

DOCKET NO. 586333

IN RE NA OK, INC.	§	BEFORE THE
D/B/A CLUB INFERNO	§	
RENEWAL APPLICATION	§	
	§	TEXAS ALCOHOLIC
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-0944)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 18th day of April, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Sarah G. Ramos. The hearing convened on October 5, 2000, and closed on December 15, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 14, 2001. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. Respondent filed Exceptions to the Proposal for Decision on April 5, 2001. Petitioner did not file a response.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

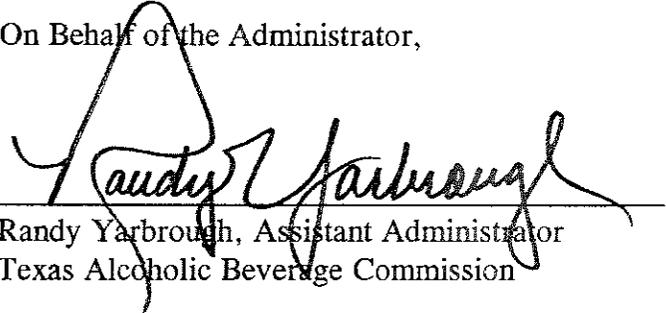
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the **renewal applications are hereby DENIED**.

This Order will become final and enforceable on May 9, 2001, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 18th day of April, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

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Licensing Division

DOCKET NO. 458-00-0944

NA OK, INC. D/B/A CLUB INFERNO	§	BEFORE THE STATE OFFICE
TRAVIS COUNTY, TEXAS (586333)	§	
	§	
PERMIT RENEWAL APPLICATION	§	OF
FILED WITH THE TEXAS ALCOHOLIC	§	
BEVERAGE COMMISSION	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

If the Texas Alcoholic Beverage Commission (TABC) reasonably believes a permittee will conduct its business in a way that endangers public peace and safety, it may deny a renewal permit. In this case, evidence introduced by TABC's Staff and other protestants showed several assaults, many involving the permittee's employees, had occurred on the licensed premises. Even though the permittee argued it would make changes to minimize any harm to the public, the Administrative Law Judge finds the permittee's history a more persuasive indicator of possible future performance and recommends that TABC deny the renewal application.

I. Procedural History, Jurisdiction, and Notice

There were no disputed notice and jurisdiction issues. Therefore, those matters are addressed only in the Findings of Fact and Conclusions of Law.

The hearing for this case was conducted October 5-6, 2000, in State Office of Administrative Hearings facilities at 1700 North Congress, Suite 1100, Austin, Texas. TABC staff attorney Dewey A. Brackin represented Staff. Attorney E. Eugene Palmer represented NA OK, Inc. d/b/a Club Inferno (Applicant), which sought renewed mixed beverage and mixed beverage late hours permits for the premises located at 222 East Sixth Street, Austin, Texas. After the hearing, the ALJ referred the case to mediation. The mediation was unsuccessful, and the contested-case record closed on December 15, 2000, after the parties filed closing briefs.

II. Discussion

A. Legal Standard

TABC may deny a renewal application if it has reasonable grounds to believe and finds that:

the place or manner in which the 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.¹ The licensed premises includes the grounds and all buildings . . . if they are directly or indirectly under the control of the same person.²

¹TEX. ALCO. BEV. CODE ANN. (Code) (Vernon 1995 and Supp. 2000)§11.46(a)(8).

²Code §11.49.

B. Evidence

Law enforcement officers, TABC staff members, and local organization representatives testified that the Applicant's business, Club Inferno, receives a high number of police calls and draws gangs to East Sixth Street. The club allows minors to enter, stays open two hours later than other Sixth Street clubs, and uses a disc jockey instead of a live band.

Akram Sami Nasreddine, Applicant's president and sole stockholder, testified that operations had recently improved and would improve even more after he makes contemplated changes, such as closing earlier and hiring a live band (Staff Ex. 2).

1. Witnesses

- **TABC Agent Kirk Dalchau**

Employed by TABC since 1988, Agent Dalchau is currently assigned to work with the Austin Police Department (APD). One way he determines whether to recommend TABC action against a permittee or licensee is by reviewing APD reports. When APD records a call, it does not necessarily mean an arrest was made; it could simply mean an officer was called to assist someone.

Agent Dalchau gathered 1998 and 1999 police data showing ninety calls were made to Applicant's club, thirty-five that had case reports. The case reports detail why an officer was called to the club. In the reports, thirteen assaults were described, nine involving Applicant's employees. Applicant did not report the assaults to TABC, even though permittees are required to report them. Thirteen cases of theft were also reported (Staff Ex. 11).

Agent Dalchau is a liaison with the Downtown Austin Alliance (DAA). He attended the meeting when DAA decided to protest Applicant's renewal request. Agent Dalchau also received complaint calls or letters from the Austin Convention and Visitors Bureau, Central Presbyterian Church, Austin Hotel and Motel Association, and APD (Staff Ex. 3). Based on what he learned from protests and complaints and on the number of calls for APD service, Agent Dalchau decided Staff should join the protest.

As to Applicant's operations, Agent Dalchau testified that it is not against the law for a club to remain open all the time, as long as the club stops serving alcohol at 2:00 a.m. There is also no law prohibiting a minor from entering a club where alcohol is served. And Mr. Nasreddine has not failed to cooperate with Staff.

Agent Dalchau also testified about Staff's exhibit 12, an analysis of Sixth Street activity. It lists the number of police calls and acts involving police at various locations from January 1 through September 30, 1998. The column for Club Inferno shows four assaults, three instances of public intoxication, thirty-four disturbances, and forty-nine "all other" situations. But the exhibit does not always distinguish activities by whether they occurred inside or outside the club; they could have been placed from the pay phone outside.

- **Lt. Carl Zimmerman, APD**

An APD lieutenant since 1996, Lt Zimmerman supervises the walking and mounted police on Sixth Street. He frequently works in the evening and also receives information from APD sergeants about Sixth Street gang activity.

Club Inferno is at the northwest corner of Sixth and San Jacinto Streets. San Jacinto Street is the only north-south street between Interstate 35 and Congress Avenue that is not closed to vehicular traffic on weekends. The lieutenant said that San Jacinto Street attracts gangs because cars cruise through the San Jacinto/Sixth Street intersection, and persons on the street and in the vehicles flash gang signs to each other.

For his commander's signature, Lieutenant Zimmerman wrote the APD complaint letter (Staff ex. 9). It summarizes computer-aided dispatches to Club Inferno for the ninety-day period ending September 9, 1999. There were seven calls for service: two 911 hang-up calls, two disturbance calls, one EMS-assist call (an intoxicated person was passed out in front of the club), and one suspicious person call. From January 1, 1999 to September 9, 1999, there were eighteen offense reports written at the specific location: four assaults, six thefts, one graffiti offense, five alcohol violations, and two public intoxication arrests.

According to Lt. Zimmerman, an APD protest was appropriate not only because of the police calls but also because Club Inferno's late hours contribute to Sixth Street violence. Most Sixth Street bars close at 2:00 a.m. on weekends. But Club Inferno, Roxy's, and Paradox stay open until 4:00 a.m. Large crowds gather after hours in the 200 block of East Sixth Street; they block the sidewalks, spill out into the roadway, and fight.

Lt. Zimmerman also thought crime was attributable to persons cruising down San Jacinto, which is not an area within Applicant's control. But controlling the crowds in the Club Inferno area requires a disproportionate percentage of police resources; it is the scene of the second highest number of fights in the area. At least once each weekend night, at 2:30 a.m. or later, there is a fight attributable either to Club Inferno or Roxy's across the street. All fifteen to twenty officers in the area are needed to break up the fights.

Like Agent Dalchau, Lt. Zimmerman could cite no particular problem with Mr. Nasreddine and thought the club could improve its business if it changed its name, had live music, closed at 2:00 a.m., and allowed only persons twenty-one and over to come in.

- **TABC Lieutenant David Ferrero**

Lt. Ferrero oversees a seventeen-county TABC area; two sergeants, who supervise fourteen agents, report to him. The lieutenant is familiar with Mr. Nasreddine and said he usually addressed TABC concerns when he personally supervised the club each day. However, when Mr. Nasreddine does not closely monitor one of his business establishments, TABC receives more complaints.

Since the protest was filed, TABC has received no new complaints against Club Inferno. Mr. Akram also owns Roxy's. DAA filed a complaint about Roxy's, but Staff decided not to protest renewal because Staff and Mr. Akram were able to work out an agreement.

- **Charles Betts, DAA**

As Executive Director of Austin DMO, Inc. d/b/a Downtown Austin Alliance, Mr. Betts advocates on behalf of the downtown area's economic well-being. DAA, was incorporated in May 1992, to revitalize downtown Austin. DAA's area is bordered by Interstate 35 on the east, Martin Luther King Boulevard on the north, San Antonio Street on the west, and generally, Townlake on the south. The district works to improve security, supplement street and sidewalk maintenance, and enhance other downtown services (Applicant's Ex. 1-3). DAA works with APD and TABC and contracts with the city to fund the downtown Ranger program. Funded by property assessments from 240 taxpaying members, DAA also manages the downtown property improvement district.

From police reports, DAA learns where crime hot spots are, and if supported by a DAA staff analysis, the security committee, and the DAA board of directors, the organization protests renewal applications. Based primarily on APD's tally of calls for police service (Staff Ex. 12), DAA filed its initial protest by letter dated August 5, 1999 (Staff Ex. 20). Although Mr. Betts has not spoken directly to Allan Shivers, TABC's Chairman, about the protest, he sent Mr. Shivers a letter, dated April 11, 2000, expressing strong opposition to Applicant's renewal (Applicant's Ex. 4). In the letter, Mr. Betts compared the high number of police calls to the 1999 business volume.³

The report is based on APD records from January 1, 1999, to June 30, 1999, and on TABC reports from 1995 to 1999. Club Inferno ranks seventh highest on the list based on eleven APD calls. The club Roxy, Dance 'Til Dawn had the highest number, thirty-three. Sixteen clubs had five or fewer APD calls. The list shows TABC cases filed since 1995, and no cases are listed for Club Inferno. Two other clubs had the highest number of TABC cases filed, Paradox Dance Club with eight and Buffalo Club with six. Nine of the twenty-seven establishments on the list feature live music. Of those nine, seven had the lowest number of police calls.

- **David Kreider, City of Austin**

Mr. Kreider is Austin's economic development manager. In his deposition (Applicant's exhibit 10), he describes the relationship between the DAA and the City of Austin.

- **Paul Hansen, Club Owner**

Mr. Hansen, formerly a police officer in a Chicago suburb, owns the restaurant and sports pub BW3, next door to Club Inferno. Mr. Hansen is present at BW3 two nights a week. His pub has seventeen televisions, three with large screens, and his business caters to patrons in their thirties. After 8:00 p.m., BW3 does not allow anyone under age twenty-one into its club.

³The letter says Club Inferno's 1999 volume was \$159,252. Mr. Nasreddine's application says the 1998 business volume was \$229,486.

As described by Mr. Hansen, Club Inferno is a teen dance club. A large number of people congregate outside Club Inferno because they do not want to pay the cover charge. Club Inferno's patrons constantly ask BW3 employees if they may use BW3's restrooms, saying Club Inferno's restrooms are too busy.

Young males have threatened his door keeper and customers. They have also blocked BW3's sidewalk and door. BW3 patrons feel intimidated, and some have refused to enter BW3 because of the crowds. Two of his customers, very upset, told BW3 employees they had been personally threatened by persons outside. One customer was pushed and threatened with being beaten; the other was verbally harassed. In addition to making threats and blocking doors, young males create a combative atmosphere; there are a number of fights.

Once, during a fight, Club Inferno's bouncer broke BW3's window. The bouncer said Club Inferno would cover the cost--\$700 to board up the window and \$200 to replace the glass. However, Club Inferno paid nothing to repair the damages.

- **Jeff Trigger, Driscoll Hotel Manager**

On behalf of the Driscoll Hotel at the corner of Sixth and Brazos Streets and as a director of Austin's hotel and motel association, Mr. Trigger, the Driscoll's manager, opposed the renewal. The Driscoll employs 250 persons. Guests include public figures as well as entertainment celebrities, and safety is the hotel's primary concern. The Driscoll also wants to protect its national and worldwide image. Mr. Trigger considers the number of Sixth Street disturbances detrimental to safety, but he could not connect any specific Sixth Street incidents to Club Inferno.

- **Robert Mitchell, Driscoll Hotel**

The Driscoll's security director, Mr. Mitchell also opposed the renewal. Club Inferno, one block east of the Driscoll, is the dance club closest to the hotel. According to Mr. Mitchell, one primary difficulty with the club is that it remains open after other Sixth Street clubs close at 2:00 a.m. The hotel has been vandalized by persons migrating down Sixth Street after Club Inferno closes at 4:00 a.m.

Mr. Mitchell's job requires him to walk down Sixth Street and talk with police officers; once, in May 1999, he went into Club Inferno to observe activities inside. Mr. Mitchell has seen persons who were fighting outside go into the club and also has seen persons leaving Club Inferno congregate in the streets to fight.

- **Brenda Johnson, Austin Convention and Visitor's Bureau**

Music and film coordinator for the bureau, Ms. Johnson also recommended denial of the application. She echoed safety concerns, noting that sixteen million visitors, who spend about \$1.6 billion, come to Austin each year. Austin's image is essential in attracting visitors. The Bureau also has written letters of concern about other clubs, namely Roxy's and Paradox.

• **Akram Nasreddine, Applicant's President**

An Austin resident since 1983, Mr. Nasreddine has owned and managed several businesses, including a used car lot, a junkyard, a car-repair shop, a used tire shop, and nightclubs.

Mr. Nasreddine said he has no way to control crowds and noise outside the club. He has asked APD many times to close San Jacinto Street, which is only twenty feet from the club's front door. Also, the only pay phone on the block is just outside Club Inferno. People use the phone to call about anything that happens in the club.

Since 1992 or 1993, his employees have screened customers based on age. Persons over twenty-one receive a wrist band when entering the club, and those under twenty-one receive a hand-stamp. Mr. Nasreddine said he had never received a citation for serving minors.

For the fourteen months preceding the hearing, Mr. Nasreddine was at Club Inferno every night, and he said he would continue personally managing the location. He mentioned several other possible methods to improve the club's situation. He would like to reopen it with a new name, Limelight. He thought stopping the music at 2:30 a.m. would help, as would having more live music. Live music generally draws an older crowd, and Club Inferno has had live music only once a month.

Applicant's exhibit 11 details rules for club employees. It requires that anyone entering the club be over the age of eighteen. Further, bartenders are required to notice whether persons without wrist bands are drinking alcohol and to ask them to leave if they do. Bartenders may serve only one drink at a time to someone with a wrist band.

2. Exhibits

Twelve of Staff's exhibits and ten of Applicant's exhibits were admitted into evidence. Certain exhibits are discussed in preceding sections. Other pertinent exhibits reflect that the area on East Sixth Street in Austin from near the intersection of Brazos and Sixth to near the middle of the block between Trinity and Neches is a disorder/crime hot spot; police received 170 calls for assistance to the area from January through August 1999 (Staff Exs. 13-15).

Staff exhibit 11 is an APD incident report concerning activity in 1998 and 1999. It provides supports documents prepared by Agent Dalchau. To illustrate situations inside Club Inferno, some reports are mentioned in the following paragraphs.

