



City of San Leandro

Meeting Date: April 17, 2017

Staff Report

File Number: 17-206

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.J.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

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 Royal Ice Cream pursuant to City of San Leandro Municipal Code Section 2-2-450 and approving the findings of the Hearing Officer to uphold the appeal of Patras Gill, Owner, regarding the Finance Director's Decision to deny the business license for Royal Ice Cream

Recommendation

Staff recommends that the City Council approve the finding of the hearing officer, that the business licensee, Mr. Patras Gill, show cause why the determination of the Finance Director should not be approved. Based upon the evidence submitted and the findings of the Hearing Officer, the appeal of the business license denial for Royal Ice Cream should be upheld and the business license should be granted.

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 applicable laws. Applicants that have had their business license application or renewal rejected are entitled to appeal the Finance Director's determination within 10 days of the mailing of the notice of rejection or non-renewal.

The San Leandro Municipal Code designates the City Council as the hearing body for business license rejection or non-renewal determinations. The San Leandro Municipal Code 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 February 16, 2017, Mr. Gill submitted a business license application to the

Finance Department in order to operate a business providing mobile ice cream vendor services in San Leandro. Pursuant to San Leandro Municipal Code Section 2-2-420, the Finance Department denied the business license application on March 8, 2017 after determining that Mr. Gill had provided a statement in the application that was not true.

Mr. Gill submitted an appeal of the Finance Director's denial of the business license. Pursuant to the San Leandro Municipal Code, the City Council considers appeals of denials of business licenses.

The proposed resolution authorizes the City Manager, or his designee, to perform the City Council's duties regarding the appeal by Royal Ice Cream. Transferring this responsibility to the City Manager relieves the City Council from holding an appeal hearing at a City Council meeting and allows the City Manager's designee to consider the appeal.

The City Manager designated Deputy City Manager Eric Engelbart to serve as the Hearing Officer for the appeal of the denial for the 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 licensee 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 showed cause why the Finance Director's denial of the business license should not be approved. Based upon the evidence submitted and the findings of the Hearing Officer, Royal Ice Cream's appeal should be upheld and the business license should be granted.



City of San Leandro

Meeting Date: April 17, 2017

Resolution - Council

File Number: 17-207 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

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

WHEREAS, on March 8, 2017, the Finance Director rejected a business license application for Royal Ice Cream pursuant to San Leandro Municipal Code Section 2-2-420 after determining that the owner and operator for Royal Ice Cream, Mr. Patras Gill, inaccurately submitted a business license application that stated Mr. Gill had not received a citation for a moving violation within the past ten (10) years; and

WHEREAS, pursuant to San Leandro Municipal Code Section 2-2-450, Royal Ice Cream 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 denials, revocations, and non-renewals 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 Royal Ice Cream 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 Royal Ice Cream business license. The City Manager is also 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 showed 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 appeal of the business license denial should be upheld and the business license should be granted."
4. The City Manager is are 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
Royal Ice Cream
Hearing Date: March 23, 2017

Appearing for Appellant:

- Mr. Patras Mashi Gill, owner, Royal Ice Cream

Appearing for City:

- 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 Mr. Patras M. Gill, Mary Ann Perini, and Lieutenant Robert McManus.

Background

On or about February 16, 2017, Mr. Gill and another associate, Mr Jamshaid Bhatti each applied for a business license in order to operate a mobile ice cream vendor business within the City, identified as Royal Ice Cream. The applications were assigned business license application # 16663 and 46627.

On March 8, 2017, the Finance Director denied the business license applications of both parties. The denial was based on San Leandro Municipal Code Section 2-2-420, which states that such applications may be denied “whenever the Finance Director has reasonable cause to believe that any statement contained in an application is not true.”

A driving record investigation of Mr. Gill, which is required for all mobile vendor applicants, revealed that on May 12, 2008, Mr. Gill received a traffic citation for causing a collision with another vehicle in violation of California Vehicle Code (CVC) Section 22107 (Turning and Stopping and Turning Signals). In addition, an investigation of Mr. Gill’s driving record revealed a July 9, 2014 citation for a violation of CVC Section 22350 (Speed Laws). However, on the section of the mobile ice cream vendor application form which requires the applicant to explain whether he or she has been involved in a traffic accident or received a citation for a moving violation, the applicant stated: “none”.

Thus, pursuant to San Leandro Municipal Code Section 2-2-420, the business license applications of both employees of Royal Ice Cream were denied because the lead applicant, Mr. Gill, stated that he had not received any citations for moving violations in the past ten years, which led the Finance Director to conclude that Mr. Gill provided a false statement in his application.

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 for mobile food vending. In his letter of appeal, the appellant asserted that the ice cream vending business was his only means of providing for his family and apologized for any mistakes he may have made in his application.

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 moving violations that were revealed in the applicant's driving record, which consisted of a speeding ticket in 2014 and a rear-end collision in 2008. Mary Ann Perini provided testimony outlining how the applicant's driving record was inconsistent with statements made in the application, which led to the Finance Director's decision to deny the application.

Mr. Gill, the applicant, provided testimony in which he acknowledged that if his driving record listed the aforementioned moving violations, then he did not dispute the veracity of those records. He also acknowledged that his command of the English language was limited and so he had received assistance from another person in filling out the application forms. As a result, any failure to acknowledge the two moving violations was not intentional and was simply a function of not having properly understood the application questions. Mr. Gill also testified that he been driving an ice cream truck for a living in San Leandro for many years without incident and that this business provided him and his family members with their only source of income. Therefore, he contended that a denial of his business license would create a severe hardship for him and his family.

Findings

1. On or about February 16, 2017, Mr. Gill and another associate, Mr. Jamshaid Bhatti each applied for a business license in order to operate a mobile ice cream vendor business within the City, identified as Royal Ice Cream. The applications were assigned business license application # 16663 and 46627.
2. A driving record investigation revealed that on May 12, 2008, the applicant received a traffic citation for causing a collision with another vehicle in violation of California Vehicle Code (CVC) Chapter 6, Section 22107 (Turning and Stopping and Turning Signals). The investigation also revealed a July 9, 2014 citation for a violation of CVC Chapter 7, Section 22350 (Speed Laws).
3. On March 8, 2017, the Finance Director denied the business license applications of both parties associated with Royal Ice Cream. The denial was based on San Leandro Municipal Code Section 2-2-420, which states that such applications may be denied

“whenever the Finance Director has reasonable cause to believe that any statement contained in an application is not true.”

4. The applicant showed cause why the action or determination of the Finance Director should not be approved. The applicant provided a plausible explanation for the inaccurate information contained in the business license application which suggests that he did not intentionally omit information. Based upon the evidence submitted and the findings set forth, the appeal of the business license denial should be approved and the business license granted.

Conclusion

The applicant showed cause why the action or determination of the Finance Director should not be approved. More specifically, the applicant sufficiently demonstrated to the hearing officer that the failure to acknowledge two prior California Vehicle Code violations on his business license application for mobile food vending was not an intentional omission but was rather an unintentional mistake. Based upon the evidence submitted and the findings set forth, the appeal of the business license denial is approved and the business license granted for business license application # 16663 and 46627.

Prepared by: Eric Engelbart, Deputy City Manager