

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

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

**HEX2021-023**  
**(CA #500063974)**

4  
5 **Appellant,**

**DECISION ON**  
**CROSS-MOTIONS FOR**  
**SUMMARY JUDGMENT**

6 **v.**

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

9 **Respondent.**

10  
11 **THIS MATTER** comes now before JEFF H. CAPELL, the Hearing Examiner for the  
12 City of Tacoma, Washington, on cross-motions for summary judgment from the parties.<sup>1</sup> In a  
13 prehearing conference held with the parties on September 8, 2021, the parties agreed that there  
14 were no known material facts in dispute between them, and that their issues in this appeal were  
15 strictly legal. Both parties indicated their intent to file a motion for summary judgment on the  
16 legal issue(s), and a submission schedule was agreed upon by all involved.

17 Thereafter, the parties made the following submissions in conformance with the agreed  
18 upon motion schedule:

- 19 - City’s Motion for Summary Judgment, filed October 8, 2021 (“City Motion”),  
20 - Appellant’s Motion for Summary Judgment, filed October 8, 2021 (“Johnson  
21 Motion”),

---

<sup>1</sup> The parties are as set forth in the captioned heading above. Appellant, Ian Johnson d/b/a MANDustrial, is referred to 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.”

**DECISION ON**  
**CROSS-MOTIONS FOR**  
**SUMMARY JUDGMENT**

1 - City’s Response to Appellant’s Motion for Summary Judgment, filed October 22,  
2021 (“City Response”), and

2 - Appellant’s Response to City’s Motion for Summary Judgment, filed October 22,  
2021 (“Johnson Response”).

4 Although the agreed motion schedule accounted for filing replies, neither party filed one.<sup>2</sup>

5 **RELEVANT BACKGROUND**

6 “[F]indings of fact on summary judgment are not proper, are superfluous, and are not  
7 considered by the appellate court.”<sup>3</sup> This is so because material facts are not supposed to be in  
8 dispute for summary judgment to be proper, making summary judgment purely a determination  
9 of (a) legal issue(s). As a result, there are no findings to be made from competing contentions  
10 here.

11 Nonetheless, after reviewing the parties’ motions, as well as the other pleadings and  
12 filings of record in this matter to date, the Examiner does provide the following material  
13 background facts, upon which the parties appear to be in agreement, and upon which this  
14 decision is based:

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

17 2. The business operates as Johnson’s sole proprietorship under the business name  
18 “Mandustrial.”<sup>4</sup> Mandustrial provides salon/grooming services geared toward men.

19 3. TMC 6B.10.040.A requires that any person who “[e]ngage[s] in any business,  
20 calling, profession, trade, [or] occupation,…” must have “[a] license therefor from the City and  
21

---

<sup>2</sup> Replies were optional.

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

<sup>4</sup> 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 around 2019.

1 [must] pay[ ] the fees” associated therewith, “[u]nless the City requirement for a license is  
2 preempted by state or federal law.”

3 4. RCW 35.22.280, at subsection 32, authorizes “Any city of the first class...[t]o  
4 grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor,  
5 and to provide for revoking the same.”

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

7 6. Johnson does not have a City issued business license for Mandustrial, and it  
8 follows that he has not paid any license fees.

9 **ISSUE PRESENTED**

10 Whether the City has the authority to require Johnson to obtain a City business license  
11 and pay the fee therefor in order to lawfully conduct business in the city of Tacoma?<sup>5</sup>

12 The TMC requirement to obtain a business license and pay the fees therefor are  
13 collectively referred to hereafter as the “Business License Requirements.”

14 **ANALYSIS AND AUTHORITY**

15 1. The Hearing Examiner has subject matter jurisdiction over this appeal under TMC  
16 1.23.050.B.9, as an “Appeal[ ] arising out of the Tax and License Code (Title 6).” TMC  
17 6B.10.140.E also confers jurisdiction over this appeal to the Examiner.

18 2. The summary judgment process is intended to eliminate a trial or hearing if only  
19 questions of law remain for resolution, and neither party contests facts necessary to reach a

20 //

21  

---

<sup>5</sup> In his notice of appeal, Johnson stated that he intends to challenge the City’s notice of appeal timeline requirement “if we move to Superior Court.” Issues related to notice were not raised or briefed before the Hearing Examiner.

1 legal determination.<sup>6</sup> The applicability of a city’s codified business license requirement is a  
2 legal question and therefore appropriate for determination on summary judgment.<sup>7</sup> Neither  
3 party has contested the Background Facts set forth above. Given the foregoing, summary  
4 judgment is appropriate here.

5           2. The existence and function of the City’s Office of the Hearing Examiner (the  
6 “OHEX”) is authorized at the state level under RCW 35.63.130 and RCW 58.17.330. TMC  
7 1.23 authorizes the OHEX specifically at the City level and further specifies the OHEX’s  
8 jurisdiction (subject matter areas). Pursuant to RCW 35.63.130, a local “[l]egislative body may  
9 vest in a hearing examiner the power to hear and decide those issues it believes should be  
10 reviewed and decided by a hearing examiner, including but not limited to: ... (b) Appeals of  
11 administrative decisions or determinations;...” Hearing examiners are therefore creatures of  
12 statute/ordinance and have only the authority they are given by those same statutes and/or  
13 ordinances.<sup>8</sup>

14           3. Courts and administrative decision making bodies in Washington State generally  
15 have jurisdictional limits placed on them. The primary exception to these limits is the state’s  
16 Superior Courts, which are courts of general jurisdiction, and are empowered to hear virtually  
17 all disputes.<sup>9</sup> Hearing examiners’ jurisdictional authority is significantly less broad.<sup>10</sup> As  
18

---

19 <sup>6</sup> *Marincovich v. Tarabochia*, 114 Wn.2d 271, 274, 787 P.2d 562 (1990); *Wilson v. Steinbach*, 98 Wn.2d 434, 656  
20 P.2d 1030 (1982); *Locke v. City of Seattle*, 162 Wn.2d 474, 483, 172 P.3d 705 (2007).

21 <sup>7</sup> *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).

<sup>8</sup> *Skagit Surveyors & Eng’rs, L.L.C. v. Friends of Skagit County*, 135 Wn.2d 542, 958 P.2d 962 (1998).

<sup>9</sup> *State ex rel. Martin v. Superior Court*, 101 Wash. 81, 93-94, 172 P. 257, 261 (1918) (“The superior courts of this  
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...”*).

1 already alluded to, the breadth of a hearing examiner’s jurisdiction is only as extensive as what  
2 its creating body can, and does expressly grant.<sup>11</sup>

3 4. From controlling case law in Washington, it would appear that hearing examiners  
4 are precluded from hearing constitutional challenges.<sup>12</sup> As such, it would appear that the  
5 Hearing Examiner cannot decide any constitutional issues raised in the parties’ motions, and  
6 cannot either invalidate or uphold the Business License Requirements on constitutional  
7 grounds.

8 5. Johnson’s challenge to the Business License Requirements appears to be based in  
9 the Federal and State Constitutions, when he says in his briefing “[w]e believe it [obtaining a  
10 business license and paying the fee] is a voluntary action based on higher court rulings and the  
11 constitution.” *Johnson Motion, p. 1* (although pages are not numbered).

12 6. Johnson offered the following (reproduced verbatim) case references and  
13 arguments derived therefrom as his support for his position that compliance with the  
14 Business License Requirements is voluntary:

15 Argument for belief that City of Tacoma's Business License Rrequirements are  
16 voluntary.

17 Marbury v. Madison 5 u.s.137

18 Constitution of these United States is the supreme law of the land. Any conflict is  
19 null and void of law.

20 Murdock V. Pennsylvania 319 u.s. 105 (1943)

---

21 <sup>10</sup> *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.).

<sup>11</sup> See e.g., *Exendine v. City of Sammamish*, 127 Wn. App. 574, 586-587, 113 P.3d 494, 500-501 (2005).

<sup>12</sup> *Id.* (“An administrative agency has no authority to determine the constitutionality of the statute it administers”);  
see also *Prisk v. Poulsbo*, 46 Wn. App. 793, 798, 732 P.2d 1013, 1017 (1987). But see also *Hernandez v. City of  
Kent*, No. 81783-3-I, 2021 Wash. App. LEXIS 2517 (Ct. App. Oct. 25, 2021) where a hearing examiner appears to  
have heard and decided constitutional issues and no mention is made by the Court of Appeals that such was  
unauthorized.

1 Since I associated myself as a libertarian I believe my rights to voluntary not  
2 comply with the cities regulatory program is well within my constitution rights.

3 *Shuttlesworth v. Birmingham, Alabama, 373 u.s. 262*

4 If a state converts your right into a privilege and issues a license and “charges” a  
5 fee for it that fee is unconstitutional.

6 *Butcher's Union Co. V. Cresant City Co., 111 u.s.762*

7 The right to follow any of the common occupations of life is an inalienable  
8 right.<sup>13</sup> *Johnson Motion p. 1~2.*

9 7. While it is true that *Marbury v. Madison* established the fundamental legal  
10 principle that legislatures cannot pass laws that are contrary to the Constitution, Johnson  
11 does not cite to any provision of either the federal or state Constitution that is contrary to  
12 the local regulation of business licenses including the charging of fees therefor. While the  
13 Constitution is the supreme law of the land, and can nullify conflicting laws, Washington  
14 law does not require a decision maker to search out authorities in support of a party’s  
15 propositions when the party has not done so himself.<sup>14</sup> Johnson fails to make any tie  
16 between his contentions on appeal and the cases to which he cites, beginning with  
17 *Marbury v. Madison* and continuing down the line. Nothing in Johnson’s referenced cases  
18 declares business licenses and fees to be unconstitutional and therefore unenforceable.

19 8. Associating oneself with a particular political party does not change the  
20 Constitutional rights that are applicable to that person. Political parties are “[n]either  
21

---

<sup>13</sup> The correct citations for each of Johnson’s referenced cases is as follows: *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803); *Murdock v. Pennsylvania*, 319 U.S. 105, 63 S. Ct. 870, 87 L.Ed. 1292 (1943), *Shuttlesworth v. Birmingham*, 373 U.S. 262, 83 S. Ct. 1130, 10 L.Ed.2d 335 (1963), and *Butchers' Union Slaughter-House & Live-Stock Landing Co. v. Crescent City Live-Stock Landing & Slaughter-House Co.*, 111 U.S. 746, 4 S. Ct. 652, 28 L.Ed. 585 (1884).

<sup>14</sup> *Lodis v. Corbis Holdings, Inc.*, 172 Wn. App. 835, 862, 292 P.3d 779, 794 (2013), citing *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978).

1 mentioned, protected, nor favored in the constitution...”<sup>15</sup> The Constitutions, both of the  
2 United States and of Washington State, apply equally and identically to persons of all (or  
3 no) political affiliation(s). One does not gain different, or especially greater, constitutional  
4 rights based on one’s political beliefs or affiliations. There is no support for that proposition  
5 in the *Murdock* case. In spite of how dogmatic our national politics has become, there are  
6 no First Amendment, religion-like protections or exemptions granted to political party  
7 affiliation. The *Murdock* case is based in the First Amendment protection of the free  
8 exercise of religion. It does not translate to libertarian aspirations to be free from all  
9 government regulation.

10 9. The words “fee” and “license” appear nowhere in *Shuttlesworth*, a criminal  
11 case dealing with the issue of whether a charge of aiding and abetting can survive the  
12 dismissal of the underlying crime. Johnson has made no attempt to show how his  
13 contentions regarding, right, privileges, licenses and charges flow from the holding(s) of the  
14 *Shuttlesworth* decision. Again, the Examiner is not obligated to search out support for a  
15 party’s arguments when not offered by the party himself.<sup>16</sup> Johnson may be a *pro se* litigant  
16 in this administrative proceeding, but “A *pro se* litigant is held to the same rules of  
17 procedural and substantive law as an attorney” even in administrative proceedings.<sup>17</sup>

18 10. Again, the *Butcher’s Union* case appears to have virtually nothing to do with  
19 whether a city can require licenses and fees regulating business operations within the city’s  
20 limits.

21 \_\_\_\_\_  
<sup>15</sup> *Anderson v. Millikin*, 186 Wash. 602, 606-08, 59 P.2d 295, 296-97 (1936).

<sup>16</sup> See case cites at fn 14. See also *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

<sup>17</sup> *In re Decertification of Martin*, 154 Wn. App. 252, 265, 223 P.3d 1221, 1227 (2009).

1 11. In any event, in regard to Johnson’s constitutional issues, unless and until the  
2 courts of this state direct otherwise, the Examiner is compelled to follow the guidance of  
3 cases such as *Exendine v. City of Sammamish*, 127 Wn. App. 574, 586-587, 113 P.3d 494,  
4 500-501 (2005) and *Miller v. City of Sammamish*, 9 Wn. App. 2d 861, 447 P.3d 593  
5 (2019),<sup>18</sup> which have stated that a “[c]ity council is a legislative body, and it does not have  
6 the power to enforce, interpret, or rule on constitutional challenges. The City Council  
7 cannot delegate power it does not have.” The Court of Appeals made this pronouncement in  
8 *Miller* in the context of addressing a hearing examiner’s having concluded that he did not  
9 have the authority to determine the constitutional validity of a city penalty ordinance.

10 12. Given the Examiner’s lack of authority to exempt Johnson from the Business  
11 License Requirements on constitutional grounds, or in other words to invalidate those same  
12 requirements on constitutional grounds, the Examiner is compelled to find that Johnson is  
13 in violation of Tacoma Municipal Code 6B.10.040.A and to deny his appeal.

14 **ORDER**

15 NOW THEREFORE, the Appellant’s Motion for Summary Judgment requesting to  
16 have the Business License Requirements of Tacoma Municipal Code 6B.10.040.A declared  
17 unconstitutional and therefore voluntary is DENIED.

18 The City’s Motion for Summary Judgment seeking the confirmation of the 2nd civil  
19 penalty of \$250, imposed by the City of Tacoma through its Tax & License division for

20 //

21 //

---

<sup>18</sup> See also *Prisk v. Poulsbo* supra. at fn 12.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

Johnson’s failure to comply with the Business License Requirements is HEREBY granted.

**ORDERED** this 5th day of October, 2021.

  
\_\_\_\_\_  
**JEFF H. CAPELL, Hearing Examiner**

**NOTICE**

**TMC 6B.10.145.D Judicial review, provides the following:**

The decision of the Hearing Examiner shall be final. The licensee and/or the Director may seek review of the decision by the Superior Court of Washington in and for Pierce County within 21 days from the date of the Hearing Examiner’s decision.