

DOCKET NO. 583056

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE TEXAS

VS.

EL REY DE TODOS LLC  
D/B/A EL REY DE TODOS  
PERMIT/LICENSE NO(s). MB534776, LB  
DALLAS COUNTY, TEXAS  
(SOAH DOCKET NO. 458-09-2356)

ALCOHOLIC

BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 3<sup>rd</sup> day of May 2010, the  
above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Richard R. Wilfong, presiding. The hearing convened on April 27, 2009 and the record was closed on December 30, 2009, after the parties submitted written closing arguments and reply briefs. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on February 10, 2010. No exceptions were filed.

The matter is before the Assistant Administrator, Texas Alcoholic Beverage Commission for review, consideration and entry of the final agency decision.

**It is Ordered** that the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted by the Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

**IT IS THEREFORE ORDERED** that NO ACTION be taken against the Respondent's permits and licenses.

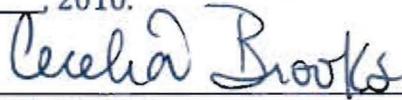
This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on May 27<sup>th</sup> 2010, unless a Motion for Rehearing is filed before that date.

SIGNED May 3<sup>rd</sup> 2010, at Austin, Texas.

  
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Sherry K. Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the agency order in the above matter was provided to each party in the manner indicated below on May 4 2010.



Cecelia Brooks  
Legal Assistant  
Texas Alcoholic Beverage Commission

Honorable Richard R. Wilfong  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
Austin, Texas  
**VIA FACSIMILE: (512) 475-4994**

Paul D. Rich  
**ATTORNEY FOR RESPONDENT**  
3500 Oak Lawn Avenue  
Suite 250  
Dallas, TX 75219  
**VIA FACSIMILE: (214) 943-7536**

El Rey De Todos, LLC  
d/b/a El Rey De Todos  
**RESPONDENT**  
2900 Walnut Hill LN #310  
Dallas, TX 75229  
**VIA REGULAR MAIL**

Emily E. Helm  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Arlington District Office

Dallas Enforcement Office

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

February 9, 2010

FEB 10 2010  
10:51 AM

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA INTERAGENCY MAIL

**RE: Docket No. 458-09-2356; Texas Alcoholic Beverage Commission, Petitioner v. El Rey De Todos, LLC d/b/a El Rey De Todos, Respondent**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Richard R. Wilfong".

Richard R. Wilfong  
Administrative Law Judge

RRW/sb  
Enclosure

xc Emily Helm, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL  
Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL  
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL  
Paul D. Rich, Attorney, Law Office of Domingo Garcia, P. C., 400 S. Zang B.vd. 6<sup>th</sup> Floor, Ste. 600, Dallas, TX 75208-5145 - VIA REGULAR MAIL



Emily Helm and Judith Kennison. Respondent appeared by attorney Paul Rich. Following the hearings the parties submitted written closing arguments and reply briefs. The record closed on December 30, 2009.

## II. ALLEGATIONS AND LEGAL STANDARDS

In its Notice of Hearing, Staff made the following allegations:

1. On or about January 1, 2006, the place or manner in which Respondent, or Respondent's agent, servant, or employee conducted its business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency, in violation of § 11.61(b)(7) of the Code.
2. On or about January 1, 2006, Respondent or Respondent's agent, servant, or employee used or allowed others to use the permitted premises in a manner that constitutes a common nuisance as defined in § 81.001 of the Code and in violation of § 81.005 of the Code.

## III. SUMMARY OF EVIDENCE PRESENTED AND ANALYSIS

At the joint hearings on place or manner and common nuisance allegations Staff presented the testimony of 13 witnesses: nine members of the Dallas Police Department and four TABC employees. Staff offered 12 exhibits, 9 of which were admitted. Respondents collectively presented eight witnesses and offered seven exhibits that were admitted.

The following is a summary of the evidence presented concerning the alleged violations and the ALJ's analysis:

**January 1, 2006 – Allegations that the Place or Manner Respondent Conducted Business Offended the General Welfare, Health, Peace, Morals and Safety of the People and the Public Sense of Decency, and/or Constituted a Common Nuisance.**

## 1. Evidence

The evidence was extensive concerning the allegations that Respondent, *et al*, conducted business in a place or manner that offended the general welfare, health, peace, morals and safety of the people and the public sense of decency, and/or constituted a common nuisance.

El Rey De Todos is among a cluster of bars and other businesses located in close proximity to each other in a "U" shaped strip center located at 2900 Walnut Hill Lane in Dallas, Texas. The bars are not assigned designated parking for use by their patrons; rather, they share a large common parking area. The common parking area is exclusively controlled and maintained by the owner of the property rather than the individual bar owners who lease their bar locations from the owner of the property.

The bar owners, including Respondent, did not dispute the criminal activity, but claimed they were not responsible for it since it occurred in the common parking area exclusively controlled and maintained by the property owner. Moreover, they adamantly argued that they can not be held legally responsible for criminal activity in the common parking area outside their bars because that is not part of their "licensed premises." Respondent further disputed that any criminal activity or other conduct offensive to the general welfare, health, peace, morals and safety of the people and the public sense of decency specifically relating to El Rey De Todos occurred on or about January 1, 2006.

## 2. Analysis

Considering the totality of the evidence, the ALJ finds that Petitioner failed to prove by a preponderance of the evidence that the place or manner in which Respondent or Respondent's agent(s), servant(s), or employee(s) conducted its business on or about January 1, 2006, warrants cancellation or suspension of Respondent's permits based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency. There was simply a lack of

evidence to prove as alleged that the violation occurred specifically on the first day of 2006. Of all the cases that were joined for the hearing on the common "place or manner" allegations, this case was the only one that alleged that the violation occurred on a single day. The others alleged the violation occurred over more than a year, generally, from some time in 2007 through 2008. The evidence, presented mainly through the testimony of Dallas police officers and TABC enforcement agents, focused on the extensive criminal activity in the area of 2900 Walnut Hill primarily over the years 2006 through 2008.

Concerning the allegation that on or about January 1, 2006, the Respondent or Respondent's agent(s), servant(s), or employee(s) used or allowed others to use the permitted premises in a manner that constitutes a common nuisance as defined in § 81.001 of the Code, the ALJ finds that the violation is alleged to have occurred before § 81.001 of the Code was enacted. This section was enacted by the Legislature in 2007, and did not become valid and enforceable until June 1, 2007. Thus, the allegation is invalid.

Accordingly, the ALJ concludes that the Petitioner failed to prove the allegations by a preponderance of the evidence and Respondent's permits should not be cancelled or suspended.

#### IV. RECOMMENDED SANCTIONS

Based on the totality of the circumstances and for the reasons stated, the ALJ recommends no sanctions against Respondent.

#### V. FINDINGS OF FACT

1. El Rey De Todos LLC d/b/a El Rey De Todos (Respondent) is the holder of Mixed Beverage and Mixed Beverage Late Hours permits issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 2900 Walnut Hill Lane, Dallas, Dallas County, Texas (licensed premises).
2. On February 5, 2009, TABC Staff (Staff) sent a Notice of Hearing to Respondent.

3. The Notice of Hearing contained a statement of the time, date, location, and the nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the allegations and the relief sought by the TABC.
4. On April 17, 28, and 29 and August 17, 18, and 19, 2009, public hearings were held at the J. Eric Jonson Central Library in Dallas, Dallas County, Texas, before Administrative Law Judge Richard R. Wilfong (ALJ). Staff appeared through attorneys Emily Helm and Judith Kennison. Respondent appeared through attorney Paul Rich. The presentation of evidence concluded on August 19, 2009, but the administrative record remained open until December 30, 2009, to allow the parties to submit closing arguments and reply briefs as ordered by the ALJ.
5. On January 1, 2006, Respondent did not conduct its business in a place or manner adverse to the general welfare, health, peace, morals and safety of the people or the public sense of decency.
6. The Legislature did not enact TEX. ALCO. BEV. CODE ANN. § 81.001 *et seq* until 2007 and it did not become effective and enforceable until June 1, 2007.

## VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, and §§ 6.01 and 11.61.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; TEX. ALCO. BEV. CODE ANN. § 11.63; and 1 TEX. ADMIN. CODE (TAC) § 155.401.
4. A preponderance of the evidence does not show that the place or manner in which Respondent conducted its business on or about January 1, 2006, warrants the suspension or cancellation of Respondent's permits under TEX. ALCO. BEV. CODE ANN. § 11.61(b)(7).
5. The Legislature enacted TEX. ALCO. BEV. CODE ANN. § 81.001 *et seq* in 2007 and it became effective and enforceable on June 1, 2007.

6. Based on the above Findings of Fact and Conclusions of Law the Respondent's permits should not be suspended or cancelled pursuant to TEX. ALCO. BEV. CODE ANN. §§ 11.61 or 81.005.

SIGNED February 10, 2010.

  
RICHARD R. WILFONG  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS