



Legislation Details (With Text)

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On agenda:	5/16/2023	Final action:		Final action:	5/16/2023
Title:	<p>Recommendation to 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; and</p> <p>Adopt resolution containing the written findings regarding the August 23, 2022 City Council Public Hearing wherein City Council rejected the Hearing Officer's recommendation. (District 1)</p>				
Sponsors:	City Manager				
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Date	Ver.	Action By	Action	Result
5/16/2023	1	City Council	approve recommendation and adopt	Pass

Recommendation to 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; and

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

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, LBPB 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> [<https://urldefense.com/v3/ https://www.imanageshare.com/pd/1R88DO0opme ;!!MKV5s95d0OKnVA!q7usARa0m9pbnUDaHrZtJbjv_k06Jxscv-HGD4pizUYgq3ydAuvRMISbGPmBBQKyRmcShgPKmtlyyOainet1L5lx5aVwEzrkW\\$>.](https://urldefense.com/v3/https://www.imanageshare.com/pd/1R88DO0opme;!!MKV5s95d0OKnVA!q7usARa0m9pbnUDaHrZtJbjv_k06Jxscv-HGD4pizUYgq3ydAuvRMISbGPmBBQKyRmcShgPKmtlyyOainet1L5lx5aVwEzrkW$>)

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.

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.

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.

Approve recommendation.

APPROVED:

THOMAS B. MODICA
CITY MANAGER