

**BUSINESS LICENCE HEARING MINUTES****FEBRUARY 22 AND MARCH 7, 2012**

A Business Licence Hearing of the Council of the City of Vancouver was held on Wednesday, February 22, 2012, at 9:36 am, in the Council Chamber, Third Floor, City Hall, to hear an appeal from the two-week suspension by the Chief Licence Inspector of the 2011 business licence issued to 0888119 BC Ltd., as the third-party operator for Ilios Enterprises Ltd., carrying on business known as Lola's Bar (the "Licensee"), located at 2291 West Broadway, Vancouver, British Columbia, (the "Premises"). The appeal also concerned the one-month suspension by the Chief Licence Inspector of the "Extended Hours Liquor Establishment" licence held by the Licensee, with respect to its hours of operation. Subsequently, the Panel recessed and reconvened on March 7, 2012, at 9:34 am to continue the hearing. The Minutes are consolidated for ease of reference.

**PRESENT:** Councillor Andrea Reimer, Chair  
Councillor Adriane Carr  
Councillor Kerry Jang

**CITY CLERK'S OFFICE:** Bonnie Kennett, Meeting Coordinator (February 22, 2012)  
Nicole Ludwig, Meeting Coordinator (March 7, 2012)

**1. 0888119 BC Ltd. as the third-party operator for Ilios Enterprises Ltd., dba Lola's Bar - 2291 West Broadway**

The Business Licence Hearing Panel had before it for consideration an Evidence Booklet, prepared by the City of Vancouver's Legal Department, which contained the following material (*on file in the City Clerk's Office*) and the evidence of witnesses:

**Notice of Hearing**

**TAB 1 Licence & Inspections Department:**

- Business licence 2012
- Business licence 2011
- BC Company Summary Search for 0888119 BC Ltd dated July 13, 2011
- BC Company Summary Search for Ilios Enterprises Limited dated July 13, 2011
- Business Licence - Operating/Good Neighbour Agreement dated January 14, 2011
- Acoustic Report from BKL Consultants in Acoustics dated November 28, 2011

**TAB 2 Correspondences:**

- Letter to Ilios Enterprises Limited from Tom Hammel dated November 24, 2011
- Letter to Ilios Enterprises Limited from Tom Hammel dated November 17, 2011

- E-mail between Diane Boutsakis and Lucia Cumerlato dated November 14 & 15, 2011
- Letter to Illios Enterprises Limited from Tom Hammel dated November 8, 2011
- E-mail between Mike De Rossi & Mark De Rossi and Tom Hammel dated November 2 & 3, 2011
- Handwritten meeting notes from Lucia Cumerlato dated November 1<sup>st</sup>, 2011
- Letter to 0888119 BC Ltd from Will Johnston dated July 21, 2011
- Letter to 0888119 BC Ltd from Will Johnston dated July 19, 2011
- Letter to 0888119 BC Ltd from Tom Hammel dated July 15, 2011
- Handwritten meeting notes from Tom Hammel dated July 6, 2011

**TAB 3 Correspondences (E-mails):**

- E-mail between Mark De Rossi and Tom Hammel dated November 17 & 18, 2011
  - Photo 1
- E-mail from Mark De Rossi to Lucia Cumerlato dated November 15 & 16, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated November 15, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated November 10, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated November 8, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated November 6, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated November 5, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated November 4, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated November 3, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated November 1, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 31, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 30, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 29, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 28, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 25, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 23, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 22, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 21, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 18, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 16, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 15, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 14, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 13, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 12, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 11, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 9, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 8, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 7, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 6, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 5, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 4, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 4, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated October 2, 2011

- E-mail from Mark De Rossi to Lucia Cumerlato dated October 1, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated September 30, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated September 29, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated September 28, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated September 27, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated September 25, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated September 24, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated September 23, 2011
- E-mail from Mark De Rossi to Lucia Cumerlato dated September 22, 2011
- E-mail between Mike De Rossi and Det/Cst Alex Clarke dated September 6 to September 14, 2011
- E-mail between from Mike De Rossi and Cathy Joe dated August 15, 2011
- E-mail from Diane Shepherd to Lucia Cumerlato dated August 8, 2011
- E-mail from Cathy Joe to Mike De Rossi dated July 26, 2011
- E-mail between Mike De Rossi and Lucia Cumerlato dated July 21 to July 26, 2011
- E-mail between Lucia Cumerlato and Melanie Mahon (LCLB) dated July 26, 2011 & e-mail between Mike De Rossi and Lucia Cumerlato dated July 21 to July 26, 2011
- E-mail between Mike De Rossi and Lucia Cumerlato date July 21 to July 22, 2011

**TAB 4 Complaints received from COV, VPD, LCLB:**

- Complaint received by Det/Cst Alex Clarke dated October 4, 2011
- Complaint received by On-line Noise Complaint Form dated October 4, 2011
- Complaint received by On-line Noise Complaint Form dated September 17, 2011
- Complaint received by Noise Complaint E-mail & Det/Cst Alex Clarke dated September 17, 2011
  - Photo #1
  - Photo #2
  - Photo #3
- Complaint received by e-mail by Lucia Cumerlato dated September 16, 2011
- Complaint received by Det/Cst Alex Clarke dated September 13, 2011
  - Photo #4
  - Photo #5
  - Photo #6
- Complaint received by Noise Complaint E-mail dated September 6 & 11, 2011
- Complaint received by Det/Cst Alex Clarke dated September 6, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated July 14 & August 30, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated August 02, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated August 02, 2011
  - Photo #7
- Complaint received by e-mail by Det/Cst Alex Clarke dated August 24, 2011
- Complaint received by On-line Noise Complaint Form dated August 24, 2011
- Complaint received by 3-1-1 dated August 24, 2011
- Complaint received by e-mail by Noise Complaints E-mail dated August 23, 2011
- Complaint received by 3-1-1 dated August 23, 2011
- Complaint received by 3-1-1 dated August 23, 2011

- Complaint received by e-mail by Det/Cst Alex Clarke dated August 23, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated August 17, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated August 17, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated August 16, 2011
- Complaint received by 3-1-1 dated August 16, 2011
- Complaint received by 3-1-1 dated August 16, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated August 13, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated August 8, 2011
- Complaint received by On-line Noise Complaint Form dated August 3, 2011
- Complaint received by Melanie Mahon, LCLB dated August 2, 2011
- Complaint received by Melanie Mahon, LCLB dated August 2, 2011
- Complaint received by 3-1-1 dated August 2, 2011
- Complaint received by 3-1-1 dated August 2, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated July 19, 2011
- Complaint received by 3-1-1 dated July 19, 2011
- Complaint received by 3-1-1 dated July 18, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated July 14, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated July 14, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated July 12, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated July 12, 2011
- Complaint received by 3-1-1 dated July 12, 2011
- Complaint received by On-line Noise Complaint Form dated July 10, 2011
- Complaint received by Noise Complaint E-mail dated July 9, 2011
- Complaint received by Bruce Edmundson, LCLB dated July 7, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated July 5, 2011
- Complaint received by e-mail by Det/Cst Alex Clarke dated July 4, 2011
- Complaint received by 3-1-1 dated March 16, 2011
- Complaint received by phone dated March 15, 2011
- Complaint received by Noise Complaint E-mail dated March 14, 2011
- Complaint received by e-mail dated March 9, 2011
- Complaint received by e-mail dated March 7, 2011
- Complaint received by phone dated March 7, 2011
- Complaint received by On-line Noise Complaint Form dated March 6, 2011
- Complaint received by e-mail dated February 15, 2011
- Complaint received by phone dated June 23, 2010
- Complaint received by phone dated June 1, 2010
- Complaint received by On-line Noise Complaint Form dated February 26, 2010
- Complaint received by phone dated September 15, 2009

**TAB 5 COV - Inspection Reports, Complaints Stats, & Other Reports:**

- Administrative Report to Standing Committee on P&E dated November 28, 2011
- E-mail from Tom Hamilton to Lucia Cumerlato dated October 18, 2011
- 2011 List of Complaints - Lola's 2291 W Broadway
- 2011 PRISM Records complaints - Lola's 2291 W Broadway

- 2010 & 2011 Total # of 911 Calls for 2200 Blk W Broadway, 2400 Blk Vine, & 2500 Blk Vine
- Coordinated Enforcement Liquor Establishment Inspection Check Sheet/Report dated July 23, 2011
- Property Use Inspection Report dated June 17, 2011
- Coordinated Enforcement Liquor Establishment Inspection Check Sheet/Report dated March 25, 2011

**TAB 6 LCLB:**

- Liquor Primary Licence #024681 dated April 19, 2011
- Liquor Primary Licence #024681 dated January 18, 2011
- E-mail between Mark De Rossi and Melanie Chalmers dated October 29, 2011
- E-mail between Mike De Rossi and Melanie Chalmers dated October 16 & 19, 2011
- E-mail from Melanie Chalmers to Det/Cst Alex Clarke & Lucia Cumerlato dated October 14, 2011
- Letter to George Boutsakis from LCLB dated October 5, 2011
- Contravention Notice #B005702 dated August 29, 2011
- Compliance Meeting dated July 6, 2011
- E-mail from Melanie Mahon to Cathy Joe & Det/Cst Alex Clarke dated July 6, 2011
- E-mail to Mark De Rossi from Melanie Mahon dated May 4, 2011
- Letter to Illios Enterprises Limited from LCLB dated November 17, 2008

**TAB 7 Police Department - Reports**

- Police Report #2011-115113 dated July 16, 2011

**TAB 8 Police Department - Other documents**

- 2011 - Query - Location: 2291 W Broadway - LMD Production
- 2010 - Query - Location: 2291 W Broadway - LMD Production
- Planning, Research and Audit Section dated September 23, 2011

The Panel also had before it the following supplemental evidence:

**TAB 1**

- Email from Catherine Marzi, dated February 11, 2012, with attached copies of complaint emails to Alex Clarke (7 pages);
- Statement of Jared Raath, made February 13, 2012, with attached copies of complaints;
- Statement of Sandra Raath, made February 16, 2012; and
- Statement of David Tedman, Made February 20, 2012, with attached copies of complaints.

As well, the Panel had before it redacted copies of complaint calls made to the Vancouver Police Department concerning 2291 West Broadway.

Robert Penkala, Solicitor, Legal Services, represented the City of Vancouver. Mrs. Athena Martins represented Ilios Enterprises, and Messers Mike and Mark De Rossi represented 0888119 BC Ltd.

Mr. Penkala advised this appeal of the Chief Licence Inspector's suspension had been brought before Council pursuant to Section 277 of the *Vancouver Charter*, and in accordance with Section 17 of the City of Vancouver *Procedure By-law*. He noted Council's discretion to uphold, reverse, or vary the suspension after considering whether or not the Licensees operation of the business constituted gross misconduct. Mr. Penkala also noted, as set out in Section 275 of the *Vancouver Charter*, Council has broad discretion to refuse, revoke, or suspend a licence.

Mr. Penkala referred the Panel to the reasons for the Chief Licence Inspector's suspension of the Business License, as set out in the Notice of Hearing dated February 7, 2012. At issue was the opinion of the Chief License Inspector that the Licensee had failed to properly manage the business by:

- (a) violating the terms of the City of Vancouver business licence and of the liquor licence issued by the British Columbia Liquor Control and Licensing Branch by permitting or allowing disorderly conduct of patrons in or about the Premises;
- (b) maintaining inadequate control of the business by failing to satisfy required noise-control measures in respect of the Premises and by allowing patrons to congregate on the street in front of the Premises so as to cause noise and other disturbances;
- (c) failing to respond adequately to previous City and Liquor Licensing Branch enforcement actions intended to reduce the negative impact on the community caused by the Licensee's business; and
- (d) causing a drain on police and City resources.

Mr. Penkala also discussed the scope of the Panel's discretion and the principles of procedural fairness, in particular the requirements of notice, the opportunity to be heard, impartiality, and reasons for the Panel's decision.

In support of the allegations set out in the above-noted reports and evidence, Mr. Penkala called the following witnesses:

1. Eve Shamash
2. Kevin McKibbin
3. Allan Smith
4. Melanie Chalmers (Inspector, Liquor Licensing & Control)
5. Alex Clarke, (Det-Cst) VPD

6. Lucia Cumerlato (COV Licensing)
7. Tom Hammel (Deputy Chief Licence Inspector)

Mr. Penkala and the Panel directed questions to the witnesses.

\* \* \* \* \*

*During the testimony and questions to witnesses on Wednesday, February 22, 2012, a recess was called at 10:33 am, and the Hearing reconvened at 10:38 am, with the same members present.*

\* \* \* \* \*

*At 12:30 pm on Wednesday, February 22, 2012, the Panel recessed and reconvened on Wednesday, March 7, 2012 at 9:34 am, to continue hearing witnesses.*

\* \* \* \* \*

Mr. Mark De Rossi and Ms. Boutsakis also asked questions of the witnesses.

In opening the two Messers De Rossi explained they would continue to work on problems explained by officials and that they have acted on all requests from officials. They also said they cannot afford to run the business on reduced hours and that compared to the Granville strip, they are not causing a drain on police and city resources. As well, they indicated that they were told to call police when there are problems they cannot resolve themselves. Finally, they submitted that despite their best efforts it was difficult to change the behaviour of their clientele, who are typically young adults accustomed to the nightclub environment rather than middle-aged pub-goers.

Ms. Martins alleged that a large number of the noise complaints from the neighbourhood started three days after a meeting of Council in June, 2011, dealing with a proposed increase in seating for liquor service in the neighbourhood. She pointed out that some complainants were responsible for numerous complaints, and furthermore that in some instances police reported no crowds or noise problems in front of Lola's upon their attendance on complaint calls. Finally, she noted that policing costs as provided in the City's evidence are around \$7000 over three years; the property taxes on the establishment are over \$50 000 annually.

George and Alex Boutsakis both spoke in support of the Licensee and the operators, noting that it is unreasonable to expect bouncers to manage crowds on the street outside establishments and that the majority of calls result in only a few minutes of police attendance.

Mr. Penkala and the Panel also asked questions of the two Messers De Rossi and Ms. Martins.

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*During the testimony and questions to witnesses, a recess was called at 11:41 am, and the Hearing reconvened at 11:53 am, with the same members present.*

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The Panel directed questions to the Licensee.

In closing, Mr. Penkala submitted that the evidence presented at the Hearing confirmed the opinion of the Chief Licence Inspector that the Licensees had failed to manage the business properly so as to warrant suspension of the business licence. Mr. Penkala noted the evidence constitutes a pattern of neighbourhood complaints regarding late-night noise issues at approximately the same time the club closes, and that the operators and licensee failed to exercise reasonable care in the conduct of their business. He further submitted that, after consideration of all the relevant facts and after giving the Licensees full opportunity to present their case, the Panel was entitled to suspend the Business License for a period it deemed fit.

Mr. Penkala responded to questions from the Panel, noting a suspension can be varied by the Panel, but did not recommend revocation of the licence at this time.

In closing, Alex Boutsakis noted the operators are doing the best they can and that any sort of suspension will affect their bottom line. He requested the Panel take all sides into consideration.

George Boutsakis requested to be informed of any violations or complaints, even during the period of the suspension. The Chair agreed to liaise with staff regarding this following the hearing.

#### **PANEL MEMBERS DISCUSSION**

Prior to making a decision, the Panel noted many of the problems occur late at night, the operators have not handled situations appropriately and that the club is treated as an after hours club by many patrons, noting this is not appropriate.

MOVED by Councillor Jang

- A. THAT the 2011 City of Vancouver Business Licence #11-158073 issued to 0888119 BC Ltd. as the third-party operator for Ilios Enterprises Ltd., carrying on the business known as Lola's Bar (the "Licensee"), located at 2291 West Broadway, Vancouver, British Columbia (the "Premises") be suspended for two weeks, and that the licensee's "extended hours liquor establishment" hours of operation be reduced to "standard hours" for four months upon reinstatement of the business licence after the suspension because the Licensee has failed to properly manage the business Premises by:
  - (a) violating the terms of the City of Vancouver business licence and of the liquor licence issued by the British Columbia Liquor Control and Licensing Branch by permitting or allowing disorderly conduct of patrons in or about the Premises;



- (b) maintaining inadequate control of the business by failing to satisfy required noise-control measures in respect of the Premises and by allowing patrons to congregate on the street in front of the Premises so as to cause noise and other disturbances;
  - (c) failing to respond adequately to previous City and Liquor Licensing Branch enforcement actions intended to reduce the negative impact on the community caused by the Licensee's business; and
  - (d) causing a drain on police and City resources.
- B. THAT during the four month roll-back of hours suspension, the Chief Licence Inspector accept an application for a standard hours liquor establishment licence in order to allow the business to continue operating under standard hours during that four-month period.

CARRIED UNANIMOUSLY

The Business Licence Hearing Panel recessed at 12:30 pm on Wednesday, February 22, 2012,  
and adjourned at 1:04 pm on Wednesday, March 7, 2012.

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