

**REGINALD COMMODORE  
AND MANAGING CHANGE,  
LLC**

**VERSUS**

**THE CITY OF NEW  
ORLEANS, THE CITY  
COUNCIL OF THE CITY OF  
NEW ORLEANS,  
COUNCILMEMBER HELENA  
MORENO,  
COUNCILMEMBER JASON  
ROGERS WILLIAMS,  
COUNCILMEMBER JOSEPH  
L. GIARRUSSO, III,  
COUNCILMEMBER JAY H.  
BANKS, COUNCILMEMBER  
KRISTIN GISELSON  
PALMER, COUNCILMEMBER  
JARED C. BROSSETT, AND  
COUNCILMEMBER CYNDI  
NGUYEN**

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**NO. 2019-CA-0127**  
  
**COURT OF APPEAL**  
  
**FOURTH CIRCUIT**  
  
**STATE OF LOUISIANA**

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**APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2018-09100, DIVISION "J"  
Honorable D. Nicole Sheppard,**

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**Judge Dale N. Atkins**

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(Court composed of Judge Terri F. Love, Judge Sandra Cabrina Jenkins, Judge Dale N. Atkins)

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**REVERSED AND REMANDED**  
**June 20, 2019**

Defendants, the City of New Orleans, the City Council of New Orleans, and the Councilmembers appeal a judgment granting a writ of mandamus and ordering the Councilmembers to adopt and ratify the City Council’s May 24, 2018 motion to approve an ordinance authorizing a conditional use permit for Plaintiffs, Reginald Commodore and Managing Change, LLC, to operate a neighborhood commercial establishment for a specialty restaurant. For the reasons that follow, we reverse the judgment of the trial court and remand for further proceedings.

### **FACTUAL AND PROCEDURAL HISTORY**

Plaintiffs, Reginald Commodore and Managing Change, LLC (“Plaintiffs”), applied to the City Planning Commission (“CPC”) for a conditional use permit for property located at 938-940 Louisiana Avenue and 3406 Constance Street to establish an ice cream parlor in a Historic Urban Two-Family Residential District (HU-RD2). The matter was assigned Zoning Docket No. 043/18 and was initiated by City Council Motion No. 18-25.

In March of 2018, the CPC Staff Report recommended approval of Plaintiffs' request under Zoning Docket No. 43/18 "subject to seven (7) provisos."<sup>1</sup> The report provided that the proposed conditional use was "consistent with the general purpose and intent of the applicable zoning district regulations, would reestablish a very low-intensity commercial use on site, and would bring a vacant property back into commerce while limiting the potential impact on surrounding residences" and was consistent with the "Plan for 21<sup>st</sup> Century." However, the CPC vote resulted in a recommendation of no legal majority to the City Council.

On May 24, 2018, the Councilmembers adopted Motion M-18-204 to allow the conditional use request by a vote of six to one. The motion was forwarded to the City Attorney's Office for preparation of a proposed ordinance.<sup>2</sup>

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<sup>1</sup> The seven provisos related to securing the appropriate rights to use City property for any and all encroachments; submitting an updated site plan, indicating the restoration of the sidewalk and curb along the front of Constance Street and the location of the trash receptacle; proposed signage and permits thereto; the prohibition of outside storage or display; and the hours of operation. It also required that the Department of Safety and Permits issue no building permits or licenses for the project until final development plans were approved by the CPC and recorded with the Conveyance Office and that the "failure to complete the conditional use process by properly recording plans within one year or failure to request an administrative extension" as provided for in Comprehensive Zoning Ordinance would void the conditional use approval.

<sup>2</sup> The Motion stated, in part:

BE IT MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS,

That the recommendation of "NO LEGAL MAJORITY" of the City Planning Commission on ZONING DOCKET NO. 43/18 - CITY COUNCIL MOTION NO. M- 18-25 - Requesting a conditional use to permit a neighborhood commercial establishment for a specialty restaurant in an HU-RD2 Historic Urban Two-Family Residential District, on Square 161, Pt. Lot 16 or Lot 16, in the Sixth Municipal District, bounded by Louisiana Avenue and Constance, Delachaise, and Laurel. Streets (Municipal Addresses: 938-940 Louisiana Avenue and 3406 Constance Street), be, and the request is hereby granted, subject to seven (7) provisos as stated in the City Planning Commission's report.

BE IT FURTHER MOVED, that a copy of the report of the City Planning Commission and of this motion be forwarded to the City Attorney's Office for the preparation of an ordinance to effectuate the request.

On July 12, 2018, the ordinance was assigned Calendar No. 32,321 and introduced and included the seven provisos recommended by the CPC. On August 9, 2018, the ordinance was placed on the agenda but was unanimously denied by the Councilmembers.<sup>3</sup>

Thereafter, on September 10, 2018, Plaintiffs filed a petition against the City, the City Council, and the Councilmembers (collectively, “the City”) requesting a writ of mandamus be issued compelling the members of the City Council to adopt the final ordinance ratifying its May 24, 2018 decision to grant a conditional use permit for the ice cream parlor. Plaintiffs amended their petition on September 13, 2018.

On September 17, 2018, the trial court issued an alternative writ and ordered the City to show cause on October 4, 2018, why a peremptory writ should not issue.<sup>4</sup> In response, the City filed exceptions of prematurity and no cause of action for failure to exhaust administrative remedies.

The exceptions and mandamus came for hearing before the trial court on October 4, 2018. After arguments, the trial court denied the City’s exceptions. The trial court took the mandamus under advisement and on November 2, 2018, the trial court granted the petition for writ of mandamus. Thereafter, the City filed

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<sup>3</sup> Prior to the denial of the conditional use request, Plaintiffs sent a letter to the Councilmembers urging them to adopt the conditional use ordinance. The letter noted that Councilmember Banks had advised them that the adoption of the ordinance was discretionary but argued that the Comprehensive Zoning Ordinance mandates the adoption thereof.

<sup>4</sup> See *Wolfe v. Atkins*, 2011-1481, p. 2 (La. App. 4 Cir. 4/18/12), 90 So.3d 1214, 1214 (the trial court has a mandatory duty to issue the alternative writ of mandamus upon the filing of the petition for writ of mandamus); *Naquin v. Iberia Parish Sch. Bd.*, 157 So.2d 287, 289 (La. App. 3d Cir. 1963) (the trial court is under a mandatory duty to issue the writ of alternative mandamus, which is the nature of a rule to show cause why the peremptory writ of mandamus should not issue).

requests for written reasons from the trial court’s decision to grant the writ of mandamus.<sup>5</sup> The trial court issued written reasons on December 4, 2018.<sup>6</sup>

The trial court signed the judgment on the mandamus on December 14, 2018 and the judgment on the exceptions on December 28, 2018. The judgment on the mandamus ordered and compelled the Councilmembers to “perform their ministerial duty” and affirmatively vote on an ordinance introduced “on July 12, 2018 consistent with the council’s discretionary May 24, 2018” motion of approval vote and adopt the final ordinance “ratifying the City Council’s May 24, 2018, decision that authorized the conditional use permit” for Plaintiffs.

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<sup>5</sup> The City also requested written reasons for the trial court’s denial of the exceptions, which were issued on November 16, 2018.

<sup>6</sup> In the reasons for judgment on the mandamus, the trial court stated:

Plaintiffs allege that the language of the New Orleans Comprehensive Zoning Ordinance (hereinafter “CZO”) §4.3 confers a ministerial duty on the City Council (hereinafter “Council”) whilst Defendants maintain otherwise. This Court agrees with Plaintiffs. In *River Street Ventures, LLC v. City of New Orleans and the New Orleans City Council* (Docket No. 2018-7160), this Court concluded that CZO §4.3, which governs conditional use ordinance applications, mandates actions upon the Council and exercises a bind on the Council’s otherwise unfettered legislative discretion. In reaching that conclusion particular attention was given to the meanings of the words adopt and ratify and this Court resolved that those words place an affirmative or otherwise ministerial duty on the Council to, upon final voting, pass the proposed ordinances that were approved at the initial hearing.

This case, like *River Street*, seeks to enforce the language of the CZO as it pertains to the Council adopting and ratifying conditional use ordinances that were approved at the initial public hearing. After the initial vote takes place and a conditional use permit is granted, the Court realizes that the remainder of the CZO procedure for conditional use ordinances prior to the Mayoral veto is ultimately a formality; and the Council must pass the proposed final ordinance and forward it to the Mayor for her to decide whether she will exercise her veto.

The *River Street Ventures* case referred to by the trial court is a decision from the Civil District Court and is not contained in the record for appeal. The reasons for judgment parallel the statements articulated by the trial court on November 2, 2018, when it ruled on the writ of mandamus.

On December 19, 2018, the City filed a motion for suspensive appeal from the December 14, 2018 judgment. The trial court granted the motion on December 21, 2018. This timely appeal follows.

## JURISDICTION

Prior to addressing the merits of the appeal, appellate courts have the duty to determine *sua sponte* whether our appellate court jurisdiction has been properly invoked by a valid final judgment. *Bayer v. Starr Int'l Corp.*, 2017-0257, p. 3 (La. App. 4 Cir. 8/15/17), 226 So.3d 514, 517–18 (citing *Moon v. City of New Orleans*, 2015-1092, p. 6 (La. App. 4 Cir. 3/16/16), 190 So.3d 422, 425; *Tsegaye v. City of New Orleans*, 2015-0676, p. 3 (La App. 4 Cir. 12/18/15), 183 So.3d 705, 710; *Delta Staff Leasing, LLC v. South Coast Solar, LLC*, 2014-1328, p. 1 (La. App. 4 Cir. 9/23/15), 176 So.3d 668, 668). This Court in *Bayer* explained:

“A valid judgment must be precise, definite, and certain. The decree alone indicates the decision. The result decreed must be spelled out in lucid, unmistakable language. The quality of definiteness is essential to a proper judgment.” *Urquhart v. Spencer*, [20]15-1354, p. 3 (La. App. 4 Cir. 12/1/16), 204 So.3d 1074, 1077, *Input/Output Marine Sys., Inc. v. Wilson Greatbatch, Tech., Inc.*, [20]10-477, p.13 (La. App. 5 Cir. 10/29/10), 52 So.3d 909, 916). A valid final judgment must contain definitive decretal language. *Moon*, [20]15–1092, p. 6, 190 So.3d at 425; *Bd. of Supervisors of Louisiana State Univ. v. Mid City Holdings, L.L.C.*, [20]14-0506, p. 2 (La. App. 4 Cir. 10/15/14), 151 So.3d 908, 910). This Court holds that the definitive decretal language necessary for a valid final judgment has three components: (1) it must name the party in favor of whom the ruling is ordered; (2) it must name the party against whom the ruling is ordered; and (3) it must state the specific relief that is granted or denied. *Freeman v. Phillips 66 Company*, [20]16-0247, p. 2 (La. App. 4 Cir. 12/21/16), 208 So.3d 437, 440; *Tsegaye*, [20]15–0676, p. 3, 183 So.3d at 710; *Mid City Holdings*, [20]14–0506, p. 3, 151 So.3d at 910; *Palumbo v. Shapiro*, [20]11-0769, p. 5 (La. App. 4 Cir. 12/14/11), 81 So.3d 923, 927). “In the absence of the necessary decretal language, the judgment is not final and appealable.” *Urquhart*, [20]15–1354, p. 3, 204 So.3d at 1077.

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In a case with multiple defendants or plaintiffs, the failure to name the particular party in favor or against whom a ruling is ordered can

render the judgment fatally defective if one cannot determine from its face the rights of each party and the relief to which the parties are entitled. La. C.C.P. art. 1841; *Urquhart*, [20]15–1354, pp. 4–5, 204 So.3d at 1078. The relief granted or denied must be determinable from the judgment itself without reference to an extrinsic source such as pleadings or reasons for judgment. *Moon*, [20]15–1092, p. 6, 190 So.3d at 425–426). A judgment which merely decrees that defendants' motion for summary judgment be granted, without stating what claims, issues, or parties are being disposed of or dismissed, lacks necessary decretal language and cannot be considered a valid final judgment. *In re Medical Review Panel of Williams v. EMSA Louisiana, Inc.*, [20]15-1178, p. 2 (La. App. 4 Cir. 10/21/16), 203 So.3d 419, 423; *Contreras v. Vesper*, [20]16-318, p. 3 (La. App. 5 Cir. 10/19/16), 202 So.3d 1186, 1188. “In the absence of the necessary decretal language, the judgment is not final and appealable” and this Court lacks appellate jurisdiction to review the merits of this matter. *Urquhart*, [20]15–1354, p. 3, 204 So.3d at 1077.

*Bayer*, 2017-0257, pp. 3-5, 226 So.3d at 517–18.

The December 14, 2018 judgment, from which the City seeks an appeal, states, in pertinent part:

THIS CAUSE came for hearing before this Court on Thursday, October 4, 2018, on petitioners Reginald Commodore and Managing Change, LLC’s rule to show cause why the alternative writ of mandamus issued by this Honorable Court on September 17, 2018 should not be made peremptory.

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IT IS ORDERED, ADJUDGED AND DECREED that the alternative writ of mandamus issued in this proceeding on September 17, 2018 is made peremptory and Councilmember Helena Moreno, Councilmember Jason Rogers Williams, Councilmember Joseph “Joe” I. Giarrusso III, Councilmember Jay H. Banks, Councilmember Kristin Gisleson Palmer, Councilmember Jared C. Brossett, and Councilmember Cyndi Nguyen are hereby ordered and compelled to perform their ministerial duty and, through an affirmative vote on the ordinance that was assigned Calendar No. 32,321 and introduced on July 12, 2018 consistent with the council’s discretionary May 24, 2018 Motion of Approval vote, adopt the final ordinance ratifying the City Council’s May 24, 2018, decision that authorized the conditional use permit for 938-940 Louisiana Avenue.

The judgment names Plaintiffs, Reginald Commodore and Managing Change, LLC, as the parties that filed the writ of mandamus and designates the Councilmembers as the parties against whom the mandamus was ordered.



Additionally, while the judgment does not explicitly state the writ of mandamus is granted, it does specify the relief as it orders the Councilmembers to act on the ordinance. Moreover, the relief granted is evident from the language of the judgment without reference to other documents. As such, the December 14, 2018 judgment contains sufficient decretal language to confer jurisdiction.<sup>7</sup>

### **DISCUSSION AND ANALYSIS**

The City argues that the trial court erred in granting the mandamus and ordering the Councilmembers to vote to approve the request for conditional use because the decision to adopt or not adopt an ordinance falls within the Councilmembers' legislative discretion, and is not a ministerial act which is the subject of a mandamus proceeding. The City also claims that the trial court erred in denying its exception of no cause of action because the petition for writ of mandamus failed to state a cause of action upon which relief may be granted. The City further argues that the trial court erred in denying its exception of prematurity because Plaintiffs failed to timely file an appeal of the City Council's August 9, 2018 decision, which denied their conditional use request. Lastly, the City

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<sup>7</sup> See *Neighbors First for Bywater, Inc. v. City of New Orleans/ New Orleans City Council*, 2017-0256, --- So.3d ----, 2017 WL 6350339 (La. App. 4 Cir. 12/13/17)(finding that the judgment, which stated petitioners' appeal is denied, indicated the relief afforded and the party against whom relief was denied and thus contained definitive decretal language that was sufficient to confer appellate jurisdiction, even though reasons for judgment were set forth in judgment itself); *State through Morrell v. City of New Orleans through Landrieu*, 2017-0110 (La. App. 4 Cir. 12/21/17), 234 So.3d 1071, writ denied 2018-0116 (La. 3/9/18) 237 So.3d 1192 (trial court judgment had decretal language to confer appellate jurisdiction in petition for writ of mandamus even though the judgment failed to specify name of party against whom ruling was ordered and failed to state party in whose favor remedy was granted because there were only two parties in the litigation and thus was clear in whose favor the judgment was granted and because the nature of the specific relief could be determined from the judgment without reference to an extrinsic source); but see *Moon v. City of New Orleans*, 2015-1092, 2015-1093 (La. App. 4 Cir. 3/16/16), 190 So.3d 422 (finding that trial court order stating that "the exceptions filed by the city in the above captioned matter are hereby granted" was not a final appealable order where the trial court failed to state which of the exceptions it was granting and did not expressly dismiss the case).

requests that Plaintiffs be taxed with the court costs it incurred in defending the case.

### ***Mandamus***

A writ of mandamus may be “directed to a public officer to compel the performance of a ministerial duty required by law.” La. C.C.P. art. 3863. A writ of mandamus may be issued in all cases where the law provides no other relief by ordinary means. La. C.C.P. art. 3862.

“Upon the filing of a petition for a writ of mandamus, the court shall order the issuance of an alternative writ directing the defendant to perform the act demanded or to show cause to the contrary.” La. C.C. art. 3865. After the hearing, the court may render judgment making the writ peremptory. La. C.C. art. 3866.

“Ministerial duties are duties in which no element of discretion is left to the public officer.” *Lens v. Landrieu*, 2016-0639, p. 3 (La. App. 4 Cir. 12/14/16), 206 So.3d 1245, 1248 (citing *Hoag v. State*, 2004–0857, p. 7 (La. 12/1/04), 889 So.2d 1019, 1024). “A ministerial duty is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law.” *Id.* “If a public officer is vested with any element of discretion, mandamus will not lie.” *Id.*

“Mandamus is an extraordinary remedy which should be applied only where ordinary means fail to afford adequate relief.” *Lens*, 2016-0639, pp. 3-4, 206 So.3d at 1248 (citing *Bd. of Trustees of Sheriff's Pension & Relief Fund v. City of New Orleans*, 2002–0640, p. 2 (La. 5/24/02), 819 So.2d 290, 292). “[M]andamus may not be granted where ... ordinary means afford adequate relief.” *Lens*, 2016-0639, p. 4, 206 So.3d at 1248 (citing *Aberta, Inc. v. Atkins*, 2012–0061, pp. 3–4 (La. 5/25/12), 89 So.3d 1161, 1163).

