



City of Tacoma
Hearing Examiner

January 10, 2017

FIRST CLASS MAIL DELIVERY

Laughing Man Productions, LLC
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(Interoffice Mail Delivery)

Brian Boice
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118 SW 330th Street #102
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Re: *Ian Johnson v. City of Tacoma, Finance Department, Tax & License*
File No. HEX 2016-035 (CA# 500102041)

To the Parties,

In regards to the above referenced case, please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision entered on January 10, 2016.

Sincerely,

Louisa Legg
Office Administrator

Enclosure: Findings, Conclusion, Decision

cc: Danielle Larson, Tax & License Division Manager, City of Tacoma

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED January 10, 2017, at Tacoma, WA.

ORIGINAL

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **LAUGHING MAN**
4 **PRODUCTIONS, LLC**

5 **Appellant,**

6 **v.**

7 **CITY OF TACOMA,**
8 **FINANCE DEPARTMENT,**
9 **TAX & LICENSE DIVISION,**

10 **Respondent.**

HEX 2016-035
CA #500102041

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION

11 **THIS MATTER** came on for hearing before the Hearing Examiner for the City of
12 Tacoma on December 15, 2016. Laughing Man Productions, LLC challenged the City of
13 Tacoma Tax and License Division's revocation of its business license. Ian Johnson appeared
14 on behalf of Appellant Laughing Man Productions, LLC and was represented at the hearing
15 by Attorney Brian Boice. The City of Tacoma was represented by Deputy City Attorney
16 Debra Casparian. Witnesses were placed under oath and testified. Exhibits were admitted
17 and reviewed. Based upon the evidence submitted, the Hearing Examiner makes the
18 following:

19 **FINDINGS OF FACT**

20 1. Ian Johnson is the primary owner of Laughing Man Productions, LLC
21 (Laughing Man). The business is supported by a number of additional investors who do not

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1 take an active management role in the company. The business purpose of the entity is
2 identified as running a haunted house and puzzle escape rooms. *Ex. R-5*. At times, the
3 business purpose description for Laughing Man has also included hosting of public and
4 private events. *Ex. R-1*. The haunted house is a seasonal use, but the escape rooms would be
5 active on a weekend per month or similar basis. *Johnson Testimony*.

6 2. Laughing Man planned to operate the haunted house and escape room activities
7 in a membership format. Interested persons would be able to purchase a membership for a
8 single night, a month, or a year. The members would be over 16 years old and would sign a
9 liability waiver. An additional admission fee would be charged for participation in offered
10 activities. *Johnson Testimony*.

11 3. The business location is 2310 Court E in Tacoma, Washington. The property
12 involved is a warehouse with two floors approximately 4,500 square feet in size available for
13 use. An additional upper area, under separate control and occupancy, opens to the 2300 block
14 of Tacoma Avenue South. This additional area is not part of the proposed business premises.
15 The warehouse was built in 1963 and does not have automatic sprinklers in the building or an
16 automatic fire detection and alarm system. *Seaman Testimony*.

17 4. The haunted house is primarily conducted in a dark environment. Patrons walk
18 through a maze and stop in various “rooms” where actors engage in actions designed to scare
19 the customers.¹ The low lighting, fog, and confusing route are part of the frightening
20 experience being created and delivered by the business. The puzzle escape rooms also have
21 the potential for dark lighting and constrained conditions. *Johnson Testimony*.

¹ Mr. Johnson also indicated that some areas used for business activities have a translucent type of lighting.

1 5. In October 2014, a different company run by Ian Johnson known as
2 MANdustrial, LLC, operated a haunted house attraction at the 2310 Court E site. On
3 October 18, 2014, the Tacoma Fire Department apparently inspected the property and noted
4 three conditions on the Temporary Special Event Permit for the site: (1) In the event of an
5 Emergency have crew members are [sic] to direct guests out of building; (2) Provide exits and
6 emergency lights; and (3) Follow IFC International Fire Code. *Exs. A-1; A-2.* MANdustrial
7 proceeded to conduct a haunted house at the Court E location in 2014. Prior to 2014, Mr.
8 Johnson had run haunted house attractions in 2012 and 2013 at a different location. *Johnson*
9 *Testimony.*

10 6. After the 2014 haunted house season, MANdustrial, LLC and Mr. Johnson
11 disputed the City's position that admissions tax was due on the ticket prices for the haunted
12 house. The disagreement centered on Mr. Johnson's belief that a competing business was
13 being treated more favorably as to admissions tax liability. MANdustrial, LLC appealed the
14 City's determination to the Hearing Examiner where the liability was upheld. The business
15 then paid the tax owing for 2014 activity. *Johnson Testimony.*

16 7. In 2015, Laughing Man applied for an Annual Business License and a
17 Temporary License for Sales or Show (Temporary Show License) to authorize the haunted
18 house activity and private and public event hosting at the 2310 Court E location. *Exs. R-1*
19 *and R-2.* The City of Tacoma denied the Temporary Show License based on
20 recommendations from the Tacoma Fire Department and the Tacoma Planning and
21 Development Services Department. The City departments were concerned about life safety

1 issues impacting patrons of the proposed business. *Ex. R-3; Larson Testimony*. The City
2 indicated that proper permits had not been obtained for construction of walls in the warehouse
3 space. The need for a Temporary Special Assembly Permit and the lack of a fire safety and
4 evacuation plan were also cited as deficiencies. *Id.* Laughing Man did not produce a haunted
5 house or other assembly related events at the 2310 Court E location in 2015. *Johnson*
6 *Testimony*.

7 8. After the 2015 Temporary Show License denial, the City communicated with
8 Mr. Johnson by email indicating that he could apply for a new license for the 2016 season and
9 advising him to contact the Fire Department and Planning and Development Services
10 Department regarding permit requirements several months in advance of the proposed events.
11 *Ex. R-4*. Mr. Johnson met with City staff at a scoping meeting regarding permit requirements
12 in the summer of 2016 and he submitted an application for Temporary License – Sales or
13 Show in June 2016. The event was described as haunted house/escape rooms. *Ex. R-5*.

14 9. The City denied the Temporary Show License application in a letter dated
15 September 26, 2016. The denial was based on recommendations from the Fire Department and
16 the Planning and Development Services Department. As in 2015, the City departments were
17 concerned about life safety issues endangering customers of the facility. *Ex. R-6; Larson*
18 *Testimony*. The City had informed Mr. Johnson during the scoping meeting that conducting a
19 haunted house on the premises would constitute a special amusement building use, which would
20 require compliance with the International Building Code (IBC) Section 411.² IBC Section 411
21 mandates a fire sprinkler system, fire alarm notification, and fire detection systems for a special

1 amusement building. *Ex. R-6; Ex. R-9*. Fire protection systems at the 2310 Court E premises
2 had not been improved since the 2015 application denial. *Seaman Testimony*. Laughing Man
3 did not appeal the 2015 license denials. *Larson Testimony*.

4 10. After the Temporary Show License application for Laughing Man Productions,
5 LLC was denied in September 2016, the City initiated revocation of the company's annual
6 business license. The annual business license revocation letter cited a number of provisions
7 of the TMC as authority for the City's action. *Ex. R-7*. Essentially the City revoked Laughing
8 Man's business license because the business had not identified authorized activity that would
9 take place at the business location. *Larson Testimony*. Laughing Man appealed the annual
10 business license revocation to the Hearing Examiner in this case.

11 11. Any Conclusion of Law deemed to be properly considered a Finding of Fact is
12 hereby adopted as such.

13 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the
14 following:

15 CONCLUSIONS OF LAW

16 1. The Hearing Examiner has jurisdiction over this case under TMC 6B.10.140.B.
17 The proceedings are conducted *de novo*. *TMC 1.23.060*. Appellant Ian Johnson, as the party
18 seeking review, has the burden of proof to establish by a preponderance of the evidence that the
19 City's decision revoking the annual business license under TMC 6B.10.140 was incorrect.
20 *TMC 1.23.070*.

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² The same substantive requirements are contained in the International Fire Code, Table 903.2.11.6; Section 914.7.1. *Ex. R-9; Seaman Testimony*.

1 2. The City identified a number of TMC sections as grounds for revocation of
2 Laughing Man’s annual business license. A license is properly revoked if the licensee has
3 failed to comply with provisions of the License Code or portions of the TMC.
4 *TMC 6B.10.140.A.2; TMC 6B.10.140.A.3.* In this case, the License Code and other provisions
5 of the TMC require a business to obtain a license to conduct a haunted house and/or escape
6 room activities. The license can only be granted if the facility being used to site the activity
7 meets fire and safety requirements. The evidence in this case showed that the 2310 Court E
8 structure lacked necessary fire safety features and failed to meet building code requirements for
9 a Special Amusement Building.

10 3. The parties dispute whether a Temporary Show License under TMC 6B.230 was
11 required for the Laughing Man’s activities. Whether a show license was the proper category, or
12 whether an entertainment license would be a better fit, the premises used for the type of activity
13 sponsored by Laughing Man must meet applicable safety standards. The 2310 Court E
14 warehouse facility does not meet the required safety standards for haunted house or escape
15 room uses and, therefore, fails to comply with provisions of the License Code and the TMC as
16 delineated in TMC 6B.10.140.A.2 and TMC 6B.10.140.A.3.

17 4. The City further based its decision to revoke Laughing Man’s annual business
18 license on 6B.10.140.A.6.b, which covers conduct of a business that would violate any law
19 relating to public health or safety. *TMC 6B.10.140.A.6.b.* The evidence demonstrated that
20 conducting the haunted house, escape room or other amusement activity at the identified
21 business location would violate safety standards and present a danger to the public welfare.

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1 Under those circumstances, the revocation was consistent with TMC 6B.10.140.A.6.b.

2 5. The License Code further states that a business license can be revoked for any
3 reason that would support denial of the license under TMC 6B.10.170. *TMC 6B.10.140.A.7.* In
4 this case, the conditions present at the business location fall short of applicable minimum safety
5 standards and provide legitimate grounds for denial of a business license for a haunted house,
6 escape room, or public assembly use. Laughing Man Productions, LLC's business plan to
7 engage in such activities at 2310 Court E would be injurious to the public health and safety
8 under both TMC 6B.10.170.B.3 and TMC 6B.10.170.D.3.

9 6. Laughing Man argues that denial of the Temporary Show License is an invalid
10 ground for revocation of the annual business license because the Temporary Show License was
11 not the proper license for the business activity Laughing Man was planning to conduct. While
12 the type of license necessary to encompass the types of activity Laughing Man was planning is
13 subject to legitimate debate, the condition of the 2310 Court E premises would preclude any
14 type of assembly use, whether categorized as a temporary show or an entertainment use. The
15 focus of the Code sections being used by the City as a basis for the business license revocation
16 is public safety, as addressed by the Code provisions governing the building improvements
17 necessary to protect patrons. The type of license denied by the City is not directly relevant
18 whether the safety deficiencies cited by the City as the basis for revoking the business license
19 were present. The un rebutted evidence shows that the business premises lacks sufficient safety
20 features to support public amusement uses.

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**FINDINGS OF FACT,
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1 7. Laughing Man also argues that the business is “exempt” under TMC 6B.80.035
2 because it would be run as a members only club. The terms of TMC 6B.80.035 outline the
3 exemption for members-only clubs as follows:

4 E. Entertainment provided for members and their guests at a private
5 club having an established membership when admission is not open to
6 the public. For purposes of this section, private club means
7 corporations or associations operated solely for object of national,
8 social, fraternal, patriotic, political or athletic nature, in which
9 membership is by application and regular dues are charged and the
10 advantages of which club belong to members, and the operation of
11 which is not primarily for monetary gain.

12 *TMC 6B.80.035.E.*

13 8. In this case, Laughing Man’s business operations fail to meet the criterion for
14 exemption that requires the club be operated “not primarily for monetary gain.” Laughing Man
15 is a profit-seeking business and any club for the purposes outlined would not qualify as purely
16 “national, social, fraternal, patriotic, political or athletic” under the terms of TMC 6B.80.035.E.
17 Likewise, the business does not qualify for exemption based on conducting private events
18 because participation in the haunted house and escape room activities would include an
19 admission charge. *TMC 6B.80.035.F.*

20 9. Laughing Man contends the City should not require it to install upgrades to fire
21 and safety systems that met Code at the time the warehouse was constructed in 1963. The City
insists that building code upgrades are triggered when the existing use is changed. *Seaman
Testimony; TMC 2.01.060.* In this instance, the warehouse/storage use is being changed to a
special amusement building use. Additional safety precautions are necessary when people will

1 be assembling for activities within a structure formerly designed and equipped for storage. *Id.*
2 Accordingly, even if the warehouse complied with building codes governing storage when it
3 was built over 50 years ago, that fact would not override the necessity for safety improvements
4 required to support a new special amusement building use.

5 10. The City of Tacoma revoked the business license for Laughing Man Productions,
6 LLC because the business activities described on the business license could not be legally
7 pursued at the business address indicated. The warehouse facility at 2310 Court E does not
8 have the life safety improvements necessary to conduct the haunted house, escape room, or
9 other amusement uses identified in the business description. The annual business license is
10 properly revoked when the activity being pursued cannot be legally conducted at the business
11 site. Laughing Man Productions, LLC can change the nature of its business to encompass a
12 wider range of activities while insuring that business activities would not be undertaken at the
13 2310 Court E site prior to necessary life safety upgrades. If such a modification to the business
14 description is pursued, it would be reasonable to allow Laughing Man to obtain a business
15 license. However, under the circumstances that existed at the time the 2016 business license
16 was revoked, the City was correct in terminating the license based on the TMC provisions
17 outlined above.

18 11. Any Finding of Fact deemed to be properly considered a Conclusion of Law is
19 hereby adopted as such.

20 Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing
21 Examiner enters the following:

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

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DECISION

The City of Tacoma's revocation of the 2016 annual business license for Laughing Man Productions, LLC is hereby AFFIRMED.

DATED this 10th day of January, 2017.


PHYLLIS K. MACLEOD, Hearing Examiner

**FINDINGS OF FACT,
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AND DECISION**

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RECONSIDERATION/APEAL OF EXAMINER’S DECISION

RECONSIDERATION:

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

APPEAL TO SUPERIOR COURT OF EXAMINER’S DECISION:

NOTICE

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's decision is appealable to the Superior Court for the State of Washington. Any court action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner shall be commenced within 21 days of the entering of the decision by the Hearing Examiner, unless otherwise provided by statute.

**FINDINGS OF FACT,
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