

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Revocation of Conditional Use Permit of:

THE BANK, Respondent

and

ZIPTHIRD INVESTMENTS, L.L.C., Respondent

OAH No. 2022051021

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and by telephone on August 31, 2022, and on September 1, 2022.

Jennifer Petrusis, Attorney at Law, represented complainant, the City of Temecula (the City).

Thomas J. Callaway, Attorney at Law, represented respondent CNC Puma Corporation (CNC Puma), owner of The Bank (The Bank), a restaurant operating at 28645 Old Town Front Street, Temecula, California (the subject property) and tenant of the subject property.

Elizabeth L. Martyn and Richard Edwards, Attorneys at Law, represented respondent Zip Third Investments, L.L.C. (Zip Third), owner of the subject property.¹

Oral and documentary evidence was received. The record remained open to allow the parties to submit written closing arguments, and the matter was closed and submitted for decision on September 19, 2022.

FACTUAL FINDINGS

Jurisdictional Matters and Background

1. In November 2007 CNC Puma submitted an application to the City for a Minor Conditional Use Permit (CUP) on behalf of The Bank for the purpose of “to upgrade to a type 47 liquor license.” The CUP application was signed by Craig Puma on behalf of CNC Puma, d.b.a. The Bank, as well as the property owner at that time named Maureen Licata.

2. On January 3, 2008, the Director of Planning for the City approved the CUP application to upgrade from a Type 41 Alcohol Beverage Control (ABC) license

¹ At hearing the City asserted that Zip Third Investments, L.L.C., as the owner of the property at issue in this hearing, and CNC Puma Corp., the owner of The Bank, a restaurant leasing the subject property on which it operates, both have an interest in the Conditional Use Permit (CUP) at issue in this hearing. Because the CUP transfers with the property and because the CUP controls the operation of The Bank, both Zip Third Investments, L.L.C. and CNC Puma Corp. are permit holders and respondents in this matter.

(on-sale beer and wine – eating place) to a Type 47 ABC license (on-sale, general) authorizing the sale of beer, wine, and distilled spirits at The Bank subject to conditions of approval.

Those conditions of approval included the following: (1) the applicant and owner of the real property agreed to indemnify the City for any actions arising from the CUP; (2) licensees may not permit the premises to become a disorderly house, which is defined as a premises that “disturbs neighbors with noise, loud music, loitering, littering, vandalism, urination or defecation, graffiti, etc. and/or has many ongoing crimes inside such as drunks, fights, assaults, prostitution, narcotics, etc., and the licensed premises includes the parking lot.”; and (3) regular hours of operations shall be as follows: Monday through Thursday 11:00 a.m. to 10:00 p.m., Friday 11:00 a.m. to 11:00 p.m., Saturday 8:00 a.m. to 11:00 p.m., Sunday 8:00 a.m. to 10:00 p.m. On holidays the facility shall be allowed to close at midnight. The sale of alcoholic beverages shall cease at 10:00 p.m. Monday through Thursday and Sunday. The sale of alcoholic beverages shall cease at 11:00 p.m. on Fridays and Saturdays. The consumption of alcohol shall cease no later than one hour after closing.

3. On October 9, 2008, Craig Puma on behalf of CNC Puma, d.b.a. The Bank, as well as Maureen Licata as property owner, signed and submitted a minor modification to the CUP application to the City requesting a modification to the CUP “to extend hours to California law, according to ABC service until 2:00 a.m.” meaning to request modification of the conditions to allow The Bank to serve alcohol on all days until 2:00 a.m.

4. On October 15, 2008, the City’s planning department approved the minor modification to the CUP allowing service of alcohol on all days until 2:00 a.m. with

conditions, including that last call for service of alcohol shall occur at 1:30 a.m., and all other previous conditions of approval shall apply.

5. On February 27, 2012, Craig Puma on behalf of CNC Puma, d.b.a. The Bank, as well as Maureen Licata as property owner, signed and submitted a minor modification to the CUP application to the City requesting "the addition of a one person musical addition inside for background music (daily noon to 10 p.m.)."

6. On February 28, 2012, the City notified Craig Puma on behalf of CNC Puma, d.b.a. The Bank by letter signed by Stuart Fisk, Senior Planner, that the 2012 minor modification to the CUP application was approved and attached the Final Conditions of Approval to the letter. The Final Conditions of Approval included the following requirements: (1) indoor dinner entertainment consisting of one keyboard or other instrument played with one vocalist for the purpose of providing background music as permitted daily from noon until 10:00 p.m.; (2) regular hours of operations shall be as follows: Monday through Thursday 11:00 a.m. to 10:00 p.m., Friday 11:00 a.m. to 11:00 p.m., Saturday 8:00 a.m. to 11:00 p.m., Sunday 8:00 a.m. to 10:00 p.m. On holidays the facility shall be allowed to close at midnight. The sale of alcoholic beverages shall cease at 10:00 p.m. Monday through Thursday and Sunday. The sale of alcoholic beverages shall cease at 11:00 p.m. on Fridays and Saturdays. The consumption of alcohol shall cease no later than one hour after closing.

7. As detailed more below, beginning in March 2021, the City issued numerous citations to CNC Puma, d.b.a. The Bank for various violations of the Temecula Municipal Code (TMC), including for violating approved operational hours beyond 11:00 p.m., having excessive noise levels including with outside speakers over allowed noise levels, and failing to have a CUP for amplified music and live entertainment. The last citation was issued in July 2021.

8. Beginning in July 2021, the City issued numerous Civil Penalty Notice and Orders to CNC Puma, d.b.a. The Bank for violations of the TMC related to the CUP in place for violations as detailed below. The last Civil Penalty Notice and Order was issued by the City on August 20, 2022.

9. On August 20, 2021, Tom Cole, Field Supervisor – Code Enforcement for the City, sent a letter to Zip Third, “attn: Norman S. Sullivan” at the address for service of process listed with the California Secretary of State for Zip Third on Wilshire Blvd. in Los Angeles, California. The letter provided, in part, as follows:

The purpose of this correspondence is to inform you that activities that are violating the Temecula Municipal Code are occurring at your property from the tenant operating as The Bank. Ongoing and current violations include the business being opened beyond the permissible operating time of 11:00 p.m. The City of Temecula Code Enforcement has been issuing, and will continue to issue, civil penalties for these violations.

10. By letter dated May 19, 2022, Luke Watson, Deputy City Manager for the City, notified CNC Puma, The Bank, and Amanda Moore, who is an officer of CNC Puma and manager of The Bank, that the City intended to revoke the CUP for the subject property based upon numerous violations of the CUP, citations, and civil penalties issued. The May 19, 2022, letter was carbon copied to owner of the subject property “Norman Sullivan” of Zip Third at the same address as the subject property in Temecula, but not to the address for service of process as listed by the California Secretary of State for Zip Third, which was on Wilshire Blvd. in Los Angeles. The May 19, 2022, letter was also carbon copied to “Maureen Licata” as the property owner.

11. On July 8, 2022, Jennifer Petrusis, counsel for the City, wrote a letter to Norman Solomon of Zip Third at that Wilshire Blvd. address in Los Angeles. The letter stated that Ms. Petrusis spoke with Mr. Solomon by telephone on July 1, 2022, regarding the City's intentions to revoke the CUP for the subject property because of the ongoing violations of the CUP as set forth in the numerous citations and civil penalties issued to The Bank. The letter also stated that Ms. Petrusis emailed a copy of the May 19, 2022, Notification letter from Deputy City Manager Watson. The July 1, 2022, telephone call was the first notification given to Zip Third that the City was moving forward to revoke the CUP.

12. On May 31, 2022, the City filed a request to set this hearing with the Office of Administrative Hearings, which included as the respondent The Bank, with notification to CNC Puma. However, the City failed to list Zip Third as a respondent, and provided no indication on the filing that Zip Third was notified of the request to set the hearing. As noted above, the first notice Zip Third received regarding this hearing for revocation of the CUP was the July 1, 2022, telephone call with Norman Solomon.

Violations of the CUP, Citations, and Civil Penalties Issued

13. The City has issued 34 separate citations to The Bank over a five-month period beginning on March 5, 2021, with the last citation issued on July 24, 2021. Each of the citations were for violation of the permitted operating hours, with The Bank consistently operating past 11:00 p.m. on Friday and Saturday nights and selling alcoholic beverages to patrons after 11:00 p.m. on Friday and Saturday nights; as well as having excessive noise levels including with outside speakers over allowed noise levels, and failing to have a CUP for amplified music and live entertainment. The first citation issued on March 5, 2021, assessed a \$50 penalty for the violations, the second

citation issued on March 6, 2021, assessed a \$150 penalty for the violations, seven of the citations assessed a \$250 penalty for the violations, one citation assessed a \$300 penalty for the violations, one citation assessed a \$400 penalty for the violations, and two citations assessed a \$500 penalty for the violations. Respondent The Bank paid the City for the first 13 citations for total payments of \$3,650, and paid an additional four citations (one citation dated May 7, 2021, for \$250; another dated May 8, 2021, for \$500; another dated July 2, 2021, for \$500; and a final dated July 3, 2021, for \$500) for total payments of \$1,750. Accordingly, The Bank paid the City \$5,400 for those 17 citations, but the remaining 18 citations were not paid by The Bank and remain delinquent. Of the 18 unpaid citations, 11 of those each assessed a penalty of \$500, and the remaining seven of the unpaid citations each assessed a penalty of \$250, for a total of \$7,250 of unpaid assessments for the violations in those citations. None of these citations were contested by CNC Puma, d.b.a. The Bank.

