

August 23, 2022

H-15

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive the supporting documentation into the record, conclude the public hearing and reject the hearing officer's recommendation to reverse the denial of the business license application for JP23 Hospitality Company, located at 110 East Broadway, and to not issue a business license. (District 1)

DISCUSSION

City Council previously referred to a hearing officer the appeal of the Financial Management Department's denial of a business license application by JP23 Hospitality Company, located at 110 East Broadway for a restaurant and ready to eat foods with alcohol license. Attached for your review is Hearing Officer Jonathan C. Navarro, Esq.'s written report (Attachment A). Below is a chronological list of events leading up to the hearing officer's decision:

- On March 14, 2022, the Department of Financial Management denied the business license application for JP23 Hospitality Company to operate a restaurant with alcohol establishment at 110 East Broadway Avenue (Attachment B) due to failure to comply with applicable laws and regulations pursuant to the Long Beach Municipal Code (LBMC) Sections 1.32.040, 3.80.210, 5.06.020 5.72.110(A) and 5.72.130.
- Pursuant to LBMC Section 3.80.421.6, an applicant can appeal the denial of a business license application to the City Council. On March 24, 2022, the applicant submitted a written request for an appeal (Attachment C).
- On April 12, 2022, the City Council referred to a hearing officer the applicant's appeal of the business license application denial. The hearing officer randomly assigned by the City Clerk's Office was Jonathan C. Navarro, Esq.
- On May 10, 2022, the appeal hearing commenced. It was continued to May 25, 2022, and subsequently continued as needed for additional testimony. The attorneys submitted evidence (Attachments D and E) and conducted the examination of witnesses. On June 8, 2022, the appeal hearing concluded.
- On June 22, 2022, as requested by the Hearing Officer, the applicant and the City both submitted written closing briefs (Attachment F).

- On July 15, 2022, the hearing officer recommended that the denial of the business license application for JP23 Hospitality Company be reversed, and the applicant's business license be issued, based on LBMC Section 3.80.421.5.

LBMC Section 2.93.050(A) requires that the City Council set a time for a hearing to review and consider the hearing officer's report and recommendation. After review of the hearing officer's report, the City Council may adopt, reject or modify the recommended decision

An independent legal review of the hearing officer's recommendations was conducted by Best, Best and Krieger, LLP (BB&K). Based on the analysis provided by BB&K (Attachment G), the Financial Management Department recommends that the City Council reject the hearing officer's recommendation and deny the appeal by JP23 Hospitality Company.

This matter was reviewed by Deputy City Attorney Arturo D. Sanchez and Director of Financial Management Kevin Riper on August 9, 2022.

TIMING CONSIDERATIONS

The hearing date of August 23, 2022 has been posted at the business location, and the property owner has been notified by mail.

FISCAL IMPACT

There is no fiscal impact associated with this item. This recommendation has no staffing impact beyond the normal budgeted scope of duties and is consistent with existing City Council priorities. If the business no longer operates, the immediate impact will be the loss of 30 to 70 local jobs.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



KEVIN RIPER
DIRECTOR
FINANCIAL MANAGEMENT

APPROVED:



THOMAS B. MODICA
CITY MANAGER

ATTACHMENTS: A – HEARING OFFICER'S REPORT
B – DENIAL LETTER FROM THE CITY
C – APPEAL LETTER FROM BUSINESS OWNER
D – HEARING EXHIBITS – DOCUMENTS
E – HEARING EXHIBITS – VIDEOS
F – ATTORNEYS' CLOSING BRIEFS
G – BEST, BEST AND KRIEGER REPORT

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CITY OF LONG BEACH
ADMINISTRATIVE APPEAL HEARING
PER LONG BEACH MUNICIPAL CODE CHAPTER 3.80.421.6

<p>JP23 HOSPITALITY COMPANY, d/b/a/ JP23,</p> <p style="padding-left: 40px;">Appellant,</p> <p style="padding-left: 40px;">vs.</p> <p>CITY OF LONG BEACH,</p> <p style="padding-left: 40px;">Respondent/Licensing Authority</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>HEARING OFFICER’S FINDINGS AND RECOMMENDATION</p>
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I. INTRODUCTION

This appeal of a business license denial came on regularly for hearing before Administrative Hearing Officer Jonathan C. Navarro commencing on May 25, 2022 at 9:00 AM via WebEx virtual hearing and continued on the following dates—May 31, 2022, June 1, 2022, June 6, 2022, June 7, 2022, and June 8, 2022. The WebEx hearing was administered by Marla Camerino with the Business License Division of the City of Long Beach’s Department of Financial Management. The Appellant, JP23 HOSPITALITY COMPANY, d/b/a/ JP23 (“Appellant” or “JP23”) appeared and was represented by Ethan Reimers, Esq. with MESSNER REEVES LLP and Jennifer N. Harris, Esq. with the Law Office of Jennifer N. Harris, P.C. The following witnesses also appeared and provided testimony in chronological order: Tara

1 Mortensen, Bureau Manager of Recovery and Business Services, Department of Financial
2 Management; Derek Ernest, Sergeant, Long Beach Police Department; Christopher Brammer,
3 Detective, Long Beach Police Department; Brian Wiedman, Deputy Fire Marshal, Long Beach
4 Fire Department; Ray Woolhether, Principal Building Inspector, Department of Development
5 Services; Gene Rodriguez, Business License Inspector II, Department of Financial Management;
6 Lori Voss, Business License Inspector II, Department of Financial Management; Tasha Day,
7 Special Events and Filming, City Manager’s Office; Jonathan Iniesta, Planner III, Department of
8 Development Services; Kevin Riper, Director, Department of Financial Management; Linda
9 Tatum, Assistant City Manager, City Manager’s Office; Jacob Poozhikala, CEO, JP23
10 Hospitality Company; and Niral Patel, Attorney, JP23 Hospitality Company.

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13 **II. STATEMENT OF FACTS**

14 On or about September 16, 2021, JP23 Hospitality dba JP23 (“JP23”) submitted an
15 application for a business license (“Application”) in order to operate its restaurant and bar in
16 Long Beach. Governed by Chapter 3.80.420.1 of the Long Beach Municipal Code (“LBMC”),
17 the Application required approval by the City of Long Beach’s (“City”) Planning, Building &
18 Safety, Environmental Health, and Fire Departments through an investigative process.

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20 Prior to JP23’s submission of the Application, the City of Long Beach (“City”) noted on
21 the record several incidents concerning JP23 Hospitality Company and its owner Jacob
22 Poozhikala (“Poozhikala”). On or about August 31, 2021, the City of Long Beach Business
23 License Division (“Business License”) became aware of an advertisement regarding a planned
24 event by Appellant for September 3rd & September 4th 2021 at 110 E. Broadway with live
25 performances by various artist. Consequently, Business License investigators reached out to
26 Poozhikala to inform him that he was not allowed to have the event on September 3rd and
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1 September 4th, 2021, because Appellant did not have a business license or an entertainment
2 permit, both of which were required prior to the opening of or operating Appellant's business.
3 Nonetheless, despite not having a business license, Appellant allegedly held a private event at the
4 110 E. Broadway location on September 4, 2021. On or about 4:00 a.m. on September 5, 2021,
5 the Long Beach Fire Department ("Fire") responded to an issue with the fire alarm at the
6 premises. On or about September 17, 2021, Building & Safety Inspector Ray Woolhether
7 ("Woolhether") inspected JP23 and issued a Notice of Inspection, which detailed the items that
8 JP23 needed to correct in order to obtain a Temporary Certificate of Occupancy ("TCO").
9 Woolhether informed Poozhikala that a TCO is invalid when operating a business without a
10 current business license, which was written on the last page of the Notice of Inspection. On or
11 about October 13, 2021, the City issued JP23 a TCO, and JP23 opened up to the public the next
12 day on or about October 14, 2021 without a business license as the Application had not yet been
13 approved. As a consequence, the City issued misdemeanor citations to Appellant for conducting
14 business in the City without first obtaining a business license. These citations were issued on
15 October 14, 2021, October 15, 2021, October 16, 2021, October 20, 2021, and October 21, 2021.

19 After multiple attempts in the latter part of October 2021 to follow up with Business
20 License regarding its business license application and receiving no answer, Appellant hired legal
21 counsel to get a response from the City. On or about November 3, 2021, the City held a meeting
22 with Appellant in which Bureau Manager for the City's Department of Financial Management
23 Tara Mortensen ("Mortensen") and Business Services Officer Brian Tuliau were in attendance.
24 Following this meeting, Business License issued a Conditional Business License ("CBL")
25 retroactive to the date of JP23's application on September 16, 2021 up until March 15, 2022
26 while the investigative process continued. In the accompanying letter to the CBL, the
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1 Department of Financial Management stated that it was issuing the CBL as an act of good faith
2 to allow Appellant to legally operate “while the investigation required to issue a permanent
3 Business License is ongoing” The letter further stated that the CBL subjected JP23 to three
4 conditions: (1) complete all action/corrections as requested within the TCO; (2) comply with all
5 applicable laws and regulations, including, but not limited to, LBMC Chapters 3, 5, and 21; and
6 (3) resolve each of the Misdemeanor Citations Issued to Applicant. Meanwhile, by October 1,
7 2021, the Application had been approved by the Planning, Building & Safety, Environmental
8 Health, and Fire Departments, although the Department of Environmental Health’s approval had
9 not shown in the City’s internal review system, INFOR, until October 19, 2021. Upon approval
10 by all concerned departments, the only remaining item for action was the approval from Business
11 License. On October 19, 2021, Business License manager Tara Mortenson instructed License
12 Inspector Gene Rodriguez (“Rodriguez”) to not release the business license. However, with the
13 Conditional Business License issued by the City on November 3, 2021, Appellant continued to
14 operate its restaurant side of the business but kept its lounge side closed.
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18 On or about December 29, 2021, Business License informed Appellant that they were in
19 violation of the CBL by having entertainment activities at their location without an entertainment
20 permit. Appellant was duly notified via a letter from Business License reminding them of
21 condition number 2 of the CBL which required them to comply with all applicable laws and
22 regulations, including but not limited to Chapters 3, 5 and 21 of the LBMC. Despite the written
23 warning from Business License, on January 23, 2022, Appellant was observed by Sergeant
24 Ernest having entertainment activity in violation of LBMC Chapter 5.72.110(A).
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26 On or about January 11, 2022, Appellant followed up on the status of the Application in
27 anticipation of Super Bowl weekend on February 10-12, 2022. A virtual meeting was held on
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1 January 25, 2022 during which Finance Director and CFO of the City's Department of Financial
2 Management Kevin Riper ("Riper"), Long Beach's Deputy City Attorney Arturo Sanchez,
3 Mortensen, Poozhikala, and Niral Patel were in attendance. During this meeting, JP23 discovered
4 issues of incompleteness with its Application for the nonpayment of the business license allegedly
5 sent out on December 17, 2021. JP23 claimed such invoices were not received until Mortenson
6 emailed them two days after their meeting on January 27, 2022. During this meeting, JP23 took
7 offense to comments made by Riper that seemed to be directed at owner Poozhikala and legal
8 counsel Niral Patel's ethnic background. Appellant addressed its suspicion on the record as to
9 whether Riper could fairly process and make determinations on JP23's applications.
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11 On or about January 26, 2022, Business License met with Appellant to discuss their
12 entertainment permit application, as well as the process for obtaining an occasional event permit
13 from Special Events & Filming until their entertainment permit application review was
14 completed. During said meeting, Appellant was specifically informed that an occasional event
15 permit could only be issued for one day events and not multiple days. On or about February 4,
16 2022, Business License became aware of advertisements for live performances by various artists
17 at Appellant's location on February 10th, 11th & 12th. Consequently, Business License notified
18 Appellant by letter dated February 9, 2022 that the live performances were not allowed at their
19 location without an entertainment permit or an occasional event permit and that these live
20 performances would create a public safety risk and be considered a public nuisance. Despite the
21 written notice from Business License, Appellants went forward with the live performances on
22 February 10th, 11th & 12th as advertised.
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26 Meanwhile, in a separate incident, on August 2, 2021, a woman filed a report with the
27 Fullerton Police Department regarding Appellant's other location in Fullerton. The woman
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1 alleged in the report that she was “roofied” (dosed with a date rape drug such as Rohypnol or a
2 similar drug) and later sexually assaulted in a nearby parking garage. The report became public
3 in local media as well as in the internet’s social media. Appellant contends that the woman’s
4 allegations devolved and snowballed into untrue and unfounded rumors, including that she was
5 raped inside Appellant’s bar in the Fullerton location, that Appellant’s staff members and owners
6 were themselves rapists, and that Appellant condoned rape culture. There is sufficient evidence
7 on the record that the rumors culminated into social media campaigns and demonstrations
8 outside of both Appellant’s locations in Fullerton and Long Beach. Poozhikala also testified that
9 threats were made against him. The Democratic Socialists of America (“DSA”) instituted a
10 campaign against Appellant, to ensure, among other things, that Appellant is not allowed to open
11 its Long Beach location. The record shows that DSA reached out to Long Beach Second District
12 City Councilwoman Cindy Allen as early as September 3, 2021 regarding the Appellant’s
13 planned operation in the City of Long Beach. The evidence also shows that various departments
14 within the City of Long Beach were aware of the Fullerton incident even before Appellant
15 applied for a business license with the City. In addition, testimony from Linda Tatum shows that
16 the City Manager’s office kept an open line of communication with Business License regarding
17 the Application and also kept Councilwoman Cindy Allen’s office “in the loop.”
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21 On March 14, 2022, Director of Financial Management (“Director”) Kevin Riper denied
22 Appellant’s business license pursuant to provisions of LBMC Chapters 3.80.421.5 and 5.04.030
23 because of Appellant’s repeated failure to comply with applicable laws and regulations of the
24 following Chapters of the LBMC: 1.32.040 Failure to obtain or exceeding limits of license or
25 permit; 3.80.210 License & Tax Payment Required; 5.06.020 Suspension/Revocation/Denial;
26 5.72.110(A) Permit Required & Prohibited Uses; 5.72.130 Permits for Occasional events. On
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1 March 24, 2022, Appellant filed an appeal for the business license application denial pursuant to
2 LBMC Section 3.80.421.6.

3 **III. LEGAL AUTHORITY FOR APPEAL**

4 LBMC 3.80.421.6 (Appeals) provides ...

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- 6 1. Any applicant for a business license whose application for such license has
7 been denied by the Director of Financial Management may, within ten (10)
8 days after such denial, appeal therefrom to the City Council by filing with
9 the Director a notice of such appeal setting forth the decision and the
10 grounds upon which he deems himself aggrieved thereby. The applicant
11 shall pay to the Director at the time of filing the notice of appeal the fee set
12 by resolution to the City for appeals hereunder. The Director shall thereupon
13 make a written report to the City Council reflecting such determination
14 denying the business license. The City Council at its next regular meeting
15 following the filing of said appeal, or within ten (10) days following the
16 filing thereof, shall set said appeal for hearing may for good cause be
17 continued by the order of the City Council. Upon the hearing of the appeal
18 the City Council may overrule or modify the decision of the Director
19 appealed from and enter such order or orders as are in harmony with this
20 Title and such disposition of the appeal shall be final.

21 **IV. STATEMENT OF ISSUES OF APPEAL BEFORE THE HEARING OFFICER**

22 By letter dated March 23, 2022, Appellant expressed its strong opposition to the denial of
23 the business license due to noncompliance. In support, Appellant cites to the language of LBMC
24 3.80.421.5 to point out the misplaced reliance of the City for the authority to deny its application.
25 Appellant claims that this chapter does not furnish the Director with the authority to deny JP23's
26 application as the language "will not so comply with applicable laws and ordinances" is forward-
27 looking, not backward-looking. By citing this LBMC 3.80.421.5, Appellant contends that the
28 Director based the denial on past instances of alleged noncompliance, which are not valid
grounds to do so.

In addition, Appellant cited LBMC 5.040.060 as inapplicable to a business license
application submitted under LBMC 3.80.420.1. Moreover, the language is similar to that of

1 3.80.421.5 as the language “will not comply with applicable laws and ordinances” is forward
2 looking. Thus, Appellant contends, past noncompliance cannot reasonably be used as grounds to
3 deny Appellant’s application.

4 Appellant also addressed LBMC 3.80.421.1B as authority that the Director failed to cite.
5 While the language of chapters 3.80.420.1 and 5.040.060 are forward looking, 3.80.421.1B
6 provides: “the applicant may be rejected for failure to comply with applicable laws and
7 regulations at any time.” Had the Director cited this chapter instead, he could have used it to
8 support his discretion to deny any application for prior instances of noncompliance. Still,
9 Appellant contends that doing so would still have been an abuse of discretion because of the
10 facts surrounding the alleged instances of noncompliance. Appellant claims that the Director’s
11 own alleged delays and misinformation upon which JP23 relied to its detriment impacted what
12 should have been the ministerial process of approving the business license.
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15 Upon receipt of Appellant’s letter, the Long Beach City Clerk’s office then scheduled a
16 formal hearing with regard to Appellant’s objections.
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18 **V. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY PARTIES**

19 **1. City’s Initial Submission Package and Appeal Letter from Appellant**

20 During the initial WebEx virtual hearing on May 25, 2022, this hearing officer explained
21 to all both parties the guidelines for the hearing. These include examination of witnesses and
22 presentation of evidence. It was stated on the record that the hearing officer received the City’s
23 initial submission package¹ in advance of the hearing. The package was received in electronic
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26 ¹ The City’s initial submission package included: a) letter from the Director to the Mayor and
27 City Council to refer this matter to a Hearing Officer dated April 12, 2022; b) letter from the
28 Director to Appellant providing notice of the business license application denial dated March 14,
2022; and c) Appellants’ Notice of Appeal dated March 23, 2022.

1 format that was transmitted to the email addresses of the hearing officer and the Applicant's
2 representatives. During the hearing, all parties acknowledged receipt of the City's initial
3 submission package.

4 **2. Appellant's Evidence**

5 In advance of the hearing, Appellant submitted the following evidence in support of its
6 appeal:
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- 8 • 110 Broadway Advertisement for Lease (Appellant's Exhibit 1)
- 9 • October 12, 2021 Temporary Certificate of Occupancy and receipt of payment
10 (Appellant's Exhibit 2)
- 11 • July 19, 2019 JP23's Invoice History (Appellant's Exhibit 3)
- 12 • Letters from Long Beach residents to the City Clerk concerning their opposition to
13 JP23 being given a business license (Appellant's Exhibit 4)
- 14 • JP23's application for ABC license and approval for it by the police department
15 (Appellant's Exhibit 5)
- 16 • March 15, 2018 Predevelopment Meeting Request (Appellant's Exhibit 6)
- 17 • October 21, 2021 Emails concerning the Entertainment Application Process and
18 Appellant asking if his application had been received (Appellant's Exhibit 7)
- 19 • Emails concerning Appellant asking for the status of his entertainment permit in
20 anticipation of Super Bowl weekend (February 10-12) (Appellant's Exhibit 8)
- 21 • September 30, 2021 Official Inspection Reports from Department of Health and
22 Human Services (Appellant's Exhibit 9)
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- 1 • October 13, 2021 Notice of Inspection with instructions of what needs to be
2 completed in order to gain business license (Appellant's Exhibit 10)
- 3 • October 13, 2021 Email from Appellant asking what needs to be done in order to
4 proceed (Appellant's Exhibit 11)
- 5 • October 15, 2021 JP23's Business License Bill Notice (Appellant's Exhibit 12)
- 6 • October 18, 2021 JP23's Proof of Payment of Business License (Appellant's Exhibit
7 13)
- 8 • October 21, 2021 Emails regarding Appellant questioning the citations issued by the
9 police department and the status of the entertainment permit and business license
10 (Appellant's Exhibit 14)
- 11 • October 22, 2021 Emails from JP23's previous counsel Niral Patel asking what is
12 needed in order for JP23 to obtain the business license (Appellant's Exhibit 15)
- 13 • October 26, 2021 Emails advertising protests due to the allegations at the Fullerton's
14 JP23 location (Appellant's Exhibit 16)
- 15 • Building Plans and Models for JP23 location (Appellant's Exhibit 17-20)
- 16 • Pictures of unfinished and finished JP23 location (Appellant's Exhibit 21-22)
- 17 • Emails concerning payment of entertainment permit application fee and business
18 license tax and also inquiring about the status of the entertainment permit in
19 anticipation of Super Bowl week (February 10-13) (Appellant's Exhibit 23)
- 20 • September 17, 2021 Email with completed application for Entertainment Permit from
21 Appellant (Appellant's Exhibit 24)
- 22 • October 13, 2021 Email concerning status/issuance of business license to JP23
23 (Appellant's Exhibit 25)
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- 1 • Emails concerning operation of JP23 and their status on the business license and
2 entertainment permit (Appellant's Exhibit 26)
- 3 • Emails concerning JP23's anticipated opening on September 23, 2021 (Appellant's
4 Exhibit 27)
- 5 • September 15, 2021 JP23's Agenda (Appellant's Exhibit 28)
- 6 • September 17, 2021 Email with second part of entertainment permit application with
7 approved building plans (Appellant's Exhibit 29)
- 8 • September 16, 2021 Fire Inspection Report listing violation by the Appellant for
9 hosting a small private gathering on September 4, 2021 (Appellant's Exhibit 30)
- 10 • September 14, 2021 Emails concerning status of JP23 construction, business license,
11 ABC license, and negative media surrounding the Fullerton location (Appellant's
12 Exhibit 31)
- 13 • September 15, 2021 Email asking about protocol for what to do about business
14 operating without a business license and entertainment permit (Appellant's Exhibit
15 32)
- 16 • September 4, 2021 Emails concerning event JP23 hosted on September 4th that
17 resulted in the fire alarm being wrongfully pulled (Appellant's Exhibit 33-34)
- 18 • September 15, 2021 Email updating Special Events staff that JP23 still should not be
19 in operation yet (Appellant's Exhibit 35)
- 20 • Emails concerning course of action with JP23 since Appellant was notified about
21 citations of operation without proper permits but still proceeded (Appellant's Exhibit
22 36)
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- 1 • September 17, 2021 Notices of Inspection of JP23 which includes instructions for
2 JP23 to follow in order to be able to be in compliance with the City (Appellant’s
3 Exhibit 37)
- 4 • Emails about having JP23’s violations be documented in a case file to be used when
5 considering applications for business license and entertainment permit (Appellant’s
6 Exhibit 38)
- 7 • October 25, 2021 Emails concerning meaning of nightclub (Appellant’s Exhibit 39)
- 8 • Emails concerning calls made by residents to Councilwoman Cindy Allen’s
9 (“Councilwoman”) office about concerns of JP23 opening (Appellant’s Exhibit 40)
- 10 • Emails concerning relationship between business license and entertainment permit
11 and concerns about JP23 operating without these permits (Appellant’s Exhibit 41)
- 12 • Emails discussing that all departments had signed off and were just waiting on
13 Mortensen’s approval for the business license and also Councilwoman’s concern
14 about JP23’s opening (Appellant’s Exhibit 42)
- 15 • October 20, 2021 Email concerning Business License Police Department Review
16 (Appellant’s Exhibit 43)
- 17 • October 20, 2021 Emails concerning Appellant inquiring about status of business
18 license and asking about the requirements for Temporary Entertainment Permit
19 (Appellant’s Exhibit 44)
- 20 • October 21, 2021 Emails regarding Appellant questioning the citations issued by the
21 police department and the status of the entertainment permit and business license
22 (Appellant’s Exhibit 45)
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- 1 • October 27, 2021 Emails asking if there was police activity in connection with JP23
2 (Appellant's Exhibit 46)
- 3 • October 21, 2021 Emails regarding the issuing of citations to JP23 for operating
4 without a business license (Appellant's Exhibit 47)
- 5 • Emails asking Police Department if they are okay with JP23 being issued a
6 conditional business license with certain conditions (Appellant's Exhibit 48)
- 7 • November 10, 2021 Emails discussing that Mortensen did not want the conditional
8 license to be treated as fix it tickets (Appellant's Exhibit 49)
- 9 • Emails concerning the details of the Conditional Business License given to JP23
10 (Appellant's Exhibit 50)
- 11 • Emails concerning the anticipated meeting with JP23 to discuss the Conditional
12 Business License (Appellant's Exhibit 51-53)
- 13 • November 15, 2022 Email from Mortensen informing all other departments of the
14 issuance of the Conditional Business License and to be aware of any compliance
15 issues (Appellant's Exhibit 54)
- 16 • December 28, 2021 Emails concerning timeline of JP23's applications and licenses
17 and their non-complaint activity (Appellant's Exhibit 55)
- 18 • Emails concerning completeness of JP23's application for the Entertainment Permit
19 (Appellant's Exhibit 56)
- 20 • Emails reflecting on the meeting with Appellant and his counsel (Appellant's Exhibit
21 57-58)
- 22 • Emails asking if there was any police enforcement for New Year's weekend at JP23
23 (Appellant's Exhibit 59)
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- 1 • February 3, 2022 Emails concerning setting up a meeting with all relevant
2 departments about next steps with JP23 (Appellant's Exhibit 60)
- 3 • February 7, 2022 Email about concerns with JP23's noncompliant activity
4 (Appellant's Exhibit 61)
- 5 • February 28, 2022 Email discussing intention of City to deny the Business License
6 (Appellant's Exhibit 62)
- 7 • February 6, 2021 Email containing link discussing issues with JP23's Fullerton
8 location (Appellant's Exhibit 63)
- 9 • September 16, 2021 Libel and Slander Complaint for JP23 v. Samantha Velasquez
10 and Justine Flores (Appellant's Exhibit 64)
- 11 • March 30, 2022 Samantha Velasquez's responses to JP23's Requests for Admission
12 (Appellant's Exhibit 65)
- 13 • September 1, 2021 Emails concerning negative media about JP23's Fullerton
14 location, likely approval of health permit, and request for meeting by Fire Department
15 to discuss safety (Appellant's Exhibit 66)
- 16 • September 7, 2021 Emails discussing wanting advice and insight from Art Sanchez
17 (Appellant's Exhibit 67)
- 18 • September 8, 2021 Emails stating that JP23 can be recommended to be put in the
19 strictest tier for entertainment conditions since they are located in downtown
20 (Appellant's Exhibit 68)
- 21 • September 16, 2021 Emails discussing wanting to foster a relationship for future
22 enforcement activities (Appellant's Exhibit 69)
- 23 • Emails concerning JP23 status for permits (Appellant's Exhibit 70-71)
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- 1 • October 8, 2021 Emails concerning steps that need to be taken in order for Fire to be
- 2 able to give its approval (Appellant's Exhibit 72)
- 3 • October 21, 2021 Email requesting a JP23 meeting with Linda Tatum (Appellant's
- 4 Exhibit 73)
- 5 • October 21, 2021 Appellant's email to elected officials that was forwarded to Kevin
- 6 Riper (Appellant's Exhibit 74)
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- 8 • October 19, 2021 Email from Mortensen saying to not approve the Business License
- 9 even though all other departments approved (Appellant's Exhibit 75)
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- 11 • Pictures inside JP23 (Appellant's Exhibit 76)
- 12 • Protest advertisements (Appellant's Exhibit 77)
- 13 • Additional Emails (Appellant's Exhibit 78)

