

**DOCKET NO. 581693**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
J ZAVALA J INC. D/B/A CITY LIGHTS BAR AND GRILL PERMIT/LICENSE NO(s). MB602885, CB & LB	§	ALCOHOLIC
	§	
	§	
CAMERON COUNTY, TEXAS (SOAH DOCKET NO. 458-09-2616)	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** this 8th day of June, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Melissa Ricard. The hearing convened on March 13, 2009 and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 6, 2009. The 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. As of this date no exceptions have been filed.

The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that 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 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 Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on July 2, 2009, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 8th day of June, 2009, at  
Austin, Texas.



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE  
State Office of Administrative Hearings  
5155 Flynn Parkway, Suite 200  
Corpus Christi, TX 78411  
**VIA FACSIMILE TO: (361) 884-5427**

J Zavala J Inc.  
d/b/a City Lights Bar And Grill  
**RESPONDENT**  
2504 N. 27th Ln  
McAllen, TX 78501  
**VIA REGULAR MAIL**

Shelia A. Lindsey  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

SAL/aa

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

May 6, 2009

RECEIVED

MA 2009

TABC HOUSTON  
LEGAL

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA REGULAR MAIL

**RE: Docket No. 458-09-2616/ TEXAS ALCOHOLIC BEVERAGE COMMISSION  
vs. J. ZAVALA J. Inc. d/b/a CITY LIGHTS BAR AND GRILL**

Dear Mr. Steen:

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "Melissa M. Ricard".

MELISSA M. RICARD  
Administrative Law Judge

MMR/MAR

Enclosure

xc Shelia A. Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, Tx 77008- VIA REGULAR MAIL

VIA REGULAR MAIL

Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA MAIL INTERAGENCY MAIL

Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL (with exhibits Nos. \_\_\_\_\_ and \_\_\_\_\_ hearing CDs)

J. Zavala J. Inc., d/b/a City Lights Bar and Grill, 2504 N. 27<sup>th</sup> Lane, McAllen, Tx 78501 - VIA REGULAR MAIL

SOAH DOCKET NO. 458-09-2616

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE STATE OFFICE

J. ZAVALA J INC.  
d/b/a CITY LIGHTS BAR AND GRILL  
PERMIT/ LICENSE NO(s).  
MB602885, LB & CB  
CAMERON COUNTY, TEXAS  
(TABC CASE NO. 581693)

§

OF

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ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against J Zavala J Inc. d/b/a City Lights Bar and Grill (Respondent). The TABC requests the Respondent's conduct surety bond be forfeited in accordance with TEX. ALCO. BEV. CODE ANN. (Code) § 11.11. The Administrative Law Judge (ALJ) grants this request.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on March 13, 2009, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces, County, Texas. The staff of the Commission (Staff) was represented by its counsel, Shelia A. Lindsey by telephone. Respondent did not appear. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of

## II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

CODE § 1(b)(2) and 16 TEXAS ADMINISTRATIVE CODE (TAC) § 33.24(j) provides that the holder of a permit must provide a conduct surety bond with an application for a permit and that the permittee agrees that the amount of the surety bond shall be paid to the state if the permit has three or more adjudicated violations of the Code since September 1, 1995.

Staff introduced three exhibits into evidence:

Exhibit 1 is the affidavit of Amy Harrison, TABC Licensing Department Director, which shows that Permit No. MB-602885, which includes the Mixed Beverage Late Permit and Caterer's Permit was issued to J Zavala J Inc., doing business as City Lights Bar and Grill, 1601 W. Harrison, Harlingen, Cameron County, Texas, by the Commission. Attached to the affidavit is the permit and violation history which shows that three adjudicated violations of the Code have taken place since September 1, 1995, and that Respondent posted Staff Conduct Surety Bond Number 060905, dated June 9, 2005, in the amount of \$5,000, payable to the State of Texas.

Exhibit 2 is the Notice of Hearing dated February 18, 2009, specifying the date, time and location of the hearing for this matter and the allegations against the Respondent which was mailed to the Respondent at its address of record.

Exhibit 3 is the US Postal Service Track & Confirm letter that the Notice of Hearing sent to Respondent by certified mail 7006 0810 0000 2143 1410 was unclaimed, and returned to the TABC on March 11, 2009.

## III. RECOMMENDATION

The notice of hearing, in bold lettering, states in bold face type: If you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in this notice will be deemed admitted as true, and the relief sought may be granted by default. According to TEXAS

ADMINISTRATIVE CODE §155.55, if any party fails to appear at the hearing, any evidence presented and accepted by the court at the hearing will be considered as being true, and the relief sought may be granted by default.

Because Respondent failed to attend the hearing, the allegations in the Notice of Hearing are deemed true and the conduct surety bond should be forfeited.

#### IV. FINDINGS OF FACT

- Permit No. MB-602885, which includes the Mixed Beverage Late Permit and Caterer's Permit was issued to J Zavala J Inc., doing business as City Lights Bar and Grill, 1601 W. Harrison, Harlingen, Cameron County, (Respondent), by the Texas Alcoholic Beverage Commission (TABC).
- 2 The mailing address of Respondent is 2504 N. 27<sup>th</sup> Lane, McAllen, Texas, 78501
  - 3 Respondent posted Staff Conduct Surety Bond Number 060905, dated June 9, 2009, in the amount of \$5,000, payable to the State of Texas.
  - 4 Respondent's permit history shows three or more adjudicated violations of the Texas Alcoholic Beverage Code have taken place since September 1, 1995.
  - 5 TABC staff sent a notice of hearing regarding the violation of the Texas Alcoholic Beverage Code to the Respondent on February 18, 2009. The notice of hearing was returned to sender on March 11, 2009, because it was unclaimed.
  - 6 The notice of hearing also contained the following language in capital letter in 12 point or larger boldface type:  
  

**If you fail to appear at the hearing, the Commission will proceed without you and the allegation (s) in this notice will be deemed admitted as true, and the relief sought may be granted by default.**
  - 7 The hearing on the merits was held on March 13, 2009, at the offices of the State Office of Administrative Hearings, Corpus Christi, Nueces County, Texas. Staff was represented by its counsel, Shelia A. Lindsey. Respondent did not appear and was not represented at the hearing.
  - 8 The hearing proceeded on a default basis, and the factual allegations were deemed admitted.

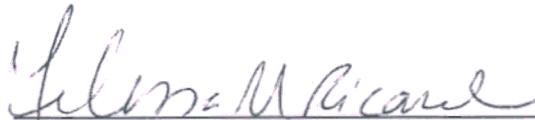
8. The hearing proceeded on a default basis, and the factual allegations were deemed admitted.

### V. CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71.

- 2 The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
- 3 Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
- 4 Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE (TAC) § 155.55.
- 5 Based upon the Findings of Fact and TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) and 16 TAC § 33.24, Staff Conduct Surety Bond Number 060905, dated June 9, 2005, in the amount of \$5,000, should be forfeited.

**SIGNED May 6, 2009.**



MELISSA M. RICARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS