

**CITY OF MINNEAPOLIS  
CITY COUNCIL  
COMMUNITY DEVELOPMENT & REGULATORY SERVICES COMMITTEE**

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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

**CITY OF MINNEAPOLIS'  
EXCEPTIONS TO THE REPORT  
& RECOMMENDATION OF  
THE ALJ**

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The Business Licensing Division and the Police Department of the City of Minneapolis (hereinafter "the City") respectfully submit the exceptions and arguments contained herein with regard to the Findings of Fact, Conclusions of Law, and Recommendation issued by Administrative Law Judge LauraSue Schlatter on October 7, 2015 (hereinafter "the report") in relation to the above-entitled matter.

It is the City's position that the report should be adopted with the few exceptions noted herein. The report supports and vindicates the most crucial and determinative positions of the City in the following key respects:

- *"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..."* Report at 1.
- *"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 [Minneapolis ordinance]. Specifically, the City has demonstrated that La Que Buena violated [Minneapolis ordinance] 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."* Report at 25.
- *"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 licenses."* Report at 25-26.

- *“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 failures on its premises are sufficient “good cause” to subject licenses to non-renewal or adverse action... 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.” Report at 30-31.*

In sum, the record of this matter and the report from the ALJ speak for themselves in establishing an extraordinarily lengthy history of multiple license violations, multiple administrative citations and fines, multiple youth alcohol compliance failures, multiple license settlement conferences, failures to abide by agreed-upon license conditions affecting life safety, and multiple incidents of criminal and nuisance activity taking place on and directly-connected to the business premises involving serious assaults, large fights, a murder and the use of dangerous and deadly weapons including knives, bottles and firearms resulting in substantial bodily injuries and loss of life. The record and report also reflect that this deleterious behavior and impact is largely unprecedented in scale and scope in relation to other licensed businesses in Minneapolis and plainly resulted in the expenditure of massive and disproportionate amounts of public resources — inclusive of staff time from multiple members of the licensing, police, and attorney’s offices — and the expenditure of other scarce public financial and staff resources.

The City respectfully differs with only one aspect of the report of the ALJ in this matter. Namely, the ALJ, after balancing many factors, found that the City had not established that nonrenewal of La Que Buena’s liquor license would be in the public interest (there is no dispute regarding the late hours food license, which the ALJ conclusively recommends should not be renewed). As referenced above, the ALJ did resoundingly determine that good cause had been established to refuse to renew the liquor license. Nonetheless, she recommended that an alternative form of adverse license action be taken against the liquor license – renewal “subject to

strict conditions.” Report at 1. Crucially, this recommendation of the ALJ regarding the proper type of sanction to be imposed against the liquor license held by La Que Buena is merely a recommendation and not a final decision. Report at 26. The City Council is entirely free to impose the level of adverse license action it deems most appropriate and supported by the record. And, in this case, that sanction should be nonrenewal of the subject liquor license. Therefore, the City submits that the report of the ALJ should be adopted<sup>1</sup> but that, on balance, the city council should conclude that renewal of the liquor license held by La Que Buena would not serve the public interest and should refuse to renew it.

The ALJ’s report, although concluding that a legal basis exists to support nonrenewal of the liquor license, recommends an adverse license action short of nonrenewal to include the imposition of “strict conditions” upon the renewal of the establishment’s liquor license. This recommendation is largely predicated upon La Que Buena’s supposed recent “remedial efforts” aimed at curbing some of the ongoing deleterious community impact stemming from the operation and existence of the business. Report at 31-32.

However, the City asserts that a more proper balancing of the public interest and related factors in determining whether to impose liquor license nonrenewal or a lesser adverse sanction, based on the clear finding that good cause supports adverse liquor license action in this matter, indicates that nonrenewal is the most appropriate action:

- A crucial factor in this balance is the ongoing and admitted failure of La Que Buena to abide by a specific license condition imposed upon it and agreed to by it as part of a license settlement agreement signed in April of 2014. La Que Buena agreed to install panic hardware on its rear entry door, in addition to a host of other

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<sup>1</sup> The City also notes that there is a typographical error in Conclusion #18 in the report which appears to incorrectly reference M.C.O. § 259.250 as M.C.O. § 259.20. The record and context clearly indicate that the ALJ intended to cite to M.C.O. § 259.250. Furthermore, the City notes that no part of its recommendation is predicated upon any allegation that the licensees or their family were or are, themselves, associated with any gang. Finally, the City incorporates into these exceptions all of its post-hearing arguments contained in its post-hearing memoranda.

security conditions. La Que Buena concedes it has altogether failed to install the panic hardware, which is required by the Fire Code and which has the potential to create a clear life safety hazard by restricting egress from the rear of the establishment during an emergency situation. The record also reflects that La Que Buena has not always complied with other security conditions from the license settlement agreement, including the posting of two security guards at designated locations during certain time periods. Additionally, the record reflects that during 2015 La Que Buena's present security team was not even aware of the currently-applicable list of multiple license conditions it was largely their duty to enforce, that they were unaware of the legal occupancy level of the establishment and that they allowed significant over-occupancy during special events. See Hearing Transcript at 439, 619 and 660-65. This ongoing failure to comply with agreed-upon and legally-imposed license conditions evidences a disregard to responsibly manage the business and is in direct and continuing violation of M.C.O. § 259.250(9) which provides that "[i]t shall be the responsibility of the licensee to fully comply with all conditions of license..." and states that "[f]ailure to comply ... shall be adequate grounds to for the ... refusal to renew ... said license." This failure provides an independent and free-standing basis to refuse to renew the liquor license and, taken in conjunction with all of the other incidents and violations and operational history and impact, strongly buttresses a conclusion that nonrenewal is the most appropriate adverse liquor license sanction.

- The ALJ report analyzes the time of night at which many of the violent and disorderly incidents occurred and finds that "[e]ight of the 15 incidents occurred at 2:00 a.m. or later." The ALJ cites this as evidence supporting a finding that much of the deleterious public impact is attributable to the late hours food license and not to the liquor license. However, as the report and record also establish, a "2:00 a.m." liquor license allows for patrons to continue to consume alcoholic beverages until 2:30 a.m. on-premises. The late hours food license only authorizes continued presence of patrons after 2:30 a.m. for the purpose of consuming food. So, the same record therefore establishes that in all reality, thirteen (13) of the fifteen (15) incidents (including both the November 2013 mass shooting and murder and the November 2014 mutual shooting) analyzed by the ALJ in fact occurred during the hours of operation of the liquor license and that only two occurred during the late hours food license hours. This distinction strongly supports a finding that nonrenewal of the liquor license is the most appropriate adverse sanction in this matter.
- Although in general terms the level of violent and disorderly activity taking place at the establishment has decreased since the filing of this adverse license action in early 2015, the record reflects that there have been other periods of relative calm at the establishment during the multiple years that the City has been expending enormous quantities of resources dealing with the violations and noncompliance at La Que Buena. Certainly, renewed violence could once again flare-up if their license were renewed as it has many, many times in the past. The City has engaged in an admirable and lengthy course of progressive discipline and proactive engagement with La Que Buena which proved ultimately unsuccessful in that blood

has been shed multiple times at the “family” restaurant and licensing violations have continued to amass. At some point, it is incumbent upon the City to deny the privilege<sup>2</sup> of continued liquor license operation at a site with such a lengthy history of both license violations and disruptive and dangerous criminal and nuisance activity. That time is now. Public safety clearly and unequivocally outweighs, on balance, any of the positive attributes of the establishment as a “longtime community gathering place.”

The City of Minneapolis requests that the City Council adopt and incorporate the report of the ALJ in this matter, as modified by these exceptions and thereby refuse to renew both 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 Buena at 1609-11 East Lake Street, Minneapolis, MN 55407.

Dated:

Nov. 13, '15



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<sup>2</sup> “Under Minnesota law, there is no property right in a liquor license.” Hymanson v. City of St. Paul, 329 N.W.2d 324, 326 n. 1 (Minn. 1983); Movers Warehouse, Inc. v. City of Little Canada, 71 F.3d 716 (8<sup>th</sup> Cir. 1995). “No citizen has an inherent or vested right to sell intoxicating liquors, and municipal authorities have broad discretion within their geographical jurisdiction to determine the manner in which liquor licenses shall be issued, regulated, and revoked.” Sabes v. City of Minneapolis, 120 N.W.2d 871, 875 (Minn. 1963). “[A] liquor licensee has no right to a renewal of his liquor license.” Flesner v. City of Ely, 863 F.Supp. 971 (Dist. Minn. 1994). A current liquor license holder is “no more entitled to renewal” of its liquor license than a first-time applicant. Id.; Paron v. City of Shakopee, 32 N.W.2d 603 (Minn. 1948); Country Liquors, Inc. v. City Council of City of Minneapolis, 264 N.W.2d 821 (Minn. 1978). Municipal authorities have broad discretion in determining the manner in which liquor licenses are renewed. Bourbon Bar & Cafe Corp. v. City of St. Paul, 466 N.W.2d 438, 440 (Minn.App.1991) (citing Sabes v. City of Minneapolis, 120 N.W.2d 871, 875 (1963)).