14. The City has issued 109 Civil Penalty Notice and Order letters to CNC Puma, d.b.a. The Bank for the continuing violations of the CUP as set forth in each of the 34 citations discussed above. The first Civil Penalty Notice and Order was issued on July 27, 2021, and assessed a fine of \$500 for the continued violations with daily accrual of civil penalties of \$2,500 per day for any continued violations. The second Civil Penalty Notice and Order was issued on July 30, 2021, and assessed a fine of \$750 for the continued violations with daily accrual of civil penalties of \$2,500 per day for any continued violations. The third Civil Penalty Notice and Order was also issued on July 30, 2021, and assessed a fine of \$500 for the continued violations with daily accrual of civil penalties of \$2,500 per day for any continued violations. The eighth Civil Penalty Notice and Order was issued on August 8, 2021, and assessed a fine of \$500 for the continued violations with daily accrual of civil penalties of \$2,500 per day for any continued violations. All of the remaining 105 Civil Penalty Notice and Order

letters issued to The Bank assessed a fine of \$1,000 each. According to the May 19, 2022, letter from Deputy City Manager Watson, The Bank paid the first 42 issued Civil Penalty Notice and Order fines totaling \$40,250 with the remaining 67 Civil Penalty Notice and Order fines being unpaid and delinquent for a total of \$67,000. However, only four of the 109 Civil Penalty Notice and Order documents indicate on their face that they have been paid, which would mean the total of fines paid is \$3,500, with a remaining 105 Civil Penalty Notice and Order fines totaling \$103,750 remaining unpaid and delinquent, which is consistent with the testimony of witnesses at the hearing. None of the Civil Penalty Notice and Orders were contested by The Bank.

The City's Evidence

15. The City presented six witnesses at the hearing. The following factual findings are based on their testimony and related documents received in evidence.

TESTIMONY OF LUKE WATSON

16. Luke Watson is currently employed by the City as the Deputy City Manager, a position he has held for about one year. Mr. Watson is also currently employed by the City as the Planning Director, a position he has held since 2015. His duties as the Deputy City Manager include the administration of all operations of the City. His duties as the Planning Director include oversight of Code enforcement, building safety, housing, and other duties. Mr. Watson has been an employee of the City since 2006 in various roles, including as Management Assistant, Analyst, Senior Planner, Community Development Director, Planning Director, and Deputy City Manager.

17. Mr. Watson explained that a CUP is a permit that must be acquired for a specific commercial use of property in the City for which there is potential for specific

impacts that need to be addressed by the City. For example, a restaurant located in a properly zoned area for restaurant use does not need a CUP to operate. However, if that restaurant wants to add a liquor license to its operation, then a CUP is needed because of the potential impacts of the liquor license on the City. A CUP has specific conditions of approval that must be met for the specific commercial use of the property, which include requirements on that specific commercial use that the City has imposed to mitigate the impact of the commercial use. Those requirements may be specific hours of operation, entertainment parameters, or other limitations.

18. Mr. Watson further explained that the CUP application process requires that the CUP applicant, usually the business owner, as well as the property owner, sign the CUP application and submit it to the City. Thereafter, the City staff and the applicant “go back and forth over a few weeks” to “work through the specific conditions that need to be addressed in the permit.” During this “back and forth” period, the applicant has an opportunity to challenge the conditions of approval. Once the applicant agrees to the conditions to be placed on the CUP, then the application will be addressed at a public hearing to be approved by the City. If the applicant is still not satisfied with the conditions to be placed on the CUP, the applicant can address that at the public hearing. After the City approves the CUP and its conditions at a public hearing, the applicant can still appeal that decision within 15 days of that approval as set forth in TMC 17.03.090.

19. Mr. Watson testified that the process to modify an existing CUP is similar to the original application to obtain a CUP. However, a minor modification to a CUP application does not require a public hearing. Instead, for a minor modification to a CUP, the City staff may approve the minor modification by administrative approval. If a major modification to a CUP is needed, then a public hearing may be required.

20. Mr. Watson testified about the specific CUP at issue in this matter. The original CUP application (application number PA-07-0314) was filed by Craig Puma on behalf of The Bank in 2007 and signed by the owner of the property at that time, Maureen Licata. The original CUP application sought to upgrade from a type 41 alcohol license (which allows for the sale of beer and wine at a restaurant) to a type 47 liquor license (which allows for the sale of beer, wine, and distilled spirits). The City had a public hearing regarding this original CUP application and thereafter granted the CUP application on January 3, 2008, with conditions of approval. Those conditions included condition number 13 that provides:

Regular hours of operations shall be as follows: Monday-Thursday 11 a.m. to 10 p.m., Friday 11 a.m. to 11 p.m., Saturday 8 a.m. to 11 p.m. and Sunday 8:00 a.m. to 10:00 p.m. On holidays (including Cinco De Mayo) the facility shall be allowed to close at midnight. The sale of alcoholic beverages shall cease at 10 p.m. Monday-Thursday and Sunday. The sale of alcoholic beverages shall cease at 11 p.m. on Fridays and Saturdays. To distinguish between ABC requirements related to sale, service and consumption, the consumption of alcohol shall cease no later than one hour after closing. (As amended at Directors Hearing on 1/3/08).

Craig Puma signed the "Acceptance of Conditions of Approval" for the original CUP on January 16, 2008.

21. Mr. Watson stated that after the issuance of the original CUP, Craig Puma, on behalf of The Bank, applied for two different modifications to the CUP. The

first minor modification application (application number PA-08-0236) was filed on October 9, 2008, for a request to extend the operating hours for the sale and consumption of alcohol for The Bank until 2:00 a.m. On October 15, 2008, the City approved the minor modification to the CUP with conditions by an administrative approval from the City staff. The final conditions of approval for the minor modification included the following:

Regular hours of operation shall be as follows: Monday-Thursday 11 a.m. to 10 p.m., Friday 11 a.m. to 11 p.m., Saturday 8 a.m. to 11 p.m. and Sunday 8 a.m. to 10 p.m.

In the case that the restaurant manager would like to stay open past the regular hours of operation (stated above) he/she may be permitted to stay open until 2:00 a.m. When this occurs, alcoholic beverages may be served until 2:00 a.m. as consistent with the provisions of California State Law.

"Last call" for alcohol service shall occur at 1:30 a.m. as consistent with California State Law.

22. The second minor modification to the CUP application (application number PA-12-0041) was filed by Mr. Puma with the City on February 2, 2012, to request to have live music inside The Bank daily from noon to 10:00 p.m. By letter dated February 28, 2012, the City, through the signature of Stuart Fisk, a Senior Planner with the City, provided an administrative approval of the second minor modification to the CUP application with final conditions of approval. The final conditions of approval included the following conditions:

Indoor entertainment consisting of one keyboard or other instrument played with one vocalist for the purpose of providing background music is permitted daily from noon until 10:00 p.m.

[¶] . . . [¶]

Regular hours of operations shall be as follows: Monday-Thursday 11 a.m. to 10 p.m., Friday 11 a.m. to 11 p.m., Saturday 8 a.m. to 11 p.m. and Sunday 8:00 a.m. to 10:00 p.m. On holidays (including Cinco De Mayo) the facility shall be allowed to close at midnight. The sale of alcoholic beverages shall cease at 10 p.m. Monday-Thursday and Sunday. The sale of alcoholic beverages shall cease at 11 p.m. on Fridays and Saturdays. To distinguish between ABC requirements related to sale, service and consumption, the consumption of alcohol shall cease no later than one hour after closing. (As amended at Directors Hearing on 1/3/08).

Mr. Watson testified that the second minor modification of the CUP in 2012 changed the operating hours of The Bank back to those listed in the original CUP because the 2:00 a.m. operating hours were not included in the final conditions of the second minor modification of the CUP approved in 2012. Mr. Watson testified that the final conditions of the 2012 minor modification to the CUP superseded the first minor modification to the CUP in 2008. According to Mr. Watson, The Bank had 15 days to appeal the final conditions of the 2012 minor modification to the CUP from the February 28, 2012, date, but no such appeal was ever filed. Mr. Watson stressed that The Bank has never filed another minor or major modification to the CUP, and as a

result the 2012 minor modification of the CUP (PA-12-0041) with its final conditions provides the current operating hours allowed for The Bank.

23. Mr. Watson described the location of The Bank restaurant in Temecula, which is in the Old Town portion of Temecula, in the "center of town." He stated that the location of The Bank is "the premier commercial intersection in the City located half a block from City Hall." Old Town is a historic district of Temecula dating back to the 1800's. The Bank is located in a "mixed use" environment that is "walkable," and generally a tourist area with some offices, some residential homes, and 24 restaurants. Old Town also includes a theater and history museum, and is a primary location for special events, and is a commercial and entertainment hub for Temecula.

24. Mr. Watson stated that he recommended that the CUP at issue in this matter be revoked because for more than one year The Bank had been violating the final conditions of the CUP with regard to operating hours, noise ordinance violations, and had a pattern of numerous assaults, batteries, drunkenness, disorderly conduct, and serious violent crime associated with The Bank. Mr. Watson first became aware that The Bank was violating the operating hours allowed in the CUP in the Summer of 2021 when the Temecula Police Department and Code Enforcement informed him of that violation. Mr. Watson stated that when the City first learned of The Bank's violation of its approved operation hours, the Code Enforcement team, Temecula Police Department, and Temecula Fire Department, all attempted to discuss the problem with the owners of The Bank to get voluntary compliance with the approved business hours. When the voluntary compliance from The Bank did not happen, the City then started issuing notices of violation, which happened for "some time" as an attempt to get The Bank to comply with required operating hours. When The Bank continued to violate the approved operating hours, the City then began issuing

administrative citations, which also continued for “some time.” When The Bank continued to violate the approved operating hours, the City began issuing Civil Penalties up to \$1,000 per day in an effort to get The Bank to comply. The City continued its efforts to get The Bank to comply with approved operating hours for over one year but was not successful. To date The Bank has not complied with the approved operating hours of the CUP, and The Bank has not submitted any application to modify the CUP to change its hours of operation. Zip Third has also not applied to modify the current CUP for any purpose.

25. Mr. Watson wrote a letter dated May 19, 2022, summarizing all of the citations and civil penalties issued against The Bank, and notifying The Bank of the City’s intention to revoke the CUP based upon the violations of approved operating hours and approved hours for sale of alcohol, as well as violations of condition 28 (c) of the CUP that provides that the CUP holder must not allow the licensed premises to become a “disorderly house,” meaning a licensed outlet (including the parking lot) that disturbs neighbors with noise and loud music, and/or has many ongoing crimes inside such as drunks, fights, assaults, prostitution, narcotics etc. Regarding the disorderly house allegations, the May 19, 2022, letter provided as follows:

It has been the experience of the Riverside County Sheriff’s Department that there have consistently been numerous instances of disturbances, assaults, batteries, public intoxication, and other crimes on The Bank’s premises and in the immediate vicinity of The Bank. In January 2022, there was a shooting on The Bank’s premises in which a former employee of The Bank was killed and two other individuals were seriously injured. The shooting occurred

approximately an hour after The Bank should have been closed for the evening, yet The Bank was still operating in violation of Condition 12 of PA12-0041. The former employee and victim of the shooting had been involved in a physical altercation at The Bank months before the shooting. According to the Riverside Sheriff's Department, The Bank used unlicensed security guards, some of which had criminal backgrounds, and this decision to use unlicensed security guards contributed to the criminal activity at The Bank.

Mr. Watson sent this May 19, 2022, letter notifying that the City intends to revoke the CUP to CNC Puma, d.b.a. The Bank to their agent for service of process, Craig Puma, Amanda Moore, Maureen Licata, and to Zip Third at "attn: Norman S. Soloman" at the address of The Bank located in Temecula, CA. The May 19, 2022, letter was not sent to Norman Soloman at his Wilshire Blvd. address, which is the listed address for service of process for Zip Third.

26. Mr. Watson admitted that the May 19, 2022, letter was not sent to Normal Solomon at the listed address for the agent for service of process for Zip Third, which is Mr. Solomon's Wilshire Blvd. address. However, the May 19, 2022, letter was included as an attachment to the July 8, 2022, letter from Jennifer Petrusis to Norman Solomon notifying Zip Third of the City's intent to revoke the CUP. Additionally, Mr. Watson noted that on August 20, 2021, Tom Cole, a Field Supervisor from the City's Code Enforcement, sent a letter to Zip Third at the proper address for the agent for service of process at the Wilshire Blvd. address regarding The Bank's activities violating the TMC.

27. Mr. Watson stated that the approved hours of operation in the CUP were chosen in order to mitigate the negative impacts of the sale of distilled spirits alcohol. He stated that the later the hours of operation, the worse the negative impacts of the sale of alcohol. Mr. Watson testified that most of the criminal activity in the vicinity of The Bank has occurred after The Bank was supposed to be closed pursuant to the approved operating hours of the CUP.

With regard to the criminal activity, in late 2020 the City established a Metro Team Plus to police the Old Town district, which included 10 sheriff's deputies, Code Enforcement officers, and Fire Department inspectors. The Metro Team Plus performs "sweeps" of the Old Town area and visits all businesses. As a result of the formation of the Metro Team Plus, voluminous information regarding the activities in the Old Town area have been collected. The Metro Team Plus reports back to the City and Mr. Watson on a weekly basis to provide information regarding those activities.

28. Mr. Watson described the criminal activity in the vicinity of The Bank that is a basis for the reason to revoke the CUP in this matter. He stated that there were two incidents of shootings that were particularly concerning. Specifically, in November 2021 in the parking lot adjacent to The Bank after The Bank was closed, a man was shot in the leg and survived. In January 2022, a former employee of The Bank was shot and killed on the doorstep of The Bank, and two other people were shot and seriously injured inside of The Bank. During the 17 years that Mr. Watson has worked for the City, he is aware of only four shootings total occurring in the City during that time. In addition to the shootings described above, there have been numerous fights and brawls in and near The Bank over the past year, including one incident occurring about one month prior to this hearing where at 2:00 a.m. in a parking lot the assailants in a fight were confronted by police and scattered. As a result of the assailant's scattering,

one person jumped over a fence and fell 50 feet breaking both of his legs. The Fire Department had to rescue that individual at the creek, which used considerable City assets. Furthermore, there have been numerous incidents of public intoxication, public urination, vomiting, and other "disorderly conduct that has been the hallmark of the operations of The Bank over the last year plus."

Mr. Watson stated that The Bank has been overserving alcohol to its patrons causing the public intoxication and other disorderly conduct issues. Additionally, he stated that many of the security personnel at The Bank were "not professionals," "not licensed," and were "instigating or escalating things." He stated that the Metro Team Plus police have witnessed numerous patrons being overserved alcohol at The Bank and coming out drunk and in some cases vomiting. All of these issues have created a violation of the CUP by being a "disorderly house."

29. Mr. Watson also testified that The Bank has been violating the CUP with regard to noise violations. He stated that the CUP provides permission for The Bank to have "indoor dinner entertainment consisting of one keyboard or other instrument played with one vocalist for the purpose of background music" daily from noon until 10:00 p.m. However, The Bank has been having a D.J. with speakers pointed into the street intersection producing very loud and excessive noise that is beyond that permitted by both the CUP and by the City noise ordinances. This noise problem has created significant impacts to surrounding businesses, which have complained to the City. Multiple citations and civil penalties were issued to The Bank for these noise violations, but they continue to occur.

30. Mr. Watson stated that nobody from The Bank ever reached out to the City regarding the noise violations or crime. However, with regard to the operating hours, Craig Puma and Amanda Lane both contacted Mr. Watson about one year ago

by email asserting that the operating hours in the CUP were incorrect, and they requested that the operating hours be changed to allow The Bank to operate until 2:00 a.m. Mr. Watson had one conversation with each of them to explain the operating hours allowed by the applicable CUP, and that they must file a modification application to the CUP to change the approved operating hours to allow The Bank to remain open until 2:00 a.m. Notably, no person or entity on behalf of CNC Puma, d.b.a. The Bank or Zip Third ever filed a modification application to make that change.

31. Mr. Watson stressed that since the Metro Team Plus has been established, these violations from The Bank have been brought to the attention of the City and numerous citations and civil penalties have been issued to The Bank. However, other businesses in Old Town have also had violations resulting in citations and civil penalties. Mr. Watson stated that those businesses "are being addressed." He stressed that the City is not singling out The Bank for revocation of the CUP, as opposed to enforcing against other businesses. Mr. Watson admitted on cross-examination that in the past 10 years the City has not revoked any other CUP for a business.

32. Mr. Watson also stated that if the CUP is revoked, he is not sure if The Bank will comply because "they have not listened to the City yet." He stated that if the CUP is revoked, then the property will be governed by the specific city plan for Old Town, which allows for use as a restaurant with a type 41 alcohol license to sell beer and wine.

33. Mr. Watson also admitted on cross-examination that he never reached out to Zip Third in an effort to address the violations of the CUP and City ordinances committed by The Bank.

TESTIMONY OF TOM COLE

34. Tom Cole is currently employed as a Field Supervisor for the Code Enforcement department of the City. He has worked full-time for Code Enforcement in the City since 1997 and has been employed by the City since 1992. Since 1997 he worked as a Code Enforcement I officer, then as a Code Enforcement II officer, then as a Senior Code Enforcement officer, and finally in his current position as a Field Supervisor. His duties as a Field Supervisor include enforcement of the City's rules, regulations and municipal code to ensure proper property maintenance and quality of life issues for City residents. His duties have remained the same since 2012.

35. Mr. Cole explained that code enforcement cases in the City typically arise from a complaint, which is then verified by investigation. Thereafter, the City issues a notice of violation, such as a warning. If compliance is not obtained, then the City moves forward with issuing an administrative citation. If compliance is still not obtained the City then moves forward with issuing civil penalties. If compliance is still not obtained, then the matter is referred to the City attorney. He stated that an administrative citation has a smaller dollar amount for the fine, than does a civil penalty. The City instituted the civil penalties in order to obtain compliance for businesses that simply pay the lesser fines for the citations as a "price of doing business." Regardless, the citations and civil penalties are simply tools used by the City to get the business to comply.

36. Mr. Cole explained that the City Code Enforcement department does not patrol the streets for code violations, but instead the City "is reactive" and "responds to complaints only." He stated that the City is "seldom proactive," and as a result it is possible that an individual or business could be violating a CUP for a while before the Code Enforcement department would know about it.

37. Mr. Cole is familiar with The Bank and has personally issued all of the citations and all of the civil penalties against The Bank at issue in this matter. Since March 2021 Mr. Cole has gone out with the Metro Team in Old Town every Friday and Saturday night and on each of those occasions has observed The Bank operating well beyond the hours of operation approved in the CUP. Mr. Cole has observed The Bank operating past 11:00 p.m. and serving alcohol to customers inside The Bank well past the approved operating hours. He has also observed customers of The Bank falling down from intoxication and vomiting. On two occasions he observed people trying to pick a fight with the Temecula Police officers after 11:00 p.m. Mr. Cole stated that the operating hours of The Bank first came to the attention of the Code Enforcement department because of a complaint from the Temecula Police Department. Mr. Cole first became aware of The Bank operating outside of its approved operating hours in the CUP in March 2021 when he began walking with police officers and observing the businesses in Old Town. Mr. Cole stated that most of the civil penalties and citations he issued to The Bank were for violations of the CUP's approved operating hours. However, he also cited other violations, such as noise violations.

38. With regard to the noise violations, Mr. Cole explained that when he observed The Bank operating past the approved operating hours in the CUP, he also observed customers of The Bank drinking, and dancing to very loud music provided at The Bank by a live D.J., along with lights. Mr. Cole explained that the TMC provides that a permitted noise level for a business in Old Town is 70 decibels. During his visits to The Bank, Mr. Cole checked the noise level with a hand-held decibel reader, which is calibrated once per year. He would go to the adjacent property to The Bank and use the decibel reader to observe the sound levels emanating from The Bank. When the D.J. was observed playing after approved hours, Mr. Cole measured the decibel levels at 95 decibels on numerous occasions. He stated that he tried to be lenient when the

decibel reading was 80 decibels, but if the reading was 90 decibels or above, he would issue a citation to The Bank. Mr. Cole stated that he gave warnings to The Bank prior to issuing any citations for noise violations. Many of the citations issued by Mr. Cole to The Bank were simply paid by The Bank and were never appealed.

Mr. Cole testified that the last citation he issued for noise violations from The Bank was on July 3, 2021. He stated that on that day he spoke directly with the contracted D.J., as well as issued a personal citation to that D.J. for noise violations, and he requested that the D.J. resolve the noise issue. The following week the noise issue was resolved, and Mr. Cole has not had noise issues from The Bank on the weekend since that time. However, Mr. Cole thereafter started receiving noise complaints regarding The Bank on Sundays. Accordingly, Mr. Cole started going to The Bank on Sundays to monitor the noise levels. Mr. Cole issued two citations for those Sunday noise violations. According to Mr. Cole, "it took them a few weeks to realize that I went there on Sundays, but after they realized that, the noise abated."

39. Mr. Cole has had conversations with the manager of The Bank, Amanda Lane (previously Amanda Moore), on about five occasions over an 18-month period regarding The Bank's violations of the approved hours of operation in the CUP. During those conversations Ms. Lane has never informed Mr. Cole that she will comply with the permitted operating hours, and Mr. Cole continued to issue citations and civil penalties. Mr. Cole testified that The Bank has paid over \$30,000 in fines for both citations and civil penalties to date, and approximately \$150,000 of fines from the issued citations and civil penalties remains unpaid.

40. Mr. Cole has had approximately ten conversations with Craig Puma because Mr. Puma is on the Old Town Review Board. Of those ten conversations, only one of the conversations was regarding The Bank's violations of the approved

operating hours of the CUP, and it took place sometime between March and June of 2021. Mr. Cole described Mr. Puma as an “absentee owner” of The Bank because Mr. Cole never sees Mr. Puma at The Bank now but would previously see Mr. Puma there before Ms. Lane became manager. According to Mr. Cole, during that one conversation Mr. Puma disagreed with the City’s interpretation of the approved operating hours in the CUP.

41. Mr. Cole has never had a conversation with anyone from Zip Third. However, Mr. Cole did send a letter to Zip Third on August 20, 2021, by regular mail to the address he obtained from the California Secretary of State for the agent for service of process for Zip Third, which was Norman Solomon at the Wilshire Blvd. address. Mr. Cole stated that he mistakenly addressed the letter to Norman Sullivan of Zip Third instead of Norman Solomon, but the letter was sent to the correct address and was clearly marked as being addressed to Zip Third. Mr. Cole never received a response to this letter, and he has never been contacted by anyone at Zip Third regarding the violations that occurred at The Bank.

Beginning on August 20, 2021, Mr. Cole also sent about 97 different civil penalty letters to Zip Third addressed to Norman Solomon at the Wilshire Blvd. address from the California Secretary of State by regular mail. None of those 97 civil penalty letters were returned to the City as undeliverable. Additionally, no person from Zip Third has ever reached out to Mr. Cole regarding those civil penalty letters.

TESTIMONY OF SERGEANT JOSHUA HEPHNER

42. Sergeant Joshua Hephner is currently employed by the Riverside County Sheriff's Department serving the City of Temecula. He explained that the sheriff’s deputies serving the City of Temecula are commonly referred to as the Temecula

Police Department. Sergeant Hephner has been a peace officer since 2010 and has worked in the City since December 31, 2020. Sergeant Hephner worked from 2017 to 2020 for the Moreno Valley station in the gang enforcement unit and has been designated by California courts as a gang expert. Sergeant Hephner is currently assigned to the City's Metro Team policing the Old Town area, and he joined the Metro Team in October 2021. However, he has policed the Old Town area since he started working at the City.

43. Sergeant Hephner testified that "problems," such as fights, disturbances, driving under the influence (DUI), and overserving alcohol, began occurring "around the COVID pandemic." Specifically, he stated that a lot of other cities shut down their bars, restaurants and other night life because of COVID. The City opened up its bars, restaurants, and other night life sooner than most other cities resulting in an influx of people coming from outside the Temecula area into Old Town, which caused issues. Sergeant Hephner stated that during that time Old Town received a large number of "a mix of people" from different areas and backgrounds, which resulted in arrests for fights, disturbances, public intoxication, DUI, and other crimes. In March 2021 the City formed the Metro Team, consisting of seven sheriff deputies and one sheriff corporal, as well as one motorcycle officer and one community service officer, to provide a safer environment for Old Town. He stated that the Metro Team would go out in Old Town on Wednesdays through Saturdays from 3:00 p.m. to 3:00 a.m. He testified that after 9:00 p.m. or 10:00 p.m. the Old Town area "morphs into a nightclub atmosphere."

44. Sergeant Hephner is familiar with The Bank because shortly after the Metro Team formed in March 2021, a former sergeant noticed problems related to overserving of alcohol at The Bank and resulting disturbances caused by fights, public intoxication etc. He stated that there were also complaints from citizens that the

security at The Bank was "heavy handed." Sergeant Hephner has personally observed the overserving of alcohol to customers at The Bank, as well as intoxicated customers becoming belligerent and starting fights, even leading up to a homicide.

Sergeant Hephner stated that there was one homicide that occurred on Sunday, January 9, 2022, at 10:40 p.m. at The Bank involving an ex-employee of The Bank, who had worked at The Bank as a security guard. The homicide was a shooting of that employee that occurred on the patio of The Bank, and at least three other individuals were also shot and injured. Sergeant Hephner was familiar with the individual killed on January 9, 2022, because he had interactions with that individual when he worked as a security guard at The Bank. Specifically, there was one incident when the individual killed on January 9, 2022, had violently assaulted a person on the dance floor of The Bank by hitting the person and making them unconscious requiring hospitalization. Sergeant Hephner stated that the individual killed on January 9, 2022, had a criminal history and was on probation for a felony conviction at the time he worked at The Bank.

Sergeant Hephner testified that on January 13, 2022, there was a candlelight vigil outside of The Bank for the homicide victim, and Sergeant Hephner spoke to an individual at the vigil. That person gave Sergeant Hephner false information regarding his identity. Sergeant Hephner "figured out" who that person was and discovered that the person had a loaded gun inside a fanny pack on his person and had a prior felony conviction. The person was arrested for being a convicted felon in possession of a firearm. Sergeant Hephner stated that this type of proactive enforcement arrest potentially prevented another homicide.

Another shooting occurred in November 2021 when some patrons at The Bank were celebrating a birthday and got into a verbal altercation. The patrons walked

outside of The Bank about 50 to 100 feet onto the sidewalk, and the shooting occurred with the victim being taken to the hospital.

45. Sergeant Hephner has also witnessed a laundry list of incidents related to The Bank. He stated that when deputies stop individuals who ultimately get arrested for DUI, on many occasions they tell the deputies that they are coming from The Bank. While those individuals arrested for DUI also come from other locations, many times they state that they were at The Bank prior to driving. Sergeant Hephner has observed several assaults per night happening in front of deputies and in front of The Bank. Sergeant Hephner has also observed on many occasions the security guards at The Bank push individuals, who are fighting, away from The Bank and into the street in order to get them away from The Bank. He also frequently sees public intoxication either in front of The Bank or down the street from The Bank. When he arrests someone for public intoxication, he asks where they are coming from and frequently, they say The Bank. Most of the incidents he describes occur after 11:00 p.m. with the vast majority of those incidents occurring closer to midnight to 2:00 a.m. Sergeant Hephner has personally observed The Bank remain open after 11:00 p.m. every weekend.

46. Sergeant Hephner stated that he has had concerns regarding the security guards employed by The Bank because some of those security guards have criminal records, don't go through the proper procedures to obtain a license as a security guard, and were "antagonizing." Sergeant Hephner described an incident when deputies were investigating the November 2021 shooting on the sidewalk in front of The Bank. Specifically, one of the witnesses to the shooting was a security guard employed by The Bank and whom Amanda Lane only knew by the moniker "Venom" or "Virus." Ms. Lane either could not or would not give the deputies the real name of

the security guard. When deputies asked him for his real name, the security guard refused to give it to them, and the security guard was uncooperative with them. Sergeant Hephner testified that when he hears of monikers like "Venom" or "Virus" the first thing that comes to mind are gang members who utilize such monikers, and he believes that the security guard was a gang member. He also testified that it is critical that the sheriff deputies get full cooperation from the businesses in Old Town when investigating crimes. Sergeant Hephner also stated that having security guards with criminal records tends to attract other people with criminal records to The Bank causing more problems.

TESTIMONY OF STUART FISK

47. Stuart Fisk is employed by the City as a Planning Manager, and in 2012 he worked for the City as a Senior Planner. Mr. Fisk was involved in the issuance of the 2012 minor modification application for the CUP at issue in this matter. Mr. Fisk was responsible for processing the approval documents for the 2012 minor modification application that ultimately resulted in the CUP applicable for The Bank today, and at issue in this hearing. Mr. Fisk testified that with regard to the CUP that sets forth the approved final conditions for the operation of The Bank, there was an initial CUP application in 2007, there was a minor modification application to that CUP in 2008, and there was a 2012 minor modification application to the CUP that was approved and set forth the approved conditions for operation that continue to be in effect today. Mr. Fisk stressed that there were no other modifications to the CUP at issue in this hearing. Mr. Fisk testified that in 2009 The Bank wanted to expand their ability to sell alcohol on their patio, which required a delineation of those areas by some type of railing. He stated that the City accomplished this request by modifying the development plan to show on the site plan for the property where the fencing would

go along Front Street. However, he stressed that this 2009 modification to the development plan was not a modification of the CUP and had nothing to do with the CUP.

48. Mr. Fisk stated that in 2012 Patrick Richardson was the Director of Planning for the City and was also Mr. Fisk's supervisor. Mr. Fisk noted that Mr. Richardson was responsible for approving or denying a minor modification to the CUP application by an administrative approval or denial. When Mr. Puma filed the 2012 minor modification to the CUP application, Mr. Fisk met with Mr. Richardson in Mr. Richardson's office to review the original CUP, the approved 2008 minor modification to the CUP, and the 2012 minor modification application. According to Mr. Fisk, Mr. Richardson was not comfortable with the change of the hours of operations as set forth in the approved 2008 minor modification to the CUP. Mr. Fisk stated that the 2008 minor modification application to the CUP was approved by a different Director of Planning for the City, a person who had the job prior to Mr. Richardson. Mr. Richardson expressly stated to Mr. Fisk that he would approve the 2012 minor modification application only if the hours of operations for The Bank was set back to that provided in the original 2007 CUP. Mr. Richardson instructed Mr. Fisk to change the approved hours of operation for The Bank to what was set forth in the original 2007 CUP, and Mr. Fisk did so himself. Mr. Fisk stressed that the approved conditions for the 2012 minor modification of the CUP were not accidental or any sort of clerical error but were instead purposely selected. Mr. Fisk testified that Mr. Richardson told him that Mr. Richardson had been in touch with Mr. Puma regarding the 2012 minor modification application, but Mr. Richardson did not tell Mr. Fisk the nature or substance of those communications.

49. When the final 2012 minor modification application to the CUP was approved by the City, Mr. Fisk provided Mr. Puma with the approval letter, as well as the attached final conditions of approval, which included the hours of operation being reverted back to what they were in the original 2007 CUP. Neither Mr. Puma nor anyone from The Bank ever contested the conditions of approval for that 2012 minor modification to the CUP application.

TESTIMONY OF JOHN CARRINGTON

50. John Carrington is currently employed as a private investigator and was retained by the City to perform an undercover investigation of The Bank.

Mr. Carrington has been to The Bank on one occasion on July 10, 2022, which was a Sunday, to perform the undercover investigation. He arrived at The Bank at 7:15 p.m. and went inside The Bank at about 8:00 p.m. Mr. Carrington stayed at The Bank until about 11:00 p.m. that day and when he left The Bank was still operating.

Mr. Carrington noted that he saw The Bank sell six shots of tequila to a patron that night at 10:39 p.m. During the time Mr. Carrington was at The Bank he purchased three alcoholic beverages including one shot of tequila at 10:03 p.m. Mr. Carrington testified that there was a D.J. playing music at The Bank that night.

51. At about 11:00 p.m. Mr. Carrington went outside of The Bank with the intention of taking decibel readings with his iPhone and then returning to The Bank for further observation. However, when he went outside, he was approached by two individuals, whom he recognized as security guards from The Bank. He knew that these two individuals were security guards from The Bank because he saw them inside The Bank wearing security shirts. According to Mr. Carrington, the two individuals threatened to "beat him up" if he did not give them his mobile phone. The security guards accused him of taking photographs inside The Bank and demanded to see his

iPhone. Mr. Carrington refused to give his phone to the two individuals. After this interaction Mr. Carrington did not enter The Bank again. However, he did take four different decibel readings of the noise outside of The Bank with his iPhone with the highest readings being 87, 83 and 80 decibels. Mr. Carrington stated that he plays in a band and frequently utilizes this particular application on his iPhone to take decibel readings. Mr. Carrington finally left the area of The Bank at about 11:25 p.m.

52. At the time Mr. Carrington left The Bank at 11:25 p.m., The Bank was still operating and selling alcohol.

TESTIMONY OF JEFFREY BRIAN LETOURNEAU

53. Jeffrey LeTourneau is currently employed as a private investigator and was retained by the City to conduct an undercover investigation at The Bank. Mr. LeTourneau was tasked by the City to go to The Bank to monitor the hours of operation and the noise levels outside of The Bank during operation. Mr. LeTourneau went to The Bank on three occasions, namely on July 13, 2022, on July 20, 2022, and on July 27, 2022. On July 13, 2022, he arrived at The Bank with his partner at 7:30 p.m. for an event called "Quality Dance Party," which he described as a "toned down drag show," where the performers were lip syncing along with speakers playing music near the dance floor. The event ended at about 11:50 p.m. that night. Mr. LeTourneau walked out of The Bank on July 13, 2022, to go across the street to take a noise reading, and he and his partner ultimately left The Bank that night at 12:20 a.m. Mr. LaTourneau stated that The Bank closed operations that night at midnight. He stated that The Bank continued to serve alcohol to customers after 10:00 p.m. that night, and Mr. LaTourneau purchased two beers at The Bank after 10:00 p.m. that night.

On July 20, 2022, Mr. LaTourneau and his partner went to The Bank at 7:15 p.m. for a drag show and they ultimately left The Bank at 12:50 a.m. The live entertainment that night at The Bank was a drag show with lip syncing performers utilizing recorded music with speakers. The drag show that night lasted from 9:15 p.m. to 10:45 p.m. On July 20, 2022, The Bank stopped its operations at 12:35 a.m. The Bank continued to serve alcohol to its customers on July 20, 2022, after 10:00 p.m. and Mr. LaTourneau purchased two beers after 10:00 p.m. that evening.

On July 27, 2022, Mr. LaTourneau arrived at The Bank at 8:15 p.m. and left The Bank that night at 12:15 a.m. The entertainment at The Bank that evening were two male dance performers with recorded music. The entertainment that evening at The Bank started at 10:45 p.m. and ended at 11:30 p.m. The Bank closed its operations that night at 12:15 a.m. The Bank served alcohol to customers that night after 10:00 p.m. and Mr. LaTourneau purchased beers that evening from The Bank after 10:00 p.m.

The Bank's Evidence

54. CNC Puma, d.b.a. The Bank, presented two witnesses at the hearing. The following factual findings are based on their testimony and related documents received in evidence.

TESTIMONY OF CRAIG PUMA

55. Craig Puma is part owner of CNC Puma, d.b.a. The Bank. Mr. Puma stated that CNC Puma, is a corporation started in 2007 by himself for purpose of the ownership and operation of The Bank, and that CNC stands for Craig and Cristy Puma. Christy Puma is now Craig Puma's ex-wife, but at that time was his wife. Mr. Puma was originally the president of CNC Puma, but he is now a board member. Mr. Puma no longer has any involvement in the day-to-day operations of The Bank other than as a

consultant when his assistance is needed. Mr. Puma was actively involved in the day-to-day operations of The Bank up to the time Mr. Puma and his now ex-wife sold a partial ownership interest in CNC Puma to Amanda Lane and Ryan Parent on February 27, 2020.

56. Mr. Puma was also a member of the Old Town local review board appointed by the Temecula mayor for nine years. Mr. Puma worked with the Director of Planning for the City for nine years during that time.

57. Mr. Puma is the person who filed the original 2007 CUP application, the 2008 minor modification application to the CUP, and the 2012 minor modification application to the CUP for The Bank. Mr. Puma filed the 2007 CUP application in order to upgrade from a type 41 alcohol license (which allows beer and wine sales) to a type 47 alcohol license (which allows for sale of beer, wine, and distilled spirits). The type 41 and 47 alcohol licenses are issued by the State agency of Alcohol Beverage Control (ABC) and not the City.

58. After the 2007 CUP was approved by the City with the final conditions including that the hours of operation as set forth above, Mr. Puma thereafter in 2008 filed a minor modification application to the CUP to request that the hours of operation of The Bank be extended to 2:00 a.m. with last call for alcohol at 1:30 a.m. The 2008 minor modification application to the CUP was approved within a week or two and was "not real complicated." Mr. Puma understood that the 2008 minor modification to the CUP allowed The Bank to operate until 2:00 a.m.

59. Mr. Puma thereafter went into the City and filed the 2012 minor modification application to the CUP to request background music for lunch and dinner crowds at The Bank. Mr. Puma testified that he submitted the 2012 minor modification

application, paid the \$300 fee for the application, and a couple of days later Mr. Puma received the approval for the 2012 minor modification application. Mr. Puma testified that there was no discussion with anyone at the City regarding the operating hours of The Bank at the time he filed the 2012 minor modification application. When Mr. Puma received the approval for 2012 minor modification application for the CUP, he "saw that it had the addition of music," and he kept a copy of the approval at the bar of The Bank. Mr. Puma testified that at the time he received that approval it was his understanding that he still had approval to operate The Bank until 2:00 a.m. Mr. Puma testified that he did not "catch it" that the 2012 minor modification approved hours had changed back to that of the original 2007 CUP. Mr. Puma testified at the hearing, "it was obvious to me that the City made an honest mistake [on the 2012 minor modification approval] and copied and pasted the wrong CUP – the 2007 CUP and not the 2008 CUP – and I did not catch it at the time." Mr. Puma stated that he believes that the City staff mistakenly copied and pasted the operating hours from the 2007 CUP into the 2012 minor modification to the CUP instead of using the proper 2008 minor modification to obtain those hours.

Mr. Puma stated that he did not read the 2012 minor modification application of the CUP approved terms, and he did not ever request an appeal of the approved terms of that 2012 minor modification. He also never submitted another minor modification application to modify the CUP.

60. After the 2012 minor modification to the CUP was approved, Mr. Puma continued to operate The Bank up to 2:00 a.m. because he understood that he had approval to do so. Mr. Puma continued to operate The Bank until 2:00 a.m. until he sold a portion of CNC Puma in February 2020. During that time frame, Mr. Puma operated The Bank until 2:00 a.m. He stated that sometimes he would close The Bank

at 1:00 a.m. because he was “getting a crowd” he did not want because most of those people were getting kicked out of other places. However, he mostly stayed open until 2:00 a.m. on the weekends during that period of time with no complaints from the City regarding those hours of operation.

61. In early 2021 Amanda Lane, part owner and the current manager of The Bank, called Mr. Puma and asked about the approved hours of operation in the CUP. Mr. Puma told her that a copy of the 2012 minor modification approval of the CUP was at the bar of The Bank. Ms. Lane told Mr. Puma that “they did a cleaning and threw it away because they did not know what it was.” Ms. Lane told Mr. Puma that the City had contacted her about the approved operating hours. In an effort to obtain clarification, Mr. Puma emailed Luke Watson in February 2021 requesting clarification of the approved operating hours for The Bank. In the email, Mr. Puma wrote, in part, as follows:

In 2012 we applied for a Minor Mod to allow us to have indoor music. At that time, I believe and [*sic*] error was made and the hours were taken from the original Conditions, requiring we close at 10pm during the week and 11pm on Friday and Saturday except for Cinco De Mayo and other holidays. We continued to stay open until 2am since. For a brief period, in 2016, I believe, Christy and I made the decision to close at 1am. Last call was at 12:30am. That was our choice due to the town getting a bit crazy after 1am. We have never been told to close before 2am and we have always been responsible business owners. . . .

Mr. Puma testified that Mr. Watson responded by providing the currently approved operating hours in the 2012 minor modification to the CUP. Mr. Puma then reached out to ABC to obtain a copy of the 2008 minor modification to the CUP showing that the approved hours at that time were until 2:00 a.m. Mr. Puma testified that he was trying to work with the City to “fix the issue” because the operating hours in the current CUP “were obviously wrong because we never discussed any change to the operating hours.” On March 3, 2021, Mr. Puma emailed a copy of the 2008 minor modification to the CUP to Mr. Watson with the statement, “I’m not sure why you don’t have these conditions in the file for The Bank, but here’s a copy for you.” Mr. Puma admitted that he has had no further communications with the City regarding the approved operating hours for The Bank since this email.

62. Mr. Puma admitted on cross-examination that he is aware that CNC Puma has paid the City thousands of dollars in fines for the citations discussed above. However, he also admitted that he has never appealed any of those citations, but believed that Ms. Lane was doing so because she told him she was “fighting the citations.” However, he also admitted that he was not aware of exactly what Ms. Lane was doing to “fight the citations.” He stated he is not aware of any person submitting an appeal document to the City for any of the citations or civil penalties.

63. With regard to the use of a D.J. as entertainment at The Bank, Mr. Puma testified that he did not believe he needed a modification to the CUP to have a D.J. because he does not believe that a D.J. is live entertainment and is instead just a recording. With regard to drag shows, Mr. Puma stated that he believes a drag show complies with the approved condition of the 2012 CUP approving indoor music with one instrument and one vocalist because it is “indoor live entertainment.” He admitted

that the live entertainment was approved to happen during dinner, and he simply stated that drag shows are “not his thing.”

64. Mr. Puma admitted that he never talked to Norman Solomon or anyone else from Zip Third about the citations or civil penalties discussed above. Mr. Puma testified that the last conversation he had with Norman Solomon was to inform him that Mr. Puma would be moving out of the country, and that Ms. Lane and Ryan Parent would be dealing with the day-to-day operations of The Bank and would be communicating with Mr. Solomon.

65. Mr. Puma testified that he is aware that CNC Puma filed for Chapter 11 bankruptcy sometime after February 2020. He was not aware of exactly when or the specifics because “that was done by Amanda and Ryan.”

TESTIMONY OF AMANDA NICOLE LANE

66. Amanda Lane, formally known as Amanda Moore, is one of the owners of CNC Puma, d.b.a. The Bank, acts as the President and C.E.O. of CNC Puma, d.b.a. The Bank, and is the day-to-day manager of The Bank. She has held these positions since February 27, 2020, when she and Ryan Parent took partial ownership of CNC Puma, d.b.a. The Bank. Ms. Lane testified that there are currently four owners of CNC Puma, d.b.a. The Bank, namely herself, Craig Puma, Christy Puma, and Ryan Parent. Her duties are oversight of all operations of the restaurant, including scheduling employee hours, managing payroll for employees, all administrative duties, interacting with the community and law enforcement, even bussing tables. Ms. Lane generally has an on-site presence at The Bank during almost all operating hours. Ms. Lane and Ryan Parent took a partial ownership in CNC Puma, d.b.a. The Bank, on February 27, 2020, and two-and-a-half weeks later the COVID pandemic forced them to shut down the restaurant.

The year 2020 was devastating financially to the business. At the end of 2020, The Bank again was operating as it had previously until 2:00 a.m.

67. Ms. Lane described The Bank as a bar and restaurant serving Mexican food. The Bank is closed on Mondays, but is open at 11:00 a.m. on Tuesdays through Fridays, and opens at 9:00 a.m. on Saturdays and Sundays. On Fridays and Saturdays, The Bank typically closes at 2:00 a.m., and on Sunday The Bank closes sometime between 10:00 p.m. and 12:00 a.m. depending on the amount of business. During the hours of operation, and particularly during the evening hours on Friday and Saturday nights, Ms. Lane is normally located outside The Bank at the corner where she can see inside the restaurant and can watch the people coming into The Bank to ensure those people are not drunk. During Friday and Saturday nights, there is lots of foot traffic and road traffic near The Bank, and "people are bouncing from one place to another." She stated that people tend to visit multiple establishments in one evening. Ms. Lane stated that the location of The Bank is at the busiest intersection in Old Town and "everything goes through that intersection." There is no designated parking for The Bank.

Ms. Lane stated that on Friday and Saturday nights, there is lots of activity around The Bank, including people going to dinner at different restaurants, groups of people looking for a place to go, bachelorette parties, homeless people, intoxicated people, and people driving and "running stop signs." Ms. Lane supervises all employees at The Bank, including the security guards. She stated that now the security guards at The Bank are licensed. However, she admitted on cross-examination that only since July 31, 2022, have all the security guards at The Bank been wearing clothing as required by City ordinances. She also admitted that in the past year-and-a-half not all the security guards working at The Bank have been licensed as security

guards. Ms. Lane testified that it was not required that the security guards be licensed. She also admitted that she did not obtain any criminal background checks on the security guards and "bouncers" who worked at The Bank, because that was not required. Ms. Lane admitted that she did not know if any of her current or former security guards have criminal convictions.

68. Ms. Lane also supervised the bartenders at The Bank and stated that all bartenders at The Bank are certified with the liquor certification from ABC. Ms. Lane also trains the bartenders and provides "pour test training" to ensure that they are pouring the correct amount of alcohol for a drink. She also instructs bartenders that they cannot overserve customers such that the customer will become drunk. If a bartender feels that a customer is impaired, they can stop serving alcohol to the customer and can also have the customer thrown out of The Bank. Ms. Lane stated that most customers at The Bank have been at other bars and restaurants in Old Town already, and it can sometimes be difficult to know how much alcohol those customers have consumed prior to coming to The Bank.

69. Ms. Lane stated during her testimony that since the end of 2020, The Bank has had a live D.J. performing at The Bank on the weekends. She stated that the D.J. typically starts performing anywhere from 2:00 p.m. to 9:00 p.m. and will perform up until 1:00 a.m. depending on the day.

70. Ms. Lane testified that when she is working outside of The Bank that she and her security guards look for individuals trying to enter The Bank who are intoxicated, stumbling or stuttering, or those who "are looking for trouble." She stated that she "screens people" entering The Bank and she, as well as the security guards, will deny access to The Bank to anyone who appears to be drunk or looking to cause trouble. Ms. Lane stated that she denies entry to people trying to enter The Bank

numerous times on each of Friday, Saturday, and Sunday nights. Additionally, Ms. Lane walks through the inside of The Bank once every 30 minutes, and if someone is showing signs of impairment and looks like they will "cause problems" she has a security guard escort that person out of The Bank. Ms. Lane stated that she makes many phone calls to the Temecula Police while she is working outside The Bank at the front door because she can see in every direction in Old Town from her location. She stated that she sees fights, DUI's, people vomiting, people "passing out" and falling because of being drunk, and people urinating in the parking lot. Ms. Lane insisted during her testimony that none of these people she observes were associated with The Bank or "had anything to do with The Bank." Ms. Lane knows half of the police officers who patrol Old Town by first name, and she has numerous personal mobile phone numbers of those officers. She stated that she calls the police frequently on Friday and Saturday nights for various problems in Old Town, but she stated, "most of my calls to police have nothing to do with our restaurant."

71. With regard to the shooting in January 2022 at The Bank where a person was killed, Ms. Lane testified that there was nothing that The Bank could have done to prevent a 22-year-old person from entering the property and shooting people. The person who was killed was a "former bouncer" at The Bank and had been fired from his job about six to eight months prior to the shooting. At the time of the shooting, the person killed worked at another restaurant down the street from The Bank. After this shooting, The Bank complied and cooperated with all requests from the Temecula police.

72. With regard to the shooting that occurred in November 2021 near The Bank, Ms. Lane was the individual who called 911 because of that shooting. She stated that the shooting happened after 1:00 a.m. and she heard the gunshot. A bouncer at

The Bank told Ms. Lane he heard the gunshot and saw the flash from the gun. She stated that she cooperated with the police investigation regarding that shooting, and that the police determined that the shooter never went into The Bank. Ms. Lane stated that there was a bouncer who had worked at The Bank on the night of the November 2021 shooting who had the nickname, Virus. According to Ms. Lane, Virus was an artist and Virus was "his artistic name." Virus worked at The Bank only for about three to four months. On the night of the November 2021 shooting, Sergeant Hephner informed Ms. Lane that Virus refused to cooperate with the police investigation of the shooting and would not provide his real name. As a result of learning this information, Ms. Lane fired Virus from his job at The Bank. Ms. Lane stated that she has one other employee who "goes by a moniker" and that person is known as Eagle. She explained that Eagle is a Native American and his father gave him that nickname.

73. Ms. Lane testified that many of the police calls made for incidents around The Bank were not caused by customers of The Bank, and many of the police calls in the area were from other businesses in the area. Ms. Lane obtained a log of calls for service from the Riverside Sheriff's Department for Old Town through a records request. She discussed many of the calls logged on that report.

74. At the time Ms. Lane and Ryan Parent purchased a portion of CNC Puma, d.b.a. The Bank, Ms. Lane understood that the allowed operating hours for The Bank were from 8:00 a.m. to 2:00 a.m. Prior to purchasing The Bank, Ms. Lane had been there many times and stayed up to 2:00 a.m. when The Bank was operating. In February or March 2021, Ms. Lane received the first warning citation from the City for being open past approved hours. Ms. Lane contacted Mr. Cole, the individual who writes citations, regarding the warning. She stated that Mr. Cole "did not have a lot of information." Ms. Lane then went to City Hall and requested "all the CUPs" for The

Bank. She stated that the City only provided her with the original 2007 CUP and the 2012 minor modification to the CUP, but not the 2008 minor modification to the CUP. She stated that she asked for the 2008 CUP because Mr. Puma told her it existed. Eventually, Ms. Lane obtained the 2008 minor modification to the CUP from Mr. Puma. Ms. Lane sent an email on March 11, 2021, to Brad Landon, the agent for service of process for CNC Puma, d.b.a. The Bank, with the attached 2012 minor modification to the CUP with the following comment:

This is where music was added and the 2am time was left out (I think is [sic] was just an error on the city's part).

Ms. Lane then forwarded that email in September 25, 2021, to a fire marshal for the City in an effort to get clarification. Ms. Lane stated that after she did so she "thought things were still in limbo." Ms. Lane stated that she thought there were many errors in the 2012 minor modification of the CUP and she "wanted them corrected," but primarily the operating hours issue. Ms. Lane stated that she never applied for a minor modification to the 2012 CUP to get approved hours of operation of up to 2:00 a.m. because "I complied with the 2008 CUP, and there was no reason to do so." Ms. Lane admitted that she has been closing The Bank at 2:00 a.m., and she continues to do so. She stated that if she did not operate until 2:00 a.m., then The Bank would be insolvent in 30 days. She stated that most of the money made at The Bank happens from midnight to 2:00 a.m.

75. Ms. Lane admitted that she paid over \$15,000 in fines associated with citations and civil penalties issued by the City for The Bank operating beyond approved hours. She admitted that The Bank continued to receive citations and civil penalties with fines for that reason with fines totaling well over \$100,000. She stated that she was a new business and did not want to make an enemy of the City so they

just paid the fines. Ms. Lane admitted that she, and no person from The Bank, ever appealed the citations or civil penalties. Instead, she stated that "I figured once [the City] figured it out that they would refund the money."

76. In July 2021 Ms. Lane contacted David Pinkerton, a person she believed at the time was the property owner of the land where The Bank sits, to inform him of the multiple citations received by the City. Ms. Lane stated that in 2021 she had only two contact numbers, one was for David Pinkerton and another was for Sean Pinkerton, and she believed that both of those individuals worked for Zip Third, the property owner. However, David Pinkerton in fact worked for a company named Metro Resources, which is a property management company hired by Zip Third. Ms. Lane stated that Mr. Pinkerton never told her that he would do anything about the citations or civil penalties, but that Mr. Pinkerton was aware that the City was citing and fining The Bank for operating outside of approved business hours.

It was not until June or July 2022 that Ms. Lane first had a conversation with Norman Solomon of Zip Third regarding any citations or civil penalties issued by the City to The Bank. Ms. Lane stated that at that time she had a long phone call with Mr. Solomon to "go over the citations," and "what was going on with the bankruptcy case." This was the first phone call or other communication that Ms. Lane had with Mr. Solomon. Ms. Lane has never read the lease agreement between The Bank and Zip Third, other than portions that were sent to her recently from Mr. Solomon regarding her obligation to provide notices to Zip Third.

Zip Third's Evidence

77. Zip Third presented two witnesses at the hearing. The following factual findings are based upon their testimony and related documents received in evidence.

TESTIMONY OF NORMAN SOLOMON

78. Norman Solomon is the manager of Zip Third, a company that “has no employees.” Mr. Solomon testified that Zip Third purchased the property where The Bank sits in 2016 from the estate of Maureen Licata. Mr. Solomon is 76 years of age and has worked in real estate development and management for over 40 years. Mr. Solomon owns over 100 properties and is involved in close to 100 limited liability companies. Mr. Solomon buys properties both as an individual, with partners, and as a limited liability company. Mr. Solomon owns multiple properties in Old Town, including several on the same block as The Bank. Mr. Solomon owns nine different properties in the City and has owned properties in the City for over 10 years. The City has never complained to Mr. Solomon about any of his properties, other than The Bank. Mr. Solomon testified that the main office for Zip Third is on Wilshire Blvd. in Los Angeles. However, Mr. Solomon has not been to that location regularly since March 2020 when the COVID pandemic began.

79. Mr. Solomon first learned of the City’s intention to revoke the CUP in this matter on July 1, 2022, when he received a telephone call from Jennifer Petrusis. Mr. Solomon “was stunned” and informed her that he knew nothing about any violations of the CUP by The Bank. Ms. Petrusis told Mr. Solomon that a hearing in this matter was already being scheduled, and Mr. Solomon asked for additional time so he could investigate. After this phone call, Ms. Petrusis sent the May 19, 2022, letter from Mr. Watson regarding the City’s intention to revoke the CUP to Mr. Solomon. The next communication Mr. Solomon had with Ms. Petrusis was on July 5, 2022, and again Mr. Solomon asked for additional time to obtain an attorney familiar with the City. He told Ms. Petrusis he wanted to work in a productive way to resolve the issues.

80. Mr. Solomon testified that "his office" first found out about the City's citations and civil penalties for The Bank in March 2022. After Mr. Solomon got a phone call from Jennifer Petrusis on July 1, 2022, he contacted his office to ask if there had been any correspondence from the City regarding the citations and civil penalties, and he was told yes. He asked for the office to collect all communications and put in one file. Mr. Solomon stated that the earliest communication from the City in that file was postmarked March 7, 2022. Mr. Solomon stated that the office only had 16 violation letters contained in eight envelopes. Mr. Solomon denied ever seeing the August 2021 letter from Mr. Cole regarding the violations.

81. In July 2022 after speaking to Ms. Petrusis, Mr. Solomon had multiple phone calls with Ms. Lane to investigate the matter. According to Mr. Solomon, Ms. Lane told him that The Bank was not violating the CUP, but that the City had made a clerical error on the 2012 minor modification of the CUP and she was "working to resolve it." Mr. Solomon stated that prior to learning about the violations of the CUP, he never had any issues with Ms. Lane and she paid her rent on time and was generally helpful. Mr. Solomon had also never received any complaints from any other businesses in Old Town regarding The Bank, so he had no reason to believe any of the issues listed in the citations and civil penalties were happening. Mr. Solomon asked Ms. Lane multiple times to comply with the hours of operation as approved in the 2012 CUP, but Ms. Lane told him that The Bank would "go under" if she did that.

82. After his conversation with Ms. Petrusis, Mr. Solomon also contacted David Pinkerton, the property manager, to discuss the issues. Mr. Solomon learned that Mr. Pinkerton had received notice of citations and civil penalties beginning in March 2022. Mr. Pinkerton also told him that Ms. Lane informed him of the citations and civil penalties, and Mr. Pinkerton believed that Ms. Lane was "taking care of it."

83. Mr. Solomon stated that he did not learn that CNC Puma, d.b.a. The Bank, was in bankruptcy proceedings until July 2022 when he learned about the City's intention to revoke the CUP. Mr. Solomon stated that he had to retain a bankruptcy attorney to get relief from the automatic stay in order to begin the process of an unlawful detainer against The Bank in order to resolve the City's issues. According to Mr. Solomon, The Bank had previously filed another bankruptcy in 2019 or 2020 because The Bank was behind in their rent payments. At that time Mr. Solomon had hired a bankruptcy attorney to get relief to file an unlawful detainer action against The Bank. However, that bankruptcy was ultimately dismissed, and Ms. Lane and Ryan Parent paid all back rent in August 2020. The Bank has been up to date with its rent payments ever since and is currently up to date. Mr. Solomon stated that now that the bankruptcy case filed by The Bank has been dismissed as of late August 2022, he is now in the process of obtaining an attorney to file an unlawful detainer against The Bank.

84. Mr. Solomon testified that he has a custom and practice of maintaining a good relationship with the City and its officials. Mr. Solomon stated that he was one of the founding members of the Old Town Business Association and helped to write its by-laws. If Mr. Solomon had proper notice of the citations and civil penalties issued against The Bank at the time they were issued, he would have immediately contacted Mr. Cole and tried to arrange a meeting with the City Manager to discuss the issues. After he received a phone call from Ms. Petrusis, Mr. Solomon immediately requested a meeting with the City Manager of the City, but the City Manager declined to meet with him. Mr. Solomon believes that if the CUP is revoked, The Bank will continue violating the CUP until Mr. Solomon evicts The Bank from the property. He believes this based on his conversation with Ms. Lane. Mr. Solomon stated that if the CUP is revoked, the value of the property will decrease. He also believes that he has not been

treated fairly by the City because his notice of these issues was insufficient for him to properly address them prior to the revocation hearing. Mr. Solomon stated he has never had this level of difficulty with any government entity.

TESTIMONY OF LAZARO FERNANDEZ

85. Lazaro Fernandez is an attorney specializing in bankruptcy law. He has been in private practice as an attorney since July 1989 and has handled thousands of bankruptcy cases. Mr. Fernandez was hired by Zip Third in late July or early August of 2022 to file a motion to convert the bankruptcy of CNC Puma, d.b.a. The Bank, from a Chapter 11 bankruptcy to a Chapter 7 bankruptcy, and to obtain relief from the automatic stay. Mr. Fernandez has filed two applications in the bankruptcy court regarding those issues and obtained hearings for those applications.

86. Mr. Fernandez explained that while The Bank is in bankruptcy, Zip Third is prevented from filing an unlawful detainer to evict The Bank. Mr. Fernandez appeared in bankruptcy court regarding the two applications referenced above. The bankruptcy court thereafter issued an order on August 23, 2022, which was received in evidence, dismissing the Chapter 11 bankruptcy all together, thereby rendering moot the motion for relief from the automatic stay. As a result, Zip Third is no longer prevented from initiating a unlawful detainer action against The Bank.

The Parties' Arguments

87. The City argues that it has met its burden to establish that CNC Puma, d.b.a. The Bank, has violated the CUP's approved operating hours, as well as the live entertainment provision of the CUP, and has become a disorderly house as prohibited in the applicable CUP. The City also argues that it has provided sufficient notice of

these violations to both CNC Puma, d.b.a. The Bank, and to Zip Third. Accordingly, pursuant to TMC section 17.03.085, the City requests revocation of the CUP.

88. CNC Puma, d.b.a. The Bank, argues that operating hours as set forth in the 2012 minor modification of the CUP are erroneous and not valid because the City simply, erroneously, and carelessly, copied and pasted the operating hours from the 2007 CUP into the 2012 CUP without consideration of the 2008 minor modification to the CUP. Accordingly, CNC Puma, d.b.a. The Bank, argues that the approved operating hours in the 2012 minor modification to the CUP are not applicable and the 2008 minor modification to the CUP is applicable. CNC Puma, d.b.a. The Bank, also argues that the City's evidence regarding the "disorderly house" issue is insufficient to establish that The Bank was responsible for all the issues in Old Town regarding fighting, public intoxication, and other issues constituting a disorderly house. With regard to noise issues, CNC Puma, d.b.a. The Bank, argues that the evidence establishes that the noise issue was resolved in July 2021. However, CNC Puma, d.b.a. The Bank, failed to make any argument regarding the alleged violation of the CUP by having live entertainment beyond that approved.

Additionally, CNC Puma, d.b.a. The Bank, also argues that the City failed to do anything to enforce the 2012 CUP approved operating hours violations by The Bank for over nine years, essentially arguing that the doctrine of laches prevents the revocation of the CUP.

89. Zip Third argues that the City failed to provide proper notice to Zip Third regarding The Bank's violation of the 2012 minor modification of the CUP, and because of that "even should the ALJ revoke or modify as to The Bank, it should not revoke or modify as to Zip Third" because Zip Third has done nothing to support the CUP revocation and Zip Third is not responsible for The Bank's operations. Zip Third

also argues that the City failed to provide proper notice regarding the citations and civil penalties to Zip Third because the City did not send those notices by certified mail to Zip Third pursuant to TMC Section 1.21.050 (B).

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The Zoning Regulations regarding Conditional Use Permits in the City of Temecula are contained in Title 17 of the Temecula Municipal Code. Title 17.030.085 of the Temecula Municipal Code governs the revocation or modification of CUPs, including the procedure for appeal and public hearing. Pursuant to TMC Section 17.03.085 (A)(4), at the hearing of an appeal “[t]he planning director, or designee, shall have the burden of proof to establish by clear and convincing evidence the facts upon which his or her recommendation to revoke the permit is based.”

2. “Clear and convincing evidence” requires a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a high probability that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

Applicable TMC Sections

3. Title 17.030.085 (A)(1)(a) of the TMC provides:

If the planning director determines that any conditions of approval of a conditional use permit, variance, development plan, or other land use entitlement have been violated, or that the permittee is operating in a manner that is

inconsistent with or that is not in accordance with the approved statement of operations, or that such entitlement is being used in a way that is injurious to the public health, safety, or welfare, the planning director shall send notice to the permit holder and the city clerk. The planning director may consult with the chief of police or fire chief in making this determination. The notice shall provide sufficient information to inform the permit holder of the reasons why the planning director is recommending that the permit be revoked and shall specifically identify the findings for revocation as set forth in subsection (A)(4) below, and that a public hearing shall be held before an independent hearing officer to determine whether the permit should be revoked, modified, or remain unchanged.

4. Title 17.030.085 (A)(1)(b) of the TMC provides that the city clerk shall refer the matter to the California Office of Administrative Hearings for the assignment of an administrative law judge to serve as an independent hearing officer, and a hearing regarding the revocation of a CUP "shall be heard within forty-five days of referral to the Office of Administrative Hearings, but may be extended for due cause including scheduling limitations of the hearing officer."

5. Title 17.030.085 (A)(5) of the TMC provides:

Revocation. The independent hearing officer may revoke a permit, or impose or modify any conditions imposed on the permit if he or she finds that any of the following findings can be made:

- a. That the permit was obtained by omission, misrepresentation, or fraud;
- b. That any of the conditions of approval for the permit have not been met, or the use is operating in a manner that is inconsistent with any of the conditions of approval;
- c. That the use for which the permit was granted is operating in violation of any statute, ordinance, law or regulation;
- d. That the permit is being exercised in a way that is detrimental to the public health, safety or welfare or constitutes a nuisance.

6. Title 17.030.085 (A)(7) of the Temecula Municipal Code provides:

Public Hearing Before the Planning Commission. The planning commission shall hold a public hearing to review the independent hearing officer's decision on the permit revocation. Notice of the public hearing shall be given pursuant to subsection (A)(2) of this section. The notice of public hearing shall briefly summarize the grounds for the independent hearing officer's decision to revoke the permit, modify any conditions of approval, or allow the permit to remain in place unchanged. The planning commission shall review the transcript of the proceeding before the independent hearing officer and the findings of fact and law issued by the independent hearing officer. The planning

commission shall only consider the evidence presented at the hearing before the independent hearing officer as well as any new evidence presented by the public at the public hearing before the planning commission. The city clerk is authorized to retain an attorney to advise the planning commission. The planning commission's decision to confirm, modify or overturn the independent hearing officer's decision shall be set forth in a resolution. The city clerk shall mail a copy of the resolution to the permit holder along with a proof of service. If the planning commission decision is not timely appealed, the revocation of the permit or any modifications to the conditions of approval shall be effective upon adoption of the planning commission resolution.

Evaluation

7. The City has established by clear and convincing evidence that the approved conditions of the 2012 minor modification to the CUP are applicable in this matter, as opposed to the 2008 minor modification to the CUP. The City has also established by clear and convincing evidence that CNC Puma, d.b.a. The Bank, has violated condition 12 of the 2012 CUP by continuously operating outside of the approved hours of operation; has violated condition 12 of the 2012 CUP by selling alcohol to customers at hours beyond that permitted by the 2012 CUP; has violated condition 9 of the CUP by having live entertainment of a D.J. at The Bank, which is beyond the live entertainment permitted in the 2012 CUP; and violated condition 28 c. for becoming a disorderly house.

APPROVED CONDITIONS OF THE 2012 MINOR MODIFICATION TO THE CUP

8. CNC Puma, d.b.a. The Bank's, argument that the 2008 Minor Modification to the CUP is the applicable CUP setting approved final conditions is unpersuasive. The City established by clear and convincing evidence, through the testimony of Luke Watson and others that the final conditions of approval in the 2012 minor modification to the CUP are those conditions that are applicable for The Bank's hours of operation and otherwise. Mr. Puma and Ms. Lane's testimony that the City simply "made a mistake" by copying the approved operating hours from the 2007 CUP was not persuasive, particularly in light of the credible testimony of Stuart Fisk, who explained that the change in those operational hours in the 2012 minor modification to the CUP was purposeful and intentional by the City. Notably, when he received the approval for the 2012 minor modification to the CUP, Mr. Puma did not read them or ever appeal those approved operating hours, which would have been the proper avenue to assert such a mistake on the part of the City. Furthermore, despite over a year of citations and civil penalties for operating outside of those approved hours, Ms. Lane (or any person from The Bank) never appealed or challenged the asserted approved operating hours to the City. Instead, Ms. Lane simply paid the fines. If she believed that the approved operational hours were incorrect, then her recourse would have been to appeal the citations. Additionally, never during this process did either Mr. Puma, or any owner of CNC Puma, d.b.a. The Bank, ever apply for another minor modification to the CUP to correct the hours of operation to those they believed were correct. The inaction of any owner of The Bank to address the issue of the approved operating hours undercuts their argument that the approved operating hours of the 2012 minor modification to the CUP are applicable in this matter.

THE BANK'S VIOLATIONS OF THE 2012 MINOR MODIFICATION TO THE CUP

9. The City established by clear and convincing evidence that CNC Puma, d.b.a. The Bank, frequently and continuously violated the approved conditions of the 2012 minor modification to the CUP. Specifically, both Ms. Lane and Mr. Puma admitted that they operated The Bank until 2:00 a.m., with service of alcohol well after 10:00 p.m., which is well beyond the allowable 11:00 p.m. operation time and 10:00 p.m. approved time to serve alcohol, because they both mistakenly believed they were entitled to do so under the approved conditions. Their mistaken beliefs do not absolve them from their violations. Additionally, both Mr. Puma and Ms. Lane asserted that a live D.J. with recorded music and speakers, as well as a drag show do not violate condition 9 of the 2012 CUP. Their assertion was unpersuasive. A live D.J. is a form of live entertainment, and so is a drag show, and both of those forms of entertainment go well beyond one vocalist and one instrument to be used during lunch and dinner. Indeed, the D.J. performed up until 1:00 a.m., which is obviously after dinner.

10. Finally, with regard to condition 28 c. of the 2012 minor modification to the CUP related to a disorderly house, Sergeant Hephner's testimony regarding activities at and around The Bank was credible and persuasive and established that The Bank had become a disorderly house, which is defined as "disturbs neighbors with noise, loud music, loitering, littering, vandalism, urination or defecation, graffiti etc." or that "has many ongoing crimes inside such as drunks, fights, assaults, prostitution, narcotics, etc." The City established by clear and convincing evidence that The Bank created loud noise beyond that allowed by the City's TMC with outdoor speakers and a D.J.; The Bank had many ongoing crimes including a murder that occurred at The Bank's patio, and many fights and incidents of public intoxication. Ms. Lane's assertion

that those things were happening around The Bank, but were not caused by The Bank, was simply unpersuasive.

THE DOCTRINE OF LACHES DOES NOT APPLY

11. CNC Puma, d.b.a. The Bank, asserted that the City failed to take any action against The Bank's failure to abide by the operating hours set forth in the 2012 CUP for over nine years, which appears to be an argument that the doctrine of laches applies to prevent the City from either revoking the CUP or enforcing the operating hours of the 2012 CUP. "The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." (*Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1381.) In this case there is no evidence that the City knew that The Bank was operating outside of the approved operating hours in the 2012 CUP until 2021 when it began issuing citations. Specifically, testimony from Mr. Cole established that the City was not aware of those violations until 2021. Accordingly, the doctrine of laches does not apply in this matter.

NOTIFICATION TO ZIP THIRD

12. Zip Third's argument that the City should be prevented from revoking the CUP because Zip Third was provided with insufficient notice regarding the citations and civil penalties in this matter is unpersuasive. Specifically, the issue in this matter is whether Zip Third was provided sufficient notice regarding the City's intention to revoke the CUP, and not whether Zip Third was provided sufficient notice of the underlying citations and civil penalties. However, the City established by clear and convincing evidence that Zip Third had received some notice regarding those citations and civil penalties at least as early as August 2021, because Mr. Cole sent both a letter

in August 2021 to Mr. Solomon at his Wilshire Blvd. address, as well as sent copies of 72 different civil penalty letters to Mr. Solomon at his Wilshire Blvd. address as early as August 2021. Mr. Solomon claimed that he did not receive these documents. However, he also admitted that he simply did not go to his office where those letters were sent during that time because of COVID. Accordingly, the City provided sufficient notice to Mr. Solomon regarding the violations of the CUP by The Bank.

13. Zip Third also argues that the City has been unfair to Zip Third because the City refuses to “work with them” to address The Bank’s violations. However, the TMC does not require the City to work with the property owner, but the TMC does provide a mechanism by which the City may revoke the CUP if repeated violations have been established pursuant to TMC Section 17.03.085. The City has met its obligations under the TMC for revocation of the CUP in this case, and the City has no obligation to “work with” the property owner otherwise. While Mr. Solomon credibly testified that the City’s revocation of the CUP will not stop the continued violations by The Bank, and that eviction of The Bank will do so. The only issue for determination in this hearing is whether the City has met its clear and convincing burden to establish that conditions of approval of the CUP have been violated and revocation of the CUP is appropriate under these circumstances and it has done so.

14. Zip Third’s argument that the CUP should be revoked with regard to CNC Puma, d.b.a. The Bank, and not with regard to Zip Third is also unpersuasive. Nothing in the TMC provides any authority by which such a revocation with regard to a tenant but not with regard to an owner is possible. Instead, the TMC simply sets forth the procedure by which the CUP may be revoked in total.

ORDER

The 2012 Minor Modification to the CUP, as well as the original 2007 CUP and the 2008 Minor Modification to the CUP, issued to CNC Puma, d.b.a. The Bank, and to Zip Third Investments, L.L.C. are revoked.

DATE: October 19, 2022

Debra D. Nye-Perkins

DEBRA D. NYE-PERKINS

Administrative Law Judge

Office of Administrative Hearings