



COLUMBIA CITY COUNCIL MEETING MINUTES TUESDAY, NOVEMBER 19, 2019

SPECIAL CALLED MEETING – 2:00 P.M.

The Columbia City Council held a Special Called Meeting on Tuesday, November 19, 2019 at City Hall, 1737 Main Street, Columbia, South Carolina 29201. The Honorable Mayor Pro-Tempore Tameika Isaac Devine called the meeting to order at 2:27 p.m. and the following members of Council were present: The Honorable Sam Davis, The Honorable Moe Baddourah, The Honorable Edward H. McDowell, Jr., and The Honorable Daniel J. Rickenmann. The Honorable Mayor Stephen K. Benjamin and The Honorable Howard E. Duvall, Jr. were absent. Also present were Ms. Teresa Wilson, City Manager and Ms. Erika D. Moore, City Clerk. This meeting was advertised in accordance with the South Carolina Freedom of Information Act.

BUSINESS LICENSE APPEAL

1. Cricket Store 17, LLC dba Taboo - *Denied*

Ms. Erika D. Moore, City Clerk said members of Council, we are here in the matter of an appeal filed by Cricket Store 17. Council are you ready to proceed and place the rules of procedure governing this appeal into the record?

Councilor Devine said this hearing is being held pursuant to Sec. 11-46 of the City Code. The parties have the right to make arguments, present evidence, exhibits, and/or testimony, and cross examine any adverse witnesses. A party may be represented by any counsel of their choosing who is admitted and in good standing in at least one state. The rules of evidence shall not apply, except as to privilege, but may be considered as a guide towards the full development of facts. The license inspector shall present first, followed by the business and a short reply by a licensed inspector. The time limits in minutes are 30-30-10, with additional time being allowed per City Council discretion. The City Council may take the matter under advisement after hearing from the parties or may vote on the appeal upon the conclusion of this hearing. The City Council shall by a majority public vote of the members present, render a written decision based on findings of fact and the standards in Chapter 11, Article II of the City Code. In doing so, City Council may consider any proposed orders tendered by the parties.

Mr. Pete Balthazor, Esq., Counsel for the Business License Division said I have been representing the City of Columbia along with Scott Bergthold who is here today, on various legal appeals or legal challenges brought by Cricket Store 17 against the City of Columbia over the years. Mr. Bergthold and I along with the City Attorney's Office have been advising the Business License Division on various business license issues, as well. We are here today to represent the Business License Division in the appeal brought by Cricket Store 17. Pursuant to



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the procedures that were just read by Ms. Devine, I would ask that Scott Bergthold be given permission by Council to appear before you to present this matter on behalf of the Business License Division. Mr. Bergthold is admitted as a member of the bar in three other states. As an out of state attorney, he has been participating with me. I am a member of the South Carolina Bar.

Councilor Devine asked if there is any objection to Mr. Bergthold presenting. Seeing none, Councilor Devine welcomed Mr. Bergthold to the podium and instructed him to proceed with his presentation.

Mr. Scott Bergthold, Esq., Counsel for the Business License Division said I take that as I do have permission to appear.

Councilor Devine said yes sir.

Mr. Scott Bergthold, Esq., Counsel for the Business License Division said if I may approach, I have an exhibit booklet I'd like to give to each member of the Council to help guide [you] through the proceeding. I'll provide a copy to whoever is here on behalf of Cricket Store, as well.

Councilor Devine asked for the record if anyone is here representing Cricket Stores.

Mr. Scott Bergthold, Esq., Counsel for the Business License Division said we'd like to walk you through the position of the Business License Division on this appeal. That is basically going to be facilitated by the binder in front of you. I'll give the business an opportunity to speak and I'll take any rebuttal or cross examination necessary. At the end of today, I will be asking Council to make a motion to adopt a written decision. That motion is inside the binder as well as a one-page written decision. That written decision is the relevant provision of the business licensing code on business license denials, which is section 11-44 and then the four reasons that were laid out in the business license inspector's denial letter dated October 14, 2019. There is a certification that acts as a table of contents for the materials I will be presenting. This was signed by Ms. Lakesha Shannon, Business License Administrator where she certified that the following documents are public records contained in the Business License Division's files and related to the business license application of Cricket Store 17, LLC d/b/a Taboo. There are ten documents there. In addition to those ten, I would also like to make a part of the record, all of the exhibits in the back of the binder and two other documents that were sent to the Business License Department in 2016 from Jeff White, the owner and proprietor of Cricket Store, LLC. There are two emails to City officials. Finally, there are certificates of good standing regarding my admission in other states. At this time, I would offer this binder of exhibits into the record.



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Councilor Devine asked if there was any objection. Seeing none, we will admit this exhibit into the record.

Mr. Scott Bergthold, Esq., Counsel for the Business License Division said I'd like to start with number one in the tabbed binder. This goes through the relevant provisions of article two for business licensing in the City of Columbia. Section 11-31 requires every business to have an obtained business license and pay a fee every year for having that business license. The next section is 11-35 (d) says that when business license applicants seek a license they have to provide proof of payment of any business related fees, assessments, and/or personal property taxes including any late fees or penalties. The next relevant section is 11-44, the denial provision. It says the license inspector shall deny a license to an applicant under this article when the application is incomplete or contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact, or when the activity for which a license is sought is unlawful or constitutes a public nuisance. The next provision is section 11-45. This deals with suspension or revocation of a license. Subsection (a) gives the license inspector the authority to revoke a license if (5) licensee has engaged in unlawful activity or nuisance related to the business. We are in a unique situation here, because we have a business that's been operating in the City of Columbia for some time, but at least for the last five years from 2014 on, has never had a valid business license. Had they had one, they would have been subject to revocation for some unlawful activities that I will talk about. The main standard is 11-44 and that is what we are here on, the denial. Finally, the last section is 11-46, which governs our appeal. The procedures are even read into the record.

- Tab two is the application that was filed by Cricket Store 17, LLC on September 13, 2019. They listed the business start date as September 13, 2019 and their description of the business is general retail. We have additional information from the applicant. They say they have read the rules in the Code requirements for the City. They also make some arguments about the types of devices they sell in the store.
- Number three is the letter dated October 14, 2019 from the Business License Division. It has several paragraphs. Section 11-44 says that you can deny a license for misrepresentation, false statements, failure to include a material fact, and so forth. Page two of that letter (page eight in the binder) gives several reasons why this application is being denied.
- Tab four is the written letter of appeal where they also get into settlement of litigation. I will let them talk about that.



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- Tab five is something that is referenced in the beginning of the Business License Division's October 14th denial letter where they said you've made repeated misrepresentations in the past. They are referring to all of the times over the years where they've come in and said we are a general retail business and then the City has done an investigation and found out that's not true. Then the court in granting an injunction, has agreed with the City and in granting the contempt sanction, has also agreed with the City. That happened several times, but the three that are included are in October 24, 2017, May 11, 2018, and the very next month in June.
- Tab six is the permanent injunction order that was entered by the Circuit Court of the Commons Pleas Court on March 8, 2018. They say that in 2011, plaintiff Cricket Store, LLC obtained a general business license and open and began operating Taboo. We know they started in 2011; therefore, the claim that their business start date was September 13, 2019 is a false statement. It goes through how Taboo sued the City in federal court (page 20), but was unsuccessful all the way to the US Court of Appeals for the Fourth Circuit. They then came in here on a BZA claim. They sued to challenge the Board of Zoning Appeals' decisions that they were an adult use or sexually oriented business. Those were also rejected. At the hearing on the injunction they made claims about Spencer's and different things. The Court looked (page 22) at what they sold; at pictures taken by Brian Cook, prior Zoning Administrator; the websites they displayed; the definitions and moved on to say (page 24) that Taboo is clearly violating the zoning ordinance provision on multiple counts and then issues a permanent injunction. We had hoped that Taboo would stop their illegal practices, but unfortunately we found out that they didn't.
- Tab seven is the order finding Cricket Store 17, LLC, Jeff White, and Larry Boyer in contempt of the March 8, 2018 permanent injunction order and the court (page 26) finds them in criminal contempt as well as civil contempt. On page 27, Judge Newman recounted the failed challenges to the ordinance in federal court and state court and in that penultimate paragraph, the second to the last paragraph on the page said photographic evidence of sexual devices proved that Taboo is a sexual device shop, i.e., a commercial establishment that regularly features sexual devices and goes through rejecting arguments about age and things that they thought would take them outside the scope of the ordinance and injunction. Finally, if you turn over to page 36, it says the Court already rejected Taboo's claims about unequal treatment. The Court was not going to rehash that ground. The most important finding is at page 40 where it says the Court finds beyond a reasonable doubt that Taboo, White, and Boyer willfully violated the injunction order and are thus subject to criminal contempt sanctions. The Court imposes a fine of \$28,500 on Taboo, which is Cricket Store 17, LLC, White, and Boyer and they are



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jointly and severally liable to pay that amount. [The Court] also held them in civil contempt to pay a \$15,000 if they continue to violate the injunction order. That's all the business license division was aware of and then in this circumstance they went out and had a private investigator gather evidence like they did during the litigation and this is what was found.

- They have a Taboo website at Taboosc.com. Go the website, click shop now, and it goes to adults only. Turn to page 45 and it says Warning! You are about to enter an adult store. It warns of sexually explicit material. It says if you are not yet 18, do not enter this site. Where it says by entering this site I agree to the following – the first bullet point – I am at least 18 years of age. They have a 2257 Compliance Statement, which is a Congressional statute about keeping records about people who participate in sexually explicit films. If you turn over, you will see that the home site of that page, which is Tabooadultstore.com, all the sexual devices that are offered for sale on the front page and the second page. These are the same websites that Judge Newman talked about in her injunction order in 2018 and her contempt order in 2019 as what shows they are continuing to operate a sexual device store.
- Behind tab nine, we have a receipt and it shows that an investigator bought these items on October 10, 2019 and their website Taboosc.com, which is the website in tab eight. It has a picture of the store and the address 4716. On the bottom it has Taboostore.com, another place you can buy these materials. It has five different items that were purchased there. These five devices are designed clearly for sexual stimulation. We took pictures of all sides of the packaging. We went to the webpage and searched for that same device that the investigator bought in the store last month and we found that every single device we purchased corresponded to what they sold, promoted, and featured on their website. There were five: clitoral stimulators, anal plugs, vibrators, bondage material, and pleasure tape. These are the types of devices that have been found to be sexually related devices or designed for sexual stimulation or bondage type activities, which in your ordinance is classified as sadomasochism, use or abuse of oneself or others. We confirmed that all the devices the investigator purchased last month were ones that they had in the store of course and we were also featured on the website.
- Exhibit ten compiles a number of cases that show that adult novelty stores are sexually device shops. They are interchangeable terms. In three of these cases: Heidman v. South Salt Lake City, Doctor John's, Inc. v. City of Roy, and City of Littlejohn, Colo. v. Z.J. Gifts D-4, LLC are all cases in which our firm wrote the ordinances for the City. We were involved in two of those cases including the one that went to the U.S. Supreme



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Court. Saying that something is a novelty doesn't mean it's not designed for sexual stimulation, which is what the ordinance is triggered by. That was also something that business license officials have.

- Finally, at the very back is the protestation of the business. The next email is from Jeff White, the owner of Taboo to Brian Cook, the Zoning Administrator in 2016 and Roger Myers, Business License Administrator stating that effective February 5, 2016, Taboo is no longer a Sexual Device Shop and/or an Adult Video and Bookstore according to your zoning definitions. The following month, Mr. White wrote an email on Tuesday, March 29, 2016 saying that I've decided to purge every single sexual device in the store. I have ceased featuring sexual devices completely. This has been going on for a long time. It was reasonable for the business license official certainly with what was before them and what was in their files, to not believe an applicant that's repeatedly been found to have made false representations to the City and it has been found to have operated illegally for some time in the City of Columbia.

For all these grounds, we would ask that when the Council deliberates we ask that even today, they would make a motion to adopt the written decision which basically says that a hearing was held, these are the standards in 11-44; these are the five grounds for denial; and it has the decision; and a place to date and sign for the members of the Council who are present. At this time, I'll ask the Council to uphold the decision of the business license official to deny a business license to Cricket Store 17, LLC. At this time, I will yield the floor to the applicant.

Councilor Devine said thank you for that presentation. We are taking testimony evidence and cross-examination. Is there any question by a member of Council before we move forward to the business?

