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September 20, 2013

Honorable City Council
City of Los Angeles
Room 395, City Hall
Los Angeles, CA 90012

Case No. DIR 2008-3094(RV)(PA2)
Appellants: Juan Barrales Amador
Address: 7026 South Broadway
Council District: 9
Plan: Southeast Los Angeles
Environmental: ENV 2013-011-CE

Honorable Members:

Background:

On August 27, 2013, after testimony was taken for the owner/operator's appeal of the Zoning Administrator's determination dated June 27, 2013 under Case No. DIR 2008-3094(RV)(PA2), the City Council Planning and Land Use Management [PLUM] Committee recommended denial of the appeal, sustained the decision of the Zoning Administrator, and instructed the Zoning Administrator to commence proceedings, pursuant to the provisions of Section 12.27.1, for revocation of the use.

As instructed by the PLUM Committee, the Zoning Administrator has prepared the findings to support that the El Arroyo Bar, located at 7026 South Broadway, continues to be a nuisance and revocation/discontinuation of the use of the property as a bar.

LINN K. WYATT
Chief Zoning Administrator

LKW:imc

PROPOSED FINDINGS IN SUPPORT OF REVOCATION

CF 13-0919
DIR 2008-3094(RV)(PA2)
7026 South Broadway, Los Angeles, CA 90003

FINDINGS OF FACT

After thorough consideration of the statements contained in the application, the report of the Zoning Analyst thereon, and the statements made at the public hearing before the Zoning Administrator on April 11, 2013, and the public hearing before the Planning and Land Use Management Committee on August 27, 2013, all of which are by reference made a part hereof, as well as knowledge of the property and the surrounding district, the City Council Planning and Land Use Management [PLUM] Committee finds that there is sufficient cause for the discontinuance or revocation of the El Arroyo Bar based upon the provisions of Section 12.27.1 of the Municipal Code as established by the following facts:

NUISANCE ABATEMENT AUTHORITY

On May 25, 1989, Ordinance No. 164,749 became effective, establishing procedures for the modification, discontinuance or removal of use, building or structure that constitutes a public nuisance or endangers the public health or safety or violates any provision of City, State, or Federal statutes or ordinance. That ordinance became Section 12.21-A,15 of the Los Angeles Municipal Code. The ordinance was subsequently amended by Ordinance Nos. 171,740, 172,056 and 180,409.

Prior to an action by the Zoning Administrator requiring that a use be discontinued, it must be found that prior governmental efforts to eliminate the problems associated with the use have failed, and the owner or lessee has failed to demonstrate to the satisfaction of the Zoning Administrator (or City Council on appeal) a willingness and ability to eliminate the problems associated with the use.

Authority

The Director of Planning, through the Office of Zoning Administration, has the authority to modify, discontinue or revoke the use; or to modify, delete or impose additional corrective conditions on the operation of the existing business under Section 12.27.1 (land use impacts caused by any use) of the Los Angeles Municipal Code.

The Zoning Administrator, in the instant matter, may add and/or modify the conditions to make them more restrictive so as to protect the neighborhood, modify the conditions to make them less restrictive if deemed no longer necessary to mitigate the impacts of the use, or may revoke the authority allowing the use.

Prior to an action by the City requiring that a use be discontinued, it must be found that:

- (a) **Prior governmental efforts to cause the owner or operator to eliminate the problems associated with the land use have failed**

(examples include formal action, such as citations, orders or hearings by the Police Department, Department of Building and Safety, the Director, a Zoning Administrator, the City Planning Commission, or any other governmental agency); and,

- (b) The owner or operator has failed to demonstrate, to the satisfaction of the Director (or City Council on appeal), the willingness or ability to eliminate the problems associated with the land use or discretionary zoning approval.

DISCUSSION

The subject property is located at the northeasterly corner of Broadway and 71st Street and is occupied by the subject bar [El Arroyo Bar] and automobile related business with associated parking. The bar contains approximately 2,600 square feet of floor area within the southwesterly portion of the building.

The properties on both sides of Broadway in the vicinity are zoned for a C2-1VL and are improved with commercial buildings. The properties behind such commercial buildings are improved with residential dwelling units, a majority of which are single-family dwellings or duplexes. The properties across the adjoining alley are improved with residential dwelling units.

On June 16, 1994, the Zoning Administrator (Case No. ZA 94-0284(PAB)) approved a Zoning Administrator's determination of conditional use status and approval of plans in conjunction with the on-site sale of beer only in a 3,360 square-foot bar (Los Amigos Bar) with additional terms and conditions. There were subsequent applications: Case No. ZA 2002-4048(CUB)(CUX) whereby the applicant's request for a Conditional Use to sell beer for on-site consumption was terminated due to no response to a 30-day notice to take action on the request; Case No. ZA 2003-2234(CUB) whereby the Zoning Administrator on July 14, 2003 dismissed a request for a conditional use to allow the sale of beer and wine for on-site consumption in conjunction with an existing 2,600 square-foot bar having hours of 7 p.m. to 2 a. m., daily, inasmuch as the bar has been determined to have deemed-to-be-approved conditional use status for the continued sale of alcoholic beverages since the bar was in operation and had a beer and wine license issued prior to March 1, 1977, which is the date used to establish such deemed-to-be-approved status per ZA Memorandum No. 60 (revised March 28, 1996).

Subsequently, the business conducted at the subject property generated community complaints and allegations which were reported to the Los Angeles Police Department. Call and arrest report documentation associated with the use were made which included; employees soliciting alcoholic beverages; unpermitted and illegal dance floor/dance hall use; loitering; excessive noise; extortion threats; the sale of alcoholic beverages to obviously intoxicated patrons; assault and threats of assault; illegal gun possession; gunfire; vandalism; and other nuisances documented in the prior determinations.

On March 6, 2009, the Zoning Administrator (Case No. DIR 2008-3094(RV)) determined that the operation of the Los Amigos Bar constituted a public nuisance and imposed

corrective conditions pursuant to Los Angeles Municipal Code Section 12.27.1 in order to mitigate adverse impacts caused by the operation of the bar. The action was appealed by the operator to the City Council (CF 09-0920)). The appeal was denied and the entire action of the Zoning Administrator upheld. The Council action on appeal was approved by the Mayor on June 23, 2009. Condition No. 35 required the business operator to file a Plan Approval within 6 months from the effective date of the City Council actions.

On October 25, 2011, under Case No. DIR 2008-3094(RV)(PA1), Pursuant to Section 12.27.1 of the Los Angeles Municipal Code and Condition No. 35 of Case No. DIR 2008-3094(RV) dated March 6, 2009, and the Council action effective as of June 29, 2009, the Zoning Administrator determined that the operation of the El Arroyo Bar (formerly known as Los Amigos Bar) located at 7026 South Broadway, has operated in partial but not full compliance with the terms and conditions set forth in the last determination. The Zoning Administrator retained, added to or modified the prior conditions. Condition No. 35 required that the owner/operator of the subject premises and/or the property owner of the land shall file a Plan Approval within 11 months from the effective date of the determination.

Condition No. 35 of DIR 2008-3094-RV(PA1)dated October 25, 2011 states in relevant part:

- "35. **MODIFIED** - *No earlier than 9 months and no later than 11 months from the effective date of this action, the owner/operator of the subject premises and/or the property owner of the land shall file a Plan Approval with the Office of Zoning Administration together with a filing fee and a mailing list of owners and occupants within 500 feet of the premises to determine the effectiveness of compliance with the conditions herein, and to determine whether additional and more restrictive conditions or, fewer conditions need to be considered for the operation of the facility or whether revocation is appropriate. The matter shall be set for a public hearing.*"

The required Plan Approval application was due October 9, 2012. The required plan approval was filed on January 2, 2013, in response to a letter from the Planning Department dated December 4, 2012, informing the owner/operator that its plan approval application was overdue.

On June 27, 2013, the Zoning Administrator under Case No. DIR 2008-3094(RV)(PA2)) determined that the operation of El Arroyo Bar was not in substantial compliance with the conditions of approval and issued a determination modifying the existing conditions and adding additional conditions. As summarized in the Zoning Administrator's Determination under Case No. DIR 2008-3094(RV)(PA2)), the Los Angeles Police Department arrests reports and calls for service, the Citizen's Declaration and public testimony taken at the Zoning Administrator's hearing held on April 11, 2013, indicate that the nuisance activities and non-compliance of the required conditions continue to occur. The owner/operator appealed the determination to the City Council.

On August 27, 2013, the City Council PLUM Committee conducted the appeal hearing, which was attended by the applicant's representative, employees of the bar [a security guard and an administrator], a resident in the area, representatives of the Los Angeles Police Department [LAPD] and Council District 9, in which the subject premise is located. The applicant's representative, employees of the bar and a resident spoke in support of the appeal stating that the nuisance activities mentioned in the LAPD reports and the prior determinations are not caused by the subject bar; such nuisances are associated with an off-site food vendor who illegally selling alcoholic beverages until 4 a.m.; therefore, the imposed conditions are not warranted for the subject bar. The representative of the LAPD testified in opposition to the appeal stating that violations of imposed conditions continue to occur at the subject bar. As recent as August 24, 2013, a few days prior to the PLUM Committee hearing, the LAPD investigation of the bar indicates violations of the imposed conditions continue to occur. The operator continuously allows patron dancing at the site, which has never been permitted and Condition No. 16 specifically prohibits dancing. The representative of Council District 9 spoke in support of the revocation of the subject bar. After the testimony was taken, the PLUM Committee recommended denial of the appeal and sustained the decision of the Zoning Administrator in retaining corrective conditions on the operation of the El Arroyo Bar. In light of the history of the operator blatantly ignoring the imposed conditions and operating the bar so as to constitute a public nuisance, the Committee instructed the Zoning Administrator to commence proceedings to find that the El Arroyo Bar, located at 7026 South Broadway, continues a nuisance and for that reason, should be closed. The Zoning Administrator has complied with that request and prepared the findings below that support a determination that the bar is a public nuisance and must be closed.

FINDINGS:

The El Arroyo Bar has been a public nuisance as established in Section 12.27.1 of the Los Angeles Municipal Code. The Director hereby finds that the site at 7026 South Broadway:

1. **Jeopardizes or adversely affects the public health, peace or safety of persons residing or working on the premises or in the surrounding area.**

There are a substantial number of Police reports to the file and oral testimony from Police, Planning staff investigations, the Council Office, public testimony and citizen declarations, which indicate that activities at the subject location have resulted in negative impacts on the nearby community. These impacts are directly associated with the relationship created between the on-site sale of alcoholic beverages as well as the non-permitted activity of dancing. Given the administrative record on this matter it is evident that this facility allows illegal solicitation of alcoholic beverages and unpermitted/illegal patron dancing. In spite of the imposition of corrective conditions on the operation of the bar, its business continues to negatively affect the welfare of the immediate area and its tenants and employees. The site continues to be the subject of a high number of calls for service to the LAPD relating to violations of operating conditions resulting in nuisance activities such as excessive noise, unpermitted and illegal dance floor/dance hall use, illegal solicitation of alcoholic beverages and the sale of alcoholic beverages to obviously intoxicated patrons in violation of the Alcoholic Beverage Control [ABC], loitering, littering, threatening behavior, prostitution, fighting, public urination, illegal parking, traffic violations, lewd conduct, drinking

in public/public drunkenness, vandalism, extortion threats by gang members, and other disturbances. The conduct of these activities has directly disturbed community residents and deprived them of their rightful ability to enjoy their residences and to enjoy the peace and quiet of their homes as well as the community at large.

2. Constitutes a public nuisance.

Testimony at the hearing and police reports attest to nuisance impacts generated by activities conducted on the premises. The lack of an effective and timely response by the bar operator and the property owner to curtail such activities and to allow the continuation of uses which were not permitted, resulted in cumulative impacts which became a public nuisance that impacted the community and utilized limited City resources to target the mitigation of the nuisance activities. No effective effort has been made to mitigate impacts by the business or the property owner. The bar with unpermitted illegal dancing continues to be a public nuisance.

3. Has resulted in repeated nuisance activities, including, but not limited to, disturbances of the peace, public drunkenness, drinking in public, public urination, vandalism, loitering, littering, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations, lewd conduct, or police detentions and arrests.

Based on public testimony, Police reports and correspondence received to the file, the operation of the bar constitutes a public nuisance. The Police have had to investigate the premises on numerous occasions and the operator has been informed of violations of the imposed conditions in English and in Spanish numerous times. However, the operator blatantly disregarded the imposed conditions and citations issued by the LAPD for non-compliance of the conditions. The property owner and the business owner/operator have failed to correct the deficiencies.