Generally, an appellate court reviews a trial court's judgment on a writ of mandamus under an abuse of discretion standard. *Lewis v. Morrell*, 2016-1055, p. 5 (La. App. 4 Cir. 4/5/17), 215 So.3d 737, 740 (citing *Hatcher v. Rouse*, 2016-0666, p. 3, n. 2 (La. App. 4 Cir. 2/1/17), 211 So.3d 431, 433; *Constr. Diva, L.L.C. v. New Orleans Aviation Bd.*, 2016-0566, p. 12 (La. App. 4 Cir. 12/14/16), 206 So.3d 1029, 1037). Also, a trial court's findings of fact in a mandamus proceeding are subject to a manifest error standard of review. *St. Bernard Port, Harbor & Terminal Dist. v. Guy Hopkins Constr. Co.*, 2016-0907, p. 4 (La. App. 4 Cir. 4/5/17), 220 So.3d 6, 10. However, questions of law, such as the proper interpretation of a statute, are reviewed by appellate courts under the *de novo* standard of review, and the appellate court is not required to give deference to the lower court in interpreting a statute. *Carver v. Louisiana Dep't of Pub. Safety*, 2017-1340, p. 4 (La. 1/30/18), 239 So.3d 226, 230; *St. Bernard Port, Harbor & Terminal Dist.*, 2016-0907, p. 4, 220 So.3d at 10.

The City claims the New Orleans Home Rule Charter and the Comprehensive Zoning Ordinance of New Orleans ("CZO") grant the City Council broad discretionary power to adopt ordinances.<sup>8</sup> The City claims the City Council's vote to approve the motion on May 24, 2018 was not an approval or a final decision of the proposed ordinance to grant Plaintiffs' request for conditional use. It argues that the motion simply directed the drafting of the proposed ordinance. The City claims that the proposed ordinance does not have the effect of law until it is adopted by a vote of majority of all members of the City Council pursuant to

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<sup>8</sup> Plaintiffs concede in their opposition brief that the City Council is a powerful legislative body with broad discretion and that the CZO spells out the process for conditional use applications, but claim the City Council failed to follow it.

Sec. 3-112(10) of the Home Rule Charter. The City argues that the May 24, 2018 motion does not have the effect of law and merely allows more time for consideration. The City states that the vote to approve motion under CZO Sec. 4.3.D.4(c) does not obligate the vote for approval of an ordinance because such a legislative act is an exercise of discretion. Thus, the City claims a mandamus cannot be used to compel the City Council to adopt the request for conditional use.

Home Rule Charter, Article III, Sec. 3–101(1) provides for the City Council’s legislative authority and states “[a]ll legislative powers of the City shall be vested in the Council.” Sec. 3–112 outlines the introduction, consideration, and passage of ordinances. It provides, in part:

(1) Proposed ordinances must be complete and in writing and may be introduced by any member at any meeting of the Council. Every ordinance shall embrace but one object except those approving the annual operating and capital budgets and codifications.

(2) After a proposed ordinance has been introduced, copies of it shall forthwith be prepared and distributed to each member of the Council and the Mayor and made available to the public.

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(5) *Proposed ordinances on any of the following specified subjects can be adopted only at a regular meeting of the Council and shall not be adopted until at least twenty calendar days have transpired beginning on the day after the date of introduction of the ordinance and not until a notice of the introduction of such proposed ordinance shall have been published in the official journal of the City not less than seven calendar days nor more than fourteen calendar days after the introduction thereof, which notice shall state the substance of the proposed ordinance and the date of the meeting at which the Council shall begin its consideration thereof:*

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(b) Imposing any license, requiring any permit, establishing any charge for services rendered, or increasing the rate of any license, fee, or utility charge.

(c) The adoption, amendment, or comprehensive revision of the Master Plan or the Comprehensive Zoning Ordinance, including without limitation text amendments, zoning or rezoning, or changing the zoning districts or classifications.

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(9) *Votes at final passage shall be taken by ayes and nays and the names of the councilmembers voting for and against each proposed ordinance or amendment shall be entered upon the journal of proceedings to be kept of all transactions of the Council.*

(10) *No proposed ordinance shall be adopted except by the affirmative vote of a majority of all members of the Council.* [Emphasis added].

New Orleans, Home Rule Charter, Art. III, § 3–112.

CZO Sec. 4.3 addresses applications for conditional use.<sup>9</sup> Sec. 4.3.D.4, which is the provision primarily at issue in this case, provides for action of the City Council after the CPC acts on a conditional use request. It states:

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<sup>9</sup> CZO Sec. 4.3.A provides the purpose of conditional use and states:

Within each zoning district, the use of land and structures are substantially uniform. However there are certain uses that, because of their unique characteristics, cannot be properly classified in certain districts without consideration, in each case, of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location. These uses are allowed as conditional uses within the zoning districts. This section sets forth the standards used to evaluate proposed conditional uses and the procedures for approving conditional uses. The designation of a use in a zoning district as a conditional use does not constitute an authorization or assurance that such use will be approved. *No conditional use may be established* and no building permit may be issued for any use designated as a conditional use within a zoning district *until a conditional use ordinance is adopted by the City Council* and final drawings are submitted to and approved by the Executive Director of the City Planning Commission. [Emphasis added].

CZO Sec. 4.3.B(1) states that the “City Council may initiate a Conditional Use application by adoption of a motion.” CZO Sec. 4.3.C then provides that the “City Council, after receiving a recommendation from the City Planning Commission, shall take formal action on requests for conditional uses.” Pursuant to CZO Sec. 4.3.D.3 the CPC then votes to approve or deny a conditional use request. Sec. 4.3.D.3(c) provides:

The City Planning Commission shall recommend approval, modified approval, or denial sixty (60) days from the opening of the public hearing. The City Planning Commission may also vote to defer action within City Charter required timeframes in cases where it discovers applicants have not submitted complete and accurate information, including but not limited to errors or omissions in following the Project NPP. The failure to resolve a finding of incomplete or inaccurate information may be grounds for recommending denial. If the City Planning Commission fails to act by a vote of the majority of the Commission members, the application will be forwarded to the City Council without recommendation of no legal majority. The City Planning Commission’s written recommendations, together with the staff report and recommendation, if any, shall be filed with the Clerk of the City Council.

a. *The City Council shall hold a public hearing in accordance with its rules and take action by motion of approval, modified approval, or denial sixty (60) days from receipt of a City Planning Commission recommendation.* The City Council may not take official action upon any application requiring a recommendation of the City Planning Commission until the report of the Commission has been received or, if the City Planning Commission has failed to act by a vote of the majority of the Commission members, once the application has been forwarded to the City Council without recommendation.

b. If the City Council fails to take action by motion sixty (60) days from receipt of the City Planning Commission recommendation, the application is denied. If the application is forwarded to the City Council without recommendation from the City Planning Commission and the City Council fails to take action by motion sixty (60) days from the date it received the application, the application is denied.

c. *If the City Council takes action by motion of approval or modified approval, the City Council shall forward the motion to the City Law Department for preparation of an ordinance. Once the ordinance is introduced by the City Council, the ordinance shall layover a minimum of twenty-one (21) days before the Council may adopt it. **The City Council shall adopt the final ordinance ratifying its decision within ninety (90) days of the date that it took action by motion.** [Emphasis added].*

New Orleans, CZO, § 4.3.

The parties dispute the interpretation of the last sentence of CZO Sec.

4.3.D.4(c). The City claims that Sec. 4.3.D.4(c) simply sets forth the time frame for the City Council to vote and does not require it to adopt an ordinance. Plaintiffs, however, claim there is no ambiguity in the last sentence of the provision and that it clearly states that the City Council “shall adopt” the ordinance ratifying the May 24, 2018 decision to grant conditional use within ninety days. Accordingly, Plaintiffs argue the City Council had a ministerial duty to adopt the conditional use ordinance approved on May 24, 2018. Plaintiffs also maintain the City Council’s decision to reverse and deny the ordinance after approving the ordinance was contrary to CZO Sec. 4.3.D.4(c).

The Louisiana Supreme Court discussed the interpretation of statutes in *Pumphrey v. City of New Orleans*, 2005-0979, pp. 10-11 (La. 4/4/06) 925 So.2d 1202, 1209–10, and stated in pertinent part:

The fundamental question in all cases of statutory interpretation is legislative intent and the ascertainment of the reason or reasons that prompted the Legislature to enact the law. *In re Succession of Boyter*, [19]99–0761, p. 9 (La. 1/7/00), 756 So.2d 1122, 1128. The rules of statutory construction are designed to ascertain and enforce the intent of the Legislature. *Id.*; *Stogner v. Stogner*, [19]98–3044, p. 5 (La. 7/7/99), 739 So.2d 762, 766. Legislation is the solemn expression of legislative will, and therefore, interpretation of a law involves primarily a search for the Legislature's intent. La. [R.S.]1:4 (2004); La. [C.C.] art. 2 (2004); *Lockett v. State, Dept. of Transp. and Development*, [20]03–1767, p. 3 (La. 2/25/04), 869 So.2d 87, 90.

When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the Legislature. La. [C.C.]art. 9 (2004); *Lockett*, [20]03–1767 at p. 3, 869 So.2d at 90–91; *Conerly v. State*, [19]97–0871, p. 3–4 (La. 7/8/98), 714 So.2d 709, 710–11. When the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law, and the words of law must be given their generally prevailing meaning. La. [C.C.] arts. 10 and 11 (2004); *Lockett*, [20]03–1767 at p. 4, 869 So.2d at 91; *Ruiz v. Oniate*, [19]97–2412, p. 4 (La. 5/19/98), 713 So.2d 442, 444. When the words of a law are ambiguous, their meaning must be sought by examining the context in which they occur and the text of the law as a whole, and laws on the same subject matter must be interpreted in reference to each other. La. [R.S.] 1:3 (2004); La. [C.C.] arts. 12 and 13; *Lockett*, [20]03–1767 at p. 4, 869 So.2d at 91.

