

HEARING BRIEF BY THE HABIBI CAFE

TO: CITY OF LOS ANGELES
DEPARTMENT OF CITY PLANNING
OFFICE OF ZONING ADMINISTRATION

FROM: HABIBI CAFE
MSW LAW FIRM, APC
2914 S. VERMONT AVENUE
LOS ANGELES, CA 90007

DATE: SEPTEMBER 6, 2022

CASE NO. DIR-2021-1463-RV

Possible Termination Of Business Permit
to Abate Nuisance Or Revocation Of Use
923-925 South Broxton Avenue
Westwood Planning Area
Zone: C4-2D-O
D.M. 135B149
C.D. 5 - Koretz
CEQA: ENV-2021-1464-CE
Legal Description Lot 10, Tract 9650

Dear Sirs:

In April 2022, the City of Los Angeles set a hearing in which the City of Los Angeles gave notice of its intent to impose certain restrictions upon the Habibi Cafe, that would have the practical effect of forcing the business to close.

The City of Los Angeles indicated in part to substantially reducing the hours of operation, forcing the business to close at or about 10:00 p.m. The foregoing restriction flies in the face of the fact that customers utilizing the services of a hooka bar, normally do not arrive at the location until after 10:00 p.m. The

proposed restriction would have the effect of closing the Habibi Cafe due to lack of business. It is a well established fact, that hooka bar customers will normally arrive around 10:00 p.m. to Midnight, and remain enjoying the hooka services until approximately 5:00 a.m. The hooka bar is not just a place to smoke the hooka, but in fact is a source for free speech and assembly for persons from the Middle East.

Hooka smoking has existed for centuries. Hooka bars provide a place for persons generally from the Middle East, Far East and India to come smoke hooka and discuss social and political issues in a friendly and open environment. The hooka bar creates a venue unlike other businesses, which do not cater or offer hooka.

In the absence of hooka bars, an entire segment of the population of the City of Los Angeles will be arbitrarily denied, a social setting which denies a safe place for persons to meet socially and discuss their political beliefs. If the City of Los Angeles imposes the revocation of the business permit of the Habibi Cafe, such imposition will violate the customer's right of free speech and association in violation of the California Constitution Article 1, Section 2 freedom of speech, Section 9 as for freedom of speech, and Section 10, as for right of association.

The political environment in the City of Los Angeles has seen a rise in unwarranted attacks upon hooka bars openly as a type of business, smoking hooka tobacco. The Habibi Cafe contends that the City's attack upon it and hooka bars in general are pretextual in nature, and secondarily are intended to diminish the ability of minority members of the Los Angeles Community from having a "place"

where they can smoke hooka and freely discuss their political, social and business affairs. Indeed, a decision by a city council will be set aside if the decision by the council acted arbitrarily, capriciously or without any evidentiary basis." *Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789, 801.

The Habibi Cafe contends that the City of Los Angeles is supporting its decision of facts which has little or no evidentiary value. By way of example, the City of Los Angeles is relying upon a report by the Los Angeles Police Department which includes all police reports going back 20 years. The report sets for vague references to criminal acts which have occurred on the entire block. What is the evidentiary value of a criminal act which occurred 20, 15, 10 or even 5 years ago. While there are a few more contemporary reports related to problem customers who were ejected by the Habibi Cafe, the reports are pretextual as being attributed to the Habibi Cafe.

The reports being made by employees of the City of Los Angeles concern minor infractions, which could be easily ameliorated. Indeed, the Habibi Cafe agreed to nearly all of the restrictions which were being imposed last April. How and why the City of Los Angeles determined that the business must be closed is without substantive, evidentiary support. Any decision to revoke the Business Permit of the Habibi Cafe under the present circumstances, would be arbitrary and capricious. Additionally, the closing of the Habibi Cafe would deny yet another hooka bar from offering a societal location for the Free Speech and Association of a select group of minorities from the Middle East, Far East and India.

Article I, section 2, subdivision (a) of the California Constitution declares:
"Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

The Habibi Cafe was willing to accept approximately 20 new restrictions regarding the operation of its business, which were demanded by the City of Los Angeles, exclusive of the hours of operation. However, rather than impose the new restrictions at the noticed hearing, the City of Los Angeles continued the hearing to September 6, 2022, amending hearing with the intent of revoking the Habibi Cafe's Business Permit, altogether.

The Habibi Cafe asks the following question: If the restrictions being foisted by the City of Los Angeles in April 2022, would allow the business to continue operating, what changed from April to September 2022, to support revocation of the Business Permit?

The arbitrary revocation of the Business Permit for the Habibi Cafe would abridge the rights of the customers pursuant to the California Constitution Article 1, Sections 2, 9 and 10.

The Habibi Cafe has been in continuous business without problems for about 20 years. Indeed, 20 years ago, the Habibi Cafe was compatible with the objectives, policies, general land use and programs specified in the General Plan for the City of Los Angeles.

“Once the city has adopted a general plan, all zoning ordinances must be consistent with that plan, and to be consistent must be ‘compatible with the objectives, policies, general land uses, and programs specified in such a plan.’

Goverment Code § 65860, subd. (a)(ii).)" *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 535-536.

“A city's findings that the project is consistent with its general plan can be reversed only if it is based on evidence from which no reasonable person could have reached the same conclusion.” *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 243. For the last 20 years, there have been very few changes in the manner that the Habibi Cafe has been operated.

After reviewing all of the materials being provided by the Department in support of the possible imposition of conditions to abate the alleged nuisance or to revocation of the business permits, I have the following additional input.

The reports begin in 2004 and set forth little detail about some type of occurrence in distant past. No attempt was made in that report, other than signage, to connect this information to the operation of the Habibi Cafe. There are stories about traffic accidents, shootings, graffiti, and other occurrences, wholly unrelated to the operation of the Habibi Cafe.

Indeed, one question that should be considered is why would the Department seek to close a business in operation for twenty years, without a serious violation. It appears from the report that any problems that may exist with signage, customers bringing in their own food and sneaking their personal alcohol into the outside area

is controllable by the Cafe.

The restrictions being proposed would severely affect the financial state of the business, making it virtually impossible to remain in business. The Habibi Cafe is ready, willing and able to work and find a meaningful solution, with all concerned entities.

The Habibi Cafe has proposed a plan which includes and accepts the many of the measures suggested and it will continue to make changes to its business as needed.

The Habibi Cafe wants to comply with all reasonable terms and conditions being advanced by the city attorney's office. Those terms would assist to relieve some of the pressure the LAPD has endured and avoid the city zoning and planning from expending additional resources regarding inspections and violations.

City of Los Angeles Municipal Code section 12.27.1 provides in pertinent part:

B. Authority. Notwithstanding any other provision of this Code to the contrary, the Director may require the modification, discontinuance or revocation of any land use or discretionary zoning approval if it is found that the land use or discretionary zoning approval as operated or maintained:

1. Jeopardizes or adversely affects the public health, peace, or safety of persons residing or working on the premises or in the surrounding area; or
2. Constitutes a public nuisance; or

3. Has resulted in repeated nuisance activities, including, but not limited to, disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, loitering, excessive littering, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or police detentions and arrests; or
4. Adversely impacts nearby uses; or

As to each relevant subdivision in City of Los Angeles Municipal Code 12.27.1, the Habibi Cafe has the following comments:

- (1) "Jeopardizes or adversely affects the public health, peace, or safety of persons residing or working on the premises or in the surrounding area;"

The report by the Los Angeles Police Department sets forth incidents beginning in 2003 and coming forward, show no connection to the Habibi Cafe whatsoever. On the contrary, the inability of the report to make a factual connection to the Habibi Cafe, actually supports the lack of jeopardy or an adverse effect upon the public health, peace or safety of persons residing or working on the premises or in the surrounding area.

Clearly, if a traffic accident occurred and a shooting resulted, a robbery occurred year ago, respectfully what factual connection does that have to the

operation of the Habibi Cafe. In the absence of factual evidence that the operation of the Habibi Cafe is factually jeopardizing or adversely affecting the public health, peace, or safety of persons residing or working on the premises or in the surrounding area, any determination would be arbitrary and capricious. It should be noted that no evidence has been presented that any of the actual customers of the Habibi Cafe have been detrimentally effected by the operation of the business.

The Habibi Cafe doesn't contend that Los Angeles Municipal Code 12.27.1 is facially unconstitutional. Rather, if a determination regarding a public nuisance is not based in fact as it relates to the actual operation of the Habibi Cafe, such finding would be arbitrary and capricious. But, we shouldn't have to go that far. The Habibi Cafe is offering to meet all rationally related conditions, in order to continue its present operation.

The standard used to review factual findings under the arbitrary and capricious standard is applicable when a quasi-legislative act is reviewed by ordinary mandamus; accordingly, the question for us is the same under either formulation: were the District's findings reasonable based on the evidence in the record? *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 637.

2. Constitutes a public nuisance, together with Sections (3) and (4):

Here, the Habibi Cafe contends that it is not a public nuisance

pursuant to California Civil Code 3480, et seq. and that no relevant evidence has been presented creating a factual nexus between distant unconnected events and the operation of the Habibi Cafe, a hookah bar.

California Civil Code 3480 defines a public nuisance, "A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."

Although the definition of a public nuisance in Los Angeles Municipal Code 12.27.1 is more expansive than Civil Code section 3480, there does not appear to be a factual nexus in support of a finding that the continued operation of the Habibi Cafe affects anyone in a manner constituting a nuisance. On the contrary, a financially and Ordinance compliant business which is not a nuisance is a benefit to the surrounding community.

It is patent that the Habibi Cafe has a very limited scope of the customers who are typically, (1) people of Middle Eastern decent, (2) people who like to congregate and smoke Turkish tobacco out of a hookah, (3) hookahs are typically smoked out of doors, or in an open patio, given the smoke, and (4) the Habibi Cafe does not provide food to areas where outside hookah smoking is allowed. Human beings however are fraught to find ways to exceed the rules and not get caught by management. To the extent that customers brought their own food from catering trucks parked on the street, or secreted their own alcohol for consumption on the premises, the Habibi

Cafe pledges to ramp-up customer education, enforcement and update any necessary signage.

To be certain, if the findings contrary to the use permit regarding the Habibi Cafe are based on the ethnic origin of the customers, such enforcement would be unlawful discrimination. Here, the Habibi Cafe is concerned that the ordinance, Section 12.27.1 et seq., as applied to them, may be violating their right to equal protection of the laws and to be free from class-based discrimination.

Equal protection under the federal and California Constitutions requires equal treatment of persons similarly situated. *City of Cleburne v. Cleburne Living Center, Inc.* (1985) 473 U.S. 432, 439, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313, 320 (Cleburne); *Brown v. Merlo* (1973) 8 Cal.3d 855, 861, 106 Cal.Rptr. 388, 506 P.2d 212.)

Of course, no governmental employee is going to openly announce that their limited enforcement of the Habibi Cafe is based on the fact that it is primarily patronized by persons of Middle Eastern descent, who also like to smoke Turkish tobacco from a hookah. "Even when a law is nondiscriminatory on its face, equal protection is violated if the law is applied in a manner that discriminates against a particular group." *U.S. Dept. of Agriculture v. Moreno* (1973) 413 U.S. 528, 534–535, 93 S.Ct. 2821, 2825–2826, 37 L.Ed.2d 782, 788.

“If the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare ... desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.” *U.S. Dept. of Agriculture v. Moreno, supra*, 413 U.S. at pp. 534–535, 93 S.Ct. at pp. 2825–2826, 37 L.Ed.2d at p. 788, italics omitted; *Parr v. Municipal Court*, (1971) 3 Cal.3d 861, 864–868, (equal protection clause requires statutory classifications to be related to permissible purposes).) Even under the more lenient rational relationship test, discriminatory animus toward a group is not a valid state objective. (*Cleburne, supra*, 473 U.S. at pp. 446–447 at pp. 3257–3258, 87 L.Ed.2d at p. 325 (irrational prejudice against the “mentally retarded”); *U.S. Dept. of Agriculture v. Moreno, supra*, 413 U.S. at pp. 534–535, 93 S.Ct. at pp. 2825–2826, 37 L.Ed.2d at p. 788 discrimination against “hippies”).)

By way of example, the Department is not contending that BJ's Restaurant and Brewhouse located at: 939 Broxton Avenue Los Angeles, California (just around the corner) is the source of the "incidents" going back to 2003 forward. The apparent enforcement appears "limited" to the Habibi Cafe for every possible traffic accident, robbery, graffiti, homeless person, shooting and/or fight, notwithstanding its lack of connection to the business. Given the lack of factual nexus between the historical incidents and the operation of the Habibi Cafe, concern exists that the enforcement of Los Angeles Municipal Code section 12.27.1 is being unequally enforced and for

grounds which may suggest invidious animus against the ethnic groups patronizing the business.

CONCLUSION

It is the hope of the Habibi Cafe that it can reach some rational concessions between the Department and the business, so that a 20 year business can continue to provide a place for persons who like to smoke hookahs and congregate. The Habibi Cafe is ready, willing and able to meet and confer in the hope that they can return to a state of full compliance with all relevant Ordinances of the City of Los Angeles.

Respectfully submitted,

MSW LAW FIRM

Dated: September 6, 2022

Martin M. Stein
Martin S. Wolf, Esq.
Attorney for Habibi Cafe