

**DOCKET NO. 586794**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
<b>COMMISSION, Petitioner</b>	<b>§</b>	
	<b>§</b>	
<b>VS.</b>	<b>§</b>	
	<b>§</b>	
<b>COACHES PUB INC.</b>	<b>§</b>	
<b>D/B/A COACHES SPORTS BAR &amp; GRILL,</b>	<b>§</b>	<b>ALCOHOLIC</b>
<b>Respondent</b>	<b>§</b>	
	<b>§</b>	
<b>PERMIT NOS. MB653358, LB</b>	<b>§</b>	
	<b>§</b>	
<b>HARRIS COUNTY, TEXAS</b>	<b>§</b>	
<b>(SOAH DOCKET NO. 458-10-3147)</b>	<b>§</b>	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 10<sup>th</sup> day of August, 2011, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Lindy Hendricks presiding. The hearing convened on August 13, 2010 and the SOAH record closed September 24, 2010. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on November 22, 2010. 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. As of this date no exceptions have been filed.

The Assistant 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 motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

**IT IS THEREFORE ORDERED** that Respondent pay a civil penalty in the amount of **\$9,000.00** on or before **SEPTEMBER 6, 2011**. If the civil penalty is not paid when due, the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED** beginning at 12:01 A.M. on **SEPTEMBER 14, 2011**, and shall remain suspended for **THIRTY (30)** consecutive days.

If this Order is appealed and judgment is issued affirming the Order, Respondent shall pay the civil penalty in the amount of **\$9,000.00** on or before the **TENTH (10<sup>th</sup>)** day following the date the judgment is signed. If not paid by that date, the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED** beginning at 12:01 A.M. on the **EIGHTEENTH (18<sup>th</sup>)** day following the date the judgment is signed and shall remain suspended for **THIRTY (30)** consecutive days.

This Order will become final and enforceable on the 5TH day of SEPTEMBER, 2011, unless a Motion for Rehearing is filed **before** that date.

**SIGNED** this the 10th day of August, 2011, at Austin, Texas.

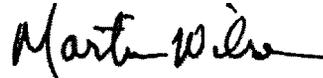


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Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

### **CERTIFICATE OF SERVICE**

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the [DAY] day of August, 2011.



---

Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Lindy Hendricks  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 North Loop West Suite 111  
Houston, Texas 77018  
**VIA FACSIMILE: (512) 322.0474**

Coaches Pub Inc.  
d/b/a Coaches Sports Bar & Grill  
**RESPONDENT**  
17460 NW Freeway  
Houston, Texas 77040-1002  
**VIA REGULAR MAIL**

Clyde Burlison  
**ATTORNEY FOR RESPONDENT**  
1533 W. Alabama, Suite 100

Houston, Texas 77006  
**VIA REGULAR MAIL**  
**AND VIA FACSIMILE: (713) 521-7365**

Martha T. Williams  
**ATTORNEY FOR PROTESTANT**  
**CITY OF JERSEY VILLAGE, TEXAS**  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019  
**VIA REGULAR MAIL**  
**AND VIA FACSIMILE: (713) 533-3888**

Shelia Lindsey  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
**VIA EMAIL: [shelia.lindsey@tabc.state.tx.us](mailto:shelia.lindsey@tabc.state.tx.us)**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 586794**

**REGISTER NUMBER:**

**NAME: COACHES PUB INC.**

**TRADENAME: COACHES SPORTS BAR & GRILL**

**ADDRESS: 17460 NW FREEWAY, HOUSTON, TEXAS 77040-1002**

**DUE DATE: SEPTEMBER 6, 2011**

**PERMITS OR LICENSES: MB653358, LB**

**AMOUNT OF PENALTY: \$9,000**

Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_  
You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

**YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.**

**Mail this form with your payment to:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
P.O. Box 13127  
Austin, Texas 78711  
Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731**

**You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.**

**Attach this form and please make certain to include the Docket # on your payment.**

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address                      P.O. Box No.

