



Armando Bencomo <armando.bencomo@lacity.org>

Public Comments Not Uploaded Public hearing Habibi cafe request to supplement record with Declaration Attached council file 21-1272

1 message

'Lobo Law' via Clerk-PLUM-Committee <clerk.plumcommittee@lacity.org>

Mon, Apr 4, 2022 at 12:11 PM

Reply-To: clerk.plumcommittee@lacity.org

To: candy.rosales@lacity.org, clerk.plumcommittee@lacity.org, matthew.lum@lacity.org

Cc: Sharia La Faber <sharialafaber@gmail.com>

Dear Ms Rosales:

Please supplement the record with the attached declaration.

Thank you

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**Sylva Decl.Hoookah Bar.10.21.21.pdf**

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DECLARATION OF ATTORNEY JULIA SYLVA

I, Julia Sylva, declare:

I am an attorney duly licensed to practice before all of the courts of the State of California, I have been retained as an expert witness to review, analyze and offer an expert opinion regarding what has occurred between the Habibi Cafe, and various Departments of the City of Los Angeles, offer those opinions based upon the record created by the Habibi Cafe and including, but not limited to: the City of Los Angeles Department of Zoning Administration and the Los Angeles Police Department, and I could and would competently testify thereto as to those opinions, if called upon to do so.

1. I have reviewed all of the relevant documents in support of the Department of Zoning Administrations October 6, 2021 Decision as it relates to the Habibi Cafe, Case No. DIR-2021-1463-RV.

2. I have also reviewed the stated position of Michael Feuer, City Attorney for the City of Los Angeles, which was posted on the website for the City Attorney on September 23, 2021. The stated position in pertinent part states: "A complete ban in the City of Los

Angeles on the sale of all flavored tobacco products, including flavored hookah, has the potential to be life-saving."

3. As a licensed attorney in California for nearly 38 years practicing public law, a former mayor, and presently representing various governmental agencies regarding issues including land use and zoning related issues, it is disturbing that the Department of Zoning Administration has mischaracterized the conditions existing at the Habibi Cafe in order to justify the imposition of unfounded Conditions 1, 5, 10, 19, 20, 24, 45, 46, 47 and 48.

4. The fact that the Habibi Cafe has agreed to the remaining 38 Conditions supports the conclusion that the entity takes the concerns of the Department seriously.

5. Rather, Conditions 1, 5, 10, 19, 20, 24, 45, 46, 47 and 48, are interfering with Appellant's Constitutionally protected right of free speech, right of free assembly pursuant to the California Constitution Article 1, Section 3.

6. As stated in the Declaration of Jan Fathi at Paragraph 2, "After a review of the conditions contained in the Decision of the

Department of Zoning Administration, some of the conditions being imposed are arbitrary and capricious. There is substantial evidence that the City of Attorney for the City of Los Angeles has taken the position that the use of flavored tobacco in the City of Los Angeles should be entirely banned. Appellant contends that the conditions set forth in the October 6, 2021, Decision set forth by the Administrator for the Department of Zoning Administration (hereinafter "Department") is a pretext to creating conditions in which no hookah lounge could be financially viable. Additionally, Appellant contends that the "investigation fee" is excessive, no basis in fact was offered by the Department to support how the "investigative fee" was determined and facially appears to be an unlawful tax.

7. The Conditions 1, 5, 10, 19, 20, 24, 45, 46, 47 and 48, when viewed from the opinion of the City Attorney, are pretextual and unfounded. Appellant correctly contends that the Department lacks an understanding why persons of Middle Eastern and Indian Heritage smoke flavored tobacco in a hookah, in the first instance. The smoking of a hookah is only incidental to the fact that historically, for hundreds of years, persons have gathered to smoke the hookah, as a form of

Constitutionally protected speech and association, by and through, deep personal expression, and of peaceful assembly and a means of finding common ground (and when there are personal or business related conflicts, as is modernly seen as a mediation process.) Historically, persons came together to resolve their differences, while smoking the hookah. The right of free assembly is guaranteed by Article 1, Section 3 of the California Constitution. Also, the right of free assembly is guaranteed by the First Amendment to the Constitution.

8. Compelling evidence exists that persons who smoke the hookah at lounges, that the process of hookah is cherished by persons of Middle Eastern heritage, persons whether they are Jewish or Muslim by religion, or Persian, Egyptian, Turkish by heritage or culture, or any of the other countries in the Middle Eastern region. Getting together with family, friends, business associates, business competitors and others to smoke the hookah is historically a manner of assembly to discuss religion, politics, social customs and the resolution of family and business issues.

9. Whether a governmental agency agree or disagree with the sales and use of flavored tobacco, such personal opinions have no place


as a basis the imposition of Conditions, through the guise of land use and zoning control, more particularly, where as here, that limit the ability of the business to operate in a legal manner. That is, selling and using flavored tobacco within the confines of a hookah bar, in which persons under 21 are not allowed, does not contribute the perils of teenage smoking. Indeed, the stated position of the City Attorney is that barring the sales of flavored tobacco at hookah lounges has the "potential" to save lives, is nothing but inadmissible speculation.

10. Artificially limiting the hours of operation as set forth in the Decision, after every other hookah lounge in the City of Los Angeles has after hours from: 1:00 am to 5:00 am. The Condition will Unconstitutionally render the Habibi Cafe as financially unable to meet its obligations. The condition is a pretext, based on the stated position of Michael Feuer, City Attorney for the City of Los Angeles, to prohibit the sale of flavored tobacco in the City of Los Angeles. The foregoing determination is arbitrary and capricious because no evidence supports the imposition of such a condition. The Habibi Cafe has been allowed to operate for over 20 years. The police reports submitted in support of the conditions are not particularized to the Habibi Cafe and occur at all

times of the day and evening. The condition is utilizing a different standard of review as to the Habibi Cafe, when compared to other food restaurants in Westwood who open earlier and close later. This Unconstitutionally limits a business owner's rights and income.

11. Simply stated, the Habibi Cafe is being punished for reporting disturbances between the patrons, accidents which occur outside the parameters of the Cafe. Thus, when the Habibi Care acts as a good citizen by reporting disturbances for the safety of its patrons and the community, the Department is turning the Cafe's reports against the Cafe. Utilizing the standard created by the Department, the Cafe should never report any disturbance for the safety of its patrons, because it just becomes grounds for the Department to impose even greater restrictions and conditions.

I make the foregoing declaration under penalty pursuant to the laws of the State of California and do affix my signature this 21st day of October, 2021 in Signal Hill, California


Julia Sylva, Esq.