

**STATE OF MINNESOTA
MINNEAPOLIS CITY COUNCIL
COMMITTEE ON COMMUNITY DEVELOPMENT
& REGULATORY SERVICES**

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 Buena**

**RESPONDENT'S STATEMENT
AND EXCEPTIONS**

La Que Buena requests that the Minneapolis City Council act to renew its liquor license for the reasons that the Administrative Law Judge set forth in her Recommendation. Although the ALJ did not recommend renewal of its late hours food license, La Que Buena believes that the reasons provided for renewal of its liquor license should also apply to its late hours food license. La Que Buena previously provided an extensive factual and legal explanation of its position in its Closing Memorandum and Reply Memorandum submitted after the hearing before the ALJ. Rather than repeat the details of its position, that Closing Memorandum and Reply Memorandum are attached and hereby incorporated by reference. A summary of the salient reasons why La Que Buena should be able to continue in business are as follows:

La Que Buena restaurant is a genuine family business. The owners Juan and Maria Sanchez built their restaurant and personally operate it. Their three sons have helped with the operation of the restaurant since they were children and continue to devote substantial time working at it. La Que Buena is an authentic and unique Mexican

restaurant. Its menu goes beyond tacos and burritos and other dishes commonly served at Mexican restaurants, serving dishes that are unique to specific regions of Mexico. (ALJ Findings, para. 9). Its clientele are predominantly (although not at all exclusively) Mexican immigrants who appreciate the authentic food that they cannot find anywhere else and the community environment. (ALJ Findings, para. 3, 9, 91). Other customers benefit from the unique culinary and cultural experience.

Mr. and Mrs. Sanchez are immigrants from Mexico. They purchased the then vacant building at 1609 East Lake Street in 2000. Juan Sanchez spent two years constructing the restaurant, through his own labor and as he raised the more than \$200,000 needed for materials, equipment and more specialized labor. The Sanchezes also obtained a loan from the City. The restaurant finally opened on December 6, 2002 and has continuously served the community ever since that date.

The Sanchez family has overcome great challenges in making La Que Buena successful due to its location in a high crime area. The neighborhood frequently experiences assaults and robberies, and has always had problems with prostitution, drug dealing and gang activity. The family has personally suffered assaults, robberies, and vandalism. But they have continued to persevere.

The issues that have gained the attention of licensing include crimes committed at the restaurant, violations of selling alcohol to minors, and several other licensing violations which would certainly not be considered serious enough to jeopardize the

license. The criminal activity is a product of the neighborhood which La Que Buena has worked hard to address, and has now addressed successfully since there have not been any police incidents at the restaurant this entire year. City staff and the ALJ acknowledged that La Que Buena could not have done anything to prevent many of the incidents and responded to them appropriately. (ALJ Findings, paras. 44, 54, Memorandum at 32-33). In many other instances, there were no findings that La Que Buena was responsible). Some of the incidents occurred off the premises and therefore should not be blamed on La Que Buena. The other licensing violations are at least partly attributable to communication and implementation problems due to cultural and language barriers. La Que Buena has diligently and painstakingly implemented procedures to ensure that it does not sell alcohol to minors. Since its purchase of an ID card reader last year, there have been no violations.

City staff who worked with La Que Buena and testified at the hearing agreed that La Que Buena had always been cooperative, followed recommendations, and worked hard to correct problems. (ALJ Findings, paras. 50, 98, Memorandum at 32). There is no suggestion of any sort of malfeasance. Unfortunately, the City has not always had an accurate perception of La Que Buena's honesty and good faith, and this likely tainted its approach to the business. As documented in the ALJ's Memorandum, one of the police officers involved with La Que Buena accused the business of being "gang-friendly" and accused one of the Sanchez son of gang association. The evidence at the hearing made

clear that these allegations were completely and utterly false. (See ALJ Memorandum at 31). The Sanchez family is thoroughly honest, hard-working and law abiding, and they have worked hard to implement procedures to try to prevent gang members from coming to the restaurant (which the same police officer agreed was impossible to prevent completely). Unfortunately, the perceptions regarding gang involvement were most likely influenced by racial profiling. More unfortunately, as the ALJ noted in her Memorandum,

The City's suspicions about gang affiliations and friendliness to gang members on the part of members of the Sanchez family were vague and highly speculative and may have contributed to inaccurate assumptions by the City's licensing and law enforcement staff about the nature of the activities at the restaurant.

(ALJ Memorandum at 31).

La Que Buena has had to work on security at and near its premises largely without police help. The Minneapolis police department has refused to allow off-duty officers to work at La Que Buena since 2013. (ALJ Findings, para. 84-86 at 20). Previously, officers were often negative in their interactions with La Que Buena. They continually refuse to intervene in criminal activity around the restaurant. (Hearing Transcript at 645).

Beginning in February, 2015, La Que Buena hired professional security guards to work at the restaurant on weekend nights. (ALJ Findings, para. 87 at 20-21). Since May, 2015, there have been at least two guards. (Id.) These guards not only ensure security at the restaurant, but they also patrol the entire block as part of their work and thereby provide

security for the entire area. (ALJ Findings, paras. 87-88, 94, 96, Memorandum at 33).

The security operation has been effective for both the restaurant and the neighborhood as evidenced by the fact that there have been no police incidents associated with La Que Buena.

Based on La Que Buena's now substantial track record of achieving success in compliance with licensing requirements and maintaining security at the facility, it is fair, appropriate and in the public interest to renew its licenses. The liquor license should be renewed as the ALJ recommends. The City should also renew the late hours food license despite the ALJ's recommendation. Although the ALJ observed that most problematic incidents occurred late, La Que Buena has now demonstrated for the past year its ability to maintain security throughout the time that it is open.

SPECIFIC EXCEPTIONS

La Que Buena takes exceptions to the specific findings and conclusions of the ALJ:

1. The ALJ's findings that certain incidents occurred which were based entirely on hearsay should be set aside. Although the administrative rules allow hearsay that is considered reasonably reliable, the Minnesota courts have placed further limitations on reliance on hearsay:

“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). The findings that incidents occurred based only on hearsay evidence where the City presented only documents prepared by police or city staff who did not testify,¹ are contained in paragraphs 21, 26, 31, 42- 49, 51-57.

2. La Que Buena takes exception to the findings in paragraph 67 and in the Memorandum section (page 32) that its prior signing of settlement agreements was admission that certain violations occurred. The language in the agreements that the City emphasizes, “this is 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

¹ With respect to many of the incidents, La Que Buena presented witnesses to testify as to their version of events. However, the City’s evidence was based on hearsay.

concerns raised by the City.² At most the earlier statement of agreement merely acknowledges the occurrence of incidents referenced in the Findings. The City should not find violations based on mention of incidents in settlement agreements.

3. La Que Buena takes exception to Conclusion No. 18 that the City has proven that it failed to take necessary action and provide security to prevent disorderly conduct and other criminal activity on its premises, and therefore to Conclusion No. 19 that good cause exists not to renew its licenses. There are not specific findings or conclusions as to how La Que Buena was responsible for any specific incidents other than a fight and shooting off its premises on November 15, 2014 based on a conclusion that an 18 year old involved in the fight had been drinking. That one specific incident is addressed in right below.

4. La Que Buena takes exception to the apparent conclusion that the evidence indicated that an 18 year old involved in a fight and shooting off of La Que Buena's premises had been drinking at the restaurant based on hearsay police reports summarizing a conversation with Alexander Sanchez. (ALJ Memorandum at 32). The City's evidence is again based entirely on hearsay from the police reports which were vague and limited as to descriptions of police conversation with Alexander Sanchez (the youngest son).

² 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).

Alexander Sanchez testified in detail at the hearing about how the restaurant was packed that night, he was busy bussing 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). He therefore never had a chance to even observe this victim/perpetrator and was in no position to observe whether the person in question was served alcohol or drank alcohol. There was also no dispute to the testimony of manager Cindy Leon that the video surveillance recording indicates that the younger person involved in the fight had been in the establishment for a short time. (Tr. 623). The detailed testimony at the hearing clearly is stronger and more reliable than the vague hearsay statements in the police reports.

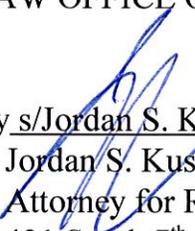
CONCLUSION

For the foregoing reasons and reasons described in previous Memoranda which are attached, the entirety of the evidence fails to establish good cause to refuse to renew La Que Buena's liquor license and late hours food license. La Que Buena, however, strongly supports the ALJ's recommendation strongly considered recommendation that failure to renew its liquor license would not be in the public interest, and believes the same reasoning should be applied to the late hours food license. The ALJ had the opportunity to observe all of the witnesses in person and carefully review the evidence during the course of an extensive four day evidentiary hearing. Her objective and considered should be able to continue to operate should be followed. The ALJ has made well-supported and

justified determinations that La Que Buena has acted in good faith, worked hard to comply with City requests and provide a safe environment and operate in compliance with licensing requirements, that it has now succeeded in complying with license requirements and providing effective security at the restaurant and to the benefit of the neighborhood, and that it provides unique cultural value to the community. All of these reasons, individually and more in combination, justify renewal of La Que Buena's licenses.

Dated: November 13, 2015

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