\_\_\_\_\_  
City              State              Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

RECEIVED  
NOV 23 2010  
TADCO HOUSTON  
LEGAL

November 22, 2010

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

**VIA REGULAR MAIL**

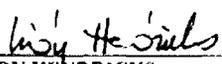
**RE: Docket No. 458-10-3147; Texas Alcoholic Beverage Commission vs. Coaches Pub Inc. d/b/a Coaches Sports Bar & Grill**

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,

  
LINDY HENDRICKS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

LH:mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Shelia Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20<sup>th</sup> Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL**  
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**  
Clyde Burleson, Attorney At Law, 1533 W. Alabama, Suite 100, Houston, Texas 77006 -**VIA REGULAR MAIL**  
Martha Williams, Attorney At Law, 2727 Allen Parkway, Houston, Texas 77019 - **VIA REGULAR MAIL**

2020 North Loop West Suite 111 Houston, Texas 77018  
713.957.0010 (Telephone) 713.812.1001 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)



contested issues of notice, jurisdiction, or venue in this proceeding. Therefore, those matters are set out in the proposed Findings of Fact and Conclusions of Law without further discussion here. The hearing concluded on August 13, 2010. The record was left open until September 24, 2010, for the receipt of the parties' closing arguments.

## II. DISCUSSION

### A. Applicable Law

The City and Staff oppose the renewal application (Application) on the basis of Sections 11.46(a)(8) and 11.61(b)(7) of the Texas Alcoholic Beverage Code. Section 11.46(a)(8) provides that the Commission or administrator may refuse to issue an original or renewal permit if it has reasonable grounds to believe and finds that "the place or manner in which the Respondent 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." Similarly, Section 11.61(b)(7) provides that the Commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if, after notice and hearing, it is determined that "the place or manner in which the permittee conducts his 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 a protest hearing such as this, the burden is on the protesting parties to show by a preponderance of the evidence that the permit(s) should not be renewed.

### B. Background

On March 5, 2007, the TABC issued Coaches a mixed beverage permit and mixed beverage late hours permit. The permits were renewed in 2008, with an expiration date of March 4, 2009. The March 2009 renewal application is the subject of this protest. The basis of the protest is the high number of calls for service at or near Coaches. One hundred and fifteen exhibits were offered by the City and Staff and admitted into evidence.

**C. Public Comment**

John Curtis Haverty is a City Councilmember who opposes the Application. He stated that Jersey Village is a small business community of about 2,200 residences with only two permitted bars. According to Mr. Haverty, Respondent receives a large amount of calls for service, has highly intoxicated patrons, and is a source of criminal problems.

Joyce Berube is also a City Councilmember and Mayor-Pro-Tem, and she supports the City's protest.

City Councilmember Rodney Derskin also submitted a protest letter.

**D. Protestants' Evidence and Arguments**

Witnesses testifying on behalf of the Protestants included TABC agents Wendy Shields and Charles Cornelius, Fire Chief Mark Bitz, Officer Dennis Koch, Police Chief Charles Wedemeyer, Sergeant Sean Horton, and Sergeant Virgil Quinton Thomas.

Agent Shields testified that she received a protest filed by Agent Cornelius and Debbie Ripple, an individual who later withdrew her protest. The basis of their protest was an excessive amount of criminal activity, sale of alcohol to intoxicated persons, and violations of city ordinances. Agent Shields looked at Coaches' permit history, checked for calls for service, and reviewed offense reports generated from the service calls. She indicated that Respondent had 100 calls for service from March 2008 to February 2009, which generated 40 offense reports. After her review, Agent Shields believes that Coaches' employees were either involved in or make no efforts to quell disturbances.

Agent Cornelius testified that he filed a protest against the renewal application of Coaches based on a conversation with Sgt. Horton of the Jersey Village Police Department (JVPD). Coaches is located at the corner of the Jones Road and Highway 290, which is a major intersection. There are

four alcohol-permitted businesses in the same large shopping strip, including a fenced-off gas station. Agent Cornelius requested and received calls for service and offense reports from Sgt. Horton and forwarded them to Agent Shields to investigate the protest. Agent Cornelius believes Respondent operates in a manner that is detrimental to the general welfare, health, peace, and morals, due to the increased number of calls for service.

Fire Chief Bitz testified that the City adopted the International Fire Code in 2003, giving businesses until 2007 to install an alarm system to monitor its sprinkler system. Because Coaches is located within the City, it must comply with the International Fire Code. Chief Bitz stated there was a dispute between Coaches and the owner of the shopping center as to who was responsible for the alarm system. He could not recall the date of the last inspection. Chief Bitz agreed that it was possible that Coaches worked out their disagreement with the landlord and is currently in compliance. Moreover, according to Chief Bitz, no citations have been issued for non-compliance fire code. The City argues that Respondent's failure to comply with the Fire Code is one reason why Respondent's manner of operation does not warrant renewal.

