

1 **OFFICE OF THE HEARING EXAMINER**
2 **CITY OF TACOMA**

3 **IAN JOHNSON d/b/a**
4 **MANDUSTRIAL,**

5 **Appellant,**

6 **v.**

7 **CITY OF TACOMA,** a Washington
8 Municipal corporation, through its
9 Finance Department, Tax & License
10 Division,

11 **Respondent.**

HEX2023-009
(CA #00197048)

DECISION ON
CROSS-MOTIONS FOR
SUMMARY JUDGMENT

12 **THIS MATTER** comes now before JEFF H. CAPELL, the Hearing Examiner for the
13 City of Tacoma, Washington, on cross-motions filed by the parties requesting summary
14 judgment in their favor.¹ In a case status conference held with the parties on July 7, 2023, the
15 parties both stated their intention to bring a dispositive motion in this appeal, and they agreed
16 that bringing their motions was a reasonable way to move this appeal forward.² A motion
17 schedule was then agreed upon.

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20 ¹ The parties are set forth in the captioned heading above. Appellant, Ian Johnson d/b/a MANdustrial, is referred to
21 herein and throughout the motion pleadings as “Johnson” or “Appellant.” The City of Tacoma is referred to as the
“City.” The Tacoma Municipal Code is at times referred to herein by its abbreviation “TMC” and the Revised
Code of Washington is referred to by its common abbreviation “RCW.”

² Johnson had previously requested leave to conduct what appeared would be rather extensive discovery. On
inquiry, the focus of his intended discovery seemed more aimed at what Johnson described as his ultimate appeal
of this matter to federal court, rather than having any bearing on the actual issue(s) at hand in this appeal. Again,
after discussion, the parties determined to bring cross-motions for summary judgment.

DECISION ON CROSS-MOTIONS
FOR SUMMARY JUDGMENT

- 1 -

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1 Thereafter, the parties made the following submissions in conformance with the agreed upon
2 motion schedule:

- 3 - City’s Motion for Summary Judgment and Memorandum and Declaration in
4 Support, filed July 26, 2023. (“City Motion”)
- 5 - Motion for Summary Judgment in Favor of the Appellant, filed July 28, 2023.
6 (“Johnson Motion”)
- 7 - City’s Response to Appellant’s Motion for Summary Judgment, filed August 7, 2023.
8 (“City Response”)

9 The Appellant did not file a response. Additionally, although the agreed upon motion
10 schedule accounted for filing replies, neither party filed one. In considering the motions, the
11 Hearing Examiner reviewed the foregoing filings, together with any attachments and
12 accompanying documents, and cited authorities.

13 The motions are decided herein as submitted, without oral argument. Based upon the
14 record and filings in the case, the exhibits, and the legal arguments briefed by the parties, the
15 Hearing Examiner enters the following:

RELEVANT BACKGROUND

16 “Findings of fact on summary judgment are not proper, are superfluous, and are not
17 considered by [] [an] appellate court.”³ This is so because material facts are not supposed to be
18 in dispute if summary judgment is proper. Summary judgment is intended to decide strictly
19 legal issues in the absence of disputes over material facts. As a result, there are no findings to
20 be made from competing contentions here.

³ *Kries v. WA-SPOK Primary Care, LLC*, 190 Wn. App. 98, 117, 362 P.3d 974 (2015).

1 At the July 7, 2023 status conference, the parties agreed that their issues, for purposes of
2 their motions, are purely legal. Undisputed facts relevant to the parties’ motions and the
3 Decision rendered herein are as follows:

4 1. Johnson conducts business in the city of Tacoma at 401 East 25th Street, #C,
5 Tacoma, WA 98421.

6 2. Johnson operates his business currently as a sole proprietorship under the business
7 name “Mandustrial.”⁴ Mandustrial provides salon/grooming services geared towards men.
8 *Johnson Brief at ¶ 2.*

9 3. TMC 6B.10.040.A requires that any person who “[e]ngage[s] in any business,
10 calling, profession, trade, [or] occupation,…” must have “[a] license therefor from the City and
11 [must] pay[] the fees” associated therewith, “[u]nless the City requirement for a license is
12 preempted by state or federal law.”

13 4. RCW 35.22.280(32) authorizes “Any city of the first class…[t]o grant licenses for
14 any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for
15 revoking the same.”

16 5. Tacoma is a First Class, Charter City.

17 6. Johnson does not have a City issued business license for his business, and it
18 follows that he has not paid any license fees.

19 7. Johnson challenged the City’s authority to require him to have a City business
20 license in a prior proceeding before the Hearing Examiner in 2021 (HEX-2021-023, the “2021
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⁴ Also rendered “MANdustrial.” “Mandustrial, LLC” was previously registered with the Secretary of State as a limited liability company, but this LLC appears to have been administratively dissolved in 2019.

1 Appeal”). The 2021 Appeal was decided on cross-motions for summary judgment in favor of
2 the City.

3 8. In the 2021 Appeal, Johnson argued, in short, that any authority the City thought it
4 had to require a business license and charge fees therefor was preempted by the United States
5 Constitution and interpreting case law. None of the cases Johnson cited in his motion stood for
6 that proposition however, and the Examiner’s decision was not based on any constitutional
7 rulings (see reasoning herein below). The Examiner determined that deciding constitutional
8 issues is beyond his jurisdiction. Instead, the Examiner recognized and upheld the City’s
9 authority to require a business license under the state and local laws cited above at paragraphs 3
10 and 4 due to Johnson’s failure to provide any preempting authority.

11 9. Johnson again challenges the City’s authority to require him to have a business
12 license in order to operate within the limits of the city of Tacoma. Again, he argues that the
13 City’s business license requirement is unconstitutional and therefore is voluntary not
14 mandatory. He argues that he has a constitutional right to operate his business in the City
15 without a business license and that the City’s code enforcement action infringes on this right.

16 **ISSUE PRESENTED**

17 Whether the City has the authority to summarily suspend Johnson’s business activity
18 until Johnson obtains a City business license and pays the fee(s) therefor in order to conduct
19 business in the city of Tacoma?

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1 **AUTHORITY AND ANALYSIS**

2 1. The Hearing Examiner has subject matter jurisdiction over this appeal under TMC
3 1.23.050.B.9, as an “Appeal[] arising out of the Tax and License Code (Title 6).” TMC
4 6B.10.145 also confers jurisdiction over this appeal to the Examiner.

5 2. Johnson appears to attack the City’s code enforcement action under review here,
6 and apparently the Hearing Examiner’s authority to hear this appeal by claiming that because he
7 has never voluntarily obtained a City business license, the City cannot suspend something that
8 “[w]as never in place to begin with.” *Johnson Brief at* ¶ 6. Johnson misunderstands the City’s
9 code enforcement action and the nature of this proceeding. Under TMC 6B.10.145, the City
10 issued a summary suspension of Johnson’s business activity, not a suspension of a non-existent
11 business license. The suspension of business activity was issued, however, because of
12 Johnson’s lack of a business license. The City has the authority to issue such a suspension of
13 business activity for “Unlicensed operations” under TMC 6B.10.145.B.3.

14 3. The parties have both moved for summary judgment. Summary judgment is
15 intended to eliminate a trial or hearing if only questions of law present for resolution, and
16 neither party contests facts necessary to reach a legal determination.⁵ The applicability of a
17 city’s codified business license requirement is a legal question and therefore appropriate for
18 determination on summary judgment.⁶ Neither party has raised any disagreement over facts
19 material to the present appeal or their motions. Both agreed that their issues were legal, not
20 factual. Given the foregoing, summary judgment is appropriate here.

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⁵ *Marincovich v. Tarabochia*, 114 Wn.2d 271, 274, 787 P.2d 562 (1990); *Wilson v. Steinbach*, 98 Wn.2d 434, 656 P.2d 1030 (1982); *Locke v. City of Seattle*, 162 Wn.2d 474, 483, 172 P.3d 705 (2007).

⁶ *Wedbush Sec., Inc. v. City of Seattle*, 189 Wn. App. 360, 363, 358 P.3d 422 (2015) citing *Avanade, Inc. v. City of Seattle*, 151 Wn. App. 290, 297, 211 P.3d 476 (2009).

1 4. As set forth in the same detail in the 2021 Appeal, the existence and function of
2 the City’s Office of the Hearing Examiner (the “OHEX”) is authorized first at the state level
3 under RCW 35.63.130 and RCW 58.17.330. Tacoma Municipal Code 1.23 authorizes the
4 OHEX specifically at the City level, and further specifies the OHEX’s areas of jurisdiction
5 (subject matter areas). Pursuant to RCW 35.63.130, a local “[l]egislative body may vest in a
6 hearing examiner the power to hear and decide those issues it believes should be reviewed and
7 decided by a hearing examiner, including but not limited to: ... (b) Appeals of administrative
8 decisions or determinations;...” The summary suspension of operations appealed here is just
9 such an administrative decision.

10 5. Courts and administrative decision-making bodies in Washington State generally
11 have jurisdictional limits placed on them. The state’s Superior Courts are the most prominent
12 exception. Superior courts, on the other hand, are courts of general jurisdiction and are
13 empowered to hear virtually all disputes.⁷ Hearing examiners’ jurisdictional authority is
14 significantly less broad.⁸ A hearing examiner’s jurisdiction is only as extensive as what its
15 creating body (the City Council) can, and does expressly grant under applicable statutes and
16 ordinances.⁹

17 6. As already set forth in the 2021 Appeal, controlling case law in Washington
18 indicates that hearing examiners are precluded from hearing constitutional challenges to the
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20 ⁷ *State ex rel. Martin v. Superior Court*, 101 Wash. 81, 93-94, 172 P. 257, 261 (1918) (“The superior courts of this
21 state are courts of general jurisdiction. They have power to hear and determine all matters, legal and equitable, and
all special proceedings known to the common law, except in so far as these powers have been expressly denied.”).
But *cf. Skagit Surveyors & Eng’rs, L.L.C.*, 135 Wn.2d at 555 (*When a superior court acts in its appellate capacity
it becomes a court of “limited statutory jurisdiction...”*).

⁸ *Skagit Surveyors & Eng’rs, L.L.C.*, 135 Wn.2d at 558, (The power of an administrative tribunal to fashion a
remedy is strictly limited by statute.).

⁹ *See e.g., Exendine v. City of Sammamish*, 127 Wn. App. 574, 586-587, 113 P.3d 494, 500-501 (2005).

1 ordinances they administer.¹⁰ As such, it would appear that the Hearing Examiner cannot
2 decide any constitutional issues raised in the parties’ motions, and cannot either invalidate or
3 uphold the City’s business license requirements on constitutional grounds. That
4 notwithstanding, there must actually be a constitutional issue upon which this appeal hinges.

5 7. Johnson’s challenge to the City’s business license requirements does assert its
6 basis once again in the Federal and State Constitutions, at least facially. Johnson once again
7 claims that, “This right [to operate a business without a license] is afforded to me by all judicial
8 court precedence and the United States constitution.” *Johnson Motion*, ¶. 6.¹¹ Unlike the 2021
9 Appeal, Johnson cites to not a single case that could be considered “judicial court precedence”
10 in his motion briefing. “Where no authorities are cited in support of a proposition, the court is
11 not required to search out authorities, but may assume that counsel, after diligent search, has
12 found none.”¹² Given that absence of authority, the Examiner can only conclude that there is
13 actually no “judicial court precedence” that excuses Johnson’s continued failure to comply with
14 the City’s business license requirements.

15 8. Johnson does reference the Supremacy Clause of the U.S. Constitution¹³ and

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¹⁰ Id. (“An administrative agency has no authority to determine the constitutionality of the statute it administers”);
19 see also *Prisk v. Poulsbo*, 46 Wn. App. 793, 798, 732 P.2d 1013, 1017 (1987). But see also *Hernandez v. City of*
20 *Kent*, No. 81783-3-I, 2021 Wash. App. LEXIS 2517 (Ct. App. Oct. 25, 2021) where a hearing examiner appears to
21 have heard and decided constitutional issues and no mention is made by the Court of Appeals that such was
unauthorized. This was done, however, in a different context, that of a civil forfeiture.

¹¹ This same language was used in the 2021 Appeal.

¹² *In re Disciplinary Proceeding Against Cottingham*, 191 Wn.2d 450, 465, 423 P.3d 818, 825 (2018); *DeHeer v.*
Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

¹³ The Supremacy Clause is found at Article VI, Paragraph 2 of the U.S. Constitution. It is commonly referred to
for the principle that the federal constitution, and federal law generally, take precedence over state laws, and even
state constitutions. Aside from merely mentioning it, Johnson made no tie into the Supremacy Clause or any
applicable federal law that preempts the City’s authority to require a business license.

1 the Fair Debt Collection Practices Act¹⁴ as authority for invalidating the City’s authority to
2 license businesses. He does not provide any analysis for how the Supremacy Clause or the
3 Fair Debt Collection Practices Act invalidate either or both of RCW 35.22.280(32) and/or
4 TMC 6B.10.040.A., and the Examiner is again under no obligation to seek out support in
5 the U.S. Constitution, the Fair Debt Collection Practices Act, or elsewhere in the corpus of
6 federal law, if Johnson cites none specifically. For the Examiner to decline deciding the
7 present motion on jurisdictional grounds (i.e., not having authority to decide a
8 constitutional issue), there has to be an actual constitutional issue advanced and supported
9 with authority. There is none. Therefore, the Examiner concludes that there are no grounds
10 to be found in the U.S. (or Washington State)¹⁵ Constitution(s), the Supremacy Clause, the
11 Fair Debt Collection Practices Act, or any other federal law that compel the Examiner to
12 invalidate the City’s business license requirements.

13 9. In addition to the foregoing, the City submits that this entire appeal is barred
14 under the principles of issue preclusion (collateral estoppel) and claim preclusion (res
15 judicata). The City is not wrong. The City cites *Weaver v. City of Everett*, 194 Wn.2d 464,
16 474, 450 P.3d 177 (2019) as authority for its contention that Johnson’s appeal here is barred
17 because of the 2021 Appeal having already been decided.¹⁶

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19 ¹⁴ This act is found at 15 U.S. Code § 1692 *et seq.* Johnson provided no citations within the act for particular
provisions that support his contentions. Where an argument is made with no citation to supporting authority, it can
be disregarded. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549, 551 (1992).

20 ¹⁵ There are no citations in Johnson’s motion to the Washington State Constitution.

21 ¹⁶ In *Weaver*, both collateral estoppel and res judicata are referred to by the Court as “equitable doctrines.” 194
Wn.2d at 472. As equitable doctrines, it may be beyond the Examiner’s authority/jurisdiction to apply them here.
At least one Washington case has opined that hearing examiners do not have the authority to hear and decide
equitable issues. *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 689 P.2d 1084 (1984). If that is
indeed the case, it should be noted that the Examiner’s decision herein to deny Johnson’s appeal does not turn
solely on the application of equitable doctrines, but rather on the lack of any actual constitutional, statutory, or case
law support for any of his contentions.

1 10. In *Weaver*, the State Supreme Court set forth the test for both collateral
2 estoppel and res judicata. For collateral estoppel to bar a claim, the following four elements
3 must be present:

4 (1) the issue decided in the earlier proceeding was identical to the
5 issue presented in the later proceeding; (2) the earlier proceeding
6 ended in a judgment on the merits; (3) the party against whom
7 collateral estoppel is asserted was a party to, or in privity with a
8 party to, the earlier proceeding; and (4) application of collateral
9 estoppel does not work an injustice on the party against whom it is
10 applied.

11 All four elements are present here. The issue in this appeal, as with the 2021 Appeal, is
12 whether the City can require Johnson to have a business license in order to operate. In the
13 2021 Appeal, the parties made their arguments and presented (or failed to present) their
14 supporting authority and a final decision was rendered.¹⁷ The parties in 2021 and now are
15 identical. Lastly, there is no injustice in requiring Johnson to obtain a business license to
16 operate in Tacoma, the same as is required of any other business. Johnson has made no
17 claim and presented no evidence that obtaining a business license is beyond his means or
18 would work a hardship. The issue on appeal here was already decided in the 2021 Appeal.
19 Collateral estoppel should prevent it being heard a second time.

20 11. “Res judicata precludes relitigation of an entire claim when a prior proceeding
21 involving the same parties and issues culminated in a judgment on the merits.”¹⁸ Again
there are four elements that a party claiming res judicata’s application must show. These
elements must be present “[a]s between a prior action and a subsequent challenged

¹⁷ To the Examiner’s knowledge, and after checking Pierce County LINX, it does not appear that the decision in the 2021 Appeal was appealed. As mentioned above, Johnson has stated on at least a couple occasions that he intends to appeal whatever decision obtains here to federal court.

¹⁸ *Weaver*, 194 Wn.2d at 480.

1 action,...” such as the 2021 Appeal and this present matter. The claiming party must show
2 “[c]oncurrence of identity ... (1) of subject-matter; (2) of cause of action; (3) of persons and
3 parties; and (4) in the quality of the persons for or against whom the claim is made.”¹⁹ Here,
4 the subject matter of the 2021 Appeal and this present matter are identical as is the cause of
5 action—an appeal of a code enforcement action due to Johnson’s failure to have a Tacoma
6 business license.²⁰ The persons and parties involved are identical, and being identical, there
7 is no disparity in the quality of the persons involved with the claims being made in either
8 2021 or the present. Ultimately, res judicata also should bar the present appeal given the
9 existing history of the 2021 Appeal. It is also noted that Johnson provided no response to
10 the City’s claims of issue and claim preclusion.

11 12. Given the lack of any authority exempting Johnson from the City’s business
12 license requirements on any of his claimed grounds, the Examiner is again compelled to
13 find that Johnson is in violation of Tacoma Municipal Code 6B.10.040.A and forced to
14 deny his appeal. The present appeal is identical in all material respects to the 2021 Appeal.

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18 ¹⁹ *Id.*

19 ²⁰ For purposes of determining identicalness of causes of action, our courts have said that the “mechanistic application of a simple test” is difficult to do. Nonetheless, courts have looked at the following criteria in making cause of action determinations:

- 20 (1) [W]hether rights or interests established in the prior judgment would be destroyed or
21 impaired by prosecution of the second action [this matter deals with the exact same rights
and interests as the 2021 Appeal]; (2) whether substantially the same evidence is presented
in the two actions [both appeals are based on materially identical facts]; (3) whether the two
suits involve infringement of the same right [yes]; and (4) whether the two suits arise out of
the same transactional nucleus of facts [also yes].

Rains v. State, 100 Wn.2d 660, 663-64, 674 P.2d 165, 168 (1983).

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ORDER

NOW THEREFORE, the Appellant’s Motion for Summary Judgment requesting to have the business license requirements of Tacoma Municipal Code 6B.10.040.A declared unconstitutional and therefore voluntary is DENIED. The City’s Motion for Summary Judgment is GRANTED. Johnson must either procure a City of Tacoma Business license for his operation, or abide by the suspension of operations notice previously posted.

ORDERED this 23rd day of August, 2023.



JEFF H. CAPELL, Hearing Examiner

1 **NOTICE**

2 **RECONSIDERATION/APEAL OF EXAMINER'S DECISION**

3 **RECONSIDERATION:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter,
5 or as otherwise provided by law, may file a motion with the Office of the Hearing Examiner
6 requesting reconsideration of a decision or recommendation entered by the Examiner. A
7 motion for reconsideration must be in writing and must set forth the alleged errors of
8 procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14
9 calendar days of the issuance of the Examiner's decision/recommendation, not counting the
10 day of issuance of the decision/recommendation. If the last day for filing the motion for
11 reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next
12 working day. The requirements set forth herein regarding the time limits for filing of
13 motions for reconsideration and contents of such motions are jurisdictional. Accordingly,
14 motions for reconsideration that are not timely filed with the Office of the Hearing
15 Examiner or do not set forth the alleged errors shall be dismissed by the Examiner. It shall
16 be within the sole discretion of the Examiner to determine whether an opportunity shall be
17 given to other parties for response to a motion for reconsideration. The Examiner, after a
18 review of the matter, shall take such further action as he/she deems appropriate, which may
19 include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code*
20 *1.23.140*)

12 **NOTICE**

13 **APEAL TO SUPERIOR COURT OF EXAMINER'S DECISION:**

14 Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's
15 decision may be appealable to the Superior Court for the State of Washington. Any court
16 action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner
17 will likely need to be commenced within 21 days of the entering of the decision by the
18 Examiner, unless otherwise provided by statute.

17 The Office of the Hearing Examiner is not aware of any avenue for appeal of a Hearing
18 Examiner decision to Federal Court. The Examiner's lack of such awareness is, of course, not
19 dispositive of anything when it comes to the Federal Court system