

LICENSE HEARING MINUTES
Faces Mears Park, 380 Jackson Street
Thursday, June 7, 2012, 2:00 p.m.
330 City Hall, 15 Kellogg Boulevard West
Nhia Vang, Deputy Legislative Hearing Officer

The hearing was called to order at 2:00 p.m.

Staff Present: Christine Rozek and Kris Schweinler, Department of Safety and Inspections (DSI)

Applicant: David Fhima, owner; Jim Carlson, Premier Latino Events, LLC, Events Coordinator

Others Present: Karen McCauley, 198 6th St E, #401; Connie Nardini, 198 6th St E, #601; Andrew Kloster, 198 6th St E, #404; Richard Masak, 198 6th St E, #501; Laurie Lapore, 198 6th St E, #602; Yvonne Klappa, 198 6th St E, #403; Jerry Johnson, 198 6th St E, #701; Mark Bayuk, 198 6th St E, #502; Brenda Masak, 198 6th St E, #501; and Zach Shwartz, representing the St. Paul Chamber of Commerce

Faces Mears Park: Add an Entertainment B to the existing license Liquor On Sale – 101-180 Seats, Liquor On Sale - Sunday, Liquor On Sale – 2AM Closing, Liquor-Outdoor Service Area (Patio), Liquor Off Sale, Restaurant (4) 51 – 150 Seats, Restaurant (D) – Add-on, and Catering – Add On licenses

Ms. Vang stated that this was an informal legislative hearing for a license application. This particular license required a Class N notification which means the neighborhood was notified and people had the chance to voice their concerns. The City received thirteen (13) letters of concern which triggered the hearing. There were three possible results from this hearing: 1) recommend the City Council issue this license without any conditions; 2) recommend the City Council issue this license with agreed upon conditions; or 3) recommend that the City Council not issue this license but refer it to the city attorney to take an adverse action on the application, which could involve review by an administrative law judge. The applicant will be required to sign a Conditions Affidavit demonstrating the understanding of the conditions.

DSI staff will explain their review of the application and state their recommendation. Ms. Vang will then ask the applicant to discuss their business plan. At the end of the hearing, she will make a recommendation for the City Council to consider. Her recommendation will be on the Consent Agenda; the City Council is the final authority on whether the license is approved or denied.

Ms. Schweinler stated that the application was for an Entertainment (B) license which allows live, taped or electronically produced music with dancing by patrons. The existing license condition is as follows:

1. Council Resolution 05-1024 waived the prohibition against the issuance of an off sale liquor license within 300 ft of any park and authorized the issuance of an off sale liquor license at 380 Jackson Street, with the condition that this license shall not permit the sale of the following: distilled spirits in containers of 50 milliliters or less (miniatures),

distilled spirits in half pint containers, fortified beers or wines, or single service containers of malt liquor (including 40oz bottles).

No correspondence was received from the district council. DSI was withholding any further recommendation pending the outcome of this hearing.

Ms. Vang asked Mr. Fhima to discuss his business plan. Mr. Fhima stated that he was the owner and executive chef of Faces, a restaurant which offered fine dining. He decided to expand his business, in order to generate needed revenue, by offering live music every Friday night and sometimes on Saturday nights as well. He had not realized that he was not allowed to offer live music and dancing because he did not have the appropriate licenses to do so. This was a total oversight on his part; he then obtained temporary permits and was applying for the appropriate license so he could continue to offer live music at his establishment. He explained that the atrium area was used for banquets and special events which he hosted, such as wedding rehearsal dinners, fundraisers, charity events, etc. The band had been playing in the atrium area and when it came to his attention that the neighbors in the two surrounding residential buildings were complaining about the loud music, he moved the band indoors to the lounge area and closed the glass patio doors in order to have a more minimal impact on the neighbors. The band had been playing until 2 a.m. and he was proposing to have the band stopped playing at 1 a.m. then continue providing music with a DJ until 1:30 a.m. He had also talked to the events coordinator about the bands that had been hired to play and they discussed hiring bands with less musicians allowing minimal or no amplified music to lessen the impact on the neighbors and diners who were not there for the entertainment. He was aware that since moving the music inside, other neighbors were now being affected by the vibration of the drums and he was unsure how to remedy this situation. He acknowledged that the neighbors had been complaining for some time about the noise level of the music from the bands; he had been unaware of their complaints until very recently. He apologized to the neighbors for not being more involved as to what was going on; if he had known, he could have taken action more quickly in an attempt to remedy the situation rather than the neighbors having to air their grievances to the city and being at this hearing to resolve problems.

Ms. Vang reviewed the site plan and asked Mr. Fhima to explain the layout of the restaurant and the proposed entertainment area. Mr. Fhima explained the layout of the restaurant and said that the lounge area was located in the corner of the building closest to Sibley and 6th streets. Ms. Vang asked Mr. Fhima whether he had talked to the building owner to see if they would be willing to provide some type of soundproofing to the building. Mr. Fhima responded that currently, the roof was leaking which the owner was aware of, but had failed to date to resolve. He did not believe the owner of the building would be agreeable to making any upgrades to soundproofing any areas of the building.

Ms. Vang invited the audience to testify.

Ms. McCauley stated that her kitchen bay window overlooked the atrium area of the restaurant and when she moved into her condominium, she expected there would be an extra level of noise from events occurring in the atrium area such as Halloween, New Year's Eve, Zombie night, etc. When Faces started having Salsa events every Friday night beginning August 2011, her life

dramatically changed due to the level of increased noise and vibration created by the live bands. She began dreading every Friday night as she could not watch TV and could not sleep because of the noise and vibration. Friends told her that they would no longer come to visit her over a weekend as they could not tolerate the noise from the music. She consulted a realtor about selling her unit and the realtor indicated to her that she would need to include a disclosure concerning the noise; this greatly devalued her property as no one would want to buy a residence knowing they would be subjected to loud music and vibration every weekend. She acknowledged that the music was no longer the problem it had been since it had moved to the inside of the restaurant; however, there still was a strong vibration from the drums. She did not want the business to fail but asked whether the decibel level be lowered or the hours of entertainment be reduced. Ms. McCauley submitted an email prior to the hearing outlining her concerns. Said correspondence is made a part of this record.

Ms. Nardini stated that her unit also overlooked the atrium area and concurred with the testimony provided by Ms. McCauley. She was extremely insulted when she attempted to complain about the noise from the music during one event and was told by a manager of Mr. Fhima's that they had a lease and could do as they wanted. She consulted a contractor to see about installing triple-paned glass to the bay window in her kitchen and when she was told they would need to put up scaffolding, she knew the building owner would not allow it. She had started a petition, which most of her neighbors signed, regarding the music and noise coming from Faces, which is what prompted this action by the city. Ms. Nardini submitted a letter and an email prior to the hearing outlining her concerns. Said correspondence is made a part of this record.

Mr. Kloster stated that he had purchased his condo for his family in May 2011. Although they did not want to see the restaurant fail, he found the music and level of noise coming from the atrium to be a nuisance and extremely offensive. He said they were all just "normal people trying to live normal lives" and asked that the decibel level and hours of music be restricted; he believed allowing live music until 2 a.m. was too late. Mr. Kloster submitted an email prior to the hearing outlining his concerns. Said correspondence is made a part of this record.

Mr. Masak stated he lived on the north side of the building and found the music to be amazingly loud and obnoxious. He believed the owner of the business was attempting to turn his business into a dance hall which he found objectionable. He requested the license be denied as he believed enforcement and compliance would be difficult if the license were approved with restrictions; he did not want to turn into a 'police officer' monitoring the establishment. Mr. Masak submitted an email prior to the hearing outlining his concerns. Said correspondence is made a part of this record.

Ms. Lapore stated that she had lived in her unit for the past 15 years and embraced living downtown as she loved music and the nightlife. She supported Faces and wanted to see Mr. Fhima succeed; however, when the music was moved inside, she was now affected by the vibration of the drums in her bedroom. She asked that the license be denied as she was concerned about enforcement. If the license were approved, she asked that there restrictions on the number of musicians, the decibel level be lowered and the hours of operation be reduced. Ms. Lapore submitted an email prior to the hearing outlining her concerns. Said correspondence is made a part of this record.

Ms. Klappa stated that she was also affected by the music when it was moved indoors as she could now feel the vibration from the drums. She concurred with Ms. Lapore's suggestion that the license be denied as she was concerned about enforcement. If the license were approved, she asked that there be restrictions on the number of musicians, the decibel level be lowered and the hours of operation be reduced. Ms. Klappa submitted an email prior to the hearing outlining her concerns. Said correspondence is made a part of this record.

Mr. Johnson stated that he did not live above the atrium; however, he could still hear the music and feel the vibration in the common hallways and by the elevators in the building. He believed it was a total nuisance to his neighbors and did not believe if restrictions were placed on the license that they would be enforced. He requested the license be denied. Mr. Johnson submitted an email prior to the hearing outlining his concerns. Said correspondence is made a part of this record.

Mr. Bayuk he also lived in the building but was not affected by the noise from the music as he spent the weekends living and caring for his elderly mother at her home. Mr. Bayuk submitted an email prior to the hearing outlining his concerns. Said correspondence is made a part of this record.

Ms. Vang stated that a number of residents had suggested the decibel level be lowered. She asked staff what this would entail. Ms. Schweinler responded that she had talked to a health inspector regarding decibel level and a normal conversation would measure at about 54. The inspector indicated to her that decibel level was unenforceable and vibration from drums could not be measured. She believed limiting amplification, restricting the hours and days a week entertainment could be provided would be a solution. She also suggested a review on the license conditions be done within three months to see if any changes needed to be made.

Ms. Masak stated that she was president of the condominium association and the problem created by the entertainment at Faces had taken up a lot of her time with complaints from the neighbors, especially since management of the restaurant had failed to respond to the neighbors' complaints. She did not wish to continue being the 'watch dog' on enforcement of any conditions or restrictions placed on the license and asked that the license for entertainment be denied.

Mr. Schwartz, St. Paul Chamber of Commerce, stated that he understood the concerns of the neighbors; however, he believed a reasonable compromise should be reached concerning the license for entertainment. The restaurant was located in a vibrant entertainment district which was what drew people to downtown St. Paul and allowed businesses to thrive. He believed the outright denial of the license would also harm future or current businesses in the area by limiting their operations. He believed Mr. Fhima would be receptive to the neighbors' concerns and encouraged granting of the license with appropriate conditions.

Mr. Carlson stated that he was the president/owner of Premier Latino Events and produced the salsa nights at Faces. He said that as a resident of St. Paul, he did not want to have to go to Minneapolis to enjoy Latino music. He said that every time he received a complaint concerning the music being too loud, he attempted to turn down the volume. He said the vibration from the

drums was difficult to resolve and was unsure whether it could be resolved. Since the music had been moved indoors, only the voices were being amplified and not the instruments. He acknowledged that given the layout of atrium, it was necessary to amplify all of the instruments in addition to the voices.

Ms. Vang asked Mr. Fhima whether he wished to respond to the concerns from those who testified. Mr. Fhima expressed embarrassment that he did not have the appropriate license to offer entertainment. He acknowledged that he had been in the restaurant business previously operating at other locations and now solely owned one restaurant, Faces. Mr. Carlson provided the entertainment, ran the events and collected the money; Faces provided the space only. He found the neighbors' concerns were valid and he offered to take full responsibility for the mistakes that had been made. He wished to work with the neighbors to resolve their concerns and still be able to provide entertainment in order for the restaurant to be successful. He assured the neighbors that he had no intention of turning his business into a dance hall. They had tried different musical event venues and found salsa to be most successful.

Ms. Vang asked whether management was available for the neighbors to talk to when they had concerns and whether the neighbors had the contact information for these individuals. Mr. Fhima responded that he would provide that information to the neighbors and again apologized for not being aware of the problems with the noise in order to remedy the situation. He said that Jackie Counsela was the restaurant manager who was there every evening and was available to respond to complaints. Concerning the musical events, Mr. Carlson was responsible for responding to any complaints concerning the volume of the music.

Ms. Vang asked how they controlled the volume of the music. Mr. Carlson responded that it was difficult when there were live musical events as they could not control the sound from the instruments and could only lower the amplification of the voices. This was impossible when the musical events were held in the atrium as amplification was necessary for the instruments and the voices given the design of the space. It was easier to control the music and sound of a DJ rather than live musicians. It was his opinion that it was easier to control the volume level when the music had been moved to the inside of the restaurant.

Mr. Fhima stated that they would like to continue to provide live music on Friday nights with salsa and perhaps every other Saturday night as well, and would limit the location to the restaurant only. He also wished to be able to continue to use the atrium to cater special events and provide live music but would restrict the time to end at 10 p.m. Approximately 30 to 40 percent of his business was banquet service that he provided in the atrium. He believed he would lose business if he could not provide music in the atrium.

Ms. Vang asked Mr. Fhima if he was willing to limit the hours of operation of the indoor music on Friday and Saturday nights. Mr. Fhima responded that most people who enjoyed dancing to salsa did not come out until later at night, usually 11 p.m. He said he would be willing to change from playing live music until 12:30 or 1 a.m. and then having a DJ play until 1:30 a.m. for patrons to leave by 2 a.m.

Ms. Lapore stated that she was concerned that if the license were granted, that live salsa music would be provided every night of the week. She also believed that a review of the license in three months was optimal. Mr. Fhima responded that he did not wish to provide live music every night of the week and did not believe his business could support it. He was also willing to consider hiring acoustical musicians for entertainment on Saturday nights and possibly Thursday nights during the week.

Ms. Masak suggested that any music provided in the atrium be canned music and only allowed until 10 p.m.; that no live music be provided in the atrium.

Mr. Kloster asked whether the license was reviewed on a yearly basis. He was concerned that if the license was granted with proposed conditions, the residents would be tied to allowing any future business those same conditions granted to Mr. Fhima. Ms. Schweinler responded that any future business would be allowed those same conditions on any license which they applied for; however, the same notification process would still be applied. If there were concerns or complaints concerning the operation of Mr. Fhima's business, they preferred to receive those on an ongoing basis rather than waiting until the renewal period as there was no review process done on any yearly basis and action against the license was only taken on a complaint basis.

The hearing was recessed from 3:45 to 4:00 p.m.

Ms. Vang stated that emails/correspondences of concern regarding the license application were also received from the following: Ann Rauvola Bailey; Kathleen Walsh; Marjorie Reed-Braun; Charles LaVine; Patricia Evens; and Don Jacobson, which was received after the response deadline. Emails/correspondences of support were also received, after the response deadline, from the following: Bobbi Higgins; Paul Miller; Matthew Burke; Naji; James Carlson; Dave Brooks; and Dave Hoang. Said correspondences were made a part of this record.

Ms. Schweinler suggested the following conditions: there shall be no live music provided in the atrium; no canned music or any other type of music allowed in the atrium past 10 p.m.; all entertainment shall be held inside with all live music ending at midnight; that all other music (canned or DJ music) shall end at 1:30 a.m.; last call will be given at 1:30 a.m.; and the doors to the restaurant shall remain closed when entertainment is provided. A review shall be held in three months with notification to the board of the association, who can then notify the residents; and DSI was also requesting the license be reviewed in 12 months after the issuance of the license.

Ms. Lapore stated that she believed ending the live music at midnight was too restrictive and suggested live music/entertainment be allowed until 12:30 a.m. Other neighbors spoke in concurrence that live music be allowed until 12:30 a.m. There would be a review in three months and if there were problems, the ending time could be adjusted accordingly. Mr. Fhima was in agreement with the conditions and appreciated the neighbors' agreement to extend the time for live music to cease at 12:30 a.m.

After reviewing all of the documents of record, Ms. Vang said she will recommend to the City Council that they approve the license with conditions. The proposed conditions were agreed to by Mr. Fhima and are as follows:

1. Council Resolution 05-1024 waived the prohibition against the issuance of an off sale liquor license within 300 ft of any park and authorized the issuance of an off sale liquor license at 380 Jackson Street, with the condition that this license shall not permit the sale of the following: distilled spirits in containers of 50 milliliters or less (miniatures), distilled spirits in half pint containers, fortified beers or wines, or single service containers of malt liquor (including 40oz bottles).
2. Live entertainment will only be provided inside the restaurant area. All live music will cease at 12:30 A.M. All other entertainment inside the restaurant will cease at 1:30A.M. and last call will be given at 1:30A.M.
3. Doors to the restaurant will remain closed during the time entertainment is provided.
4. There will be no live or amplified music provided in the atrium. All entertainment in the atrium will cease by 10:00P.M.

The hearing adjourned at 4:25 p.m.

The Conditions Affidavit was signed and submitted on June 19, 2012.

Submitted by:
Vicki Sheffer