



OFFICE OF
CITY ATTORNEY
CITY OF SAN DIEGO

SAN DIEGO, CALIFORNIA

August 22, 1935.

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DEPUTIES

H. B. DANIEL
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To the Honorable, The Mayor and Council
of The City of San Diego, California.

Gentlemen:

In answer to your request contained in Resolution No.
63435, as follows:

"The City Attorney is hereby requested to give a written opinion on the Council's position relative to the petition of various residents and property owners for elimination of noise from the Tavern Hacienda, 4691 University Avenue."

please be advised that the Council's position in the matter is regulated by Ordinance No. 581 (New Series), and especially in Section 13 thereof.

Section 13 provides two methods by which the Council may suspend or revoke a license for a business of this nature. The first method is based upon an investigation and report of the Chief of Police that the operations of the business result in the violation of some law or ordinance. In the event such a report is received by the Council they may then suspend the license or may revoke and annul such license. However, in the case before us the Chief of Police has reported in writing that there has been no violation of any law or ordinance in connection with the management of this place of business, so, therefore, the Council

probably does not have jurisdiction to revoke the license on such grounds.

The second method provides "for any cause by it deemed sufficient the Council of The City of San Diego may at any time by resolution suspend or revoke any license issued under the terms of this ordinance." The words "for any cause by it deemed sufficient," must be construed as meaning for any cause legally sufficient. In other words the Council cannot simply arbitrarily revoke a license granted under the terms of the ordinance, but must have reasonably sufficient legal grounds for such a revocation.

In the event that the Council as a fact-finding body determines that this place of business is being conducted in such a fashion as to constitute a public nuisance, then I would say that the ordinance gives authority to the Council to revoke or suspend the license.

A "public nuisance" is defined by the Civil Code, Sections 3479 and 3480, as follows:

"Sec. 3479. NUISANCE, WHAT. Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance."

"Sec. 3480. PUBLIC NUISANCE. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."

Mayor and Council - 3.

With such facts that I have before me furnished from the Clerk's file on the subject, and without making any independent investigation of my own, I am forced to conclude that there is not sufficient evidence before the Council to successfully prosecute this place of business as being a public nuisance. Therefore, it is my conclusion that unless and until sufficient evidence is before the Council to permit an abatement of the place of business as a public nuisance, the Council may not legally suspend or revoke the license of the Tavern Hacienda.

In the event that there is presented to the Council any evidence that the operators of this place of business are violating any of the provisions of Ordinance No. 581 (New Series), or of any state statute, or that the place is a public nuisance, the Council has jurisdiction to revoke such license.

Respectfully submitted,



C. L. Byers
City Attorney.

CLB/S