

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF THE STATE OF CALIFORNIA

AB-10013

File: 47-647476; Reg: 23094065

MEG METTLE & MOXIE, INC.
Dba Made by Meg,
796 Via Del Monte
Palos Verdes Estates,
California 90274
Appellant/Applicant

v.

BARNEY FARRNSWORTH, *et al.*
Respondents/Protestants, and;

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Honorable Matthew G. Ainley

Appeals Board Hearing: May 9, 2025
Sacramento, CA/Teleconference

ISSUED MAY 15, 2025

Appearances: *Appellant:* Carrie L. Bonnington, of PILLSBURY WINTHROP SHAW PITTMAN LLP, as counsel for Meg Mettle & Moxie, Inc.;

Respondents: Jennifer M. Casey, as counsel for the Department of Alcoholic Beverage Control,

Ralph Barat Saltsman, of SOLOMON, SALTSMAN & JAMIESON, as counsel for Joseph Disanto,

James Parker, in *propria persona*,

Sheri Kantor, in *propria persona*, and;

Edward McNamara, in *propria persona*.

OPINION

MEG METTLE & MOXIE, INC., doing business as Made by Meg (hereinafter appellant or applicant), appeals from a decision of the Department of Alcoholic Beverage Control¹ denying a premises-to-premises transfer of a type 47 on sale general eating place license. For the following reasons, the Department's decision is affirmed.

FACTS AND PROCEDURAL HISTORY

On April 11, 2023, appellant filed an application for an on-sale general license (by way of a premises-to-premises transfer) for an establishment located at 796 Via Del Monte, Palos Verdes Estates, California (Proposed Premises). The Proposed Premises is commonly known as La Venta Inn. The La Venta Inn was built in the 1920s and has been in use ever since. The Proposed Premises is currently used for various events, and appellant is the current lessee and has been since 2021.

Appellant provides food and beverages for any event booked at the proposed Premises. The Proposed Premises has a full kitchen, which is used for most of the food preparation for onsite events. Prior to the current application, appellant provided alcoholic beverages for events under catering authorizations issued by the Department.

¹ The decision of the Department under Government Code section 11521(a), dated November 19, 2024, is set forth in the appendix.

The Proposed Premises is surrounded by residences, all of which were built after the Proposed Premises. As such, it is the only commercial property in the area. Of the residences, two are located within 100 feet of the Proposed Premises or its parking lot.

The Proposed Premises has a dedicated parking lot. The entrance is off Via Somonte, and vehicles going to and from the Proposed Premises must turn off Via Del Monte and drive a short distance up Via Somonte to reach the entrance. Via Somonte is blocked off just past the entrance to the parking lot, which prevents vehicles from traveling farther up Via Somonte. During events, the parking lot sometimes fills up, which causes vehicles to park on the streets in the surrounding area.

As part of its investigation, the Department contacted Sheryl Brady with the Palos Verdes Estates Planning Department. Ms. Brady indicated that there is a zoning exception for the Proposed Premises, and therefore, no conditional use permit was required. Ms. Brady did not raise any objection to the applied-for license.

The Department also contacted Chief of Police Luke Hellinga for the Palos Verdes Estates Police Department. Chief Hellinga did not have any objection to the applied-for license. He also did not have any concerns about crime in the area.

In connection with its application, Appellant submitted a letter of non-interference. Appellant indicated that all staff is to park in the dedicated parking lot. Otherwise, they are to park on the adjoining streets. Anyone who books an

event is required to select one of three parking solutions: 1) self-park in the lot if the guest count is below 75; 2) ride-share drop-off/pick-up, or; 3) shuttles.

Appellant restricts noise at the property line to 55 decibels (dB) and takes regular readings to ensure that this level is being met. To minimize noise, Appellant has moved scullery operations indoors. Appellant has also posted signs at the edge of the licensed area and in the parking lot.

Events at the Proposed Premises are held mornings, afternoons, and evenings. At night, events end no later than 10:00 p.m., with all guests off site by 10:30 p.m., and full clean-up by 11:00 p.m. Any disc jockeys (DJs) hired in connection with an event must use the Proposed Premises' speaker system and outside speakers are prohibited. Further, Appellant has installed sound-proofing material, and exterior doors and windows are closed for entertainment/dancing.

As a result of its investigation, the Department recommended the following 12 conditions be added to the license, should it issue:

1. The quarterly gross sales of alcoholic beverages shall not exceed the quarterly gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.
2. Sales, serve, and consumption of alcoholic beverages shall be permitted only between the hours of 9:00 am and 9:30 pm each day of the week.
3. Entertainment provided shall not be audible at any residential property within any proximity of the licensed premises.
4. There shall be no live entertainment of any type, including but not limited to, live music, disc jockey, karaoke, topless

entertainment, male or female performers or fashion shows after 9:30 p.m.

5. The petitioner(s) shall post a prominent, permanent sign stating, "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" in a place that is clearly visible to patrons of the licensed premises. The sign shall be at least two feet square with at least two-inch block lettering.
6. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the most recently certified ABC-257 and ABC-253.
7. The petitioner(s) shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control as depicted on the most recently certified ABC-257 and ABC-253.
8. Petitioner(s) shall actively monitor the area under their control in an effort to prevent the loitering of persons on any property adjacent to the licensed premises as depicted on the most recently certified ABC-253.
9. The sale of alcoholic beverages for consumption off the premises is prohibited.
10. The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of persons on or about the parking lot. Additionally, the position of such lighting shall not disturb the normal privacy and use of any neighboring residences.
11. A sign shall be posted in a conspicuous space at the entrance/exit point of said patio area, which shall state, "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT". Said sign shall measure no less than seven inches by eleven inches (7" x 11 ") and contain lettering no less than one (1) inch height.
12. Between the hours of operation or at any time the premises are providing/hosting special events, the petitioner(s) shall provide 2 (2) uniformed security guard(s) in the parking lot and/or premises and shall maintain order therein and prevent any activity which would interfere with the quiet enjoyment of their property by nearby residents of the surrounding community. The licensed

uniform security guard(s) must be licensed by the State of California, Department of Consumer Affairs.

