



May 10, 2024

City of Costa Mesa
 Development Services Department
 Attn. Gabriel Villalobos
 77 Fair Drive
 P.O. Box 1200
 Costa Mesa, CA 92628-1200

File No. ARE01-1001

**RE: Land Use Project Application for Blessed Black Wings LLC doing business as
 Commissary Lounge; 2968 Randolph Avenue, Unit #2, Costa Mesa, CA 92626**

Dear Mr. Villalobos:

In response to the City's request, please see the revised letter of justification which responds to all additional questions regarding the project to allow or otherwise grant the appropriate entitlement permitting the change of Applicant's existing Type 48 liquor license from the California Department of Alcoholic Beverage Control (hereinafter "ABC") to a new Type 90 Music Venue license, add entertainment in the form of dancing, and obtain a finding from the City for public convenience and/or necessity, as described more fully herein.

REQUEST

Applicant requests that the City allow for the premise to operate under a Type 90 license, which is more conducive to the proposed use as a music and live entertainment venue. Additionally, Applicant requests that the condition prohibiting dancing be removed, as patron dancing is a natural byproduct of live music events. Applicant is requesting to change its operating hours to Wednesday-Sunday 8:00 pm to 2:00 a.m. (and holidays if they do not fall in Applicant's proposed operating days). Lastly Applicant seeks a finding of "public convenience and necessity" (Business and Professions Code Section 23958.4(b) (2)), as the premise will be located in an area that has been determined by the state of California Department of Alcoholic Beverage Control to have an undue concentration of licenses as defined in Business and Professions Code Section 23958.4(a).

Currently the Applicant operates under a Type 48 (On-Sale General- Public Premises) ABC license, which authorizes the sale of beer, wine, and distilled spirits for consumption on the premises where sold, where no food service is required. The premise has always been, and will continue to be, a music venue as evidenced by the previous City approvals for the premises and historical documentation provided with previous applications and available to all that desire to

search. Until January 1, 2023, the Department of Alcoholic Beverage Control did not have a license that truly encompassed all operational uses of the premise, (i.e., a music venue), and as such Applicant was forced to apply for and operate under a Type 48 ABC license. The State legislature, finally, provided a license type that encompasses this distinctive use by way of CA Senate Bill 793 (SB 793) which created the Type 90 Music Venue License effective as of January 1, 2023. The Type 90 license cures a longstanding gap in the alcoholic beverage licensing scheme by allowing premises with live entertainment, such as Commissary Lounge, to incorporate the ancillary use of alcoholic beverage service with the prevailing use as a live music venue.

SB 793 Amends §23320 of the California Business and Professions Code, to include, but not be limited to, the creation and/or establishment of a “music venue license” to be issued to a music entertainment facility that may be open to all ages and provide alcoholic beverage service only to adults. Alcoholic beverages may only be consumed on the premises during the time period of two hours before a live performance at the venue, throughout the performance, and one hour after the live performance. No food or kitchen is required under this license use.

The Applicant shall strictly comply with and/or meet the requirements set forth in Sections 23320 and 23550 of the ABC Act. ABC retains both the statutory and Constitutional jurisdiction to:

- 1) Complete a thorough investigation of the applicant and applied for premises to ensure compliance with ALL the requirements of the Type 90 ABC licenses prior to issuance by ABC of the same;
- 2) Issue the Type 90 License; and
- 3) Ensure ongoing compliance by any Type 90 Licensee following issuance of the license.

During both correspondence and in person meetings with staff, the Applicant’s representative and members of staff have reviewed the previous entitlements to include several issues related thereto, to include the approved “use” and parking. After said discussion and meetings the Applicant contends, and the City has agreed, that there is no actual “change” to the existing use, rather it is a change of the ABC license type; and as such, there will not be a change and/or impact in the required parking. Such contention is based, among other things, on the history of the location, the entitlements thereon, the operations of the business and the availability of the new ABC licenses which more accurately meets the needs of the venue, and representations made by City staff. Moreover, there is, nor will be, no change or increase of square footage from the previously approved application in 2019.

BACKGROUND

Applicant has operated Commissary Lounge at its current location since early 2013 under a Type 48 license, (operating since 2008 at the previous Bristol Street location). The license for the current premise has been in operation for nearly a decade with no record of disciplinary action or operating restrictions from ABC. Modifications to the existing use were granted by the City to include pre-recorded music via DJ in 2013, and live entertainment in the form of live bands, comedians, spoken word/poetry readings, karaoke, and electronic game machines in 2019. [See previous conditions of approval outlined below].

The property is zoned MG (General Industrial) and has a plan designation of General Industrial. The site consists of two parcels (2968 Randolph Avenue and 2960 Randolph Avenue) which share a common driveway. The premise is located on the east side of Randolph Avenue, south of Baker Street, and consists of an existing one-story 16,000 square foot industrial building. Applicant proposes to occupy and continue using the existing approximate 4,300 square feet of the existing building, with the previous hours of operation being from 9:00 pm to 2:00 a.m. Thursday through Saturday.

HISTORY OF ENTITLEMENTS

PA-12-26

On January 14, 2013, the City of Costa Mesa Planning Commission approved a CUP and PCN which allowed the Applicant to move its operations (i.e., Type 48 license, live entertainment, etc.) to the current site and allowed revisions to the hours/days of operations to Thursday, Friday, and Saturday 9:00 pm to 2:00 am.

ZA-18-51

On February 21, 2019, the City of Costa Mesa approved Applicant's Conditional Use permit to allow an amendment to Planning Application PA-12-26, allowing operations until 2:00 AM that included live entertainment in the form of live bands, comedians, spoken word/poetry readings, and karaoke, as well as to allow four or more electronic game machines not to exceed 570 square feet of floor area within the establishment. No physical expansion or increase in floor area for the establishment; days and hours of operation also remain unchanged.

PROJECT

Overall Proposed Use

Applicant seeks to change its ABC license to a type of use that is more conforming with the current and historical operations of the Applicant as a live music venue. Applicant is also requesting to change its operating hours to Wednesday-Sunday 8:00 pm to 2:00 a.m. and the following holidays (if they do not fall in Applicant's proposed operating days): New Years Eve, New Years Day, July Fourth, St. Patrick's Day, Christmas Eve, Christmas, Cinco De Mayo, Mardi Gras, and Halloween. The Applicant's premise is located in a vibrant urban district known as South Bristol Entertainment & Cultural Arts (SoBECA) Urban Plan. The Applicant seeks to contribute to this growing area by providing patrons with an immersive entertainment experience featuring live performances, and other cultural events. All events will be open to the public via ticket sales. Private events will not be held, and the Applicant understands that any private or special events would require CUP approval and a parking study from the City.

Acquiring a Type 90 license will enable the Applicant to enhance its offerings by serving alcoholic beverages while maintaining a family-friendly atmosphere that welcomes patrons of all ages. This change in license type allows for Applicant to be more inclusive with patrons that are allowed be on the premises, while also providing for more restrictions in service of alcohol as it

can only be served within a specific time frame before and after a live event. As expounded further below, with this change in license Applicant is proposing various restricted areas for alcohol service, stringent multipoint ID checks, and wristbands for all patrons with color differentiation for patrons under 21 years of age.

Applicant is not expanding the building footprint in any way, a proposed interior remodel will upgrade the interior space to remove the arcade games, provide a permanent stage area, audience/dance area, and updated seating for event patrons. The plans provided with this application depict a stage area with three parts on against the north wall of the interior. Seating areas are existing and are indicated stage right and stage left, and in front of the bar area. If an event involves bottle service, areas are indicated on the plans where only patrons 21 years of age or older may remain; the area in between these sections will be the dancing/standing area facing the stage that is available to all patrons. Applicant will sell tickets online and at the designated ticket booth.

Parking

As referenced above during both written correspondence and face-to-face meetings with staff, this office and members of the staff have thoroughly examined the previous entitlements, addressing various issues including approved usage and parking arrangements. Following these discussions and meetings, the Applicant asserts, and the City previously concurred, that there is no actual alteration to the existing usage; rather, it involves a change in the type of ABC license. Consequently, there will be no alteration or impact on the required parking. This assertion is supported by factors such as the historical use of the location, existing entitlements, business operations, and the availability of new ABC licenses that better suit the venue's needs. Additionally, there will be no change or increase in square footage from the previously approved application in 2019.

With 4,300 square feet a total of 46 parking spaces are required as established through PA-12-26, with 53 spaces present, the premise meets the parking requirement. A reciprocal parking agreement is in place with the landlord of the premise and adjacent businesses, which allocates the required number of parking spaces required for the proposed use. This agreement is on file with the City. Additionally, Applicant believes use of parking areas will be alleviated by patrons' use of transportation services such as Uber and Lyft. Lastly Applicant is agreeable to removing the gate from the west side of the building allowing access to the existing parking spaces in continuation of the current parking lot and would be willing to agree to a condition of approval requiring the same.

Scheduled events will be marketed online, with tickets and admission fees available to purchase online or at the door (given available patron capacity).

Wristband Identification:

All patrons entering the establishment, regardless of age, will be provided with wristbands upon entry. Wristbands for individuals under 21 years of age will be distinctively colored to facilitate easy identification. Proposed wristbands will be provided to CMPD for assessment and

viability of security protocols to ensure that wristbands cannot be removed or transferred to other patrons.

ID Checks:

Rigorous ID checks will be conducted at the entrance to verify the age of all patrons. This includes scanning IDs or using other verification methods to ensure accuracy at the point of entry. Additionally, ID checks will be carried out at tables where bottle service is provided upon entry into the VIP area. This secondary check serves as an extra layer of verification to prevent underage individuals from accessing alcohol.

Bottle Service Protocol and Age-Restricted Areas during 18 and over events:

If an event includes patrons who are 18 years of age or older, Applicant will have restricted areas for VIP/bottle service, which will only be exclusively for patrons aged 21 or older. These areas will be roped off and have 4-6 standing security personnel, in addition to roaming security personnel, who will monitor these areas to ensure those under 21 are not allowed access to areas where there is bottle service.

Patrons opting for bottle service must adhere to specific guidelines to ensure compliance with age restrictions and responsible drinking practices. All members of the party must be present before they are escorted to the bottle service area. This ensures that underage individuals are not attempting to gain access to the area. Strict enforcement of age requirements will be upheld in the bottle service area, with only individuals aged 21 or older permitted entry. IDs will be rechecked by the host for each member of the party at a table for bottle service before alcohol is served.

Staff Training and Security Protocols

Applicant has composed a comprehensive Security Policy and Procedure Manual, which has been provided to the City previously and is again provided with the amended application submission. In addition to internal training on all protocols, all staff members will undergo comprehensive training on the protocol, including proper ID verification techniques and handling procedures for underage patrons. Training sessions will emphasize the importance of adherence to legal regulations and maintaining a safe environment for all patrons.

Clear signage will be displayed throughout the establishment, informing patrons of the age-restricted areas and the importance of ID compliance. Information regarding the alcohol service protocol will be communicated through various channels, including social media, website announcements, and in-person interactions with patrons.

Regular audits and spot checks will be conducted to ensure compliance with the protocol. Feedback from patrons and staff will be solicited to identify areas for improvement and refine the protocol as needed.

The City has clearly acknowledged the SoBECA area of retail and fine dining as essential to tourists, locals, and the community's economy, as the growth from The LAB Anti-Mall has grown exponentially in the last decade to now include several restaurants, breweries, shops, and hotel accommodations via the Residence Inn by Marriott. Applicant seeks to add to the City's mission of expansion of this area by continuing to contribute to the local economy and local culture and acknowledges the importance of the City's plan to build their nightlife and culture centers around a particular area, where a thriving entertainment scene can contribute mightily to those centers for people to gather.

PERMITTED USE PER MUNICIPAL CODE

As the existing use is compliant with Costa Mesa Municipal Code Sections 13-29(e); 13-29(g)(2), exempt under CEQA guidelines and is consistent with Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code, Applicant proposes that the change in license type from a Type 48 ABC license to a Type 90 ABC license will continue to conform to the City's relevant Municipal Code Sections. Moreover, entertainment and on sale alcohol sales and consumption have long been approved and operational at the site. As such, we request either an administrative approval of the request with revised and added conditions as reasonable required or that the application be processed as a MCUP given the change, in all practicality is the ABC license type.

PERMITTED USE UNDER CALIFORNIA BUSINESS & PROFESSIONS CODE §23550

Under *California Business and Professions Code §23550* a Type 90 license must meet the following requirements:

(c) "Music entertainment facility" means a publicly or privately owned live performance venue, concert hall, auditorium, or an enclosed arena where music or entertainment events are presented for a price of admission. The facility does not have to be used exclusively for music or entertainment events. A venue is not a "music entertainment facility" for purposes of this article unless it satisfies all of the following criteria:

(1) The facility has defined performance and audience spaces.

(2) The facility includes mixing equipment, a public address system, and a lighting rig.

(3) The facility employs one or more individuals to serve not less than two of the following roles:

(A) A sound engineer.

(B) A booker.

(C) A promoter.

(D) A stage manager.

(E) Security personnel.

(F) A box office manager.

(4) There is a paid ticket or cover charge to attend performances at the facility and artists are paid and do not play for free or solely for tips, except for fundraisers or similar charitable events.

(5) Performances at the facility are marketed through listings in printed or electronic publications, on websites, by mass email, or on social media.

Applicant will meet all of the Type 90 requirements, per B&P Code 23550, above with the updates to the facility via a defined audience and stage area with proper lighting and sound equipment to provide the best possible live performance experience for its patrons. Tickets will be available for purchase online and at the designated ticket booth at the entrance. The premise will have employees that serve as stage manager, sound and lighting engineer, booker/promoter, box office manager and security personnel.

APPLICANT'S MISSION

In the current market landscape, entertainment venues must constantly adapt to stay relevant by offering diverse seating options, accommodations, and overall aesthetics. Music venues, in particular, have witnessed ongoing development and evolution to cater to patrons' varying preferences. Some venues aim to replicate intimate settings, while others opt for a more expansive stadium or arena atmosphere.

For example, this office has previously processed a type 90 ABC license for a comedy club, which shares similarities with dining facilities in terms of seating arrangements. In a comedy club, tables are typically arranged in a vertical layout, with patrons facing each other while the stage for entertainment is positioned to one side. Despite the dining-like setup, there is no doubt that such an environment constitutes an entertainment venue.

Respectfully it is not the City's position to determine or advise any venue how they should set up, rather they meet the definition by providing entertainment and providing those services that are customary in entertainment venues such as this.

In keeping with the successful formula established by the current businesses owned and operated by the Applicant's principal, Applicant seeks to develop Commissary Lounge into an establishment that stays current with the times. Applicant seeks to maintain the City's vision for the SoBECA area, while deftly navigating the needs of the community and contributing to the local culture and economy.

In conclusion, the applicant respectfully requests that the application herein be approved and looks forward to a great working relationship with the City of Costa Mesa, the surrounding businesses, and the community at large.

Very truly yours,



F. MICHAEL AYAZ