The meaning and intent of a law is determined by considering the law in its entirety and all other laws on the same subject matter and placing a construction on the provision in question that is consistent with the express terms of the law and with the obvious intent of the Legislature in enacting it. *Boyter*, [19]99–0761 at p. 9, 756 So.2d at 1129; *Stogner*, [19]98–3044 at p. 5, 739 So.2d at 766. The statute must, therefore, be applied and interpreted in a manner, which is consistent with logic and the presumed fair purpose and intention of the Legislature in passing it. *Boyter*, [19]99–0761 at p. 9, 756 So.2d at 1129. This is because the rules of statutory construction require that the general intent and purpose of the Legislature in enacting the law must, if possible, be given effect. *Id.*; *Backhus v. Transit Cas. Co.*, 549 So.2d 283, 289 (La. 1989). Courts should give effect to all parts of a statute and should not give a statute an interpretation that

makes any part superfluous or meaningless, if that result can be avoided. *Boyter*, [19]99–0761 at p. 9, 756 So.2d at 1129. It is likewise presumed that the intention of the legislative branch is to achieve a consistent body of law. *Stogner*, [19]98–3044 at p. 5, 739 So.2d at 766.

Using the aforementioned principles, the trial court erred in interpreting CZO Sec. 4.3.D.4(c) as providing for a ministerial duty to definitively adopt a proposed ordinance. A vote to approve the May 24, 2018 motion does not legally bind the City Council to then affirmatively adopt an ordinance as final. Although the last sentence provides the City Council shall adopt the ordinance ratifying the decision within ninety days from the date it acted on the motion, the previous sentence provides the City Council *may* adopt it after a minimum of twenty-one days from when the City Council approved the motion. Reading the sentences together and in reference to each other, as the rules of interpretation provide, we conclude that the last statement of the CZO Sec. 4.3.D.4(c), sets forth a time period for which the City Council must vote on a proposed ordinance and does not obligate that the City Council to accept it. Otherwise, the second sentence of CZO Sec. 4.3.D.4(c) giving the City Council discretion in which it may or may not adopt an ordinance would be superfluous. A vote to adopt or deny a proposed ordinance thus is within the City Council’s discretion, contrary to Plaintiff’s assertions, and thus is not a ministerial duty in which a mandamus could be issued. Accordingly, the trial court erred in ordering the City Council to adopt and ratify the proposed ordinance, as it is vested in discretion. *See Humane Soc’y of New Orleans v. Landrieu*, 2013-1059, p. 4 (La. App. 4 Cir. 2/26/14), 135 So.3d 1195, 1197 (a mandamus is not available to compel performance that requires the exercise of discretion, “however slight”).



Additionally, as discussed above, Home Rule Charter, Sec. 3-112(9) provides that votes at final passage of an ordinance shall be taken by a vote of the Councilmembers voting for and against each proposed ordinance. Sec. 3-112(10) also states that no proposed ordinance shall be adopted except by the affirmative vote of a majority of all members of the City Council. These provisions further demonstrate the City Council's authority to accept or deny a proposed ordinance. The Home Rule Charter does not mandate the City Council affirmatively vote in favor of an ordinance.

Pursuant to the Home Rule Charter and the CZO, a vote of the City Council is discretionary and cannot be compelled by a writ of mandamus. Therefore, the trial court erred in granting the writ of mandamus and ordering the Councilmembers to vote to adopt and ratify the proposed conditional use ordinance.

### ***Exceptions of No Cause of Action and Prematurity***

The City argues that the trial court erred in denying its exception of no cause of action and its exception of prematurity.<sup>10</sup> However, because we reverse on the mandamus, any discussion on the exceptions is pretermitted.

