STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF MINNEAPOLIS

OAH No. 80-6010-32335

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 Beuna

RESPONDENT'S CLOSING MEMORANDUM

INTRODUCTION

The City of Minneapolis has failed to justify adverse licensing action against La Que Buena restaurant. La Que Buena has demonstrated that it is a diligently and conscientiously run neighborhood family business that has struggled to be successful in a low income and high crime neighborhood. The City seeks to blame and scapegoat La Que Buena for serious problems of criminal activity in the neighborhood that La Que Buena not only cannot prevent but also make it a victim. La Que Buena has worked hard and ultimately effectively to address problems that are within its control, and thereby improves the quality of life public safety in the community. The City's efforts to revoke the licenses and effectively put La Que Buena out of business are unjustified and counter to the public interest.

STATEMENT OF FACTS

A. Background of La Que Buena.

La Que Buena is a Mexican restaurant with a bar. (Tr. 121). It is a family restaurant which primarily serves the local Mexican community looking to get a taste of

home. (Tr. 439-40). It serves unique Mexican dishes which attract customers from long distances, as well as tacos and burritos. (Tr. 616-17). There are many regular customers. (Tr. 643-44).

La Que Buena is located at 1609-1611 East Lake Street. (Tr. 34-35, 557). Juan Sanchez and Maria Sanchez, who are husband and wife, are the owners of La Que Buena. (Tr. 35-36, 380). They began the business 13 years ago. (Tr. 380). Juan and Maria Sanchez both work at the restaurant regularly. (Tr. 381). Maria Sanchez works during the day and sometimes at night. (Tr. 381). Juan Sanchez usually works at night and on the weekend. (Tr. 381).

The Sanchez's immigrated to the United States from Mexico in 1986, and moved to Minnesota in 1999. (Tr. 382). Juan Sanchez first opened a cowboy clothing store a couple of blocks away. (Tr. 382). He then brought the building on 1609 East Lake Street in 200 with plans to open a Mexican restaurant, having observed the growing Mexican community. (Tr. 382, 384). The Sanchez's spent two years doing construction and getting the restaurant ready to open. (Tr. 382). During that time, they had to earn or raise the money necessary to complete construction, while Juan Sanchez also personally worked on construction on tasks that he knew. (Tr. 383-84).

The restaurant opened on December 6, 2002. (Tr. 385). The premises has a capacity for 50 people, with fourteen tables and six seats at the bar. (Tr. 387). The restaurant at first only served food. (Tr. 385). However, when La Que Buena began to

serve seafood, Mr. Sanchez found that customers expected beer to be available with the meal. (Tr. 385).

La Que Buena first applied for an on-sale wine license and Class E Entertainment license in 2003. (Tr. 35-36, 386; Exhibit 2). The entertainment permitted for a Class E license is limited to TV sets, pre-recorded music including a radio or stereo or jukebox, and karokee. (Tr. 36-37, 115). Inspector Casey testified that La Que Buena later obtained a special late night food license permitting it to sell food but no alcohol from 2:00 am - 5:00 a.m. (Tr. 37). Juan Sanchez testified that the restaurant has been open until 5 am since they opened. (Tr. 388). It also upgraded to an on-sale liquor license and Class C2 Entertainment license which permits amplified sound and up to three musicians. (Tr. 37-38).

The neighborhood is a high crime area. (Tr. 109, 288-89, 395-96, 553, 610-11). There is "directed police patrol" which involves concentrating more police in the area due to concern about criminal activity. (Tr. 109). Prostitution is an ongoing problem on East Lake Street. (Tr. 272, 289, 435, 553, 644-45). There are many assaults and robberies in the area. (Tr. 272-73, 275, 289, 553). Historically, the infamous gang-related shooting of Minneapolis police officer Jerry Haaf at the Pizza Shack in 1992 occurred on the same block where La Que Buena is now located. (Tr. 615-616).

When the business opened, windows were broken every night and there were robberies inside the restaurant. (Tr. 384) Juan and Maria Sanchez have been robbed

multiple times at the restaurant. (Tr. 418). Manager Cindy Leon has also been assaulted and had her car vandalized. (Tr. 554-56). There is also drug dealing. (Tr. 275, 438). Graffiti is painted all along Lake Street including La Que Buena. (Tr. 398)

La Que Buena's presence makes the neighborhood safer by increasing lawful activity in the area, and from having a security officer outside. (Tr. 422). There is more crime and violence in the neighborhood during the time that La Que Buena is closed. (Tr. 499-500). Other businesses around La Que Buena have closed. (Tr. 481).

Juan Sanchez wants La Que Buena to stay open because it is part of his and his family's life, people lke the food there, and the business brings life to the street. (Tr. 480-81). The youngest son, Alexander Sanchez who is 16 years old, has helped out in the restaurant almost every day since he was a little kid. (Tr. 515-16). The middle son, James Sanchez who is 19, has worked in the restaurant since he was 8 and continues to spend substantial time working there. (Tr. 527-29). James broke into tears when testifying about the importance of the restaurant to him and the family. (Tr. 529-32, 544-46).

La Que Buena needs the liquor license to stay viable because customers expect to have beer or wine with their seafood. (Tr. 483, 511-12, 618). If customers could not have beer with their meals at La Que Buena, they would go to another restaurant that sells beer with a similar type of food. (Tr. 512-13, 618).

B. Incidents Cited by City in Support of Adverse Licensing Action.

City Inspector Ken Ziegler sent La Que Buena a violation notice on December 9,

2005 alleging that it was providing live entertainment. (Tr. 38-40; Exhibit 3). The notice alleged that La Que Buena was providing live entertainment on December 5, 2005 and requested that it discontinue. (Tr. 40; Ex. 3). Mr. Ziegler did not testify at the hearing. His notice was introduced through Julie Casey who had no independent knowledge of the incident. (Tr. 113-115). Juan Sanchez testified that at that event, he had three musicians which was permitted by his license at that time, but the inspector alleged that he had four musicians because a customer was standing besides the musicians singing with them. (Tr. 401). Juan Sanchez also testified that he has always obtained the required permits before providing live entertainment, which has been approximately 12 times per year for specific events. (Tr. 390).

On June 3, 2007, two Minneapolis inspectors came to La Que Buena after 2 am in response to a report of alcohol sales after 2 am. (Ex. 4). One of the inspectors states in her memorandum that she asked staff at the order counter if they were selling beer and the staff responded they were not. (Ex. 4). The memo alleges that the inspectors observed open beers on tables at 2:55 am, and also inspected the basement and found empty beer cans. (Ex. 4). Casey testified that the City Ordinance requires alcohol to be removed from tables by 2:30 am, and that the basement of La Que Buena could only be used for storage under their floor plan. (Tr. 42). The inspectors who reported the incident did not testify at the hearing. The report was introduced through Casey who had no independent knowledge of the incident. (Tr. 117). Former La Que Buena assistant manager Casey

Khatib and Juan Sanchez testified that there had been a private family event in the basement the previous day, specifically a birthday party for a son of the owners, that one can of beer had been left in the basement, and no customers had access to the basement. (Tr. 339-40, 408). One or two bottles of beer had been left on a table in the restaurant area that morning but it was "an honest mistake" where staff had forgotten to collect a bottle(s) from an unoccupied table after 2 am. (Tr. 340). It was normal practice at La Que Buena to do last call at about 1:30 am, then constantly remind customers that they had 15 minutes to finish their drinks, and then start collecting alcohol related items at 1:45 so that by 1:55 am there would be no such items. (Tr. 340-41). Juan Sanchez testified that he and his wife remove beers from the tables before 2 am, and also trained all employees that it is their responsbility. (Tr. 392). La Que Buena subsequently agreed to pay a fine and take remedial measures in response to the incident. (Ex. 5). Juan Sanchez testified that he did not read the documents because he had insufficient knowledge of English but assumed he had to sign because the City officials were in charge. (Tr. 409).

On May 13 and 20, 2008, Inspector Michele Harvet (then Michele Olds) sent violation notices alleging that La Que Buena was displaying alcohol beverage signs in a manner that the public could see from the outside in violation of an ordinance, i.e the signing was facing outside of the building. (Tr. 47-48, 122; Exs. 6-7). Inspector Harvet did not testify at the hearing. Casey testified based on the violation notices but had no independent knowledge of the incidents. (Tr. 122-124). The applicable ordinance, which

specifically prohibited signs advertising alcohol within 300 feet of a church was subsequently repealed so the there would no longer be a violation. (Tr. 123).

On May 10, 2009, Casey issued an administrative citation alleging that La Que Buena had alcohol beverage signs within 300 feet of a church in violation of an ordinance. (Tr. 48, Ex. 8). The sign advertising beer was inside the restaurant but posted in the window facing outside so that the public could see it. (Tr. 125). Juan Sanchez explained that the beer company had placed the sign on a wall in the interior of the restaurant in a manner that it could be seen from the outside throught the window, and he did not realize it was improper until told by the inspector. (Tr. 410-413; Ex. 113). La Que Buena paid the citation. (Tr. 48-49). Sanchez paid the ticket because he was not educated and did not read English, and did not realize that he had a choice. (Tr. 413).

A police report alleges that on June 3, 2010, an La Que Buena server served alcohol to two underage shoppers. (Tr. 50; Ex. 9). The report was introduced through Ms. Casey who had no independent knowledge of the incident. (Tr. 127-128). She does not know if the person who made the alleged sale was ultimately convicted of any crime. (Tr. 128). No one involved in the incident testified. The police report contains no explanation of the IDs provided to the server, provides no copies or the Ids, and does not indicate any admission by anyone at La Que Buena that the violation occurred. (Tr. 51; Ex. 9). Casey never spoke with anyone at La Que Buena about the incident to get their account, and never reviewed any recording of the incident or photos of the shoppers' Ids even though

the police reports indicate these items exist and they would have been available to her. (Tr. 129). Owner Juan Sanchez was not present at the restaurant during the incident, but was upset with the persons he left in charge. (Tr. 413-14). From the time that La Que Buena received its first alcohol license, it has given classes to employees on the requirements for serving alcohol, and showed videos and put together a file for new employees with instructions. (Tr. 414-15).

A police report states that on February 10, 2011, police were called in response to a report of gunshots being fired from a pickup truck behind La Que Buena. (Tr. 52, Ex. 10). The police reported observing the person later identified as a suspect being pushed out of La Que Buena and refused service. (Ex. 10 at 6). The police report was introduced through Ms. Casey who had no independent knowledge of the incident, and never conducted any inquiry or attempted to verify any of the information in the report. (Tr. 130-32). The City did not call anyone to testify who had any direct knowledge. The only concern that Ms. Casey expressed about La Que Buena's conduct in this incident was that it had not called 911. (Tr. 53). She did not consider the incident to be important. (Tr. 132). Juan Sanchez testified that he was present during the incident, was in the kitchen cooking, did not hear any gunshots, and did not hear from any employees that they heard shots. (Tr. 416-17). He would have called 911 if he had any knowledge of gunshots being fired. (Tr. 417). Mr. Sanchez denied assertions in the police report that he told police the perpetrators might be gang members and he had seen them before because in

fact he had not seen them before. (Tr. 496-97). Based at the time of the alleged incident at 11:37 pm, there would have been music in the restaurant from karaoke which would have made it difficult to hear noise outside. (Tr. 418).

The City introduced through Ms. Casey a police report from February 20, 2011 that describes a customer from La Que Buena being assaulted and robbed as he left the restaurant. (Tr. 55; Ex. 11). Casey testified that her concern from that incident was that the police report claims that Mr. Sanchez stated he did not know the suspects but they might be gang members, which demonstrated to Ms. Casey that Mr. Sanchez "knew people who were coming to his establishment participated in gang activity." (Tr. 55). Casey had no independent knowledge of the incident and did not attempt to conduct any inquiry. (Tr. 135). She acknowledged that the police report does not indicate if Mr. Sanchez actually saw the individuals entering the establishment or if he had sufficient evidence they were gang members to bar them from the restaurant. (Tr. 137-40). Casey did not consider the incident to be significant. (Tr. 135). Juan Sanchez recalled that the robbery occurred outside the restaurant in an alleyway and the victim, who had not been in the restaurant, came inside for help. (Tr. 419-20). The victim called police himself, and Mr. Sanchez cooperated with the police and offered surveillance videos which the police never retrieved. (Tr. 419). It has been common for Minneapolis police not to do follow up investigations of crimes occurring outside the restaurant. (Tr. 421-23).

In an incident on May 15, 2011, a police reports states that a patron at La Que

Buena assaulted a server who refused to serve the patron and escorted him out of the restaurant because the patron was intoxicated. (Tr. 57; Ex. 12). The City again introduced the police report through Ms. Casey who had no independent knowledge about the incident. (Tr. 143-44). Casey faulted La Que Buena for allowing an intoxicated customer into the restaurant and because the server suffered a significant bodily injury. (Tr. 58). She acknowledged not having any information to indicate that La Que Buena did not act properly, and that it did act properly by refusing service, asking the person to leave and calling the police. (Tr. 145). Juan Sanchez testified that the incident involved a drunken woman whom La Que Buena security did not even allow into the restaurant, but she threw a bottle at a inside the restaurant from outside. (Tr. 425-26). Mr. Sanchez called the police as is La Que Buena's regular practice in response to assaults at or near the restaurant. (Tr. 426).

On June 10, 2011, Casey inspected La Que Buena at 2:40 am and alleged that she found music playing in violation of the ordinances which require music to stop by 2 am. (Tr. 58-59; Ex. 13). She could not recall what kind of music was playing or where it was coming from. (Tr. 146). Casey came one month later on July 10, 2011 after 2 am, found music playing and issued a citation. (Tr. 60; Ex. 14). Casey again did not document what kind of music was playing and how it violated the ordinance. (Tr. 147). In that incident, a customer had plugged in the jukebox and played music. (Tr. 558-59).

A police reports states that on July 15, 2011, there was a fight inside La Que

Buena and one of the people involved broke an exterior window of the restaurant after he left. (Tr. 61; Ex. 15). The City again introduced the police report through Ms. Casey who had no independent knowledge about the incident. Casey testified that the incident concerned her because the suspect claimed that he had come into the restaurant because Mr. Sanchez had not paid him for a construction job in connection with another business that Mr. Sanchez owned and because she had not seen another case where a restaurant window was broken that had to do with the owner. (Tr. 62-63). Casey conceded that she did not have information that Mr. Sanchez had done anything wrong, and that he acted properly by calling police in response to the broken window. (Tr. 147-49). Mr. Sanchez testified that the individual had come to the restaurant drunk seeking to retaliate for not being paid for construction job where the individual had done a poor job so Mr. Sanchez was not paid and therefore could not pay the individual. (Tr. 427).

Casey prepared a violation notice on August 22, 2011 after she came to La Que Buena and found a person sitting on the patio and drinking beer at 2:40 a.m. (Tr. 63; Ex. 16). The applicable ordinance required alcohol to be put away by 2:30 a.m. and La Que Buena's business plan called for the patio to close at 10 pm. (Tr. 63-64). Casey testified that she believes she discussed the incident with Cindy Leon who said that she did not know anyone was on the patio, and Casey has no reason to doubt that. (Tr. 151). Casey acknowledged that the patio is publicly accessible through the parking lot and it would be possible for a person to come to the patio from outside the restaurant without being seen.

(Tr. 151-52). She also did not know if the person on the patio was drinking beer that came from the restaurant. (Tr. 153-54). Juan Sanchez testified that the person sitting on the patio was not La Que Buena's customer but entered the patio with his own beer. (Tr. 428-29). Cindy Leon testified that the customer was drinking a brand of beer not sold at the restaurant. (Tr. 560). La Que Buena security was doing rounds in back every ten minutes, but the person must have arrived recently. (Tr. 429). Mr. Sanchez offered to provide surveillance video to verify that the person did not come from La Que Buena, but Ms. Casey was not interested and just issued a ticket. (Tr. 429).

An Incident Detail Report documents that on August 27, 2011, an employee of La Que Buena called 911 to report that a customer alleged that someone showed her a gun. (Tr. 67-68; Ex. 17). The report was introduced through Ms. Casey who had no independent knowledge of the incident. (Tr. 155). The report states that the employee who called did not see a gun herself. (Ex. 17). There is no information that a gun was recovered. (Tr. 68). Juan Sanchez testified that he remembers the incident and no one had a gun. (Tr. 429). Casey acknowledged that the employee acted properly by calling the police, and the information contained in the report does not indicate La Que Buena did anything wrong. (Tr. 156).

On March 12, 2012, Ms. Casey issued an "Advisory Notice" that she observed pictures on La Que Buena's Facebook page which indicated to her that La Que Buena employees may be dancing for patrons which was not permitted by La Que Buena's

entertainment license. (Tr. 69; Ex. 18). There was no sanction attached to the notice because there was no violation. (Tr. 70, 156). Ms. Casey was later informed by La Que Buena representatives that the pictures showed wives performing a dance for their husbands. (Tr. 69, 158). La Que Buena does not normally permit dancing. (Tr. 442, 563). Occasionally customers will stand up and dance when they hear a particular song, but staff will stop them. (Tr. 442). In this instance, the customer had asked Cindy if she could dance for one song for her husband because it was his birthday. (Tr. 563).

The City introduced an Incident Detail Report from August 7, 2012 which indicates that the manager of La Que Buena called 911 to request police assistance to remove a drunk female customer who was laying down in a booth and refused to leave. (Tr. 71; Ex. 19). Casey, who again had no independent knowledge of the incident, faulted La Que Buena because it was reported that the individual had been in the restaurant for four hours and Minneapolis ordinance requires establishments not to allow overly intoxicated individuals on their premises. (Tr. 71). Casey did not have any information outside the police report that the patron was in the establishment for more than four hours, and had no information how long she had been drunk. (Tr. 160-62). La Que Buena would not allow a person to stay in a booth for hours, and this woman had been there between 10-20 minutes, the period from the time she entered until police arrived. (Tr. 444, 504, 561, 562). The woman had previously been prohibited from entering the establishment. (Tr. 502-03). Cindy Leon testified this was the woman who later assaulted her, but Cindy

had previously taken pity on her and given her food. (Tr. 561).

A police report states that on July 27, 2012, a customer at La Que Buena was hit behind his ear by someone with a glass bottle after he had left the restaurant. (Tr. 72; Ex. 20). Casey, who again had no independent knowledge of the incident, testified that she was concerned because the victim had been in La Que Buena and was hit with a glass bottle, and that the victim may have been overly intoxicated before entering the restaurant because the police report has the victim reporting that he had a 12 pack of beer before going to the restaurant. (Tr. 72). Casey was not aware of anything that La Que Buena could have done to prevent the assault from happening. (Tr. 163). Former security Daniel Aguilar testified that he was present for that incident, did not see anyone hit with a bottle in the restaurant, that he had thrown the three individuals out because they only wanted to order alcohol and could not present Ids, and they got upset and hit a patron on the way out of the restaurant. (Tr. 358). He could not have done anything to prevent an assault. (Id.)

On August 16, 2012, two victims reported being assaulted by three suspects and struck with a beer bottle inside La Que Buena, accoring to a police report. (Tr. 73; Ex. 21). Casey, who had no independent knowledge of the incident, testified that she was concerned because the employee witness reported that she had refused to serve the suspects because they were drunk but there was no mention in the police report whether there was an attempt to remove the suspects before the incident occurred. (Tr. 73, 163). The police report also does not contain any indication of whether this question was

explored. (Ex. 21). Casey agreed that staff at La Que Buena acted appropriately by trying to remove the individuals, and she did not know of anything La Que Buena could have done to prevent the assault from happening. (Tr. 164). Cindy Leon testified that security had refused to serve the individuals because they were underage, and they responded by attacking. (Tr. 566). Cindy told security to remove them and called 911. (Tr. 567).

On August 26, 2012, a victim reported that her vehicle tires had been slashed while in the parking lot behind La Que Buena. (Tr. 74; Ex. 22). Casey, who again had no independent knowledge of the incident, testified that she was concerned because the victim was an La Que Buena employee. (Tr. 74, 164-65). Casey did not know of anything La Que Buena could have done to prevent the incident from happening other than getting a surveillance camera to monitor the area which it later obtained. (Tr. 165-66). Juan Sanchez knew the customer, and had discovered that the customer's tires were slashed when he went outside to throw away garbage. (Tr. 445-46). The customer had had problems with his workers. (Tr. 446). He is still a regular customer since the incident. (Tr. 446).

A police report describes an incident on November 9, 2012 where Mr. Sanchez sought assistance from an off-duty police officer who was working security for La Que Buena in response to a customer who did not pay for his food before leaving. (Tr. 76-77; Ex. 24). The police report claims that Mr. Sanchez later determined that the customer did pay for his food, that Mr. Sanchez lunged at the suspect, and that both the suspect and Mr.

Sanchez were intoxicated. (Id.) The City introduced the police reports through Ms. Casey who had no independent knowledge of the incident, (Tr. 168), and did not call the police officer to testify. Casey had never personally seen Juan Sanchez drinking or smelled alcohol on his breath or observe signs of intoxication during the numerous times she had seen him. (Tr. 168). Casey testified that she believes police reports to be true and does not entertain the possibility that they could be false or mistaken. (Tr. 169-170). Juan Sanchez specifically testified that he does not drink alcohol and has never drank in this life. (Tr. 447). Cindy Leon verified that Juan Sanchez was sober that night and she has never seen him drink. (Tr. 570). A waitress had reported that the customer had not paid, and when Mr. Sanchez demanded that the customer pay, the customer lunged at Mr. Sanchez. (Tr. 447-48). Sanchez only put his hand in front to avoid being hit. (Tr. 448). Mr. Sanchez went out into the street to call for the off-duty police officer who was in his squad car across the street and not even in front of the restaurant. (Tr. 448, 568-69). The customer told the police officer that Mr. Sanchez had hit him. (Tr. 448). Mr. Sanchez offered to show the police officer the surveillance video to prove that he did not hit the customer. (Tr. 448).

On March 15, 2013, Ms. Casey issued a citation to La Que Buena, alleging that she observed a DJ in violation of La Que Buena's license restrictions. (Tr. 78; Ex. 25). Casey did not know the identity of the person she believed was acting as a DJ, did not recall what songs he announced or what language he was speaking. (Tr. 170-71). She is not

fluent in Spanish. (Tr. 172). Casey testified that it did not matter what the employee was saying because as long as he was speaking into the microphone he would be a DJ. (Tr. 172). When Casey spoke with Cindy Leon a few days later about the incident, Ms. Leon stated that the person was not a DJ but Casey could not recall the explanation. (Tr. 171-72). The Minneapolis ordinances do not define DJ, and Casey considers anyone who is speaking into a microphone to be a DJ. (Tr. 173). Juan Sanchez denies every having a DJ, but testified that it was his son who was playing the karaoke. (Tr. 391, 450). Cindy Leon testified that she had asked Juan's youngest son Alex Sanchez to monitor the karaoke while Cindy took her daughter home. (Tr. 571-72). There was confusion because people do not use the phrase karaoke monitor in Spanish but just call them DJ. (Tr. 572). However, Alex was not serving as a DJ but only writing down the name of persons requesting songs and what songs they wanted. (Tr. 572). Juan Sanchez paid the citation because he thought he had no choice. (Tr. 450).

