



April 30, 2008

Roberto E. Anazco Sanchez  
c/o Mister Salsa Dine & Dance Place  
206 – 1483 Douglas Street  
Victoria BC V8W 3K4 **Registered Mail**

Dear Mr. Sanchez:

**Re: Roberto Anazco Sanchez, dba Mister Salsa Dine & Dance Place, Victoria BC  
Food Primary Licence No. 302373 Cases: EH08-033, 037, 039**

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This letter constitutes a decision by the general manager of the Liquor Control and Licensing Branch pursuant to Section 20 of the *Liquor Control and Licensing Act* (the "Act"), regarding Notices of Enforcement Action EH08-003, EH08-037 and EH08-039 (the "NOEAs") issued to the above named licensee.

EH08-033 (dated April 8, 2008)

1. The branch alleges that on March 9, 2008, the licensee contravened section 43(2)(b) of the *Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied. The proposed penalty is a seven day suspension of the liquor licence (item 11, of Schedule 4 of the *Liquor Control and Licensing Regulation* (the "*Regulation*")).

EH08-037 (dated April 7, 2008)

2. The branch alleges that on March 14, 2008, the licensee contravened section 6 (4) of the *Regulation* by permitting more persons in the licensed establishment than the person capacity set by the general manager and the number of persons in the licensed establishment was more than the occupant load. The proposed penalty is the cancellation of the liquor licence (section 20(2)(e) *Act*).
3. The branch alleges that on March 14, 2008, the licensee contravened section 42(4) of the *Regulation* by allowing liquor to be taken from the licensed establishment. The proposed penalty is the cancellation of the liquor licence (section 20(2)(e) *Act*).

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**Ministry of Public Safety  
and Solicitor General**

Liquor Control and  
Licensing Branch

Mailing Address:  
PO Box 9292 Stn Prov Govt  
Victoria BC V8W 9J8  
Telephone: 250 387-1254  
Facsimile: 250 387-9184

Location:  
Second Floor, 1019 Wharf Street  
Victoria BC

[http:// www.pssg.gov.bc.ca/lclb](http://www.pssg.gov.bc.ca/lclb)

EH08-039 (dated April 7, 2008)

4. The branch alleges that on March 31, 2008, the licensee contravened section 12 of the *Act* by failing to cooperate with the police and ensure that its actions and those of its staff do not put either liquor inspectors or police at risk or prevent them from carrying out their duties. The proposed penalty is the cancellation of the liquor licence (item 46, Schedule 4 of the *Regulation* and section 20(2)(e) *Act*).

**Issues**

1. Did the licensee contravene the *Act*, *Regulation* and the terms and conditions of its licence as alleged above?
2. If so, what penalty, if any, is warranted for each contravention?

**Applicable Statutory Provisions*****Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267***

**12** (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.

(2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions

(a) that vary the terms and conditions to which the licence is subject under the regulations, or

(b) that are in addition to those referred to in paragraph (a).

**20** (1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

(a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence;

(b) the conviction of the licensee of an offence under the laws of Canada or British Columbia or under the bylaws of a municipality or regional district, if the offence relates to the licensed establishment or the conduct of it;

(c) the persistent failure to keep the licensed establishment in a clean and orderly fashion;

(c.1) a failure by the licensee to take reasonable measures to ensure that the operation of the establishment is not contrary to the public interest and does not disturb persons in the vicinity of the establishment;

(d) the existence of a circumstance that, under section 16, would prevent the issue of a licence;

(e) the suspension or cancellation of a municipally, regionally, provincially or federally granted licence, permit or certificate that the licensee is required to hold in order to operate the licensed establishment.

(2) If the general manager has the right under subsection (1) to take action against a licensee, the general manager may do any one or more of the following, with or without a hearing:

- (a) [Repealed 1999-36-13.]
- (b) impose terms and conditions on the licensee's licence or rescind or amend existing terms and conditions on the licence;
- (c) impose a monetary penalty on the licensee in accordance with the prescribed schedule of penalties;
- (d) suspend all or any part of the licensee's licence in accordance with the prescribed schedule of licence suspensions;
- (e) cancel all or any part of the licensee's licence;
- (f) order the licensee to transfer the licence, within the prescribed period, to a person who is at arm's length from the licensee.

**43** (1) A person must not sell or give liquor to an intoxicated person or a person apparently under the influence of liquor.

(2) A licensee or the licensee's employee must not permit

- (a) a person to become intoxicated, or
- (b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

### ***A Guide for Liquor Licensees in British Columbia***

As a licensee, it is your responsibility to operate your business so that it complies with the law and with the terms and conditions of your licence. (page 1)

You must cooperate with liquor inspectors and police, and ensure the actions of you and your staff do not put liquor inspectors or police at risk or prevent them from carrying out their duties. (page 3)

### ***Liquor Control and Licensing Regulation, B.C. Reg. 244/2002***

**6** (1) Before the general manager

- (a) approves the issuance of a licence,
- (b) approves a structural alteration of or a change to the size of any area of a licensed establishment,
- (c) approves a transfer of a licence under section 21 (3) of the Act, or
- (d) approves an application for an increase in the person capacity of a licensed establishment,

the general manager must set the person capacity of the establishment, having regard to the public interest and the views of a local government or first nation if provided under section 10 or 53 of this regulation...

(4) It is a term and condition of a licence that there must not be, in the licensed establishment at any one time, more persons than the person capacity set under subsection (1) or (3).

**42** (1) A person must not consume liquor in a licensed establishment unless that liquor has been purchased from or served by the licensee of that licensed establishment...

(4) All liquor sold or served in a licensed establishment must be consumed there, and the licensee must not allow liquor, other than the following, to be taken from the licensed establishment:

(a) a bottle of wine that is unfinished by a patron and sealed by the licensee before being taken by that patron from the licensed establishment;

(b) liquor that is sold for consumption off premises in accordance with the Act, this regulation and the terms and conditions of the licence.

### **Background**

The licensee operates Mister Salsa Dine and Dance Palace under food primary licence 302373 and is licensed to sell liquor Monday to Sunday from 11:00 a.m. to midnight. It has a licensed capacity of 55 persons and patron participation entertainment other than games is permitted. The licence is subject to terms and conditions that include the terms and conditions contained in the publication "A Guide for Liquor Licensees in British Columbia."

The licence was issued to the licensee on February 9, 2007. The branch's file for the establishment reveals that on January 9, 2007, the licensee met with a liquor inspector and said that he understood, and would abide by, the terms and conditions of his licence.

On April 1, 2008, two branch inspectors visited the establishment and found that the door was locked. They could see that the surveillance camera, TVs, turntable, computers, beer fridge, furniture, liquor and glasses had all been removed, and there were papers strewn on the floor. The inspectors were unable to reach the licensee, and they received information from the police that he had plans to leave Canada. On April 3, 2008 another liquor inspector noted that there was a sign on the establishment door stating that the establishment was closed.

On April 8, 2008, the branch issued the above three NOEAs to the licensee by way of registered mail to both his home address and his establishment address. They were sent to the addresses that the licensee confirmed were correct on March 14, 2008, when he spoke with the branch registrar. Over the last five to six weeks, the branch has made at least a dozen unsuccessful attempts to contact the licensee and discuss this and other enforcement matters. In light of the licensee's failure to respond to the branch's correspondence, telephone calls and email, it was determined that this matter would proceed by way of written submissions. The April 8, 2008 letter informed the licensee that he had until April 14, 2008, to provide his written response to the allegations.

As of the date of this decision, the licensee has not claimed the April 8, 2008, registered letters from the post office nor contacted the branch.

**Summary of Evidence**

Full particulars of the alleged contraventions are contained in the NOEAs. A summary of the allegations is as follows:

**EH08-033**

On March 9, 2008 at approximately 0340 hours (the business day of March 8/9, 2008) a branch liquor inspector and a Victoria city police officer inspected the establishment and observed a male passed out at a table. After some difficulty in rousing him, the police officer noted that the patron's speech was slurred, slow and difficult to understand, his eyes were watery, his eyelids droopy, and he had difficulty with his coordination and needed help from the officer to retrieve his identification documents. The police officer determined that the male was 18 years of age.

**EH08-037**

On March 14, 2008, at approximately 2250 hours two Victoria city police officers observed a large line-up on the two staircases leading up to and blocking the landing which overlooks Douglas Street. Approximately 50 people were waiting to enter the establishment. There were also empty liquor bottles on the landing. Two males in the line-up were charged with possession of a dangerous weapon and removed from the scene. Additional police were summoned to assist and several people were arrested including some minors who had been drinking in the establishment and who were intoxicated in a public place.

The police instructed the line up to disperse as no one appeared to be gaining entry to the establishment. The police could not enter the main door because of the number of people exiting. One of the officers stood to the side of the door and counted patrons as they went down the main staircase. He counted 100 patrons in this manner. He was unable to count all the patrons who departed because some left via another route and he wanted to remain focussed on accurately counting those who passed directly in front of him.

The police eventually entered the establishment and observed a strong odour of marihuana. They observed a female patron hide a bottle of Corona beer in her left pocket in full view of staff and then leave the establishment. The police followed her, conducted a check and found the half full beer and confirmed that she had removed it from the establishment.

**EH08-039**

On March 30, 2008, at approximately 0020 hours (business day of March 29/30, 2008) two Victoria city police officers entered the establishment. They observed 20 people inside, some dancing and others at tables or the bar. They saw that every table had either bottles of Corona beer or cans of Genuine draft beer, but no food was visible anywhere. The officers could see no food, dirty dishes or kitchen staff in the kitchen area.

The licensee shut off the music, which was very loud, and made an announcement in Spanish, at which point all the patrons turned and glared at the police and moved and formed a semi circle in front of them. The police become very uncomfortable and concluded that the licensee had instructed the patrons to attempt to intimidate them. The licensee asked the police what they were doing in the establishment, and they responded that they were conducting a licensed premise check. The licensee then approached three males in the crowd who, in response, entered the kitchen and returned to distribute approximately 10 plates of potato chips to the patrons.

The licensee made several statements directed at the police, forcefully expressing his disagreement with their presence. At one point, as the police were leaving, the licensee moved right up to the face of one of the officers to verbally express his unhappiness and his opinion of their actions.

Early in 2008, due to the licensee's increasingly aggressive behaviour towards liquor inspectors and police, the branch and the police decided that their staff's safety was at risk when carrying out their inspections of this establishment. Branch inspectors were instructed not to attend the establishment unless they had police accompaniment, and police were instructed not to attend the establishment on their own.

### **Licensee's Response**

The licensee has not responded to the allegations.

### **Analysis and Decision**

Based on the above information about the branch's attempts to communicate with the licensee, I am satisfied that Mr. Sanchez has been provided with adequate notice of the allegations contained in the NOEAs, an opportunity to respond and notice of the consequences of failing to do so. It appears that he has purposively been avoiding communicating with the branch regarding enforcement matters given our repeated, and documented, efforts to contact him.

I have no reason to believe that the evidence provided by the police and the liquor inspectors in respect of these matters is inaccurate or not truthful.

Based on the information contained in the NOEAs and their attachments, and absent any additional information provided by the licensee, I find the following:

1. On March 9, 2008, the licensee contravened section 43(2)(b) of the *Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.
2. On March 14, 2008, the licensee contravened section 6 (4) of the *Regulation* by permitting more persons in the licensed establishment than the person capacity set by the general manager and the number of persons in the licensed establishment was more than the occupant load.
3. On March 14, 2008, the licensee contravened section 42(4) of *the Regulation* by allowing liquor to be taken from the licensed establishment.
4. On March 31, 2008, the licensee contravened section 12 of the *Act* by failing to cooperate with the police and ensure that its actions and those of its staff do not put either liquor inspectors or police at risk or prevent them from carrying out their duties.

### **Penalty**

Having found that the contraventions are proven, section 20(2) of the *Act* gives me the discretion to order one or more of the following enforcement actions:

- Impose a suspension of the liquor licence for a period of time;
- Cancel a liquor licence;
- Impose terms and conditions to a licence or rescind or amend existing terms and conditions;
- Impose a monetary penalty;
- Order a licensee to transfer a licence

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimum set out in Schedule 4 of the *Regulation*. I may, if I am satisfied that it is in the public interest, impose a penalty that is greater than those provided in the penalty schedule. I am not bound to order the penalty proposed in the NOEAs.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

I have reviewed the branch's records for the licence and for the licensee. There is no record of prior proven contraventions or enforcement actions of the *same types* for this licensee or this establishment within the year preceding this incident. However, the licensee's proven compliance history includes an April 21, 2008, enforcement decision which finds that on October 31, 2007, he operated his establishment contrary to the primary purpose as stated on his licence and that on January 3, 2008, he failed to provide documents as requested by a liquor inspector.

The range of penalties for a first contravention of section 43 (2)(b) of the *Act* in accordance with item 1 of Schedule 4 of the *Regulation* is a 4-7 day suspension and/or \$5000-\$7000. I find that in the circumstances a penalty is warranted to ensure voluntary compliance in the future, and I find the proposed penalty of a 7 day suspension of the liquor licence is appropriate. However, before ordering any suspension, I have turned my mind to whether a cancellation of the licence, as proposed for the remaining three contraventions, is warranted.

The maximum capacity set for an establishment is designed, in part, as a safety standard to ensure that patrons and staff can exit the establishment safely during a fire or other threat. It is also designed to minimize any negative impact on the community arising from noise, parking and traffic flow issues. The evening in question, the licensee had permitted entry to at least double the number of patrons permitted under his licence. The police officer counted 100 patrons exiting but he was aware of additional patrons exiting in another direction which he was unable to count. The landing outside the establishment and the exit stairs were clogged with people, leaving little or no room to move. The licensee clearly was not in control of the door, as evidenced by the excessive number of patrons and the fact that a female patron, in full view of the staff, was able to pocket a beer and leave the establishment. Several police officers were required to deal with the very large crowd both inside and outside and arrests were made, including intoxicated minors who had been drinking in the establishment. Liquor bottles, presumably from inside the establishment, were abandoned on the outside landing. I find that the community was negatively impacted by this event and that the excessive numbers inside the establishment were a real safety hazard. A penalty is warranted for both the overcrowding contravention and the contravention of permitting liquor to be removed from the establishment.

I have considered the seriousness of the licensee's uncooperative and hostile response to the police who conducted the March 31<sup>st</sup> licensed premise check. The licensee's aggressive behaviour towards the officers, along with the manner in which he encouraged (or at the very least, did not prevent) the crowd of patrons from also responding in a physically confrontational manner, endangered the officer's safety. Further, the licensee's pattern of increasingly belligerent behaviour raised grave concerns for the branch earlier this year and necessitated police accompaniment for liquor inspectors when carrying out their inspections of the establishment.

British Columbia's liquor licensing regime is structured on the principal of voluntary compliance and requires that licensees cooperate and work with liquor inspectors and police. A fundamental term and condition of every liquor licence is that a licensee cooperate with liquor inspectors and police and ensure their actions do not put them at risk or prevent them from carrying out their duties. The licensee's behaviour on March 31 was clearly contrary to his obligations as a licensee and warrants a significant penalty.

During the brief time that this licensee has been operating, he has exhibited, on more than one occasion, a disregard for the liquor rules and a disinterest in working cooperatively with the branch. He has refused to accept correspondence sent to him by the branch, nor does he respond to email or telephone messages. Further, his establishment appears to be closed although he has not communicated his intentions in that regard to the branch. The licensee's compliance history and the nature of his interactions with the branch demonstrate a chronic failure to comply with the law and the terms and conditions of his licence.

The manner in which the licensee operates his establishment has an adverse influence on the surrounding community as demonstrated by the incidents described above. Significant resources have been expended by both the branch and police to regulate this establishment and to try and bring it into voluntary compliance. Therefore, having considered the licensee's recent behaviour, the significant public interest issues, as well as his past compliance history, I conclude that he cannot be brought into compliance through the mechanisms of the legislation and that an appropriate course of action is to cancel the licence.

### **Order**

Pursuant to s. 20(2) of the *Act*, Food Primary Licence No. 302373 is cancelled effective the close of business today.

Yours truly,

*Original signed by*

Jaclynn Hunter  
Deputy General Manager  
Compliance and Enforcement Division  
Liquor Control and Licensing Branch

cc: Sgt. Jim Simpson, Victoria City Police  
Cheryl Caldwell, Deputy General Manager, Licensing Division  
Gary Barker, Regional Manager