

C-8

April 12, 2022

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Refer to Hearing Officer the business license application denial appeal by JP23 Hospitality Company located at 110 East Broadway Avenue, Long Beach, CA 90802. (District 1)

DISCUSSION

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 A), due to the failure of the business to comply with applicable laws and regulations, pursuant to the following Chapters of the Long Beach Municipal Code (LBMC), Sections 1.32.040, 3.80.210, 5.06.020, 5.72.110(A) and 5.72.130.

On March 24, 2022, the applicant filed an appeal for the business license application denial (Attachment B).

Pursuant to LBMC Section 3.80.421.6, an applicant for a business license whose application for such license has been denied by the Director of Financial Management may appeal to the City Council. Whenever it is provided that a hearing shall be heard by the City Council, the City Council may, in its discretion, conduct the hearing itself or refer it to a hearing officer, in accordance with LBMC 2.93.050(A). If the City Council refers the matter to a hearing officer, then staff and the hearing officer will set the hearing date for not less than twenty (20) days nor more than thirty (30) days after the City Council referral. Such hearing may for good cause be continued by the order of the City Council. Further, Notice of the Hearing shall be sent to the interested parties at least twenty (20) days before the hearing, in accordance with LBMC 2.93.050(B)(1). In practice, the City Council decision to refer the matter to a hearing officer means that the hearing would occur anytime from May 2, 2022 through May 12, 2022.

This matter was reviewed by Deputy City Attorney Arturo D. Sanchez on March 28, 2022.

TIMING CONSIDERATIONS

If referred, upon selection of a hearing officer, the matter will be heard not less than ten (10) days nor more than thirty (30) days thereafter.

HONORABLE MAYOR AND CITY COUNCIL

April 12, 2022

Page 2

FISCAL IMPACT

There is no fiscal or local job impact associated with this item.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



KEVIN RIPER

DIRECTOR OF FINANCIAL MANAGEMENT

ATTACHMENT A: DENIAL LETTER

ATTACHMENT B: DENIAL APPEAL LETTER

APPROVED:



THOMAS B. MODICA
CITY MANAGER

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



Denial of Business License Application BU22114159

March 14, 2022

Page 2 of 3

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 Tulliau, 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:	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.
---------------------------------	---

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: *Matthew* 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.

Attachment B

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)

Attachment B**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)

Attachment B**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)

Attachment B**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.

Attachment B

- 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)

Attachment C

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-YjZu8356Mn98R3iOv26FU23MYyGEuO3gLthhEBYPsHVUjAIXks>

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.

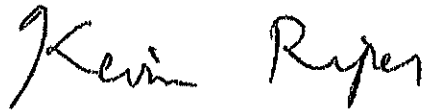


February 9, 2021

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 Riper
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



Enclosure

Events | JP23

jp23.com/events/?fbclid=IwAR1DQn-VZu8356Mn98R3Ov26Fuz3MvYGeU03qLthEBBVPsfHVJwKs

Home PB System - Login City of Long Beach...

Apps New Tab

Reading list

JP23 LONG BEACH SUPERBOWL WEEKEND EVENTS

103 of Super Bowl Weekend events in Busta Rhymes, Kelly Rowland and only 7 days



BUSTA RHYMES
THE SUPER BOWL
JP23
LONG BEACH
THURSDAY FEB 27TH
7:00PM - 11:00PM
\$15

BUY TICKETS



JP23 LONG BEACH
NEELY
BOTTLE SERVICE SUGGESTED
WEDNESDAY FEB 26TH
7:00PM - 11:00PM
\$15

BUY TICKETS



BIG GAME PRE PARTY
JP23 LONG BEACH
WEDNESDAY FEB 26TH
7:00PM - 11:00PM
\$15

BUY TICKETS

Check out 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