

**TABC CASE NO. 573755**

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, PROTESTANT &	§	
PETITIONER	§	
	§	
MAYOR BILL WHITE CITY OF HOUSTON,	§	
CHIEF OF POLICE HAROLD L. HURTT,	§	
HPD CAPTAIN RICHARD GERSTNER,	§	
COUNCIL MEMBER M.J. KHAN,	§	
REPRESENTATIVE SCOTT HOCHBERG,	§	
SHARPSTOWN CIVIC ASSOCIATION,	§	ALCOHOLIC
PROTESTANTS	§	
	§	
VS.	§	
	§	
ORIGINAL APPLICATION OF	§	
TEXAS T PROMOTIONS LLC	§	
d/b/a EL ZORRO DISCOTHEQUE	§	
(MB, LB), RESPONDENT	§	
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-08-2550)	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

CAME ON FOR CONSIDERATION this 7<sup>th</sup> day of November, 2008, the above-styled and numbered cause.

After proper notice was given, Administrative Law Judge Don Smith heard this case. The hearing convened on August 7, 2008 and adjourned on August 8, 2008. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 30, 2008. The Proposal for Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. Exceptions and Replies were filed to which the Administrative Law Judge replied and recommended that no changes be made to the Proposal for Decision.

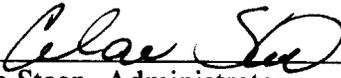
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED** by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's original application is hereby **DENIED**.

This Order will become final and enforceable on December 4, 2008, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 7<sup>th</sup> day of November, 2008, at Austin, Texas.

  
\_\_\_\_\_  
Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

Judge Don Smith  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, Texas 77018  
**VIA FACSIMILE TO (713) 812-1001**

Ronald Monshaugen  
**ATTORNEY FOR RESPONDENT**  
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**VIA FACSIMILE TO (713) 880-5297**

Texas T Promotions LLC  
d/b/a El Zorro Discotheque  
**RESPONDENT**  
8150 SW Fwy 'Z'  
Houston, Texas 77074  
**VIA U.S. FIRST CLASS MAIL**

Mayor Bill White  
**PROTESTANT**  
c/o Nirja Aiyer  
Senior Assistant City Attorney  
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1200 Travis, Suite 300  
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**VIA FACSIMILE TO (713) 308-3371**

Xavier Herrera  
City of Houston Community Liaison  
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**VIA FIRST CLASS MAIL**

Representative Scott Hochberg  
State Representative, District 137  
**PROTESTANT**  
c/o Renita Coleman  
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M.J. Khan  
Council Member, District F  
**PROTESTANT**  
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Harold L. Hurtt  
Chief of Police, Houston Police Department  
**PROTESTANT**  
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Houston, Texas 77002  
**VIA FIRST CLASS MAIL**

Captain Richard Gerstner  
Houston Police Department  
Westside Patrol Division  
**PROTESTANT**  
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**VIA FIRST CLASS MAIL**

Sharpstown Civic Association Inc.  
**PROTESTANT**  
c/o Matthew Caligur, Attorney  
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**VIA FACSIMILE TO (713) 751-1717**

Sharpstown Civic Association Inc.

**PROTESTANT**

7211 Regency Square Blvd., Suite 117

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**VIA FACSIMILE TO (713) 789-2312**

Ramona M. Perry

**ATTORNEY FOR PETITIONER**

TABC Legal Section

Licensing Division

Enforcement Division

RMP/aa

# State Office of Administrative Hearings

Cathleen Parsley  
Chief Administrative Law Judge

September 30, 2008

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

**VIA REGULAR MAIL**

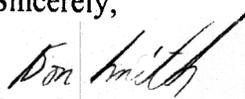
**RE: Docket No. 458-08-2550; Texas Alcoholic Beverage Commission vs. Texas T Promotions LLC d/b/a El Zorro Discotheque**

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 § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,



Don Smith  
Administrative Law Judge

DS/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20<sup>th</sup> Street, Suite 600, Houston, TX 77008- **VIA FACISIMILE AND REGULAR MAIL**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**  
Ronald Monsahugen, Attorney for Respondent, 1225 North Loop West, Suite 640, Houston, TX 77008 -**VIA FACISIMILE AND REGULAR MAIL**  
Nirja Aiyer, Senior Assistant City Attorney, City of Houston, 1200 Travis, Suite 300, Houston, TX 77002 - **VIA FACISIMILE AND REGULAR MAIL**

Matthew Caligur, Protestant, Sharpstown Civic Association, Inc., 1000 Louisiana, Suite 2000, Houston, TX 77002 - **VIA FACISIMILE AND REGULAR MAIL**  
Representative Scott Hochberg, Protestant, State Representative, District 137, 7011 Harwin, Suite 230, Houston, TX 77036 - **VIA FACISIMILE AND REGULAR MAIL**

**SOAH DOCKET NO. 458-08-2550**

<b>IN RE THE ORIGINAL APPLICATION</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>OF TEXAS T PROMOTIONS, LLC</b>	<b>§</b>	
<b>D/B/A EL ZORRO DISCOTHEQUE,</b>	<b>§</b>	<b>OF</b>
<b>APPLICANT</b>	<b>§</b>	
<b>HARRIS COUNTY, TEXAS</b>	<b>§</b>	
<b>(TABC CASE NO. 573755)</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Texas Promotions, LLC d/b/a El Zorro Discotheque (Applicant or El Zorro) has applied to the Texas Alcoholic Beverage Commission (Commission or TABC) for a mixed beverage permit and mixed beverage late hours permit for premises located at 8150 S.W. Freeway 'Z', Houston, Harris County, Texas. Texas State Representative Scott Hochberg, Mayor Bill White of the City of Houston (Houston or City), Houston Chief of Police Harold L. Hurtt, Houston Police Department Captain Richard Gerstner, Houston Council Member M. J. Khan, Sharpstown Civic Association, and citizens from Houston, Texas (Protestants) filed a protest to the issuance of the permits based upon concerns for the general welfare, health, peace, morals, and safety of the people in the community. The Commission's staff (Staff) presented the case for the Protestants, as well as presenting evidence against the issuance of the permits. Houston's Legal Department also presented evidence against the issuance of the permits.

At the hearing, Protestants stated that they were protesting the issuance of the permits due to the location of the premises, the gang activity at the location, the criminal activity at the location, and that a common nuisance existed on the premises during the 12-month period preceding the application for the permits. Staff requested that the recommendations of State Representative Hochberg, Mayor White, Police Chief Hurtt, City Council Member Khan, and a letter from Harris County Commissioner Radack against the issuance of the permits be given due consideration under § 41 of the Texas Alcoholic Beverage Code (Code), which provides due consideration may be given to their recommendations. Staff and the City presented evidence

against the issuance of the permits. For the Applicant, Tok Cha Stewart and Larry Sullivan presented evidence that the issuance of the permits would not violate the public's general welfare, health, peace, morals, safety and sense of decency. After considering the arguments and evidence presented by the parties, the Administrative Law Judge (ALJ) finds that there is sufficient basis for denying the application and recommends that the permits not be issued.

### **I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On August 7, 2008, a public hearing was convened on this matter at the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas, before ALJ Don Smith. The Applicant was represented by its attorney Ronald Monshaugen. Staff and Protestants were represented by Ramona Perry. The City of Houston was represented by its attorney Nirja Aiyer. The hearing concluded on August 8, 2008, and the record closed the same day.

### **II. DISCUSSION AND ANALYSIS**

#### **A. Applicable Law**

Protestants challenge the application on the basis of § 46(a) of the Code, which provides

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exist:

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, peace, morals, and safety of the people and on the public sense of decency.

(15) during the six months immediately preceding the filing of the application the premises for which the permit is sought have been operated, used, or frequented for a purpose or in a manner that is lewd, immoral, or offensive to public decency.

The Protestants presented testimony under the theory that a common nuisance exists on the premises for which the permit or license is sought, and that the application should be denied pursuant to § 81.004 of the Code, which provides

The commission, administrator, or county judge, as applicable, may refuse to issue an original or renewal permit, after notice and an opportunity for a hearing, if the commission, administrator, or county judge finds, that, at any time during the 12 months preceding the permit or license application, a common nuisance existed on the premises for which the permit or license is sought, **regardless of whether the acts constituting the common nuisance were engaged in by the applicant or whether the applicant controlled the premises at the time the common nuisance existed.**"

Applicant presented testimony under the same statute, which continues:

"The commission, administrator, or county judge, as applicable, may issue an original or renewal permit or license if, at the hearing, it is found that the applicant did not control the premises at the time the common nuisance existed and the applicant has taken reasonable measures to abate the common nuisance.

## **B. Evidence - Protestants' Case**

The Protestants, who have the burden of proof, oppose issuance of the permits because of the location of the premises at 8150 S.W. Freeway 'Z' (the premises or club) and the gang activity at the location. The history of the location is significant. Carnival Night Club (Carnaval) operated at the premises from February 4, 2003, to January 25, 2008. Protestants opposed renewal of Carnaval's permits, and a hearing was held at SOAH in March 2006 before ALJ Don Smith. The parties entered into a settlement agreement on March 22, 2006, but two



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Carnaval settlement agreement that required Carnaval to close the parking lot exits to Beechnut at night, and testified that Carnaval sometimes failed to close the parking lot exits to Beechnut, thus allowing the gang members to race out of the parking lot into the neighborhoods.

3. **John Lorenz** is a Senior Project Manager for a construction firm, and the Chairman of the Architect Control Committee of the Sharpstown Civic Association. He has lived at 8318 Mobud since 1983, and testified that when the club was in operation on the premises, it created nuisance problems to the quality of life in the surrounding neighborhoods. Mr. Lorenz testified that he has been awakened at night from gunshots from the premises, and has watched police helicopters follow vehicles that left the premises' parking lot. It was Mr. Lorenz's opinion that no amount of additional security could eliminate the nuisance problems caused by the gang members in the parking lot of the premises and at the club.

4. **Robert Kane** works for J P Morgan Chase in Information Resources, and lives at 8807 Grape, which is in gunshot range of the club. Mr. Kane has lived in Mexico, Brazil, and other areas of South America. He described the premises as being like a "Favela," the gang run shanty areas of Brazil. Mr. Kane stated that he was scared to drive by Carnaval, and could view the gangs out of control in the parking lot. Mr. Kane testified that he went into the parking lot of the premises at the end of 2005, and it was like being in a horror movie: guys were fighting with girls, and everyone was drinking heavily. Mr. Kane heard gunshots coming from the premises on a regular basis, and repeatedly observed vehicles driving erratically from the parking lot onto the street.

5. **Captain Richard Gerstner** is with the Houston Police Department (HPD). When Carnaval had the premises, he was the West Side Captain, and was responsible for the area that included the premises. Captain Gerstner testified that the club was a "hot spot area" that drained his manpower from midnight to morning. TABC Exhibit 3A is his protest letter stating the premises are too dangerous a location for a club. Captain Gerstner testified that in 2007, 334 calls for police services were attributed to disturbances originating from the premises. He

explained that prior to August 2005, HPD officers were allowed to work off-duty security at the club, but a "City Wide Assist" alert went out in August 2005, from a threat of a riot-situation inside the club involving the Fire Marshall. It was Captain Gerstner's opinion that the incident was similar to the Moody Park protests, in that every available officer in the county had to be called out. Thereafter, HPD officers were not allowed to work off-duty security at the club.

Captain Gerstner testified that the club was a magnet for gangs and criminals in the area. The premises are in a high crime area. Captain Gerstner introduced a map of the "police beat" the premises are in, as well as the six "beats" surrounding the premises, and testified the "beats" are the highest crime areas in Houston. He testified that the March 2006 Carnaval/Protestant settlement did not work because "gang bangers and alcohol don't mix." The club gave the gangs a forum to meet and act out. Resulting gunfire and disturbances from the premises spilled over into the surrounding neighborhoods. The result was that the quality of life for the residents was put at risk. Captain Gerstner testified that when Carnaval closed on January 25, 2008, the police calls stopped.

**6. Officer James Tudyk** is the HPD Crime Analysis officer who put together the 2007 crime statistics for the premises. Officer Tudyk testified that he used conservative estimates. On cross-examination, Respondent's attorney complained that it was not 334 calls, but 149 calls, and after further reduction, that it was 12 calls.

**7. Officer Robert Tagle** is an HPD officer who has specialized in gang activities since 1977 when he was a Probation Officer. Officer Tagle testified that the "beat" where the premises are located has the highest concentration of gang activity in Houston. Officer Tagle identified over 10 gangs in the area, and testified that the club was the SW Cholos gang stronghold. Other gangs were also at the premises. It was Officer Tagle's opinion that allowing a Club to operate on the premises would cause "residents to feel like a prisoner in their own neighborhood." Gang members are almost always under the influence of alcohol and drugs, have convoluted judgment, are carrying guns or other weapons, and exhibit erratic dangerous

behavior. Officer Tagle testified that Carnaval attracted gangs and intensified the gangs in the area

On cross-examination, Officer Tagle was requested to give his opinion as to what Applicant had to do to make the club safe for the public. Officer Tagle testified that the premises could not be made safe for a club. At best, Officer Tagle outlined the priorities that Applicant could attempt to accomplish, which were:

1. Recognize the Problem.
2. Hire a large number of commissioned officers for security.
3. Impose a dress code of no hats, white shirts, rosary beads, baggy pants, lettered shirts.
4. Recognize specific gang tattoos.
5. Make reasonable searches upon entry.
6. Do an identification check upon entry, which would include criminal history and outstanding warrant check (make lots of arrests).

8. **Sgt. Smart** is an HPD officer in the gang division. Sgt. Smart testified that gangs hang out in night clubs, malls, and parks. Gangs are easily identifiable. The SW Cholos gang “hangout” was the Carnaval Club. It was Sgt. Smart’s opinion that El Zorro could not stop gang activity at a club on these premises.

Sgt. Smart testified that gangs are brazen in their activities, and that security at clubs does not alter gang activity. The gangs in the club also loiter around in the parking lot. There is a lot of criminal activity going on that spills into the neighborhoods. The occupancy at the premises is 2,400 people for over 20,000 square feet of building. Sgt. Smart testified that HPD would have to dedicate at least 10 gang officers to the premises to deter gang activity during the year, which is 20% of the HPD gang task force. Presently, the HPD gang task force is limited to investigating and building cases against the gang bosses.

9. **Officer Tomeo** is an HPD West Side Patrol officer whose “beat” includes the premises. Officer Tomeo testified that he went to the premises many times a week on

complaints of assault, gang activity, sexual assault, gunshots in the parking lot, and narcotics. One time Officer Tomeo was making a DWI arrest in the parking lot, when the gang bangers started discharging their firearms into the air and threatening him. He said it was too dangerous for one officer to go to the club alone, and when the police entered the parking lot, the gang bangers would start trouble to keep the officers from entering the club. There was lots of active criminal activity in the parking lot, and sometimes the police could not get into the club because there was so much crime in the parking lot. Narcotic use was open and widespread inside the club, even with security guards all around. Rival gangs were in the club, and the neighbors were always calling about firearms being discharged, the loud noise, and the erratic driving. Since Carnaval closed, the premises have become quiet. The club brought a lot of trouble for the neighborhood, as the club was a magnet for gang activity. It is Officer Tomeo's opinion that if a new club opens on the premises, the same problems will come back.

**10. Exhibits** were admitted into evidence that summarized testimony. Because of time restraints, there were several exhibits that were admitted into evidence that summarized testimony, and the Applicant was allowed to cross-examine the witness about the exhibits. TABC Exhibit 1 and 1a is the power point presentation TABC intended to show, that was admitted as a paper summary. The exhibit gives a the history of the premises; the terms of the March 22, 2006 negotiated settlement with Carnaval; evidence showing the settlement did not diminish the crime at the club; and summarized evidence why the premises is a dangerous location for a club. The exhibits summarize police calls for service, and identify specific criminal activity that occurred or originated at the premises for the years 2004 (109 calls), 2005 (140 calls), 2006 (69 calls), and 2007 (334 calls). The exhibits also reflect that after the club closed in January 2008, the crime rate dropped dramatically. The exhibits state that five confirmed gangs are "vying for control of this turf" (the premises): SW Cholos, SPPL (Somos Poquito Pero Locos), MS13 (Mara Salvatrucha), Hustone Tango (prison gang), and La Primera. The exhibit gives the gang membership numbers and known crime statistics attributed to gang activity around the premises. The crimes include assaults, aggravated assaults, sexual assaults, robberies, auto thefts, drugs, and drive-by shootings. TABC Exhibit 4 is an aerial photo of the

premises, the surrounding area, and the seven “police beats” around the club. Several witnesses used TABC Exhibit 4 to appropriately mark the distances of homes and businesses from the premises. The City of Houston introduced 10 thick exhibits of offense reports, service calls, criminal records, gang activity map for 2007, gang activity map for 2008, and the City of Houston’s Petition for a permanent injunction. The Petition is based upon the theory of common nuisance against the premises, and is pending in the 129<sup>th</sup> District Court, Harris County, Texas. The Petition has attached supporting documentation, including the Federal Indictment of Edilberto Portillo and Elida Sanchez, the owners of Carnaval.

Protestants had other witness they wanted to present, but because of time restraints, and the cumulative nature of the testimony, Protestants rested their case so that Applicant would have the opportunity to present its testimony.

### **C. Applicant’s Case**

1. **Tok Cha Stewart** is the sole owner of Texas T Promotions LLC, doing business as El Zorro Discotheque. Since 1977, Ms. Stewart has opened four clubs. Her club in Atlanta, the Atlanta Peach, has occupancy for 3,520 people. The Atlanta Police work her security at the club. To date, Ms. Stewart testified, she has never been cited with any violations. Ms. Stewart’s clubs play Latino international music.

Ms. Stewart testified that El Zorro will be different than Carnaval. First, the gangs do not like her type of music. Secondly, El Zorro has a Perceived Nuisance Abatement Plan (Applicant’s Exhibit S) that refuses any admittance to any known gang members. The plan includes hiring off-duty commissioned police officers for security. TABC admitted in the Request for Admissions that Applicant has requested to employ off-duty HPD officers as security at the club; that HPD refuses to allow its officers to work as off-duty security at the premises; and that off-duty HPD officers are the best qualified personnel to operate as security at the club. Ms. Stewart testified that she intends to have the best security possible in order to keep

the gangs out of the club. The club would be open on Friday through Monday from 9 p.m. to 2 a.m., and on special occasions on Thursday

Ms. Stewart defined herself as a "Promoter." Ms. Stewart said that Elida Sanchez is also a "Promoter." Elida Sanchez owned Carnaval and is married to Edilberto Portillo. Ms. Stewart got to know Ms. Sanchez in 1997, when Mr. Portillo's band played in Ms. Stewart's Atlanta club. Ms. Stewart was at the grand opening of Carnaval in 2003. In September, 2007, Ms. Sanchez heard that Carnaval was for sale. She went to Carnaval's closing party. Ms. Stewart bought Carnaval from Ms. Sanchez for a million dollars, with a \$500,000 down payment, and a \$500,000 note. Part of the \$500,000 down payment consisted of \$100,000 forgiveness of debt. Ms. Stewart expected to make more than two million dollars a year profit from El Zorro. The UCC Financing Statement gives Carnaval Night Club, Inc. a security interest in the furniture, fixtures, equipment, and inventory. Ms. Stewart testified that she was unaware the indictment in City Houston Exhibit 7 orders that all assets of Carnaval are forfeited to the federal government, and the indictment alleges a Portillo drug trafficking and money laundering organization. Ms. Stewart testified that there is no drug connection between the two clubs.

Applicant presented 24 exhibits that were admitted into evidence, including TABC's deemed admissions to Applicant's Request for Admissions that Applicant has a reputation for operating a night club in a peaceable and law abiding manner; and that the premises are qualified to hold mixed beverage and mixed beverage late hours permits. Ms. Stewart testified that she intends to set up the club in Houston, get an apartment here, and spend half her time in Houston, and half her time in Atlanta. She has a lease agreement with West Houston Holding, LLC, if the application is approved.

**2. Gary Smith** made a comment for West Houston Holding, LLC, and Republic Central Realty, Inc. (the owners) that they intend to lease the premises to Applicant. Further, Mr. Smith stated that the owners have always complied with the law, and intend to do so in the future.

3. **Larry Sullivan** testified as an expert witness for Applicant. Mr. Sullivan retired in 1992 as Chief for TABC. In 1966 he started out as a Tax Compliance Officer, and was transferred to TABC in 1972. Mr. Sullivan stated that the “cause and effect” of Carnival’s problems began when HPD refused to provide off-duty officers for security in August 2005. He said a year of closure of the club gives Applicant the opportunity to open with a different crowd, since the gangs moved on to other clubs when Carnival closed.

Mr. Sullivan testified that Applicant’s Perceived Nuisance Abatement Plan is above industry standards. No operator of a club wants gang members in their club, and Mr. Sullivan asserted that the parking lot is the most important area to have security to abate the problems of gang members. Off-duty police officers in uniform are a time-tested deterrence. It was Mr. Sullivan’s opinion that off-duty HPD officers should be allowed to provide security for Applicant. Mr. Sullivan pointed out that HPD would be in conflict to law enforcement and discriminating if it allows its off-duty officers to provide security at one business, but not another business. Another part of the plan is to close the parking lot exits to Beechnut at night, which will push the leaving patrons away from the neighborhoods and onto the S.W. Freeway feeder road. Mr. Sullivan pointed out that if Houston had zoning, like Austin, there would be fewer problems with a large club being opened around neighborhoods. But since Houston has an open development system, it was Mr. Sullivan’s opinion that Applicant should be allowed to open the club on the premises. As Mr. Sullivan said, everyone deserves a chance, and he knows how to set up security for the club.

#### **D. Analysis**

Six months and twelve months immediately preceding the filing of the application, a common nuisance existed at the premises. On January 25, 2008, Carnival closed the club. On January 28, 2008, Applicant filed her application to re-open the club. In 2007, the club was the “hangout” for the SW Cholos and other gangs in Houston, Texas. In 2007, a significant amount of calls were made to the police from disturbances originating from the club, whether it was 112

calls or 334 calls. The police reports and testimony are that shootings were occurring on the premises on a regular basis, there was open use of cocaine inside the club, drugs were being sold in the club, assaults were commonplace on the premises, and the police were concerned about their safety when going onto the premises. In an August 18, 2007 Police Report, HPD undercover officers reported that with 15-20 security officers in the club, and several marked security patrol cars roving the premises' parking lot, the undercover officers observed drug sales in the men's restroom; open cocaine use at the tables and around the dance floor; and that 25% of the customers inside the club appeared to be heavily intoxicated. The residents testified they regularly heard gunshots from the parking lot of the premises, and observed vehicles leave the premises' parking lot driving erratically and dangerously. Experts testified that no amount of additional security could make the premises and club safe, and that if the application is approved, the gangs will be back at the club.

The failure of Applicant to be able to provide off-duty commissioned officers for security at the club is the final factor that warrants the refusal of the permits based on the general welfare, health, peace, morals, and safety of the community, and on the public sense of decency. The premises are at the hub of the Hispanic gang territory. Applicant wants to open a Latino club. Even Applicant's expert stated that the "cause and effect" of the gangs going to the club is the HPD telling their officers not to work off-duty security at the club. Previously, Carnaval and Protestants entered into a settlement agreement that envisioned off-duty HPD officers working security at the club. Applicant's attorney stated that no commissioned officers will work off-duty security at the club because of HPD's unwritten policy of not allowing off-duty HPD officers to work at the club. Therefore, Applicant can not provide adequate security for the public, the gangs will come back to the club, and to approve the application would be inviting more criminal activity into the neighborhood.

### III. FINDINGS OF FACT

Texas T Promotions, LLC d/b/a El Zorro Discotheque (Applicant) filed an original application (the application) with the Texas Alcoholic Beverage Commission (the Commission) on January 28, 2008, for a mixed beverage permit and mixed beverage late hours permit for premises located at 8150 S.W. Freeway 'Z', Houston, Harris County, Texas.

2. Protests to the application were filed by Texas State Representative Scott Hochberg, Mayor Bill White of the City of Houston, Houston Chief of Police Harold L. Hurtt, Houston Police Department Captain Richard Gerstner, Houston Council Member M. J. Khan, Sharpstown Civic Association, and citizens from Houston, Texas (Protestants).
3. The Commission's Staff issued a notice of hearing on May 30, 2008
4. The Commission's Staff issued an amended notice of hearing on July 8, 2008
5. The amended notice of hearing contained a statement of the time, place, and 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 matters asserted.
6. The hearing was held on August 7, 2008, in Houston, Harris County, Texas, before Don Smith, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH). The Applicant was represented by its attorney Ronald Monshaugen. Staff and Protestants were represented by Ramona Perry. The City of Houston was represented by its attorney Nirja Aiyer. The hearing concluded on August 8, 2008, and the record closed the same day.
7. The premises at 8150 S.W. Freeway 'Z' includes a 20,00 square foot building (club) with an occupancy for 2,400 people, and a large parking lot (premises) located on the S.W. Freeway feeder road and on Beechnut, and in-between Beechnut and Gessner in Houston, Harris County, Texas.
8. Six months and twelve months immediately prior to Applicant filing the application, the club was the "hangout" for the SW Cholos gang and other gangs.
9. Six months and twelve months immediately prior to Applicant filing the application, illegal drug use was commonplace in the club and on the premises.

10. Six months and twelve months immediately prior to Applicant filing the application, there were guns being fired illegally on the premises at night on a regular basis.  
  
Six months and twelve months immediately prior to Applicant filing the application, there were vehicles leaving the premises at night at high rates of speed, driving erratically, and driving dangerously.
2. Six months and twelve months immediately prior to Applicant filing the application assaults were commonplace on the premises.
3. In 2007, a significant number of calls were made to the Houston Police Department (HPD) concerning disturbances that originated from the club and premises.
4. In 2007, HPD officers were concerned about their safety when going onto the premises.
15. In 2007, the crime that originated in the club and on the premises was spilling over into the surrounding neighborhoods.
16. Applicant's Perceived Nuisance Abatement Plan can not work because commissioned police officers will not work off-duty security at the club and premises.
7. Applicant has not provided reasonable measures to abate the criminal activities at the club and premises.

#### IV. CONCLUSIONS OF LAW

The Commission has jurisdiction over this matter pursuant to TEX. ALCO BEV. CODE ANN. Chapters 1 and 5 and §§ 6.01, 11.41, 11.46, and 32.01.

SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003.

Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. Based on the foregoing findings of fact, issuance of the requested permits will adversely affect the safety of the public, the general welfare, peace, or morals of the people, and violate the public sense of decency, as described in TEX. ALCO. BEV. CODE ANN. § 11.46.

Based on the foregoing findings of fact, during the six months immediately preceding the filing of the application, the premises for which the permit is sought, have been operated.