conditions shall be adequate grounds for refusal to renew, revocation or suspension of said license or license permit." Those standards and conditions provide, in part, that:

it is the "responsibility of the licensee to take appropriate action to prevent further violations following conduct by any persons on the business premises, including parking areas, in violation of any of the following statutes or ordinances: ...

g. Minnesota Statutes, Sections 97B.021, 97B.045, 609.66 through 609.67, and 624.712 through 624.716, and Section 393.40, 393.50, 393.70, 393.80, 393.90 and 393.150 of this Code, which prohibits the unlawful possession, transportation, sale or use of a weapon.

h. Minnesota Statutes, Section 609.72 and Section 385.90 of this Code, which prohibits disorderly conduct.

¹⁵⁵ *Hymanson v. City of St. Paul*, 329 N.W.2d 324, 326 n.1 (Minn. 1983).

¹⁵⁶ *Flesner v. City of Ely*, 863 F. Supp. 971, 979 (D. Minn. 1994).

¹⁵⁷ *Bourbon Bar & Café Corp. v. City of St. Paul*, 466 N.W.2d 438, 440 (Minn. Ct. App. 1991) (citing *Sabes v. City of Minneapolis*, 120 N.W.2d 871, 875 (Minn. 1963)).

¹⁵⁸ M.C.O. §§ 360.150 and 362.340.

¹⁵⁹ See, *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557 (Minn. Ct. App. 2001); *Metro Bar & Grill, Inc., d/b/a Arnellia's v. City of St. Paul*, C6-00-1156 (Minn. Ct. App. May 1, 2001) (unpublished).

¹⁶⁰ *E.T.O., Inc. v. Town of Marion*, 375 N.W.2d 815, 819 (Minn. 1985).

¹⁶¹ Minn. Stat. § 340A.412, subd. 2(b).

¹⁶² *Paron v. City of Shakopee*, 32 N.W.2d 603, 609 (Minn. 1948); *Sabes v. City of Minneapolis*, 120 N.W.2d 871, 875 (Minn. 1963).

I. Any other criminal activity arising out of the conduct of the business.¹⁶³

Minneapolis Code of Ordinances § 259.250 also states that the licensee has the responsibility to "provide adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, including parking areas."¹⁶⁴ The licensee must also comply with all conditions of the license or other requirements "duly imposed by the licensing authority or agreed to by the licensee."¹⁶⁵ Finally, M.C.O. § 259.250 specifies, in relevant part, that the licensee "is directly and vicariously responsible for any violations on the premises, including parking areas, by any employees, independent contractors, other persons hired by the licensee, or otherwise under the supervision or management of the licensee."¹⁶⁶ Failure to comply with these standards is grounds for non-renewal.¹⁶⁷

With respect to La Que Buena's special late hours food license, M.C.O. § 360.70(e) provides that the city council may deny, revoke, suspend or refuse to renew a special late hours food license for any of the following reasons:

- (1) The existence of special later hours disturbs the peace, quiet or repose of surrounding residential or commercial areas;
- (2) The existence of special later hours contributes to crime, disorderly behavior, noise, traffic, litter or parking problems in the area near the establishment;
- (3) Any violation of the laws relating to sale or service of alcoholic beverages;
- (4) Any violation of the terms of this section;
- (5) Any other good cause related to the operation of the establishment.¹⁶⁸

Analysis

Good Cause Not to Renew Special Late Night Hours Food License

The record in this matter contains substantial evidence of disorderly conduct, assaults, weapon use, and alcohol compliance failures occurring on La Que Buena's premises on a fairly frequent basis between May 2012 and December 2014. The evidence is sufficient to find that, at least until mid-2014, La Que Buena failed to take appropriate action, such as providing adequate security to prevent fights, assaults, and disorderly

¹⁶³ M.C.O. 259.250(1).

¹⁶⁴ M.C.O. § 259.250(4).

¹⁶⁵ *Id.*

¹⁶⁶ M.C.O. § 259.250(3).

¹⁶⁷ M.C.O. § 259.250.

¹⁶⁸ M.C.O. § 360.70(e).

conduct from continuing to occur on its premises in violation of M.C.O. § 259.250(1) and (4).

The City's theory that La Que Buena is, or ever has been, a place that is "friendly" to gang members is unsupported by the evidence. The City failed to establish that either James or Alexander Sanchez is a gang member or affiliated with a gang. James and Alexander each stated unequivocally and credibly that he is not connected in any way with a gang and has no interest in the life of a gang member. The City's suspicions about gang affiliations and friendliness to gang members on the part of members of the Sanchez family were vague and highly speculative and may have contributed to inaccurate assumptions by the City's licensing and law enforcement staff about the nature of the activities at the restaurant.

The Administrative Law Judge is likewise not persuaded by the Licensee's claim that much of the criminal activity took place off of the restaurant's premises and outside of its control. Contrary to the Licensee's claim, most of the cited criminal and disorderly conduct occurred in the restaurant, just outside its front door, or in its parking lot. Pursuant to M.C.O. § 259.250(1), a licensee is responsible to take appropriate action to prevent criminal and disorderly conduct on its premises, including parking areas. In *CUP Foods, Inc. v. City of Minneapolis*,¹⁶⁹ the Minnesota Court of Appeals upheld the City's finding that there was "good cause" to discipline a convenience store's licenses where there was ample evidence that drug transactions took place "in and around the store," and the licensee knew that crime was an ongoing problem.¹⁷⁰

The Administrative Law Judge is convinced that a significant portion of La Que Buena's problems with disruptive and violent activity is related to its special late hours food license. The pattern of incidents involving violence seems to bear out the theories, voiced by both Officer Menter and Mr. Sanchez, that people leave other establishments in the area at or near closing time, sometimes after drinking to excess, and go to La Que Buena in search of food. La Que Buena's special late hours food license appears to attract the wrong sort of customer late at night.

The record of disorderly and violent disturbances in the late night and very early morning hours establishes good cause to deny La Que Buena's request to renew its special late hours food license. Therefore, the Administrative Law Judge recommends that the City refuse to renew La Que Buena's special late hours food license.

Good Cause Not to Renew the Class E Liquor License

Because the City has demonstrated that La Que Buena has failed to comply with M.C.O. § 259.250 on repeated occasions, the City has demonstrated sufficient grounds for non-renewal of or other adverse action against La Que Buena's liquor license pursuant to that ordinance. Assaults, disorderly conduct, weapon use, and alcohol compliance

¹⁶⁹ 633 N.W.2d 557, 564 (Minn. Ct. App. 2001).

¹⁷⁰ *Id.*

failures on its premises are sufficient "good cause" to subject licenses to non-renewal or adverse action.

The Administrative Law Judge finds La Que Buena's claim that the City inappropriately relied on hearsay evidence to establish the license violations to be unpersuasive. It is well established that reliable hearsay evidence, including police reports, are admissible in license disciplinary proceedings.¹⁷¹ Moreover, the Licensee entered into settlement agreements with the City wherein it acknowledged and admitted to many of the license violations at issue.¹⁷² And, with respect to the November 15, 2014, incident involving a gun fight between two patrons, Alexander Sanchez corroborated the account in the police report that the 18-year-old had been drinking.¹⁷³

Public Interest in Renewing the Class E Liquor License

The same combination of La Que Buena's history of license violations, especially the back-to-back youth alcohol compliance failures in May, July, and December of 2014, along with the pattern of criminal and nuisance activity on the restaurant's premises, are troublesome and support the City's argument that it has demonstrated that continued operation of La Que Buena does not serve the public good and it should refuse to renew La Que Buena's Class E liquor license. Nonetheless, the presence of a benefit to the public should be weighed in a decision regarding a sanction such as whether or not to renew a liquor license.¹⁷⁴

There are two relevant lines of evidence to consider in determining whether the public interest favors denying or renewing La Que Buena's Class E liquor license. First, is the question of the extent to which renewing the license does not serve the public interest. The City presented undisputed testimony that La Que Buena's historical failure to curb disorderly and violent conduct on and around its premises demanded excessive City resources and drew protests from nearby neighborhood groups. This evidence favors denial of the license renewal based on a finding that renewing the license would not serve the public interest.

But there was also substantial testimony about La Que Buena's remedial efforts, and evidence that those efforts are succeeding. Ms. Casey and Ms. Notsch acknowledged that La Que Buena has been receptive to the City's crime prevention recommendations. Moreover, Ms. Casey conceded that La Que Buena staff acted appropriately in several of the cited instances where police were called to assist with

¹⁷¹ See Minn. R. 1400.7300, subp. 1 (2015); Minn. R. Evid. 803(8) (public records exception to hearsay rule); *In the Matter of the Class E Liquor License Held by Starmac, Inc. and Richard P. Nelson d/b/a Champions Saloon & Eatery*, OAH Docket No. 68-6010-30397, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION (February 6, 2014).

¹⁷² See Ex. 31.

¹⁷³ Test. of A. Sanchez at 523.

¹⁷⁴ *In the Matter of the On-Sale Liquor License, Class A, with Sunday Sales held by Midwest Latino Entertainment & Talent, Inc.*, OAH Docket No. 2-6010-20557, FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION at 36 (March 2010) citing *DRJ, Inc., d/b/a Diva's Overtime Lounge v. City of St. Paul* (Minn. Ct. App. Nov. 2007).

customers or others engaging in assaultive or disorderly conduct.¹⁷⁵ These efforts on the part of the Licensee undercut the City's claim that La Que Buena failed to "take appropriate action to prevent further violations" in violation of M.C.O. § 259.250 and support consideration of a lesser sanction than non-renewal.¹⁷⁶

Moreover, many of the incidents involving conflict and violence, as discussed above, occurred in connection with people coming to La Que Buena late at night, drunk, and being turned away; or gaining entrance to the restaurant, then violent when the restaurant refused to serve them more alcohol. If La Que Buena's special late hours food license were not renewed, it appears likely to the Administrative Law Judge that many of the problems that have led to police calls would no longer occur.

The record established that La Que Buena has made great efforts in the past year and a half to improve security and to train employees with respect to alcohol sales compliance. Both the City's Lead License Inspector Julie Casey and Crime Prevention Specialist Karen Notsch praised La Que Buena Manager Cindy Leon's efforts in creating an employee training manual on alcohol sales compliance, and posting signs in English and Spanish regarding the need for patrons to show proper identification and abide by a dress code. La Que Buena purchased an automated drivers' license reader following the September 2014 meeting with the City.¹⁷⁷ This evidence weighs in favor of the public interest, particularly because the improvements made by La Que Buena appear to be reflected in fewer incidents involving disorderly or violent conduct (only two in 2014, as opposed to 5 in 2013 and 4 each in 2011 and 2012) and, except for the alcohol compliance violations,¹⁷⁸ no licensing violations since 2013.

The second area to consider in the public interest analysis is the extent to which La Que Buena makes a positive contribution to the common good; and what the loss of La Que Buena would mean to the community. There was substantial testimony concerning the positive role that La Que Buena plays in the neighborhood and in the community. A stable business on that block, including the security it provides during its hours of operation, is a deterrent to criminal activity. The testimony established that La Que Buena is a family restaurant that emphasizes the culture of the local community. It is not primarily a bar, as demonstrated by the policy Mr. Sanchez put into place requiring patrons to order food before they can be served alcoholic beverages. La Que Buena contributes to the local community – by donating money to the local public high school, by participating in the local business community, and by working to reach out to its business as well as to its residential neighbors. Mr. Sanchez and Ms. Leon testified

¹⁷⁵ See Test. of J. Casey at 192-193.

¹⁷⁶ M.C.O. § 259.250(1).

¹⁷⁷ Test of C. Leon at 605.

¹⁷⁸ The Administrative Law Judge is particularly concerned about the seriousness of the sales of alcoholic beverages to underage individuals, and recommends that, if the City finds that it is in the public interest to grant La Que Buena a Class E liquor license, it attach stringent conditions to the license. In particular, the conditions should place a heavy emphasis on compliance with the requirements concerning sales of alcohol to minors.

credibly that, if La Que Buena loses its Class E liquor license, it will likely have to close. The loss of the restaurant will mean a loss of a longtime community gathering place.

If the City agrees that, on balance, allowing La Que Buena a Class E on-sale liquor license is in the public interest, the City could consider imposing conditions on La Que Buena's license as an alternative to non-renewal of La Que Buena's liquor license. M.C.O. § 362.365 authorizes the City to impose conditions on a liquor license, upon finding "good cause," to "preserve the public peace and protect and promote good order, livability and security." The City could adopt this alternative if it determines that renewal of La Que Buena's license with additional conditions would be in the public interest.¹⁷⁹ The Administrative Law Judge recommends that the City consider the following conditions, imposed for the term of one year:

- Continue to enforce a policy regarding the safe service of alcohol to prevent persons who are intoxicated from being allowed on the premises;
- Train all of its employees in all aspects of alcohol service, including the verification of all patrons' identification cards;
- Continue to conduct self-checks of its employees four times per year to ensure compliance with its policies to prevent alcohol sales to minors.
- Require La Que Buena to continue to employ a professional, outside security firm;
- Continue to gate the restaurant's rear parking lot at 10:00 p.m., daily;
- Maintain all additional lighting in the restaurant's rear parking area;
- Maintain three surveillance cameras in the rear parking area and supply the Minneapolis Police with surveillance recordings within one day of a request;
- Close the restaurant's rear entrance to patron entry after 10:00 p.m., each day;
- Post security guards in the rear parking area and at the front door when more than 25 patrons are in the restaurant; and restrict entrance to any person appearing intoxicated;
- Maintain "No Trespassing" signs and follow trespass procedures outlined by the Minneapolis Third Precinct;
- Continue to post and enforce, in cooperation with the Minneapolis Police Third Precinct, a dress code to discourage gang activity from occurring on its premises;
- Continue to enforce a policy to prevent loitering on the restaurant's premises.

The record demonstrates that good cause exists to not renew La Que Buena's special late hours food license. The record further demonstrates that good cause exists to not renew La Que Buena's Class E liquor license. However, because on balance, the record demonstrates that the public interest will be better served if La Que Buena is permitted to remain a viable business, the Administrative Law Judge respectfully

¹⁷⁹ See *DRJ, Inc. v. City of St. Paul*, 741 N.W. 2d 141, 145 (Minn. Ct. App. 2007).

recommends that the Minneapolis City Council grant La Que Buena's application for renewal of a Class E liquor license, subject to the conditions described above.

L.S.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MN 55164-0620

CERTIFICATE OF SERVICE

In the Matter of the Class E On-Sale Liquor and Special Late Hours Food Licenses held by La Que Buena, Inc. and Juan and Maria Sanchez, d/b/a La Que B	OAH Docket No.: 80-6010-32335
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Katie Lin, certifies that on October 7, 2015, she served the true and correct **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** by courier service or by placing it in the United States mail with postage prepaid, addressed to the following individuals:

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