

DOCKET NO. 618992

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner/Protestant	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
	§	
RENEWAL APPLICATION OF D. HOUSTON INC. D/B/A TREASURES, Applicant/Respondent	§	ALCOHOLIC
	§	
	§	
PERMIT MB256488, LB256489	§	
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-13-5202)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of April, 2014, 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 January 16, 2014 and the SOAH record closed on January 17, 2014. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on March 12, 2014. The Proposal for Decision was properly served on all parties, who were given an opportunity to file exceptions. No exceptions were filed.

After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the 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.

All motions, requests for entry of Proposed Findings of Fact 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 Respondent's application for renewal of its Mixed Beverage Permit and Mixed Beverage Late Hours Permit is hereby **GRANTED**.

This Order will become final and enforceable on the 1st day of May, 2014, unless a Motion for Rehearing is filed by the 30th day of April, 2014.

SIGNED this the 7th day of April, 2014, at Austin, Texas.



Sherry K-Cook, 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 7th day of April, 2014.



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) 322-2061

D. Houston, Inc.
d/b/a Treasures
APPLICANT/RESPONDENT
P.O. Box 570427
Houston, Texas 77257-0427
VIA FIRST CLASS MAIL, CMRRR # 70120470000133007098

Ronald Monshaugen
Albert Van Huff
ATTORNEYS FOR APPLICANT/RESPONDENT
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Houston, Texas 77008
VIA FACSIMILE: (713 880-5297)
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VIA FIRST CLASS MAIL, CMRRR # 70120470000133008699

Sandra K. Patton
ATTORNEY FOR PETITIONER/PROTESTANT
TABC Legal Division
VIA E-MAIL: sandra.patton@tabc.state.tx.us

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

March 12, 2014

RECEIVED

MAR 14 2014

**TABC HOUSTON
LEGAL DEPT.**

Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

**RE: SOAH Docket No. 458-13-5202; Texas Alcoholic Beverage
Commission vs. D. Houston Inc. d/b/a Treasures**

Dear Ms. Cook:

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

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

Sincerely,

A handwritten signature in cursive script that reads "Lindy Hendricks".

Lindy Hendricks
Administrative Law Judge

LH/mr

Enclosure

xc Sandra Patton, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008
- **VIA REGULAR MAIL**
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX
78731 - **VIA REGULAR MAIL**
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX
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Ronald Monshaugen and Albert Van Huff, Attorneys at Law, 1225 North Loop West, Suite 640, Houston,
TX 77008 - **VIA REGULAR MAIL**

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4. **Crystal Cowart**16
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D. Houston, Inc. d/b/a Treasures (Applicant, Respondent, or Treasures) submitted a renewal application (Application) for its mixed beverage permit and mixed beverage late hours permit from the Texas Alcoholic Beverage Commission (TABC or Commission) for the premises located at 5647 Westheimer, Houston, Harris County, Texas. The Commission’s Staff protested the renewal application pursuant to Texas Alcoholic Beverage Code (Code) § 11.46 (a)(8). 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 the permits and, therefore, recommends Respondent’s renewal application be granted.

I. PROCEDURAL HISTORY

On January 16, 2014, a two-day hearing was convened in this matter in Houston, Texas, before ALJ Lindy Hendricks. TABC appeared and was represented by Sandra Patton, staff attorney. Respondent appeared and was represented by attorneys Ronald Monshaugen and Albert Van Huff. The hearing concluded on January 17, 2014, and the record was closed that same day.

Prior to the hearing, Respondent filed a motion to dismiss and in the alternative, specially excepted to the pleadings in the notice of hearing. Staff responded and filed an amended notice of hearing. At the hearing, Respondent objected to the amended notice of hearing, arguing that the TABC should proceed under Code §§ 11.46 (a)(3) and (15). The ALJ determined that Respondent had six-month’s notice of the pleading with the correct citation. The amendment was proper and was either not material or did not create an unfair surprise to warrant a continuance. The ALJ denied the motion to dismiss, special exceptions, and request for continuance. The hearing on the protest proceeded under the amended notice of hearing.¹

¹ In September 2012, TABC filed a suspension/cancellation case under dockets 458-12-7939 and 458-12-7940 involving these same allegations. Before the hearing was held, TABC moved to dismiss the case, choosing to proceed under this protest docket 458-13-5202.

Respondent argued that § 11.641(c) applies because non-renewal of a permit is tantamount to cancellation and, therefore, the testimony of certain witnesses should be excluded. Staff argued that § 11.641 (c) does not apply because TABC is seeking a denial of the renewal application. While denial of a renewal application may or may not have the same effect as a cancellation, Section 11.641 (c) is clear and unambiguous in that it only applies to a suspension or cancellation case. The legislature did not include language granting statutory authority to consider alternatives to the issuance or refusal of an application under Subchapter B. Therefore, the ALJ found § 11.641(c) does not apply in this renewal protest.

II. APPLICABLE LAW

Petitioner has alleged the following grounds for the protest:

1. The place or manner in which Applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, in violation of Code § 11.46(a)(8).
2. Respondent or Respondent's agent, servant, or employee, solicited or permitted solicitation of persons for immoral or sexual purposes, in violation of Code §§ 11.61(b)(2), 11.61(b)(7), 104.01(7), and 16 Tex. Admin. Code § 35.31.
3. Respondent or Respondent's agent, servant, or employee, sold or permitted others to sell a narcotic on the licensed premises, in violation of Code §§ 11.61(b)(2), 11.61(b)(7), 104.01(9), and 16 Tex. Admin. Code § 35.41(b).
4. Respondent or Respondent's agent, servant, or employee, engaged in or permitted conduct on the premises which is lewd, immoral, vulgar, or offensive to public decency, in violation of Code §§ 11.61(b)(2), 11.61(b)(7), and 104.01(7).

III. EVIDENCE

The following individuals appeared at the protest hearing and offered comment in support of the granting of the renewal application: James Cook, Penny Tubb, B. Nguyen, Justin Jones,

Respondent argued that § 11.641(c) applies because non-renewal of a permit is tantamount to cancellation and, therefore, the testimony of certain witnesses should be excluded. Staff argued that § 11.641 (c) does not apply because TABC is seeking a denial of the renewal application. While denial of a renewal application may or may not have the same effect as a cancellation, Section 11.641 (c) is clear and unambiguous in that it only applies to a suspension or cancellation case. The legislature did not include language granting statutory authority to consider alternatives to the issuance or refusal of an application under Subchapter B. Therefore, the ALJ found § 11.641(c) does not apply in this renewal protest.

II. APPLICABLE LAW

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4. Respondent or Respondent's agent, servant, or employee, engaged in or permitted conduct on the premises which is lewd, immoral, vulgar, or offensive to public decency, in violation of Code §§ 11.61(b)(2), 11.61(b)(7), and 104.01(7).

III. EVIDENCE

The following individuals appeared at the protest hearing and offered comment in support of the granting of the renewal application: James Cook, Penny Tubb, B. Nguyen, Justin Jones, Ted Amaro, Gene Moreno, and Crystal Cowart. Officers with the Houston Police Department

(HPD), Harris County Sheriff's Office, and TABC Agent Robert Holloway testified. Following is a summary of the relevant testimony.

A. Petitioner's Evidence

1. HPD Officer Juvenito Castro

Officer Castro has been with HPD for 11 years and assigned to the Narcotics Division for 5 years. Officer Castro testified that on April 18, 2012, he entered Treasures in an undercover capacity to conduct an investigation and attempt to purchase narcotics. After paying a fee to enter, Officer Castro was seated at middle of the club. He was approached by a dancer named Star. He asked Star for some cocaine. Star said she did not have any at the club but would call her dealer. Officer Castro observed Star text messaging on her cellphone as she asked him how much he wanted. Officer Castro told her \$60's worth, and Star stated that it would be about 15 to 20 minutes. After that period of time, Officer Castro observed a Hispanic male enter the club. Star said, "he's here," and had Officer Castro step out to the patio smoking area. Officer Castro gave Star \$60 and a box of cigarettes as she had requested. He observed Star approach the Hispanic male who handed Star a plastic baggy which she placed inside the cigarette box and returned to Officer Castro. Star then gave the cigarette box containing the plastic baggy to Officer Castro. Inside the baggy was a white powdery substance which Officer Castro field-tested that night. The field test was positive for cocaine. Officer Castro then turned the evidence over to Officer Marco Lopez. The substance was analyzed and tested positive for cocaine.²

Officer Castro testified that Star also suggested that they go upstairs for some fun. When asked what she meant by fun, Star stated she would perform oral or straight sex for \$300 to \$400. Officer Castro testified that Star repeatedly solicited for sex that evening. Star was identified to be Gena Jones. Ms. Jones was charged with attempted delivery of cocaine for which she received deferred adjudication.³ Officer Castro has not been back to Treasures since April 18, 2012.

² TABC Ex. 5.

³ Resp. Ex. R1.

2. HPD Officer Patrick McIntyre

Officer McIntyre has been with HPD for 22 years and assigned to the Narcotics Division for 12 years. Officer McIntyre testified that on April 21, 2012, he entered Treasures in an undercover capacity to conduct an investigation and attempt to purchase narcotics. After paying a fee to enter, Officer McIntyre was approached by a dancer named Asha. During their conversation, Officer McIntyre stated he wanted to purchase ecstasy and was willing to pay \$100 for 5 pills. The dancer left and returned 5 minutes later with a blue gum wrapper containing 5 yellow pills. Officer McIntyre paid \$20 for 1 pill with a promise to buy more if it was indeed ecstasy.

Later that evening, Asha approached Officer McIntyre and offered a lap dance. Officer McIntyre paid \$20 for the lap dance. He stated the lap dance was erotic. Asha gyrated and exposed her breasts and vagina to Officer McIntyre during the dance. Asha then asked if Officer McIntyre wanted to go upstairs for the cost of a \$150 bottle of champagne. She offered to perform oral and straight sex upstairs for the price of \$300 for a half-hour and \$500 for an hour. At the conclusion of the investigation, Officer McIntyre turned the pill over to Officer Lopez who tagged and processed the evidence. He testified that Officer Lopez was a uniformed officer assigned to the investigation to collect any evidence. The pill was analyzed and tested positive for methamphetamine.⁴ Asha was identified to be Nicole Marie Reilly. Ms. Reilly was charged with delivery of a controlled substance.

3. HPD Officer Jason Dunn

Officer Dunn has been with HPD for 17 years and assigned to the Narcotics Division for 7 years. Officer Dunn testified that on April 25, 2012, he entered Treasures in an undercover capacity to conduct an investigation and attempt to purchase narcotics. He was accompanied by Officer Castro. They were seated at the main stage area and were approached by a dancer named Brandy. Officer Dunn testified that he asked Brandy for cocaine. Brandy agreed to get him approximately 2 grams of cocaine. Officer Dunn testified that he observed Brandy speak with a

⁴ TABC Ex. 6.

waitress, walk out of sight, and come back with a little package for which he paid \$120. Officer Dunn testified that the entire transaction took 20 minutes from the time he entered Treasures. At the conclusion of his investigation, Officer Dunn handed the package over to Officer Lopez to collect and tag the evidence into the property room. Officer Dunn testified that Officer Lopez field-tested the substance which was positive for cocaine. Brandy was identified to be Brittani Sparrow. Officer Dunn had been to Treasures on four occasions. In one of those investigations, Officer Dunn was able to purchase narcotics. Officer Dunn has not been back to Treasures since April 26, 2012.

4. HPD Officer Robert Romano

Officer Romano has been with HPD for 32 years and assigned to the Narcotics Division for 28 years. Officer Romano testified that on April 25, 2012, he entered Treasures in an undercover capacity to conduct an investigation and attempt to make a prostitution case. He was accompanied by undercover Officer MyIntyre and Villasana. Officer Romano testified that the week before he had met a dancer named Bianca at Treasures and had remained in contact with her via text messages. Officer Romano explained that he texted Bianca that he was coming into town the following week and was looking for some girls to take to a hotel. Officer Romano testified that the plan was for Bianca to hook him up with a couple of other dancers and go to his hotel. When Officer Romano arrived at Treasures he texted Bianca.

Bianca and two dancers joined the officers at a table. There was a discussion with the dancers about leaving the club to go to the hotel. Bianca told Officer Romano there was a buyout fee of \$100 per dancer to check out of Treasures, plus \$1,000 per dancer in exchange for sex at the hotel. Bianca also offered to go upstairs, but that would cost \$150 per dancer plus \$500 per hour per dancer to go upstairs. Officer Romano agreed, instead, to go to the hotel and pay the dancers \$3,000 once they got there. After the agreement was reached, the officers gave the dancers \$300 to check out. Officer Romano testified that the dancers took a cab to the hotel where the officers were waiting. Bianca was later identified to be Bianca Delgado.

5. HPD Officer Matthew Rippey

Officer Rippey has been with HPD for 10 years and assigned to the Vice Division for 2 years. Officer Rippey testified that on April 26, 2012, he entered Treasures in an undercover capacity to conduct an investigation, looking for prostitution violations. After paying a fee to enter, Officer Rippey was greeted by a dancer named Sana who led him to a table and asked if she could sit with him. Officer Rippey testified that Sana asked if he had been upstairs before and he responded affirmatively. He testified he told Sana he wanted oral sex and that Sana said it would cost \$350 to have oral sex with her upstairs. Sana was later identified to be Kata Csuthyra.

6. HPD Officer Casey Lewis

Officer Lewis has been with HPD for 7 years and assigned to the Vice Division for 2 years. Officer Lewis testified that on April 26, 2012, he entered Treasures in an undercover capacity to conduct an investigation, looking for prostitution and vice-related violations. He had a conversation with a dancer named Ramsey and asked her about going upstairs to the VIP area. Officer Lewis also asked about tipping her upstairs to which she responded, "Oh, you have been here before." Officer Lewis testified he asked for oral sex, and Ramsey said she would charge him \$150 for oral sex, in addition to the \$150 bottle of champagne and \$500 fee to go the VIP area upstairs. Ramsey was later identified to be Ramsi Bowling. Officer Lewis testified that the conversation he had with Ramsey was a one-on-one conversation not heard by anyone else.

7. HPD Sergeant Roger Espinoza

Sgt. Espinoza works for HPD and was previously assigned to the Vice and Narcotics Division. Sgt. Espinoza testified that on April 26, 2012, he entered Treasures in an undercover capacity to conduct an investigation, looking for prostitution and TABC violations. A dancer came to his table and introduced herself as Adrian. Sgt. Espinoza told her he was there celebrating his divorce, and Adrian said, "Then you must need some good head." Adrian stated she could help him with that. Sgt. Espinoza testified that Adrian stated it would be \$500 to go upstairs for oral and

straight sex. She pointed to a door on the first floor and stated they could have oral sex in that room for \$300 or straight sex for \$500. Sgt. Espinoza testified that it was one of the fastest and easiest prostitution investigations with which he was involved. The entire transaction took place within 15 to 20 minutes of his arrival. Adrian was later identified to be Camille Martin.

Sgt. Espinoza described the conversation as private. He testified the club was not loud. He did not know if someone walking around the club would be able to tell what they were talking about. Sgt. Espinoza could not comment on Treasure's place or manner after his investigation because he was promoted to the Jail Division.

8. HPD Sergeant Andrew Duncan

Sgt. Duncan has been with HPD for 18 years and assigned to the Narcotics Division for 8 years. Sgt. Duncan testified that on May 3, 2012, he entered Treasures in an undercover capacity to conduct an investigation. Officers Chance and Esquivel accompanied him. After paying the fee to enter, the officers sat near the front of the club. At some point, Officer Chance and Esquivel went upstairs to the Champagne Room. Sgt. Duncan remained downstairs with a Hispanic dancer named Brook. He asked Brook how much it would cost to have sex with her, with Officer Esquivel involved. Officer Esquivel had joined them at the base of the stairs. Brook agreed to \$950. Sgt. Duncan then went upstairs into the VIP area with Brook and joined the other officers and two dancers. In the VIP room, Sgt. Duncan asked how much it would cost for the other two dancers to perform oral sex on each other. The dancers gave a price of \$500. The officers paid \$500 and the two dancers performed oral sex. They were later identified to be Sompert Curry and Natalee Bettis.⁵

9. HPD Officer Lavon Laugermann

Officer Laugermann has been with HPD for 9 years and assigned to the Vice Division for 2 years. Officer Laugermann testified that on August 2, 2012, she and Officer Bryant Hall entered Treasures in an undercover capacity to conduct an investigation in response to a complaint about

⁵ Brook was not identified because she left before the conclusion of the investigation.

sexually oriented business (SOB) violations and prostitution. They were seated on the first floor when they approached by a dancer named Daisy. Officer Laugermann testified that they had an intimate conversation in which Daisy agreed to have oral and straight sex in exchange for \$500. Daisy was later identified to be Shannon Green. Officer Laugermann stated that it took about 20 minutes from the time Daisy joined them to make their prostitution case.

10. HPD Officer Bryant Hall

Officer Hall has been with HPD for 21 years and assigned to the Vice Division for 17 years. He testified that on November 2, 2012, he and Officer Laugermann entered Treasures in an undercover capacity to conduct an investigation. A dancer named Princess approached their table. A conversation ensued in which Princess agreed to perform oral sex on Officer Laugermann in exchange for \$1,000. Princess was later identified to be Shavon Stevens.

Officer Hall testified that he was also at Treasures on April 26, 2012, as part of the Raid and Extraction Team. His assignment was to assist undercover officers in an emergency situation and to follow up any investigation by locating and identifying suspects. Officer Hall testified that he entered Treasures at approximately 1:00 A.M., dressed in police raid gear. He was instructed to go immediately to the VIP room upstairs. At the bottom of the staircase, Officer Hall observed a man he believed to be a manager. He testified that the man spoke into his walkie-talkie saying, "The police are here. The police are here." Once upstairs, Officer Hall went to the south side of the VIP area with a narrow hallway with booths. In front of each booth was a small, round table. When he walked down the hallway, Officer Hall observed two individuals in a booth to his left who appeared to be engaged in sexual activity. He testified that the female wore a lace-like top but was naked from the waist down. He observed her sitting on a male, straddling him with her legs on each side of his body. The male had his pants and underwear pulled down toward his ankles. Officer Hall testified that he illuminated them and confirmed that they were engaged in straight sex. He stated that the female jumped up, grabbed her panties from the table, and started to put them on. He then observed the male sitting there with an erection with a condom on his penis.

Officer Hall testified that he asked them for their identification. The female asked to get her identification from her locker. She was later identified as Ashly Carrion. Officer Hall testified that he observed people he believed to be managers in the third section of the VIP area. He testified that anyone walking down the hall could have observed the activity because the booths were in the open and not in closed rooms. He stated that when the male stood up, Officer Hall observed a spent condom wrapping on the bench seat where the male was sitting. Officer Hall also recovered a bar receipt for \$1,180 and did not believe it was all for drinks.

Officer Hall testified that he has been in Treasures at least 5 times in 2012. He described the behavior he observed as routine for Treasures. He is not aware of Treasure's manner of operation since November 2012.

11. HPD Officer Marco Lopez

Officer Lopez has been with HPD for 13 years and is assigned to the SWAT Team. Officer Lopez testified that he was called to assist in undercover operations as the marked unit. During these operations, his job was to stop a vehicle, transport prisoners, and tag evidence. Officer Lopez testified that he was attached to the undercover investigations at Treasures on April 18, 21, and 26, 2012. He testified that the undercover officers maintained control and custody of any evidence until he met them and explained that either the undercover officers or Officer Lopez conducted a field test of the evidence. Officer Lopez then took custody of the evidence. He then weighed the substance, completed the submission forms, and placed the evidence inside an HPD envelope bag. The bag was sealed, initialed, and placed into the narcotics lockbox.

Officer Lopez testified that on April 18, 2012, he took custody of narcotic evidence from Officer Castro; on April 21, 2012, from Officer McIntyre; and on April 26, 2012, from Officer Dunn.

12. Harris County Deputy Edwin Thomas

Deputy Thomas has been with the Harris County Sheriff's Office for 24.5 years and assigned as an undercover investigator in the Vice Unit for 6.5 years. Deputy Thomas testified that on

November 27, 2012, he entered Treasures around noon in an undercover capacity to conduct an investigation, looking for prostitution and SOB violations. Deputy William Trejo and Anthony Thompson accompanied him. After paying a cover fee, the officers sat near the stage and were soon approached by a couple of dancers. Deputy Thomas testified that approximately 20 minutes after their arrival, a dancer named Riley approached their table. Riley agreed to perform oral and straight sex. Deputy Thomas testified that Riley said it would cost \$140, \$100 for the sex and \$40 for the manager to look the other way. Once they established a price, Riley took out a condom and attempted to undo Deputy Thomas's pants and place the condom on him. Deputy Thomas stopped her by saying he did not feel comfortable because people were walking around. They agreed to meet later that night. Deputy Thomas testified that the transaction did not take long because Riley was very aggressive, going so far as to pull aside her underwear to expose her pubic region to him. Riley was later identified to be Bobbi Jo Ingram.

Deputy Thomas testified that he returned to Treasures on January 3, 2013, to conduct a second investigation into allegations of prostitution. After paying a fee to enter, Deputy Thomas sat near the front stage. After approximately 20 minutes, he encountered a dancer named Delia. Deputy Thomas paid \$100 for some lap dances during which Delia simulated sex acts like masturbation, bumping, and grinding. Deputy Thomas testified he had an intimate conversation with Delia in which there was solicitation for sexual conduct. Delia agreed to perform oral and straight sex in exchange for \$625. Deputy Thomas stated that Delia originally asked for \$700, but they negotiated the price down. They agreed to have sex at his hotel. Deputy Thomas testified that Delia asked him for \$40 to pay the manager in order for her to leave early. Delia was later identified to be Tenika Lightfoot.

13. TABC Agent Robert Holloway

Agent Holloway has been with the TABC for 8.5 years. Agent Holloway testified he was assigned to conduct the protest investigation of the renewal application. The basis of the protest was the number of cancellation cases that TABC filed against Treasures. He testified that when TABC receives cases from HPD and Harris County, he reviews the reports and adopts the cases if there are

violations of the Code. Additionally, he requests employee records and sign-in sheets of the dancers arrested. Agent Holloway testified that Treasures provided him with independent contractor information sheets, listing the dancers' stage names, legal names, and contact information. He testified that Treasures's manner of operation has not changed. He said Treasures consistently has violation reports for prostitution. In Agent Holloway's opinion, the renewal application should not be granted because the violations have been consistent and repeated, despite the 2011 settlement agreement in which Treasures paid a \$102,000 civil penalty and stated they were going to monitor the club to prevent future violations. Agent Holloway testified that Treasures continued to have TABC violations through January 2013, but he was not aware of any violations or arrests after January 2013.

14. Administrative Violation History⁶

Respondent's administrative history shows the 2011 allegations of public lewdness were unfounded, and the renewal application was granted after a protest hearing.

Violation Date	Violation(s)	Disposition
10/28/2011	Place or manner (misc.), intoxicated permittee, and public lewdness ⁷	ALJ found no violation
08/24/2011	Place or manner (renewal protest)	Application granted
10/20/2010	Public lewdness	60 days or \$102,000
02/18/2010	Public lewdness	Included in the settlement agreement that resolved the 10/20/2010 public lewdness violation.
02/08/2010	Sale of drugs and public lewdness	Included in the settlement agreement that resolved the 10/20/2010 public lewdness violation.
08/27/2009	Soliciting alcohol and prostitution	Included in the settlement agreement that resolved the 10/20/2010 public lewdness violation.

⁶ The ALJ did not include the allegations previously docketed under SOAH Dockets 458-12-7939 and 458-12-7940 because they are the same violations alleged in this protest.

⁷ The allegations of prostitution were settled with a finding of lewd or vulgar acts and categorized as "public lewdness."

05/13/2009	Public lewdness	Included in the settlement agreement that resolved the 10/20/2010 public lewdness violation.
12/05/2008	Public lewdness, soliciting alcohol, prostitution, and place or manner (misc.)	Included in the settlement agreement that resolved the 10/20/2010 public lewdness violation.
01/29/2009	Place or manner (misc.)	3 days or \$900
09/10/2009	Breach simple	5 days or \$1,500
01/11/2008	Prostitution and soliciting alcohol	26 days or \$3,900
03/23/2007	Public lewdness	10 days or \$1,500
07/29/2005	Possession of unfit alcohol	Written warning
06/11/2004	Sale during prohibited hours	Written warning
	Consumption during prohibited hours	5 days or \$750
05/09/2002	Sale to intoxicated person, intoxicated permittee, and prostitution	40 days or \$6,000
12/17/2001	Public lewdness	10 days or \$1,500
05/19/2000	Intoxicated permittee	10 days or \$1,500
04/09/2000	Public lewdness	Dismissed with prejudice
01/08/2000	Possession of unfit alcohol	Written warning
01/10/1999	Possession liquor without stamps and unfit alcohol	Written warning
08/01/1997	Misc. violations, public lewdness, inspection refusal	Written warning
11/13/1996	Sale of drugs, public lewdness, solicit alcohol	20 days or \$3,000

B. Respondent's Evidence

1. Casey Wallace

Mr. Wallace has been the general counsel for Treasures since early 2012. He testified that Treasures was the subject of a nuisance action filed by the City of Houston and State of Texas on May 16, 2012, involving many of the same violations alleged in this protest. On December 5, 2012, Treasures reached a settlement agreement with the City.⁸ On January 25, 2013, Treasures settled with the State of Texas.⁹

⁸ Resp. Ex. R28.

⁹ Resp. Ex. R27 and R26.

In its settlement, Treasures agreed to ensure that all managers and employees are aware of the commitment to eliminate prostitution and to instruct them to perform their duties in such a manner as to prevent, detect, and stop any illegal activity or conduct. Mr. Wallace testified that managers are trained to detect and stop any illegal activity, including specifically prostitution, public lewdness, indecent exposure, and possession of narcotics. Managers are trained to search a dancer's bags and locker for drugs and other paraphernalia. Additionally, Treasures agreed to put signs on each table stating that no illegal activities are committed in the club and voluntarily agreed to report to the City any suspicious or illegal activity. The permittee also bars anyone from employment who has committed a violation at another club. Mr. Wallace testified that the owner and managers of Treasures do not allow any misconduct or criminal activity, and the owner has hired additional managers to monitor and enforce the policies of the club. Finally, minors are not allowed in Treasures.

Mr. Wallace testified that, as part of the settlement, Treasures funds a City monitor. An undercover monitor is sent by the City to look for any criminal activity and is required to report his or her findings to the City and Treasures. According to Mr. Wallace, there have been reports that the monitor has been in Treasures several times and detected no criminal activity. Mr. Wallace testified that there have been no arrests or allegations of criminal activity, including public lewdness or indecent exposure, at Treasures since January 2013. In addition to funding the City's monitor, Treasures contributes \$100,000 to fund the City's newly created Human Trafficking Unit within HPD and requires its employees to attend a human trafficking awareness program.

Mr. Wallace testified that Treasures has changed its manner of operation since the settlement. The booths and rooms upstairs that previously provided privacy and seclusion have been eliminated. Treasures also removed the walls from a secluded area previously known as the library downstairs. These areas are now open and can be easily seen by everybody. Additionally, Treasures increased lighting so that it is easier to observe the activities inside the club. Managers monitor the first and second floor with flashlights and communication devices.

Mr. Wallace explained that if a dancer or employee commits or attempts to commit any violation, that person is immediately suspended or terminated. Mr. Wallace testified that Treasures runs a background check on dancers and will not hire anyone who has a conviction for drugs or prostitution in the past 60 months. Treasures has also hired licensed security guards and at least two are on the premises 24 hours a day, 7 days a week, to stop any misconduct or illegal activity.

In Mr. Wallace's opinion, Treasures is now the most transparent club in Houston and crimes are simply not committed. He testified that it is the normal business practice to generate a report each time TABC comes to the club. As general counsel, he has examined those reports and testified that TABC has been inside the club on 11 occasions since May 2012 and found no violations. The visits occurred on May 11, 2012; June 6, 2012; June 14, 2012; July 27, 2012; March 1, 2013; April 13, 2013; July 25, 2013; September 7, 2013; December 19, 2013; January 3, 2014. However, he conceded that these visits were compliance inspections and not undercover investigations.

2. James Alfred Southerland

Mr. Southerland is a labor employment lawyer. He reviewed the Dancer Packet containing the agreement between Treasures and its dancers. Based on his evaluation of the relationship between Treasures and the dancers, it is Mr. Southerland's opinion that the dancers are independent contractors.

3. Ali Davari

Mr. Davari is president of D. Houston, Inc., which has been doing business as Treasures for approximately 15 years.¹⁰ He has been in the SOB since 1983 and currently holds eight TABC permits, six of which are at SOBs. Mr. Davari testified that he made numerous changes to Treasures's manner of operation after the HPD investigations of 2012 and the settlement of the nuisance lawsuit. Treasures now provides a Dancer Packet and requires its dancers to read and

¹⁰ The permits subject to the protest renewal was originally issued in July 1995. The ALJ must presume without the benefit of all renewal applications and/or corporate changes that Mr. Davari is not the original owner.

acknowledge their understanding of company policy.¹¹ Mr. Davari testified to the policies contained in the packet. Background checks are conducted, and a dancer who has been convicted of prostitution, public lewdness, or possession of narcotics will not be hired. Lockers are randomly checked. Purses and bags are also checked upon entry to the club. Mr. Davari also said dancers are informed that “pillow talk” or “fantasy talk” constitutes prostitution even if the dancers do not intend to perform any sex act. Mr. Davari testified Treasures does not allow drugs, prostitution, and any criminal activity. He also stated that there have been no arrests or TABC violations at Treasures in the past 12 months.

Mr. Davari testified on cross-examination that he had similar problems with his dancers and settled those violations with the TABC in September 2011. He thought at the time he was being targeted with repeated vice raids at Treasures. Mr. Davari testified that in response to the repeated raids and after the settlement with TABC, he had a management meeting at which he informed his employees that they had to follow the TABC’s rules and regulations.

4. Crystal Cowart¹²

Ms. Cowart has been employed by Treasures for 12 years, first as a waitress and hostess, and is now in the accounting department. Ms. Cowart testified that there is no requirement for a dancer “tip out” a manager to leave early. She also testified that she was present on May 3, 2012, when Sgt. Duncan made a prostitution case after allegedly spending an hour or two with Ms. Bettis. As the hostess that night, Ms. Cowart was aware when Ms. Bettis arrived. According to Ms. Cowart, Ms. Bettis had been in Treasures less than 10 minutes before the raid team arrived and took her out of the club. Ms. Cowart did not believe Ms. Bettis committed the violation because she had not been in the club for the amount of time alleged by Sgt. Duncan.

¹¹ Resp. Ex. R21A

¹² Ms. Cowart provided public comment and was later called as a rebuttal witness for Respondent.

5. James Robert Butler

Mr. Butler has been a criminal defense attorney for 22 years. He testified that he represents 15 SOBs in Houston. Based on his observations, he believed that in the last 3 years Treasures had been targeted and investigated more often than other similar clubs. Mr. Butler testified that there have been no arrests made at Treasures in the past 12 months. Additionally, Mr. Butler testified to the dispositions of the criminal cases filed against the dancers.¹³

6. David Feldman

Mr. Feldman has been the City Attorney of Houston since 2010. He signed the “Nuisance Abatement Settlement Agreement” on behalf of the City on December 5, 2012. At the time of the settlement, he thought that Treasures was operating in accordance with the law. He also thought that if Treasures continued to comply with the agreement, the business would likewise comply with the law. Mr. Feldman testified that after the settlement agreement was reached, the Vice Division continued to conduct undercover investigations inside Treasures; but none of them resulted in arrests in the past 12 months. He also stated that the monitor did not find any violations during the 4-month period of time established by the agreement for compliance checks.

In November 2013, the City settled another lawsuit involving Treasures and 15 other SOBs.¹⁴ A new division of HPD was created to combat human trafficking. According to Mr. Feldman, Treasures contributes significant sums to fund the newly created division. Mr. Feldman testified that, if the renewal application is not granted, Treasures could no longer participate in the agreement. In addition to Treasures’s monetary contributions, Mr. Feldman stated that Treasures provides a free flow of information which helps the City to combat the larger problem of human trafficking. This information includes the names of dancers who have been terminated or suspicious individuals. Without this information from Treasures, Mr. Feldman believes Houston’s efforts to combat human trafficking would be impeded.

¹³ Resp. Ex. R2-R6, R8-R13, R15.

¹⁴ Resp. Ex. R30.

Although the Harris County Sheriff's Department arrested two persons for prostitution at Treasures on dates between when the two lawsuits were settled, Mr. Feldman stated that he believes Treasures was in compliance with the settlement agreements because they reported the arrests to the City, took remedial measures to terminate the dancers, and provided information to the City to track those individuals. He testified that it would be naïve to think prostitution or other inappropriate activity will not occur at an SOB. According to Mr. Feldman, it is more important to foster transparency and relationships so that the business will monitor, report, and voluntarily take corrective actions. Mr. Feldman believes the human trafficking is a more severe problem than prostitution and illegal drug transactions and said Treasures has contributed and assisted in combatting human trafficking by its changed manner of operation.

Mr. Feldman testified that Treasures has become a good citizen of the City. He does not believe Treasures poses a threat to the general welfare, health, peace, morals, and safety of the people. As the City Attorney speaking on behalf of the city, Mr. Feldman does not object to the granting of the renewal application.¹⁵

IV. ARGUMENTS AND ANALYSIS

Staff argues that the manner in which Respondent may conduct its business warrants the refusal of the permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Staff argues that the best evidence of how Respondent may operate in the future is how it has operated in the past.

Respondent contends Treasures has changed and now complies with applicable law. According to Respondent, the following factors indicate that the place or manner in which Respondent may conduct its business will not be contrary to the general welfare, health, peace, morals, safety, and sense of decency to the community: no arrests or violations occurred in the past 12 months at Treasures, despite undercover investigations by the Vice Division, the City monitor, and TABC inspectors; Treasures has taken measures to operate in compliance with the settlement

¹⁵ Code § 11.41. The TABC may give due consideration to the recommendations local officials, including the city attorney of the city in which the premises sought to be licensed are located.

agreements, and the City is satisfied with its manner of operation; and the alleged violations are unadjudicated administrative cases based on HPD investigations that resulted in only three convictions.

First, to address the issue of the dancers, the ALJ finds that Respondent is responsible for the conduct its dancers on the licensed premises for purposes of the Code. The evidence showed that the prostitution and drug sales were pervasive and possibly encouraged by Respondent's practice of having private areas for customers and dancers to use.

As to whether the place or manner of operation warrants refusal of the application, the ALJ examines first the place of operation. It is undisputed that the location is permitted to operate as an SOB. Therefore, the ALJ does not find that the place of operation warrants the refusal of the application.

As to the manner of operation, the ALJ agrees that Respondent's past manner of operation is a good indicator of its future manner of operation. The parties disagree about the review period of this renewal protest. The ALJ determines that a 2-year review period is appropriate in this case for three reasons. First, a permit must be renewed every 2 years. Therefore, an opportunity exists to protest the renewal application every 2 years for violations that occur during the time. Second, Respondent's permit history shows that the previous renewal application of July 2011 was protested. The ALJ in that protest hearing examined Respondent's permit history up to the date of the hearing on March 29, 2012. After a full evidentiary hearing, the ALJ found the evidence was insufficient to show that Respondent's operation created an unusual condition. The renewal application was therefore granted. The renewal period that has not been previously reviewed or protested is the past 2 years. The last violation date considered in the 2011 application case was September 27, 2011. Finally, a 2-year review period is reasonable because the Code and TABC's rules provide indirect guidance on review periods. Sale to minor violations, for instance, have a 36-month review period.¹⁶ Repeat violations within a period of 36 consecutive months may result in enhanced penalties. Similarly, health, safety, and welfare violations have a 36-month review period: whereas, a major

¹⁶ Code § 106.13.

regulatory violation has a review period of 24 months. For these reasons, the ALJ finds that a 2-year review period is reasonable in this protest hearing.

The ALJ finds that during the 2-year renewal period that is the subject of the protest, Treasures had a mixed compliance history. The ALJ finds that the credible evidence is sufficient to show all the alleged violations occurred on the licensed premises. The violations are listed in Findings of Fact Nos. 8-22.

In spite of the fact that the evidence shows a large number of violations occurred, the ALJ agrees with Respondent that these administrative violations have not been adjudicated in a manner that would allow the Administrator to impose specific sanctions for those violations as a result of this proceeding. These violations may have warranted a suspension or cancellation if Staff had sought such penalty under Code § 11.61. However, this hearing involves the protest of the renewal application. Therefore, the ALJ is required to address only whether Respondent *may conduct* its business in a place or manner that warrants denial under Code § 11.46(8).

Respondent argues that it has changed its manner of operation to show that it may conduct business in compliance with the law. Training is provided to help managers detect and stop any illegal activity. Treasures agrees to report any suspicious or illegal activity to the City. Booths, rooms, and walls that previously provided privacy were removed. Lighting was improved to increase visibility. Treasures conducts background checks and denies employment to anyone convicted of drugs or prostitution. Purses, bags, and lockers are checked for drugs and other paraphernalia. Two licensed security guards monitor the premises 24 hours a day, 7 days a week. Treasures does not allow any misconduct or criminal activity.

Generally, the ALJ is skeptical when a business, facing a protest or suspension/cancellation case, suddenly and recently comes into compliance with the law. Moreover, if there were no complaints or investigations conducted, then a clean history of no-violations would not be difficult to garner. However, the evidence shows that the Vice Division continued to conduct undercover investigations at Treasures after December 5, 2012. Additionally, a monitor for the City conducted

undercover investigations during a 4-month period after December 2012. TABC also conducted inspections on May 11, 2012; June 6, 2012; June 14, 2012; July 27, 2012; March 1, 2013; April 13, 2013; July 25, 2013; September 7, 2013; December 19, 2013; and January 3, 2014. Despite numerous investigations and inspections, the evidence shows that there have been no arrests or violations at Treasures in the past 12 months. It appears that the changes implemented by Treasures to its manner of operation have successfully prevented or deterred any violations.

The ALJ finds that in a 2-year period of time, from April 2012 to January 2013, Treasures had violations during nine months. On the other hand, Treasures has demonstrated compliance with the law during the latter 12 months. The period of compliance is significant and exceeds the period of time Treasures was out of compliance. Furthermore, despite the fact that most of the violations in this case were the result of the City's investigation and HPD cases, the City is satisfied with Respondent's manner of operation. The City Attorney, who protested the 2011 renewal application, testified that he believes Treasures is a law-abiding business and is not a threat to the health, safety, and welfare of the community. Thus, the City does not object to the granting of the application. In fact, aside from public comment, the City is the only member of the community to take a position on how Respondent's manner of operation may affect "the people and the public sense of decency." No citizens of the community protested the renewal application.

For these reasons, the ALJ finds that the preponderance of the evidence did not show that the place or manner in which Respondent may conduct its business warrants the refusal of the permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Therefore, the ALJ does not recommend the denial of Respondent's renewal application.

V. FINDINGS OF FACT

1. D. Houston, Inc. d/b/a Treasures (Applicant/Respondent/Treasures) has filed a renewal application with the Texas Alcoholic Beverage Commission (Commission or TABC) for its mixed beverage permit MB256488 and mixed beverage late hours permit LB256489, for premises located at 5647 Westheimer, Houston, Harris County, Texas.

2. TABC protested the renewal application based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency.
3. A Notice of Hearing dated July 25, 2013, 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. An order dated November 22, 2013, reset the hearing date to January 16 and 17, 2014.
4. On January 8, 2014, Staff filed an amended Notice of Hearing.
5. On January 16, 2014, a two-day hearing was convened in this matter in Houston, Texas, before ALJ Lindy Hendricks. TABC appeared and was represented by Sandra Patton, staff attorney. Respondent appeared and was represented by attorneys Ronald Monshaugen and Albert Van Huff. The hearing concluded on January 17, 2014, and the record was closed that same day.
6. Respondent's administrative violation history shows the 2011 allegations of public lewdness were unfounded, and the 2011 renewal application was granted after a protest hearing.

Violation Date	Violation(s)	Disposition
10/28/2011	Place or manner (misc.), intoxicated permittee, and public lewdness ¹⁷	ALJ found no violation
08/24/2011	Place or manner (renewal protest)	Application granted
10/20/2010	Public lewdness	60 days or \$102,000
02/18/2010	Public lewdness	Included in the settlement agreement that resolved the 10/20/2010 public lewdness violation.
02/08/2010	Sale of drugs and public lewdness	Included in the settlement agreement that resolved the 10/20/2010 public lewdness violation.
08/27/2009	Soliciting alcohol and prostitution	Included in the settlement agreement that resolved the 10/20/2010 public lewdness violation.
05/13/2009	Public lewdness	Included in the settlement agreement that resolved the 10/20/2010 public lewdness violation.

¹⁷ The allegations of prostitution were settled with a finding of lewd or vulgar acts and categorized as "public lewdness."

12/05/2008	Public lewdness, soliciting alcohol, prostitution, and place or manner (misc.)	Included in the settlement agreement that resolved the 10/20/2010 public lewdness violation.
01/29/2009	Place or manner (misc.)	3 days or \$900
09/10/2009	Breach simple	5 days or \$1,500
01/11/2008	Prostitution and soliciting alcohol	26 days or \$3,900
03/23/2007	Public lewdness	10 days or \$1,500
07/29/2005	Possession of unfit alcohol	Written warning
06/11/2004	Sale during prohibited hours	Written warning
	Consumption during prohibited hours	5 days or \$750
05/09/2002	Sale to intoxicated person, intoxicated permittee, and prostitution	40 days or \$6,000
12/17/2001	Public lewdness	10 days or \$1,500
05/19/2000	Intoxicated permittee	10 days or \$1,500
04/09/2000	Public lewdness	Dismissed with prejudice
01/08/2000	Possession of unfit alcohol	Written warning
01/10/1999	Possession liquor without stamps and unfit alcohol	Written warning
08/01/1997	Misc. violations, public lewdness, inspection refusal	Written warning
11/13/1996	Sale of drugs, public lewdness, solicit alcohol	20 days or \$3,000

7. Respondent is responsible for the conduct of the dancers on its licensed premises.
8. On April 18, 2012, Respondent's agent, servant, or employee (namely Gena Jones) sold a narcotic (namely cocaine) to Officer Castro on the licensed premises.
9. On April 18, 2012, Ms. Jones solicited or permitted solicitation of persons for sexual purposes with Officer Castro when she agreed to perform oral sex in exchange for \$300 to \$400.
10. On April 21, 2012, Respondent's agent, servant, or employee (namely Nicole Marie Reilly) sold a narcotic (namely ecstasy) to Officer McIntyre on the licensed premises.
11. On April 21, 2012, Ms. Reilly solicited or permitted solicitation of persons for sexual purposes when she agreed to have sex for \$300 a half-hour or \$500 an hour.
12. On April 25, 2012, Respondent's agent, servant, or employee (namely Brittani Sparrow) sold a narcotic (namely cocaine) to Officer Dunn on the licensed premises.
13. On April 25, 2012, Respondent's agent, servant, or employee (namely Bianca Delgado) solicited or permitted solicitation of persons for sexual purposes with Officer Romano when she agreed to have sex in exchange for \$1,000.

14. On April 26, 2012, Respondent's agent, servant, or employee (namely Kata Csuthyra) solicited or permitted solicitation of persons for sexual purposes with Officer Rippey when she agreed to perform oral sex in exchange for \$350.
15. On April 26, 2012, Respondent's agent, servant, or employee (namely Ramsi Bowling) solicited or permitted solicitation of persons for sexual purposes with Officer Lewis when she agreed to perform oral sex in exchange for \$150.
16. On April 26, 2012, Respondent's agent, servant, or employee (namely Camille Martin) solicited or permitted solicitation of persons for sexual purposes with Sgt. Espinoza when she agreed to perform oral sex in exchange for \$300 or straight sex for \$500.
17. On April 26, 2012, Respondent's agent, servant, or employee (namely Ashly Carrion) was having sex with a customer on the licensed premises.
18. On May 3, 2012, Respondent's agent, servant, or employee (namely Sompert Curry and Natalee Bettis) solicited or permitted solicitation of persons for sexual purposes when they agreed to perform oral sex on each other in exchange for \$500. Ms. Curry and Ms. Bettis engaged in oral sex with one another on the licensed premises.
19. On August 2, 2012, Respondent's agent, servant, or employee (namely Shannon Green) solicited or permitted solicitation of persons for sexual purposes with Officer Laugermann when she agreed to perform oral and straight sex in exchange for \$500.
20. On November 2, 2012, Respondent's agent, servant, or employee (namely Shavon Stevens) solicited or permitted solicitation of persons for sexual purposes with Officer Hall when she agreed to perform oral and straight sex in exchange for \$1,000.
21. On November 27, 2012, Respondent's agent, servant, or employee (namely Bobbi Jo Ingram) solicited or permitted solicitation of persons for sexual purposes with Deputy Thomas when she agreed to perform oral and straight sex in exchange for \$100.
22. On January 3, 2013, Respondent's agent, servant, or employee (namely Tenika Lightfoot) solicited or permitted solicitation of persons for sexual purposes with Deputy Thomas when she agreed to perform oral and straight sex in exchange for \$625.
23. Respondent settled a nuisance lawsuit with the City of Houston and the State of Texas in December 2012 and January 2013, respectively.
24. Respondent settled a sexually oriented business (SOB) lawsuit with the City in December 2013.
25. Respondent modified its manner of operation to include training to detect and stop any illegal activity.

26. Respondent agreed to report any suspicious or illegal activity to the City.
27. Respondent removed booths, rooms, and walls that previously provided privacy and improved lighting to improve visibility inside the club.
28. Respondent conducts background checks and denies employment to anyone convicted of drugs or prostitution.
29. Respondent checks purses, bags, and lockers for drugs and other paraphernalia.
30. Respondent hired two licensed security guards to monitor the premises 24 hours a day, 7 days a week.
31. Respondent's policy is to not allow any misconduct or criminal activity on the premises.
32. The City does not object to the granting of the renewal application.
33. No citizen of the community protested the place or manner of operation.
34. During the 2-year renewal period, Respondent had a 9-month period of time in which violations were observed, but there were no arrests or violations during the past 12 months.
35. During the 2-year renewal period, Respondent had a mixed compliance history, but the period of compliance outweighs the period of non-compliance.

VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Tex. Alco. Bev. Code chs. 5, 11, and 28, and §§ 6.01 and 11.46(a)(8). Tex. Alco. Bev. Code § 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 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. Based on the above Findings of Fact Nos. 8, 10, and 12, Respondent's agent, servant, or employee sold a narcotic on the licensed premises, in violation of Tex. Alco. Bev. Code §§ 11.61(b)(2), 11.61(b)(7), and 104.01(9).

5. Based on the above Findings of Fact Nos. 9, 11, 13-16, 18-22, Respondent's agent, servant, or employee solicited or permitted solicitation of persons for immoral or sexual purposes, in violation of Tex. Alco. Bev. Code §§ 11.61(b)(2), 11.61(b)(7), and 104.01(7).
6. Based on the above Findings of Fact No. 17, Respondent's agent, servant, or employee engaged in or permitted conduct on the premises which is lewd, immoral, or offensive to public decency, in violation of Tex. Alco. Bev. Code §§ 11.61(b)(2), 11.61(b)(7), and 104.01(7).
7. Based on the above Findings of Fact Nos. 25-36, the place or manner in which Respondent may conduct its business does not warrant the refusal of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, pursuant to Tex. Alco. Bev. Code § 11.46(a)(8).
8. Respondent's renewal application of mixed beverage permit MB256488 and mixed beverage late hours permit LB256489 should be not denied based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency pursuant to Tex. Alco. Bev. Code Ann. § 11.46(a)(8).

SIGNED March 12, 2014.



LINDY HENDRICKS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS