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CITY OF ALBUQUERQUE
CITY ADMINISTRATIVE HEARING OFFICE

IN THE MATTER OF:
JEFFERSON CENTRAL, LLC
120 Jefferson St. N.E.
Albuquerque NM 87108

IDO 24-608
Administrative Civil Enforcement

OPINION AND ORDER

This matter came before the Hearing Officer pursuant to the City of Albuquerque's (hereafter "the City" or "COA"), October 17, 2024 Notice of Administrative Civil Enforcement. The case was heard on the merits on April 28, 2025.

COA's Notice of Administrative Civil Enforcement alleges four separate violations on three separate inspection dates of the City's Integrated Development Ordinance (IDO). During inspections on July 25, September 23, and October 16, 2024, the City alleges that the above-referenced property was found to be in violation of the IDO prohibition against litter, outdoor storage, allowable property uses, and tents erected at a place other than a camp site.

Having reviewed the Notice of Administrative Civil Enforcement, Respondent's April 11, 2025 Response, and the various motions filed in connection with the case, and having heard the arguments and testimony from the City and the Respondent at the hearing on this matter, and having duly considered the facts and the law, I find and order as follows:

1. The sole issue before me in this case is whether Respondent was in violation of any of the cited IDO provisions on the above-referenced inspection dates. I consider constitutional arguments to be outside the scope of my review. I presuppose the IDO meets constitutional muster or the City would not have enacted it as written. As such, I have not and

do not consider any constitutional arguments raised by the Respondent. Respondent has preserved such issues in its pleadings filed of record in this matter. Likewise, the City has preserved its objections to such claims.

2. As to the alleged IDO violations,[1] I find and rule as follows:

a**. Alleged litter violations** – The City claimed that it identified litter on the property on one or more of its three inspections. I do not agree with Respondent that the City needs to prove the materials identified actually pose a threat to safety, health or welfare. There was uncontroverted testimony that what appeared to be observed discarded food items on the property were a vector for pests. Urban litter and accumulations of refuse and rubbish by their very nature, tend to pose such threats. The City need only prove that such materials are present on the property.

Nevertheless, having handled hundreds of IDO litter cases over time, many of which were associated with homeless encampments, having reviewed the City's photographic exhibits, and having heard the Respondent's testimony that it employs a watchman to monitor conditions on the property, I find these violations to be *de minimis*. Compared to other such cases including many cases of owner-occupied residential properties, the parking lot at this property generally appears to have been well-maintained and does not demonstrate the entropic accumulations of detritus generally characteristic of such violations. While these

[1] IDO sections have changed over time. Accordingly, to avoid over-specific mis-citation, I leave it to the parties to identify specific provisions of the IDO related to the named alleged violations.

alleged violations are not non-existent, they are *de minimis* and this claim is accordingly dismissed.

3. **Outdoor storage** – for reasons similar to those discussed above respecting claimed IDO litter violations, I find and conclude that outdoor storage violations while not non-existent, are *de minimis*. They are accordingly dismissed. Suffice it to say that I have seen a lot worse, and those documented in the photographs of this property do not merit the requested fines or penalties.

4. **Allowable uses/homeless tents** – we come to the crux of this case under this topic. The City has alleged that Respondent's permitting persons to erect tents on the property violates two distinct IDO provisions: allowable uses, and the separate provision requiring that tents attached to the ground for use as overnight accommodation must be on a camp site. While this assertion is technically correct, it has been my consistent practice that where the same operative facts establish more than one discrete IDO violation, fines are imposed for only one violation on the theory that undifferentiated violations should not subject a person to separate fines under multiple IDO provisions for essentially the same transgression.

Thus, while I find that Respondent's permitting persons to erect tents on its property violates both the IDO's allowable uses provision and the provision restricting tents attached to the ground for use as overnight accommodation to camp sites, I will uphold fines for violations of only one IDO provision for each of the three separate inspection dates for a total of $1,500 in fines. Based upon my review of the facts and the law, my rationale on this pivotal issue is as follows: undefined or not, a "camp site" is not a bookstore parking lot. Whatever the common

understanding is of that term, it is not the parking lot of an urban bookstore. This argument might gain more traction if Respondent ran a KOA campground or RV park with tent sites, but the claim that a bookstore parking lot should be considered a "camp site" is a bridge too far.

Likewise, permitting the parking lot of an urban bookstore to be used as a tent camp site is not an allowable use under the IDO. The evidence presented was that there are ways under City ordinances to obtain approval for unorthodox uses of property but Respondent's witnesses testified that they deemed pursuit of such remedies to be unduly onerous and burdensome, and unlikely to succeed, so they did not pursue them. Accordingly, use of Respondent's book store parking lot as a tent camp site is not an allowable use under the IDO. There is no requirement for showing that such a use poses any threat or danger to public health or safety as Respondent seemed to suggest.

Having heard the evidence and testimony in this case, I find Mr. Kerley to be a very credible witness. He testified that he is just trying to help people by creating a space where the homeless and their property would be safe. I do not question the sincerity of either his statements or his motives. Mr. Kerley is an altruistic idealist. Were the world full of idealists such as Gillam Kerley, humanity would likely solve broad-based societal problems without the need for the blunt instrument of government. Indeed, in a world principally populated by altruistic idealists, such large-scale social problems as Mr. Kerley says he is trying to ameliorate might never even come into existence.

The reality however, is that altruistic idealists are few and far between in this world. No no matter how well-intentioned the Gillam Kerley's of the planet may be, they have simply

never been sufficient in number throughout the history of mankind to effectively solve broad-based, timeless societal problems. And the consequence of isolated persons endeavoring to solve the big picture problems of a society is that they create inevitable spinoff problems for others. As an example, while Mr. Kerley testified that he provides access to water and bathrooms for Quirky Books' homeless campers during business hours, there was testimony that after business hours (apparently), some of his invitees were using neighboring properties for their bathroom needs.

I have read Respondent's answer filed April 11th. I know judge Allison personally. I enthusiastically supported his appointment to the Second Judicial District Court. I consider him to be one of the most astute judges in the District. I have the highest respect for him and I do not disagree with anything he wrote in the *Ladella* case. But all of that is by and large irrelevant here. The sole issue in this case is whether Respondent's property is in violation of the City's integrated development ordinance. This is not a case about the rights of or risks to homeless persons occupying public property. It's a case about the limits of the rights of private property owners to the allowable uses of their property.

Quirky books has written that it is simply "making one small private attempt to solve an enormous public problem." That's a direct quote from their answer. However well-intentioned, the Respondent's actions and initiatives merely give rise to new problems in attempting to solve others. The reality is that Quirky books cannot solve the enormous public problem of homelessness and in trying to do so, they have merely caused other harms. The homeless problem is for governments to solve. Irrespective of one's views of how inapt their solutions, if

any, may be, Quirky books does not have the right to choose to create new public problems in furtherance of its preferential private agenda. These principles are intrinsic to the IDO.

IT IS THEREFORE ORDERED:

1. The City's requested relief is granted in part as follows: fines are assessed against the Respondent in the amount of $1,500. The fine is suspended for a period of two weeks from the filed date of this Order and will be waived if the allowable uses/camp site violations are cured to the City's satisfaction within that period.

2. At the hearing, Respondent requested a stay of enforcement pending appeal. I deemed the request premature. Respondent may renew that request at this time.

3. Following the hearing, Respondent submitted a letter requesting that certain hearing exhibits be stricken from the record. I do not rule on letter requests. Moreover, it would appear that my dismissal of claims related to alleged IDO outdoor storage and litter violations may moot the basis for Respondent's request. The City's photographs Respondent's letter referenced were a partial basis for the foregoing rulings in Respondent's favor.

Dated this 1ST day of May, 2025.

/s/ Rip Harwood

Ripley B. Harwood
Hearing Officer