

# BUSINESS LICENSE COMMISSION

## Minutes

Regular Meeting

Tuesday, May 29<sup>th</sup> 2007

**1. CALL TO ORDER:**

Vice-Chair Zaden called the meeting to order at 6:30 PM.

**2. PLEDGE OF ALLEGIANCE:** Commissioner Barker led the Pledge of Allegiance.

**3. ROLL CALL:**

Commissioners Present: Erik Barker, Pat Rogers, Gary Reichard, Jim Kazakos, and Vice-Chair Sibyl Zaden.

Commissioners Absent: Chair Murchison is excused.

Staff Present: Susan Keene, Community Development Director, Jeffrey Aubel, Acting Code Compliance Manager; Bruce Robertson, Administrative Staff Assistant and Lauren B. Feldman representing Jenkins & Hogin.

Others Present: None.

**4. APPROVAL OF AGENDA:**

**ACTION:** Commissioner Rogers moved the approval of the agenda. The motion was seconded by Commissioner Kazakos and carried unanimously, noting Chair Murchison's absence.

**5. CONSENT CALENDAR:**

A. Approve the minutes of July 11, 2006

**ACTION:** Commissioner Kazakos moved approval of the minutes. The motion was seconded by Commissioner Barker and carried unanimously, noting Chair Murchison's absence.

**6. PUBLIC COMMENT:**

A. Alan Bernstein, West Hollywood introduced himself as the DAB (Disabilities Advisory Board) liaison to the Business License Commission.

*Ms. Lauren Feldman, representing the City Attorney's office, introduced herself and explained her role, at the meeting as legal counsel for the Commission.*

**7. PUBLIC HEARINGS:**

**A. Review of Pinkberry's compliance with City Council imposed Conditions of Approval:** The Business License Commission shall conduct a sixty-day (60) review of the effectiveness and compliance of conditions imposed by City Council Resolution 06-3473, a resolution conditioning Pinkberry's conditions of operation to mitigate ongoing impacts to surrounding residents and businesses.

Staff Report

The staff report was presented by Community Development Director, Susan Keene.

Ms. Keene reminded the Commission that this public hearing was mandated by City Council Resolution 06-3473, requiring that the Business License Commission review the business' compliance with conditions previously set forth by the Council.

Ms. Keene also noted that the business (Pinkberry) has requesting that Condition One, hours of operation, be amended to be 11:00 AM – 10:00 PM, Monday thru Thursday, and 11:00 AM – 11:00 PM Fridays and Saturdays. Additionally, Pinkberry is requesting that the Condition Three, requiring a security guard to be posted, on all days of operation, from 6:00 to closing be deleted.

Staff advised the Commission that in recent months negative neighborhood impacts have decreased. This reduction could be the result of decreased business during winter months, additional Pinkberry locations opening and/or competitors opening nearby.

As a requirement of CC 06-3473, the Department of Transportation conducted a traffic study at the North end of Huntley near Pinkberry. Staff temporarily closed Huntley Drive to test what the effects of a temporarily street closure, at this location, would have on the neighborhood. Unfortunately, due to an emergency, the street was reopened sooner than anticipated and the full impact of the closure is not known.

Staff also recommended that the business be required to operate additional registers during peak times, in order to expedite service to patrons and to further reduce neighborhood impacts.

Finally, staff recommended that the Commission review this matter in 120 days.

Applicant's Presentation

Sandy Hutchens, representing the applicant made a brief presentation to the Commission.

In his remarks Mr. Hutchins outlined Pinkberry's compliance with all conditions imposed by this commission and subsequently by the City Council. He added that, since the City Council hearing in November '07, Pinkberry has (in an effort to be a good neighbor) arranged for the sidewalk in front of and southward on Huntley Drive to be steam cleaned daily. Pinkberry representative have met with the city mediator, neighbors and neighboring businesses as directed by the Council.

Mr. Hutchins confirmed that Pinkberry would be happy to accept a condition to add additional registers, as recommended by staff, but implored the Commission to restore the original operating hours 11:00 AM – 11:00 PM all days of operation.

