



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 12/4/2012

Report Type: Consent

Title: Appeal Referral: Entertainment Permit Denial

Report ID: 2012-00947

Location: Citywide

Recommendation: Pass a Resolution 1) causing the appeal of the operation manager's decision to deny the entertainment permit application for Antigua to be heard by a City Council appointed administrative hearing examiner, and 2) referring any future appeals of the operation manager's decision concerning an entertainment permit denial to an administrative hearing examiner.

Contact: Tina Lee-Vogt, Program Manager, (916) 808-2679; Bob Rose, Code Enforcement Manager, (916) 808-5947; Ron O' Connor, Operations Manager, (916) 808-8183, Community Development Department

Presenter: None

Department: Community Development Dept

Division: Business Compliance

Dept ID: 21001314

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Exhibit A-Denial
- 5-Exhibit B-Appeal

City Attorney Review

Approved as to Form
 Gary Lindsey
 11/29/2012 9:19:56 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
 Russell Fehr
 11/27/2012 10:13:48 AM

Approvals/Acknowledgements

Department Director or Designee: Max Fernandez - 11/28/2012 2:53:03 PM



Description/Analysis

Issue: On October 12, 2011, Felipe Olvera—owner of the Antigua Cantina & Grill/Ultra Lounge, located in City Council District 4—submitted an Entertainment Permit renewal application to the City pursuant to the Entertainment Establishments Ordinance (Sacramento City Code, Chapter 5.108). After a thorough investigation, the application was denied pursuant to Sacramento City Code Section 5.108.250(D)(5), which incorporates the standard in Sacramento City Code Section 5.108.190(B)(4) by reference. The factual basis of the denial is described in the “Notice of Denial” letter dated October 5, 2012 (Exhibit A). On October 16, 2012, the applicant filed a “Notice of Appeal” regarding the denial (Exhibit B).

Policy Considerations: The Code Compliance Division of the Community Development Department has an established hearing process with hearing examiners appointed by the City Council. The Entertainment Establishments Ordinance allows for aggrieved entertainment permit applicants to appeal to the City Council. The Entertainment Establishments Ordinance also allows the City Council to refer appeals to an administrative hearing examiner.

Environmental Considerations: Under the CEQA guidelines, continuing administrative activities do not constitute a “project” as defined in Section 15378 of the CEQA Guidelines and are therefore exempt from review.

Commission/Committee Action: None.

Rationale for Recommendation: Staff anticipates that the issues raised in this notice of appeal will involve a lengthy fact-finding process. Therefore, staff is recommending that the City Council refer the appeal of the Antigua Cantina & Grill/Ultra Lounge to an administrative hearing examiner.

Financial Considerations: The administrative hearing examiner appointed by the City Council will charge the City of Sacramento for the services of hearing various appeals on an hourly basis. The anticipated cost of referring this appeal to be heard by an administrative hearing examiner is not expected to exceed \$500.

Emerging Small Business Development (ESBD): Not applicable. No goods or services are being purchased.

BACKGROUND

The current Entertainment Establishments Ordinance (Sacramento City Code, Chapter 5.108) was adopted by the City Council in October of 2003. The City Council encourages the development of arts and culture in Sacramento, and recognizes that many entertainment venues provide a means for such development. The ordinance generally requires establishments, which act as entertainment venues, to secure an Entertainment Permit beforehand. Additionally, under Section 5.108.190(D)(1)(a) through (j) the City Manager or the designee thereof may impose conditions relating to the operation of the entertainment establishment.

On October 12, 2011, Felipe Olvera, owner of the Antigua Cantina & Grill/Ultra Lounge, which is located at 711 K Street (formerly 723 K Street), submitted an Entertainment Permit renewal application to the Community Development Department in which he requested approval to hold entertainment activities at the premises. After a thorough investigation of the application, including a review of reports/recommendations from the Chief of the Sacramento Police Department, the application was denied pursuant to Sacramento City Code Section 5.108.250(D)(5), which incorporates the standard stated in Section 5.108.190 (B)(4). The Community Development Department issued a formal “Notice of Denial” of the entertainment permit application on October 5, 2012. Copies of this notice were mailed to the applicant by first-class mail, and personally delivered to the applicant on October 5, 2012. The basis for the denial is described in the “Notice of Denial” letter of October 5, 2012, and is included in this report as Exhibit A of the resolution. On October 16, 2012, the applicant filed an appeal of the denial; a copy of the appeal is included in this report as Exhibit B of the resolution.

In the event an Entertainment Permit application is denied, the ordinance allows any applicant who is aggrieved by the decision of the City Manager or designee to appeal the decision to the City Council. In lieu of hearing the appeal itself, the City Council may cause the appeal to be heard by a hearing examiner whenever the City Council determines from an examination of the notice of appeal that a hearing may involve a lengthy fact-finding process that could be more appropriately accommodated by a formal administrative hearing before a hearing examiner.

Staff anticipates that the issues raised in this appeal will involve a lengthy fact-finding process. Therefore, staff recommends that the City Council refer the appeal of the Antigua Cantina & Grill/Ultra Lounge to an administrative hearing examiner for an evidentiary hearing and final decision on the matter.



RESOLUTION NO.

Adopted by the Sacramento City Council
December 4, 2012

A RESOLUTION CAUSING THE APPEAL OF THE PROPOSED DENIAL OF THE ENTERTAINMENT PERMIT FOR THE ANTIGUA CANTINA & GRILL/ULTRA LOUNGE LOCATED AT 711 K STREET TO BE HEARD BY AN ADMINISTRATIVE HEARING EXAMINER

BACKGROUND

- A. Sacramento City Code Section 5.108.260 provides that any person aggrieved by a decision of the City Manager in denying an entertainment permit may appeal the decision to the City Council.
- B. Sacramento City Code Sections 1.24.050 and 1.24.060 provide that in lieu of hearing an appeal itself, the City Council may cause an appeal to be heard by a hearing examiner designated by the City Council whenever it determines from an examination of the notice of appeal that a hearing on the subject of the appeal may involve a lengthy fact-finding process would be more appropriately accommodated by a formal administrative hearing before a hearing examiner.
- C. Appeal from denial of an entertainment permit is not included among the categories of appeal set forth in current City Council Resolutions.
- D. An examination of the notice of appeal that Felipe Olvera filed regarding the proposed denial of the entertainment permit for the Antigua Grill & Cantina/Ultra Lounge, located at 711 K Street, reveals that the subject appeal may involve lengthy fact finding that is more appropriately done by an administrative hearing examiner.
- E.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Clerk shall refer the appeal that Felipe Olvera filed regarding the proposed denial of the entertainment permit for the Antigua Grill & Cantina/Ultra Lounge, located at 711 K Street, to an administrative hearing examiner.

Table of Contents:

- Exhibit A: Notice of Denial – Page X
- Exhibit B: Notice of Appeal – Page X



COMMUNITY DEVELOPMENT
DEPARTMENT

CITY OF SACRAMENTO
CALIFORNIA

Mailing Address:
300 RICHARDS BLVD, 3RD FLOOR
SACRAMENTO, CA
95811
Business Compliance
PH 916-808-3535
FAX 916-808-6833

October 5, 2012

Felipe Olvera
Antigua Cantina & Grill/Ultra Lounge
723 K Street
Sacramento, CA 95814

Re: Denial of Entertainment Permit Application

Dear Mr. Olvera,

The City of Sacramento received your application to renew your establishment's Entertainment Permit Number 09-05244 (issued on November 12, 2009), for the entity doing business as Antigua Cantina & Grill/Ultra Lounge at 723 K Street in Sacramento, California. The City Manager designated the Community Development Department to conduct a thorough investigation of the application. As part of our investigation, we obtained recommendations and reports from the Chief of Police. Based on the findings of our investigation, the City of Sacramento hereby denies your renewal application, pursuant to Sacramento City Code Sections 5.108.250(D) and 5.108.190(B)(4).

Your application is denied for the following reason(s):

- 1) **June 30, 2012:** Sacramento police officers observed 445 patrons inside your establishment during entertainment activities. That observed occupancy exceeded the maximum listed occupancy of 299 persons. This was a violation of **Condition 6** of Antigua's former entertainment permit.
- 2) **March 10, 2012:** At approximately 12:00 a.m., Sacramento police officers reported that your establishment was holding an entertainment event for persons that were eighteen (18) years of age and over while alcohol was available for sale and consumption on the premises. This was a violation of **Condition 10** of Antigua's former entertainment permit. (Note: The preceding was communicated in an *Order Imposing Administrative Penalty* letter, dated April 18, 2012, along with a copy of the applicable entertainment permit condition.)

- 3) **March 10, 2012:** Sacramento police officers observed that 516 patrons were inside your establishment during entertainment activities. That observed occupancy exceeded the maximum listed occupancy of 299 persons. This was another violation of **Condition 6** of Antigua's former entertainment permit.
- 4) **November 1, 2011:** Sacramento Police officers observed the sale of alcohol at an event for persons that were eighteen (18) years of age and older. This was another violation of **Condition 10** of Antigua's former entertainment permit.
- 5) **August 7, 2010:** At approximately 11:30 p.m., Sacramento police officers responded to your establishment to conduct a business check. Responding officers reported that the doors to your establishment were open to the public while a disc jockey (DJ) was playing music and patrons were inside dancing. This was a violation of **Condition 7** of Antigua's former entertainment permit. (Note: The preceding was communicated to you in a *Notice of Violation* letter, dated August 17, 2010, including a copy of the applicable entertainment permit condition.)

On and after November 5, 2012, at your business establishment that is identified above, you must cease providing any and all entertainment that is subject to the permit requirement of Sacramento City Code Section 5.108.030(A). If you ignore the cessation date, by providing duly-regulated entertainment without a valid entertainment, you and your establishment will be subject to criminal and/or civil liabilities, pursuant to Sacramento City Code section 5.108.280. (See Sac. City Code, § 5.108.290.) **Be advised that you will receive no further notices.** Please also be advised that, when an application for an entertainment permit is denied, no application for an entertainment permit to conduct the proposed activity at the same location shall be considered by the City of Sacramento for a period of one (1) year from the date of denial. (Sac. City Code, § 5.108.230.)

In accordance with Sacramento City Code 5.108.260, you may appeal this decision to the City Council in accordance with Chapter 1.24 of the Sacramento City Code. The appeal shall be made by filing a written notice thereof with the Sacramento City Clerk at the Historic City Hall Building, 1st Floor, at 915 I Street in Sacramento, California—not later than ten (10) calendar days after this notice has been personally served upon or mailed to you. The written appeal must be accompanied by a non-refundable appeal fee in the amount of \$400.00. Failure to file a proper written appeal of this notice and decision of denial within ten (10) calendar days of the date of service of the notice will constitute a waiver of all rights to an administrative appeal hearing, and the denial will be final. Failure to appeal this notice in a proper and timely fashion will constitute a failure to exhaust administrative remedies and a bar to any judicial action pertaining to this decision. **When a denial has been served, all entertainment activities must cease regardless of any pending administrative appeal.** (See Sac. City Code, §§ 5.108.030(A), 5.108.260, 5.108.280.)

Antigua Cantina & Grill/Ultra Lounge
Entertainment Permit Application (Denial)
October 5, 2012
Page 3

Respectfully,



Ron O'Connor, Operations Manager
Community Development Department

Enclosure: Entertainment Permit Appeal Form

cc: file
Tina Lee-Vogt, Program Manager, Community Development Department
Robert Rose, Code Enforcement Manager, Community development Department
Max Fernandez, Director, Community Development
Ken Bernard, Captain, Police Department
Gary Lindsey, Jr., Deputy City Attorney, City Attorney's Office

October 15, 2012

To Who It May Concern:

I would first like to apologize to the City of Sacramento, Police Department and Fire Department for having to deal with the violations mentioned in the denial letter. It was never my intent to be in this situation and for that I am very sorry.

I am asking for a chance to continue with entertainment and I will make sure my conditions are met. When we first opened I did request to get our occupancy load increased but I was unsuccessful. Attached are emails I sent the fire department with no actions taken from their part.

I have 3 businesses in Sacramento and would love to be able to continue doing business on Kay Street. I have been there since 2009, I have 2 more years left on my lease and without entertainment it will be very hard to be successful and get through this very difficult economic time.

Please review my information and I ask that you give me another chance.

Thank you in advance for your time,



Felipe Olvera

1021

11-35/1210 CA
90888

ANTIGUA CANTINA & GRILL

711 K ST
SACRAMENTO, CA 95814

DATE

10/15/12

PAY
TO THE
ORDER OF

City of Sacramento \$ 400⁰⁰

four hundred

DOLLARS

Security
Deposit on
Back

Bank of America

ACH/RIT 121000359

entertainment permit

Yvette Medina MP

FOR

⑈001021⑈ 121000358⑈ 164100285894⑈



COMMUNITY DEVELOPMENT
DEPARTMENT

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Antigua Cantina & Grill/Ultra Lounge
Entertainment Permit Application (Denial)
October 5, 2012
Page 3

Respectfully,

A handwritten signature in black ink, appearing to read 'Ron O'Connor', with a long horizontal flourish extending to the right.

