

## **RESOLUTION NO. 2012-406**

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.

#### **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:**

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- Exhibit B: Notice of Appeal – Page X

Adopted by the City of Sacramento City Council on December 4, 2012 by the following vote:

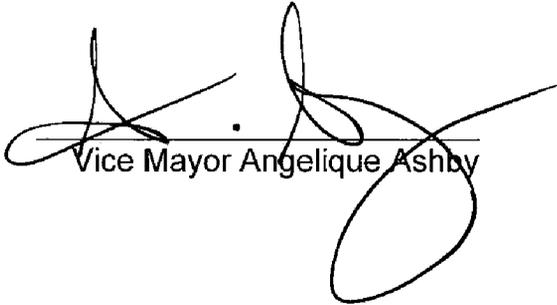
Ayes: Councilmembers Ashby, Cohn, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: Councilmember D. Fong

Attest:



Vice Mayor Angelique Ashby



Shirley Concolino, City Clerk



COMMUNITY DEVELOPMENT  
DEPARTMENT

CITY OF SACRAMENTO  
CALIFORNIA

*Mailing Address:*  
300 RICHARDS BLVD, 3<sup>RD</sup> 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, 1<sup>st</sup> 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  
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Respectfully,

A handwritten signature in black ink, appearing to read 'R. O'Connor', written in a cursive style.

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