Finally, Mr. Hutchens expressed concern regarding the traffic study and potential negative impacts to the business, should the street be closed, but agreed to accept the Commissions determination, on this matter.

Public Testimony

A. Donna Feinstein, Los Angeles, spoke in support of Pinkberry, noting the business' determination to keep the neighborhood clean by having employees monitor and pick-up trash in the area.

B. Joe Na, Pinkberry manager, assured the Commission that employees would comply with body's recommendation.

C. Casey Chase, Pinkberry manager, concurred with the former speaker.

D. Bruce Traub, West Hollywood, commented on the May 10<sup>th</sup> LA Times article regarding the definition of yogurt. Additionally, Mr. Traub stated that the attendant (security guard) fails to address traffic and parking matters and supports staffs recommendation.

E. Joseph Clapsaddle, West Hollywood Chamber Board President, commented that it is a tribute to West Hollywood that businesses want to locate in our city, and supports the Pinkberry's request to remain daily open until 11:00 PM.

F. Philip Hoskins, West Hollywood, asked that the Commission specify the duties of the attendant and spoke in favor of additional traffic studies.

G. Lyn DeShields, West Hollywood, recommends strict monitoring of any/all conditions imposed by the commission.

H. Donald Elmlad, West Hollywood, spoke in support of the staff recommendation, asked that business hours be restricted to 9:00 PM daily, and stated that employees continue to serve patrons after 10:00 PM, in violation of conditions imposed by the City Council. Finally, Mr. Elmlad asked that the City not take away additional parking on Huntley by adding yet additional meters.

I. Brian Bleak, property owner 868 Huntley Drive, spoke in support of Pinkberry and requested the business be allowed to remain open until 11:00 PM.

J. Sunitha Anjilvel, West Hollywood, complimented Pinkberry's compliance with conditions imposed, by the City and with Pinkberry's willingness to work with the neighbors.

K. Jeanne Dobrin, West Hollywood, stated that Pinkberry has yet to comply with BL 06-01, Condition 4.8 requiring that a loading and unloading plan be submitted and approved by the Department of Transportation.

Rebuttal

Mr. Hutchins thanked the Commission and reassured them of Pinkberry owner, Shelly Hwang's, personal and business integrity and continued desire to work with neighboring businesses, neighbors and the City with any future issues that might arise.

Commission Discussion

**Kazakos** acknowledged that he visited the site noted that the security person was doing nothing other than opening and closing the front door for customers. Commissioner Kazakos also expressed concerns regarding the posted sign recommending that additional wording be added indicating that the area *is* permit parking only, and that the sign be lighted at night.

**Reichard** inquired as to the business' projected revenues between 10:00 – 11:00 PM.

**Rogers** expressed reservations as to the effectiveness of the security person and recommended that, if a parking violation is witnessed the security person should immediately notify Pinkberry employees and that service be denied until the parking violation is abated. Commissioner Rogers also expressed concern about reducing the hours of operation, especially when other similar businesses may be operating later. Finally, he disagreed with Staff's recommendation requiring that additional registers be operational during peak times, stating that a wise business owner will implement policies which expedite service to patrons.

**Barker** expressed wariness of potential neighborhood impacts should the Commission decide to extend hours of operations, and concurred with staffs recommendation to revisit the matter in 120 days.

**Zaden** concurred with Commissioner Kazakos regarding posting a sign which clearly states that Huntley is preferential parking emphasizing that this should be a condition added to the resolution.

Vice-chair Zaden also suggested that patrons waiting in line at closing should be brought inside and that no other patrons be served.

**Reichard** empathized with neighbors and would support requiring the security person to approach illegally parked patrons asking them to repark their vehicles prior to being served.

Commissioner Reichard also suggested revised wording to condition 3.3, of the Resolution to read, *A Pinkberry employee shall be posted in front of the business from 6:00 p.m. to closing on all days of operation. The employee shall monitor the queue line to ensure queuing is directed toward Santa Monica Boulevard, advise patrons to be respectful of noise levels and to alert Pinkberry staff when patrons are illegally parked and refuse service until such time as the illegal condition is abated.*

Formatte

Deleted:

Deleted:

Formatte

**Barker** noted that he is not supportive of the security person approaching illegally parked patrons stating his concern with possible patron/employee confrontation.

**ACTION:** Vice-chair Zaden moved the staff recommendation, noting commissioner amendments as read into the record. The motion was seconded by Commissioner Barker and carried unanimously, noting Chair Murchison's absence.

**B. Modification, Suspension or Revocation of all Regulatory Licenses held by Miyagis, 8225 Sunset Blvd., West Hollywood, CA 90069:** The Business License Commission will hold a public hearing to consider modification, suspension or revocation of Regulatory licenses held by Miyagis, 8225 Sunset Blvd., West Hollywood, CA 90069

Staff Report

The staff report was presented by the Acting Commercial Code Compliance Manager, Jeffrey Aubel.

Applicant's Presentation

Larry Watt, representing the applicant made a brief presentation to the Commission. In his presentation, he asked the commission to reject Staff's recommendation or to postpone the hearing to allow the applicant more time to review the charges.

Mr. Watt contended that considering charges one and two, as outlined in the staff report, would be inappropriate as they occurred in the 2006, considered by Mr. Watt to be *ancient history*. Mr. Watt also contended that considering the noise violation (citation) referenced in the staff report would also be inappropriate as Miyagis spent a considerable amount of money to have the walls insulated with noise mitigating insulation, and that since that time no further citations have been issued for noise.

The applicant admitted his client allowed dancing, but contends that, his client believed, that it was the City's policy to allow such activity during the Conditional Use and Parking Use permit application process. Mr. Watt conceded that when Miyagis was unable to acquire the additional required parking, for this use, the application was withdrawn. Mr. Watt added that since the withdrawal of these applications, Miyagis has instructed their staff not to allow patrons to dance.

Mr. Watt also addressed the citation for holding a special event without obtaining the required permit, contending that his client applied for a permit, in good faith, and believed that the permit would be issued, but held the event without having received final approval from the City. Mr. Watt further explained that on two subsequent occasions Miyagis applied for and cancelled each event, having failed to receive approval from the City.

Regarding the calls for service provided in the staff report, Mr. Watt argued that the majority of these calls were not the result of bad behavior on the part of Miyagis, or their customers, but that his client was encouraged to call the sheriff in an effort to avoid potential problems and that his client should not be penalized for calls made in good faith.

Mr. Watt also addressed the shooting which recently occurred in a nearby lot, and stated that there has been no indication that this shooting was related to Miyagis.

Finally, Mr. Watt admitted that past mistakes were made, informing the Commission that since the business is now in escrow that this is not the time to revoke the business licenses of this business.

Public Testimony.

- A. Scot Hermes, Hollywood, spoke as a frequent patron stating he feels safe when at Miyagis.
- B. Thomas Smith, Miyagis employee stated that an employee of Miyagis, he depends on this business for his livelihood.
- C. Travis Sentell, Los Angeles, as an employee, Travis confirmed that patrons are no longer encouraged to dance and the Miyagis takes the City's position, on this matter, very seriously.
- D. David Paraolico, employee, petitioned the Commission to allow Miyagis to continue to operate as he depends on them for income.
- E. Josh Soboty, employee, contended that not all parking lot activity can be attributed to Miyagis.
- F. Gator Lee, Brentwood, commented that the party atmosphere at Miyagis was the result of a previous ownership and asked the Commission to be patient, as change takes time.

G. Marish Devonish, argued that noise does not emanate outside when the doors are closed and attributed some noise to the Sunset Strip.

H. Christopher Dancel, Officer Off Duty, Inc., has been hired by Miyagis for security purposes and stated that he has witnessed patrons from other businesses using the parking lot.

I. Allan Wilior, West Hollywood, spoke in support of the staff recommendation commenting on Miyagis willful disrespect for City codes, public drunkenness, urination, and noise.

J. Jeanne Dobrin, West Hollywood, commented on noise, stated that the City is too permissive with negligent businesses and spoke in support of the staff recommendation.

#### Rebuttal

Mr. Watts rebutted that some public testimony cannot be attributed directly to Miyagis, restated that many of the calls to services resulted in no violation being reported by the sheriff and suggested that the City's recommendation for revocation is draconian. Finally, Mr. Watts concluded that the evidence presented by staff, is insufficient to justify the recommendation of revocation.

#### Commission Discussion

**Rogers** commented that the 73 of the 104 calls to service appear valid and attributable to patron disturbance.

**Reichard** expressed concern that not all parking lot occurrences could be attributable solely to Miyagis, having occurred outside the immediate business, and therefore expressed caution in making a decision, based on this evidence.

**Kzakos** asked for a ratio of alcohol to food served by Miyagis.

**Martin Sok**, Miyagis controller, responded that the ratio is approximated 60:40 (alcohol:food).

**ACTION:** Commissioner Roger moved closure of the public hearing. The motion was seconded by Commission Barker.

Miyagis representative again requested that the public hearing be continued, keeping the public hearing open in order to allow further public testimony.

The public hearing was closed by a unanimous consensus of the commission, noting Chair Murchison's absence.

**Zaden** concurred with Commissioner Reichard's concerns.

**Rogers** asked for additional information regarding the recommendation for revocation.

**Reichard** again asked for further information prior to making a decision.

*Staff* clarified the recommendation by stating that even after issuing repeated violation notices, Miyagis continued to operate illegally, resulting in the criminal charged being filed by the City Prosecutor's office.

**ACTION:** Vice-chair Zaden recommended adoption of the staff recommendation. The motion was seconded by Barker.

*Staff* informed that Commission that although the recommendation is for revocation, the Commission also has the option of either modification or suspension of the licenses.

**Reichard** again expressed concern with holding the business solely responsible for all activity occurring in the lot held by Miyagis. Commissioner Reichard added support for a continuance, giving the Commission more time to fully review the matter and to return with possible conditions that would also be appropriate.

**Rogers** supports action that is punitive, acknowledging that a one month suspension might be excessive.

**ACTION:** Vice-chair withdrew her motion.

**ACTION:** Rogers moved Miyagi's licenses be suspended for a period of one week, requiring that the business to return, to the Commission, in 30 days for further review, including review of the valet operation.

Barker requested a friendly amended, to the motion, suspending the licenses for 30 day with the requirement that the business close at Midnight for a period of 30 days.

**Rogers** withdrew his motion.

**ACTION:** Rogers motioned to table this item to June 19<sup>th</sup> 2007. The motion was seconded by Commissioner Barker.

**AYES:** Rogers

**NOES:** Barker, Reichard, Kazakos, Vice-chair Zaden

**ABSENT:** Murchison

Motion Fails.

**ACTION:** Barker motioned to suspend the business licenses for two weeks, restrict operating hour to Midnight for 30 days, and to return, to the

Commission for further review in 30 days. The motion was seconded by Commissioner Reichard.

**Reichard** emphasized his support for restricting hours of operation, but not to impose restrictions which would bankrupt the business.

A friendly amendment to suspend the license for one week was made by Commissioner Reichard and accepted by the maker of the motion.

**AYES:** Barker, Reichard, Kazakos, Vice-chair Zaden

**NOES:** Rogers

**ABSENT:** Murchison

Motion carries.

Staff read the appeal process into the record.

8. **New Business:** None.
9. **Unfinished Business:** None.
10. **Items from Staff:** None.
11. **Public Comment:**
  - A. Jeanne Dobrin, West Hollywood, commented that Miyagis are scofflaws.
  - B. Allan Willon, West Hollywood, commented on the density of alcohol licenses in the City.
12. **Items from Commissioners.** None.
13. **Adjournment:** The Business License Commission will adjourn to the next required meeting of this body, to be determined by the Director of Community Development, and to be held in West Hollywood Park Auditorium at 6:30 PM., 647 No. San Vicente Blvd., West Hollywood, CA.  
**Motion carried by a consensus of the Commission.**

---

CHAIRPERSON

ATTEST:

---

BUSINESS LICENSE OFFICER

