



City of San Leandro

Meeting Date: April 17, 2017

Staff Report

File Number: 17-192 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.I.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff report to approve a resolution authorizing the City Manager or his designee to perform certain functions pertaining to the business license denial of Pearle Cab pursuant to City of San Leandro Municipal Code Section 2-2-450 and approving the findings of the Hearing Officer to deny the appeal of Ahmad Meher, Owner, regarding the Finance Director's Decision to deny the business license for Pearle Cab

Recommendation

Staff recommends that the City Council approve the finding of the hearing officer, that the business license applicant, Mr. Ahmad Meher, failed to show why the determination of the Finance Director should not be approved. Based upon the evidence submitted and the findings of the Hearing Officer, the business license denial for Pearle Cab should be upheld and the appeal should be denied

Background and Summary

Pursuant to the San Leandro Municipal Code, the Finance Director has the authority to reject a business license whenever the Finance Director has reasonable cause to believe that any statement contained in a business license application is not true or that a business will not comply with any applicable laws. Applicants that have had their license rejected are entitled to appeal the Finance Director's determination within 10 days of mailing the notice of revocation.

The San Leandro Municipal Code designates the City Council as the hearing body for business license rejection determinations. The San Leandro Municipal Code also authorizes the City Council to delegate the authority to conduct the hearing to a hearing officer to make a recommendation to the City Council for a final determination.

On or around August 5, 2016, Mr. Meher submitted a taxicab driver's permit application to the

Police Department. Additionally, Mr. Meher submitted a business license application and a taxicab business permit application to the Finance Director on or around August 8, 2016.

Pursuant to San Leandro Municipal Code Section 6-6-315(h), the Police Department denied the taxicab driver's permit application on October 4, 2016 after determining that Mr. Meher had, within the past ten (10) years, been convicted of an offense involving the use of force or violence upon another person. Mr. Meher never appealed the denial of the taxicab driver's permit.

Pursuant to San Leandro Municipal Code Section 6-6-225(j), the Finance Director denied the taxicab business permit application and corresponding business license application on March 8, 2017 after determining that Mr. Meher had, within the past ten (10) years, "committed an act of violence, dishonesty or fraud with the intent to injure another person or to benefit the applicant or another".

Mr. Meher submitted an appeal of the Finance Director's denial of the taxicab business permit and the business license. Pursuant to the San Leandro Municipal Code, the City Manager considers appeals of the denial of the taxicab business permit and the City Council considers appeals of the denial of the business license.

The proposed resolution authorizes the City Manager, or his designee, to perform the City Council's duties regarding the appeal by Pearle Cab. Transferring this responsibility to the City Manager relieves the City Council of the task of holding the full appeal at a City Council meeting and allows the City Manager's designee to concurrently consider the appeal of the denials of the taxicab business permit and the business license.

The City Manager designated Deputy City Manager Eric Engelbart to serve as the Hearing Officer for the appeal of the denials for the taxicab business permit and business license. Under the San Leandro Municipal Code, the City Council, based upon the record only, may approve or disapprove the Hearing Officer's Findings. On March 23, 2017, the Deputy City Manager, the City's independent Hearing Officer for this case, held a hearing for the applicant to show cause why the action or determination of the Finance Director should not be approved. On April 3, 2017, the Hearing Officer rendered his findings, and decision. The Hearing Officer's findings and decision are attached.

For purposes of expedience for both the business applicant and the City Council, staff recommends that the City Council concurrently and retroactively refer consideration of the business license appeal to the City Manager or his designee, in this case, the Deputy City Manager. Pursuant to the Hearing Officer's Findings and Decision, the applicant failed to show cause why the action or determination of the Finance Director should not be approved, which was to deny the business license. Based upon the evidence submitted and the findings, the business license rejection of Pearle Cab should be upheld and the Pearle Cab owner's appeal of the business license rejection should be denied.



City of San Leandro

Meeting Date: April 17, 2017

Resolution - Council

File Number: 17-193

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION authorizing the City Manager or his designee to perform certain functions pertaining to the business license denial of Pearle Cab pursuant to City of San Leandro Municipal Code Section 2-2-450 and approving the findings of the Hearing Officer to deny the appeal of Ahmad Meher, Owner, regarding the Finance Director's Decision to deny the business license for Pearle Cab

WHEREAS, on March 8, 2017, the Finance Director rejected a business license application and taxicab business permit application for Pearle Cab pursuant to San Leandro Municipal Code Section 2-2-420 after determining that Pearle Cab could not comply with applicable laws and San Leandro Municipal Code Section 6-6-225(j), after determining that Mr. Meher had, within the past ten (10) years, "committed an act of violence, dishonesty or fraud with the intent to injure another person or to benefit the applicant or another" and after determining that Mr. Meher did not have a valid taxicab driver's permit; and

WHEREAS, pursuant to San Leandro Municipal Code Section 2-2-450, Pearle Cab timely submitted an appeal of the Finance Director's decision; and

WHEREAS, City of San Leandro Municipal Code Section 2-2-450 authorizes the City Council to delegate the authority to conduct a hearing for appeals regarding business license revocations to a hearing officer and make a recommendation to the City Council for a final determination; and

WHEREAS, the City Council does hereby wish to delegate this authority to the City Manager or his designee; and

WHEREAS, under San Leandro Municipal Code Section 2-2-450, at an appeal hearing, the applicant must show cause why the action or determination of the Finance Director should not be approved. The findings of the City Council are final and conclusive in

the matter; and

WHEREAS, the decision of the Hearing Officer must be submitted to the City Council which may, on the basis of the record only, approve or disapprove the findings of the hearing officer. The findings of the hearing officer for the business license denial appeal for Pearle Cab are attached hereto, and made a part hereof.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. The Recitals above are true and correct, and made a part of the City Council's decision; and
2. Pursuant to City of San Leandro Municipal Code Section 2-2-450, the City Council hereby authorizes the City Manager, or his designee, to conduct the appeals hearing for the denial of the Pearle Cab business license. The City Manager is authorized to take all appropriate steps to conduct the appeal consistent with City of San Leandro Municipal Code Section 2-2-450; and
3. Pursuant to City of San Leandro Municipal Code Section 2-2-450, the City Council approves the findings of the Hearing Officer; which are as follows:

“The applicant failed to show cause why the action or determination of the Finance Director should not be approved. Based upon the evidence submitted and the findings set forth, the business license denial and taxicab business permit denial are upheld and the appeal is denied.”
4. The City Manager is hereby authorized and directed, on behalf of the City Council, to take all actions necessary or appropriate to carry out and implement the intent of this Resolution.

City of San Leandro
Business License Revocation Appeal
Pearle Cab
Hearing Date: March 23, 2017

Appearing for Appellant:

- Ahmad Meher, Owner

Appearing for City:

- David Baum, Finance Director
- Robert McManus, Police Lieutenant
- Mary Ann Perini, Budget & Compliance Manager

The appeal came for hearing after written notice in accord with San Leandro Municipal Code Section 2-2-450 before Eric Engelbart, Deputy City Manager. Testimony was provided by Ahmad Meher, David Baum, and Lieutenant Robert McManus.

Background

On or about August 5, 2016, Mr. Meher applied for a taxicab driver's permit to operate a taxicab within the City.

On or about August 8, 2016, Mr. Meher applied for a business license and taxicab business permit to operate a taxicab business, identified as Pearle Cab. The application was assigned business license application # 48002.

On October 4, 2016, the San Leandro Police Department denied the taxicab driver's permit. This denial was based on San Leandro Municipal Code Section 6-6-315(h), which states that the Police Department may deny an application for such a permit if the applicant has been convicted within a ten-year period of any offense involving the use of force or violence upon another person. A background investigation of Mr. Meher, which is required for all taxicab permit applicants, revealed that on December 23, 2008, Mr. Meher was convicted of a felony for a violation of California Penal Code Section 245(a)(1) (Assault with a deadly weapon), and also revealed that on October 16, 2012, the appellant had his probation revoked for a violation of California Penal Code Section 242 (Battery). Mr. Meher never appealed the determination of the San Leandro Police Department to deny the taxicab driver's permit.

On March 8, 2017, the applicant's business license application and taxicab business permit that was associated with the above-referenced taxicab driver's permit was also denied by the City's Finance Director. This denial of the taxicab business permit was based on San Leandro Municipal Code Section 6-6-225(j), which provides that if the applicant, within ten years prior to the date of application has committed "an act involving violence, dishonesty or fraud with the intent to injure another person", the

Finance Director may deny the taxicab business permit. Thus, pursuant to San Leandro Municipal Code Section 2-2-420, the Finance Director concurrently denied the business license application for Pearle Cab as the proposed business could no longer operate in compliance with the City's municipal code because Mr. Meher did not have a taxicab driver's permit and the taxicab business permit was denied.

Consistent with San Leandro Municipal Code Section 2-2-450, the applicant timely filed an appeal to the City of the rejection of the business license and taxicab business permit. In his letter of appeal, the appellant asserted that he had spent a lot of money on his taxi vehicle in order for it to pass the inspections that are required by the City for taxicab permits. In addition, the appellant stated that his background "is clean" and that he has "a clean driving record".

Per San Leandro Municipal Code Section 2-2-450, the applicant was provided notification by the City that a hearing date to consider the merits of his appeal was scheduled for March 23, 2017.

Testimony

At the hearing, Police Lieutenant McManus testified to the history of arrests and convictions that was revealed in the applicant's criminal background check.

David Baum, Finance Director also provided testimony explaining the basis for denying the applicant's business license and taxicab business permit. Mr. Meher provided testimony in which he concurred that the convictions outlined in the Police Lieutenant's testimony were an accurate reflection of his criminal record. However, he stated that that convictions happened "a long time ago" and were the result of him being with the "wrong people", who provided him with alcohol.

Findings

1. On August 8, 2016, Mr. Meher applied for a business license and taxicab business to operate Pearle Cab. On both applications Mr. Meher identified a prior conviction for a violation of California Penal Code Section 245(a)(1) (Assault with a deadly weapon).
2. Mr. Meher applied for a taxicab driver's permit on or about August 5, 2016.
3. A background investigation revealed that on December 23, 2008, the applicant was convicted of a felony for a violation of California Penal Code Section 245(a)(1) (Assault with a deadly weapon) and that the applicant had his probation revoked for violating California Penal Code Section 242 (Battery) in 2012.
4. The San Leandro Police Department denied the taxicab driver's permit on October 4, 2016, pursuant to San Leandro Municipal Code Section 6-6-315(h), based upon the above conviction. San Leandro Municipal Code Section 6-6-315(h) provides that the Police Department may deny an application for a taxicab driver's permit if the applicant has been convicted within a ten-year period of any offense involving the use of force or violence upon another person.

5. The Finance Director denied the business license application and taxicab business permit on March 8, 2017. San Leandro Municipal Code Section 6-6-225(j) permits the Finance Director to deny a taxicab business permit where an applicant, within ten years prior to the date of application has committed “an act involving violence, dishonesty or fraud with the intent to injure another person”. San Leandro Municipal Code Section 2-2-420 permits the Finance Director to deny a business license permit when a proposed business will not comply with any applicable laws.

6. The criminal violations committed by Mr. Meher clearly qualify as grounds for the Finance Director to deny a taxicab business permit. Because Mr. Meher cannot obtain a taxicab business permit, granting him a business license to operate a taxicab business in the City would be inconsistent with the City’s municipal code. Mr. Meher did not present testimony refuting the criminal violations that have occurred within the past ten years.

Conclusion

The applicant failed to show cause why the action or determination of the Finance Director should not be approved. Based upon the evidence submitted and the findings set forth, the business license denial and taxicab business permit denial are upheld and the appeal is denied.