

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

OATES FOOD SERVICES II, LLC,
a Virginia limited liability company,

Plaintiff,

v.

Case No. 2:23cv272

JURY TRIAL DEMANDED

CITY COUNCIL OF THE CITY OF NORFOLK, VIRGINIA, in its official capacity,

SERVE: City Attorney Bernard Pishko
810 Union Street, Suite 900
Norfolk, Virginia 23510

and

KENNETH COOPER ALEXANDER, in his official capacity as Mayor and Councilmember of
the City of Norfolk, Virginia,

SERVE: City Attorney Bernard Pishko
810 Union Street, Suite 900
Norfolk, Virginia 23510

and

MARTIN A. THOMAS, JR., in his official capacity as Vice Mayor and Councilmember of the
City of Norfolk, Virginia,

SERVE: City Attorney Bernard Pishko
810 Union Street, Suite 900
Norfolk, Virginia 23510

and

COURTNEY R. DOYLE, in her official capacity as Councilmember of the City of Norfolk,
Virginia,

SERVE: City Attorney Bernard Pishko
810 Union Street, Suite 900
Norfolk, Virginia 23510

and

MAMIE B. JOHNSON, in her official capacity as Councilmember of the City of Norfolk, Virginia,

SERVE: City Attorney Bernard Pishko
810 Union Street, Suite 900
Norfolk, Virginia 23510

and

PAUL RIDDICK, in his official capacity as former Councilmember of the City of Norfolk, Virginia,

SERVE: City Attorney Bernard Pishko
810 Union Street, Suite 900
Norfolk, Virginia 23510

and

THOMAS R. SMIGIEL, JR., in his official capacity as Councilmember of the City of Norfolk, Virginia,

SERVE: City Attorney Bernard Pishko
810 Union Street, Suite 900
Norfolk, Virginia 23510

and

ANDRIA P. MCCLELLAN, in her official capacity as Councilmember of the City of Norfolk, Virginia,

SERVE: City Attorney Bernard Pishko
810 Union Street, Suite 900
Norfolk, Virginia 23510

and

DANICA J. ROYSTER, in her official capacity as Councilmember of the City of Norfolk, Virginia,

SERVE: City Attorney Bernard Pishko
810 Union Street, Suite 900
Norfolk, Virginia 23510

and

JOHN E. PAIGE, in his official capacity as Councilmember of the City of Norfolk, Virginia

SERVE: City Attorney Bernard Pishko
810 Union Street, Suite 900
Norfolk, Virginia 23510

and

CITY OF NORFOLK, VIRGINIA, a municipal corporation,

SERVE: City Attorney Bernard Pishko
810 Union Street, Suite 900
Norfolk, Virginia 23510

Defendants.

COMPLAINT

NOW COMES Plaintiff Oates Food Services II, LLC, a Virginia limited liability company (“Oates Food Services” or “Scotty Quixx”), by counsel and files this Complaint against the City Council of the City of Norfolk, Virginia, the Mayor, Vice-Mayor, and other Councilmembers and the former Councilmember of the City of Norfolk, in their official capacities as stated above (collectively “City Council”), and the City of Norfolk, Virginia (“City”) (together with City Council, “Defendants”) and in support thereof states as follows:

Introduction

1. The City and City Council unconstitutionally abused the power and resources of government to target and effectively destroy Scotty Quixx’s business because they did not want the young racial minority clientele it served in Downtown Norfolk. Scotty Quixx bar and restaurant operated on the 400 block of Granby Street for nearly 2 decades. Scotty Quixx and its employees, owners, and customers were collateral damage in the City and City Council’s desperate and misguided attempt to address violence in the wake of incidents near other establishments (not Scotty Quixx) in Downtown Norfolk in 2022. Faced with a significant shortage of law enforcement personnel, the City and City Council wanted to appear to voters to be addressing the violence problem. Thus, in a matter of weeks, the City and City Council targeted and searched for pretext to eliminate multiple bars and restaurants that attracted predominately young racial

minority clientele on weekend nights.¹ Despite significant effort, the City could not identify any safety concerns with Scotty Quixx. The City was only able to identify a possible reporting anomaly that, as City law prescribes, should be addressed with mere corrective measures rather than the drastic action of revoking Scotty Quixx's special exception to operate as an entertainment establishment and ultimately destroying the business financially and through its longstanding reputation with its customers. The City and City Council's actions were based on animus, prejudice, and the unfair and inaccurate stereotype that all bars and restaurants Downtown that attract a predominately young racial minority clientele on weekend nights contributed to a safety problem. These actions were contrary to law, logic, and basic fairness, subjecting the Defendants to liability pursuant to 42 U.S.C. § 1983, the purpose of which is to hold governments accountable when they violate the Constitution by abusing their power and immense public resources to bully citizens as the City and City Council have done here. This should not stand.

2. The City and City Council violated City law. The sole violation cited by the City was an alleged reporting inconsistency between sales numbers sent by Scotty Quixx to Virginia Alcoholic Beverage Control (the "ABC") for the Mixed Beverage Annual Review ("MBAR") and to the Norfolk City Commissioner of the Revenue for meals taxes. As set forth below, these reports were made in good faith. City law sets forth the remedy for inconsistent reporting which is corrective in nature rather than punitive. More specifically, the procedure under the ordinance places businesses that have submitted apparently inconsistent reporting numbers on an audit list should they apply for a new special exception or a modification of an existing one. Importantly, the law does not provide for a business to lose its special exception in the event of a single reporting

¹ "Weekend nights" in this Complaint refers to Friday nights from 7 PM through Saturday morning at 2:00 AM and Saturday night from 7:00 PM through Sunday morning at 2:00 AM.

inconsistency. Even when businesses are delinquent on paying meals taxes or have completely failed to pay meals taxes, the City's ordinance does not provide for the business to lose its special exception until it is afforded several chances to remedy the problem. Nevertheless, in its march to remove businesses and people they deemed undesirable from Downtown Norfolk using any pretext it could find, the Defendants bypassed City law and revoked Scotty Quixx's special exception. The goal in taking the subject actions was not to investigate, remedy, or even punish a reporting anomaly—it was to remove Scotty Quixx and its predominately young racial minority clientele from Downtown Norfolk.

3. These pretextual and unlawful motives are further demonstrated by the City's behavior before City Council. City Council considered and voted to revoke Scotty Quixx's special exception during its September 27, 2022 City Council Meeting. Both prior to and during that meeting, while feigning that the revocation only had to do with the reporting anomaly, the City Attorney and an Assistant City Attorney made false and inflammatory accusations to City Council that there was a shooting and/or murder inside Scotty Quixx in 2019. Such a shooting or murder did not occur. City and City Council were doing or saying whatever was needed—true or untrue—to ensure that Scotty Quixx and its predominately young racial minority clientele were removed from Downtown Norfolk.

4. Finally, while effectively putting Scotty Quixx out of business for a mere reporting error, the Defendants are using the City's own clerical error to argue that the revocation cannot be challenged in court. Before it was forced to shut down permanently, Scotty Quixx appealed the City Council's revocation in the Norfolk Circuit Court along with claims pursuant to 42 U.S.C. § 1983. For the first time in those proceedings, Defendants claimed that Oates Enterprises, LLC ("Oates Enterprises"), the former landlord, held the special exception, not Scotty Quixx. This is

despite the fact that Oates Food Services operated Scotty Quixx since 2013, paid meals taxes to the City, and otherwise interacted with numerous City agencies and personnel throughout that time. Defendants' claim is based on a single and obvious clerical error made by City staff that was unbeknownst to Scotty Quixx until the revocation process in 2022. In contradiction to their current position, the City and City Council used reporting numbers from Scotty Quixx, not Oates Enterprises, to support the revocation of the special exception. The City and City Council should not be permitted to conveniently avoid accountability by taking advantage of their own clerical error and contradicting the very basis for their action underlying this suit.

5. The City and City Council engaged in a relentless campaign to weaponize government power and act on their animus against Scotty Quixx and its clientele to achieve an end that they deemed politically favorable while ignoring their own ordinance and the Constitution of the United States. Defendants should be held accountable for their violation of due process and failure to afford equal protection under the law.

Parties

6. Plaintiff Oates Food Services is a Virginia limited liability company with a principal place of business in Norfolk, Virginia. Oates Food Services operated Scotty Quixx at 434 Granby Street, Norfolk, Virginia before the Special Exception was revoked by City Council on September 27, 2022, which precipitated this action. Oates Food Services holds a fictitious name certificate to do business as "Scotty Quixx."

7. Defendant City is a city and a political subdivision of the Commonwealth of Virginia.

8. Defendants the Mayor, Vice-Mayor, and other City Councilmembers listed in the caption of this case were members of Council, either currently or on September 27, 2022, when the revocation decision was made. They are being sued in their official capacities. Councilman

Riddick's term has ended since the revocation decision, and he is no longer on City Council but remains liable in his official capacity as a member of council when the actions set forth herein were taken. Councilman Riddick was replaced by Councilman Paige.

9. Defendant City Council is the governing body for the City.

Jurisdiction and Venue

10. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1343 because this action arises under the Constitution of the United States and federal law.

11. The Court has the authority to issue Declaratory Judgments that certain government actions are unconstitutional under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, and 28 U.S.C. § 1343(a) and 42 U.S.C. § 1983.

12. This Court has personal jurisdiction over Defendants.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to these claims occurred in this District. Moreover, Defendants all reside in this District.

14. There is an actual and justiciable controversy between Plaintiff and Defendants sufficient for the Court to issue relief under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202.

Factual Background

I. *Oates Food Services II, LLC is Awarded a Special Exception*

15. The Scotty Quixx bar and restaurant operated on the 400 block of Granby Street in Downtown Norfolk for nearly two decades until Defendants took the actions that precipitated this lawsuit.