14 **3. The City's Evidence**

15 In advance of the hearing, the City submitted the following evidence in support of its
16 opposition to the appeal:
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- 18 • Long Beach Municipal Code Chapter References (Respondent's Exhibits 1-8)
- 19 • Approved Building Plans for JP23's Banquet Hall (Respondent's Exhibit 9)
- 20 • September 16, 2021 Fire Inspection Report re: violation by the Appellant for
- 21 hosting a small private gathering on September 4, 2021 (Respondent's Exhibit 10)
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- 23 • Email re: Instagram advertisements for events on September 3rd and 4th at JP23
- 24 and the subsequent postponing of the event (Respondent's Exhibit 11-12)
- 25 • September 16, 2021 Emails re: requirements for a business license and
- 26 entertainment license (Respondent's Exhibit 13)
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- 1 • June 18, 2019 Petition for Conditional ABC License , JP23's Valid ABC License
2 effective from June 1, 2021-June 30, 2022, September 7, 2021 JP23's Business
3 License Application, and September 14, 2021 JP23's Seller's Permit
4 (Respondent's Exhibit 14)
- 5 • September 17, 2021 Notice of Inspection of JP23 (Respondent's Exhibit 15)
- 6 • September 17, 2021 Temporary Certificate of Occupancy Application and
7 October 12, 2021 approval (Respondent's Exhibit 16)
- 8 • October 7, 2021 Email from Rodriguez to Mortensen (Respondent's Exhibit 17)
- 9 • October 13, 2021 Notice of Inspection (Respondent's Exhibit 18)
- 10 • October 14, 2021 Email from Senior Building Inspector Forest Johnson to
11 Appellant re: Temporary Certificate of Occupancy (Respondent's Exhibit 19)
- 12 • Long Beach Police Reports re: JP23's operation without a Business License
13 (Respondent's Exhibit 20-21)
- 14 • October 20, 2021 Emails re: status of business license and asking about the
15 requirements for Temporary Entertainment Permit (Respondent's Exhibit 22)
- 16 • October 21, 2021 Emails re: listing requirements for the Temporary
17 Entertainment Permit (Respondent's Exhibit 23)
- 18 • October 24, 2021 Long Beach Police Report re: the arrest of a man displaying
19 disorderly conduct who had been drinking earlier at JP23 (Respondent's Exhibit
20 24)
- 21 • September 15, 2021 JP23's Business License Application (Respondent's Exhibit
22 25)
- 23 • October 25, 2021 Bill for Business License (Respondent's Exhibit 26)
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- 1 • November 2, 2021 Instagram Advertisement for JP23 (Respondent's Exhibit 27)
- 2 • November 3, 2021 Conditional Business License (Respondent's Exhibit 28)
- 3 • Emails between Appellant and Mortensen re: approval of the Conditional
- 4 Business License and allegations made against JP23's Fullerton location
- 5 (Respondent's Exhibit 29)
- 6
- 7 • November 14, 2021 Long Beach Police Report (Respondent's Exhibit 30)
- 8 • November 22, 2021 Long Beach Police Report (Respondent's Exhibit 31)
- 9 • November 26, 2021 Police call log (Respondent's Exhibit 32)
- 10 • December 9, 2021 Long Beach Police Report (Respondent's Exhibit 33)
- 11 • December 13, 2021 Long Beach Police Report (Respondent's Exhibit 34)
- 12 • December 28, 2021 Emails re: status of the Fire Department's approval of the
- 13 business license (Respondent's Exhibit 35)
- 14
- 15 • January 19, 2022 Emails between Appellant and Mortensen re: Conditional
- 16 Business License (Respondent's Exhibit 36)
- 17
- 18 • January 23, 2022 Long Beach Police Report (Respondent's Exhibit 37)
- 19 • January 27, 2022 Email re: JP23's business license (Respondent's Exhibit 38)
- 20 • January 27, 2022 Emails between Appellant and Mortensen re: payment of the
- 21 Entertainment Permit Application Fee and the Business License Tax
- 22 (Respondent's Exhibit 39-40)
- 23
- 24 • January 31, 2022 Email from Business License Inspector Lori Voss re:
- 25 recommendations on JP23's Entertainment Permit Application (Respondent's
- 26 Exhibit 41)
- 27
- 28

- 1 • January 14, 2022, January 14, 2022, January 31, 2022 Police call logs
2 (Respondent's Exhibit 42)
- 3 • February 18, 2022 Amended Complaint re: misdemeanors relating to JP23
4 (Respondent's Exhibit 43)
- 5 • February 7, 2022 Complaint re: misdemeanors relating to JP23 (Respondent's
6 Exhibit 44)
- 7 • February 9, 2022 Notice to Appellant re: Unpermitted Live Entertainment at 110
8 East Broadway (Respondent's Exhibit 45)
- 9 • Advertisements for JP23's Super Bowl Event on February 10-12 (Respondent's
10 Exhibit 46)
- 11 • Pictures and proof of Instagram posts from the Super Bowl Event on February 10-
12 12 at JP23 (Respondent's Exhibit 47)
- 13 • Long Beach Police Reports re: operation without an Entertainment Permit
14 (Respondent's Exhibit 48-49)
- 15 • February 9, 2022 Emails re: Occasional Event Permit (Respondent's Exhibit 50)
- 16 • February 9, 2022 Emails re: Appellant's Super Bowl weekend events
17 (Respondent's Exhibit 51)
- 18 • March 14, 2022 Denial of JP23's Business License Application, November 3,
19 2021 Letter re: Conditional Business License and its conditions, list of
20 misdemeanor citations, and referenced Long Beach Municipal Code
21 (Respondent's Exhibit 52)
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- 1 • March 22, 2022 Memorandum from Chief of Police Wally Hebeish (“Hebeish”)
2 to Deputy Chief Robert Smith re: denial of Entertainment Permit for JP23
3 (Respondent’s Exhibit 53)
- 4 • March 22, 2022 Memorandum from Hebeish to Mortensen re: Long Beach Police
5 Departments Entertainment Permit recommendation (Respondent’s Exhibit 54)
- 6 • March 23, 2022 Notice of Appeal for the Denial of the Business License
7 (Respondent’s Exhibit 55)
- 8 • Letters to residents of Long Beach re: noise complaints (Respondent’s Exhibit 56)
- 9 • April 5, 2022 Emails re: entitlement processing history of JP23 (Respondent’s
10 Exhibit 57)
- 11 • Grand Prix Weekend (April 8-10) advertisements (Respondent’s Exhibit 58)
- 12 • April 9, 2022 Emails re: Police Department calls received relating to JP23
13 (Respondent’s Exhibit 59)
- 14 • Instagram advertisements for Easter Sunday Brunch (April 17, 2022)
15 (Respondent’s Exhibit 60)
- 16 • Noise Complaint Summary, Forms sent in from residents, letters notifying
17 residents that JP23 had been notified, and letters notifying Appellant of the
18 complaints (Respondent’s Exhibit 61-62)
- 19 • April 20, 2022 Letter notifying Appellant of hearing date for the appeal
20 (Respondent’s Exhibit 63)
- 21 • April 28, 2022 Long Beach Fire Inspection Report re: compliance instructions
22 (Respondent’s Exhibit 64)
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- 1 • April 28, 2022 Email to Appellant re: unpermitted work complaint to the City
- 2 (Respondent's Exhibit 65)
- 3 • April 28, 2022 Email containing pictures of JP23 (Respondent's Exhibit 66-68)
- 4 • Notice of Public Hearing for JP23's appeal for denial of business license
- 5 (Respondent's Exhibit 69)
- 6
- 7 • Business License Application Instructions (Respondent's Exhibit 70)
- 8 • List of Entertainment Permit Fees (Respondent's Exhibit 71)
- 9 • Various departments' reviews for JP23's business license (Respondent's Exhibit
- 10 72)
- 11

12 City's Video Exhibits

- 13 • Police Body Cam videos including issuing of citations; videos of music disturbances
- 14 from JP23; video of Instagram stories from JP23; video of Instagram live posts by
- 15 JP23; and a video of an intoxicated male (Respondent's Video Exhibit 1-41)
- 16

17 **3. Supplemental Issues Closing Arguments**

18 At the conclusion of the evidentiary portion of the hearing, both Parties submitted their

19 closing arguments on the record. In addition, both Parties previously agreed to submit their

20 closing arguments in brief format sometime after the hearing has concluded. It was noted on the

21 record that nothing in the municipal code precludes the Hearing Officer from considering new

22 legal arguments in the Parties' closing briefs that are based on facts and evidence that are already

23 on the record. However, in order to maintain fairness in the process, novel legal arguments that

24 are based on new facts not on the record may not be presented in the briefs. Therefore, any new

25 facts and/or evidence stated in the closing arguments, however relevant they may be, will not be

26 considered by this Hearing Officer. Consequently, both parties were provided a deadline of June

27

28

1 22, 2022 to submit their respective closing briefs. On June 23, 2022, the City Clerk’s office
2 forwarded the Parties’ closing briefs to the Hearing Officer.

3 **VI. DISCUSSION**

4 The sole issue on this appeal is whether the City complied with its own ordinance(s) in
5 denying the Appellant’s Business License Application. More specifically, LBMC 3.80.421.5
6 provides:
7

8 “In the event that a particular department of the City rejects an application for the
9 reason that such business or the location at which it is proposed to conduct the
10 same will not so comply with applicable laws and ordinances, the Director of
11 Financial Management shall not issue such license.”

12 In its closing brief, the City submits the following arguments. First, by operating without
13 a business license, Appellant’s Application must be denied. The City contends that by hosting an
14 event on September 4, 2021, without a business license, entertainment permit or a certificate of
15 occupancy, and operating without a business license on October 14, 15, 16, 20, & 21st, 2021,
16 Appellant failed to bring their business into compliance, thereby violating the relevant provisions
17 of LBMC § 3.80.210. Despite those violations, Business License still provided Appellant with a
18 CBL to provide them with ample opportunity to come into compliance. However, during a four-
19 (4) month period, Appellants still failed to bring their business into compliance.
20

21 Second, the City argues that Appellant has consistently refused to comply with LBMC §
22 5.72.110(A) by continuing to provide live entertainment, amplified music, disc jockeys and
23 dancing without an entertainment permit or an occasional event permit beginning with
24 Appellant’s event on September 4, 2021. While Appellant did attempt to apply for Occasional
25 Event Permits with the City’s Special Events & Filming Department on a few occasions,
26 Appellant never obtained one after it learned that they were only available for one day events.
27
28

1 Third, the City contends that pursuant to the provisions of LBMC Chapter 3.80.410² and
2 as a result of Appellant’s consistent failure to abide by the city ordinances regarding business
3 licenses and entertainment permits, Kevin Riper, as the City’s Director of Financial
4 Management, had a duty to take action and deny Appellant’s Business License Application

5 The City further argues that the actions of The City’s Business License Division were
6 both reasonable and measured in addressing Appellant’s business and entertainment related
7 activities. The City pointed out that Appellant was given numerous opportunities to bring its
8 business into compliance with the City’s rules, regulations and ordinances. Despite opening its
9 business prior to receiving its business license and being cited for misdemeanor violations on
10 several occasions for operating without a business license, Appellant was still issued a CBL so
11 that it could come into compliance with the City’s ordinances. However, Appellants still failed to
12 bring their business into compliance.
13
14

15 The City’s arguments, however, are unpersuasive. The City fails to address its authority
16 to issue or deny a business license application under the plain meaning of the LBMC §
17 3.80.421.5. In its closing brief, Appellant pointed out the fact that the position of the Financial
18 Management department within the City is to carry out ministerial duties rather than regulatory
19 ones. Appellant points to LMBC 3.80.110 for reference which states: “this Chapter is enacted
20 solely for the purpose of raising revenue for the general municipal purposes and for the usual
21 current expenses of the City. It is not intended to be regulatory.” Appellant argues that upon
22
23
24

25 ² LBMC § 3.80.410 provides: “It shall be the duty of the Director of Financial
26 Management, and he is hereby directed, to administer and enforce each and all of the provisions
27 of this Chapter, and the Chief of Police shall render such assistance in the enforcement of this
28 Chapter as may from time to time be required by the Director of Financial Management.”

1 receipt of an application for a business license, the Department of Financial Management is
2 obligated to “refer such application to the appropriate departments of the City in order that it
3 may be ascertained whether the business proposed to be conducted or the premises in which it
4 is proposed to locate such business will comply with applicable fire, building safety, zoning,
5 health and other laws and regulations.” (LBMC § 3.80.421.1). Once those departments
6 complete their investigation and determine that an applicant’s business “will comply” with
7 applicable laws and regulations, Financial Management has the *ministerial*³ duty to issue the
8 license. This Hearing Officer agrees. In this case, Financial Management’s role pursuant to
9 Chapter 3.80 of the Municipal Code is ministerial, and not regulatory in nature. Upon approval
10 by all concerned departments of the Application as reflected in INFOR on October 19, 2021,
11 Financial Management had a ministerial duty to issue the business license to Applicant. In
12 addition, the plain language of the ordinance provides that Financial Management must deny
13 an application where one of the relevant departments finds “that such business or the location
14 at which it is proposed to conduct the same *will not so comply* with applicable laws and
15 ordinances.” (LBMC § 3.80.421.5). This Hearing Officer agrees with Appellant in that the
16 plain meaning of the Code is forward-looking, not backward looking. Although there is no
17 dispute that the record shows that Appellant has committed several violations on various
18 occasions, nothing on the record indicates that Appellant will not so comply with applicable
19 laws and ordinances. The only basis for Business License’ denial of the Application was
20 violations that occurred prior to the denial of the Application. Without more, this Hearing
21 Officer will not speculate whether those past violations determine that Appellant will not so
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27 ³ That which is done under the authority of a superior; opposed to judicial: that which involves
28 obedience to instructions, but demands no special discretion, judgment, or skill. Black’s Law
Dictionary, 2nd Ed.

1 comply with applicable laws and ordinances. While this hearing officer is not ignorant of the
2 fact that numerous past violations and citations were attendant in the decision by Business
3 License to deny the Application, the plain language of LBMC § 3.80.421.5 simply does not
4 contemplate those past violations and citations be considered in the denial or approval of the
5 Application.

6
7 **VII. RECOMMENDATION**

8 The record is replete with evidence of Appellant's various violations of City
9 ordinances. Despite being provided ample opportunities to come into compliance with the
10 City's ordinances, Appellant has failed to do so. While this Hearing Officer is cognizant of
11 Appellant's apparent ignorance or arrogance in flouting the City's ordinances, the plain
12 meaning of LBMC § 3.80.421.5 simply does not provide that those violations and Appellant's
13 failure to come into compliance with the City's ordinances be taken into consideration when
14 issuing or denying a business license. Based on the foregoing, this Hearing Officer hereby
15 recommends that the denial of Appellant's business license application be reversed and the
16 business license be issued in accordance with the LBMC.⁴
17

18
19 Dated this 15th day of July 2022

20 /s/ JONATHAN C. NAVARRO, ESQ.
21 Administrative Hearing Officer
22
23
24
25

26 _____
27 ⁴ This Hearing Officer's recommendation is limited to the sole issue regarding the denial of
28 Appellant's Business License Application and outside the scope regarding the issue of the City's
enforcement and police powers regarding Appellant's violations and citations.

March 14, 2022

VIA EMAIL, AND REGULAR AND CERTIFIED MAIL

Mr. Jacob Poozhikala
Chief Operating Officer
JP23 Hospitality Company
110 East Broadway
Long Beach, CA 90802

Re: Denial of Business License Application BU22114159

Business Address: 110 East Broadway Avenue, Long Beach, CA 90802, APN 728002701

Dear Mr. Poozhikala:

Thank you for your interest in establishing a business in the City of Long Beach. Unfortunately, your business license application to operate a restaurant with alcohol establishment is denied at this time, and your conditional business license (Attachment A) terminates as of the date of this letter. The Business License Division of the Financial Management Department has denied your application due to the failure of JP23 Hospitality Company (Applicant) to comply with applicable laws and regulations, including the following Chapters of the Long Beach Municipal Code (LBMC), full text available within Attachment B:

1. 1.32.040--Failure to obtain or exceeding limits of license or permit;
2. 3.80.210-- License & Tax Payment Required;
3. 5.06.020--Suspension/Revocation/Denial;
4. 5.72.110(A)--Permit Required & Prohibited Uses;
5. 5.72.130--Permits for Occasional events.

Pursuant to the provisions of the LBMC, the City of Long Beach has a duty to ensure a business "will comply with applicable fire, building safety, zoning, health and other laws and regulations," when considering issuance of a Business License (LBMC Chapters 3.80.410 and 3.80.421.1). As I have previously written to you, there have been numerous instances of non-compliance (see Attachment B) of the City's regulations. Two meetings, one on November 3, 2021, and another on January 25, 2022, occurred with representatives of the City's Business License Division and the Applicant's representatives. These two meetings afforded the Applicant an opportunity to request clarification of any of the City's regulations or any of the provisions of the LBMC. Unfortunately, non-compliant business activities have continued at the Applicant's place of business.

In addition, given the history of the Applicant's non-compliant behavior prior to November 3, 2021, the Department of Financial Management exercised its authority under the LBMC Chapter 3.80.421.1B to issue a Conditional Business License as an act of good faith to allow for the legal operation of the business while



the investigation required to issue a permanent Business License was ongoing. The Conditional Business License issued to the Applicant contained a list of itemized conditions described below.

1. Complete all action/corrections as requested within the Temporary Certificate of Occupancy
2. Comply with all applicable laws and regulations, including but not limited to, LBMC Chapters 3, 5 and 21
3. Resolve each of the Misdemeanor Citations issued to Applicant (see Attachment C)

In a December 29, 2021, letter to Applicant (Attachment D), the Business License Division pointed out that there had been incidents documented by the Long Beach Police Department (LBPD), where the Applicant was not in compliance with the conditions referenced above. This letter specifically pointed to incidents that were in violation of LBMC Chapter 5.72.110. Finally, in a February 9, 2022, letter to the Applicant (Attachment E), the Financial Management Department informed the Applicant that if it proceeded with live entertainment events on February 10th, 11th and 12th, such actions would be in direct violation of LBMC Chapters 5.72.110 and 5.72.130. The Applicant disregarded this letter and proceeded with the live entertainment events. The Applicant was once again not in compliance with the conditions referenced above.

Based upon the Applicant's actions since as early as September 2021, when it attempted to open its business without either a certificate of occupancy or a business license with the City, as well as the Applicant's actions since the meeting of November 3, 2021, when a conditional business license was issued to it by the Business License Division, Applicant has consistently refused to abide by the rules and regulations of the City of Long Beach. Therefore, pursuant to the provisions of LBMC Chapters 3.80.421.5 and 5.04.030 of the LBMC, the Applicant's application for a business license is denied because of the Applicant's repeated failure to comply with applicable laws and ordinances of the City.

Should the Applicant wish to appeal the denial of the business license application to the Long Beach City Council, it may do so by filing an appeal letter with the Director of Financial Management within ten (10) calendar days from the date of mailing of this letter, pursuant to LBMC Chapter 3.80.421.6. **The notice of appeal shall state the reason for the appeal and the grounds of such appeal.**

Please send the notice of appeal to the address below along with a nonrefundable filing fee of \$1,398.00.

City of Long Beach Business License Division
Attn: Marla Camerino
411 W. Ocean Blvd., 6th Floor
Long Beach, CA 90802



Denial of Business License Application BU22114159

March 14, 2022

Page 3 of 3

Should you have any questions regarding the appeal process, please contact Marla Camerino, Administrative Analyst, at (562) 570-6162 or by email at marla.camerino@longbeach.gov.

Sincerely,



Kevin Riper

Director of Financial Management / CFO

Attachment A: Conditional Business License

Attachment B: All Long Beach Municipal Code Chapter References

Attachment C: List of City Code Violations

Attachment D: Letter to Applicant dated December 29, 2021

Attachment E: Letter to Applicant dated February 9, 2022

cc: Brian Tuliau, Acting Business Services Officer
Tara Mortensen, Manager of Business Services
Arturo D. Sanchez, Deputy City Attorney



November 3, 2021

Mr. Jacob Poozhikala
Chief Operating Officer
JP23 Hospitality Company
110 East Broadway
Long Beach, CA 90802

Dear Mr. Poozhikala:

Please find enclosed a Conditional Business License, effective immediately, and effective up to March 15, 2022, which is no longer than 180 days, as prescribed in the Long Beach Municipal Code (LBMC) from the date your business license application was received by the Business Services Bureau complete, which was September 16, 2021.

As per the LBMC, it is the duty of the Director of Financial Management to ensure a business “will comply with applicable fire, building safety, zoning, health and other laws and regulations,” when considering issuance of a Business License, as per Sections 3.80.410 and 3.80.421.1. It has come to the Director’s attention that there have already been numerous instances of non-compliance (see list below) of the City’s regulations prior to the issuance of a Business License to JP23 Hospitality Company dba JP23. We have reviewed the initial evidence gathered in the investigation required in the business licensing process, and have determined that a more thorough investigation of the appropriateness of issuing a permanent Business License is prudent.

The following is a list of violations issued to date by City staff. Prior to violations being issued City staff from multiple departments had numerous communications with JP23, both verbally and in writing, to go over the regulations. There were also attempts by JP23 to conduct large events without appropriate Occupancy Permits, and without a Business License application having been submitted – let alone a Business License issued, -- even after being advised by staff not to conduct such events.

1. *Notice of Violation of Long Beach Building Standards Code, issued on Friday, 9/17/21.*
Issued for noncompliance with LBMC Section 18.08.010 by allowing public occupancy prior to receiving a Temporary Certificate of Occupancy (TCO).

November 3, 2021

Page 2

2. *Notice of Violation (FIR#65251) of California Fire Code, issued on Saturday, 9/18/21.*
Issued for noncompliance with California Fire Code Section 105.3.3 and allowing occupancy prior to receiving a Temporary Certificate of Occupancy (TCO).
3. *Misdemeanor Citation Issued on Thursday, 10/14/2021.*
Issued for noncompliance with LBMC Section 3.80.210 for conducting business in the City of Long Beach without first obtaining a Business License.
4. *Misdemeanor Citation issued on Friday, 10/15/21.*
Issued for noncompliance with LBMC Section 3.80.210 for conducting business in the City of Long Beach without first obtaining a Business License.
5. *Misdemeanor Citation issued on Saturday, 10/16/21.*
Issued for noncompliance with LBMC Section 3.80.210 for conducting business in the City of Long Beach without first obtaining a Business License.
6. *Misdemeanor Citation issued on Wednesday, 10/20/21.*
Issued for noncompliance with the LBMC Section 3.80.210 for conducting business in the City of Long Beach without first obtaining a Business License.
7. *Misdemeanor Citation issued on Thursday, 10/21/21.*
Issued for noncompliance with the LBMC Section 3.80.210 for conducting business in the City of Long Beach without first obtaining a Business License.

Given this history, the Department of Financial Management is exercising its authority under the LBMC 3.80.421.1B to issue a Conditional Business License as an act of good faith to allow for legal operation of your business while the investigation required to issue a permanent Business License is ongoing. JP23 must also meet the conditions itemized within the Conditional Business License, as described below. While we are mindful of the strain that this delay must be causing you and your business, the Department does have a clear obligation to investigate all new business license applications thoroughly.

Please be advised that there are three (3) conditions of operation associated with this conditional business license, as listed below, and the applicant may be rejected for failure to comply at any time, as per the LBMC Section 3.80.421.1.

1. Complete all actions/corrections as requested within the Temporary Certificate of Occupancy.



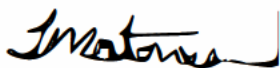
November 3, 2021

Page 3

2. Comply with all applicable laws and regulations, including but not limited to, LBMC Chapters 3, 5 and 21.
3. Resolve each of the Misdemeanor Citations identified above.

Thank you for your interest in becoming a business owner in the City of Long Beach. We are dedicated to not only providing for a healthy business community, but also in providing a safe and enjoyable community for residents and visitors. We look forward to working through the process with you, and ultimately, the success of your business in Long Beach. If you have any questions, please contact Brian Tuliau, Business Services Officer, at (562) 570-6363 or by email at brian.truliau@longbeach.gov.

Sincerely,



Tara Mortensen
Manager of Business Services

ENCLOSURE





City of Long Beach
Business Services Division
411 W. Ocean Boulevard, 6th Floor
Long Beach, CA 90802
 Website: www.longbeach.gov/finance/business_license
 Phone: (562) 570-6211 Email: LBBIZ@longbeach.gov

CONDITIONAL BUSINESS LICENSE

This is a Conditional Business License, which is valid for a **maximum of 180 days** from date of application in accordance to Long Beach Municipal Code (LBMC) 3.80.421.1(B).

Application Date: September 16, 2021 Expiration: March 15, 2022

To: JP23 Hospitality Company DBA: JP23
 (Business Owner)

For: Operation of a Restaurant/Bar Account No.: _____
 (Business Type)

At 110 East Broadway In the City of Long Beach.
 (Location)

Conditions of Operation:	<ol style="list-style-type: none"> Complete all actions required to obtain a certificate of occupancy. Comply with all applicable laws and regulations, including but not limited to, LBMC Chapters 3, 5 and 21. Resolution of the Misdemeanor Citations that have been issued to date.
---------------------------------	--

This is **NOT** your permanent business license. Prior to the issuance of your permanent business license, you must make certain corrections or obtain specific permit/approvals from the following City Departments:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Development Services Department | <input type="checkbox"/> Health & Human Services Department |
| <input checked="" type="checkbox"/> Financial Management Department | <input type="checkbox"/> Police Department |
| <input checked="" type="checkbox"/> Fire Department | |

COMMENTS | As per LBMC 3.80.421.1B, "the applicant may be rejected for failure to comply with applicable laws and regulations at any time." Please be sure to review the correction notices issued by City Departments and make all the necessary corrections prior to or by the date indicated above as the expiration of this license.

I have read and understand the above requirements and conditions of operation:

Applicant's Signature: _____ Date: _____

Business Services Manager: *Motawa* Date: 11/3/21

Director of Financial Mgmt. *Kevin Ripper* Date: 11/03/2021

This Conditional Business License MUST be posted at your place of business so that it is clearly visible to the public.

LONG BEACH MUNICIPAL CODE CHAPTERS REFERENCED

1.32.040 Failure to obtain or exceeding limits of license or permit—Grounds for suspension, revocation or denial.

- A. Whenever this Code requires that a permit or license be obtained before an activity may be commenced or conducted, any person who commences or conducts such activity without first obtaining the required and appropriate license or permit shall be deemed in violation of the provisions of this Code. Such violation may constitute a ground for denial of an application for a license or permit governing that specific activity. The use of premises, amusement machines, games or devices licensed or permitted pursuant to this Code for other than their intended use or not in compliance with the license or permit issued shall constitute grounds for revocation or suspension of the license.
- B. No person, whether as principal, agent, clerk, employee, partner or otherwise, either for himself or herself or any other person, or for any body corporate, or as an officer of any corporation, or otherwise, shall commence or carry on any business, trade, calling, profession or occupation for which a license is required by this Code without first having procured such license; and such person shall comply with all of the applicable requirements or provisions of this Code.
- C. Any person engaged in a business or activity in an unincorporated territory or in another incorporated area which is annexed to the City shall obtain a City business or other license, if required by this Code, within thirty (30) days after the effective date of annexation.

(Ord. C-5525 § 2, 1979; prior code § 1200.3)

3.80.210 License and tax payment required.

There are hereby imposed upon the businesses, trades, professions, callings and occupations specified in this Chapter license taxes in the amounts hereinafter prescribed. It shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the City without first having procured a license from said City to do so and paying the tax hereinafter prescribed and without complying with any and all applicable provisions of this Code, and every person conducting any such business in the City shall be required to obtain a business license hereunder.

This Section shall not be construed to require any person to obtain a license prior to doing business within the City if such requirement conflicts with applicable statutes of the United States or of the State of California.

Any person who engages in any business for which a business license is required, shall be liable for the amount of all taxes and penalties applicable from the date of commencement of the business, whether or not such person would have qualified for such business license; however, such payment shall not create any right for the person to remain in business.

All payments of business license tax received by the City, irrespective of any designation to the contrary by the taxpayer, shall be credited and applied first to any penalties and tax due for prior years in which the tax was due but unpaid.

(Ord. C-7783 § 2, 2002; Ord. C-6259 § 1 (part), 1986)

3.80.410 Duties of Director of Financial Management and Chief of Police.

It shall be the duty of the Director of Financial Management, and he is hereby directed, to administer and enforce each and all of the provisions of this Chapter, and the Chief of Police shall render such assistance in the enforcement of this Chapter as may from time to time be required by the Director of Financial Management.

(Ord. C-6259 § 1 (part), 1986)

3.80.421.1 Application—Investigation.

- A. The Director shall refer such application to the appropriate departments of the City in order that it may be ascertained whether the business proposed to be conducted or the premises in which it is proposed to locate such business will comply with applicable fire, building safety, zoning, health and other laws and regulations.
- B. The Director may issue a conditional license under this Chapter for the applicant to conduct business during the investigation period if: all necessary applications have been completed by the applicant, the business tax and application fees have been paid, no department has declared the building or structure "unsafe" as defined in Section 102 of the current edition of the California Uniform Building Code, and the business has not had an application denied pursuant to the provisions of this Chapter within the past year. A conditional license shall not be valid for a period longer than one hundred eighty (180) days from the date of application. During such period, based upon review by the appropriate departments of the City, the applicant may be rejected for failure to comply with applicable laws and regulations at any time. Within one hundred eighty (180) days, if no departments have rejected the applicant or requested an extension of the time to review same, the Director shall issue the license.
- C. The Director, at his sole discretion, may issue a notice of nonoperation during the investigation period when a department determines the building or structure unsafe and corrections are required prior to the safe operation and continuation of the business. Following completion and City approval of any City mandated corrections, a conditional license or a business license may be issued.

(Ord. C-7849 § 1, 2003; Ord. C-6259 § 1 (part), 1986)

3.80.421.5 Application—Rejection.

In the event that a particular department of the City rejects an application for the reason that such business or the location at which it is proposed to conduct the same will not so comply with applicable laws and ordinances, the Director Of Financial Management shall not issue such license.

(Ord. C-6259 § 1 (part), 1986)

3.80.421.6 Appeals.

Any applicant for a business license whose application for such license has been denied by the Director of Financial Management may, within ten (10) days after such denial, appeal therefrom to the City Council by filing with the Director a notice of such appeal setting forth the decision and the grounds upon which he deems himself aggrieved thereby. The applicant shall pay to the Director at the time of filing the notice of appeal the fee set by resolution of the City Council for appeals hereunder. The Director shall thereupon make a written report to the City Council reflecting such determination denying the business license. The City Council at its next regular meeting following the filing of said appeal, or within ten (10) days following the filing thereof, shall set said appeal for hearing to be held not less than ten (10) days nor more than thirty (30) days thereafter and such hearing may for good cause be continued by the order of the City Council. Upon the hearing of the appeal the City Council may overrule or modify the decision of the Director appealed from and enter any such order or orders as are in harmony with this Title and such disposition of the appeal shall be final.

(Ord. C-6325 § 8, 1986; Ord. C-6259 § 1 (part), 1986)

5.04.030 Application—Rejection.

In the event that a particular department of the City rejects an application for the reason that such business or the location at which it is proposed to be conducted will not comply with applicable laws and ordinances, no permit shall be issued, and the application shall be denied.

(Ord. C-7461 § 10, 1997)

5.06.020 Suspension/Revocation/Denial.

- A. Any permit to do business in the City issued pursuant to this Title 5 may be suspended, revoked or denied in the manner provided in this Section upon the following grounds:
1. The permittee or any other person authorized by the permittee has been convicted of violation of any provision of this Code, State or Federal law arising out of or in connection with the practice and/or operation of the business for which the permit has been granted. A plea or verdict of guilty, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this Section. The City Council may order a permit suspended or revoked, following such conviction, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the California Penal Code allowing such a person to withdraw his/her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment;
 2. For any grounds that would warrant the denial of the issuance of such permit if application therefore was being made;
 3. The permittee or any other person under his/her control or supervision has maintained a nuisance as defined in Section 21.15.1870 of the Long Beach Municipal Code which was caused by acts committed on the permitted premises or the area under the control of the permittee;
 4. The permittee, his/her employee, agent or any person connected or associated with permittee as partner, director, officer, stockholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for the permit required under the provisions of this Code;
 5. The permittee has failed to comply with any condition which may have been imposed as a condition of operation or for the issuance of the permit required under the provisions of this Code;
 6. The permittee has failed to pay any permit fees that are provided for under the provisions of this Code within sixty (60) days of when the fees are due.
- B. Upon receipt of satisfactory evidence that any of the above grounds for suspension or revocation of said permit exist, the permittee shall be notified in writing that a hearing on suspension or revocation shall be held before the City Council, the grounds of suspension or revocation, the place where the hearing will be held, and the date and time thereof which shall not be sooner than ten (10) days after service of such notice of hearing.
- C. All notices provided for in this Section shall be personally served upon the permittee or left at the place of business or residence of such permittee with some person over the age of eighteen (18) years having some suitable relationship to the permittee. In the event service cannot be made in the foregoing manner, then a copy of such notice shall be mailed, postage fully prepaid, addressed to the last known address of such permittee at his/her place of business or residence at least ten (10) days prior to the date of such hearing.
- D. Whenever a business permit has been revoked/or denied under the provisions of this Section, no other application by such permittee for a business permit to conduct a business or operate in the City shall be considered for a period of one (1) year from the date of such revocation or denial.

(Ord. C-7423 § 14, 1996; Ord. C-6325 § 13 (part), 1986; Ord. C-6260 § 1 (part), 1986)

5.72.110 Permit required and prohibited uses.

- A. No person shall carry on, maintain or conduct any entertainment activity in the City without first obtaining a permit therefor from the City.
- B. Entertainment provided at a private residence for the monetary gain of any person is prohibited. However, this prohibition is in no way intended to infringe on the rights of private persons to engage in the activities regulated by this Chapter at their residence for private, as opposed to commercial, purposes.

(Ord. C-7423 § 26, 1996)

5.72.130 Permits for occasional events.

- A. Unless a permit has been approved and issued by the City Council or Director of Financial Management as outlined above, any entertainment activity as defined within this Chapter requires an occasional event permit, issued by the Director of Financial Management or his/her designee pursuant to the provisions of this Section.
- B. An occasional event permit shall not be issued for any premises or location more than twenty four (24) times within any twelve (12) month period, and events for which occasional event permits are issued must be at least ten (10) days apart. This prohibition shall not apply to any parks and recreation or other City operated facility.
- C. Applications for occasional event permits will be accepted for consideration only if the following requirements have been met. Failure to meet any of these requirements will render the application incomplete/void. Incomplete or void applications will not be processed:
 - 1. The application shall be submitted no more than thirty (30) business days and no less than ten (10) business days prior to the event.
 - 2. The applicant shall pay the filing fee, as established by resolution of the City Council, at the time the application is filed with the City.
 - 3. All parties to the application must be at least eighteen (18) years of age.
 - 4. The application must be accompanied by lease/rental agreements, security contracts, and any other supporting documentation as required by the Director of Financial Management.
- D. An occasional event permit shall be issued by the Director of Financial Management only after he/she has determined the following:
 - 1. The peace and quiet of the neighborhood will not be disturbed.
 - 2. Adequate security, as determined by the Director of Financial Management, has been afforded.
 - a. Where professional security services have been required, a written contract must be obtained and submitted to the Director of Financial Management no less than five (5) days prior to the scheduled event.
 - b. The contract must contain such information as the Director of Financial Management may require, including, but not limited to:
 - (i) The event location;
 - (ii) The date and specific hours of the event;
 - (iii) The number of guards assigned; and
 - (iv) A statement that the guards will be uniformed or non uniformed and armed or unarmed.
 - c. The security contract must be signed by the permit applicant and by a duly authorized representative of a private patrol operator, as licensed by the State of California Department of Consumer Affairs, who is in possession of a Long Beach City business license, issued pursuant to Chapter 3.80 of the Long Beach Municipal Code.
 - 3. That all prerequisite requirements of other agencies or departments have been met.
 - 4. In making a determination of whether or not to issue an occasional event permit, the Director of Financial Management may inspect the premises and site at which the event is to take place. The Director of Financial Management may also consider prior complaints, police service calls and other relevant information related to prior events on the premises.
- E. An occasional event permit for a nonprofit fundraising event shall not be approved unless and until a charitable solicitation permit has been obtained pursuant to Chapter 5.28 of the Long Beach Municipal Code.

- F. Where a promoter has been engaged to market, advertise or conduct the event, said promoter must obtain a City business license prior to approval of the occasional event permit. If the event is a charitable event, then the promoter must also comply with all applicable requirements of Chapter 5.28 of the Long Beach Municipal Code.
- G. As a condition of occasional event permit issuance, the permittee agrees to reimburse the City:
 - 1. Whenever excessive police services, as determined by the Director of Financial Management, are required as the result of any incident or nuisance arising out of or in connection with the permitted event; and
 - 2. For costs associated with the removal of signs posted in connection with the event, whether or not the signs had been permitted by any City department, as outlined in Chapter 21.44 of the Long Beach Municipal Code.
- H. In no event shall the issuance of an occasional event permit by the Director of Financial Management be construed as permission to disturb the peace. Permits may be denied or revoked by the City if it is determined that the event sponsor or any agent, employee or associate of any such event organizer has willfully made any false or misleading statement in an application or has not fully complied with the requirements of this Chapter or has violated any of the provisions of this Chapter or the provisions of any other applicable law, rule or regulation.

(ORD-12-0018 (Emerg.), § 4, 2012; ORD-10-0016, § 1, 2010; Ord. C-7423 § 26, 1996)

List of Violations Issued to the Applicant

- ***Notice of Violation of Long Beach Building Standards Code, issued on Friday, 9/17/21.***
Issued for noncompliance with LBMC Section 18.08.010 by allowing public occupancy prior to receiving a Temporary Certificate of Occupancy (TCO)
- ***Notice of Violation (FIR#65251) of California Fire Code, issued on Saturday, 9/18/21.***
Issued for noncompliance with California Fire Code Section 105.3.3 and allowing occupancy prior to receiving a Temporary Certificate of Occupancy (TCO).
- ***Misdemeanor Citation Issued on Thursday, 10/14/2021.***
Issued for noncompliance with LBMC Section 3.80.210 for conducting business in the City of Long Beach without first obtaining a Business License.
- ***Misdemeanor Citation Issued on Friday, 10/15/21.***
Issued for noncompliance with LBMC Section 3.80.210 for operating a business without a Business License.
- ***Misdemeanor Citation issued on Saturday, 10/16/21.***
Issued for noncompliance with LBMC Section 3.80.210 for conducting business in the City of Long Beach without first obtaining a Business License.
- ***Misdemeanor Citation Issued on Wednesday, 10/20/21.***
Issued for noncompliance with the LBMC Section 3.80.210 for conducting business in the City of Long Beach without first obtaining a Business License.
- ***Misdemeanor Citation issued on Thursday, 10/21/21.***
Issued for noncompliance with the LBMC Section 3.80.210 for conducting business in the City of Long Beach without first obtaining a Business License.
- ***Misdemeanor Citation issued on Thursday, 12/9/21***
Issued for Non-compliance with LBMC 5.72.110(A) for operating without an entertainment permit.
- ***Misdemeanor Citation issued on 12/23/21***
Issued for Non compliance with LBMC 5.72.110(A) for operating without an entertainment permit.
- ***Misdemeanor Citation issued on 1/13/22***
Issued for Non-compliance with LBMC 5.72.110(A) for operating without an entertainment permit.
- ***Misdemeanor Citation issued on 1/28/22***
Issued for Non-compliance with LBMC 5.72.110(A) for operating without an entertainment permit.

December 29, 2021

Mr. Jacob Poozhikala
Chief Operating Officer
JP23 Hospitality Company
110 East Broadway
Long Beach, CA 90802

Dear Mr. Poozhikala:

As we discussed yesterday, this letter will serve as notification that it has come to the attention of the Department of Financial Management that there have been actions at JP23 documented by the Long Beach Police Department that have not been in compliance with the terms and conditions of the Conditional Business License issued on November 3, 2021 (enclosed), specifically Condition #2 and **LBMC Section 5.72.110 relating to Entertainment Permits**.

As a reminder, the Conditions of the Conditional Business License include:

1. Complete all actions required to obtain a certificate of occupancy.
2. Comply with all applicable laws and regulations, including but not limited to, LBMC Chapters 3, 5 and 21.
3. Resolution of the Misdemeanor Citations that have been issued to date.

The Department of Financial Management will be reviewing these documented actions further. If you have any questions related to compliance with the LBMC, please email tara.mortensen@longbeach.gov and Brian Tuliau, Acting Business Services Officer, at brian.tuliau@longbeach.gov.

Sincerely,



Tara Mortensen
Manager of Business Services

ENCLOSURE

cc: Kevin Riper, Director of Financial Management
Brian Tuliau, Acting Business Services Officer

February 9, 2022

VIA EMAIL, AND REGULAR AND CERTIFIED MAIL

Mr. Jacob Poozhikala
Chief Operating Officer
JP23 Hospitality Company
110 East Broadway
Long Beach, CA 90802

Re: Notice of Unpermitted Live Entertainment Events at 110 East Broadway

Dear Mr. Poozhikala:

It has come to the City of Long Beach's (City) attention that JP23 Hospitality Company dba JP23 (JP23), located at 110 East Broadway, has advertised live entertainment events to occur within JP23 on Thursday (2/10), Friday (2/11) and Saturday (2/12) of this week that requires a City issued Entertainment Permit, or an Occasional Event Permit if an active Entertainment Permit has not been issued, per Long Beach Municipal Code (LBMC) Chapter 5.72. JP23 has **not** been issued an Entertainment Permit, and has **not** applied for an Occasional Event Permit. Please see the attached link advertising the above referenced live entertainment events, screen shots of the website as it appeared as of the date of this letter are enclosed (Enclosure):

<https://jp23.com/events/?fbclid=IwAR1DQrN-YjZu8356Mn98R3iOv26FU23MYyGEuO3gLthEBBYPsHVUjAIXks>

The City is seriously concerned for the health and safety of the general public and for JP23's patrons, if these unpermitted live entertainment events proceed as planned. The City has not had an opportunity to review operational, site or safety plans for these events, as is a part of the normal process to obtain an Occasional Event Permit.

JP23 has a history of repeated non compliance with the LBMC, with nine misdemeanor citations and two notice of violations being issued starting on September 17, 2021 and as recent as January 28, 2022. As the COO of JP23 Hospitality, you have been informed on several occasions of the City's regulations and processes, including the City's entertainment permit requirements, as well as those for obtaining an occasional event permit.

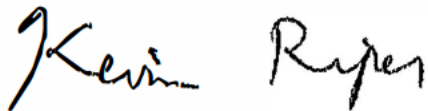


February 9, 2021

Page 2

Please be advised, proceeding with these three separate planned unpermitted events would be a violation of LBMC Chapter 5.72.110 and 5.72.130. The operation or maintenance of any business in violation of Title 5 of the LBMC is considered a public nuisance pursuant to LBMC Chapter 9.37.090 D. If JP23 continues with these planned live entertainment events, the City will take appropriate action.

Sincerely,



Kevin Ripper
Director of Financial Management

ENCLOSURE

cc: **JP23**

Niral Patel, Esq

Registered Agent for Service of Process for White Spot, Inc., a General Partner of Spot Investments, LP (Property Owner)

Teresa J. Rhyne

Representatives for the Live Entertainment Artists

Dennis Ashley, ICM Partners

Daniel Kim, CAA

City of Long Beach

Thomas B. Modica, City Manager

Arturo D. Sanchez, Deputy City Attorney



JP23 LONG BEACH SUPERBOWL WEEKEND EVENTS

Kick off Super Bowl Weekend with us. Busta Rhymes, Neely & the one and only T-Pain



BUY BUSTA TICKETS

BUY NEELY TICKETS

BUY T-PAIN TICKETS

Checkout all Super Bowl Weekend Events

BUY EVENT TICKETS

SUPER BOWL COUNT DOWN

003 : 13 : 16 : 47

MESSNER REEVES LLP

March 23, 2022

VIA ELECTRONIC MAIL AND FEDEX

City of Long Beach Business License Division
Attn: Marla Camerino
411 W. Ocean Blvd., 6th Floor
Long Beach, CA 90802
E-Mail: marla.camerino@longbeach.gov

Re: *JP23 Hospitality Company, Inc. Notice of Appeal - Denial of Business License Application BU22114159*

Dear Ms. Camerino:

This firm is counsel for JP23 Hospitality Company, Inc. (hereinafter, “JP23”). JP23, located at 110 East Broadway Avenue, is a full service restaurant and bar. JP23 employs over 70 people and offers residents and visitors premium dining and nighttime entertainment in an upscale, contemporary space in Long Beach’s vibrant downtown district. This letter will serve as JP23’s Notice of Appeal, pursuant to Long Beach Municipal Code (“LBMC”) Chapter 3.80.421.6, with regard to the City of Long Beach Director of Financial Management Kevin Riper’s (the “Director”) denial of JP23’s Business License Application BU22114159.

The Director’s decision threatens to shut down a thriving and profitable business and put over 70 people out of work. The Director cites a number of alleged permitting violations as grounds for denial of the license. But the Director’s denial fails on two fronts: (1) neither LBMC 3.80.421 nor 5.040.060, which the Director cited for authority to deny JP23’s application, is applicable under these circumstances; and (2) any discretion the Director may have to deny the application is outweighed by the facts favoring issuance of the business license; i.e., the Director’s own unreasonable and unwarranted delays in processing and issuing the applicable permits, JP23’s good faith efforts to cooperate with the Director, and the substantial time and resources JP23 has poured into the business. The denial should be reversed and the business license should be issued.

I. Brief Summary of Facts

JP23’s endeavor to give the City of Long Beach an exceptional establishment dates back to 2018. The City approved the transfer of an Alcoholic Beverage Control (“ABC”) license to JP23. JP23 met with City officials in a predevelopment meeting to discuss the substantial improvements JP23 planned for the premises; including an accessory entertainment space, decks, a commercial kitchen and mezzanine. Further discussed in the predevelopment meeting were JP23’s plans for both dining and entertainment and the proper permitting for each side of the

business. JP23 was specifically told that it could operate under a temporary entertainment permit once the buildout was completed, pending issuance of the permanent entertainment permit. In September 2019, plans for the improvements were approved and construction commenced. In March 2020, in the middle of construction, the COVID-19 pandemic brought JP23's buildout to a sudden halt for nearly a year. However, JP23 persisted through the difficulties and resubmitted new plans for the buildout, which were approved in February 2021. Construction recommenced in March 2021.

On September 16, 2021, JP23 submitted complete applications for a Business License and an Entertainment Permit. All necessary departments signed off on JP23's temporary certificate of occupancy, and it was issued on October 13, 2021. In anticipation of opening JP23's restaurant on October 14, 2021, *nearly a month after submitting the application*, JP23 contacted the Business License Division and was told that an invoice had finally been created for the business license tax. JP23 logged onto the payment portal as instructed; but was unable to pay using the "E-Account" number provided. After multiple follow ups to the Business License Division, JP23 was finally able to pay the invoice, which posted on October 19, 2021. Meanwhile, despite believing in good faith that JP23 was in compliance, JP23 was cited for operating without a license. JP23 attempted to follow up by telephone multiple times on October 18, 19, 20, 21, and 22 in a good faith effort to get direction from the Business License Division. Not until JP23 was forced to get legal counsel involved did the Business License Division finally respond and agree to set up a meeting for November 3, 2021 (still well over six weeks after the applications were submitted).

At the November 3, 2021 meeting, City officials were unable to give satisfactory explanations about why the business license had not been issued; nor why the application process had been delayed so significantly. Further, JP23 requested a temporary entertainment permit, but inexplicably, the City represented that JP23 did not qualify for one. After the meeting on November 3, 2021, the Business License Division agreed to issue a conditional business license retroactive to the date of JP23's application, September 16, 2021.

JP23 continued to operate the restaurant side of the business, keeping the lounge side closed pending issuance of the entertainment permit. On January 11, 2022, *nearly four months after JP23 submitted the application*, JP23 followed up on its application. JP23 emphasized the fact that the Los Angeles area would see an enormous influx of visitors for the Super Bowl on February 13, and JP23 requested assistance via e-mail to the Business License Division in getting the permit approved before then. On January 17, *nearly a week later and over four months after JP23 submitted its application*, Ms. Tara Mortenson responded simply to say she needed to "check on a few things" and promised to get back to JP23. On January 19, JP23 again followed up via e-mail. Ms. Mortensen responded simply by saying a meeting would be set.

On January 25, 2022 JP23 attended a meeting via videoconference with City officials. To JP23's surprise, the City claimed, *for the first time*, that JP23's application for an entertainment permit was "incomplete" due to (1) nonpayment of an invoice for application fees allegedly sent out on October 25, 2021; and (2) nonpayment of an invoice for a business license for allegedly

sent out on December 17, 2021. *Neither invoice was received until Ms. Mortenson sent them via e-mail on January 27, 2022.*

Worse still, at the January 25, 2022 meeting, the Director made certain comments to which JP23 took offense. The comments appeared to be directed at JP23's principal, Jacob Poozhikala, and legal counsel's, Niral Patel, ethnic background. Enclosed herewith is the declaration of Niral Patel, setting forth the Director's comments. The comments caused JP23 to question whether the Director could fairly process and make determinations on JP23's applications.

Regardless, JP23, in further good faith efforts, requested guidance on having entertainment for Super Bowl weekend in light of the City's position that the application was "incomplete." Ms. Mortenson suggested a solution wherein JP23 could apply for a "special events permit." Ms. Mortenson specifically told that JP23 could have a 3-day event under the special events permit. *In reliance on this information from Ms. Mortenson*, JP23 moved forward with applying for the special events permit and booking an artist for Super Bowl weekend, including remitting down payments.

On March 14, 2022, the Director sent a letter to JP23 denying its business license application, "pursuant to the provisions of LBMC Chapters 3.80.421.5 and 5.04.030 . . . because of the Applicant's repeated failure to comply with applicable laws and ordinances of the City." Specifically, the Director alleges two instances of noncompliance on 9/17/21 and 9/18/21 for allowing occupancy prior to obtaining a temporary certificate of occupancy (despite the citations being issued weeks before JP23 opened to the public); five from 10/14/21 to 10/21/21 for conducting business without a business license (despite JP23's business license application being submitted on 9/16/21 and the Director issuing a conditional business license retroactive to that date); and seven from 12/9/21 to 2/12/22 for operating without an entertainment permit (despite the Director failing to issue an entertainment permit within 60 days of JP23's application as he was required to do).

II. Neither LBMC 3.80.421 Nor 5.040.060 Furnishes the Director With Authority to Deny a Business License Application Under These Circumstances

As set forth in the denial letter, the Director relies on LBMC Chapters 3.80.421.5 and 5.04.030 for authority to deny JP23's application. However, the Director's reliance on those chapters is misplaced. Neither chapter furnishes the Director with authority to deny JP23's application.

LBMC 3.80.421.5 provides as follows:

In the event that a particular department of the City rejects an application for the reason that such business or the location at which

it is proposed to conduct the same will not so comply with applicable laws and ordinances, the Director Of Financial Management shall not issue such license.

LBMC 3.80.421.5 mandates the Director not to issue a license under one condition: that a department rejects an application because the business or the location of the business “**will not so comply** with applicable laws and ordinances.” (Emphasis Added.) *The language of LBMC 3.80.421.5 is forward-looking, not backward-looking.* Under LBMC 3.80.421.5, the Director may only deny the application where JP23’s business **will not** comply with some provision of law. For example, in the event a City department found that JP23’s business was incompatible with its zoning district (i.e., if JP23 tried to open in a residential-only district), the Director may be authorized to deny JP23’s application under LBMC 3.80.421.5 But neither the Director, nor any other department, made such a finding. Instead, the Director cited *past* instances of alleged noncompliance as grounds to deny JP23’s application.

In citing LBMC 3.80.421, the Director is necessarily making the finding that *past* instances of alleged noncompliance means that JP23 “will not comply with applicable laws and ordinances.” The Director’s position is absurd, particularly given JP23’s applications on file and good faith efforts to comply:

- With regard to the alleged noncompliance for allowing occupancy prior to obtaining a temporary certificate of occupancy, JP23 obtained a temporary certificate of occupancy on October 13, 2021.
- With regard to the alleged noncompliance for conducting business prior to obtaining a business license, JP23 applied for a business license on or about September 16, 2021, paid the business license tax after multiple good faith efforts, and obtained a conditional business license retroactive to September 16, 2021.
- With regard to the alleged noncompliance for operating without an entertainment permit, JP23 applied for an entertainment permit on or about September 16, 2021, followed up multiple times about approval of the entertainment permit, and, due to the Director’s delays and reticence, inquired about alternative means of compliance via a temporary entertainment permit and a special events permit.

JP23’s applications for the proper permitting and licensure, as well as its extensive good faith efforts to work with the City, cannot be discounted. The alleged past noncompliance cannot reasonably be used as grounds for a finding that JP23 “will not so comply with applicable laws and ordinances.” Even if JP23 conceded its noncompliance in the alleged instances the Director cites, it does not follow that JP23 will not comply in the future.

JP23 **will** comply with all applicable laws and ordinances once its business license is issued. LBMC 3.80.421.5 is inapplicable and does not furnish the director with authority to deny JP23’s application.

LBMC 5.04.030 provides as follows:

In the event that a particular department of the City rejects an application for the reason that such business or the location at which it is proposed to be conducted will not comply with applicable laws and ordinances, no permit shall be issued, and the application shall be denied.

LBMC 5.04.030 applies to applications for a permit under Title 5 of the LBMC; e.g., an entertainment permit application. 5.04.030 is **inapplicable** to a business license application submitted under LBMC 3.80.420.1. However, even if 5.04.030 had any application to a business license, the language of 5.04.030 is substantially similar to that of LBMC 3.80.421 and functions identically. LBMC 5.04.030 is similarly forward looking in that past noncompliance cannot reasonably be used as grounds for a finding that JP23 “will not so comply with applicable laws and ordinances.” LBMC 5.04.030 is inapplicable and does not furnish the director with authority to deny JP23’s application.

III. The Director Did NOT Cite LBMC 3.80.421.1B as Authority to Deny the Application

LBMC 3.80.421.1B provides that during the 180-day conditional business license period, “the applicant may be rejected for failure to comply with applicable laws and regulations at any time.” Arguably, the Director could have cited 3.80.421.1B for the proposition that the Director has discretion to deny an application for prior instances of noncompliance. **But the Director failed to do so.**

Even if the Director had cited 3.80.421.1B for authority to deny JP23’s application, it would have been a complete abuse of discretion. It would have ignored the facts surrounding the alleged instances of noncompliance (including the Director’s own delays and misinformation upon which JP23 relied to its detriment); it would have ignored the substantial time and resources JP23 poured into the business; and it would have ignored JP23’s substantial good faith efforts to cooperate with the Director’s office and enjoy a healthy, mutually beneficial relationship with the City of Long Beach.

First, JP23 did not open to the public until October 14, 2021, after issuance its temporary certificate of occupancy on October 13, 2021. On September 17 and 18, 2021 JP23’s doors were closed to the public. At no point before the temporary certificate of occupancy was issued did JP23 allow public occupancy of its premises. There is no factual basis to support the City’s citations for public occupancy prior to a TCO being issued.

Second, JP23 submitted its application for a business license on or about September 16, 2021. Nearly a month later, the Director's office finally generated an invoice for the business license tax, which JP23 timely paid. The Director subsequently issued a conditional business license for the period of September 16, 2021 (the date of JP23's application) to March 15, 2022. Effectively, JP23 was retroactively approved to operate dating back to September 16, 2021. Accordingly, the citations for operating without a business license from October 14, 2021 to October 21, 2021 are void and the Director may not reasonably rely on those citations to now deny JP23's application.

Third, JP23 submitted a complete application for an entertainment permit on or about September 16, 2021. The Director, pursuant to LMBC 5.72.120G, was required to "refer it to all concerned City departments for investigation." Within 60 days, each department was to file their respective reports and recommendations and the Director was to then transmit the application with the reports and recommendations to the City Council. But instead of following his obligations under the Code, the Director unreasonably and unlawfully delayed processing JP23's application. Despite JP23's multiple good faith follow-ups, JP23 did not learn that the Director deemed the application "incomplete" due to nonpayment of invoices until January 25, 2022, over four months after JP23 submitted its application. However, nonpayment of invoices (which JP23 did not receive until January 27, 2022) is not grounds to fail to process the application under LMBC 5.72.120D. Indeed, among the enumerated items constituting a complete application in LMBC 5.72.120A, payment of any fees is not one of them. Additionally, the Director's office's misinformation with regard to the special events permit, upon which JP23 reasonably relied and booked entertainment to JP23's detriment, directly resulted in the alleged noncompliance over Super Bowl weekend. It is inexplicable why the Director's office gave JP23 apparently false information and then refused to make an exception based thereon. Moreover, it is puzzling, at best, why the Director's office represented to JP23 that it did not qualify for a temporary entertainment permit. JP23 can find no good reason why it would not qualify for a temporary permit under LMBC 5.72.125. Indeed, the Director would have been required under LMBC 5.72.125 to issue a temporary permit and the alleged noncompliance for operating without an entertainment permit would have been avoided entirely.

In sum, JP23 has worked exhaustively to cooperate with the City of Long Beach and the Director's office over the course of four years, even weathering and persisting through the devastation of the COVID-19 pandemic. JP23 has poured millions of dollars into creating an attractive and desirable establishment for the residents and visitors of Long Beach. JP23 has employed over 70 people. The alleged instances of "noncompliance" cited by the Director are either not factually supported or directly resulted from the Director's own delays, conduct, and representations. The Director's decision to deny JP23's business license threatens to result in a complete waste of four years and millions of dollars while putting over 70 people out of work. ***Had the Director cited 3.80.421.1B as authority for the Director's discretion to deny JP23's application, it would be an unequivocal abuse of that discretion.***

IV. Conclusion

Pursuant to the foregoing, JP23 respectfully requests the City Council overrule and/or modify the Director's decision in accordance with the Council's authority under LBMC 3.80.421.6. Further, JP23 respectfully requests that the City set the hearing on this appeal concurrently with a hearing on JP23's application for an entertainment permit pursuant to LBMC 5.72.120 and approve issuance of said entertainment permit.

This correspondence is intended to give notice of JP23's appeal and generally set forth the "the decision and the grounds upon which [JP23] deems himself aggrieved thereby" in accordance with LBMC 3.80.421.6. This correspondence shall not be intended to be an exhaustive account of every fact, argument, and/or claim upon which JP23 may rely at the time of the hearing on this appeal. JP23 specifically reserves the right to provide additional facts, evidence, and details in support of its appeal as appropriate.

Respectfully,

MESSNER REEVES LLP



Ethan Reimers

Encl.: Chk #113370 in the amount of \$1,398.00 for filing fee.
Declaration of Niral Patel
cc: Kevin Riper via E-mail (kevin.riper@longbeach.gov)
Tara Mortenson via E-mail (tara.mortensen@longbeach.gov)
Art Sanchez via E-mail (art.sanchez@longbeach.gov)
Jennifer Harris via E-mail (jennifer@jenniferharrislaw.com)
Niral Patel via E-mail (niralpatel@niralpatelinjurylaw.com)
Client via E-mail


DECLARATION OF NIRAL PATEL

I, NIRAL PATEL, declare and state as follows:

1. I am an attorney at law duly licensed to practice before all courts in the State of California, and principal of NIRAL PATEL INJURY LAW, former attorney(s) of record of JP23 Hospitality Company for the purpose of obtaining a business license from the City of Long Beach.
2. On January 25, 2022, I attended a meeting with the Department of Financial Management of the City of Long Beach in my capacity as legal representative of JP23 Hospitality Company.
3. In attendance at the meeting were Jacob Poozhikala, owner of JP23 Hospitality Company, Tara Mortenson, Bureau Manager, Kevin Riper, Director of Long Beach Financial Management Department, and Art Sanchez, Deputy City Attorney.
4. During the meeting, Kevin Riper, who was visibly frustrated, commented about how things are done in this country, implying that my self and Jacob Poozhikala were not.
5. I was offended by the statement and felt it had negative racial undertones.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 23rd day of March 2022, at the City of Newport Beach, California.


Niral Patel

AUGUST 23, 2022

ATTACHMENT D
HEARING EXHIBITS – DOCUMENTS

**A SCANNED IMAGE OF THE AGENDA ITEM
ATTACHMENTS ARE AVAILABLE ONLINE AT**
<https://www.longbeach.gov/finance/business-info/business-licenses/business-license-appeals/>

OR

**PLEASE CONTACT
MARLA CAMERINO AT
(562) 570-6162
marla.camerino@longbeach.gov**



August 23, 2022

ATTACHMENT E
HEARING EXHIBITS - VIDEOS

**A SCANNED IMAGE OF THE AGENDA ITEM
ATTACHMENTS ARE AVAILABLE ONLINE AT**

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5 Attorneys for CITY OF LONG BEACH
6
7

8 **BEFORE THE ADMINISTRATIVE HEARING OFFICER**
9 **FOR THE CITY OF LONG BEACH, CALIFORNIA**
10

11 ADMINISTRATIVE HEARING TO SHOW
12 CAUSE WHY BUSINESS LICENSE
APPLICATION NO. BU22114159
13 SUBMITTED BY APPELLANT JP23
HOSPITALITY COMPANY, LOCATED AT
14 110 E. BROADWAY, LONG BEACH,
CALIFORNIA, SHOULD NOT BE DENIED
15 PURSUANT TO CHAPTER 3.80.421.6 OF THE
LONG BEACH MUNICIPAL CODE

**LEGAL BRIEF SUBMITTED BY CITY
OF LONG BEACH IN SUPPORT OF ITS
DENIAL OF BUSINESS LICENSE
APPLICATION NO. BU22114159
SUBMITTED BY APPELLANT JP23
HOSPITALITY COMPANY**

Hearing
Commencement Date: May 25, 2022
Time: 9:00 AM

ELECTRONIC HEARING CONDUCTED
VIA WEBEX

Hearing Officer: Jonathan Navarro

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21 **I. STATEMENT OF FACTS**

22 The City of Long Beach Business License Division (hereinafter “Business License”) first
23 became aware of Appellant JP23 Hospitality Company, Inc. (hereinafter “Appellant”) when it was
24 notified by the Long Beach City Manager’s Office about a citizen complaint regarding Appellant’s
25 plans to open its business on Broadway Avenue & Pine Street, during the general public comment
26 portion of the Long Beach City Council meeting on August 3, 2021. [Testimony of Business
27 License Manager Tara Mortensen (hereinafter “**Mortensen Testimony**,”) Day 1.] Business License
28 gathered information regarding Appellant in order to appropriately respond to any further

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1 complaints and determined that their proposed business was being planned for a location at the
2 corner of Pine Avenue and Broadway. (**Mortensen Testimony**; Day 1.) At that time, Appellant
3 did not have a business license application on file with Business License. (**Mortensen Testimony**;
4 Day 1.)

5 On or about August 31, 2021, Business License became aware of an advertisement regarding
6 a planned event by Appellant for September 3rd & September 4th 2021 at 110 E. Broadway with
7 live performances by XZIBIT, The Dogg Pound, Ohgeesy & DJ Carisma. Business License had
8 one of its investigators visit the premises. (See City’s Exhibit 11, PP. COLB_091-_092.) Business
9 License investigators took photos of 110 E. Broadway which showed the business location was still
10 under construction. (**Mortensen Testimony**; **Day 1**.) Business License investigators then reached
11 out to the business owner, Jacob Poozhikala, to inform him that he was not allowed to have the
12 Grand Opening event on September 3rd and September 4th, 2021, because Appellant did not have
13 a business license or an entertainment permit, both of which were required prior to the opening of
14 Appellant’s business. [Testimony of Gene Rodriguez (hereinafter “**Rodriguez Testimony**”); Day
15 3.] Appellant was selling tickets online for these live events on both September 3rd & September
16 4th. (City’s Exhibit 11, PP. COLB_091-_092).

17 Business License confirmed with the City’s Building & Safety Department that Appellant
18 did not have a Temporary Certificate of Occupancy for 110 E. Broadway. [**Mortensen Testimony**,
19 Day 1; Testimony of Raymond J. Woolhether (hereinafter “**Woolhether Testimony**”), Day 3.],
20 which meant that no members of the public were allowed to be on the premises except for licensed
21 contractors who were working on the interior or exterior build-out of the location. (**Woolhether**
22 **Testimony**, Day 3.)

23 Business License then organized a meeting between each of the City Departments which
24 would be involved in the eventual review of a business license application for 110 E. Broadway,
25 which departments included, Planning, Building & Safety, Environmental Health, and Fire, in
26 addition to the Police Department. (**Mortensen Testimony**; Day 1.) The meeting involved a
27 discussion of what action to take against the Appellant in order to prevent the unpermitted and
28 unlicensed event from occurring and to gain Appellant’s compliance with the City’s rules,

1 regulations and ordinances. (**Mortensen Testimony**; Day 1.) Business License was also very
2 concerned for the safety of the public in having such an event move forward without any oversight
3 or approvals from the City. (**Mortensen Testimony**, Day 1.)

4 Despite not having a business license, entertainment permit or any certificate of occupancy
5 issued by the City for 110 E. Broadway, Appellant went forward and hosted an event on September
6 4, 2021. [Testimony of Long Beach Police Officer Derek Ernest (hereinafter “**Ernest Testimony**”),
7 Day 2.]

8 A few days prior to September 3, 2021, officers from the Long Beach Police Department’s
9 Downtown Vice Unit contacted Appellant’s principal, Jacob Poozhikala, by telephone to inform
10 him that they were aware of the advertised live events and that the events were unpermitted. The
11 officers asked Mr. Poozhikala not to have the events if he did not obtain the required permits.
12 (**Ernest Testimony**, Day 2.) On the night of September 4, 2021, Sergeant Derek Ernest visited
13 Appellant’s business location and observed approximately forty-(40) people inside of the business.
14 Sergeant Ernest had a conversation with Appellant’s principal, Jacob Poozhikala, who informed him
15 that it was a private event and that he was allowed to hold a private event, without the required
16 business license, entertainment permit or certificate of occupancy. (**Ernest Testimony**, Day 2.)
17 Sergeant Ernest later confirmed that Mr. Poozhikala’s representations regarding a private event were
18 untrue, once he observed patrons entering the location from a rear entrance near the back alley of
19 the 110 E. Broadway. (**Ernest Testimony**; Day 2.)

20 On or about 4:00 a.m. on September 5, 2021, the Long Beach Fire Department (hereinafter
21 “Fire”) responded to a fire alarm at 110 E. Broadway and determined that someone attending the
22 event at 110 E. Broadway had intentionally pulled the fire alarm when there was no emergency
23 occurring at the location. [Testimony of Brian Weidman (hereinafter “**Weidman Testimony**”), Day
24 2.] Fire was unable to reset the fire alarm after it was activated due to the fact that the entire fire
25 system had not yet been inspected and approved by Fire as part of the approved plans for the
26 location. (**Weidman Testimony**; Day 2.) Appellant was cited for the Fire Code violations on or
27 about September 16, 2021. (See City’s Exhibit “10“, P. COLB_090.)

28 On September 16, 2021, Appellant submitted a complete application for a business license

1 with Business License for its business location at 110 E. Broadway. (**Mortensen Testimony**, Day
2 1; City’s Exhibit “14”, PP. COLB_098-_101.) Appellant’s business license application was
3 submitted through the investigative process which subjects it to review by the City’s Planning,
4 Building & Safety, Environmental Health, and Fire Departments pursuant to their respective duties
5 under the Long Beach Municipal Code. (**Mortensen Testimony**, Day 1; City’s Exhibit “4”, PP.
6 COLB_016-_018.) Once the investigative process for Appellant’s business license application was
7 completed the application came back to Business License for their final review, however Appellant
8 had already been cited for operating its business without a business license and Business License
9 determined it would not be appropriate to issue a business license at that time because the Applicant
10 was not operating in compliance with the Long Municipal Code. (**Mortensen Testimony**, Day 1.)

11 On or about September 17, 2021, Building & Safety Inspector Ray Woolhether inspected
12 110 E. Broadway and issued a Notice of Inspection which details all of the items that Appellant
13 needed to correct in order to obtain a Temporary Certificate of Occupancy for the location. (See
14 City’s Exhibit “15”, PP. COLB_106-_107.) The Notice of Inspection noted a violation of Long
15 Beach Municipal Code (hereinafter “LBMC”) Chapter 18.08.010 by having public occupancy
16 without approvals and specifically described 110 E. Broadway as an, “active construction site with
17 no occupancy approvals granted.” (City’s Exhibit “15” COLB, P. _106; See City’s Exhibit 7, P.
18 COLB_045.) On the last page of the Notice of Inspection dated September 17, 2021, it
19 specifically states, “Do Not Occupy Until TCO is approved.” (City’s Exhibit “15” COLB, P.
20 _106; **Woolhether Testimony**, Day 3,) On or about September 17, 2021, Mr. Woolhether went
21 over all of the requirements to obtain a Temporary Certificate of Occupancy with Jacob
22 Poozhikala and specifically informed him that a current business license is required prior to
23 operating otherwise your Temporary Certificate of Occupancy is invalid. (**Woolhether**
24 **Testimony**, Day 2; See also City’s Exhibit 19, P. COLB_114.) On or about October 13, 2021, a
25 Temporary Certificate of Occupancy was issued to Appellant by the City’s Building & Safety
26 Division. (See City’s Exhibit 18, P. COLB_113.)

27 On October 14, 2021, Appellant was open for business and had over fifty-(50) people at
28 the location. [See Testimony of Detective Christopher Brammer, hereinafter “**Brammer**

1 **Testimony.**”), Day 2; **Ernest Testimony**, Day 2; City’s Exhibit 20, COLB PP. _115-117; City’s
2 Video Exhibit 01.] Appellant was observed serving alcoholic beverages and food to the patrons of
3 the business, despite not having a business license with the City. (**Brammer Testimony**, Day 2.)
4 Appellant’s general manager Sami Marzougui was issued a citation by Sergeant Derek Ernest for
5 operating a business without a business license in violation of LBMC Chapter 3.80.210. (**Ernest**
6 **Testimony**, Day 2; City’s Exhibit 20, COLB PP. _115- _117.)

7 On October 15, 2021, Appellant was again open for business and undercover officers
8 ordered and were served alcoholic beverages by one of Appellant’s employees. Appellant’s
9 manager, Sami Marzougui, was cited again for Appellant’s operation of its business without a
10 business license with the City. (**Brammer Testimony**, Day 2.) A citation was issued for a
11 violation of LBMC Chapter 3.80.210 . (**Brammer Testimony**, Day 2; City’s Exhibit 21, PP.
12 COLB_118-_119.) Appellant was cited for the same violations on October 16, 2021, October 20,
13 2021 and October 21, 2021, respectively. (**Ernest Testimony**, Day 2; City’s Exhibit “43”, PP.
14 COLB _170-_172.)

15 After conducting research on the issue and in order to provide Appellant with another
16 opportunity to come into compliance, Business License decided to issue a Conditional Business
17 License to Appellant pursuant to LBMC Chapter 3.80.421.1 (A). (**Mortensen Testimony**, Day 1;
18 City’s Exhibit “4”, PP. COLB_017-_018.) During a meeting on November 3, 2021, Appellant and
19 its attorney were provided with a copy of a conditional business license along with a cover letter
20 which was read to them word for word and as well as the contents of the conditional business
21 license. (**Mortensen Testimony**, Day 1; City’s Exhibit “28”, P. COLB _132.) There were three
22 conditions of operation: (1) Complete all actions required to obtain a certificate of occupancy, (2)
23 Comply with all applicable laws and regulations, including but not limited to, LBMC Chapters 3,
24 5 and 21, (3) Resolution of the Misdemeanor Citations that have been issued to date. (City’s
25 Exhibit “28”, P. COLB _132.)

26 During this November 3, 2021 meeting, the entertainment permit process and the
27 conditions for obtaining an entertainment permit were all explained to Appellant, including the
28 basic requirement that no entertainment activities can occur at the business until an entertainment

1 permit is issued by the City or an occasional event permit is obtained from the City’s Special
2 Events and Filming Department. (**Mortensen Testimony**, Day 1; City’s Exhibit “6”, PP.
3 COLB_025-_028, _033-_034.) The explanation of the entertainment application process was
4 necessary because Appellant had already begun having entertainment activities at 110 E.
5 Broadway, despite not having an entertainment permit issued to them by Business License.
6 (**Mortensen Testimony**, Day 1.) Appellant has had a disc jockey, amplified music and dancing
7 most nights since opening its business in or about October 13, 2021, primarily during the
8 weekends. (**Ernest Testimony**, Day 2.)

9 On December 29, 2021, Business License contacted Appellant and informed them that
10 they were operating in violation of their Conditional Business License by having entertainment
11 activities at their location without an entertainment permit. (**Mortensen Testimony**, Day 1; City’s
12 Exhibit “52”, P. COLB _235.) Business License prepared and sent this letter to Appellant to
13 ensure that they were aware that Business License was aware of their violations and to remind
14 them of condition number 2 of their Conditional Business License which required them to comply
15 with all applicable laws and regulations, including but not limited to Chapters 3, 5 and 21 of the
16 Long Beach Municipal Code. (**Mortensen Testimony**, Day 1; City’s Exhibit “52”, P. COLB
17 _235.)

18 Despite this warning letter, on January 23, 2022, Appellant was observed having a disc
19 jockey, live amplified music and dancing at their business location. (**Ernest Testimony**, Day 2.)
20 The entertainment activity observed by Sergeant Ernest was in violation of LBMC Chapter
21 5.72.110(A). (City’s Exhibit 37, PP. COLB _151-_152.) On or about January 26, 2022, Business
22 License again met with Appellant to discuss their business operations, to inform them that their
23 entertainment permit application was complete and would be sent out for review, and to go over
24 the process for obtaining an occasional event permit from Special Events & Filming until their
25 entertainment permit application investigation and review was completed. (**Mortensen**
26 **Testimony**, Day 1.) Appellant was specifically informed that an occasional event permit could
27 only be issued for one day and not multiple days. (**Mortensen Testimony**, Day 1; City’s Exhibit
28 “6”, PP. COLB _033-034.)

1 On or about February 4, 2022, Business License became aware of advertisements for live
2 performances by artists Buster Rhymes, Nelly & T-Pain at Appellant’s business on July 10th, 11th
3 & 12th. (Mortensen Testimony, Day 1; City’s Exhibit “52”, P. COLB _238; City’s Exhibit “46,”
4 PP. COLB _204- _208.). As a result of this discovery, Business License prepared a letter to
5 Appellant dated February 9, 2022, informing them that the live performances were not allowed at
6 the location without an entertainment permit or an occasional event permit and that moving
7 forward with these live performances would create a public safety risk and be considered a public
8 nuisance. [Testimony of Kevin Riper (hereinafter “**Riper Testimony**”), Day 4; **Mortensen**
9 **Testimony**, Day 1; City’s Exhibit “52, PP. COLB _236- _238.) Despite their receipt of this letter,
10 Appellants went forward with the live performances on February 10th, 11th & 12th as advertised.
11 (**Brammer Testimony**, Day 2; City’s Video Exhibits “32”, “37” & “40.”)

12 Based upon Appellant’s history of violations, their consistent refusal to abide by the same
13 set of rules and regulations and ordinances that every business in the City of Long Beach must
14 abide by in order to ensure, in part, the health and safety of the public, Business License sent a
15 letter dated March 14, 2022, denying Appellant’s business license application. (**Riper**
16 **Testimony**, Day 4; City’s Exhibit “52”, PP. COLB _222- _238.) Business License arrived at the
17 decision to deny Appellant’s business license application after carefully consulting with the
18 Director of Financial Management and the Assistant City Manager. [**Mortensen Testimony**, Day
19 1; Riper Testimony, Day 4; Testimony of Linda Tatum (hereinafter “**Tatum Testimony**”), Day 5.]

20
21 **II. LEGAL AUTHORITY AND ARGUMENT**

22 **A. Long Beach Municipal Code Chapter 3.80.421.5 Provides the Authority to Deny**
23 **Business License Application No. BU22114159.**

24 **1. Operating Without a Business License.**

25 LBMC Chapter 3.80.421.5 states as follows:

26 “In the event that a particular department of the City rejects an application for the
27 reason that such business or the location at which it is proposed to conduct the same will not so
28 comply with applicable laws and ordinances, the Director Of Financial Management shall not

1 issue such license.”

2 The facts and evidence presented above by the City during this hearing regarding
3 Appellant’s business operations at 110 E. Broadway, Long Beach, California 90802 are
4 undisputed. Appellant did not offer any evidence or testimony in opposition to either the City’s
5 evidence regarding Appellant’s operation of its business without a business license or to the City’s
6 evidence regarding the entertainment activities that have been offered at their location since
7 September 4, 2021, without an entertainment permit.

8 Pursuant to the relevant provisions of LBMC Chapter 3.80.210 which state in part, . . . “It
9 shall be unlawful for any person to transact and carry on any business, trade, profession, calling or
10 occupation with the City *without first having procured a license from said City to do so* and
11 paying the tax hereinafter prescribed and without complying with any and all applicable
12 provisions of this Code, and any such business in the City shall be required to obtain a business
13 license hereunder.” . . . (emphasis added.) (City’s Exhibit “52”, P. COLB_229.)

14 Appellants hosted an event on September 4, 2021, without a business license,
15 entertainment permit or a certificate of occupancy. Appellants operated without a business license
16 on October 14, 15, 16, 20, & 21st, 2021. The criminal prosecution involving those violations is
17 still in pending in the Long Beach Superior Court. (City’s Exhibit “43”, PP. COLB_170-177.)
18 Despite those violations, Business License still provided Appellant with a Conditional Business
19 License to provide them with an opportunity to come into compliance. During a four-(4) month
20 period, Appellants failed to bring their business into compliance.

21 **2. Providing Entertainment Activities Without an Entertainment Permit.**

22 LBMC Chapter 5.72.110(A) , states as follows, “No person shall carry on, maintain or
23 conduct any entertainment activity in the City without first obtaining a permit therefor from the
24 City.”

25 Entertainment Activity is defined in LBMC Chapter 5.72.115(A) as “any activity
26 conducted for the primary purpose of diverting or entertaining a clientele in a premises open to the
27 general public. Such activity shall include, but shall not be limited to, dancing, whether by
28 performers or patrons of the establishment, live musical performances, instrumental or vocal,

1 when carried on by more than two (2) persons or whenever amplified; musical entertainment
2 provided by a disc jockey or karaoke, or any similar entertainment activity involving amplified,
3 reproduced music.”

4 Appellant has consistently refused to comply with LBMC Chapter 5.72.110(A), by
5 continuing to provide live entertainment, amplified music, disc jockeys and dancing without an
6 entertainment permit or an occasional event permit since its event on September 4, 2021. While
7 Appellant did attempt to apply for Occasional Event Permits with the City’s Special Events &
8 Filming Department on a few occasions, Appellant never obtained one after it learned that they
9 were only available for one day events. [Testimony of Tasha Day (hereinafter “**Day Testimony**”),
10 Day 4.] As a result, Appellant never did come into compliance, even after a Conditional Business
11 License was issued to them by Business License.

12 **3. Director of Financial Management’s Duty**

13 Pursuant to the provisions of LBMC Chapter 3.80.410, “It shall be the duty of the Director
14 of Financial Management, and he is hereby directed, to administer and enforce each and all of the
15 provisions of this Chapter, and the Chief of Police shall render such assistance in the enforcement
16 of this Chapter as may from time to time be required by the Director of Financial Management.”

17 As a result of Appellant’s consistent failure to abide by the ordinances identified above
18 regarding business licenses and entertainment permits, Kevin Riper, as the City’s Director of
19 Financial Management, had a duty to take action and deny Appellant’s business license
20 application based upon Appellant’s repeated failures to come into compliance.

21 **B. Claims In Support of Appellant’s Appeal Which Are Based Upon Preliminary**
22 **Facts, Cannot be Considered by the Hearing Officer Until Appellant Satisfies It’s Burden of**
23 **Establishing the Existence of the Preliminary Facts.**

24 California Evidence Code Section 403 (a) states as follows:

25 The proponent of the proffered evidence has the burden of producing evidence as to the
26 existence of the preliminary fact, and the proffered evidence is inadmissible unless the court finds
27 that there is evidence sufficient to sustain a finding of the existence of the preliminary fact, when:

28 (1) The relevance of the proffered evidence depends on the existence of the preliminary

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- fact;
- (2) The preliminary fact is the personal knowledge of a witness concerning the subject matter of his testimony;
- (3) The preliminary fact is the authenticity of a writing; or
- (4) The proffered evidence is of a statement or other conduct of a particular person and the preliminary fact is whether that person made the statement or so conducted himself.”

During the cross-examination of the City’s witnesses and during the direct testimony of witnesses called as part of Appellant’s presentation of evidence, a number of questions were posed to witnesses without any foundation. Specifically, “Were you aware that (Councilwoman) Cindy Allen conducted her own investigation of the allegations against Appellant’s Fullerton location to uncover the truth?” (Testimony of Linda Tatum, Day 5.) Or the implication that (Councilwoman) Cindy Allen was somehow involved in the posting of false allegations and/or public comments involving Appellant’s business? (Testimony of Niral Patel, Day 6.) A number of different theories and inferences were made by Appellant during the course of this hearing which lacked any evidentiary support, let alone the establishment of the preliminary fact which supports them.

Any arguments submitted by Appellant in support of their appeal to the City’s denial of their business license application which rely on preliminary facts should be excluded on relevance grounds should Appellant fail to carry its burden of submitting evidence which establishes those preliminary facts as is required by the provisions of California Evidence Code Section 403.

C. The Actions of The City’s Business License Division Were Both Reasonable And Measured in Addressing Appellant’s Business and Entertainment Related Activities.

Appellant was given numerous opportunities to bring its business into compliance with the City’s rules, regulations and ordinances. Despite knowingly opening its business prior to receiving its business license and being cited for misdemeanor violations on several occasions for operating without a business license, the City’s Business License Division still gave Appellant another opportunity to come into compliance with the City’s ordinances by issuing them a conditional business license on November 3, 2021.

Appellant was then given an additional four-(4) months to come into compliance with the

1 City’s ordinances involving entertainment permits. Rather than placing a hold on the
2 entertainment activities they were conducting at their business location and applying for and
3 obtaining an Occasional Event Permit from the City’s Special Events & Filming Department until
4 the review of their entertainment permit was completed by the City’s Business License Division,
5 they have continued with the entertainment activities that they had conducted at their business
6 since September 4, 2021.

7 Even after Appellant willfully refused to adhere to the City’s Letter Dated February 9,
8 2022, wherein it requested that Appellant not move forward with the live performances on
9 February 10, 11th, & 12th, the City waited an additional 30 days before taking action and denying
10 Appellant’s business license application.

11
12 **III. CONCLUSION**

13 Based upon the foregoing facts and evidence, the City of Long Beach Business License
14 Division’s decision to deny Appellant JP23 Hospitality Company’s Business License Application
15 No. BU22114159 for 110 E. Broadway should be upheld and confirmed and the Appeal of Appellant
16 JP23 Hospitality Company should be denied.

17
18 DATED: June 22, 2022

19 CHARLES PARKIN, City Attorney

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ARTURO D. SANCHEZ
24 Deputy City Attorney
25 Attorneys for CITY OF LONG BEACH
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4 the review of their entertainment permit was completed by the City's Business License Division,
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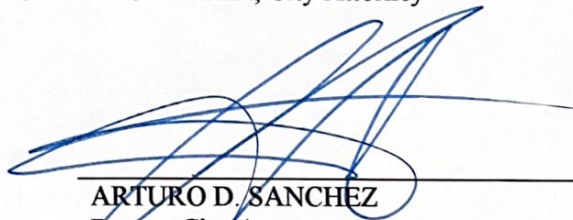
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12 **III. CONCLUSION**

13 Based upon the foregoing facts and evidence, the City of Long Beach Business License
14 Division's decision to deny Appellant JP23 Hospitality Company's Business License Application
15 No. BU22114159 for 110 E. Broadway should be upheld and confirmed and the Appeal of Appellant
16 JP23 Hospitality Company should be denied.

17
18 DATED: June 22, 2022

19 CHARLES PARKIN, City Attorney

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23 ARTURO D. SANCHEZ
24 Deputy City Attorney
25 Attorneys for CITY OF LONG BEACH
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Attorneys for Petitioner JP23 Hospitality Company, Inc. and Jacob Poozhikala

**BEFORE THE ADMINISTRATIVE OFFICER
FOR THE CITY OF LONG BEACH, CALIFORNIA**

ADMINISTRATIVE HEARING ON
HOSPITALITY COMPANY, INC. AND
JACOB POOZHICALA'S APPEAL OF
BUSINESS LICENSE APPLICATION NO.
BU22114159

**JP23 HOSPITALITY COMPANY, INC.
AND JACOB POOZHICALA'S CLOSING
BRIEF**

Date: May 25, 2022
Time: 9:00 am

This is a case about the City of Long Beach playing judge, jury, and executioner without due process of law. The City went out of its way to deny JP23 Hospitality Company ("JP23") a business license on unfounded allegations and hearsay. In doing so, the City turned what is supposed to be a fair and objective process into a political hit job. More to the point, the City overstepped the bounds of the Long Beach Municipal Code in processing JP23's application.

Specifically, the Department of Financial Management had the ministerial function to (1) receive the application; (2) process the application; (3) receive the business license tax; and (4) issue the license. This function was routinely automated, generally free from the oversight of upper management within Financial Management or the political entanglements of City Council. The

process was simple: Financial Management would enter the application into their computer system for other departments' review; the other departments would either approve or reject the application; and if all departments approved the application, Financial Management was to issue the license. But an objective, fair, and ministerial process was not what happened with JP23's application. Financial Management had no intention of being objective, fair, or ministerial.

Instead, the powers that be in the City of Long Beach heard about the allegations, rumors, and hearsay surrounding JP23's Fullerton location. They heard about the protests, demonstrations, and social media campaigns angrily declaring JP23 to be a haven of sexual assault, an establishment that condones rape culture. Undoubtedly, it was politically unpopular to be seen supporting JP23. So instead of allowing JP23's application to be processed in the fair, objective, and ministerial manner in which it was supposed to be, the City decided to form a task force to observe and document alleged violations in order to eventually deny JP23 its license.

But the City ran into a problem: JP23's application had been processed through and completed Financial Management's normal workflow. JP23 had paid its business license tax, provided the necessary documentation, and its application had been reviewed and approved by the departments of planning, building, health, and fire. So, in a flagrant violation of the Long Beach Municipal Code, Financial Management STOPPED issuance of the license. Financial Management targeted JP23's license and waylaid it from its normal workflow. They needed a way to delay issuance of the license, in order to build their case to eventually deny the license.

What they came up with was issuing a temporary "conditional business license." The City will presumably contend it was completely within their authority to issue a conditional business license. But the Long Beach Municipal Code does not permit the City to issue a conditional business license AFTER the relevant city departments have already completed their review and approval. The Long Beach Municipal Code permits the City to issue a conditional business license so a business can legally operate DURING the departments' review. But that's not how the City used the Conditional Business License. They used the Conditional Business License as a means to further DELAY issuance of the permanent business license in furtherance of their scheme to eventually deny JP23's application.

The City wants to make this denial solely about the alleged permitting violations. They want to argue that their task force to bring JP23 down worked. They want to argue that the decision should be upheld because they caught JP23 operating without the appropriate permitting. Of course, this argument completely ignores that Financial Management delayed and misled JP23 in processing their applications. It ignores that the business license was to be issued when all the city departments approved JP23's application. Moreover, the City wants the hearing officer to believe that the reason they organized the task force in the first place, back in September 2021, was because of an advertised event that did not go forward.

But the weight of the evidence shows that in fact, the City, including City Councilwoman Cindy Allen and the City Manager's office, was fully aware early on of the allegations surrounding JP23 Fullerton. The weight of the evidence shows that Financial Management was fully aware early on that the situation with JP23 could get "political and messy." The weight of the evidence shows that at all relevant times, there was an open line of communication from Financial Management, to the City Manager's office, to the office of City Councilwoman Cindy Allen. And the weight of the evidence certainly shows that Financial Management treated JP23's application differently from any other business's application.

The City's decision is also blind to the fact that JP23 Long Beach was the culmination of years of planning, construction, and resources into the business. Jacob Poozhikala, JP23's owner and CEO, spent nearly 4 years and millions of dollars to build JP23 Long Beach into his dream business. Mr. Poozhikala endured through the disastrous COVID-19 pandemic, continuing to incur costs but still unable to open. He endured through protests, demonstrations, and defamatory social media campaigns based on a lie. But endure he did, and JP23 Long Beach was finally ready to open in the latter half of 2021. Instead of realizing his dream and leading JP23 Long Beach to its full potential, he faced delays and a City that had already adjudged guilt before he ever submitted his application for a business license. Unfortunately, it is not just Mr. Poozhikala who is facing the consequences of an unjust guilty verdict. It is also the dozens of employees who rely on JP23 for their livelihoods.

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Accordingly, pursuant to the evidence presented at the hearing and the Long Beach Municipal Code, JP23 respectfully requests that the appeal be granted. JP23 respectfully requests the hearing officer do what Financial Management should have done back in October 2021, according to its own internal procedures and the Long Beach Municipal Code, and issue the business license.

I. STANDARD OF REVIEW

The standard of the hearing officer’s review is de novo; i.e., no presumption or deference should be given to the Department of Financial Management’s decision. The City concedes that it has the burden to produce evidence of the grounds upon which Financial Management chose to deny JP23’s application. Indeed, that no presumption or deference is given to Financial Management’s decision is reflected in the Long Beach Municipal Code section governing this appeal process. The hearing officer, sitting in place of the City Council, “may overrule or modify the decision of the Director appealed from and enter any such order or orders as are in harmony with this Title” (LBMC 3.80.421.6).

II. THE BUSINESS LICENSE APPLICATION PROCEDURE IS INTENDED TO BE MINISTERIAL, NOT REGULATORY

Upon receipt of an application for a business license, the Department of Financial Management is obligated to “refer such application to the appropriate departments of the City in order that it may be ascertained whether the business proposed to be conducted or the premises in which it is proposed to locate such business will comply with applicable fire, building safety, zoning, health and other laws and regulations.” (LBMC 3.80.421.1). In JP23’s case, the relevant departments reviewing the application were the departments of planning, building, fire, and health. Once those departments complete their investigation and determine that an applicant’s business “will comply” with applicable laws and regulations, Financial Management has the *ministerial* duty to issue the license. Indeed, Financial Management’s role pursuant to Chapter 3.80 of the Municipal Code is explicitly not intended to be regulatory in nature. Instead, Chapter 3.80 is “enacted solely for the purpose of raising revenue for general municipal purposes and for the usual current expenses of the City. *It is not intended to be regulatory.*” (LBMC 3.80.110) (Emphasis Added).

The notion that the business license procedure is not intended to be regulatory is further reflected in the language of the Code providing the circumstances under which Financial Management denies an application. Financial Management must deny an application where one of the relevant departments finds “that such business or the location at which it is proposed to conduct the same ***will not so comply*** with applicable laws and ordinances.” (LBMC 3.80.421.5) (Emphasis Added). The language of the Code is forward-looking, not backward looking. The Code contemplates denial of a business license where, for example, a business is not compatible with its proposed zoning district. The Code does not contemplate denial of a business license merely for past permitting violations that can be readily corrected and cured. Yet mere permitting violations (permits which Financial Management itself has deliberately delayed and/or denied) are precisely the grounds upon which Financial Management denied JP23’s application.

Financial Management is further authorized to issue a conditional business license “for the applicant to conduct business **during** the investigation period.” (LBMC 3.80.42.1) (Emphasis Added). However, there is no authority for Financial Management to issue the conditional business license **after** the investigation period is completed. Plainly, the intent of the conditional business license is to permit a business to operate while the departments of planning, building, fire, and health complete their review. Once those departments complete their review, the permanent business license is to be issued. There is no authority to issue the conditional business license after the permanent business license has already been approved.

III. THE EVIDENCE PRESENTED PROVES THAT FINANCIAL MANAGEMENT UNLAWFULLY FAILED TO ISSUE THE PERMANENT BUSINESS LICENSE

The evidence shows that Financial Management, unduly prejudiced against JP23 by unfounded hearsay allegations surrounding its Fullerton location, far overstepped their ministerial role and unlawfully failed to issue a permanent business license. Instead, Financial Management unlawfully issued a conditional business license after the investigation period was over. Moreover, the evidence shows that Financial Management consistently acted in bad faith with JP23, including misleading JP23 about temporary entertainment licensure. To the extent that Financial Management has any discretion over the issuance of a business license, Financial Management abused that

discretion with their own bad faith conduct; as well as in light of the time and resources poured into JP23 Long Beach along with the dozens of people they employ.

A. JP23 Background and Development

JP23 is a restaurant and lounge owned and operated by Jacob Poozhikala. It is also the culmination of Mr. Poozhikala's (a Canadian immigrant of South Asian descent) American dream. The concept is to provide upscale contemporary American dining as well as nighttime entertainment. JP23's first location in Fullerton was established nearly 10 years ago in 2013. (J. Poozhikala, Video Timestamp 2022-06-07 13:33:58 – 13:36:20). JP23 quickly became a fixture in downtown Fullerton and a cornerstone of the Fullerton business community. (J. Poozhikala, Video Timestamp 2022-06-07 13:36:40 – 13:37:55).

After several years of success in downtown Fullerton, Mr. Poozhikala wanted to take the JP23 concept to a second location and develop it on a grander scale. (J. Poozhikala, Video Timestamp 2022-06-07 13:35:31 – 13:36:17). He decided on opening a location in Long Beach, a city where he had fond childhood memories. He was presented with an opportunity to lease a space in the vibrant Downtown Dining and Entertainment District in Long Beach. Though the space had long been neglected and needed extensive renovation for his vision to come to fruition, Mr. Poozhikala was undeterred. (J. Poozhikala, Video Timestamp 2022-06-07 13:43:19 – 13:43:45) (JP23 Exhibits 1, 21, 22, 76). He signed a 25-year lease in September 2017, agreeing to an initial monthly rent of \$20,000 with periodic increases chained to an inflation index. (J. Poozhikala, Video Timestamp 2022-06-07 13:43:48 – 13:44:41).

Mr. Poozhikala engaged the City in predevelopment meetings, showing City officials his initial plans and renderings for the space. (JP23 Exhibits 6, 17, 18, 19, 20) After months of having his design professionals revise the plans to meet the City's needs without compromising Mr. Poozhikala's vision, the City's planning department finally approved a set of plans for the first time in September 2019. (J. Poozhikala, Video Timestamp 2022-06-07 14:00:41 – 14:03:47). The buildout commenced soon thereafter. (J. Poozhikala, Video Timestamp 2022-06-07 14:04:04 – 14:04:26).

Unfortunately, the COVID-19 pandemic forced construction to stop for approximately a

year. (J. Poozhikala, Video Timestamp 2022-06-07 14:05:40 – 14:06:28). JP23 Long Beach’s opening had to be put on hold for even longer. Meanwhile, the government shut down indoor dining for months, devastating the restaurant industry, including JP23. (J. Poozhikala, Video Timestamp 2022-06-07 14:07:04 – 14:09:07).

Once city government was able to return to a semblance of normal workflow, JP23 was finally able to get revised plans approved by Long Beach Planning, and JP23 recommenced the buildout in early 2021. (J. Poozhikala, Video Timestamp 2022-06-07 14:09:28 – 14:10:46). Mr. Poozhikala, having spent years developing the space and just having survived the COVID-19 pandemic, wanted to make JP23 Long Beach’s opening an event. JP23 targeted opening for Labor Day weekend with a hip hop concert. (J. Poozhikala, Video Timestamp 2022-06-07 14:11:25–14:12:06; City Exhibit 11.) As the targeted weekend in September 2021 approached, Mr. Poozhikala worked tirelessly to get the space ready for a grand opening. Unfortunately, however, Mr. Poozhikala soon realized that JP23 would not be ready in time to host the concert and thus canceled it. (City Exhibit 11; T. Mortensen, Video Timestamp 2022-05-25 09:47:59 – 09:48:05).

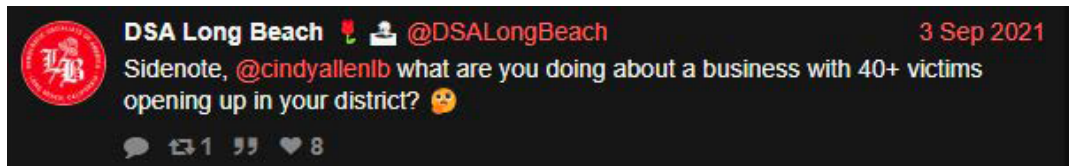
B. The Allegations Surrounding JP23 Fullerton Impeded the City’s Ability to Process the Applications Fairly

Meanwhile, on August 2, 2021, a young lady, Samantha Velasquez, reported to police that she was “roofied” inside JP23 Fullerton and later sexually assaulted in a nearby parking garage. (J. Poozhikala, Video Timestamp 2022-06-07 14:23:20 – 14:24:36). According to Derek Ernest, he heard of the allegations surrounding JP23 Fullerton *on the same day*, even before the allegations were reported by local media, meaning someone with inside knowledge in Fullerton wanted to make sure the powers that be in Long Beach, where JP23 would soon be opening, knew about the allegations. (D. Ernest, Video Timestamp 2022-05-31 14:01:20 – 14:03:00).

Ms. Velasquez’ allegations devolved and snowballed into untrue and unfounded rumors, including that Ms. Velasquez was raped inside the bar, that JP23’s staff members and owners were themselves rapists, and that JP23 condoned rape culture. (J. Poozhikala, Video Timestamp 2022-06-07 14:24:51 – 14:26:30). The rumors culminated into social media campaigns and demonstrations outside of both JP23 Fullerton and JP23 Long Beach, and even threats against the

owner. (J. Poozhikala, Video Timestamp 2022-06-07 14:27:03 – 14:31:07); JP23 Exhibit 77). Litigation ensued, and discovery revealed that **Ms. Velasquez never had any unknown drugs in her system after the alleged incident.** (JP23 Exhibits 64, 65). However, JP23 and Mr. Poozhikala had already been adjudged guilty by the court of public opinion, and the City was all too happy to oblige.

The campaign against JP23 was organized, at least in part, by the Democratic Socialists of America, who wanted to ensure that the powers that be never allow JP23 open in Long Beach (JP23 Exhibits 4, 79, 80) (N. Patel, Video Timestamp 09:30:18 – 09:35:45). The evidence shows that they reached out to Cindy Allen as early as September 3, 2021:



There is no doubt that the allegations inhibited the City’s ability to treat JP23’s business license application fairly. Multiple city officials testified that the first time they heard of JP23 was with regard to a complaint about JP23 opening in the midst of the allegations and protests. The evidence shows that City Councilwoman Cindy Allen’s office was fully aware of the allegations. Councilwoman Allen, an elected official, could not be seen supporting a business that supposedly condoned rape culture. The evidence shows that Financial Management was acutely aware of the Fullerton allegations and distributed it to all other departments as early as September 1, 2022. (JP23 Exhibit 66-002) As early as September 14, before JP23 even applied for a business license, the City Manager’s office, who would be reporting to Cindy Allen’s office, became involved in what was expected to be a “political and messy” process (JP23 Exhibit 31).

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From: Tara Mortensen <Tara.Mortensen@longbeach.gov>
Sent: Wednesday, September 01, 2021 7:42 PM
To: Robbie Grego <Robbie.Grego@longbeach.gov>; Jose Gonzalez <Jose.Gonzalez@longbeach.gov>; Judith Luon <Judith.Luon@longbeach.gov>; David Khorrani <David.Khorrani@longbeach.gov>; Christopher Kpantz <Christopher.Kpantz@longbeach.gov>; Karl Wiegelman <Karl.Wiegelman@longbeach.gov>; Moshgan Mofidi <Moshgan.Mofidi@longbeach.gov>; Tasha Day <Tasha.Day@longbeach.gov>; Art Sanchez <Art.Sanchez@longbeach.gov>
Cc: Keith Mortensen <Keith.Mortensen@longbeach.gov>; Gene Rodriguez <Gene.Rodriguez@longbeach.gov>; Jo Alvarez <Jo.Alvarez@longbeach.gov>
Subject: Re: JP23 on Broadway

Gene, our lead Business License Inspector, reached Jacob, the owner, at (714) 561-1161.

He stated he didn't know he needed an entertainment permit. He also disclosed that he has \$30k invested in the events this weekend and sounded like he could be moving forward.

The group should also be aware of the negative press about their Fullerton location.

<https://fullertonobserver.com/2021/08/09/rape-allegations-jp23/>

	Protesters demand shut down of Fullerton restaurant - Fullerton Observer
	Around 20 demonstrators showed up on August 7 th and that number doubled on August 8 th in front of JP23 Urban Kitchen on the corner of Commonwealth Ave and Harbor Blvd. "It is a dangerous place, and we will shut it down," one demonstrator said. Samantha Velasquez says she was drugged at JP23 on August 1, and then later raped, and left in a parking structure near the Metro station.
	fullertonobserver.com

Tara (Yeats) Mortensen, MCPP
Bureau Manager

Department of Financial Management | Business Services Bureau
411 W. Ocean Blvd, 6th Floor | Long Beach, CA 90802
Office: 562-570-6340



Sorry, there is so much info here. I expect this to get political and messy in the future and just want to make sure you have quite a bit of info if asked questions on the spot.

Tara

Tara (Yeats) Mortensen, MCPP
Bureau Manager

Department of Financial Management | Business Services Bureau
411 W. Ocean Blvd, 6th Floor | Long Beach, CA 90802
Office: 562-570-6340

There is additional concern about this location due to negative media surrounding JP23's Fullerton location, and allegations of an environment that allows (and maybe even promotes) for sexual violence, including sexual assaults and drugging on the premises or in connection to their vendors. There have been several protests at the location demanding it be shut down, public comments at Fullerton's City Council meetings, several articles in their newspaper along with TV news reports, and lots of social media postings. The business owner has publicly denied the claims .

Tara

Indeed, Financial Management kept an open line of communication with the City Manager's office (and specifically Linda Tatum) for their feedback and recommendations. Ms. Tatum, in turn, kept Cindy Allen's office "in the loop." (JP23 Exhibits 52, 53, 55, 60; L. Tatum, Video Timestamp 2022-06-07 09:26:40 – 09:31:52; 09:38:23 – 09:39:38, 09:41:52 – 09:43:04, 09:49:57 – 09:52:03).

- Oscar mentioned that he spoke with Linda (not sure it was a full brief of the situation or just a quick chat) and that he brought it up at the department head meeting. CD2 is getting complaints from residents concerned about this location and staff is also concerned that they will attempt to operate during the Grand Prix and capitalize on all of the Grand Prix goers. Oscar mentioned that it might be time to talk to the Council Office. They are not operating yet, so this is still in Fire and DV's court, so it seems appropriate that Oscar is leading this coordinate effort.

From: Tara Mortensen <Tara.Mortensen@longbeach.gov>

Sent: Thursday, October 28, 2021 6:07 PM

To: Kevin Riper <Kevin.Riper@longbeach.gov>

Cc: Sandy Tsang-Palmer <Sandy.Tsang-Palmer@longbeach.gov>; Brian Tuliau <Brian.Tuliau@longbeach.gov>

Subject: Re: Conditional Business License/Permanent Business License

Hi,

Linda conferenced me in to a spur of the moment call with Art and her today, and she is good with the conditional business license, as Charlie is recommending. She wants me to meet with him next week to review the process, the conditions, explain our expectations, and to explain the path to getting an entertainment permit. Art has sent a note to Mr. Poozihakala's counsel which I'll forward to you in a sec, asking for a meeting next Wed at 130.

I made your changes in the letter as well as updated it a bit from my conversation with Linda and my follow up with Art. He is in the process of reviewing the letter. I'll send it back over to you and Sandy for final review once I get it back, and I'm assuming we want to send it up to Linda as well for review. Linda is also going to reach out to CD2 to make sure the councilwoman is in the loop before the meeting, she said she would send me a note when she talks to her.

From: Linda Tatum <Linda.Tatum@longbeach.gov>
Sent: Tuesday, November 2, 2021 1:23 PM
To: Kevin Riper <Kevin.Riper@longbeach.gov>
Subject: RE: JP23 - Conditional Business License Documents

Kevin,

I looped her (Cindy Allen – District 2) in that FM would proceed with issuance of a conditional license, followed by a meeting with the business owner to ensure they were made aware of the conditions, and other information regarding the process, including the entertainment permit application.

Oscar has had further detailed conversation with Cindy's Chief of Staff to provide further detail on the process/next steps as my discussion with her was very high level. So yes, she is looped in.

FYI—she has spoken with the applicant on previous occasions, but he is not likely to reach out to her as she has been clear in expressing her concerns regarding their prior operation in Fullerton. Call me if you need more info/background.

Linda F. Tatum
Assistant City Manager

Tara Mortensen <Tara.Mortensen@longbeach.gov>

Thu 2/3/2022 11:50 AM

To: Donald Mauk <Donald.Mauk@longbeach.gov>

Cc: Vicky Gutierrez <Vicky.Gutierrez@longbeach.gov>; Artrenity Borden <Artrenity.Borden@longbeach.gov>

Hi Don,

FM would like to schedule a meeting next week (as soon as we can get it all together) with PD, City Atty, and Fire to discuss our next steps with JP23 and their continued violations of our Municipal Code. FM has already met with CM and has preliminary direction, and we need this meeting to complete our tasks to provide final recommendations to Linda. Jose Gonzalez and Derek Ernst, the two PD Staff that Business License works with the most, have provided the contacts and chain of command for PD. I wanted to give you a heads up in case you want to add/delete attendees.

Tara Mortensen <Tara.Mortensen@longbeach.gov>

Mon 2/28/2022 10:10 AM

To: Linda Tatum <Linda.Tatum@longbeach.gov>

Cc: Kevin Riper <Kevin.Riper@longbeach.gov>; Art Sanchez <Art.Sanchez@longbeach.gov>

Good Morning Linda,

Just wanted to provide a quick status report.....Art and I are ensuring we are doing our due diligence to ensure FM is clearly making the appropriate next steps in line with the LBMC, as well as ensuring we have the appropriate documentation to protect the City. We met with DV and Fire last week to close a few gaps in information and followed up with PD a few days before that. We are now moving forward with drafting the denial letter.

Tara

The City will presumably claim that the nature of the open line of communication between Financial Management, the City Manager's office, and Councilwoman Allen's office was due to constituent complaints regarding noise from JP23. But Councilwoman Allen was "looped in" at least as early as September 15, well before JP23 even opened its doors to the public. The City Manager's office is simply not involved in business license decision, except in the case in of JP23.

The bottom line is, the City never intended to issue a business license to JP23 because they knew that they would be attracting a political firestorm if they did. The City wants the hearing officer to believe that they put together a task force to build a case against JP23 because of a canceled event in early September. This is pure pretext. The allegations in Fullerton are the reason why Cindy Allen got involved in a business license application. The allegations in Fullerton are the reason why the City Manager's office got involved in a business license application. The allegations in Fullerton are the reason why the Director of Financial Management and the Bureau Manager got involved. The allegations in Fullerton are the reason why the Bureau Manager involved her husband in charge of vice in downtown Long Beach. The allegations in Fullerton are the reason why the Bureau Manager coordinated a task force to observe and document alleged violations on the part of the applicant. The allegations in Fullerton are the reason why the Bureau Manager stopped issuance of the business license after all departments approved the application and instead issued a conditional business license. The allegations in Fullerton are the reason why the City Manager's office and Councilwoman Allen's office were kept "in the loop." And ultimately, the allegations in Fullerton are the reason why Financial Management denied the application.

C. **Long Beach Departments of Planning, Health, Building, and Fire Approve JP23's Business License Application but Financial Management Fails to Issue the License**

JP23 submitted and completed its application for a business license by September 16, 2021. (G. Rodriguez, Video Timestamp 2022-06-01 10:30:18 – 10:30:59; 11:23:43 – 11:24:51). From there, the normal workflow (as well as the Long Beach Municipal Code) dictates that the application is submitted to departments of planning, building, fire and health. (G. Rodriguez, Video Timestamp 2022-06-01 11:21:28 – 11:22:12). Once the departments complete their review and approve the

license, Financial Management then is to issue the license. Here, however, Financial Management put a “hold” on JP23’s application, and kept it there, despite the fact that JP23 was not open to the public or conducting any entertainment activity as of September 16. (G. Rodriguez, Video Timestamp 2022-06-01 11:25:58 – 11:28:07.)

In processing and issuing business licenses, Financial Management is sitting in the shoes of a *ministerial*, as opposed to *regulatory*, agency. Indeed, this is stated explicitly in the Long Beach Municipal Code:

This Chapter is enacted solely for the purpose of raising revenue for general municipal purposes and for the usual current expenses of the City. ***It is not intended to be regulatory.***

(LMBC 3.80.110) (Emphasis Added.)

Financial Management’s purpose is to receive the application, send the application out to the relevant city departments for review, collect the business license tax, and (assuming the city departments approve the license), issue the license. What Financial Management is not allowed to do is step into the shoes of a regulatory body. What they are not allowed to do is organize a task force to observe an applicant and document violations in order to build a case against them. What they are not allowed to do is coordinate and report to the City Manager’s office and City Councilmembers, who are beholden to political interests and political pressure. What they are not allowed to do is target an applicant and decide not to issue a license before the applicant ever has a chance.

Yet that is precisely what happened here. Days after JP23 submitted its application, the City was on the case and coordinating to build a case against JP23.

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From: Robbie Grego <Robbie.Grego@longbeach.gov>
Sent: Thursday, September 23, 2021 5:29 PM
To: Art Sanchez <Art.Sanchez@longbeach.gov>; Raymond Woolhether <Raymond.Woolhether@longbeach.gov>; Oscar Orci <Oscar.Orci@longbeach.gov>; Brian Weidman <Brian.Weidman@longbeach.gov>; Jose Gonzalez <Jose.Gonzalez@longbeach.gov>; Judeth Luong <Judeth.Luong@longbeach.gov>; Tara Mortensen <Tara.Mortensen@longbeach.gov>; Patricia Diefenderfer <Patricia.Diefenderfer@longbeach.gov>
Cc: Sandy Tsang-Palmer <Sandy.Tsang-Palmer@longbeach.gov>; Gene Rodriguez <Gene.Rodriguez@longbeach.gov>; Keith Mortensen <Keith.Mortensen@longbeach.gov>; Mozghan Mofidi <Mozghan.Mofidi@longbeach.gov>; Ashley Geer <Ashley.Geer@longbeach.gov>
Subject: RE: JP23 - Sept 23rd is planned start date

Thanks Art. I've just looped in City Prosecutor Doug Haubert and his team. He advised that everything we are all doing right now is the correct plan of action. We need to continue to build a case against this business as violations occur. It may take a few more visits to the site for violations but it important to document everything we see or find. He said its critical to note that no construction is occurring when we are called out to the location for events or gatherings. Photos and body camera footage are very helpful.

He believes we already have enough documentation to support the violations but we should continue what we are doing, including issuing violation and correction notices. Please continue to share anything we have with this group.

Robbie Grego
Deputy Fire Chief, Fire Marshal

Long Beach Fire Department | Fire Prevention
3205 Lakewood Blvd. | Long Beach, CA 90808
Office: 562-570-2579 | Mobile: 714-553-9151

In fact, Business Services Bureau Manager Tara Mortensen enlisted the help of her husband, Sgt. Keith Mortensen, who was the administrative sergeant in charge of the downtown vice division of the Long Beach Police Department, as early as September 15. Sgt. Mortensen, was, in fact, in charge of maintaining the database used by the police department to determine which businesses had valid business licenses and entertainment permit. (C. Brammer, Video Timestamp 2022-05-31 15:55:16 – 15:57:32.) Effectively, via Ms. Mortensen's marriage, Financial Management had its own enforcement division within the Long Beach Police Department (JP23 Exhibit 21-001):

From: Tara Mortensen
Sent: Wednesday, September 15, 2021 6:08 PM
To: Keith Mortensen; Jose Gonzalez
Cc: Gene Rodriguez; Artrenity Borden; Latrice Cooper
Subject: JP23 Followup with Business License and Vice

Hi,

I feel like we should do a call next week when Brian is here and get him in the loop. I also think we need to get Derek from the Pine Ave PD Ops side also in the loop. I am going to ask Brian to make sure that we have a clear set of directions from each of the Departments on what to do if we see something there, or any of the other businesses that don't have licenses/entertainment Permits. There is sort of a gap in this space about what to do when we see something like this situation. I just want to make sure we close the loop for all involved, front line and in the offices.

Artrenity/Latrice will set something up for next Tuesday.

Tara

Tara (Yeats) Mortensen, MCPP
Bureau Manager

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Office: 562-570-6340



By October 15, the City’s internal review system, INFOR, showed that the departments of planning, building, and fire had completed their reviews and approved JP23’s application. The department of health had approved the application on October 1, 2021, but the approval did not show in INFOR until October 19 (JP23 Exhibit 27-001, G. Rodriguez, Video Timestamp 2022-06-01 11:34:58 – 11:35:24). Indeed, the “only thing holding up the license” was Ms. Mortensen’s “ok,” though Ms. Mortensen’s involvement in the business license process was atypical. (G. Rodriguez, Video Timestamp 2022-06-01 11:48:47 – 11:50:48). But instead of performing Financial Management’s ministerial duty, Ms. Mortensen said **NO and instructed her staff member Gene Rodriguez not to issue the license.** (JP23 Exhibit 75):

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From: Tara Mortensen
Sent: Tuesday, October 19, 2021 4:01 PM
To: Gene Rodriguez
Cc: Brian Tuliau
Subject: Re: JP23 just called

Do not release it.

We are going to do a review and it will have to be approved by the FM Director and CM.

Tara (Yeats) Mortensen, MCPP
Bureau Manager

Department of Financial Management | Business Services Bureau
411 W. Ocean Blvd, 6th Floor | Long Beach, CA 90802
Office: 562-570-6340



From: Gene Rodriguez <Gene.Rodriguez@longbeach.gov>
Sent: Tuesday, October 19, 2021 3:44 PM
To: Tara Mortensen <Tara.Mortensen@longbeach.gov>
Cc: Brian Tuliau <Brian.Tuliau@longbeach.gov>
Subject: Fw: JP23 just called

Health is approved.

Tara, your ok is the only thing holding up the license at this point. Do you want to release it? I don't see anything outstanding that we need at the moment for this license. Let me know, thank you.

Gene Rodriguez, License Inspector II
City of Long Beach, Business License Dept
Business Relations Bureau
Offc: 562.570.5771
Fax: 562.499.1097

D. Financial Management Unlawfully Schemes to Delay Issuance of the Permanent Business License

After Ms. Mortensen unlawfully stopped issuance of the business license, she needed to figure out a way to delay the license in order to eventually deny the application. The same day she stopped issuance of the license, she informed her boss, Financial Management Director Kevin Ripper,

that she would “put together a plan and recommendation to give [him] by the end of the day on Thursday.” (JP23 Exhibit 42-001):

From: Tara Mortensen
Sent: Tuesday, October 19, 2021 5:33 PM
To: Kevin Riper
Subject: Fwd: JP23 just called

Fyi.... The business license has completed it's workflow and is back to FM.

I will put together a plan and recommendation to give you by the end of the day on Thursday (I'm off tomorrow)

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Gene Rodriguez <Gene.Rodriguez@longbeach.gov>
Sent: Tuesday, October 19, 2021 3:44:52 PM
To: Tara Mortensen <Tara.Mortensen@longbeach.gov>
Cc: Brian Tuliau <Brian.Tuliau@longbeach.gov>
Subject: Fw: JP23 just called

Health is approved.

Tara, your ok is the only thing holding up the license at this point. Do you want to release it? I don't see anything outstanding that we need at the moment for this license. Let me know, thank you.

Gene Rodriguez, License Inspector II
City of Long Beach, Business License Dept
Business Relations Bureau
Offc: 562.570.5771
Fax: 562.499.1097

The first idea Ms. Mortensen came up with was reaching out to the police department to see if they would recommend denying the application, even though the police department was not normally involved in reviewing business license applications. Indeed, after her staff informed her that the application had completed its workflow, the very next day, Ms. Mortensen reached out to the police department, requesting whether they “would support FM in its review for a potential denial of the business license”:

///

///

///

///

> On Oct 20, 2021, at 11:59 AM, Tara Mortensen <Tara.Mortensen@longbeach.gov> wrote:
>
> Don,
>
> FM feels it prudent to do a review of all Departments interactions with JP23 in its final determination
for the Business License Application.
>
> Is PD in a position that it would like to provide a recommendation,
> either way on the approval of the Business License This is a little
> out of the ordinary, usually VICE only provides this for the
> Entertainment Permit that comes after the Business License (you have
> to have the one before you get the other), but given the amount of
> interaction your team has had prior, wondering if you would support FM
> in its review for a potential denial of the business license
>
> I forwarded an email that was provided to me when we denied
> Restoration's Business License, they were operating without one when
> they were violating the health order, so their application was denied,
> as well as their Health Permit was revoked
>
> I'm guessing if yes, you are going to want to get the AC/DC in the loop. While you are out, should
you like someone to have the conversation with them, or for FM to go directly to them.
>
> Tara
>
>
>

Apparently, this method was not feasible, because Ms. Mortensen set up meetings with the City Manager's office in order to discuss the "approach" for delaying and denying the application (all the while keeping JP23 in the dark about the status of its license, JP23 being forced to retain counsel to get the City to respond):

From: Tara Mortensen
Sent: Thursday, October 21, 2021 12:18 PM
To: Brian Tuliau
Cc: Art Sanchez
Subject: Re: JP23 - 110 E Broadway

Thank you. I've forwarded it to Kevin. I have two meetings tomorrow about this, and don't plan to reach out until I have more clarity from the CM. I meet with Tom in one meeting, and Linda and Oscar in another about it.

Once we know the approach moving forward, we will work through it.

Of course his email is full of all kinds of inaccuracies, we have provided him all kinds of info.

Tara (Yeats) Mortensen, MCPP
Bureau Manager

Department of Financial Management | Business Services Bureau
411 W. Ocean Blvd, 6th Floor | Long Beach, CA 90802
Office: 562-570-6340



The next idea Ms. Mortensen came up with was pursuing whether or not food service was subordinate to alcohol service, and therefore attacking JP23 as a “nightclub” in violation of the zoning ordinance (JP23 Exhibit 39):

From: Tara Mortensen
Sent: Monday, October 25, 2021 4:24 PM
To: Brian Tuliau
Subject: Re: ABC License

I feel like I have heard that there is a percentage of food receipts required if a restaurant/bar.....like 60% food/40% Alcohol

Can you check in with Gonzo and see if there is a way to get that definition explored further with ABC.

In the zoning section of the Muni Code.....

21.15.1855 - Nightclub. (Zoning Section)

"Nightclub" means any bar, cocktail lounge, dance club or similar establishment with an entertainment permit for live amplified music and dancing in conjunction with alcoholic beverage sales operating under a Type 48 Department of Alcoholic Beverage Control license (On-sale General—Public Premises). This also includes bars, taverns, karaoke bars and similar establishments with an entertainment permit for live amplified music and dancing where any food service is subordinate to the sale of alcoholic beverages.

I'd like to push forward with trying to get the food service subordinate to the alcohol clarifying. We are going to need this for what comes next. We need to really understand the nuance of the rules, and this is a perfect time for you, Art and I to dive in.

Tara (Yeats) Mortensen, MCPP
Bureau Manager

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By October 27, Ms. Mortensen decided on a “conditional business license,” approved the City Manager’s office by October 29, to be issued the following week (and indeed, the conditional business license was issued on November 3) (JP23 Exhibits 53, 48):

///
///
///
///

Also as we discussed, I figured out the **conditional business license process** both what we do in the system, and what documents are issued. Attached is a draft conditional business license that we create outside of INFOR, our permitting platform. This is the form that has been used to issue them in the past with some updates to make it applicable to this situation. I adapted this one from one that was issued in 2019. Please note that the Planning and Building box would be checked, but that can't be done until its in PDF and getting signed, that's just how the template was created.

From: Tara Mortensen
Sent: Friday, October 29, 2021 1:58 PM
To: James Richardson
Cc: Donald Mauk; Brian Tuliau
Subject: Re: JP23

after lots and lots of meetings and reading.....The CM has settled on a conditional business license with conditions in place till March. I'm going to be meeting with the business owner next Wednesday. The conditions include: he has to complete all of the corrections associated with the TCO, he has to resolve his misdemeanors with the prosecutor, and he has to comply with all federal, state and local regulations including Chapter 3, 5 and 21 of the Muni code.

This does not consider the entertainment permit yet, that is totally separate, and can't be addressed until he has a business license and is operating, that will be the next step.

It'd be nice to know if PD is okay with these conditions or would like to suggest additions.....?

Thanks for hanging in there with me while this all got sorted out.

Sent from my Verizon, Samsung Galaxy smartphone
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The evidence shows that Ms. Mortensen believed that the conditional business license was a proper means to delay issuance of the business license so she could continue to build a case against JP23. Soon after Financial Management issued the conditional business license, Ms. Mortensen reached out to her contacts in other departments, advising, “There isn’t an automated workflow for this License like you are used to seeing, this one relies on us communicating together as a team outside of the system.” As multiple City witnesses testified, multi-departmental coordination on this level was highly unusual for simply processing a business license. But Ms. Mortensen spearheaded the effort for JP23.

Ms. Mortensen asked that each department’s respective staffs document and report “compliance issues” to her staff in order to build a case and justify denying JP23’s application at the end of the conditional license period (and indeed, Financial Management denied the license on

March 14, 2022, resulting in this appeal). (JP23 Exhibit 54).

Tara Mortensen <Tara.Mortensen@longbeach.gov>

Mon 11/15/2021 4:12 PM

To: Robbie Grego <Robbie.Grego@longbeach.gov>; Raymond Woolhether <Raymond.Woolhether@longbeach.gov>; Oscar Orci <Oscar.Orci@longbeach.gov>; Keith Mortensen <Keith.Mortensen@longbeach.gov>; Art Sanchez <Art.Sanchez@longbeach.gov>; Brian Weidman <Brian.Weidman@longbeach.gov>; Jose Gonzalez <Jose.Gonzalez@longbeach.gov>; Patricia Diefenderfer <Patricia.Diefenderfer@longbeach.gov>; Gene Rodriguez <Gene.Rodriguez@longbeach.gov>; Mozghan Mofidi <Mozghan.Mofidi@longbeach.gov>; Ashley Geer <Ashley.Geer@longbeach.gov>; Derek Ernest <Derek.Ernest@longbeach.gov>

Cc: Evan Zeisel <Evan.Zeisel@longbeach.gov>

Hi Everyone,

I just want to let everyone know that JP23 was issued a Conditional Business License on November 3rd. One of the conditions of operation is that they have to be in compliance with all City regulations. There isn't an automated workflow for this License like you are used to seeing, this one relies on us communicating together as a team outside of the system.

I would appreciate it if you would please ask all of your staff to please notify Gene Rodriguez if there are any compliance issues with this business, or if the opposite, they address issues as required. We need to make sure that we are gathering accurate information timely in order to eventually move forward with approving or denying a permanent License. I anticipate that we will be addressing compliance around the first of the year.

The Conditional Business License does not allow for the activities that require an Entertainment Permit. The review process for an Entertainment Permit has just begun, and will take 90 to 120 days to process. If staff at any point witnesses live bands, dancing, amplified music outside, etc., please let Gene know.

Thanks,

Tara

Tara (Yeats) Mortensen, MCPP
Bureau Manager

Department of Financial Management | Business Services Bureau
411 W. Ocean Blvd, 6th Floor | Long Beach, CA 90802
Office: 562-570-6340



But the Long Beach Municipal Code does not permit Financial Management to act as a regulatory agency in processing and issuing business licenses. The Long Beach Municipal explicitly states that the purpose of the business license is to collect the business license tax: “This Chapter is enacted solely for the purpose of raising revenue for general municipal purposes and for the usual current expenses of the City. ***It is not intended to be regulatory.***” (LBMC 3.80.110) (Emphasis Added). Accordingly, Financial Management had the ministerial duty to issue the

licenses once the departments of planning, building, fire, and health completed their review and approved the application. Planning, building, fire, and health determined that JP23's business "will comply" with applicable codes and regulations. Once those departments determined that JP23's business "will comply" with applicable codes and regulations, Financial Management was to issue the license. But that is not what happened here.

Presumably, the City will argue that Financial Management was permitted to issue a conditional business license under LBMC 3.80.421.1B. They will argue that Financial Management is itself an "appropriate department" which is to conduct its **own** investigation and determine "whether the business proposed to be conducted or the premises in which it is proposed to locate such business will comply with applicable fire, building safety, zoning, health and other laws and regulations." And thus, the "investigation period" was still open at the time the City issued the conditional business license on November 3, irrespective of the fact that the departments of planning, building, fire, and health had conducted their investigation and approved the application at least as early as October 19.

The City's argument is fatally flawed. The premise that the Financial Management may conduct their own investigation is in direct conflict with the Long Beach Municipal's mandate that the business license application process is **not** regulatory. The Department of Financial Management is the finance arm of the City. They are bean counters. Their role in the business license application process is to receive the application, send it the relevant departments for review, collect the business license tax, and once the departments approve, perform the ministerial function of issuing the license. Moreover, the language of the Code is **forward-looking** – i.e., the relevant departments determined that JP23 "will comply" with the applicable laws and regulations. The language of the Code is **not backward-looking** – i.e., Financial Management may not deny the license based on *past* violations that can be corrected and cured (such as mere permitting violations). Such an interpretation of the Code effectively puts Financial Management into a regulatory role, which the Code explicitly prohibits.

The conditional business license procedure under LBMC 3.80.421.1B permits Financial Management to issue a conditional license "during the investigation period"; i.e., during the time all

other departments are performing their respective reviews. The conditional business license provision exists so that applicants can legally operate while the relevant City departments review their applications. The conditional business license provision does **not** exist to allow Financial Management to delay issuance of the permanent business license while the City builds up a case against the application. Yet, that is precisely what happened here.

There is no dispute that planning, building, fire, and health completed their review and approved JP23's application. There is no dispute that JP23 paid its business license tax. There is no dispute that, in contravention of Financial Management's own customary procedures and practices, Ms. Mortensen stopped issuance of JP23's application. There is no dispute that Financial Management issued a conditional business license after JP23 had already received approvals from all necessary departments, under the pretext that Financial Management could conduct its own investigation. There is not even a dispute that Financial Management treated JP23's application differently than every other application. Financial Management simply unlawfully failed to perform its ministerial duty, and for improper reasons. The business license must be issued.

E. The City's Pattern of Bad Faith Dealings with JP23

In line with the City's bad faith failure to issue the permanent business license in October 2021, the City continually engaged in bad faith conduct with JP23, simply because they wanted to make it as difficult as possible for JP23 to do business in Long Beach.

1. Financial Management Misled JP23 Regarding Eligibility for a Temporary Entertainment Permit

In addition to improperly stopping and delaying issuance of the permanent business license, Financial Management also misled JP23 into believing they were not eligible for a temporary entertainment permit. According to Financial Management, JP23 is ineligible for a temporary entertainment permit because no business had had an entertainment permit at the premises in the prior 12 months. This requirement is nowhere to be found in the Long Beach Municipal Code. In fact, Lori Voss, the person in charge of processing JP23's entertainment permit, admitted that this provision is not found in the Code. (L.Voss, Video Timestamp 2022-06-06, 12:29:20 – 12:30:40, 12:58:15 – 13:00:16). The Municipal Code provision on point reads as follows:

The Director of Financial Management ***shall issue*** a temporary entertainment permit for no more than ninety (90) days to ***a new business*** or an existing business with new ownership where the previous owner had a valid entertainment permit, not involving adult entertainment as defined in Title 21 of the Long Beach Municipal Code, if he or she finds:

1. The applicant is an individual or lawfully created business entity having a valid ownership interest in the business;
2. No suspensions, denials or revocations of an entertainment permit have occurred at the location in the past twelve (12) months before the application date;
3. The applicant has also applied for a regular entertainment permit for the same location;
4. The owner of the property on which the entertainment is to be conducted has consented in writing to the application for the temporary permit.

(LBMC 5.72.125A) (Emphasis Added).

Ms. Voss claimed that the requirement came from an internal Financial Management policy – yet no such policy was produced. In any event, such a policy, if it exists, would not be permitted under the Municipal Code because it **mandates** Financial Management (i.e., “shall issue”) issue the temporary entertainment permit so long as the applicant is eligible. JP23 is a new business and would have met the four enumerated requirements under the code. **JP23 would have been issued the temporary entertainment permit had Financial Management not misinformed Mr. Poozhikala.**

The more likely explanation for the misrepresentation is that Financial Management attempted to stretch the meaning of the Municipal Code, because they did not want JP23 to have entertainment. They wanted to build a case against JP23 and issuing a temporary entertainment permit would be counterproductive to that goal.

The fact is, JP23 is and always has been eligible for a temporary entertainment permit, and the fact that Financial Management misled JP23 to believe otherwise is another facet in the bad faith way Financial Management processed JP23’s applications.

2. **JP23 Was Forced to Retain Counsel Simply to Get the City to Respond**

After multiple follow-ups with Financial Management and no response, JP23 was forced to

retain counsel in order to get Financial Management to respond. (N. Patel, Video Timestamp 2022-06-08 09:10:34 – 09:10:58; JP23 Exhibit 15).

JP23 - 110 E Broadway

21 messages

niralpatel@niralpatelinjurylaw.com <niralpatel@niralpatelinjurylaw.com> Fri, Oct 22, 2021 at 12:38 PM
To: joel.alvarez@longbeach.gov, kimberly.mak@longbeach.gov, Gene.Rodriguez@longbeach.gov, Brian.Tuliau@longbeach.gov, sami@jp23.com, Mayor@longbeach.gov, derek.ernest@longbeach.gov, tim.patton@longbeach.gov, james.ahumada@longbeach.gov, citymanager@longbeach.gov
Cc: Jacob Poozhikala <Jacob@jp23.com>

Good afternoon.

I have been retained to represent JP23. My client has completed the City of Long Beach's application for a Business License and has made all payments required. However, the business license has yet to be granted. Please see attached invoice and proof of payment.

I am writing to determine what is still required of complete the process and obtain the business license. Please call me at the below number as soon as possible.

Thank you.

Niral Patel, Esq.
Owner
Niral Patel Injury Law
100 Bayview Circle
Suite 100
Newport Beach, CA - 92660
Phone: (805) 748-9317
FAX: (714) 627-4696
Email: NiralPatel@NiralPatelInjuryLaw.com
Web page: NiralPatelInjuryLaw.com

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No business should be forced to retain counsel just to get some transparency from the City. JP23 received no clarity on the status of the business license until a meeting on November 3, 2021, at which point JP23 was issued the unlawful conditional business license. In fact, we now know that the reason the City's communication had stalled was because Ms. Mortensen was buying time to come up with a plan to deny the license, even though the application had already been approved by all relevant departments (JP23 Exhibit 45):

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///

From: Tara Mortensen
Sent: Thursday, October 21, 2021 12:18 PM
To: Brian Tuliau
Cc: Art Sanchez
Subject: Re: JP23 - 110 E Broadway

Thank you. I've forwarded it to Kevin. I have two meetings tomorrow about this, and don't plan to reach out until I have more clarity from the CM. I meet with Tom in one meeting, and Linda and Oscar in another about it.

Once we know the approach moving forward, we will work through it.

Of course his email is full of all kinds of inaccuracies, we have provided him all kinds of info.

Tara (Yeats) Mortensen, MCPP
Bureau Manager

Department of Financial Management | Business Services Bureau
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Office: 562-570-6340



3. The Unlawfully-Issued Conditional Business License Imposed Conditions That Could Not Reasonably Be Timely Met Due to the City's Own Conduct

As previously discussed, the City unlawfully issued a conditional business license on November 3, 2021. One of the conditions of the conditional business license was “Resolution of the misdemeanor citations that have been issued to date.” Yet as late as January 27, 2022, the City Prosecutor had not even bothered to file the misdemeanor charges (N. Patel, Video Timestamp 2022-06-08 09:21:31 – 09:22:40; JP23 Exhibit 23):

On Thu, Jan 27, 2022 at 3:38 PM Jacob Poozhikala <Jacob@jp23.com> wrote:

Good afternoon!

Thanks for your time as well. We were able to E-pay both of them. Please see attached confirmation.

At the meeting we forgot mention something important. We are trying to settle the citations. We went to all our ticketed court dates and none of the citations have even been filed. The DA's office has no record of the citations so we are unable to negotiate any settlements.

Niral has been working on this deigently and we will keep you updated if this changes.

Sincerely,

Jacob Poozhikala

///

///

In other words, the City set a condition which they then made it nearly impossible for JP23 to meet. Consistent with their dealings with JP23, they set JP23 up to fail.

4. **Tara Mortensen Tried to Leverage Other Branches of Government to Press JP23, Including Alcoholic Beverage Control and the City Prosecutor**

Ms. Mortensen, apparently wanted to leverage her Alcoholic Beverage Control connections in order to press JP23, as early as September 8. (Exhibit 38-008). Ms. Mortensen also inappropriately tried to influence City Prosecutor to prosecute JP23 more strictly, beyond a “fix it ticket.” (JP23 Exhibit 49; L. Voss, Video Timestamp 2022-06-06 12:51:30 – 12:52:17). This conduct is in line with Ms. Mortensen’s pattern and practice to make doing business in Long Beach as difficult as possible for JP23.

5. **The Director of Financial Management Made Racially Insensitive Remarks**

On January 25, 2022, Mr. Poozhikala and his counsel, Niral Patel, attended a meeting set by Financial Management. Also in attendance were Kevin Riper, the Director of Financial Management and Ms. Mortensen. During the meeting, Mr. Riper was visibly frustrated and stated that “in this country,” people follow rules – the implication being, of course, that Mr. Poozhikala and Mr. Patel, who are both of South Asian descent, are not from “this country.” (N. Patel, Video Timestamp 2022-06-08 09:29:01 – 09:29:28.) Mr. Riper’s completely inappropriate remark is a window into the mindset of Financial Management in their dealings with JP23. If the intent behind the remark was to make JP23 feel unwelcome, then Mr. Riper certainly succeeded in that endeavor.

F. **The Hearing Officer Should Not Consider Hearsay Evidence of Any Violations; Nor Should the Hearing Officer Consider Evidence of Alleged Post-Notice Violations**

The City denied JP23’s application due to the alleged failure to “comply with applicable laws and regulations” on March 14, 2022; i.e., permitting violations (City Exhibit 52). As set forth above, Financial Management was obliged to perform its ministerial duty to issue the permanent license in October 2021 in any event. The City has other means to hold JP23 accountable for any

alleged violations, other than eliminating the dozens of jobs JP23 has brought to the city. Indeed, the City is doing so via misdemeanor charges arising out of the same alleged permitting violations (City Exhibit 43).

However, to the extent that the hearing officer wishes to consider any evidence of the alleged violations, JP23 requests that the hearing officer not consider and moves to strike any hearsay evidence of the alleged violations in accordance with the Long Beach Municipal Code 2.93.030 (stating, in relevant part, “Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.”) The City has not met their burden to the extent the only evidence of a specific violation is an out-of-hearing statement or unauthenticated and unverified documents.

Additionally, the City attempted to present evidence of alleged post-notice violations related to noise complaints and the building of a stage in the premises’ lounge area. JP23 respectfully requests that the hearing officer not consider and moves to strike such evidence as irrelevant, in accordance with Long Beach Municipal Code 2.93.030 (stating “irrelevant and unduly repetitious evidence shall be excluded.”) The issues on appeal are defined by the March 14, 2022 notice, which also served as the report presented to the City Council pursuant to Long Beach Municipal Code 3.80.421.6 (stating, “The Director shall thereupon make a written report to the City Council reflecting such determination denying the business license.”). The City made no attempt to amend or augment the March 14, 2022 notice to include such alleged violations as grounds to deny the application. It is simply unjust to JP23 to permit the City to present evidence of alleged violations for which JP23 had no notice would be issues on appeal. Accordingly, any evidence of such alleged violations should be excluded.

IV. CONCLUSION

The City, in its zeal to keep JP23 out of Long Beach, blatantly exceeded its authority under its own Municipal Code. The City heard about the rumors in Fullerton and knew it would be politically unpopular to support JP23. The City decided right then and there that they were going to go out of their way to kill a flourishing business. Spearheaded by Tara Mortensen, the City put

together a task force to build a case against JP23 in order to eventually deny its business license.

JP23 respectfully requests the hearing officer not permit Financial Management to exceed its own authority. JP23 respectfully requests the hearing officer consider Financial Management's bad faith dealings with JP23. JP23 respectfully requests that the hearing officer consider the years of planning and effort poured into this business. JP23 respectfully requests that the hearing officer consider the tumult of the COVID-19 pandemic, and JP23's perseverance through uncertainty. JP23 requests that the hearing officer consider the dozens of employees who will be out of work should Financial Management's decision stand. Ultimately, JP23 requests the hearing officer recommend entering an order compelling JP Financial Management to (1) issue a permanent business license, retroactive to October 15, 2021; and (2) accept JP23's temporary entertainment permit application, as Financial Management should have done back in October 2021.

DATED: June 22, 2022

Respectfully submitted,

MESSNER REEVES LLP

/s/ Ethan Reimers

Ethan Reimers
Attorneys for Petitioner
JP23 Hospitality Company, Inc.

PROOF OF SERVICE

JP23 v. CITY OF LONG BEACH

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 650 Town Center Drive, Suite 700, Costa Mesa, CA 92626.

On June 22, 2022, I served true copies of the following document(s) described as **JP23 HOSPITALITY COMPANY, INC. AND JACOB POOZHICALA'S CLOSING BRIEF** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address cscherz@messner.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 22, 2022, at Costa Mesa, California.

/s/ Claudia Scherz

Claudia Scherz

SERVICE LIST
JP23 APPEAL OF BUSINESS LICENSE APPLICATION DENIAL

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Memorandum

To: Honorable Mayor Robert Garcia and Members
of the Long Beach City Council

From: Christopher M. Pisano, Patrick D. Skahan

Date: August 11, 2022

Re: *JP23 v. City of Long Beach*: Analysis of Hearing Officer’s Findings and
Recommendation

I. OVERVIEW

The City has retained Best Best & Krieger LLP (“BB&K”) in the administrative matter of *JP23 Hospitality Company, d/b/a JP23 v. City of Long Beach*. BBK was hired to review and analyze the Hearing Officer’s Findings and Recommendation (hereafter “Report”), and to report to the City Council. The City Council has the authority to consider the Hearing Officer’s Report pursuant to the Long Beach Municipal Code (“LBMC”). Specifically, LBMC section 2.93.050(B)(8) provides that, “[a]fter review of the Hearing Officer’s report, the City may adopt, reject or modify the recommended decision. In its discretion, the City Council may take additional evidence at the hearing or refer the case to the Hearing Officer with instructions to consider additional evidence.”

This memorandum analyzes the Hearing Officer’s Report for consistency with the LBMC and relevant case law. It is intended to assist the City Council in its review and consideration of the Hearing Officer’s Report. Based on our review of the record, the LBMC and relevant authority, we recommend that the City Council reject the Hearing Officer’s Report, and that it

uphold the denial of Appellant's business license application. As is discussed herein, we find that the Hearing Officer's Report is inconsistent with the LBMC and applicable law.

II. THE PROCEEDING BEFORE THE HEARING OFFICER

Appellant JP23 Hospitality Company, d/b/a/ JP23 ("Appellant" or "JP23") appealed the March 14, 2022 determination by the City of Long Beach ("City") to deny its application for a business license to operate a restaurant and bar at 110 E. Broadway. The City Council appointed a Hearing Officer to consider the appeal pursuant to LBMC section 2.93.050. The administrative hearing was conducted between May 25, 2022 and June 8, 2022. On July 15, 2022, the Hearing Officer issued a Report, finding that the City had not complied with the LBMC in denying Appellant's business license application. The relevant factual and legal findings are in the Report and record of the proceeding before the Hearing Officer, and are summarized in relevant part below.

A. Summary of Factual Findings.

On or about August 2, 2021, a woman filed a report with the City of Fullerton Police Department regarding another business operated by Appellant in Fullerton, CA. The woman alleged she was drugged and later sexually assaulted in a nearby parking garage. The report became public in local media and social media. "Appellant contends that the woman's allegations devolved and snowballed into untrue and unfounded rumors, including that she was raped inside Appellant's bar in the Fullerton location, that Appellant's staff members and owners were themselves rapists, and that Appellant condoned rape culture." (Report, at p. 6:3-7.) The Hearing Officer concluded "[t]here is sufficient evidence on the record that the rumors culminated into social media campaigns and demonstrations outside of both Appellant's

BBK
BEST BEST & KRIEGER
ATTORNEYS AT LAW

locations in Fullerton and Long Beach.” (Report, at p. 6:7-9.) Appellant later sued the woman for libel, trade libel, and slander over the events she reported. (Appellant’s Ex. 64.) The case remains pending in the Orange County Superior Court.

The City’s Business License Division (“Business License”) first became aware of Appellant when it was notified by the Long Beach City Manager’s Office about a citizen complaint regarding Appellant’s plans to open its business on Broadway & Pine Street, during the general public comment portion of the City Council meeting on August 3, 2021. (City’s Legal Brief, at p. 1:22-27.) At that time Appellant did not have a business license application on file with Business License. (*Id.*, at p. 2:2-4.)

On or about August 31, 2021, Business License became aware of an advertisement for an event that was going to take place on September 3 and 4, 2021 at Appellant’s location at 110 E. Broadway in the City, where Appellant was planning to have live performances by several musical artists. (Respondent’s Exs., 11-12.) Business License investigators reached out to Appellant’s CEO Jacob Poozhikala (“Poozhikala”) to inform him that the business was not allowed to have a live music event because Appellant did not have a business license or an entertainment permit, both of which were required prior to the opening of or operating of Appellant’s business with live events.

Business License also confirmed with the City’s Building & Safety Department that Appellant did not have a Temporary Certificate of Occupancy (“TCO”) for the location at 110 E. Broadway, which meant that members of the public were not allowed on the premises, except for licensed contractors who were working on the interior or exterior build-out of the location. (City’s Legal Brief, at p. 2:17-22.)

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A few days before September 3, 2021, Long Beach Police Department's Downtown Vice Unit contacted Poozhikala by telephone to inform him the advertised live event was unpermitted, and instructed him not to have the event if he did not obtain the required permits. (City's Legal Brief, at p. 3:8-12.) Despite this warning, Appellant held what it claimed was a private event on September 4, 2021, even though it did not have a business license, entertainment permit or a TCO.

On the night of September 4, 2021, Sergeant Derek Ernest with the Long Beach Police Department visited Appellant's business location, and observed approximately forty (40) people inside. (City's Legal Brief, at 3:12-13.) He spoke with Poozhikala, who informed him that it was a private event and that he was allowed to hold a private event without the required business license, entertainment permit, or TCO. (*Id.*, at 3:13-16.) Sergeant Ernest later determined that Poozhikala's representations about a private event were untrue, as he observed patrons entering the location from a rear entrance near the back alley of 110 E. Broadway. (*Id.*, at 3:17-19.) On September 5, 2021, at 4:00 a.m., the Long Beach Fire Department responded to the location regarding an issue with the fire alarm, and thereafter cited Appellant. The Fire Inspection Report states that California Fire Code section 105.3.3 [occupancy prohibited before approval] was "violated on Saturday, September 4th by hosting a small private gathering." (Respondent's Ex. 10.)

On September 16, 2021, Appellant submitted its complete application for a business license to the City. The application was subject to review in an investigative process by the City's Planning, Building & Safety, Environmental Health, and Fire Departments for approval. (Respondent's Exs. 13-14.)

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On September 17, 2021, Building and Safety Inspector Ray Woolhether inspected JP23 and issued a Notice of Inspection, including items that needed to be corrected in order to obtain a TCO. “Woolhether informed Poozhikala that a Temporary Certificate of Occupancy is invalid when operating a business without a current business license, which was written on the last page of the Notice of Inspection.” (Report, at p. 3:10-12; see also Respondent’s Ex., 19 [email noting discussion that “a current L.B.C. business license is required prior to operating otherwise your TCO is invalid”].)

As of October 1, 2021, Appellant’s business license application had been approved by the City’s Planning; Building & Safety; Environmental Health; and Fire Departments. (Report, at p. 4:7-10.) However, the approval by the Department of Environmental Health did not show in the City’s internal review system INFOR, until October 19, 2021. (*Id.*, at 4:9-11.)

On or about October 13, 2021, the City issued Appellant a TCO. (Respondent’s Ex., 19.) Appellant opened to the public the next day, “on or about October 14, 2021 without a business license as the Application had not yet been approved.” (Report, at p. 3:13-15.) On October 14, 15, 16, 20, and 21, 2021, the City issued misdemeanor citations to Appellant for conducting business in the City without first obtaining a business license. (*Id.*, at p. 3:15-18.)

On November 3, 2021, the City held a meeting with Appellant, which was attended by Tara Mortensen, Bureau Manager for the Department of Financial Management, and Brian Tuliau, Business Services Officer. Following this meeting, Business License issued Appellant a Conditional Business License (“CBL”), retroactive to September 16, 2021, the date of Appellant’s business license application, through March 15, 2022, while the investigative process continued. The Department of Finance’s letter said that “it was issuing the CBL as an

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act of good faith to allow Appellant to legally operate ‘while the investigation required to issue a permanent Business License is ongoing.’ ” (Report, at p. 4:1-3; see also Respondent’s Ex. 52.) Further, the letter stated that JP23 was subject to three conditions under the CBL: “(1) complete all actions/corrections as requested within the TCO; (2) comply with all applicable laws and regulations, including, but not limited to, LBMC Chapters 3, 5, and 21; and (3) resolve each of the Misdemeanor Citations Issued to Applicant.” (Report, at p. 4:3-7.)

During the November 3, 2021 meeting, the entertainment permit process and the conditions for obtaining an entertainment permit before holding entertainment activities were explained to Appellant. (City’s Legal Brief, at p. 5:26-27.) This was necessary because Appellant had already begun having entertainment activities, including using a disc jockey, amplified music, and dancing on most nights since opening its business on or about October 13, 2021, even though Appellant had not obtained an entertainment permit for any of these activities. (*Id.*, at p. 6:3-8.)

On December 29, 2021, Business License informed Appellant that it was in violation of the CBL for hosting entertainment activities without an entertainment permit, citing condition number 2 of the CBL. (Respondent’s Ex. 52.) Despite the written warning, on January 23, 2022, Sergeant Ernest observed Appellant hosting another entertainment event without an entertainment permit in violation of LBMC Chapter 5.72.110(A). Appellant held entertainment events, including using a disc jockey, live amplified music, and dancing at their business location without an entertainment permit. (City’s Legal Brief, at p. 6:18-21.)

On or about January 11, 2022, Appellant inquired if the City about the status of its business license application in anticipation of Super Bowl weekend on February 10-12, 2022. On

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January 25, 2022, a meeting was held with Appellant and members of the City, including Kevin Riper, Finance Director and CFO of the Department of Financial Management, Arturo Sanchez, Deputy City Attorney, Mortensen, Poozhikala, and Appellant's former counsel Niral Patel. Appellant learned about issues of incompleteness with its business license application, including nonpayment of the business license allegedly sent on December 17, 2021. Appellant claimed it did not receive the invoices until Mortensen emailed them on January 27, 2022. The Hearing Officer found that, "[d]uring this meeting JP23 took offense to comments by Riper that seemed to be directed at owner Poozhikala and legal counsel Niral Patel's ethnic background. Appellant addressed its suspicion on the record as to whether Riper could fairly process and make determinations on JP23's applications." (Report, at p. 5:7-10.)

The next day, on January 26, 2022, Business License met with Appellant to discuss its entertainment permit application, and the process of obtaining an occasional event permit (one day only; not multiple days) from Special Events & Filming. Appellant was informed that an occasional event permit could be issued only for one-day events. (City's Legal Brief, at p. 6:26-28.)

On or about February 4, 2022, Business License learned of advertisements for live performances by various artists, including Buster Rhymes, Nelly & T-Pain at Appellant's location on February 10, 11, and 12, 2022. (City's Legal Brief, at p. 7:1-3.) On February 9, 2022, Business License notified Appellant by letter that live performances were not allowed without an entertainment permit or an occasional event permit, and that the live performances would create a public safety risk and public nuisance. (Respondent's Ex. 45.) Despite the



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written notice, Appellant held the live events as advertised on February 10, 11, and 12, 2022, despite not having an entertainment permit. (Report, at p. 5:24-25.)

Based upon Appellant's history of violations and their refusal to abide by the same set of rules and regulations as other businesses in the City, on March 14, 2022, Director of Financial Management Kevin Riper sent a letter to Appellant indicating that the City had denied their business license application. (City's Legal Brief, at p.7:12-15.) In particular, the letter stated, "[t]he Business License Division of the Financial Management Department has denied your application due to the failure of JP23 Hospitality Company (Applicant) to comply with applicable laws and regulations, including the following Chapters of the Long Beach Municipal Code (LBMC), full text available within Attachment B: (1) 1.32.040 - Failure to obtain or exceeding limits of license or permit; (2) 3.80.210 - License & Tax Payment Required; (3) 5.06.020 - Suspension/Revocation/Denial; (4) 5.72.110(A) - Permit Required & Prohibited Uses; (5) 5.72.130 Permits for Occasional events." (Respondent's Ex. 52; see also Report, at p. 6:24-28.) The denial letter cited the City's duty to ensure a business "will comply with applicable fire, building, safety, zoning health and other laws and regulations" when considering issuing a business license. (Respondent's Ex., 52, citing LBMC Chapter 3.80.410¹ and 3.80.421.1²). This appeal followed. (Respondent's Ex. 55.)

¹ LBMC § 3.80.410 states: "It shall be the duty of the Director of Financial Management, and he is hereby directed, to administer and enforce each and all of the provisions of this Chapter, and the Chief of Police shall render such assistance in the enforcement of this Chapter as may from time to time be required by the Director of Financial Management."

² LBMC § 3.80.421.1 (A) states: "The Director shall refer such application to the appropriate departments of the City in order that it may be ascertained whether the business proposed to be conducted or the premises in which it is proposed to locate such business will comply with applicable fire, building safety, zoning, health and other laws and regulations."

B. The Hearing Officer’s Findings.

The issue the Hearing Officer considered was whether the City complied with the LBMC in denying Appellant’s business license application. (Report, at p. 21:5-6 [citing LBMC § 3.80.421.5].) The Hearing Officer made two principal conclusions. First, that the Director of Financial Management (the “Director”) had a ministerial duty pursuant to Chapter 3.80 of the LBMC to issue the business license once all concerned departments approved the application “as reflected in INFOR on October 19 2021.” (Report, at p. 23:6-13.) The Hearing Officer based this finding on the conclusion that Financial Management’s role is “not regulatory in nature.” (*Id.*, at p. 23:10.)

Second, the Hearing Officer concluded that the text of LBMC sections 3.80.421.1 and 3.80.421.5 forbids the City from considering the applicant’s past conduct in determining whether the business “will comply” with applicable fire, building, safety, zoning, health and other laws and regulations. Specifically, “although there is no dispute that the record shows that Appellant has committed several violations on various occasions”, the Hearing Officer concluded that LBMC section 3.80.421.5 is “forward-looking, not backward looking” and that the LBMC “simply does not contemplate those past violations and citations be considered in the denial or approval of the application.” (Report, at pp. 23:19 - 24:6.)

III. THE CITY ACTED WITHIN THE DISCRETIONARY SCOPE OF THE LBMC IN DENYING APPELLANT’S BUSINESS LICENSE APPLICATION

Based on our review of the proceeding below, the LBMC and relevant case law, we recommend the City Council reject the Hearing Officer’s Report, and uphold the denial of



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Appellant's business license application. We recommend this based on the five reasons summarized herein:

1. In contrast to the Hearing Officer's conclusion that the Director has a ministerial duty to issue the business license, the LBMC and California case law confirm that business licensing decisions are discretionary determinations, not ministerial functions. The Director appropriately acted within his discretion under the LBMC in denying the application based on his findings about the Appellant's past violations of the LBMC, and its refusal to comply with the City's rules and regulations.³ (See Respondent's Ex. 52 [citing LBMC sections 1.32.040; 3.80.210; 5.06.020; 5.72.110(A); and 5.72.130].)

2. The City Council may also rely on LBMC section 3.80.421.1(B) as an additional grounds for denying Appellant's business license application and rejecting the Hearing Officer's Report. This section provides in pertinent part that, "a conditional license shall not be valid for a period longer than one hundred eighty (180) days from the date of application. During such period, based upon review by the appropriate departments of the City, the applicant may be rejected for failure to comply with applicable laws and regulations at any time." (*Id.*) Here, Appellant was issued a CBL on November 3, 2021. The Director denied the application within 180 days, "because of the Applicant's repeated failure to comply with applicable laws and ordinances of the City." (Respondent's Ex. 52.) While the Director's March 14, 2022 denial letter does not expressly cite LBMC section 3.80.421.1(B) as the authority for the denial, a

³ The Director's March 14, 2022 denial letter concluded that the "Applicant has consistently refused to abide by the rules and regulations of the City of Long Beach. Therefore, pursuant to the provisions of LBMC Chapters 3.80.421.5 and 5.04.030 of the LBMC, the Applicant's application for a business license is denied because of the Applicant's repeated failure to comply with applicable laws and ordinances of the City." (Respondent's Ex., 52.)

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reviewing body may treat this as harmless error, and the City Council may rely upon this section in addition to those cited by the Director. Section 3.80.421.1(B) is not exclusively “forward-looking” as it allows consideration of an applicant’s conduct “at any time.”

3. LBMC section 3.80.421.5 provides, “[i]n the event that a particular department of the City rejects an application for the reason that such business or the location at which it is proposed to conduct the same will not so comply with applicable laws and ordinances, the Director Of Financial Management shall not issue such license.” While the Hearing Officer found that LBMC section 3.80.421.5 is exclusively forward-looking and bars directors from considering an applicant’s past conduct, this finding is contrary to the statutory scheme.

4. Even if other provisions of the LBMC are exclusively forward-looking (which they are not), the Hearing Officer ignored LBMC section 5.06.020(A)(5), which expressly authorizes denying any permit to do business in the City issued pursuant to Title 5, where the “permittee **has failed** to comply with any condition which may have been imposed as a condition of operation or for the issuance of a permit required under the provisions of this Code.” This code section expressly provides that past conduct may be considered when denying a business license application. Indeed, the provisions of Title 5 expressly apply in the context of Chapter 3.80 business licenses. (See LBMC § 5.02.010.)

5. Accepting the Hearing Officer’s Report would lead to an absurd result that is contrary to public policy. The Hearing Officer’s narrow interpretation of the LBMC would require the City to ignore an applicant’s past conduct, regardless of how egregious it is, in determining whether the applicant will comply with the City’s laws and regulations. This is not a correct interpretation of the LBMC.

IV. ANALYSIS

A. Standard of Review and Exhaustion of Administrative Avenues.

In any reviewing tribunal, a fundamental rule of appeals procedure is that a decision challenged on appeal is presumed correct, and the burden is on the appellant to affirmatively demonstrate error. (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 549.) Code of Civil Procedure section 475 provides in pertinent part, “[n]o judgment, decision, or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect **was prejudicial**, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained and suffered substantial injury, **and that a different result would have been probable** if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown.” (*Id.*, emphasis added.)

Ultimately, an appellant bears the burden to show not only that the lower tribunal, or in this case the Director, erred, but also that the error was prejudicial in that it resulted in a miscarriage of justice. (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800–802 (“*Cassim*”).) “[A] “miscarriage of justice” should be declared only when the court, “after an examination of the entire cause, including the evidence,” is of the “opinion” that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.’ [Citation.]” (*Cassim, supra*, at p. 800.) Only prejudicial error is grounds for reversal. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 573–574.) When the record supports a

judgment, notwithstanding a purported error, such error is harmless. (See, e.g., *American Federation of State etc. Employees v. County of Los Angeles* (1983) 146 Cal.App.3d 879, 887.)

Similarly, under the doctrine of exhaustion of administrative remedies, a party must obtain a decision from the final administrative decision-maker before bringing an action in court. (*Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 594.) The exhaustion requirement permits the agency to correct any deficiency, avoid costly litigation, and also facilitates the development of a factual record to assist in later judicial review. (*Sierra Club v. San Joaquin Local Agency Formation Commission* (1999) 21 Cal.4th 489, 501; *Campbell v. Regents of the University of California* (2005) 35 Cal.4th 311, 322.)

Consistent with this doctrine, the LBMC establishes the City Council as the final administrative body to review an appeal of the denial of a business license. (See LBMC §§ 3.80.421.6; 2.93.010.) In cases where a Hearing Officer conducts an administrative hearing and prepares a report, the City Council has final decision-making authority under LBMC section 2.93.050(B) to review and consider the report and determine whether to adopt, reject, or modify it. (*Id.*, at subs. (B)(7) & B(8).) This process is consistent with the doctrine of exhaustion of administrative remedies, and permits the City to correct any deficiency and to avoid costly litigation. The Hearing Officer's Report should be considered in this context.

B. The Duty to Issue a Business License is Discretionary, not Ministerial.

California courts have found that, “[a] ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists.” (*Kavanaugh v. West Sonoma County Union High School*

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Dist. (2003) 29 Cal.4th 911, 916 [citation].) “A public entity has a ministerial duty to comply with its own rules and regulations where they are valid and unambiguous.” (*Gregory v. State Bd. of Control* (1999) 73 Cal.App.4th 584, 595.) [“W]here a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion.” (*Ellena v. Dept. of Ins.* (2014) 230 Cal.App.4th 198, 205 [citations omitted].)

While the City has a mandatory and ministerial duty to follow the procedures set forth in the LBMC, its determination to issue a license is generally a discretionary act. (E.g., *MacDonald v. State of California* (1991) 230 Cal.App.3d 319, 330 [“the predominant character of licensing is discretionary”].) In particular, where a public agency or employee must determine whether particular legal criteria have been met before a license or permit is issued, the licensing or permitting decision is a discretionary one. (See, e.g., *Thompson v. City of Lake Elsinore* (1993) 18 Cal.App.4th 49, 57 [no mandatory duty to issue permit “even if a proposed application and plan meet all existing code and regulatory requirements”]; *Slagle Constr. Co. v. County of Contra Costa* (1977) 67 Cal.App.3d 559, 563–564 [county planning commission had no mandatory duty to issue building permit, even if applicant's subdivision map has been approved and applicant is not in violation of law].) California courts have also held that where a licensing decision is discretionary, a public entity is immune from a claim of damages under Government Code section 818.4.⁴ (*West v. State of California* (1986) 181 Cal.App.3d 753, 760; *Colome v. State Athletic Com.* (1996) 47 Cal.App.4th 1444, 1455.)

⁴ Gov. Code § 818.4 provides, “[a] public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate,

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Here, the weight of authorities and multiple sections of the LBMC confirm that the Director has discretion to determine whether particular legal criteria have been met by an applicant when granting or denying a business license application. Under LBMC section 3.80.410, a duty is imposed on the Director “to administer and enforce each and all of the provisions of this Chapter. . .” In administering and enforcing the Chapter, “[t]he Director shall refer [a business license application] to the appropriate departments of the City in order that it **may be ascertained** whether the business proposed to be conducted on the premises in which it is proposed to locate such business will comply with all applicable fire, building safety, zoning, health and other laws and regulations.” (LBMC § 3.80.421.1(A) (Application – Investigation), emphasis added.) Where a particular City department finds that the business or the location at which it is proposed “will not so comply with applicable laws and ordinances, the Director of Financial Management shall not issue such license.” (LBMC § 3.80.421.5; see also § 5.04.030 [application – rejection].) Thus, the duty to reject a business license application is mandatory under the LBMC when the Director makes a determination that the applicant will not comply with the City’s applicable laws and ordinances.

The plain language of the LBMC ultimately vest discretion with the City to determine whether the business or the location “will comply” or “will not so comply” with applicable health and safety and other laws and regulations. (LBMC §§ 3.80.421.1(A); 3.80.421.5; 5.04.030, respectively.) In other words, the City has discretion to determine whether particular legal criteria have been met to grant the application. In such cases the duty to approve a business

approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.”

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license is discretionary, not ministerial. (*Thompson v. City of Lake Elsinore, supra*, 18 Cal.App.4th at pp. 57-58 [issuance of building permits is a discretionary function]; *Slagle Constr. Co. v. County of Contra Costa, supra*, 67 Cal.App.3d at pp. 563-564.)

Here, the Director exercised his discretion under LBMC sections 3.80.21.1(A), 3.80.421.5 and 5.04.030 in making a determination that the applicant will not comply with the City's applicable laws and ordinances, based upon a lengthy record of noncompliance. The Director was not required to ignore the Appellant's record of noncompliance with the LBMC when making his determination. Indeed, violations of law are relevant considerations when denying permits. (See *Slagle, supra*, 67 Cal.App.3d at 564.)

Moreover, the regulatory nature of Title 5 confirms that discretion is necessarily vested in the Director when issuing or denying a business license application. Title 5 is entitled Regulation of Business, Trades and Professions. Its purpose is to "set forth the specific standards and criteria under which such businesses, trades and professions shall be conducted and regulated within the City" and "to set forth the procedures and conditions for applying for" necessary permits. (LBMC § 5.02.010.)

The Hearing Officer's Report did not analyze the applicability of Title 5 to Appellant's application. Appellant argued to the Hearing Officer that Section 5.04.030 is inapplicable to a business license application submitted under LBMC section 3.80.420, and the Hearing Officer agreed. (Report, at pp. 7:26- 8:5; 23:9-19.) That was incorrect. The Director is not confined exclusively to Chapter 3.80 in considering a business license application, but rather may also consider the regulatory provisions in Title 5. LBMC section 5.02.010 confirms that the local regulations set forth in Title 5 are "**in addition to any other requirements**" the City may apply



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to any business, “including but not limited to, Chapter 3.80 of the Long Beach Municipal Code.” (LBMC § 5.02.010 [Purpose], emphasis added.) Appellant’s contention that the Director may not consider Chapter 5.04 in the context of a business license application is incorrect. The Director retains discretion under the code to consider whether the applicant has satisfied the conditions for a permit set forth in Chapter 5.04 before issuing a business license.

Similarly, in the conditional business license context, the LBMC confirms the City’s discretion to determine whether particular legal criteria have been met in order to grant the application. Under LBMC section 3.80.421.1(B), a conditional license may be issued for the applicant to conduct business during the investigation period of 180 day from the date of application. “During such period, based upon review by the appropriate departments of the City, the applicant **may** be rejected for failure to comply with applicable laws and regulations **at any time.**” (LBMC § 3.80.421.1(B), emphasis added.) By using the discretionary term “may”, the LBMC vests discretion with the Director to determine whether or not to issue the business license. (See *Woolls v. Superior Court* (2005) 127 Cal.App.4th 197 [generally the word “may” is permissive, while the word “shall” is mandatory].) The Director is not limited by any specific time-period in making this determination. Instead, compliance with applicable laws “at any time” may be evaluated.

The City Council has discretion as a superior administrative body to reject or modify the report of the Hearing Officer under LBMC section 2.93.050(B)(8). Contrary to the findings in the Report, the Director’s licensing determination is inherently discretionary. The LBMC vests discretion in the Director to determine whether the applicant “will comply” with the City’s laws and regulations. Because here the Director must determine whether particular legal criteria have

been met before issuing a business license or permit, the licensing or permitting decision is a discretionary one.

C. **LBMC section 3.80.421(B) Provides the City Council Additional Grounds to Deny Appellant's Business License Application.**

As additional grounds for denying Appellant's business license application, the City Council may rely on LBMC section 3.80.421.1(B). Here, the facts fall within the scope of LBMC section 3.80.421(B). Specifically, the City granted a conditional business license to Appellant on November 3, 2021. (Respondent's Ex. 28.) The conditional business license was retroactive to September 16, 2021, the date of Appellant's application for a business license. On March 14, 2022, within 180 days from the date of application, the Director issued the denial of business license application letter. (Respondent's Ex. 52.) Thus, the Director was authorized to exercise his discretion and deny the business license application during this period based on the Appellant's "failure to comply with applicable laws and regulations at any time." (LBMC § 3.80.421.1(B).) This section of the LBMC further confirms the discretion that is necessary to determine whether the applicant will or will not comply with the City's applicable laws and regulations – both in the conditional and standard business license contexts.

Even though the City's denial letter did not cite LBMC section 3.80.421.1(B), Appellant must show in any appeal not only that the lack of citation to LBMC section 3.80.421.1(B) was error, but also that the error was material, i.e. not harmless error. (*Cassim, supra*, 33 Cal.4th at p. 800; *Soule v. General Motors Corp., supra*, 8 Cal.4th at pp. 573–574.) Appellant cannot do so, and the City Council may treat LBMC section 3.80.421.1(B) as additional grounds for denial. The lack of citation to this code section in the denial letter may be considered as harmless error,

consistent with California law when an appellant fails to show prejudice. Indeed, the Report recognizes that if the Director's denial letter had only cited LBMC section 3.80.421.1(B), "he could have used it to support his discretion to deny any application for prior instances of noncompliance." (Report, at p. 8:8-9.) Because LBMC section 3.80.421.1(B) applied and authorized denying Appellant's business license application based on past conduct in the Directors' discretion, Appellant cannot demonstrate a prejudicial error that resulted in a miscarriage of justice by not expressly citing this subdivision of the code in the denial letter. Rather, the City Council may rely on LBMC section 3.80.421.1(B) as additional grounds for denying the application. Appellant cannot demonstrate any prejudice by not citing this code section.

D. The LBMC Does Not Prohibit the City From Considering Past Noncompliance in Denying a Business License.

The Hearing Officer's Report is also based on a legally incorrect conclusion that when granting or denying a business license application under LBMC section 3.80.421.5 the City must ignore an applicant's past interactions with the City. The finding ignores the statutory scheme, which must be read in context as a whole. Further, the finding in the Report incorrectly reads language into the statute. It would lead to absurd results where past conduct could only be considered in the context of a conditional business license under LBMC section 3.80.421.1(B), but not when considering a traditional business license application. To remedy this absurd result, the City Council should reject the Hearing Officer's Report.

In determining the intent of an ordinance for statutory meaning, courts must assume that each term in the ordinance "has meaning and appears for a reason." (See *Kulshrestha v. First*



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Union Commercial Corp. (2004) 33 Cal.4th 601, 611; see also *TG Oceanside, L.P. v. City of Oceanside* (2007) 156 Cal.App.4th 1355, 1374 [the rules of construction applying to statutes apply equally to ordinances].) Courts will consider the statute read as a whole, harmonizing the various elements by considering each clause and section in the context of the overall statutory framework. (*Wade v. Superior Court* (2019) 33 Cal.App.5th 694, 710.)

Contrary to the Hearing Officer's conclusion, the plain language of the LBMC in Chapters 3.80 and 5.02 confirm that the Director and the City's particular departments are not required to exclude past conduct when making their determination whether an applicant will comply with applicable laws and regulations. The LBMC delegates discretion to the City in determining whether the applicant "will comply" or "will not so comply" when issuing a business license. Past conduct is relevant to this analysis. The specific applicable sections of the LBMC are set forth below.

LBMC section 3.80.421.1 (Application – Investigation) provides:

"The Director shall refer such application to the appropriate departments of the City in order that it may be ascertained whether the business proposed to be conducted or the premises in which it is proposed to locate such business **will comply** with applicable fire, building safety, zoning, health and other laws and regulations."

(*Id.*, emphasis added.)

Similarly, LBMC section 3.80.421.5 (Application – Rejection) provides:

In the event that a particular department of the City rejects an application for the reason that such business or the location at which it is proposed to conduct the

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same **will not so comply** with applicable laws and ordinances, the Director Of Financial Management shall not issue such license.

(Id., emphasis added.)

In addition, LBMC 5.04.030 (Application – Rejection) states:

In the event that a particular department of the City rejects an application for the reason that such business or the location at which it is proposed to be conducted **will not comply** with applicable laws and ordinances, no permit shall be issued, and the application shall be denied.

(Id., emphasis added.)

The Hearing Officer did not cite any section of the LBMC as expressly preventing the Director from considering Appellant’s past performance when denying a business license application “pursuant to the provisions of LBMC Chapters 3.80.421.5 and 5.04.030.”

(Respondent’s Ex., 52, at p. 2.) Rather, the Report reads words into the LBMC to conclude past conduct cannot be considered. In so doing, the Report ignores the express language of LBMC section 5.06.020(A)(5) that allows any permit to do business in the City pursuant to Title 5 to be suspended revoked or denied upon grounds that: “[t]he permittee **has failed to comply** with any condition which may have been imposed as a condition of operation or for the issuance of the permit required under the provisions of this Code.” *(Id., emphasis added.)* Nothing in the LBMC restricts the City to considering only future conduct, which really cannot be proved other than through an applicant’s past performance. Under this section, the City may consider if an applicant “has failed to comply” in the past in denying a permit. In fact, the Director’s denial letter cited this section 5.06.020 as grounds for denial of Appellant’s application. (Respondent’s

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Ex. 52.) As noted above, the City Council may reject any contention that section 5.06.020 does not apply to granting a business license under Chapter 3.80 because the regulatory requirements under Title 5 (including chapter 5.06) are expressly in addition to the requirements of Chapter 3.80. (See LBMC § 5.02.010.)

The Director's interpretation of the LBMC that allows him to consider past conduct of an applicant should be upheld, as it is consistent with the City's own interpretation of its ordinance. (See *Dix v. Superior Court* (1991) 53 Cal.3d 442, 460 ["Unless unreasonable or clearly contrary to the statutory language or purpose, the consistent construction of a statute by an agency charged with responsibility for its implementation is entitled to great deference."]; see also *Colome v. State Athletic Com.* (1996) 47 Cal.App.4th 1444, 1455 [because appellants can point to no statute that requires respondents to issue them a license, respondents' decision is discretionary]; *Sunset Amusement Co. v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80 [a city is not without recourse where a licensed business is creating a public nuisance and may revoke a permit in such circumstances].)

It is important to reiterate here that Appellant demonstrated a lengthy history of operating its business in disregard of the City's applicable rules and regulations. The Hearing Officer even concluded that "[t]he record is replete with evidence of Appellant's various violations of City ordinances" and "[d]espite being provided ample opportunities to come into compliance with the City's ordinance, Appellant has failed to do so." (Report, at p. 24:8-10.) The Hearing Officer was also in fact "cognizant of Appellant's apparent ignorance or arrogance in flouting the City's ordinances. . ." (Report, at p. 24:11.) If accepted, the Report would curiously force the City to ignore Appellant's past conduct, and essentially speculate as to whether the applicant will or will



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not comply with the LBMC in the future. Case law provides support that the City may consider Appellant's past disregard of its regulatory authority as a relevant indicator of future conduct. (See e.g., *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 (injunction warranted given defendant's disregard of City's licensing and zoning laws and stated intent to operate and actual operation of medical marijuana dispensary in violation of those laws); *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912 [party's conduct "clearly demonstrates that more than past violations have occurred or will reasonably probably occur in the immediate future" and authorized injunctive relief]; *California Alliance for Utility etc. Education v. City of San Diego* (1997) 56 Cal.App.4th 1024 [past actions may evince a relationship to present or future conduct]; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, [courts may presume that party will continue similar practices in light of party's refusal to admit violation].)

E. Accepting the Hearing Officer's Report Could Lead to Absurd Results That Are Contrary to Public Policy.

Finally, as a matter of public policy, the Hearing Officer's Report would lead to the absurd result that the City could only consider an applicant's past history of noncompliance in cases where a conditional business license had been granted, but past conduct must be ignored in all other cases. In other words, accepting the Report would cause perverse incentives because any new business that sought to operate in the City could simply open for business without first obtaining a business license. The City would then be forced to ignore the applicant's prior choice to open a business without first obtaining a business license when determining if the applicant "will comply" with applicable laws and regulations on a going forward basis. Such a result is against public policy, and it would lead to absurd results. Courts are counseled by the

absurdity canon to “avoid any [statutory] construction that would produce absurd consequences.” (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 578; see *Lewis v. Superior Court* (1985) 175 Cal.App.3d, 366, 377 [“It would be absurd to attribute to the Legislature an intent to construe the language and underlying purpose . . . so narrowly.”].) Impossibility is akin to the absurdity canon. (*National Shooting Sports Foundation, Inc. v. State* (2018) 5 Cal.5th 428, 433.) Accepting the Report would in effect require a practical impossibility by requiring the Director to determine whether an applicant will comply with the City’s laws and ordinances without considering an applicant’s past history of doing so. The Report should be rejected for this additional and independent reason.

V. CONCLUSION

For the reasons set forth herein, we recommend that the City Council reject the findings and recommendation in the Report, and uphold the denial of Appellant’s business license application. The Director has discretion under the LBMC to deny Appellant’s business license application. The Director was within his discretion in determining that the Applicant “will not so comply” with the LBMC under sections 3.80.421.5 and 5.04.030 based on Appellant’s repeated past failure to comply with applicable laws and ordinances under the LBMC because the code is not exclusively forward-looking. Moreover, the City Council may also rely upon LBMC section 3.80.421.1(B) in upholding the Director’s denial.

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