(Decision at pp. 4-5.) The Department recommended that the application be approved, subject to the conditions above. The Department issued appellant an interim operating permit (IOP) on June 23, 2023. All the conditions apply to the operation of the premises under the IOP.

Licensing Representative E. Tarin-Randle (hereinafter "LR Tarin-Randle") visited the Proposed Premises a total of four times after the IOP was issued and before the administrative hearing. LR Tarin-Randle did not see any loitering, criminal or obnoxious activity, or anything which might impair the quiet enjoyment of nearby residents.

Department agents also visited the Proposed Premises on three (3) separate occasions after the IOP was issued. Agent Perry first arrived at the Proposed Premises on June 20, 2023, but found that it was closed. During the second visit, on July 7, 2023, Agent Valencia visited the premises and heard entertainment noises, a potential violation of IOP condition number three. During the third visit, on August 25, 2023, Agent De La Rosa had to warn the on-duty manager that the Proposed Premises might be violating conditions three and four due to live entertainment and noise emanating beyond the licensed premises.

Appellant retained the services of retired Department agent, Dawn Kenney. Ms. Kenney visited the Proposed Premises on two different nights when events were ongoing. Ms. Kenney spent time in the parking lot and on the surrounding streets. In her opinion, she did not hear or see anything which might be

considered a violation of appellant's proposed conditions. She heard some noise from the Proposed Premises, including some celebratory cheers and clinking from silverware, dishes, and glasses. Ms. Kenney monitored guests as they were leaving, although none appeared intoxicated, drove erratically, or played loud music.

Protestant Joseph Disanto (hereinafter "Disanto") testified at the hearing that he lives across the street from the Proposed Premises. Disanto hears noise emanating from the Proposed Premises daily, including the ice machine, scullery noise, amplified music, amplified voices, crowd noise, and vehicle noise. Disanto took videos of various events at the licensed premises and keeps a log of various events held at the Proposed Premises. However, most of Disanto's videos and logs include events that occurred at the Proposed Premises before the IOP was in place.

Robert Akin (hereinafter "Akin") testified at the hearing that his residence overlooks the Proposed Premises, and he is disturbed by noise emanating there. While there are limits on the number of events held at the Proposed Premises pursuant to catering permits, there would be no limit should the applied-for license be issued. Akin testified that the increase would lead to more problems for him.

Sandra Damiani (hereinafter "Damiani") testified that she lives approximately 200 feet from the Proposed Premises, and can hear noise emanating from there, including "loud whooping and music" (Findings of Fact, at ¶ 25.) Damiani made a video on August 4, 2023, after the IOP was issued,

and noise coming from the Proposed Premises is heard. Damiani is also concerned about traffic and parking connected to the events at the Proposed Premises.

Bradley Farnsworth (hereinafter "Farnsworth") testified about music and other entertainment emanating from the Proposed Premises. Farnsworth lives between 150-200 feet from the Proposed Premises.

Sheri Kantor (hereinafter "Kantor") testified she lives within 100 feet of the Proposed Premises and described problems with employees parking in the street causing noise such as doors slamming and car alarms. Kantor also testified regarding noise emanating from the Proposed Premises from parties and specifically described DJs being audible at her home and their use of swear words and other vulgar language.

Patricia Kasschau (hereinafter "Kasschau") testified that she can hear amplified music, DJs, and scullery work. James Parker (hereinafter "Parker") testified that noise from the Proposed Premises disturbs him on a regular basis. Parker installed sound proofing equipment inside his house to no avail as he can still hear music and entertainment noises coming from the Proposed Premises. Parker has called the police and police reports document that officers have heard noise coming from the Proposed Premises at a distance of 541 feet away.

On May 9, 2024, the administrative law judge (ALJ), Matthew G. Ainley, issued a proposed decision deeming the protest of Gayne Brenneman as withdrawn, and overruling the protests of Robert Akin, Richard Bohner, Sandra Damiani, Joseph Disanto, Bradley Farnsworth, Sheri Kantor, Patricia Kasschau,

Edward McNamara, James Parker, Elizabeth White, and John Williams. ALJ Ainley found that the license shall issue to appellant, subject to the conditions set forth in the petition for conditional license.

On May 21, 2024, the Department issued a notice to all parties regarding ALJ Ainley's proposed decision and advised each party that it would consider written comment before deciding whether to adopt the proposed decision. After receiving written comments, the Department indicated they would not adopt the proposed decision on June 26, 2024 and issued a notice to all parties on July 2, 2024.

On August 20, 2024, the Department notified the parties that it would be deciding the matter under Government Code section 11517(c), and it requested written argument on the following:

1. Is the Department limited in protecting quiet enjoyment of nearby residences only in relation to the operations of the proposed licensed business that are related to alcohol service?
2. Are the conditions on the proposed license limiting the operation of the license to adequately protect the quiet enjoyment of nearby residences?
 - a. If not, are there any conditions that would be appropriate to protect the quiet enjoyment of nearby residences?
3. Does evidence of a condition violation under an interim operating permit by the applicant, with the same conditions being placed upon the license at issue, place a burden upon the applicant to show how it will modify its operation of the licensed premises to ensure future violations of conditions will not occur?
 - a. If yes, is there evidence in the record that the applicant met its burden to show that its operation of the license will not violate conditions placed upon the license which it did violate while operating under the interim operating permit?

- b. If there is a burden upon the applicant and not enough evidence was presented to meet its burden, should the license be denied, or should the case be remanded for the taking of further evidence to allow applicant the opportunity to meet its burden?
4. Was evidence of the Department receiving an affirmative response from the Palos Verdes Estates Planning Department enough to meet the applicant's burden to show their planned licensed premises complies with local zoning laws?
- a. If yes, who has the burden to present evidence that the response from the city was in error?
 - b. Is there evidence in the record that the city's response that the licensee's proposed operations were within all zoning and local ordinances was erroneous?
 - c. If there is not enough evidence to show the city's response to the Department's request regarding zoning was made in error, should the case be remanded to allow the party whose burden it is in question 4(a) to present further evidence on the record?
5. Is the applicant the true and sole owner of the proposed licensed business?
- a. Which party has the burden to show that the landlord does not hold an interest in the licensed business based on contractual agreements for revenue and sales of the proposed licensed business?
 - b. Is there evidence in the record that shows that the lease agreement between the landlord and the proposed licensed business has created an ownership interest in the proposed licensed business such that the landlord should be required to be a co-licensee with applicant?
 - c. If there is not enough evidence to show whether the landlord has an ownership interest in the proposed licensed business or not, should the case be remanded to allow the party whose burden it is in question 5(a) to present further evidence on the record?

After receiving written argument from the parties, the Department issued its operative decision on November 19, 2024, sustaining the protest on the grounds that appellant “has not met its burden to establish that the operation of the licensed premises will comply with condition 3 of the conditional license. The premises-to-premises transfer of a type 47, on sale general eating place license is denied.” (Decision at p. 13.) Appellant timely requested reconsideration by the Department which was denied. Appellant filed a timely appeal contending that the Department imposed a “heightened” burden on appellant and the decision is not supported by substantial evidence.

DISCUSSION

A. Standard of Review

The scope of the Board's review is defined by section 23084. The Board is not a trier of fact, and it does not reweigh evidence, evaluate witness credibility, or substitute its judgment for that of the Department. The Board's review is limited to determining:

1. Whether the Department has proceeded without or in excess of its jurisdiction;
2. Whether the Department has proceeded in the manner required by law;
3. Whether the Department's decision is supported by its findings; and
4. Whether the findings are supported by substantial evidence in light of the whole record.

Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The Board does not reweigh

conflicting evidence but instead considers whether the Department's findings are supported by such evidence in light of the whole record. (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 287, 291.)

The Board also considers whether any procedural error or evidentiary ruling prejudiced the appellant. Reversal is not warranted unless the appellant affirmatively demonstrates that an error resulted in prejudice. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; *Reimel v. House* (1969) 268 Cal.App.2d 780, 787; *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 308.) The burden is on the party seeking reversal to show that it is reasonably probable a more favorable result would have been reached absent the alleged error. (*City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 51–52; *Thornbrough v. Western Placer Unified School Dist.* (2013) 223 Cal.App.4th 169, 200.)

This standard imposes a high threshold. The Board may not overturn a decision simply because different inferences could be drawn from the evidence. The question is not whether the Board would have reached the same result, but whether the Department's findings are supported by substantial evidence and whether appellant has shown prejudicial error.

B. Analysis

Appellant claims the Department imposed a heightened standard on its burden of proof at the administrative hearing. (AOB, at p. 10.) Appellant further disputes the Department's findings that appellant failed and would continue to fail to comply with the conditions imposed on its IOP. (*Id.* at pp. 10-17.) Finally,

appellant argues that substantial evidence does not justify the denial of its application. (*Id.* at pp. 17-19.)

First, the Board agrees with appellant that there is no “heightened” evidentiary standard permitted by law on a licensee to show that it will comply with the conditions of an IOP. The standard, as always, is “substantial evidence.” As stated above, this Board is bound by the Department’s findings so long as they are supported by substantial evidence. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Southland)* (2002) 103 Cal.App.4th 1084, 1094 [127 Cal.Rptr.2d 652, 659] [citing *Kirby v. Alcoholic Beverage Control Appeals Bd.* (1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] [“In considering the sufficiency of the evidence issue the court is governed by the substantial evidence rule[;] any conflict in the evidence is resolved in favor of the decision; and every reasonably deducible inference in support thereof will be indulged. [Citations.]”]; see also *Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815] [“When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the department.”].) “Substantial evidence” is “evidence of ponderable legal significance, which is ‘reasonable in nature, credible and of solid value.’ ” (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304, 307–308], internal citations omitted.)

Here, the Department found that appellant violated the conditions of the IOP, most notably, condition 3, which states, “Entertainment provided shall not be

audible at any residential property within any proximity of the licensed premises.” (Conclusions of Law at ¶ 15.) There was testimony by several of the nearby residents that entertainment emanating from the Proposed Premises was audible at their residences. (Findings of Fact at ¶¶ 22-30.) Further, Department agents noted music and live entertainment audible outside of the Proposed Premises on two (2) separate occasions: June 30, 2023 and August 25, 2023. (*Id.* at ¶¶ 18-19.) Finally, there was documentary and video evidence of noise emanating from the Proposed Premises. (Exhs. Disanto-7 and Damani-1.) The above evidence constitutes substantial evidence that appellant violated condition 3.

Further, the Department found that appellant would continue to violate condition 3:

Applicant has demonstrated that it is either unable or unwilling to comply with the recommended conditions and has thus failed to meet its burden to establish why the license should issue.

(Conclusions of Law at ¶ 15.) Again, the Board will defer to this finding so long as it is supported by substantial evidence. (*Kirby, supra*, 261 Cal.App.2d at 122.)

Further, the Board must accept all reasonable inferences from the evidence in favor of the Department. (*Harris v. Alcoholic Beverage Control Appeals Bd.* (1963) 212 Cal.App.2d 106, 113.)

Here, the Department established that its agents visited the Proposed Premises on at least two occasions, and even warned the on-duty manager that appellant may be violating condition 3. (Findings of Fact at ¶¶ 18-19.) When given the chance to offer potential solutions to the noise issue, appellant's response was to either “remove the condition or add time limitations.”

(Conclusions of Law at ¶ 14.) The Department found this solution inadequate to address its concerns that appellant would continue to violate condition 3. (*Id.* at ¶ 15.)

The Board cannot say the Department erred in denying appellant's license application. A reasonable inference to be drawn from the evidence that appellant violated its IOP conditions, and failing to offer viable solutions on how it could prevent those violations, is that appellant will continue to violate the same conditions. At oral argument, appellant maintains that she did offer evidence of noise mitigation efforts in an effort to comply with condition 3. However, the Department clearly found those efforts unavailing. As the ultimate trier of fact, that is their privilege. (*Lorimore v. State Personnel Bd.* (1965) 232 Cal.App.2d 183, 189 [42 Cal.Rptr. 640]; *Brice v. Dept. of Alcoholic Bev. Control* (1957) 153 Cal.App.2d 315, 323 [314 P.2d 807]; *People v. Burton* (1958) 162 Cal.App.2d 790, 792 [328 P.2d 492, 493] ["It was for the trier of the facts to pass upon the credibility of the witnesses and the weight to be accorded the evidence."].) "The trier of fact . . . is the sole judge of the credibility of the witnesses [and] may disbelieve them even though they are uncontradicted if there is any rational ground for doing so . . ." (*Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 970-971 [191 Cal.Rptr. 415].) The Appeals Board may not reweigh the evidence or interfere with the Department's credibility determinations absent a clear showing of abuse of discretion.

The Department established by substantial evidence that appellant violated the conditions of its IOP and those violations interrupted nearby residents'

quiet enjoyment of their property. Appellant failed to meet her burden in proving she could (or would) remedy those violations in the future. The Board cannot say the Department erred in denying appellant's license application.

ORDER

The decision of the Department is affirmed.²

SUSAN A. BONILLA, CHAIR
MEGAN McGUINNESS, MEMBER
SHARLYNE PALACIO, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² This final order is filed in accordance with Business and Professions Code section 23088 and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code section 23090 *et seq.* Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: abcboard@abcappeals.ca.gov.

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE PROTESTS OF:

Barney Farnsworth, et al.

**AGAINST THE PREMISES-TO-PREMISES
TRANSFER OF AN ON-SALE GENERAL
EATING PLACE LICENSE TO:**

Meg Mettle & Moxie, Inc.
Dbas Made by Meg
796 Via Del Monte
Palos Verdes Estates, California 90274

Applicant

File No.: 47-647476

Reg. No.: 23094065

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Alcoholic Beverage Control
Office of Legal Services

DECISION UNDER GOVERNMENT CODE SECTION 11517(c)

The above-entitled matter having regularly come before the Department on November 20, 2024, for decision under Government Code Section 11517(c) and the Department having considered its entire record, including the transcript of the hearing held on February 7, 2024, March 12, 2024, and March 13, 2024, before Administrative Law Judge Matthew G. Ainley, and good cause appearing, the following decision is hereby adopted:

John P. Newton, Assistant Chief Counsel, represented the Department of Alcoholic Beverage Control.

Derek M. Mayor and Carrie L. Bonnington, attorneys-at-law, represented applicant Meg Mettle & Moxie, Inc. Megan Walker, the Applicant's owner was present.

Ralph Barat Saltsman and Adam N. Koslin, attorneys-at-law, represented protestant Joseph Disanto, who was present.

Protestants Robert Akin, Richard Bohner, Sandra Damiani, Bradley Farnsworth, Sheri Kantor, Patricia Kasschau, Edward McNamara, James Parker, Elizabeth White, and John Williams personally appeared at the hearing. The Protestants were allowed to appear and participate in the hearing as parties pursuant to Government Code section 11500(b).

Protestant Gayne Brenneman did not appear at any time during the hearing. Pursuant to Business and Professions Code section 24015(g),¹ Brenneman's protest is deemed withdrawn.

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on March 13, 2024.

ISSUES

The issues to be determined are whether issuance of the applied-for license would be contrary to public welfare or morals on the basis that (1) it would adversely impact residences within 100 feet, (2) it would adversely impact residences beyond 100 feet, (3) it would create a nuisance from noise, traffic, littering, and loitering, (4) it would create a law enforcement problem, (5) it would lead to an increase in crime, (6) it would create parking problems, (7) the applied-for premises lacks kitchen facilities, (8) the Applicant failed to properly post notice, (9) it would create a hidden ownership, (10) the applied-for premises are not properly zoned, (11) the applied-for premises do not comply with existing covenants, conditions, and restrictions, (12) it would adversely impact a consideration point, (13) it would lead to intoxicated patrons, (14) it would lead to increased roadway danger, including drunk driving, and (15) the Applicant is already violating existing law.

FINDINGS OF FACT

1. The pending application was filed with the Department on April 11, 2023. It seeks issuance of a type 47, on-sale general license (by way of a premises-to-premises transfer) for premises located at 796 Via Del Monte, Palos Verdes Estates, California (the Proposed Premises).
2. The Proposed Premises is commonly known as La Venta Inn. It was built in the 1920s and has been in use ever since. It was the first building constructed in the area. A permanent license has not previously been issued to the Proposed Premises.
3. The Proposed Premises is currently used for various events. As such, different sections of the Proposed Premises have been identified for use. Indoor sections include a ballroom, lower garden room, upper garden room, and middle room. Outdoor or open-air sections include a courtyard, a terrace, and a veranda.
4. The Applicant is the current lessee of the Proposed Premises and has been since 2021. The Applicant provides food and beverages for any event booked there. Some events, such as various community events, do not have any food or beverage service. The Proposed Premises has a full kitchen, which is used for the majority of food preparation for events onsite. Prior to this application, the Applicant provided alcoholic beverages for events at the Proposed Premises under catering authorizations issued by the Department to licensees (including Applicant under a permanent license

¹ All statutory references are to the Business and Professions Code unless otherwise noted.

issued elsewhere). Although Applicant has a lease agreement with their Landlord constituting rent to be paid in accordance with receipts earned from events held on the Proposed Premises, there is no evidence that the Landlord exercises operational control over the Applicant or the operation of the Proposed Premises.

5. The Proposed Premises is surrounded by residences, all of which were built after the Proposed Premises. As such, it is the only commercial property in the area. Of the residences, two are located within 100 feet of the Proposed Premises or its parking lot.

6. The Proposed Premises has a dedicated parking lot. The entrance to the parking lot (and, therefore, the Proposed Premises) is off Via Somonte. Vehicles going to and from the Proposed Premises must turn off Via Del Monte and drive a short distance up Via Somonte to reach the entrance to the parking lot. Via Somonte is blocked off just past the entrance to the parking lot, which prevents vehicles from traveling farther up Via Somonte. During events, the parking lot sometimes fills up. When it does, vehicles park on the streets in the surrounding area.

7. The Applicant posted the notice of intent to sell alcoholic beverages near the sign at the entrance to the parking lot. (Exhibit A28.)

8. The Department contacted Sheryl Brady with the Palos Verdes Estates Planning Department. Ms. Brady indicated that there is a zoning exception for the Proposed Premises and, therefore, no conditional use permit was required. She forwarded a copy of the exception (exhibits A39 and Disanto-39) to the Department. Brady did not raise any objection to the applied-for license being issued. There was no protest filed by the city in response to this application.

9. The Proposed Premises is located in census tract 6703.04. Under the formula set forth in section 23958.4, five licenses are allowed in the census tract. Currently, three licenses exist.

10. The City of Palos Verdes Estates does not maintain crime statistics in the manner set forth in in section 23958.4.

11. The Department contacted the Chief of Police for the Palos Verdes Estates Police Department, Luke Hellinga. Chief Hellinga did not have any objection to the applied-for license being issued. He also did not have any concerns about crime in the area.

12. The Department determined that there were no consideration points (as that term is defined in section 23789) in the area.

13. In connection with its application, the Applicant submitted a letter of non-interference. The Applicant indicated that, if the number of guests permit it, all staff is to park in the dedicated parking lot. Otherwise, they are to park on the adjoining streets. Anyone who books an event is required to select one of three parking solutions: self-park in the lot if guest count is below 75, ride-share drop-

off/pick-up, or shuttles. The Applicant restricts noise at the property line to 55 dB and takes regular readings to ensure that this level is being met. (Exhibit D7.)

14. To minimize noise, the Applicant has moved scullery operations indoors. The Applicant has also posted signs at the edge of the licensed area and in the parking lot. (See, e.g., exhibits A18 & A28.) Events are held mornings, afternoons, and evenings. At night, events end no later than 10:00 p.m., with all guests off site by 10:30 p.m., and full clean-up by 11:00 p.m. Any DJs hired in connection with an event must use the Proposed Premises' speaker system (see, e.g., exhibit A37); outside speakers are prohibited. Further, the Applicant has installed sound-proofing material. (Exhibits A9 & A19-20.) Exterior doors and windows are closed for entertainment/dancing and are only opened by staff.

15. As a result of its investigation, the Department recommended that 12 conditions be added to the license, should it issue. As follows:

1. The quarterly gross sales of alcoholic beverages shall not exceed the quarterly gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.
2. Sales, serve, and consumption of alcoholic beverages shall be permitted only between the hours of 9:00 am and 9:30 pm each day of the week.
3. Entertainment provided shall not be audible at any residential property within any proximity of the licensed premises.
4. There shall be no live entertainment of any type, including but not limited to, live music, disc jockey, karaoke, topless entertainment, male or female performers or fashion shows after 9:30 p.m.
5. The petitioner(s) shall post a prominent, permanent sign stating, "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" in a place that is clearly visible to patrons of the licensed premises. The sign shall be at least two feet square with at least two-inch block lettering.
6. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the most recently certified ABC-257 and ABC-253.

7. The petitioner(s) shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control as depicted on the most recently certified ABC-257 and ABC-253.
8. Petitioner(s) shall actively monitor the area under their control in an effort to prevent the loitering of persons on any property adjacent to the licensed premises as depicted on the most recently certified ABC-253.
9. The sale of alcoholic beverages for consumption off the premises is prohibited.
10. The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of persons on or about the parking lot. Additionally, the position of such lighting shall not disturb the normal privacy and use of any neighboring residences.
11. A sign shall be posted in a conspicuous space at the entrance/exit point of said patio area, which shall state, "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT". Said sign shall measure no less than seven inches by eleven inches (7" x 11") and contain lettering no less than one (1) inch height.
12. Between the hours of operation or at any time the premises are providing/hosting special events, the petitioner(s) shall provide 2 (2) uniformed security guard(s) in the parking lot and/or premises and shall maintain order therein and prevent any activity which would interfere with the quiet enjoyment of their property by nearby residents of the surrounding community. The licensed uniform security guard(s) must be licensed by the State of California, Department of Consumer Affairs.
16. The Department recommended that the application be approved, subject to the conditions set forth in the petition for conditional license. On June 23, 2023, the Department issued an interim operating permit (IOP), which has been renewed. All the conditions apply to operation of the premises under the IOP.
17. Licensing Representative E. Tarin-Randle inspected the Proposed Premises twice during her investigation and twice more in advance of the hearing in this matter (i.e., after the IOP issued). LR Tarin-Randle did not see any loitering, any criminal activity, any obnoxious activity, or anything which might impair the quiet enjoyment of nearby residents during her visits.
18. Department agents also visited the Proposed Premises on three separate occasions after the IOP was issued. On the first visit, June 30, 2023, Agent Perry visited the premises, but it was closed. On July 7, 2023, Agent Valencia visited when the premises was open and heard entertainment noises, a potential violation of IOP condition 3.

19. On August 25, 2023, Supervising Agent B. De La Rosa had to warn the on-duty manager that the Proposed Premises might be violating conditions 3 and 4 relating to live entertainment after 9:30pm and entertainment noise emanating beyond the licensed premises.

20. Supervising-Agent-in-Charge B. Beach testified that it is unclear whether the conditions were violated due to the definition of “entertainment” and whether it was entertainment noise that emanated beyond the licensed premises.

21. The Applicant retained the services of a retired Department agent, Dawn Kenney. Ms. Kenney visited the Proposed Premises on two different nights when events were ongoing. She spent time in the parking lot and on the streets surrounding the Proposed Premises, including from the addresses of the various protestants. In her opinion, she did not see or hear anything which might be considered a condition violation. She heard some noise from the Proposed Premises, including some celebratory cheers and clinking from silverware, dishes, and glasses. She monitored guests as they were leaving—none appeared intoxicated, drove erratically, or played music loudly.

22. Protestant Joseph Disanto testified that he lives across the street from the Proposed Premises. The Proposed Premises is visible from a portion of Disanto’s residence. He hears noise emanating from the Proposed Premises daily, including the ice machine, scullery noise, amplified music, amplified voices, crowd noise, and vehicle noise. He took videos of various events, although some of them pre-date the issuance of the IOP (i.e., the conditions were in effect at the later events, but not at the earlier ones). (Exhibits Disanto-19-Disanto-37.) He also kept logs of various events held at the Proposed Premises, only one of which covers dates after the issuance of the IOP. (Exhibit Disanto-7.)

23. Disanto has lived in this residence for 35 years. Many of the problems he described in his testimony pre-date the Applicant. Various events (exotic car shows, parades, weddings, etc.) held at the Proposed Premises, including those for which a catering permit was obtained allowing the sale of alcohol, have been disruptive. In 2017, he retained the services of a former Department employee, Lauren Tyson, to help deal with the situation. Ms. Tyson testified that the location is concerning from a licensing standpoint—it is located below many of the nearby residences, creating a fishbowl effect.

24. Robert Akin testified that his residence overlooks the Proposed Premises—the spire of the building is visible. He is disturbed by noise emanating from the Proposed Premises. While there are limits on the number of events which may be held per year pursuant to catering permits, there would be no limit should the applied-for license issue. He believes this increase will lead to more problems for him. He testified that the use of catering permits is better than issuing the applied-for license.

25. Sandra Damiani testified that she lives approximately 200 feet from the Proposed Premises. She can hear noise from the Proposed Premises, particularly from the back of her house. (See, e.g., exhibit Damiani-1.) She testified hearing loud whooping and music emanating from the Proposed Premises. She filmed a video on August 4, 2023, after the IOP was issued, of La Venta from her house in which noise coming from the Proposed Premises is heard. (Damiani-1) She is also concerned about traffic and

parking connected to events at the Proposed Premises because she has witnessed the Applicant's employees parking on the residential street. She testified that the parking situation is somewhat better since the city implemented permit parking.

26. John Williams testified about the covenants, conditions, and restrictions applicable to all of the properties in the area. Based on his reading of the CC&Rs and the City of Palos Verdes Estates zoning code, he opined that the use of the Proposed Premises contemplated by the Applicant is it is contrary to the zoning code and the CC&Rs.

27. Bradley Farnsworth testified about the noise emanating from the Proposed Premises, specifically music and other entertainment. He also testified about the IOP violations during the Department Agents' visits on the two dates in July and August, 2023, as well as traffic and parking. He lives between 150-200 feet from the Proposed Premises.

28. Sheri Kantor testified that she has a direct line of sight to the Proposed Premises. She lives within 100 feet of the Proposed Premises. She described problems with employees parking in the street causing noise such as doors slamming and car alarms. She also testified regarding noise emanating from the Proposed Premises from parties. She specifically described DJs being audible at her home and their use of swear words and vulgar language. She also described problems with traffic.

29. Patricia Kasschau testified that she has lived in the neighborhood since 1974. She did not have any problems with the Proposed Premises until she retired in 2016. Previously, she could only see the dome and cupola of the building; trees have since been removed and she can now see the entire building. The removal of the trees has increased the audibility of noise from the Proposed Premises to Kasschau's house. She testified hearing amplified music, DJs, and scullery work. She also testified about problems with parking, and traffic.

30. James Parker testified that he moved into his residence in 1986, but that he did not have a problem with the Proposed Premises until 1994. He testified that noise from the Proposed Premises disturbs him on a regular basis. He testified installing sound proofing equipment inside his house to no avail; he can still hear music and entertainment noises coming from the Proposed Premises. He has also called the police and police reports have been created documenting that police officers have heard noise coming from the Proposed Premises at a distance of 541 feet away. He opined that the Applicant has "never" complied with the conditions.

31. In closing argument, Applicant's counsel requested that the Department remove condition 3, which prohibits the entertainment provided upon the licensed premises from being audible at any residential property within any proximity of the licensed premises. The bases for this request are that the term "entertainment" is confusing, that it will lead to neighbors "weaponizing" the condition by making complaints to the Department, and that no one else in the community is subject to such a restriction, The nearby residents credibly testified that Proposed Premises has a long history of causing disturbances, both prior to and during the Applicant's operation of the premises, and both while

operating under catering authorizations and, most recently, the IOP. (Hearing Transcript, vol. 3, pp 176-177.)

32. Except as set forth in this decision, all other allegations in the protest and all other contentions of the parties lack merit.

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution delegates the exclusive power to license the sale of alcoholic beverages in this state to the Department of Alcoholic Beverage Control.
2. Business and Professions Code section 23958 requires that the Department conduct a thorough investigation to determine, among other things, if the applicant and the proposed premises qualify for a license, if the provisions of the Alcoholic Beverage Control Act have been complied with, and if there are any matters connected with the application which may affect public welfare or morals. It provides, in part, that the Department shall deny an application for a license if the applicant or the proposed premises do not qualify for a license under the Act. It further provides that the Department shall deny an application for a license if issuance of the license (a) would tend to create a law enforcement problem or (b) would result in or add to an undue concentration of licenses, except as provided in section 23958.4.
3. In a protest matter, the applicant bears the burden of establishing that it is entitled to a liquor license from the start of the application process until the Department makes a final determination.²
4. Section 23958.4 sets forth a two-prong test for determining whether an area has an over-concentration of licenses. The first prong relates to the number of reported crimes in the relevant reporting district, while the second relates to the number of licenses within the relevant census tract. An area is over-concentrated if either prong is met. Even if an area is over-concentrated, the license may still issue if the applicant demonstrates that public convenience or necessity would be served.
5. The City of Palos Verdes Estates does not maintain crime statistics in the manner set forth in this section. (Finding of Fact ¶ 10.) Accordingly, the high-crime prong of this section does not apply.
6. Examining the second prong of this test, the Proposed Premises is in census tract 6703.04. Five on-sale licenses are permitted in this census tract. Currently, three exist. (Finding of Fact ¶ 9.) Accordingly, the Proposed Premises is not located in an overconcentrated census tract.
7. There is no evidence that issuance of the applied-for license would adversely impact public safety or create a law enforcement problem. Since Palos Verdes Estates P. D. is the law enforcement agency with responsibility for the area in which the Proposed Premises is located, great weight is given to the fact that neither it nor its chief of police had any objections to or concerns with the applied-for license

² *Coffin v. Alcoholic Beverage Control Appeals Board*, 139 Cal. App. 4th 471, 43 Cal. Rptr. 3d 420, (2006).

being issued. (Finding of Fact ¶ 11.)

8. Rule 61.4³ provides that, in cases involving an application for an original license or the premises-to-premises transfer of a retail license, no such license shall be issued if the premises or its parking lot is located within 100 feet of a residence. An exception to this prohibition exists if the applicants establish that the operation of the business would not interfere with such residents' quiet enjoyment of their property.

9. In this case, there are two residences located within 100 feet of the Proposed Premises. While rule 61.4's quiet enjoyment requirement applies only to those two properties, the Department still has a duty to evaluate and consider the impact that a proposed licensed premises may have on nearby residences and the neighborhood that are outside of the 100-foot perimeter. Given that the Proposed Premises is the only commercial use in an otherwise residential neighborhood, its operations also affect several other residences, all of which are beyond 100 feet.

10. The juxtaposition of commercial and residential properties is potentially problematic. Various residents credibly testified about the noise which emanates from the Proposed Premises and described its impact upon them. While it is unclear from the record which of the disruptive noises are from entertainment and which noises are not, the fact that the neighbors are regularly and routinely disturbed by the operation of the Proposed Premises is established. (Findings of Fact ¶¶ 22-30.)

11. In the present case, the Department has recommended conditions which (a) restrict the amount of alcoholic beverages which may be sold in relation to food, (b) restrict the hours during which alcoholic beverages can be sold, served, or consumed, (c) restrict the audibility of entertainment, the type of entertainment, and the hours during which such entertainment can take place, (d) restrict the consumption of alcoholic beverages on adjacent property, and (e) restrict the sale of alcoholic beverages for off-site consumption. These conditions would also require the Applicant to, among other things, hire two security guards and prevent loitering. (Findings of Fact ¶¶ 15.)

12. The Department opined that the addition of conditions to the license would mitigate any adverse impact from its issuance, and on that basis recommended approval of the application. The Applicant submitted evidence of the steps it has undertaken to prevent any such interference. (Findings of Fact ¶¶ 13-16.) However, in its closing the Applicant admitted that the licensed premises could not comply with condition 3 as currently constituted in the IOP, and that it was inevitable that entertainment noise such as amplified music, or DJs would be heard at nearby residences because of the operation of the applied for licensed premises (Finding of Fact ¶ 31).

13. The importance of complying with conditions cannot be overstated—without the conditions the application would be denied due to the adverse impact upon nearby residents. Although, as explained by Supervising-Agent-in-Charge B. Beach, revocation is typically reserved for cases where there have

³ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

been repeated violations over time, that only occurs in a situation where a license has been issued on a permanent basis and the Department's handling of enforcement cases on similar issues has no bearing on whether to issue a license over a valid protest. The Department would have been well within its authority to revoke the IOP under section 24044.5(h) for any substantiated violations. The fact that it exercised its discretion and did not do so is ultimately irrelevant to the issues to be determined here.

14. The purpose of the proposed conditions is an effort to mitigate these disturbances. Yet Applicant asserts that the language of the condition is confusing, which means that there will inevitably be violations and conflicts with the neighbors. Rather than propose an alternative solution, Applicant's demand is to simply remove the condition or add time limitations (which would not address the asserted "confusion"). Moreover, Applicant asserts that the Department must issue the license because, without it, adequate revenue will not be generated to maintain this historic building. Applicant is thus essentially arguing that the concerns of neighbors and the regular disturbances that they suffer should be ignored in the interest of the upkeep of the premises. This tacitly admits that the use of the Proposed Premises, even with the proposed conditions, is incompatible with the surrounding neighborhood. (Finding of Fact ¶ 31.)

15. Notwithstanding the Department's recommendation that the license should issue, it is of significant concern that the plethora of evidence adduced at hearing that the Applicant repeatedly disturbed the neighbors, and potentially violated two of its conditions while operating under the IOP, warrants reconsideration of this recommendation. (Findings of Fact ¶¶ 18-20, and 22-30.) Although not all the disruptive noise described in the testimony may have been from entertainment provided at the Proposed Premises, some of it (such as the amplified music and some of the amplified voices) is considered entertainment. This further illustrates that even the proposed conditions are not sufficient to adequately mitigate the disruptions caused. Moreover, when there is significant evidence that an applicant may have violated conditions while operating under an IOP, the applicant's obligation to present evidence showing how it will comply with all conditions in the future should the license be issued is heightened. Applicant here did not make any such showing. In the absence of this showing, Applicant has demonstrated that it is either unable or unwilling to comply with the recommended conditions and has thus failed to meet its burden to establish why the license should issue.

16. Section 23789 provides that the Department is specifically authorized to refuse to issue any retail license for premises located (a) within the immediate vicinity of churches and hospitals or (b) within 600 feet of schools and public playgrounds or nonprofit youth facilities.

17. The evidence established that there are no consideration points in the vicinity of the Proposed Premises. (Finding of Fact ¶ 12.)

18. Section 23790 provides, in part, that "[n]o retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city."

19. Zoning is the province of the local regulatory agency. If there is an alleged violation of a zoning ordinance, it is up to the local regulatory agency to pursue it, not the Department.

20. Thus, in the case of an application for an alcoholic beverage, a two-track system exists—the applicant must take the necessary steps to comply with local zoning ordinances and must also take the necessary steps to satisfy the requirements of the ABC Act.

21. With respect to applications for retail licenses, the Department cannot issue a license “where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city.” In this case, the evidence established that, according to the City of Palos Verdes Estates, the Proposed Premises is the subject of a zoning exception. As such, it is properly zoned and no conditional use permit is required. (Finding of Fact ¶ 8.)

22. The Protestants argued that, based on its own terms, the zoning exception allows the Proposed Premises to be used for hotel and restaurant purposes “within the existing building **only**” (emphasis added). (Exhibits A39 & Disanto-39.) However, the Department is not the proper forum nor authority to interpret the zoning ordinances of the City of Palos Verdes Estates.

23. The evidence established that the city determined that the Proposed Premises is properly zoned. If the Protestants contend that the city’s determination was in error, their remedy is to bring their concerns to the city. The Department does not have the authority to overturn the city’s determination on this issue.

24. Enforcement of covenants, conditions, and restrictions is beyond the authority of the Department. Generally, CC&Rs are enforceable in a civil action. To the extent that the CC&Rs may have been incorporated into the city’s zoning code, they are enforceable by the city.

25. Section 23985 provides that, after filing an application to sell alcoholic beverages, the applicant shall post a notice in a conspicuous place at the entrance to the proposed premises. The notice shall remain posted for at least 30 consecutive days.

26. The evidence established that the Applicant posted the required notice in this case at the entrance to the parking lot. (Finding of Fact ¶ 7.) The Protestants argued that the notice should have been posted at the corner of Via Del Monte and Via Somonte where, in their opinion, it would be more visible. The corner in question, although part of the property, is not the *entrance* to the property—the driveway on Via Somonte is. Accordingly, the notice was properly posted.

27. Section 23787 provides, in part, that the Department shall, before issuing any on-sale license for the sale of alcoholic beverages to be consumed or otherwise disposed of in any bona fide public eating place, determine whether the public eating place is equipped and maintained in good faith for sales to and consumption by the public of meals upon the premises.

28. Section 23038 is a definitional section which provides that a bona fide public eating place is one which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking and an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health. This section goes on to define meals as the usual assortment of foods commonly ordered at various hours of the day and provides that the service of such food and victuals as sandwiches or salads only shall not be deemed compliance with this requirement. Finally, it defines guests as people who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and order and obtain at such time, in good faith, a meal therein.

29. The evidence established that the Proposed Premises has a full kitchen. As such, it complies with section 23787. (Finding of Fact ¶ 4.)

30. The evidence established that the Applicant is owned by Megan Walker. The evidence also established that Ms. Walker is actively involved in the operation of the Applicant and the Proposed Premises. There is no evidence of any hidden ownership or control of the operations of the Proposed Premises by the landlord of La Venta Inn.

31. Issues relating to traffic and parking are beyond the purview of the Department. The local governing agency, in this case the City of Palos Verdes Estates, is responsible for maintaining roads, controlling the flow of traffic, and managing street parking.

ORDER

The protest filed by Gayne Brenneman is deemed withdrawn. The protests filed by Robert Akin, Richard Bohner, Sandra Damiani, Joseph Disanto, Bradley Farnsworth, Sheri Kantor, Patricia Kasschau, Edward McNamara, James Parker, Elizabeth White, and John Williams are sustained in that the Applicant has not met its burden to establish that the operation of the licensed premises will comply with condition 3 of the conditional license. The premises-to-premises transfer of a type 47, on sale general eating place license, is denied.

Dated: November 19, 2024

Sacramento, California



Joseph McCullough
Director

Pursuant to Government Code section 11521(a), any party may petition for reconsideration of this decision. The Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or on the effective date of the decision, whichever is earlier.

Any appeal of this decision must be made in accordance with Chapter 1.5, Articles 3, 4 and 5, Division 9, of the Business and Professions Code. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.