

MEMORANDUM

To: Honorable Mayor and City Councilmembers

From: Gregory Palmer, City Prosecutor
Robert Dunn, Police Chief

Date: April 18, 2023

Subject: Update on Compliance of JP23 with Findings and Order of the Fullerton City Council Regarding Appeal of Denial of the JP23 Urban Kitchen Entertainment Permit Renewal Application

On February 1, 2022 the City Council issued a written decision concerning JP23's live entertainment permit. In that decision, the Council overruled the decision of Fullerton Police Chief Robert Dunn who denied JP23's live entertainment permit renewal application. The Council issued a live entertainment permit with its hours of entertainment restricted to no later than 11:00 PM Sunday through Wednesday and no later than 12:00 AM (midnight) Thursday through Saturday. This specific provision was to be reviewed by the Council in 9 months. Additionally, the Council ruled that JP23 had to be operated under its current CUP terms, limit its occupancy to 299, maintain queuing as set forth in the security plan, and immediately bring the exterior lighting into compliance with the CUP.

The Council set an October 31, 2022 date to provide them with an update. As that date approached, City Prosecutor Gregory P. Palmer wrote a letter to Jacob Poozhikala on September 30, 2022. In that letter, Mr. Poozhikala was informed of the upcoming October 31, 2022 Council update, and he was informed of the update which would be provided to the Council unless he resolved the remaining issues before the Council meeting on October 31, 2022. The unresolved issues he was made aware of in that letter were as follows:

- A. He had not submitted a new security plan.
- B. A Conex container had been placed on the patio area and electrical installations were made without permits or approvals.
- C. The external lighting on the north side of the building has not been installed.
- D. The building permit for the lighting installed on the west exterior side of the building had not been obtained.

- E. The DJ leaves his music board which continues to play recorded, amplified music after the time period imposed by Council.
- F. He was informed that the City had recently become aware of a change in the ownership structure of JP23 in the previous several months. The nature of the change was at that time unknown exactly, and Mr. Poozhikala was asked to clarify who the new stakeholders were and how, if at all, he still had a role in the organization.

Attorney Jennifer Harris, on behalf of Mr. Poozhikala, wrote back to Mr. Palmer by correspondence dated October 6, 2022. Ms. Harris addressed each point separately, but most notably, indicated that the business had been sold to a new owner and that the licenses and property were in the process of being transferred to the new owner. She further indicated that Mr. Poozhikala expected the transfer to the new owner to be complete by early November.

Ms. Harris also claimed in the same letter that the DJ ceases the entertainment activity at the required time, per the entertainment permit.

Mr. Palmer wrote back to Ms. Harris by letter dated October 7, 2022. In that letter Mr. Palmer made Ms. Harris aware that the Police Department had more than a dozen police reports ranging from April to September 2022 wherein officers of the Fullerton Police Department -- some of them simply driving by JP23 on patrol or doing a bar check; or in one instance, entered the establishment in plain clothes under cover -- heard and observed amplified music still playing loudly inside JP23 well after midnight, sometimes by more than an hour.

And as much as an update to Council at that time may be mooted by the change in ownership looming, Council was updated in writing of the impending change of ownership by memorandum on or about November 2, 2022.

On or about November 2, 2022 Makaveli DTF, LLC cba Chakos, Social submitted a new entertainment permit application to the City. In that new application, the new owner and principle of Makaveli, DTF, LLC was Luke Pathiyil.

In addition to the entertainment permit application, Mr. Pathiyil also submitted a new security and operations plan along with a new floor plan for JP23.

A written "Purchase of Business Agreement" was also provided to the City by Mr. Pathiyil. Notably, the agreement was dated on February 22, 2018. It was executed by Mr. Poozhikala and Mr. Pathiyil on July 1, 2022. Both men signed as the CEOs of the respective corporate entities JP23, Hospitality Company and Makaveli, DTF, LLC. The purchase price for all of the business equipment, inventory and packaging; books, records

and files, trademarks and trade names, as well as goodwill, was zero dollars (\$0.00). The sale will not close until the ABC licenses transferred, the entertainment permit is approved, the extended patio is approved, the business licenses approved, and the lease is signed. If the conditions are not met, the agreement to sell will be void.

Finally, the City was also provided with a commercial sublease agreement between Mr. Poozhikala and Makaveli, DTF, LLC. By its terms, Mr. Poozhikala is the sub landlord, and Mr. Pathiyil is the sub tenant. No term is mentioned in the sublease. The term of the master lease is not mentioned. This, too, was signed on July 1, 2022.

On or about December 15, 2022 a former employee of JP23 informed the City that the new owner is Jacob Poozhikala's cousin, and that the plan is for the business to change names, but be controlled still by Jacob Poozhikala for a year and then to change back to JP23 after that.

It was decided that Police Chief Robert Dunn, Community Development Director Sunayana Thomas and Mr. Palmer needed to meet Mr. Pathiyil in person to assess whether this was a bona fide purchase or simply the placement of a "straw man" in charge in order to allow Mr. Poozhikala to avoid the consequences of his actions.

Mr. Pathiyil came to the Fullerton Police Department on February 7, 2023 and met with those persons. Mr. Pathiyil is indeed Mr. Poozhikala's cousin. He has known him all his life. He has been a long time patron of JP23. He has a full-time job in the I.T. industry. He works primarily from home for a company on the east coast. So his hours on the west coast begin very early in the morning here he intends to open the restaurant/bar at about 4:00 PM after his primary workday is over and will stay and operate the restaurant/bar until closing time at 2:00 AM. He has never operated a restaurant or a bar. He is currently being trained to take over by Jacob Poozhikala. Jacob is still in control of JP23 at the present time and will remain in control until Mr. Pathiyil completes the update of the CUP with the modifications he is making, the transfer of the ABC license, the entertainment permit, the business license, and the patio modifications are approved. Mr. Pathiyil confirmed that if he does not complete each of these five things, the sale will not be completed and that as of the present time, he is not yet the owner or the operator of JP23 – Jacob Poozhikala is.

Mr. Pathiyil said Jacob signed a 30 year master lease, and that he is simply subleasing it from Jacob Poozhikala. Mr. Pathiyil will pay the monthly lease payment to Jacob who will then, in turn, pay the master lease. He could not explain why he did not simply assume the master lease.

Ms. Thomas explained what he had to do to update the CUP and gain the patio approvals. Mr. Pathiyil appeared to be very perplexed by all he had to do to accomplish what Mr. Poozhikala had in mind.

It was very clear to all of us in the room with Mr. Pathiyil that he was nothing more

than a “straw man” put up by Jacob Poozhikala to avoid his responsibility, and that Mr. Pathiyil was not a bona fide purchaser.

Accordingly, the City believes that Mr. Poozhikala was responsible and remains responsible for the following violations of the Council ruling:

1. The outdoor patio dining area remains unresolved.
2. The exterior lighting remains unresolved.
3. JP23 violated the limited hours by allowing live entertainment beyond the hours imposed:
 - a. On Friday, April 29, 2022 and undercover operation was being conducted at JP23. The agents assigned to that operation observed the DJ leave his post at midnight but the amplified music continued until approximately 1:00 AM.
 - b. On Sunday, May 8, 2022 Fullerton Police Officers were standing outside JP23 at approximately 12:09 AM and her loud amplified music coming from the from inside JP23. There was no DJ at his post but the music continue to play.
 - c. On Sunday, May 15, 2022 Fullerton Police Officers were on patrol in the right turn lane of Commonwealth at Harbor. It was approximately 12:15 AM and the officers heard loud amplified music coming from JP23.
 - d. On Saturday, May 21, 2022 Fullerton Police Officers were on patrol on Commonwealth at Harbor. The time was approximately 12:33 AM and they heard loud amplified music coming from JP23.
 - e. On Sunday, May 22, 2022 Fullerton Police Officers were on patrol on Commonwealth at Harbor. The time was approximately 12:13 AM and they could hear loud amplified music coming from JP23.
 - f. On Saturday, May 28, 2022 Fullerton Police Officers were on patrol on Commonwealth at Harbor. The time was approximately 12:17 AM and they could hear loud amplified music coming from JP23.
 - g. On Sunday, May 29, 2022 Fullerton Police Officers were on patrol on Commonwealth at Harbor. The time was approximately 12:49 AM and they could hear loud amplified music coming from JP23.

- h. On Sunday, June 12, 2022 Fullerton Police Officers were on patrol on Commonwealth at Harbor. The time was approximately 12:31 AM and they could hear loud amplified music coming from JP23.
- i. On Sunday, June 19, 2022 Fullerton Police Officers were on patrol on Commonwealth at Harbor. The time was approximately 12:25 AM and they could hear loud amplified music coming from JP23.
- j. On Sunday, June 26, 2022 Fullerton Police Officers were on patrol on Commonwealth at Harbor. The time was approximately 1:01 AM and they could hear loud amplified music coming from JP23.
- k. On Saturday, July 9, 2022 Fullerton Police Officers were on patrol on Commonwealth at Harbor. The time was approximately 1:56 AM. The officers observed patrons seated at tables still drinking alcoholic beverages.
- l. On Sunday, July 24, 2022 Fullerton Police Officers were on patrol on Commonwealth at Harbor. The time was approximately 12:20 AM. The officers observed patrons seated at tables still drinking alcoholic beverages.
- m. On Saturday, August 6, 2022 Fullerton Police Officers were on patrol on Commonwealth at Harbor. The time was approximately 12:27 AM. The officers observed patrons seated at tables still drinking alcoholic beverages.
- n. On Saturday, September 3, 2022 Fullerton Police Officers were on patrol on Commonwealth at Harbor. The time was approximately 12:45 AM. The officers observed patrons seated at tables still drinking alcoholic beverages.
- o. On Friday, September 23, 2022 the Fullerton Fire Department observed a blue Conex box container being installed without permits or approvals. A stop work notice was issued.
- p. Also on Friday, September 23, 2022 the Fullerton Fire Department observed a blue Conex box container being installed without permits or approvals. A stop work notice was issued. The time was approximately 12:14 AM.