16. Prior to 2013, the business was owned by the Oates family before it was sold to Alfred Ragas, Jr. ("Ragas") and Christopher M. Johnson ("Johnson"). The Oates family through an entity known as "Oates Enterprises II, LLC" remained the owner of the real property and the landlord.

In 2013, because of the change in ownership, the new owners applied for a special exception with the City of Norfolk to continue the operation of Scotty Quixx as an entertainment establishment, which allowed later closing times and the ability to serve alcohol.

17. On January 28, 2013, Ragas and Johnson submitted an application signed by both of them for a special exception for Oates Food Services to operate an “Entertainment Establishment” called “Scotty Quixx.” A copy of the application is included with and incorporated into the Special Exception ordinance attached as Exhibit 1. The application listed as the “Trade name of business” as “Scotty Quixx.” Next to “Name(s) of business owner(s),” the application listed Ragas and Johnson as well as Oates Food Service II LLC. Next to “Property Owner(s),” the application listed Scott Oates, Oates Enterprises II, LLC (“Oates Enterprises”), and Hugh F. Oates, Jr. Next to “Daytime Telephone Number,” Ragas and Johnson provided their own phone numbers. Ragas and Johnson signed the application above “Signature of Applicant”. No leadership of Oates Enterprises signed the application or provided their phone number.

18. Oates Enterprises did not apply for a special exception during this relevant period and has never claimed otherwise.

19. The City sent correspondence dated March 28, 2013 associated with the application process to agents of Oates Food Services listed on the application, not Oates Enterprises. The City’s own correspondence identifies the location as “Oates Food Service II” in an aerial photograph as well as on a zoning map. Mr. Ragas is also referred to as the applicant. Exhibit 2.

20. The application was heard before the Planning Commission and the City Council. A copy of the video recording of the April 23, 2013 City Council meeting is attached hereto as Exhibit 3. Minutes of said meeting are attached hereto as Exhibit 4. Both Mr. Ragas and Mr. Johnson attended these meetings, and Mr. Johnson was announced as the applicant representative at both

meetings. No one representing Oates Enterprises appeared at these meetings and Oates Enterprises was not mistakenly announced as the applicant at either meeting. Both bodies unanimously approved the application without any questions or debate.

21. On April 23, 2013, City Council adopted the Special Exception, Ordinance No. 45,078 (Exhibit 1), allowing the “operation” of an entertainment establishment known as “Scotty Quixx” at 434 Granby Street, Norfolk, Virginia. Among other things, the special exception allowed Scotty Quixx to be open until 2:00 AM and to serve alcoholic beverages. The Ordinance includes the application as an exhibit. The Ordinance also enclosed the aerial photo referenced above clearly implying that “Oates Food Services II” would hold the special exception at the location.

22. The Ordinance erroneously states in one place that the Special Exception is being awarded to “Oates Enterprises II, LLC.” Upon information and belief, this was a clerical error made by City staff in drafting the ordinance document.

23. Ragas and Johnson were not aware of the clerical error as they did not receive a copy of the ordinance itself until 2022 when the City sought to revoke the special exception.

24. Oates Food Services operated Scotty Quixx as the special exception holder from 2013 until the special exception was revoked by City Council on September 27, 2022.

25. From 2013 on, the City and/or City affiliated offices regularly interacted with Oates Food Services as the operator of Scotty Quixx including but not limited to in the payment of meals taxes (Exhibits 5, 6), entering into a lease with the City for a sidewalk area (Exhibit 7), in awarding a grant to Scotty Quixx during COVID-19 (Exhibit 8, 9) and in discussing with the principal planner with the City a potential name change to the entity (Exhibit 10).

26. City staff requested and used MBAR and meals tax information submitted by Oates Food Services II, LLC as pretext to revoke the special exception. They did not raise a pretext having anything to do with Oates Enterprises II, LLC for the revocation.

27. Until after the special exception was already revoked, the City and City Council never claimed that Oates Food Services did not hold this special exception.

II. *Violence in Downtown Norfolk Leads to City Council and Other City Leadership Ordering Action Taken Against Bars and Restaurants Serving Predominately Young Racial Minority Clientele on Weekend Nights*

28. In 2022, there were multiple shootings in the Downtown Norfolk area.²

29. Two of the shootings in the Downtown Norfolk area occurred near certain bars and restaurants: (i) a March 2022 incident near Chicho's Backstage ("Chicho's"), located at 320 Granby Street; and (ii) an August 5, 2022 incident near Legacy Restaurant and Lounge ("Legacy"), located at 216 E. Plume Street.

30. Scotty Quixx had no connection to any shooting in 2022.

31. In the wake of these incidents, City leadership and City Council have displayed animus towards Scotty Quixx and certain other Downtown Norfolk area bars and restaurants that serve or served predominately young racial minority clienteles and shown a desire to expel these businesses and their clientele from the Downtown area.

32. On March 22, 2022, after the incident near Chichos, Councilwoman Doyle stated in a City Council work session that "[w]e don't have control of our Downtown" and that the City should examine the conditional use permits of all Downtown bars and restaurants and if they were not

² The "Downtown Norfolk area" for purposes of this Complaint references the area in the City of Norfolk, Virginia bordered on the approximate east by St. Paul's Boulevard extended to the Elizabeth River, the approximate south by the Elizabeth River, the approximate west by Duke Street, and the approximate north by US Route 58/Virginia Beach Boulevard.

compliant with the terms set forth therein “we need to shut them down.” She stated that she received complaints about the “incompatibility” of the “nightclub, bar, restaurant scene with the Downtown residents.” Exhibits 11,12.

33. By email dated August 4, 2022, Deputy City Attorney Adam Melita requested MBAR information from ABC for Hell’s Kitchen, Chicos, Waterside District, Republic, Baxter’s, Neon Liv, Caioir Bistro, Culture, and Scotty Quixx. Exhibit 13. Each business is a bar and restaurant located in the Downtown Norfolk area.

34. In response to the incident at Legacy, on August 5, 2022 City Manager Filer stated at a press conference, in relevant part: (ABC 13 News Now WVEC video footage of the press conference is attached as Exhibit 14):

- “I think it is safe to say that every establishment in the entertainment district Downtown should begin preparing to come to this Council and explain why they should continue to operate Downtown. That explanation should include very clearly what benefits you provide to the overall culture, health and entertainment of our citizens by way of your establishment operating in the Downtown District. Make no mistake, operating Downtown in Norfolk is a privilege. With that privilege come rights that must be met. So we are now explaining to everybody today that in the next several months you should begin preparations to explain why you should continue to operate your establishment.”
- “The Mayor is currently on his way back to the City. I have spoken with all City Council members this morning. We do not have a specified plan of attack but make no mistake, this latest event is now the end. We have tried cajoling. We have tried asking. We have tried incentivizing. We have tried begging. Those days are now over and the repercussions will now begin.”
- “It’s really now incumbent upon every establishment to come before the Council as a body and explain why we [sic] they believe they should have the opportunity to do business on Granby Street.”
- “The point that I’m making today and Council has made and will make when they come back from the recess is the obligation is no longer on us to say you’re doing something wrong. The obligation from this point forward beginning today is on establishments to tell us why they believe they have the right to do business Downtown.”

- [When asked about what the City would be examining]: “The easiest place to start for every business owner is to look at every single condition in your conditional use permit. Every single one of them. And most of those conditional use permits, if you haven’t seen them, contain far more than 2 or 3 conditions. There are a lot of conditions in there. I think the easiest place to start is to look at that and ask a very real question: do I feel confident that on Friday/Saturday nights I’m adhering to everything that’s in this document? And if you can’t answer yes with a straight face, I would strongly urge you to pivot and to figure out how you can answer yes.”

35. A special exception was the prior name the City used for what it now calls conditional use permits.

36. On August 12, 2022, Deputy City Attorney Melita wrote a memorandum giving permission for the Commissioner of the Revenue and the City Attorney to discuss tax information with ABC regarding MBAR for the Downtown Norfolk area nightlife bars and restaurants listed in the August 4, 2022 FOIA request. Exhibit 15. Notably, Mr. Melita sought and received information regarding “Oates Food Services II LLC,” not Oates Enterprises.

37. Upon information and belief, this type of comparison and analysis is not conducted in the ordinary course and was not conducted for businesses outside of the Downtown Norfolk area in 2022.

III. *The City and City Council Find Pretext to Shut Down Multiple Downtown Bars and Restaurants In Just a Few Weeks, All Serving Predominately Young Racial Minority Clienteles on Weekend Nights*

38. The City and City Council targeted Scotty Quixx and other businesses in Downtown Norfolk area in August through October of 2022.

39. On August 25, 2022, the City initiated action to revoke Legacy’s conditional use permit for allegedly not abiding by the required security plan, hurting property values, and generally having a negative effect on the neighborhood and City. The statement of proposed revocation for

Legacy is attached hereto as Exhibit 16. On September 13, 2022, City Council revoked Legacy's Conditional Use Permit to operate as an entertainment establishment. Exhibit 17.

40. On September 7, 2022, the City's Zoning Administrator revoked the restaurant zoning certificate for Downtown Norfolk area nightlife bar and restaurant Culture Lounge & Restaurant, located at 814 Granby Street in Norfolk for alleged ABC violations, failure to pay food and beverage taxes, and improperly providing entertainment in a restaurant facility.

41. On September 13, 2022, City Council passed changes to zoning ordinance regulations targeting nightlife bars and restaurants by imposing more stringent requirements. A copy of that ordinance is attached hereto as Exhibit 18.

42. On September 19, 2022, the City's Zoning Administrator issued a Statement of Proposed Revocation to revoke the conditional use permit issued to California Burrito, LLC, located at 319 Granby Street in Norfolk for alleged violations including allegedly exceeding the maximum occupancy in its nightclub on multiple occasions. Exhibit 19. City Council revoked the conditional use permit on October 11, 2022.

43. Upon information and belief, all of these businesses served predominately young racial minority clientele on weekend nights.

IV. *Revocation of Scotty Quixx's Special Exception*

44. On September 10, 2022, ABC and Norfolk Police conducted an "Observation-Joint Operation" at Scotty Quixx with at least 5 ABC officers involved. A copy of the partially redacted report of that operation is attached hereto as Exhibit 20. Upon information and belief, there were no violations found as a result of this effort.

45. Despite apparently finding nothing with its sting operation, on September 12, 2022, without warning, the City issued a Statement of Proposed Special Exception Revocation (“Statement”) to Scotty Quixx. Exhibit 21.

46. Revealingly, the cover letter for the Statement indicated that the City “has initiated action to revoke the Conditional Use Permit granted to Legacy,”—an apparent typographical error that is revealing of the City’s true intentions—shut down all nightlife bars and restaurants in the Downtown Norfolk area serving a clientele deemed incompatible with Downtown Norfolk, in the minds views of City leadership. Exhibit 21 (emphasis added).

47. The Statement provided in relevant part that by submitting different numbers to Virginia ABC for MBAR reporting and to the City for meals taxes, that either Scotty Quixx’s reporting to ABC or the City was inaccurate, or both were inaccurate, in violation of the special exception.

48. The City made no attempt to try to understand why the numbers were different because the City did not care why. They were merely looking for pretext to shut Scotty Quixx down as they did with other businesses. If the City had cared enough to investigate thoroughly, they would have learned that Scotty Quixx submitted actual sales numbers to the City for meals taxes, and thus paid their meals taxes in full. Scotty Quixx submitted numbers that did not apply discounts for happy hours and other specials to the ABC for its MBAR reporting. Scotty Quixx submitted these numbers in good faith under the belief that figures submitted to ABC should not include discounts. ABC, the regulating body for the MBAR reports, has not taken any action against Scotty Quixx for this issue and, as explained below, any penalty ABC could have imposed under Virginia law would have been significantly less severe than the functional corporate death penalty imposed by the City and City Council.

V. *The Revocation of Scotty Quixx’s Special Exception Was Contrary to City Law and Grossly Disproportionate to the Alleged Reporting Error*

49. On July 18, 2017, City Council passed a law entitled “A Resolution Approving the Protocol for Delinquent Meal Taxes and Special Exceptions” to address the kind of reporting anomaly that is alleged here. A copy of that Resolution is attached hereto as Exhibit 22. A copy of the video recording from the July 18, 2017 City Council meeting in which this resolution was passed is attached hereto as Exhibit 23; *see also* Exhibit 24 (minutes from that meeting).

50. The law provides that revocation of an existing special exception is not a remedy for a reporting inconsistency like this one. Rather, businesses who submit inconsistent reports are put on an Audit List and flagged in case there is an attempt to apply for a special exception in the future or a change in the existing one. It is only then that an actual audit is conducted. If there is found to be a tax delinquency, then the business is referred to the Treasurer for tax collection. The law then provides a procedure whereby special exception holders who are delinquent in their taxes have multiple opportunities to correct the issue before their special exception is in jeopardy.

51. Minutes and video of City Council discussions with staff regarding the 2017 Ordinance when it was proposed from during a City Council Work Session on June 6, 2017, reveal that it was intended to create certainty and consistency in how the City treats special exception holders in 1) instances of noncompliance in paying meals taxes or 2) inconsistencies in reporting sales figures for meals taxes and to other entities, including the ABC. City Attorney Pisco explained that it was intended to provide “a series of steps” before a special exception would be revoked. In other words, it is designed to prevent exactly what has happened here—arbitrary, capricious, and convenient use of a single reporting issue to revoke a special exception. A copy of the video recording of this session is attached hereto as Exhibit 25. A copy of the minutes regarding this session is attached hereto as Exhibit 26.

52. In short, the 2017 Ordinance provides multiple opportunities for businesses to cure the more serious issue of a failure to pay and provides for a future possible audit for the less serious issue of inconsistent reporting. Nothing in the 2017 Ordinance allows for the immediate revocation of a special exception as has been done here.

53. Further, while ABC has not charged or found Scotty Quixx in violation of any MBAR requirement, if there was a charge, ABC would have given Scotty Quixx an opportunity to contest allegations or resolve the charge by accepting a 10-day suspension or a \$1000 civil penalty, as long as the ratio was 30% or higher. Va. Code § 4.1-227; 3 VAC § 5-70-210; *see also* Virginia Alcoholic Beverage Control Authority, The Hearings Process, <https://www.abc.virginia.gov/enforcement/hearings-and-appeals/hearings-process> (last visited May 15, 2023). Thus, the City and City Council's actions in response to an MBAR reporting issue were grossly more severe than what the actual enforcement body, ABC, could have imposed.

VI. *While Feigning that the Revocation Was Only About a Reporting Issue, the City Attorney's Office Makes False Allegations of a Shooting Inside Scotty Quixx in 2019*

54. As part of discussions between the City and owners of Scotty Quixx in the wake of the issuance of this Statement, City Attorney Bernard Pishko stated in a September 19, 2022 email that "While not included as a part of the basis [for revocation], I understand there was a shooting inside Scotty Quixx in 2019 which would have been after you became the owner. Did you make changes to prevent a similar incident, if so, what were the changes?" Every City Council member, including the Mayor and Vice Mayor were copied on that email. A copy of the email is attached hereto as Exhibit 27.

55. There was no shooting inside Scotty Quixx in 2019. A copy of a Stipulation of Facts regarding the event that the City is mistakenly referring to is attached here to Exhibit 28.

VII. *The City Council Hearing*

56. The parties appeared before City Council on September 27, 2022. A video of relevant proceedings is included as Exhibit 29. Letters submitted to City Council by Oates Food Services and Oates Enterprises in advance of the hearing are attached hereto as Exhibits 30 and 31, respectively.

57. At the hearing, counsel for Scotty Quixx moved for a deferral of the decision in light of the vagueness of the allegations against it and the fact that it had not received responses to FOIA requests it submitted to the City, ABC, and the Norfolk Police Department. City Council sat silently and did not respond to this request.

58. Assistant City Attorney Taylor made the following statements during her presentation to City Council:

- “Yes, it was violence in Downtown Norfolk that caused the City to take a closer look at their conditional use permit and special exception holders.”
- “[T]here was a murder inside of Scotty Quixx—a shooting back in early 2019.”
- She stated that the procedure for delinquent meals taxes “has nothing to do with Scotty Quixx. Scotty Quixx has paid meals taxes when due. We just don’t know if those numbers are correct or not. We do know that they are different than what was reported to the ABC.”
- “It is Scotty Quixx that needs to commit to what their violation is. . . . They did not tell us, was it the MBAR that was wrong, was it the meals taxes that they reported to the Commissioner that was wrong?”

59. Ms. Taylor made the untrue statement about a murder and shooting happening inside Scotty Quixx during her rebuttal time. Counsel for Scotty Quixx attempted to correct the record about the incorrect statement, but Mayor Alexander refused to allow counsel to speak. Thus, in an environment in which the City and City Council had great concern with gun violence in nightlife bars and restaurants in the Downtown Norfolk area, City Council proceeded to a vote after being

presented a falsehood by Assistant City Attorney Taylor that a shooting and murder had occurred inside Scotty Quixx, without providing Scotty Quixx an opportunity to clarify the record.

60. Again, this discussion should have had nothing to do with the purported basis of the revocation, but nevertheless, the City Attorney's office on two occasions inaccurately referenced this 2019 incident to insinuate that Scotty Quixx was an unsafe environment and attempt to unlawfully sway City Council.

61. Additionally, City Spokesperson Chris Jones continued the misinformation via a text message to a reporter after the meeting:

[Assistant City Attorney] Kat[herine Taylor] said tonight that there was a murder at SQ a while back.
She misspoke. Event was a shooting with a malicious wounding conviction inside Scotty Quixx.

(a screenshot is attached hereto as Exhibit 32)

62. While Mr. Jones correctly noted that Ms. Taylor's statement to counsel was inaccurate, his account of the events in 2019 was also inaccurate. There was no shooting, malicious wounding, or murder inside Scotty Quixx in 2019 or any other time.

63. Further, it is worth noting that, consistent with the City Manager's statements in the wake of the Legacy incident, Assistant City Attorney Taylor tried to put the burden on Scotty Quixx to keep their special exception and not on the City to show why it should be taken away.

64. City Council voted 5-2 in favor of revocation. Yays: Mayor Alexander, Councilwoman Doyle, Councilwoman McClellan; Councilwoman Johnson; Councilman Smigiel. Nays: Councilman Riddick, Councilwoman Royster. Abstaining: Vice Mayor Thomas.

65. No councilmember voting in favor of revocation provided any discussion, asked any questions, or provided explanation of his or her vote.

66. The revocation ordinance, No. 48928 (attached hereto as Exhibit 33) provides in relevant part that “The City of Norfolk has received complaints and identified issues concerning Oates Enterprises II, LLC on property located at 434 Granby Street and known as ‘Scotty Quixx’” and that “the appropriate City investigators and officers have investigated the complaints and have carefully reviewed the operations of said establishment.”

67. Upon information and belief, there have been no complaints from the community about Scotty Quixx and no investigation other than an apparent determination that the numbers submitted did not match.

68. After the revocation, Scotty Quixx determined that it could not profitably operate under its by right use more limited hours of operation and no ability to serve alcohol. That, combined with the delay and uncertainty associated with challenging this decision in Court and the ongoing costs staying in business without bringing in revenue, eventually and unfortunately led to Scotty Quixx deciding not to continue its lease and permanently close.

VIII. *The City and City Council Acted Illegally Out of Animus Towards Scotty Quixx and Businesses Like It that Had Young Racial Minority Clienteles on Weekend Nights*

69. The City and City Council’s goal was not to remedy a reporting inconsistency, but instead to use it as a pretext to effectively put Scotty Quixx out of business.

70. City Council is the governing body for the City and acts as the City’s agent. Thus, the City is liable for any constitutional violations that took place in City Council’s revocation of the Special Exception. Moreover, City staff took affirmative steps and made omissions in support of the unlawful revocation efforts, so the City also has liability on that separate basis.

71. The City and City Council’s actions in revoking the Special Exception were done under color of state and local law and pursuant to the official policies and practices of the City Council and the City.

72. The City and City Council's actions ultimately made it impossible for Scotty Quixx to operate its business profitably and led to it having to permanently close.

73. Scotty Quixx has and will suffer damages in the form of lost sales, lost profits, damage to reputation, loss of goodwill, loss of employees, loss of inventory, harm to its marketing efforts, and potentially other damages because of the City and City Council's unconstitutional actions, the exact amount to be proven at trial. Scotty Quixx is also entitled to nominal damages because of these unconstitutional actions.

74. As Plaintiff's constitutional rights were violated and Defendants are liable under 42 U.S.C. § 1983, Plaintiff is entitled to payment of its attorney fees and costs pursuant to 42 U.S.C. § 1988.

75. Initially, Scotty Quixx sought to appeal and reverse City Council's revocation pursuant to Va. Code § 15.2-2285(F). Such action had to be filed in the Norfolk Circuit Court pursuant to statute as *Oates Food Services II, LLC et al. v. City Council of the City of Norfolk, Virginia, et al.*, Case No. CL22014414-00. This action also included similar constitutional claims under 42 U.S.C. § 1983 as are being alleged here. This lawsuit was served on October 27, 2022 by service received by Norfolk City Attorney Pishko and the parties proceeded to litigate the action. As Scotty Quixx has since determined that it had to close its business, it elected to nonsuit the state court action and bring its claims under 42 U.S.C. § 1983 in what it considers a more appropriate court to hear federal constitutional claims under a federal statute. But by virtue of the filing and litigating of this prior claim as well as the extensive media coverage of same, to the extent any notice to the locality is needed under Va. Code § 15.2-209, the City Attorney and presumably the mayor had actual knowledge of the claim, including its nature and time and place where the injury was alleged to have occurred within 6 months after the City Council revocation decision.

COUNT I- City Council's Decision Was Invalid, Unreasonable, Arbitrary, Capricious, Not Fairly Debatable, and Violated Plaintiffs' Substantive Due Process Rights Because

Revocation Was An Unduly Harsh Penalty that Was Based on Animus Instead of Rationality and Proportionately (Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; violation of 5th and 14th Amendments to the Constitution of the United States; 42 U.S.C. § 1983) (against all Defendants)

76. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

77. Faced with an alleged reporting inconsistency by Scotty Quixx, the City and City Council failed to follow the procedures set forth in the active 2017 Ordinance discussed above.

78. Plaintiff had a property interest in the revoked Special Exception. *See Ruttenberg v. Jones*, No. 07-1037, 283 Fed. Appx. 121, 129 (4th Cir., June 17, 2008).

79. In addition, the City and City Council acted arbitrarily and capriciously by imposing the functional bar and restaurant death penalty on Scotty Quixx, a remedy disproportionate in severity to the alleged infraction and without a rational basis.

80. The City and City Council's actions were not consistent with law, or proportional to or intended to address alleged reporting issues.

81. The City and City Council's actions were irrational because they were not based on logic or reason but on animus against the predominately young racial minority clientele served by Scotty Quixx on weekend nights.

82. The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States ensures that "[N]o person shall be . . . deprived of life, liberty, or property without due process of law." The Due Process Clause does not allow local governments to act in an arbitrary and irrational way that affects a person's property interests.

83. "[G]overnment officials cannot simply act solely in reliance on public distaste for certain activities, instead of on legislative determinations concerning public health and safety or otherwise dealing with zoning. Simply put, the dispositive principle is that private biases may be outside the

reach of the law, but the law cannot, directly, or indirectly, give them effect.” *Marks v. City of Chesapeake*, 883 F.2d 308, 311 (4th Cir. 1989) (citations, alteration marks, and internal quotation marks omitted).

84. City Council’s decision was unreasonable, arbitrary, and bears no reasonable relation to the public health, safety, morals, or general welfare of the community.

85. City Council’s revocation of the Special Exception was arbitrary and capricious and violated the fairly debatable standard.

86. The City and City Council’s actions in revoking the Special Exception were done under color of state and local law and pursuant to the official policies and practices of the City Council and the City.

87. This Count raises an actual case or controversy.

88. Defendants violated Plaintiff’s substantive due process rights under the 5th and 14th Amendments of the Constitution of the United States. Plaintiff is entitled to a declaration stating that fact. Further, Defendants are jointly and severally liable for compensatory and nominal damages in amounts to be proven at trial under 42 U.S.C. § 1983 and attorney fees under 42 U.S.C. § 1988.

89. An actual, justiciable, and substantial controversy exists between the parties concerning this issue and this Court has authority to issue a declaratory judgment regarding same.

90. Plaintiff requests a trial by jury on this Count on all appropriate issues.

COUNT II- City Council’s Decision Violated Plaintiffs’ Equal Protection Rights (Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; violation of 14th Amendment to the Constitution of the United States; 42 U.S.C. § 1983) (against all Defendants)

91. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

92. City Council's action in revoking the Special Exception was in violation of Scotty Quixx's equal protection rights under the 14th Amendment to the Constitution of the United States.

93. The City's policy for addressing this issue did not provide for a remedy remotely as severe as revocation of a special exception for a single alleged reporting inconsistency and consequently, Scotty Quixx was treated differently than the businesses that received the benefit of the policy and procedure.

94. Upon information and belief, the City does not regularly conduct the comparison analysis that it did here on other businesses and only conducted this analysis because it was searching for pretext to remove from the Downtown Norfolk area businesses and people deemed undesirable by City management and elected officials.

95. Upon information and belief, under current law, City Council has never revoked a business's special exception or conditional use permit for a single reporting inconsistency like it did to Scotty Quixx.

96. Upon information and belief, under current law, City Council has not revoked a business's special exception or conditional use permit for a single meals tax delinquency without following its required procedure in the 2017 Ordinance.

97. Upon information and belief, under current law, City Council has not revoked a business's special exception or conditional use permit for a single MBAR reporting issue or violation.

98. Upon information and belief, under current law, City Council has not revoked a business's special exception or conditional use permit for an alleged ABC violation when the ABC itself has not imposed any remedies.

99. The City and City Council's violation of City law and disparate treatment of similarly situated businesses versus Scotty Quixx is due to the City and City Council's animus towards

Scotty Quixx and certain other nightlife bars and restaurants in the Downtown Norfolk area with predominately young racial minority clientele and has no rational basis.

100. Scotty Quixx is being singled out as one in a class of one or one of a class of a few by the City and City Council and is being treated inconsistently with how the City and City Council treat other businesses with similar reporting inconsistencies because of animus against certain Downtown Norfolk bars and restaurants with predominately young racial minority clientele. *E.g.*, *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) (holding that a plaintiff stated a claim against a locality for requiring a 33-foot easement as a condition for connecting to municipal water supply when the locality only required a 15-foot easement for others similarly situated; “Our cases have recognized successful equal protection claims brought by a ‘class of one,’ where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” (citations omitted)).

101. The City and City Council’s actions in revoking the Special Exception were done under color of state and local law and pursuant to the official policies and practices of the City Council and the City.

102. An actual, justiciable, and substantial controversy exists between the parties concerning this issue and this Court has authority to issue a declaratory judgment regarding same.

103. Defendants violated Plaintiff’s equal protection rights under the 14th Amendment of the Constitution of the United States. Plaintiff is entitled to a Declaration stating accordingly. Further, Defendants are jointly and severally liable for compensatory and nominal damages in amounts to be proven at trial under 42 U.S.C. § 1983 and attorney fees under 42 U.S.C. § 1988.

104. Plaintiff requests a trial by jury on this Count on all appropriate issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and hold as follows:

A. Declare that City Council's revocation of the Special Exception violated Plaintiff's substantive due process rights under the 14th Amendment of the Constitution of the United States and that as a result, Plaintiff is entitled to a judgment for compensatory damages for an amount to be determined at trial, plus reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988, against all Defendants jointly and severally;

B. Declare that City Council's revocation of the Special Exception violated Plaintiff's equal protection rights under the 14th Amendment of the Constitution of the United States, and that as a result, Plaintiff is entitled to a judgment for compensatory damages in an amount to be determined at trial, plus reasonable attorney fees and costs pursuant to 42 U.S.C § 1988, against all Defendants jointly and severally;

C. Order that Scotty Quixx is entitled to nominal damages against Defendants, jointly and severally, for the constitutional violations set forth herein;

D. Order that Scotty Quixx is entitled to their attorney fees and costs pursuant to 42 U.S.C. § 1988 for payable by Defendants, jointly and severally, for constitutional violations;

E. An award of costs and expenses against the Defendants; and

F. Such other relief that this Court deems just and proper.

JURY DEMAND: PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL APPROPRIATE ISSUES

Respectfully submitted,

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a Virginia limited liability company,
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