

**CITY OF MINNEAPOLIS  
CITY COUNCIL  
PUBLIC SAFETY AND REGULATORY SERVICE COMMITTEE**

In the Matter of the Class E on-sale  
Wine with Strong Beer License with Sunday Sales,  
Held by Reyes and Fele, L.L.C.  
Db a Carne Asada Fresh Mexican Grill

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATIONS**

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This matter came on for a Technical Advisory Committee (“TAC”) meeting on Wednesday July 20, 2005 at 12:30 p.m. in Room 1 of City Hall, 350 South Fifth Street, Minneapolis, MN 55415. The TAC meeting was held to discuss issues related to the operation of Reyes and Fele LLC, dba Carne Asada Fresh Mexican Grill (“Carne Asada”), located at 809 East Lake Street, Minneapolis, Minnesota 55407 pursuant to a Notice to Appear, dated July 6, 2005. Present at the TAC meeting was the following representative of Carne Asada: Mr. Modesto Reyes (Owner). Also present were the following representatives of the City of Minneapolis: Deputy Director of Licenses and Consumer Services Ricardo Cervantes, Licenses and Consumer Services Inspector Ken Ziegler, Sergeant Travis Glampe of the Minneapolis Police, Officer Tom Hendrickson of the Minneapolis Police, Officer Dave Rodriguez of the Minneapolis Police, and Assistant City Attorney Joel Fussy.

Based upon the agreement between the parties and all files and records contained herein, it is recommended that the Committee make the following recommendation:

## **FINDINGS OF FACT**

1. Mr. Reyes is the current owner of Carne Asada at 809 East Lake Street and MeGusta at 1505 East Lake Street.

2. The Minneapolis Police Department License Investigation Division conducts youth alcohol compliance checks in an effort to assure liquor license holders are not serving alcohol to persons under the age of 21.

3. On January 6, 2005 the Minneapolis Police License Investigation Division conducted a youth alcohol compliance check at Carne Asada. Two 18 year old decoys were sent into the restaurant at which point they ordered Corona Beers from the Carne Asada employee behind the counter. Although the employee looked at their ids, she still sold the beers to the decoys. This constituted Carne Asada's first alcohol compliance failure. As a result of the failure, an administrative citation was issued to Mr. Reyes. Mr. Reyes requested an administrative hearing on the citation. On April 13<sup>th</sup> a hearing was held before an administrative hearing officer. The hearing officer found for the City and held that the citation was properly issued. Mr. Reyes was ordered to pay \$500 per a fine schedule detailed in a 08-20-2004 City Council resolution.

4. On March 3, 2005 the Minneapolis Police License Investigation Division conducted a second youth alcohol compliance check at Carne Asada. Protocol dictates that a "recheck" be done any time an establishment fails a check. A 20 year old decoy and an 18 year old decoy were sent into the restaurant at which point the 18 year old ordered a Corona Beer from the Carne Asada employee behind the counter. Without checking the decoy's id, the employee sold the beer to the decoy. This constituted Carne Asada's second alcohol compliance failure. As a result of the failure, an administrative

citation was issued to Mr. Reyes. Mr. Reyes requested an administrative hearing on the citation. On April 13<sup>th</sup> a hearing was held before an administrative hearing officer. The hearing officer found for the City and held that the citation was properly issued. The citation had originally been issued for \$1,000 per a fine schedule established by a 08-20-2004 City Council resolution. The hearing officer reduced the fine to \$250. Following this hearing, Officer David Rodriguez of the Minneapolis Police License Investigation Division met with Mr. Reyes to discuss strategies for improving Carne's Asada's performance in the compliance checks.

5. On April 28, 2005 the Minneapolis Police License Investigation Division conducted a third youth alcohol compliance check at Carne Asada. Two 19 year old decoys were sent into the restaurant at which point they ordered two Corona Beers from the Carne Asada employee behind the counter. Although the employee looked at their ids, he still sold the beers to the decoys. This constituted Carne Asada's third alcohol compliance failure. As a result of the failure, an administrative citation was issued to Mr. Reyes. Mr. Reyes requested an administrative hearing on the citation. On June 13, 2005 a hearing was held before an administrative hearing officer. The hearing officer found for the City and held that the citation was properly issued. Mr. Reyes was ordered to pay \$2,000 per a fine schedule established by a 08-20-2004 City Council resolution. The hearing officer also imposed cost recovery of \$391.51 to be paid by Mr. Reyes.

6. Following the third failure, a meeting was held with Mr. Reyes at the offices of the Minneapolis Police License Investigation Division. Lieutenant Robert Skomra, Sergeant Travis Glampe and Officer David Rodriguez of the License Investigation Division attended along with Mr. Reyes. During this meeting numerous ideas were

presented to Mr. Reyes in an effort to assist him in achieving compliance during an upcoming fourth-compliance check. The consequences of a failure during this upcoming check were also discussed.

7. On June 30, 2005 the Minneapolis Police License Investigation Division conducted a fourth youth alcohol compliance check at Carne Asada. Two 19 year old decoys were sent inside the restaurant, at which point they ordered a Carta Blanca Beer and a Corona Beer from the Carne Asada employee behind the counter. Although the employee looked at their ids, he still sold the beers to the decoys. This constituted Carne Asada's fourth alcohol compliance failure. Rather than issuing an administrative citation, policy dictates that the establishment's liquor license be referred to the City Council for action.

8. Two of the four alcohol compliance violations have resulted in criminal convictions for sale of alcoholic beverages to an underage person against Carne Asada's employees. Criminal charges are pending in the two remaining cases.

### **CONCLUSIONS**

1. On four separate occasions employees of Carne Asada served beer to persons under the age of 21, in violation of Minneapolis City Ordinance 370.10 and Minnesota Statute 340A.503 subd. 2(1). This occurred in a period of less than six months.

2. Minneapolis City Ordinance 363.360 mandates revocation of Carne Asada's Strong Beer and Wine License upon a third criminal conviction of a Carne Asada employee for the sale of alcoholic beverage to an underage person.

3. Minnesota Statute 340A.402 (2) states that a person cannot hold a State of Minnesota retail liquor license for a period of 5 years following revocation of a liquor license that

had been held by said person. As such, a revocation of Carne Asada's On Sale Wine with Strong Beer License would also cause revocation of Mr. Reyes' liquor license at MeGusta.

4. Carne Asada has not demonstrated an ability to properly manage and oversee its employees, despite providing them with proper training.

### **RECOMMENDATIONS**

That the Class E On Sale Wine with Strong Beer License, with Sunday sales issued to Carne Asada be revoked, with the revocation stayed through January 7, 2007 under the following conditions:

1. Carne Asada will not serve alcoholic beverages until January 1, 2006.
2. Carne Asada will pay a \$3,000 fine.
3. Carne Asada will reimburse the City of Minneapolis for its costs in this matter.  
Carne Asada will pay the City \$838.28 in cost recovery. (See appendix A for a breakdown of costs)
4. Carne Asada owes the City \$2391.51 as a result of the hearing officer's decision regarding the April 28, 2005 alcohol compliance failure. Carne Asada will pay this fine.
5. The total of the above fines is \$6229.79. Carne Asada will be allowed to pay these fines in monthly installments over a period of 16 months. Carne Asada will be required to pay \$389.37 by the 15<sup>th</sup> of each month. The first payment will be due September 15, 2005 and the last payment will be due December 15, 2006. Tardiness in making the monthly installments will constitute a violation of this agreement and the stayed revocation will be imposed. In the event of unforeseen

circumstances, the City of Minneapolis will allow payment to be made by the 15<sup>th</sup> of the following month. This is provided that Mr. Reyes gives 7 days notice to the Minneapolis Police License Investigation Division and Mr. Reyes makes the subsequent month's payment in a timely manner. Such a waiver must be approved by the Commander of the Minneapolis Police License Investigation Division.

6. Carne Asada will create a management plan that requires a manager or owner to be present at the establishment during all times of alcohol sales. Said manager or owner will be knowledgeable in the City Ordinances and State Statutes regulating the service of alcohol, along with the policies of Carne Asada regarding alcohol service. This plan will also contain an action plan for any employee found to be in violation of City Ordinances, State Statutes or Carne Asada policies regarding the service of alcohol. The action plan will include any corrective actions including dismissal. This plan will include the names of individuals who will be managing the establishment. Carne Asada will notify Licenses and Consumer Services or the Minneapolis Police Department License Investigation Division of any changes in the management team or management plan. Carne Asada will have this management plan in place prior to resuming alcohol sales. This plan will remain in place during any period of time in which alcohol is sold.
7. Carne Asada will abide by a 07-20-2005 plan (See Appendix B) that was drafted by Mr. Reyes and submitted to the TAC committee. This plan includes the following:

- A. Carne Asada will install a “sophisticated software program” that will verify customer’s identification prior to any alcohol sale.
  - B. Carne Asada will have mandatory alcohol server training for its employees.
  - C. All employees will be given written instructions in English and Spanish explaining procedures of alcohol sales.
  - D. Signage will be placed in the restaurant regarding alcohol sales.
  - E. Management will have weekly meetings with employees regarding alcohol service rules.
8. Carne Asada agrees that they will not violate Minneapolis City Ordinance 370.10 and Minnesota Statute 340A.503 subd. 2(1) by serving alcohol to persons under the age of 21.
9. Any violations of this agreement prior to January 7, 2007 will result in the imposition of the stayed revocation or in the immediate surrendering of Carne Asada’s Strong Beer and Wine License for a period of 5 years.
10. This agreement shall not preclude any other adverse license action, including but not limited to suspension or revocation, for subsequent violations of this agreement, or any federal, state or local laws, ordinances, or regulations.

Carne Asada Fresh Mexican Grill

Minneapolis Police Department

By: \_\_\_\_\_  
Mr. Modesto Reyes  
Owner

By: \_\_\_\_\_  
Lt. Robert Skomra  
Commander, License Division

Date: July 25, 2005

Date: July 25, 2005

### APPENDIX A

06-30-2005	Number Deployed	Time	Cost
Officers	1	1 Hour	\$35.08
Sergeants	2	3 Hours	\$121.71
Decoys	2	2 Hours	\$20.00
Equipment			<u>\$200.00</u>
			\$376.79

07-20-2005	Number Deployed	Time	Cost
Officers	2	2 Hours	\$70.16
Sergeants	1	6 Hours	\$243.42
Deputy Director	1	1.5 Hours	\$64.41
Senior License Inspector	1	1.5 Hours	\$33.10
Assistant City Attorney	1	1.5 Hours	<u>\$50.40</u>
			\$461.49