

IN THE THIRTEENTH CIRCUIT COURT FOR THE STATE OF FLORIDA  
CIRCUIT CIVIL DIVISION

Heriberto Orlando Rodriguez Manduley,  
d/b/a Ybor Cigars Plus  
Petitioner,

Circuit Ct. Case No.: 21-CA-1111  
Division: C

vs.

CITY OF TAMPA,  
Respondent.

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ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This case is before the Court on Petition for Writ of Prohibition filed February 8, 2021, by Petitioner Heriberto Manduley d/b/a Ybor Cigars Plus. This Court has reviewed the Petition, appendix, and applicable law.<sup>1</sup> Because this Court finds that the petition does not show that the City is acting in excess of its jurisdiction, the petition is denied.

The petition seeks the writ to prevent City Council from taking up proceedings related to suspending Petitioner's alcohol sales permit.<sup>2</sup> A hearing is scheduled February 18, 2021. Because the City has not yet undertaken an enforcement or revocation hearing, this Court may consider the petition. *Sparkman v. McClure*, 498 So. 2d 892, 895 (Fla. 1986)(Prohibition is appropriate to prevent a public official from exceeding his jurisdiction and is intended to be preventative, not corrective. It is not appropriate where the challenged act has already occurred).

Petitioner operates an establishment, Ybor Cigars Plus, which serves alcoholic beverages pursuant to wet zoning authorized by the City of Tampa. The establishment was cited on December 17, and December 20, 2020, for violating the Mayor's Executive Order 20-42, requiring business operators to take reasonable steps to enforce the wearing of masks and social distancing to prevent the spread of COVID-19. The December 17, 2020, citation was issued pursuant to Exec. Ord. 20-42(3)(b) for violations of the City's mask requirements by the establishment's employees and further provides payment and challenge instructions. The second citation is identical to the first, except that it cites violations of the mask requirements by patrons of the establishment. The citation directs an alleged violator who wishes to challenge the citation to contact the City to request a hearing, which would take place in the county court. Petitioner contends he elected not to pay the fine and, instead, sought a hearing, but a hearing has not been held.

In addition to the two citations already mentioned, the City also issued a notice of intent to suspend ability to engage in sales of alcoholic beverages under section 27-318 of the City's land development code. The January 7, 2021, notice sets forth the relevant health and safety directives issued by state, county, and city authorities to curb the

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<sup>1</sup> The court appreciates Petitioner's inclusion of copies of all municipal authority cited to in the petition, which greatly facilitated the court's review.

<sup>2</sup> The ability to engage in the sale of alcoholic beverages is also referred to as "wet zoning."

spread of COVID-19. It addressed the current situation as a state of emergency, and it specified the December 17, and December 20, 2020, violations as grounds for taking the proposed action.

Petitioner contends Exec. Ord. 20-42 divests the City of jurisdiction to conduct the suspension hearing before a court's adjudication of guilt and asks this court for a writ to stop the suspension hearing. In support of this contention, Petitioner relies on a provision in Exec. Ord. 20-42, which expressly invokes section 23-5, City of Tampa Code, for enforcement, allegedly to the exclusion of other enforcement proceedings. The City's Exec. Ord. 20-42 paragraph 6, states:

**Enforcement.** ... in the event voluntary compliance is not achieved then, as a last resort, pursuant to Sec. 252.46, Florida Statute, this Order shall have the full force and effect of a law of the City of Tampa, and shall be a noncriminal civil infraction, enforceable under Ch. 23.5, City of Tampa Code, as a Class II violation, which carries a maximum civil penalty of up to a \$500 fine. ... (emphasis added.)

Section 23-5 of the Tampa City Code is entitled "Supplemental Proceedings." Section 23-5.2, sets forth the proceedings for which it is applicable, saying:

**Sec. 23.5-2. - Applicability; nonapplicability.**

The provisions of this chapter shall apply to all violations of city codes or ordinances which are expressly declared by the City Council to be governed by the provisions of this chapter. This chapter shall not apply to the enforcement pursuant to F.S. §§ 553.79 and 553.80 of building codes adopted pursuant to F.S. § 553.73 as they apply to construction... (Emphasis added.)

As the above language shows, supplemental proceedings apply *only* if expressly declared by City Council to be governed by the provisions of the code's chapter 23, and the Executive Order did so. The Executive Order is intended to have the effect of an ordinance adopted by City Council, and to include the supplemental enforcement proceedings under section 23-5 as an additional enforcement option. Nothing in the Executive Order's language negates other enforcement mechanisms such as those found in section 27-318, however. Section 27-318(c)(1) and 27-318(c)(1)(f) provides for the revocation or suspension of alcohol sales under certain circumstances, including:

**Sec. 27-318 (c)(1) Revocation or suspension of sales for cause.**

Revocation or suspension of sales for cause. The City Council, after conducting a public hearing as provided for in section 27-318(d) is authorized to suspend or revoke the ability to sell alcoholic beverages from property which has previously been granted an approval. In order for city council to suspend or revoke, it must determine that the property owner, holder of the alcoholic beverage license, operator of the establishment, or any agent or employee thereof, have been found to have violated or have been convicted of any one (1) or more of the following:

(f) Failing to comply with any of the provisions of the health and sanitation ordinances of the city, the county or laws of the state after having received reasonable notice to eliminate or correct any condition existing on the property that is in violation of such ordinances or laws; [or]...

(2) For purposes of this section, the terms "convicted" or "conviction" shall mean being found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a violation of a municipal or county ordinance or state or federal law, as provided herein. The terms "violation" or "violated" shall mean being found in non-compliance with any part of this Code and shall include the terms "convicted" or "conviction," as determined by the reviewing city department. (Emphasis added.)

Exec. Ord. 20-42 was not required to expressly invoke enforcement proceedings under 27-318, and the Executive Order did not negate City Council's ability to conduct proceedings under the code's section 27-318 merely by adopting supplemental enforcement proceedings. To the extent Petitioner contends a conviction by a court is a prerequisite to conducting suspension or revocation proceedings under section 27-318, he is mistaken. An administrative finding of noncompliance also supports the suspension or revocation of the ability to engage in alcohol sales. Sec. 27-318(2), Tampa City Code. Because the petition does not show that City Council intends to act in excess of, or without jurisdiction, the petition is denied without need for a response.

Thus it is ORDERED that the petition is DENIED on the date imprinted with the Judge's signature.

Electronically Conformed 2/10/2021

James Barton

By: \_\_\_\_\_

CARL HINSON  
CIRCUIT COURT JUDGE

Electronic copies provided through JAWS