

Review of Denial of Business License Application for JP23 Hospitality Company

Analysis of Hearing Officer's Findings and Recommendation
City of Long Beach City Council Meeting - August 23, 2022

PRESENTED BY

Christopher M. Pisano, Esq.; Patrick D. Skahan, Esq.

March 14, 2022 Denial Letter (Ex. 52)



CITY OF
LONG BEACH

Department of Financial Management
411 West Ocean Boulevard, 6th Floor
Long Beach, CA 90802
(562) 579-6425

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

March 14, 2022 Denial Letter Continued (Ex. 52)



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.

Long Beach Municipal Code (LBMC) § 3.80.410

- LBMC section 3.80.410: “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.”

LBMC § 2.93.050

- LBMC section 2.93.050(A): “Whenever it is provided that a hearing governed by this Chapter shall be heard by the City Council, the Council may, in its discretion, either conduct the hearing itself or appoint a Hearing Officer to conduct the hearing.”

Hearing Officer's Findings and Recommendation

1 JONATHAN C. NAVARRO, ESQ., CSB #198310
2 ADMINISTRATIVE HEARING OFFICER
3 TEL.: (714) 647-9361
4 FAX: (714) 647-9362
5 EMAIL: jnavarro@navarro-law.com

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

JP23 HOSPITALITY COMPANY, d/b/a/ JP23,) HEARING OFFICER'S FINDINGS AND
Appellant,) RECOMMENDATION
vs.)
CITY OF LONG BEACH,)
Respondent/Licensing)
Authority)

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 Maria 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

HEARING OFFICER'S FINDINGS AND RECOMMENDATION

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.

VII. RECOMMENDATION

6
7
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

Dated this 15th day of July 2022

/s/ JONATHAN C. NAVARRO, ESQ.
Administrative Hearing Officer

27
28
⁴ This Hearing Officer's recommendation is limited to the sole issue regarding the denial of 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.

HEARING OFFICER'S FINDINGS AND RECOMMENDATION

- 24 -

List of Violations Issued to the Applicant

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.

LBMC § 2.93.050

- LBMC section 2.93.050(B)(8): “After 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.”

LBMC § 3.80.421.5

- LBMC section 3.80.421.5: “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 § 3.80.421.1(A)

- LBMC section 3.80.421.1(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.”

The City May Consider Past Conduct as an Indicator of Future Compliance

- *E.g., Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904.
- “...past actions may to some extent evince a relationship to present or future conduct . . . where the past action was in fact an on-going procedure from which the court could reasonably infer, in light of the city attorney's refusal to change that procedure, that there would be continuing or future threatened . . . violations.” (*Id.* at 916.)
- “the trial court was justified in concluding that the City Council's conduct in pursuing its contentions that it may interpret and adjust the requirements of the Brown Act as it sees fit, in dealing with a particular project, clearly demonstrates that more than past violations have occurred or will reasonably probably occur in the immediate future. We conclude the Brown Act authorizes injunctive relief that is based on, in relevant part, a showing of ‘*past actions and violations that are related to present or future ones . . .*’ ” (*Id.* at 917.)

LBMC § 3.80.421.1(B)

- LBMC section 3.80.421.1(B), provides in part: “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.”

LBMC § 5.06.020

- LBMC section 5.06.020(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: . . .(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 a permit required under the provisions of this Code.”

The Hearing Officer's Interpretation Will Lead to an Absurd Result

- The City's Finance Department is entitled to deference in interpretation of its municipal code. (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”).)
- 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.)

Conclusion and Recommendation

- We recommend that the City Council reject the findings and recommendation in the Hearing Officer's Report, and uphold the denial of Appellant's business license application.