

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

OAH Docket No. 80-6010-32335

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

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDATION FOR
DENIAL OF LICENSE RENEWAL &
DENIAL OF REQUEST FOR STAY
PENDING APPEAL**

This matter came on for a license hearing on Tuesday, December 1, 2015 at the regularly-scheduled meeting of the Community Development & Regulatory Services Committee of the Minneapolis City Council. The license hearing was called to consider the Findings of Fact, Conclusions of Law and Recommendation issued by Administrative Law Judge LauraSue Schlatter on October 7, 2015 relevant to the operation of La Que Buena, Inc. d/b/a La Que Buena (hereinafter “the Licensee”), located at 1609 East Lake Street in Minneapolis, Minnesota. Licensee Juan Sanchez was present and represented at hearing and all stages of these proceedings by his attorney Jordan S. Kushner of the Law Office of Jordan S. Kushner.

Based upon the entirety of the record as forwarded to the Committee by the State of Minnesota Office of Administrative Hearings as well as the arguments presented to the Committee in hearing and the written exceptions of the parties, the Committee hereby makes the following:

FINDINGS OF FACT

1. This administrative hearing process was initiated pursuant to a Notice and Order for Hearing filed by the City in March 2015. Administrative Law Judge (hereinafter “ALJ”) LauraSue Schlatter was assigned to preside over the matter, OAH Docket No. 80-6010-32335.

2. The Notice and Order for Hearing sought nonrenewal of the subject business licenses (a class E on-sale liquor license as well as a special late-hours food license) as the appropriate action to be taken by the Minneapolis City Council, based on the allegations contained therein.

3. An administrative evidentiary hearing was held in this matter in front of ALJ Schlatter on June 22—25, 2015, at the Office of Administrative Hearings. The Licensee was present at the administrative hearing and represented by his attorney Jordan S. Kushner. Joel M. Fussy, Assistant Minneapolis City Attorney, appeared for and behalf of the City of Minneapolis.

4. At the administrative hearing multiple individuals provided testimony and numerous exhibits were admitted into the voluminous and complete official record of the proceedings.

5. The record was closed by ALJ Schlatter On September 4, 2015 at the conclusion of an extensive period of post-hearing briefing by the parties. ALJ Schlatter issued her thirty-four (34) page Findings of Fact, Conclusions of Law and Recommendation on October 7, 2015.

6. ALJ Schlatter concluded that the City of Minneapolis had established that good cause exists to refuse to renew both the liquor and late-hours food licenses of the Licensee. ALJ Schlatter recommended that the Minneapolis City Council should refuse to renew the Licensee's late-hours food license and recommended that the council should renew subject to strict conditions the Licensee's liquor license.

7. Pursuant to applicable law and procedure, and as described on page 26 of the ALJ report:

This Report is a recommendation, not a final decision. The Minneapolis City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Pursuant to Minn. Stat. § 14.61 (2014), the City Council will not make its final decision until after it has provided each party adversely affected an opportunity to file exceptions and present argument to the Minneapolis City Council.

8. The City of Minneapolis served a proper Notice of Committee Hearing (and subsequent Amended Notice of Committee Hearing) upon the Licensee and its attorney of record which notified

the Licensee and his attorney of the December 1st license hearing and additionally provided notification of the right to file written exceptions to the ALJ report by filing such with the City Clerk's Office.

9. The Licensee and its counsel received all notifications regarding the license hearing and the Licensee's right to file written exceptions to the Findings and Conclusions of the ALJ report. The Licensee, through its counsel, properly and timely filed written exceptions with the City Clerk prior to the hearing.

10. This Committee, after full and careful consideration of the entirety of the record in this matter as well as all arguments made by counsel, concurs with the ALJ that abundant good cause exists to refuse to renew both the liquor and late-hours food licenses held by the Licensee for the reasons delineated in the ALJ report. This Committee further finds that the most appropriate adverse license sanction for both licenses is nonrenewal, based upon the factors cited by city staff in the city's written exceptions and the arguments made during the license hearing before this committee.

11. Subsequent to the license hearing in this matter, counsel for the Licensee and counsel for the city have reached and documented an agreement in which the Licensee has waived any further appeals of this license nonrenewal action in exchange for the effective date of the nonrenewal action to be January 1, 2016 at 5:00 a.m. (as opposed to December 20, 2015 after publication in *Finance & Commerce*). City staff strongly supports this agreement as it will bring finality to this matter, avoid potential time-consuming and costly appeals, avoid the potential for a stay of the nonrenewal action to be granted by a reviewing court, and because the operation of the establishment for the remainder of this month will remain subject to all applicable laws, ordinances and applicable requirements.

CONCLUSIONS

1. The Committee hereby **ADOPTS** and **INCORPORATES** the Findings of Fact, Conclusions of Law and Recommendation as issued by Administrative Law Judge LauraSue Schlatter, as modified

by the exceptions filed by city staff, and determines that nonrenewal 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 is supported by good cause and that nonrenewal of each license is the most appropriate adverse license sanction based on the entirety of the record in this matter.

RECOMMENDATIONS

1. That these Findings, Conclusions and Recommendations be adopted by the City Council and made part of the official record.

2. That the City Council **REFUSE TO RENEW** the class E on-sale liquor and special late-hours food licenses held by the Licensee, **effective January 1, 2016 at 5:00 a.m.**

3. That the request of the Licensee for a stay of the license nonrenewal actions by the City Council pending any potential appeal be **DENIED**. At the conclusion of the December 1, 2015 license hearing in this matter, the Licensee was afforded an opportunity to request and through its counsel did make a request for a stay of the license nonrenewal actions pending a potential appeal via application for a writ of certiorari to the Minnesota Court of Appeals, pursuant to DRJ, Inc. v. City of St. Paul, 741 N.W.2d 141 (Minn.App. 2007). The request for a stay of the revocation was denied by the Committee after balancing the potential harms to the City and the community with the Licensee's desire to preserve the status quo. Said denial of stay is hereby affirmed based on the sound reasons of public policy, resource allocation and potential ongoing or reoccurring deleterious community, public safety and public health impact expressed during Committee deliberation of the request and expressed in the record. Because of the agreement made by the Licensee to waive any further appeals of this action (referenced in Finding #11, above), it is understood that no further requests for stays will be forthcoming.