LAW OFFICES

Member of the Bar:

United States Supreme Court
United States Court of Appeals for Third Circuit
United States Court of Appeals for Fourth Circuit
United States Court of Appeals for Fifth Circuit
United States Court of Appeals for Sixth Circuit
United States Court of Appeals for Eighth Circuit
United States Court of Appeals for Ninth Circuit
United States Court of Appeals for Tenth Circuit
United States Tax Court.
Master of Law in Taxation

FRANK A. WEISER
3460 Wilshire Boulevard, Suite 1212
Los Angeles, California 90010
Telephone: (213) 384-6964
Fax: (213) 383-7368

Refer To File No.

February 15, 2023

BY PERSONAL DELIVERY AND E-MAIL

Vincent P. Bertoni
Estineh Mailian
Jack Chiang
c/o Matthew Lum
City Planner
City of Los Angeles
Office of Zoning Administration
and Los Angeles Department of
City Planning
200 N. Spring Street, Room 763
Los Angeles, CA 90012-4801
E-Mail: matthew.lum@lacity.org

Re: Appeal of Zoning Administrator Decision
Dated February 6, 2023 for Property Commonly
known as the Magic Carpet Motor Inn located
at 400-414 1/4 West Century Boulevard,
Los Angeles, CA 90003/My clients:
Charles E. Williams and A&W Development
Co., Inc. and Magic Carpet andMotor Inn/Case No.
DIR-2022-2202-RV/ Zone R2-1/D.M. 091-5A201/C.D.
8-Harris- Dawson/CEQA: ENV-2022-22-3-CE

Dear Mr. Lum:

As you know, I represent Charles E. Williams and A&W Development

Vincent P. Bertoni
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Jack Chiang
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Page 2
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Co., Inc. and Magic Carpet and Motor Inn, the owners and operators of the subject property commonly known as the Magic Carpet Motor Inn located at 400-414 1/4 West Century Boulevard, Los Angeles, CA 90003 ("Motel" or "Property").

My clients demand an immediate appeal of the Zoning Administrator Decision ("Decision") to impose conditions of operation on the motel to abate an alleged nuisance.

My clients object to the imposition of any conditions on the operation of the motel.

The grounds of objections are as follows:

Well settled and long standing United States Supreme Court case law extends the clear protections of the Fourth Amendment of the U.S. Constitution to the secure and private areas of the property. As such any entry cannot lawfully be accessed without my clients' consent. Case law is clear that the City has no authority to access the units without an appropriate administrative warrant under Fourth Amendment.

In a Ninth Circuit published case that I litigated on behalf of another motel owner, the Ninth Circuit held that although the "common law tresspassory test" does not apply to the public areas of

a private commercial establishment such as a motel, the private secured areas are subject to Fourth Amendment strictures under the reasonable expectation of privacy test. See Patel v City of Montclair, 798 F.3d 895 (9th Cir. 2015); See v Seattle, 387 U.S. 541 (1967) (Fourth Amendment applies to private commercial establishments); Marshall v Barlow's, Inc., 436 U.S. 307 (same). The City of Los Angeles ("City") officials and police officers have claimed to have authority to enter the motel multiple times to inspect the motel and illegally gather alleged information against my clients.

The City officials and LAPD have threatened my clients that a failure to comply with the inspections could result in criminal or civil penalty and on its face and as applied to my clients violated their First Amendment rights.

Consent was not properly obtained as my clients to the unlawful entry onto the motel. Significantly, in the First Amendment context, courts must "look through forms to the substance" of governmental conduct. Bantam Books, Inc. v Sullivan, 372 U.S. 58, 67 (1983). Informal measures, such as "the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation," can violate the First Amendment. Id.

The Ninth Circuit has held that government officials violate this provision when their acts "would chill or silence a person of ordinary firmness from future First Amendment activities."

Mendocino Environmental Ctr. v Mendocino County, 192 F.3d 1283, 1300 (9th Cir. 1999) (internal citations omitted). Ninth circuit case law establishes that petitioning activity falls within the scope of this protection.

Here, the threats and threats of criminal prosecution and civil penalties more than meets that standard and the compelled searches vitiate any argument of consent to the inspections.

The City's unconstitutional demands for entry and the subsequent searches and seizures of claimed evidence were done without proper consent or a administrative warrant or court order the Fourth Amendment and the evidence and as a result of this the evidence that was obtained by such unconstitutional searches are excludable and cannot be used by the City in attempting to impose conditions on the motel.

Consent was not properly obtained, and significantly, in the First Amendment context, courts must "look through forms to the substance" of governmental conduct. Bantam Books, Inc. v Sullivan, 372 U.S. 58, 67 (1983). Informal measures, such as "the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation," can violate the First Amendment. Id.

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"would chill or silence a person of ordinary firmness from future First Amendment activities." Mendocino Environmental Ctr. v Mendocino County, 192 F.3d 1283, 1300 (9th Cir. 1999) (internal citations omitted).

Here, the threats and threats of criminal prosecution and civil penalties for failure to allow the inspections more than meets that standard.

The City also never provided the actual alleged crime reports and calls for service but has only provided redacted reports.

My clients were entitled to receive the actual unredacted police reports and calls for service under the Due Process Clause. See Armstrong v Manzo, 380 U.S. 545 (1965) (due process requires reasonable notice and opportunity to be heard). The administrative burden to the City in providing the police reports is slight and their private interest in operating the motel is great.. See Matthews v Eldridge, 424 U.S. 319 (1976) (adfopting three factor test as to what process is due under the Due Process Clause).

My clients were also not afforded a fair hearing in compliance with the Due Process Clause.

Well established law in the United States Court of Appeals for the Ninth Circuit is that the right to a "fair trial in a fair tribunal", In re Murchison, 349 U.S. 133, 136 (1955), applies not only to courts, but also to state administrative agencies charged with applying eligibility criteria for licenses. Stivers v. Pierce, 71 F.3d 732, 741 (9th Cir. 1995).

It is also well established in the Ninth Circuit that a biased administrative proceeding is not a procedurally adequate one and is to be denied preclusive effect. Clements v. Airport Authority of Washoe County, 69 F.3d 321, 333 (9th Cir. 1995). A biased cannot be cured by subsequent judicial review in state court, even if the subsequent state court procedures includes de novo review. Clements, 69 F.3d at 333.

While "[i]n attempting to make out a claim of unconstiutional bias, a plaintiff must 'overcome a presumption of honesty and integrity' on the part of decision-makers", he can do so by showing that one or more council members "'prejudged or reasonably appears to have prejudged, an issue.'" Stivers v Pierce, 71 F.3d 732, 741 (9th Cir. 1995). (citations omitted). In this circuit, a showing that only one member of the administrative tribunal was actually biased, or where circumstances create the appearance that one member is biased, vitiate the proceedings as a whole. Stivers, 71 F.3d at 746-748. And the issue of bias is not necessarily waived by failing to seek recusal of the biased administrative member if no state or local law exists providing a mechanism for recusal. Stivers, 71 F.3d at 748. For procedural due process analysis, it does not matter what the substantive outcome

of the hearing is since the procedural guarantees of the Due Process Clause are "absolute", and are not dependent on the merits of the claim. Clements, 69 F.3d at 333-334 (quoting Carey v. Piphus, 435 U.S. 247, 266-67 (1978) (Carey holds that even if the plaintiff has no substantive case, a claim for nominal damages still can be prosecuted for the violation of the procedural due process right); see also Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988) (appellant was entitled to have judgment set aside on grounds of violation of procedural due process even though he admitted he did not have a meritorious defense to the substance of the claim).

The Ninth Circuit's formulation of an appearance of bias test, consistent with Supreme Court authority, is that "due process is denied by circumstances that create the likelihood or the appearance of bias" because such a possibility of judicial bias creates a constitutionally unacceptable risk of actual bias. Stivers, 71 F.3d at 742; Withrow v. Larkin, 421 U.S. 35, 47 (1975); Peters v. Kiff, 407 U.S. 493, 502 (1972); Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868(2009) and adopted a new more expansive test for determining an appearance of bias claim.

My clients also requested that the case be transferred to an independent hearing officer chosen by both the parties and not be heard by an employee of the City, which was den ied.

In the Ninth Circuit, the appearance of bias or bias by only one member of the Planning Commission is enough to vitiate the proceedings regardless of whether he had an impact on the other councilmembers or affects the deliberations of an otherwise impartial tribunal. Stivers, 71 F.3d at 746-748. A recusal motion is not necessarily a prerequisite to invoke the rule. Stivers, 71 F.3d at 746-748.

Further, under California law "[o]nce a licensee has acquired a conditional use permit," or has deemed approved or grandfatherred status, "a municiplaity's power to revoke [or modify] the conditional use is limited," and "due process prequires that it act only upon notice to the permittee, upon a hearing, and upon evidence supporting a finding of revocation [or modification." Bauer v City of San Diego, 75 Cal.App.4th 1285, 1294-95 (1999).

Revocation or modification of a CUP at such a hearing cannot "**interfere[sic] with the constitutional right to carry on a lawful business [and] it must be clear the public interests require such interference and that the means employed are reasonably necessary to accomplish the purpose and are not unduly oppressive to individuals.**" Bauer , 75 Cal.App.4th at 1294 (internal quotation marks and citations omitted) (emphasis added). "**It is consequently a very harsh remedy which requires the strictest adherence to principles of due process.Whenever alternate remedies can achieve the same goal, such as the imposition of additional conditions or controls,**

these avenues ought to be pursued if possible." Bauer , 75 Cal.App.4th at 1294 (internal quotation marks and citations omitted) (emphasis added).

The conditions imposed, especially the conditions of a full time armed security guard is not reasonably necessary to accomplish the claimed purpose of the modification and is clearly unduly opporessive to my clients. The intent is clear. The City wishes to circumvent my clients due process rights and submit the motel's operation to administrative extinction which is clearly prohibited under federal and state law. Bauer , 75 Cal.App.4th at 1295.

The City knows that a full time security guard is economically prohibitive especially when there has been an economic dowturn to business due to the pandemic. The City did not, even attempt to sit down and work with my clients in addressing the alleged nuisance issues before taking this action. It is clear that there never was an intent to cure any alleged issues the City has with the motel's operation.

What the City really intends to is to close the motel to transfer it to a developer or for residential housing. This hearing was pretextual and does not comply with even the most basic rudiments of due process.

Further, any search or seizure of the motel's records without consent or a warrant is wholly unconstitutional. This is now established in a case that I litigated as counsel of record on behalf of a group of motel owners in the City of L.A. in the United States Supreme Court case of City of Los Angeles v Patel, 576 U.S. 409 (2015) in which the Supreme Court in a 5-4 decision affirmed a United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") decision facially invalidating on Fourth Amendment grounds a motel registration records search ordinance. See Patel v City of Angeles, 758 F.3d 1058 (9th Cir. 2013)(en banc).

In the Patel case, the Supreme Court held that even when there is a statute or ordinance that compels motel owners (and the principle applies to all business owners) to produce business documents on demand without a court order or consent upon the imposition of civil or criminal penalties for failure to do so, such a law is facially and completely unconstitutional under the Fourth Amendment as the Constitution requires that the owner first be given judicial process in order to contest the matter.

I successfully litigated as counsel of record the Patel case. Some of my other published cases are Patel v Penman, 103 F.3d 858 (9th Cir.1996);Patel v. City of San Bernardino,310 F.3d 1134 (9th Cir. 2002); Patel v City of Montclair, 798 F.3d 895 (9th Cir. 2015); Herrera v City of Palmdale, 918 F.3d 1037 (9th Cir. 2019); City of San Bernardino Hotel/Motel Association v City of San

Bernardino, 59 Cal.App.4th 237.

Further, in addition to the above referenced constitutional violations the City's actions violate the Fifth Amendment Takings Clause, and the substantive component of the Due Process Clause and Equal Protection Clauseof the Fourteenth Amendment of the United States Constitution .

My clients also deny that there is credible evidence that they are operating the motel in violation of local or state law, let alone as a public nuisance.

The Decision claims that there was evidence that LAPD found some individuals carrying guns at the motel. This raises, in addition to other grounds, a Second Amendment objection to such claimed evidence under New York State Rifle & Pistol Association, Inc.v Bruen, 597 U.S. ___ (2022). Whatever one's political views are regarding gun control, the Supreme Court has now ruled that the Second Amendment right to bear arms extends to carrying arms in public, obviously if the individual is licensed under local and state law. However, such licensing requirements must meet the Bruen historical analysis test to be constitutional. The City's evidence did not address any of the Second Amendment concerns and no negative inferences can be drawn against my clients on the basis that alleged individuals were found to have arms at the motel. It is a constitutional right regardless of our views on the propriety of the Bruen decision.

I trust that my clients will not be forced to file a federal civil rights lawsuit against the City in the United States District Court for the Central District of California for damages and injunctive relief under 42 U.S.C. §1983 for violation of their federal civil rights, including but not limited to the previously referenced constitutional violations, and that the City will act accordingly and afford them their proper due process.

Please make this letter and the enclosed documents a part of the administrative record andd for distribution to the City Council and any other City officials.If you need to speak to me directly, I can be reached by e-mail at maimons@aol.com or at (213) 399-7806

Sincerely,

Frank A. Weiser
Attorney at Law

cc: Charles E. Williams and A&W Development
Co., Inc. and Magic Carpet andMotor Inn/Case

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