



Response to Ethics Complaint From: Jaimie C. Pendleton

8/11/2016

To Whom It May Concern:

I, Nathan Mulkey, Deputy Fire Marshal for the Spokane Fire Department (SFD), have not committed any acts of moral turpitude or dishonesty, or knowingly aided any others in the commission of such acts. Pursuant to Spokane Municipal Code (SMC) 01.04A.110 D (1) (b) and SMC 01.04A.110 D (1) (d), I formally request that the complaint against me by Jamie C. Pendleton be dismissed.

In considering SMC 01.04A.110 D (1) (b), I have not benefitted whatsoever from any of my interactions with personnel at the Spokane Daiquiri Factory. The process of issuing an Assembly Permit to this business, then considering this Ethics Complaint has generated a significant amount of stress and has consumed many hours working on it and generating a response to each interaction with the business, and to the Ethics Commission with regard to this Ethics Complaint. The purpose of the Ethics Commission is to ensure that per SMC 01.04A.010 (A), City officers and employees "...never use their City position, authority or resources for personal gain." I have not benefitted one iota by having any interaction with any member or employee of the Spokane Daiquiri Factory. The complaint by Jamie C. Pendleton does not allege that I have gained or benefitted from Spokane Daiquiri Factory, so even if the allegations that are outlined in the Ethics Complaint are true, they would not constitute a violation of this article.

In considering SMC 01.04A.110 D (1) (d), it is clear that the complaint is frivolous, groundless, and has been brought for the purpose of harassing me. The complaint against me is the result of a reduction in the Maximum Assembly Occupant Load for the tenant space located at 121 N. Wall St. In January 2014, when this space was occupied as "Spokane Downtown Daiquiri Factory," they were allowed to have 224 patrons per the calculations of Shannon Millard, who has since retired. On 5/24/2016, Jamie C. Pendleton applied on the behalf of a new business with the registered trade name of "Spokane Daiquiri Factory" for a new Assembly Permit. I performed the inspections that would be necessary to determine the Maximum Assembly Occupant Load for the new Assembly Permit. The plans submitted by Spokane Daiquiri Factory were the same plans that were submitted in 2014 and I found that there were many discrepancies between the plans and what was actually in the tenant space. Measurements of floor area in actuality are smaller than the plans show, which reduces the number of people that can safely occupy the business. The plans also show tables and chairs where there are actually couches. This further reduces the number of people that can safely fit in the area. The patio area showed 48 chairs, but in actuality, it only had tables and chairs for 24 people. The Maximum Assembly Occupant Load that I calculated was 190 people inside the tenant space, and 24 people out on the patio.

Prior to issuing the Assembly Permit with these numbers, I was contacted by Dean Giles, the Acting Building Official. He had two International Building Code (IBC) concerns that needed to be addressed. The first concern was that the Certificate of Occupancy (CO) for the tenant space was for 95 persons because the prior tenant had more tables and chairs. The second concern was that Giles had performed a survey and found that the IBC allowance for the number of restroom fixtures would not serve any more than 164 persons in the Spokane Daiquiri Factory space. The common area restroom fixtures at Crescent Court serve all of the businesses on the 1st floor of that building, so a new business opening that utilizes these restrooms cannot have a capacity that exceeds the fixture availability. The options that were presented to the Spokane Daiquiri Factory were to add restroom fixtures in their tenant space (as most businesses do), or to have the decreased Maximum Occupant Load.

On 6/17/2016, I was able to issue an Assembly Permit with a Maximum Occupant Load of 164 because Spokane Daiquiri Factory had obtained a new CO for that number. If Spokane Daiquiri Factory is able to add some restroom fixtures to their tenant space, then they may be able to increase their Maximum Assembly Occupant Load to 190 people if they do not lose Assembly Area square footage.

I was not involved with the Assembly Permit process of the Spokane Downtown Daiquiri Factory in 2014, so I do not know why the CO and restroom issues were not addressed at that time.

An additional complaint brought up by Jamie C. Pendleton is that the SFD would not issue Spokane Daiquiri Factory a “double occupancy” – one with tables and chairs for a daytime crowd, and one without tables and chairs for a night club crowd. The Spokane Fire Marshal’s office issued such permits to a handful of bars (including Spokane Downtown Daiquiri Factory) between 2011 and 2014 in an effort to help businesses be more flexible. The effort proved to be difficult to administer and enforce because businesses failed to remove all of their tables and chairs at night, causing unsafe, overcrowded situations. In addition to this, the Permits were difficult to understand and they caused confusion for business employees, and fire inspectors who were at the business to check the occupant loading. This is evidenced by Notices of Violation issued to Spokane Downtown Daiquiri Factory on 2/15/2014, and 2/22/2014 by the Fire Marshal at that time, Lisa Jones. Later in 2014, “double occupancy” Assembly Permits were discontinued. If businesses wanted to increase their capacity for a special event, they could obtain a Special Event Permit and receive a special inspection for a temporary floor plan with a higher occupant load.

There is no prejudice against the Spokane Daiquiri factory. Even though Jamie C. Pendleton feels as though Spokane Daiquiri Factory should be able to pick up where Spokane Downtown Daiquiri Factory left off when it closed its doors, it is a new business, with a new business license, and a different floor plan. We apply the *same* process to all businesses. Only three blocks away there is a bar that opened in 2011 and was given a “double occupancy” Assembly Permit. The owner sold the business to an employee in 2015 (the business never even closed, and it kept the same name) and, because of the new business license, a new Assembly Permit application with floor plans was required. I did the inspection to issue the new Assembly Permit and they were limited to having *one* Maximum Assembly Occupant Load. Since that time, the business has obtained a Special Event Permit for a review of increasing their Maximum Assembly Occupant Load on a busy weekend.

In all of my dealings with the Daiquiri Factory and with Jamie C. Pendleton, I have worked my hardest to follow all code requirements that I am familiar with. I continually strive to maintain a professional, business-friendly and courteous demeanor despite any challenges I encounter. I work to help all businesses and contractors overcome obstacles with the code by presenting options or letting them know what other businesses have done in similar situations. My goal is always that the completion of the inspection process will end with a thank-you. I have never been the subject of an ethics complaint, and I care deeply about maintaining a good reputation. On every inspection that I have done, I have strived to apply the knowledge that I have gained of the International Fire Code, the IBC, and the SMC to each inspection, equally across all buildings and businesses.



8/11/2016

Nathan Mulkey
Spokane Fire Department
Deputy Fire Marshal