On January 1, 1998, a man was attacked by another man and a woman. The bouncer broke up the fight and removed the attackers from the club, but the male attacker returned and hit the victim again (Ex. 11, p. 31).

On March 22, 1998, a bicycle patrol officer was assaulted on the sidewalk outside the club. The officer observed a small disturbance at Club Inferno between a subject and the doorman. The club's manager waved the officer over to assist with the customer, and the customer hit the officer (Ex. 11, pp. 46-48).

On April 20, 1998, an officer was flagged down by three men who claimed to have been assaulted inside Club Inferno. All the men's faces were bruised and swollen. One said he had lost his wallet during the attack. The men said they had asked the club's bouncers for assistance during the fight, but the bouncers threw them out instead of assisting them. One of the bouncers said the three men started a fight and were attacked by about twenty people (Ex. 11, pp. 44-45).

On October 10, 1998, a man was attacked by two or three other men. The victim was taking Polaroid photographs to sell them to patrons. His camera was stolen during the attack (Ex. 11, p. 25-26).

On October 16, 1998, Club Inferno's bartender was assaulted inside the club. It took eighteen stitches to close the wounds to his nose and forehead (Ex. 11, p. 20).

A man was assaulted on May 2, 1999, at Club Inferno. The victim had a large laceration on the left side of his head. As the victim reported the incident, the club's bouncer hit him on the head with a wooden stick and punched him in the right jaw and stomach. The bouncer said he hit the victim after the victim attacked him; the bouncer denied hitting the victim with anything other than his right fist (Ex. 11, p. 11).

On May 28, 1999, an intoxicated man stole a purse, and an officer assisted in locating the purse and returning it to the victim (Ex. 11, p. 35).

A man at Club Inferno was assaulted on July 6, 1999. When police arrived, he was bleeding from a wound he received (Ex. 11, p. 6).

On August 27, 1999, an officer was flagged down by an assault victim who had been inside Club Inferno. She reported being ordered by the club's bouncer to get off the bar counter. She hesitated and asked for assistance because her arm was broken. The bouncer became angry, grabbed the left strap of her shirt, and pulled her off the bar. She fell to her knees. When a friend tried to protect the victim, the bouncer hit the friend in the back of the head (Ex. 11, p. 3).

Police wrote several "minor in possession" citations during April and May 1999 (Ex. 11, pp. 61-68). On September 5, 1999, officers were working undercover in Club Inferno. When they entered the club, the bouncers scattered through the club to warn patrons that they were there. Nevertheless, several minors who had been consuming alcoholic beverages were arrested for providing false identification cards or for drinking alcoholic beverages ordered by persons who were not minors (Ex. 11, p. 52-58).

Pages 73-102 of Exhibit 11 reflect several thefts reported at Club Inferno.

C. Analysis

Applicant argued that its activities were no different than those of any other Sixth Street club. In fact, it did not receive the highest number of police calls, and it had no pending TABC violations. Club Inferno may not be the scene of the most club fights or thefts on Sixth Street. Certainly problems based on San Jacinto Street traffic are not attributable to Club Inferno.

The ALJ agrees that concerned citizens and public officials could do more to promote safety on Sixth Street, such as prohibiting entry of persons under age into clubs where alcohol is sold, closing San Jacinto Street to all vehicles except emergency vehicles, and requiring such clubs to close at 2:00 a.m. But, the fact that other means are available to promote safety and keep peace does not excuse Applicant from complying with those laws already in place.

The evidence cast Applicant's business as unsafe and unpeaceful. The high number assaults inside the club, clearly an area within Applicant's control, was alarming, but the types of assaults was even more striking. It appeared as if Applicant's bouncers were unable to maintain "order" except by inflicting serious injury on customers. In 1999, one patron was hit with a wooden stick, a woman was pulled off the bar counter with such force that she fell to her knees, and the woman's friend was hit when trying to protect her from further injury by the bouncer. Even if the bouncer's story about the April 1998 incident is accepted, three men started a fight and were attacked by twenty people. The large number of attackers indicates a fairly organized group acted together to cause violence. They may have been part of a gang or may have had a riot mentality. In either case, there was no peace and safety for other patrons at the club during the outbreak.

Another indication of lawlessness inside Club Inferno were the bouncers' warnings to minors during police undercover operations. Even though Applicant's employees signed the rules saying underage drinking was prohibited and Applicant instituted the wrist band procedure, these procedures did not prevent minors from getting alcohol. No one could argue that underage drinking is consistent with the public's general welfare, health, peace, and safety. Code §11.46(a)(8).

As for what Applicant could and could not control, it is common knowledge that many people are on Sixth Street on weekend nights, which would make it difficult to maintain order on the sidewalks. But Applicant should have better managed the sidewalk area just outside its door—at least to prevent BW3 customers from being harassed and to prevent BW3's window from being broken.

In its closing brief, Applicant highlighted the prospective nature of the Code provision; it requires inquiry into how Applicant may conduct its business. Mr. Nasreddine mentioned contemplated changes for the club: an earlier closing time, a new name, and more live music. Also, he said he had more actively managed the club in the fourteen months preceding the hearing, and law enforcement officials testified he had addressed their concerns when he was on site every day.

But more convincing than Applicant's plans for the future was its demonstrated performance in the past. For example, even though Applicant's bouncer said Club Inferno would pay for the damage to BW3's property, Applicant did not do so. Perhaps in the emotion of the moment, Applicant is willing to make promises it does not keep. Certainly during 1998, Applicant knew of police and community concerns about "after hours" violence, assaults, thefts, and underage drinking. The only change Mr. Nasreddine made was to be present more often, beginning in August 1999. That was the month the woman with the broken arm was pulled off the bar and one month before the bouncers warned patrons about an undercover operation. Passivity in the face of such serious problems negates what Mr. Nasreddine said he would like to do in the future. Were TABC allowed to issue conditional licenses, requiring Applicant to actually implement safeguards, renewal might be appropriate. But, the record in this case reflects a lack of interest in peace and safety.

There was no factual basis to determine community morals or the sense of decency. However, Code §11.46(a)(8) does not require a finding as to every possible violation. Based on the number of police calls and assaults, especially those assaults involving employees, together with the general manner in which Applicant operated the club (e.g., damaging neighboring property and condoning underage drinking), the ALJ finds that Applicant may conduct its business in a manner violative of the general welfare, health, peace, and safety of the people and recommends denial of the application.

III. PROPOSED FINDINGS OF FACT

1. Applicant holds Mixed Beverage Permit MB419158 and Mixed Beverage Late Hours Permit LB419159 issued by the Texas Alcoholic Beverage Commission (TABC), for premises located at 222 East Sixth Street, Austin, Travis County, Texas.
2. On July 26, 1999, Akram Sami Nasreddine, Applicant's president and sole stockholder, filed a renewal application.
3. After protests were filed, TABC's staff requested a hearing at State Office of Administrative Hearings (SOAH).
4. Staff sent Applicant a hearing notice on April 4, 2000.
5. Applicant's current business, Club Inferno, is a teen dance club.
6. Persons under twenty-one are allowed into the club.
7. The police have the most difficulty with clubs that allow minors.
8. The majority of Sixth Street bars close at 2:00 a.m. Club Inferno, Roxy's, and Paradox stay open later.
9. The later hours contribute to large crowds in the 200 block of East Sixth Street.
10. The Driscoll hotel, which is one block from Club Inferno, has been vandalized by persons moving down the block after the 2:00 a.m. normal closing hours for other Sixth Street businesses.
11. The restaurant and sports pub BW3 is next door to Club Inferno.
12. A large number of people congregate outside Club Inferno because they do not want to pay the cover charge.
13. Club Inferno's patrons ask BW3 employees if they may use BW3's restrooms, saying Club Inferno's restrooms are too busy.

14. Young males outside Club Inferno have threatened BW3's door keeper and customers. They have also blocked BW3's sidewalk and door area.
15. BW3 patrons feel intimidated, and some have refused to enter BW3 because of the crowds blocking the door.
16. There have been a number of fights outside Club Inferno.
17. Once, during a fight, Club Inferno's bouncer broke BW3's window.
18. Although the bouncer said Club Inferno would cover the cost--\$700 to board up the window and \$200 to replace the glass--Club Inferno paid nothing to repair the damages.
19. Although the bouncer said Club Inferno would cover the cost--\$700 to board up the window and \$200 to replace the glass--Club Inferno paid nothing to repair the damages.
20. Applicant should have better controlled the sidewalk area immediately outside its business.
21. Persons who have been fighting on Sixth Street sometimes go into Club Inferno, and persons inside the club sometimes congregate in the streets to fight.
22. At least once each weekend night, there is a fight attributable either to Club Inferno or Roxy's across the street.
23. The fights are often at 2:30 or 3:00 a.m. and require all fifteen to twenty officers in the area to respond.
24. In 1998 and 1999, there were ninety Austin Police Department (APD) calls to Applicant's club or the area outside it.
25. From January 1 through September 30, 1998, for Club Inferno's address, there were APD calls for four assaults, three public intoxication cases, thirty-four disturbances, and forty-nine "all other" situations. The other situations include calls for service, even when officer-initiated.
26. From January 1, 1999 to September 9, 1999, there were eighteen offense reports written at the specific location: four assaults, six thefts, one graffiti offense, five alcohol violations, and two public intoxication arrests.
27. For the ninety-day period ending September 9, 1999, there were seven calls for police service to Club Inferno: two 911 hang-up calls, two disturbance calls, one EMS-assist call (intoxicated person passed out in front of club), and one suspicious person call.

28. Examples of the reasons police were called to Club Inferno include:
- a. On January 1, 1998, a man was attacked by another man and a woman. The bouncer broke up the fight and removed the attackers from the club, but the male attacker returned and hit the victim again.
 - b. On April 20, 1998, three men were involved in a fight but the bouncer refused their requests for assistance, and instead, threw them out of the club saying they had started the fight and were then attacked by about twenty people.
 - c. On October 10, 1998, a man was assaulted inside the club and his Polaroid camera was stolen.
 - d. On October 16, 1998, Club Inferno's bartender was assaulted inside the club. It took eighteen stitches to close the wounds to his nose and forehead.
 - e. A man was assaulted by the bouncer at Club Inferno, on May 2, 1999. The victim's head was deeply cut by a wooden stick.
 - f. On August 27, 1999, a Club Inferno bouncer pulled a woman off the bar counter by grabbing the left side of her shirt. Because the woman's arm was broken from an earlier accident, she fell to her knees in pain from being pulled.
 - g. The injured woman's friend tried to protect her, and the bouncer hit the friend in the back of the head.
 - h. Police wrote several "minor in possession" citations in Club Inferno during April and May 1999.
 - i. On September 5, 1999, officers were working undercover in Club Inferno. When they entered the club, the bouncers scattered through the club to warn patrons that officers were there.
 - j. In spite of the bouncer's warnings, several minors who had been consuming alcoholic beverages on September 5, 1999, were arrested for providing false identification cards or for drinking alcoholic beverages ordered by persons who were not minors.

IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. (Code) §11.46(a)(8) (Vernon 1995 and Supp. 2000).
2. SOAH has jurisdiction to conduct the administrative hearing in this matter and to issue this Proposal for Decision under Code §5.43 and TEX. GOV'T CODE ANN. Chapter 2003 (Vernon 2000).

3. The parties received proper and timely notice of the hearing, as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001 (Vernon 2000).
4. Based upon the Findings of Fact, the manner in which the Applicant's business may be conducted is inimical to the general welfare, health, peace, and safety of the public. Code §11.46(a)(8).
5. The application of NA OK, Inc. d/b/a Club Inferno for a renewal permit should be denied.

SIGNED this 14th day of February, 2001.



Sarah G. Ramos
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS