



## COUNCIL MINUTES

May 4, 2015

The City Council of the City of Mesa met in a Study Session in the lower level meeting room of the Council Chambers, 57 East 1st Street, on May 4, 2015 at 5:02 p.m.

COUNCIL PRESENT	COUNCIL ABSENT	OFFICERS PRESENT
John Giles Alex Finter Christopher Glover Dennis Kavanaugh David Luna Dave Richins Kevin Thompson	None	Christopher Brady Debbie Spinner Dee Ann Mickelsen

1. Review items on the agenda for the May 4, 2015 Regular Council meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

Conflict of interest: None.

Items deleted from the consent agenda: None.

Business License and Revenue Collections Administrator Tim Meyer reported that the applicant submitted a business plan for the Council to review (**See Attachment 1**) as it relates to item 3-f (Nile Theater - A music venue with a bar is requesting a new Series 6 Bar License for The Mantooth Group, LLC, 105 West Main Street – Michelle Donovan, agent. There is currently no existing license at this location. There exists a Permanent Injunction (Maricopa County Superior Court Case CV2002-011923) pertaining to the property issued pursuant to Arizona Revised Statutes Title 12, Chapter 7, Article 12 [Abatement of Crime Property]) on the Regular Council meeting agenda.

Responding to a question from Councilmember Glover, Assistant to the City Manager Natalie Lewis explained that the Good Neighbor Policy coincides with the Downtown Entertainment District (DED) by defining some best practices that enable a peaceful coexistence of the neighboring businesses. She noted that in 2012, the Council approved the DED with the intent of eliminating the state-required buffer of 300 feet between churches and schools and establishments that serve alcohol.

Ms. Lewis explained that the Good Neighbor Policy encourages new businesses to reach out to the Downtown Mesa Association (DMA) and talk to the Mesa Police Department (MPD) regarding situations such as the Nile Theater. She said that it was helpful for a business to provide its plan in order to keep the establishment safe and clean, manage the noise, and respect the neighbors. She added that if the applicant is successful in obtaining a liquor license, City staff would work with the business as it relates to the Good Neighbor Policy.

Councilmember Glover thanked staff and commented that if the tenant obtains a liquor license, he would hope it adheres to the Good Neighbor Policy and that there is an open dialogue between the businesses and residents downtown.

In response to inquiries from Mayor Giles and Councilmember Richins, City Attorney Debbie Spinner clarified that in 2002, the Maricopa County Attorney filed a civil action requesting a permanent injunction against the following parties: the property owner, C.K. Properties LLC; Kathleen and Claude W. Adams, the managing agents of C.K. Properties LLC; Nile Theater LLC; and Corey Adams, managing partner of Nile Theater LLC. She added that the injunction also states "and anyone acting in concert with them."

Ms. Spinner, in addition, commented that it was her understanding that Mantooth Group LLC (Mantooth) was leasing the building from C.K. Properties LLC and stated that the question was whether the injunction also applies to the tenant. She pointed out that the applicant has taken the legal position that the injunction does not apply to Mantooth. She noted that since the language was vague, her staff asked the applicant to contact the County Attorney's Office in an effort to have the injunction amended or lifted if it no longer applies.

Responding to a question from Councilmember Richins, Ms. Spinner stated that to ensure that the Arizona State Liquor Board (ASLB) is aware of the issue and that the injunction is properly reviewed, staff recommends that the Council give a conditional approval. She added that would allow the ASLB to determine whether the injunction is either compliant or not applicable. She noted that state law requires that the Council respond to a liquor license application within 60 days of receipt by either approval or a recommendation. She added that if no recommendation was made, then the ASLB would approve the application without a hearing, which she did not advise.

Councilmember Richins commented that he was satisfied with the operations of the tenant and that the City's goal was to build up the downtown district.

Discussion ensued relative to the unclear language in the injunction which could potentially impact the Nile Theater liquor license application.

Mayor Giles stated that he was concerned with the history of the Nile Theater and wanted to ensure that the applicant adhered to the Good neighbor Policy.

Ms. Spinner explained that the item must be removed from the consent agenda if a conditional approval is made by the Council, due to the requirement by state statute to specifically identify the basis for a conditional approval or denial.

Councilmember Finter recounted that past experiences resulted in the need for a hired police presence outside of buildings downtown.

In response to a question posed by Mayor Giles, Ms. Spinner advised that staff could request that the applicant follow the Good Neighbor Policy, but pointed out that such a request was not enforceable.

Ms. Lewis further clarified that liquor license holders are administratively required to receive a permit from Tax and Licensing on an annual basis. She assured everyone that the process provides the Council an opportunity to reinforce the Good Neighbor Policy if the holder does not adhere to such policies.

Ms. Spinner offered to write a motion for the item on the consent agenda that would include the attached minutes from this Study Session and provide the specific details of the conditions for approval as required by the ASLB.

Michelle Donovan, sole owner of Mantooth Group LLC, addressed the Council and explained that she has operated the Nile Theater for the past five years. She stated that she has made several attempts to contact the City Attorney's Office and County Attorney's Office to get the injunction lifted. She also noted that she has worked with the Neighborhood Economic Development Corporation (NEDCO) and the DMA for the past five years to ensure that Mantooth adheres to the Good Neighbor Policy.

Mayor Giles thanked Ms. Donovan for bringing a good business to downtown Mesa and for her willingness to comply with the Good Neighbor Policy. He stated that the Council was prepared to move forward with this item and leave it on the consent agenda.

Ms. Spinner suggested that the language of the agenda item be amended to include the previously discussed conditions and that staff be directed to submit the minutes from this meeting to the ASLB as documentation of the Council's discussion.

Ms. Donovan expressed concern that if the Council approved her application with conditions, the state was prone to automatically deny the license. She introduced her attorney Chad Kaffer, representing Davidson and Kaffer, PLLC.

Mr. Kaffer offered a short overview of the original injunction. He explained that his client has an "arm's length lease" with the owner of the building, meaning the permanent injunction, by its own terms, does not apply to Mantooth. He noted that the statute provides that the type of injunction issued (criminal abatement) can only apply to individuals and is not something that follows the property.

Mayor Giles commented that he did not want to prejudice Mantooth's application with the ASLB and said that he was content with leaving this item on the consent agenda for approval without conditions. He added that it was the consensus of the Council that the three conditions recommended by staff have been satisfied by the documentation and explanation received from the applicant.

2-a. Hear a presentation, discuss and provide direction regarding redevelopment along the Main Street corridor from Gilbert to Power.

(This item was continued to a future Study Session.)

2-b. Hear a presentation and discuss an update on the collection and administration of Transaction Privilege Tax.

Business Services Department Director Ed Quedens displayed a PowerPoint presentation regarding the Transaction Privilege Tax. (**See Attachment 2**)

Mr. Quedens explained that the Transaction Privilege Tax (TPT) is a tax on the privilege of doing business in Arizona. He stated that the vendors often pass on the TPT to the consumer. He reported that Mesa's local TPT for FY 13/14 was more than \$140 million.

Mr. Quedens stated that the Tax Simplification is an initiative that began under Governor Jan Brewer. He briefly highlighted four major pieces of legislation that followed. (See Page 3 of Attachment 2)

Mr. Quedens provided a short synopsis of the Centralized TPT Administration with the Arizona Department of Revenue (ADOR) as follows:

- Mesa's tax audit went live under the ADOR processes in January 2015.
- Multi-jurisdictional businesses are assigned through the ADOR and required to have audits done on each jurisdiction, either by the ADOR or by the City Tax Auditor.
- Staff will notify the ADOR of the City's intent to audit local businesses and all disputes and assessments will be handled through the ADOR.
- Mesa will have centralized licensing, which will go live in November 2015.
- Mesa will take over the local TPT license renewals in November 2016.
- ADOR's computer systems were not ready for the centralized tax return processing and the Governor's Office delayed the program until 2016.
- After January 2016, tax returns and payments will be remitted to and processed by the ADOR and payments will be transmitted to Mesa on a weekly basis.
- Updates to the ADOR systems are not complete and the project advanced today to a code "Yellow," although the project is still at risk of being delayed once again.

Mr. Quedens discussed the fiscal impacts in the proposed FY 15/16 budget due to assessments charged to the City of Mesa from the state. He said that there was a one-time assessment of \$333,671 for modifications to the State Tax System for TPT, as well as an ongoing cost of \$953,582 for state administration of the following:

- Urban Revenue Sharing
- HURF (Highway User Revenue Fund)
- City or County Special Tax District
- State Shared TPT
- Local TPT

In response to a question from Vice Mayor Kavanaugh, Mr. Quedens clarified that City staff would request a rebate from the state if the ADOR does not have a fully functioning system on time. He added that Mesa would incur additional costs in order to keep its system running while the new system continues being developed and revised.

Responding to a question from Councilmember Luna, Mr. Quedens explained that the cumulative tax systems of the ADOR are outdated and fragile. He remarked that the state is not concerned with which location of a business pays tax, whereas Mesa requires such detailed

information for multiple reasons. He said that such significant changes to the system, as well as reprogramming old technology, have proven to be cumbersome. He assured the Council that the state was committed to address those issues.

Mr. Quedens reviewed the reengineering of the Business Services Department and highlighted the goals of the Tax Audit Unit as follows:

- Rebuild the audit program under the ADOR processes to perform local and multi-jurisdictional audits.
- Rebuild the return rate from the current rate of 1.8 back up to four times the recovery.
- Build a Business Analysis/Intelligence Program that will facilitate staff in preventing tax leakage during the transition from the current tax system to state administration.
- Eliminate three vacant auditor positions.

In response to a question from Councilmember Richins, Mr. Quedens clarified that the Business Analysis/Intelligence Program relates to moving Mesa's existing data from its current tax system in order to analyze data with previous years and compare it to other databases.

Mr. Quedens, in addition, reported that the ADOR will begin collecting tax debts after January 2016. (See Page 10 of Attachment 2) He explained that Mesa's collections group has been transitioning to Citywide collections and will continue pursuing existing TPT debt, while also acquiring debts from other City departments. He noted that the group was being retitled to Citywide Collections due to the change in focus and was currently at 3.4 times the return on revenue versus expenses.

Mr. Quedens discussed the fact that the ADOR will assume the TPT licensing and return processing in 2016, while City staff continues to handle specialty licensing. (See Page 11 of Attachment 2) He pointed out that the business registry is a place for collecting various types of data to ascertain who is transacting business in the community. He added that the goal was to combine the specialty licensing with the other types of permits and to remove the burden on the business community of getting a separate license. He explained that once the business registry is accumulated, staff will understand which businesses are not included and also make a recommendation with respect to how to include others.

Councilmember Richins commented that most communities require a business license and suggested that it might be less confusing if Mesa did so as well. He noted that the Chamber of Commerce frequently inquires when the City will implement business licenses and added that he has been asking about it for seven years.

City Manager Christopher Brady responded that if there is a consensus of the Council who are interested in staff pursuing the issue, that would be helpful. He explained that the new system features a single portal to collect general business information and will prompt businesses for alarm permits, fire permits, and other specialty licenses. He added that once that registry is created, the Council can decide how to move forward.

In response to a question from Councilmember Finter, Mr. Brady clarified that staff specifically shopped for permitting software and determined that the vendor offered an additional module for collecting business information. He indicated that the information gathering process will also assist economic development purposes to determine the types of businesses in Mesa. He added that the Council may elect, in the future, to charge a nominal fee upfront to cover the operational expenses of the software.

In response to a question from Mayor Giles, Mr. Brady indicated that staff would be happy to provide a presentation of the new software to one of the Council subcommittees.

Mr. Quedens stated that several positions would be eliminated due to the transfer of TPT responsibilities to the state, including five vacant positions and three active positions that would be moved within the Department. (See Pages 12 through 15 respectively of Attachment 2) He reported that the staff changes would provide an ongoing savings of \$532,636 for FY 15/16. He added that a one-time funding addition of \$109,000 was requested in FY 15/16 in order to continue the operations of TPT processing until the ADOR's system goes live.

In response to a question from Mayor Giles, Mr. Quedens confirmed that his department would work with the City Manager on a contingency plan in the event that the TPT processing is delayed.

Assistant to the City Manager Scott Butler explained that the League of Arizona Cities and Towns continues to monitor the centralized TPT administration and is working closely with the ADOR. He thanked Governor Ducey's staff for working well with all of the parties involved for a smooth implementation.

Councilmember Glover expressed concern with the elimination of positions after the Business Services Department implements all the proposed changes and increases enforcement. He requested a follow-up from the Department to confirm that no additional staff is needed.

Mr. Brady responded that the changes would be effective July 1, 2015 and closely monitored. He stated that staff's goal was to comply with state law, while remaining effective in collections. He added that if the increased audits and collections are successful in reaching the goal of a 2.5 return, then it would be justified in bringing staff back, if necessary.

Mayor Giles commented that it was unfortunate that there was not more certainty related to the upcoming changes with respect to this issue.

3. Acknowledge receipt of minutes of various boards and committees.

- 3-a. Audit, Finance and Enterprise Committee meeting held April 2, 2015.
- 3-b. Sustainability and Transportation Committee meeting held March 19, 2015.
- 3-c. Public Safety Committee meeting held April 6, 2015.
- 3-d. Economic Development Advisory Board Accelerator Subcommittee meeting held February 19, 2015.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Luna, that receipt of the above-listed minutes be acknowledged.

Carried unanimously.

4. Hear reports on meetings and/or conferences attended.

There were no reports on meetings and/or conferences attended.

5. Scheduling of meetings and general information.

City Manager Christopher Brady stated that the meeting schedule is as follows:

Thursday, May 7, 2015, 7:30 a.m. – Study Session

6. Adjournment.

Without objection, the Study Session adjourned at 5:54 p.m.

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JOHN GILES, MAYOR

ATTEST:

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DEE ANN MICKELSEN, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 4<sup>th</sup> day of May, 2015. I further certify that the meeting was duly called and held and that a quorum was present.

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DEE ANN MICKELSEN, CITY CLERK

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(attachments – 2)

# Davidson & Kaffer, PLLC

“Applying Practical Business Experience to the Practice of Law”

**Frederick E. Davidson**

Admitted to Practice: Arizona, Colorado and New Jersey

**Chad R. Kaffer**

Admitted to Practice: Arizona

**Jason M. Cupo (Of Counsel)**

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Via U.S. First Class Mail and Email

April 30, 2015

Michelle Donovan  
Mantooth Group, LLC  
105 West Main Street  
Mesa, Arizona 85210

**Re: Romley adv. Adams, et. al;  
Maricopa County Cause No. CV2002-011923**

Dear Michelle,

You have requested a legal opinion as to whether an injunctive relief order (the “Order”) entered in the above-referenced matter is applicable to a current application for a liquor license by Mantooth Group, LLC (“Mantooth”) for that real property located at 105 West Main Street in Mesa, Arizona, (the “Property”) more commonly referred to as the “Nile Theater.” As the Order is specific in its terms as an injunction solely against the particular defendants within that matter, and not as against either a future arms-length tenant such as Mantooth, nor against the Nile Theater itself, the Order is inapplicable to Mantooth’s application. Indeed, by the plain language of *Ariz. R. Stat. § 12-993*, (the statute invoked by the movant in seeking injunctive relief), the relief sought is applicable only as to the parties so enjoined, not the “...place used for the criminal activity.”

### **Factual Background**

The Order at issue was entered in Maricopa County Civil Cause No. CV2002-011923, styled “Richard Romley v. Kathleen and Clause Adams, et. al.,” (the “Action”). That Action was filed on June 24, 2002, by the Maricopa County Attorney’s office against defendants Kathleen and Claude Adams, Corey Adams, CK Properties, LLC, and Nile Theater, LLC pursuant to *Ariz. Rev. Stat. § 12-998* (“Nuisance, Commercial Building Used For a Crime, Action to Abate and Prevent”).



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Defendants Kathleen and Claude Adams originally purchased, and later quitclaimed the Property to CK Properties, LLC, an Arizona limited liability company wholly owned by them, by virtue of that quit claim deed recorded as document number 94-0792489 in the records of the Maricopa County Recorder's Office. Upon information and belief, the Adamses thereafter operated the Nile Theater as a music and general entertainment venue.

Six years later, on or about March 16, 2000, the Adamses' son, Corey Adams, formed Nile Theater, LLC, an Arizona limited liability company wholly owned by Mr. Adams as its sole member. Upon information and belief, Nile Theater, LLC, thereafter undertook many of the daily operations of the Nile Theater, including procuring entertainment, coordinating with the public, security and the maintenance of the premises.

Due to issues regarding the maintenance and security of the Property and surrounding premises, as well as complaints by neighbors to the Property of activities of a criminal nature occurring at and around the Property, the Maricopa County Attorneys' office sought and received an injunctive Order against the Defendants; that Order is the subject of your inquiry. A copy of that injunctive relief Order is attached hereto as **Exhibit A**. Per the Order, the enjoined parties are "defendants Kathleen and Claude Adams, Corey Adams, CK Properties, LLC, and Nile Theater, LLC ... their agents, employees and anyone acting in concert with them..." The Order thereafter proscribes eight (8) courses of action to be undertaken by the defendants.

### Analysis

Mantooth is not enjoined by the Order as (1) the Order is specific as to those parties enjoined, which does not include nor anticipate Mantooth; and, (2) the Order does not serve as an injunction against the property itself either under applicable statute, nor by its clear terms.

1. The Order Is Not an Injunction as to Mantooth.

By its terms, the Order solely enjoins the actions of "defendants Kathleen and Claude Adams, Corey Adams, CK Properties, LLC, and Nile Theater, LLC ... their agents, employees and anyone acting in concert with them..." Mantooth is clearly not a named enjoined party to the Order (nor could it be, as Mantooth was not formed until 2009, seven years following the Court's entry of the Order). Of note, Mantooth is an Arizona limited liability company wholly owned by you, Michelle Donovan; and, as such, is not owned, operated, or in any way affiliated with any of the enjoined parties.

The only other possible inquiry, therefore, is to determine whether Mantooth may be deemed one of the named enjoined parties' "agents, employees [or] anyone acting in concert with them..." as contemplated by the Order. *See e.g. Bussart v. Superior Court*, 11 Ariz. App. 348, 351, 464 P. 2d 668 (1970)(Holding an injunction properly issued against a party over which

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the court has *in personam* jurisdiction may be binding upon certain classes of persons with notice who are not parties to the litigation). It bears noting that this language is commonplace in injunctive relief orders, and is reflective of the proscription imposed upon the Courts by *Ariz R. Civ. P.*, Rule 65(h), which requires that an injunction be “specific in its terms” and be “binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.” *Id.* For the reasons stated *infra*, Mantooth does not fall within any of the classes of persons sought to be enjoined by the Court’s Order, as Mantooth is not an agent, employee or person acting in concert with the named enjoined parties.

As an initial matter, in no sense can Mantooth be viewed as the “agent” of the named enjoined parties. “Agency” is defined as, “the fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.” See RESTATEMENT (3<sup>rd</sup>) of AGENCY, § 1.01. At no time has Mantooth ever been placed in the capacity of a fiduciary of any of the named enjoined parties, nor has Mantooth ever accepted such an agency appointment. Rather, Mantooth is an autonomous tenant doing business at the Property separate and distinct from those enjoined parties.

Moreover, Mantooth is not an employee of any of the enjoined parties. Arizona statutory law defines an employee as “any person who performs services for an employer under a contract of employment either made in this state or to be performed wholly or partly within this state.” See *Ariz. Rev. Stat.* § 23-350(1). Mantooth does not perform services under any contract for employment with any of the named enjoined parties. Rather, Mantooth’s status is as a lessee/tenant under an arms-length lease with CK Properties, LLC, the owner of the Property.

Finally, Mantooth cannot be said to be “acting in concert with” any of the named enjoined parties. “Concerted action” is defined as, “An action that has been planned, arranged, and agreed on by parties acting together to further some scheme or cause, so that all involved are liable for the actions of one another.” See BLACK’S LAW DICTIONARY, (10<sup>th</sup> Ed. 2014) (“Concerted Action”). Again, Mantooth has no plan, nor arrangement, scheme or cause with any of the named enjoined parties. Rather, Mantooth operates the Nile Theater at the Property solely for its own economic purposes, without regard to the named enjoined parties, except as to Mantooth’s duty to comply with its lease.

## 2. The Order Does Not Serve as An Injunction Against the Property Itself.

The Court’s Order is clear that it is issued only as to the named enjoined defendants, and not as to the Property itself. Indeed, no language exist within the Order that the Order shall be binding upon the Property, nor the Property’s tenants or future owners. Rather, the Court’s Order

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was issued “pursuant to the authority of A.R.S. § 12-998...” Of note, Section 12-998(B)(4) provides that any injunctive order is for the purpose of protecting the public from potential criminal activity, but shall not affect the “...place used for the criminal activity.” In effect, such an injunction is intended by statute to enjoin or compel behavior, not to serve as an unrecorded lien or restriction against the property.

While not explained specifically in the statute, the rationale against such an order is obvious- were the injunctive relief allowed to run with the land from lessor to lessee, or from purchaser and buyer, it would dramatically effect the actions a future tenant or purchaser could make with respect to the property. As the order would remain unrecorded, however, there would be no record or constructive notice to the potential tenant or purchaser of the restriction.

It also bears noting that, regardless of that fact that Mantooth is not bound by the Order, Mantooth has always operated itself in substantial conformance with that Order, including (1) the hiring of security for the Nile Theater, (2) the use of one security person per every 75 patrons, (3) the use of two security personnel to patrol the premises and surrounding areas, (4) a zero tolerance policy for any illegal conduct or contraband within the Nile Theater, (5) the posting of signage within the Nile Theater that patrons may be searched for illegal contraband, and may be subject to arrest for the possession of same, (6) a continuous policy of maintenance and cleaning of the premises and surrounding areas following events, (7) sales limited to legal beverages and excluding any products associated with the use of illegal drugs; and, (8) the observance of noise ordinances.

In fact, Mantooth has shown itself to be a responsible business owner and supporter and anchor of Mesa’s burgeoning downtown economy. The support from the City of Mesa, and local business owners, to Mantooth’s application for a license speaks volumes to this fact. While the Nile Theater certainly experienced incidents that were troubling and required Court intervention, such incidents occurred over thirteen (13) years ago, involving unrelated parties, under wholly differing economy circumstances surrounding and attracted to the Property. The use of those circumstances to judge Mantooth’s current application, is therefore wholly untenable, as Mantooth has operated responsibly throughout its tenure as a tenant at the Nile Theater, and encouraged a climate of growth within the downtown Mesa arts district.

### **Conclusion**

Mantooth Group, LLC is not subject to that injunctive relief order entered in Maricopa County Cause No. CV2002-011923. The Order is specific in its terms as an injunction solely against defendants Kathleen and Claude Adams, Corey Adams, CK Properties, LLC, and Nile Theater, LLC, and not as against either a future arms-length tenant such as Mantooth. Furthermore, as the Order was issued pursuant to *Ariz. R. Stat.* § 12-993, and does not explicitly state that it acts as an injunction against the Property, the injunction is applicable only as to the

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named defendants, not the Property. In fact, the language of the statute specifically prohibits the injunction from being entered against the Property itself, rather than specific defendants.

Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

*Chad R. Kaffer*

Chad R. Kaffer  
For the Firm

# EXHIBIT A

CERTIFIED COPY

FILED  
10/24/2002 @ 11:30 a.m.  
MICHAEL K. JEANES, Clerk  
By *Snyder*  
Deputy

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RICHARD M. ROMLEY  
MARICOPA COUNTY ATTORNEY

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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

RICHARD M. ROMLEY  
MARICOPA COUNTY ATTORNEY,

Plaintiff,

v.

KATHLEEN AND CLAUDE W. ADAMS,  
a married couple; COREY ADAMS, a  
single man; C.K. PROPERTIES, a  
Limited Liability Corp.; NILE THEATER,  
a Limited Liability Corp.,

Defendants.

NO. CV 2002-011923

**PERMANENT INJUNCTION**

(Non-Classified Civil)

PRIORITY CASE  
[A.R.S. 12-993]

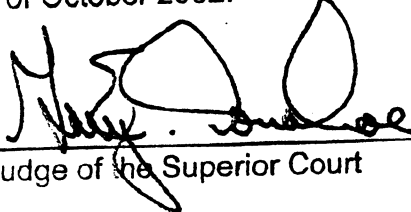
The Court, having considered the evidence presented at trial and the parties' post-hearing memoranda and pursuant to the authority of A.R.S §12-998, hereby grants Plaintiff's application for a permanent injunction and enjoins Kathleen and Claude W. Adams, Corey Adams, CK Properties L.L.C., and Nile Theater, L.L.C., (Nile Theater is located at 105 West Main Street in Mesa, Arizona) their agents, employees and anyone acting in concert with them as follows:

- 1 1. At all events taking place in the Nile Theater, licensed security companies and  
2 licensed security personnel shall be used.
- 3 2. The ratio of security personnel inside the Nile Theater during each event open to  
4 the public shall be 1 security personnel to 75 patrons. The name, address and  
5 telephone number of each security person working an event at the Nile Theater  
6 shall be maintained by the Nile Theater so that Plaintiff can independently verify  
7 compliance with this ratio requirement.
- 8 3. Defendants shall have no less than two security personnel patrolling the  
9 alleyway, Mahoney parking lot, Bank of America parking lot and Drew parking lot  
10 from one hour before each event at the Nile Theater to one hour after each  
11 event. The patrols are to be frequent enough to maintain a security presence in  
12 those areas in an effort to deter Nile Theater patrons from engaging in illegal  
13 conduct.
- 14 4. Each security person shall be instructed that illegal conduct shall not be  
15 tolerated. Drugs, drug paraphernalia and alcohol inside the Nile Theater are to  
16 be confiscated, the person in possession shall be detained and the City of Mesa  
17 police called. If the police do not respond in a reasonable time (15 to 20  
18 minutes), the person in possession of the contraband shall be released after his  
19 or her photograph is taken and his or her name and address is recorded on an  
20 incident report. If the police fail to respond, the photograph, a copy of the  
21 incident report and the contraband shall be turned over to the City of Mesa  
22 police. If the police fail to respond to the call the incident will not be utilized in  
determining whether Defendants have acted to abate the nuisance. Therefore,  
to preclude a dispute regarding whether the police were actually called,  
Defendants shall keep a copy of the incident report with a notation on the  
incident report of the time the call to the City of Mesa Police was placed, the  
name of the person placing the call and whether or not the Police responded.

- 1 5. At least two signs measuring no less than 24 inches x 36 inches with  
2 conspicuous lettering in no less than 72 points shall be posted in a visible and  
3 conspicuous place at each entrance to the Nile Theater, at the box office, in  
4 each restroom and in each public room of the Nile Theater warning patrons that  
5 upon entering or at any time while on the premises, they and their pockets,  
6 bags, and purses are subject to search for drugs, drug paraphernalia, alcohol  
7 and weapons and, that if any banned material is found, they will be  
8 photographed and detained until such time as the City of Mesa Police arrive.
- 9 6. By ten o'clock a.m. on the day following each event at the Nile Theater,  
10 employees or contractors of Defendants shall clean up the surrounding parking  
11 lots (Mahoney, Bank of America, and Drew), the alleyway, and Main Street for a  
12 distance of twenty feet on each side of the front of the Nile Theater. The level of  
13 the clean up is that those areas are to be restored to the same condition of  
14 cleanliness as when the event started. The clean up shall include, but is not  
15 limited to, handbills and flyers, beverage containers whether broken or not,  
16 syringes, clothing, condoms, necklaces, masks, blow pops and pacifiers.
- 17 7. Except for bottled water and other legal beverages, sales of products commonly  
18 associated with the use of illegal drugs, such as pacifiers, Vicks, surgical or dust  
19 masks and glow pops, shall be prohibited during all events.
- 20 8. After ten o'clock p.m., music playing inside the Nile Theater shall not be audible  
21 more than five feet beyond the property lines of the Nile Theater.

22 This order shall be effective on the date it is signed.

MADE AND ENTERED this 23<sup>rd</sup> day of October 2002.

BY:   
Judge of the Superior Court



The Mantooth Group has been the tenant at 105 West Main Street Mesa, Arizona 85201 since 2010. Mantooth has operated The Nile Theater for the past 5.5 years with none of the issues that the The Nile LLC had when they were in control of the building. Mantooth does not participate in the drug culture that once surrounded The Nile.

It is our understanding after seeking multiple legal opinions, that the injunction placed against The Adams family and Nile LLC, does not apply to Mantooth Group LLC. Mantooth operates as an independent company from The Adams. However, Mantooth does understand that might not be the opinion of other entities involves in the approval or denial of their liquor license application. If it is found that this injunction does pertain to Mantooth, they will follow the injunctions guidelines as an act of good faith and as a Good Neighbor in Downtown Mesa. Those guidelines and Mantooth's plan to adhere to them are listed below.

- I. *All events taking place in the Nile Theater, licensed security companies and licensed security personnel shall be used.*  
Mantooth has used professional security since opening.
- II. *The ratio of security personnel inside the Nile Theater during each event open to the public shall be 1 security personnel to 75 patrons. The name, address and telephone number of each security person working an event at the Nile Theater shall be maintained by the Nile Theater so that Plaintiff can independently verify compliance with this radio requirement.*  
Mantooth will posted the requested information in the hallway to the box office at the beginning of every show. The manager on duty will also have a copy. Furthermore, Mantooth will keep a file for each security guard.
- III. *Defendants shall have no less than two security personnel patrolling the alleyway, Mahoney parking lot, Bank of America parking lot and Drew parking lot from one hour before each event at the Nile Theater to one hour after each event. The patrols are to be frequent enough to maintain a security presence in those areas in an effort to deter Nile Theater patrons from engaging in illegal conduct.*  
Mantooth has at least one guard posted in the alleyway at all times as well as a two + man crew that does a sweep of the above mentioned areas every thirty minutes.
- IV. *Each security person shall be instructed that illegal conduct shall not be tolerated. Drugs, drug paraphernalia and alcohol inside the Nile Theater are to be confiscated, the person in possession shall be detailed and the City of Mesa police called. If the police do not respond in a reasonable time (15 to 20 minutes), the person is possession of the contraband shall be release after his or her photograph is taken and his or her name and address is record on an incident repost. If the police fail to respond, the photograph, a copy of the incident report and the contraband shall be turned over to the City of Mesa police. If the police fail to respond to the call the incident will not be utilized in determining whether Defendants have acted to abate the nuisance. Therefore, to preclude a dispute regarding whether the police were actually called, Defendants shall keep a copy of the incident report with a notation on the incident report of the time the call to the City of Mesa Police was place, the name of the person placing the call and where or not the Police responded.*

Mantooth does bag checks and pat downs on each patron as they enter the building. As it stands re-entry is allowed but patrons have been and will continue to be re-checked each time they enter the building. In the case the liquor license is achieved for 105 West Main Street, the venue will then become a no re-entry venue. Patrons will not be allowed to leave once they enter the building for the event unless they are leaving for the night. In addition, when contraband is found on any person entering The Nile, Mantooth will take possession of the items, call the police, and fill out the incident reports mentioned above. Protocol will be follow. Incident reports are already a part of the nightly responsibility of the lead security guard. Mantooth also call these legal guardian of any patrons found in violation of the rules and will only release minors to their parent or guardian.

- V. *At least two signs measuring no less than 24 inches x 36 inches with conspicuous lettering in no less than 72 points shall be posted in a visible and conspicuous place at each entrance to the Nile Theater, at the box office, in the each restroom and in each public room of the Nile Theater warning patrons that upon entering or at the any time while on the premises, they are their pockets, bags, and purses are subject to search for drugs, drug paraphernalia, alcohol, and weapons and, that if any banned material is found, the will be photographed and detained until such time as the City of Mesa Police arrive.*

Mantooth will post the above mentioned signs in all public rooms, entrances/exits, green rooms, and so on. As it stands, Mantooth has similar signs posted on the doors as well as a sign that reserves their right to refuse entrance to anyone wearing gang related, racist, homophobic, or otherwise dangerous themes. Mantooth has worked well with Mesa PD over the years to ensure that their patrons, the citizens of downtown and adjacent businesses are safe from illegal and or dangerous activities. Mantooth also lets all band members know that no drugs or alcohol are allowed in the building. If bands are caught they are asked to leave as they are violating the agreement made between Mantooth and the band's agent.

- VI. *By ten o'clock a.m. on the day following each event at the Nile Theater, employees or contractors of Defendants shall clean up the surrounding parking lots (Mahoney, Bank of America, and Drew), the alleyway, and Main Street for a distance of twenty feet on each side of the front of the Nile Theater. The level of the cleanup is that those areas are to restored to the same condition of the cleanliness as when the event started. The cleanup shall include, but is not limited to, handbills and flyers, beverage containers whether broken or not, syringes, clothing, condoms, necklaces, masks, blow pops and pacifiers.*

Mantooth cleans the surrounding areas of the Nile before and after every show. It is part of security's detail to clean all areas around the building as well as adjacent parking lots. Mantooth also ordered five extra recycle bins when they took procession of the building to not only ensure the cleanliness of the outside areas but to help cut down on their carbon footprint. 90% of all waste created by Mantooth is recyclable. Mantooth is also assisted by TLC on the weekends in sorting through the trash and recycle to make sure everything is going in the proper bin. In 5.5 years, Mantooth has received only 2 notices from the DMA about trash left behind by bands who left the parking lot late and those areas were cleaned immediately. Mantooth will continue to clean up after their patrons. Furthermore,

Mantooth has banned the handing out of fliers as patrons leave the building. Fliers can only be handed out as people enter the building in an effort to keep the trash inside.

- VII. *Except for bottled water and other legal beverages, sale of products commonly associated with the use of illegal drugs, such as pacifiers, Vicks, surgical or dust masks and glow pops, shall be prohibited.*

Mantooth only sell water, canned soda, chips, and candy inside of The Nile. Mantooth does give away ear plugs as the box office to protect patrons' hearing. With the issuance of the liquor license these items would then include canned beer on the main floor and hard alcohol and wine in the area no called LoFi Coffee. There will be a security plan in place that will be submitted to Commander Williams prior to the opening of the bar areas. There will be no alcohol in the basement level show room.

- VIII. *After ten o'clock p.m., music playing inside the Nile Theater shall not be audible more than five feet beyond the property lines of The Nile Theater.*

Mantooth closes the main doors to the lobby as well as the interior doors to The Nile during each band's set that goes on past 9:00pm. The doors are kept open to get the lines in at door time but remain closed while bands are playing to help stop sound bleed.

It is and has been Mantooth's intent to run a responsible and safe music venue. These guidelines were put in place to squash the illegal activity of a previous tenant. Mantooth is more than willing to work with Mesa PD and the City of Mesa to ensure that illegal activity will not take place once the liquor license is in place. Mantooth would like to see Downtown Mesa grow and they would like to remain being a Good Neighbor.

# City of Mesa

# Transaction Privilege Tax Update

City Council

May 4, 2015

Business Services Department



## What is Transaction Privilege Tax?

- In Arizona, TPT is a tax is on the privilege of doing business
- Goods, Some Services including Rentals, Construction
- Vendors usually pass TPT on to the consumer
- \$140,049,323 - Mesa Local TPT FY13-14

## Tax Simplification Legislation

- HB 2466 – Signed into law May 11, 2012
  - Online Portal
- HB 2111 – Signed into law June 25, 2013
  - Centralize TPT Administration with ADOR
- HB 2389 – Signed into law April 30, 2014
  - Clean up and clarification
- SB 1446 – Signed into law February 24, 2015
  - Clarified Contractor Tax Liability and Licensing

## Centralized TPT Administration with ADOR

- Tax Audit – Went Live 1/1/2015
  - Mesa Now Audits Under ADOR Processes
  - Multi-Jurisdictional Businesses
    - Multi-Jurisdictional Audit Required
    - Assigned through ADOR - ADOR or City Tax Auditor
  - Local Businesses
    - ADOR Notification – City Tax Auditor
  - Assessments Issued Through ADOR
  - Disputes Handled Through ADOR

## Centralized TPT Administration with ADOR

- Centralized Licensing – Go-Live 11/2015
  - Still Have Local Licenses
  - Administered through ADOR
    - Renewals for 2016 Start in November
    - New 2016 Licenses through ADOR



## Centralized TPT Administration with ADOR

- Centralized Tax Return Processing – 2/1/2016
  - Transactions on or after 1/1/2016
    - Tax Returns and Payments Remitted to and Processed by ADOR
    - Payments Transmitted to us Weekly

## Centralized TPT Administration with ADOR

- Concerns
  - Full Program Was to Go-Live 1/1/2015
  - ADOR Computer Systems Were Not Ready
    - Licensing and Return Processing Delayed by Governor's Office to 1/1/2016
  - Updates to ADOR Systems Are Not Complete
    - Project is Currently Coded "Red" as Serious Risk of Not Being Complete on Time
    - ADOR Working to Get Project Back to Green and Deliver on Time
- There is a Considerable Risk That the Go-Live Will Be Delayed Again

## FY2016 Fiscal Impact from the State

- Charges Assessed to the City of Mesa in the FY2016 State Budget
  - \$333,671 – Modifications to the State Tax System for TPT (One-Time)
  - \$953,582 – State Administration (Ongoing)
    - Urban Revenue Sharing
    - HURF
    - City or County Special Tax District
    - State Shared TPT
    - Local TPT

## Department Reengineering

- Tax Audit Unit
- Rebuild Audit Program Under ADOR Processes
  - Local Audits
  - Multi-Jurisdictional Audits
  - Rebuild our return rate
- Build a Business Analysis/Intelligence Program
  - Transition Away from Current Tax System
  - Prevent Tax Leakage During Transition
  - Enhance Analysis of Mesa Tax Data
  - Find Non-Filing Businesses – Enhanced Revenue
- Eliminate 3 Vacant Auditor Positions

## Department Reengineering

- Tax Collections Unit
  - ADOR will Collect Tax Debts after 1/1/16
  - Transitioning to Citywide Collections
    - Existing TPT Debt
    - Taking on PD False Alarms, Fire, Housing, Property Damage, Human Resources (Benefits and Tuition Reimbursement), Code Compliance, Falcon Field
- 3.4 Times Revenue Returned versus Expenses
- Retitling the Unit to Collections

## Department Reengineering

- Licensing Office
  - ADOR will Take Over 2016 TPT Licensing and Return Processing
  - Still Handling Specialty Licensing
  - Business Registry
    - Alarms Permitting
    - Fire Safety Occupational Permit Application
  - Enhanced License Enforcement
- Eliminate 1 Tax & Licensing Specialist Position

## Department Reengineering

- **Payment Processing**
  - **ADOR will Take Over TPT Returns 2/1/16**
    - **No TPT Return Processing**
  - **Eliminate 2 Payment Processing Specialist Positions**

## Department Reengineering

- Mail Services
  - ADOR will Take Over TPT Returns 2/1/16
    - No Monthly TPT Return Forms Mailed
  - Other Reduced Mailing Initiatives
  - Eliminate .5 Vacant Mail Services Worker Position



## Department Reengineering

- **Non-TPT Changes**
  - **Customer Contact Center**
    - Eliminate .5 Vacant Customer Service Specialist Position
  - **PD False Alarms Unit**
    - Moved from PD Communications to Business Services Billing Operations
- **Revise our Organizational Structure**

# FY16 Department Reduction Summary

## **Reductions**

3 Tax Auditor Positions (Vacant Positions)	\$248,184
1 Tax License Specialist Position (Move Staff)*	\$59,465
2 Payment Processing Specialist Positions (Move Staff)*	\$127,415
1 Mail Services Worker Position (Vacant)	\$51,588
1 Customer Service Specialist Position-PT (Vacant)	\$31,584
Supplies & Print Costs for Tax Licenses & Returns*	\$14,400

**\$532,636**

## **FY2016 Addition**

Funding to Continue TPT Processing to ADOR Go-Live	\$109,000
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\* If ADOR Tax administration is delayed, reductions will also need to be delayed.

# Questions?