



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT
COMMERCIAL SERVICES BUREAU

333 West Ocean Boulevard • Long Beach, CA 90802

February 7, 2003

VM Associates, Inc.
DBA Flamingo Gentleman's Club
2421 E. Artesia Blvd.
Long Beach, CA 90805

Dear Sir:

On February 7, 2003 your application for an adult entertainment permit at 2421 E. Artesia Blvd., Long Beach, CA, was approved subject to the attached requirements that were initialed and signed by Vasken Tatarian on December 12, 2002.

Failure to comply with any of the provisions of Chapter 5.72 of the Long Beach Municipal Code or any of the attached requirements will constitute grounds for suspension or revocation of the permit. In the event that any of the requirements or conditions of this permit are in conflict, the permittee shall adhere to the strictest of the applicable requirements and conditions.

Sincerely,

James A. Goodin
Business Services Officer
Commercial Services Bureau

JAG:lf

FLAMINGO GENTLEMANS CLUB 020703.DOC

Attachment

cc: 9th District Council Office
Chief of Police

Application for Adult Business Entertainment Permit

The statements below reflect the locational and operational requirements of adult oriented businesses in the City of Long Beach as contained in Chapter 5.72 of the Long Beach Municipal Code. Please initial each statement in the blank space provided to evidence your intent to comply with the applicable requirements.

U-T (a) The place of entertainment is not located within three hundred feet (300') from any residential zoning district or residential planned development district within the City; or within one thousand feet (1,000') of any public or private school (kindergarten through twelfth grade) located within the City; or within six hundred feet (600') of a City park; or within five hundred feet (500') of a church (as defined in Section 21.15.510 herein); or within one thousand feet (1,000') of any other adult entertainment business; or within the areas set forth in Section 21.45.110(f). All measurements set forth above shall be made in a straight line, without regard to intervening structures or objects, from the nearest point on the property line of the residential zone, school, church, park or other adult entertainment business, as applicable.

U-T (b) No owner, operator or manager shall permit any entertainer or employee on the premises of the adult entertainment business to engage in a showing of the human male or female genitals, pubic hair, anus, cleft of the buttocks, or vulva with less than a fully opaque covering, and/or the female breasts with less than a fully opaque covering over any part of the nipple or areola and/or covered male genitals in a turgid state. This provision may not be complied with by applying an opaque covering simulating the appearance of the specific anatomical part required to be covered.

U-T (c) No owner, operator or manager shall permit any entertainer or employee on the premises of the adult entertainment business to have intentional physical contact with any patron.

U-T (d) No owner, operator or manager shall permit any person to perform for patrons any entertainment except upon a stage of at least eighteen inches (18") above the level of the floor which is separated by a distance of at least six feet (6') from the nearest area occupied by patrons, and no patron shall be permitted within six feet (6') of the stage while the stage is occupied by an entertainer. S.72.140 C3

U-T (e) No owner, operator or manager shall permit any person under the age of eighteen (18) years within the premises at any time during the hours of operation.

U-T (f) All indoor areas of the place of entertainment in which patrons are permitted, except restrooms, will be open to plain view, unaided by mirrors, electronic

monitoring devices or other devices at all times from all public portion of the establishment.

V-T (g) At least one permitted, authorized security guard shall be on duty within the premises at all times while the adult entertainment business is open for business. The security guard shall be charged with preventing violations of the law and enforcing compliance by patrons with the requirements of this chapter. No security guard required pursuant to this subparagraph shall act as a door person, ticket seller, ticket taker, or attendance person while acting as a security guard.

V-T (h) The premises within which the entertainment is located shall provide sufficient sound absorbing insulation so that noise generated inside the premises shall not be audible anywhere on the adjacent property or public right-of-ways or within any other building or other separate unit within the same building.

V-T (i) The place of entertainment shall have a manager on the premises at all times while the establishment is open to the public.

V-T (j) If the place of entertainment is licensed to serve alcoholic beverages, the permittee shall abide by the rules and regulations set forth by the California Department of Alcoholic Beverage Control.

V-T (k) The stage or entertainment areas shall not be open to view from outside the premises.

V-T (l) Permanent barriers shall be installed and maintained to screen the interior of the premises from public view for each door used as an entrance/exit to the business.

V-T (m) No exterior door or window shall be propped or kept open at any time during the hours of operation.

V-T (n) Any exterior windows shall be covered with opaque covering.

V-T (o) All areas of the place of entertainment accessible to patrons shall be illuminated at least to the extent of two foot (2') candles, minimally maintained and evenly distributed at ground level.

V-T (p) The place of entertainment shall have a door person on the premises at all times the establishment is open to the public who shall check photo identification of all persons entering the premises to ensure that no person under the age of eighteen (18) is permitted on the premises.

V-T (q) The place of entertainment shall provide a security system that visually records and monitors all parking lot areas serving the place of entertainment.

V.T (r) The adult entertainment business shall not operate between the hours of two o'clock (2:00) a.m. and nine o'clock (9:00) a.m.

V.T (s) Parking: Adult entertainment businesses shall comply with the parking requirements set forth in Chapter 21.41 (Off-Street Parking And Loading Requirements). The number of parking spaces provided shall be the equivalent of that required for new construction, regardless of the status of the legal nonconforming parking rights of the previous use.

V.T (t) Displays: The adult entertainment business shall not display any adult oriented material or adult oriented merchandise which would be visible from any location other than from within the premises of the adult entertainment business. This limitation includes newsracks, except as permitted by Long Beach Municipal Code Chapter 14.20 (Newsracks).

I declare under the penalty of perjury that I have read and understood both Chapter 5.72 of the Long Beach Municipal Code and the above and certify that I will comply with the requirements opposite which I have placed my initials.



Signature, Title

12-12-02
Date

VASKew TATARIA
Print Name and Title



OFFICE USE ONLY

Revised 12-12-02

Accepted by: P. LeBeauf Date: 12-3-02
 Zoning Approval Date: 12/3/02 By: Fleming

APPLICATION FOR ADULT ENTERTAINMENT PERMIT

(Please Print All Information/Incomplete Applications Will Not Be Accepted)

Applicant's Name (Legal Ownership Structure): VM Associates INC.

Home Phone: (714) 548-3961 Business Phone: (714) 535-0811

Business Name (d.b.a.): Flamingo Gentleman's club

Business Site Address: 2421 E. Artesia LB. Ca. 90805

Date Business Acquired: N/A

Date Business Proposes to Open: Dec 15, 2002

Days & Time Premises are Open for Inspection: 9:am. 3:00 p.m. M-F
initial business license

Proposed Use(s):

With Dancing by Patrons _____ Without Dancing by Patrons ✓

Please describe adult entertainment: Live stage shows with ~~strip~~ ^{VJ} Dancers
Sit-far away patrons around the stage

Explain briefly the proposed use of the rooms within the building: Storage, manager
offices

Legal description of parcel of land: _____

Copy of lease or contract: _____

Contact Person's Name (authorized agent, manager, etc. . .): Max AHMADI (Legal Rep.)

Contact Person's Phone: (714) 553-2921 714-366-1880
Vasken

Type of Organization: 714-717-1145

- Corporation
- Partnership
- Individual
- Unincorporated Association or Club
- Trust
- L.L.C.
- Other, explain:

OFFICE USE ONLY

Planning & Building Department

Date Received: _____

- Parking plan
- Site plan
- Fully dimensioned interior floor plan

Zoning: Y-Lowrey Date: 12/3/02
Building: _____ Date: _____

General information (all applicants)

Principal place of business (if other than the business address listed on page 1):

618 E. Ball Road
Anaheim, CA 92805

Fictitious business name(s) or d/b/a(s) used:

Flamingo Gentlemen's Club

Place and date of filing fictitious business name statement:

on license from VASKEN TATARIAN
JAN 4 1995 Santa Ana, CA

County(ies) in which fictitious business name statement is (are) filed:

Orange County
Los Angeles County

Names and addresses of all agents and employees authorized to negotiate or otherwise represent individual in connection with any transaction with the City of Long Beach:

~~MAX AHMADI 5215 E Fern Haven Lane, Anaheim, CA 9280~~
~~VASKEN TATARIAN 618 E Ball Road Anaheim, CA 9280~~

Name and address of person (agent) authorized to accept service of process in California:

VASKEN TATARIAN

State whether you are licensed or have ever been licensed by any governmental agency to engage in any business. If so, list each such license held, the city, and county in which held, the number and expiration date thereof:

~~FLAMINGO THEATER, 618 E. BALL RD, ANAHEIM, CA 92804~~
~~VASKEN TATARIAN~~

Is this applicant a subsidiary of a present corporation or business? [] yes [X] no
If yes, explain

How long has the corporation or business been in operation?

6-years

Have you ever had a license revoked or suspended? [] yes [X] no
Reason?

IT WAS NEVER REVOKED OR SUSPENDED.

Business entity or trade name?

Flamingo Gentleman's Club

IF APPLYING AS A CORPORATION

Check One Box: For-Profit Corporation [] Non-Profit Corporation

(if a non-profit corporation, please attach copies of both State and Federal tax exemption certificates)

Name of Corporation: VM Associates

Corporation Number: 1793650

Date and Place of Incorporation: Anheim, CA 11-12-96

Location of Headquarters: 2421 E. Artesia St. Long Beach, CA

Please attach certified copies of Articles of Incorporation and By-Laws, and all amendments thereto to this application.

90802

Names and Residence Address of Corporation Officers/Directors (members of executive board):

Name	Title	Address	Telephone
VASREN TATARIAN	CEO	618 E. Ball Rd. Anaheim, CA 92805	714-535-0811

* Attach additional pages as necessary

Number of shares issued by corporation: 101000

Number of shares retained by corporation: 0

Names and addresses of shareholders, if ten (10) or less, state also the number and type of shares:

100% VASREN TATARIAN 618 E. Ball Rd. Anaheim, CA
90805

Name and address of agent for service of process designated by Corporation with the

Secretary of State of California: Same as above

IF APPLYING AS A CORPORATION

CORPORATE OFFICER I

Name: VASKEN TATARIAN

Title: CEO, president

Alias: _____

Residence Address: 8469 Beach Circle Cypress

Business Address: 6190 E. Ball Rd. CA
Anaheim, CA 90805

Social Security #: 560-75-3280

Date of Birth: July 20, 1960

Driver's License #: N1969031

Residence Phone: 714-414-3961

Business Phone: 714-535-2811

CORPORATE OFFICER II

Name: _____

Title: _____

Alias: _____

Residence Address: _____

Business Address: _____

Social Security #: _____

Date of Birth: _____

Driver's License #: _____

Residence Phone: _____

Business Phone: _____

CORPORATE OFFICER III

Name: _____

Title: _____

Alias: _____

Residence Address: _____

Business Address: _____

Social Security #: _____

Date of Birth: _____

Driver's License #: _____

Residence Phone: _____

Business Phone: _____

CORPORATE OFFICER IV

Name: _____

Title: _____

Alias: _____

Residence Address: _____

Business Address: _____

Social Security #: _____

Date of Birth: _____

Driver's License #: _____

Residence Phone: _____

Business Phone: _____

GENERAL OPERATING CONDITIONS

Complete Each Question

ALCOHOL/FOOD/ADDITIONAL BUSINESSES

Will liquor be sold and consumed on the premise?

Yes [] No

a. If Yes, complete the following box:

Check One Box to Indicate License Type	Alcoholic Beverage Control License No.	Premises Type: Club (restaurant) or Commercial(store)
On sale beer		
On sale beer & wine	Pending	Gentleman's club
On sale distilled spirits		

2. Is a bonafide eating place provided on the premises? (Bona fide eating place means a place which is regularly used for serving meals for compensation, which has suitable kitchen facilities containing conveniences for cooking an assortment of foods for ordinary meals other than fast foods, sandwiches or salads. The kitchen must contain proper refrigeration for food and must comply with all applicable regulations of the Health and Human Services Department.

[] Yes No

a. If yes, list types of food sold: _____

b. If no, list any food products (such as snacks) sold: _____

3. Are non-alcoholic beverages sold?

Yes [] No

4. How many tables for seating? 20

Are other types of business conducted on the premises?

Yes [] No

a. If yes, list type(s): ~~Food~~ Dancing

6. Are pool tables provided?

[] Yes No

a. If yes, indicate number: _____

7. Is there a license for the pool tables?

[] Yes No

a. If yes, license number: _____

8. Are amusement machine(s) and/or jukebox(es) provided?

[] Yes No

a. If yes, indicate number and type: _____

9. Is there a license for the amusement machine(s) and or jukebox(es)?

[] Yes No

a. If yes, decal number(s): _____

10. Owner of machine(s) and/or Jukebox(es):

Name: _____ MA

Address: _____

Telephone No. (____) _____

GENERAL OPERATING CONDITIONS (Continued)

SECURITY

Number of security officers: 1 Per shift

12. Is any other type of security provided? Cameras [X] Yes [] No

a. If yes, describe type of security: Cameras with Recording Capabilities in The Parking Structure as well as indoor.

Days and hours security officers or other security will be provided: (please fill out completely)

Table with 8 columns (Day, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, Sunday) and 2 rows (Hours of Security, 11 am, 2 am).

Describe minimum number of officers: 1

13. Will a private security firm be used? [] Yes [X] No

a. If Yes, Provide the following information of the contracted security firm:

Name: City Business License No.

Address: Telephone No.

Private Patrol Operator Number:

ADMISSION and/or MEMBERSHIP FEES CHARGED

14. Will minors be allowed on the premises? [] Yes [X] No

15. Will the premises be open to the general public? [X] Yes [] No

16. Will an admission fee be charged? [X] Yes [] No

a. If yes, fee schedule: Depends on market demand Varying from 0-\$1.

17. Is there a private area for exclusive use of members and their guests only? [] Yes [X] No

a. If yes, types of membership and fees:

18. Will guests of members pay an admission fee or other charges? [X] Yes [] No

a. If yes, describe the fee schedule or other charges: General Public

GENERAL OPERATING CONDITIONS (Continued)

HOURS OF OPERATION

Establishment hours of operation by day:

(please fill out completely)

Day	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Open	11 a.m.	11:30 a.m.	11:00 a.m.	11:00 a.m.	11 a.m.	11 a.m.	11 a.m.
Close	2:00 a.m.	2:00 a.m.	2:00 a.m.	2:00 a.m.	2 a.m.	2 a.m.	2 a.m.

PARKING FACILITIES AND ARRANGEMENTS

19. Is parking available? Yes [] No

20. Is parking facility part of the business premises? Yes [] No

a. If no, what is the street address of the off-premises parking facility? _____

b. Describe business arrangement made with owner of parking facility if not part of business premises. (please attach copy of parking contract or deed restriction) _____

c. Days and hours parking facility will be available? 7-days 11:am To 2:00 am

d. How many individual parking spaces (approximately)? 54

End of General Operating Conditions Section
Please Continue to Next Section

Entertainment - Restaurant []

Entertainment - Tavern (bar)

Entertainment - Other []

Does the Proposed Activity have:

Outdoor entertainment? [] Yes No

If yes, please describe: _____

Dancing by performers? Yes [] No

Live music by more than two (2) performers? Yes [] No

Amplified music (live)? Yes [] No

Amplified music (recorded)? Yes [] No

Disc Jockey? Yes [] No

Karaoke? Yes [] No

Adult Entertainment as defined by L.B.M.C Section 5.72.115(B)? Yes [] No

Will the establishment serve as a family pool/billiard hall as provided in Section 5.72.180 of the Long Beach Municipal Code? [] Yes No

Any other type of entertainment not listed above? [] Yes No

If yes, briefly describe the entertainment activity.

Stage Area Yes [] No

If yes, provide dimensions of stage area. L 16 x W 9 = _____ sq. ft. Height: 29"

Describe stage material and surface type: wood frame, and plastic tile
Surf

Schedule of entertainment. Please provide days of the week and time of day. If entertainment is not provided the same days and times every week, please provide a detailed schedule of the specific dates and times of the entertainment. Attach an additional sheet if necessary:
 (please fill out completely)

Day	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Entertainment Type	Dan/Billi and the above listed activities						
Start Time	11:am	11:00am	11:00am	11:00am	11:00am	11:00am	11:00am
End Time	2:am	2:00am	2:00am	2:00am	2:00am	2:00am	2:00am

Comments: _____

RELEASE FORM

The undersigned, VASKEN TATARIM, hereby authorizes the City of Long Beach, by and through its appropriate officers, agents and employees to verify and confirm the information contained in this application, and to conduct such other investigations as may be reasonably required by the City of Long Beach, its officers, agents and employees for the purpose of determining the capability, fitness and capacity of:

(D.B.A.) FLAMINGO GENTELMAN'S CLUB

to obtain the (entertainment type) ADULT permit/license.

The applicant by signing this application consents that service of any notice required or provided for by the laws, rules, regulations, or ordinances of the City of Long Beach upon the person at the address designated in this application as the business address, will constitute sufficient and legal notice. Any change in the person or the address listed in the application may be made only in writing to the Director of Financial Management.

The applicant consents and agrees that full compliance will be made with all applicable State laws and City ordinances governing the conduct of the particular type of business activity for which a business license or permit is requested. The applicant by signing this application understands that any incomplete or false information may constitute grounds for denial.

I swear under penalty of perjury that I have read the forgoing application. The application is completed under my supervision and that all information and statements regarding this application are true and correct.

V.M. ASSOCIAT BY VASKEN TAT C.E.O 11-26-02
SIGNATURE (OWNER) TITLE DATE

N 9169031 CA
DRIVER'S LICENSE OR I.D. CARD NUMBER STATE

Application for Adult Business Entertainment Permit

The statements below reflect the locational and operational requirements of adult oriented businesses in the City of Long Beach as contained in Chapter 5.72 of the Long Beach Municipal Code. Please initial each statement in the blank space provided to evidence your intent to comply with the applicable requirements.

U T (a) The place of entertainment is not located within three hundred feet (300') from any residential zoning district or residential planned development district within the City; or within one thousand feet (1,000') of any public or private school (kindergarten through twelfth grade) located within the City; or within six hundred feet (600') of a City park; or within five hundred feet (500') of a church (as defined in Section 21.15.510 herein); or within one thousand feet (1,000') of any other adult entertainment business; or within the areas set forth in Section 21.45.110(f). All measurements set forth above shall be made in a straight line, without regard to intervening structures or objects, from the nearest point on the property line of the residential zone, school, church, park or other adult entertainment business, as applicable.

U T (b) No owner, operator or manager shall permit any entertainer or employee on the premises of the adult entertainment business to engage in a showing of the human male or female genitals, pubic hair, anus, cleft of the buttocks, or vulva with less than a fully opaque covering, and/or the female breasts with less than a fully opaque covering over any part of the nipple or areola and/or covered male genitals in a turgid state. This provision may not be complied with by applying an opaque covering simulating the appearance of the specific anatomical part required to be covered.

U T (c) No owner, operator or manager shall permit any entertainer or employee on the premises of the adult entertainment business to have intentional physical contact with any patron.

U T (d) No owner, operator or manager shall permit any person to perform for patrons any entertainment except upon a stage of at least eighteen inches (18") above the level of the floor which is separated by a distance of at least six feet (6") from the nearest area occupied by patrons, and no patron shall be permitted within six feet (6") of the stage while the stage is occupied by an entertainer.

U T (e) No owner, operator or manager shall permit any person under the age of eighteen (18) years within the premises at any time during the hours of operation.

U T (f) All indoor areas of the place of entertainment in which patrons are permitted, except restrooms, will be open to plain view, unaided by mirrors, electronic

monitoring devices or other devices at all times from all public portion of the establishment.

V-T (g) At least one permitted, authorized security guard shall be on duty within the premises at all times while the adult entertainment business is open for business. The security guard shall be charged with preventing violations of the law and enforcing compliance by patrons with the requirements of this chapter. No security guard required pursuant to this subparagraph shall act as a door person, ticket seller, ticket taker, or attendance person while acting as a security guard.

V-T (h) The premises within which the entertainment is located shall provide sufficient sound absorbing insulation so that noise generated inside the premises shall not be audible anywhere on the adjacent property or public right-of-ways or within any other building or other separate unit within the same building.

V-T (i) The place of entertainment shall have a manager on the premises at all times while the establishment is open to the public.

V-T (j) If the place of entertainment is licensed to serve alcoholic beverages, the permittee shall abide by the rules and regulations set forth by the California Department of Alcoholic Beverage Control.

V-T (k) The stage or entertainment areas shall not be open to view from outside the premises.

V-T (l) Permanent barriers shall be installed and maintained to screen the interior of the premises from public view for each door used as an entrance/exit to the business.

V-T (m) No exterior door or window shall be propped or kept open at any time during the hours of operation.

V-T (n) Any exterior windows shall be covered with opaque covering.

V-T (o) All areas of the place of entertainment accessible to patrons shall be illuminated at least to the extent of two foot (2') candles, minimally maintained and evenly distributed at ground level.

V-T (p) The place of entertainment shall have a door person on the premises at all times the establishment is open to the public who shall check photo identification of all persons entering the premises to ensure that no person under the age of eighteen (18) is permitted on the premises.

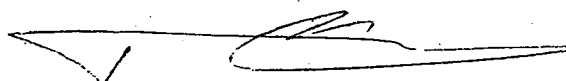
V-T (q) The place of entertainment shall provide a security system that visually records and monitors all parking lot areas serving the place of entertainment.

V.T (r) The adult entertainment business shall not operate between the hours of two o'clock (2:00) a.m. and nine o'clock (9:00) a.m.

V.T (s) Parking: Adult entertainment businesses shall comply with the parking requirements set forth in Chapter 21.41 (Off-Street Parking And Loading Requirements). The number of parking spaces provided shall be the equivalent of that required for new construction, regardless of the status of the legal nonconforming parking rights of the previous use.

V.T (t) Displays: The adult entertainment business shall not display any adult oriented material or adult oriented merchandise which would be visible from any location other than from within the premises of the adult entertainment business. This limitation includes newsracks, except as permitted by Long Beach Municipal Code Chapter 14.20 (Newsracks).

I declare under the penalty of perjury that I have read and understood both Chapter 5.72 of the Long Beach Municipal Code and the above and certify that I will comply with the requirements opposite which I have placed my initials.



Signature, Title

12-12-02
Date

VASHew TATARim
Print Name and Title

ORIGINAL FILED

MAR 10 1999

**LOS ANGELES
SUPERIOR COURT**

1 LAW OFFICE OF RONALD TALMO
2 RONALD TALMO, Esq. #78376
3 1055 N. Main St., Suite 1100
4 Santa Ana, California 92701
5 (714) 558-8427

6 Attorney for Petitioner, V & M Associates, Inc.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 V & M ASSOCIATES, INC.,

12 Petitioner,

13 vs.

14 CITY OF LONG BEACH,

15 Respondent.
16

No. **B0206790**

COMPLAINT FOR DECLARATORY
RELIEF; PETITION FOR WRIT
OF MANDATE, PURSUANT TO
CCP § 1085, COMPELLING THE
CITY OF LONG BEACH TO ACT
ON AND ISSUE AN
ENTERTAINMENT PERMIT

17 Petitioner alleges:

18
19 1. Petitioner is a Corporation, existing under the laws of the State of California, who
20 seeks an entertainment permit for the Flamingo Theater, located at 2421 E. Artesia Blvd., in the
21 City of Long Beach. The type of entertainment contemplated to be offered at the Flamingo
22 Theater is protected under the U.S. Constitution, and Article 1, Section 2 of the State
23 Constitution.

24 2. Respondent, the City of Long Beach, was, and now is, an administrative agency created
25 and existing under the laws of California, possessing concurrent jurisdiction to approve
26 entertainment permits within the City of Long Beach, along with the Department of Financial
27 Management who actually issues such permits.

28 3. Long Beach Municipal Code Section 5.72.110 prohibits persons from carrying on,

LAW OFFICE OF RONALD TALMO
1055 N. Main St., Suite 1100
Santa Ana, California 92701
(714) 558-8427

32

1 maintaining, or conducting any entertainment activity within the City without first obtaining an
2 entertainment permit. Section 5.72.115 defines "entertainment activity" as any activity conducted
3 for the primary purpose of diverting or entertaining clientele in a premises open to the general
4 public. Said activity shall include, but shall not be limited to, dancing, whether by performers or
5 patrons of the establishment, live musical performances, instrumental or vocal, when carried on
6 by more than two persons or, whenever amplified; musical entertainment provided by a disc
7 jockey or karaoke, or any similar entertainment activity involving amplified reproduced music.

8 4. On September 22, 1997, Petitioner submitted an application for an entertainment
9 permit to the Department of Financial Management. Petitioner's proposed use of the premises
10 was for an adult theater featuring on-stage semi-nude and nude dancing with accompanying
11 recorded music, played through an amplified sound system, to patrons 18 years of age and older.
12 Petitioner also proposed to offer a type of entertainment known within the industry as "couch
13 dancing", whereby a partially clothed female entertainer performs a close proximity dance with a
14 patron of the establishment. As nude dancing would be offered at Petitioner's establishment, only
15 non-alcoholic beverages would be served.

16 5. Respondent characterizes Petitioner's establishment as an adult entertainment business
17 within the meaning of the City's Municipal Code. Long Beach Municipal Code Section
18 21.15.110 E provides that a "Cabaret" meaning a nightclub, theater, or other establishment which
19 features live performances by topless and/or bottomless dancers, exotic dancers, strippers,
20 wrestlers, or similar entertainers, and where such performances are distinguished or characterized
21 by an emphasis on specified sexual activities or display specific anatomical areas, is an adult
22 entertainment business. Section 21.15.110 I defines specified anatomical areas as (1) less than
23 completely and opaquely covered human genitals, pubic region, buttocks, and female breast
24 below the point immediately above the top of the areola; and (2) human male genitals in a
25 discernibly turgid state, even if completely and opaquely covered. Section 21.15.110 J defines
26 specified sexual activities as (1) actual or simulated sexual intercourse, anal intercourse, oral or
27 anal copulation, bestiality, pedophilia, necrophilia, direct physical stimulation of unclothed
28 genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory

1 functions in the context of sexual a relationship; (2) clearly depicted human genitals in a state of
2 sexual stimulation, arousal, or tumescence; (3) use of human or animal masturbation, sodomy,
3 oral copulation, coitus, ejaculation; (4) fondling or touching of nude human genitals, pubic
4 region, buttocks or female breast; (5) masochism, erotic or sexually oriented torture, beating or
5 the infliction of pain; (6) erotic or lewd touching, fondling, or other contact with an animal by a
6 human being; and (7) human erection, urination, menstruation, vaginal or anal irrigation.

7 6. As a consequence of being characterized as an adult entertainment business, as defined
8 by Section 21.15.110, Petitioner is further required to conform his establishment to certain
9 enumerated development standards, particularly pertaining to adult entertainment businesses, in
10 order to ensure that the use of the establishment, as an adult entertainment business, does not
11 adversely impact adjacent uses. For example, Long Beach Municipal Code Section 21.45.110 A
12 prohibits adult entertainment businesses from being located within certain distances from other
13 types of land uses, such as a church, City park, or public school. Section 21.45.110 C requires an
14 adult entertainment business to provide security guards, state licensed, armed, uniformed, and
15 approved by the Long Beach Police Department, the number of which to be determined ad hoc
16 by the Chief of Police. Section 21.45.110 E requires all areas of adult entertainment businesses to
17 be illuminated at a minimum of one-foot candle, minimum maintained and evenly distributed at
18 ground level. Section 21.45.110 F prohibits adult entertainment businesses from operating
19 between the hours of 12:00 a.m. and 9:00 a.m.

20 7. Subsequent to Petitioner's application for an entertainment permit to feature nude
21 entertainment, the City of Long Beach amended Chapter 5.72 of their municipal code,
22 concerning entertainment permits, to prohibit public nudity within the City, notwithstanding any
23 connection with speech and/or expressive activity. Long Beach Municipal Code Section
24 5.72.140 C prohibits an owner or other person with managerial control over any adult
25 entertainment business from permitting any person on the premises of an adult entertainment
26 business to engage in a live showing of the human male or female genitals, pubic area, or
27 buttocks with less than a fully opaque covering, and/or the female breasts with less than a fully
28 opaque covering over any part of the nipple or areola and/or covered male genitals in a

1 discernibly turgid state. Section 5.72.140 C also prohibits any person from performing for
2 patrons any entertainment except upon a stage at least 18 inches above the level of the floor
3 which is separated by a distance of at least 6 feet from the nearest area occupied by patrons, and
4 no patron shall be permitted within 6 feet of the stage while the stage is occupied by an
5 entertainer.

6 8. Respondent has a clear, present, and ministerial duty to accept and process applications
7 for entertainment permits pursuant to Long Beach Municipal Code Section 5.72.120. Specifically
8 Section 5.72.120 C requires the Director of Financial Management to refer an application for an
9 entertainment permit to all concerned City departments for investigation. Those concerned
10 departments are required to file a report stating their recommendations regarding the approval or
11 denial of such permit within 60 days of receiving the request from the Director of Financial
12 Management. After receiving the reports from the City departments, Section 5.72.120 D 1
13 mandates the Director of Financial Management to transmit the application, together with those
14 reports and recommendations of the City departments, to the City Council for a hearing.

15 9. Pursuant to Long Beach Municipal Code Section 5.72.120 D 4, if the City Council
16 determines that (1) the application is complete and truthful; (2) where the applicant is an entity,
17 that the entity is a bona fide entity, organized and conducted for a lawful purpose; (3) the persons
18 interested in the ownership and operation of the entity and the officers and trustees of the entity
19 are law abiding persons and persons who will operate and conduct the business or activity in a
20 lawful manner; and (4) the public peace, welfare, and safety will not be impaired, than the City
21 Council is required to either approve the application, grant a short-term permit under Section
22 5.72.126, or deny the application altogether.

23 10. Notwithstanding the approval by the City Council, Long Beach Municipal Code
24 Section 5.72.120 D prohibits the business from operating until the Director of Financial
25 Management actually issues the permit. Section 5.72.120 D 4 mandates the issuance of the
26 permit provided that the applicant has met all conditions imposed by any City department, has
27 complied with all applicable laws, and has paid the applicable license tax and permit fees.

28 11. Petitioner has obtained approval by all City departments concerned with the operation

1 of Petitioner's business. The Department of Planning and Building has conditionally approved
2 the modifications Petitioner proposed to make to the existing structure in converting the structure
3 to an adult entertainment theater.

4 12. Petitioner has a clear, present, and substantial right to the performance of
5 Respondent's duty in that Petitioner has duly applied for an entertainment permit, deemed
6 complete by the Department of Financial Management on November 13, 1997, but Respondent
7 has failed and refused to forward the application to the City Council as mandated by Section
8 5.72.120 D 1.

9 13. Petitioner is beneficially interested in the issuance of the writ in that Petitioner has
10 duly applied for an entertainment permit, and pursuant to Long Beach Municipal Code Section
11 5.72.110, is prohibited from operating without such permit.

12
13 **THE CITY OF LONG BEACH'S ENTERTAINMENT PERMIT APPLICATION**
14 **PROCESS IS CONSTITUTIONALLY DEFECTIVE IN THAT IT LACKS TIME LIMITS**
15 **BY WHICH THE APPLICATION MUST BE APPROVED OR DISAPPROVED**

16 14. The U.S. Constitution requires that applications for licenses and permits, which
17 impact First Amendment protected activities, be acted upon within a reasonably brief period of
18 time to avoid the unconstitutional prior restraint of protected speech, which would result from
19 any undue delay.

20 15. The City of Long Beach's application process for approving or disapproving
21 entertainment permits is constitutionally defective, as it related to Petitioner's First Amendment
22 protected activities, in that it lacks any time limits by which the City Council must act on his
23 application for an entertainment permit.

24 16. Long Beach Municipal Code Section 5.72.120 D requires the Director of Financial
25 Management to transmit the application, together with the reports and recommendations of the
26 City departments, to the City Council for hearing and shall notify the applicant of the time and
27 place of the hearing which shall be held before the City Council on the first **available** hearing
28 date.

17. Section 5.72.120 D lacks any definite time limits by which the hearing must take

1035 N. M...
SANT
(714) 55-
TE 1100
2701
558-3981

TE 1100
701
538-3981
1055 N. MA
SANTA
(714) 538-3981

1 place. The absence of any definite and objective time limits by which this hearing must take
2 place enables the City Council to indefinitely delay any such hearing required by Section
3 5.72.120 D. Indeed, under Section 5.72.120 D, the City Council could decide that the next
4 available hearing date is 6 months from the date on which the Director of Financial Management
5 transmits the application to them. Alternatively, other City matters may occupy future hearing
6 dates. In any case, the potential exists that the hearing will take place beyond the reasonably brief
7 time period mandated by the U.S. Constitution.

8 18. The City of Long Beach's application process for approving or disapproving
9 entertainment permits is also constitutionally defective, as it related to Petitioner's First
10 Amendment protected activities, in that it lacks any time limits by which the Director of
11 Financial Management must actually issue the entertainment permit in the event the City Council
12 approves such application after an eventual hearing.

13 19. Long Beach Municipal Code Section 5.72.120 D 4, provides in relevant part, that
14 upon approval of the application by the City Council, the Director of Financial Management shall
15 issue the permit, provided that the applicant has met all conditions imposed by any City
16 department, has complied with all applicable laws, and has paid the applicable license tax and
17 permit fees. Section 5.72.120 D 4 further provides that the **applicant** shall have 180 days after
18 City Council approval to obtain the permit, and failure to do so within that period shall render the
19 City Council approval void, unless an extension of the compliance period is granted by the City
20 Council before the compliance period has ended.

21 20. In the event Petitioner has complied with all conditions imposed by any City
22 department, the Director of Financial Management can still abstain from issuing the permit
23 because Section 5.72.120 D 4 lacks any time periods by which the issuance of the entertainment
24 permit must take place. Indeed, in the event the Director of Financial Management withholds
25 issuance of the entertainment permit for more than 180 days of the City Council's approval,
26 Petitioner would be required to re-submit his application, as the City Council's approval would
27 be rendered void pursuant to Section 5.72.120 D 4.

1055 N. MAIN ST
SANTA ANA
(714) 558-7011
58-3981

1
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE CITY OF LONG BEACH'S ENTERTAINMENT PERMIT APPLICATION PROCESS IS CONSTITUTIONALLY DEFECTIVE IN THAT IT ALLOWS CITY OFFICIALS TO IMPOSE EXCESSIVE INVESTIGATION AND NOTIFICATION FEES

21. The U.S. Constitution also requires permit schemes, which impact First Amendment protected activities, to prescribe adequate and definite standards by which to guide City officials when they set permit fees. Long Beach Municipal Code Section 5.72.110 A 4 allows the City to collect a non-refundable investigation and notification fee, as set by City Council resolution, at the time the application is filed.

22. Pursuant to Section 5.72.110 A 4, the City is free to collect whatever fees the City deems appropriate at the time the application for an entertainment permit is filed. Depending on the type of entertainment the applicant proposes to offer, the City is able to set the notification and investigation fee, financially impossible for the applicant to meet, that could effectively bar certain types of establishments within the City of Long Beach that the City disagrees with. As a matter of economics, if the City Council sets a disproportionately excessive fee that the applicant cannot meet, the applicant does not conduct business in the City of Long Beach. Thus, the City of Long Beach could set Petitioner's notification and investigation fee to prevent him from exercising his First Amendment protected activities.

23. Pursuant to Section 5.72.120 D 3 C, the applicant for an entertainment permit is required to pay all costs of notice of the hearing, required to be given to affected property owners and occupants, in the manner prescribed by the Director of Financial Management. This Section also affords City officials excessive discretion to set disproportionately excessive fees in order to silence Petitioner's First Amendment protected speech.

THE CITY OF LONG BEACH'S ENTERTAINMENT PERMIT APPLICATION PROCESS IS CONSTITUTIONALLY DEFECTIVE IN THAT IT GRANTS EXCESSIVE SUBSTANTIVE DISCRETION TO CITY OFFICIALS IN DECIDING WHETHER TO APPROVE AND ISSUE AN ENTERTAINMENT PERMIT

24. The U.S. Constitution further requires permit schemes, which impact First Amendment protected activities, to contain definite and objective standards by which to guide the decision maker in approving or disapproving such permits, to avoid the danger of self-

1055 N. MAIN ST.
SANTA ANA, CA 92701
(714) 538-8600

1 censorship. The City of Long Beach's entertainment permit scheme, as it relates to Petitioner's
2 First Amendment protected activities, endows City officials with excessive substantive discretion
3 in deciding whether to approve or disapprove his entertainment permit.

4 25. Long Beach Municipal Code Section 5.72.120 D 4 provides that at the hearing, if the
5 City Council determines that (1) the application is complete and truthful; (2) where the applicant
6 is an entity, it is a bona fide entity, organized and conducted for a lawful purpose; (3) the
7 applicant, the persons interested in the ownership and the operation of the entity, and the officers
8 and trustees of the entity are law abiding persons and persons who will operate and conduct the
9 business or activity in a lawful manner; and (4) that the public peace, welfare, and safety will not
10 be impaired, than either the application shall be approved, a short-term permit, as described in
11 Section 5.72.126, shall be approved, or denied.

12 26. The City of Long Beach's entertainment permit application process is constitutionally
13 defective in that it allows the City Council to consider whether the applicant is a law abiding
14 person who will operate and conduct the business in a lawful manner. Section 5.72.120 D 4 lacks
15 any definite and objective standards by which to measure the applicant's conduct, as well as the
16 conduct of those other persons interested in the ownership and operation of the business, as it
17 relates to the operation of Petitioner's business. For instance, what conduct makes the Petitioner
18 not a law abiding person who will not operate and conduct the business in a lawful manner.
19 Thus, the City Council is free to define and apply their definition of what a law abiding person is,
20 and exercise discretion in determining whether the persons interested in the ownership and
21 operation of Petitioner's business will operate and conduct the business in a lawful manner.

22 27. Section 5.72.120 D 4 also allows the City Council to consider whether the public
23 peace, welfare and safety will be adversely affected in deciding whether to approve an
24 application for an entertainment permit. Such vague standards as public peace, welfare and safety
25 do not comport with the definite and objective standards required under the U.S. Constitution, in
26 the context of permit and licensing schemes that impact First Amendment protected activities.
27 The City Council is endowed with incredible discretion in determining whether the public peace,
28 welfare and safety are adversely affected. This amount of unconstitutional discretion allows the

1055 N. MAIN ST.
SANT
(714) 558-3981
TE 1100
2701
558-3981

1 City Council to disapprove Petitioner's application for an entertainment permit for any reason
2 and clothe the denial of Petitioner's entertainment permit with a determination that the public
3 peace, welfare and safety are adversely affected, thus effectively censoring Petitioner's First
4 Amendment protected speech.

5 28. Section 5.72.120 D 4 requires that in the event the City Council approves the
6 application for an entertainment permit, the Director of Financial Management shall issue the
7 permit, provided that the applicant has met all conditions imposed by any City Department, has
8 complied with all applicable laws, and has paid the applicable license tax and permit fees.

9 29. The ability for any concerned City department to impose any conditions on
10 Petitioner's application for an entertainment permit, along with the Director of Financial
11 Management's power to forestall the issuance of an entertainment permit, if in the Director's
12 opinion those conditions have not been satisfied, further renders City officials with an
13 unconstitutional amount of discretion in deciding whether to issue Petitioner an entertainment
14 permit. For example, Long Beach Municipal Code Section 21.45.110 C, allows the Chief of
15 Police to determine the number of security guards required at an adult entertainment business,
16 and also allows the Chief to increase that number at any time, if it is determined, in the Chief's
17 discretion, that such increase is necessary to protect the public peace and the surrounding
18 neighborhood. In the context of First Amendment protected activities, such as Petitioner's, the
19 ability for the Chief of Police to prescribe any number could have the effect of prohibiting
20 Petitioner from operating as an adult entertainment business. It could be cost prohibitive on
21 Petitioner's business to require him to employ 5 security guards. City officials are thus able to
22 deny Petitioner's First Amendment protected activities by requiring the employment of a
23 prohibitive number of security guards.

24 30. The 180 day period, under Section 5.72.120 D 4, in which the applicant for an
25 entertainment permit has to comply with those conditions before the Director of Financial
26 Management is required to issue the entertainment permit, allows the City sufficient time to
27 amend any ordinance concerning the operation of Petitioner's adult entertainment business, and
28 allows City departments the ability to impose any additional requirements in which Petitioner

1 must comply with before his entertainment permit will issue. Such excessive discretion, allows
2 the Director of Financial Management the ability to indefinitely forestall Petitioner from
3 engaging in his First Amendment protected activities.

4 31. The excessive substantive discretion in which the City of Long Beach's Municipal
5 Code Chapter 5.72, concerning entertainment permits, endows City officials, in the context of
6 Petitioner's First Amendment protected activities, amounts to an unconstitutional prior restraint.

7
8 **A CAUSE OF ACTION FOR DEPRIVATION OF PETITIONER'S RIGHTS UNDER
9 THE U.S. CONSTITUTION HAS ACCRUED**

10 32. The Director of Financial Management, in not forwarding Petitioner's application to
11 the Long Beach City Council for hearing, has deprived Petitioner of his First Amendment rights,
12 giving rise to a cause of action under Title 42 U.S.C. § 1983.

13 33. The delay resulting from the City Council not being able to decide and approve
14 Petitioner's application for an entertainment permit has deprived Petitioner of his First
15 Amendment rights under the U.S. Constitution, and Article I, Section 2 of the State Constitution.

16 **THE FAILURE TO ACT UPON PETITIONER'S ENTERTAINMENT PERMIT
17 APPLICATION HAS VIOLATED THE PROVISIONS OF THE PERMIT
18 STREAMLINING ACT, AS CONTAINED IN GOVERNMENT CODE SECTION
19 65920 et. seq.**

20 34. The Permit Streamlining Act, applicable to all public agencies, including charter
21 cities, was enacted in order to ensure a clear understanding of the specific requirements which
22 must be met in connection with the approval of *development projects* and to expedite decisions
23 on such projects. For the purposes of the Streamlining Act, *development project*, as defined in
24 Government Code Section 65928, means any project undertaken for the purpose of development,
25 including a project involving the issuance of a permit for construction or reconstruction, but not a
26 permit to operate. Government Code Section 65928 further provides that a *development project*
27 does not include any ministerial projects proposed to be carried out by public agencies.
28 Government Code Section 65931 provides that a *project* means any activity involving the
issuance to a person of a lease, permit, license, certificate, or other entitlement for use, by one or

LAW OFFICE OF RICHARD J. IALOMO
1055 N. J. STREET
SAN ANTONIO, TEXAS 78201
(714) 556-5583

1 more public agencies.

2 35. Government Code Section 65952 (a) provides that any public agency which is a
3 responsible agency for a development project that has been approved by the lead agency shall
4 approve or disapprove the development project within either 180 days from the date on which the
5 lead agency has approved the project , or within 180 days of the date on which the completed
6 application for the development project has been received and accepted as complete by that
7 responsible agency, whichever period is longer.

8 36. Petitioner's application for an entertainment permit was deemed complete by the
9 Department of Financial Management as of November 13, 1997. The 180 day time period by
10 which such applications must be either approved or disapproved, as mandated by the provisions
11 of the Permit Streamlining Act, expired as of May 12, 1998. Petitioner's application for an
12 entertainment permit has not been approved or disapproved within the statutorily mandated time
13 period.

14 37. Government Code Section 65956 (b) provides that in the event a lead agency or a
15 responsible agency fails to act to approve or disapprove a development project within the time
16 limits required by this article, the failure to act shall be deemed approval of the permit
17 application for the development project. However, the permit shall be deemed approved only if
18 the public notice required by law has occurred.

19 38. Petitioner is informed and believes that his application for an entertainment permit,
20 presently before the City of Long Beach, is covered by the provisions of the Permit Streamlining
21 Act. Petitioner's proposed use of the establishment as an adult entertainment theater requires him
22 to obtain an entertainment permit before operating. Petitioner has made substantial additions and
23 modifications to the existing structure in order to conform with both adult entertainment industry
24 standards, and the City of Long Beach's special development standards, as contained in Chapter
25 21.45 of the City's municipal code, applicable solely to adult entertainment businesses. Without
26 an entertainment permit, Petitioner's business would be rendered useless.

27 39. Petitioner is informed and believes that the City of Long Beach's position is that
28 Petitioner's application for an entertainment permit is not covered by the Permit Streamlining

1055 N. MAIN ST.
SANTA ANA
(714) 551-9270
558-3981

1 Act because the issuance of an entertainment permit involves merely a permit to operate, and
2 thus excluded from the Permit Streamlining Act under the definition of *development project* as
3 contained in Government Code Section 65928.

4 40. Petitioner has exhausted administrative remedies by requesting immediate
5 consideration and issuance of his entertainment permit from the Department of Financial
6 Management.

7 41. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law,
8 other than the relief sought in this petition, in that Petitioner can only obtain an entertainment
9 permit by Respondent acting on Petitioner's application, and damages would be an inadequate, as
10 well as unobtainable relief.

11 /////
12 /////
13 /////
14 /////
15 /////
16 /////
17 /////
18 /////
19 /////
20 /////
21 /////
22 /////
23 /////
24 /////
25 /////
26 /////
27 /////
28 /////

1055 N. MAINT. ST.
SANT. (714) 556-3981
TELE 1100
/2701
536-3981

1 WHEREFORE, Petitioner prays:

2 1. That the court issue an alternative writ of mandate commanding Respondent to forward
3 the completed application to the City Council, according to law, or to show cause before this
4 court, at a time specified by court order, why Respondent has not done so and why a peremptory
5 writ should not issue.

6 2. That the court require Respondent to issue an entertainment permit with basic fire and
7 safety conditions, as a matter of law, because Respondent has failed to act on Petitioner's
8 application within the statutorily prescribed period, pursuant to Government Code Section
9 65956 (b).

10 3. That, on the return of the alternative writ and the hearing of this petition, this court
11 issue its peremptory writ of mandate commanding Respondent to forward the completed
12 application to the City Council, according to law.

13 4. That the court order Respondent to issue Petitioner an entertainment permit, with basic
14 fire and safety conditions, on the grounds that Respondent's entertainment permit scheme is
15 constitutionally defective.

16 5. For DECLARATORY RELIEF, declaring whether or not Petitioner's application for
17 an entertainment permit is covered by the Permit Streamlining Act, as contained in Government
18 Code Section 65920 et. seq.

19 5. For costs of suit herein incurred;

20 6. For attorneys fees; and

21 7. For such other and further relief as the court may deem proper.

24 Dated: March 10, 1999

Respectfully Submitted,

26 Ronald Talmo
27 Ronald Talmo,
Attorney for Petitioner,
V & M Associates, Inc.

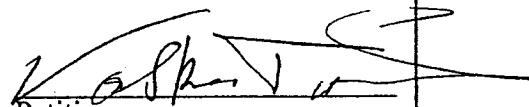
VERIFICATION

1
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
3

I, Vasken Tatarian, am the Petitioner in the above entitled proceeding. I have read the foregoing petition and know the contents thereof. The same is true of my knowledge, except as to those matter which are therein alleged on information and belief, and as to those matter, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 3-9-99


Petitioner,
Vasken Tatarian
V & M Associates, Inc.

1055 N. MAIN ST.
SANTANA
(714) 55-
TYPE 1100
92701
538-3981

1 LAW OFFICE OF RONALD TALMO
2 RONALD TALMO, Esq. #78376
3 1055 N. Main St., Suite 1100
4 Santa Ana, California 92701
5 (714) 558-8427

6 Attorney for Petitioner and Plaintiff, V & M Associates, Inc.

ORIGINAL FILED

APR 23 1999

**LOS ANGELES
SUPERIOR COURT**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 V & M ASSOCIATES, INC.,
12 Petitioner and Plaintiff
13 vs.
14 CITY OF LONG BEACH,
15 Respondent and Defendant

No. BC206790

FIRST AMENDED COMPLAINT FOR
ADMINISTRATIVE MANDAMUS;
DECLARATORY RELIEF; AND
FEDERAL CIVIL RIGHT VIOLATIONS

17 Petitioner alleges:

18 COMMON ALLEGATIONS

19 1. Petitioner is a Corporation, existing under the laws of the State of California, who
20 seeks an entertainment permit for the Flamingo Theater, located at 2421 E. Artesia Blvd., in the
21 City of Long Beach. The type of entertainment contemplated to be offered at the Flamingo
22 Theater is protected under the U.S. Constitution, and Article 1, Section 2 of the State
23 Constitution.

24 2. Respondent, the City of Long Beach, was, and now is, an administrative agency created
25 and existing under the laws of California, possessing concurrent jurisdiction to approve
26 entertainment permits within the City of Long Beach, along with the Department of Financial
27 Management who actually issues such permits.

28 3. Long Beach Municipal Code Section 5.72.110 prohibits persons from carrying on,

LAW OFFICE OF
1055 N. SA
(714) 558-3981
LD TALAMO
JTE 1100
A. 92701
X 558-3981

1 maintaining, or conducting any entertainment activity within the City without first obtaining an
2 entertainment permit. Section 5.72.115 defines "entertainment activity" as any activity conducted
3 for the primary purpose of diverting or entertaining clientele in a premises open to the general
4 public. Said activity shall include, but shall not be limited to, dancing, whether by performers or
5 patrons of the establishment, live musical performances, instrumental or vocal, when carried on
6 by more than two persons or, whenever amplified; musical entertainment provided by a disc
7 jockey or karaoke, or any similar entertainment activity involving amplified reproduced music.

8 4. On September 22, 1997, Petitioner submitted an application for an entertainment
9 permit to the Department of Financial Management. Petitioner's proposed use of the premises
10 was for an adult theater featuring on-stage semi-nude and nude dancing with accompanying
11 recorded music, played through an amplified sound system, to patrons 18 years of age and older.
12 Petitioner also proposed to offer a type of entertainment known within the industry as "couch
13 dancing", whereby a partially clothed female entertainer performs a close proximity dance with a
14 patron of the establishment. As nude dancing would be offered at Petitioner's establishment, only
15 non-alcoholic beverages would be served. Petitioner's application was deemed complete by the
16 Department of Financial Management on November 13, 1997.

17 5. Respondent characterizes Petitioner's establishment as an adult entertainment business
18 within the meaning of the City's Municipal Code. Long Beach Municipal Code Section
19 21.15.110 E provides that a "Cabaret" meaning a nightclub, theater, or other establishment which
20 features live performances by topless and/or bottomless dancers, exotic dancers, strippers,
21 wrestlers, or similar entertainers, and where such performances are distinguished or characterized
22 by an emphasis on specified sexual activities or display specific anatomical areas, is an adult
23 entertainment business. Section 21.15.110 I defines specified anatomical areas as (1) less than
24 completely and opaquely covered human genitals, pubic region, buttocks, and female breast
25 below the point immediately above the top of the areola; and (2) human male genitals in a
26 discernibly turgid state, even if completely and opaquely covered. Section 21.15.110 J defines
27 specified sexual activities as (1) actual or simulated sexual intercourse, anal intercourse, oral or
28 anal copulation, bestiality, pedophilia, necrophilia, direct physical stimulation of unclothed

LAW OFFICE OF
D. TALMO
1055 N. M.
SANTO
(714) 538-4444
ITE 1100
92701
A 538-3981

1 genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory
2 functions in the context of sexual a relationship; (2) clearly depicted human genitals in a state of
3 sexual stimulation, arousal, or tumescence; (3) use of human or animal masturbation, sodomy,
4 oral copulation, coitus, ejaculation; (4) fondling or touching of nude human genitals, pubic
5 region, buttocks or female breast; (5) masochism, erotic or sexually oriented torture, beating or
6 the infliction of pain; (6) erotic or lewd touching, fondling, or other contact with an animal by a
7 human being; and (7) human erection, urination, menstruation, vaginal or anal irrigation.

8 6. As a consequence of being characterized as an adult entertainment business, as defined
9 by Section 21.15.110, Petitioner is further required to conform his establishment to certain
10 enumerated development standards, particularly pertaining to adult entertainment businesses, in
11 order to ensure that the use of the establishment, as an adult entertainment business, does not
12 adversely impact adjacent uses. For example, Long Beach Municipal Code Section 21.45.110 A
13 prohibits adult entertainment businesses from being located within certain distances from other
14 types of land uses, such as a church, City park, or public school. Section 21.45.110 C requires an
15 adult entertainment business to provide security guards, state licensed, armed, uniformed, and
16 approved by the Long Beach Police Department, the number of which to be determined ad hoc
17 by the Chief of Police. Section 21.45.110 E requires all areas of adult entertainment businesses to
18 be illuminated at a minimum of one-foot candle, minimum maintained and evenly distributed at
19 ground level. Section 21.45.110 F prohibits adult entertainment businesses from operating
20 between the hours of 12:00 a.m. and 9:00 a.m.

21 7. Subsequent to Petitioner's application for an entertainment permit to feature nude
22 entertainment, the City of Long Beach amended Chapter 5.72 of their municipal code,
23 concerning entertainment permits, to prohibit public nudity within the City, notwithstanding any
24 connection with speech and/or expressive activity. Long Beach Municipal Code Section
25 5.72.140 C prohibits an owner or other person with managerial control over any adult
26 entertainment business from permitting any person on the premises of an adult entertainment
27 business to engage in a live showing of the human male or female genitals, pubic area, or
28 buttocks with less than a fully opaque covering, and/or the female breasts with less than a fully

1 opaque covering over any part of the nipple or areola and/or covered male genitals in a
2 discernibly turgid state. Section 5.72.140 C also prohibits any person from performing for
3 patrons any entertainment except upon a stage at least 18 inches above the level of the floor
4 which is separated by a distance of at least 6 feet from the nearest area occupied by patrons, and
5 no patron shall be permitted within 6 feet of the stage while the stage is occupied by an
6 entertainer.

7 8. The City of Long Beach's authority to prohibit nudity derives from AB 726, amending
8 Penal Code § 318.5 and § 318.6, relating to adult entertainment. Before the enactment of AB
9 726, cities were allowed to directly regulate the exposure of the genitals or buttocks or of the
10 breasts of any person who acts as a waiter, waitress, or entertainer, if such ordinance related to
11 live acts, demonstrations, or exhibitions occurring in public places, and places open to the public
12 view. Penal Code § 318.5 and § 318.6 also expressly exempted theaters, concert halls, or similar
13 establishments which are primarily devoted to theatrical performances, from its provisions. AB
14 726 declared that Penal Code § 318.5 and § 318.6 shall not be construed to preempt the
15 legislative body of any city or county from regulating an adult or sexually oriented business, or
16 similar establishment in the manner, and to the extent permitted by the United States Constitution
17 and the California Constitution. AB 726 eliminated Penal Code § 318.5's and § 318.6's
18 exemption for theaters pursuant to the Supreme Court's holding in *Barnes v. Glen Theatre, Inc.*
19 (1991) 501 U.S. 560, upholding a prohibition on total nudity in adult entertainment businesses.
20 However, AB 726 excludes any adult or sexually oriented business that has been adjudicated by a
21 court of competent jurisdiction to be, or by action of a local body allowing the business to
22 operate on or before July 1, 1998, as, a theater, concert hall, or similar establishment primarily
23 devoted to theatrical performances.

24 9. Respondent has a ministerial duty to accept and process applications for entertainment
25 permits pursuant to Long Beach Municipal Code Section 5.72.120. Specifically Section
26 5.72.120 C requires the Director of Financial Management to refer an application for an
27 entertainment permit to all concerned City departments for investigation. Those concerned
28 departments are required to file a report stating their recommendations regarding the approval or

TALMO
E 1100
92701
SANI
558-3981
LAW OFFICE OF
1035 N. J
(714) 558-9442

1 denial of such permit within 60 days of receiving the request from the Director of Financial
2 Management. After receiving the reports from the City departments, Section 5.72.120 D 1
3 mandates the Director of Financial Management to transmit the application, together with those
4 reports and recommendations of the City departments, to the City Council for a hearing.

5 10. Pursuant to Long Beach Municipal Code Section 5.72.120 D 4, if the City Council
6 determines that (1) the application is complete and truthful; (2) where the applicant is an entity,
7 that the entity is a bona fide entity, organized and conducted for a lawful purpose; (3) the persons
8 interested in the ownership and operation of the entity and the officers and trustees of the entity
9 are law abiding persons and persons who will operate and conduct the business or activity in a
10 lawful manner; and (4) the public peace, welfare, and safety will not be impaired, than the City
11 Council is required to either approve the application, grant a short-term permit under Section
12 5.72.126, or deny the application altogether.

13 11. Notwithstanding the approval by the City Council, Long Beach Municipal Code
14 Section 5.72.120 D prohibits the business from operating until the Director of Financial
15 Management actually issues the permit. Section 5.72.120 D 4 mandates the issuance of the
16 permit provided that the applicant has met all conditions imposed by any City department, has
17 complied with all applicable laws, and has paid the applicable license tax and permit fees.

18 12. Petitioner has obtained approval by all City departments concerned with the operation
19 of Petitioner's business. The Department of Planning and Building has conditionally approved
20 the modifications Petitioner proposed to make to the existing structure in converting the structure
21 to an adult entertainment theater.

22 13. On December 17, 1997, a Site Plan Review Committee approved the Petitioner's
23 project as a theater which than allowed the Petitioner to operate with full nudity upon completion
24 of construction.

25 14. On April 6, 1999, Petitioner's application for an entertainment permit was approved
26 by the City Council, subject to the conditions that (1) the operation of the establishment shall be
27 limited to those activities and elements approved by the City Council, (2) Petitioner agrees to
28 reimburse the City whenever excessive police services, as determined by the Chief of Police, are

1 required as the result of any incident or nuisance arising out of or in connection with the
2 Petitioner's operations, (3) Petitioner shall employ two permitted authorized security guards at all
3 times during hours of operations, along with the Chief of Police's authority to increase that
4 number in the event that the police department receives a substantial increase in the number of
5 complaints; (4) the Chief of Police has the authority to require security officer presence if any
6 noise, and disturbance complaints or trash left in the parking lot is attributed to the operation of
7 the business; (5) Petitioner is required to maintain full compliance with all applicable laws,
8 ordinances and stated conditions, (6) Petitioner shall keep all doors closed at all times during the
9 operation of the business, except in case of emergency; (7) Petitioner shall not allow any sound
10 to be audible from any area outside of the business; (8) and Petitioner is subject to revocation
11 proceedings if any violations of the new amendments to Municipal Code Sections 5.72.140,
12 5.72.145, and 9.20.040 occurs at Petitioner's establishment.

13 FIRST CAUSE OF ACTION

14 (ADMINISTRATIVE MANDAMUS PER CCP § 1094.5)

15 15. Petitioner hereby incorporates paragraphs 1-14 of this first amended complaint as
16 though fully set forth in this paragraph.

17 16. The decision of the City Council on April 6, 1999 to impose eight conditions on the
18 granting of the entertainment permit was in excess of their jurisdiction and in abuse of their
19 discretion, in that the Long Beach Municipal Code does not grant the City any power to impose
20 any conditions on an entertainment permit, and the discretion that is granted to City officials
21 violated the First Amendment to the federal Constitution, and Article 1 Section 2 of the State
22 Constitution.

23 17. The U.S. Constitution requires that applications for licenses and permits, which
24 impact First Amendment protected activities, be acted upon within a reasonably brief period of
25 time to avoid the unconstitutional prior restraint of protected speech, which would result from
26 any undue delay.

27 18. The City of Long Beach's application process for approving or disapproving
28 entertainment permits is constitutionally defective, as it related to Petitioner's First Amendment

1 protected activities, in that it lacks any time limits by which the City Council must act on his
2 application for an entertainment permit.

3 19. Long Beach Municipal Code Section 5.72.120 D requires the Director of Financial
4 Management to transmit the application, together with the reports and recommendations of the
5 City departments, to the City Council for hearing and shall notify the applicant of the time and
6 place of the hearing which shall be held before the City Council on the first available hearing
7 date.

8 20. Section 5.72.120 D lacks any definite time limits by which the hearing must take
9 place. The absence of any definite and objective time limits by which this hearing must take
10 place enables the City Council to indefinitely delay any such hearing required by Section
11 5.72.120 D. Indeed, under Section 5.72.120 D, the City Council could decide that the next
12 available hearing date is 6 months from the date on which the Director of Financial Management
13 transmits the application to them. Alternatively, other City matters may occupy future hearing
14 dates. In any case, the potential exists that the hearing will take place beyond the reasonably brief
15 time period mandated by the U.S. Constitution.

16 21. The City of Long Beach's application process for approving or disapproving
17 entertainment permits is also constitutionally defective, as it related to Petitioner's First
18 Amendment protected activities, in that it lacks any time limits by which the Director of
19 Financial Management must actually issue the entertainment permit in the event the City Council
20 approves such application after an eventual hearing.

21 22. Long Beach Municipal Code Section 5.72.120 D 4, provides in relevant part, that
22 upon approval of the application by the City Council, the Director of Financial Management shall
23 issue the permit, provided that the applicant has met all conditions imposed by any City
24 department, has complied with all applicable laws, and has paid the applicable license tax and
25 permit fees. Section 5.72.120 D 4 further provides that the applicant shall have 180 days after
26 City Council approval to obtain the permit, and failure to do so within that period shall render the
27 City Council approval void, unless an extension of the compliance period is granted by the City
28 Council before the compliance period has ended.

1055 N. MAP
SANT
(714) 5
TTE 1100
92701
558-3981

1 23. In the event Petitioner has complied with all conditions imposed by any City
2 department, the Director of Financial Management can still abstain from issuing the permit
3 because Section 5.72.120 D 4 lacks any time periods by which the issuance of the entertainment
4 permit must take place. Indeed, in the event the Director of Financial Management withholds
5 issuance of the entertainment permit for more than 180 days of the City Council's approval,
6 Petitioner would be required to re-submit his application, as the City Council's approval would
7 be rendered void pursuant to Section 5.72.120 D 4.

8 24. The U.S. Constitution further requires permit schemes, which impact First
9 Amendment protected activities, to contain definite and objective standards by which to guide
10 the decision maker in approving or disapproving such permits, to avoid the danger of self-
11 censorship. The City of Long Beach's entertainment permit scheme, as it relates to Petitioner's
12 First Amendment protected activities, endows City officials with excessive substantive discretion
13 in deciding whether to approve or disapprove his entertainment permit.

14 25. Long Beach Municipal Code Section 5.72.120 D 4 provides that at the hearing, if the
15 City Council determines that (1) the application is complete and truthful; (2) where the applicant
16 is an entity, it is a bona fide entity, organized and conducted for a lawful purpose; (3) the
17 applicant, the persons interested in the ownership and the operation of the entity, and the officers
18 and trustees of the entity are law abiding persons and persons who will operate and conduct the
19 business or activity in a lawful manner; and (4) that the public peace, welfare, and safety will not
20 be impaired, then either the application shall be approved, a short-term permit, as described in
21 Section 5.72.126, shall be approved, or denied.

22 26. The City of Long Beach's entertainment permit application process is constitutionally
23 defective in that it allows the City Council to consider whether the applicant is a law abiding
24 person who will operate and conduct the business in a lawful manner. Section 5.72.120 D 4 lacks
25 any definite and objective standards by which to measure the applicant's conduct, as well as the
26 conduct of those other persons interested in the ownership and operation of the business, as it
27 relates to the operation of Petitioner's business. For instance, what conduct makes the Petitioner
28 not a law abiding person who will not operate and conduct the business in a lawful manner.

LAW OFFICE OF
ALD. TALAMO
1035 N. W.
SANTI
(714) 558-3981
JITE 1100
A. 92701
K. 558-3981

1 Thus, the City Council is free to define and apply their definition of what a law abiding person is,
2 and exercise discretion in determining whether the persons interested in the ownership and
3 operation of Petitioner's business will operate and conduct the business in a lawful manner.

4 27. Section 5.72.120 D 4 also allows the City Council to consider whether the public
5 peace, welfare and safety will be adversely affected in deciding whether to approve an
6 application for an entertainment permit. Such vague standards as public peace, welfare and safety
7 do not comport with the definite and objective standards required under the U.S. Constitution, in
8 the context of permit and licensing schemes that impact First Amendment protected activities.
9 The City Council is endowed with incredible discretion in determining whether the public peace,
10 welfare and safety are adversely affected. This amount of unconstitutional discretion allows the
11 City Council to disapprove Petitioner's application for an entertainment permit for any reason
12 and clothe the denial of Petitioner's entertainment permit with a determination that the public
13 peace, welfare and safety are adversely affected, thus effectively censoring Petitioner's First
14 Amendment protected speech.

15 28. Section 5.72.120 D 4 requires that in the event the City Council approves the
16 application for an entertainment permit, the Director of Financial Management shall issue the
17 permit, provided that the applicant has met all conditions imposed by any City Department, has
18 complied with all applicable laws, and has paid the applicable license tax and permit fees.

19 29. The ability for any concerned City department to impose any conditions on
20 Petitioner's application for an entertainment permit, along with the Director of Financial
21 Management's power to forestall the issuance of an entertainment permit, if in the Director's
22 opinion those conditions have not been satisfied, further renders City officials with an
23 unconstitutional amount of discretion in deciding whether to issue Petitioner an entertainment
24 permit. For example, Long Beach Municipal Code Section 21.45.110 C, allows the Chief of
25 Police to determine the number of security guards required at an adult entertainment business,
26 and also allows the Chief to increase that number at any time, if it is determined, in the Chief's
27 discretion, that such increase is necessary to protect the public peace and the surrounding
28 neighborhood. In the context of First Amendment protected activities, such as Petitioner's, the

LAW OFFICE
1055 N. M.
SANTA ANA
(714) 538-8444

9 TALMO
.JE 1100
92701
558-3981

1 ability for the Chief of Police to prescribe any number could have the effect of prohibiting
2 Petitioner from operating as an adult entertainment business. It could be cost prohibitive on
3 Petitioner's business to require him to employ 5 security guards. City officials are thus able to
4 deny Petitioner's First Amendment protected activities by requiring the employment of a
5 prohibitive number of security guards.

6 30. The 180 day period, under Section 5.72.120 D 4, in which the applicant for an
7 entertainment permit has to comply with those conditions before the Director of Financial
8 Management is required to issue the entertainment permit, allows the City sufficient time to
9 amend any ordinance concerning the operation of Petitioner's adult entertainment business, and
10 allows City departments the ability to impose any additional requirements in which Petitioner
11 must comply with before his entertainment permit will issue. Such excessive discretion, allows
12 the Director of Financial Management the ability to indefinitely forestall Petitioner from
13 engaging in his First Amendment protected activities.

14 31. The excessive substantive discretion in which the City of Long Beach's Municipal
15 Code Chapter 5.72, concerning entertainment permits, endows City officials, in the context of
16 Petitioner's First Amendment protected activities, amounts to an unconstitutional prior restraint.

17 32. Under AB 726, Petitioner was recognized as a theater, prior to July 1998, but the City
18 Council, by imposing condition # 8, has so refused to recognize, despite the Site Plan Review
19 Committee's decision.

20 SECOND CAUSE OF ACTION

21 (42 U.S.C § 1983: FIRST AMENDMENT)

22 33. Plaintiff hereby incorporates paragraphs 1-32 of this first amended complaint as
23 though fully set forth in this paragraph.

24 34. In *Baby Tam & Co., Inc. v. City of Las Vegas* (9th Cir. 1998) 98 D.A.R. 9897, the 9th
25 Circuit held that a licensing scheme involving a prior restraint on First Amendment protected
26 activities must provide an avenue for prompt judicial review, which can only be satisfied by the
27 opportunity for a prompt hearing and prompt decision by a judicial officer. The 9th Circuit stated
28 that the final word on permit denials impacting First Amendment protected activities must be left

1 in the hands of judicial officers, rather than local censors.

2 35. The City of Long Beach's entertainment application process ignores any mechanism
3 for prompt judicial review, and allows the City Council to have the final word on entertainment
4 permits involving First Amendment protected activities.

5 36. As a direct and proximate result of Defendant's licensing scheme, Plaintiff is
6 deprived of his federal right to engage in Free Speech, and has suffered damages according to
7 proof at trial. Such damages include loss of income.

8 37. Additionally, Plaintiff has been denied his First Amendment right by the City's
9 Decision to not process his application until April 6, 1999, thereby suffering general damages
10 and loss of income.

11 **THIRD CAUSE OF ACTION**

12 (42 U.S.C. § 1983: EQUAL PROTECTION)

13 38. Plaintiff hereby incorporates paragraphs 1-37 of this first amended complaint as
14 though fully set forth in this paragraph.

15 39. The City of Long Beach has imposed a no nudity requirement upon Plaintiff, but has
16 not imposed such a requirement on a similar adult entertainment business in the City of Long
17 Beach, namely Angels Theatre.

18 40. There is no legitimate governmental interest for the City of Long Beach to treat
19 Petitioner's establishment in a different manner than other such establishments, similarly
20 situated.

21 41. The City of Long Beach has arbitrarily decided to impose a no nudity requirement on
22 Plaintiff, and has chosen not to impose such requirement on Angels Theatre merely on the basis
23 of the date in which Plaintiff's establishment is set to open. There is no compelling governmental
24 interest served in permitting Angels Theatre to allow the exhibition of live nude entertainment,
25 but not allowing Plaintiff.

26 42. As a direct and proximate result of the unequal treatment by the City, Plaintiff has and
27 will suffer according to proof at trial.

28 //

LAW OFFICE OF T. J. TALAMO
1055 N. Y. SANITARY
(714) 558-3981
ITE 1100
92701
558-3981

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH CAUSE OF ACTION
(PERMIT STREAMLINING ACT)

43. The Permit Streamlining Act, applicable to all public agencies, including charter cities, was enacted in order to ensure a clear understanding of the specific requirements which must be met in connection with the approval of *development projects* and to expedite decisions on such projects. For the purposes of the Streamlining Act, *development project*, as defined in Government Code Section 65928, means any project undertaken for the purpose of development, including a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate. Government Code Section 65928 further provides that a *development project* does not include any ministerial projects proposed to be carried out by public agencies. Government Code Section 65931 provides that a *project* means any activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use, by one or more public agencies.

44. Government Code Section 65952 (a) provides that any public agency which is a responsible agency for a development project that has been approved by the lead agency shall approve or disapprove the development project within either 180 days from the date on which the lead agency has approved the project, or within 180 days of the date on which the completed application for the development project has been received and accepted as complete by that responsible agency, whichever period is longer.

44. Plaintiff's application for an entertainment permit was deemed complete by the Department of Financial Management as of November 13, 1997. The 180 day time period by which such applications must be either approved or disapproved, as mandated by the provisions of the Permit Streamlining Act, expired as of May 12, 1998. Plaintiff's application for an entertainment permit has not been approved or disapproved within the statutorily mandated time period.

45. Government Code Section 65956 (b) provides that in the event a lead agency or a responsible agency fails to act to approve or disapprove a development project within the time limits required by this article, the failure to act shall be deemed approval of the permit

1 application for the development project. However, the permit shall be deemed approved only if
2 the public notice required by law has occurred.

3 46. Plaintiff is informed and believes that his application for an entertainment permit,
4 presently before the City of Long Beach, is covered by the provisions of the Permit Streamlining
5 Act. Plaintiff's proposed use of the establishment as an adult entertainment theater requires him
6 to obtain an entertainment permit before operating. Plaintiff has made substantial additions and
7 modifications to the existing structure in order to conform with both adult entertainment industry
8 standards, and the City of Long Beach's special development standards, as contained in Chapter
9 21.45 of the City's municipal code, applicable solely to adult entertainment businesses. Without
10 an entertainment permit, Plaintiff's business would be rendered useless.

11 47. Plaintiff is informed and believes that the City of Long Beach's position is that
12 Plaintiff's application for an entertainment permit is not covered by the Permit Streamlining Act
13 because the issuance of an entertainment permit involves merely a permit to operate, and thus
14 excluded from the Permit Streamlining Act under the definition of *development project* as
15 contained in Government Code Section 65928.

16 /////

17 /////

18 /////

19 /////

20 /////

21 /////

22 /////

23 /////

24 /////

25 /////

26 /////

27 /////

28 /////

D. TALMO
ITE 1100
92701
SANT,
X 558-3981
LAW OFFICE OF
1055 N. W
(714) 558-8444

1 WHEREFORE, Petitioner prays:

2 1. That this court issue its peremptory writ of mandate, ordering Respondent to issue an
3 entertainment permit without conditions.

4 2. For general and special damages on the second and third causes of action.

5 3. For a judicial declaration, declaring whether or not Petitioner's application for an
6 entertainment permit is covered by the Permit Streamlining Act, as contained in Government
7 Code Section 65920 et. seq.

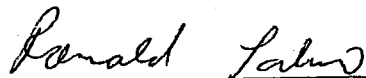
8 4. For costs of suit herein incurred;

9 5. For attorneys fees; and

10 6. For such other and further relief as the court may deem proper.

11
12
13 Dated: 4/23/99

Respectfully Submitted,



By Ronald Talmo,
Attorney for Petitioner and Plaintiff,
V & M Associates, Inc.

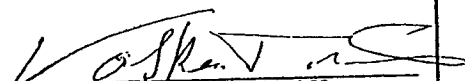
LAW OFFICE OF
1055 N
SAI
(714) 536-3981
ALD TALMO
JULIE 1100
4. 92701
EX 536-3981

VERIFICATION

I, Vasken Tatarian, am the Petitioner and Plaintiff in the above entitled proceeding. I have read the foregoing petition and know the contents thereof. The same is true of my knowledge, except as to those matter which are therein alleged on information and belief, and as to those matter, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 4-21-99


Petitioner and Plaintiff
Vasken Tatarian
V & M Associates, Inc.

LAW OFFICE
1055 N. M.
SANTA ANA
(714) 558-8427; FAX 558-3981

D. TALMO
THE 1100
92701

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 LAW OFFICE OF RONALD TALMO
RONALD TALMO, Esq. # 78376
2 1055 N. Main St., Suite 1100
Santa Ana, California 92701
3 (714) 558-8427

4 Attorney for Petitioner, and Plaintiff, V & M ASSOCIATES, Inc.

5
6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 V & M ASSOCIATES, INC.,
12 Petitioner and Plaintiff,

13 vs.
14

15
16 CITY OF LONG BEACH,
17 Respondent and Defendant.

No. BC206790

ASSIGNED TO: Judge Ernest Hiroshige,
Department 54

NOTICE OF MOTION AND MOTION
ON PETITION FOR WRIT OF
MANDATE; COMPLAINT FOR
DECLARATORY RELIEF; AND
42 U.S.C. § 1983

Trial Date: None
Discovery Cutoff: None

Dept: 54
Time: 9:30 a.m.
Date: May 26, 1999

18
19
20 TO THE ABOVE ENTITLED COURT, AND TO THE RESPONDENT, AND
21 DEFENDANT, THE CITY OF LONG BEACH:

22 PLEASE TAKE NOTICE that on May 26, in Department 54 at 9:00 a.m., or soon
23 thereafter as the matter may be heard, Petitioner, V & M ASSOCIATES, INC., will move for an
24 order directing the Long Beach City Council to issue Petitioner an entertainment permit with
25 basic fire and safety conditions only, on the grounds that the application of Long Beach
26 Municipal Code Chapter 5.72 to Petitioner's First Amendment protected activities is an
27 unconstitutional prior restraint, and denies Plaintiff of rights guaranteed under the Equal
28 Protection Clause of the Fourteenth Amendment. This motion will be based upon the First

NOTICE OF MOTION ON COMPLAINT FOR ADMINISTRATIVE MANDAMUS; CCP § 1094.5

LAW OFFICE OF
RONALD TALMO
1055 N. MAIN ST., SUITE 1100
SANTA ANA, CA. 92701
(714) 558-8427
FAX 558-3981

1 Amended Complaint for Administrative Mandamus, the attached memorandum of points and
2 authorities, and all other evidence submitted during argument on the motion.

3 Dated: 4-23-99

Respectfully Submitted,

Ronald Talmo

By Ronald Talmo
Attorney for Petitioner and Plaintiff,
V & M ASSOCIATES, INC.

1035 N
LAW OFFICE
LD TALMO
SUITE 1100
A. 92701
SA.
(714) 558-3981
AX 558-3981
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 LAW OFFICE OF RONALD TALMO
2 RONALD TALMO, Esq. # 78376
3 1055 N. Main St., Suite 1100
4 Santa Ana, California 92701
5 (714) 558-8427

6 Attorney for Petitioner, V & M ASSOCIATES, Inc.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 V & M ASSOCIATES, INC.,
12 Petitioner and Plaintiff,
13 vs.
14 CITY OF LONG BEACH,
15 Respondent and Defendant.

No. BC206790

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITIONER & PLAINTIFF'S FIRST
AMENDED COMPLAINT FOR
ADMINISTRATIVE MANDAMUS;
DECLARATORY RELIEF; AND
FEDERAL CIVIL RIGHTS VIOLATIONS

16
17 Petitioner and Plaintiff, V & M ASSOCIATES, Inc., hereby submits the following
18 memorandum of points and authorities in support of his first amended complaint for
19 Administrative Mandamus, CCP § 1094.5, Declaratory Relief, and Federal Civil Rights
20 Violations:

21 /////
22 /////
23 /////
24 /////
25 /////
26 /////
27 /////
28 /////

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE

LAW OFFICE
1055 N. N. A.
SANTA ANA
(714) 558-8427 FAX 558-3981
D TALMO
SUITE 1100
92701

TABLE OF CONTENTS

1

2 TABLE OF AUTHORITIES ii

3 I. FACTS 1

4 II. ARGUMENT 4

5 A. THIS COURT SHOULD ISSUE A PEREMPTORY WRIT OF MANDATE,
6 ORDERING RESPONDENT TO ISSUE PETITIONER AN
7 ENTERTAINMENT PERMIT WITH BASIC AND FIRE SAFETY
8 CONDITIONS ONLY 4

9 1. Petitioner Was Recognized As A Theater By The City Of Long
10 Beach On December 17, 1997 And Is Thus Exempt From The Provisions
11 Of AB 726 4

12 2. The City Of Long Beach's Entertainment Permit Application Process
13 Is An Unconstitutional Prior Restraint As It Relates To Petitioner's
14 First Amendment Protected Activities 5

15 A. The Long Beach City Council has too much discretion in
16 determining whether to grant or deny Petitioner's
17 application for an entertainment permit 5

18 B. The Long Beach Municipal Code lacks any time limits by
19 which City officials must act on and issue Petitioner's
20 entertainment permit 9

21 C. The Long Beach Municipal Code lacks an avenue for prompt
22 judicial review in the event that Petitioner's application is
23 denied 12

24 B. BY IMPOSING A NO NUDITY REQUIREMENT ON PLAINTIFF'S
25 ENTERTAINMENT PERMIT, THE CITY OF LONG BEACH HAS
26 NOT TREATED PLAINTIFF IN THE SAME MANNER AS OTHER
27 ADULT THEATERS SIMILARLY SITUATED 13

28 III. CONCLUSION 15

LAW OFFICE
1055 N. J
SANTA ANA, CA 92701
(714) 558-8422

J TALAMO
VITE 1100
92701
558-3981

TABLE OF AUTHORITIES

FEDERAL CASES

Baby Tam & Co., Inc. v. City of Las Vegas (9th Cir. 1998)
98 DJ D.A.R. 9789.....5,12,13

Barnes v. Glen Theatre, Inc. (1991)
501 U.S. 650.....4,14-15

Cantwell v. Connecticut (1940)
310 U.S. 296.....5

Dease v. City of Anaheim (C.D. Cal. 1993)
826 F.Supp. 3367

Forsyth County, Ga. v. Nationalist Movement (1992)
505 U.S. 123.....5,6

Freedman v. Maryland (1965)
380 U.S. 51.....10,11,12,13

FW/PBS, Inc. v. City of Dallas (1990)
493 U.S. 215.....10,11

Largent v. Texas (1943)
318 U.S. 418.....6

Reed v. Reed (1971)
404 U.S. 71.....14

Schad v. Borough of Mount Ephraim (1981)
452 U.S. 61.....5

Schneider v. State (1939)
308 U.S. 147.....6

Shuttlesworth v. Birmingham (1969)
394 U.S. 147.....5

Staub v. City of Baxley (1958)
355 U.S. 313.....6

CALIFORNIA CASES

Brown v. Merlo (1973)
8 Cal.3d 855.....14

Burton v. Municipal Court (1968)
68 Cal.2d 684.....7

Estevanovich v. City of Riverside (1999)
1999 DJ D.A.R. 845.....14,15

People v. Library One, Inc. (1991)
229 Cal.App.3d 973.....9,10

Perrine v. Municipal Court (1971)
5 Cal.3d 6568

Tily B., Inc. v. City of Newport Beach (1998)
99 DJ D.A.R. 68.....15

STATUTES

AB 726.....4,5

PENAL CODE § 318.5.....4

PENAL CODE § 318.6.....4

J TALMO
CITE 1100
92101
SANTA
LAW OFFICE
1055 N.
(714) 558-8421
558-3981

1 LONG BEACH MUNICIPAL CODES

2	§ 5.72.110.....	1
	§ 5.72.115.....	1
3	§ 5.72.120.D.....	2,11
	§ 5.72.120.D.4.....	2,8,11,12
4	§ 5.72.126.....	2
	§ 5.72.140.....	3
5	§ 5.72.140.C.....	2,3,13
	§ 5.72.145.....	3
6	§ 9.20.040.....	3
	§ 21.15.110.E.....	1
7	§ 21.15.110.I.....	1
	§ 21.15.110.J.....	1
8	§ 21.45.110 C.....	9

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAW OFFICE
1055 N. M.
SANTA ANA
(714) 538-6427

J. TALMO
111E 1100
92701
538-3981

LAW OFFICE
1035 N. A
SANTA ANA
(714) 538-8421
J. TALAMO
SUITE 1100
92701

1 I. FACTS

2 Petitioner, V & M Associates, owns a parcel of property, located at 2421 E. Artesia Blvd,
3 in the City of Long Beach. Petitioner proposes to convert the existing structure into an adult
4 theater, the "Flamingo Theatre", offering semi-nude and nude dancing to consenting patrons 18
5 years of age and older. Long Beach Municipal Code, hereinafter "LBMC", § 5.72.110 prohibits
6 persons from carrying on, maintaining, or conducting any entertainment activity within the City
7 without first obtaining an entertainment permit. LBMC § 5.72.115 defines, "entertainment
8 activity as any activity conducted for the primary purpose of diverting or entertaining clientele
9 in a premises open to the general public...Said activity shall include, but shall not be limited to,
10 dancing, whether by performers or patrons of the establishment, live musical performances,
11 instrumental or vocal, when carried on by more than two persons, or whenever amplified;
12 musical entertainment provided by a disk jockey or karaoke , or any similar entertainment
13 activity involving amplified reproduced music." The City of Long Beach would also characterize
14 Petitioner's establishment as an adult entertainment business within the meaning of Chapter
15 21.45 of its municipal code ¹.

16 On September 22, 1997, Petitioner submitted an application for an entertainment permit

17 _____
18 ¹ LBMC § 21.15.110 E provides that a "cabaret" meaning a nightclub, theater, or other
19 establishment which features live performances by topless and/or bottomless dancers, exotic
20 dancers, strippers, wrestlers, or similar entertainers, and where such performances are
21 distinguished or characterized by an emphasis on "specified sexual activities" or display "specific
22 anatomical areas", is an adult entertainment business. § 21.15.110 I defines specific anatomical
23 areas as (1) less than completely and opaquely covered human genitals, pubic region, buttocks,
24 and female breast below the point immediately above the top of the areola; and (2) human male
25 genitals in a discernibly turgid state, even if completely and opaquely covered. § 21.15.110 J
26 defines specified sexual activities as (1) actual or simulated sexual intercourse, anal intercourse,
27 oral or anal copulation, bestiality, pedophilia, necrophilia, direct physical stimulation of
28 unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of
excretory functions in the context of sexual a relationship; (2) clearly depicted human genitals in
a state of sexual stimulation, arousal, or tumescence; (3) use of human or animal masturbation,
sodomy, oral copulation, coitus, ejaculation; (4) fondling or touching of nude human genitals,
pubic region, buttocks or female breast; (5) masochism, erotic or sexually oriented torture,
beating or the infliction of pain; (6) erotic or lewd touching, fondling, or other contact with an
animal by a human being; and (7) human erection, urination, menstruation, vaginal or anal
irrigation.

LAW OFFICE
1055 N. M.
SANTA ANA, CA 92701
(714) 558-8421
TALAMO / TALAMO
STE 1100
92701
558-3981

1 to the City of Long Beach's Department of Financial Management². Petitioner listed on-stage
2 semi-nude and nude dancing as the type of entertainment proposed to be offered at the
3 establishment. Petitioner also listed, what is commonly referred to within the industry as "couch
4 dancing", whereby a partially clothed female entertainer performs a close proximity dance with a
5 patron of the establishment, as entertainment proposed to be offered. Petitioner's application for
6 his entertainment permit was deemed complete by the Department of Financial Management on
7 November 13, 1997. On December 17, 1997 a Site Plan Review Committee approved the
8 Petitioner's project as a theater.

9 Pursuant to LBMC § 5.72.120 D 4, if the City Council determines that (1) the application
10 is complete and truthful; (2) where the applicant is an entity, that the entity is a bona fide entity,
11 organized and conducted for a lawful purpose; (3) the persons interested in the ownership and
12 operation of the entity and the officers and trustees of the entity are law abiding persons and
13 persons who will operate and conduct the business or activity in a lawful manner; and (4) the
14 public peace, welfare, and safety will not be impaired, than the City Council is required to either
15 approve the application, grant a short-term permit under Section 5.72.126, or deny the
16 application altogether. Notwithstanding the approval by the City Council, LBMC § 5.72.120 D
17 prohibits the business from operating until the Director of Financial Management actually issues
18 the permit. § 5.72.120 D 4 mandates the issuance of the permit provided that the applicant has
19 met all conditions imposed by any City department, has complied with all applicable laws, and
20 has paid the applicable license tax and permit fees.

21 Subsequent to Petitioner's application for an entertainment permit to feature nude
22 entertainment, the City of Long Beach amended Chapter 5.72 of their municipal code,
23 concerning entertainment permits, to prohibit public nudity within the City, notwithstanding any
24 connection with speech and/or expressive activities. LBMC § 5.72.140 C prohibits an owner or
25 other person with managerial control over any adult entertainment business from permitting any
26 person on the premises of an adult entertainment business to engage in a live showing of the

27
28 ² A true and exact copy of Petitioner's application is attached hereto as Exhibit 'A'

LAW OFFICE
1035 N.
SAN JUAN
(714) 558-9421
D. TALAMO
SUITE 1100
92701

1 human male or female genitals, pubic area, or buttocks with less than a fully opaque covering,
2 and/or the female breasts with less than a fully opaque covering over any part of the nipple or
3 areola and/or covered male genitals in a discernibly turgid state. Section 5.72.140 C also
4 prohibits any person from performing for patrons any entertainment except upon a stage at least
5 18 inches above the level of the floor which is separated by a distance of at least 6 feet from the
6 nearest area occupied by patrons... and no patron shall be permitted within 6 feet of the stage
7 while the stage is occupied by an entertainer.

8 Notwithstanding the fact that Petitioner's application was deemed complete by the
9 Department of Financial Management, Petitioner's application was not heard by the City Council
10 until April 6, 1999. On April 6, 1999, Petitioner's application for an entertainment permit was
11 approved by the City Council, subject to the conditions that (1) the operation of the establishment
12 shall be limited to those activities and elements approved by the City Council, (2) Petitioner
13 agrees to reimburse the City whenever excessive police services, as determined by the Chief of
14 Police, are required as the result of any incident or nuisance arising out of or in connection with
15 the Petitioner's operations, (3) Petitioner shall employ two permitted authorized security guards
16 at all times during hours of operations, along with the Chief of Police's authority to increase that
17 number in the event that the police department receives a substantial increase in the number of
18 complaints; (4) the Chief of Police has the authority to require security officer presence if any
19 noise, and disturbance complaints or trash left in the parking lot is attributed to the operation of
20 the business; (5) Petitioner is required to maintain full compliance with all applicable laws,
21 ordinances and stated conditions, (6) Petitioner shall keep all doors closed at all times during the
22 operation of the business, except in case of emergency; (7) Petitioner shall not allow any sound
23 to be audible from any area outside of the business; (8) and Petitioner is subject to revocation
24 proceedings if any violations of the new amendments to Municipal Code Sections 5.72.140,
25 5.72.145, and 9.20.040 occurs at Petitioner's establishment. The relevant portions of those Code
26 Sections prohibit Petitioner from allowing Flamingo entertainers to appear in a state of nudity
27 while on the premises.

28 //

LAW OFFICE
1055 N. N. SANTA ANA
(714) 558-8421
J TALAMO
TELE 1100
92701
FAX 558-3981

1 **II. ARGUMENT**

2 **A. THIS COURT SHOULD ISSUE A PEREMPTORY WRIT OF MANDATE,**
3 **ORDERING RESPONDENT TO ISSUE AN ENTERTAINMENT PERMIT WITH**
4 **BASIC FIRE AND SAFETY CONDITIONS ONLY**

5
6 1. Petitioner Was Recognized As A Theater By The City Of Long Beach On
7 December 17, 1997 And Is Thus Exempt From The Provisions Of AB 726

8 AB 726 amended Penal Code § 318.5 and § 318.6, relating to adult entertainment. Before
9 the enactment of AB 726, Penal Code § 318.5 and § 318.6 allowed local governments to directly
10 regulate the exposure of the genitals or buttocks or of the breasts of any person who acts as a
11 waiter, waitress, or entertainer, if such ordinance related to live acts, demonstrations, or
12 exhibitions occurring in public places, and places open to the public. Former Penal Code § 318.5
13 and § 318.6 also expressly exempted theaters, concert halls, or similar establishments which are
14 primarily devoted to theatrical performances, from its provisions. AB 726 declared that Penal
15 Code § 318.5 and § 318.6 shall not be construed to preempt the legislative body of any city or
16 county from regulating an adult or sexually oriented business, or similar establishment in the
17 manner, and to the extent permitted by the United States Constitution and the California
18 Constitution.

19 Thus, AB 726 eliminated the exemption for theaters and other similar establishments
20 provided by Penal Code § 318.5 and § 318.6, pursuant to the Supreme Court's decision in *Barnes*
21 *v. Glen Theatre, Inc.* (1991) 501 U.S. 560, upholding a state's prohibition on nudity in adult
22 entertainment businesses over First Amendment scrutiny. Notwithstanding a city's authority to
23 prohibit nudity altogether in any adult entertainment business, under the amended Penal Code §
24 318.5 and § 318.6, AB 726 excludes any adult or sexually oriented business that has been
25 adjudicated by a court of competent jurisdiction to be, or by action of a local body allowing the
26 business to operate on or before July 1, 1998, as a theater, concert hall, or similar establishment
27 primarily devoted to theatrical performances.

28 Petitioner's establishment, even though not operating as such, was recognized, and
allowed to operate, by the City of Long Beach well before July 1, 1998. On December 17, 1997,
the City of Long Beach, through its Department of Planning and Building, conditionally

LAW OFFICE
1055 N. W.
SANTA ANA, CA 92701
(714) 558-8402 FAX 558-3981

1 approved a Site Plan Review calling for the conversion of the existing structure at 2421 E.
2 Artesia to an entertainment building. The approval of Petitioner's project as a theater, before
3 July 1, 1998 allows Petitioner to operate his establishment with full nudity upon the completion
4 of construction, as Petitioner is exempted by the provisions of AB 726.

5 2. The City Of Long Beach's Entertainment Permit Application Process Is An
6 Unconstitutional Prior Restraint As It Relates To Petitioner's First Amendment
7 Protected Activities

8 **A. The Long Beach City Council has too much discretion in determining whether to grant**
9 **or deny Petitioner's application for an entertainment permit**

10 As previously discussed, the type of entertainment Petitioner seeks to feature at the
11 Flamingo Theatre is protected speech under the First Amendment. *Schad v. Borough of Mount*
12 *Ephraim* (1981) 452 U.S. 61. The City of Long Beach's application process for approving or
13 disapproving entertainment permits is constitutionally defective, as it relates to First Amendment
14 protected activities, in that it allows both the City Council and the Director of Financial
15 Management the ability to impose arbitrary investigation and notification fees on an applicant
16 seeking to offer entertainment protected by the First Amendment, thus enabling city officials to
17 censor protected speech. It is a fundamental concept of First Amendment jurisprudence that a
18 law subjecting the exercise of First Amendment freedoms to the prior restraint of a license must
19 contain narrow, objective and definite standards to guide the licensing authority, so as to remove
20 any opportunity for the licensing authority censor or abridge First Amendment freedoms. (See
21 e.g. *Shuttlesworth v. Birmingham* (1969) 394 U.S. 147; and *Cantwell v. Connecticut* (1940) 310
22 U.S. 296). Because the City of Long Beach requires that Petitioner obtain a permit before
23 engaging in First Amendment protected activities, the City's entertainment permit application
24 process is subject to scrutiny under the analytical framework of prior restraint jurisprudence. (See
25 e.g. *Baby Tam & Co., Inc. v. City of Las Vegas* (9th Cir. 1998) 98 DJ D.A.R. 9789).

26 In *Forsyth County, Ga. V. Nationalist Movement* (1992) 505 U.S. 123, an organization
27 filed suit challenging the constitutionality of the County's assembly and parade ordinance. The
28 ordinance imposed a \$1,000 advance fee for a permit to conduct a parade, procession, or open air
public meeting. The ordinance further provided that the fee could be adjusted in order to meet the

LAW OFFICE
1055 N. M.
SANTA ANA, CA 92701
(714) 558-8421 FAX 558-3981

J. TALAMO
JUDGE 1100

1 expenses incident to the administration of public order in the matter licensed. It was argued that
2 the ordinance was facially invalid because it does not prescribe adequate standards for the
3 administrator to apply when he sets a permit fee. The Court held that the ordinance was an
4 unconstitutional prior restraint of speech because the ordinance lacked narrowly drawn,
5 reasonable, and definite standards to guide the fee determination and allowed city officials to
6 examine to content of the speech activity to determine estimated expenses. The Court found that
7 a government regulation that allows arbitrary application is inherently inconsistent with a valid
8 time, place, and manner regulation because such discretion has the potential for becoming a
9 means of suppressing a particular view. *Forsyth County* at 130. The court reasoned that how
10 much to charge for police protection is left to the whim of the administrator, and that he is not
11 required to rely on any objective factors nor provide any explanation for his decision. The Court
12 also reasoned that nothing in the law or its application prevents the official from encouraging
13 some views and discouraging others through the arbitrary application of fees. *Forsyth County* at
14 133.

15 A core concept underlying the First Amendment is that permit and licensing schemes
16 which impact First Amendment protected activity, such as Petitioner's, must contain definite and
17 objective standards by which to guide the decision maker in approving or denying such permits
18 to avoid the danger of self-censorship inherent in permit schemes which afford officials with
19 broad discretion. A long line of decisions has held unconstitutional ordinances governing the
20 issuance of licenses to conduct First Amendment activities where administrative officials were
21 granted excessive discretion in determining whether to grant or deny a license. (See e.g. *Staub*
22 *v. City of Baxley* (1958) 355 U.S. 313, holding unconstitutional an ordinance which allowed
23 officials to grant or deny a permit for persons to solicit citizens to join an organization based
24 upon the "character of the applicant" and the "effects on the general welfare"; *Schneider v. State*
25 (1939) 308 U.S. 147, holding unconstitutional an ordinance which permitted city officials to
26 deny a license if the applicant was "not of good moral character"; and *Largent v. Texas* (1943)
27 318 U.S. 418, holding unconstitutional an ordinance which provided that a permit could be
28 granted for the distribution of religious publications if city officials deemed it "proper and

LAW OFFICE
1055 N. M.
SANTA ANA
(714) 538-8421
JD TALMO
SUITE 1100
92701
X 538-9981

1 advisable"). A fortiori, an ordinance, impacting First Amendment freedoms, is unconstitutional
2 if no standards whatever are set forth to circumscribe the discretion of officials in granting or
3 denying licenses. *Burton v. Municipal Court* (1968) 68 Cal.2d 684 at 691. The City of Long
4 Beach's entertainment permit scheme, as it relates to Petitioner's First Amendment protected
5 activities, is fraught with the danger of censorship because it endows City officials with
6 excessive substantive discretion in deciding whether to approve or deny his entertainment permit.

7 In *Dease v. City of Anaheim* (C.D. Cal. 1993) 826 F.Supp. 336, the City of Anaheim
8 enacted a Conditional Use Permit Ordinance which required Adult Entertainment Businesses to
9 obtain a permit before featuring "nude" or "semi-nude" dancing. The Anaheim Municipal Code
10 gave the planning commission certain criteria to follow in determining whether to grant or deny
11 such a permit. Specifically, the ordinance provided:

12 "In granting any such conditional use permit the Planning Commission may
13 establish such conditions as it may determine to be reasonably necessary to
14 safeguard and protect the public health and safety and promote the general welfare
15 and to insure the development of any use authorized in accordance with approved
16 plans. Before the Planning Commission can issue a Conditional Use Permit, it
17 must find that the proposed use will not (1) adversely affect the adjoining land
18 uses and the growth and development of the area, (2) be detrimental to the peace,
19 health, safety, and general welfare of the area, (3) create an undue burden by
20 generating excessive traffic, or (4) be detrimental to the peace, health, safety, and
21 general welfare of the citizens of the City of Anaheim."

18 It was argued that the ordinance was an unconstitutional prior restraint because it confers
19 excessive substantive discretion on city officials to decide whether to grant or deny a permit. The
20 Court stated that Anaheim's ordinance vests the Planning Commission with the power to decide
21 who may or may not obtain a permit. *Dease* at 344. The Court held that because the
22 Commission's decision making is not guided by definite and objective standards, the ordinance
23 infringed upon the First Amendment rights of the permittee. *Id* at 344. The Court explained that
24 the Commission's ability to make decisions based on ambiguous criteria such as the general
25 welfare of the community effectively gives the Commission the power to make decisions on any
26 basis at all, including an impermissible basis, such as the content of the speech. *Id* at 344.
27 Anaheim's permit scheme was held to be a prior restraint on protected speech because it
28 essentially required the permittee to obtain the government's permission or approval before

LAW OFFICE
1065 N. M.
SANTA ANA,
(714) 538-8642

J TALMO
JITE 1100
97701
X 538-3981

1 engaging in speech. *Id* at 342.

2 Similarly, LBMC § 5.72.120 D 4, one of the criteria which the City Council may consider
3 in determining whether to grant or deny Petitioner's application for an entertainment permit is
4 the degree, if any, in which the public peace, welfare, and safety would be impaired. This amount
5 of discretion, as it relates to Petitioner's First Amendment protected activities, allows city
6 officials to grant or deny Petitioner's application for any reason. The lack of definite and
7 objective criteria to guide city officials in granting or denying Petitioner's application renders the
8 City of Long Beach's entertainment permit application process a prior restraint. Virtually the
9 same offensive language, public peace, welfare, and safety, used in Long Beach's municipal
10 code, was held unconstitutional in *Dease*.

11 In *Perrine v. Municipal Court* (1971) 5 Cal.3d 656, Perrine challenged the provisions of a
12 Los Angeles Municipal Ordinance which allowed the City to deny an applicant a permit to
13 operate an adult bookstore if the applicant was previously convicted of certain enumerated
14 crimes. In holding that provision unconstitutional, the California Supreme Court reasoned that
15 the City is not limited to denying a license on the basis of a conviction of any of the enumerated
16 crimes, but must determine whether the applicant or any of his associates have committed any of
17 those crimes, a determination that may be fraught with uncertainty. *Perrine* at 663. Even in the
18 absence of First Amendment considerations, an ordinance regulating the right to engage in a
19 lawful occupation or business must bear a rational relationship to a valid governmental purpose.
20 *Id* at 663. Thus, the Court held the standards for excluding persons from engaging in such
21 commercial activities must bear some reasonable relation to their qualifications to engage in
22 those activities. *Id* at 663. The Court explained that the ordinance's broad exclusion for past
23 criminal convictions goes far beyond any constitutionally permitted restriction on the right to
24 engage in a lawful occupation or business. *Id* at 664.

25 In the present case, LBMC § 5.72.120 D 4 allows the City Council, in deciding whether
26 or not to approve Petitioner's application for an entertainment permit, to consider if the applicant,
27 the persons interested in the ownership and the operation of the entity, and the officers and
28 trustees of the entity are law abiding persons and persons who will operate and conduct the

LAW OFFICE
1055 N. M.
SANTA ANA
(714) 538-8427
J. TALAMO
JITE 1100
92701
538-3981

1 business activity in a lawful manner. In light of the First Amendment considerations, this
2 provision allows the City Council unbridled discretion in determining if the applicant is a law
3 abiding persons who will operate and conduct the business activity in a lawful manner. There are
4 no standards by which the City Council must follow in making this determination. Such
5 discretion cannot pass constitutional muster under the Supreme Court's prior restraint analysis.
6 Even in the absence of First Amendment considerations, the lack of any standards for
7 determining if the applicant is a law abiding person who will operate and conduct the business
8 activity in a lawful manner, allows the City Council to make arbitrary determinations that bear no
9 reasonable relation to the applicant's ability to operate the business.

10 Furthermore, LBMC § 21.45.110 C, allows the Chief of Police to determine the number
11 of security guards required at an adult entertainment business, and also allows the Chief to
12 increase that number at any time, if it is determined, in the Chief's discretion, that such increase
13 is necessary to protect the public peace and surrounding neighborhood. In the context of First
14 Amendment protected activities, the ability for the Chief of Police to prescribe any number, vests
15 the Chief with unlimited discretion in determining how many security guards are necessary to
16 protect the public peace and surrounding neighborhood. Such discretion allows the Chief to
17 impose any number which could have the effect of prohibiting Petitioner from operating as an
18 adult business because of the increased costs in hiring more employees.

19 Finally the ability for the concerned City departments to impose any conditions on
20 Petitioner's application for any entertainment permit, along with the Director of Financial
21 Management's power to forestall the issuance of an entertainment permit, if in the Director's
22 opinion those conditions have not been satisfied, further renders Long Beach City official's with
23 an unconstitutional amount of discretion. The Long Beach Municipal Code lacks any standards
24 by which to guide the concerned City departments in the imposition of those conditions.

25 **B. The Long Beach Municipal Code lacks any time limits by which City officials must act
26 on and issue Petitioner's entertainment permit**

27 In *People v. Library One, Inc.* (1991) 229 Cal.App.3d 973, the defendants were charged
28 with the use of a premises for an adult business without a conditional use permit, in violation of

LAW OFFICE
1055 N. W.
SANTA ANA
(714) 558-8421
J. TALAMO
JTE 1100
92701
558-3981

1 the Los Angeles County Code. The defendants argued that the permit scheme applicable to such
2 types of adult businesses was an unconstitutional prior restraint because it lacked time limits by
3 which county officials were required to comply with in either issuing or denying a permit to
4 operate. The defendant's position was essentially that, under the code, county officials could
5 indefinitely postpone deciding on an application, thus precluding such First Amendment
6 protected businesses from operating in the County. The Court held that the code provisions,
7 requiring a business license and a conditional use permit as prerequisites to the operation of an
8 adult bookstore and picture arcade, constituted an invalid prior restraint, notwithstanding their
9 validity as a content-neutral time, place, and manner restriction, since they did not specify any
10 time limit for the denial or issuance of a license or permit. *Library One, Inc.* at 975. The Court
11 explained that licenses which impact First Amendment rights are required to provide procedural
12 safeguards, such as requiring a licensing authority to grant or deny permits to operate within a
13 reasonably brief period of time, to avoid unwarranted suppression of protected speech. *Id* at 984.

14 In *Freedman v. Maryland* (1965) 380 U.S. 51, a state statute required exhibitors of
15 motion pictures to submit films to a State Board of Censors for licensing in
16 advance of exhibition. The defendant, charged with not obtaining a license prior to showing a
17 film, argued that the statute violated his First Amendment rights to free speech because the
18 licensing scheme amounted to a prior restraint. The Supreme Court, in reversing the defendant's
19 conviction, held that (1) the burden of proving a film is unprotected expression must rest on the
20 censor; (2) **that the exhibitor must be assured that the censor will, within a specified brief**
21 **period, either issue a license or go to court to restrain showing the film;** (3) and the
22 procedures employed must also assure a prompt final **judicial** decision, to minimize the deterrent
23 effect of an interim and possibly erroneous denial of a license. *Freedman* at 58-59.

24 Similarly in *FW/PBS, Inc. v. City of Dallas* (1990) 493 U.S. 215, the City of Dallas's
25 licensing ordinance, pertaining to sexually oriented businesses, was challenged as an
26 unconstitutional prior restraint because it lacked no time limits upon which city officials had to
27 act on the license. The Ordinance Stated that the chief of police shall approve the issuance of a
28 sex-oriented business license to an applicant within 30 days after receipt of an application, but

LAW OFFICE
10551
SA
JLD TALMO
SUITE 1100
A 92701
AX 558-3981
(714) 558-3981

1 the license may not issue if the premises have not been approved by the health department, fire
2 department, and building officials, as being in compliance with applicable laws and ordinances.
3 The Supreme Court applied the holding in *Freedman* (1965) 380 U.S. 51, and ruled that even
4 though the chief of police had to act upon the application within 30 days, the absence of time
5 limits within which health, fire, and building officials were required to approve the
6 establishment, rendered the ordinance unconstitutional. *FW/PBS, Inc.* (1990) 493 U.S. 215 at
7 227. The Supreme Court stated that the core policy underlying *Freedman* is that a license for
8 First Amendment protected businesses must be issued within a reasonable brief period of time
9 because undue delay results in the constitutional suppression of protected speech.

10 In the present case, the City of Long Beach's application process for approving or
11 disapproving entertainment permits is constitutionally defective, as it relates to Petitioner's First
12 Amendment protected activities, in that it lacks any time limits by which the City Council must
13 act upon Petitioner's application for an entertainment permit. LBMC § 5.72.120 D requires the
14 Director of Financial Management to transmit the application, together with the reports and
15 recommendations of the City departments, to the City Council for hearing and shall notify the
16 applicant of the time and place of the hearing which shall be held before the City Council on the
17 first **available** hearing date. § 5.72.120 D lacks any definite time limits by which the hearing
18 must take place. The absence of any definite and objective time limits by which the hearing
19 before the City Council must take place enables the City Council to indefinitely delay any such
20 hearing required by § 5.72.120 D. Indeed, under § 5.72.120 D, the City Council could decide that
21 the next available hearing date is 6 months from the date on which the Director of Financial
22 Management transmits the application to them. Alternatively, other City matters may occupy
23 future hearing dates. In any event, the potential exists that the hearing will take place beyond the
24 reasonably brief time period mandated by the long line of Supreme Court cases such as
25 *Freedman v. Maryland* (1965) 380 U.S. 51. Unless the City Council approves an application for
26 an entertainment permit, the Director of Financial Management does not issue the permit.

27 The unconstitutionality of the City of Long Beach's entertainment permit application
28 process is further compounded by LBMC § 5.72.120 D 4, which provides that upon approval of

LAW OFF
1055 N
SAN
(714) 558-8...
LD TALAMO
SUITE 1100
A. 92701
AX 558-3981

1 the application by the City Council, the Director of Financial Management shall issue the permit,
2 provided that the applicant has met all conditions imposed by any City department, has complied
3 with all applicable laws, and has paid the applicable license tax and permit fees...The **applicant**
4 shall have 180 days after City Council approval to obtain the permit, and failure to do so within
5 that period shall render the City Council approval void, unless an extension of the compliance
6 period is granted by the City Council before the compliance period has ended. LBMC § 5.72.120
7 D 4 also lacks any definite and objective period by which the Director of Financial Management
8 must approve or deny Petitioner's application. In the event Petitioner has complied with all
9 conditions imposed by any City, paid the applicable license tax and permit fees, the Director of
10 Financial Management is still able to abstain from issuing the permit because the municipal code
11 does not provide any time limits by which the Director is required to issue the permit.

12 **C. The Long Beach Municipal Code lacks an avenue for prompt judicial review in the
event that Petitioner's application is denied**

13
14 In *Baby Tam & Co., Inc. v. City of Las Vegas* (9th Cir. 1998) 98 DJ D.A.R. 9897, Baby
15 Tam sought and was denied a business license to operate as an adult bookstore. The licensing
16 scheme under review provided that if a bookstore license is denied, the applicant may file a
17 petition for a writ of mandamus in a Nevada State Court. The issue in the case was whether or
18 not the provision allowing for the applicant to file a writ of mandamus in the event a bookstore
19 license was denied, satisfied the procedural safeguards required under *Freedman v. Maryland*
20 (1965) 380 U.S. 51. The Supreme Court held in *Freedman* that (1) the burden of proving a film
21 is unprotected expression must rest on the censor; (2) that the exhibitor must be assured that the
22 censor will, within a specified brief period, either issue a license or go to court to restrain
23 showing the film; (3) and the procedures employed must also assure a prompt final **judicial**
24 decision, to minimize the deterrent effect of an interim and possibly erroneous denial of a license.
25 *Freedman* at 58-59. The Appellate Court in *Baby Tam & Co., Inc.* held that mere access to
26 judicial review does not satisfy the *Freedman* requirement that a licensing scheme involving a
27 prior restraint provide an avenue for prompt judicial review, and that the requirement can only be
28 satisfied by the opportunity for a prompt hearing and prompt decision by a judicial officer. *Baby*

1 *Tam & Co., Inc.* at 9790.

2 The court reasoned that the requirement that a judicial officer decide whether or not the
3 denial of a permit to engage in First Amendment protected activities is necessary because the
4 First Amendment cannot tolerate a prior restraint that gives the effect of finality to the licensing
5 official's decision to deny a license. *Id* at 9790. The Court stated that only a judicial
6 determination in an adversary proceeding ensures the necessary sensitivity to freedom of
7 expression. *Id* at 9790. "The use of the word "final", in *Freedman*, in conjunction with judicial
8 determination and judicial decision means that the judicial officers should make the final
9 decision denying a license rather than a state censor, if judicial review is sought. *Id* at 9791.

10 The City of Long Beach's entertainment application process completely ignores any
11 mechanism for prompt judicial review, and thus would allow the City Council's decision to deny
12 Petitioner's entertainment permit application to be final. Thus, pursuant to the Long Beach
13 Municipal Code, the City has the last word on whether Petitioner may engage in speech or not,
14 and in the event Petitioner's application is denied, he would be prevented from operating pending
15 his decision on whether to seek judicial review. Allowing government censors the ability to
16 determine who may engage in speech and who may not was exactly what the decision in *Baby*
17 *Tam & Co., Inc.* was meant to prevent. In fact, under the other *Freedman* requirements, the City
18 of Long Beach would be required to bear the burden of going to court and justifying a license
19 denial. Because it lacks an avenue for prompt judicial review, the City of Long Beach's
20 entertainment permit application process, as it relates to Petitioner's First Amendment protected
21 activities, amounts to an unconstitutional prior restraint.

22 **B. BY IMPOSING A NO NUDDITY REQUIREMENT ON PLAINTIFF'S**
23 **ENTERTAINMENT PERMIT, THE CITY OF LONG BEACH HAS NOT**
24 **TREATED PLAINTIFF IN THE SAME MANNER AS OTHER ADULT**
25 **THEATERS SIMILARLY SITUATED**

26 The City of Long Beach has a similar adult entertainment business operating in the City.
27 That business, known as Angels Theatre, features customary ballroom nude dancing. While the
28 City of Long Beach has chosen not to impose a no nudity requirement on Angels Theatre, the
City has chosen to require Plaintiff's establishment to comply with LBMC § 5.72.140 C, which

1 prohibits adult entertainment businesses from allowing its entertainers to appear in a state of
2 nudity.

3 The Equal Protection Clause of the Fourteenth Amendment provides that no state shall
4 deny any person within its jurisdiction the equal protection of the laws. This principle of equal
5 protection preserved by both state and federal Constitutions, of course, does not preclude the
6 state from drawing distinctions between different groups of individuals, but it does require that,
7 at a minimum, persons similarly situated with respect to the legitimate purpose of the law,
8 receive like treatment. *Brown v. Merlo* (1973) 8 Cal.3d 855 at 861. The federal constitutional
9 standard has been phrased as follows: "The Equal Protection Clause denies to States the power to
10 legislate that different treatment be accorded to persons placed by a statute into different classes
11 on the basis of criteria wholly unrelated to the objective of that statute...A classification must be
12 reasonable, not arbitrary, and must rest upon some ground of difference having a fair and
13 substantial relation to the object of the legislation, so that all persons similarly circumstanced
14 shall be treated alike." *Reed v. Reed* (1971) 404 U.S. 71 at 75-76.

15 When a legislative body provides that one group of people shall receive different
16 treatment from another, the provisions of our constitution demand more than nondiscriminatory
17 application within the class established, they also impose a requirement of some rationality in the
18 nature of the class singled out. *Estevanovich v. City of Riverside* (1999) 1999 DJ D.A.R. 845 at
19 847. A state may not rely on a classification whose relationship to an asserted goal is so
20 attenuated as to render the distinction arbitrary or irrational. *Id* at 847.

21 1. Legitimate Governmental Purpose

22 In imposing a no nudity requirement upon the operation of Plaintiff's establishment, the
23 City of Long Beach's purpose must be to combat the so-called "secondary effects" municipalities
24 have associated with adult entertainment businesses. These secondary effects include increased
25 crime, depreciation of property values, and neighborhood blight. If the City's purpose in
26 prohibiting nudity was other than regulating such secondary effects, the no nudity condition
27 would amount to a content-based regulation, and thus would not survive scrutiny under well
28 established First Amendment jurisprudence. (See, *Barnes v. Glen Theatre, Inc.* (1991) 501 U.S.

1 650; and *Tily B., Inc. v. City of Newport Beach* (1998) 99 DJ D.A.R. 68)

2 2. Classification Scheme

3 Within the classification of adult entertainment businesses, the City of Long Beach has
4 chosen to allow entertainers of Angels Theatre to appear nude, while prohibiting entertainers at
5 Plaintiff's establishment from doing so. If the City's goal in prohibiting nudity is to reduce the
6 secondary effects associated with adult entertainment businesses, as it must be, than there is no
7 legitimate reason to allow nudity in one adult business while prohibiting it in the other. Recently,
8 in *Estevanovich v. City of Riverside* (1999) 1999 DJ D.A.R. 845 at 850, the 4th Circuit Court of
9 Appeals held that a municipal code regulating hours of operation in poolrooms, arbitrarily and
10 irrationally singled out poolrooms from other businesses that remain open all night, such as
11 bowling alleys, dart parlors, card parlors, truck stops, mini-marts, and midnight basketball
12 leagues, in order to reduce criminal activity. It is well settled that a statute makes an improper
13 and unlawful discrimination if it confers particular privileges upon a class arbitrarily selected
14 from a larger number of person all of whom stand in the same relation to the privileges granted
15 and between whom and the persons not so favored no reasonable distinction or substantial
16 difference can be found justifying the inclusion of the one and the exclusion of the other. *Id* at
17 848. The City of Long Beach's goal in reducing the secondary effects of Plaintiff's business must
18 be inherently suspect.

19 III. CONCLUSION

20 In light of the foregoing discussion, a Writ of Mandate should issue to compel
21 Respondent to issue the entertainment permit, with basic fire and safety conditions **only** because
22 the application process, as it relates to Petitioner's First Amendment protected activities, is an
23 unconstitutional prior restraint. The imposition of a no nudity requirement on Plaintiff's
24 establishment violates the Equal Protection Clause of the Fourteenth Amendment.

25 Dated: 4/23/99

Respectfully Submitted,

Ronald Talmo

By Ronald Talmo
Attorney for Petitioner and Plaintiff,
V & M Associates, Inc.

Exhibit 'A'



Accepted by DFL
 Date Accepted 9-22-97

completed 10-31-97
11-13-97 jw

APPLICATION FOR PERMIT CITY OF LONG BEACH

PLEASE PRINT

Applicant's Name: VM Associates, Inc.

Business Name: FLAMINGO Theater

Address of Business: 2421 E. Artesia Blvd. Phone: 714-535-0811

Date Business Proposes to Open 12-1-97

Days & Time Premises are Open for Inspection: BY APPOINTMENT by calling VASKEN TATARIAN AT 714-535-0811

Proposed Use:

Entertainment Restaurant with Dancing Without Dancing

Entertainment ~~Restaurant~~ with ^{EROTIC} Dancing _{Stage} Without Dancing ^{Public}

Social Club Pool or Billiard Hall Other Please explain: _____

Contact Person Name: VASKEN TATARIAN Phone: 714-229-1556

Explain briefly the proposed use of the rooms within the building: An Adult Theater. For Patron 18 years or older. on Stage with dancing with recorded music - ALSO couch dancing, selling Non Alcoholic Beverages

Type of Organization:
 Corporation Partnership Individual Unincorporated Association or Club Trust
 Other, explain: _____

OFFICIAL USE ONLY

BUILDING/FIRE/HEALTH DEPARTMENT (circle)		Date Received _____
<input type="checkbox"/>	Building/Location meets Dept. requirements for the proposed use.	
<input type="checkbox"/>	Building/Location meets Dept. requirements for the proposed use subject to the following conditions: _____	
<input type="checkbox"/>	Building/Location does not meet Dept. requirements for the proposed use.	
Inspection Completed: _____	By: _____	
(Date)	(Initials)	
POLICE DEPARTMENT		
<input type="checkbox"/>	Police finds no basis for denial	
<input type="checkbox"/>	Police finds no basis for denial with conditions: _____	
<input type="checkbox"/>	Police finds basis for denial	
Conditions: _____		
Basis for denial: _____		
By: _____		Date: _____
Title: _____		

IF CORPORATION

Check one: Profit Non Profit If a non profit corporation, please attach copies of both State and Federal tax exempt certificates.

Name of Corporation: V.M. Associates, INC.
 Corporation Number: 1793650
 Date and Place of Incorporation: Nov 12, 196 Anaheim, CA
 Location of Headquarters: 2421 E. Artesia CA

Please attach certified copies of Articles of Incorporation and By-Laws, and all amendments thereto to this application.

Names and residence address of officers (members of executive board):

OFFICER	ADDRESS	PHONE NUMBER
President	MAJID AHMADI - President 5215 E. Fern Haven Ln Anaheim CA 92807	714-271-7499
Vice President	8469 Bouch ave. Cijrem. CA 92603 VASKEN TATARON	714-220-1556
Secretary	Same as president - MAJID AHMADI	"
Treasurer	Same as vice president VASKEN TATARON	"
Other		

Number of shares issued by corporation: 1000 Number of shares retained by corporation: 1000

Names and addresses of shareholders, if ten (10) or less, state also the number and type of shares:
Same as President

Name and address of agent for service of process designated by Corporation with Secretary of State of California:
Charles Fuvano 2400 S. State College Blvd. Anaheim, CA 92806

Principal Place of Business: 2421 E. Artesia Blvd. Long Beach
 (If different than business address for which permit is sought)

Address of principal officers: 5215 E. Fern Haven Lane Anaheim, CA 92807

Names and Addresses of all agents and employees authorized to negotiate or otherwise represent individuals in connection with any transaction with the City of Long Beach: MAJID AHMADI

Fictitious Name(s): Flamingo Trust

Place & Date of filing Fictitious Business Name Statement: per Mr. Majid 4/97 11/19

County(ies) in which Fictitious Business Name Statement is (are) filed: Orange Co. Anaheim L.A. County, V.M. Assoc

State whether you are Licensed by any governmental agency to engage in any Business. If so, list each such license held, the City in which held, the number and expiration date thereof:

TYPE OF LICENSE	CITY	NUMBER	EXP. DATE
<u>N/A</u>			

Yes No Is this applicant a subsidiary of a present corporation or business?
 If yes, explain _____

How long has the corporation or business been in operation? one year
(7)

CORPORATE OFFICER (Information requested is necessary for Police Department Identification and Investigation)

NAME Masid AHMADI

TITLE President / Secretary

RESIDENCE ADDRESS 5215 E. Fern Haven Lane

CITY Anaheim, CA ZIP 92807

RESIDENCE PHONE NUMBER 714-279-9499

BUSINESS ADDRESS 242 E. Atlantic Blvd

CITY Long Beach, CA STATE ZIP

BUSINESS PHONE NUMBER

RACE W SEC M HAIR Brown EYES Brown HEIGHT 5'5 WEIGHT 140
DATE OF BIRTH 1/20/46 PLACE OF BIRTH IRAN DRIVERS LICENSE NUMBER C 5269511

CORPORATE OFFICER (Information requested is necessary for Police Department Identification and Investigation)

NAME VASKEN TATARIAN / Treasurer

TITLE Vice President

RESIDENCE ADDRESS 8160 Beach Circle

CITY Cypress, CA STATE ZIP 90630

RESIDENCE PHONE NUMBER

BUSINESS ADDRESS

CITY STATE ZIP

BUSINESS PHONE NUMBER

RACE W SEC M HAIR Brown EYES Brown HEIGHT 5'11 WEIGHT 220
DATE OF BIRTH 7-20-60 PLACE OF BIRTH Syria DRIVERS LICENSE NUMBER N 9169031

CORPORATE OFFICER (Information requested is necessary for Police Department Identification and Investigation)

NAME

TITLE

RESIDENCE ADDRESS

CITY STATE ZIP

RESIDENCE PHONE NUMBER

BUSINESS ADDRESS

CITY STATE ZIP

BUSINESS PHONE NUMBER

RACE SEX HAIR EYES HEIGHT WEIGHT
DATE OF BIRTH PLACE OF BIRTH DRIVERS LICENSE NUMBER

8

GENERAL OPERATING CONDITIONS

Yes No Will liquor be sold and consumed on the premise?

If Yes:

	TYPE OF LICENSE	NUMBER OF LICENSE	CLUB OR COMMERCIAL
<input type="checkbox"/>	On sale beer	N/A	
<input type="checkbox"/>	On sale beer & wine		
<input type="checkbox"/>	On sale distilled spirits		

Yes No Is a bona fide eating place provided on the premises? (Bona fide eating place means a place which is regularly used for serving meals for compensation, which has suitable kitchen facilities containing conveniences for cooking an assortment of foods for ordinary meals other than fast foods, sandwiches or salads. The kitchen must contain proper refrigeration for food and must comply with all applicable regulations of the Health and Human Services Department).

If yes, list types of food sold: _____
 If no, list any food products sold: _____

Yes No Are non-alcoholic beverages sold?
 20 *Maid 9-24-97*

How many tables for seating? 90 patrons

Yes No Are other types of business conducted on the premises?
 If yes, list type(s): Call Souvenir Item like T-shirts, mugs
a - 2 other things that have business name on them

Yes No Are pool tables provided?
 If yes, indicate number: _____

Yes No Is there a license for the pool tables?
 If yes, license number: _____

Yes No Are amusement machine(s) and/or jukebox(es) provided?
 If yes, indicate number and type: _____

Yes No Is there a license for the amusement machine(s) and or jukebox(es)?
 If yes, decal number: _____

Owner of machine(s) and/or Jukebox(es):
 Name: _____
 Address: _____

Yes No Are minors allowed on the premises?

Yes No Are the premises open to the general public?

Yes No Will security officers be provided?
 If yes, number of security officers: one Security Personnel
to patrol the premises

General Operating Conditions - continued

Yes No Other type of security? Video Cameras To
 If yes, describe type of security: Minor Interviews

Days and hours security officers or other security will be provided: Exterior of the facility

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
11:00 AM to 2:00 AM	11:00 AM to 2:00 AM	11:00 AM to 2:00 AM	11:00 AM to 2:00 AM	11:00 AM to 2:00 AM	11:00 AM to 2:00 AM	11:00 AM to 2:00 AM

every day

Yes No Will an admission fee be charged?
 If yes, fee schedule: Varies based on Promotion and hours of the day/week \$1.00 - 5.00 depending on day

Yes No Is there a private area for exclusive use of members and their guests only?
 If yes, types of membership and fees: _____

Yes No Will guests of members pay an admission fee or other charges?
 If yes, schedule of fee or other charges: \$1 - \$5.00 depending on day

Opening and closing hours by day:

DAY	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
OPEN	11:00 AM	11	11	11	11	11	11
CLOSE	2:00 AM	2	2	2	2	2	2

Yes No Are there businesses within 300 feet? Yes
 What type?: Oil Refinery to the south, Towing and Machine/Tool Parts to the East and West

Yes No Are there residences within 300 feet?
 Approximately how close? _____

Yes No Is parking available?

Yes No Is parking facility part of the business premises?
 If no, address of parking facility: _____

Describe business arrangement made with owner of parking facility if not part of business premises: (Attach contract if applicable)
Premises has 40 parking spaces 55 ✓

Days and hours parking facility will be available: MA

How many spaces? N/A

ENTERTAINMENT/RESTAURANT OR ENTERTAINMENT/TAVERN

Type of Entertainment:

Yes No Instrumental entertainment by more than one musician?

Yes No Singing entertainment?
If yes, number of persons singing: _____

Yes No Disk Jockey?

Yes No Vaudeville, floor show or cabaret entertainment?

Yes No Adult entertainment as defined in Section 21.15.110 (attached) of the Long Beach Municipal Code?

Yes No Dancing by patrons, guest or customers?

Yes No Any other type of entertainment not listed above? Table Dance

If yes, give a brief description of each entertainment activity: Bikini Dancers
Dancing on table area for customers

Yes No Is there a dance floor?

Length: _____ Width: _____ Square Feet: _____ Material: _____

Schedule of time for entertainment and/or dancing? 11:00 A.M. to 2:00 A.M.

RELEASE FORM

The undersigned, on behalf of V.M. Associates, hereby authorizes the City of Long Beach, by and through its appropriate officers, agents and employees, to verify and confirm the information contained in this application and to conduct such other investigations as may be reasonably required by the City of Long Beach, its officers, agents and employees for the purpose of determining the capability, fitness and capacity of V.M. Associates to obtain the Entertainment permit/license.

The applicant, by signing this application, consents that service of any notice required or provided for by the laws, rules, regulations, or ordinances of the City of Long Beach upon the person at the address designated in this application as the business address, will constitute sufficient and legal notice. Any change in the person or the address listed in the application may be made only in writing to the Director of Financial Management.

The applicant consents and agrees that full compliance will be made with all applicable State laws and City ordinances governing the conduct of the particular type of business activity for which a business license or permit is requested. The applicant by signing this application understands that any incomplete or false information may constitute grounds for denial.

I swear under penalty of perjury that I have read the forgoing application and that all information and statements made by the undersigned/applicant regarding this application are true and correct.

[Signature] [Signature] Vice Presid. 9-22-97
Signature Title Date
[Signature] [Signature] Vice presid. 9-22-97
B.L. N 9169031

Witnessed by: [Signature] Patricia LeBeauf

1793650

State of California

SECRETARY OF STATE

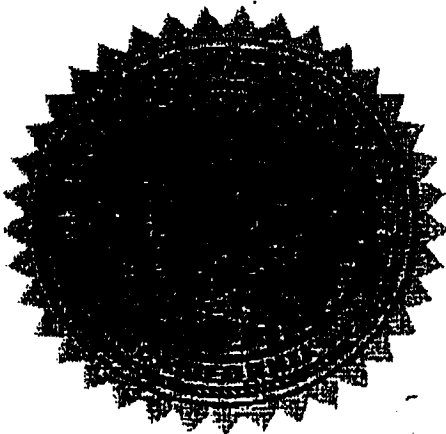
CORPORATION DIVISION

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

NOV 12 1996



Bill Jones

Secretary of State

1793650

ARTICLES OF INCORPORATION
OF
V.M. ASSOCIATES, INC.

ENDORSED
FILED
In the office of the Secretary of State
of the State of California

NOV 12 1996

I

The name of the corporation is V.M. Associates, Inc.

Bill Jones
BILL JONES, Secretary of State

II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the business, the trust company business, or the practice of the banking profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California of this corporation's initial agent for service of process is: Charles M. Farano, 2100 So. State College Blvd., Anaheim, California 92806.

IV

This corporation is authorized to issue only one class of shares of stock; and the total number of shares which this corporation is authorized to issue is 1,000,000 without par value.

V

The liability of the directors of the corporation for monetary California law is eliminated to the fullest extent permissible under California law.

VI

Any director, officer, employee or other agent of this corporation or other person serving at the request of the corporation, shall be indemnified for breach of duty to the corporation and its stockholders, to the fullest extent permissible under California law.

DATED: 11/8/96

Thomas G. Kieviet
Thomas G. Kieviet, Incorporator

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

DATED: 11/8/96

Thomas G. Kieviet
Thomas G. Kieviet