SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/16/99			DEPT. 86
HONORABLE DAVID P. YAFFE	JUDGE	C. HUDSON M. LOMELI, CRT. ASST.	DEPUTY CLERK
HONORABLE 3.	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	DOLMAN AUDIO VISUAL	Reporter

9:30 am BC206790

V&M ASSOICATES INC
VS
CITY OF LONG BEACH

Plaintiff Counsel: RONALD TALMO (X)

Defendant Counsel: DANIEL S. MURPHY (X)

NATURE OF PROCEEDINGS:

DOLMAN AUDIO VIDEO DOES NOT CONSTITUTE THE OFFICIAL RECORD OF THIS COURT.

PETITIONER, V & M ASSOCIATES, INC'S., NOTICE OF MOTION OF PETITION FOR WRIT OF MANDATE;

Matter comes on for hearing and is argued.

1. Petitioner is not entitled to the relief it seeks, which is to require respondent to issue it a permit to operate an entertainment business free of ALL respondent's ordinances, including its prohibition against nude dancing establishments (First Amended Complaint 14:2-3. The prohibition against nude dancing is valid. BARNES v. GLEN THEATRE INC. 501 U.S. 560(1991).

2. Petitioner has no standing to complain that respondent has too much discretion in determining whether to grant or deny an entertainment permit, because such a permit was issued to petitioner upon application therefor and petitioner is therefore not aggrieved by the alleged defect in the ordinance.

3. It was not an abuse of discretion for respondent to refuse to process petitioner's application for an entertainment permit until petitioner obtained permits to build the premises in which the entertainment was

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COUNTY CLERK

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HONORABLE DAVID P. YAFFE JUDGE | C. HUDSON DEPUTY CLERK
HONORABLE JUDGE PRO TEM | M. LOMELI, CRT. ASST.
3. ELECTRONIC RECORDING MONITOR
NONE Deputy Sheriff | DOLMAN AUDIO VISUAL Reporter

9:30 am BC206790

V&M ASSOICATES INC
VS
CITY OF LONG BEACH

Plaintiff Counsel RONALD TALMO (X)

Defendant Counsel DANIEL S. MURPHY (X)

NATURE OF PROCEEDINGS:

to be provided. Petitioner advances no reason why such refusal was unreasonable under the circumstances, or any evidence that it objected to such refusal at the administrative level. Because this is the only delay to which petitioner was subjected in the permit process, petitioner was not aggrieved by a lack of a time limit in respondent's ordinance regarding the issuance of entertainment permits.

4. The automatic stay provision in LBMC Section 5.72.145C satisfies the requirement of prompt judicial review expressed in FREEDMAN v. MARYLAND, 380 U.S.51 (1965) and BABY TAM & CO. v. CITY OF LAS VEGAS, 154 F3d 1097(9th Cir. 1998). As stated in the latter case, the current status of the requirement in the former case, that the licensor bear the burden of going to court, is questionable in the light of later pronouncements by the Supreme Court.

5. Petitioner's argument that it has been denied equal protection of the laws by virtue of disparate treatment is not supported by any evidence.

This order disposes of all of the issues raised in petitioner's first amended complaint except the fourth cause of action. That issue must be resolved in the trial department, and this order will remain interlocutory in the meantime.

The parties and their counsel have made the court's review of this matter unnecessarily burdensome and

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HONORABLE 3.	JUDGE PRO TEM	DOLMAN AUDIO VISUAL	ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff		Reporter

9:30 am	BC206790 V&M ASSOICATES INC VS CITY OF LONG BEACH	Plaintiff Counsel	RONALD TALMO (X)
		Defendant Counsel	DANIEL S. MURPHY (X)

NATURE OF PROCEEDINGS:

time consuming, by relying upon Non-California authorities while completely ignoring the requirement of CRC 313(e) that copies of such authorities be furnished to the court. Counsel for each party is to show cause why sanctions in the sum of $500.00 each should not be imposed for violation of Local Rule 9.4(b). Notice of hearing waived. Sanctions are imposed against both parties in the sum of $250.00. Counsel Ronald Talmo and Daniel S. Murphy are each to pay sanctions to the Clerk of the Superior Court and file a proof of payment in this department within 5 days.

MINUTES ENTERED
06/16/99
COUNTY CLERK

SCOTT W. WELLMAN, State Bar # 082897
JENIFFER FRIEND, State Bar # 200146
WELLMAN & WARREN
Attorneys at Law
4 Venture, Suite 325
Irvine, California 92618-3325

Telephone: 949-450-0662
Facsimile: 949-450-0750

Attorneys for Petitioner, V&M Associates, Inc.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

V & M Associates, Inc.

Plaintiffs,

V

CITY OF LONG BEACH

Defendants

Case No.: BC206790
Dept.: 54
Judge: Hon. Ernest B. Hiroshige

NOTICE OF APPLICATION AND APPLICATION FOR ORDER TO SET ASIDE COURT'S DISMISSAL REINSTATE THE MATTER TO THE COURT'S DOCKET ; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF RONALD TALMO & VASKIN TATARIAN

Date: October 14, 1999
Time: 8:30 a.m.

CALENDARED

TO ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 14, 1999, at 8:30 a.m. or as soon thereafter as the matter may be hered, in Department 54 of the above-entitled Court, Plaintiff, V & M Associates, Inc., will apply with Notice to show good cause why the Court should grant Plaintiff an Order Setting Aside the Court's Dismissal and reinstating the matter to the Court's docket.

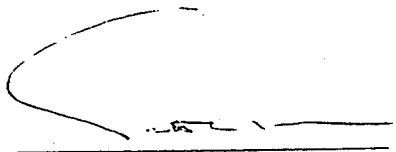
The motion will be made pursuant to Civil Code of Procedure § 473 on the grounds that the dismissal entered in this case was by reason of Plaintiff's Attorney's mistake, inadvertence and/or excusable neglect.

The Notice will be based on this Notice, Memorandum of Points and Authorities, Declarations of Ronald Talmo and Vaskin Tatarian, the pleadings, the files and records of the

above-entitled action, and such oral and documentary evidence as may be presented at the hearing on this motion.

DATE:September 14, 1999

WELLMAN & WARREN



Scott W Wellman
Attorney for Plaintiff
V & M Associates, Inc.

MEMORANDUM OF POINTS & AUTHORITIES

1. INTRODUCTION

On August 12, 1999 the previous attorney for Plaintiff mistakenly, without the consent and authority of the client filed a motion seeking the dismissal of this action. Consequently the Court dismissed the action. (see declarations of Talmo and Tatarian.)

This motion seeks to set a side the Court's dismissal of this action under C.C.P. Section 473(b) due to the mistake, inadvertence, or excusable neglect of Plaintiff's counsel.

Setting aside the dismissal of this action and reinstating this matter to the Court's docket will promote judicial economy. Furthermore, if the dismissal is not set aside Plaintiff will be greatly prejudiced. This process will expend considerably more judicial resources than setting aside the dismissal of the action under C.C.P. Section 473 and ordering the matter reinstated to the Court's docket.

Concurrently with this C.C.P. § 473 motion, is a motion for leave to file a second amended complaint. This complaint has been made necessary because Plaintiff's previous counsel failed to assert the theories necessary to the success of the Plaintiff's case. In short the Plaintiff feels that it was not adequately represented by their previous counsel. Not only did Plaintiff's previous counsel fail to assert the proper theories, but also he simply dismissed the action without Plaintiff's consent or knowledge.

2. UNDER C.C.P. SECTION 473 THE DISMISSAL OF PLAINTIFF'S COMPLAINT SHOULD BE SET ASIDE.

Code of Civil Procedure Section 473 provides, in pertinent part, as follows:

"The court may, upon any terms as may be just, relive a party or his or her legal representative from a judgment, ***dismissal***, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect". (emphasis added).

* * *

Furthermore, where the dismissal was a result of the mistake or inadvertance of the attorney, then it is mandatory that the court set aside the dismissal:

"Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect". (emphasis added)

As set forth in the accompanying Declaration, Ronald Talmo, Plaintiff's previous counsel acting mistakenly believed that he had authority to dismiss the action, which resulted in the action being dismissed. This error on the part of the plaintiff's previous attorney clearly constitutes mistake, inadvertence, or excusable neglect under C.C.P. Section 473.

Commenting on the effect of C.C.P. § 473 on involuntary dismissals, Weil & Brown, CAL. PRAC. GUIDE: CIVIL PRO. BEFORE TRIAL (The Rutter Group 1994) in section 11:49.1 provides, in pertinent part, as follows:

"Effect of CCP § 473 "attorney affidavit of fault"? CCP § 473 mandates setting aside a dismissal when Plaintiff seeks relief based on an "attorney's affidavit of fault"... "Attesting to his or her mistake, inadvertence, surprise or neglect" (need not be excusable neglect; see para. 5:292)."

In Section 5:292, Weil & Brown, comment as follows:

" Attorney affidavit of fault: "(w)henever an application for relief is timely, in proper form, and accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise or neglect, (the court shall) vacate any (1) resulting default entered by the clerk.....or (2) resulting default judgment....." [CCP § 473 (emphasis and parentheses added)]

The only limitation is that the court may deny relief if it finds the default " was not in fact caused by the attorney's mistake, inadvertence, surprise or neglect (e.g. where attorney is attempting to "cover up" for client), [CCP § 473 (emphasis added); see **Rogalski V Nabers Cadillac** (1992) 11 CA4th 816, 14 CR2d 286,289, fn. 5--affidavit ineffective where attorney did not represent clients at time of default]"

There is no requirement that the attorney's neglect be inexcusable and the court must grant relief under C.C.P.§ 473 even when the court finds that there was inexcusable neglect on the part of the attorney. See Beeman V. Burling (1990) 216 CA3d 1586, 1604, 265 CR 719.

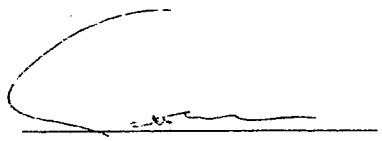
Further, even if the court finds that the dismissal was not the result of the attorney's mistake or inadvertence, the dismissal was still the result of excusable neglect on the part of the client. Therefore, in any case the dismissal should be set aside.

3. CONCLUSION

For the foregoing reasons, as a dismissal of this action resulted from the mistake, inadvertence, and/or excusable neglect of Plaintiff's attorney, it is respectfully submitted that the court should enter an order setting aside the dismissal, restoring this action to the court's docket, and assigning a new Delay Reduction Hearing date.

DATE: September 14, 1999

WELLMAN & WARREN



Scott Wellman

Attorney for Plaintiff

V & M Associates, Inc.

DECLARATION OF RONALD TALMO

I, RONALD TALMO, do hereby declare and state as follows:

1. I am an attorney duly licensed to practice in the State of California. I have personal knowledge of the following facts, and if called upon, could and would competently testify thereto.

2. I was previously the attorney of record for the plaintiff and petitioner, V & M Associates, Inc. ("V & M") in this action.

3. On July 16, 1999, I attended the hearing on V & M's petition for Writ of Administrative Mandamus. Before the hearing I read the Judge's tentative ruling which was to deny the writ. At that time I informed Vaskin Tatarian, V & M's president, of the judge's ruling and told him that the only remaining issues were in the 4th Cause of Action which we were probably going to lose anyway. I told him that we should probably dismiss it. Mr. Tatarian told me to do "whatever I felt was best."

4. Based on Mr. Tatarian's statement to me, I believed that I had the authority to dismiss the action. I therefore filed a dismissal of the action on August 12, 1999.

5. After the hearing on the Writ, at no time did I confirm with Mr. Tatarian or anyone on behalf of V & M that V & M intended to dismiss the action. I only assumed that V & M intended to dismiss the action based upon Mr. Tatarian's statement to me at the Writ hearing.

6. Subsequently, I was informed by Mr. Tatarian's new counsel that V & M never intended to dismiss the action nor did V & M intend to give me authority to dismiss the action.

7. If I had known that Mr. Tatarian did not intend to dismiss the action, I would not have filed the dismissal.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13 of September, 1999 at Santa Ana, California.

Ronald Talmo

RONALD TALMO

DECLARATION OF VASKIN TATARIAN

I, VASKIN TATARIAN, do hereby declare and state as follows:

1. I have personal knowledge of the following facts, and if called upon, could and would competently testify thereto.

2. I am currently, and have since its inception, been the president of Plaintiff, V & M Associates, Inc. ("V & M"). As its president I am familiar with V & M's activities and operations.

3. On July 16, 1999, I attended on V & M's behalf a hearing in Department 85 of the Los Angeles Superior Court. The subject of the hearing was V & M's application for an administrative Writ of Mandamus in Case No. BC206790 entitled V & M Associates Inc. v. City of Long Beach. Up to the time of the hearing and until the first part of August, 1999, V & M was represented by attorney Ronald Talmo.

4. English is a second language for me as my primary language is Armenian. I am not educated in legal matters and have trouble understanding language using "legaleze".

5. Before the commencement of the writ hearing, Mr. Talmo informed me that the judge's tentative ruling was to deny V & M's Writ. He then went into a discussion of the judge's reason very little of which I understood. I frankly was quite upset and to this day do not understand why the writ was dismissed. I asked Mr. Talmo if the judge's decision could be appealed. He said yes but it could take up to ten (10) or twelve (12) months. I responded by saying "what can we do because I don't understand these things". After that I left the court room.

6. At no time did I, or anyone else on behalf of V & M, tell Mr. Talmo to dismiss the action. To the contrary, in a telephone conversation in early August, I informed Mr. Talmo that V & M was consulting with alternative counsel, and that he should do nothing more on the file until he heard from me.

7. On August 23, 1999 I attended a status conference in Department 54. V & M's new counsel, Wellman & Warren, represented V & M. At this time, Mr. Wellman informed me that Mr. Talmo had apparently filed, on August 12, 1999, a dismissal of the action. This came as a complete shock and surprise to me as I had no knowledge of the dismissal and had not authorized it.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th Day of September, 1999 at Anaheim, California.

Vaskin Tatarian

PROOF OF SERVICE BY MAIL

(C.C.P. Section 1013a(3))

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18 and I am not a party to the within action. I am employed by the law firm of WELLMAN & WARREN LLP, Attorneys at Law, 4 Venture, Suite 325, Irvine, California 92718.

I served the attached documents, titled **PLAINTIFF'S NOTICE OF APPLICATION AND APPLICATION FOR ORDER TO SET ASIDE COURT'S DISMISSAL, REINSTATE THE MATTER TO THE COURT'S DOCKET; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF RONALD THELMA & VASKIN TATARIAN** on the interested parties in this action, by placing true copies thereof in sealed envelope, addressed as follows:

Robert E. Shannon, Esq.
Daniel S. Murphy, Esq.
333 West Ocean Blvd.
Long Beach, California 90802-4664

On **September 16, 1999**, I placed said envelope for collection and mailing, following ordinary business practices at the business offices of WELLMAN & WARREN LLP, at the address set forth above, for deposit in the United States Postal Service.

I am familiar with the practice of WELLMAN & WARREN LLP, for collection and processing of correspondence for mailing with the United States Postal Service, and the said envelope will be deposited with the United States Postal Service on said date in the ordinary course of business.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed September 16, 1999, Irvine, California.

Ajith Moonesinghe
(Type or Print Name)

(Signature)

SCOTT W. WELLMAN, STATE BAR #082897
WELLMAN & WARREN LLP
Attorneys at Law
4 Venture, Suite 325
Irvine, California 92618-3325
Telephone: (949) 450-0662
Facsimile: (949) 450-0750

Attorneys for Plaintiff,
V & M ASSOCIATES, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

V & M Associates, Inc. Plaintiff, v. CITY OF LONG BEACH, Defendant.	CASE NO.:BC206790 DEPT: 54 JUDGE: Ernest M. Hiroshige **SECONDED AMENDED COMPLAINT FOR DECLARATORY RELIEF; INVERSE CONDEMNATION AND EMINENT DOMAIN; PERMIT STREAMLINING ACT**

Plaintiff alleges:

COMMON ALLEGATIONS

1. Plaintiff is a Corporation, existing under the laws of the State of California, who received a conditional entertainment permit for the Flamingo Theater, located at 2421 E. Artesia Boulevard, in the City of Long Beach.

2. Defendant, the City of Long Beach, is and at all times herein mentioned was an administrative agency created and existing under the laws of California.

3. Defendant, at the time of the allegation, possessed and continues to possess concurrent jurisdiction to approve entertainment permits within the City of Long Beach, along with the Department of Financial Management who initially approves and issues such permits.

4. The approvals are pursuant to Long Beach Municipal Code Section 5.72.110, which states that persons are prohibited from carrying on, maintaining, or conducting any entertainment activity within the City without first obtaining an entertainment permit. Section 5.72.115 further defines "entertainment activity" as any activity conducted for the primary purpose of diverting or entertaining clientele in a premises open to the general public. Said activity shall include, but shall not be limited to, dancing, whether by performers or patrons of the establishment, live musical performances, instrumentals or vocal, when carried on by more than two persons or whenever amplified; musical entertainment provided by disc jockey or karaoke, or similar entertainment activity involving amplified reproduced music.

5. As further provided in the Code, Defendant has a ministerial duty to accept and process applications for entertainment permits pursuant to Long Beach Municipal Code Section 5.72.120. Section 5.72.120C specifically requires the Director of Financial Management to refer an application for an entertainment permit to all concerned City departments for investigation. Those concerned departments are required to file a report stating their

recommendations regarding the approval or denial of such permit within sixty (60) days of receiving the request from the Director of Financial Management. After receiving the reports from the City departments, Section 5.72.120D1 mandates the Director of Financial Management to transmit the application, together with those reports and recommendations of the City departments, to the City Council for a hearing.

6. On February 9, 1999, the City, in reliance upon California Assembly Bill 726 ("AB726") amended Long Beach Municipal Code 9.20.050 which made illegal nude dancing. Pursuant to AB726, a "grandfather clause" exists under its prohibitive language which exempts nude dancing theaters (such as Plaintiff's property) from the said prohibition if, inter alia, "by action of a local body . . . allowing the business to operate on or before July 1, 1998." As alleged below, by December 17, 1997, all discretionary approvals for Plaintiff's project as a nude dancing theater had been received. Therefore, Plaintiff's business should have been and still should be subject to the AB726 "grandfather clause." In other words, on December 17, 1997, the Plaintiff had vested rights in the use of its property as a nude dancing theater.

7. Following the necessary steps provided to attain an entertainment permit pursuant to the aforementioned code, Plaintiff on September 22, 1997, submitted an application for an entertainment permit to the Department of Financial Management. Plaintiff's proposed use of the premises was for an adult theater

featuring on-stage semi-nude and nude dancing with accompanying recorded music played through an amplified sound system to patrons eighteen (18) years of age and older. On November 13, 1997, the City's Department of Financial Management deemed Plaintiff's application permit complete. Once completed, the City is then required to forward the application for processing within sixty (60) days thereafter. However, as discussed below, the City artificially and intentionally waited until after July 1, 1998 to begin processing the application in order to deprive the Plaintiff's from falling within the "grandfather clause" of AB726. Indeed, in direct violation of the City Code, the City did not begin processing the entertainment permit application until January 11, 1999, more than fourteen (14) months after it was deemed complete by the City's Department of Financial Management.

8. On December 17, 1997, the City's Site Plan Review Committee approved the Plaintiff's project as a *theater* which allowed Plaintiff to operate with full nudity upon completion of construction. It was at this time the application process was complete and ready to be reviewed by the City Council. This completion of the application process occurred well before the cut-off date (July 1, 1998) in order to qualify for the "grandfather clause" of AB 726, *infra*. The city was well aware that the Site Development Plan had been approved and that the Plaintiff was expending substantial sums in reliance upon the approval. The City artificially waited until after it enacted a "no nudity" ordinance

before granting the entertainment permit and then, in reliance upon the ordinance, issued the permit with the wholly new condition of no nudity.

9. The City's sole excuse for refusing to issue the entertainment permit earlier (i.e., within the AB726 grandfather clause period) is that the Plaintiff was remodeling the building and constructing a new parking structure. However, the remodeling process is wholly independent of the entertainment permit process. Indeed, the City itself admits as much. In a letter to the City Council, the Director of Financial Management recommended that the entertainment permit be issued subject to the condition that the building be complete.

10. As stated below, the Plaintiff would not have engaged in such remodeling and construction, but for the approvals they received from the City, on December 17, 1997. Those approvals included the Site Plan which specifically approved the project as a theater containing nude dancing as well as the assurances from the City Department of Financial Management on November 13, 1997, which affirmatively stated that the entertainment application was complete.

11. On April 6, 1999, Plaintiff's application for an entertainment permit was approved by the City Council, subject to the conditions that (1) the operation of the establishment shall be limited to those activities and elements approved by the City Council, (2) Plaintiff agrees to reimburse the City whenever

excessive police services, as determined by the Chief of Police, are required as the result of any incident or nuisance arising out of or in connection with the Plaintiff's operations, . . . (8) and Plaintiff is subject to revocation proceedings if any violations of the new amendments to Municipal Code Sections 5.72.140, 5.72.145, and 9.20.040 occurs at Plaintiff's establishment. Condition eight (8) placed a restraint on Plaintiff's vested rights in that the City applied the "no nudity" ordinance, which did not apply originally in its prior stated usage. The refusal by the City to allow such usage, after waiting to decide well beyond the sixty (60) day time limit, constitutes an abuse of discretion and deprived Plaintiff from its vested rights.

