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14                                   SUPERIOR COURT OF THE STATE OF CALIFORNIA

15                                   FOR THE COUNTY OF ORANGE

16                                   CENTRAL JUSTICE CENTER

17                  1921 HARBOR BLVD LLC DBA HIGH  
18                  SEAS, a California limited liability  
19                  company,

20                                  Petitioner,

21                                  v.

22                  CITY OF COSTA MESA, a California  
23                  public entity; and  
24                  DOES 1 through 20,

25                                  Respondents.

CASE NO:

VERIFIED PETITION FOR A WRIT OF  
ORDINARY MANDATE [CODE CIV.  
PROC., § 1085]

26                                   INTRODUCTION

27                  1.        Petitioner 1921 Harbor Blvd LLC dba High Seas (“High Seas”) has spent over  
28                  two years and several million dollars applying to Respondent City of Costa Mesa (the “City”)  
to obtain issuance of retail storefront cannabis business permit (“CBP”) for the property  
located at 1921 Harbor Boulevard, Costa Mesa, California 92627 (the “Property”). On  
September 26, 2023, High Seas indisputably completed the final step of this arduous process  
when the City’s building department signed off on its final inspections of the approximately  
\$4,500,000.00 tenant improvement project at the Property.

2.        High Seas is ready for business. All that remains is for the City to complete the  
plainly ministerial step of issuing the CBP. The City has failed to issue the CBP. The City has  
not, and cannot, dispute the fact that High Seas has satisfied all conditions required by the City

1 in connection with its application for a CBP. In fact, since High Seas completed this  
2 permitting process on September 26, 2023, the City has simply stopped communicating with  
3 High Seas. Three full weeks have passed with no communication from the City. High Seas  
4 has reached out to the City via email (multiple times), letter from legal counsel, phone call  
5 (multiple times), and in person. All inquiries have been ignored and no response as to the  
6 reason for not issuing the CBP given.

7 3. There is no justification for the City not issuing the CBP. The City is well  
8 aware that all steps have been completed and the CBP must be issued in accord with the City  
9 of Costa Mesa Municipal Code, and due process rights of High Seas as protected under Article  
10 I, Section Seven of the California Constitution. The City has arbitrarily and capriciously  
11 refused to complete the final ministerial step of actually issuing High Seas its CBP.  
12 Accordingly, High Seas has been forced to file this petition to obtain a writ from this Court  
13 instructing the City to issue the CBP.

#### 14 JURISDICTION, VENUE, AND PARTIES

15 4. The Court has jurisdiction over this petition pursuant to Code of Civil Procedure  
16 section 1085.

17 5. Venue is proper in this Court because the City is a public entity located in this  
18 judicial district and the CBP license will be issued for commercial activity in the City.

19 6. High Seas is, and at all times mentioned was, a limited liability company duly  
20 organized and existing under the laws of the State of California and qualified to do business in  
21 California.

22 7. High Seas is informed and believes the City is, and at all times mentioned was,  
23 a general law city incorporated under the laws of the State of California and located in the  
24 County of Orange.

25 8. High Seas does not know the true names and capacities of the parties named as  
26 DOES 1 through 20 and, therefore, sues them by fictitious names. High Seas is informed and

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believes DOES 1 through 20 are in some way responsible for the events described in this petition or impacted by them. High Seas will seek leave to amend this petition when the true names and capacities of these parties have been ascertained.

MEASURE “Q”

9. On November 2, 2020, City voters approved the “City of Costa Mesa Retail Cannabis Tax and Regulation Measure,” also known as Measure Q.

10. Among other things, Measure Q authorized the City Council to adopt an ordinance which permits and regulates retail cannabis storefront (dispensaries) and non-storefront (deliveries) businesses.

11. On June 15, 2021, to implement Measure Q, the City adopted Ordinance No. 2021-08. A true and correct copy of Ordinance No. 2021-08 is attached to this Petition as Exhibit 1 and is incorporated by reference as if set forth in full at this point.

12. Among other things, Ordinance No. 2021-08 amended Chapter IX (Special Land Use Regulations), Article 21 (Location of Marijuana Distributing, Manufacturing, Research and Development and Testing Laboratories) of the Costa Mesa Municipal Code’s (the “Code”) land use matrix to change cannabis retail sales from prohibited to conditionally permitted with a minor conditional use permit and added a land use category for retail storefront cannabis sales.

13. Ordinance 2021-08 also added section 13-200.93 to Chapter IX, Article 21 to the Code, which establishes the permitted zones and planning application requirements for retail cannabis storefront uses.

14. Specifically, with regard to High Seas’ CBP application, Chapter IX, Article 21, Section 13-200.93 of the Code provides:

...

(c) The following planning application shall be required for cannabis retail uses:

(1) A conditional use permit shall be required for retail storefronts and non-storefronts; ...

...

(d) A conditional use permit may be issued to allow the location of a retail cannabis use pursuant to subsection (a) and (b) of this section, subject to the following conditions:

- (1) The requirements of Chapter III of this title have been met;
- (2) The findings for granting conditional use permit pursuant to section 13-29(g) are met;
- (3) The applicant obtains a cannabis business license for the location pursuant to Chapter VI of Title 9 of this Code; and
- (4) The use is conducted in compliance with all applicable state and local laws.

15. On June 15, 2021, to further implement Measure Q, the City adopted Ordinance No. 2021-09.

16. Relevant to this dispute, Ordinance No. 2021-09 amended Title 9, Chapter VI (CBPs) to establish additional permitting requirements for retail storefront CBPs in the City. A true and correct copy of Ordinance No. 2021-09 is attached to this Petition as Exhibit 2 and is incorporated by reference as if set forth in full at this point.

17. Title 9, Chapter VI of the Costa Mesa Municipal Code provides in relevant part:

- **9-481. Purpose and intent.** It is the purpose and intent of this chapter to regulate the ... retail sale, ... of cannabis and cannabis-related products in a manner which is responsible, which protects the health, safety, and welfare of the residents of Costa Mesa, and to enforce rules and regulations consistent with state law. In part to meet these objectives, a permit shall be required in order to own and/or to operate a cannabis business within the city. ...

- **9-482. Legal Authority.** Pursuant to Sections 5 and 7 of Article XI of the California Constitution and the provisions of Division 10 of the Business and Professions Code, the city is authorized to adopt ordinances that establish standards, requirements and regulations for local licenses and permits for cannabis and cannabis -related activity.

- **9-482.5. Authority of the City Manager.** ... The City Manager is authorized to make reasonable rules, policies, and procedures consistent with the intent and spirit of this Chapter concerning the applications, the application process, the information required of applicants, the application procedures, and the administration and procedures to be used and followed in the application process for permit applications and requests for permit changes or modifications pursuant to this Chapter, and the implementation and administration of social equity programs.

- **9-493. City business license required.** Prior to commencing operations, a cannabis business shall obtain and thereafter maintain a valid city business license pursuant to Chapter I of this title. Failure to do so will render the cannabis permit invalid.

- **9-494. Conditional use permit required.** No cannabis business permit shall be issued, and no person shall conduct a cannabis business unless a conditional use permit has been issued therefore pursuant to the provisions of Title 13, Chapter IX, Article 21 of this Code.

24. Per Title 9, Chapter II, Article 1, Section 9-116 of the Code, the City's Department of Economic and Development Services is responsible for administering the rules and regulations adopted by the City council for licensed commercial cannabis businesses within the City, and all CBP applications are processed and reviewed by the City's Department of Economic and Development Services.

25. The City's Department of Economic and Development Services website identifies several steps in the CBP application process in order to obtain the required permits:

1. Pre-Application;
2. CBP Application;
3. Conditional Use Permit;
4. Plan check and inspections; and
5. Issuance of CBP and Business License.

A true and correct copy of a printout of the City's Department of Economic and Development Services website as of October 11, 2023, is attached to this Petition as Exhibit 3 and is incorporated by reference as if set forth in full at this point.

26. The Department of Economic and Development Services makes application forms and submittal guides available on its website. True and correct copies of the following application forms and submittal guides available on the Department of Economic and Development Services website are attached to this Petition and incorporated by reference as if set forth in full at this point:

- Pre-Application Form and Submittal Guide: Cannabis Storefront Business—Exhibit 4;
- Cannabis Business Permit (CBP) Application Form and Submittal Guide – Exhibit 5;
- Conditional Use Permit (CUP) Form and Submittal Guide: Cannabis Retail Storefront and/or Delivery – Exhibit 6;

- Retail Cannabis Business Permit Defense and Indemnity Agreement – Exhibit 7; and
- Cannabis Application Fee Schedule – Exhibit 8.

27. The Department of Economic and Development Services also developed a “CBP Process Flowchart” of the CBP application process. A true and correct copy of the City’s Department of Economic and Development Services “CBP Process Flowchart” is attached to this Petition as Exhibit 9 and is incorporated by reference as if set forth in full at this point.

HIGH SEAS APPLIES FOR A CBP

28. High Seas has satisfactorily completed every step of the City’s Department of Economic and Development Services “CBP Process Flowchart.”

29. High Seas submitted a pre-application to operate a retail storefront cannabis business at the Property. On or about September 9, 2021, the City approved High Seas’ pre-application (FZ-21-118) submission. A true and correct copy of the City’s September 9, 2021 letter to High Seas is attached to this Petition as Exhibit 10 and is incorporated by reference as if set forth in full at this point.

30. On or about October 24, 2021, the City issued High Seas a Notice to Proceed, indicating High Seas satisfied the initial CBP application submittal requirements for its application, Number MA-21-08, and that all listed business owners and officers passed a preliminary background check. A true and correct copy of the City’s October 24, 2021 Notice to Proceed letter is attached to this Petition as Exhibit 11 and is incorporated by reference as if set forth in full at this point.

31. On June 2, 2022, the City Planning Commission approved Resolution No. PC-2022-12, granting a conditional use permit (“CUP”) to allow a retail storefront cannabis business with delivery to operate on the Property. A true and correct copy of Resolution No. PC-2022-12 is attached to this Petition as Exhibit 12 and is incorporated by reference as if set forth in full at this point.

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1           32.     On December 14, 2022, the California Department of Cannabis Control issued  
2 High Seas a Cannabis Retailer License, Number C10-0001208-LIC (“CA Cannabis License”).  
3 A true and correct copy of High Seas’ CA Cannabis License is attached to this Petition as  
4 Exhibit 13 and is incorporated by reference as if set forth in full at this point.

5           33.     On December 22, 2022, the City Building Department issued a commercial  
6 building permit for construction of the improvements on the Property required by the CUP.

7           34.     On April 17, 2023, Nancy Huynh, the City’s Development Services  
8 Department’s Senior Planner, emailed High Seas’ principal, Michael Moussalli, providing him  
9 with a checklist of items for High Seas’ final CBP inspection.

10          35.     Ms. Huynh’s list included:

- 11                 •     Conditions of approval matrix;
- 12                 •     Certificate of insurance (at least \$2 million including general and  
13 auto liability);
- 14                 •     Employee roster (name/title of each employee including all owners);
- 15                 •     List of delivery vehicles (make, model, license, registered owner  
16 name, if no delivery vehicles within initial opening, please note that  
17 on a separate letter or email to me);
- 18                 •     Retail Cannabis Business Permit Defense and Indemnity  
19 Agreement;
- 20                 •     City Business License (once you apply, ... provide me with the five-  
21 digit account number);
- 22                 •     Schedule appointment with Finance Department to review tax  
23 remittance process; email Ricardo Rosiles ...; and
- 24                 •     Final Security Plan (if any changes to floor plan layout that would  
25 affect the security plan exhibits, please update it and provide a copy  
26 of the final version).

27          36.     High Seas has completed each and every single one of these requests. High  
28 Seas has not received a request from the City which it has not completed.

37.     Most recently, as the final steps prior to issuance of the CBP, on September 11,  
2023, the City conducted and signed off on final inspections for the mechanical, plumbing,  
electrical, and fire prevention for the improvements at the Property.

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38. On September 22, 2023, the City conducted and signed off on final Planning approval and final Public Services Department approval for the improvements at the Property.

39. On September 26, 2023, the City conducted and signed off on final Building / Occupancy approval for the improvements at the Property. A true and correct copy of the inspection report for the tenant improvements is attached to this Petition as Exhibit 14 and is incorporated by reference as if set forth in full at this point.

**HIGH SEAS INDISPUTABLY COMPLETES ALL CBP APPLICATION REQUIREMENTS**

40. High Seas has satisfied all conditions for the City to complete the processing of its CBP application.

41. The City has arbitrarily and capriciously refused to continue processing High Seas' CBP application and has arbitrarily and capriciously refused to communicate with High Seas regarding the status of its CBP application. High Seas has no adequate remedy at law. High Seas' only recourse is to petition this Court for issuance of a writ to compel the City to issue High Seas its CBP.

**CLAIM FOR RELIEF**

(Ordinary Mandate – Against the City, and DOES 1 through 20)

42. High Seas incorporates by reference paragraphs 1 through 41 above as though set forth in full at this point.

43. The City's issuance of cannabis business permits is subject to the requirements set forth under the Costa Mesa Municipal Code, the application forms and submittal guides implemented by the City's Department of Economic and Development Services for issuing cannabis business permits in the City, and California law. The City is obligated to perform the ministerial duty of processing High Seas' CBP application and ultimately issue High Seas' CBP.

44. High Seas has no plain, speedy and adequate remedy in the ordinary course of law, other than the writ sought by this Petition. The City has essentially left High Seas' application for a CBP in administrative limbo, as the City has not denied High Seas'

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1 application which would trigger its right to an appeal of that decision. The only means by  
2 which High Seas may compel the City to follow its Municipal Code and process its application  
3 for a CBP, and ultimately issue the CBP, is this Petition for a writ of mandate.

4 PRAYER FOR RELIEF

5 WHEREFORE, High Seas prays as follows:

- 6 1. For a peremptory writ of mandate to be issued under seal of this Court that  
7 orders (a) the City issue High Seas' retail storefront cannabis business permit;  
8 2. For recovery of costs, including attorneys' fees, pursuant to Code of Civil  
9 Procedure section 1021.5 (as applicable); and  
10 3. For such other or further relief the Court deems just.

11 DATE: October 18, 2023

Respectfully submitted,

12 FINCH, THORNTON & BAIRD, LLP

13  
14 By: \_\_\_\_\_  
15 DAVID S. DEMIAN  
16 JUSTIN M. STOGER  
17 O. THOMAS BARAJAS  
Attorneys for Petitioner 1921 Harbor Blvd LLC  
dba High Seas

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VERIFICATION

I, Michael Moussali, have read VERIFIED PETITION FOR A WRIT OF ORDINARY  
MANDATE [CODE CIV. PROC., § 1085].

The matters stated in the document are true based on either my own knowledge, or  
information and belief.

I declare under penalty of perjury under the laws of the State of California that the  
above is true and correct to the best of my knowledge.

Executed on October \_\_\_\_, 2023 in Costa Mesa, California.

\_\_\_\_\_  
Michael Moussali