The Police investigations have revealed ongoing violations of the conditions imposed by the city including in part: allowing un-permitted patron dancing; employees not wearing uniforms and name tags; loud music being heard from outside the bar, the required hot line number not being picked up; untimely filing of the Covenant and Agreement and the plan approval for condition compliance review; illegal solicitation of alcoholic beverages and the sale of alcoholic beverages to obviously intoxicated patrons in violation of the ABC regulations. No attempt by the business owner and employees or the property owner has been made to abide by the conditions despite repeated warnings by the Police. No good faith effort to improve the conduct of the operation has been made by the business or property owner. The lack of a proactive bona fide security guard has also allowed nuisance activities in front of and within the bar. These activities have contributed to making the bar a nuisance magnet. The weight of the evidence, both written and oral, clearly demonstrates the ongoing nuisance activities of the location and a lack of action by the operator to comply with the imposed conditions and to discourage nuisance activity. The operator has not e Alcoholic Beverage Control [ABC] regulations. As summarized in the Zoning

Administrator's determination for the second condition compliance review dated on June 27, 2013 [DIR 2008-3094(RV)(PA2)], the operator has failed to attain substantial compliance with the conditions of the prior determinations required by the City Council on June 29, 2009 under Case No. DIR 2008-3094(RV) and as subsequently modified by the Zoning Administrator under Case No. Case No. DIR 2008-3094(RV)(PA1) on October 25, 2011. The Los Angeles Police Department [LAPD] investigation reports of the site indicate that the same violations of the imposed conditions, which were cited by the LAPD five years ago, continue to occur. Dancing, which requires a conditional use permit, has never been permitted on site. Condition No. 16 of the prior determinations prohibits dancing and the dance floor area was required to be covered up to discourage non-permitted dancing. LAPD investigations including the most recent investigation on August 24, 2013, indicate that dancing has been continuously permitted at the bar with amplified music resulting in noise impacts and nuisance activities to the surrounding properties.

6. Violates any conditions imposed by a prior discretionary land use approval including approvals granted pursuant to Sections 12.24, 12.27, 12.32 or 14.00.

The bar and the sale of beer and wine, while permitted as a deemed-to-be-approved conditional use, do not allow the bar to operate without appropriate social constraints. Prior to this action, there were no conditions of operation in place to give guidance to the owner and operator on how to conduct the business trouble free. In this instance, the City has had to turn to its Revocation procedures pursuant to the Municipal Code Section 12.27.1 to ensure the health, safety, and welfare of citizens surrounding the subject site. In order to preclude the occurrence of any problems, and to protect the surrounding neighborhood, the Zoning Administrator has imposed conditions upon the site and its use as a bar, which are intended to protect the interest of the surrounding neighborhood and to prevent further detrimental effect thereon. It was hoped that the conditions imposed on the operation of the subject bar would allow it to be a trouble free establishment. Those conditions were made available to the business owner/operator and the property owner for review and their representative's response has been quoted elsewhere in the prior determinations.

As summarized in the Zoning Administrator's determination [DIR 2008-3094(RV)(PA2)] and further as testified by the LAPD before the PLUM Committee on August 27, 2013, the business operator has blatantly disregarded the required conditions resulting in nuisance activities and violations of the imposed conditions.

7. Prior governmental efforts to cause the owner or operator to eliminate the problems associated with the land use have failed (examples include formal actions, such as citations, orders or hearings by the Police Department, Department of Building and Safety, the Director, a Zoning Administrator, the City Planning Commission, or any other governmental agency).

In 2009, under its former name, Los Amigos Bar under a different operator [Miguel Vasquez] was determined to be a public nuisance as established in Section 12.27.1 of the Los Angeles Municipal Code and 37 conditions were imposed in order to mitigate nuisance activities associated with the operation of the bar. [DIR 2008-3094(RV)].

The operator at the time of the original nuisance hearing in 2008 is no longer affiliated with the operation of the bar and a new operator is in place. The current business owner/operator [Mr. Juan Barrales Amador] took over the business under the name of El Arroyo Bar in June, 2009.

The first condition compliance review of the imposed conditions was due December 30, 2009, but, was not filed until May 5, 2011. On October 25, 2011, the Zoning Administrator determined that the operation of the El Arroyo Bar has operated in partial but not full compliance with the terms and conditions set forth in the last 2009 determination. Condition No. 35 required a Plan Approval application for the second condition compliance review within 11 months. [DIR 2008-3094(RV)(PA1)]

The second condition compliance review required by the prior action was due October 9, 2012, but was filed on January 2, 2013, only after a letter informing the owner/operator for an over-due plan approval application was received. On June 27, 2013, under Case No. DIR 2008-3094(RV)(PA2), the Zoning Administrator determined that the operator had failed to attain substantial compliance with the imposed conditions. The review of the current operation indicates that the property owner and the operator failed to demonstrate their efforts to mitigate nuisance activities associated with the bar. As summarized in the Zoning Administrator's determination dated June 27, 2013, non-compliance of the imposed conditions continues to occur resulting in nuisances and adverse impacts to the surrounding properties. In order to mitigate the nuisance activities, some of the prior conditions were modified by the Zoning Administrator including the conditions for security guards and hours of operation, and amplified music and speakers were prohibited. The business operator [Juan Barrales Amador] appealed the Zoning Administrator's determination to the City Council with a new representative.

At the appeal hearing on August 27, 2013 before the PLUM Committee, the operator and his representative denied any responsibilities to mitigate nuisance activities referenced in the LAPD reports and the Zoning Administrator's determinations stating that such nuisance activities are associated with an off-site food vendor and are not relevant to the subject bar; therefore, according to them, there is no nexus between the imposed conditions and the operation of the bar.

There have been numerous opportunities given the property owner and the operator in the past to correct the definiteness in condition compliance. The operator has been informed of non-compliance of the operating conditions in English and Spanish by the Police Department numerous times. However, such

repeated government agency efforts have resulted in no results. The property owner and the business owner/operator have shown no efforts to improve the situation, and, further refuse to accept any responsibility by discrediting the Police investigation reports and the Zoning Administrator's findings.

After continuing the conditions and limitations imposed herein on this location for more than five years, the owner and operator have blatantly disregarded the citations issued by the LAPD for non-compliance of the conditions and have allowed un-permitted patron dancing, illegal solicitation of alcoholic beverages, and other violations of the imposed conditions as summarized in the Zoning Administrator's determinations. It is noted that prohibition of dancing, live entertainment, live music on site and amplified music heard beyond the subject premises were referenced in Case No. ZA 94-0284(PAB) dated June 16, 1994.

Further, the current owner and operator have knowledge of the conditions as they have been the owner and operator since 2009 when the operating conditions were first imposed and as they have been repeatedly informed of the violation of the conditions by LAPD numerous times in the past even while appeals by the owner/operator have been pending. The testimony from the operator and his representative before the PLUM Committee on August 27, 2013 denying any responsibility for nuisance activities referenced in the LAPD reports and the Zoning Administrator's determinations clearly indicates that no progress is expected.

8. **The owner or operator has failed to demonstrate, to the satisfaction of the Director, the willingness or ability to eliminate the problems associated with the land use or discretionary zoning approval.**

The owner and operator have not demonstrated the willingness or ability to eliminate the problems associated with the land use or discretionary actions, and immediate revocation of the land use approval is appropriate to abate the nuisance activity and create a positive and healthy environment for the surrounding residential and commercial uses. As noted in the prior findings above and as summarized in the Zoning Administrator's determinations, the property owner and operator failed to file the required Approval of Plans applications as required by Condition No. 35 after the corrective conditions were initially imposed, and failed to file two subsequent required Approval of Plans applications in a timely manner.

After continuing the conditions and limitations imposed herein on this location for approximately five years, the owner and operator have failed to comply with key conditions that would serve to alleviate criminal and nuisance activity such as the requirements to prohibit non-permitted patron dancing and illegal solicitation of alcoholic beverages, to contain noise/music inside the bar, to require employees wear uniforms and name tags, to discourage patrons from dancing by covering the floor area delineated by tiles, and to stop serving alcoholic beverages to obviously intoxicated patrons. Despite repeated warnings and citations issued by the LAPD, the LAPD investigation on August 24, 2013 indicates violations of the imposed conditions continue.

The PLUM Committee hereby finds that the record and the repeated administrative attempts made to improve the operation of the bar have not resulted in the elimination of the problems associated with the use. The use of the property as a bar is hereby ordered discontinued.

It is the purpose of these proceedings, under Ordinance No. 180,409 to provide a just and equitable method to be cumulative with and in addition to any other remedy available for the abatement of public nuisance activities.

It is further determined that the instant action by the PLUM Committee is in compliance with Section 12.27.1 of the Municipal Code and does not impair the constitutional rights of any person. All of the procedures followed as a part of this action conform to the Municipal Code. The owner and operator of the premises have been provided notice of these proceedings and have been afforded the opportunity to review the file in advance of the hearing, which was duly noticed, and to testify at the hearing and respond to the allegations concerning the impacts of the operation of El Arroyo Bar. Their representative, Mr. Armando Chavira, and the operator were in attendance at the Zoning Administrator's and the City Council's Planning and Land Use Management Committee public hearings held on April 11, 2013, and August 27, 2013. Further, the conditions imposed were not so onerous as to prevent the viable and successful operation of the business.