### ***Court Costs***

The City also argues this Court should order and assess all court costs of defending this matter against Plaintiffs under La. R.S. 13:4521(A)(1).<sup>11</sup> This statute

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<sup>10</sup> “Generally speaking, there is no appeal from a judgment overruling exceptions because such a judgment is simply interlocutory in nature.” *Trahant v. Perez*, 2002-1414, pp. 8-9 (La. App. 4 Cir. 3/19/03), 843 So.2d 479, 484 (quoting *Allied Nav. Co. v. International Org. of Masters, Mates & Pilots*, 272 So.2d 23, 25 (La. App. 4 Cir.1973)). However, “[a]n appellant is entitled to seek review of all adverse interlocutory judgments prejudicial to them, in addition to the review of the final judgment when an unrestricted appeal is taken.” *Maqubool v. Sewerage & Water Bd. of New Orleans*, 2018-0572, p. 3 (La. App. 4 Cir. 11/14/18), 259 So.3d 630, 632–33 (quoting *Orleans Par. Sch. Bd. v. Lexington Ins. Co.*, 2011-1720, p. 10 (La. App. 4 Cir. 8/22/12), 99 So.3d 723, 729).

addresses temporary deferment of court costs during the pendency of a lawsuit involving a state or its subdivisions, and provides, in relevant part:

Except as provided in R.S. 13:5112, R.S. 19:15 and 116, and R.S. 48:451.3, and as provided in this Subsection, *the state, any political subdivision as defined in this Section, and any agent, officer, or employee of any such governmental entity* when acting within the scope and authority of such employment or when discharging his official duties *may temporarily defer court costs*, including cost of filing a judgment dismissing claims against the state, political subdivision, or agent, officer, or employee thereof, *in any judicial proceeding instituted or prosecuted by or against the state, any political subdivision, or agent, officer, or employee thereof in any court of this state or any municipality of this state*, including particularly but not exclusively those courts in the parish of Orleans and the city of New Orleans... Costs which are temporarily deferred pursuant to this Section cannot be shifted to opposing parties during the pendency of such deferment; however, *when a final judgment is rendered dismissing all claims against the state, a political subdivision, or agent, officer, or employee thereof and when the judgment taxes costs of the state, political subdivision, or agent, officer, or employee thereof against the opposing party in accordance with the provisions of Code of Civil Procedure Article 1920, the opposing party shall be condemned to pay the temporarily deferred court costs.* [Emphasis added].

La. R.S. 13:4521(A)(1).

Here, there is no judgment taxing the City's court costs to Plaintiffs.

Moreover, in *State, Dep't of Transp. & Dev. v. Lauricella Land Co.*, 12-384, p. 10 (La. App. 5 Cir. 12/11/12), 106 So.3d 1124, 1130, the Fifth Circuit determined that “because La. R.S. 13:4521(A) only provides for an exemption of *prepayment* to the state, its agencies, and political subdivisions of the state of *its own incurred court costs*, the state, its agencies, and political subdivisions of the state can be made to pay its own incurred costs in a proceeding *by or against it.*” (emphasis in original).

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<sup>11</sup> The City raised this issue before the trial court. The City argued in the exception of no cause of action that Plaintiffs be condemned to pay the temporarily deferred court costs associated with defending against Plaintiffs' claims. Plaintiffs do not address the City's request for costs in their brief.

Accordingly, neither the state nor its political subdivisions is immune from court costs unless such immunity is statutorily provided. *Jefferson Par. Hosp. Dist. No. 1 v. K & B Louisiana Corp.*, 13-508, 13-730, p. 10 (La. App. 5 Cir. 3/12/14), 138 So.3d 51, 56. Additionally, under the provisions of the statute, an opposing party, such as Plaintiffs, is not necessarily required to pay the City's temporarily deferred costs absent a judgment dismissing the claims and taxing the costs of the state agency or political subdivision against it. Further, La. R.S. 13:4521(A)(1), references La. C.C.P. art. 1920, the article providing for the trial court assessment of costs.<sup>12</sup> Thus, it is within the discretion of the trial court to assess costs against the parties. We decline the City's request for an award for costs.

### **CONCLUSION**

For the reasons expressed above, we find that the trial court erred in granting the petition for writ of mandamus and ordering the Councilmembers to affirmatively vote to adopt and ratify the conditional use request. The City Council has the discretion to adopt and enact a proposed ordinance in zoning matters and thus it is not a ministerial act which can be compelled by writ of mandamus. The December 14, 2018 judgment of the trial court is therefore reversed. Further, the City's request for court costs is to be determined by the trial court. Accordingly, we reverse the trial court's ruling and remand the case for assessment of court costs.

### **REVERSED AND REMANDED**

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<sup>12</sup> See La. C.C.P. art. 1920 (providing “[u]nless the judgment provides otherwise, costs shall be paid by the party cast, and may be taxed by a rule to show cause” and that “[e]xcept as otherwise provided by law, the court may render judgment for costs, or any part thereof, against any party, as it may consider equitable”); *Jefferson Par. Hosp. Dist. No. 1*, 13-508, p. 11, 138 So.3d at 56 (the trial court has great discretion in awarding costs; while it is the general rule that the party cast in judgment should be taxed with costs, the trial court may assess costs in any equitable manner and against any party in any proportion it deems equitable).