A police report by an off duty officer working security at La Que Buena states that on June 9, 2013, the officer was informed that a male had just walked into the restaurant and was attempting to start a fight. (Tr. 79; Ex. 26). The officer escorted the suspect outside, observed that he was intoxicated and found out that he was only 19 years old. (Ex. 26). The suspect told the officer that he had been drinking at house of the person who was with him. (Ex. 26). A person described in the police report as an owner of the business requested that the suspect and person with him trespassed from the property

because they had previously been involved in fights. (Tr. 79-80; Ex. 26). Ms. Casey, who had no independent knowledge of the incident, testified that it was appropriate to have the people trespassed and she did not know why La Que Buena did not previously have them trespassed. (Tr. 80, 175). Casey did not have any information about where the other fights had occurred. (Tr. 176). Juan Sanchez testified that the person had caused problems one or two times previously so he called the police to have him removed. (Tr. 451). Leon also testified that the individual was drunk on arrival so they called the police to have him removed. (Tr. 572-73). Julie Casey and a police officer had recently told Sanchez and Leon about the option of having people trespassed and he followed that advice. (Tr. 451-52, 573).

A 911 call report from July 1, 2013 indicates that someone called from La Que Buena to report that a male swinging a belt outside the restaurant. (Tr. 80-81; Ex. 27). The City did not call anyone who had any direct or independent knowledge of the incident to testify. Casey, who had no independent knowledge of the incident, (Tr. 178), faulted La Que Buena because the report showed "a problem with patrons acting out again on the premises." (Tr. 81). Casey acknowledged that the incident report does not indicate if the suspects had done anything wrong on the premises and contained no information that La Que Buena had done anything wrong. (Tr. 178).

On August 25, 2013, a security guard at La Que Buena attempted to remove a patron from the premises and the patron pulled a knife on the security guard. (Tr. 81; Ex.

28). According to the police report, the guard responded by hitting the patron with a baton. (Tr. 81-81; Ex. 28). The guard, however, testified that while he was removing a customer who was intoxicated and being aggressive, someone else came up from behind outside the restaurant and tried to stab the guard. (Tr. 359-60). To the security guard's knowledge, the assailant had not been in the restaurant. (Tr. 361). The assailant was charged with felony assault. (Tr. 82). Casey acknowledged that the security guard acted properly and that there is no information that La Que Buena did anything wrong in that incident. (Tr. 179-180).[1]

A police report describes an incident on September 2, 2013 where a large group of people in La Que Buena got into a fight. La Que Buena staff moved the people involved in the fight outside the restaurant, and fight then spilled into the rear. A person outside then fired gunshots from outside the alley toward the parking lot. A security guard fired back. (Tr. 83; Ex. 29). The police report alleges that sons of the owner were present at the incident, but uncooperative with police. (Tr. 84; Ex. 29). The City introduced the police report through Julie Casey who had no independent knowledge of the incident, (Tr. 186-87), and did not call witness with direct knowledge to testify. Casey did not know

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[1] Casey testified that La Que Buena could have installed a metal detector, but acknowledged that it was not a legal requirement and the she and no one else to her knowledge had suggested such a measure as of that time. (Tr. 180-81). Metal detectors are usually used by larger businesses which would be costly for a small business. (Tr. 180). At a subsequent settlement conference with the City in October, 2013, there was discussion about a metal detector but city officials did not require one as part of the settlement agreement. (Tr. 180-83). Grant Wilson testified that he believes there are metal detectors in five nightclubs in Minneapolis. (Tr. 234).

anything La Que Buena could have done to stop the fight other than hire more security guards. (Tr. 185). She did not know how many security guards would be necessary or how many La Que Buena had working that night. (Tr. 185). Casey acknowledged the gunshots were fired by someone from outside La Que Buena property, and La Que Buena could not have done anything to prevent the shots from being fired. (Tr. 187). She also agreed that the security guard who fired back "did do what he should have done." (Tr. 187-88).

With respect to the September 2, 2013, the security guard, Juan Sanchez and James Sanchez explained that a group of customers had come from Nuevo Rodeo and appeared to have had a few drinks, and got into a fight. (Tr. 362-63, 453-54, 533-34). The guard sprayed mace to break of the fight, which resulted in all customers dispersing. (Tr. 363, 534). The manager Cindy Leon called 911 for assistance. (Tr. 454). The staff moved people outside of the restaurant. (Tr. 454). The shots were fired by people from outside the restaurant property who had not been inside the restaurant but had come from across the street, which was indicated on surveillance video shown to police. (Tr. 364, 454-55, 518, 575). The shots were fired above people's heads, apparently not intended to hit anyone. (Tr. 372). The security guard cooperated with police and testified in court against the offenders. (Tr. 364). The security guard further refuted suggestions by the City that the owner's sons were targets of the attack, explaining that they had nothing to do with the persons involved in the fight other than to help break it up, they were not

specifically attacked by anyone, they were not present in the area of the shooting, and they cooperated with police in giving statements about the incident. (Tr. 366, 371-72, see also Juan Sanchez testimony at 456). The youngest son Alexander Sanchez, who was 14 at the time of the incident, confirmed that he did not know any of the people involved in the fight and did not recall every seeing any of them. (Tr. 519). James Sanchez also denied he was a target of the fight. (Tr. 536). The police placed the two Sanchez children in a squad car and questioned them, which caused fear but they nevertheless cooperated and answered questions truthfully. (Tr. 519-20, 535-36). Cindy Leon later testified in court to identify the shooter. (Tr. 575).

Casey issued a Citation Notice for an incident on September 7, 2013 when she alleged that the outdoor patio at La Que Buena was operating at 12:20 am, but the business plan called for the patio to close at 10 pm. (Tr. 84-85; Ex. 30). The business plan that Casey alleges required closing of the patio at 10 pm was not provided by the City as evidence. (Tr. 189-190). La Que Buena paid the $200 fine. (Tr. 85; Ex. 30). Casey testified that there was a group of people sitting and talking, and there was no alcohol present. (Tr. 188, 192). Cindy Leon later informed Casey that it was La Que Buena's chef who was sitting outside with friends. (Tr. 188). Juan Sanchez testified that the cook had asked permission to eat outside with his girlfriend because the restaurant was crowded, and Sanchez "didn't think it was a big crime for him to be outside eating. He wasn't drinking or anything. . . . It was just . . . two people." (Tr. 457). La Que Buena

had also been told by the health department not to allow anyone to eat inside the kitchen, which left the cook with no other place to eat. (Tr. 578). The citation notice alleges that the business plan provides that food and wine and beer will be served on the patio, and that hours of operation will be from 11 am - 10 pm. (Tr. 190; Ex. 30). The purported plan does not state that no one can sit on the patio after 10 pm, but Casey nevertheless maintained that "anybody seated on the patio would be the same as conducting business." (Tr. 190). Despite Casey having a camera and being accompanied by another inspector, the City had no pictures or other documentation of the incident. (Tr. 191-92).

On November 23, 2013, Cindy Leon called 911 to report that there were an estimated 30 gang members fighting on the street outside La Que Buena and security was trying to keep them out of the restaurant. (Tr. 88; Ex. 32). Casey, who had no independent knowledge of the incident, agreed that the report indicated that the fight happened outside of La Que Buena's premises and La Que Buena was trying to keep those involved in the fight from getting inside. (Tr. 193). Although Cindy Leon reported there were 30 people, it was really about 10 but she exaggerated the number because she knew the police would not come right away unless it was a big number. (Tr. 580). The security guard on duty and Leon did not observe any indication that the persons fighting were gang members. (Tr. 374, 580). Casey agreed that La Que Buena acted property by trying to keep the people out and calling the police, and that there was nothing La Que Buena did wrong in this incident. (Tr. 193). Although Grant Wilson testified that the alleged gang members would

not be in the area if not for La Que Buena, (Tr. 238-39), Cindy Leon vigorously disputed this assertion, pointing out that there are gang members up and down the street and the association of La Que Buena with a Latino gang is racial profiling. (Tr. 580-82).

On November 25, 2013 a person walked past the front of La Que Buena and shot a gun through the window of the restaurant. (Tr. 89; Ex. 33). One victim was killed, and three others suffered non-threatening wounds. (Id.) There is no indication that the shooter had ever been inside of La Que Buena or on the premises. (Tr. 194; Ex. 33). When asked if La Que Buena could have done anything to prevent this crime from happening Casey responded that the police report indicated that all of the victims were gang members, and La Que Buena should have been stopping people it knew to be gang members from entering the premises. (Tr. 194). Casey conceded that she had no information outside the police report about whether any of the victims were gang members, knew nothing about the victims, and did not know if La Que Buena had any information that anyone entering the establishment that night was a gang member. (Tr. 195-96). The video surveillance indicated that the perpetrator parked next to a gas station across the street, came to the window and fired, and then took off running. (Tr. 459-60). The security guard on duty testified that he had not previously seen the victim who was the target of the shooting and got killed, that he saw him enter the restaurant and observed no indications that he was suspicious, intoxicated or a gang member. (Tr. 368-69). Although La Que Buena staff did not know the victim who died, Cindy Leon knew the three other people who were

shot as innocent bystanders who were regular customers and worked and went to school, and not gang members. (Tr. 582-83).

La Que Buena and city licensing officials and police held a settlement conference on October 24, 2013 to address alleged violations and crime issues. (Tr. 86; Ex. 31). Juan Sanchez and Cindy Leon represented La Que Buena. (Tr. 87; Ex. 31). The conference reconvened on December 18, 2013 after La Que Buena obtained counsel. (Id.) An agreement was signed on April 14, 2014. (Tr. 90; Ex. 31). Under the agreement, La Que Buena's after hour food license was suspended until September 3, 2014, the entertainment license was reduced from C2 to Class E, and the business license was suspended for three days. (Tr. 90; Ex. 31). The settlement agreement also contained a list of eleven remedial measures. (Tr. 192; Ex. 31). Casey testified that "all my inspections indicated that they [La Que Buena] have done what was on here." (Tr. 192).

The remedial measures included:

- The rear parking lot would be gated at 10 pm each night. (Tr. 461; Ex. 31). La Que Buena has closed the gate after 10 pm since the agreement. (Tr. 461-62, 594-95). Under the agreement, La Que Buena cannot lock the gate because of fire regulations. (Tr. 461-62).

- La Que Buena agreed to put additional lighting in the parking lot which it did. (Tr. 462, 595).

- La Que Buena agreed to put three surveillance cameras in the rear parking lot

which it did. (Tr. 462, 595-96). The cameras can be watched on monitors from the office in the basement, or now can also be watched from cell phones. (Tr. 596).

- La Que Buena agreed to provide surveillance recordings to Minneapolis police within a day of a request. (Tr. 463; Ex. 31). It has not received any request, but Juan Sanchez states, "very gladly I will provide it to them." (Tr. 463).

- The agreement calls for La Que Buena to install panic hardware on the rear door. (Tr. 463; Ex. 31). It has not been able to follow through since discovering that it would require changing the door and breaking through the cement because the level in the alley is higher than the door, thereby making the change cost prohibitive. (Tr. 463-64, 596). The total cost to install a door that opened out instead of in, take out the cement so the door will open out and level it to the parking lot and make it handicap accessible, would be about $20,000. (Tr. 596-97). La Que Buena was not aware of all the work that would need to be done and the cost at the time it agreed to this provision. (Tr. 597).

- La Que Buena also agreed to close the rear door to patrons after 10 pm. (Tr. 461, 464; Ex. 31). La Que Buena has closed as per the agreement, and has even replaced the wooden door with a metal door so it could not be forced open. (Tr. 461, 464).

- The agreement calls for La Que Buena to post a security guard at the front and rear doors on Friday and Saturday nights when there are more than 25 patrons in the restaurant. (Tr. 464; Ex. 31). La Que Buena now has two security guards working every Friday through Sunday night, and recently added Thursdays. (Tr. 466; 431-32, 597-98,

600-01, 633). La Que Buena also now has up to three security guards. (Tr. 598, 602).

- The agreement calls for a security review with the Minneapolis Police 3rd Precinct Crime Prevention Unit. (Tr. 465; Ex. 31). La Que Buena has attempted to contact the police department about the security review, but the police have not responded. (Tr. 465, 601). Civilian crime prevention specialist Karen Notsch and Julie Casey reviewed La Que Buena's security plan. (Tr. 601).

- The agreement calls for La Que Buena to post no trespass signs on the premises which it has done. (Tr. 466, 602; Ex. 31).

- Security guards are supposed to wear clothing to identify themselves, and they wear a badge and uniform and other security-related gear. (Tr. 466, 602, 640; Ex. 31).

- La Que Buena agreed to have a dress code, and post and enforce it in order to prevent gang activity. (Tr. 466; Ex. 31). La Que Buena prepared a dress code, and has posted and enforced it, despite complaints by people that it is racist which has resulted in a loss of customers. (Tr. 466-67). Cindy Leon wrote the dress code, obtained approval from the Minneapolis police crime prevention specialist, and then made it into a poster in English and Spanish and put is on the front and back doors. (Tr. 584-85, 588-89; Ex. 116).

- The agreement calls for a policy to prevent loitering. (Tr. 467; Ex. 31). Cindy Leon has let security know not to let anyone who is not a customer stand in front of the building. (Tr. 603).

The City officials did not dispute that La Que Buena has followed all provisions in the settlement agreement.

La Que Buena failed minor alcohol compliance checks conducted by the police department on May 12, and July 31, 2014. (Tr. 92, 603-05 ; Ex. 34-35). Both of the employees who were accused of serving alcohol to minors, although having sympathetic personal situations, were fired. (Tr. 605). La Que Buena paid fines for these two incidents. (Tr. 93; Ex. 34-35). A licensing settlement conference was hold in response to the two violations where La Que Buena agreed to a $1500 fine, $1000 of which was stayed for two years, and a 30 day license suspension which was stayed for two years. (Tr. 94; Ex. 36).

In response to the minor alcohol violations, La Que Buena obtained an ID card reader to verify the ages of purchasers of alcohol. (Tr. 213, 393, 468, 472, 605). La Que Buena management also spoke to the workers and had classes. (Tr. 468, 605). Juan Sanchez has arranged on his own to send underage buyers to test the workers. (Tr. 468). La Que Buena faces a challenge because some of its workers to do not speak English well which makes it more difficult to explain the law and policies. (Tr. 469). Cindy Leon wrote a manual on how to handle alcohol which was approved by the City and she gives to new hires and then tests them on it, and has them sign a sheet when they pass the test. (Tr. 585-87; Ex. 117). Leon also shows videos to employees, some of which she made on her own in Spanish. (Tr. 586). She took a course herself at the University of Minnesota on

handling alcohol. (Tr. 586, 589). Leon further arranged for the people at the University of Minnesota to put together a pamphlet which she provides to employees. (Tr. 590-92; Ex. 118). Leon has also put up posters around the building to advise customers that they are carding. (Tr. 593; Ex. 119).

On November 15, 2014, there was a shooting at an intersection across the street from La Que Buena involving two people who had left the restaurant and got into a fight. (Tr. 96; Ex. 37). One of the assailants was 40 years old and the other was 18. (Id.) The City's only witness about this incident was Ms. Casey who had no independent knowledge other than having reviewed La Que Buena's surveillance video of the incident, and otherwise relied on the police reports. (Tr. 198). Casey testified that she was concerned due to summaries of statements in the police report suggesting that the 18 year old was drunk and had been drinking inside La Que Buena. (Tr. 98). The surveillance video did not show the 18 year old drinking inside La Que Buena. (Tr. 199, 606-07).

Casey testified that she relied in part on a statement contained in the police reports by the 18 year old (Gomez) that he had been drinking at La Que Buena. (Tr. 200). However, Gomez actually just said that he was drunk and did not remember much of the incident, and did not say where he had been drinking or obtained the alcohol and did not indicate anywhere that he drank or was served alcohol at La Que Buena. (Tr. 200-201; Ex. 32).

Casey also testified that she relied on a statement in the police report that alleges that Alexander Sanchez stated to police that both victims/suspects were inside La Que Buena drinking. (Tr. 201-202). There is no recording of that statement, and Casey had no further information beyond the vague and contradictory summary in the police report that has Alexander Sanchez upstairs at the time of the shooting and without providing any indication that he even saw the person who was shot. (Tr. 202-03; Ex. 32). Alexander Sanchez later told Casey after she went to serve the suspension that "they had the wrong person . . . and that the person they had was over the age of 21 that he was serving." (Tr. 199-200, 202).

Casey also relied on vague summaries of interviews with witnesses that indicated both victims/suspects were seen drinking. (Tr. 203-07). There were no specific statements about what Gomez was seen drinking, including any confirmation that it was an alcohol beverage, when and where he was drinking it, and whether he was served by La Que Buena staff. (Id.)

The video surveillance recording indicates that the younger person involved in the fight had been in the establishment for a short time. (Tr. 623).

Alexander Sanchez testified that the restaurant was packed that night, he was busy busing tables and going back and forth from the kitchen, and he did not recall seeing specifically the faces of anyone there. (Tr. 522, 524). He does not know what the people involved in the fight looked like. (Tr. 522, 524, 526).

Based solely on the police reports, Casey and her supervisor Grant Wilson determined that La Que Buena has served alcohol to a minor, and decided to impose the 30 day suspension of La Que Buena's business license that had previously been stayed as well as the stayed $1000 fine. (Tr. 99, 208; Ex. 38). Casey and Wilson did not speak with any one at La Que Buena to hear its account of what happened before preparing and delivering the letter imposing penalties. (Tr. 208-09). There was no opportunity for appeal or to contest the decision. (Tr. 209, 471). La Que Buena has not paid the fine. (Tr. 100).

On December 21, 2014, there was a fight outside of La Que Buena. While La Que Buena staff attempted to break up the fight, a suspect hit a security guard in the head with a gun. The three suspects fled but were subsequently apprehended by police and identified by Juan Sanchez and La Que Buena employees. (Tr. 100-102; Ex. 39). The City's only witness to testify about this incident was Ms. Casey who had no independent knowledge but relied solely on the police reports. (Tr. 209). Casey has no information indicating the persons involved in the fight were ever inside La Que Buena. (Tr. 210). She conceded that La Que Buena staff acted properly by going into the parking lot to remove the person and by calling the police, and that they did not do anything wrong in this situation. (Tr. 210). Juan Sanchez verified that he and staff had prevented the assailant from entering the restaurant because he had baggy pants and a hat in violation of the dress code, the assailant responded by fighting and hitting the security guard in the

head with a gun and then fleeing. (Tr. 472-73). Sanchez called the police who caught the assailant in the alley. (Tr. 473).

C. Baseless Gang Allegations Regarding La Que Buena.

There was an undertone from City officials testifying insinuating that La Que Buena is somehow tolerant of or event associated with Latino gangs. The explicit testimony on this subject came from Minneapolis police officer David Menter, who asserted that La Que Buena was friendly to the Surenos 13 street gang. (Tr. 294-297). Menter alleged that on one occasion, he responded to a call about a fight in an apartment above the business where he saw a son of the owners of La Que Buena in the presence of gang members, and that he believed the son to be an "affiliate" of the gang. (Tr. 296, 307). He could not say when that incident occurred. (Tr. 309). Menter did not recall finding any illegal activity on that call, and could not recall what the owners' son was doing at the apartment or how long he was there. (Tr. 310-311). Menter claimed that he saw the son in the presence of gang members on the street on other occasions, but could not provide any specifics. (Tr. 318). Menter was not aware of the son having any tattoos indicating gang affiliation. (Tr. 318). He conceded that there is no formula or other certain means of identifying a person as a gang member other than "it coming out their mouth saying I am a member of ths gang." (Tr. 319-20). Menter asked the son, who denied any such affiliation. (Tr. 317). Menter testified that he told Ms. Sanchez of his

belief that her son was a gang affiliate, which obviously offended her. (Tr. 316).[2]

Juan Sanchez explained that none of this children are connected with a gang, that he has worked hard to raise them properly, the older two children (19 and 23 years old) own a construction company and the youngest child (16) attends a military school for high school. (Tr. 398-99). The youngest son Alexander Sanchez testified that neither he nor his brothers have ever been affiliated with any gang. (Tr. 520-21). James Sanchez, the son whom Menter actually accused of being a gang affiliate, denied that he had any involvement with any gang. (Tr. 537-38). He also did not have anything with the tenants that previously lived in the apartment above La Que Buena. (Tr. 538-39). Cindy Leon also verified that the Sanchez sons are all hard workers who are dedicated to their jobs and family and are not involved in any gang. (Tr. 577). Menter appeared to accuse James of being in gang because he walked into the restaurant in blue hoodie sweatshirt which he had been wearing while working construction. (Tr. 577).

Menter also claimed that he saw people he believed to be gang members in the establishment. (Tr. 296-97). Menter had seen La Que Buena security refuse access to individuals possibly based on gang affiliation. (Tr. 296-97). Menter conceded that he could not identify every person who is a gang member. (Tr. 306). Menter also acknowledged that he could make a mistake about identifying a person as a gang member. (Tr. 306, 320). He conceded that there is no way a business could prevent all gang

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[2] Testimony by other witnesses does not have Maria Sanchez at the meeting.

members from coming in. (Tr. 320-21). Witnesses who worked at La Que Buena testified that they denied entry to anyone whom they believed were involved with a gang. (Tr. 338). However, as Menter acknowledged, it is not usually possible to determine if a person is in a gang. (Tr. 356). Attempts to draw conclusions about gang affiliation based on the color of people's clothing and other physical characteristics could be interpreted as discrimination or racial profiling. (Tr. 254-44, 356).

D. Other Evidence of Challenges and Efforts to Improve.

Inspector Julie Casey agreed that the owners and manager were cooperative in her dealings with them "they do seemingly put in place the things that we have asked them to do in the hearing notices." (Tr. 102). Casey testified that since the City filed this action in March, 2015, the situation at La Que Buena has "been very quiet. There haven't been police incidents there." (Tr. 103). There actually have not been any problematic incidents since December 21, 2014 and throughout the time since La Que Buena re-opened from its 30 day suspension in February, 2015. (Tr. 211, see also Kuntz testimony at 328). During this time, Casey has conducted inspections and La Que Buena has passed alcohol compliance checks by the police. (Tr. 211-212).

The police crime prevention specialist described the employee manual as "excellent." (Tr. 285).

Although city officials blamed La Que Buena for allowing gang members, on one claimed that a restaurant could identify all gang members seeking to enter. (Tr. 253-55

[Grant Wilson]). Although City officials blamed La Que Buena for allowing intoxicated people to enter, no one claimed that all intoxicated persons could be recognized. (Tr. 257 [Grant Wilson]).

Grant Wilson claimed that a neighbor and neighborhood organizations had complained about La Que Buena, but could not identify any specific people who had complained, or provide any specific dates. (Tr. 260-62).

In order to make the premises safer, La Que Buena was "very, very interested" in Minneapolis police officer Frank Kuntz's suggestion to hire off-duty police officers to provide security.[3] (Tr. 326). Although La Que Buena hired off-duty Minneapolis police officers to provide security for about 1 to 1 ½ years, the Minneapolis police precinct inspector Michael Sullivan told the officers involved in coordinating security that they could not schedule officers at La Que Buena or work there themselves. (Tr. 278-79, 301, 331). Sullivan did not explain or communicate the decision to La Que Buena. (Tr. 279). After Sullivan ordered Officer Kuntz to stop scheduling off-duty officers, those who were scheduled simply did not show up. (Tr. 333, 598-99). Cindy Leon called Officers Kuntz and Menter repeatedly without receiving a response, until Kuntz finally told Leon that they were not allowed to work at La Que Buena anymore but did not provide an

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[3] At an earlier time, Minneapolis police officer Carlos Escobar had approached La Que Buena management and proposed providing off-duty security. (Tr. 341-342). After La Que Buena decline, the officer would drive by at night, issue citations to illegally parked cars on La Que Buena's block while bypassing illegally parked cars on neighboring blocks. (Tr. 342).

explanation. (Tr. 599-600). La Que Buena was subsequently unable to get any police officers to provide security because the inspector denied permission. (Tr. 344-46). The Minneapolis police inspector acknowledges that he refused to allow any police officers to work off duty security at La Que Buena earlier this year. (Tr. 275-76).

Officer Kuntz testified that manager Cindy Leon was very concerned about keeping people out of the restaurant who were already intoxicated, describing it as "one of the issues that was near and dear to her heart." (Tr. 330).

Menter described La Que Buena as usually "quiet" until about 1:30 in the morning when other bars close, and customers come to La Que Buena after drinking elsewhere because it is open for food after 2 pm. (Tr. 293, 323; see also testimony of Juan Sanchez at 393).

E. Current Security Efforts.

La Que Buena security guards, who work late at night on weekends, stand in front of the entrance, and do not allow people who appear intoxicated to enter the premises. (Tr. 353-54). Security removes customers who are aggressive. (Tr. 354). There are always other people besides security guards to respond to disturbances, including Juan Sanchez, his sons, Cindy Leon, and the cook. (Tr. 376-77).

Security guards work for La Que Buena every Friday through Sunday night from 9 pm until closing and were about to start working Thursdays. (Tr. 431, 633). Jermaine Battles began working security in February, 2015. (Tr. 433, 633). He has 15 years of

experience in security. (Tr. 634-35). Battles recruited another security guard, Luke Smeby, who first came regularly to observe the situation and then officially joined Battles in working security since May 2, 2015 there have been two security guards on all these shifts. (Tr. 432, 434, 637). Smeby has an associate degree in law enforcement, ten years of experience in security, and has gone through police skills training. (Tr. 434). He is currently employed during the day with a contractor who provides security for Hennepin County government properties. (Tr. 434).

The security guards card people coming into the restaurant, notify people that they must make purchases if coming inside, and keep out people who are heavily intoxicated, are not in compliance with the dress code, or otherwise cause suspicion. (Tr. 435, 640-42). In addition to protecting La Que Buena, the security guards work to prevent illegal activity throughout the entire block where La Que Buena is located. (Tr. 436). They lock the back gate to the parking lot at 10 pm, and do rounds around the block every 10-15 minutes to make sure the back and alley are clear. (Tr. 436-37, 643). The security has been effective in eliminating the problems that occurred at and around La Que Buena in the past. (Tr. 437, 646).

Battles rates the safety of the neighborhood on a scale from 1 to 10 as a 2. (Tr. 644). He identifies the problem that requires his services not as the establishment but the surrounding neighborhood. (Tr. 644). There is regularly prostitution up and down the street. (Tr. 644-45). There are people regularly loitering across the street who appear to be

waiting to rob La Que Buena customers as they leave. (Tr. 645). Police regularly drive back and forth but make no attempt to intervene in criminal activity. (Tr. 645).

F. Support from Neighbors.

Carlos Aguilar, who has owned a business next door to La Que Buena for the past five years and works at all hours, has never found any problems with safety around La Que Buena. (Tr. 627-28). He testified that La Que Buena helps with safety in the neighborhood because they often have security. (Tr. 629). Carlos Aguilar also eats in the restaurant regularly and at all different times, and feels safe there. (Tr. 629-31). He believes that closing La Que Buena would affect his own business because some of his customers go to eat there. (Tr. 631).

George Pineda has lived five houses down the alley or around the corner from La Que Buena for the past 4 ½ years. (Tr. 667). He previously lived four blocks away and has been a regular customer for about 14 years. (Tr. 668). Pineda believes the food is excellent and there are no other Mexican restaurants in the area that are comparable quality. (Tr. 669-70). He typically eats at La Que Buena with his family, including his wife and some of his six children. (Tr. 670). Pineda has eaten there as late as 2 am with his wife after dancing. (Tr. 671). Pineda has never experienced any problems with safety at La Que Buena. (Tr. 670-71). He feels safe because of the two security guards and the front is well lit. (Tr. 671).

Pineda finds that the area around La Que Buena has a lot of prostitution and drug

dealing, and other criminal activity which is encouraged by a nearby parking not with no lights. (Tr. 671-72). The criminal activity increases after La Que Buena closes and there is no security, and police are slow to respond. (Tr. 672, 676-77).

Shawn Caron, a regular customer from Ham Lake, testified that he frequently eats at La Que Buena because the food is "phenomenal". (Tr. 678-79). He has eaten there at various times including late evenings and has not had any concerns about his safety. (Tr. 680).

ARGUMENT

I. APPLICABLE LEGAL STANDARDS

The non-renewal of a liquor license must "be based on articulable and legally sufficient reasons." E.T.O., Inc. V. Town of Marion, 375 N.W.2d 815, 819 (Minn. 1985). The standard typically applied for renewal is statutory, based on whether "renewal would not be in the public interest." Minn. Stat. § 340A.412, subd. 2(b). This provision would not apply to the late night food license that the City seeks to revoke. The Minneapolis City Charter provides that a license may be revoked based on good cause. Minneapolis Charter, ch. 4, § 16. The evidence in this case fails to demonstrate that renewal of La Que Buena's liquor license would not be in the public interest. There is also not good cause for revocation of the late night food license based on events in the preceding year relating to that license, and to the extent there is good cause, non-renewal is not an appropriate remedy.

II. EVIDENTIARY LIMITATIONS BASED ON HEARSAY.

The City has relied substantially on hearsay evidence with respect to most incidents that are part of its case, and relies solely on hearsay evidence to prove many incidents. The applicable procedural rule for administrative hearings permit admission of hearsay evidence,

> "if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs." Minn. Rules 1400.7300, Subd. 1.

Minnesota courts, however, have held that

> "in the absence of a special statute, an administrative agency cannot, at least over objection, rest its findings of fact solely upon hearsay evidence which is inadmissible in a judicial proceeding." State ex rel. Indep. Sch. Dist. No. 276 v. Dep't of Education, 256 N.W.2d 619, 627 (Minn.1977); *see also* Sabes v. City of Minneapolis, 265 Minn. 166, 173, 120 N.W.2d 871, 876 (1963) ("[N]either pure hearsay nor hearsay corroborated by a mere scintilla of competent evidence is sufficient.... there must be some substantial evidence introduced to sustain findings."). This rule been applied to a quasi-judicial determination by an agency without statewide jurisdiction. *See* In re Expulsion of E.J.W. from Indep. Sch. Dist. No. 500, 632 N.W. 2d 775, 782 (Minn.App. 2001) (holding that "the hearing officer lacked an adequate basis ... to support the conclusion that [respondent] participated in the bomb threat " because, inter alia, there was no evidence "beyond hearsay").

Nelson v. City of St. Paul, Dept. Of Safety and Inspections, App. Case No. A11-0998, 2012 WL 2873845 at 2 (Minn. Ct. App. July 16, 2012)(unpublished)(reverses administrative determination by City based solely on hearsay evidence).

In the instant case, the numerous alleged incidents where the City introduced solely hearsay evidence must be rejected for purposes of any determination of whether or

not to grant the City's request for non-renewal of La Que Buena's licenses. For other incidents where there may be a combination of hearsay and normally admissible evidence, the hearsay evidence still fails to meet the standard for reasonable and prudent persons, and in any event should be given little weight.

III. THE SUBSTANTIVE EVIDENCE FAILS TO SUPPORT NON-RENEWAL.

The evidence in this case fails to support the City's case for non-renewal. The City previously imposed disciplinary and remedial measures on La Que Buena for a various alleged violations, but La Que Buena had abided and continues to abide by conditions imposed, thereby rendering further harsh discipline of non-renewal arbitrary and counter-productive. Specifically, La Que Buena has not had any violations since the last agreement with the City in October 2014 in response to sale of alcohol to minors. La Que Buena has also continuously abided by all conditions and not been responsible for any further violations relating to its agreement with the City in April, 2014.

The main impetus for the City's adverse action against La Que Buena is the incident on November 15, 2014 where two individuals got into a fight that led to shooting outside of La Que Buena's premises. The City has claimed - and already penalized La Que Buena for selling alcohol to a minor in that incident by forcing a 30 day closure and imposing a $1000 fine, based on completely unreliable hearsay evidence. La Que Buena should not be subject to further penalty based on conduct that it did not commit. The only evidence that the City presented in support of its contention that La Que Buena served

alcohol to the minor victim/perpetrator in that incident were hearsay statements. Under Minnesota case law cited in Section II above, such hearsay evidence is insufficient.

The circumstances of this hearsay demonstrates the importance of the appellate precedent limiting hearsay evidence. The statements are completely vague as to any specifics and insufficient to even reasonably conclude that the 18 year old was ever served alcohol at La Que Buena. None of the hearsay statements specifically allege that any staff at La Que Buena served alcohol to this individual. No detail is even provided in any of the hearsay statements that could provide any sort of confident conclusion that he was drinking alcohol. One of the hearsay statements is attributed to Alexander Sanchez who testified in person at the hearing and made clear that he never had a chance to even observe this victim/perpetrator and was therefore in no position to observe whether the person in question was served alcohol or drank alcohol. Other testimony from Cindy Leon established that the surveillance video did not show this individual drinking in the establishment but indicated that he was on the premises for a short time. The evidence in the record cannot support any conclusion that La Que Buena served alcohol to a minor in connection with this incident.

The City did not indicate specifically through any of its testifying officials that it held La Que Buena responsible for the underlying assault that occurred outside its premises on November 15, 2014. In a fairly recent and somewhat licensing case, an ALJ held that an establishment was not responsible for crimes occurring near but outside its

premises. See In the Matter of the On-Sale Liquor, License, Class A, with Sunday Sales held by Midwest Latino Entertainment & Talent, Inc., OAH 2-6010-20557-6, Findings of Fact Conclusions of Law and Recommendation, March 17, 2010. La Que Buena should not be held responsible for a fight that occurred outside its property and therefore could not control.

The only other incident that is part of the record following La Que Buena's last agreement with the City is an incident on December 21, 2014 where a criminal hit an La Que Buena security in the head with a gun when the La Que Buena staff refused to allow him into the restaurant. Testifying city officials did not claim that La Que Buena did anything wrong by trying to keep miscreants out and calling the police.

Outside of the two incidents where the City failed to prove that La Que Buena acted improperly, the evidence was undisputed that La Que Buena has not had any problems since its last agreement with the City in October 2014. The City has absolutely no complaints of any sort since LQN re-opened from its suspension at the end of January, 2015. It is undisputed that La Que Buena has earnestly and diligently implemented the remedial measures set forth in its agreements with the City in April and October, 2014. It has hired 2-3 security guard who vigorously patrol the premises and surrounding area every weekend night, and vigorously enforce policies to prevent intoxicated persons from entering the premises and keep minors from being served alcohol, and to keep out gang members through a dress code as well as others who may cause trouble. La Que Buena

has implemented policies to prevent sale of alcohol to minors, including use of an ID card reader, and providing a policy manual, classes, videos, and testing to employees. The evidence establishes that La Que Buena's remedial measures have been effective in making La Que Buena a safe place and preventing improper sale of alcohol.

The other older incidents cited by the City, although numerous, do not justify adverse action against La Que Buena. The prior incidents consist of criminal activity or misconduct occurring at or near the premises of La Que Buena, and other alleged minor or disputed violations of various code provisions. Many of these incidents are based solely on hearsay evidence and therefore cannot be considered based on the law set forth in Section II above. With respect to the numerous incidents involving police calls many occurred of the premises and therefore not within La Que Buena's control. Other police calls in response to conduct on La Que Buena's premises involved La Que Buena responding to and trying to prevent criminal activity and protect the safety of its staff and customers. In these instances, La Que Buena is a victim of its high crime location struggling to maintain order and safety. For most of the incidents, City officials could not explain what La Que Buena did wrong. For other incidents where City officials faulted La Que Buena, the evidence shows that the criticisms are wrong or unreasonable. These incidents stand in sharp contrast to those in the case of Champions Bar which the City has relied on in its hearing notice, where there was evidence of numerous drug transactions on the premises, and numerous violent crimes including a shooting on the premises that

security staff did not attempt to stop, and a security officer soliciting a prostitute on the premises. See In the Matter of the Class E Liquor License held by Starmac, Inc. and Richard P. Nelson d/b/a Champions Saloon & Eatery, OAH 68-6010-30397, Findings of Fact, Conclusions of Law and Recommendation, February 6, 2014.

Other alleged violations over the years are non-serious or disputed or unproven. A customer dancing, a beer poster placed inside the restaurant but visible through the window, an unattended can of beer on a table after hours, a person sneaking on the patio with a drink after hours, the cook eating on the patio after closing time, music playing once after hours, a karaoke monitor being confused as a DJ, if even violations, are not of the magnitude to justify terminating a license and putting a restaurant out of business.

Most significantly, the evidence presented at the hearing strongly supports the renewal of La Que Buena's liquor license based on the "public interest" standard. It is a small family business that provides a distinctive product to the community. The family's and management's hard work and valiant efforts in the face of adversity of operating in a high crime and low income neighborhood should be rewarded rather than punished. The evidence shows that the crime in the neighborhood is a longstanding problem that long predates La Que Buena's existence and continues completely independently of La Que Buena. The most significant connection between La Que Buena and crime in the neighborhood is La Que Buena's accomplishments in reducing criminal activity by engaging in and promoting legitimate and legal activity on a block filled with crime and

vacant businesses, and by providing vigorous security which benefits the community as well as La Que Buena.

CONCLUSION

It is time for the City to stop making La Que Buena a scapegoat for problems that the City and its police have failed to address. The City must stop its cruelly false and racist accusations that this honest, law-abiding and hardworking family is somehow involved with or friendly to gangs. The City must instead begin to recognize La Que Buena's efforts and successes in contributing to the community, and as part of the solution rather than problem in the community as to public safety and promotion of the public interest. The public interest will be served by supporting La Que Buena in its continued operation rather than terminating its licenses.

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LAW OFFICE OF JORDAN S. KUSHNER

By s/Jordan S. Kushner

Jordan S. Kushner, ID 219307
Attorney for Respondent
431 South 7th Street, Suite 2446
Minneapolis, Minnesota 55415
(612) 288-0545