

**OFFICE OF THE DIRECTOR OF EXCISE AND LICENSES
CITY AND COUNTY OF DENVER, COLORADO**

RECOMMENDED DECISION

**IN THE MATTER OF THE APPLICATION OF MELODEE SIDEBOTTOM, DOING
BUSINESS AS JAMMIN JOE'S BBQ, LLC, FOR A BEER AND WINE LIQUOR
LICENSE FOR THE PREMISES KNOWN AND DESIGNATED AS 2600 HIGH
STREET, DENVER, COLORADO**

This matter came to hearing on November 1, 2013 pursuant to prior notice, and concerns an Application by Melodee Sidebottom, doing business as Jammin Joe's BBQ, LLC, for a Beer and Wine Liquor License for the premises known and designated as 2600 High Street, Denver, Colorado.

The Applicant Jammin Joe's BBQ, LLC (Applicant or Jammin Joe's) appeared through its owner Melodee Sidebottom. Assistant City Attorney Dan Douglas appeared on behalf of the Licensing Authority of the City and County of Denver (City). Protestants appeared through Joe Mauro. At the hearing, Applicant's Exhibits A-1, A-1(b), A-2(a and b), A-3, and A-4; Protestants' Exhibits P-1 and P-2; and City's Exhibits C-1 through C-5 were received into evidence.

After review of the testimony and exhibits as summarized below, the undersigned Hearing Officer enters the following findings of fact, conclusions of law, and recommended decision:

1. The Applicant Jammin Joe's is currently authorized to do business in Colorado. Melodee Sidebottom is the 100% owner of Jammin Joe's and was authorized to represent the Applicant at the hearing. *See* Exhibit A-3 (corporate resolution authorizing Ms. Sidebottom to appear at hearing for the LLC). In this Application, Jammin Joe's requests a Beer and Wine Liquor License for the premises at 2600 High Street.

2. The proposed premises are suitable and adaptable for the intended purpose and the Applicant has the right to possession of the premises. Exhibit C-5—the exhibit was amended at hearing—is the floor plan for the liquor licensed premises proposed by Jammin Joe's. Notably, in the original Application Jammin Joe's proposed to include an outdoor patio within the liquor licensed premises. Testimony at hearing, however, pointed out that there was no entry to the patio from inside Jammin Joe's. Consequently, to enter the patio, customers would have exited the restaurant *to an area not included within the licensed premises* and entered the patio from outside. Since the liquor laws would prohibit Jammin Joe's customers from taking alcoholic beverages into an unlicensed area, Jammin Joe's modified the Application and the floor plan to remove the patio from the proposed licensed premises.

3. The testimony and evidence indicate that notice of the Application and the hearing was posted at the premises as required by law. *See* Exhibits A-1 and A-1(b) (Hearing Posting Affidavits indicating notice of hearing posted at premises from September 13, 2013 and continuing through November 1, 2013), and C-4 (City's Verification of Posting confirming notice of Application and Hearing posted at premises on October 10, 18, 21, 28, and 31, 2013). Additionally, the evidence establishes that notice of the Application was duly published, notifying interested persons of the hearing in this matter and their right to submit information to the City in support of or in opposition to the Application. *See* Exhibit C-1 (Published Notice of Application in Daily Journal on October 10, 2013).

4. Pursuant to the Revised Municipal Code of the City and County of Denver, Councilman Albus Brooks was given notice of the hearing on the Application.

5. At the hearing in this matter, David Meyer, Joseph Van Dyke, and Ms. Sidebottom testified in support of the Application. Linda Dowlen and Mr. Mauro testified in opposition to the Application. In addition, Darrell Watson submitted comments on behalf of the Whittier Neighborhood Association, a Registered Neighborhood Association operating within the Designated Area for this Application.

6. Mr. Meyer, who is over the age of 21 and occasionally consumes an alcoholic beverage, is a resident in the Designated Area. Mr. Meyer stated: Jammin Joe's is operating as a barbeque restaurant at this time. Mr. Meyer has patronized the restaurant and "loves" the food there. He enjoys having Jammin Joe's in the neighborhood, noting that he has met many neighbors at the restaurant; he personally desires that the license issue. Furthermore, he believes there is a neighborhood need and desire for the license. In particular, Mr. Meyer believes that some customers at Jammin Joe's would like to have a drink with their food. Mr. Meyer believes that approval of the Application will have a positive effect on the health, welfare, safety, and morals of the neighborhood. He also believes that Jammin Joe's will operate the license in a lawful manner.

7. Mr. Van Dyke, a resident in the Designated Area, is a business consultant, and is assisting Ms. Sidebottom in getting Jammin Joe's up and running. According to Mr. Van Dyke, the building where Jammin Joe's operates was rundown and empty before Ms. Sidebottom opened the restaurant on July 4, 2013. The Applicant renovated and "cleaned-up" the building, thereby improving the neighborhood. Mr. Van Dyke noted that most of Jammin Joe's business (*i.e.* food sales) is take-out. In fact, the restaurant seats only six inside; the outside patio has seating capacity for 20-28. (As discussed above, the Application was modified at hearing to exclude the patio. Therefore, if the liquor license is granted, customers ordering an alcoholic beverage would have to stay inside the restaurant, an area having limited seating capacity.) Mr. Van Dyke described Jammin Joe's as a "fast casual" restaurant: no table service, only counter service. According to Mr. Van Dyke, Jammin Joe's needs a liquor license to help profitability and to stay financially viable.

8. Ms. Sidebottom is the 100% owner of Jammin Joe's. This is her first experience in operating a restaurant, and, if the liquor license is granted, her first experience in managing a liquor license. Ms. Sidebottom believes that the neighborhood needs and desires a barbeque

restaurant. Many customers, according to her testimony, are requesting alcoholic drinks with their meals. This—that is, the frequent requests from customers—is the reason she has applied for a liquor license. With the requested liquor license, Jammin Joe’s intends to serve mainly bottled beer and some wines. Ms. Sidebottom, who is over the age of 21 and occasionally consumes an alcoholic beverage, personally desires that the license issue. She believes that issuance of the license will not adversely affect the health, welfare, safety, or morals of the neighborhood. Furthermore, she is confident that Jammin Joe’s will operate the liquor license in a lawful manner.

9. Ms. Sidebottom stated that she intends to be at the restaurant approximately one-half time. As noted above, she has no prior experience in operating or managing a restaurant or a liquor license. She stated, however, that she will take an alcohol service program. Furthermore, she and Mr. Van Dyke stated that all staff serving alcoholic drinks at Jammin Joe’s will become TIPS certified. In response to a request from the City, Ms. Sidebottom agreed that issuance of the liquor license could be conditioned upon the Applicant’s submission of proof that she and all staff currently at the restaurant (and serving alcoholic drinks) have completed the TIPS (or comparable) program.

10. Jammin Joe’s submitted Exhibits A-2(a and b) into evidence. These are petitions containing the signatures of 288 persons in support of the Application. The Protestants objected to the petitions, pointing out, in part, that the petitions are not on the forms provided by the Department for collection of signatures in support of a liquor license application. The Hearing Officer notes that the Department’s Policies and Procedures, Section II.(F)(8)(c), simply require that petitions be circulated on Department forms *or on forms that “resemble” the Department’s forms*. Ms. Sidebottom and Mr. Van Dyke, the persons who circulated the petitions, testified that they complied with the Department’s requirements when circulating the petitions. For example, the witnesses stated that they personally witnessed the signatures; that they verified that the signatories were over the age of 21; that the signatories read the petition; that persons signing the petitions did so voluntarily; etc. At hearing, the Protestants pointed out that an initial review of the petitions revealed that many of the persons signing the petitions did not reside in the Designated Area. And in a post-hearing letter—the Hearing Officer provided the parties an opportunity to submit letters by November 4, 2013 summarizing their analysis of the petitions and the number of signatures from persons not residing in the Designated Area—the Protestants pointed out that 153 signatures (out of 288) on the Applicant’s petitions, approximately 53% of the total signatures on Exhibits A-2(a and b), were from persons *not* residing in the Designated Area. According to Protestant’s examination, some of the signatures were from persons residing in cities other than Denver. Jammin Joe’s does not dispute Protestant’s analysis of its petitions. And based upon the substantial number of signatures from persons not residing in the Designated Area, the Protestants object to any consideration of Jammin Joe’s petitions.

11. Ms. Dowlen, who is over the age of 21 and occasionally consumes an alcoholic beverage, is a resident in the Designated Area. She testified: The Whittier neighborhood, where Jammin Joe’s is located, is a small neighborhood. The area now has four liquor licensed establishments, and there is no need for another liquor license in the neighborhood. Although the area is changing, there is still significant criminal activity there. Ms. Dowlen herself has observed apparently drunk people walking in the neighborhood. In her opinion, there is already an excess

of liquor licensed businesses in the community, and the issuance of another such license to Jammin Joe's would adversely affect the public health and safety. Moreover, Ms. Dowlen is concerned with Ms. Sidebottom's inexperience in managing a liquor license, especially in a residential area such as Whittier. For example, Ms. Dowlen is concerned that Jammin Joe's will not know how to deal with customers ordering a drink and who are already intoxicated. In general, Ms. Dowlen believes the neighborhood already has an adequate number of places to get an alcoholic drink, and there is no need for another liquor license in the area. She further questions whether Jammin Joe's will operate a liquor license lawfully. For these reasons, she opposes the Application.

12. Mr. Mauro, who is over the age of 21 and a resident of the Designated Area, also opposes the Application. In his opinion, there is already an adequate number of liquor licensed businesses in the area, enough places for residents to meet for a drink. Mr. Mauro notes that there are schools and school students, many elderly residents, and many families in the area where Jammin Joe's is located. As such, this is not an appropriate location for a liquor licensed restaurant. According to Mr. Mauro, the Whittier neighborhood is generally a quiet residential area, and the issuance of a liquor license to Jammin Joe's may change the character of the neighborhood. Mr. Mauro believes there is no neighborhood need or desire for issuance of the requested license, and that issuance of the license would negatively affect the health, welfare, safety, and morals of the neighborhood. Furthermore, Mr. Mauro is concerned with Ms. Sidebottom's inexperience in operating or managing a restaurant or a liquor license. Given that inexperience, he is concerned with Jammin Joe's ability to responsibly operate the license. (Mr. Mauro noted that, even in this Application process, Jammin Joe's has already demonstrated its unfamiliarity with the Department's rules and processes for requesting a license (*e.g.* the Application's original inclusion of the patio in the licensed premises that would have resulted in customers taking drinks to unlicensed areas to reach the patio).

13. Mr. Mauro personally circulated Protestant's petitions in opposition to this Application. Collectively, Exhibits P-1 and P-2 contain the signatures of 89 residents in the Designated Area in opposition to the Applications.

14. Mr. Watson is the Vice President of the Whittier Neighborhood Association (WNA) and appeared to present the Good Neighbor Agreement (Exhibit A-4) between WNA and Jammin Joe's. That Agreement was unanimously approved by WNA's board of directors. Mr. Watson stated that WNA neither opposes nor supports this Application. However, if the liquor license is granted, WNA requests that the four conditions listed in Section 1(A) of the Good Neighbor Agreement be specifically incorporated into the issued license. Those conditions provide: Jammin Joe's will enforce a no loitering policy outside its premises; Jammin Joe's will maintain the exterior of its premises by immediately removing graffiti and keeping sidewalks, lawns, and public rights of way free of debris and trash; Jammin Joe's will meet with WNA's board to evaluate compliance with the Agreement at least one month in advance of the annual renewal of its license; and Jammin Joe's will participate in a city-led mediation process if unresolved concerns or issues arise.

15. The City's Exhibit C-3 indicates there are 4 establishments now holding a liquor license in the Designated Area including: two Hotel and Restaurant licensees; one Retail Liquor Store

licensee; and one Beer and Wine licensee. As discussed above, the Applicant's witnesses believe that the reasonable requirements of the neighborhood require issuance of the license requested here, notwithstanding the existence of other liquor licensed establishments in the area. Protestant's witnesses believe that the reasonable requirements of the neighborhood are already met by existing liquor licensed establishments in the area

16. The Hearing Officer is not persuaded by Protestant's position that Jammin Joe's Application should be denied for the reason that there is already a sufficient number of liquor licensed establishments in the area to meet the neighborhood's needs and desires. Exhibit C-3 indicates that there are only four liquor licensed businesses in the Designated Area. Only three of these (two Hotel and Restaurant licensees and one Beer and Wine licensee) are places where residents in the community could gather for a meal and a drink. The Hearing Officer cannot conclude, based solely upon the testimony of two witnesses (Mr. Mauro and Ms. Dowlen), that the existence of four liquor licensed establishments in the entire Designated Area is adequate to meet community needs or desires. Moreover, the existence of four liquor licensed establishments would not meet the needs or desires of customers at Jammin Joe's for a drink with their meal at the Applicant's restaurant. The Hearing Officer also notes that many of Protestant's concerns regarding the effects of the requested liquor license on the Designated Area (*e.g.* the effect on school students or families in the area, the effects on neighborhood parking, the potential effect on crime in the area) are speculative. There is no evidence that issuance of a liquor license to the Applicant would negatively affect these aspects of community life.

17. However, the Hearing Officer is persuaded by Protestant's suggestion that Jammin Joe's failed to present sufficient evidence of the neighborhood's needs and desires for issuance of the license. In particular, the Hearing Officer is persuaded that the petitions presented by the Applicant are not credible and should not be considered as evidence in support of the Application. Protestant's uncontroverted analysis of Exhibits A-2(a and b) shows that over one half of the signatures on the documents were from persons not residing in the Designated Area. This considerable defect in the Applicant's petitions is highly troublesome and calls into question whether Jammin Joe's petition circulators actually complied with the rules relating to petitions with respect to any of the specific signatures on the documents (*e.g.* the requirement that each signature be affixed to the petition in the presence of the circulator). For these reasons, the Hearing Officer concludes that Jammin Joe's petitions in their entirety should be disregarded when considering neighborhood need and desire for the requested license. Without the petitions, Jammin Joe's presented the testimony of only one unaffiliated witness (Mr. Meyer) in support of the Application. Protestants, in comparison, presented evidence of general neighborhood opposition to the Application (*i.e.* petitions with 89 residents opposing issuance of the license). Jammin Joe's as the Applicant was required to present credible and sufficient evidence of neighborhood needs and desires for a liquor license. The Hearing Officer concludes that Jammin Joe's failed in this requirement, and, therefore, its Application should be denied.

18. In light of the Hearing Officer's recommendation, WNA's request to specifically include certain conditions in the liquor license and the City's request to condition issuance of the license upon submission of proof that the Applicant and its Staff have completed certain training are moot.

ACCORDINLY, having considered the evidence in its entirety, the Hearing Officer concludes that Applicant Melodee Sidebottom, doing business as Jammin Joe's BBQ, LLC, for a Beer and Wine Liquor License for the premises known and designated as 2600 High Street, Denver, Colorado, has failed to sustain her burden to show that there is a need for the requested license to meet the reasonable requirements of the neighborhood; that the residents and owners and managers of businesses within the Designated Area desire that the license issue; and that approval of the Application would not be injurious to the health, welfare, safety or morals of the Designated Area. **IT IS RECOMMENDED that the Application be denied.**

RECOMMENDED this 7th day of November, 2013.

/s/ Anthony Marquez

Anthony Marquez
Hearing Officer

Any party in interest may file objections to the foregoing Recommended Decision within ten (10) calendar days from the date above.

All filings shall be made by email to the Deputy Director, judy.steele@denvergov.org, copying ruthie.sullivan@denvergov.org, john.jennings@denvergov.org, and any opposing parties.

The Deputy Director of the Department of Excise and Licenses will issue a **FINAL DECISION** in this matter following review and consideration of the Recommended Decision, and if applicable, any objections.

CERTIFICATE OF SERVICE

The undersigned hereby states and certifies that one true copy of the foregoing Recommended Decision was sent via email, on the date above, to the following:

Melodee Sidebottom Jammin Joe's BBQ 2600 High Street Denver, Colorado 80205 melodeesidebottom@comcast.net	Dan Douglas Assistant City Attorney 201 W. Colfax Avenue, Dept. 1207 Denver, Colorado 80202 daniel.douglas@denvergov.org	Judy Steele, Deputy Director, Dept. of Excise and Licenses 201 W. Colfax Avenue Denver, Colorado 80202 judy.steele@denvergov.org
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/s/ Anthony Marquez_____

Anthony Marquez
Hearing Officer