Officer Koch has been an officer with JVPD for six years. He worked as the night shift corporal until he was assigned to the red light camera review in July 2009. He testified that he responded to service calls at Coaches for fights, robbery, assault, criminal mischief, general disturbances, and burglary of motor vehicles. In his opinion, Coaches has a high volume of calls for service, and he believes their manner of operation does not warrant renewal. On cross-examination, Officer Koch clarified that he was not aware of the protest or the number of calls for service until the previous week. He was unfamiliar with the manner and operation of Coaches from July 2009 to present.

Chief Wedemeyer is the chief of police for JVPD. The City encompasses two and a half square miles and is divided into a residential and commercial district. Coaches is located in the commercial district. Chief Wedemeyer testified that he had recommended that City Council protest Coaches' renewal. His recommendation was based his staff's recommendation, which was based on narcotics violations and gang activity that occurred at Coaches. JVPD has 23 police officers, with

four to six officers working each of the three shifts. According to Chief Wedemeyer, depending on the nature of the call, it is possible that all officers on a shift would need to respond to a call for service. He testified that since the protest was filed, Coaches hired four sheriff's deputies and improved the situation. On cross-examination, Chief Wedemeyer testified that the number of calls for service for the two-year period between 2008 and 2010 was approximately 400. None of the reports were marked by his officers as "gang-related." Some of the calls for service included traffic and other incidents unrelated to Coaches' manner of operation. However, there were offenses, namely public intoxication, attributed to Coaches. Chief Wedemeyer explained that, although Coaches is located in a large shopping strip, along the freeway, and shares the parking lot with other businesses, Coaches is the only business open until 2:00 a.m., whereas others close around 10:00 p.m.

Sgt. Horton is an investigator with the JVPD. While responding to service calls at Coaches, he observed large crowds, intoxicated people, fights, and gang members. Sgt. Horton has arrested several gang members and observed gang members entering the business as recently as a few weeks ago. Since his promotion to investigator in 2007, Sgt. Horton no longer patrols the area and is unfamiliar with the number of calls for service.

Sgt. Thomas is the JVPD evening patrol shift sergeant from 2:00 p.m. to 10:00 p.m. He testified that when JVPD allowed City officers to work extra-jobs as security for Coaches, he observed gang members initiating fights. He identified Juan Angel Gonzalez as a member of the Houstone Gang and who was also the manager at Coaches. In his opinion, Coaches has had gang problems since 2006 and gang members still frequent the bar. He testified he was in Coaches two times this year. In January 2010, he received a call made by the bar because an intoxicated patron refused to leave. In June 2010, Sgt. Thomas responded to a call for service when an 18-year-old patron hit her boyfriend with a beer mug. The underage patron was arrested for public intoxication. He admitted that as of last week, he did not know how many calls for service were made or the number of arrests or reports generated. He testified, however, that the number of calls for service has diminished.

The City introduced 85 offense reports<sup>1</sup> that were generated from the calls for service between January 2008 and June 2010. The City argues that, while some calls were not related to the manner of Coaches' operation, many more are directly related. While some offense reports are not directly connected to Coaches, the City argues they show the sort of spill-over that occurs late at night from Coaches' manner of operation. The City further argues that the offense reports show times when the entire shift of patrol officers is needed to respond to a disturbance at Coaches, leaving the City's residents unprotected. The City argues that as such Coaches' manner of operation is detrimental to the general welfare, health, peace, morals, and safety of the people.

#### **E. Respondent's Evidence and Arguments**

Witnesses testifying on behalf of Respondent included Sergeant Marvin Brown, Deputy Gary Wilson, Kari Morgan, Bradley Clifford, Wesley Everett Hood, Quincy Riggs, and Richard Brandon Fallon. Ten exhibits were offered by Respondent and admitted into evidence.

Sgt. Brown works for the Harris County Sheriff's Office and has worked an extra job at Coaches since May 2009. He testified that the Sheriff's Office has a policy of checking businesses and reviewing their calls for service before approving extra-employment. If the business allows underage drinking or has too many arrest reports or assaults, then officers from the Sheriff's Office are not allowed to work extra jobs there. He was approved to work security at Coaches and his duties included preventing underage drinking, screening gang members, and clearing the parking lot when the business is closed. He works security both inside and outside Coaches from 10:00 p.m. to 2:30 a.m. For security, there are numerous cameras installed and interior and exterior lighting. Every half hour he patrols the parking lot and testified that it is common to see the JVPD making traffic stops there. According to Sgt. Brown, there is a 24-hour Whataburger and a Mexican restaurant that is open until 11:00 p.m. or 1:00 a.m. in the same center. He testified that he sees Whataburger customers park their cars in the vicinity of Coaches. Sgt. Brown said the parking lots get crowded and, with a common parking area, people park wherever space is available. Sgt. Brown has had over five hundred hours of training and specialty classes in identifying gang members,

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<sup>1</sup> The City cited 86 offense reports in its closing argument but the Court count shows 85.

tattoos, and activities. He testified that he supervises three officers at Coaches and that they have turned away intoxicated people and gang members at the door. When gang members are on the premises, they are asked to leave.

Deputy Wilson has worked security at Coaches for a year from 10:00 p.m. to 2:00 a.m. According to Deputy Wilson, the clientele for Coaches varies and includes every-day people and off-duty Harris County, Houston, and Pasadena police officers. When he has identified gang members inside Coaches, they are asked to leave. He explained that the dress code for Coaches has changed, restricting gang-related attire. He was unaware of any public intoxication or assault cases against Coaches in the last year.

Ms. Morgan is the general manager of Coaches and worked under the new management since 2007. She believes the protest was initiated by Agent Cornelius for personal reasons.

Mr. Clifford was the doorman for Coaches from 2007 until June 2010. His duties include checking identification, dress code, and tattoos to make sure there is no gang affiliation. On a Friday night in 2007, he would turn away about 40 people at the door and about 30 to 35 on Saturdays. The numbers declined in 2008 and more so with the arrival of the deputies working security in 2009. While he has observed JVPD inside the club, he never observed any arrests for public intoxication or disturbances.

Mr. Hood is an assistant manager and bartender for Coaches. He testified that the gang member identified by Sgt. Thomas, Juan Gonzalez, worked in the kitchen in 2004 or 2005, before Coaches was purchased by the current owner in 2007. According to Mr. Hood, Juan Gonzalez never worked for Coaches' current owners.

Mr. Riggs is an assistant manager for Coaches. He testified that there is one manager on duty who works with security and staff. On a busy Friday night there can be about 350 patrons. Mr. Riggs testified that he would be made aware of anything major happening at Coaches such as fights, intoxicated people falling down or being removed from the club.

Mr. Fallon is the owner of Coaches and purchased the business from its previous owners in 2007. At the end of 2007, Mr. Fallon switched from Magnolia PD to using JVPD for security. Mr. Fallon testified that at some point in 2008, JVPD no longer worked security for Coaches. Mr. Fallon was without uniformed security for seven or eight months in 2008, until his application for security was approved by Harris County Sheriff's Department in 2009. Mr. Fallon testified that since the deputies took over security in 2009, there have been no calls for service for public intoxication or assaults inside the bar. Mr. Fallon testified that Coaches requires all their employees to be seller-server trained and certified. Except for the eight months after JVPD's unexpected absence, Mr. Fallon testified that he has employed uniformed officers, always intended to have uniformed officers, and will continue to have uniformed officers work security.

### III. ANALYSIS

The essence of Protestants objections is that Coaches has a high number of calls for service and is a place frequented by gangs. Protestants contend that the number of incidents associated with Coaches warrants the denial of its permit renewal on the basis of the "place or manner" provisions cited above.

However, calls for service can be made by anyone, anytime, and for any reason. At a location like Coaches, where there is a large, shared parking lot for the entire shopping center, it is important to look at the offense reports and determine if the calls are attributable to Coaches. Offenses can only be attributable to the club, if it allowed them to occur or if the club's conduct contributed to their occurrence. Because this case was brought under legal provisions related to the place or manner "in which the permittee conducts his business," conduct occurring inside and outside of the club is only relevant to the extent that it is attributable to Coaches' patrons and is a reflection of the manner in which Coaches conducts its business.

In the two and a half year period between January 2008 and June 2010, the City had 85 offense reports. Of those, 12 were related to offenses that occurred inside Coaches,<sup>2</sup> and only one

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<sup>2</sup> There were eleven offense reports in 2008 and only one incident in January 2009.

involved conduct directly attributable to the permittee. On August 9, 2008, an employee/bouncer interfered with an arrest, pushing a JVPD officer and telling him, "Get out of here."<sup>3</sup> The bouncer later told officers he did not realize the man was an officer and would not have done that had he known.<sup>4</sup> This single incident would not support the finding of a place or manner violation that would warrant a denial of the renewal application.

During that same two and a half year period, other offenses that occurred inside the club include assault, theft, disorderly conduct, public indecency, and narcotics. Fights, disturbances, and similar acts can occur on a licensed premise spontaneously or it may slowly escalate from an argument. To hold a permittee responsible for the criminal actions of third parties, there must be a showing that the permittee had a reasonable opportunity to prevent the offense. The evidence is insufficient to show that employees were involved, committed, or allowed these offenses to take place.<sup>5</sup> To the contrary, the evidence shows that many criminal activities were first discovered by club employees who intervened, detained suspects, and called the police. Without evidence to show that the permittee knew or, in the exercise of reasonable care, should have known of the offenses or likelihood of their occurrences and failed to take reasonable steps to prevent the offenses, the evidence is insufficient to show Respondent committed a Section 11.46 (a)(8) or 11.61(b)(7) place or manner violation.<sup>6</sup>

The remaining offense reports refer to incidents that took place in the parking lot. The evidence shows the parking lot is very large and mutually shared by stores and four other licensed establishments that also sell alcoholic beverages. Those businesses, however, close around 11:00 p.m. to 1:00 a.m. and many of the offenses occurred between 1:00 and 2:30 a.m. The evidence also shows this parking lot is located at a very busy intersection, with a 24-hour Whataburger. Sgt. Brown testified that the parking lot is used commonly by JVPD in making traffic stops, and that customers of Whataburger park near and around Coaches.

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<sup>3</sup> City Exh. 55.

<sup>4</sup> The case was dismissed.

<sup>5</sup> Permittee is defined to include an agent, servant, or employee.

<sup>6</sup> TABC Rules § 35.31.

While Coaches is certainly responsible for monitoring and addressing activities in areas within its control such as inside the club and the front entrance area, it is difficult to say that Coaches is responsible for all incidents in this large, shared parking lot. The parking lot is not an area that Coaches has exclusive control, moreover, the parking lot is accessible to the public from the freeway and Jones Road at all times. Nevertheless, there are approximately 12 incidents supported by police reports from May to November 2008 that involve patrons of Coaches. During that six-month period, patrons were observed leaving Coaches and/or made statements that they had been drinking at Coaches. Some of these patrons were also able to leave Coaches with beer bottles and glass which were later used in assaults in the parking lot. They were subsequently arrested in the parking lot for public intoxication or assaults. While the evidence is insufficient to show Coaches sold or delivered an alcoholic beverage to an intoxicated person, the reports show numerous intoxicated people leaving Coaches. The evidence shows that Coaches has only one manager on duty on nights when the crowd may have reached 350. The ALJ concludes that Coaches was unable to properly control the amount of alcohol consumed by its patrons. Thus, Coaches' manner of operation was such that patrons were able to become intoxicated, leave the premises with alcohol, engage in fights in the parking lot, and get arrested for public intoxication. Again, these incidents occurred during a six-month period that coincided with the time JVPD stopped working security for Coaches and before Harris County Sheriff's deputies were hired.

The evidence further shows that the offenses that could be attributed to Coaches lessened with the hiring of deputies working security and with the addition of lighting, cameras, and a security system. Later reports indicate bouncers removed disorderly patrons and disturbances were "under control of the off-duty deputy working at Coaches as extra employment."<sup>7</sup>

The City and Staff argue that the number of calls for service presents a drain on the police force. Yet, the evidence shows the number of calls for service since 2008 has declined. Moreover, many of the calls for service were made by management, employees, and off-duty licensed peace officers working security at Coaches. The disturbances that occurred inside the club were quelled by security, the suspects detained and held until JVPD arrived. Currently, club employees are

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<sup>7</sup> City Exh. 104.

attempting to handle any problems that arise. Additionally, when calls for service were cited with the address for Coaches, review of the offense reports indicate otherwise. The number of calls for service to an address in a large, shared parking lot at a busy intersection is simply unreliable without further review of the offense reports. As such, the number of calls for service is an insufficient basis to deny the permit in this situation.

None of the offense reports show incidents to be gang-related. There is insufficient evidence that Coaches has a gang problem. There is testimony that gang members have been observed inside the club. However, the offense reports do not show gang members committed or were associated with any criminal activities at Coaches.

#### **IV. CONCLUSION AND RECOMMENDATION**

Ultimately, the ALJ finds that the problems attributable to Coaches are limited in scope and evidence to a few incidents during six months of 2008. The ALJ finds that Coaches made efforts to control the premises and patrons by hiring security. Mr. Fallon credibly testified that he always intended to have licensed peace officers work security. The evidence shows Magnolia Police Department and JVPD had previously provided security and Harris County Sheriff's deputies presently provide security. In addition, Mr. Fallon installed an elaborate security system with interior and exterior cameras and lighting. There is no indication that Coaches' conduct was so egregious, that the permittee continues to violate the law, or that it is beyond correction or compliance, such that denial of the application is warranted. Coaches has had no prior adjudicated administrative violation since its permits were issued in 2007, with the exception of a restrained case. Coaches has not been suspended or fined for any administrative action. Therefore, the ALJ does not find that Coaches is beyond correction or continues to commit violations of the Code to warrant denial of its renewal application.

Therefore, the ALJ finds that during a six-month period Coaches operated in a manner that allowed patrons to leave the club intoxicated with alcohol, supporting a suspension or civil penalty

under Section 11.61(b)(7). However, the ALJ does not find the conduct or permit history sufficient to deny the renewal application under Section 11.46(b)(8).

The ALJ recommends that the permits be renewed, but that a 30-day suspension, or that a \$9,000 civil penalty in lieu of a suspension,<sup>8</sup> be assessed.

## V. FINDINGS OF FACT

1. Coaches Pubs Inc. d/b/a Coaches Sports Bar & Grill (Respondent) has filed a renewal application with the Texas Alcoholic Beverage Commission (TABC) for its mixed beverage permit and mixed beverage late hours permit for a premises located at 17460 NW Freeway, Houston, Harris County, Texas 77040.
2. Protest to the application was filed by the City of Jersey Village and TABC based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency.
3. An Amended Notice of Hearing dated July 26, 2010, was issued by TABC Staff notifying all parties that a hearing would be held on the application and informing the parties of the time, place, and nature of the hearing.
4. The Amended Notice of Hearing in this case indicated that the permit renewals were being opposed on the basis of the Texas Alcoholic Beverage Code Sections 11.46(a)(8) - grounds for denial and 11.61(b)(7) - grounds to suspend or cancel.
5. On August 13, 2010, a hearing began before Administrative Law Judge Lindy Hendricks in Houston, Texas. TABC Staff appeared at the hearing through its Staff Attorney Shelia Lindsey. Respondent appeared and was represented by its attorneys, Clyde Burleson and Michael Craig. Protestant appeared and was represented by its attorneys, Martha Williams and David Olsen. The record closed on September 24, 2010, after the parties filed post-hearing briefs.
6. On May 11, May 25, July 23, August 8, August 9, October 22, and November 10, 2008, intoxicated patrons of Coaches were permitted to leave the club, some with alcohol, and were arrested for public intoxication.
7. The Harris County Sheriff's Office has a policy of checking businesses and reviewing service calls before approving employment of its peace officers for off-duty security work. Harris County Sheriff's Office approved off-duty employment at Coaches on or before May 2009.

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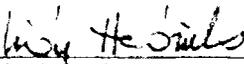
<sup>8</sup> The civil penalty is assessed at \$300 per day.

8. Coaches does not currently and never did employ any known gang member. A known gang member was employed at the club in 2004 or 2005, before Coaches was purchased by its current owner.
9. Coaches has attempted to ban identifiable gang members from frequenting the club and implemented a dress code to prohibited gang attire.
10. The incidents of criminal activities attributable to Coaches occurred during a six-month period in 2008 and have diminished with the rehiring of licensed peace officers and new security system.
11. Coaches has had no prior adjudicated administrative violation that resulted in a suspension or civil penalty.

## VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 11, 28, and 29, and §§ 6.01, 11.46(a)(8), and 11.61(b)(7). TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. The State Office of Administrative Hearings 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. ch. 2003.
3. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.401.
4. Between May and November of 2008, as detailed in the Finding of Fact No. 6, Respondent operated in a manner that allowed its patrons become intoxicated and leave with alcohol from the licensed premises, in violation of TEX. ALCO. BEV. CODE ANN. § 11.61(b)(7).
5. Based on the Findings of Fact Nos. 7-11, Respondent's renewal application for a mixed beverage permit and mixed beverage late hours permit for the premises located at 17460 Northwest Freeway, Houston, Harris County, Texas 77040, should be granted.
6. Respondent's permits should be suspended for 30 days, and Respondent should be allowed to pay \$9,000 in lieu of suspension.

SIGNED November 22, 2010.

  
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LINDY HENDRICKS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS