

May 16, 2023

R-14

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive, review and accept 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. (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. 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 which bridges the analytic gap between the raw evidence and the City Council's decision to reverse the Hearing Officer's recommendation to reverse the denial of JP 23's business license application for 110 E. Broadway Avenue and not issue a business license to JP23.

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 JP 23 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.

This matter was reviewed by Deputy City Attorney Arturo D. Sanchez on May 8, 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 Written Findings in this matter in compliance with the Court's Order dated April 19, 2023.

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FISCAL IMPACT

This recommendation to receive, review and accept the written findings 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,

A handwritten signature in blue ink, appearing to read 'T. B. Modica', is positioned above the printed name.

THOMAS B. MODICA
CITY MANAGER

Attachment: BB&K Written Findings

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.)

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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.)
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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