

ORIGINAL



Application

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☐ Area Planning Commission ☐ City Planning Commission ☐ City Council ☒ Director of Planning

Regarding Case Number: DIR 2016-0824 (RV)

Project Address: 6364 West Hollywood Boulevard, Los Angeles, CA 90028

Final Date to Appeal: 06/10/2016

Type of Appeal:

- ☐ Appeal by Applicant
☒ Appeal by a person, other than the applicant, claiming to be aggrieved
☐ Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Hollywood Nightlife Group, Inc., dba Cosmo Nightclub

Alberto Avila

Company: Hollywood Nightlife Group, Inc., dba Cosmo Nightclub

Mailing Address: 7119 W. Sunset Boulevard, #185

City: Los Angeles

State: CA

Zip: 90046

Telephone: (323) 638-0429

E-mail: mdk@mdklawfirm.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

☒ Self

☐ Other: _____

- Is the appeal being filed to support the original applicant's position?

☐ Yes

☒ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Michael D. Kolodzi, Esq.

Company: The Kolodzi Law Firm

Mailing Address: 433 N. Camden Drive, Suite 600

City: Beverly Hills

State: CA

Zip: 90210

Telephone: (310) 279-5212

E-mail: mdk@mdklawfirm.com

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed?

☒ Entire ☐ Part

Are specific conditions of approval being appealed?

☐ Yes ☒ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: _____

Date: _____

6/9/16

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- Original Applicants must pay mailing fees to BTC and submit a copy of receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered original applicants and must provide noticing per LAMC 12.26 K.7.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. (CA Public Resources Code § 21151 (c)). CEQA Section 21151 (c) appeals must be filed within the next 5 meeting days of the City Council.

This Section for City Planning Staff Use Only		
Base Fee: \$ 89.00	Reviewed & Accepted by (DSC Planner): Rick Torrer	Date: 6-9-16
Receipt No: 0201325539	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

Office: Van Nuys
Applicant Copy
Application Invoice No: 30168

City of Los Angeles
Department of City Planning



Scan this QR Code® with a barcode
reading app on your Smartphone.
Bookmark page for future reference.

City Planning Request

NOTICE: The staff of the Planning Department will analyze your request and accord the same full and impartial consideration to your application, regardless of whether or not you obtain the services of anyone to represent you.

This filing fee is required by Chapter 1, Article 9, L.A.M.C.

Applicant: HOLLYWOOD NIGHTLIFE GROUP, INC. - AVILA, ALBERTO (323-6380429)
Representative: THE KOLODZI LAW FIRM - KOLODZI, MICHAEL (310-2795212)
Project Address: 6364 WEST HOLLYWOOD BOULEVARD, 90028

NOTES:

DIR-2016-824-RV-1A

Item	Fee	%	Charged Fee
Appeal by Aggrieved Parties Other than the Original Applicant *	\$89.00	100%	\$89.00
Case Total			\$89.00

Item	Charged Fee
*Fees Subject to Surcharges	\$89.00
Fees Not Subject to Surcharges	\$0.00
Plan & Land Use Fees Total	\$89.00
Expediting Fee	\$0.00
OSS Surcharge (2%)	\$1.78
Development Surcharge (6%)	\$5.34
Operating Surcharge (7%)	\$6.23
General Plan Maintenance Surcharge (5%)	\$4.45
Grand Total	\$106.80
Total Invoice	\$106.80
Total Overpayment Amount	\$0.00
Total Paid (this amount must equal the sum of all checks)	\$106.80

LA Department of Building and Safety
VR TONI 2016083637 6/9/2016 2:19:45 PM

PLAN & LAND USE \$106.80

Sub Total: \$106.80

Council District: 13
Plan Area: Hollywood
Processed by TORRES, RICARDO on 06/09/2016

Receipt # 0201325589

Signature: _____

JUSTIFICATION/REASON FOR APPEAL

Appellant HOLLYWOOD NIGHTLIFE GROUP, INC., dba COSMO NIGHTCLUB ("Hollywood") hereby files the attached Appeal Application in Case No. DIR 2016-0824 (RV), as it pertains to the Director of City Planning, City of Los Angeles' requirement of "the discontinuance of the operation of a cocktail bar/lounge with alcohol sales at the establishment known as The Cosmo, located at 6364 West Hollywood Boulevard," Los Angeles, California 90028 (the "Premises"). The reasons for the appeal are as follows:

It is well established in this jurisdiction the processes needed to properly and legally revoke a Conditional Use Permit ("CUP"). Once a licensee has acquired a conditional use permit, or has "deemed approved" status, a municipality's power to revoke the conditional use is limited. *Trans-Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal.App.2d 776, 783 (Emphasis added). If the permittee has incurred substantial expense and acted in reliance on the permit, the permittee has acquired a vested property right in the permit and is entitled to the protections of due process before the permit may be revoked. *Id.* at p. 795 (Emphasis added). "In determining that a permit, validly issued, should be revoked, the governing body of a municipality acts in a quasi-judicial capacity. In revoking a permit lawfully granted, due process requires that it act only upon notice to the permittee, upon a hearing, and upon evidence substantially supporting a finding of revocation." *Ibid.*

"When a permittee has acquired such a vested right it may be revoked if the permittee fails to comply with reasonable terms or conditions expressed in the permit granted [citations] or if there is a compelling public necessity." *Jones v. City of Los Angeles* (1930) 211 Cal. 304, 314; see, *Lawton v. Steele* (1894) 152 U.S. 133, 137; *O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151, 158. A compelling public necessity warranting the revocation of a use permit for a lawful business may exist if the conduct of a business as a matter of fact constitutes a nuisance and the permittee refuses to comply with reasonable conditions to abate the nuisance. In these circumstances a municipality has the authority to remove such a business under its police power to prohibit and enjoin nuisances. *Jones v. City of Los Angeles*, supra, 211 Cal. at p. 316. However, in order to justify the interference with the constitutional right to carry on a lawful business it must be clear the public interests require such interference and that the means employed are reasonably necessary to accomplish the purpose and are not unduly oppressive on individuals. *Lawton v. Steele*, supra, 152 U.S. 133, 137; *Leppo v. City of Petaluma* (1971) 20 Cal.App.3d 711, 717.

In the instant matter, pursuant to the aforementioned case authority, Hollywood has acquired a "vested right" in maintaining the CUP at the Premises. Indeed, Hollywood has expended in excess of One Million Dollars (\$1,000,000.00) in renovating and maintaining the Cosmo Nightclub since inception. To affirm revocation of the CUP would, in effect, deprive Hollywood of their monumental investment in their nightclub and be duly oppressive to its owners. Further, there has been no tender of "evidence substantially supporting a finding of revocation." Indeed, the alleged twenty-four (24) CUP violations, as baldly and speculatively testified to at the Public Hearing on May 10, 2016 (and further absent of any iota of physical evidence sans the biased testimony of law enforcement and city officials, who were not subject to cross-examination), have either NOT been adjudicated in a court of law and/or NOT been filed by the City Attorney's Office, both at the time of the aforementioned May 10, 2016 hearing, the May 26, 2016 findings/recommendation of the Director of City Planning, and the drafting of this appeal.

Indeed, although the Los Angeles Police Department ("LAPD") and City officials testified at length regarding the aforementioned twenty-four (24) CUP violations at the May 10, 2016 public hearing; notably, only two (2) criminal cases were filed therefrom: *People of the State of California v. Conrad P. Straub, et al.* (Case No. 5CA15614), and *People of the State of California v. Matthew Jacob Goldberg, et al.* (Case No. 6CJ07541), as testified to by Jacqueline Lawson, Deputy City Attorney. Furthermore, as testified to undersigned counsel at the same hearing, both cases are still in the pretrial stages. The next pretrial date for these two (2) cases is scheduled for August 2, 2016. Even further, as testified to by Steve Houchin, Deputy City Attorney, and outlined in the May 26, 2016 findings/recommendation, there are thirteen (13) "cases under review," but NOT filed. As such, an affirmation of the May 26, 2016 determination sets the dangerous precedent that the City can easily proffer false testimony regarding alleged CUP violations (and the Director of City Planning can further pass judgment based off of those alleged CUP violations), but said violations are not strong enough to merit an actual filing of a criminal complaint at the time of the public hearing, the director's determination, and the drafting of this appeal. Entirely nonsensical and illegal.

Lastly, there has been no presentation of a "compelling public necessity" to warrant the revocation of Hollywood's CUP, as there has been no adjudication that their activities constituted a nuisance, and, to date, as testified to at the public hearing by its agents, Hollywood has complied with all requests by the LAPD to abate the alleged nuisance(s). What is evident is that the City, the LAPD, the Alcoholic Beverage Control ("ABC"), and Councilmember Mitch O'Farrell have conspired to engage in an intentional, unlawful, and concerted pattern of harassment to eliminate the Cosmo Nightclub, as it caters to an African-American clientele. This point cannot be understated. Such discriminatory behavior cannot be tolerated, and absent their day in Court to rebut these baseless CUP violations (notably of which have NOT been filed), Hollywood's CUP must not be revoked.

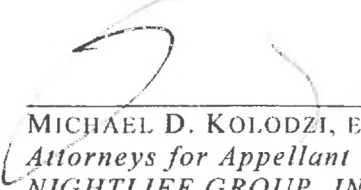
Accordingly, prior to a revocation by the Director of City Planning of the CUP of the Premises, due process must be afforded unto the appellant. The Director of City Planning cannot legally revoke the CUP of the Premises predicated on alleged CUP violations that have NOT been adjudicated in a court of law. To do so is an egregious affront to Appellant's due process rights, and is entirely premature pending the disposition of the aforementioned criminal cases. To further do so exposes the City of Los Angeles, the LAPD, and the ABC to a clear civil action.

For these reasons, Appellant Hollywood respectfully requests a grant of their appeal of the Director of City Planning findings/recommendations dated May 26, 2016.

DATED: June 9, 2016

Respectfully submitted,
THE KOLODZI LAW FIRM

By:



MICHAEL D. KOLODZI, ESQ.
*Attorneys for Appellant TOP GUN
NIGHTLIFE GROUP, INC. dba
CASHMERE NIGHTCLUB aka THE
DAY AFTER NIGHTCLUB*