



CITY OF WEST WENDOVER

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WEST WENDOVER CITY COUNCIL MINUTES OF THE SPECIAL MEETING OF OCTOBER 8, 2007

The West Wendover City Council met for a special meeting on October 8, 2007. The meeting was held at the West Wendover Library, Pilot Peak Room. Mayor Thaut presided.

Council Members Present: Roy Briggs, Emily Carter, Jimmy Carter, Jamey Christie and Johnny Gorum

Others Present: Ron Supp, Craig Ronzone, David Lockie, Craig Harasek, Bryce Kimber, Dixie Melville, Devan Croasmun, Claude Fratto, Cassie Fratto, Donald Lininger, Lisa Supp, Scott Bangerter, Jason Vance, Brenda Flinders, Leon Flinders, Dave Wiskerchen, Sandi Gunter, Jose Luna, Arby Stone, Ivan Brekke, Toni Corona, Jeff Knudtson, John Hanson, Chris Melville and Anna Bartlome

The following proceedings were had.

1. CALL TO ORDER AND ROLL CALL

Mayor Thaut called the meeting to order at 6:30 p.m. All those present and excused are noted above.

2. PLEDGE OF ALLEGIANCE

Mayor Thaut led those present in the Pledge of Allegiance.

3. COMMENTS FROM THE GENERAL PUBLIC:

Mayor Thaut explained that this would be the only time allowed for public comment. No public comment was offered or received.

4. NEW BUSINESS

PUBLIC HEARING the West Wendover City Council will conduct a public hearing of the appeal by Donabel's LLC, dba Southern X-Posure, of the 9-12-2007 decision of the Chief of Police to revoke the Sexually Oriented Business license of Donabel's LLC, dba Southern X-Posure

Mayor Thaut closed the regular portion of the meeting and opened the public hearing portion of the meeting.

Mayor Thaut introduce Rich Barrows, of Wilson, Barrows & Salyer, would be representing the City in this meeting. Mayor Thaut disqualified herself as the presiding officer. Rich Barrows explained that the Council Members are the decision maker and should not be biased for or against either the Chief of Police or the Licensee. Rich Barrows explained that a letter had been received from Licensees attorney stating that some Council Members may have a bias due to where they work.

All of the Council Members declared where they worked, that they have no bias against Donabel's LLC, Southern X-Posure or Scott Bangerter, and are not aware of any corporate decisions made by their employers.

See the attached Council Decision for the transcript of the meeting.

Rich Barrows declared the evidentiary portion of the hearing closed at 8:43 p.m. and opened the argument portion of the meeting opened.

Rich Barrows declared the argument portion of the meeting over and turned the meeting back to Mayor Thaut. Mayor Thaut closed the public hearing portion of the meeting and opened the regular portion of the meeting at 9:26 p.m.

***a. Discussion and Decision with Regard to the Appeal by Donabel's LLC, dba Southern X-Posure of the 9-12-2007 Decision of the Chief of Police to Revoke the Sexually Oriented Business License of Donabel's LLC, dba Southern X-Posure per City Code 3-4-11 and Other Matters Appropriately Related Thereto**

Council Member Christie made the motion to reverse the decision of the Chief of Police on the revocation of the sexually oriented business license of Donabel's LLC, dba Southern X-Posure per City Code 3-4-11 and instead implement a thirty day suspension with a request that all employees and new hire employees be drug tested. The motion was seconded by Council Member E. Carter. A roll call vote was taken and each Council Member must state the reasoning behind their vote.

Council Member Briggs votes aye and stated that there is no direct implication of Mr. Bangerter having knowledge.

Council Member E. Carter votes aye and stated that she believes the suspension is warranted due to there being seven independent drug buys in the Southern X-Posure by employees. Council Member E. Carter stated that to revoke the license would indicate that Mr. Bangerter had direct knowledge of the sale or use of drugs and does not feel that that was adequately proven.

Council Member J. Carter votes aye and stated that there is nothing implicating Mr. Bangerter with a sufficient lack of that information.

Council Member Christie votes aye and states that there is no evidence that shows Mr. Bangerter was aware of the activity going on within his business. Council Member Christie further stated that there seemed to be a difference of opinion of the function of key personnel and whether key personnel is a management position. Council Member Christie further stated that the City Code administrative due process of the code.

Council Member Gorum votes aye and stated that no evidence was brought before the Council implicating Mr. Bangerter and due process of the code.

5. *NEXT MEETING DATE AND ADJOURNMENT

The next meeting date is a joint meeting with the REC District at 6:00 p.m. and a regular meeting on October 16, 2007 at 7:00 p.m. both meetings will be held at the West Wendover Library, Pilot Peak Room. Council Member E. Carter made the motion to adjourn at 9:43 p.m. The motion was seconded by Council Member Christie and passed unanimously.

ATTEST:

Anna E. Bartlome
City Clerk/Records Officer

**THE CITY COUNCIL OF
THE CITY OF WEST WENDOVER, NEVADA**

**IN THE MATTER OF THE LICENSE
REVOCATION OF:**

COUNCIL DECISION

**DONABEL'S LLC, DBA
SOUTHERN X-POSURE,**

LICENSEE.

On October 8, 2007, the City Council (Council) of the City of West Wendover, Nevada (City), made a decision after a public hearing on the merits in open meeting partially granting the above Licensee's appeal, overturning the license revocation decision of the City's Chief of Police, Ron Supp (Chief of Police), and suspending the License for a period of 30 days. The following is a written embodiment of that decision:

On September 12, 2007, the Chief of Police issued his decision (Decision) revoking the Sexually Oriented Business license of Donalel's LLC, dba Southern X-Posure (Licensee). On September 13, 2007, Licensee appealed the Decision pursuant to the City Code. By agreement between the Licensee and the City Manager, the public hearing of the Licensee's appeal by the Council was scheduled for a special meeting of the Council on Monday, October 8, 2007. The hearing was held as scheduled. The Licensee appeared by its representative, Scott Bangerter, its Managing Member, and its attorneys David B Lockie and Craig Harasek. The Chief of Police represented himself without legal counsel. The Council was represented by its special legal counsel, Richard G. Barrows. The Chief of Police presented evidence, sworn testimony, cross-examination of witnesses and argument in support of his Decision. Licensee presented evidence, sworn testimony, cross-examination of witnesses and argument in opposition to the Decision. The matter was submitted for the decision of the Council. The Council deliberated in open meeting and reached a decision in open meeting as stated below.

ACCORDINGLY,

THE COUNCIL HEREBY FINDS, CONCLUDES AND DECIDES AS FOLLOWS:

1. The City of West Wendover, Nevada is an incorporated City of the State of Nevada.

2. The City is governed by the Council.

3. The City adopted a Sexually Oriented Business Ordinance, which is codified as Title 3, Chapter 4 of the City Code (Sexually Oriented Business Code).^{1/}

4. Code Sec. 3-4-4 requires all Sexually Oriented Business's to obtain a Sexually Oriented Business license from the City.

5. On February 6, 2007, the City and Licensee entered into a Settlement Agreement (Settlement Agreement) of a lawsuit between the City and Licensee.^{2/}

6. Among other things, the Settlement Agreement contained the following agreements between the City and the Licensee:

a. Southern X-Posure is a Sexually Oriented Business under Title 3, Chapter 4 of the City Code. ¶2.1

b. The City waived, and agreed not to pursue, any alleged or perceived violations of the Sexually Oriented Business Code occurring prior to the effective date of the Agreement. ¶1.4

c. During all business hours Licensee must have at least one Key Employee on the premises who shall be charged with duties of seeing that the Sexually Oriented Business Code are being followed. ¶6.1

d. Licensee shall be strictly liable for violations of the Settlement Agreement by its employees, agents, contractors and performers within its business. ¶7

7. In accordance with the Settlement Agreement, Donabel's LLC, dba Southern X-Posure, applied for, and was issued, Sexually Oriented Business license

¹ City Exhibit No. 7.

² City Exhibit No. 8.

No. 5858 (License) for the period from July 1, 2007 through June 30, 2008.^{3/}

8. In accordance with the Settlement Agreement, the Licensee's Managing Member, Scott Bangerter (Bangerter), Joe Luna, and Sylvia Tripp were issued Key Employee work cards.^{4/}

9. In or around June, 2007, the Elko Combined Narcotics Unit (Unit) started an investigation into the possession and sale of illegal narcotics in the City of West Wendover. The Chief of Police was not a part of the Unit or the investigation. That investigation eventually led to the Southern X-Posure.

10. Between June and August 2007, the Unit concluded that employees^{5/} and customers of Southern X-Posure were engaging in possession and sale of illegal drugs at the Southern X-Posure and the Unit applied for a search warrant of the Southern X-Posure.^{6/}

11. On Thursday, August 17, 2007, the search warrant was executed at the Southern X-Posure by the Unit. At that time no illegal drugs were found by the Unit. However, at that time, an employee of the Southern X-Posure, Rojelio Cornejo, the bouncer, and Sylvia Tripp, a Key Employee and independent contractor-performer, were arrested by the Unit for possession and sale of illegal drugs inside the Southern X-Posure on previous occasions.

12. On September 4, 2007, in accordance with Sec. 3-4-10 of the Sexually Oriented Business Code, the Chief of Police held a hearing with the Licensee and its legal counsel on the issue of whether the Sexually Oriented Business License should be revoked as a result of the Unit investigation and arrests.

13. On September 12, 2007, the Chief of Police issued his Decision that the License should be revoked^{7/}.

14. On September 13, 2007, the decision was served on Licensee.

³ City Exhibit No. 1.

⁴ City Exhibit Nos. 9, 10 and 11.

⁵ Since it was not relevant to its investigation, the Unit did not make the technical distinction between "employees" and "independent contractor-performers".

⁶ City Exhibit No. 5 and testimony of Craig Ranzone.

⁷ City Exhibit No. 6.

15. On the same day, the Licensee timely appealed the Decision and it was stayed pending appeal.

16. As a result, the Southern X-Posure was not closed even one day between the time of the Decision on September 12, 2007, and the Council hearing on October 8, 2007.

17. On October 8, 2007, the Council conducted a *de novo* public hearing in special open meeting of all of the issues related to the Decision. The technical rules of evidence applicable to Nevada courts did not apply to this public hearing before the Council. In particular, reliable hearsay evidence is admissible, and was admitted, at the hearing before the Council.

18. Between June, 2007 and August 16, 2007, controlled substances were possessed, used and sold within the premises of the Southern X-Posure. (The possession, use and sale of controlled substances within the premises of the Southern X-Posure will be referred to as "Illegal Narcotics").

19. The Licensee and Scott Bangerter did not have actual knowledge of the Illegal Narcotics.

20. The Council exercises its discretion to not apply the strict liability provisions of Sexually Oriented Business Code Sec. 3-4-29 regarding this particular episode of Illegal Narcotics in the Southern X-Posure.

21. Nevertheless, the Licensee "knowingly" allowed the Illegal Narcotics in violation of Sexually Oriented Business Code Sec. 3-4-10-B-2. At the public hearing, Bangerter testified that he did not know about the Illegal Narcotics, primarily because he was absent in the Philippines during the period in question. However, Bangerter testified that there were various occasions that he suspected Illegal Narcotics at the Southern X-posure. Therefore, Bangerter – and, thus, Licensee – had constructive knowledge of the Illegal Narcotics because:

- a. Licensee's Key Employee, Sylvia Tripp, had actual knowledge of the Illegal Narcotics, since she possessed and sold them and that knowledge is imputed to the Licensee;
- b. If Bangerter did not have actual knowledge of the Illegal Narcotics, he suspected them. As a result, in the reasonable supervision of the business he should have known about them; and
- c. Having suspected Illegal Narcotics, a person may not avoid actual knowledge and responsibility for the conduct of his business by

absenting himself from the business so as to avoid acquiring such knowledge.

22. A city such as West Wendover, has the right and discretion to pass an ordinance which requires its licensees to operate their businesses in such a fashion as to prevent its employees and on site independent contractors from knowingly allowing illegal activities on the business premises. The City has done just that in Sexually Oriented Business Code Sec. 3-4-10-B-2, which provides that the Chief of Police may revoke the Sexually Oriented Business license if he determines that one or more of three categories of persons knowingly allowed the possession or sale of narcotics on the premises. Sexually Oriented Business Code Sec. 3-4-10-B-2 provides that:

“The Chief of police may revoke the license if the chief of police determines that:

[1] a licensee or

[2] an employee, independent contractor, agent or

[3] any person acting at the request or with the acquiescence of the licensee or owner in furtherance of the sexually oriented business use

has knowingly allowed possession, use, or sale of controlled substances on the premises.”

23. Thus, in addition to the Licensee’s constructive knowledge, one or more employees and independent contractor-performers of Licensee “knowingly” allowed the Illegal Narcotics in the Southern X-Posure. In accordance with Sexually Oriented Business Code Sec. 3-4-10-B-2, the “knowledge” of the Licensee’s employees and independent contractor-performers is imputed to the Licensee. In this sense the Ordinance uses “knowingly” to distinguish between an innocent situation such as one in which narcotics are planted on the employee and brought into the business by the employee without his/her knowledge. Liability under Sexually Oriented Business Code Sec. 3-4-10-B-2 is also distinguished from strict liability under Sexually Oriented Business Code Sec. 3-4-29, because under that latter, the Licensee may be punished even if a customer brings narcotics into the premises without the knowledge of all three of the categories of persons with knowledge described in Sexually Oriented Business Code Sec. 3-4-10-B-2.

24. The Southern X-Posure employee and independent contractor-performers arrested on August 17, 2007, for the Illegal Narcotics have not yet been convicted by a

criminal court. However, that has no bearing on this separate non-criminal proceeding. The License could be revoked for the Illegal Narcotics even if both of the Southern X-Posure employees were acquitted of the criminal charges.

25. Because the Licensee's owner, Scott Bangerter, was in the Philippines during the time that the Unit discovered Illegal Narcotics in the Southern X-Posure – and because the Licensee had only constructive knowledge, as opposed to actual knowledge, of the Illegal Narcotics, the Council exercises its discretion to suspend the License rather than revoke the License.

26. In violation of Sexually Oriented Business Code Sec. 3-4-9-C, the Licensee has demonstrated an inability to operate or manage the Southern X-Posure in a law abiding manner, thus necessitating the above action by law enforcement officers. For this reason the License is suspended for a period of 30 calendar days.

27. This Decision is effective on October 8, 2007, and is final.

ADOPTED BY THE COUNCIL IN OPEN MEETING ON THE 16th DAY OF OCTOBER, 2007, BY A COUNCIL VOTE OF _____ FOR AND _____ AGAINST, WITH _____ ABSTAINING AND _____ ABSENT.

City Council of the
City of West Wendover, Nevada

DATED: _____

By: _____

CLERK

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October 16, 2007