Ron O'Connor, Operations Manager
Community Development Department

Enclosure: Entertainment Permit Appeal Form

cc: file
Tina Lee-Vogt, Program Manager, Community Development Department
Robert Rose, Code Enforcement Manager, Community development Department
Max Fernandez, Director, Community Development
Ken Bernard, Captain, Police Department
Gary Lindsey, Jr., Deputy City Attorney, City Attorney's Office



Re: VIVE Cocina Mexicana

Monday, December 28, 2009 10:18 AM

From: "Felipe Olvera" <girafales22@yahoo.com>
To: "Steve Bodick" <sbodick@sfd.cityofsacramento.org>

Hope you had a great holiday, we were hoping to get an updated occupancy. Do you have time this week? Please let me know.

Thank you,
Felipe

Sent from my iPhone

On Dec 3, 2009, at 4:47 PM, "Steve Bodick" <sbodick@sfd.cityofsacramento.org> wrote:

Felipe
Emergency Exits are counted as part of the Exiting System and may be used at any time. Be advised, that they must be kept clear at all times

Felipe <girafales22@yahoo.com> 12/02/2009 16:19 PM >>>
Steve,

Hope all is well! This email is to confirm our conversation about using emergency exits to exit temporary while the construction is completed as long as we do not use the kitchen for a path to the exit. Thanks again Steve!

Felipe



Re: VIVE Cocina Mexicana

Wednesday, December 30, 2009 8:30 AM

From: "Steve Bodick" <sbodick@sfd.cityofsacramento.org>
To: "Felipe Olvera" <girafales22@yahoo.com>

I can't get it this week
What time and day next week??

>>> Felipe Olvera <girafales22@yahoo.com> 12/29/2009 13:02 PM >>>
Yes

Sent from my iPhone

On Dec 29, 2009, at 12:56 PM, "Steve Bodick" <sbodick@sfd.cityofsacramento.org> wrote:

Did you get your permit issues cleared up?

Felipe Olvera <girafales22@yahoo.com> 12/28/2009 10:18 AM >>>

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Felipe



Re: VIVE Cocina Mexicana

Wednesday, December 30, 2009 8:35 AM

From: "Steve Bodick" <sbodick@sfd.cityofsacramento.org>
To: "Felipe" <girafales22@yahoo.com>

See you then

>>> Felipe <girafales22@yahoo.com> 12/30/2009 08:31 AM >>>
anytime, tuesday at 9:30am?

--- On Wed, 12/30/09, Steve Bodick <sbodick@sfd.cityofsacramento.org> wrote:

From: Steve Bodick <sbodick@sfd.cityofsacramento.org>
Subject: Re: VIVE Cocina Mexicana
To: "Felipe Olvera" <girafales22@yahoo.com>
Date: Wednesday, December 30, 2009, 8:30 AM

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Re: VIVE Cocina Mexicana

Thursday, January 21, 2010 11:59 AM

From: "Felipe Olvera" <girafales22@yahoo.com>
To: "Steve Bodick" <sbodick@sfd.cityofsacramento.org>
Re: "Felipe Olvera" <girafales22@yahoo.com>

Steve,

We have our grand opening Jan 28th at 6pm and was wondering when can get our occupancy load. We are expecting more than 299 guests and I would be embarrassed if we had to turn people away. The mayor will be there as well. Please let me know.

Felipe

On Jan 19, 2010, at 8:46 AM, "Steve Bodick" <sbodick@sfd.cityofsacramento.org> wrote:

That one isn't from us. It may be the Health Dept.

Felipe Olvera <girafales22@yahoo.com> 01/19/2010 08:30 AM >>>

I have an inspection this morning that I have to reschedule, can you help me track down the inspector please can't find her info.

Thanks,

Felipe
396-7122

Sent from my iPhone

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DEPARTMENT OF
POLICE

CHIEF OF POLICE
RICK BRAZIEL

DEPUTY CHIEFS
SAM SOMERS, JR.
BRIAN LOUIE

CITY OF SACRAMENTO
CALIFORNIA

5770 FREEPORT BLVD., SUITE 100
SACRAMENTO, CA
95822-3516

PH 916-808-0800
FAX 916-808-0818
www.sacpd.org

January 18, 2012
Ref. 10-16

Alley Katz
2019 O Street
Sacramento, CA 95811

RE: ABC License #598162

Dear Licensee:

On January 12, 2012 the Sacramento Police Department conducted a minor decoy operation at various licensed establishments in the City of Sacramento. A decoy, under the age of twenty-one (21), was sent into your establishment in an attempt to purchase an alcoholic beverage. Your employees were successful in preventing this activity.

Thank you for your continuous efforts in keeping our youth safe and for being a responsible member of our community.

Sincerely,

Pat Keller, Sgt.
Metro Division

PK/kg