

May 16, 2023

R-14
REVISED

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive, review and adopt the written findings regarding the August 23, 2022 City Council Public Hearing wherein the City Council rejected the Hearing Officer's recommendation to reverse the denial of the business license application for JP23 Hospitality Company (JP23), located at 110 East Broadway, and to not issue a business license, in accordance with Courts Order.

Adopt a Resolution containing the written findings regarding the August 23, 2022 City Council Public Hearing wherein the City Council rejected the Hearing Officer's recommendation. (District 1)

DISCUSSION

On August 23, 2022, the City Council, after considering the evidence and testimony, including the presentation and analysis by Best, Best & Krieger LLP (BB&K), unanimously voted to reject the Hearing Officer's recommendation to reverse the denial of JP23's business license application, and to not issue a business license.

JP23 filed its appeal with Los Angeles Superior Court on September 19, 2022 and the hearing on JP23's appeal occurred on March 16, 2023. The Court adopted its tentative ruling, subject to certain modifications, in favor of the City of Long Beach (City). The Court entered its judgment on April 19, 2023. (See Exhibit "A" to BB&K's Memorandum dated May 8, 2023.) As part of its judgment granting an Alternative Writ, the Court ordered this case remanded back to the Long Beach City Council so that it can make written findings "to provide an analytic bridge between the evidence and its decision or order on August 23, 2022 to reject the Hearing Officer's recommendation, and uphold the Director's denial of JP23's business license application" for 110 E. Broadway Avenue and not issue a business license to JP 23 (see BB&K Written Findings - Exhibit B).

Proposed Written Findings

Based on the evidence considered at the August 23, 2022 hearing of the City Council, the relevant provisions of the Long Beach Municipal Code (LBMC), the Administrative Record (AR) in the writ action, and the Court's judgment, the below includes proposed written findings to bridge what the Court identified as an analytic divide between the evidence and the underlying determination:

1. The LBMC's plain language vests discretion with the City to determine whether the business or the location will comply with applicable health and safety and other laws and regulations. (LBMC §§ 3.80.421.1(A); 3.80.421.1(B), 3.80.421.5.)
2. JP23's violations of the LBMC started on or about Labor Day Weekend 2021. Before JP23 had even applied for necessary permits, JP23 started marketing its "grand opening" Labor Day event "three months in advance." (AR 6-22:1943.) It sold tickets online for live music performances and advertised on Instagram. (AR 4-15:1389; 6AR-22-1943; 1AR-6-368.) The City's Police Department (LBPD) confirmed JP23 had no entertainment permit or business license at the time. (AR 4-15:1390-92.) JP23 was informed by the LBPD not to hold the event because it did not have the necessary approvals from the City. (AR 6-22:1944; AR 4-15:1394.) On September 4, 2021, Sgt. Ernest responded to the location after observing numerous people entering the restaurant. (AR 4-15:1396.) Sgt. Ernest observed approximately 40 people outside and saw people entering both the front and back doors. (AR 4-15:1397-98.) During public comment immediately following the administrative hearing, a member of the public commented to seeing a "large event on Saturday that required a lineup on Broadway to allow the crowd of people in." (AR 6-23:2049.) Similarly, at 4:00 a.m., the City's Fire Department was forced to respond to a malicious fire alarm at the premises. (AR 4-15:328-29; AR 6-28:2154-55.) Whether the event was "private" or not, the Fire Department issued JP23 an incident report for violation of California Fire Code 105.3.3 [occupancy prohibited before approval]. (AR 4-15:328-29; AR 1-6:367.)
3. Two weeks after its grand opening event, on September 16, 2021, JP23 submitted for the first time a completed application for a business license to the City. (AR 1-6:371; AR 4-12:1189.) Its CEO Mr. Poozhikala signed an attestation in the application that "I must obtain a business license and all necessary federal, state, and local permits" before he could operate his business in Long Beach. (AR 1-6:375.) The application was subject to review in an investigate process by the City's Planning, Building & Safety, Environmental Health, and Fire Departments before it came back to Financial Management for its final review. (AR 4-12:1191-1192.)
4. While the City was still reviewing the business license application, JP23 inexplicably opened for business. It not only opened its restaurant and bar, but began holding live entertainment events, including live music and disc jockeys, even though it did not have an entertainment permit or a business license. On or about October 13, 2021, the City issued JP23 a TCO, but it had not yet issued the business license. (AR 1-6:385, 390.) Responding to the ongoing open business on October 14, 15, 16, 20, and 21, 2021, LBPD issued misdemeanor citations to JP23 for repeatedly conducting its business without a business license. (See AR 1-6:392, 2-6:395, 2-6:400, 2-6:503, 511.)

5. No provision of the LBMC prevents the Director of Financial Management (Director) or the City Council from also considering JP23's past extensive record of noncompliance. Neither, does the LBMC require the Director to ignore continuing violations. Indeed, JP23's violations were ongoing as of October 19, 2021 – the date that JP23 contends the City was obligated to issue it a license. (See AR 2-6:503 [listing citations on 10/14, 10/15, 10/16, 10/20 and 10/21].) The City gave JP23 every opportunity to open its business successfully. The City issued JP23 a Conditional Business License (CBL) on November 3, 2021. (AR 2-6:410.)
6. Even after granting the CBL, on December 29, 2021 and several occasions thereafter, the City was forced to notify JP23 that it was violating the LBMC for hosting entertainment events without an entertainment permit. (AR 2-6:511-512 [Exh. 52]; AR 4-12:1229.)
7. On or about February 4, 2022, the City learned of advertisements for live performances by various well-known artists, including Busta Rhymes, Nelly & T-Pain at JP23's location on February 10, 11, and 12, 2022. (AR 4-12:1238.) On February 9, 2022, the City notified JP23 that live performances advertised for February 10, 11, and 12 at the business 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. (AR 2-6:513 [Exh. 52].) JP23 nonetheless held the live events as advertised without a temporary entertainment permit. (AR 6-28:2158; AR 2-6:491-492; AR 4-12:1233, 1239.)
8. Financial Management is one of the "appropriate departments of the City" that determines whether to issue a business license if the business will comply with applicable rules and regulations. (AR 4-12:1193; see also LBMC § 3.80.421.1(A).) The Director had discretion to determine whether particular legal criteria had been met before granting JP23's business license application, including the requirement to determine whether JP23 will comply with the City's rules and regulations. No provision of the LBMC prevents the Director or the City Council from also considering JP23's past extensive record of noncompliance. (See LBMC §§ 3.80.421.1(A); 3.80.421.1(B); 3.80.421.5.)
9. Based on JP23's history of violations and its refusal to abide by the same set of rules and regulations as other businesses in the City, on March 14, 2022, the Director denied JP23's business license application and terminated its CBL. (AR 2-6:499.) The Director correctly determined to reject JP 23's business license application based on all of the evidence and reasoning cited herein, and consistent with the Court's Judgment. (See LBMC §§ 1.32.040; 3.80.210; 3.80.410; 3.80.421.1(A); 3.80.421.1(B); 3.80.421.5; 3.80.421.6.)

A copy of the Administrative Record in the Appeal Matter can be found on the following link provided by BB&K: <https://www.imanageshare.com/pd/1R88DO0opme>.

The Proposed Written Findings identified above are incorporated into the attached Resolution, which the City Council is to receive, review and adopt.

This matter was reviewed by Deputy City Attorney Arturo D. Sanchez on May 8, 2023 and May 12, 2023 and by Budget Manager Grace H. Yoon on May 5, 2023.

TIMING CONSIDERATIONS

City Council action is requested on May 16, 2023 in order to meet the May 19, 2023 deadline for the filing of a Return with the Los Angeles Superior Court, Department 85, by BB&K which details the City Council's adopted Resolution which incorporates the Proposed Written Findings in this matter in compliance with the Court's Order dated April 19, 2023.

FISCAL IMPACT

This recommendation to receive, review and adopt the attached Resolution has no fiscal or local job impact. This recommendation has no staffing impact beyond the normal budgeted scope of duties and is consistent with City Council priorities.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



THOMAS B. MODICA
CITY MANAGER

Attachment: Resolution
BB&K Written Findings

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RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH CONTAINING THE WRITTEN
FINDINGS REGARDING THE AUGUST 23, 2022 CITY
COUNCIL PUBLIC HEARING

WHEREAS, on August 23, 2022 the City Council, after considering the evidence and testimony, including the presentation and analysis by Best, Best & Krieger LLP (BB&K), unanimously voted to reject the Hearing Officer’s recommendation to reverse the denial of JP23’s business license application, and not issue a business license; and

WHEREAS, JP23 filed its appeal with the Los Angeles Superior Court on September 19, 2022 and the hearing on JP23’s appeal occurred on March 16, 2023; and

WHEREAS, he Court adopted its tentative ruling, subject to certain modifications, in favor of the City of Long Beach (City); and

WHEREAS, As part of its judgment granting an Alternative Writ, the Court ordered this case remanded back to the Long Beach City Council so that it can make “written findings to provide an analytical bridge between the evidence and its decision or order on August 23, 2022 to reject the Hearing Officer’s recommendation, and uphold the Director’s denial of JP23’s business license application for 110 E. Broadway Avenue and not issue a business license to JP23;

NOW, THEREFORE, the City Council of the City of Long Beach resolves as follows:

Section 1. Based on the evidence considered at the August 23, 2022 hearing of the City Council, the relevant provisions of the Long Beach Municipal Code (“LBMC”), the Administrative Record (“AR”) in the writ action, and the Court’s Judgment, the written findings below are intended to bridge what the Court identified as an analytic

1 divide between the evidence and the City Council’s underlying determination:
2

3 A. The LBMC’s plain language vests discretion with the City of
4 Long Beach (“City”) to determine whether the business or the location will
5 comply with applicable health and safety and other laws and regulations.
6 (LBMC §§ 3.80.421.1(A); 3.80.421.1(B); 3.80.421.5.)
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8 B. JP23 Hospitality Company’s violations of the LBMC started on
9 or about Labor Day Weekend 2021. Before JP23 Hospitality Company
10 (“JP23”) had even applied for necessary permits, JP23 started marketing its
11 “grand opening” Labor Day event “three months in advance.” (AR 6-
12 22:1943.) It sold tickets online for live music performances and advertised
13 on Instagram. (AR 4-15:1389; 6AR-22-1943; 1AR-6-368.) The City’s
14 Police Department confirmed JP23 had no entertainment permit or
15 business license at the time. (AR 4-15:1390-92.) JP23 was informed by
16 the City’s Police Department not to hold the event because it did not have
17 the necessary approvals from the City. (AR 6-22:1944; AR 4-15:1394.) On
18 September 4, 2021, Sgt. Ernest responded to the location after observing
19 numerous people entering the restaurant. (AR 4-15:1396.) Sgt. Ernest
20 observed approximately 40 people outside and saw people entering both
21 the front and back doors. (AR 4-15:1397-98.) During public comment, a
22 member of the public commented to seeing a “large event on Saturday that
23 required a lineup on Broadway to allow the crowd of people in.” (AR 6-
24 23:2049.) Similarly, at 4:00 a.m., the City’s Fire Department was forced to
25 respond to a malicious fire alarm at the premises. (AR 4-15:328-29; AR 6-
26 28:2154-55.) Whether the event was “private” or not, the Fire Department
27 issued JP23 an incident report for violation of California Fire Code 105.3.3
28 [occupancy prohibited before approval]. (AR 4-15:328-29; AR 1-6:367.)

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C. Two weeks after its grand opening event, on September 16, 2021, JP23 submitted for the first time a completed application for a business license to the City. (AR 1-6:371; AR 4-12:1189.) Its CEO Mr. Poozhikala signed an attestation in the application that “I must obtain a business license and all necessary federal, state, and local permits” before he could operate his business in Long Beach. (AR-1:6:375.) The application was subject to review in an investigative process by the City’s Planning, Building & Safety, Environmental Health, and Fire Departments before it came back to Financial Management for its final review. (AR 4-12:1191-1192.)

D. While the City was still reviewing the business license application, JP23 inexplicably opened for business. It not only opened its restaurant and bar, but began holding live entertainment events, including live music and disc jockeys, even though it did not have an entertainment permit or a business license. On or about October 13, 2021, the City issued JP23 a TCO, but it had not yet issued the business license. (AR 1-6:385, 390.) Responding to the ongoing open business on October 14, 15, 16, 20, and 21, 2021, the Police Department issued misdemeanor citations to JP23 for repeatedly conducting its business without a business license. (See AR 1-6:392, 2-6:395, 2-6:400, 2-6:503, 511.)

E. No provision of the LBMC prevents the Director or the City Council from also considering JP23’s past extensive record of noncompliance. Neither, does the LBMC require the Director to ignore continuing violations. Indeed, JP23’s violations were ongoing as of October 19, 2021 – the date that JP23 contends the City was obligated to issue it a

1 license. (See AR 2-6:503 [listing citations on 10/14, 10/15, 10/16, 10/20
2 and 10/21].) The City gave JP23 every opportunity to open its business
3 successfully. The City issued JP23 a CBL on November 3, 2021, which it
4 was happy to accept. (AR 2-6:410.)

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6 F. Even after granting the CBL, on December 29, 2021 and
7 several occasions thereafter, the City was forced to notify JP23 that it was
8 violating the LBMC for hosting entertainment events without an
9 entertainment permit. (AR 2-6:511-512 [Exh. 52]; AR 4-12:1229.)

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11 G. On or about February 4, 2022, the City learned of
12 advertisements for live performances by various well-known artists,
13 including Buster Rhymes, Nelly & T-Pain at JP23’s location on February 10,
14 11, and 12, 2022. (AR 4-12:1238) On February 9, 2022, the City notified
15 JP23 that live performances advertised for February 10, 11, and 12 at the
16 business were not allowed without an entertainment permit or an occasional
17 event permit, and that the live performances would create a public safety
18 risk and public nuisance. (AR 2-6:513 [Exh. 52].) JP23 nonetheless held
19 the live events as advertised without a temporary entertainment permit.
20 (AR 6-28:2158; AR 2-6:491-492; AR 4-12:1233, 1239.)

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22 H. Financial Management is one of the “appropriate departments
23 of the City” that determines whether to issue a business license if the
24 business will comply with applicable rules and regulations. (AR 4-12:1193;
25 see also LBMC § 3.80.421.1(A).) The Finance Director had discretion to
26 determine whether particular legal criteria had been met before granting
27 JP23’s business license application; including the requirement to determine
28 whether JP23 will comply with the City’s rules and regulations. No

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provision of the LBMC prevents the Director or the City Council from also considering JP23’s past extensive record of noncompliance. (See LBMC §§ 3.80.421.1(A); 3.80.421.1(B); 3.80.421.5.)

I. Based on JP23’s history of violations and its refusal to abide by the same set of rules and regulations as other businesses in the City, on March 14, 2022, the Director of Financial Management denied JP23’s business license application and terminated its CBL. (AR 2-6:499.) The Director correctly determined to reject JP23’s business license application based on all of the evidence and reasoning cited herein, and consistent with the Court’s Judgment. (LBMC §§ 1.32.040; 3.80.210; 3.80.410; 3.80.421.1(A); 3.80.421.1(B); 3.80.421.5; 3.80.421.6.).

Section 2. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

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OFFICE OF THE CITY ATTORNEY
DAWN MCINTOSH, City Attorney
411 W. Ocean Boulevard, 9th Floor
Long Beach, CA 90802

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I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of May 16, 2023, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Recusal(s): Councilmembers: _____

City Clerk

Memorandum

To: Honorable Mayor Rex Richardson and
Members of the City of Long Beach City
Council

File No.: 65192.00023

From: Christopher M. Pisano; Patrick D. Skahan

Date: May 8, 2023

Re: *JP23 v. City of Long Beach* – The Court’s Judgment and Its Written Findings
Requirement

I. OVERVIEW

The City retained Best Best & Krieger LLP (“BB&K”) in the matter of *JP23 Hospitality Company v. City of Long Beach*, County of Los Angeles, Case No. 22STCP03424. BB&K was hired to review and analyze the Hearing Officer’s Findings and Recommendation (“Report”), to report to the City Council, and then to defend the City in Petitioner JP23’s writ of mandate action regarding denial of its business license and temporary entertainment permit application.

On August 23, 2022, the City Council held a noticed public hearing to review the Report. (AR 7-32:2315.) After considering the evidence and testimony, including a presentation and analysis from BB&K, the City Council unanimously voted to reject the hearing officer’s recommendation to reverse the denial of JP23’s business license application. (AR 8-39:2770.)¹ On August 26, 2022, the City Clerk served written notice of the City Council’s decision to reject the hearing officer’s recommendation, and thereby uphold the Director of Financial Management’s (“Director”) denial determination consistent with LBMC section 2.93.050(B)(9). (AR 8-39:2770.) Then, on September 19, 2022, JP23 filed its petition for writ of mandate in County of Los Angeles Superior Court .

¹ Citations with the prefix “AR” are to the Administrative Record in the case.

On March 16, 2023, the Court held the hearing on Petitioner JP23's writ petition, and adopted its tentative ruling as its final, subject to certain modifications. On April 19, 2023, the Court entered Judgment. A copy of the Judgment is attached as **Exhibit A**.

II. THE COURT'S JUDGMENT

The Court entered Judgment in favor of the City on Petitioner's first and second causes of action for issuance of a business license and temporary entertainment permit, respectively. Specifically, the Judgment found that: (1) JP23's first cause of action was denied in its entirety and judgment was entered in favor of the City because the City does not have a duty to issue JP23 a business license; (2) JP23's second cause of action was denied in its entirety and judgment was entered in favor of the City because the City does not have a duty to issue JP23 a temporary entertainment permit. Among other things, the Judgment confirmed that:

1. The City's Director of Financial Management ("Director") has discretion to issue a conditional business license to JP23 pursuant to Long Beach Municipal Code ("LBMC") section 3.80.421.1(B);
2. The City's investigation of an applicant for a business license contemplated under LBMC section 3.80.421.1(A) is not limited to the investigations conducted by the fire, building safety, zoning, and health departments;
3. The Director has discretion to determine whether an applicant for a business license will comply in the future, including based on past conduct (see, e.g., LBMC 3.80.421.5 [Director's duty to not issue a license based on determination applicant will not comply]), and the Court deferred to the Director's interpretation of the relevant cited code language in this case;
4. Under LBMC section 3.880.421.1(B), the investigation period identified in this section is not limited to the investigation conducted by the fire, building safety, zoning and health departments, but also entails the Director's analysis of future compliance;
5. JP23 waived its argument that the City's issuance of the conditional business license was illegal and wrong and a permanent business license should have been issued to JP23 based on an alleged ministerial duty to issue because the argument was not adequately raised in JP23's opening brief. [Citations omitted.]

In addition, the Court denied Petitioner’s third cause of action, except to the limited extent it ordered the City to reconsider its actions taken in order to provide an analytic bridge between the evidence and its decision or order on August 23, 2022, to reject the Hearing Officer’s recommendation, and uphold the Director’s denial of JP23’s business license application. As a result, the Court ordered that a writ of mandate shall issue to remand the action to the City Council for the City Council to comply with the written findings requirements set forth in *Topanga Ass’n for a Scenic Community v. County of Los Angeles* (1975) 11 Cal.3d 506.

III. THE WRIT OF MANDATE

A copy of the Court’s peremptory writ is attached as **Exhibit B**. As the Judgment describes, pursuant to the holding in *Topanga Ass’n, supra*, 11 Cal.3d 506, “the agency decision-making body is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis to review the decision. *Id.* at 514-15. Implicit in [Code of Civil Procedure] section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. *Id.* at 515.” (Judgment, at p. 28.) The City Council “need not make express findings and may incorporate by reference a staff report as its implied findings. [Citation.] However, a mere recitation of statutory language, terse statements, and boilerplate findings do not contain sufficient details to bridge the analytic gap. [Citations.]” (*Ibid.*)

Here, an extensive written record was presented to the City Council, including the Hearing Officer’s determination, a staff report, and both Petitioner’s and City staff’s positions. (See, e.g., AR 7-33:2316, 7-35:2523, 7-36:2534.) However, while the City Clerk served written notice of the City Council’s decision to reject the hearing officer’s recommendation, the Court found that the August 26, 2022 notice “offered no explanation for the decision” (See Judgment at p. 28.) Further, the Court found that:

The only findings were the approval of Councilwoman Zahra’s motion to adopt the staff’s recommendation at the August 23, 2022 City Council meeting. AR 2519-20. Yet, the staff’s recommendation consisted only of (a) the City attorney’s oral explanation that the hearing officer’s decision caused Finance concern because it was contrary to staff protocols and understanding that a business’s compliance with City regulations should be considered when determining whether to issue a license (AR 2450) and (b) Finance’s August 23, 2022 report reciting the application’s history and relying on BB&K’s ‘independent legal review’. AR 2178-79. The record is devoid of any reasoning by the City Council that bridges gap between the evidence and the decision.

(*Id.* at pp. 28-29.)

Thus, the Court’s peremptory writ specifically orders that in its reconsideration, “the City Council is to explain what LBMC provisions it is relying on and how the evidence supports its decision. Nothing in this writ shall limit or control in any way the discretion legally vested in the City.” (**Exhibit B.**)

IV. PROPOSED WRITTEN FINDINGS

Based on the evidence considered at the August 23, 2022 hearing of the City Council, the relevant provisions of the LBMC, the Administrative Record in the writ action, and the Court’s Judgment, the below includes proposed written findings to bridge what the Court identified as an analytic divide between the evidence and the underlying determination:

1. The LBMC’s plain language vests discretion with the City to determine whether the business or the location will comply with applicable health and safety and other laws and regulations. (LBMC §§ 3.80.421.1(A); 3.80.421.1(B); 3.80.421.5.)
2. Petitioner’s violations of the LBMC started on or about Labor Day Weekend 2021. Before JP23 had even applied for necessary permits, JP23 started marketing its

“grand opening” Labor Day event “three months in advance.” (AR 6-22:1943.) It sold tickets online for live music performances and advertised on Instagram. (AR 4-15:1389; 6AR-22-1943; 1AR-6-368.) The City’s Police Department confirmed JP23 had no entertainment permit or business license at the time. (AR 4-15:1390-92.) JP23 was informed by the City’s Police Department not to hold the event because it did not have the necessary approvals from the City. (AR 6-22:1944; AR 4-15:1394.) On September 4, 2021, Sgt. Ernest responded to the location after observing numerous people entering the restaurant. (AR 4-15:1396.) Sgt. Ernest observed approximately 40 people outside and saw people entering both the front and back doors. (AR 4-15:1397-98.) During public comment, a member of the public commented to seeing a “large event on Saturday that required a lineup on Broadway to allow the crowd of people in.” (AR 6-23:2049.) Similarly, at 4:00 a.m., the City’s Fire Department was forced to respond to a malicious fire alarm at the premises. (AR 4-15:328-29; AR 6-28:2154-55.) Whether the event was “private” or not, the Fire Department issued JP23 an incident report for violation of California Fire Code 105.3.3 [occupancy prohibited before approval]. (AR 4-15:328-29; AR 1-6:367.)

3. Two weeks after its grand opening event, on September 16, 2021, JP23 submitted for the first time a completed application for a business license to the City. (AR 1-6:371; AR 4-12:1189.) Its CEO Mr. Poozhikala signed an attestation in the application that “I must obtain a business license and all necessary federal, state, and local permits” before he could operate his business in Long Beach. (AR-1:6:375.) The application was subject to review in an investigative process by the City’s Planning, Building & Safety, Environmental Health, and Fire Departments before it came back to Financial Management for its final review. (AR 4-12:1191-1192.)

4. While the City was still reviewing the business license application, JP23 inexplicably opened for business. It not only opened its restaurant and bar, but began holding live entertainment events, including live music and disc jockeys, even though it did not have an entertainment permit or a business license. On or about October 13, 2021, the City issued JP23 a TCO, but it had not yet issued the business license. (AR 1-6:385, 390.) Responding to the ongoing open business on October 14, 15, 16, 20, and 21, 2021, the Police Department issued misdemeanor citations to Petitioner for repeatedly conducting its business without a business license. (See AR 1-6:392, 2-6:395, 2-6:400, 2-6:503, 511.)
5. No provision of the LBMC prevents the Director or the City Council from also considering Petitioner's past extensive record of noncompliance. Neither, does the LBMC require the Director to ignore continuing violations. Indeed, Petitioner's violations were ongoing as of October 19, 2021 – the date that JP23 contends the City was obligated to issue it a license. (See AR 2-6:503 [listing citations on 10/14, 10/15, 10/16, 10/20 and 10/21].) The City gave Petitioner every opportunity to open its business successfully. The City issued JP23 a CBL on November 3, 2021, which it was happy to accept. (AR 2-6:410.)
6. Even after granting the CBL, on December 29, 2021 and several occasions thereafter, the City was forced to notify JP23 that it was violating the LBMC for hosting entertainment events without an entertainment permit. (AR 2-6:511-512 [Exh. 52]; AR 4-12:1229.)
7. On or about February 4, 2022, the City learned of advertisements for live performances by various well-known artists, including Buster Rhymes, Nelly & T-Pain at JP23's location on February 10, 11, and 12, 2022. (AR 4-12:1238) On February 9, 2022, the City notified Petitioner that live performances advertised for

February 10, 11, and 12 at the business 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. (AR 2-6:513 [Exh. 52].) Petitioner nonetheless held the live events as advertised without a temporary entertainment permit. (AR 6-28:2158; AR 2-6:491-492; AR 4-12:1233, 1239.)

8. Financial Management is one of the “appropriate departments of the City” that determines whether to issue a business license if the business will comply with applicable rules and regulations. (AR 4-12:1193; see also LBMC § 3.80.421.1(A).) The Finance Director had discretion to determine whether particular legal criteria had been met before granting Petitioner’s business license application; including the requirement to determine whether Petitioner will comply with the City’s rules and regulations. No provision of the LBMC prevents the Director or the City Council from also considering Petitioner’s past extensive record of noncompliance. (See LBMC §§ 3.80.421.1(A); 3.80.421.1(B); 3.80.421.5.)
9. Based on Petitioner’s history of violations and its refusal to abide by the same set of rules and regulations as other businesses in the City, on March 14, 2022, the Director of Financial Management denied Petitioner’s business license application and terminated its CBL. (AR 2-6:499.) The Director correctly determined to reject JP23’s business license application based on all of the evidence and reasoning cited herein, and consistent with the Court’s Judgment.

Enclosures

EXHIBIT A

FILED
Superior Court of California
County of Los Angeles

APR 19 2023

David W. Slayton, Executive Officer/Clerk of Court
By: J. De Luna, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
STANLEY MOSK COURTHOUSE

JP23 HOSPITALITY COMPANY, INC., a
California corporation,

Petitioner,

v.

CITY OF LONG BEACH, a California
municipality; LONG BEACH CITY
COUNCIL, administrative body of the City of
Long Beach; LONG BEACH DEPARTMENT
OF FINANCIAL MANAGEMENT, an agency
of the City of Long Beach; and DOES 1-50,
inclusive,

Respondents.

Case No. 22STCP03424
Judge: Hon. James C. Chalfant, Dept. 85

UNLIMITED JURISDICTION

~~PROPOSED~~ JUDGMENT

Action Filed: September 19, 2022
Trial Date: March 16, 2023

BEST BEST & KRUEGER LLP
ATTORNEYS AT LAW
300 SOUTH GRAND AVENUE, 25TH FLOOR
LOS ANGELES, CALIFORNIA 90071

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1 JUDGMENT

2 In their Petition for Writ of Mandamus, Petitioner JP23 Hospitality Company, Inc.
3 (“JP23”) asserts three causes of action for (1) mandamus under Code of Civil Procedure section
4 1085 to issue a business license (2) mandamus under Code of Civil Procedure section 1085 to
5 issue a temporary entertainment permit, and (3) mandamus to direct Respondent Long Beach City
6 Council to set aside its decision and to reconsider and proceed in a manner required by law
7 against Respondents City of Long Beach, Long Beach City Council, and Long Beach Department
8 of Financial Management (collectively “City”).

9 On March 16, 2023, the hearing on Petitioner JP23’s verified petition for writ of mandate
10 came on for hearing in Department 85 of this Court, the Honorable James C. Chalfant, judge,
11 presiding. JP23 appeared through its counsel, Niral Patel. The City appeared through its counsel,
12 Christopher M. Pisano, and Arturo D. Sanchez.

13 Prior to the hearing, on March 15, 2023, this Court issued its tentative ruling. A true and
14 correct copy of the tentative ruling is attached as **Exhibit A** and incorporated in full by this
15 reference.

16 On March 16, 2023, after considering the administrative record, all pleadings on file in
17 this action, the trial briefs and materials submitted, and oral arguments made by counsel, and for
18 the reasons set forth in the Court’s tentative ruling, this Court adopted its tentative ruling as its
19 final ruling, as modified herein as follows:

- 20 1. The Court withdraws its analysis of Title 5 of the Long Beach Municipal Code
21 from the tentative ruling. See, e.g., Section E.3.b (Title 5) of the ruling;
22 2. The Court confirms the City’s Director of Financial Management (“Director”) has
23 discretion to issue a conditional business license to JP23 pursuant to the Long
24 Beach Municipal Code (“LBMC”) section 3.80.421.1(B);
25 3. The Court finds that the City’s investigation contemplated under LBMC section
26 3.80.421.1(A) is not limited to the investigations conducted by the fire, building
27 safety, zoning, and health departments;
28 4. The Court finds that LBMC section 3.80.421(A) gives the Director discretion to

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determine whether an applicant for a business license will comply in the future, including based on past conduct (see, e.g., LBMC § 3.80.421.5 [Director’s duty to not issue a license based on determination applicant will not comply]), and the Court defers to the Director’s interpretation of the relevant cited code language in this matter;

5. The Court finds that under LBMC section 3.80.421.1(B), the investigation period identified in this section is not only the investigation conducted by fire, building safety, zoning, and health, but also entails the Director’s analysis of future compliance;
6. JP23’s argument that the City’s issuance of the conditional business license to JP23 was illegal and wrong because the review by the relevant departments of the City had been completed as of October 19, 2022 and a permanent business license should have been issued to JP23 because of the City’s ministerial duty to issue, was not adequately raised in JP23’s Opening Brief and was therefore waived by JP23. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591.)

Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The alternative writ of mandamus issued on September 22, 2022 is discharged.
2. The Petition’s first cause of action for a writ of mandate under Code of Civil Procedure section 1085 is denied in its entirety and judgment is entered in favor of the City and against JP23 because the City does not have a duty to issue JP23 a business license.
3. The Petition’s second cause of action for a writ of mandate under Code of Civil Procedure section 1085 is denied in its entirety and judgment is entered in favor of the City and against JP23 because the City does not have a duty to issue JP23 a temporary entertainment permit.

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4. The Petition's third cause of action is denied except as follows:

- a. A writ of mandate shall issue under seal of this Court to remand the action to the City Council for the City Council to comply with the written findings requirement set forth in *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. The writ shall command the City Council to reconsider its action taken in light of the decision of this Court in order to provide an analytic bridge between the evidence and its decision or order on August 23, 2022 to reject the Hearing Officer's recommendation, and uphold the Director's denial of JP23's business license application. The City Council is to explain what LBMC provisions it is relying on and how the evidence supports its decision. Nothing in this judgment or the writ shall limit or control in any way the discretion legally vested in the City.
- b. In all other respects, the Petition is denied. This Judgment disposes of all claims asserted in the Petition.

IT IS SO ORDERED.

Dated: 4/19, 2023

By: 
HONORABLE JAMES C. CHALFANT
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

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DEPARTMENT 85 LAW AND MOTION RULINGS

Case Number: 22STCP03424 **Hearing Date:** March 16, 2023 **Depr:** 85

JP23 Hospitality Company, Inc. v. City of Long Beach et al., 22STCP03424

Tentative decision on petition for writ of mandate: remand for Topanga compliance

Petitioner JP23 Hospitality Company, Inc. (“JP23”) seeks writs of administrative and traditional mandate compelling Respondents City of Long Beach (“City”), Long Beach City Council (“City Council”), and City’s Department of Financial Management (“Finance”) to rescind the denial of JP23’s business license application and refusal to issue a temporary entertainment permit.

The court has read and considered the moving papers and opposition (no reply was filed) and renders the following tentative decision.

A. Statement of the Case

1. Petition

Petitioner JP23 filed this lawsuit on September 19, 2022, alleging two causes of action for traditional mandamus and one for administrative mandamus against Respondents City, City Council, and Finance. The Petition alleges in pertinent part as follows.

JP23 is a restaurant and lounge owned and operated by Jacob Poozhikala (“Poozhikala”). After years of operating in Fullerton, Poozhikala had a chance to lease a space in the City. He signed a 25-year lease in September 2017 with rent of \$20,000 per month. After a series of 2018 predevelopment meetings, the City’s Planning Department (“Planning”) approved a set of plans in September 2019. The buildout began soon thereafter, but the COVID-19 pandemic shut down the City government and compromised J23. After the City returned to some version of normal, Planning approved a revised set of plans and J23 resumed the buildout in early 2021.

On September 16, 2021, JP23 submitted its application to Finance for a business license and an entertainment permit, also requesting a temporary entertainment permit. Finance put a hold on processing the business application. JP23 believes this was the result of pressure on the City beginning on August 2, 2021 from false rumors regarding JP23’s Fullerton location. From September 3 to 10, 2021, the Democratic Socialists of America (“DSA”) led a campaign to flood Councilwoman Cindy Allen’s (“Allen”) office with in-person meetings, letters, flyers, and Twitter messages not to approve JP23’s application. By the time JP23 had submitted its application for a business license, public opinion had deprived it of a fair and unbiased review of its application.

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The City decided to form a task force to observe and document any Code violations to deny JP23 its license. Because JP23 had already received all the necessary approvals from every other department, Finance had to stop the normal workflow of the application to prevent issuance of a license. Throughout October 2021, Poozhikala attempted every day to get updates on his applications. On October 22, 2021, he retained legal counsel to compel the City to respond.

On October 27, 2021, Finance issued a temporary conditional business license, which the Long Beach Municipal Code (“LBMC”)[1] does not allow under these circumstances. When the City issued the temporary license, Poozhikala was informed that he was ineligible for a temporary entertainment permit because no business had held an entertainment permit at the premises in the previous 12 months. The LBMC does not have such a requirement.

On March 14, 2022, Finance denied JP23’s application for a business license. JP23 served a timely notice of appeal and administrative hearing occurred throughout May and June 2022. On July 15, 2022, the hearing officer found that Finance had a ministerial duty to approve the application. Finance also may consider only whether JP23 will commit LBMC violations in the future and may not consider past violations. The hearing officer recommended that the denial of JP23’s business license application be reversed.

The City Council delayed putting the appeal on its agenda by a month so that it could retain legal counsel to draft an opinion supporting Finance’s recommendation to reject the hearing officer’s decision. The law firm wrote a one-sided written legal opinion interpreting the LBMC in a manner favorable to Finance’s position.

On August 23, 2022, the City Council considered the law firm’s report, to which JP23 submitted written objections. The City Council voted unanimously to reject the hearing officer’s decision and adopt Finance’s recommendation. On August 26, 2022, the City Council issued a written decision denying the business license appeal. As a result, the temporary conditional business license issued expired.

JP23 seeks a writ of administrative mandate directing the City to rescind its denial of JP23’s business license application and reconsider it in the manner required by law. JP23 also seeks traditional mandamus compelling the City to issue JP23 a business license retroactive to October 19, 2021 and a temporary entertainment permit.

2. Course of Proceedings

On September 20, 2022, JP23 served Respondents City and Finance.

On September 22, 2022, the court denied JP23’s *ex parte* application for a stay and issued an alternative writ to compel the City to either grant the relief requested or to show cause for why it should not do so at hearing.

On December 22, 2022, Respondents filed an Answer.

On February 16, 2023, the court granted the motion of Jennifer Harris, Esq. (“Harris”) to be relieved as counsel for JP23.

On February 24, 2023, JP23 filed notice of substitution of attorney from Ethan Reimers, Esq. (“Reimers”) to Nira Patel, Esq. (“Patel”).

B. Standard of Review

1. Administrative Mandamus

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15.

CCP section 1094.5 does not in its face specify which cases are subject to independent review, leaving that issue to the courts. Fukuda v. City of Angels, (1999)20 Cal.4th 805, 811. In cases reviewing decisions which affect a vested, fundamental right the trial court exercises independent judgment on the evidence. Bixby v. Pierno, (1971) 4 Cal.3d 130, 143. See CCP §1094.5(c). In other cases, the substantial evidence test applies. Mann v. Dept. of Motor Vehicles, (1999) 76 Cal.App.4th 312, 320; Clerici v. Dept. of Motor Vehicles, (1990) 224 Cal.App.3d 1016, 1023.

JP23 contends that the independent judgment standard of review governs the City Council's denial of its business license because its rights are sufficiently vested. JP23 has been working to develop the restaurant for years and has invested over \$3 million in the refurbishment of the building, obtaining all necessary permits, and a temporary business license. As a result, JP23's right to continued operation of the business is a fundamental vested right. Pet. Op. Br. at 14. The City's opposition contends the facts should be reviewed for substantial evidence. Opp. at 18.

A right is fundamental on either of two bases: (1) the character and quality of its economic aspect and (2) the character and quality of its human aspect. Benetatos v. City of Los Angeles, ("Benetatos") (2015) 235 Cal.App.4th 1270, 1280 (citations omitted) (substantial evidence applied to city's imposition of conditions on continued operation of burger stand to abate a nuisance); Amerco Real Estate Co. v. City of West Sacramento, ("Amerco") (2014) 224 Cal.App.4th 778, 783 (citation omitted). This is a case-by-case determination. In weighing the fundamental issue, the courts do not alone weigh the economic aspect, but also its effect in human terms and its importance to the individual in the life situation. Benetatos, supra, 235 Cal.App.4th at 1270 (citing Bixby v. Pierno, supra, 4 Cal.3d at 144). This task is done on a case-by-case basis. Id. The substantial evidence standard of review has been applied to administrative decisions that restrict a property owner's return, increase the cost of doing business, or reduce profits because such decisions impact mere economic interests. Id. at 1281 (citations omitted). On the other hand, the independent judgment standard of review is applied to decisions that will drive a property owner out of business or significantly injure the owner's ability to function. Ibid. Where a case involves pure economic interests, courts are far less likely to find a fundamental vested right. Ibid. (citation omitted).

"[A]s a general rule, when a case involves or affects purely economic interests, courts are far less likely to find a right to be of the fundamental vested character." JKH Enterprises, Inc. v. Department of Industrial Relations, (2006) 142 Cal.App.4th 1046, 1060 (impact of agency's decision to issue an administrative stop work order and penalty for violation labor relations was purely economic and the substantial evidence was appropriate standard of review). The substantial evidence test applies to review administrative decisions that restrict a property owner's return on investment, which increase the cost of doing business, or reduce profits, because such decisions impact mere economic interests rather than fundamental rights. In contrast, a court will apply its independent judgment where the administrative decision will drive the owner out of business or significantly injure its ability to function. Compare Termo Company v. Luther, (2008) 169 Cal.App.4th 394, 398-99 (independent judgment test applies where implementation of the agency's decision and order to shut down and abandon oil wells would shut down the petitioner's oil well business that had been in existence for 20 years) with Standard Oil v. Feldstein, (1980) 105 Cal.App.3d 590, 604 (substantial evidence test applied where there was no contention oil company will be driven to ruin by the agency action); Mobil Oil Corp. v. Superior Court, (1976) 59 Cal.App.3d 293, 305 (same); Amerco, supra, 224 Cal.App.4th at 784 (land use decision that U-Haul could not maintain overlarge sign governed by substantial evidence test).

The ultimate question in each case is whether the affected right is deemed to be of sufficient significance to preclude its extinction or abridgement by a body lacking judicial power. Interstate Brands v. Unemployment Ins. Appeals Bd., (1980) 26 Cal.3d 770, 779, n.5. A property owner has neither a vested right to develop their property in a particular fashion, nor a vested right to a permit free of conditions. Paoli v. California Coastal

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Com., (“Paoli”) (1986) 178 Cal.App.3d 544, 550-51 (reviewing Commission’s decision imposing an open space easement condition on CDP).

This case concerns JP23’s right to obtain a business license a temporary entertainment permit to operate a restaurant and in the City. This right involves a purely economic interest that has not vested. Although JP23 was issued a temporary business license, it was conditioned on JP23 qualifying for the issuance of an actual business license. That right has not vested and the substantial evidence standard of review applies to the facts presented at the administrative hearing.

“Substantial evidence” is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, (“California Youth Authority”) (2002) 104 Cal.App.4th 575, 585), or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal.App.4th 267, 305, n.28. The petitioner has the burden of demonstrating that the agency’s findings are not supported by substantial evidence in light of the whole record. Young v. Gannon, (2002) 97 Cal.App.4th 209, 225.

The trial court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency’s decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585. “[T]he test of substantiality must be measured on the basis of the *entire* record, rather than by simply isolating evidence which supports the board and ignoring other relevant facts of record which rebut or explain that evidence.’ [Citations.]” Martori Brothers Distributors v. Agricultural Labor Relations Bd., (1981) 29 Cal.3d 721, 727 (italics added.)” Gerawan Farming, Inc. v. Agric. Labor Relations Bd., (2018) 23 Cal.App.5th 1129, 1162. The standard is met if there is relevant evidence in the record which a reasonable mind might accept in support of the findings. Id. (citation omitted). If there is a plausible basis for the decision, the fact that contrary findings may be equally reasonable, or even more so, is of no moment. Id.

The agency’s decision must be based on the evidence presented at the hearing. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The hearing officer is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, *supra*, 11 Cal.3d at 514-15. Implicit in CCP section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Id. at 515.

An agency is presumed to have regularly performed its official duties (Evid. Code §664), and the petitioner therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137. “[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion.” Afford v. Pierno, (1972) 27 Cal.App.3d 682, 691.

2. Traditional Mandamus

A party may seek to set aside an agency decision by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085. A petition for traditional mandamus is appropriate in all actions “to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station....” CCP §1085.

A traditional writ of mandate under CCP section 1085 is the method of compelling the performance of a legal, ministerial duty. Pomona Police Officers’ Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance.” Id. at 584 (citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

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No administrative record is required for traditional mandamus to compel performance of a ministerial duty.

C. Governing Law[2]

1. The City Charter

The City Manager has the authority to direct and supervise the administration of all Manager-directed departments of the City. Opp. RJN Ex. A (Charter §302(a)). The City Manager also has the authority to submit such reports as the City Council may require concerning the operations of these departments, and to recommend to City Council the adoption of measures deemed advisable. Charter §302(f) (Opp. RJN Ex. A).

2. The LBMC[3]

a. Chapter 3.80 (Business License Tax) of Title 3 (Revenue and Finance)

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. The payment of a business tax required by this Chapter, and its acceptance by the City, and the issuance of a business license to any person shall not entitle the holder thereof to carry on any business unless he has complied with all of the requirements of this Code, including, but not limited to, those of Title 5 as appropriate, and all other applicable laws. §3.80.110.

A “business license” means a certificate issued by the City to a taxpayer and evidencing payment of a prescribed tax. §3.80.136 (Pet. RJN Ex. A). License taxes in the amount prescribed are imposed upon the businesses, trades, professions, callings and occupations in the City. §3.80.210. 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, paying the tax prescribed in Chapter 3.80, and complying with any and all applicable provisions of the LBMC. §3.80.210. The Director of Finance (“Director”) has the duty to administer and enforce all provisions of Chapter 3.80 (Business License Tax). §3.80.410.1.

Each applicant for a business license shall file a written statement with the City upon prescribed forms indicating the type of business activity to be conducted, officers of the firm, and such further information as may be deemed necessary by the Director. §3.80.420.1.

The person making an application for a new business’s first license shall furnish to the Director, for guidance in ascertaining the amount of license to be paid by the applicant, a written statement on a mandatory form setting forth such information as may be required and necessary to properly determine the amount of the license to be paid by the applicant. §3.80.420.7. If the amount of the license to be paid by the applicant is based upon the average number of persons employed or upon the gross receipts of his business, he shall estimate the average number of persons to be employed or the gross receipts of his business for the period to be covered by the license to be issued. §3.80.420.7.

The Director shall refer the application to the appropriate City departments so that it may be ascertained whether the business proposed will comply with applicable fire, building safety, zoning, health, and other laws and regulations. §3.80.421.1(A). If a particular City department rejects an application because such business will not comply with applicable laws and ordinances, the Director shall not issue the license. §3.80.421.5.

The Director may issue a conditional license for the applicant to conduct business during the investigation period if the applicant has completed all necessary applications and paid business taxes and

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application fees, no department has declared the building unsafe, and the business has not had an application denied pursuant to Chapter 3.80. §3.80.421.1(B). Such a conditional license shall not be valid for more than 180 days from the date of the application. §3.80.421.1(B). During this 180-day period, based on review by the appropriate City departments, the applicant may be rejected for failure to comply with applicable laws and regulations at any time. §3.80.421.1(B). If no departments have rejected the applicant during the 180 days or requested an extension of the time to review same, the Director shall issue the license. §3.80.421.1(B).

Every new license tax shall be due and payable on or prior to the date of commencement of the transacting or carrying on of the business, trade, profession, calling or occupation for which a tax is imposed under the provisions of Chapter 3.80. §3.80.421.7(A).

Any applicant for a business license whose application has been denied by the Director may appeal to the City Council by filing a notice of appeal and the grounds on which he deems himself aggrieved. §3.80.421.6. The Director shall make a written report to the City Council reflecting the determination to deny a business license. §3.80.421.6. Upon hearing the appeal, the City Council may overrule or modify the decision of the Director and enter such order as is in harmony with this Title and the decision shall be final. §3.80.421.6.

b. Title 5 (Regulation of Business, Trades and Professions)

The provisions of Title 5 are regulatory, and all requirements set forth, including those for a permit hereunder, if any, and any regulatory fees levied pursuant to this Title 5, are in addition to any other requirements, monetary or otherwise, that may be applied to any business, trade or professions by any other provision of law, including, but not limited to, Chapter 3.80. §5.02.010.

Any permit to do business in the City pursuant to Title 5 may be suspended, revoked, or denied for failure to comply with any condition imposed as a condition of operation or for the issuance of the permit. §5.06.020(A)(5).

In the event that a particular department of the City rejects an application for the reason that such business or location will not comply with applicable laws and ordinances, no permit shall be issued, and the application shall be denied. §5.04.030.

c. Entertainment Permit

No person shall carry on, maintain or conduct any entertainment activity in the City without first obtaining a permit therefor from the City. §5.72.110(A).

The Director shall issue a temporary entertainment permit for up to 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, if the Director finds that (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 12 months before the application date, (3) the applicant has applied for a regular entertainment permit for the same location, and (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. §5.72.125(A) (Pet. RJN Ex. C). The applicant must also agree to comply with all temporary operating conditions that the Director may impose. §5.72.125(C)-(D).

Unless a permit or temporary permit has been approved and issued by the City Council or Director per sections 5.72.120 and 5.72.125, any entertainment activity requires an occasional event permit from the Director. §5.72.130(A). Such a permit shall not be issued for more than 24 events in a 12-month period at least 10 days apart each. §5.72.130(B).

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c. Hearing Procedure

Whenever it is provided that the City Council shall hold a hearing governed by Chapter 2.93, the City Council may in its discretion either conduct the hearing itself or appoint a hearing officer to conduct it. §2.93.050(A) (Pet. RJN Ex. B). If a hearing officer conducts the hearing, any party may be represented by counsel, the hearing officer shall determine the order of proceedings, and shall afford all parties the opportunity to present relevant evidence. §2.93.050(B)(2), (3). The hearing officer shall render his report in writing no later than 15 days after the hearing is closed. §2.93.050(B)(5), (6). The report shall include findings of fact, a summary of relevant evidence, a statement of issues, a resolution of witness credibility where testimony conflicts, and a recommended decision. §2.93.050(B)(6).

Once the City Council receives the hearing officer's report, it shall set a time for a hearing to review and consider the report on at least ten days' notice to all interested parties. §2.93.050(B)(7). After reviewing the report, the City Council may take additional evidence or refer the case to the hearing officer with instructions to consider additional evidence. §2.93.050(B)(8). The City Council may adopt, reject, or modify the hearing officer's recommended decision. §2.93.050(B)(8). The City Council's decision takes effect upon service on all interested parties. §2.93.050(B)(9).

D. Statement of Facts

1. Background

JP23 is a California corporation the purpose of which is to operate sports restaurants and lounges. AR 867, 1883. In September 2017, Poozhikala decided to expand the business and signed a 25-year lease at 110 Broadway, Long Beach, CA (the "Property") with a starting rent of \$20,000 per month and periodic increases based on an inflation index. AR 1888, 1891-92. This development was a pretty large undertaking with an initial budget of \$1.5 or \$2 million. AR 1895. Poozhikala hired an architect and together they filed paperwork for a pre-development application process and met with City officials in March 2018. AR 1895, 1897. At the meeting, Poozhikala showed City officials his plans for the space and received their feedback. AR 1896.

In September 2019, the City approved the buildout plans and issued a building permit. AR 1906. The plan check, building, and permit fees cost Poozhikala over \$150,000. AR 1906. He spent \$200,000 on demolition and began construction in October or November 2019. AR 1906-07. The building was built in 1920 and was rundown and needed interior and exterior improvements. AR 1914. As a result of the structure's age, he kept running into problems which he did not foresee, and which slowed the process. AR 1914.

In March 2020, with about 30% of the construction complete and \$1,000,000 invested, the COVID-19 pandemic halted construction. AR 1908. Although the City's local rent stoppage order kept landlords from collecting rent, Poozhikala knew he would have to pay that rent eventually. AR 1909. JP23's Fullerton location also was shut down, and its takeout and delivery services provided insignificant revenue. AR 1909-10. The construction was not shut down, but City Hall was, and he got to the point where construction halted because he could not get necessary feedback from the City. AR 1911.

On January 29, 2021, Poozhikala obtained the City's final approved plan with an estimated six to eight months to finish construction. AR 1912.

2. The August 2021 Scandal

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The restaurant is an entertainment venue that requires hype and a soft opening to develop a positive energy in the community. AR 1913. Poozhikala planned to open the restaurant on Labor Day weekend of 2021. AR 1912. He knew he needed to advertise the opening event three months in advance of the Labor Day weekend and did so. AR 1913, 1943.

By August 2021, the Fullerton business was doing well again after coming out of the pandemic. AR 1922. A woman named Samantha Velasquez (“Velasquez”) then reported that she had been drugged and raped in a parking structure near the Fullerton JP23 in the early morning hours of Sunday, August 2, 2021. AR 1922-23.

On August 4, 2021, friends told Poozhikala that Velasquez’s story had gone viral on Instagram. AR 1924-25. By August 5, 2021, the Instagram had reached 500,000 people and Poozhikala was contacted for television interviews about the incident. AR 1924. The narrative then changed into allegations of multiple incidents and a general conspiracy in which bartenders roofied customers for staff and bouncers to sexually assault. AR 1924-25. By August 6, JP23 received death threat phone calls every minute and a half. AR 1926. Someone posted Poozhikala’s home address, which prompted him to have armed guards stay with him for a week and send his children to Houston. AR 1926.

These threats turned into protests outside of the Fullerton JP23, where the crowd would attack anyone who went into the restaurant. AR 1927. This went on for months at the Fullerton location, and then the protesters turned their attention to Long Beach. AR 1927, 1936. The protestors discovered the advertisements for the planned Labor Day weekend grand opening and reached out to the artists who were coming to perform and asked them to cancel. AR 1928-29. A couple of them did so. AR 1929.

The website EmailActionNetwork.org allowed people to send emails to City councilmembers without verifying the names or email addresses that people used. AR 1938-39. This website sent 1800 versions of the same letter to various people in the City. AR 1939. One form letter demanded that the City Council not issue a business license to JP23. AR 2022, 2802.

The activist group Democratic Socialists of America (“DSA”) created the form letter and posted a link to it on the group’s Twitter account. AR 1992-94. It also encouraged followers to communicate with Allen, the City Councilwoman for JP23’s leased Property. AR 1992. DSA’s local branch and other accounts tweeted Allen to ask what she was doing about a business (JP23) with 40 plus victims opening in her district. AR 1995, 2018, 2122.

On September 1, 2021, Finance employee Tara Mortenson (“Mortenson”) emailed an article on the protests to her group. AR 1080-81. In a September 14, 2021 email, Mortenson noted that the allegations and negative media attention have raised concerns about the Property. AR 1125.

On October 12, 2021, another Finance employee emailed Mortenson that Councilwoman Allen had voiced concerns about opening a new JP23 because of the social media posts and general negative media attention. AR 1008. Notwithstanding these reports, an October 14, 2021 status report indicated that the City expected the establishment to operate safely in its jurisdiction. AR 1089.

3. The Labor Day Promotion

JP23 advertised a Labor Day weekend grand opening for its Long Beach location on Instagram. AR 368. Sometime before that weekend, JP23 posted an announcement that the opening had been postponed. AR 369.

4. The Fire Code Violation for Lack of a Certificate of Occupancy

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JP23 hosted a small private gathering at the restaurant on September 4, 2021. AR 367. A deputy fire chief notified various City employees via email on September 4, 2021 that JP23's owner went back on his word and hosted an event at the restaurant. AR 967. He suggested that the addressed employees should work together to determine a course of action. AR 967. Mortensen responded that this incident should impact JP23's entertainment permit and business license. AR 967.

On September 8, 2021 an employee suggested to Mortenson that Finance warn Poozhikala that his business license application would be denied if JP23 operated without a license again. AR 991. Mortensen replied that Finance should not communicate with Poozhikala yet because this was an issue for the Long Beach Fire Department ("LBFD") and other departments to handle. AR 983. The event was a private party where no one bought anything and the issue was occupancy and whether the restaurant has a safe space. AR 991. Finance employee Gene Rodriguez ("Rodriguez") replied that it would be a good idea to involve "Art" (Deputy City Attorney Art Sanchez ("Sanchez")) in the details of the denial to ensure that all documents were in order. AR 983.

On September 16, 2021, LBFD met with Finance and other departments to discuss the September 4, 2021 fire code violation. AR 916. In an email to Finance Director Kevin Riper ("Riper") after the meeting, Mortensen explained that LBFD intended to issue a notice of the violation and provide Finance with information to determine if this meets the needs for an administrative misdemeanor citation. AR 963. There was some confusion on how to issue citations because such an "egregious offender" is rare. AR 963. Mortensen expected this to get more political and messier in the future. AR 963. Riper replied that another employee had already briefed him on the incident as well as complaints from the neighborhood. AR 1110.

A LAFD Fire Inspection Report issued on September 16, 2021 noted that the September 4 private gathering at the restaurant violated Fire Code section 105.3.3, which prohibits occupancy of a building until a Fire Code official conducts an inspection, confirms that the building meets applicable Fire Code sections, and issues an occupancy permit. AR 367. Poozhikala signed for receipt of the report on September 18, 2021. AR 367.

5. The Business License and Entertainment Permit Applications

On September 16, 2021, Poozhikala submitted JP23's business license application. AR 371. The application acknowledged that JP23 could not operate a business in the City unless it complied with all applicable laws and regulations. AR 375. It also needed to obtain a business license and all necessary federal and state permits to comply with LBMC Chapter 3.80. AR 375.

Finance employee Rodriguez acknowledged receipt of JP23's application and informed Poozhikala by email that he needed to provide more information to help the City process it. AR 371. Rodriguez also noted that, because Poozhikala had indicated he would have entertainment at the restaurant, he would need a separate entertainment packet form to obtain an entertainment permit as an accessory to a restaurant business license. AR 371.

Poozhikala submitted the packet for an entertainment license via email on September 17, 2021. AR 859. In the packet, he marked that the proposed entertainment was part of his restaurant business. AT 870, 876.

Between September 2021 and January 2022, Poozhikala called and emailed Finance multiple times to ask about steps he needed to take or the general progress of his application. AR 792, 793, 795-98, 801, 806-08, 856, 859, 917, 1006, 1011, 1013, 1014.

6. The Application Processing

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On September 17, 2021, Building and Safety Inspector Ray Woolhether (“Woolhether”) inspected the Property and issued a Notice of Inspection. AR 383. Because the Property was an active construction site, it had no occupancy approvals. AR 383. Poozhikala therefore violated section 18.08.010 when he allowed public occupancy on September 4, 2021 without approvals. AR 383. The Notice of Inspection ordered him to cease and desist all occupancy until all City departments verified that public improvements were completed and approved. AR 383.

The Notice of Inspection also provided instructions on how Poozhikala could obtain a Temporary Certificate of Occupancy (“TCO”). AR 383-84. This required that he first complete all outstanding building, electrical, plumbing, and mechanical corrections, complete all disabled access requirements, obtain a fire alarm permit and inspections, and obtain LBFD and Health Department approvals. AR 384. Until Poozhikala had at least the temporary certificate, JP23 could not occupy the building. AR 384.

On September 23, 2021, Poozhikala applied for a TCO. AR 385.

An Inspection Report issued by Health on September 30, 2021 noted that JP23 needed to properly seal all gaps and crevices in the grease trap. AR 799. All other corrective actions were complete, so Health approved the health permit for the Property. AR 799. Finance received notice of this approval on October 4, 2021. AR 1112.

On October 8, 2021, LBFD approved the application for a TCO. AR 1090.

The City issued a TCO for the Property on October 12, 2021. AR 386. In a Notice of Inspection on October 13, 2021, the City noted that the TCO would expire in 30 days, on November 8, 2021. AR 390. By then, JP23 needed to submit revisions to the building plans, obtain approval for the egress store front, make all corrections, and obtain final approvals from all departments. AR 390.

JP23’s payment of \$1,380.30 for the business tax cleared on October 19, 2021. AR 803. On October 19, 2021, Rodriguez told Mortenson that Planning, Building, LBFD, and Health had all approved and her approval was the only thing in the way of JP23’s business license application. AR 1093. Mortenson told Rodriguez not to release the business license until it was reviewed and approved by the Director and City Manager. AR 1093. She wrote to Director Riper that the business license had completed its workflow and was back with Finance, and that she would provide Riper with her recommendation in two days. AR 1006.

On October 21, 2021, Poozhikala emailed Finance employees about the delay in issuing him a business license, noting that the City had cited him again the previous evening. AR 1014. He asserted that Finance had told him on October 15 that the license would be approved once he paid the fee. AR 1014. On October 20, Rodriguez said something about the City Manager but never explained and suggested that Poozhikala call his manager, Brian Tuliau (“Tuliau”). AR 1014. Poozhikala called Tuliau multiple times the next day to no effect. AR 1014. Poozhikala did not understand why he still had no business license nearly two weeks after all life and safety departments approved the TCO, and yet it seemed that the City had time to continue to cite him. AR 1014.

In an internal October 21 email, Mortenson told her team that she did not want to reply to Poozhikala until she had more clarity on the issue from meetings that were scheduled for the next day. AR 1013.

On October 22, 2021, JP23’s attorney informed Finance that he had been retained by JP23. AR 897. He submitted proof of JP23’s October 19, 2021 business tax payment and asked what else JP23 needed to do to obtain a business license. AR 807.

In an October 24, 2021 email, a Building inspector told Poozhikala that he needed a current business license before he operates the business. AR 391. Otherwise, the TCO is invalid. AR 391.

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7. The October 2021 Citations

On October 14-15 and 24, 2021, LBPB issued citations to JP23 for operating on the Property without a business license. AR 392, 395, 400. The report for the October 14 citation explained that LBPB Detective J. Gonzalez told Poozhikala on September 2, 2021 that it was illegal to operate the business or have any occupants besides workers without a business license. AR 393. He also had been informed that he had not passed his fire and health inspections, which meant that he did not have a TCO. AR 393. People had been recorded entering the restaurant on September 3 and Poozhikala was instructed that was illegal. AR 393. Poozhikala continued to have occupants at the premises for that evening. AR 393.

On October 14, four detectives entered the restaurant and found 50 people inside, with the business open and serving alcohol and food. AR 393. The detectives paid for food with LBPB vice funds and contacted other LBPB personnel to issue a citation. AR 393.

8. The Conditional Business License

On October 27, 2021, Mortenson informed Director Riper that she had figured out the conditional business license process and had prepared both a draft license and a draft cover letter for Poozhikala that listed all his violations. AR 1028-29. Riper approved of the idea but asked if the 180-day term of the conditional license would run from the date of its issuance and not the application. AR 1027-28. Mortenson replied that it would run from the date of application, which was not best for everyone involved but was required by the LBMC. AR 1027. She also reported that a co-worker would reach out to Councilwoman Allen's office to keep her in the loop before the meeting on this conditional license. AR 1027.

On November 3, 2021, Finance issued a conditional business license to JP23, which was retroactive to September 16, 2021 and would expire March 15, 2022. AR 409. Mortenson's accompanying letter explained that the Director had learned of numerous instances of JP23's non-compliance with City regulations. AR 502. This included (1) occupancy without a TCO, which violated both section 18.08.010 and the Fire Code, and (2) five violations of section 3.80.210 on October 14-16 and 20-21, 2021 for conducting business without a business license. AR 502-03. Therefore, a more thorough investigation was prudent before Finance would issue a permanent business license. AR 502.

The conditional license was an act of good faith to allow JP23's legal operation of the business until the investigation was complete. AR 503. The conditional license required JP23 to complete all corrections listed in the TCO, comply with all applicable laws and regulations, and resolve the seven misdemeanor citations accrued. AR 503-04.

On November 5, 2021 Poozhikala thanked Finance for the conditional business license via email and stated that JP23 was addressing all the items needed to get the full business license. AR 510.

9. The January 2022 Citation

On January 25, 2022, LBPB issued a citation for activity in the early morning hours of January 23, 2022. AR 429. On that night, an officer heard loud music coming from the second floor of JP23's restaurant. AR 429. From outside the restaurant, he could see the flashing lights and dancing, and he could hear a live DJ making announcements. AR 429. The amplified music, patrons dancing, and a live DJ all require a City-issued entertainment permit. AR 429. JP23 did not have an entertainment permit and these activities violated section 5.72.110(A).

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10. The 2022 Communications

On January 27, 2022, Finance sent Poozhikala an email summarizing a meeting earlier that week. AR 432. The email explained that Finance had sent a bill to JP23 for an entertainment permit application fee on October 25, 2021, and another for the business license tax on December 17, 2021. AR 432. The entertainment permit application was not complete until JP23 paid both. AR 432.

On February 9, 2022, Director Riper sent Poozhikala a letter about events JP23 had advertised for February 10-12, 2022. AR 513. Poozhikala did not have an entertainment permit and had not applied for an occasional event permit. AR 513. JP23 had a history of repeated non-compliance with the LBMC and had been informed on several occasions about the need for an entertainment permit. AR 513.

11. The Denial of a Business License

On March 14, 2022, Director Riper sent Poozhikala a letter denying his business license application and terminating the conditional business license. AR 3. Per sections 3.80.410 and 3.80.421.1, the City has a duty to ensure a business would comply with applicable fire, building safety, zoning, health and other laws and regulations when it considers whether to issue a license. AR 3. The letter asserted that Finance denied JP23's application due to its failure to comply with applicable laws and regulations, including a failure to obtain or exceeding limits of a license or permit (§1.32.040), failure either to obtain the necessary license or to pay the required tax (§3.80.210), suspension/revocation/denial (§5.06.020), violation of permit requirements or prohibited uses (§5.72.110(A)), and failure to obtain permits for occasional events (§5.72.130). AR 3, 4.

The City and JP23 representatives had met on November 3, 2021 and January 25, 2022, and JP23 had the opportunity to ask for clarification of any LBMC provisions. AR 3. Yet, the violations continued. AR 3. Prior to the November 3 meeting, Finance had issued JP23 a conditional business license under section 3.80.421.1(B) to provide an opportunity in good faith to for the business to run while the City processed the application for a permanent business license. AR 3-4. The conditions for the conditional license included compliance with all applicable laws and regulations. AR 4.

On December 29, 2021, Finance wrote JP23 a letter that highlighted incidents in which LBPB documented that JP23 was not in compliance with the conditions. AR 4. On February 9, 2022, Finance informed JP23 that its scheduled live events from February 10-12 would violate sections 5.72.110 and 5.72.130. Yet, JP23 still hosted those events. AR 4. This all occurred after JP23 opened in September 2021 without a business license. AR 4. Based on JP23's history of refusal to comply with City rules and regulations, Finance chose to deny the business license application pursuant to sections 3.80.421.5 and 5.04.030. AR 4.

A list of JP23's violations was attached to the March 14 denial letter. AR 511. In addition to the violations for occupancy without a TCO and five violations of section 3.80.210 for conducting business without a business license on October 14-16 and 20-21, 2021, the list included citations for operating without an entertainment permit on December 9 and 23, 2021, and January 13 and 28, 2022. AR 511.

12. The Appeal

On March 23, 2022, JP23 appealed Finance's denial of its business license application. AR 20. JP23 asserted that neither section 3.80.421.5 nor 5.04.030 applied. AR 20. Section 3.80.421.5 directs Finance not to issue a license when a department determines that the applicant will not comply with applicable laws and ordinances. AR 22-23. To use past misconduct to imply future misconduct was absurd when JP23 always demonstrated good faith efforts to comply and to work with the City. AR 23. Section 5.04.030 concerns applications for entertainment permits, not business licenses. AR 24. JP23 also asserted that the Director's unreasonable and unwarranted delays in processing and issuing the applicable permits, JP23's good faith

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efforts to cooperate with the Director, and the substantial time and resources JP23 had poured into the business outweigh any discretion the Director may have. AR 20.

During its April 12, 2022 meeting, the City Council discussed whether to refer the appeal to a hearing officer. AR 45. The City Attorney stated that the basis for denial was JP23's LBMC violations. AR 46.

Councilwoman Zendejas stated that she was not in the business of denying business licenses. AR 45.

Councilwoman Allen commented that her district had received well over 100 emails on the subject. AR 47. She stated that everyone must abide by the rules. AR 47. She always found obtaining proper permits easy as a businessowner and she could not understand why JP23 failed to do so. AR 47-48.

Councilman Austin added that while he respected the investment JP23 has made into the City and he could not understand how someone could get to the point that JP23 has in the process after investing that much money. AR 49.

Vice Mayor Richardson noted that if this went before a hearing officer, the City Council would hear any appeal on that decision. AR 50. He encouraged Poozhikala to be a good neighbor, build good will, be a part of the community, and build support for when his case returned to City Council. AR 50. When that happened, quality of life would be an important factor. AR 50.

The City Council voted 9-0 to refer the appeal to a hearing officer. AR 51.

On April 20, 2022, Finance notified Poozhikala that, pursuant to sections 2.93 and 3.80.421.6, the appeal hearing on denial of JP23's business license application would take place on May 10, 2022. AR 228. At the hearing, the City would present evidence that it denied the business license application because of his failure to comply with applicable laws and regulations. AR 228.

13. The Appeal Hearing

The appeal hearing began on May 10 and ended on June 8, 2022. Pertinent testimony is as follows.

a. Mortensen

A business license application usually goes from Planning, to Building, to LBFD, and then to Health. AR 1191. Each department reviews the application for appropriateness under its section of the LBMC and decides whether to approve, deny, or conditionally approve it. AR 1191, 1193. The application then returns to Finance through the electronic INFOR system for a final review, after which the license can be issued. AR 1191, 1193.

On September 1, 2021, Mortensen sent an email with an article on the allegations about the JP23 in Fullerton to all City departments concerned with public safety. AR 1252-53. Negative media attention is not a factor when they process an application, but Mortensen felt that the information might concern public safety. AR 1258. What each department did with that information was up to them. AR 1258.

As of September 8, 2021, the September 4 private party was the only JP23 violation of law of which Mortensen was aware. AR 1273. Mortenson felt warranted in leveraging her connections with ABC. AR 1273. She did not intend to interfere with JP23's ABC license but she did intend to inform ABC about one of its licensees. AR 1273-74. This is not something Mortenson normally does. AR 1274. A Finance employee who has since departed suggested that the entertainment permit should be in the strictest tier if there are additional issues down the road. AR 1274-75. It is not normal practice to hold off issuance of an entertainment permit when the applicant has not operated the business without a license. AR 1277.

Rodriguez's September 14, 2021 email after JP23's September 4 private party suggested they bring in Deputy City Attorney Sanchez for discussion of denial. AR 1280. While Mortenson assumes that Rodriguez meant for denial of the business application, but they did not discuss the issue. AR 1280-81.

Another employee suggested that, given the two violations on September 4, it might be time to talk to the City Council's office, which is separate from the City Council itself. AR 1289. This is normal for actual violations of law. AR 1289.

By the time all departments finished review of JP23's application, they had issued citations to JP23 for LBMC violations. AR 1198. Mortenson advised Finance staff co-workers that they should wait before approving the business license application because the LBMC clearly provides that each department attests that the applicant complies with local regulations. AR 1198-99. For that reason, the business license was not immediately issued, and Finance instead conducted research to determine the next step. AR 1199.

On November 3, Finance decided to give JP23 the benefit of the doubt and issue a conditional license. AR 1199. Finance met with Poozhikala to ensure that he understood and had an opportunity to ask questions. AR 1199, 1201. They also discussed the entertainment permit regulations because the activities of music and dancing were consistent with businesses that need an entertainment permit. AR 1201-02. A business license must be issued before an applicant can receive an entertainment permit. AR 1209. JP23 had applied for one, but meanwhile it could receive occasional event permits for special events and filming. AR 1213. They also discussed the availability of an occasional event entertainment permit process. AR 1206. However, JP23 was ineligible because there was no entertainment permit within the previous 12 months at the Property. AR 1223.

Between December 27 and 29, 2021, Mortenson called Poozhikala and told him that he had violated the LBMC because he hosted entertainment events without an entertainment or occasional event permit. AR 1229. Poozhikala became angry and accused Finance of doing this because of the allegations about the Fullerton location, which Mortenson denied. AR 1230.

Director Riper, Mortenson, and Deputy City Attorney Sanchez met with Poozhikala and his attorney on January 26, 2022 to make sure that he understood that his entertainment permit application was still not complete, review occasional event permit requirements, and inform him that future LBMC violations would jeopardize both entertainment and business license applications. AR 1233-34.

JP23 held multiple events from Thursday to Friday on Super Bowl weekend. AR 1233. Finance learned about this through advertisements that three well-known artists would be there. AR 1238. Finance informed Poozhikala via letter that, despite the likelihood that this would draw a large crowd, he had not undergone the City's process to ensure that the event is appropriate and safe. AR 1238. JP23's Instagram shows that it followed through with the events. AR 1239.

On October 20, 2021, Mortenson emailed Donald Mauk of LBPD that Finance wanted to review JP23's application with all pertinent departments. AR 1315. LBPD is not normally involved in business license applications and this situation was unusual. AR 1315, 1335.

Business license application approvals also do not typically require review and approval by the City Manager or Director. AR 1247. In JP23's case, however, it was the appropriate path even though it occurs infrequently. AR 1311.

b. Derek Ernest

LBPD Sergeant Derek Ernest ("Ernest") learned about JP23 on August 2, 2021 when a concerned citizen sent an email about a new business about to open, which was JP23. AR 1388, 1411. LBPD did some online research to see if the concerns were valid and discovered that JP23 was advertising a grand opening in early September with live performers. AR 1389. At first, he was concerned only for public safety, but then a

vice detective informed him that the business had no entertainment permit. AR 1390. Ernest's contacts at vice include a supervisor who is Mortensen's husband. AR 1412-14. Earnest learned that JP23 did not have a business license either. AR 1392.

Sometime before the event was to take place, Ernest called Poozhikala to tell him not to host it because he did not have the needed licenses. AR 1394. Poozhikala said that he was under the impression that he would have the license and permit by the date of the event. AR 1394-95. He gave his word that he would cancel the event if he did not. AR 1395. The event was cancelled. AR 1395.

Ernest was working on September 4 when he noticed about 40 people going in and out. AR 1396, 1398. Ernest informed Poozhikala that because the building had no occupancy certificate, only workers were allowed. AR 1397. Poozhikala said that he was allowed to hold a private event such as the ongoing event. AR 1397. Ernest did not see any business operation or entertainment that night. AR 1415-16.

Ernest did not know whether it is unusual for a City official like Mortensen to send her spouse to issue citations, but a violation is a violation; it does not matter who issues the citation. AR 1413-14.

c. Brian Weedman

Brian Weedman ("Weedman") works for LBFD and is the City's deputy fire marshal. AR 1482. On September 4, 2021, the engine company notified the fire marshal that it had to respond to a fire alarm activation at the Property at 4:00 a.m. AR 1486. Weedman researched it and learned that the building had no occupancy permit. AR 1486-87. There was no urgency because there was no event at the Property ongoing. AR 1487. When asked why the report was prepared on September 17 when the call out took place on September 4, Weedman stated that his inspector might have been out of town and, in any event, he did not need an inspector to perform the inspection and complete a report the same day. AR 1487.

On September 15, 2021, Weedman had a meeting with the Building Department and the fire marshal. AR 1502-03. They discussed Weedman's intent to issue a Notice of Violation for the Property's occupancy on September 4. AR 1502-03. Weedman also had several conversations with Mortensen about the issuance of the Notice of Violation, whether the occupancy was a violation of the Fire Code, and whether he should write an inspection notice. AR 1503.

A Notice of Violation makes the owner of a building aware that the Fire Code prohibits something the owner is doing. AR 1499. Between September 17 and October 8, 2021, LBFD did not issue additional occupancy Notices of Violations to JP23. AR 1499-1500. The lack of further notices of violation means that Poozhikala had met his responsibility to abate and cure the violation relative to LBFD. AR 1501.

An email dated September 23, 2021 instructed all departments, including LBFD, to build a case against JP23. AR 1508-09. The City's prosecutor was looped into the email. AR 1509.

d. Woolhether

Woolhether is a Building and Safety inspector. Building and Safety Inspectors work with Finance, but not closely. Any coordination between them to process an application is unusual. AR 1543.

e. Rodriguez

On September 14, 2021, JP23 submitted its initial application for a business license. AR 1569. The application lacked certain documents needed for any business that sought to sell alcohol, which JP23

submitted on September 16, 2021. AR 1578.

Poozhikala told Rodriguez that he wanted to be open for Grand Prix weekend, which was the third week of September 2021. AR 1572, 1578. Rodriguez explained to Poozhikala that he needed the licenses before he could operate, which required approval from all the relevant departments. AR 1578. Every application starts with Planning, moves to LBFD, then to Building, and ends with Health. AR 1579, 1596-97.

JP23's business license application went through Building and LBFD without delay. AR 1584. Health received it on Friday, October 15, 2021, and approved it the next Monday. AR 1584. It then returned to Finance, which had a hold in place since September 16 for an ABC license and seller's permit. AR 1584-85. The purpose of a hold is to make sure that Finance has all the required information before it releases a license. AR 1585. This does not often happen. AR 1598. Finance will usually issue a license once all departments sign off, the applicant has paid all fees, and Finance has received the information and paperwork it requested. AR 1598, 1601.

Finance never took the hold off the application because of concerns about entertainment activity at the restaurant in early September. AR 1585-87, 1600. It issued JP23 a conditional business license on November 3 or 4, 2021, but never a permanent license. AR 1587. Rodriguez did not know of any business or entertainment activity at the restaurant between September 4 and the September 16 date on which JP23 received its ABC License and seller's permit. AR 1600.

For the entertainment permit application, the only issue at first was that JP23 submitted an electronic copy via email and needed to submit a signed hard copy. AR 1587-88.

f. Riper

In the nine months that Riper has been the Director, it is rare for Finance to ask for prosecution of a Fire Code violation. AR 1768.

g. Linda Tatum

Linda Tatum ("Tatum") is the Assistant City Manager. AR 1795. The City Manager is not normally involved in processing business license applications. AR 1798. Councilwoman Allen asked the City Manager to be involved with JP23's application because of complaints she had received about JP23's operation in Fullerton. AR 1799-1801.

When JP23 first opened, it did not have an entertainment permit but could operate as a restaurant and bar. AR 1858. Tatum was not aware of entertainment activity at the restaurant as of October 29, 2021, but she had no reason to be. AR 1858.

h. Poozhikala

Poozhikala has spent \$3,000,000 in renovations of the Property. AR 1940.

i. Public Comment

One member of the public noted that JP23 had no licenses or permits in the beginning of August yet was already advertising for its Labor Day grand opening. AR 2049. These are events planned well in advance

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even as it knew it did not have the proper documentation. AR 2049. Even when it was shut down on Friday, it held a large event that created a line on Broadway on the same Saturday. AR 2049.

Another member of the public, Lee Bray (“Bray”), was involved in promoting with JP23. AR 2052. When Poozhikala asked to take over major days like Labor Day and the Super Bowl for promotions, he represented to Bray that his entertainment and business licenses were coming in the mail. AR 2052-54.

14. The Hearing Officer’s Decision

On July 15, 2022, the hearing officer issued a decision recommending reversal of the denial of a business license. AR 2153-76.

The hearing officer found that JP23’s business license application required approval from Planning, Building & Safety, Health, and LBFD under section 3.80.420.1. AR 2154. On August 31, 2021, Finance’s Business License Division (“BLD”) learned that JP23 had advertised a planned event for September 3, and 4, 2021, without a business license or an entertainment permit. AR 2154-55. After BSD warned JP23, the entity still had a private event on September 4, 2021. AR 2155.

LBFD responded to the Property’s fire alarm at 4:00 a.m. on September 4. AR 2155. On September 17, 2021, Building & Safety Inspector Woolhether inspected the Property and issued a Notice of Inspection that outlined the corrections needed to obtain a TCO. AR 2155. He warned Poozhikala in writing that a TCO would be invalid if JP23 operated the business without a license. AR 2155.

The City issued a TCO on October 13, 2021, and JP23 opened for business the next day without an approved business license. AR 2155. As a consequence, the City issued five misdemeanor citations in October 2021 for operating a business without a license. AR 2155.

Finance did not respond to JP23’s efforts to follow up on his business license application throughout October 2021. AR 2155. JP23 hired legal counsel to get a response from the City. AR 2155. The City met with JP23 on November 3, 2021, after which Finance issued a conditional business license, effective September 16, 2021 to March 15, 2022. AR 2155. Finance also sent a letter that stated this was an act of good faith to allow JP23 to legally operate during the investigation for a permanent business license. AR 2155-56.

Although Planning, Building & Safety, Health, and LBFD finished review and approved the business license application by October 1, on October 19, 2021 Mortenson ordered Rodriguez not to release the business license. AR 2156. Pursuant to the conditional license, JP23 continued to operate the restaurant side of the business but not the lounge. AR 2156.

On December 29, 2021, BSD notified JP23 that it had violated the conditional license by conducting entertainment activities without an entertainment permit. AR 2156. Despite this warning, Sgt. Ernest observed JP23 host another entertainment activity on January 23, 2022. AR 2156.

At a meeting on January 25, 2022, JP23 discovered that its business license application was incomplete for failure to pay relevant fees. AR 2157. JP23 alleged that it did not receive the invoices until after that meeting. AR 2157.

On January 26, 2022, BSD met with JP23 to discuss the entertainment permit application and the process for obtaining an occasional event permit. AR 2157. BSD warned JP23 that occasional event permits are only for one day only. AR 2157.

In February 2022, BSD learned that JP23 advertised live performances at the restaurant on February 10-12, 2022. AR 2157. BSD warned JP23 by a letter dated February 9, 2022 that the live performances were not

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allowed without an entertainment permit, but JP23 still held the events. AR 2157.

Throughout this process, the allegations of sexual assault at JP23’s Fullerton location, and the social media rumors, campaigns, and demonstrations that followed, led Councilwoman Allen and the City Manager to involve themselves in the application process. AR 2157-58. The various City departments were aware of the Fullerton incident even before JP23 applied for a business license, and the City Manager’s office kept an open line of communication with BSD and also kept Councilwoman Allen’s office “in the loop.” AR 2158.

On March 14, 2022, Director Riper denied the business license application based on sections 3.80.421.5 and 5.04.030. AR 2158. The denial cited JP23’s failure to obtain or exceeding limits of a license or permit under section 1.32.040, failure either to obtain the necessary license or to pay the required tax under section 3.80.210, suspension and revocation under section 5.06.020, violation of permit requirements or prohibited uses under section 5.72.110(A), or failure to obtain permits for occasional events per section 5.72.130. AR 2158.

The issues for appeal were twofold. First, JP23 argued that LBMC Chapter 3, specifically section 3.80.421.5, is forward-looking and does not permit denial of a license based on past instances of non-compliance. AR 2159. JP23 also asserted that section 5.040.060 is inapplicable to a business license application and also is forward-looking only. AR 2159-60. JP23 also questioned why Riper never cited section 3.80.421.1(B), which does allow him to reject an applicant for prior instances of non-compliance with applicable laws. AR 2160. JP23 claimed that, in any case, Finance’s own alleged delays and misinformation upon which JP23 relied to its detriment impacted the ministerial approval process, and denial under section 3.80.421.1(B) would be an abuse of discretion. AR 2160.

The hearing officer noted that the sole issue is whether the City complied with its own ordinances in denying the business license application. AR 2173. The key provision was section 3.80.421.5, which provides that the Director shall not issue a license when a City department rejects an application because the applicant will not comply with applicable laws and ordinances. AR 2173. The City argued that it must deny the application because JP23 operated without a business license. AR 2173. Even after Finance granted a conditional business license, JP23 failed to bring its operations into compliance. AR 2173. It also provided live entertainment without an entertainment permit or occasional event permit multiple times. AR 2173. It did not even apply for an occasional event permit after learning that such permits are for one day only. AR 2173.

The hearing officer found these arguments unpersuasive because the City did not address the plain meaning of section 3.80.421.5. AR 2174. The hearing officer agreed with JP23 that Finance’s obligations are ministerial in issuing a business license, noting that section 3.80.110 provides that Chapter 3.80 “is enacted solely for the purpose of raising revenue for the general municipal purposes and for the usual current expenses of the City. It is not intended to be regulatory.” AR 2174. Under section 3.80.421.1, the Director was obligated to refer JP23’s application to appropriate departments of the City to ascertain whether the proposed business will comply with applicable fire, building safety, zoning, health, and other laws and regulations. AR 2175. If the departments agree, Finance has the ministerial duty to issue the license. AR 2175.

In addition, the plain language of section 3.80.421.5 provides that Finance shall deny an application where a relevant department 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.” This language is forward-looking. AR 2175. The only basis for denial of the business license was violations occurring before the denial. AR 2175. The hearing officer acknowledged that the evidence showed that JP23 violated City ordinances multiple times but would not speculate whether those past violations mean that JP23 will not comply with applicable laws and ordinances. AR 2175-76. Section 3.80.421.5 simply does not allow contemplate that past violations and citations may be considered in denial or approval of a business license. The hearing officer therefore recommended that the City reverse the denial and issue JP23 a business license. AR 2176.

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15. The City Council Hearing

On August 12, 2022, Finance sent JP23 notice of a City Council hearing on August 23, 2022 to consider the hearing officer's recommendation. AR 2177. The City also gave public notice of this hearing. AR 2315.

Finance's notice of the City Council hearing attached all of the administrative hearing's physical evidence, briefing, and video footage, but no transcripts of the witness testimony. AR 2180-97.

The public submitted dozens of written comments. One described the chaos he saw and heard when JP23 operated and advised the City Council not to issue it a business license because it does not respect its neighbors. AR 2560.

Director Riper recommended that the City Council reject the hearing officer's recommendation. AR 2178. He cited to "an independent legal review" by the law firm of Best, Best and Krieger, LLP ("BB&K"). AR 2179, 2274-97.

a. The BB&K Report

BB&K's report stated that it had been retained by the City to review the hearing officer's decision and report to the City Council and recommended rejection of the hearing officer's recommendation. AR 2274. BB&K opined that the Director's authority to issue a business license is discretionary, not ministerial. AR 2287-88. The City has a mandatory duty to follow the LBMC's procedures, but the determination whether an application meets legal criteria generally is a discretionary one. AR 2287. The report cited Thompson v. City of Lake Elsinore (1993) 18 Cal.App.4th 49, 57, which held no mandatory duty to issue a permit even if an application meets all existing code and regulatory requirements. AR 2287. Section 3.80.421.5 imposes a duty for the Director to reject an application if a department finds it deficient, not to grant it if none of them do but section 3.80.421.1(A)'s determination whether an applicant will comply with applicable laws and regulations is discretionary. AR 2288. The Director exercised his discretion under sections 3.80.21.1(A), 3.80.421.5, and 5.04.030 to determine that JP23 will not comply with the City's applicable laws and ordinances based on a lengthy record of non-compliance. AR 2289.

The regulatory nature of Title 5 confirms the Director's discretion. The hearing officer did not analyze Title 5's application because he incorrectly agreed with JP23 that it is inapplicable to a business license application submitted under section 3.80.420. AR 2289. Section 5.02.010 confirms that the regulations in Title 5 are "in addition to any other requirements" for permits, including Chapter 3.80. Hence, the Director retains discretion to consider the conditions for a permit in Chapter 5.04. AR 2290.

Additionally, the regulations for conditional business license confirms the City's discretion to determine whether particular criteria have been met. AR 2290. Section 3.80.421.1(B) permits a conditional license to be issued during the investigation period for 180 days. AR 2290. During such period, "the applicant may be rejected for failure to comply with applicable laws and regulations at any time." §3.80.421.1(B). The word "may" gives the Director discretion whether to issue a business license at any time. AR 2290. While the Director's denial letter did not cite section 3.80.421.1(B), and that failure was an error, JP23 cannot show any prejudice and the City Council could rely on that provision. AR 2291-92.

The hearing officer incorrectly concluded that the City must ignore past non-compliance in an application for a business license because he ignored the statutory scheme read as a whole. AR 2292. The plain language in Chapters 3.80 and 5.02 confirm that the Director and the particular departments may consider past conduct in making their determination whether an applicant will comply with applicable laws and regulations. The LBMC delegates discretion to determine whether the applicant "will comply" and past conduct is relevant to this analysis. AR 2293 (citing §§ 3.80.421.1, 3.80.421.5, 5.04.030). AR 2293-94. There is no provision of the LBMC that expressly prohibits consideration of past non-compliance. AR 2294.

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The hearing officer ignored section 5.06.020(A)(5), which allows a permit to be suspended, revoked, or denied upon the 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....” AR 2294. Under this express language, the City may consider an applicant’s past failure to comply in denying a permit. AR 2294. The hearing officer’s interpretation to the contrary would produce absurd consequences. AR 2297.

b. JP23 Objections

On August 17, 2022, JP23 objected to Director Riper’s recommendation and the use of BB&K’s report as evidence at the City Council hearing. AR 2298. Sections 2.93.050(B)(5) and (B)(6) require that the hearing officer immediately file his report no later than 15 days after the hearing is closed and the hearing officer’s report was due on July 7, 2022. AR 2299. When the City Clerk’s office asked for an extension for this deadline on behalf of the hearing officer, JP23 agreed so long as the decision would be on the agenda for the first City Council meeting after submission. AR 2299. This did not occur and JP23 objected to the hearing based on the hearing officer’s delay in filing the decision and the City Council’s delay in setting a hearing. AR 2299.

JP23’s objections included a copy of an email chain from August 3, 2022. AR 2306-07. On August 11, 2022, the City explained, that although the City Council received the hearing officer’s decision on July 15, 2022, this date was past the deadline for its monthly meeting on July 19, 2022. AR 2303. The City intended the report to be on the August agenda but it was continued because one councilmember was unavailable. AR 2303.

JP23 also objected that BB&K’s report was inadmissible because its authors were not at the administrative hearing where the parties presented evidence, examined witnesses, and submitted closing briefs. AR 2300. BB&K could not hear the evidence, consider its admissibility, assess the credibility of witnesses, or hear the arguments. AR 2300. The report also misstated the evidence and conclusions in the hearing officer’s decision. AR 2300.

c. The Hearing

On August 19, 2022, JP23 demanded that Councilwoman Allen recuse herself from the City Council hearing due to her awareness of the hearsay allegations against the Fullerton location and an unacceptable probability of bias. AR 2310-12. Although Allen did not believe her participation posed a conflict of interest, she recused herself. AR 2439.

The City’s attorney explained that the hearing officer’s decision caused concern because it was contrary to all staff protocols and understanding that a business’s compliance with City regulations should be considered when determining whether to issue a license, as it has been for years. AR 2450. This led the City to contact BB&K for a report. AR 2450-51. The authors of the BB&K report presented their opinion. AR 2451-59. JP23 then presented its arguments. AR 2459, 2534.

After public comment, Councilwoman Zendejas said that she needed to look at the facts in any decision that could affect the community. AR 2519. To her, JP23’s multiple citations prior to receipt of a business license increase the concern how it will behave after it gets a license. AR 2519. The number of opportunities JP23 had to fix them also concerned her. AR 2519-20.

Zendejas moved to approve the staff recommendation, reject the hearing officer’s decision, and uphold denial of a business license because she believed it best for the community in the long term. AR 2520. The motion passed 8-0. AR 2520-21. The City Council’s decision was memorialized in an August 26, 2022 notice that offered no explanation for the decision. AR 2770-71.

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16. Traditional Mandamus Evidence[4]

a. The Business License Application

JP23's CEO and founder Poozhikala opened the first JP23 location in Fullerton on March 17, 2013. Poozhikala Decl., ¶2. After two years, it became one of the most successful businesses in Orange County. Poozhikala Decl., ¶2.

On October 7, 2021, Poozhikala sent a physical copy of his entertainment permit application after Finance informed him it could not accept the electronic submission. Poozhikala Decl., ¶8. His entertainment permit application included written consent from the landlord. Poozhikala Decl., ¶8.

On October 14, 2021, Poozhikala attempted to contact Finance to ask when it would issue the business license and how he could pay the business tax. Poozhikala Decl., ¶15. He was concerned with how long the business license and entertainment permit applications were taking. Poozhikala Decl., ¶11. Both were essential to the business because he designed the restaurant with both in mind. Poozhikala Decl., ¶11. After several calls, he learned that the INFOR computer system did not have the updated approvals yet. Poozhikala Decl., ¶15. Towards the end of the day, he called back and learned that INFOR had been updated. Poozhikala Decl., ¶15. He received an online invoice number and instructions on where to pay. Poozhikala Decl., ¶15.

When Poozhikala followed the instructions, he saw the invoice online. Poozhikala Decl., ¶15. When he tried to click so he could pay, it disappeared and would not let him proceed. Poozhikala Decl., ¶15. Until 5:00 p.m., he called Finance multiple times and left voicemail messages about what happened. Poozhikala Decl., ¶15. No one responded. Poozhikala Decl., ¶15. He decided to open the business and hope that someone would timely fix the payment portal. Poozhikala Decl., ¶16. That evening, LBPD detectives issued a citation for operating the business without a business license. Poozhikala Decl., ¶17.

On October 15, 2021, Poozhikala called Finance multiple times until 3:30 p.m., when someone told him the portal was working now. Poozhikala Decl., ¶18. He went online and made the payment, which cleared on October 19, 2021. Poozhikala Decl., ¶18. He called multiple times that week to ask when he would receive a business license, to no avail. Poozhikala Decl., ¶19.

b. Post-Hearing Evidence

On June 28, 2022, counsel for JP23 deposed Velasquez in the defamation action JP23 has filed against her. Harris Decl., ¶¶ 2-3. Velasquez's messages from the Instagram account @SoCalWarriorWoman show that on August 8, 2021, a friend began work on a draft letter that people could send to all City Councilmembers and businessowners adjacent to the Property. Harris Decl., ¶3, Ex. A. By August 21, 2021, several people were discussing protests, tweeting the City and police, and taking other steps to apply pressure. Harris Decl., ¶3, Ex. A. On September 7, 2021, two people said they wanted to bring down Poozhikala and make him go bankrupt. Harris Decl., ¶3, Ex. A.

On September 10, 2021, someone created an email template to send to Councilwoman Allen to object to JP23 at the Property. Harris Decl., ¶3, Ex. A. Although the plan was to wait until 3:00 p.m. for the "email storm", one person reported that multiple people already had contacted her. Harris Decl., ¶3, Ex. A.

The campaign persisted through August 2022. Harris Decl., ¶3, Ex. A. On May 24, 2022, Councilwoman Allen's office texted one of the organizers about the virtual public hearing on JP23's license application. Harris Decl., ¶3, Ex. A.

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E. Analysis

JP23 seeks a writ of administrative mandate directing the City to rescind its denial of JP23's business license application and reconsider it in the manner required by law. JP23 also seeks traditional mandamus compelling the City to issue JP23 a business license retroactive to October 19, 2021 and a temporary entertainment permit.

As a threshold matter, JP23's traditional mandamus claim to compel the City to issue a business license is subsumed within its administrative mandamus claim. CCP section 1094.5 is the exclusive remedy for judicial review of a final administrative decision. See Woods v. Superior Court (1981) 28 Cal.3d 668, 675. "A party cannot circumvent the exhaustion doctrine by bringing actions other than administrative mandamus such as actions for declaratory relief." Walter H. Leimert Co. v. California Coastal Commission, (1983) 149 Cal.App.3d 222, 232. Only JP23's claim for a temporary entertainment permit lies in traditional mandamus.

1. Principles of Statutory Interpretation

This case principally concerns the proper interpretation of LBMC provisions governing business licenses and entertainment permits. The construction of local agency charter provisions, ordinances, and rules is subject to the same standards applied to the judicial review of statutory enactments. Domar Electric v. City of Los Angeles, (1994) 9 Cal.4th 161, 170-72; Department of Health Services of County of Los Angeles v. Civil Service Commission, (1993) 17 Cal.App.4th 487, 494.

In construing a legislative enactment, a court must ascertain the intent of the legislative body which enacted it to effectuate the purpose of the law. Brown v. Kelly Broadcasting Co., ("Brown") (1989) 48 Cal.3d 711, 724; Orange County Employees Assn. v. County of Orange, ("Orange County") (1991) 234 Cal.App.3d 833, 841. The court first looks to the language of the statute, attempting to give effect to the usual, ordinary import of the language and seeking to avoid making any language mere surplusage. Brown, *supra*, 48 Cal 3d at 724. Significance, if possible, is attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. Orange County, *supra*, 234 Cal.App.3d at 841. "The statute's words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, '[t]here is no need for judicial construction and a court may not indulge in it. [Citation.]'" MCI Communications Services, Inc. v. California Dept. of Tax & Fee Administration, (2018) 28 Cal. App. 5th 635, 643.

2. Some Deference to the Director's Interpretation Is Required

The City argues that it is entitled to deference because Chapter 3.80 is the City's regulation, and the Director is a senior official interpreting his responsibilities and authority under the LBMC. See e.g., Ocean Street Extension Neighborhood Assn. v. City of Santa Cruz, (2021) 73 Cal.App.5th 985, 1028 (deference was appropriate where the court was evaluating the city's code section); Harrington v. City of Davis, (2017) 16 Cal.App.5th 420, 435 (deference appropriate where city's decision required it to balance the requirements of the building code against the interests of the applicant, neighbors, and the needs of the community). Opp. at 13-14.

An agency's view of the meaning and scope of its own ordinance or regulation is entitled to great weight unless it is clearly erroneous or unauthorized. Friends of Davis v. City of Davis, (2000) 83 Cal.App.4th 1004, 1015; Anderson First Coalition v. City of Anderson, (2005) 130 Cal.App.4th 1173. Nonetheless, a court will not follow an agency's interpretation of its own laws and regulations if the interpretation is clearly erroneous. Terminal Plaza Corp. v. City and County of San Francisco, (1986) 186 Cal.App.3d 814, 825-26.

The courts take ultimate responsibility for construction of a statute, according weight and respect to the agency's interpretation. Yamaha Corp. of America v. State Board of Equalization, ("Yamaha") (1998) 19

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Cal.4th 1, 12. Where an agency interprets a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues, which is the source of the presumptive value of the agency's views. *Id.* at 11. Deference to an agency's interpretation of a statute is not unlimited, even in substantive areas of an agency's expertise, because determining a statute's "meaning and effect is a matter 'lying within the constitutional domain of the courts.'" Center for Biological Diversity v. Department of Fish & Wildlife, (2015) 62 Cal.4th 204, 236. When an agency does not have a longstanding interpretation of a statute or has not adopted a formal regulation interpreting the statute, courts need not defer to, and may simply disregard, the opinion offered by the agency. Interinsurance Exchange of Automobile Club v. Superior Court, (2007) 148 Cal.App.4th 1218, 1235-36.

Furthermore, deference and the weight given to an agency's interpretation is situational and dependent on the presence or absence of factors supporting the merit of the interpretation. Yamaha, supra, 19 Cal.4th at 7-8, 12. A court is more likely to defer to an agency's interpretations of its own ordinance than its interpretation of a statute as the agency is familiar with ordinances it has authored and is cognizant of the practical implications of one interpretation over another. *Id.* Greater deference is also appropriate where the City's decision is "entwined with issues of fact, policy, and discretion." *Id.* at 12-13. Some deference also is warranted where there are "indications of careful consideration by senior agency officials" or "the agency 'has consistently maintained the interpretation in question.'" *Id.* at 13.

For purposes of determining the deference that should be afforded, a court should consider factors indicating that the agency has a comparative advantage over the courts—such as if the subject matter of the statute is especially technical or complex—and factors indicating that the agency's interpretation in question is probably correct—such as when the interpretation has gone through formal notice-and-comment rulemaking, when there are indications of careful consideration by senior agency officials, or when the agency has maintained a consistent interpretation over time. *See Harlick v. Blue Shield of California*, 686 F.3d 699, 717 (9th Cir. 2012); *see also Hoechst Celanese Corp. v. Franchise Tax Bd.*, ("Hoechst") (2001) 25 Cal.4th 508, 524 (an administrative construction of a statute is only entitled to as much deference as is warranted by "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control").

In rejecting the hearing officer's interpretation, the City Council made no interpretation of any LBMC provision that would be subject to deference by the court. AR 2770-71. Plainly, BB&K's interpretation of the LBMC presented as expert opinion evidence also is not entitled to deference. BB&K is a law firm hired by the City for JP23's appeal and is not a City official. This leaves only the Director's interpretation.

On March 14, 2022, Director Riper sent Poozhikala a letter denying JP23's business license application and terminating the conditional business license. AR 499. The letter stated that Finance had denied the application due to JP23's failure to comply with applicable laws and regulations, including a failure to obtain or exceeding the limits of a license or permit (§1.32.040), failure to either obtain the necessary license or pay the required tax (§3.80.210), suspension/revocation/denial (§5.06.020), violation of permit requirements or prohibited uses (§5.72.110(A)), and failure to obtain permits for occasional events (§5.72.130). AR 3. Per sections 3.80.410 and 3.80.421.1, the City has a duty to ensure a business would comply with applicable fire, building safety, zoning, health and other laws and regulations when it considers whether to issue a license. AR 3. Pursuant to sections 3.80.421.5 and 5.04.030, the Director denied JP23's application for a business license for repeated failure to comply with applicable laws and ordinances. AR 4.

Although the Director's March 14, 2022 letter does not purport to interpret the pertinent Chapter 3 or Title 5 provisions, it implicitly relies on interpretations of both to give him discretion to deny a business license. Applying the Yamaha factors, the Director is head of a City department and therefore a senior official, but he is subordinate to the City Manager. There is no indication that his interpretation is a longstanding one; the uncertainty of Finance employees in their September and October 2021 emails suggests otherwise. There is no indication that his interpretations have been carefully considered, and the Director has no advantage over the court that would suggest he is probably correct, such as the existence of technical or complex issues or

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formal notice-and-comment rulemaking. Nor is there anything in the Director's letter to support the validity of his reasoning or consistency with earlier and later pronouncements. See Hoechst, *supra*, 25 Cal.4th at 524.

In short, the Director's interpretation is entitled to deference because he is a senior official who has interpreted City ordinances, but the other situational factors demonstrate that his interpretation need not be accorded great weight.

3. The Director's Interpretation, as Fleshed Out by the BB&K Opinion, Is Partly Wrong

The City argues that its determination to issue a license is generally a discretionary act. See MacDonald v. State of California, (1991) 230 Cal.App.3d 319, 330 ("the predominant character of licensing is discretionary"). *Opp.* at 12.

A ministerial act is one that is performed by a public officer "without regard to his or her own judgment or opinion concerning the propriety of such act." Ellena v. Department of Insurance, (2014) 230 Cal.App.4th 198, 205. It is "essentially automatic based on whether certain fixed standards and objective measures have been met." Sustainability of Parks, Recycling & Wildlife Legal Defense Fund v. County of Solano Dept. of Resource Mgmt., ("Sustainability of Parks") (2008) 167 Cal.App.4th 1350, 1359. In contrast, a discretionary act involves the exercise of judgment by a public officer. County of Los Angeles v. City of Los Angeles, (2013) 214 Cal.App.4th 643, 653-54.

Contrary to the City's argument and the BB&K opinion, whether a permit is discretionary or ministerial depends on the nature of the permit and the ordinance governing it. After a project has been approved as meeting all zoning requirements, issuance of a "run-of-the mill" building permit is ministerial. See, e.g., Friends of Westwood, Inc. v. City of Los Angeles, (1987) 191 Cal.App.3d 259, 270, 277 (permit is ministerial if the ordinance limits public official to determining whether zoning permits the structure, the structure meets Building Code strength requirements, and applicant had paid his fee). On the other hand, the issuance of building permits is a discretionary function, and a building official has no mandatory duty to issue any particular building permit at all, where zoning compliance has not been approved, even if a proposed project meets all other building code and regulatory requirements. See Thompson v. City of Lake Elsinore, ("Thompson") (1993) 18 Cal.App.4th 49, 57-58 (city had no discretion to withhold a certificate of occupancy after discretionary building permit had been approved).

A public entity has a ministerial duty to comply with its own rules and regulations where they are valid and unambiguous." CV Amalgamated LLC v. City of Chula Vista, (2022) 82 Cal. App. 5th 265, 279.

a. Chapter 3.80

Chapter 3.80 is contained in Title 3 (Revenue and Finance) and entitled "Business License Tax". Chapter 3.80's express purpose is to raise revenue and it is not intended to be regulatory. §3.80.110. A "business license" means a certificate issued by the City to a taxpayer and evidencing payment of a prescribed tax. §3.80.136. It shall be unlawful for any person to transact and carry on any business, trade, profession, calling, or occupation in the City without a business license, paying the tax prescribed in Chapter 3.80 and complying with any and all applicable provisions of the LBMC. §3.80.210.

The Director has the duty to administer and enforce all provisions of Chapter 3.80. §3.80.410.1. The Director shall refer the application to the appropriate City departments so that it may be ascertained whether the business proposed will comply with applicable fire, building safety, zoning, health, and other laws and regulations. §3.80.421.1(A). If a particular City department rejects an application because such business will not comply with applicable laws and ordinances, the Director shall not issue the license. §3.80.421.5.

Chapter 3.80 clearly imposes a ministerial duty on the Director. As expressly stated in section 3.80.110, Chapter 3's business license tax is a revenue generating device and is not regulatory. The Director's duty

under section 3.80.421.5 is to refer a business license application to the pertinent LAFD, Building & Safety, Health, and Planning departments for their evaluation of the business's compliance with the laws governing them. It is unclear from section 3.80.421.5 whether these departments exercise discretion or simply measure compliance with a fixed standard. See Sustainability of Parks, *supra*, 167 Cal.App.4th at 1359. What is clear, however, that once these departments have approved, the Director has no discretion under Chapter 3.80. If the required fee has been paid, he must issue a business license.[5] As JP23 argues, Finance's role pursuant to Chapter 3.80 is to receive the application, refer it to other departments, collect the fee, and then issue the license. Pet. Op. Br. at 12.

b. Title 5

BB&K also relied on section 5.04.030 for the Director's discretion to determine that JP23 will not comply with the City's applicable laws and ordinances based on a lengthy record of non-compliance. AR 2289.

Title 5 (Regulation of Business, Trades and Professions) has a regulatory purpose, and all requirements set forth, including those for a permit, are in addition to any other requirements, monetary or otherwise, that may be applied to any business, trade or professions by any other provision of law, including Chapter 3.80. §5.02.010. Any permit to do business in the City pursuant to Title 5 may be suspended, revoked, or denied for failure to comply with any condition imposed as a condition of operation or for the issuance of the permit. §5.06.020(A)(5). In the event that a particular department of the City rejects an application for the reason that such business or location will not comply with applicable laws and ordinances, no permit shall be issued, and the application shall be denied. §5.04.030.

In addition, Chapter 3.80 states that the payment of a business tax required by this Chapter, and the issuance of a business license, shall not entitle the holder thereof to carry on any business unless he has complied with all of the requirements of this Code, including Title 5. §3.80.110.

By its plain terms, Title 5 supplements the requirements of Chapter 3.80 for purposes of a business license. Assuming that a business license is a permit – and section 5.02.010 reflects that it is -- a business license application may be denied if the business or location will not comply with applicable laws and ordinances. §5.04.030. While Title 5 does not state what department or public official should make this determination, there is no reason to believe that it would be any public official other than the Director.

Hence, the Director had discretion under section 5.04.030 to deny JP23's business license application. This discretion is supported by the fact that the Director has discretion to issue a conditional business license. See *post*.

c. Conditional Business Licenses

BB&K relied on the regulations for a conditional business license to confirm the City's discretion to determine whether particular criteria have been met. AR 2290.

The Director may issue a conditional license for the applicant to conduct business during the investigation period if the applicant has completed all necessary applications and paid business taxes and application fees, no department has declared the building unsafe, and the business has not had an application denied pursuant to Chapter 3.80. §3.80.421.1(B). Such a conditional license shall not be valid for more than 180 days from the date of the application. §3.80.421.1(B). During this 180-day period, based on review by the appropriate City departments, the applicant may be rejected for failure to comply with applicable laws and regulations at any time. §3.80.421.1(B). If no departments have rejected the applicant during the 180 days or requested an extension of the time to review same, the Director shall issue the license. §3.80.421.1(B).

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The court agrees. Section 3.80.421.1(B) permits a conditional license to be issued during the investigation period for 180 days. AR 2290. During such period, “the applicant may be rejected for failure to comply with applicable laws and regulations at any time.” §3.80.421.1(B). The use of the word “may” gives the Director discretion whether to issue a business license at any time. AR 2290.[6]

The City correctly distinguishes Thompson, *supra*, 18 Cal.App.4th at 57-58, as a case where the building permit had been approved and the certificate of occupancy was a ministerial duty, whereas the Director had not issued a business license, was still investigating whether JP23 will comply with applicable rules and regulations, and after November 3, 2021 JP23 was operating only on a conditional license. Unlike the building permit in Thompson, the Director had no mandatory duty to issue a permanent license during the 180-day review of JP23’s conditional license. Opp. at 13-14.

The Director had discretion to deny a license during the 180-day period in which JP23 had been issued a conditional license.

d. Consideration of Past Violations

BB&K stated that the hearing officer incorrectly concluded that the City must ignore past non-compliance in an application for a business license because he ignored the statutory scheme read as a whole. AR 2292. The plain language in Chapters 3.80 and 5.02 confirm that the Director, and the departments involved, may consider past conduct in making their determination whether an applicant will comply with applicable laws and regulations. The LBMC delegates discretion to determine whether the applicant “will comply” and past conduct is relevant to this analysis. AR 2293 (citing §§ 3.80.421.1, 3.80.421.5, 5.04.030). AR 2293-94. There is no provision of the LBMC that expressly prohibits consideration of past non-compliance. AR 2294. The hearing officer also ignored section 5.06.020(A)(5), which allows a permit to be suspended, revoked, or denied upon the 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...” AR 2294. BB&I concluded that this language expressly permits the City to consider an applicant’s past failure to comply in denying a permit. AR 2294.

The court agrees with most of this analysis. Nothing in sections 3.80.421.1, 3.80.421.5, 5.04.030 requires consideration of only forward-looking conduct without reference to past conduct. Shakespeare said: “What’s past is prologue”, meaning that past events can be relied upon to predict the future. If JP23 has violated the law by operating without a TCO, a business license, and/or an entertainment permit after it was warned not to do so, then it may well do so in the future. These facts may be considered in deciding whether a business license applicant will comply with applicable laws and regulations.[7]

In fact, the City correctly notes (Opp. at 14-15) that section 3.80.421.1(B) provides in pertinent part that, during a conditional business license’s 180-day period of existence, the applicant may be rejected for failure to comply with applicable laws and regulations at any time.” Section 3.80.421.1(B) allows the Director to consider an applicant’s conduct at any time during that 180-day period. On November 3, 2021, Finance issued a conditional business license to JP23, retroactive to September 16, 2021, which would expire March 15, 2022. AR 409. The Director denied JP23’s application on March 14, 2022. AR 3. JP23’s business license application was denied during that 180-day period.

The Director had authority to consider past violations.

4. The Temporary Entertainment Permit Claim

No person shall carry on, maintain or conduct any entertainment activity in the City without first obtaining a permit therefor from the City. §5.72.110(A).

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The Director shall issue a temporary entertainment permit for up to 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, if the Director finds that (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 12 months before the application date, (3) the applicant has applied for a regular entertainment permit for the same location, and (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. §5.72.125(A). The applicant must also agree to comply with all temporary operating conditions that the Director may impose. §5.72.125(C)-(D).

JP23 argues that the City contended that JP23 is ineligible for a temporary entertainment permit because no business had an entertainment permit at the premises in the prior 12 months. This is erroneous. Under section 5.72.125(A), both (1) a new business and (2) an existing business with new ownership are eligible for a temporary permit. JP23 is a new business. Pet. Op. Br. at 13.

JP23 argues that, as a new business, it is eligible for a temporary entertainment permit if it meets the four requirements set forth in section 5.72.125(A), and it does so. It is undisputed that (1) JP23 is a lawfully created business entity having a valid ownership interest (AR 867), (2) there are no suspensions or revocations of an entertainment permit in the 12 months prior to the application date, and (3) JP23 applied for a regular entertainment permit for the same location. Finally, (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. Poozhikala Decl. ¶8. Because JP23 satisfied the four requirements in section 5.72.125(A), the Director had a ministerial duty to issue the temporary entertainment permit to JP23. Pet. Op. Br. at 13.

JP23's claim for a temporary entertainment permit is moot absent a concurrently issued business license because section 3.80.210 requires a license to do business in the City. Moreover, the conditions imposed for any temporary entertainment permit are discretionary under 5.72.125(C)-(D). The Director has no ministerial duty to issue a temporary entertainment permit without conditions.[8]

5. JP23's Hearing Procedure Claims

JP23 argues that the City Council exceeded its jurisdiction by delaying its City Council meeting to obtain an advisory opinion from BB&K, failing to receive all the evidence from the administrative hearing because transcripts of the witness testimony were not obtained, accepting an unfair and prejudicial legal brief which was not evidence, and disregarding the hearing officer's decision. Pet. Op. Br. at 15.

These are not issues of jurisdiction but rather compliance with the LBMC and they may be addressed summarily. In reviewing the hearing officer's decision, the City Council is expressly authorized to take additional evidence, or it may refer the case to the officer with instructions to consider additional evidence. LBMC §2.93.050(B)(8). Nothing prevented the City from obtaining a legal opinion from retained counsel, and expert legal testimony is often submitted in civil lawsuits and administrative proceedings.[9]

JP23 had an opportunity to present evidence at the City Council hearing and to object to the evidence presented by the City. Yet, it did not object or submit the missing witness testimony of which it complains. AR 2298, 2300-01.

With respect to the timing of the City Council hearing, the hearing officer is required to render his report in writing no later than 15 days after the hearing is closed. §2.93.050(B)(5), (6). JP23 stipulated that the hearing officer could take additional time to render his report. AR 2299. Once the City Council receives the hearing officer's report, it is required to set a time for a hearing to review and consider the report on at least ten days' notice to all interested parties. §2.93.050(B)(7). JP23 received notice of the hearing consistent with the LBMC's requirements (AR 2177), and the City continued the City Council hearing because of the unavailability of a Councilmember. AR 2303.

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To the extent that JP23 argues that it conditioned its stipulation for the hearing officer to have additional time to prepare his report on the fact that the City Council would hear the matter at its first meeting after the report's submission (AR 2299), this condition was not met. It is not clear that JP23 could lawfully condition an agreement for the hearing officer to have more time on the City Council's action. In any event, JP23 has not shown any prejudice from the approximately one-month delay between the hearing officer's July 15, 2022 report and the August 19, 2022 City Council hearing. *See, e.g., Soule v. General Motors Corp.*, (1994) 8 Cal.4th 548, 573–74 (only prejudicial error is grounds for reversal).

6. Topanga

The decision-maker for administrative mandamus is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, *supra*, 11 Cal.3d at 514-15. Implicit in CCP section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. *Id.* at 515.

While Topanga requires adequate findings for an administrative decision, they need not be stated with formality and it is sufficient that the findings enable the court to determine that the agency found the necessary facts to support its determination. Kateen v. Department of Real Estate, (1985) 169 Cal.App.3d 481, 485.

Administrative findings suffice when they both “inform the parties of the bases on which to seek review” and permit the courts to determine whether the decision is based on lawful principles.” McMillan v. American General Finance Corp., (1976) 60 Cal.App.3d 175, 185. The findings do not need to be extensive or detailed. “[W]here reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision it has long been recognized that the decision should be upheld if the agency ‘in truth found those facts which as a matter of law are essential to sustain its... [decision].’” Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection, (2008) 44 Cal.4th 459, 516.

An agency's land use decision is subject to the Topanga rule. *See City of Rancho Palos Verdes v. City Council*, (1976) 59 Cal.App.3d 869, 885. A transcript of taped oral remarks by the decision-maker at a public hearing when rendering a decision can be considered. City of Carmel-by-the-Sea v. Board of Supervisors, (“City of Carmel-by-the-Sea”) (1977) 71 Cal.App.3d 84, 91.

These oral findings need not be stated with the precision required in judicial proceedings. Where reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision, the decision should be upheld if the agency found those facts which as a matter of law are essential to sustain its decision. Craik v. County of Santa Cruz, (2000) 81 Cal.App.4th 880, 884-85.

A city council need not make express findings and may incorporate by reference a staff report as its implied findings. McMillan v. American General Financial Corp., (1976) 60 Cal.App.3d 175, 183-85. However, a mere recitation of statutory language, terse statements, and boilerplate findings do not contain sufficient details to bridge the analytic gap. Glendale Memorial Hospital & Health Center v. State Dept of Mental health, (2001) 91 Cal.App.4th 129; City of Carmel-by-the-Sea, *supra*, 71 Cal.App.3d at 91.

In this case, JP23 correctly contends (Pet. Op. Br. at 14-15) that the City Council failed to make any written findings. The City Council's decision was memorialized in an August 26, 2022 notice that offered no explanation for the decision. AR 2770-71. The only findings were the approval of Councilwoman Zahra's motion to adopt the staff's recommendation at the August 23, 2022 City Council meeting. AR 2519-20. Yet, the staff's recommendation consisted only of (a) the City attorney's oral explanation that the hearing officer's decision caused Finance concern because it was contrary to staff protocols and understanding that a business's compliance with City regulations should be considered when determining whether to issue a license (AR 2450) and (b) Finance's August 23, 2022 report reciting the application's history and relying on BB&K's

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“independent legal review”. AR 2178-79. The record is devoid of any reasoning by the City Council that bridges gap between the evidence and the decision.

The City’s opposition does not defend the City Council’s lack of findings or analysis. An analytic bridge between the evidence and the City Council’s decision is especially important because the LBMC does not entirely support the existence of the Director’s discretion and there is substantial evidentiary support for the positions of both sides. *See post*. The case must be remanded for the City Council to comply with Topanga.

7. Petitioner JP23’s Bias Claim

“Bias and prejudice are never implied and must be established by clear averments.” *Andrews v. Agricultural Labor Relations Bd.*, (1981) 28 Cal.3d 781, 792.) Adjudications are presumed to be impartial, but “the presumption of impartiality can be overcome” by “a particular combination of circumstances creating an unacceptable risk of bias.” *Morongo Band of Mission Indians v. State Water Resources Control Bd.*, (2009) 45 Cal.4th 731, 741. This is sometimes referred to as the “totality-of-the circumstances approach.” *Id.* at 740.

JP23 argues that the City and its City Councilmembers were targeted by a coordinated political attack against JP23 as early as August 2021. This contact with City officials, including the City Council, continued throughout the business application process for JP23 from August 2021 through August 23, 2022. *Harris Decl.*, ¶3, Ex. A. *Pet. Op. Br.* at 17.

As early as August 2021, the City was aware of the rumors at JP23’s Fullerton location. AR 1411, 1180. In September 2021, there were conversations in City departments about contacting the City Council’s office regarding JP23. AR 1289. The City Manager became involved at the request of Councilwoman Allen’s office in September 2021. AR 1799-1801. There was evidence that the City was motivated by the Fullerton rumors to deny JP23’s business license application before it was even submitted. AR 1411, 1180. *Pet. Op. Br.* at 17.

JP23 concludes that the City Councilwoman Allen, who had been involved for a year and recused herself, necessarily influenced other City Councilmembers. On April 12, 2022, she made comments showing a clear bias, stating that she had received over 100 emails and various complaints which “was concerning”. AR 47. She also stated that rules must be followed, it is easy to do so, and she did not understand why JP23 had not. AR 47-48. JP23 contends that Councilmembers Austin and Vice Mayor Richardson also made negative comments. AR 47-48, 50. JP23 concludes that three Councilmembers expressed negative views about JP23 before any evidence was taken. As a result, there was a high probability of bias and only the hearing officer was a neutral decision-maker. *Pet. Op. Br.* at 17.

The court will assume that some City employees -- particularly Mortensen and Rodriguez -- were biased against JP23. After all, as of September 8, 2021, the September 4 private party was the only JP23 violation of law of which Mortensen was aware. AR 1273. Yet, Mortensen contacted ABC about JP23. AR 1273. Another Finance employee suggested that the entertainment permit should be in the strictest tier if there are additional issues down the road. AR 1274-75. Rodriguez’s September 14, 2021 email suggested that they bring in Deputy City Attorney Sanchez for discussion of denying the business. AR 1280. Another employee suggested that it might be time to talk to the City Council’s office. AR 1289.

All of this occurred when there had been a single violation of failure to have a certificate of occupancy and none of it was normal procedure. Some Finance employees appear to have been prejudiced against JP23. On the other hand, Finance decided to give JP23 the benefit of the doubt and issued a conditional license on November 3, 2021. AR 409, 502.

In any event, the City Council, not Finance, was the final decision-maker. During its April 12, 2022 meeting, the City Council discussed whether to refer the appeal to a hearing officer. AR 45. Councilwoman Zendejas stated that she was not in the business of denying business licenses. AR 45. Councilman Austin stated that he respected the investment JP23 had made, and he could not understand how someone could get to the point that JP23 has after investing that much money. AR 49. Vice Mayor Richardson encouraged Poozhikala to be a

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good neighbor, build good will, be a part of the community, and build support for when his case returned to City Council. AR 50.

None of these statements show prejudice against JP23. Instead, as the City argues (Opp. at 18-19), the City Council followed its procedures governing its hearings. Councilwoman Allen recused herself and JP23 did not demand any other Councilmember's recusal.

JP23 has not shown an unacceptable risk of bias by the City Council making the final decision.

8. Fairness

JP23 notes that the City Council referred the matter to a neutral hearing officer, who conducted a full hearing. JP23 complains that the City was dissatisfied by the hearing officer's decision and hired BB&K to substitute its opinion for that of the hearing officer. The City delayed setting the matter for hearing before the City Council in order to generate the BB&K opinion. This was fundamentally unfair. Had the roles been reversed, JP23 would not have been allowed to do the same. Pet. Op. Br. at 18.

Due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Matthews v. Eldridge, (1976) 424 U.S. 319, 333. Due process "is flexible and calls for such procedural protections as the particular situation demands." Underground Contractors, Inc. v. City of San Diego, (2003) 108 Cal.App.4th 533, 543.

The City correctly notes (Opp. at 19) that the City Council hearing process was not fundamentally unfair. The court has addressed *ante* the delay in the hearing officer report and the City Council hearing. The City Council was entitled, in its discretion, take additional evidence and it did so in receiving the BB&K report and presentation. See LBMC §2.93.050(B)(8). The City argues that JP23 received the BB&K report in advance of the meeting and had an opportunity to respond to it.^[10] Even if this is not true, JP23 had 20 minutes to present evidence and argument at the August 23 City Council meeting and could have asked for a continuance to rebut the report. JP23 was afforded due process.

9. Substantial Evidence

JP23 argues that there is substantial evidence supporting the hearing officer's recommendation. As of October 13, 2021, Health, LBFD, Planning, and Building and Safety had all signed off on the business license application indicating that JP23 was in compliance. Pet. Op. Br. at 15.

According to JP23, the record shows that Finance and the City engaged in a coordinated and planned effort to deny JP23 a business license before the application was even submitted. A task force was created, and Finance instructed other departments to build a case against JP23. Nearly every testifying City employee admitted that JP23's business license review was abnormal, unusual, rare, atypical, and uncommon. The evidence shows that the City was motivated by false rumors about JP23's Fullerton location; it would have politically unpopular to allow JP23 to open in the City. Pet. Op. Br. at 16.

There were multiple instances of JP23's compliance that were discounted by the Director. JP23 complied with sections 3.80.420.1 and 3.80.420.7 in submitting a completed application for a business license. AR 1578. JP23 complied with the September 17, 2021 LBFD inspection notice by curing and abating the violation as required under the Fire Code. JP23 paid its business tax pursuant to section 3.80.421.7(A). JP23 complied with all Health, Fire, Safety and Building Codes to obtain approvals from those respective Departments, including building permits, health permits, planning approvals, and the temporary certificate of occupancy. JP23 complied with the LBMC to receive the conditional business license

retroactive to September 16, 2021. Additionally, JP23 made multiple inquiries about how to comply and sought assistance, direction and alternatives from the City to ensure compliance. Pet. Op. Br. at 12-13.

JP23 concludes that the evidence showed its full compliance with the law for the entire four years the project was being developed. Only after JP23 realized that Finance was purposefully withholding its business license did it open to operate and subsequently was cited for violating the LBMC at the direction of Mortensen, with the assistance of her husband, Sergeant Keith Mortensen. Pet. Op. Br. at 16.

The City responds that there is substantial evidence to support the City Council's determination. Contrary to JP23's contention that it "showed full compliance with the law" for four years, the record shows it was a serial offender. Contrary to any conspiracy to deny JP23 a business license based on the allegations of sexual assault at its Fullerton location, the City went beyond in assisting JP23 to submit a complete application. See AR 1229-30. The City granted JP23 a conditional business license notwithstanding its ongoing violations. Opp. at 18.

The court also notes that the City had several meetings with, and issued warnings to, JP23. A Fire Inspection Report issued by LBFD on September 16, 2021 noted that the September 4 private gathering without an occupancy permit violated Fire Code section 105.3.3. AR 367.

In an October 24, 2021 email, a Building inspector told Poozhikala that he needed a current business license before he operates the business. AR 391. On October 14-15 and 24, 2021, LBPD issued citations to JP23 for operating the restaurant without a business license. AR 392, 395, 400. LBPD Detective J. Gonzalez told Poozhikala on September 2, 2021 that it was illegal to operate the business or have any occupants besides workers without a business license. AR 393.

On November 3, 2021, Finance issued a conditional business license to JP23, retroactive to September 16, 2021, which would expire March 15, 2022. AR 409. Mortenson's accompanying letter explained that the Director had learned of numerous instances of non-compliance with City regulations. AR 502. The conditional license required JP23 to complete all corrections listed in the TCO, comply with all applicable laws and regulations, and resolve the seven misdemeanor citations accrued. AR 503-04.

On January 25, 2022, LBPD issued a citation for activity in the early morning hours of January 23, 2022. AR 429. The amplified music, patrons dancing, and a live DJ all require a City-issued entertainment permit. AR 429. JP23 did not have an entertainment permit and all these activities violated section 5.72.110(A).

On February 9, 2022, Director Riper sent Poozhikala a letter about events JP23 had advertised for February 10-12, 2022. AR 513. Poozhikala did not have an entertainment permit and had not applied for an occasional event permit. AR 513.

Thus, there is substantial evidence supporting both sides. That is, there is substantial evidence that JP23 was singled out because of the Fullerton allegations, it was fully compliant until Finance decided to stall the business license application, and Finance's delay directly led to JP23's eventual non-compliance with LBMC requirements. There also is substantial evidence that JP23 ignored the LBMC requirements for a certificate of occupancy, business license, and entertainment permit, despite warnings of the consequences. The existence of substantial evidence supporting both positions makes more important the need for the City Council to issue findings and reasoning consistent with Topanga.

F. Conclusion

The matter must be remanded for the City Council to comply with Topanga. Finance's role pursuant to Chapter 3.80 is ministerial, but the Director has discretion under Title 5 and in issuing a conditional license pursuant to 3.80.421.1(B), and he may consider instances of past conduct in doing so. Substantial evidence

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supports the positions of both sides. The City Council must provide an analytic bridge between the evidence and its decision in which the City Council explains what LBMC provisions it is relying on and how the evidence supports its decision. In all other respects, the Petition is denied.

The City's counsel is ordered to prepare a proposed judgment and writ of mandate, serve them on JP23's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An CSC re: judgment is set for April 20, 2023 at 9:30 a.m.

[1] All references to statute are to the LBMC unless specified otherwise.

[2] JP23 requests judicial notice of LBMC Chapter 3.80 (Pet. RJN Ex. A), section 2.93.050 (Pet. RJN Ex. B), and section 5.72.125A (Pet. RJN Ex. C). City and Finance request judicial notice of Long Beach City Charter ("Charter") section 302 (Opp. RJN Ex. A). The requests are granted. Evid. Code §452(b).

[3] Some of the LBMC provisions are not in either party's request for judicial notice but are referred to in the hearing officer's decision or in the law firm report that was provided to the City Council.

[4] The court has ruled on the City's written objection to the Declaration of Jacob Pozzhikala, sustaining the objection to paragraph 9. The City also objects to the declaration is extra-record evidence. JP23 has made no motion to augment the record with this evidence, and it is inadmissible for the administrative mandamus claim. See CCP §1094.5(e). It is, however, admissible for JP23's claim of traditional mandamus for a temporary entertainment permit.

[5] The City argues that Finance is one of the "appropriate departments of the City" that determines whether to issue a business license if the business will comply with applicable rules and regulations. LBMC §3.80.421.1(A). Opp. at 14. This argument appears inconsistent with the plain language of Chapter 3 but may be a basis for the Director to have discretion under section 5.04.030.

[6] As BB&K noted, while the Director's denial letter erroneously did not cite section 3.80.421.1(b), JP23 did not show any prejudice and the City Council could rely on that provision. AR 2291-92.

[7] The court does not agree that section 5.06.020(A)(5) aids the analysis of past violations. Section 5.06.020(A)(5) provides that any permit to do business in the City pursuant to Title 5 may be suspended, revoked, or denied for failure to comply with any condition imposed as a condition of operation or for the issuance of the permit. This provision requires an existing permit, if only a temporary one, which contains conditions. As such, it is applicable to the section 3.80.421.1(B)'s conditional license, not an unconditional business license.

[8] The City argues that the court should strike JP23's evidence submitted in support of its traditional mandate claim showing that the owner of the property consented in writing to the application for the temporary entertainment permit as improper extra-record evidence. Pozzhikala Decl., ¶8. Opp. at 15. As the evidence is relevant to the traditional mandamus claim for a temporary entertainment permit, the request is denied.

[9] The City argues that its Charter authorizes the City Manager to share findings of an appointed outside counsel with the City Council, as the Hearing Officer's findings concern the operations of Finance, a City Manager-directed department. Charter section 302(f) states that the City Manager has the power "[t]o submit such reports as the City Council may require concerning the operations of Manager-directed departments..." City RJN Ex. A. Opp. at 17-18. The court need not agree with the City that this provision authorized the BB&K report in order to conclude that the report was properly presented to the City Council as expert evidence.

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[10] The City's citation (AR 2177) only shows that JP23 was notified of the August 23, 2022 meeting. The BB&K report is referred to in Finance's August 23, 2022 recommendation to the City Council (AR 2178-79) and there is no evidence when JP23 received it.

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PROOF OF SERVICE

I, Tatiana Palomares, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 300 South Grand Avenue, 25th Floor, Los Angeles, California 90071. On March 17, 2023, I served a copy of the within document(s):

[PROPOSED] JUDGMENT

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Niral Patel, Esq. *Attorneys for Petitioner*
Niral Patel Injury Law JP23 Hospitality Company, Inc.
100 Bayview Circle, Suite 100
Newport Beach, CA - 92660
Phone: (805) 748-9317
Email:
NiralPatel@NiralPatelInjuryLaw.com
niral@patelinjurylaw.ccm

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

Executed on March 17, 2023, at Los Angeles, California.

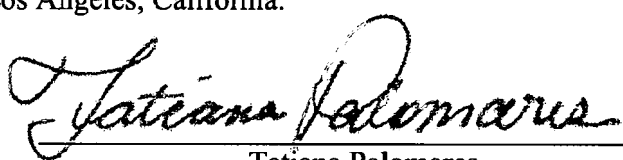

Tatiana Palomares

EXHIBIT B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
STANLEY MOSK COURTHOUSE

JP23 HOSPITALITY COMPANY, INC., a
California corporation,

Petitioner,

v.

CITY OF LONG BEACH, a California
municipality; LONG BEACH CITY
COUNCIL, administrative body of the City of
Long Beach; LONG BEACH DEPARTMENT
OF FINANCIAL MANAGEMENT, an agency
of the City of Long Beach; and DOES 1-50,
inclusive,

Respondents.

Case No. 22STCP03424
Judge: Hon. James C. Chalfant, Dept. 85

UNLIMITED JURISDICTION

^{Ke} ~~PROPOSED~~ PEREMPTORY WRIT

Action Filed: September 19, 2022
Trial Date: March 16, 2023

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
300 SOUTH GRAND AVENUE, 25TH FLOOR
LOS ANGELES, CALIFORNIA 90071

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PROPOSED PEREMPTORY WRIT

THE PEOPLE OF THE STATE OF CALIFORNIA

TO RESPONDENTS CITY OF LONG BEACH, LONG BEACH CITY COUNCIL, AND
LONG BEACH DEPARTMENT OF FINANCIAL MANAGEMENT:

WHEREAS on APR 19 2023 judgment was entered ordering that a peremptory writ of
mandate issue from this Court,

YOU ARE HEREBY COMMANDED, upon receipt of this writ, to reconsider your
decision of August 23, 2022 to reject the Hearing Officer’s recommendation, and uphold the
Director of Financial Management’s (“Director”) denial of JP23’s business license application in
order comply with the written findings requirement set forth in *Topanga Ass’n for a Scenic
Community v. County of Los Angeles* (1974) 11 Cal.3d 506. The City Council shall reconsider its
action taken in light of the decision of this Court in order to provide an analytic bridge between
the evidence and its decision or order on August 23, 2022 to reject the Hearing Officer’s
recommendation, and uphold the Director’s denial of JP23’s business license application. The
City Council is to explain what LBMC provisions it is relying on and how the evidence supports
its decision. Nothing in this writ shall limit or control in any way the discretion legally vested in
the City.

YOU ARE FURTHER COMMANDED to file with this Court a return to this writ on or
before MAY 19 2023.



David W. Slayton

Dated: APR 25 2023, 2023

By: [Signature]
Deputy Clerk

K. Encinas

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PROOF OF SERVICE

I, Tatiana Palomares, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 300 South Grand Avenue, 25th Floor, Los Angeles, California 90071. On March 17, 2023, I served a copy of the within document(s):

[PROPOSED] PEREMPTORY WRIT

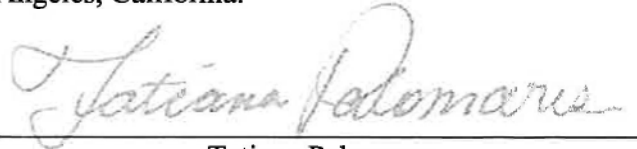
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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

Executed on March 17, 2023, at Los Angeles, California.



Tatiana Palomares