

**DOCKET NO. 604380**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Jurisdictional Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
<b>CITY OF HOUSTON, Protestant</b>	§	
	§	
<b>VS.</b>	§	
	§	
<b>D. HOUSTON, INC. D/B/A TREASURES, Respondent/Renewal Applicant PERMITS MB256488, LB256489</b>	§	<b>ALCOHOLIC</b>
	§	
<b>HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-12-0985)</b>	§	<b>BEVERAGE COMMISSION</b>

**CORRECTED ORDER**

**CAME ON FOR CONSIDERATION** this 30th day of May, 2013, 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 (ALJ) Roshunda Pringle presiding. The hearing convened on March 29, 2012 and the SOAH record closed on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on May 24, 2012. 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 were filed by the Jurisdictional Petitioner on June 11, 2012 and by the Protestant on June 8, 2012. On June 21, 2012, Respondent filed a Response to the Exceptions. On June 27, 2012, the ALJ filed an Amended Proposal for Decision. No exceptions were filed in response to the Amended Proposal for Decision.

After review and due consideration of the Proposal for Decision, the Exceptions and Response thereto and the Amended Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Amended Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

Although I adopt the Findings and Conclusions in the Amended Proposal for Decision, I disagree with the statement in the ALJ's analysis that "The prior settlements are not sufficient to meet Protestant's burden in that the Waiver Orders do not show Respondent admitted or agreed

to the violations but only that Respondent agreed to a finding by TABC regarding the occurrence of the alleged violations.” A Finding in a Waiver Order is exactly the same as a Finding made by the Commission when it adopts an Administrative Law Judge’s proposed Finding. In both instances, the Finding is a factual statement. In the case of the Waiver Orders, even as noted by the ALJ, it is a fact that the incidents occurred. For purposes of deciding whether a permittee is operating in a place or manner inconsistent with the public interest, it should be the fact of the occurrence that matters.

However, the ALJ states that “Even with a finding, Protestant does not present sufficient evidence that Respondent’s operation created an unusual condition or situation” that would justify refusing the application. Since this reflects the ALJ’s evaluation of the sufficiency of the evidence, and since that is a matter left to the ALJ’s discretion under Government Code §2001.058(e), I cannot alter the ALJ’s finding.

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.

**THEREFORE, IT IS ORDERED** that the application of D. Houston, Inc. d/b/a Treasures for renewal of Mixed Beverage Permit MB256488 and Mixed Beverage Late Hours Permit LB256489 be **GRANTED**.

This Order will become **final and enforceable** on the 25TH day of June, 2013, **unless a Motion for Rehearing is filed by the 24th day of June, 2013.**

**SIGNED** this the 30th day of May, 2013, at Austin, Texas.



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Edwin C. Swedberg, 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 30th day of May, 2013.



---

Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

ROSHUNDA PRINGLE  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 N. Loop, Suite 111  
Houston, TX 77018  
**VIA FACSIMILE: (512) 322-2061**

D. HOUSTON INC.  
d/b/a Treasures  
**RESPONDENT**  
P.O. Box 570427  
Houston, TX 77257-0427  
**VIA REGULAR MAIL**

RONALD A. MONSHAUGEN  
ALBERT T. VAN HUFF  
**ATTORNEYS FOR RESPONDENT**  
1225 North Loop West, Suite 640  
Houston, TX 77008  
**VIA REGULAR MAIL**  
**AND VIA FACSIMILE: (713) 880-5297**

LISA D. CRISSMAN  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division

CITY OF HOUSTON  
**PROTESTANT**  
c/o Nirja Aiyer and Bertrand Pourteau  
900 Bagby Street, 3<sup>rd</sup> Floor  
Houston, TX 77002  
**VIA FACSIMILE: (832) 393-6259**

**DOCKET NO. 604380**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Jurisdictional Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
<b>CITY OF HOUSTON, Protestant</b>	§	
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<b>VS.</b>	§	
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<b>D. HOUSTON, INC. D/B/A TREASURES, Respondent/Renewal Applicant PERMITS MB256488, LB256489</b>	§	<b>ALCOHOLIC</b>
	§	
<b>HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-12-0985)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 29th day of May, 2013, 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 (ALJ) Roshunda Pringle presiding. The hearing convened on March 29, 2012 and the SOAH record closed on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on May 24, 2012. 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 were filed by the Jurisdictional Petitioner on June 11, 2012 and by the Protestant on June 8, 2012. On June 21, 2012, Respondent filed a Response to the Exceptions. On June 27, 2012, the ALJ filed an Amended Proposal for Decision. No exceptions were filed in response to the Amended Proposal for Decision.

After review and due consideration of the Proposal for Decision, the Exceptions and Response thereto and the Amended Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Amended Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

Although I adopt the Findings and Conclusions in the Amended Proposal for Decision, I disagree with the statement in the ALJ's analysis that "The prior settlements are not sufficient to meet Protestant's burden in that the Waiver Orders do not show Respondent admitted or agreed

to the violations but only that Respondent agreed to a finding by TABC regarding the occurrence of the alleged violations.” A Finding in a Waiver Order is exactly the same as a Finding made by the Commission when it adopts an Administrative Law Judge’s proposed Finding. In both instances, the Finding is a factual statement. In the case of the Waiver Orders, even as noted by the ALJ, it is a fact that the incidents occurred. For purposes of deciding whether a permittee is operating in a place or manner inconsistent with the public interest, it should be the fact of the occurrence that matters.

However, the ALJ states that “Even with a finding, Protestant does not present sufficient evidence that Respondent’s operation created an unusual condition or situation” that would justify refusing the application. Since this reflects the ALJ’s evaluation of the sufficiency of the evidence, and since that is a matter left to the ALJ’s discretion under Government Code §2001.058(e), I cannot alter the ALJ’s finding.

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.

**THEREFORE, IT IS ORDERED** that the application of D. Houston, Inc. d/b/a Treasures for renewal of Mixed Beverage Permit MB256488 and Mixed Beverage Late Hours Permit LB256489 be **GRANTED**.

This Order will become **final and enforceable** on the 22nd day of June, 2013, **unless a Motion for Rehearing is filed by the 21st day of June, 2013.**

**SIGNED** this the 29th day of May, 2013, at Austin, Texas.



---

Edwin C. Swedberg, 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 29th day of May, 2013.



---

Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

ROSHUNDA PRINGLE  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 N. Loop, Suite 111  
Houston, TX 77018  
**VIA FACSIMILE: (512) 322-2061**

D. HOUSTON INC.  
d/b/a Treasures  
**RESPONDENT**  
P.O. Box 570427  
Houston, TX 77257-0427  
**VIA REGULAR MAIL**

RONALD A. MONSHAUGEN  
ALBERT T. VAN HUFF  
**ATTORNEYS FOR RESPONDENT**  
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LISA D. CRISSMAN  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

May 24, 2012

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

**VIA REGULAR MAIL**

**RE: Docket No. 458-12-0985; Texas Alcoholic Beverage Commission vs. D.  
Houston, Inc. d/b/a Treasures**

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).

RECEIVED

MAY 29 2012

TABC HOUSTON  
LEGAL

Sincerely,

  
ROSHUNDA PRINGLE  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

RP/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Lisa Crissman, 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**  
Albert Van Huff, Monshaugen & Van Huff, 1225 North Loop West, Suite 640, Houston, Texas 77008 -**VIA REGULAR MAIL**  
Bertrand Pourceau, City of Houston, 1200 Travis, 3<sup>rd</sup> Floor, Houston, Texas 77002 - **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)

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§ § § §	<b>BEFORE THE STATE OFFICE</b>
<b>CITY OF HOUSTON, Protestant</b>	§ § § §	
<b>VS.</b>	§ § § §	<b>OF</b>
<b>THE RENEWAL APPLICATION OF D. HOUSTON, INC. D/B/A TREASURES (MB, LB) Respondent</b>	§ § § §	<b>ADMINISTRATIVE HEARING</b>

**PROPOSAL FOR DECISION**

D. Houston, Inc. d/b/a Treasures (Tresaures or Respondent) filed a renewal application with the Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) for a mixed beverage permit and mixed beverage late hours permit for the premises located at 5647 Westheimer, Houston, Harris County, Texas. The City of Houston (Protestant) protested the renewal of Respondent's permits based on the general welfare, peace, morals, and safety concerns of the public.

After considering the arguments and evidence presented by the parties, the Administrative Law Judge (ALJ) finds there is an insufficient basis for denying the renewal of permits and recommends that the permits be issued.

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

There were no 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.

On March 29, 2012, a public hearing was convened in this matter in Houston, Texas, before

ALJ Roshunda Pringle. Petitioner was represented by attorney Lisa D. Crissman. Respondent was represented by attorneys Ronald Monshaugen, Albert Van Huff, and Paul Nugent. Protestant was represented by attorney Bertrand Pourteau. The record closed on March 29, 2012.

## II. APPLICABLE LAW

The statutory foundation for the protest to this application is Tex. Alco. Bev. Code § 11.46(a)(8), 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.

Protestant specifically alleges that 1) the place where the Respondent seeks a renewal application is a common nuisance that is continuing and ongoing; 2) the premises where Respondent seeks a renewal permit are operated in a manner which is lewd, immoral, or offensive to the public decency; and 3) Applicant has an extensive violation history which warrants denial of the renewal application.

## III. PUBLIC COMMENTS

### A. Public Comments from Protestant

David E. Feldman is the City Attorney for the City of Houston. Mr. Feldman recommends the denial of the renewal application for several reasons. Mr. Feldman stated that Treasures has operating as a sexually oriented business without a permit and in violation of a city ordinance for more than a decade. He said that Treasures has been able to operate for more than a decade because the business has repeatedly launched unsuccessful legal challenges against the City of Houston regarding its status as a sexually oriented business. Mr. Feldman said that it is common knowledge

in the City of Houston that the “real” business of Treasures is to be sexually oriented. Mr. Feldman stated that Treasures has been unsuccessful in controlling crimes on their premises, such as prostitution, drug dealing, and public lewdness. In his opinion, Treasures is a haven for criminal activity that enables human trafficking. Mr. Feldman explained that Treasures is within 600 feet of an elementary school and near several churches and neighborhoods. In addition, Treasures is a drain on city resources because of the constant policing that is required. He believes that the citizens of the City of Houston deserve better. Mr. Feldman strongly believes that Treasures’ negative impact affects the general welfare, health, peace, morals, and safety concern of the public.

Steve Wachel is the manager at Good Year Tires, a business adjacent to Treasures. Mr. Wachel’s chief concern was the prostitution that occurs on his parking lot. Mr. Wachel explained how each morning he has to pick up used condoms and trash from his parking lot. He said that school children walk across his parking lot daily and should not have to encounter used condoms and trash. Mr. Wachel had knowledge of at least one shooting that occurred on his parking lot. To deter trespassing, Mr. Wachel stated, he placed a “no parking” sign on his parking lot and several vehicles have been towed. He said that the sign has somewhat deterred only the illegal parking.

Mike Laster is a City of Houston council member. Mr. Laster represents District J. District J is a new district established after re-districting. He stated that Treasures is located within the district. Mr. Laster advised that the area has its fair share of problems but has immeasurable potential as a commercial district as well as a residential district. Mr. Laster believes that the district is a place where small businesses can start up and thrive. In his opinion, illegally operated businesses like Treasures do not fit within the vision of the district or the City of Houston. Mr. Laster stated that he has no bias against sexually oriented businesses because there are parameters established for such activities. In his opinion, Treasures has ignored the parameters and continued to operate as a sexually oriented business without a permit. Mr. Laster commended the City of Houston and the city attorney for their efforts in attempting to prevent the business’s continued operations.

Miles LeBlanc is an assistant general counsel with the Houston Independent School District (HISD). HISD opposes the renewal application. HISD opposes the sale of alcohol in close proximity of its schools. Mr. LeBlanc stated that Treasures is approximately 543 feet from St. George Place Elementary School located at 5430 Hidalgo Street, Houston, Texas 77056. Mr. LeBlanc said that the safety and security of the HISD students and staff is of paramount concern. Based on the concern, HISD supports Protestant's protest against the renewal application.

#### **B. Public Comments from Respondent**

Mitch Cook, Jennifer MacNally, Shontiniqua Stoker, Tenika Lightfoot-Roberts, Gene Moreno, Rayna Gines, Tracy Thompson, Ted Ahara, and Preshette Thornton support the issuance of the renewal application. All persons who were in support of the issuance of the renewal application were employees of Respondent. Each person similarly explained how a denial of the renewal application would negatively impact their lives financially.

#### **IV. EVIDENCE**

Staff presented its notice of hearing issued to the parties and TABC records which included Treasures' administrative history, settlement agreements, and current application for permit renewal. As stated in its notice, Staff remained neutral in the protest to the renewal of the permits. According to Staff, the Applicant has met all Commission requirements to hold the permits at the location and has complied with all Texas Alcoholic Beverage Code requirements in effect at the time of the application.

Documentary evidence shows that Treasures obtained its permits in July 1995. Treasures has had more than 30 violations at 5647 Westheimer, Houston, Harris County, Texas. According to the documentary evidence, all of the violations have been resolved with either a suspension or civil penalty. Specifically, TABC settled all pending violations against Treasures from December 5, 2008, to September 27, 2011.

Protestant presented an aerial photo of 5647 Westheimer. The photo was offered to show the distance between Respondent's premises and St. George Place Elementary School located at 5430 Hidalgo Street. Secondly, Protestant presented a copy of Article III of the city code that governs sexually oriented businesses. The provision was offered to show that Treasures, by operation, met the definition of a sexually oriented business. Protestant did not present sworn testimony for the court to consider.

## V. ANALYSIS

Protestant bears the burden of proof in establishing that Respondent's business operations create an unusual condition or situation that is contrary to the general welfare, peace, morals, and safety of the people and the public sense of decency. Protestant argued that the premises where the Respondent seeks a renewal permit are a nuisance, which warrants denial of the renewal application. Protestant further argued that Respondent's manner of operation, as indicated by an extensive violation history, creates an unusual circumstance which warrants denial of the renewal application.

According to the documentary evidence, all of the violations at Treasures have been resolved by either written warning or suspension. None of those violations resulted in a permit revocation. Instead, Applicant has always been allowed to pay a civil penalty. On September 27, 2011, TABC and Treasures executed an agreement that settled all pending violations against Treasures from December 5, 2008, to September 27, 2011. In the agreement, Treasures was assessed a suspension of 60 days with an opportunity to pay a civil penalty of \$1,700 per day for a total civil penalty of \$102,000. Protestant argued that the execution of the settlement is proof of admission to each violation resolved by the agreement, thereby proving their burden. The ALJ disagrees. The prior settlements are not sufficient to meet Protestant's burden in that the Waiver Orders do not show Respondent admitted or agreed to the violations but only that Respondent agreed to a finding by TABC regarding the occurrence of the alleged violations. Even with a finding, Protestant does not present sufficient evidence that Respondent's operation created an unusual condition or situation that is contrary to the general welfare, peace, morals, and safety of the people and the public sense of decency. In addition, Protestant argued that Treasures operate as a sexually oriented business

without a permit and relied on the provision from the city code and prior violations that have been settled. The provision and prior settlements alone are insufficient to prove Protestant's burden.

Furthermore, Tex. Alco. Bev. Code § 109.33 authorizes a county or city to adopt a regulation or ordinance that prohibits the sale of alcoholic beverage within 1,000 feet of a public school. But Protestant did not present any evidence that Harris County or the City has done so.

In this instance, Respondent is fully qualified to obtain its requested TABC-issued renewal permits. The location of the proposed business does not create an unusual situation or circumstance that warrants denial of the application. As a result, Protestant's evidence was insufficient to establish that the place or manner in which Respondent conducts business warrants denial of the renewal permits. The ALJ recommends that the renewal permits be issued.

## VI. FINDINGS OF FACT

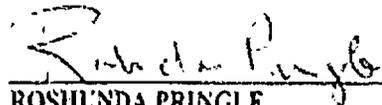
1. D. Houston d/b/a Treasures (Respondent) has filed a renewal application with the Texas Alcoholic Beverage Commission (TABC) for a mixed beverage permit and mixed beverage late hours permit, for premises located at 5647 Westheimer, Houston, Harris County, Texas.
2. The City of Houston protested the renewal based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency.
3. A Second Amended Notice of Hearing, dated February 6, 2012, 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. On March 29, 2012, a hearing was conducted by ALJ Roshunda Pringle in Houston, Texas. TABC Staff appeared at the hearing through Staff Attorney Lisa Crissman. Respondent appeared and was represented by its attorneys, Ronald Monshaugen, Albert Van Huff, and Paul Nugent. The City appeared and was represented by attorney Bertrand Pourteau. The record closed on March 29, 2012.
5. Respondent was granted an original permit to operate a bar with a mixed beverage permit and mixed beverage late hours permit in July 1995.
6. All administrative actions against Respondent for violations committed from December 5, 2008 to September 27, 2011 have resulted in dismissals or been resolved by an order to pay civil penalties.

7. None of those violations resulted in a permit revocation.
8. The evidence presented was insufficient to prove that Respondent operated as a sexually oriented business.
9. Respondent has met all TABC requirements for holding the permits requested for the proposed licensed premises at this location.
10. No unusual conditions or situations exist that would warrant refusal of the permits.

#### VII. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Tex. Alco. Bev. Code chs. 5, 11, 28, and 29, and §§ 6.01 and 11.46(a)(8).
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 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 ch. 2001, and 1 Tex. Admin. Code § 155.401.
4. Renewal of the requested permits does not adversely affect the general welfare, health, peace, morals or safety of the people or violate the public sense of decency. Tex. Alco. Bev. Code § 11.46(a)(8).
5. Respondent's renewal application for a mixed beverage permit and mixed beverage late hours permit, for the premises located at 5647 Westheimer, Houston, Harris County, Texas, should be granted.

SIGNED May 24, 2012.

  
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ROSHUNDA PRINGLE  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS