

**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 REPLY  
MEMORANDUM**

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**INTRODUCTION**

The City of Minneapolis, in its closing argument, attempts to paint a factual picture based on unsupported assertions of its witnesses and unreliable hearsay evidence while ignoring the more reliable, specific and compelling evidence provided through Respondent La Que Buena's witnesses. The City oversimplifies the "good cause" standard set forth by prior case law. The City also appears to suggest that the only role of the ALJ is to determine whether there is good cause for adverse action and not to make recommendations as to what action to be taken which would be a departure from the role of the ALG in license proceedings.

**FACTUAL REPLIES**

The City suggests that La Que Buena's entry into agreements with the City regarding sanctions or remedial action, or payment of citations establishes the City's factual allegations. It provides no authority that the signing the agreements or payments of fines conclusively establishes specific violations. Such an approach would be particularly problematic for the facts adduced at the hearing do not support, or even contradict the

City's allegations. The agreements further do not address the circumstances surrounding the incident which make it debatable whether violations occurred, or if there were technical violations, do not address their seriousness. The language in the agreements that the City emphasizes, "this agreement is FREELY & VOLUNTARILY ENTERED INTO IN GOOD FAITH" (Exhibits 5, 31, 36), does not include any language specifically admitting violations as the City claims (City's Memorandum at 4), but simply indicates that La Que Buena is freely and voluntarily agreeing to sanctions or remedial measures to address concerns raised by the City.<sup>1</sup> At most the earlier statement of agreement merely acknowledges the occurrence of incidents referenced in the Findings.

With respect to the City's position that payment of a citation constitutes an admission that the violation occurred, the City has not provided evidence that notification of that position was clearly communicated to or understood by La Que Buena. The City introduced a form that it claims is sent out with the citation, without any foundation that La Que Buena received the form. There is no place where LQB signed any sort of admission that a violation occurred. Although the City may deem payment of citations as an admission and cause for adverse action pursuant to its ordinance, it provides no authority that payment of a citation must be deemed as a factual establishment of a

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<sup>1</sup> The City also falsely states with respect to June 3, 2007 incident that LQB served alcohol after 2:30 a.m. (City Memorandum at 4) when it was only alleged in the Findings of Fact (Exhibit 5) that alcohol was observed on customer tables at that time and the City's unsubstantiated hearsay documents indicates partially filled bottles of beer were found on tables that inspectors were unable to photograph (Exhibit 4).

violation for purposes of a factfinding proceeding. Even if a technical violation occurred, the mere payment of the citation does not address its seriousness.

The City places a substantial emphasis on La Que Buena's inability to date to meet its agreement to install panic hardware on the rear door due to the unanticipated required costs estimated at about \$20,000 to replace the entire door and the cement outside the door into the parking lot so the door can open outside. This issue was not part of the City's prior notices in this proceeding and should not be a grounds for adverse action. The City officials had not raised any issue at the hearing about the door, but all testimony indicated a belief that La Que Buena has met all of its obligations under its agreements with the City. The problem was only revealed because the owner and manager of La Que Buena were truthful and forthcoming in their testimony about their challenges in complying with their obligations as well as their overall successful compliance. The problem with the City trying to raise this newly discovered issue as grounds for adverse action is illustrated by its reliance on a provision of the fire code requiring that a door open in the direction of egress - which the City had not even specifically ordered - without addressing the provision of the Fire Code which provides for variances from orders. Minn. Fire Code § 108.1. If this matter were properly raised through the administrative process, La Que Buena would have strong grounds for requesting a variance.

The City also attempts to bring forth a new allegation that LQB has exceeded its

maximum occupancy. This is based on exaggerated estimate by security guard Luke Smeby that there were hundreds of people in the restaurant for a boxing match. This was clarified by other witnesses Cindy Leon and Jermaine Battles, neither of whom counted the occupants but had lower estimate. Battles pointed out that for that one event, a large number of people were watching television from the patio rather than inside the restaurant. It was only one event in question. This matter was not raised as a grounds for adverse action in prior notices and should not be considered.

The City also seems to attribute responsibility to security guards to know the exact terms of LQB's agreement with the City. There is no such requirement that LQB show its agreement to security guards. The security testified clearly about their responsibilities to keep the restaurant, its parking lot, and the area around the premises safe, and their effectiveness in meeting these responsibilities. There was no evidence that LQB failed to have two security guards when it had more than 25 patrons at one time, as per the agreement with the City. (Ex. 31 at 4). The video recordings introduced certainly do not show that LQB functions as a "nightclub." (City Memo at 13-14). The video referenced by the City shows security successfully meeting the challenge of dealing with difficult situations that require a combination of respect for the public, enforcing rules and making sometimes difficult judgments about whether prospective customers are suitable to enter the premises.

Regarding the shooting incident outside of LQB and its premises on November 15,

2004 where it is critical for the City to prove its contention that LQB served alcohol to a minor, the City attempts to establish exclusively through double hearsay evidence from the police reports that the 18 year old suspect/victim was served alcohol inside La Que Buena. The City provides no reliable evidence that anyone interviewed specifically observed the 18 year old inside the restaurant before the fight outside. It is clear from their testimony that James and Alex Sanchez did not specifically observe the two individuals in the restaurant or outside, but only saw them on the surveillance video after the incident and the surveillance video did not show the 18 year old's activity in the restaurant. The City relies on observations of police the 18 year old appeared drunk to conclude that he must have been served alcohol in LQB. There is no reliable objective evidence about this individual's actual level of intoxication, or where he obtained or consumed the alcohol that he had. Cindy Leon's testimony that it could not be determined that the young man was served alcohol in LQB (Tr. 607) cannot be reliably refuted. The City's jumping to a rash conclusion and closing down LQB for 30 days and imposing a \$1000 fine without any due process does not constitute evidence that any violation occurred.

With respect to most of the incidents at issue, LQB relies on its original memorandum which fully sets forth the pertinent factual evidence in the record.<sup>2</sup>

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<sup>2</sup> The City cites testimony of Grant Wilson in its Argument section in support of its claim that public interest will not be harmed by closing La Que Buena because there are other restaurants in the immediate area "offering Mexican cuisine." (City Memorandum at 24-25). Grant Wilson, despite offering confident negative opinions about

## ARGUMENT

The City summarizes its central position that the alleged

ongoing pattern of criminal and nuisance activity on a liquor licensee's premises, coupled with numerous license and code violations, constitutes legally adequate grounds . . . that continued renewal of the license would not serve the public interest, and further, that such a conclusion does not require any showing that the license holder specifically intended for the criminal or nuisance activity to occur or continue.

(City Memorandum a 23). The City's position does not address that most of the alleged nuisance activity at issue occurred off of La Que Buena's premises, and that many of the alleged criminal events and code violations are based on reliable hearsay evidence or are otherwise unsubstantiated. The City also emphasizes authority that uphold a city's discretion to find good cause for adverse licensing action, but does not cite any authority that *mandates* a finding of good cause for adverse action where there is a "lack of evil intent or *mens rea*" (City Memorandum at 25) and evidence of good faith efforts by an establishment to rectify problems.

Although the city suggests that case law supports strict liability of licensees for off premises activity or activity that a licensee cannot control, a closer study of applicable authority indicates that such incidents do not automatically give rise to good cause for adverse action. Matter of On-Sale Liquor License, Class B, 763 N.W.2d 359, 366-67

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LQB's management and responsibility for activity around its premises, as well as the lack of importance of the cuisine offers to the area, had never been inside La Que Buena. (Tr. 270). The only allegedly similar Mexican restaurants Wilson could name within the "immediate vicinity" were 12 blocks to the east and eight blocks to the west, all within a densely populated urban area. (Tr. 247-48).

(Minn. Ct. App. 2009) reversed on due process grounds the City of Minneapolis' imposition of liquor license conditions for "good cause" based on "off-premises activity of patrons" who leave the establishment and are noisy, thereby causing disruption to the neighborhood and consuming police resources. On-Sale Liquor License contrasted the situation presented with a case where "multiple drug transactions occurred on and around business premises." Id. (citing Hard Times Café, Inc. v. City of Minneapolis, 625 N.W.2d 165, 171 (Minn. Ct. App. 2001)). On-Sale Liquor License emphasized the differences of "on-premises" illegal activity providing "a license holder with notice that they may be subject to adverse action." 763 N.W.2d at 368. Although not noted in On-Sale Liquor License, it was also shown in Hard Times Café that a co-owner was involved in the illegal drug transactions. 625 N.W.2d at 168. See also Tamarac Inn, Inc. V. City of Long Lake, 310 N.W.2d 474, 476-78 (Minn. 1981)(reversed as arbitrary and capricious a city's denial of renewal of a liquor license based on the business' failure to complete renovations within a specified time, and based on numerous alleged code and liquor law violations and numerous police reports around the establishment where neither the business nor its employees had been charged with criminal offenses in connection with the business operation and another similar business had some similar violations). Thus this case law indicates that good cause for adverse action requires activity that is actually illegal, that is on the premises, and involves some culpable conduct by persons associated with the business.

Other case relied on by the City similarly upheld adverse licensing action based on on-premises activity and culpable contact by the business. In CUP Foods, Inc. v. City of Minneapolis, 633 N.W.2d 557, 564 (Minn. Ct. App. 2001), good cause was based on “drug dealing and loitering . . . on a frequent basis on and near CUP Foods’ premises,” “sale of drugs occurring *inside* his store.” (Emphasis added). CUP Foods, however, reversed the City’s decision as arbitrary and capricious to deviate from the ALJ’s recommendation to place conditions on the license and instead close the business for six months without explanation.<sup>3</sup> Id. at 565.

As noted in LQB’s original closing, recent ALJ reports on similar situations have

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<sup>3</sup> The City in its introduction is ambiguous as to whether it is seeking a finding of good cause for non-renewal or good cause for adverse action. (City Memorandum at 1). Its actual request, as quoted in its opening sentence is for a recommendation on “[w]hether good cause exists for the Minneapolis City Council to refuse to renew or otherwise take adverse license action.” However, the City goes on to state that the city council will be able to consider aggravating or mitigating circumstances, and only requests a finding as to “whether cause exists to refuse to renew the subject business licenses. (Id.) The City’s original and formal request calls for a recommendation as to whether there is good cause for adverse action, and if so, what that action should be. In other words, there can be a recommendation of lesser adverse actions than non-renewal but placement of less harsh conditions on the license as in the case of CUP Foods or Neuvo Rodeo/Midwest Entertainment. It is believed that this has been the common practice in the City of Minneapolis since the Hard Times Café case where the ALJ found good cause for adverse action while otherwise making positive findings about the business, but did not make any recommendations as to the adverse action. The appeals court consequently found, “Confining our review solely to the record before us, we cannot determine with certainty whether the evidence supports respondent’s decision. Considering the harshness of the penalty exacted against relator compared with the ALJ’s positive findings, the absence of findings by respondent justifying its decision and the admission of one of the council members that respondent was exposed to prohibited information, we cannot avoid the conclusion that respondent’s decision may have been improperly influenced.” 625 N.W.2d at 174.

made contrasting recommendations based on whether the illegal activity in question was on-premises with the business or its agents having control to some degree over the activity. 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 (license revoked based on 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); 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 (recommending denial of revocation where establishment was not responsible for crimes occurring near but outside its premises). It is also worth noting that in this case involving the establishment called Nuevo Rodeo which was referenced at the hearing, there were also numerous code violations or criminal activity on premises, including an employee drinking beer on the premises after 2:30 a.m., a patron arrested for cocaine possession in the bathroom, and numerous instances of assaultive and unruly conduct inside the premises, but the ALJ did not deem the business to be sufficiently responsible to warrant license revocation.

Despite the general statements of law about the limits of due process rights associated with liquor licenses and the broad discretion of a City to find good cause for

adverse licensing action, applicable precedent does not support non-renewal or removal of licenses based on off-premise activity, or violations on premises where there is limited culpability by the license holder and good faith efforts to improve conditions. La Que Buena has demonstrated, and the City does not dispute that it has done everything within its ability to be code compliant, eliminate illegal activity and improve safety on and around the premises, has made great improvements, and has not had any incidents this year. Under these circumstances, the City has not demonstrated good cause for its requested non-renewal of LQB's licenses.

#### **CONCLUSION**

For the foregoing reasons and the reasons previously set forth, Respondent La Que Buena respectfully requests findings and recommendations that the City lacks good cause and it is not in the public interest to refuse to renew La Que Buena's liquor and late night food licenses.

Dated: September 4, 2015

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