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CITY OF MADISON
OFFICE OF THE CITY ATTORNEY


Room 401, CCB

266-4511

Date: August 17, 2016

MEMORANDUM

TO: Alcohol License Review Committee

FROM: Assistant City Attorney Jennifer Zilavy 

RE: Jalapeno Mexican Grill Ltd d/b/a Sol Azteca

I am unable to attend the ALRC meeting tonight due to an obligation I have at my daughter's school this evening. I am aware that the application for Jalapeno Mexican Grill Ltd., d/b/a Sol Azteca, was referred back to the ALRC from the Common Council.

I believe Captain Patterson will be at the meeting this evening and he can give you some background information on concerns the City has regarding the Sol Azteca operation. Those concerns resulted in an ALERT meeting on April 5, 2016. A summary of that meeting is attached to this memo.

Jalapeno Mexican Grill Ltd failed to timely file a renewal for their liquor license. Captain Patterson and I met with them again in June to let them know that they had to remove all liquor from their premises as of July 1, 2016, unless they obtained a provisional liquor license. Due to ongoing nuisance-type issues with Sol Azteca, Captain Patterson and I told Jalapeno Mexican Grill that we would not oppose a provisional license if they agreed to close at 10:00 p.m. and have that as a condition during the term of their provisional license. Oligario and Maria, did agree to that condition.

Jalapeno Mexican Grill filed a new license application and the ALRC considered that application at their July 20, 2016 meeting and recommended approval to the Common Council with conditions. On July 21, 2016, the City Clerk issued another provisional license to Jalapeno Mexican Grill and added the conditions the ALRC recommended for the new liquor license. On August 3, 2016, Captain Patterson informed Jalapeno Mexican Grill that their liquor license application was not approved and that it was sent back to the ALRC for future consideration. That email requested that Oligario and I meet with me and Captain Patterson on August 15, 2016, to discuss resolution on the conditions. That email (attached) also reminded Oligario and Maria that the provisional license still required Sol Azteca to close by 10:00 p.m. each night.

Captain Patterson never received a response back from Oligario and Maria. On August 15, 2016, Captain Patterson contacted Oligario and asked if they were planning on coming to the meeting that afternoon. Oligario responded that they were running late but they would be at the meeting.

The ordinance and statute permit only one (1) provisional liquor license per calendar year. Thus, the provisional license issued on July 21, 2016, is void. The provisional license issued on June 30, 2016 is the license that governs, which means that if the ALRC recommends approval of the new application, Sol Azteca has to close at 10:00 p.m. until the Common Council approves the ALRC's recommendation and the new license is issued. The provisional license expires on August 30, 2016. This means that if the new license application is approved, there will be a gap in licensing since the next Common Council meeting is not until September 6, 2016. Sol Azteca will not be permitted to have alcohol on the premises during this gap period.

April 19, 2016

Maria Fernanda Velasquez Schettini
Oligario Rodriguez Herrera
6802 Park Edge Drive
Madison, WI 53719

RE: Sol Azteca Fusion Grill Ltd. ALERT meeting
1821 S. Park Street

Dear Maria and Oligario,

Thank you for meeting with me and Captain Patterson, Lieutenant Groehler, Officer Alvarez and Alder Sheri Carter at the South District Police station on April 5, 2016 to discuss our concerns regarding your operation of Sol Azteca. I explained at the meeting that the purpose of an ALERT meeting is to work with you to problem solve in an effort to prevent future enforcement action against your establishment. The City wants your business to be successful and by bringing certain issues to your attention we are hopeful that those issues will not continue in the future.

You indicated that you understand that your liquor license needs to be posted in your establishment. You also indicated that you understand that if neither of you are at the establishment, even for a short period of time, the law requires you to have a licensed bartender on the premises. You stated that you understood that any unlicensed bartenders have to be under the direct supervision of a licensed bartender, which means that if either of you are serving as the licensed bartender, you can't be back in your office doing paperwork or anything else. You have to be actively supervising whoever is bartending without a license. I suggest keeping copies of bartender's licenses on premises so that when the police come in, they can easily verify the status of any bartender.

We talked about one of the disturbances you had at Sol Azteca where a patron came in with their own alcohol in an already intoxicated state. Oligario made a reasoned decision as to how to best deal with this patron and thankfully, the situation ended with nobody being physically injured. I recommended that you participate in the Safer Bars Training offered by the Madison Police Department. There are usually two public training sessions per year and you can also schedule one just for your establishment. Please contact Sergeant Alexander Berkovitz at 266-4248, or aberkovitz@cityofmadison.com, to schedule your Safer Bars training. This is a very helpful training for learning more about ID checking and dealing with common issues that arise in licensed establishments. There is no cost to you for this training.

I mentioned the legal requirement that you purchase all your alcohol beverages from a licensed wholesaler. If you run out of any alcohol product, you are prohibited by law from replenishing

your supply from a grocery store or liquor store or any other establishment that is not a licensed wholesaler. You stated you understood this requirement.

We talked about the stolen bicycles that were found in the basement of your establishment and our concerns that stolen property was possibly being trafficked out of your establishment. You stated that the bikes were stored in the basement at the request of your landlord and that you were no longer going to allow the landlord to store things in your basement. Your explanation regarding the bicycles did not make much sense, but we gave you the benefit of the doubt that you were not involved in trafficking stolen bicycles and we trust that since you will not allow the landlord to use your basement in the future, we will not find stolen bicycles, or any other such articles again.

The City has received complaints from neighbors regarding noise—complaints that you are more of a nightclub than a restaurant. Neighbors have also complained about the trash and bottles strewn around the parking lot. I explained to you the issues we had with the bar that was previously at this location and that the neighbors are sensitive to issues of noise and a seemingly neglected parking lot. You stated that you would make sure the rear door of the establishment was closed so that noise from the establishment would be less likely to carry into the neighborhood. You stated that the bottles strewn around the parking lot were from a house that abuts the parking lot. It is in your best interest to keep the parking lot free of bottles and trash, regardless of how the bottles and trash get there. A parking lot littered with beer bottles and trash suggests that the establishment does not care.

Oligario mentioned that Sol Azteca had some financial issues, but that he thought the business was rebounding. The City has frequently seen establishments that are struggling financially make poor business decisions in an attempt to make more money—such as focusing more on alcohol sales than food sales. Those decisions more often than not, resulted in the demise of the business. The City would like to see you thrive as a restaurant and we hope that you continue to focus your efforts on your food business.

If you have questions or need clarification, please contact me at 266-4511 or by email at jjilavy@cityofmadison.com.

Sincerely,

Jennifer Zilavy
Assistant City Attorney

Copy: Captain John Patterson
Lieutenant June Groehler
Officer Mike Alvarez
Alder Sheri Carter

ALRC

Zilavy, Jennifer

From: Patterson, John
Sent: Monday, August 15, 2016 8:39 AM
To: Patterson, John; 'Olegario Rodriguez'
Cc: 'Sol Azteca Fusion Grill'; 'Fernanda Schettini de Rodriguez'; Alvarez, Michael; Groehler, June; Zilavy, Jennifer; Carter, Sheri
Subject: RE: Important Update to Your Alcohol License

Hello Olegario-

We are still planning to meet with you today at 1pm in the Office of the City Attorney. I haven't received a response from you, so I thought I would send a confirmation. Please let us know if you are not planning to attend today.

Thanks,

John Patterson, Captain of Police
South Police District
Madison Police Department
825 Hughes Place
Madison, Wisconsin 53713
(608) 267-8687 (Desk)



From: Patterson, John
Sent: Wednesday, August 03, 2016 8:10 PM
To: 'Olegario Rodriguez'
Cc: 'Sol Azteca Fusion Grill'; 'Fernanda Schettini de Rodriguez'; Alvarez, Michael; Groehler, June; Zilavy, Jennifer; Carter, Sheri
Subject: Important Update to Your Alcohol License

Hello Olegario-

I am not sure if you were aware or not, but I wanted to confirm with you that your alcohol license was not approved by the Common Council last night. Your license application was referred back to the ALRC meeting on August 17. Alder Carter, myself, Lt. Groehler, Officer Alvarez and City Attorney Jennifer Zilavy would like to meet with you on **Monday, August 15th at 1pm in the Office of the City Attorney** to discuss your application. Please come to the 4th floor of the City County Building and we will be in the conference room for the City Attorney's Office. We hope that in this meeting we can come to an agreement on a set of conditions – to include a modified closing time – that will be agreeable to everyone and that reflects the interests of the neighborhood.

I spoke with City Attorney Jennifer Zilavy today and confirmed that you can still operate under your provisional license at this time. As a reminder, this provisional license does require you to close at 10pm each night. Please feel free to

contact me prior to August 15 with any questions. I will be out of the office for most of next week, but I am reachable for the remainder of this week.

Thank you,

John Patterson, Captain of Police
South Police District
Madison Police Department
825 Hughes Place
Madison, Wisconsin 53713
(608) 267-8687 (Desk)