Councilor Baddourah clarified for the record that this has been going on since 2011 and there have been many attempts by the store to mislead the City, inspectors, and the facts; that has been well documented in your presentation. It is fair to say that this has been going on for a long time and it is time to put this to rest.

Councilor Devine said we will proceed with the presentation of evidence and arguments by the business.

Councilor McDowell asked if Taboo was pronouncing that this is a general store.



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Mr. Scott Bergthold, Esq., Counsel for the Business License Division said that is the argument they are making and have been making since 2016. The store is Cricket Store 17, LLC and it does business as Taboo. That is what their argument was in the Court's injunction, too.

Councilor Devine said we will move to the presentation of evidence by the business. You have thirty minutes for your presentation. If you would state your name for the record, then you can proceed.

Ms. Cheyenne Wiseman said I am manager of Taboo. She said Larry Boyer no longer works there and I have taken over his position. I am not legal representation for Taboo. I was asked by the owner to appear in his place. I'm not sure where our lawyers are. I'm not sure why they are not here. I was asked to be the face of the store. I have no legal representation. I have no legal education. I was just asked to appear as the face of the store.

Councilor Devine said we thank you for being here. We will note that the legal counsel that has been part of it, is not present at this hearing. Is there any statement on behalf of the store that you would like to make in response to the business license department's case?

Ms. Cheyenne Wiseman said no ma'am; I wasn't given one.

Councilor Devine said we appreciate you being here. Will you yield the rest of your time? You had thirty minutes.

Ms. Cheyenne Wiseman said yes.

Councilor Devine said we've had the business license present their case; the business itself is here. Mr. Bergthold, do you want your ten minutes of rebuttal.

Mr. Scott Bergthold, Esq., Counsel for the Business License Division said I certainly won't use that much. I know that Ms. Wiseman has been working for the store for some time. She filed an affidavit as the assistant manager in the Court in May 2018; was part of the operations during the timeframe that the Court in July 2019 found that the business was operating in contempt of the Court's injunction. Our request would be that the Council would make a motion to adopt the written decision.

Councilor Devine said pursuant to the hearing procedures, City Council may take the matter under advisement after the hearing or may vote on the appeal at the conclusion of the hearing, which has concluded. Is there a motion?



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Mr. Scott Bergthold, Esq., Counsel for the Business License Division said we believe that the business had notice, because the notice of this hearing was hand delivered to the store. I would like to have Ms. Wiseman confirm that Greg Williams from the City's business license division did deliver a copy of the notice talking about this hearing.

Councilor Devine said Ms. Wiseman can you confirm that notice of this hearing was received.

Ms. Cheyenne Wiseman said yes ma'am; I was the person who received it. I was informed by Mr. White that he was not told that he had to be here. I can't speak for our lawyers, but I can say that he was not aware that he had to be here.

Councilor Devine said but you as assistant manager of the business received notice of the hearing that was served on the business location.

Ms. Cheyenne Wiseman said as manager, yes ma'am.

Mr. Scott Bergthold, Esq., Counsel for the Business License Division said and that was more than a week ago.

Ms. Cheyenne Wiseman said yes sir.

Councilor McDowell said duly notified; letter received.

Mr. Scott Bergthold, Esq., Counsel for the Business License Division said yes; correct.

Upon a motion made by Mr. Baddourah and seconded by Mr. McDowell, Council voted unanimously to affirm the decision of the business license official to deny a business license to Cricket Store 17, LLC d/b/a Taboo and adopt the written decision tendered to it that upholds the business license denial, because applying the standards in Chapter 11, Article II of the City Code, the record before the Council supports the license denial.

Councilor Devine said pursuant to the procedures, City Council will render the written decision based on the findings of fact and the standards of Chapter 11, Article II of the City Code and that will be tendered to all parties.

Mr. Scott Bergthold, Esq., Counsel for the Business License Division asked that the participating members sign the adopted written decision, which will be the official written decision for the record.



We Are Columbia

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ADJOURNMENT

Upon a motion made by Mr. McDowell and seconded by Mr. Davis, Council voted unanimously to adjourn the meeting at 3:04 p.m.

Respectfully submitted by:

Erika D. Moore, CMC
City Clerk