12. As a duly exempted business under AB 726 (now codified in California Penal Code Sections 318.5 and 318.6), Plaintiff contends that the foregoing preemption waiver ("grandfather clause") applies to it:

> "The provisions of this section shall not be construed to apply to any adult or sexually oriented business, as defined herein, that has been adjudicated by a court of competent jurisdiction to be, or by action of a local body such as issuance of an adult entertainment establishment license or permit allowing the business to operate on or before July 1, 1998, as, a theater, concert hall, or similar establishment primarily devoted to theatrical performance for purposes of this section."

13. Prior to July 1, 1998, Plaintiff had obtained approval from all City departments concerned with the operation and usage of

its business. Furthermore, the Department of Planning and Building approved the modifications Plaintiff proposed to make to the existing structure in converting the structure to an adult entertainment theater. Plaintiff's reliance on such approval has now caused Plaintiff's property to become valueless, and has specifically become so due to the language in the permit based on condition number eight **(#8)** stated within the City's approval, *supra*.

14. The City's issuance of the entertainment permit, which now contains a wholly new condition prohibiting nude dancing, constitutes an abuse of discretion and deprives Plaintiff from its vested rights.

FIRST CAUSE OF ACTION
(DECLARATORY RELIEF)

15. Plaintiff hereby incorporates paragraphs 1 through 14 of this complaint as though fully set forth in this paragraph.

16. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning their respective rights and duties in that Plaintiff contends that on or about September 22, 1997, Plaintiff submitted an application for an entertainment permit which was deemed complete by the Department of Financial Management on November 13, 1997. Furthermore, on December 17, 1997, the City approved Plaintiff's Site Plan specifically containing nude dancing. The City then artificially waited until after it enacted a "no nudity" ordinance before having a hearing

for the entertainment permit on April 6, 1999. In reliance upon the new ordinance, the City then issued the permit with the wholly new condition of no nudity. Since all DISCRETIONARY approvals had been received before the ordinance went into effect the Plaintiff's rights had vested in its stated usage and the refusal by the City to allow such usage constituted an abuse of discretion. This unreasonable delay in time caused Plaintiff to miss the cut-off date for "grandfather clause" status, which is stated in AB 726 as July 1, 1998.

17. Defendant disputes these contentions and contends that it decided Plaintiff's entertainment permit in a timely fashion and that there are no other requirements that they were expected to follow.

18. Plaintiff desires a judicial determination of its rights and duties, and a declaration as to Plaintiff's rightful status as stated under AB 726, the "grandfather clause" provision.

19. A declaration is necessary and appropriate at this time under the circumstances in that Plaintiff may ascertain its rights and duties under AB 726. The unsettled affair is costing Plaintiff loss of income for each day they are not allowed to open their doors.

20. As a proximate result of the actions of Defendant, Plaintiff has been damaged generally in a sum to be determined at trial including the incurrence of substantial attorney's fees and

legal costs.

21. Plaintiff has exhausted all of its administrative remedies. Plaintiff filed with the proper authorities and received the necessary approvals prior to the City Council's final approval for the entertainment permit. Plaintiff exhausted all remedies available and received a favorable response; however, Defendant did not issue the response until more than a year later which contained a wholly new condition prohibiting nude dancing. This was well after the initial Department of Financial Management approval and the approval of Plaintiff's Site Plan, and thus resulted in Plaintiff losing its status of exemption under AB 726's grandfather clause.

SECOND CAUSE OF ACTION
(INVERSE CONDEMNATION / EMINENT DOMAIN)

22. Plaintiff hereby incorporates paragraphs 1 through 21 of this complaint as though fully set forth in this paragraph.

23. On September 22, 1997, Plaintiff submitted an application for an entertainment permit.

24. On November 13, 1997, Plaintiff's application for his entertainment permit was deemed completed by the Department of Financial Management. On December 17, 1997, Plaintiff's Site Plan was approved specifically as a theater containing nude dancing. It was at this time that Plaintiff was ready to begin the process of opening its doors and spent substantial amounts to remodel the property, including the construction of a new parking structure;

on reliance upon the approvals received from the City. However, the City artificially waited until after it enacted a "no nudity" ordinance before granting the entertainment permit and then, in reliance upon the ordinance, issued the permit with the wholly new condition of no nudity. Since all DISCRETIONARY land use approvals had been received before the ordinance went into effect the Plaintiff's rights had vested in its stated usage and the refusal by the City to allow such usage constitutes an abuse of discretion.

25. As a result of Defendant's failure to act on the recommendations within a reasonable time, Plaintiff became subject to the provisions of AB 726, and did not receive the appropriate "grandfather" status. The failure of the City Council to act in a timely manner and the recent enforcement of AB 726 has caused Plaintiff not to be able to run his business or use his property as intended or for any purpose whatsoever. This is a constructive taking of Plaintiff's vested rights in violation of Plaintiff's constitutional rights, and was further an abuse of discretion.

26. Defendant's delay in granting Plaintiff's property an entertainment permit prior to AB 726's enactment has proximately and substantially caused Plaintiff to incur damages in an amount to be determined at trial. Such damages include attorney's fees and legal costs expended by Plaintiff.

/ / /

27. Plaintiff has received no compensation for the damage to its property.

28. Plaintiff has incurred and will incur attorney's fees because of this proceeding, in amounts that cannot yet be ascertained which are recoverable in this action under the provisions of §1036 of the Code of Civil Procedure.

THIRD CAUSE OF ACTION
(PERMIT STREAMLINING ACT)

29. Plaintiff hereby incorporates paragraphs 1 through 28 of this complaint as though fully set forth in this paragraph.

30. 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, as defined in Government Code §65928, which 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 §65928 further provides that a development project does not include any ministerial projects proposed to be carried out by public agencies. Government Code §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.

/ / /

31. Government Code §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 one hundred eighty (180) days from the date on which the lead agency has approved the project, or within one hundred eighty (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.

32. Plaintiff's application for an entertainment permit was deemed complete by the Department of Financial Management as of November 13, 1997. The one hundred eighty (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.

33. Moreover, Plaintiff's Site Plan was approved on December 17, 1997. The one hundred eighty (180) day period from that date expired as of June 16, 1998. Plaintiff's application had not been approved by that time. Whether the statutory mandated deadline was May 12, 1998 or June 16, 1998, both fall within the AB726 "grandfather clause" period. If the permit had been timely granted, then the condition prohibiting nude dancing would not have applied. Thus, the City abused its discretion by

failing to meet the statutory mandated deadlines of the "Permit Streamlining Act."

34. Government Code §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 application for the development project. However, the permit shall be deemed approved only if the public notice required by law has occurred.

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

36. Plaintiff is informed and believes that his application for an entertainment permit, presently before the City of Long Beach, is covered by the provisions of the Permit Streamlining Act. Plaintiff's proposed use of the establishment as an adult entertainment theater requires him to obtain an entertainment permit before operating. Plaintiff has made substantial additions and modifications to the existing structure in order to conform with both adult entertainment industry standards, and the City of Long Beach's special development standards, as contained in

Chapter 21.45 of the City's municipal code, applicable solely to adult entertainment businesses. Without an entertainment permit, Plaintiff's business would be rendered useless.

WHEREFORE, Plaintiff prays:

1. For a judicial declaration, declaring whether or not Plaintiff's business is deemed "grand fathered" under the provisions of AB 726. Thus showing, but-for Defendant's procedures, Plaintiff would have been able to operate by July 1, 1998.

2. For general and special damages on the first and second cause of action.

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

4. For costs of suit herein incurred;

5. For attorneys fees; and

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

Dated: September 14, 1999

WELLMAN & WARREN LLP

Scott Wellman
Attorney for Plaintiff
V & M Associates, Inc.

VERIFICATION

Vice

I, Vasken Tatarian, is the President of V & M Associates, Inc., the 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: September 14, 1999

Vasken Tatarian
V. President
V & M Associates, Inc.

PROOF OF SERVICE BY MAIL
(C.C.P. Section 1013a(3))

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 and I am not a party to the within action. I am employed by law firm of **WELLMAN & WARREN LLP**, 4 Venture, Suite 325, Irvine, California 92618-3325.

I served the attached document, titled **SECONDED AMENDED COMPLAINT** on the interested parties in this action, by placing true copies thereof in sealed envelopes, addressed as follows:

Robert E. Shannon, Esq.
Daniel S. Murphy, Esq.
CITY OF LONG BEACH
333 West Ocean Boulevard
Long Beach, CA 90802-4664

On September 15, 1999, I placed said envelopes for collection and mailing, following ordinary business practices, at the business offices of WELLMAN & WARREN LLP, at the address set forth above, for deposit in the United States Postal Service. I am readily familiar with the practice of WELLMAN & WARREN LLP, for collection and processing of correspondence for mailing with the United States Postal Service, and said envelopes will be deposited with the United States Postal Service on said date in the ordinary course of business.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed September 15, 1999, at Irvine, California.

Cavinda Walgampaya
(Type or Print Name)

(Signature)

V&M1/

SCOTT W. WELLMAN STATE BAR #082897
WELLMAN & WARREN LLP
Attorneys at Law
4 Venture, Suite 325
Irvine, California 92618-3325

Telephone: (949) 450-0662
Facsimile: (949) 450-0750

Attorneys for Plaintiff V & M Associates

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

V & M Associates, Inc.

Plaintiffs,

v.

CITY OF LONG BEACH

Defendants.

CASE NO.:BC206790 "BY FAX"
DEPT: 54
JUDGE: Ernest M. Hiroshige

THIRD AMENDED COMPLAINT FOR DECLARATORY RELIEF; INVERSE CONDEMNATION AND EMINENT DOMAIN; PERMIT STREAMLINING ACT

Plaintiff alleges:

COMMON ALLEGATIONS

1. Plaintiff is a Corporation, existing under the laws of the State of California, who received a conditional entertainment permit for the Flamingo Theater, located at 2421 E. Artesia Boulevard, in the City of Long Beach.

2. Defendant, the City of Long Beach, is and all times herein mentioned was an administrative agency created and existing under the laws of California.

3. Defendant, at the time of the allegation, possessed and continues to possess concurrent jurisdiction to approve entertainment permits within the City of Long Beach, along with the Department of Financial Management who initially approves and issues such permits.

4. The approvals are pursuant to Long Beach Municipal Code Section 5.72.110, which states that persons are prohibited from carrying on, maintaining, or conducting any entertainment activity within the City without first obtaining an entertainment permit. Section 5.72.115 further defines "entertainment activity" as any activity conducted for the primary purpose of diverting or entertaining clientele in a premises open to the general public. Said activity shall include, but shall not be limited to, dancing, whether by performers or patrons of the establishment, live musical performances, instrumentals or vocal, when carried on by more than two persons or whenever amplified; musical entertainment provided by disc jockey or karaoke, or similar entertainment activity involving amplified reproduced music.

5. As further provided in the Code, Defendant has a ministerial duty to accept and process applications for entertainment permits pursuant to Long Beach Municipal Code

§5.72.120. Section 5.72.120C specifically requires the Director of Financial Management to refer an application for an entertainment permit to all concerned City departments for investigation. Those concerned departments are required to file a report stating their recommendations regarding the approval or denial of such permit within sixty (60) days of receiving the requests from the Director of Financial Management. After receiving the reports from the City departments, Section 5.72.120D1 mandates the Director of Financial Management transmit the application, together with those reports and recommendations of the City departments, to the City Council for a hearing.

6. On February 9, 1999, the City, in reliance upon California Assembly Bill 726 (AB726) amended Long Beach Municipal Code 9.20.050 which made nudity illegal. The language of the statute states,

> "Except for the First Amendment-protected expression, no person shall knowingly appear nude or with female breasts exposed in any public or any place open to public view. Likewise, no person shall appear, bathe, sunbathe, walk, or be in any public place or place open to public view in such a manner that the genitals, vulva, pubis, pubic hair, buttocks, natal cleft, perineum, anus, anal region, or pubic hair region of any person, or any portion of the breasts at or below the upper edge of the areola thereof of any female person, is exposed to public view or is not covered by an opaque covering . . ."

7. Pursuant to AB726, a "grandfather clause" exists under its prohibitive language which exempts nude dancing theaters (such as Plaintiff's property) from the said prohibition if,

inter alia, "by action of a local body . . . allowing the business to operate on or before July 1, 1998." As alleged below, by December 17, 1997, all discretionary approvals for Plaintiff's project as a nude dancing theater had been received. Therefore, Plaintiff's business should have been and still should be subject to the AB726 "grandfather clause." In other words, on December 17, 1997, the Plaintiff had vested rights in the use of its property as a nude dancing theater.

8. Following the necessary steps provided to attain an entertainment permit pursuant to the aforementioned code, Plaintiff on September 22, 1997, submitted an application for an entertainment permit to the Department of Financial Management. Plaintiff's proposed use of the premises was for an adult theater featuring on-stage semi-nude and nude dancing with accompanying recorded music played through an amplified sound system to patrons eighteen (18) years of age or older. On November 13, 1997, the City's Department of Financial Management deemed Plaintiff's application permit complete. Once completed, the City is then required to forward the application for processing within sixty (60) days thereafter. However, as discussed below, the City artificially and intentionally waited until after July 1, 1998 to begin processing the application in order to deprive the Plaintiff's from falling within the "grandfather clause" of AB726. Indeed, in direct violation of the City Code, the City did not begin processing the entertainment permit application

until January 11, 1999, more than fourteen (14) months after it was deemed complete by the City's Department of Financial Management.

9. On December 17, 1997, the City's Site Plan Review Committee approved the Plaintiff's project as a ***theater*** which allowed Plaintiff to operate with full nudity upon completion of construction. It was at this time the application process was complete and ready to be reviewed by the City Council. This completion of the application process occurred well before the cut-off date (July 1, 1998) in order to qualify for the "grandfather clause" of AB726, *infra*. The city was well aware that the Site Development Plan had been approved and that the Plaintiff was expending substantial sums in reliance upon the approval. The City artificially waited until after it enacted a "no nudity" ordinance before granting the entertainment permit and then, in reliance upon the ordinance, issued the permit with the wholly new condition of no nudity.

10. The City's sole excuse for refusing to issue the entertainment permit earlier (i.e., within the AB726 grandfather clause period) is that the Plaintiff was remodeling the building and constructing a new parking structure. However, the remodeling process is wholly independent of the entertainment permit process. Indeed, the City itself admits as much. In a letter to the City Council, the Director of Financial Management recommended that the entertainment permit be issued subject to

the condition that the building be complete.

11. As stated below, the Plaintiff would not have engaged in such remodeling and construction, but for the approvals they received from the City, on December 17, 1997. Those approvals included the Site Plan which specifically approved the project as a theater containing nude dancing as well as the assurances from the City Department of Financial Management on November 13, 1997, which affirmatively stated that the entertainment application was complete.

12. On April 6, 1999, Plaintiff's application for an entertainment permit was approved by the City Council, subject to the conditions that (1) the operation of the establishment shall be limited to those activities and elements approved by the City Council, (2) Plaintiff agrees to reimburse the City whenever excessive police services, as determined by the Chief of Police, are required as the result of any incident or nuisance arising out of or in connection with the Plaintiff's operations, . . . (8) and Plaintiff is subject to revocation proceedings if any violations of the new amendments to Municipal Code Sections 5.72.140, 5.72.145, and 9.20 occurs at Plaintiff's establishment. Condition eight (8) placed a restraint on Plaintiff's vested rights in that the City applied the "no nudity" ordinance, which did not apply originally in its prior stated usage. The refusal by the City to allow such usage, after waiting to decide well beyond the sixty (60) days time limit, constitutes an abuse of

discretion and deprived Plaintiff form its vested rights.

13. As a duly exempted business under AB726 (now codified in California Penal Code §§318.5 and 318.6), Plaintiff contends that the foregoing preemption waiver ("grandfather clause") applies to it:

> "The provisions of this section shall not be construed to apply to any adult or sexually oriented business, as defined herein, that has been adjudicated by a court of competent jurisdiction to be, or by action of a local body such as issuance of an adult entertainment establishment license or permit allowing the business to operate on or before July 1, 1998, as, a theater, concert hall, or similar establishment primarily devoted to theatrical performances for purposes of this section."

14. Prior to July 1, 1998, Plaintiff had obtained approval from all City departments concerned with the operation and usage of its business. Furthermore, the Department of Planning and Building approved the modifications Plaintiff proposed to make to the existing structure in converting the structure to an adult entertainment theater. Plaintiff's reliance on such approval has now caused Plaintiff's property to become valueless, and has specifically become so due to the language in the permit based on condition number eight **(#8)** stated within the City's approval, *supra*.

15. The City's issuance of the entertainment permit, which now contains a wholly new condition prohibiting nude dancing, constitutes an abuse of discretion and deprives Plaintiff from its vested rights.

16. Furthermore, the City's standards for issuance of the entertainment permit (§5.72) is pursuant to an unconstitutionally overbroad statute. The ordinance is written in such a manner that allows the City Council to apply "conditions" to the issuance of an entertainment permit; such conditions include the application of City Code §9.20 (prohibiting nudity). Section 9.2050, itself, is unconstitutionally overbroad and it infringes on plaintiff's right to freedom of expression by not allowing nudity without furthering an important or substantial government interest as required by United States v. O'Brien, 391 U.S. 367 (1968); and therefore any use of it as a "condition" is a violation of Plaintiff's rights.

FIRST CAUSE OF ACTION
(DECLARATORY RELIEF OF UNCONSTITUTIONALLY OVERBROAD ORDINANCE)

17. Plaintiff hereby incorporates paragraphs 1 through 16 of this complaint as though fully set forth in this paragraph.

18. Plaintiff is subject to a City Code which allows the City Council to determine whether or not Plaintiff should receive an entertainment permit. Once the City Council has determined whether it will issue an entertainment permit, the City Council has the unfettered discretion to determine whether it would like to place "conditions" on said permit.

19. The "conditions" may not be, on their own, unconstitutional. However, Defendant then applies an unconstitutionally overbroad ordinance in Section 9.2050 as one

of the "conditions". This statute prohibits nudity through very broad language which states:

> "Except for the First Amendment-protected expression, no person shall knowingly appear nude or with female breasts exposed in any public or any place open to public view. Likewise, no person shall appear, bathe, sunbathe, walk, or be in any public place or place open to public view in such a manner that the genitals, vulva, pubis, pubic hair, buttocks, natal cleft, perineum, anus, anal region, or pubic hair region of any person, or any portion of the breasts at or below the upper edge of the areola thereof of any female person, is exposed to public view or is not covered by an opaque covering . . ."

Under this language, the City of Long Beach has infringed upon Plaintiff's First Amendment protections through regulating nudity in an overbroad manner.

20. The language protecting against nude performance does not meet the criteria that must be followed according the First Amendment and announced in United States v. O'Brien, 391 U.S. 367 (1968). Therefore, at the very least, the restriction against expression must "further an important or governmental interest."

21. The goals of the City of Long Beach fail to further an important governmental interest. The goals of the said statute must be further "unrelated to the suppression of free expression." Here, the goals the statute serves are completely related to the suppression of free expression, and the "incidental restrictions on [the] alleged First Amendment freedoms are greater than are essential to the furtherance of that interest," thus making the ordinance against nudity unconstitutionally overbroad and an infringement on Plaintiff's

First Amendment expression.

22. Plaintiff desires a judicial determination of its rights and duties, and a declaration as to Plaintiff's rightful status.

23. A declaration is necessary and appropriate at this time under the circumstances in that Plaintiff may ascertain its rights and duties under the entertainment permit (§5.72) and City Code §9.2050. The unsettled affair is costing Plaintiff loss of income for each day they are not allowed to open their doors.

24. As a proximate result of the actions of Defendant, Plaintiff has been damaged generally in a sum to be determined at trial including the incurrence of substantially attorney's fees and legal costs.

SECOND CAUSE OF ACTION
(DECLARATORY RELIEF FOR ABUSE OF DISCRETION)

25. Plaintiff hereby incorporates paragraphs 1 through 24 of this complaint as though fully set forth in this paragraph.

26. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning their respective rights and duties in that Plaintiff contends that on or about September 22, 1997, Plaintiff submitted an application for an entertainment permit which was deemed complete by the Department of Financial Management on November 13, 1997. Furthermore, on December 17, 1997, the City approved Plaintiff's Site Plan specifically containing nude dancing. The City then artificially waited until

after it enacted a "no nudity" ordinance before having a hearing for the entertainment permit on April 6, 1999. In reliance upon the new ordinance, the City then issued the permit with the wholly new condition of no nudity. Since all DISCRETIONARY approvals had been received before the ordinance went into effect the Plaintiff's rights had vested in its stated usage and the refusal by the City to allow such usage constituted an abuse of discretion. This unreasonable delay in time caused Plaintiff to miss the cut-off date for "grandfather clause" status, which is stated in AB726 as July 1, 1998.

27. Defendant disputes these contentions and contends that it decided Plaintiff's entertainment permit in a timely fashion and that there are no other requirements that they were expected to follow.

28. Plaintiff desires a judicial determination of its rights and duties, and a declaration as to Plaintiff's rightful status as stated under AB726, the "grandfather clause" provision.

29. A declaration is necessary and appropriate at this time under the circumstances in that Plaintiff may ascertain its rights and duties under AB726. The unsettled affair is costing Plaintiff loss of income for each day they are not allowed to open their doors.

30. As a proximate result of the actions of Defendant, Plaintiff has been damaged generally in a sum to be determined at trial including the incurrence of substantial attorney's fees and

costs.

31. Plaintiff has exhausted all of its administrative remedies. Plaintiff filed with the proper authorities and received the necessary approvals prior to the City Council's final approval for the entertainment permit. Plaintiff exhausted all remedies available and received a favorable response; however, Defendant did not issue the response until more than a year later which contained a wholly new condition prohibiting nude dancing. This was well after the initial Department of Financial Management approval and the approval of Plaintiff's Site Plan, and thus resulted in Plaintiff losing its status of exemption under AB726's "grandfather clause."

THIRD CAUSE OF ACTION
(INVERSE CONDEMNATION / EMINENT DOMAIN)

32. Plaintiff hereby incorporates paragraphs 1 through 31 of this complaint as though fully set forth in this paragraph.

33. On September 22, 1997, Plaintiff submitted an application for an entertainment permit.

34. On November 13, 1997, Plaintiff's application for his entertainment permit was deemed completed by the Department of Financial Management. On December 17, 1997, Plaintiff's Site Plan was approved specifically as a theater containing nude dancing. It was at this time that Plaintiff was ready to begin the process of opening its doors and spent substantial amounts to remodel the property, including the construction of a new parking

structure; on reliance upon the approvals received from the City. However, the City artificially waited until after it enacted a "no nudity" ordinance before granting the entertainment permit and then, in reliance upon the ordinance, issued the permit with the wholly new condition of no nudity. Since all DISCRETIONARY land use approvals had been received before the ordinance went into effect the Plaintiff's rights had vested in its stated usage and the refusal by the City to allow such usage constitutes an abuse of discretion.

35. As a result of Defendant's failure to act on the recommendations within a reasonable time, Plaintiff became subject to the provisions of AB726, and did not receive the appropriate "grandfather" status. The failure of the City Council to act in a timely manner and the recent enforcement of AB726 has caused Plaintiff not to be able to run his business or use his property as intended or for any purpose whatsoever. This is a constructive taking of Plaintiff's vested rights in violation of Plaintiff's constitutional rights, and was further an abuse of discretion.

36. Defendant's delay in granting Plaintiff's property an entertainment permit prior to AB726's enactment has proximately and substantially caused Plaintiff to incur damages in an amount to be determined at trial. Such damages include attorney's fees and legal costs expended by Plaintiff.

37. Plaintiff has received no compensation for the damages

to its property.

38. Plaintiff has incurred and will incur attorney's fees because of this proceeding, in amounts that cannot yet be ascertained which are recoverable in this action under the provisions of §1036 of the Code of Civil Procedure.

FOURTH CAUSE OF ACTION
(PERMIT STREAMLINING ACT)

39. Plaintiff hereby incorporates paragraphs 1 through 38 of this complaint as though fully set forth in this paragraph.

40. 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, as defined in Government Code §65928, which 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 §65928 further provides that a development project does not include any ministerial projects proposed to be carried out by public agencies. Government Code §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.

41. Government Code §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 one hundred eighty (180) days from the date on which the lead agency has approved the project, or within one hundred eighty (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.

42. Plaintiff's application for an entertainment permit was deemed complete by the Department of Financial Management as of November 13, 1997. The one hundred eighty (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.

43. Moreover, Plaintiff's Site Plan was approved on December 17, 1997. The one hundred eighty (180) day period from that date expired as of June 16, 1998. Plaintiff's application had not been approved by that time. Whether the statutory mandated deadline was May 12, 1998 or June 16, 1998, both fall within the AB726 "grandfather clause" period. If the permit had been timely granted, then the condition prohibiting nude dancing would not have applied. Thus, the City abused its discretion by failing to meet the statutory mandated deadlines of the "Permit Streamlining Act."

44. Government Code §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 application for the development project. However, the permit shall be deemed approved only if the public notice required by law has occurred.

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

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

permit Plaintiff's business would be rendered useless.

WHEREFORE, Plaintiff prays:

1. For a judicial declaration, declaring whether or not the entertainment permit code under §5.72 is unconstitutionally overbroad, as well as whether City Code §9.20 is unconstitutionally overbroad, both providing the opportunity to exercise unfettered discretion.

2. For a judicial declaration, declaring whether or not Plaintiff's business is deemed "grand fathered" under the provisions of AB726. Thus showing, but-for Defendant's procedures, Plaintiff would have been able to operate by July 1, 1998.

3. For general and special damages on the first, second and third cause of action.

4. For a judicial declaration, declaring whether or not Plaintiff's application for an entertainment permit is covered by the Permit Streamlining Act, as contained in Government Code §65920 et. seq.

5. For costs of suit herein incurred;

6. For attorney's fees; and

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

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Dated: January 5, 2000

WELLMAN & WARREN, LLP

Scott Wellman
Attorney for Plaintiff
V & M Associates, Inc.

PROOF OF SERVICE BY MAIL
(C.C.P. Section 1013a(3))

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 and I am not a party to the within action. I am employed by law firm of **WELLMAN & WARREN LLP**, 4 Venture, Suite 325, Irvine, California 92618-3338.

I served the attached document, titled **THIRD AMENDED COMPLAINT FOR DECLARATORY RELIEF; INVERSE CONDEMNATION AND EMINENT DOMAIN; PERMIT STREAMLINING ACT** on the interested parties in this action, by placing true copies thereof in sealed envelopes, addressed as follows:

Robert E. Shannon, Esq.
Daniel S. Murphy, Esq.
CITY OF LONG BEACH
333 West Ocean Boulevard
Long Beach, CA 90802-4664

On January 5, 2000, I placed said envelopes for collection and mailing, following ordinary business practices, at the business offices of WELLMAN & WARREN LLP, at the address set forth above, for deposit in the United States Postal Service. I am readily familiar with the practice of WELLMAN & WARREN LLP, for collection and processing of correspondence for mailing with the United States Postal Service, and said envelopes will be deposited with the United States Postal Service on said date in the ordinary course of business.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed January 5, 2000, at Irvine, California.

Cavinda Walgampaya
(Type or Print Name)

(Signature)

V&M/

4-19-00

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

V & M ASSOCIATES, INC., PLAINTIFF(S)	CASE NUMBER BC 206790
VS. CITY OF LONG BEACH, DEFENDANT(S)	TENTATIVE RULING

BC 206790
Hearing Date: April 5, 2000
Dept. 54, Judge Ernest M. Hiroshige
DEMURRER TO THIRD AMENDED COMPLAINT
MOVING PARTY: Defendant City of Long Beach.
RESPONDING PARTY: Plaintiff V&M Associates

T/R: THE MATTER IS TO BE CONTINUED FOR A DATE CONVENIENT TO COUNSEL IN APPROXIMATELY 2 WEEKS. DEFENDANT CITY OF LONG BEACH IS TO SUBMIT THE PROPER DECLARATIONS AND COMPLY WITH THE REQUIREMENTS FOR JUDICIAL NOTICE.

Defendant's demurrer is premised largely on its assertion that Plaintiff's claims have already been brought and denied by Judge Yaffe's ruling. Defendant has requested that the Court take judicial notice of Judge Yaffe's Order dated June 16, 1999 and has attached a purported copy of such order to its request for judicial notice as well as its demurrer. In neither case is a declaration provided attesting that the copies provided to the Court are true and correct copies of the Order. The Demurrer merely states that a copy is attached to the Demurrer as Exh. A. (Dem., 4:26). Such a statement is not a declaration under penalty of perjury sufficient to authenticate the purported Order.[1] CEC § 1401(a).

[1] Moreover, Defendant's request for judicial notice does not state the basis for judicially noticing the submitted documents. Presumably, Defendant's request is made pursuant to CEC § 452(c) and (d). If this is the basis for Defendant's request, Defendant must either provide the Court and each party with a copy of the material sought to be noticed or, if the material is part of the

39

Defendant to give notice.

Date:

Ernest Hiroshige
Judge of the Superior Court

Court file, specify in writing the part of the file sought to be noticed. CRC 323. Defendant has done neither.

ROBERT E. SHANNON, City Attorney
DANIEL S. MURPHY, Principal Deputy City Attorney SBN 132,444
333 W. Ocean Boulevard, Ste. 1100
Long Beach, CA 90802-4664

Telephone: 562-570-2200

Attorneys for Defendant
City of Long Beach

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

V & M ASSOCIATES, INC., Plaintiff, vs. THE CITY OF LONG BEACH, Defendants.	Case No. BC206790
	DEFENDANT CITY OF LONG BEACH'S REQUEST FOR JUDICIAL NOTICE; DECLARATION OF DANIEL S. MURPHY
	DATE: April 19, 2000 **TIME:** 8:30 A.M. **DEPT:** 54
	TRIAL DATE: NONE **DISCOVERY CUT OFF:** NONE **MOTION CUT OFF:** NONE

City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

Pursuant to Evidence Code §§ 452(c)and(d) and 453, Defendant, City of Long Beach, requests the court to take judicial notice of the following:

1. Plaintiff V & M ASSOCIATES, INC.'s First Amended Complaint and Petition for Writ of Mandate in the above referenced action that was filed on or about April 23, 1999. (A true and correct copy is attached hereto as Exhibit "A".)

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2. Plaintiff V & M ASSOCIATES, INC.'s Notice of and Motion on Petition for Writ of Mandate with Memorandum of Points and Authorities in the above referenced action that was filed on or about May 20, 1999. (A true and correct copy is attached hereto as Exhibit "B".)

3. Defendant City of Long Beach's Opposition to plaintiff's Petition for Writ of Mandate with Memorandum of Points and Authorities in the above referenced action that was filed on or about June 9, 1999. (A true and correct copy is attached hereto as Exhibit "C".)

4. Plaintiff V & M ASSOCIATES, INC.'s Reply to Defendant City of Long Beach's Opposition plaintiff's Petition for Writ of Mandate with Memorandum of Points and Authorities in the above referenced action that was filed on or about June 14, 1999. (A true and correct copy is attached hereto as Exhibit "D".)

5. Judge Yaffe's ruling on plaintiff's Petition for Writ of Mandate in the above referenced case that was entered on June 16, 1999. (A true and correct copy is attached hereto as Exhibit "E".)

DATED: April 5, 2000.

ROBERT E. SHANNON, City Attorney

By

Daniel S. Murphy, Principal Deputy

Attorneys for Defendant,

CITY OF LONG BEACH

F) Shannon
City A... f Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

DECLARATION OF DANIEL S. MURPHY

I, Daniel S. Murphy, say and declare as follows:

1. That I am an attorney at law duly licensed to practice before all the courts in the State of California and am a principal deputy city attorney for defendant City of Long Beach. As such, I am personally familiar with the facts set forth below, and if called and sworn as a witness, I could and would competently testify to the following facts.

2. That plaintiff V & M ASSOCIATES, INC.'s First Amended Complaint and Petition for Writ of Mandate in the above referenced action was filed on or about April 23, 1999. A true and correct copy of said Complaint and Petition is attached hereto as Exhibit "A".

3. That plaintiff V & M ASSOCIATES, INC.'s Notice of and Motion on Petition for Writ of Mandate with Memorandum of Points and Authorities in the above referenced action was filed on or about May 20, 1999. A true and correct copy of said Notice and Motion with Memorandum of Points and Authorities is attached hereto as Exhibit "B".

4. That defendant City of Long Beach's Opposition to plaintiff's Petition for Writ of Mandate with Memorandum of Points and Authorities in the above referenced action was filed on or about June 9, 1999. A true and correct copy of said Opposition is attached hereto as Exhibit "C".

4. Plaintiff V & M ASSOCIATES, INC.'s Reply to Defendant City of Long Beach's Opposition plaintiff's Petition for Writ of Mandate with Memorandum of Points and Authorities in the above referenced

. Shannon
City Att... of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

action was filed on or about June 14, 1999. A true and correct copy of said Reply is attached hereto as Exhibit "D".

5. That Judge Yaffe's ruling on plaintiff's Petition for Writ of Mandate in the above referenced case was entered on June 16, 1999. A true and correct copy of said Order is attached hereto as Exhibit "E".

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

Executed this 5TH day of April, 2000, in Long Beach, California.

Daniel S. Murphy

. Shannon
of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

V & M ASSOCIATES, INC., PLAINTIFF(S)	CASE NUMBER BC 206790
VS.	
CITY OF LONG BEACH, DEFENDANT(S)	TENTATIVE RULING

BC 206790
Hearing Date: April 19, 2000
Dept. 54, Judge Ernest M. Hiroshige
DEMURRER TO THIRD AMENDED COMPLAINT
MOVING PARTY: Defendant City of Long Beach.
RESPONDING PARTY: Plaintiff V&M Associates

T/R: THE DEMURRER(S) TO THE 1ST AND/OR 2ND CAUSES OF ACTION IS OVERRULED. THE DEMURRERS TO THE 3RD AND 4TH CAUSES OF ACTION ARE SUSTAINED WITHOUT LEAVE TO AMEND. PLAINTIFF TO FILE A FOURTH AMENDED COMPLAINT IN CONFORMITY WITH THIS RULING, ELIMINATING THE 3RD AND 4TH CAUSES OF ACTION, WITHIN 10 DAYS OF THIS RULING. DEFENDANT TO ANSWER WITHIN 10 DAYS OF RECEIVING THE FOURTH AMENDED COMPLAINT.

The 4th c/a (mislabeled 3rd c/a in the demurrer) for violation of the permit streamlining act asserts that as Plaintiff's rights vested prior to the passing of AB 342 when all discretionary approvals had been granted, failure to act on their permit request was in violation of Gov. Code § 65928, et seq., which requires that permit requests be acted upon within 180 days of acceptance by the lead agency. (TAC, ¶¶ 43-45). Defendant asserts that the act only applies to construction permits and not permits to operate. Gov. Code § 65943(a). Plaintiff has filed no opposition to this demurrer. As no opposition is filed, the demurrer is inferred meritorious and should be granted. LR 9.15.

It would appear that Defendant demurs to either Plaintiff's 1st c/a - declaratory relief to unconstitutionally overbroad ordinance and/or 2nd c/a - declaratory relief based on abuse of discretion. (Dem., 4-6). CRC 312(b)(4) requires that the motion set forth each specific portion of the pleading challenged by the

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demurrer. Defendant's notice of demurrer and demurrer only state generally that it challenges Plaintiff's cause of action for declaratory relief. However, Plaintiff has asserted two claims for declaratory relief and it is unclear which claim is challenged by Defendant's demurrer. In its memorandum of points and authorities, Defendant asserts that it is the 1st cause of action being challenged. However, Defendant also demurs to the 2nd cause of action for inverse condemnation even though Plaintiff's claim for inverse condemnation within the TAC is the 3rd c/a. Thus, it is unclear which declaratory relief claim is being demurred to.

Defendant also demurs to Plaintiff's 3rd c/a (mislabeled 2nd c/a) for inverse condemnation. The 3rd c/a alleges that as Plaintiff's site plan had already been approved for nude dancing by the Long Beach Site Plan Review Committee, but not yet by the City Council, all discretionary approvals had been obtained and Plaintiff's rights had vested. (TAC, ¶ 34). As Defendants failed to act on the recommendations of the Site Plan Review Committee in an appropriate time, AB 726 was passed by the legislature and its enforcement has restricted Plaintiff's ability to properly use his property, thereby constituting a constructive taking. Id. at ¶¶ 35 and 36.

In Hunter v. Adams (1960) 180 Cal.App.2d 511, the Court of Appeal held that actions reasonably necessary to safeguarding public health, safety or morals which are essential to the general public welfare are legitimate governmental actions within the purview of the government's constitutional police power. Such legitimate governmental actions are not within the scope of eminent domain restrictions and do not require compensation to the owner. Id. at 522. (Accord, Candlestick Properties, Inc. v. San Francisco Bay Conservation and Development Commission (1970) 11 Cal.App.3d 557, 571-572 (restriction preventing filling of bay lands on private property was a valid exercise of police power calling for regulations which promote health, safety, morals or general welfare and not compensable taking as it was for aesthetic purposes)).

Plaintiff argues in opposition that Defendant's actions were undertaken for solely moral convictions. (Opp., 12-13). This assertion in not within the TAC and therefore the 3rd c/a is subject to demurrer. The only question then is whether the demurrer should be sustained with or without leave to amend. Judge Yaffe has already determined that Defendant's ordinance prohibition on nude dancing is valid. (Req. For Jud. Not., Exh. E, ¶ 1). In his petition to Judge Yaffe for a writ of mandate, Plaintiff asserted that Defendant's purported purpose for the ordinance to battle "secondary effects" resulting from nude dancing establishments was inherently suspect and was likely for some other purpose. (Req. For Jud. Not., Exh. B (Plaintiff's Petition), 14-15). Plaintiff did not specify what that other

purpose may have been. Thus, Judge Yaffe rejected Plaintiff's argument and determined that the ordinance was passed to combat secondary effects, citing Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991), which held that prevention of the secondary effects normally associated with such establishments was a proper purpose for prohibiting nude dancing. (Req. For Jud. Not., Exh. B (Plaintiff's Petition), 14-15).

Furthermore, on March 29, 2000, the United States Supreme Court reaffirmed the valid purpose of regulating completely nude dancing to prevent the secondary effects associated with establishments permitting nude dancing. City of Erie v. Pap's A. M., (2000) No. 98-1161. The Court held that requiring dancers to wear pasties or G-strings was a valid regulation which furthered the interest in combating secondary effects and not an invalid restriction on expression.

The demurrers to the 1st and/or 2nd causes of action are overruled. The demurrers to the 3rd and 4th causes of action are sustained without leave to amend.

Defendant to give notice.

Date:

Ernest Hiroshige
Judge of the Superior Court

SCOTT W. WELLMAN, STATE BAR #082897
WELLMAN & WARREN LLP
Attorneys at Law
4 Venture, Suite 325
Irvine, California 92618-3325

Telephone: (949) 450-0662
Facsimile: (949) 450-0750

Attorneys for Plaintiff V & M Associates

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

V & M Associates, Inc. Plaintiffs, v. CITY OF LONG BEACH Defendants.	CASE NO.:BC206790 DEPT: 54 JUDGE: Ernest M. Hiroshige **FOURTH AMENDED COMPLAINT FOR DECLARATORY RELIEF**

Plaintiff alleges:

COMMON ALLEGATIONS

1. Plaintiff is a Corporation, existing under the laws of the State of California, who received a conditional entertainment permit for the Flamingo Theater, located at 2421 E. Artesia Boulevard, in the City of Long Beach.

2. Defendant, the City of Long Beach, is and all times

herein mentioned was an administrative agency created and existing under the laws of California.

3. Defendant, at the time of the allegation, possessed and continues to possess concurrent jurisdiction to approve entertainment permits within the City of Long Beach, along with the Department of Financial Management who initially approves and issues such permits.

4. The approvals are pursuant to Long Beach Municipal Code Section 5.72.110, which states that persons are prohibited from carrying on, maintaining, or conducting any entertainment activity within the City without first obtaining an entertainment permit. Section 5.72.115 further defines "entertainment activity" as any activity conducted for the primary purpose of diverting or entertaining clientele in a premises open to the general public. Said activity shall include, but shall not be limited to, dancing, whether by performers or patrons of the establishment, live musical performances, instrumentals or vocal, when carried on by more than two persons or whenever amplified; musical entertainment provided by disc jockey or karaoke, or similar entertainment activity involving amplified reproduced music.

5. As further provided in the Code, Defendant has a ministerial duty to accept and process applications for entertainment permits pursuant to Long Beach Municipal Code §5.72.120. Section 5.72.120C specifically requires the Director

of Financial Management to refer an application for an entertainment permit to all concerned City departments for investigation. Those concerned departments are required to file a report stating their recommendations regarding the approval or denial of such permit within sixty (60) days of receiving the requests from the Director of Financial Management. After receiving the reports from the City departments, Section 5.72.120D1 mandates the Director of Financial Management transmit the application, together with those reports and recommendations of the City departments, to the City Council for a hearing.

6. On February 9, 1999, the City, in reliance upon California Assembly Bill 726 (AB726) amended Long Beach Municipal Code 9.20.050 which made nudity illegal. The language of the statute states,

> "No person shall knowingly appear nude or with female breasts exposed in any public or any place open to public view. Likewise, no person shall appear, bathe, sunbathe, walk, or be in any public place or place open to public view in such a manner that the genitals, vulva, pubis, pubic hair, buttocks, natal cleft, perineum, anus, anal region, or pubic hair region of any person, or any portion of the breasts at or below the upper edge of the areola thereof of any female person, is exposed to public view or is not covered by an opaque covering . . ."

7. Pursuant to AB726, a "grandfather clause" exists under its prohibitive language which exempts nude dancing theaters (such as Plaintiff's property) from the said prohibition if, inter alia, "by action of a local body . . . allowing the business to operate on or before July 1, 1998." As alleged

below, by December 17, 1997, all discretionary approvals for Plaintiff's project as a nude dancing theater had been received. Therefore, Plaintiff's business should have been and still should be subject to the AB726 "grandfather clause." In other words, on December 17, 1997, the Plaintiff had vested rights in the use of its property as a nude dancing theater.

8. Following the necessary steps provided to attain an entertainment permit pursuant to the aforementioned code, Plaintiff on September 22, 1997, submitted an application for an entertainment permit to the Department of Financial Management. Plaintiff's proposed use of the premises was for an adult theater featuring on-stage semi-nude and nude dancing with accompanying recorded music played through an amplified sound system to patrons eighteen (18) years of age or older. On November 13, 1997, the City's Department of Financial Management deemed Plaintiff's application permit complete. Once completed, the City is then required to forward the application for processing within sixty (60) days thereafter. However, as discussed below, the City artificially and intentionally waited until after July 1, 1998 to begin processing the application in order to deprive the Plaintiff's from falling within the "grandfather clause" of AB726. Indeed, in direct violation of the City Code, the City did not begin processing the entertainment permit application until January 11, 1999, more than fourteen (14) months after it was deemed complete by the City's Department of Financial

Management.

9. On December 17, 1997, the City's Site Plan Review Committee approved the Plaintiff's project as a ***theater*** which allowed Plaintiff to operate with full nudity upon completion of construction. It was at this time the application process was complete and ready to be reviewed by the City Council. This completion of the application process occurred well before the cut-off date (July 1, 1998) in order to qualify for the "grandfather clause" of AB726, *infra*. The city was well aware that the Site Development Plan had been approved and that the Plaintiff was expending substantial sums in reliance upon the approval. The City artificially waited until after it enacted a "no nudity" ordinance before granting the entertainment permit and then, in reliance upon the ordinance, issued the permit with the wholly new condition of no nudity.

10. The City's sole excuse for refusing to issue the entertainment permit earlier (i.e., within the AB726 grandfather clause period) is that the Plaintiff was remodeling the building and constructing a new parking structure. However, the remodeling process is wholly independent of the entertainment permit process. Indeed, the City itself admits as much. In a letter to the City Council, the Director of Financial Management recommended that the entertainment permit be issued subject to the condition that the building be complete.

11. As stated below, the Plaintiff would not have engaged

in such remodeling and construction, but for the approvals they received from the City, on December 17, 1997. Those approvals included the Site Plan which specifically approved the project as a theater containing nude dancing as well as the assurances from the City Department of Financial Management on November 13, 1997, which affirmatively stated that the entertainment application was complete.

12. On April 6, 1999, Plaintiff's application for an entertainment permit was approved by the City Council, subject to the conditions that (1) the operation of the establishment shall be limited to those activities and elements approved by the City Council, (2) Plaintiff agrees to reimburse the City whenever excessive police services, as determined by the Chief of Police, are required as the result of any incident or nuisance arising out of or in connection with the Plaintiff's operations, . . . (8) and Plaintiff is subject to revocation proceedings if any violations of the new amendments to Municipal Code Sections 5.72.140, 5.72.145, and 9.20 occurs at Plaintiff's establishment. Condition eight (8) placed a restraint on Plaintiff's vested rights in that the City applied the "no nudity" ordinance, which did not apply originally in its prior stated usage. The refusal by the City to allow such usage, after waiting to decide well beyond the sixty (60) days time limit, constitutes an abuse of discretion and deprived Plaintiff form its vested rights.

13. As a duly exempted business under AB726 (now codified

in California Penal Code §§318.5 and 318.6), Plaintiff contends that the foregoing preemption waiver ("grandfather clause") applies to it:

> "The provisions of this section shall not be construed to apply to any adult or sexually oriented business, as defined herein, that has been adjudicated by a court of competent jurisdiction to be, or by action of a local body such as issuance of an adult entertainment establishment license or permit allowing the business to operate on or before July 1, 1998, as, a theater, concert hall, or similar establishment primarily devoted to theatrical performances for purposes of this section."

14. Prior to July 1, 1998, Plaintiff had obtained approval from all City departments concerned with the operation and usage of its business. Furthermore, the Department of Planning and Building approved the modifications Plaintiff proposed to make to the existing structure in converting the structure to an adult entertainment theater. Plaintiff's reliance on such approval has now caused Plaintiff's property to become valueless, and has specifically become so due to the language in the permit based on condition number eight **(#8)** stated within the City's approval, *supra*.

15. The City's issuance of the entertainment permit, which now contains a wholly new condition prohibiting nude dancing, constitutes an abuse of discretion.

16. Furthermore, the City's standards for issuance of the entertainment permit (§5.72) is pursuant to an unconstitutionally overbroad statute. The ordinance is written in such a manner that allows the City Council to apply "conditions" to the

issuance of an entertainment permit; such conditions include the application of City Code §9.20 (prohibiting nudity). Section 9.2050, itself, is unconstitutionally overbroad and it infringes on plaintiff's right to freedom of expression by not allowing nudity without furthering an important or substantial government interest as required by United States v. O'Brien, 391 U.S. 367 (1968); and therefore any use of it as a "condition" is a violation of Plaintiff's rights.

FIRST CAUSE OF ACTION
(DECLARATORY RELIEF OF UNCONSTITUTIONALLY OVERBROAD ORDINANCE)

17. Plaintiff hereby incorporates paragraphs 1 through 16 of this complaint as though fully set forth in this paragraph.

18. Plaintiff is subject to a City Code which allows the City Council to determine whether or not Plaintiff should receive an entertainment permit. Once the City Council has determined whether it will issue an entertainment permit, the City Council has the unfettered discretion to determine whether it would like to place "conditions" on said permit.

19. The "conditions" may not be, on their own, unconstitutional. However, Defendant then applies an unconstitutionally overbroad ordinance in Section 9.2050 as one of the "conditions". This statute prohibits nudity through very broad language which states:

> "No person shall knowingly appear nude or with female breasts exposed in any public or any place open to public view. Likewise, no person shall appear, bathe, sunbathe, walk, or be in any public place or

> place open to public view in such a manner that the genitals, vulva, pubis, pubic hair, buttocks, natal cleft, perineum, anus, anal region, or pubic hair region of any person, or any portion of the breasts at or below the upper edge of the areola thereof of any female person, is exposed to public view or is not covered by an opaque covering . . ."

Under this language, the City of Long Beach has infringed upon Plaintiff's First Amendment protections through regulating nudity in an overbroad manner.

20. The language protecting against nude performance does not meet the criteria that must be followed according the First Amendment and announced in United States v. O'Brien, 391 U.S. 367 (1968). Therefore, at the very least, the restriction against expression must "further an important or governmental interest."

21. The goals of the City of Long Beach fail to further an important governmental interest. The goals of the said statute must be further "unrelated to the suppression of free expression." Here, the goals the statute serves are completely related to the suppression of free expression, and the "incidental restrictions on [the] alleged First Amendment freedoms are greater than are essential to the furtherance of that interest," thus making the ordinance against nudity unconstitutionally overbroad and an infringement on Plaintiff's First Amendment expression.

22. Plaintiff desires a judicial determination of its rights and duties, and a declaration as to Plaintiff's rightful status.

23. A declaration is necessary and appropriate at this time under the circumstances in that Plaintiff may ascertain its rights and duties under the entertainment permit (§5.72) and City Code §9.2050. The unsettled affair is costing Plaintiff loss of income for each day they are not allowed to open their doors.

24. As a proximate result of the actions of Defendant, Plaintiff has been damaged generally in a sum to be determined at trial including the incurrence of substantial attorney's fees and legal costs.

SECOND CAUSE OF ACTION
(DECLARATORY RELIEF FOR ABUSE OF DISCRETION)

25. Plaintiff hereby incorporates paragraphs 1 through 24 of this complaint as though fully set forth in this paragraph.

26. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning their respective rights and duties in that Plaintiff contends that on or about September 22, 1997, Plaintiff submitted an application for an entertainment permit which was deemed complete by the Department of Financial Management on November 13, 1997. Furthermore, on December 17, 1997, the City approved Plaintiff's Site Plan specifically containing nude dancing. The City then artificially waited until after it enacted a "no nudity" ordinance before having a hearing for the entertainment permit on April 6, 1999. In reliance upon the new ordinance, the City then issued the permit with the wholly new condition of no nudity. Since all DISCRETIONARY

approvals had been received before the ordinance went into effect the Plaintiff's rights had vested in its stated usage and the refusal by the City to allow such usage constituted an abuse of discretion. This unreasonable delay in time caused Plaintiff to miss the cut-off date for "grandfather clause" status, which is stated in AB726 as July 1, 1998.

27. Defendant disputes these contentions and contends that it decided Plaintiff's entertainment permit in a timely fashion and that there are no other requirements that they were expected to follow.

28. Plaintiff desires a judicial determination of its rights and duties, and a declaration as to Plaintiff's rightful status as stated under AB726, the "grandfather clause" provision.

29. A declaration is necessary and appropriate at this time under the circumstances in that Plaintiff may ascertain its rights and duties under AB726. The unsettled affair is costing Plaintiff loss of income for each day they are not allowed to open their doors.

30. As a proximate result of the actions of Defendant, Plaintiff has been damaged generally in a sum to be determined at trial including the incurrence of substantial attorney's fees and costs.

31. Plaintiff has exhausted all of its administrative remedies. Plaintiff filed with the proper authorities and received the necessary approvals prior to the City Council's

final approval for the entertainment permit. Plaintiff exhausted all remedies available and received a favorable response; however, Defendant did not issue the response until more than a year later which contained a wholly new condition prohibiting nude dancing. This was well after the initial Department of Financial Management approval and the approval of Plaintiff's Site Plan, and thus resulted in Plaintiff losing its status of exemption under AB726's "grandfather clause."

WHEREFORE, Plaintiff prays:

1. For a judicial declaration, declaring whether or not the entertainment permit code under §5.72 is unconstitutionally overbroad, as well as whether City Code §9.20 is unconstitutionally overbroad, both providing the opportunity to exercise unfettered discretion.

2. For a judicial declaration, declaring whether or not Plaintiff's business is deemed "grand fathered" under the provisions of AB726. Thus showing, but-for Defendant's procedures, Plaintiff would have been able to operate by July 1, 1998.

3. For general and special damages on the first and second cause of action.

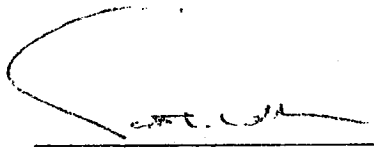
4. For costs of suit herein incurred;

5. For attorney's fees; and

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

Dated: April 20, 2000

WELLMAN & WARREN, LLP



Scott Wellman
Attorney for Plaintiff
V & M Associates, Inc.

PROOF OF SERVICE
BY MAIL

(C.C.P. Section 1013a(3))
STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 and I am not a party to the within action. I am employed by law firm of **WELLMAN & WARREN LLP**, 4 Venture, Suite 325, Irvine, California 92618-3325.

I served the attached **FOURTH AMENDED COMPLAINT FOR DECLARATORY RELIEF AND DAMAGES,** on the interested parties in this action, by placing true copies thereof in sealed envelopes, addressed as follows:

Robert E. Shannon, City Attorney
Daniel S. Murphy, Principal Deputy
CITY OF LONG BEACH
333 E. Ocean Boulevard, Ste 1100
Long Beach, CA 90802-4664

On April 20, 2000 I placed said envelopes for collection and mailing, following ordinary business practices, at the business offices of WELLMAN & WARREN LLP, at the address set forth above, for deposit in the United States Postal Service. I am readily familiar with the practice of WELLMAN & WARREN LLP, for collection and processing of correspondence for mailing with the United States Postal Service, and said envelopes will be deposited with the United States Postal Service on said date in the ordinary course of business.

I declare that I am employed by the law office of WELLMAN & WARREN LLP whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed April 20, 2000 at Irvine, California.

Allie Chun
(Type or Print Name)

Allie Chun
(Signature)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

04/19/00			DEPT. 54
HONORABLE ERNEST HIROSHIGE	JUDGE	S. TEMBLADOR A. ROMERO, CRT ASST	DEPUTY CLERK
HONORABLE 1	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
	Deputy Sheriff	S. WONG	Reporter

8:30 am	BC206790	Plaintiff Counsel	Scott W. Wellman (X) WELLMAN & WARREN
	V&M ASSOICATES INC VS CITY OF LONG BEACH	Defendant Counsel	DANIEL S. MURPHY (X)

NATURE OF PROCEEDINGS:

DEMURRER OF DEFENDANT CITY OF LONG BEACH, TO PLAINTIFF'S THIRD AMENDED COMPLAINT

STATUS CONFERENCE

ORDER TO SHOW CAUSE RE: SANCTIONS AGAINST PLAINTIFF FOR FAILURE TO APPEAR AT THE STATUS CONFERENCE OF 4/13/00

The matter comes on for hearing.

The Court issues a written tentative ruling.

Court and counsel argue the matter on the record.

The Court takes the matter under submission.

Later, after further consideration, the tentative ruling stands without modification.

The demurrer(s) to the first and/or second causes of action is overruled. The demurrers to the third and fourth causes of action are sustained without leave to amend. Plaintiff to file a fourth amended comlaint in conformity with this ruling, eliminating the third and fourth causes of action, within ten days of this ruling. Defendant to respond within ten days of receiving the fourth amended complaint.

The Court's written ruling is signed and filed this

MINUTES ENTERED
04/19/00
COUNTY CLERK

42

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

04/19/00			DEPT. 54
HONORABLE ERNEST HIROSHIGE	JUDGE	S. TEMBLADOR A. ROMERO, CRT ASST	DEPUTY CLERK
HONORABLE 1	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
	Deputy Sheriff	S. WONG	Reporter

8:30 am BC206790

V&M ASSOICATES INC
VS
CITY OF LONG BEACH

Plaintiff Counsel: Scott W. Wellman (X) WELLMAN & WARREN

Defendant Counsel: DANIEL S. MURPHY (X)

NATURE OF PROCEEDINGS:

date.

Clerk to notice.

Copies of this minute order are sent via facsimile transmission this date as follows:

Scott W. Wellman 949/450-0750

Daniel S. Murphy 562/436-1579

MINUTES ENTERED
04/19/00
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 09/25/00			DEPT. 54
HONORABLE ERNEST HIROSHIGE	JUDGE	S. TEMBLADOR A. ROMERO, CRT ASST	DEPUTY CLERK
HONORABLE 2	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
	Deputy Sheriff	NONE	Reporter

9:00 am	BC206790	Plaintiff Counsel	N/A
	V&M ASSOICATES INC VS CITY OF LONG BEACH	Defendant Counsel	DANIEL S. MURPHY (X)

NATURE OF PROCEEDINGS:

POST-MEDIATION STATUS/TRIAL SETTING CONFERENCE

Conference is held.

Defendant's counsel makes special appearance for all parties this date.

Counsel indicates that the matter has been settled.

The Court sets an ORDER TO SHOW CAUSE RE: DISMISSAL for November 27, 2000 at 9:00 a.m. in this department.

Defendant to notice.

MINUTES ENTERED
09/25/00
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 11/27/00			DEPT. 54
HONORABLE ERNEST HIROSHIGE	JUDGE	S. TEMBLADOR A. ROMERO, CRT ASST	DEPUTY CLERK
HONORABLE 3	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
	Deputy Sheriff	NONE	Reporter

9:00 am	BC206790	Plaintiff Counsel	
	V&M ASSOICATES INC		NO APPEARANCES
	VS	Defendant Counsel	
	CITY OF LONG BEACH		

NATURE OF PROCEEDINGS:

ORDER TO SHOW CAUSE RE: DISMISSAL

The matter comes on for hearing.

The Court sustains the OSC and orders the case dismissed pursuant to Code of Civil Procedure section 583.410(a).

Dated November 27, 2000

[redacted]

Ernest M. Hiroshige
Judge of the Superior Court

A copy of this minute order is sent via United States mail addressed as follows:

Scott W. Wellman
WELLMAN & WARREN
4 Ventura, Suite 325
Irvine, CA 92618-3325

MINUTES ENTERED
11/27/00
COUNTY CLERK

44

CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802

FACSIMILE COVER SHEET

DATE: 5-8-02

TO: Annie Chu - ABC

FAX #: (562) 982-1396

FROM: Jeannine - Bus license

PHONE #: 570-5598

FAX #: (562) 570-6180

Transmitting 2 pages (including cover sheet)

Please call or FAX me if you do not receive the number of pages indicated. Thank you.

CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802

FACSIMILE COVER SHEET

DATE: 5-9-02

TO: Vasken Tatarian / VM Associate Inc.

FAX #: 714-535-0831

FROM: Jeannine - Business license

PHONE #:

FAX #: (562) 570-6783

Transmitting 2 pages (including cover sheet)

Please call or FAX me if you do not receive the number of pages indicated. Thank you.

Your Permit at
2421 E. Artesia
Per your Request

BUSINESS LICENSE

ACCOUNT: BU97036480 OWNERSHIP NON-TRANSFERABLE DATE: 05/25/01

LICENSE EXPIRES ON 06/23/02

THE LICENSEE NAMED BELOW IS AUTHORIZED TO OPERATE THE FOLLOWING TYPE OF BUSINESS: ENT/NO ALC/NO DANCING DBA: FLAMINGO THEATER

LOCATED AT: 2421 E ARTESIA BLVD

906302
VM ASSOCIATE INC
C/O VASKEN TATARIAN
8469 BEACH CIRCLE
CYPRESS CA 90630

AUTHORIZED BY ROBERT S. TORREZ
DIR. OF FINANCIAL MGMT.

.. ..

==========> LICENSE HOLDER -- PLEASE NOTE <==========

THE TOP PORTION OF THIS FORM IS YOUR LICENSE. YOU MUST DISPLAY THE LICENSE IN A CONSPICUOUS PLACE ON THE BUSINESS PREMISES.

THE DATE YOUR LICENSE EXPIRES IS INDICATED ON THE FACE OF THE LICENSE. IF YOU DO NOT RECEIVE A RENEWAL NOTICE BY THE EXPIRATION DATE, CONTACT THE BUSINESS LICENSE SECTION AT (562) 570-6211.

NOTE: YOU ARE RESPONSIBLE FOR RENEWING THE LICENSE ON OR BEFORE THE LICENSE EXPIRATION DATE. (PLEASE NOTIFY THE BUSINESS LICENSE SECTION IF YOU ARE NO LONGER IN BUSINESS.)

PLEASE REPORT IMMEDIATELY ANY CHANGE IN OWNERSHIP, BUSINESS LOCATION, MAILING ADDRESS, OR BUSINESS ACTIVITY TO THE BUSINESS LICENSE SECTION.

3.80.166 New business.

As used in this chapter, "new business" means a business in existence and operation which has not previously obtained a current business license. (Ord. C-6259 § 1 (part), 1986).

.80.210 License and tax payment required.

There are hereby imposed upon the businesses, trades, professions, callings and occupations specified in this chapter license taxes in the amounts hereinafter prescribed. It shall be unlawful for any person to) and carry on any business, trade, profession, calling or occupation in the city without first having ed a license from said city to do so and paying the tax hereinafter prescribed and without complying with any and all applicable provisions of this code, and every person conducting any such business in the city shall be required to obtain a business license hereunder.
This section shall not be construed to require any person to obtain a license prior to doing business within the city if such requirement conflicts with applicable statutes of the United States or of the state of California.

Any person who engages in any business for which a business license is required, shall be liable for the amount of all taxes and penalties applicable from the date of commencement of the business, whether or not such person would have qualified for such business license; however, such payment shall not create any right for the person to remain in business.
All payments of business license tax received by the city, irrespective of any designation to the contrary by the taxpayer, shall be credited and applied first to any penalties and tax due for prior years in which the tax was due but unpaid. (Ord. C-7783 § 2, 2002: Ord. C-6259 § 1 (part), 1986).

3.80.429.1 Suspension or revocation.

A. Whenever any person fails to comply with any provision of this chapter pertaining to business license taxes or any rule or regulation adopted pursuant thereto or with any other provision or requirement of law, including, but not limited to, this municipal code and any grounds that would warrant the denial of initial issuance of a license hereunder, the director of financial management, upon hearing, after giving such person ten (10) days' notice in writing specifying the time and place of hearing and requiring him to show cause why his license should not be revoked, may revoke or suspend any one or more licenses held by such person. The notice shall be served in the same manner as notices of assessment are served under section 3.80.444. The director shall not issue a new license after the revocation of a license unless he is satisfied that the registrant will thereafter comply with the business license tax provisions of this chapter and the rules and regulations adopted thereunder, and until the director collects a fee, the amount of which shall be determined by director in an amount to recover the actual costs of processing, in addition to any other taxes that may be required under the provisions of this chapter.

B. Any person who engages in any business after the business license issued therefor has been suspended or revoked, and before such suspended license has been reinstated or a new license issued, shall be guilty of a misdemeanor. (Ord. C-6259 § 1 (part), 1986).

5.02.010 Purpose.

The purpose of this title 5 is to identify those businesses, trades and professions conducted and carried on in the city of Long Beach that require local regulation in order to promote and protect the public health, and welfare of Long Beach and its citizens. It is the further purpose of this title 5 to set forth the ...ic standards and criteria under which such businesses, trades and professions shall be conducted and regulated within the city and, as to those businesses, trades and professions for which a permit is required hereunder, to set forth the procedures and conditions for applying for such a permit.
The provisions of this title 5 are regulatory, and all requirements set forth, including those for a permit hereunder, if any, and any regulatory fees levied pursuant to this title 5, are in addition to any other requirements, monetary or otherwise, that may be applied to any business, trade or professions by any other provision of law, including, but not limited to, chapter 3.80 of the Long Beach municipal code. (Ord. C-6260 § 1 (part), 1986).

TOP ^ A

5.02.020 Definitions.

For the purpose of this title 5, certain words and phrases are defined and certain words and phrases shall be construed as set forth in this section 5.02.020, unless it is apparent from their context that a different meaning is intended or unless they or any other terms are specifically defined in one or more of the chapters of this title, in which case the chapter definitions shall be controlling in such chapters.
A. "Applicant" means any person who applies for a business license or permit.

B. "Business" means each and every business, commercial or industrial enterprise, trade, profession, occupation, vocation, calling or any means of livelihood, whether or not carried on for gain or profit.

...usiness license" means a license issued pursuant to chapter 3.80 evidencing the payment of a ...ness license tax for the carrying on of a business in the city of Long Beach.

D. "Business permit" or "permit" means a permit, if required, issued pursuant to this title 5 evidencing compliance by a licensed business in the city of Long Beach with the regulatory provisions of this title 5.

E. "Permit identification card" means a card, if required, issued pursuant to this title 5, evidencing the issuance to a permittee of a valid permit and setting forth information as may be required pursuant to the provisions of this title 5.

F. "Person" means any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, business or common law trust, society, individual, estate, receiver, retirement plan, trustee, or any other group or combination acting as a unit. (Ord. C-7423 § 1, 1996: Ord. C-6325 § 11, 1986; Ord. C-6260 § 1 (part), 1986).

5.04.010 Application-Required.

A. Each applicant for a permit pursuant to this title 5 shall file a written statement with the city upon prescribed forms indicating the type of activity to be conducted, officers of the firm and sufficient information requested by the city to enable determination as to issuance or nonissuance of the permit, and a separate permit shall be obtained for each branch establishment or separate office or place for carrying on any business or pursuit within the city.

B. If applicant has not provided all required information and paid the necessary application fees within sixty (60) days, the application will be deemed void and of no further force and effect. (Ord. C-7423 § 13, 1996: Ord. C-6260 § 1 (part), 1986).

TOP ^ A

5.72.110 Permit required and prohibited uses.

A. No person shall carry on, maintain or conduct any entertainment activity in the city without first obtaining a permit therefor from the city.

B. Entertainment provided at a private residence for the monetary gain of any person is prohibited. However, this prohibition is in no way intended to infringe on the rights of private persons to engage in the activities regulated by this chapter at their residence for private, as opposed to commercial, purposes. (Ord. C-7423 § 26, 1996).

5.72.121 Permit application filing and process for adult entertainment.

Any business or establishment desiring a permit required by this chapter to provide adult entertainment as described in subsection 5.72.115.B shall complete and file the application form supplied by the city and shall accompany the form with the fee established by resolution of the city council, which fee shall be no more than necessary to cover the costs of processing and investigating the application.

A. Application requirements. The application form shall require and the applicant shall provide information which includes the following:

1. The business owner's name, residence street address, and mailing address, if different, and any and all aliases; and

2. The name under which the entertainment business is to operate; and

3. The telephone number of the entertainment business and the address and legal description of the parcel of land on which the entertainment business is to be located; and

4. The date on which the owner acquired the enterprise for which the permit is sought and the date on which the enterprise began or will begin operations at the location for which the permit is sought; and

5. A statement whether the owner previously operated in this or any other county, city or state under an entertainment establishment license/permit or similar business license, and whether the applicant has ever had such a license revoked or suspended and the reasons therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation; and

6. If the owner is a corporation, all of the aforementioned information shall be provided for each officer and director of the corporation as well as for any person, or other entity holding over fifty percent (50%) of the shares of the corporation; and

7. If the owner is a partnership, the aforementioned information shall be provided for each general partner; and

8. A statement under penalty of perjury that the owner has personal knowledge of the information contained in the application and that the information contained is true and correct, and that the application has been completed under the owner's supervision; and

9. An initialized list of the operational requirements of a business providing entertainment and a signed, sworn statement that the owner has read, understands and intends to comply with the aforementioned operational requirements; and

10. A description of all entertainment business activities proposed to occur on the site of the entertainment business and the anticipated occupancy of the entertainment business; and

11. A site plan describing the building and/or unit proposed for the entertainment facility and a fully dimensioned interior floor plan; and

12. If the premises are being rented or leased or are being purchased under contract, a copy of such lease or contract.

Within seven (7) days of receipt of an application the city manager or designee shall determine whether the application contains all the information required by the provisions of this chapter. If it is determined that the

application is not complete, the applicant shall be notified in writing within ten (10) business days of receipt of the application that the application is not complete and the reasons therefor, including any additional information necessary to render the application complete. The applicant shall have thirty (30) calendar days to submit additional information to render the application complete. Failure to do so within the thirty (30) day [illegible] shall render the application null and void. Within five (5) business days following the receipt of an [illegible]ded application or supplemental information, the city manager or designee shall again determine whether the application is complete in accordance with the procedures set forth above. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five (5) business days of that fact. All notices required by this chapter shall be deemed given upon the date they are either deposited in the United States mail or the date upon which personal service of such notice is provided.

B. Issuance of permit-Investigation.

1. Determination to issue permit. Upon receipt of a completed application for the permit, the city manager or designee shall conduct an investigation to determine if the proposed business is in compliance with the provisions of this chapter. Within thirty (30) calendar days of a completed application having been filed, the city manager or designee shall approve and issue the permit if all the requirements of this chapter have been met. If the city manager or designee determines that the application does not satisfy the requirements of this chapter, he/she shall deny the application. On the day the decision is made, the applicant shall immediately be served with written notice of the decision either personally or by deposit in the United States mail, first-class postage prepaid, at the address shown on the application. Service shall be deemed complete upon personal service or deposit of the written notice in the United States mail. A temporary license will automatically be issued in the event the city does not approve or deny the permit within the time period established by this section.

2. Standards for approval of permit. The city manager or designee shall approve and issue an entertainment permit if the application and evidence submitted demonstrates that:

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 subsection 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 adult entertainment business to the nearest point on the property line of the residential zone, school, church, park or other adult entertainment business, as applicable.

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.

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.

d. No owner, operator or manager shall permit any person to perform for patrons any entertainment except upon a stage 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.

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.
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 portions of the establishment.
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 subsection shall act as a door person, ticket seller, ticket taker, or attendance person while acting as a security guard.
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 rights-of-way or within any other building or other separate unit within the same building.
i. The place of entertainment shall have a manager on-premises at all times while the establishment is open to the public.
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.
k. The stage or entertainment areas shall not be open to view from outside the premises.
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.
m. No exterior door or window shall be propped or kept open at any time during the hours of operation.
n. Any exterior windows shall be covered with opaque covering.
o. All areas of the place of entertainment accessible to patrons shall be illuminated at least to the extent of two (2) foot-candles, minimally maintained and evenly distributed at ground level.
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.
q. The place of entertainment shall provide a security system that visually records and monitors all parking lot areas serving the place of entertainment.

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. (Ord. C-7747 § 2, 2001).

5.72.140 Conditions of operation.

Any person operating under a permit issued pursuant to this chapter shall, at all times, observe the following conditions of operations:

A. Hours. No person shall carry on, maintain or conduct any business or activity regulated by this chapter between the hours of two o'clock (2:00) A.M. and six o'clock (6:00) A.M.; except that this restriction shall not apply on New Year's Eve or to a graduation dance sponsored by a state-accredited school.

B. Inspection. The premises where all businesses or activities are conducted pursuant to this chapter, whether public or private, shall at all times when open be subject to inspection by the director of financial management or his/her designee, all business license, health, building, and fire inspectors, and all police personnel in the pursuit of their official duties. No person shall hinder or obstruct such inspection. The purpose of the inspection is to determine whether the permitted premises is being operated in compliance with all requirements of applicable law. Delay or obstruction of such inspection may be grounds for suspension or revocation of any license or permit issued by the city.

C. Adult entertainment. Any person operating any adult entertainment business (as that term is defined in section 21.15.110) shall, at all times, observe the following conditions of operations:

1. 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.

2. 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.

3. No owner, operator or manager shall permit any person to perform for patrons any entertainment except upon a stage 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.

4. 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.

5. 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 portions of the establishment.

6. 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 subsection shall act as a door person, ticket seller, ticket taker, or attendance person while acting as a security guard.

7. 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 rights-of-way or within any other building or other separate unit within the same building.

8. The place of entertainment shall have a manager on-premises at all times while the establishment is

open to the public.

9. 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.

10. The stage or entertainment areas shall not be open to view from outside the premises.

11. 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.

12. No exterior door or window shall be propped or kept open at any time during the hours of operation.

13. Any exterior windows shall be covered with opaque covering.

14. All areas of the place of entertainment accessible to patrons shall be illuminated at least to the extent of two (2) foot-candles, minimally maintained and evenly distributed at ground level.

15. 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.

16. The place of entertainment shall provide a security system that visually records and monitors all parking lot areas serving the place of entertainment.

17. 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. (Ord. C-7747 § 3, 2001: Ord. C-7713 § 2, 2000: Ord. C-7591 § 1, 1999: Ord. C-7423 § 26, 1996).

5.06.020 Suspension/Revocation/Denial.

A. Any permit to do business in the City issued pursuant to this Title 5 may be suspended, revoked or denied in the manner provided in this Section upon the following grounds:

1. The permittee or any other person authorized by the permittee has been convicted of violation of any provision of this Code, State or Federal law arising out of or in connection with the practice and/or operation of the business for which the permit has been granted. A plea or verdict of guilty, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this Section. The City Council may order a permit suspended or revoked, following such conviction, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the California Penal Code allowing such a person to withdraw his/her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment;

2. For any grounds that would warrant the denial of the issuance of such permit if application therefore was being made;

3. The permittee or any other person under his/her control or supervision has maintained a nuisance as defined in 21.15.1870 of the Long Beach Municipal Code which was caused by acts committed on the permitted premises or the area under the control of the permittee;

4. The permittee, his/her employee, agent or any person connected or associated with permittee as partner, director, officer, stockholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for the permit required under the provisions of this Code;

5. The permittee has failed to comply with any condition which may have been imposed as a condition of operation or for the issuance of the permit required under the provisions of this Code;

6. The permittee has failed to pay any permit fees that are provided for under the provisions of this Code within sixty days of when the fees are due.

B. Upon receipt of satisfactory evidence that any of the above grounds for suspension or revocation of said permit exist, the permittee shall be notified in writing that a hearing on suspension or revocation shall be held before the City Council, the grounds of suspension or revocation, the place where the hearing will be held, and the date and time thereof which shall not be sooner than ten days after service of such notice of hearing.

C. All notices provided for in this Section shall be personally served upon the permittee or left at the place of business or residence of such permittee with some person over the age of eighteen years having some suitable relationship to the permittee. In the event service cannot be made in the foregoing manner, then a copy of such notice shall be mailed, postage fully prepaid, addressed to the last known address of such permittee at his/her place of business or residence at least ten days prior to the date of such hearing.

Whenever a business permit has been revoked/or denied under the provisions of this Section, no other application by such permittee for a business permit to conduct a business or operate in the City shall be considered for a period of one year from the date of such revocation or denial. (Ord. C-7423 § 14, 1996: Ord. C-6325 § 13 (part), 1986: Ord. C-6260 § 1 (part), 1986).

JUNIOR COLLEGE NOTEBOOK

Falcons lose a lot more [illegible] just opener

By David Felton
Staff writer

A 35-14 loss to Chaffey College in the season opener wasn't the only bad news for Cerritos' football team Saturday.

Sophomore running back **Daniel Dixon** fractured his left fibula and is most likely gone for the season, according to head coach **Frank Mazzotta.**

"It's possible he could be back," said Mazzotta, "but you never know."

Dixon, whom Mazzotta called "probably the best running back in the (Mission Conference)," was injured at the bottom of a pile of players in the third quarter. Dixon gained 58 yards on 12 carries.

"He was running pretty well," Mazzotta said.

Sophomore **Bo Renaud** and freshman **Brian Campbell** (Bellflower High) were listed possible replacements for Dixon by Mazzotta.

"We'll reload," he said.

The long, short of it

At one point in the fourth quarter of Saturday's opener against Fullerton, Compton's football team trailed 27-6.

And while they eventually lost 30-26, the Tartars made a game of it with three long drives that took advantage of the height of th[illegible] [illegible]ceivers and the diminu[illegible] [illegible]re of Fullerton's sec-[illegible]

[illegible]e big, we average (6-feet, [illegible]hes)," said Compton coach [illegible]ornell Ward, who has sophomores **David Sutton** (6-7), **Adrian Smith** (6-4), **James Finley** (6-3) and **Cory Fredrick** (6-0) and freshmen **Tremaine Dorsey** (6-2) and **Jordan Slye** (6-2) among his receiving corps. "They're big-time, Division I wide outs."

Slye used his size to beat Fullerton cornerback **Stephen Randolph** (5-8) for an 88-yard scoring strike and Dorsey outleaped another Hornet defender for a 7-yard TD later in the fourth.

Mazzotta, whose team hosts Compton Saturday at 7 p.m., has seen the film from the Compton-Fullerton game and is impressed with the athleticism of the Tartars.

"They've got talent," Mazzotta said. "They're going to be pretty good."

The Falcons' defensive backs can't match the size of Compton's receivers — not many can — but Mazzotta feels his secondary can challenge Compton for any jump balls.

"We're not big ... but we're pretty good athletes," said Mazzotta, who mentioned sophomore cornerback **Tim McCullouch** (6-0, Jordan High) as a player to watch.

USC football coach Pete Carroll watched the first half of Saturday's Compton College-Fullerton game. The game featured several Division-I prospects. Carl Hidalgo / For the Press-Telegram

No. 1 in the house

With a bye week for his Trojans, USC head football coach **Pete Carroll** watched the first half of Saturday's Compton-Fullerton game from the sidelines.

It's not known who Carroll was there to see, but the game featured several players from both teams who have D-I talent.

The Tartars feature offensive lineman **Kevin Myers,** Finley and freshman quarterback **Ashlee Palmer** (Lynwood). Hornets tight end **Jason Vandiver** is a preseason JC All-American.

Odds and ends

• Cypress College's women's soccer team will have a memorial ceremony for late coach **Ray Haas** on Sept. 14 before its Orange Empire Conference game against Golden West.

Haas, who began the program in 1991 and led the Chargers to consecutive state titles in 1998 and '99, died June 4 of a stroke.

The team has dedicated this season to Haas' memory.

USC/UCLA FOOTBALL NOTEBOOK

Saturday: vs. Colorado State
Coliseum, 5 p.m., Ch. 7, KMPC/1540

Saturday: at Illinois, 9 a.m.
Ch. 7, XTRA/690, KXTA/1150

Bing unsure of ailing shoulder

By Scott Wolf
Staff writer

USC strong safety **Darnell Bing's** sore shoulder remained an issue Monday and the starting free safety said he isn't sure if he'll play against Colorado State.

"It's so-so," Bing said. "It isn't necessarily worse but it's not better. If it still hurts, I'll sit out and rest it, instead of making it worse by playing."

The Poly High graduate practiced but did not participate in contact during Monday's practice. His replacement is junior-college transfer **Scott Ware,** who did not play against Virginia Tech because he returned only a couple days before that game after being sidelined with a concussion.

Ware said he's fully recovered and ready to play this week. But [illegible]ld depend on Bing, who in[illegible] [illegible]ould play whenever he [illegible]e if an injury would [illegible]e him.

[illegible]ing's not quite 100 percent and that's great for Scott," Trojan coach **Pete Carroll** said. "We've got to see what happens. I don't know if (Bing) is back for full-time duties."

In trouble

Freshman wide receiver [illegible]

screwed up on the flight," Carroll said.

Carroll said tight end **Fred Davis** also had "travel problems" while Davis said he was late for a team meeting. Davis was allowed to attend practice, however, but forced to roll on the grass instead of participating with his teammates.

Still no Dennis

Carroll said tailback **Hershel Dennis** will not return this week from his indefinite suspension. Dennis, also from Poly, is the focus of an alleged sexual assault investigation by Los Angeles police.

Ready to play

Freshman center **Jeff Byers** is splitting snaps with starter **Ryan Kalil,** and Carroll said Byers could get into the playing rotation against Colorado State. The biggest concern with Byers is learning pass-protection formations after playing primarily for a running team in high school.

"The thing I was concerned about is we didn't have a second center," Carroll said.

Holmes improves

Tight end **Alex Holmes,** who is still bothered by a strained calf, said he felt "70 percent" better Monday.

Quarterback **John David Booty,** who has nerve damage in his elbow, still has not been allowed to throw although he feels better.

"It's fine, I'm just waiting for clearance," Booty said.

Senior **Brandon Hance** remains the backup.

Familiar face

Colorado State tailback **Marcus Houston** played against the Trojans in one of his first college games while attending Colorado. Houston gained 150 yards in a 17-14 loss at the Coliseum in 2000.

— Scott Wolf

UCLA quick hits

The Big Ten took a beating for delays and inconsistencies in its instant replay rule, but it won't impact Saturday's game at Illinois. UCLA is one of four visiting nonconference teams to tell the Big Ten it will not use instant replay in the game.

"The decision (what to challenge) is made upstairs, so I didn't see an benefit," Bruins coach **Karl Dorrell** said.

• Bruins strong safety **Jarrad Page** (bruised heel) is expected to practice Wednesday and is expected to play.

• Dorrell said receiver **Tab Perry** would have an increased role now that his academic status is resolved, but at this point he will remain at flanker behind **Craig Bragg.**

• Dorrell was pleased with the offensive line's performance against Oklahoma State, particularly center **Mike McCloskey.**

"The one I would single out is Mike McCloskey. He's a guy that played a great game," Dorrell said.

— Brian Dohn

DEL MAR CHARTS

Monday, September 6, 2004
Day 42 of a 43-day meet

2352 — FIRST. 6 Furlongs. I'M SMOKIN STAKES. Stakes. 2-year-olds. Purse: $100,000.

Index	Horse,Jockey	Wt.	PP	St	¼	½	¾	Str	Fin	Odds
2206	Top Money, Enriquez	116	3	1	2-1	2-1	—	1½	1-3	1.60
2215	Fallbrue, Nakatani	119	2	3	1-hd	1-hd	—	2-2½	2½	2.30
2143	Proud Tower Too, Baze	117	1	4	4	4	—	3-hd	3½	2.00
2243	Generalist, Smith	117	4	2	3-hd	3-hd	—	4	4	4.30

3-Top Money 5.20, 2.40, NO-TIX; 2-Fallbrue 2.80, NO-TIX; 1-Proud Tower Too NO-TIX
Time— :22.45 :45.87 :57.42 1:09.28. Start good. won driving.
Winner—B.g.-16,Old Topper-Money by Madrid Trainer—Adam Hitchingson
Own-Tommy Town Thoroughbreds LLC
POOLS-Mutuel Pool—$245,855 Exacta Pool—$123,325 Quinella Pool—$17,408
Scratched— Bonar Fango
$1 EXACTA (3-2) PAID $6.10; $2 QUINELLA (2-3) PAID $8.80

2353 — SECOND. 6 Furlongs. Claiming. Fillies & Mares, 3-year-olds & up. Claiming price $10,000-9,000. Purse: $19,000.

Index	Horse,Jockey	Wt.	PP	St	¼	½	¾	Str	Fin	Odds
2183	Champ's Ole', Fuentes	119	8	7	3-1	5-3	—	2-1½	1-1½	6.80
2214	Shes a Freeble, Pedroza	119	1	3	2-1	1-1	—	1½	2-1½	2.40
2214	Pas Three, Baze	119	3	4	4-hd	3½	—	3½	3-2½	8.80
2088	Charlina, John	116	4	5	5-5	4-hd	—	4-4	4-no	2.20
2108	La Perfecta, Enriquez	119	2	6	6	6	—	5½	5-11	2.50
2183	Oneaboyluckylady, Delfino	119	5	1	1-hd	2-1	—	6	6	15.70

8-Champ's Ole' 12.80, 6.00, 3.40; 1-Shes a Freeble 3.80, 3.00; 3-Pas Three 3.80
Time— :21.82 :45.40 :58.21 1:11.35. Start good. won driving.
Winner—B.f.-16,Fabulous Champ-Ole' Sta Trainer—Jerry Dutton
Own-Berlach, Capehart and Dutton Stables
POOLS-Mutuel Pool—$277,243 Daily Double Pool—$91,847 Exacta Pool—$175,430
Quinella Pool—$21,179 Trifecta Pool—$180,835
Claimed— Oneaboyluckylady-Stevens, Vellanoll and Young-F Aguirre
Scratched— Sunshine Caper, Legal Emigrant
$2 DAILY DOUBLE (3-8) PAID $60.00; $1 EXACTA (8-1) PAID $22.90; $2 QUINELLA (1-8) PAID $20.20; $1 TRIFECTA (8-1-3) PAID $100.80; $2 DAILY DOUBLE (3-7) PAID $9.20

2354 — THIRD. 5 ½ Furlongs. Maiden Special Weight. 2-year-olds. Purse: $49,000.

Index	Horse,Jockey	Wt.	PP	St	¼	½	¾	Str	Fin	Odds
2189	Cash in the Bank, Baze	120	5	1	1-1	1-2½	—	1-5	1-8	0.80
2180	Dannybrook Pride, Pedroza	120	4	3	6	6	—	6	2-nk	11.30
—	A-Peep Five, Sorenson	120	1	6	5-2½	5-5	—	5½	3-1	5.10
2282	Chips Are Down, Flores	120	3	4	2-hd	2-hd	—	2-hd	4-1½	2.70
2235	A-Yes He's a Pistol, Valdivia	120	2	5	3-hd	3½	—	3-2½	5-3	5.10
—	Buck Teddy Buck, Smith	120	6	2	4-2½	4-4½	—	4-hd	6	8.80

7-Cash in the Bank 3.60, 2.80, 2.10; 6-Dannybrook Pride 6.40, 2.80; 1-Peep Five 2.40
Time— :21.95 :44.70 :56.92 1:03.48. Start good. won ridden out.
Winner—Dk/Ro.g.-18,Robyn Dancer-Run to the Bank Trainer—Ruben Cardenas
Own-Cornejo Racing, Inc.
POOLS-Mutuel Pool—$307,383 Daily Double Pool—$24,773 Exacta Pool—$209,894
Quinella Pool—$23,311 Superfecta Pool—$55,837 Trifecta Pool—$157,563
Pick Three Pool—$127,829
Scratched— Swedish Cowboy, Bwangetsthebrick, Jack's Kid
$2 DAILY DOUBLE (8-7) PAID $38.20; $1 EXACTA (7-6) PAID $6.80; $2 QUINELLA (6-7) PAID $12.80; $1 SUPERFECTA (7-6-1-8) PAID $41.30; $1 TRIFECTA (7-6-1) PAID $28.30; $1 PICK THREE (3/6-8-2/7/7) PAID $67.00

2355 — FOURTH. 1 Mile. Maiden Special Weight. Fillies, 2-year-olds. Purse: $51,000.

Index	Horse,Jockey	Wt.	PP	St	¼	½	¾	Str	Fin	Odds
—	Splendid Blended, Desormeaux	118	7	2	1½	1½	1-1	1-2½	1-5	1.70
2184	Sip One for Mom, Baze	118	3	5	6-1½	6-1½	3-2	2-1½	2-4	5.10
2049	Groovy Crown, Stevens	118	8	8	5-hd	4-hd	5-hd	4-1½	3-2	17.50
2230	Lyndee's Pearl, Espinoza	118	1	1	3½	3½	2-1	3-1½	4-1	14.20
2130	Island Escape, John	118	4	9	9	9-hd	6-4	5-hd	5-2	8.70
1476	Chili, Nakatani	118	6	4	4½	5½	4-1	6-6	6-6½	2.90
—	Jewel of the Night, Flores	118	5	7	7-2	7½	8-hd	8-2	7-hd	6.80
—	Shipping Court, Bloome	113	2	6	8½	9	9	7½	8-5	34.60
2182	Savanna Charm, Smith	118	9	3	2-1	2-1	7-hd	9	9	32.30

6-Splendid Blended 5.40, 3.20, 3.00; 4-Sip One for Mom 4.80, 3.80; 9-Groovy Crown 6.00
Time— :23.04 :47.82 1:12.70 1:24.73 1:37.15. Start good. won ridden out. Fast
Winner—Ch.f.-16,Unbridled's Song-Valid Blend Trainer—Neil D. Drysdale
Own-Peter Vegso
POOLS-Mutuel Pool—$403,930 Daily Double Pool—$38,250 Exacta Pool—$242,842
Quinella Pool—$28,918 Superfecta Pool—$89,579 Trifecta Pool—$227,358
Pick Three Pool—$98,197
Scratched— Clay Girl, Jaiden
$2 DAILY DOUBLE (7-6) PAID $8.80; $1 EXACTA (6-4) PAID $16.80; $2 QUINELLA (4-6) PAID $17.20; $1 SUPERFECTA (6-4-8-2) PAID $871.40; $1 TRIFECTA (6-4-8) PAID $109.40; $2 DAILY DOUBLE (7-1) PAID $4.80; $1 PICK THREE (8-2/7/7-1/6) PAID $47.40

2356 — FIFTH. 1 Mile Turf. Allowance Optional Claiming. 3-year-olds & up. Claiming price $20,000. Purse: $68,000.

Index	Horse,Jockey	Wt.	PP	St	¼	½	¾	Str	Fin	Odds
2236	Azlyan, Cohen	111	2	1	1-1	1-1½	1-2½	1-4½	1-4	27.00
2072	Drake's Victory, Flores	118	3	10	6-1	6-1	6-1	5½	2-no	4.00
2117	Ultimato, Court	121	1	2	3½	3-hd	3½	2½	3½	5.40
2230	Legal Logic, Espinoza	123	5	8	10	10	10	7-3½	4½	2.40
2230	Spencer's Magic, Garcia	116	10	9	7-hd	7-1	7-1½	8-hd	5-1	4.00
2203	Cahill Mango, Nakatani	117	9	4	6-1½	8½	8½	4-hd	6-2	8.20
2153	King George W, Loyd	121	4	5	2-1	2-1	2-1½	3-1	7-2	53.50
2202	Proud Cardinal, Baze	121	6	3	4-1	4-1½	4-hd	6-1	8½	20.10
2225	Sharp Marc, Pedroza	123	8	6	5½	5-1	5-1½	9-2	9-2½	12.50
2230	Rush Country, Valdivia	118	7	7	9½	9½	9-1½	10	10	20.50

2-Azlyan 56.00, 18.80, 10.80; 3-Drake's Victory 6.00, 4.40; 1-Ultimato 6.80
Time— :22.84 :47.03 1:10.73 1:22.01 1:34.18. Start good. won driving. Firm
Winner—Dk/Br g.-18,Azzlyan-Chiquitita Trainer—Craig Dollase
Own-Nick Cafarchio
POOLS-Mutuel Pool—$546,785 Daily Double Pool—$30,548 Exacta Pool—$354,727
Quinella Pool—$37,189 Trifecta Pool—$371,379 Pick Three Pool—$118,183
Scratched— General Moody, Ring of Friendship, Golden Bonus, Gold Dan
$2 DAILY DOUBLE (6-2) PAID $231.80; $1 EXACTA (2-3) PAID $173.80; $2 QUINELLA (2-3) PAID $147.40; $1 TRIFECTA (2-3-1) PAID $844.00; $1 PICK THREE (2/7/7-1/6-2) PAID $172.80

2357 — SIXTH. 6 Furlongs. PIRATE'S BOUNTY HANDICAP. Handicap. 3-year-olds & up. Purse: $75,000.

Index	Horse,Jockey	Wt.	PP	St	¼	½	¾	Str	Fin	Odds
8248	Our New Recruit, Baze	121	8	1	2-1½	3-1½	—	1½	1-2	3.80
9592	Bluesthestandard, Smith	122	4	4	4-1	1-hd	—	2-1½	2-2	2.40
9248	Newark, Diaguez	114	1	7	5½	5-2	—	4-2½	3-2½	29.40
2070	Kamsack, Desormeaux	116	6	5	6-1½	6-2½	—	5-1½	4-1	5.80
—	Onebadshark, Jauregui	118	8	2	7-4½	7-hd	—	6-1	5-2	45.30
1116	Marino Marini, Nakatani	119	3	6	1-hd	2½	—	3½	6½	2.10
—	Ray Jones, Espinoza	116	2	8	8	8	—	8	7-1½	18.40
9248	Tough Game, Pedroza	118	7	3	2-hd	4-hd	—	7-hd	8	10.80

9-Our New Recruit 9.20, 4.40, 3.80; 5-Bluesthestandard 3.80, 3.00; 2-Newark 6.80
Time— :21.78 :44.14 :55.84 1:08.25. Start good. won driving.
Winner—Ch.h.-15,Alphabet Soup-Belle Danielle Trainer—John W. Sadler
Own-C R K Stable
POOLS-Mutuel Pool—$515,193 Daily Double Pool—$38,600 Exacta Pool—$287,189
Quinella Pool—$32,750 Superfecta Pool—$112,943 Trifecta Pool—$288,280
Pick Three Pool—$107,827
Scratched— Heavenly Search
$2 DAILY DOUBLE (2-9) PAID $490.20; $1 EXACTA (9-5) PAID $10.30; $2 QUINELLA (5-9) PAID $10.40; $1 SUPERFECTA (9-5-2-6) PAID $1,029.70; $1 TRIFECTA (9-5-2) PAID $226.70; $1 PICK THREE (1/6-2-9) PAID $520.40

2358 — SEVENTH. 6 Furlongs. Allowance. 3-year-olds & up. Purse: $54,000.

Index	Horse,Jockey	Wt.	PP	St	¼	½	¾	Str	Fin	Odds
1458	Long Range Missile, Baze	119	9	2	7½	2-1½	—	2-3	1-3	3.30
2240	Golden Souvenir, Stevens	119	5	4	3-1½	1-1½	—	1-hd	2-no	3.10
2240	Outofthe Blue Stew, Bloome	116	2	7	8-2½	6-3	—	3-1½	3-3	14.00
2144	Hickory Pete, Rals	119	10	9	9-2½	9-2	—	8-1	4-2	10.50
2160	Dalton Bay, Cohen	111	7	6	10-4	10-3	—	9-1½	5-1	35.40
1552	Jase, John	118	4	6	4½	4-1½	—	4-1½	6½	6.90
—	My Last Chance, Espinoza	123	8	3	5-1	5-1½	—	5-hd	7-1½	7.30
2125	Revenuecent, Desormeaux	123	1	11	7-2	6-1½	—	6-1½	8-no	29.00
5333	Valiant Edge, Flores	123	3	10	6-hd	7-hd	—	10-hd	9½	15.70
5354	Maybe Midnight, Valdivia	123	6	5	1-hd	3½	—	7½	10-no	38.70
5277	Al Boom, Puglisi	123	11	1	11	11	—	11	11	65.50

9-Long Range Missile 8.60, 4.00, 3.00; 5-Golden Souvenir 4.00, 3.00; 2-Outofthe Blue Stew 6.80
Time— :21.78 :43.79 :56.04 1:08.71. Start good. won ridden out.
Winner—Gr/Ro.c.-16,Tactical Cat-Actinella Trainer—Ronald W Ellis
Own-B. Wayne Hughes
POOLS-Mutuel Pool—$497,292 Daily Double Pool—$44,290 Exacta Pool—$319,978
Quinella Pool—$35,320 Superfecta Pool—$115,285 Trifecta Pool—$298,329
Pick Three Pool—$124,520
Scratched— NONE
$2 DAILY DOUBLE (9-9) PAID $37.00; $1 EXACTA (9-5) PAID $10.70; $2 QUINELLA (5-9) PAID $13.80; $1 SUPERFECTA (9-5-2-10) PAID $1,018.00; $1 TRIFECTA (9-5-2) PAID $117.80; $1 PICK THREE (2-9-9) PAID $806.80

2360 — EIGHTH. 1 1/8 Mile Turf. DEL MAR DERBY. Stakes. 3-year-olds. Purse: $400,000.

Index	Horse,Jockey	Wt.	PP	St	¼	½	¾	Str	Fin	Odds
2106	Blackdoun, Nakatani	122	10	10	10	10		5½	1-nk	0.90
1703	Toasted, Douglas	122	3	3HD	3-hd	3-hd		3-1	2-no	6.50
2180	Laura's Lucky Boy, Stevens	122	2	7-1½	2-2½	2-2		1-1½	3½	6.70
2008	Tarvplane, Desormeaux	122	6	6-2	5-hd	6-1½		6-1	4-1	12.10
—	Fast and Furious, Espinoza	122	9	9-1	9-1½	9-hd		8-1½	5-no	7.70
2146	Semi Lost, Baze	122	7	4-1	4-2	4-1½		2-hd	6-1	10.40
—	Pace Cowboy, Valdivia	122	1	8-1	8-3	8-1		7-2	7-3	75.40
2108	Bedmar, Smith	122	4	7½	7-hd	7-hd		9-6	8-2	61.50
2008	Lucky Pulpit, Puglisi	122	5	1-1½	1-2½	1½		4-hd	9-15	24.00
2106	Sajinsola, Flores	122	8	5HD	6-2	5-hd		10	10	12.00

10-Blackdoun 3.80, 2.80, 2.20; 3-Toasted 4.80, 3.00; 2-Laura's Lucky Boy 3.80
Time— :24.04 :47.73 1:11.43 1:35.08 1:46.75. Start good. won driving.
Winner—Gr/Ro.c.-18,Verglas (IRE)-Rada Trainer—Julio C. Canani
Own-Heilly and Woodside Farms LLC
POOLS-Mutuel Pool—$640,305 Daily Double Pool—$50,993 Exacta Pool—$339,570
Quinella Pool—$33,189 Superfecta Pool—$164,084 Trifecta Pool—$349,145
Pick Three Pool—$149,784
Scratched— NONE
$2 DAILY DOUBLE (9-10) PAID $18.80; $1 EXACTA (10-3) PAID $11.80; $2 QUINELLA (3-10) PAID $16.20; $1 SUPERFECTA (10-3-2-6) PAID $233.20; $1 TRIFECTA (10-3-2) PAID $58.30; $1 PICK THREE (9-9-10) PAID $40.80

2300 — NINTH. 1 Mile. Claiming. 3-year-olds. Claiming price $10,000-14,000. Purse: $23,000.

Index	Horse,Jockey	Wt.	PP	St	¼	½	¾	Str	Fin	Odds
2137	Aerojack, Pedroza	118	8	6	6-1	6-2	5-1½	1-hd	1-½	5.20
2295	Klassic Ty, Nuevas	120	6	1	4-1	3-1½	2-1½	2-1	2-2½	2.30
2188	Cinema Star, Espinoza	118	7	7	8-7	7½	6-hd	5-1½	3-1	3.00
2050	Tactactoryou, Douglas	118	2	4	3-hd	4-hd	3½	4½	4-3	12.80
2137	Lurch At Ty, Vergara	118	1	8	7½	8-6	7-hd	8-2	5-1	20.30
2278	Chihenderneveruner, Nakatani	118	4	2	1½	1-hd	1½	3-hd	6½	4.70
2295	Seven Way Shake, Bloome	113	3	3	5½	5-hd	8-4	7-1½	7-3	18.80
1188	Devoted Love, Court	118	9	5	2-1	2-hd	4-hd	6-2	8-1	7.80
2137	Cloudy Money, Rals	118	5	9	9	9	9	9	9	12.30

8-Aerojack 12.40, 5.20, 2.80; 7-Klassic Ty 3.80, 2.20; 8-Cinema Star 2.80
Time— :22.34 :46.07 1:11.31 1:24.84 1:38.08. Start good. won driving. Fast
Winner—Gr/Ro c.-16,Wolves Springs-Chocolate Crunch. Trainer— Jack Carava
Own-Fred N. Sahadi
POOLS-Mutuel Pool—$385,734 Daily Double Pool—$34,726 Exacta Pool—$232,855
Quinella Pool—$23,233 Superfecta Pool—$116,427 Trifecta Pool—$252,827
Pick Three Pool—$85,715
Claimed— Chihenderneveruner-Aledore, Knapp and Yenraris-S Knapp
Claimed— Cloudy Money-Brewer Racing Stable, Hanon and Daves-H Hines
Claimed— Klassic Ty-Patrick Maguire-J Sadler
Claimed— Cinema Star-Chauvet, Bill and Moran, Michael-M Dixit
Claimed— Aerojack-Paul Assinesi-P Assinesi
Scratched— Gotta Go Go, Magicjohnnyjoin
$2 DAILY DOUBLE (10-8) PAID $25.80; $1 EXACTA (8-7) PAID $10.40; $2 QUINELLA (7-8) PAID $18.80; $1 SUPERFECTA (8-7-8-2) PAID $681.80; $1 TRIFECTA (8-7-8) PAID $66.20; $2 DAILY DOUBLE (10-1) PAID $3.80; $1 PICK THREE (9-10-8) PAID $61.40

2301 — TENTH. 1 1/8 Mile Turf. Maiden Special Weight. 3-year-olds & up. Purse: $51,000.

Index	Horse,Jockey	Wt.	PP	St	¼	½	¾	Str	Fin	Odds
7080	Diamond Indy, John	118	3	7-1½	8-2	8-hd		4½	1-½	12.30
2188	Veenyn Public, Bloome	113	6	HD	1-1	1-1		1-1	2½	41.90
2141	Johnny Red Karl, Douglas	122	9	HD	7½	7-1		6-1½	3½	5.50
2080	Wanted Man, Valdivia	118	10	10	9-hd	9-3		8-2	4-no	5.30
2225	Maxwell Sunrise, Flores	118	1	5½	5-hd	4½		5-1	5½	13.50
2141	Repulse Bay, Desormeaux	118	5	8-1½	6-2	5½		7-1	6-hd	10.80
2138	Providence, Court	118	2	3½	3-1½	3-hd		2½	7-1½	2.80
2245	Like a Tiger, Baze	118	7	9-4	10	10		9-3	8-1	2.70
2245	Potent Wind, Espinoza	118	8	2-2	2½	2-1		3-1	9-1	9.40
2173	Fanguo, Nocus	118	4	4-1½	4½	6-1		10	10	72.70

4-Diamond Indy 26.60, 13.20, 10.40; 8-Veenyn Public 34.20, 20.40; 9-Johnny Red Karl 8.70
Time— :23.93 :49.84 1:13.35 1:37.21 1:49.07. Start good. won driving. Firm
Winner—Dk/B.c.-18,A.P. Indy-Adat Trainer—Richard E. Mandella
Own-Diamond A Racing Corporation
POOLS-Mutuel Pool—$520,850 Daily Double Pool—$112,181 Exacta Pool—$329,184
Quinella Pool—$32,132 Superfecta Pool—$190,558 Trifecta Pool—$364,188
Pick Three Pool—$163,026
Scratched— Crew Felt, Point the Bar, Rhythm King
$2 DAILY DOUBLE (8-4) PAID $180.80; $1 EXACTA (4-8) PAID $294.80; $2 QUINELLA (4-8) PAID $707.80; $1 SUPERFECTA (4-8-9-10) PAID $52,408.20; $1 TRIFECTA (4-8-9) PAID $5,873.80; $1 PICK THREE (10-8-4) PAID $178.30; PICK FOUR WINNING NUMBERS: 9-10-8-4
PICK FOUR POOL—$554,494
TICKETS WITH 4 CORRECT PAID $798.80; PICK SIX WINNING NUMBERS: 2-9-9-10-8-4
PICK SIX POOL—$532,879
PICK SIX CARRYOVER $286,875
189 TICKETS WITH 6 CORRECT PAID $1,183.20; PLACE PICK ALL WINNING NUMBERS: 10-OF-10; PLACE PICK ALL POOL—$48,865
TICKETS WITH 10 CORRECT PAID $38,246.20
On-Track Attendance ...... 25,580 Mutuel Handle $2,803,840
Inter-Track Attendance .... 16,116 Mutuel Handle $8,864,840
Out of State Attendance ..... N/A Mutuel Handle $8,700,224
TOTAL Attendance .... 41,876 Mutuel Handle ... $18,988,721

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VM ASSOCIATES EXHIBITS - 1

Exhibit Number	Description
A	City Resolution C-22376 (guidelines for use of hearing officers)
B	City Resolution C-27713 (raising hourly rate to be paid to hearing officers) and memo, City Atty › City Clerk with list of potential hearing officers
C	6/8/04 Ltr. Diamond › City Atty (rejects all selections for hearing officer)
D	6/9/04 Ltr. City Atty › Diamond (explains hearing officer selection process)
E	6/15/04 Ltr. CityClerk › VM Associates. (DUPLICATE OF X4)
F	6/18/04 Ltr. Diamond › City Clerk. (DUPLICATE OF X6)
G	California Identification Card – Briana Hernandez
H	California Driver License – Bianca Mendoza

END OF FIRST HEARING DAY

RESOLUTION NO. C- 22376

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH ESTABLISHING PROCEDURAL GUIDELINES FOR THE USE OF HEARING OFFICERS FOR THE CONDUCT OF ADMINISTRATIVE HEARINGS DELEGATED BY THE CITY COUNCIL

WHEREAS, the City Council recently adopted Ordinance No. C-5295 to provide a procedure for delegating the conduct of certain administrative hearings presently heard by the Council; and

WHEREAS, the Council desires to secure a panel of qualified attorneys to preside as hearing officers from time to time on such matters as the Council may refer for hearing;

NOW, THEREFORE, the City Council of the City of Long Beach resolves as follows:

Section 1. That the City shall request the Long Beach Bar Association to submit a list of qualified attorneys who are willing to serve as hearing officers for the City.

Sec. 2. That an attorney serving as a hearing officer shall have practiced law in the State of California for at least five (5) years and shall have had at least five (5) years of experience in civil trial or civil appellate practice.

Sec. 3. Whenever the Council decides to refer a hear-

ing to a hearing officer, such officer shall be selected by lot by the City Clerk from the list of qualified attorneys. Thereafter the City Clerk shall notify the hearing officer so selected and shall give the necessary notice and make the necessary arrangements for the hearing.

Sec. 4. Once an attorney serves as a hearing officer, he shall not be assigned another hearing until all attorneys on the qualified list have had an opportunity to handle at least one hearing. The Long Beach Bar Association will be requested to update the list of qualified attorneys at least every two (2) years.

Sec. 5. The hearings shall be conducted pursuant to the provisions set forth in Ordinance No. C-5295 and Ordinance No. C-5232, and the hearing officer shall prepare the appropriate findings, conclusions and recommendations as required by Ordinance No. C-5295.

Sec. 6. The City Attorney will provide such legal advice to the hearing officer as may be reasonably required before, during and after the hearing.

Sec. 7. The City Clerk will provide the necessary recording or transcripts, if required, as well as stenographic clerical services as may be reasonably required by the hearing officer.

Sec. 8. Before accepting an assignment to conduct a hearing, a hearing officer shall ascertain that he does not have a conflict of interest, either under applicable state laws or

CITY ATTORNEY
Long Beach, California 90802

under the Code of Ethics of the State Bar. In particular, the hearing officer shall comply with the conflict of interest provisions of the Political Reform Act of 1974 (Government Code §§ 87100 through 87103).

Sec. 9. The hearing officer will be paid the sum of sixty-five dollars ($65.00) per hour for services rendered; provided, however, that the minimum compensation for any one hearing shall be the equivalent of three hours' service, excluding rehearings. Upon completion of the hearing or rehearing, the hearing officer shall submit his bill in writing to the City Clerk; and upon approval by the Mayor, payment of such bill shall be processed by direct payment pursuant to City of Long Beach Administrative Regulation 23-1.

Sec. 10. The City Clerk shall certify to the passage of this resolution by the City Council of the City of Long Beach, and shall post it in three conspicuous places in said City, and said resolution shall thereupon take effect.

I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of August 30, 1977, by the following vote:

Ayes: Councilmembers: PHILLIPS, SIMON, KELL, WILSON, SATO, CARROLL, RUBLEY, CLARK.

Noes: Councilmembers: NONE.

Absent: Councilmembers: EDGERTON.

AYH:skh
8-24-77
2+28

Elaine L. Hamilton
City Clerk

CITY ATTORNEY
Long Beach, California 90802

CERTIFIED TRUE AND CORRECT COPY
CITY CLERK OF THE CITY OF LONG BEACH
DATE: JUN 09 2004

L-99 (9/76)

RESOLUTION NO. C- 27713

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING RESOLUTION NO. C-23483 WHICH AMENDED RESOLUTION NO. C-22376 WHICH ESTABLISHED PROCEDURAL GUIDELINES FOR THE USE OF HEARING OFFICERS FOR THE CONDUCT OF ADMINISTRATIVE HEARINGS DELEGATED BY THE CITY COUNCIL

WHEREAS, the City Council of the City of Long Beach did adopt Resolution No. C-22376 on August 30, 1977, which established procedural guidelines for the use of hearing officers for the conduct of administrative hearings delegated by said City Council; and

WHEREAS, Section 9 of Resolution No. C-22376 established the rate of compensation for services rendered by the hearing officers to be $65.00 per hour; and

WHEREAS, the City Council of the City of Long Beach did adopt Resolution No. C-23483 on January 11, 1983, amending Resolution No. C-22376 regarding the procedural guidelines for the use of hearing officers but did not in fact amend the rate of compensation for hearing officers; and

WHEREAS, the rate of compensation for the services rendered by the hearing officers has not been amended since 1977 and has been determined to be insufficient to adequately compensate the hearing officers;

NOW THEREFORE, the City Council of the City of Long Beach resolves as follows:

Section 1. That Section 9 of Resolution No. C-23483 be amended to read as follows:

"Section 9. The hearing officer will be paid the sum of one hundred fifty

Robert [illegible]
City Attorn[illegible] of Long Beach
333 West Ocea[illegible] Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

B

dollars ($150.00) per hour for services rendered; provided, however, that the minimum compensation for any one hearing shall be the equivalent of three hours' service, excluding rehearings. Upon completion of the hearing or rehearing, the hearing officer shall submit his bill in writing to the City Clerk; payment of such bill shall be processed by direct payment pursuant to City of Long Beach Administrative Regulation 23-1."

Sec. 2. Except as specifically amended by this resolution, all other guidelines contained in Resolution No. C-23483 shall remain in full force and effect.

Sec. 3. The City Clerk shall certify to the passage of this resolution by the City Council of the City of Long Beach and it shall thereupon take effect.

I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of July 11, 2000, by the following vote:

Ayes: Councilmembers: Baker, Colonna, Roosevelt, Kell, Topsy-Elvord, Grabinski, Kellogg, Shultz.

Noes: Councilmembers: None.

Absent: Councilmembers: Oropeza.

Shellie Powell
City Clerk

CERTIFIED AS A TRUE AND CORRECT COPY
Larry G. Herrera
CITY CLERK OF THE CITY OF LONG BEACH
DATE: JUN 09 2004

APR:rmb6-29-2000(HEARINGOFF.RES)00-02694
F:\APPS\CtyLaw32\WPDOCS\D028\P001\00011888.WPD

Robert [illegible] Beach
City Attorney
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

City of Long Beach
Working Together to Serve

Memorandum

Date: June 30, 2003

To: Larry G. Herrera, City Clerk

From: Robert E. Shannon, City Attorney RES

Subject: Administrative Hearing Officers

Pursuant to your request, attached is an updated list of potential Administrative Hearing officers.

Should you have any questions regarding the above, please do not hesitate to contact me.

RES:lvs
Attachment

cc: Gerald R. Miller, City Manager

RES

CITY OF LONG BEACH
Working Together to Serve

ADMINISTRATIVE HEARING OFFICERS

Name	Address	Contact Nos.	Details
Accetta, Therese Ann	3020 Old Ranch Pkwy. #300 Seal Beach, CA 9040-2752	(562) 799-5733 Phone (562) 596-5098 Fax	Arbitrator, Los Angeles Bar; Dispute Resolution Svcs. June 1994 - Present
Bayles, Calvin D.	110 Pine Avenue, Ste. 200 Long Beach, CA 90802	(562) 435-7735 Phone (562) 437-3075 Fax	
Bergkvist, Carl J.	400 Oceangate, #800 Long Beach, CA 90802-4307	(562) 435-1426 Phone (562) 495-4255 Fax	-
Brodsky, Ronald D.	12746 Martha Ann Drive Los Alamitos, CA 90720	(562) 596-6462 Phone (562) 522-9797 Cell	
Bronn, Clyde L.	P.O. Box 92735 Long Beach, CA 90809-2735	(562) 597-7263 Phone	
Burcham, Dan H.	5855 Naples Plaza Suite 304 Long Beach, CA 90803	(562) 438-7004 Phone (562) 438-7009 Fax	
Burns, Hugh R.	Law Offices of Hugh Burns 3780 Kilroy Airport Way, 2nd Fl. Long Beach, CA 90806	(562) 256-7040 Phone (562) 256-7041 Fax hugh.burns@legal-office.us	
Byrne, Theodore P.	P.O. Box 1581 Redondo Beach, CA 90278	(310) 714-9483 Phone (888) 872-3967 Fax	Judge Pro Tem LASC 1998-Present
Cannavo, Judith A.	444 W. Ocean Blvd. Suite 800 Long Beach, CA 90802	(562) 624-2822 Phone (562) 624-2892 Fax	ADR Panel - Long Beach Bar & LASC; Judge Pro Tem
Carter, Paul J.	Bergkvist, Bergkvist & Carter 400 Oceangate, Suite 800 Long Beach, CA 90802-4307	(562) 435-1426 Phone (562) 495-4255 Fax	
Castner, Jeff (Comm.)	535 Winslow Avenue Long Beach, CA 90814	(562) 432-7737 Phone (562) 597-9360 Fax	*Commissioner (Retired)
Churchill, Carol A.	1979 Raymond Avenue Signal Hill, CA 90806	(562) 597-4534 Phone (562) 697-4534 Fax	
Dalessi, William T.	200 Oceangate #440 Long Beach, CA 90802-8225	(562) 436-5203 Phone (562) 437-8225 Fax	

CITY OF LONG BEACH
Working Together to Serve

ADMINISTRATIVE HEARING OFFICERS

Name	Address	Contact Nos.	Details
DeBiaso, J. Rodney	4326 Atlantic Avenue Long Beach, CA 90807-2804	(949) 955-2577 Phone (714) 402-3362 Cell	
deMartino, Valerie K.	111 W. Ocean Blvd., #1300 Long Beach, CA 90802	(562) 628-0287 Phone (562) 628-0297 Fax	
Evans, William D.	555 E. Ocean Blvd, #500 Long Beach, CA 90802	(562) 435-4499 Phone (562) 495-4299 Fax	
Feinberg, Cheryl Lackman	3740 Long Beach Blvd. Long Beach, CA 90807	(562) 595-7341 Phone (562) 426-9801 Fax CLFeinberg@aol.com	
Greenberg, Bruce A.	200 Oceangate Suite 850 Long Beach, CA 90802-4335	(562) 437-2000 Phone (562) 495-2653 Fax	
ge, Talmadge M.	6430 DeLeon Street Long Beach, CA 90815	(562) 431-0518 Phone (562) 799-8242 Fax	
Heggeness, Clark	4230 Virginia Vista Long Beach, CA 90807	(562) 427-9736 Phone	Mediator /Arbitrator for Bar Association and Court
Hirota, Ryan K.	5000 E. Spring St.,. #430 Long Beach, CA 90815	(562) 421-6333 Phone (562) 421-6903 Fax	
Hohn, Bruce A.	12139 Paramount Blvd. Downey,	(562) 861-3335 Phone (562) 862-4177 Fax	
Israel, Albert S.	115 Pine Avenue #300 Long Beach, CA 90802	(562) 432-5111 Phone (562) 498-1161 Fax	
Kaleta, Victor J.	420 S. Allen Avenue Pasadena, CA 91106-3505	(626) 792-9829 Phone (626 792-0326 Fax	
Lackman, Lawrence	3740 Long Beach Blvd. Long Beach, CA 90807	(562) 595-7341 Phone (562) 426-9801 Fax LHLackman@aol.com	
Lamhofer, Eric T.	3760 Kilroy Airport Way #260 Long Beach, CA 90806	(562) 988-1027 Phone (562) 988-1163 Fax	

CITY OF LONG BEACH
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ADMINISTRATIVE HEARING OFFICERS

Name	Address	Contact Nos.	Details
Leonard, Richard	12139 Paramount Blvd. Downey, CA 90242	(562) 861-3335 Phone (562) 862-4177 Fax	
Martin, Clive	6318 Marina Pacifica Dr. North Long Beach, CA 90803	(562) 436-2281 Phone clivesmartin@aol.com	
Matsuk, Leonard A.	111 W. Ocean Blvd., #625 Long Beach, CA 90802	(562) 432-5487 Phone (562) 432-0355 Fax	
Montgomery, Cole	111 W. Ocean Bld., #1300 Long Beach, CA 90802	(562) 435-6565 Phone (562) 590-7909 Fax	
Moyer, Lynn	200 Oceangate Suite 830 Long Beach, CA 90802	(562) 437-4407 Phone (562) 437-6057 Fax lynn.moyer@verizon.net	
ell, Frank R.	11 Golden Shore, Ste. 400 Long Beach, CA 90802	(562) 435-7471 Phone (562) 435-7405 Fax VNCNS@earthlink.net	
Otto, Douglas W.	111 W. Ocean Blvd., #1300 Long Beach, CA 90801-2210	(562) 491-1191 Phone (562) 590-7909 Fax	
Pearce, Michael J.	249 E. Ocean Blvd., #440 Long Beach, CA 90801	(562) 437-9797 Phone (562) 437-6868 Fax	
Peeples, Mary K.	Gilligan Law Corporation 3030 Old Ranch Parkway Seal Beach, CA 90740	(562) 431-2000 Phone (562) 431-2100 Fax	*Has facilities for hearings; they do arbitrations and mediations
Price, Michael W.	2500 E. Imperial Hwy. Suite 201-116 Brea, CA 92821-6122	(714) 528-4792 Phone (714) 572-2151 Fax	Exp. w/LBMC 2.93 & 9.37 and Nuisance Abatement, Code Enforcement, H & S
Price, William C.	555 E. Ocean Blvd., #810 Long Beach, CA 90802	(562) 436-1231 Phone (562) 435-6384 Fax	
Ramsey, Thomas A.	111 W. Ocean Blvd. 19th Floor Long Beach, CA 90802-4632	(562) 436-7713 Phone (562) 436-7313 Fax	
Rasmussen, Norman	11 Golden Shore #430 Long Beach, CA 90802	(562) 436-9631 Phone (562) 436-1467 Fax	

CITY OF LONG BEACH
Working Together to Serve

ADMINISTRATIVE HEARING OFFICERS

Name	Address	Contact Nos.	Details
Rice, Stuart M.	4326 Atlantic Avenue Long Beach, CA 90807	(562) 867-1861 Phone (562) 424-1659 Fax	
Saacke, William C.	McNulty & Saacke 25500 Hawthorne Blvd. #2350 Torrance, CA 90505	(310) 316-9000 Phone (310) 791-2247 Fax	
Salmon, Samuel M.	3700 Santa Fe Ave., Ste. 300 Long Beach, CA 90810	(310) 834-3600 Phone (310) 834-8305 Fax SAM834-3600@earthlink.net	
Schurr, Pamela Bourette	11 Golden Shore #400 Long Beach, CA 90802-4218	(562) 435-7471 Phone (562) 435-7405 Fax VNCNS@earthlink.net	
Shapiro, Anita Rae (Comm)	P.O. Box 1508 Brea, CA 92822-1508	(714) 529-0415 Ph/Fax (714) 606-2649 Cell PrivateJudge@adr-shapiro.corn	*Commissioner http://www.adr-shapiro.com
Soden, Mary Ann	P.O. Box 32465 Long Beach, CA 90832	(562) 434-8349 Phone	
Spagnola, Charles T.	Cayer, Spagnola & Jenkins 444 W. Ocean Blvd. #700 Long Beach, CA 90802-4517	(562) 435-6008 Phone (562) 435-3704	
Thomas, Allen L.	3545 Long Beach Blvd., #490 Long Beach, CA 9807-3941	(562) 988-0055 Phone (562) 988-1535 Fax	
Vande Wydeven, Mathew J	Wise, Pearce, Yocis & Smith 249 E. Ocean Blvd., Ste. 440 Long Beach, CA 90801	(562) 437-9797 Phone (562) 437-6868 Fax	Arbitrator/Mediator LASC 1994 - Present
Wise, Susan E. Anderson	249 E. Ocean Blvd. #440 Long Beach, CA 90802	(562) 437-9797 Phone (562) 437-6868 Fax	Arbitrator, LA Bar Assn. Dispute Resolution Srvcs 1994 - Present
Zugsmith, George S.	1379 Park Western Dr. #323 San Pedro, CA 90732	(310) 541-3927 Phone (310) 541-3927 Fax	Experience as arbitrator, mediator, judge pro tem

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LAW OFFICES OF
ROGER JON DIAMOND
2115 MAIN STREET
SANTA MONICA, CALIFORNIA 90405-2215
TELEPHONE (310) 399-3259
FAX (310) 392-9029
rogdiamond@aol.com

June 8, 2004

Michelle Gardner
Office of City Attorney
333 West Ocean Blvd., 11th Fl.
Long Beach, CA 90802-4664

Re: Hearing on Revocation of Business License for Flamingo Club, 2421 East Artesia

Dear Ms. Gardner:

In reply to your letter of June 7, 2004 please be advised that I reject all three names listed in your letter for hearing officers. I do not believe the so called 50 local attorneys were selected properly.

I need to have the list of all 50 so called local attorneys and the criteria utilized in selecting them to be on the list. I need to have all documents relating to the selection of these attorneys.

I did not select either one of the three names listed in the letter. I do not know when the City Clerk selected anyone of these names. None of them is acceptable to me.

With respect to the payment of the hearing officer my client will pay the hearing officer providing we have the right to participate in the selection of the hearing officer.

Sincerely,

ROGER JON DIAMOND

RJD:jb

cc: Irma Heinreich, Office of City Clerk
Fax No. 562/570-6789

#C

OFFICE OF THE CITY ATTORNEY
Long Beach, California

ROBERT E. SHANNON
City Attorney

HEATHER A. MAHOOD
Assistant City Attorney

June 9, 2004

VIA FACSIMILE (310) 392-9029 AND U.S. MAIL

Law Offices of Roger Jon Diamond
2115 Main Street
Santa Monica, CA 90405-2215

RE: Hearing on Revocation of Business License and Adult Entertainment Permit issued to VM Associates, Inc. d.b.a. Flamingo Gentleman's Club, 2421 E. Artesia, Long Beach

Dear Mr. Diamond,

I am in receipt of your letter dated June 8, 2004. In response, I have enclosed two resolutions, entitled C-22376 and C-27713, regarding the use of hearing officers for the conduct of administrative hearings. The conduct of hearings is governed by Long Beach Municipal Code, Chapter 2.93. This process has been utilized by the City Clerk's Office in the random selection of the three candidates submitted to you on June 7th.

In January through June, 2003, an advertisement was sent to the Long Beach Bar Association, who then distributed the advertisement to all Long Beach Bar Association members interested in acting as an impartial administrative hearing officer. Those qualified candidates submitted letters of interest and resumes, which are on file. The list was compiled and completed on June 30, 2003, as the cover memo from City Attorney Robert E. Shannon to the City Clerk indicates. I am enclosing the cover memo and list of hearing officers for your information.

The City Clerk's office routinely, randomly selects three names from the hearing officer list, based on availability. I neither have, nor have I had, contact with any of the three individuals selected by the City Clerk. Further, these candidates do not receive paid employment by the City in any other fashion. As you know, the attorneys participating in administrative hearings cannot directly communicate with any hearing officer outside of the hearing.

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At this time, I am requesting that you either select a hearing officer from the three names drawn, or else the City Clerk will randomly draw a name from the three available candidates.

Additionally, if you recall your letter dated April 22, 2004, you indicated that you would be out of the country for two weeks beginning Monday May 24, 2004 and would not return until June 8, 2004. Ms. Irma Heinrichs from the City Clerk's office contacted you at your law office to schedule a hearing date and you indicated that you would only be available one day for the entire month of June – on June 28, 2004. Therefore, candidates for hearing officer have been contacted regarding their availability on that date and the City has subpoenaed fourteen potential witnesses to appear on June 28th.

The City has been following all legal requirements and procedural guidelines, and is acting in accordance with *Haas v. County of San Bernardino, et al.* (2002) 27 Cal. 4th 1017. The Long Beach resolutions ensure reasonable impartiality, as is enumerated in *Haas*, 27 Cal.4th at 1037, footnote 22 (i.e., the candidates for hearing officer are on a preestablished system of rotation and, no person appointed is eligible for a future appointment until the list is revised every two years).

I look forward to your prompt response in this matter.

Sincerely,

ROBERT E. SHANNON
CITY ATTORNEY

Michelle Gardner
Deputy City Attorney

Encl.

04-02414

EXHIBITS

NR	ID	INTRO	DESCRIPTION

bcc:

CITY OF LONG BEACH

CITY CLERK

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802 • (562) 570-6101 FAX (562) 570-6789

June 15, 2004

VM Associates, Inc.
c/o Vasken Tatarian
dba Flamingo Gentleman's Club
2421 E. Artesia
Long Beach, California 90805

Subject: Hearing on Revocation of Business License and Adult Entertainment Permit issued to VM Associates, Inc. d.b.a. Flamingo Gentleman's Club, 2421 E. Artesia, Long Beach. (District 8)

Dear Mr. Tatarian:

This is to advise you that a continued hearing, regarding the subject matter referenced above, has been scheduled for Monday, June 28th. The hearing will take place at the Long Beach City Hall, 333 West Ocean Boulevard, Long Beach, 4th Floor Conference Room, commencing at 9:00 a.m.

All other correspondence has been direct through your attorney, Roger Jon Diamond.

If you have any questions, please contact Irma Heinrichs, City Clerk Department, at (562) 570-6228.

Respectfully,

Larry G. Herrera
City Clerk

Prepared by:
Irma Heinrichs

cc: Roger Jon Diamond, Attorney
Michelle Gardner, Deputy City Attorney

E

LAW OFFICES OF
ROGER JON DIAMOND
2115 MAIN STREET
SANTA MONICA, CALIFORNIA 90405-2215
TELEPHONE (310) 399-3259
FAX (310) 392-9029
rogdiamond@aol.com

June 18, 2004

Larry G. Herrera, City Clerk
City of Long Beach
333 West Ocean Blvd.,
Long Beach, CA 90802

Re: Hearing on Revocation of Business License and Adult Entertainment Permit Issued to VM Associates, Inc. dba Flamingo Gentleman's Club, 2421 East Artesia

Dear Mr. Herrera:

I have received correspondence from you and from Deputy City Attorney Michelle Gardner regarding this matter which apparently has been set for Monday June 28, 2004 at 9 A.M. at the Long Beach City Hall.

Ms. Gardner has indicated a willingness to select a hearing officer over my objection. We have a dispute as to whether or not the hearing officer can be selected properly.

I have not gotten back to Ms. Gardner because I have been engaged in a jury trial in Rancho Cucamonga for the past week and before that I was out of the country for two weeks and before that I was in trial in San Bernardino for two months.

I hope to be available on Monday June 28, 2004 for the hearing. I am trying to work out my schedule now.

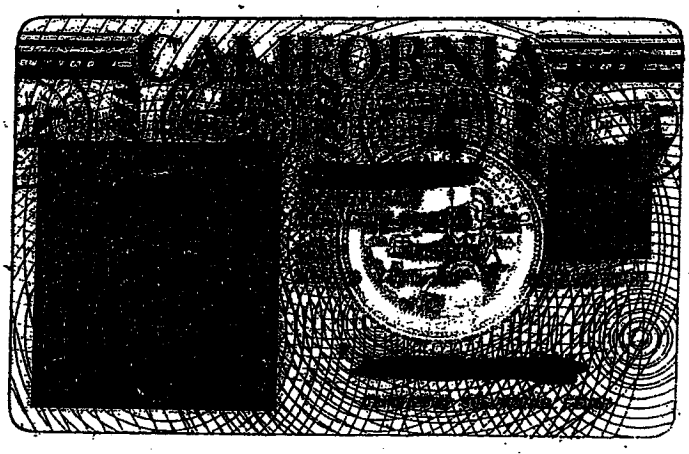
In any event, I do object to all hearing officers selected by Long Beach. The process is flawed.

Sincerely,

Roger Jon Diamond /jp

ROGER JON DIAMOND

RJD:jb
cc: Michelle Gardner, Deputy City Attorney
Dictated But Not Read



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rogdiamond@aol.com

September 13, 2004

Thomas A. Ramsey
111 West Ocean Blvd.
19th Floor
Long Beach, CA 90802-4632

Fax: 562-436-7313

Re: Flamingo Theater

Dear Mr. Ramsey:

The purpose of this letter brief is to request that you recommend to the Long Beach City Council that it not vote to suspend or revoke the business license or the entertainment permit of the Flamingo Theater. Evidence was submitted and arguments were made at three separate sessions of the hearing on June 28, July 21, and September 7, 2004.

First, I wish to reiterate what I said at the close of the hearing on September 7, 2004 - that my client and I waive any statutory requirement, or ordinance or regulation that would require you to render your recommendation or decision within a specified time. I know that as a private attorney you must have other cases that occupy your time. Therefore, we have no objection if you need to take additional time to decide this case.

Second, we respectfully object to your deciding this case based on Haas v. County of San Bernardino, 27 Cal.4th 1017 (2002) which held that a private attorney may not be retained by a city or a county to conduct an administrative hearing when the city or the county has unilaterally selected the hearing officer, pays the hearing officer, and the hearing officer has some expectation of the possibility of future employment by that governmental entity. In this particular case the city attempted to circumvent the holding of the Haas case by selecting unilaterally three possible hearing officers and then allowing the selection from those three selected by the city. With all due respect to you and to the city, the procedure followed by the City of Long Beach that wound up with your being the hearing officer still ran afoul of the holding of the Haas case. The list generated by the City of Long Beach was restricted and the three officers selected by the city were unilaterally selected. I understand that you have tentatively rejected this argument but I do need findings on this particular point. In particular, you must

disclose in your written decision the number of hearings you have conducted for the City of Long Beach, what your pay is, and whether there is the possibility of future employment by the city. I need to know how many prior hearings you conducted for the city and whether your decision favored or opposed the position taken by city officials who requested the hearing.

With respect to the merits of the case there are really two separate issues, one dealing with the nudity issue and the other dealing with the allegation of employment of underaged dancers. The first substantive issue can be broken down into two parts, one dealing with the grandfather status issue and the other dealing with nudity in general.

In order to make the appropriate recommendation it is important for you to understand the history of the litigation regarding nude dancing.

In 1969 Penal Code Section 318.6 was enacted, which declared that nothing in the Penal Code should be construed to invalidate any local ordinance purporting to prohibit nudity. However, Penal Code Section 318.6 was limited to non theatrical establishments. In other words, local ordinances were not allowed by virtue of Penal Code Section 318.6 if the local ordinances purported to ban nude dancing at theaters, concert halls, or similar establishments.

In Crownover v. Musick, 9 Cal.3d 405 (1973) the California Supreme Court dealt with local ordinances that prohibited nude dancing in places other than theaters, concert halls or similar establishments. The court upheld such ordinances

Later, in Morris v. Municipal Court, 32 Cal.3d 553 (1982) the California Supreme Court overruled its prior decision in Crownover v. Musick, In the Morris case a dancer at a San Jose bar was arrested for exposing her buttocks in violation of a Santa Clara ordinance. In the Morris case the Supreme Court ruled that the conduct in question could not be prohibited even though not performed in a theater, concert hall, or similar establishment, but rather in a bar. The California Supreme Court relied upon such United States Supreme Court decisions as Schad v. Mt. Ephraim, 452 U.S. 61, 68 L.Ed.2d 671, 101 S.Ct. 2176 (1981) and Doran v. Salem Inn, Inc., 422 U.S. 922, 45 L.Ed.2d 648, 95 S.Ct. 2561 (1975).

At about the same time that the courts were grappling with the issue of whether nude dancing is or is not protected by the First Amendment a separate issue was being presented to the judicial system - adult zoning ordinances. The first case to reach the United States Supreme Court regarding the question of adult zoning laws was Young v. American Mini Theaters, Inc., 427 U.S. 50, 49 L.Ed.2d 310, 96 S.Ct. 2440 (1976). Later the Supreme Court decided the Schad case and still later it decided Renton v. Playtime Theaters, Inc., 475 U.S.41, 89 L.Ed.2d 29, 106 S.Ct. 925 (1986). Essentially what the United States Supreme Court said in the adult zoning cases is that while bookstores, arcades, movie theaters, and live cabaret shows that present erotic activity are protected by the First Amendment, cities still have the right under zoning authority to determine where such businesses may be located. However, the zoning laws may not be so restrictive as to make it unreasonable for such a business to be able to open and operate in any particular city. An example of a city's zoning code purporting to regulate the location of adult businesses which was thrown out by the California Court of Appeal is City of Stanton v. Cox, 207 Cal.App.3d 1557 (1989). In that particular case the Court of Appeal ruled that the City of Stanton local adult zoning ordinance was too restrictive.

Regarding the general question as to why a city does have the power to zone adult businesses altogether the Supreme Court concluded that if cities rely upon studies regarding alleged adverse secondary effects from such businesses the cities may zone where they can be located but again cannot ban them completely. Numerous cases have arisen from litigation regarding the application of particular adult zoning laws to particular adult bookstores, theaters, and related businesses.

Long Beach enacted its first adult zoning ordinance on October 25,1977, which became effective on November 25, 1977. See generally Walnut Properties, Inc. v. City Council, 100 Cal.App.3d 1018 (1980). Later the city amended its adult zoning ordinances a number of times. See generally People v. Superior Court (Lucero), 49 Cal.3d 14 (1989).

Still later amendments to the Long Beach adult zoning code produced additional litigation. See, e.g., Lim v. City of Long Beach, 217 F.3d 1050 (9th Cir. 2000), cert.den. 531 U.S. 119, 149 L.Ed.2d 105, 121 S.Ct. 1189 (201).

As stated, the premise of these adult zoning ordinances, including the one in Long Beach, is that adult businesses cause adverse secondary effects in the community to the extent that nearby sensitive uses should be protected from such businesses. However, the studies which support these kinds of ordinances must involve activities which are

being regulated by the zoning ordinance in question. The studies must be relevant to the particular ordinance enacted by the city. See Renton v. Playtime Theaters, supra.

The evidence is uncontroverted that in this particular case the Flamingo Theater was established in a heavy industrial area in northern Long Beach, far from any sensitive uses. The police officers who testified in this case conceded the appropriateness of the location for the Flamingo Theater. It backs up onto the 91 Freeway and is surrounded by a junk dealer and an oil refinery. The Flamingo Theater complies with the Long Beach adult zoning code. The studies which led to the adoption of the Long Beach adult zoning ordinance focused on nude establishments.

In 1991, nine years after the California Supreme Court decided Morris v. Municipal Court, supra, the United States Supreme Court decided a nude dancing case, Barnes v. Glen Theatre, Inc., 501 U.S. 560, 115 L.Ed. 2d 504, 111 S.Ct. 2456 (1991), which upheld an Indiana ordinance regarding nude entertainment. Because of the numerous votes of the individual justices it was really impossible to know what the United States Supreme Court actually said in the Barnes case. Its decision did not command a majority. There was disagreement in the legal community as to the meaning of the decision in Barnes v. Glen Theatre, Inc., supra. Apparently some persons in the California legislature were of the opinion that nude dancing was no longer constitutionally protected under the First Amendment and therefore cities should be free to prohibit it if they were so inclined. It was thought that cities in California could not "take advantage" of the Supreme Court's decision in the Barnes case because of Penal Code Section 318.6, which basically was being construed as preempting local control over nudity in adult theaters.

Former Assembly Member Scott Baugh introduced Assembly Bill 726, which was enacted in 1998. The Scott Baugh Bill amended Penal Code Section 318.6 to essentially provide that nothing in the Penal Code should be construed as invalidating an ordinance of any city relating to nude dancing. Section 318.6(c) included a provision that restricted the application of Penal Code Section 318.6 to businesses that did not receive an adult entertainment license or permit until sometime after July 1, 1998.

The evidence in the instant case establishes that the applicant applied for the required adult entertainment license in 1997. V.M. Associates, Inc. acquired the property at 2421 East Artesia Boulevard in the City of Long Beach in 1997 and applied for the required entertainment permit at that time. The city embarked upon a tactic of stalling

to first allow the Scott Baugh Bill to go forward and be considered by the Legislature and signed by the Governor. Thereafter, on February 9, 1999 the Long Beach City Council purported to adopt Ordinance No. C7591 regarding nudity and adult entertainment businesses. That ordinance, No. C7591, made specific reference to the Scott Baugh Bill and made specific reference to the Barnes decision by the United States Supreme Court. Ordinance No. C7591 also made reference to the alleged adverse secondary effects of adult businesses and specifically referred to its amendment to Section 21.45.110 of the Long Beach Municipal Code relating to zoning regulations. The ordinance amended Long Beach Municipal Code Section 5.72.140 (C) (1) to prohibit nude dancing.

The ordinance also amended Section 9.20.050 of the Long Beach Municipal Code to prohibit nudity in public. The ordinance made no reference to the grandfather status afforded businesses that obtained entertainment permits or licenses before July 1, 1998. The ordinance was adopted on May 9, 1999 by the City Council and approved by the Mayor on February 11, 1999. Presumably it took effect 30 days later. In the mean time, while city bureaucrats continued to horse VM Associates, Inc. around regarding its application for the permit by repeatedly telling the applicant that it needed to supply additional information, the Long Beach City Council on May 29, 2001 amended the same code provisions that it previously amended by Ordinance No. C7591. The new ordinance was numbered C-7747. At page 3 of Ordinance No. C-7747 specific reference was made to the published decision by the Federal District Court in Lim v. City of Long Beach, 12 F.Supp.2d 1050 (C.D. Cal. 1998). In that published decision by a federal district judge, the federal court had upheld the adult zoning provisions of the Long Beach Municipal Code. However, the plaintiff in that case, Mr. Lim, appealed that decision to the Ninth Circuit, and obtained a reversal, Lim v. City of Long Beach, 217 F.3d 1050 (9th Cir. 2000). Although the ordinance was not adopted until May 29, 2001, after the Ninth Circuit's reversal in the Lim case, the ordinance (Ordinance No. C7747) made no reference to the Ninth Circuit decision reversing the district court decision cited in the city ordinance. The new ordinance stated that nude dancing caused adverse secondary effects. However, the zoning ordinance of the City of Long Beach already factored in the adverse secondary effects caused by nude dancing. That is why the city severely restricts the location of adult businesses and, as stated previously, the location of the Flamingo Theater satisfies the very stringent requirement of the city's zoning code. Therefore, there is no further need to regulate an adult business that already complies with the zoning code.

Prior to the adoption of Ordinance No. C-7747 on May 29, 2001, the United States Supreme Court decided City of Erie v. Pap's A.M., 529 U.S. 277, 146 L.Ed.2d 265, 120 S.Ct. 1382 (2000) which upheld the right of the City of Erie to ban totally nude entertainment. However, the case did not involve zoning. The United States Supreme Court essentially upheld the right of the City of Erie to enforce its anti nudity ordinance because of the same reason that it previously gave for upholding an adult zoning ordinance in Young v. American Mini Theaters, supra. The court stated, 529 U.S. at 293:

> "Even if we had not already rejected the view that a ban on public nudity is necessarily related to the suppression of the erotic message of nude dancing, we would do so now because the premise of such a view is flawed. The State's interest in preventing harmful secondary effects is not related to the suppression of expression. In trying to control the secondary effects of nude dancing, the ordinance seeks to deter crime and the other deleterious effects caused by the presence of such an establishment in the neighborhood. . . ."

Thus, the Supreme Court essentially upheld the right of a city to ban totally nude entertainment if such a ban were necessary to protect "the neighborhood." Neighborhoods are already protected by the city's zoning ordinance and therefore no further protection is necessary. There are already laws on the books dealing with the general problem caused by promiscuous activity. Prostitution is banned under Penal Code Section 647(b). Lewd conduct is banned by Penal Code Section 647(a) and Penal Code Section 314. Live obscene conduct is already prohibited by the State Penal Code. See Penal Code Section 311.6. Therefore the further ban on total nudity does not further any legitimate interest of the City of Long Beach since Long Beach is already protected by its zoning law. Moreover, the Supreme Court did state in the Erie case that . . . "the dancers at Kandyland and other such establishments are free to perform wearing pasties and G-strings. . . .

The Long Beach Municipal Code, in contrast, goes much further. It provides as follows:

> "No owner, operator or manager shall permit any entertainer or employee on the premises of the adult entertainment business to engage in a showing in the human male or female genitals, pubic hair, anas, 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."

The provision quoted above in the Long Beach Municipal Code goes beyond what the United States Supreme Court said cities may do, i.e. require pasties and G-strings.

In any event, it is respectfully submitted that the City of Long Beach has no authority to adopt the restrictions being enforced in this case given the existence of the adult zoning ordinance and given the fact, undisputed, that the Flamingo Theater is located in an appropriate zone for an adult business. Moreover, there are apparently no other spots in the entire city for such a business.

Finally, we come to the last issue in the case - whether the Flamingo Theater knowingly hired underage dancers. First, it is respectfully submitted that there is no competent evidence that any underage dancers were employed at any time. The city having failed to prove its case with competent evidence (as opposed to hearsay), the finding should simply be made that there has been a failure of proof.

Assuming arguendo that it was established on one isolated occasion that two underage dancers were employed it is clear the evidence is uncontroverted that the Flamingo Theater employed them in the mistaken belief and in the reasonable belief that they were at least 18 years of age. Since no alcohol is served at the location there is no need to require the dancers to be 21 years of age. Under California law an adult is someone who is 18 years of age or older. See Family Code Section 6501. The City apparently contends the two dancers in question were 17 years of age not 18.

In analogous areas of the law when age is a critical fact for criminal or disciplinary purposes the good faith belief of the accused is always a defense. See generally People v. Hernandez, 61 Cal.2d 529 (1964), where the California Supreme Court held that the accused's good faith, reasonable belief that the young lady with whom the accused had sex was 18 years of age or more was a defense to a charge of statutory rape.

In the non criminal setting of ABC rules and regulations it is also a defense with respect to whether the person was under the age of 21 that the licensee accused of serving the underage customer had a reasonable, good faith belief that the person was at least as old as he or she represented himself or herself to be. See generally Business & Professions Code Section 25660 and Provigo Corp. v. Alcoholic Beverage Control Appeals Board, 7Cal.4th 561, 565 (1994). Here is it undisputed that a driver's license or other official identification was provided to the Flamingo Theater. The Flamingo Theater produced photo copies of the driver's licenses or photo ID's at the hearing.

The city apparently contends that somehow the Flamingo Theater fabricated the photo ID that was presented at the hearing. This is absurd. The police officer testified that the persons depicted in the ID's were the persons with whom he dealt at the time in question. The testimony is uncontroverted that the photo ID's were shown by the dancers. Clearly the Flamingo relied in good faith upon the presentation of the photo ID contained in the driver's license or other state identification card.

If the City contends that its ordinance imposes absolute liability and that there is no defense, no matter how much good faith was shown by the licensee, then the City's ordinance is clearly invalid. It would be impermissible to impose absolute liability on the part of a licensee who takes precautions such as the one shown here to insist upon an identification card to establish age. Indeed, the police officer in question testified that the cards themselves depicted in the photocopies (Exhibits G & H) may have been accurate and not counterfeits. He explained that the DMV may have issued these licenses in reliance upon fraudulent documents, such as a phony birth certificate. However, that is not the fault of the Flamingo Theater.

We would have a different case if the ID itself was patently phony on its face or if the person were clearly not an adult, as for example a 10 year old girl showing a phony ID. Here, in contrast, we have young women who appear to be at least 18 years of age who presented what appeared to be authentic state identification cards or driver's licenses. It would be impermissible to justify a suspension or revocation based upon the alleged

underage dancer issue. We do not have a case where the Flamingo repeatedly utilized the services of underaged dancers. The police testified they have been there on a number of occasions and it was only on one occasion where two underage dancers were detected. Moreover, this looks and smells like a set up because the two dancers in question apparently were going from club to club with the full knowledge of the Los Angeles Police Department and the Long Beach Police Department.

The Flamingo Theater respectfully requests that specific findings be made on the issues of the underage dancers, the photo ID's in question and the reasonable reliance upon the Flamingo Theater on such documentation.

The written recommendation of the hearing officer in Long Beach is not binding on the City Council. This hearing officer is respectfully requested to submit a strong recommendation that the City not waste its money on this particular case. Nothing in the Long Beach Municipal Code precludes the hearing officer from thinking "outside the box" and from giving an overview of the case that makes sense beyond the limited ability of the normal bureaucrat to think. After all, what is at stake here are taxpayer dollars and sound public policy.

The hearing officer should not fear not being retained for future cases because that would be an impermissible consideration in any event. The hearing officer is respectfully requested to submit a report that goes beyond the bureaucratic mind and explains the context of this case.

It is not insignificant that the application process began in 1997, before the ordinance was changed. It also is not insignificant that the location in question is zoned for an adult cabaret. The Flamingo Theater recognizes that during the course of the hearing the hearing officer made evidentiary determinations that what he is to consider is the 2002 or 2003 application, and not the 1997 application. In this respect licensee respectfully states that the hearing officer has too narrowly viewed the case. The application process began in 1997. It has been the same process.

It would not be fair for the city to compel the applicant (Vasken Tatarian) to alter the application under threat of not getting the license altogether. The evidence is over-whelming and uncontroverted that the licensee spent over $2,000,000 building the structure in question. Licensee had to build a totally new parking structure. Licensee had to move the building to comply with a city directive regarding a fire lane.

If the applicant is not able to operate as it initially intended - a nude theater - then the city will have taken the licensee's property without due process and without just compensation. Essentially the city has condemned the applicant's property. Applicant bought the property and built the theater and separate parking structure as required by the city. As the project was going forward the city kept stalling until it had the opportunity to amend its code to try to make the business purpose impossible. The city acted in bad faith in this particular case.

What is needed is a courageous hearing officer to set forth this theory in the written recommendation. Even if this hearing officer should reject the argument advanced herein the hearing officer ought to at least discuss the issues even if he should ultimately reject the position advanced by licensee Flamingo Theater. Someone, somewhere should at least have the issue presented. The big picture should be presented, not a narrow aspect. The big picture ought to be presented because the City Council, as elected representatives, should know the complete picture. For example, based upon the hearing office's report the City Council may decide that while there may have been a technical violation sound public policy should lead to an amendment to the code to grandfather in this particular establishment. The hearing officer would view his job too narrowly if he thought he should limit his recommendation and/or discussion to certain technical limited issues.

We are sure the City Council would welcome a more detailed explanation and a bigger picture of the entire situation so as to be able to react intelligently to the problem. We do have a problem here. An applicant, in good faith, bought property in the area zoned for an adult use when the ordinances clearly allowed for totally nude dancing, spent $2,000,000 building the theater and building a parking structure, only to be delayed in the process while the city, taking advantage of certain changes in the law pronounced by the Supreme Court, changed the rules in the middle of the game. This is simply unfair.

Unfortunately when dealing with city government one is confronted by bureaucrats who only look at their own little area and do not look at the big picture. Somewhere, some place in this world there must be somebody who has the intelligence and courage to look at the big picture. Otherwise, government is condemned to waste millions of dollars every year because no one wants to look at the big picture. Hopefully the report to be submitted to the City Council in this case will at least describe the situation even if the ultimate recommendation is against the licensee.

For the foregoing reasons, licensee Flamingo Theater respectfully asks this hearing officer to recommend to the City Council that the license and permit not be suspended or revoked.

Respectfully submitted,

Roger Jon Diamond

ROGER JON DIAMOND

RJD:jb

cc:
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Office of City Attorney
333 West Ocean Blvd., 11th Fl.
Long Beach, CA 90802

Larry G. Herrera, City Clerk
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c/o Flamingo Theater
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c/o VM Associates, Inc.
618 E. Ball Road
Anaheim, CA 92805

PROOF OF PERSONAL SERVICE
(Code Civ. Proc. §1011)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Thomas A. Ramsey, declare as follows:

I am over the age of 18 and not a party to the within action. My business address is 111 West Ocean Boulevard, Nineteenth Floor, Long Beach, California 90802-4632. I am employed in Los Angeles County, California.

On, September 22, 2004, I served the **REPORT AND RECOMMENDATION OF HEARING OFFICER FOR THE MATTER OF ENTERTAINMENT PERMIT (BU20253680) AND BUSINESS LICENSE (BU20253430) OF VM ASSOCIATES, INC., DOING BUSINESS AS FLAMINGO GENTLEMAN'S CLUB** on the interested party in this matter, by personally delivering the document to:

CITY CLERK
CITY OF LONG BEACH
333 WEST OCEAN BOULEVARD
LONG BEACH, CA 90802

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 22, 2004.

THOMAS A. RAMSEY

PROOF OF PERSONAL SERVICE
(Code Civ. Proc. §1011)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Thomas A. Ramsey, declare as follows:

I am over the age of 18 and not a party to the within action. My business address is 111 West Ocean Boulevard, Nineteenth Floor, Long Beach, California 90802-4632. I am employed in Los Angeles County, California.

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OFFICE OF THE CITY ATTORNEY
CITY OF LONG BEACH
ELEVENTH FLOOR
333 WEST OCEAN BOULEVARD
LONG BEACH, CA 90802

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 22, 2004.

THOMAS A. RAMSEY

PROOF OF SERVICE BY MAIL
(Code Civ. Proc. §1013(a))

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 111 West Ocean Boulevard, Nineteenth Floor, Long Beach, California 90802-4632.

On September 22, 2004, I served the within **REPORT AND RECOMMENDATION OF HEARING OFFICER FOR THE MATTER OF ENTERTAINMENT PERMIT (BU20253680) AND BUSINESS LICENSE (BU20253430) OF VM ASSOCIATES, INC., DOING BUSINESS AS FLAMINGO GENTLEMAN'S CLUB** on the parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

LAW OFFICES OF
ROGER JON DIAMOND
2115 MAIN STREET
SANTA MONICA, CA 90405-2215

XX **(BY MAIL)** I caused such envelope with postage thereon fully prepaid to be placed in the U.S. mail at Long Beach, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

* **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

X **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 22, 2004, at Long Beach, California.

Linda Marshall

LINDA MARSHALL