

**TREMONTON CITY CORPORATION
SPECIAL CITY COUNCIL MEETING
September 2, 2014**

Members Present:

Diana Doutre
Lyle Holmgren
Jeff Reese
Bret Rohde
Byron Wood
Roger Fridal, Mayor
Shawn Warnke, City Manager
Darlene S. Hess, Recorder

SPECIAL CITY COUNCIL WORKSHOP

Mayor Roger Fridal has called a convening of a Special Meeting of the City Council to be held at the Civic Center, City Council Chambers, located at 102 South Tremont Street, Tremonton, Utah 84337 at 5:03 p.m. on September 2, 2014. Those in attendance were Mayor Fridal, Councilmembers Doutre, Holmgren, Reese, Rohde, and Wood, City Manager Shawn Warnke, Recorder Darlene S. Hess, City Attorney Dustin Ericson, Public Works Director Paul Fulgham, and Police Chief David Nance. Other Staff Members present: Business Licensing Clerk Linsey Nessen. Also present: Jason Bench, Warren Braegger, Shane Moates, and Jeramy Val Udy,

1. Approval of Agenda:

Motion by Councilmember Doutre to approve the agenda of September 2, 2014 for this Special Council Meeting. Motion seconded by Councilmember Holmgren. Vote: Councilmember Doutre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, Councilmember Rohde - aye, and Councilmember Wood - aye. Motion approved.

2. Hearing: Mayor Fridal called the Hearing to order at 5:05 p.m. to consider the revocation of a Business License. There were nine people in attendance.

- a. Wherein the City Council may formally consider the revocation of Business License of Huff-N-Puff-N-Stuff pursuant to Title 9, Licensing, Control and Regulation of Business and Construction, Chapter 9-100 Licensing, Control and Regulation of Businesses, Part 9-119 Transfer of License Prohibited – Exception and Part 9-120 Revocation or Denial of Business License of the Revised Ordinances of Tremonton City

Attorney Ericson explained to the Council and Mayor that what will be done tonight is hold a hearing to determine whether or not to revoke a Business License for Huff-N-Puff-N-Stuff. The meeting will proceed with an opening statement by Attorney Ericson, informing the Council of what his office has found and what his recommendation will be. At that point in time, representatives of Huff-N-Puff-N-Stuff will have the opportunity to address the Council and explain a little bit of their situation, though this will not be their testimony. If they are going to

provide testimony, that will be a little later.

After both sides have been able to explain why this license should be revoked or not, some witnesses will be called. Attorney Ericson will ask questions of those witnesses, and then representatives of Huff-N-Puff-N-Stuff will have the opportunity to ask questions of those witnesses, back and forth, and then the Council can also ask questions of those witnesses.

After all the witnesses have been called by the City, Huff-N-Puff-N-Stuff will have the opportunity to call some witnesses. Huff-N-Puff-N-Stuff will ask questions, then Attorney Ericson will ask questions, back and forth, and then the Council will have the opportunity to ask questions.

After that, the Council could then ask questions of either Attorney Ericson or the Huff-N-Puff-N-Stuff representative. After that is done, Attorney Ericson will give some closing thoughts, representatives from Huff-N-Puff-N-Stuff will do the same, and then Attorney Ericson will have the final closing statement.

At that point in time, the Council will be able to consider whether to revoke the [business] license or not. The standard must prove that the Council was using a preponderance of the evidence [based upon] a scale. If it is more than 50%, leaning one way or the other, then that is a preponderance of the evidence. 50.1% would be a preponderance of the evidence.

Attorney Ericson stated that he is not exactly sure who from Huff-N-Puff-N-Stuff will be speaking on their behalf, and asked whoever that would be to come forward and introduce himself.

Mr. Warren Braegger introduced himself as one of the co-owners of Huff-N-Puff-N-Stuff, and said that Jason Bench is his partner.

Attorney Ericson gave the Council the opportunity to ask any questions before the Hearing is started. There were no questions.

Opening Statements

Attorney Ericson stated that, tonight, he would be asking the Council to consider whether or not the Huff-N-Puff-N-Stuff Business License should be revoked, specifically, upon the consideration of Tremonton City Ordinance No. 9-119 which states that transferring of a license is prohibited. Attorney Ericson said that he will be providing the Council with a copy of that Ordinance, but, essentially, what it states is an applicant of a license who comes in and applies for a license, then that applicant is then the owner of that license. If the business is sold or transferred to a separate owner, then a new license needs to be applied for. The hypothetical would be that if Councilman Reese purchases a business, he can't just then give his Business License to Mayor Fridal without Mayor Fridal then coming in and re-applying for a new license in Mayor Fridal's name.

9-120, also of the Tremonton City Ordinances, describes the process by which a

license can be revoked if there is violation of any of the Ordinances that govern the licenses. That is why we are here today.

Notice was given to Mr. Moates, Mr. Braegger, and Mr. Bench about the City's findings that there had been a transfer in violation of the City Ordinance, so we are here tonight for the Council to then consider whether or not to revoke the license.

In trying to demonstrate to the Council what has happened, Attorney Ericson said that he was going to ask for Linsey Nessen and Darlene Hess from the Tremonton City's Administration to provide some testimony tonight. Attorney Ericson will ask some questions of them; Mr. Braegger will have the opportunity to ask questions of them; and then the Council will have the opportunity to ask questions of them, as well. That is the process that will be laid out tonight.

Warren Braegger stated that they came in, they are a legitimate business, and they try to do everything on the up and up. They came [to the City] and asked how they go about doing this. They were given three things to do. They hired an attorney and did those three things that they were told by Tremonton City, so this was kind of a shock to them when they heard about it. Mr. Braegger said that was all that they have to say.

Attorney Ericson said that he would also speak to the Council that Mr. Braegger and Mr. Bench have met with "us," and there is no allegation here of criminal wrong doing occurring in that business. There are no findings with the Police Department that there are any wrong doings occurring. It is simply a matter of Tremonton City Ordinance being violated.

Attorney Ericson stated that, if the Council doesn't have any questions, he would ask, at this time, that Linsey Nessen come up.

Witness Testimonies

Attorney Ericson: Ms. Nesson, could you please remind the Council what your position here is here at Tremonton City?

Linsey Nesson: I am the Deputy Recorder.

Attorney Ericson: What are some of your responsibilities as Deputy Recorder?

Linsey Nessen: H.R. and Payroll, Business Licensing, Minutes.

Attorney Ericson: Do you know why we are here tonight?

Linsey Nessen: Yes.

Attorney Ericson: And what of your responsibilities is specific to tonight's hearing?

Linsey Nessen: Business Licensing.

Attorney Ericson: I'm going to ask you first, are you familiar with this document right here?

Linsey Nessen: Yes.

Attorney Ericson: What is that?

Linsey Nessen: It is our City Ordinance on Licensing.

Attorney Ericson: Okay. Are you familiar with Ordinance No. 9-119?

Linsey Nessen: Yes.

Attorney Ericson: I know it is pretty long, but can you summarize what the meat of that is?

Linsey Nessen: In the advent there is a change in ownership, the City Recorder is suppose to be notified within ten days before the change is made.

Attorney Ericson: Okay. And what would you describe as a change in ownership?

Linsey Nessen: A new owner coming in and buying the business.

Attorney Ericson: Okay. And, then, referring to 9-120, are you familiar with that Ordinance?

Linsey Nessen: Yes.

Attorney Ericson: And, briefly, what is the meat of that Ordinance?

Linsey Nessen: That a license can be revoked if the conditions within the Ordinance isn't met.

Attorney Ericson: I am going to mark these two City Ordinances as Exhibit 1 to put on the record, and I'll give that at this point to the City Recorder.

Attorney Ericson: Ms. Nessen, are you familiar with the Huff-N-Puff-N-Stuff?

Linsey Nessen: Yes.

Attorney Ericson: How so?

Linsey Nessen: They got a Business License.

Attorney Ericson: Do you recall . . . I'm sorry, I didn't mean to cut you off.

Linsey Nessen: You're fine.

Attorney Ericson: They received a Business License, and then you were going to say what?

Linsey Nessen: Just from me.

Attorney Ericson: Okay. And was that on behalf of Tremonton City?

Linsey Nessen: Yes.

Attorney Ericson: And do you know when the first Business License was issued?

Linsey Nessen: 2012.

Attorney Ericson: Okay. Are you familiar with this document?

Linsey Nessen: Yes.

Attorney Ericson: And what is that document?

Linsey Nessen: This is the original Business License Application, and then the first license I printed for the business.

Attorney Ericson: And for what business are you . . .

Linsey Nessen: Okay, for Huff-N-Puff-N-Stuff.

Attorney Ericson: Okay. And so what was the process for Huff-N-Puff-N-Stuff to get that Business License?

Linsey Nessen: The original one was based out of the home, so he had to get a Conditional Use Permit to allow him to have a business out of his home and then just fill out the application and pay the fee.

Attorney Ericson: Okay. And when you say he, who do you mean?

Linsey Nessen: Sorry, Shane Moates.

Attorney Ericson: Shane Moates, and that's who you were referring to when you say he?

Linsey Nessen: Yes.

Attorney Ericson: And he was the owner of the business?

Linsey Nessen: Yes.

Attorney Ericson: Okay. Was that license granted?

Linsey Nessen: Yes.

Attorney Ericson: At what point - how was that granted?

Linsey Nessen: August 31, 2012 is when I issued the License.

Attorney Ericson: Okay, and is that a copy of the Business License?

Linsey Nessen: Yes.

Attorney Ericson: On the Business License, on the right hand side, is there something in capital letters?

Linsey Nessen: Yes.

Attorney Ericson: What does it state?

Linsey Nessen: "Not Transferable."

Attorney Ericson: Okay. Additionally, at the bottom of the License, is there some wording, and what does that state?

Linsey Nessen: "That it must be posted in a conspicuous place at all times."

Attorney Ericson: Okay. I'm going to mark that as Exhibit 2 for the record.

Councilmember Dautre: Can I ask a question on that?

Attorney Ericson: Please do.

Councilmember Dautre: What is the address on that?

Linsey Nessen: 727 West 600 South Apt 3 in Tremonton.

Attorney Ericson: And that was a home based business, correct?

Linsey Nessen: Yes it was.

Councilmember Rohde: I'm sorry. What was that address again?

Linsey Nessen: 727 West 600 South, I believe

Recorder Hess: 727 West 600 South Apt 3.

Attorney Ericson: I'll just note as we're recording that that was the City Recorder Darlene Hess who read from the Business License regarding the address.

Ms. Nessen, are you familiar with this document?

Linsey Nessen: Yes.

Attorney Ericson: And what is that document?

Linsey Nessen: This is the application when Mr. Shane Moates moved his business from his home to the 17 North Tremont Street location where they are currently at.

Attorney Ericson: Okay. And what paperwork was required for Mr. Moates to Transfer that license?

Linsey Nessen: A new application.

Attorney Ericson: Okay. And was that application granted?

Linsey Nessen: Yes.

Attorney Ericson: And was the Business License issued?

Linsey Nessen: Yes.

Attorney Ericson: And is a copy of that Business License included?

Linsey Nessen: Yes.

Attorney Ericson: On the right hand side in capital letters does that Business License say anything?

Linsey Nessen: Yes.

Attorney Ericson: What does it say?

Linsey Nessen: "Not Transferable."

Attorney Ericson: And on the bottom of the license?

Linsey Nessen: "Must be posted in a conspicuous place at all times."

Attorney Ericson: And what was the address on that one again?

Linsey Nessen: 17 North Tremont St.

Attorney Ericson: And you stated that was a transfer of his Business License?

Linsey Nessen: Yes, to that location.

Attorney Ericson: And why was that transferred? Why was that transfer necessary?

Linsey Nessen: Because he moved locations.

Attorney Ericson: Okay, at that point in time, did he discontinue being a home

based business?

Linsey Nessen: Yes.

Attorney Ericson: Okay, and when we say “he,” who are we referring to?

Linsey Nessen: Shane Moates.

Attorney Ericson: Okay. I’ve marked this Business License and the corresponding application as Exhibit 3 for the Recorder.

Councilmember Rohde: What was the date of that?

Linsey Nessen: January 11th. The license was issued January 11, 2013.

Councilmember Rohde: Thank you.

Attorney Ericson: Ms. Nessen, are you familiar with this document?

Linsey Nessen: Yes.

Attorney Ericson: And what is it?

Linsey Nessen: This is the 2014 Business License Renewal form I send out to businesses and then I also include a change form, an Update Form, for businesses when I send out the renewals if they have any changes to note it on there and sent it back to me with their renewal.

Attorney Ericson: Okay, and were there any changes noted on this application?

Linsey Nessen: Yes. A change of owner’s address and phone number of Shane Moates.

Attorney Ericson: And so, that is not a change of the actual business’s address.

Linsey Nessen: No.

Attorney Ericson: It’s just a change of the owner’s address. And that owner, again, was?

Linsey Nessen: Shane Moates.

Attorney Ericson: Was the Business License re-granted or granted again?

Linsey Nessen: Yes.

Attorney Ericson: And what was the date on that?

Linsey Nessen: The date issued was 12/31/13. It was for his 2014 License.

Attorney Ericson: So that License carried through the year 2014?

Linsey Nessen: Yes. I just printed it early.

Attorney Ericson: Okay. And, that Business License, is this a copy of it?

Linsey Nessen: Yes.

Attorney Ericson: Okay. On the right hand side is there something in capital letters?

Linsey Nessen: Yes.

Attorney Ericson: What does that state?

Linsey Nessen: "Not Transferrable."

Attorney Ericson: And at the bottom . . .

Linsey Nessen: Yes.

Attorney Ericson: What does that say?

Linsey Nessen: "Must be posted in a conspicuous place at all times."

Attorney Ericson: And as we've discussed these three Business Licenses, 2012, 2013, and 2014 Business Licenses, were those issued to Mr. Moates?

Linsey Nessen: Yes.

Attorney Ericson: Meaning he received a physical copy of the license.

Linsey Nessen: Yes.

Attorney Ericson: Okay. I am going to mark the 2014 Business License as Exhibit 4, and give that to the City Recorder at this point in time.

Ms. Nessen, following the issuance of the 2014 Business License, did anything change with the Huff-N-Puff-N-Stuff?

Linsey Nessen: In March I received a phone call, March 28th, from Mr. Jason Bench.

Attorney Ericson: What was the reason for that phone call.

Linsey Nessen: They were saying they wanted to buy the Huff-N-Puff-N-Stuff and wondering what they needed to do to keep their grandfather status so they could stay located where they are at.

Attorney Ericson: Okay, and when you say "they." do you know who else was

with Mr. Bench in that venture?

Linsey Nessen: I didn't at that point, no.

Attorney Ericson: Okay.

Linsey Nessen: Mr. Bench is the only one I spoke to.

Attorney Ericson: So he called you on the telephone, and what, if anything, did you say to Mr. Bench?

Linsey Nessen: I told him I wasn't sure. That I would have to check with our City Attorney and look at our Ordinance to see what he needed to do.

Attorney Ericson: Okay. And did you, in fact, check with the City Attorney?

Linsey Nessen: I did.

Attorney Ericson: Sorry.

Linsey Nessen: I sent the City Attorney an email with our Ordinance attached for his review, and, to see what needed to be done.

Attorney Ericson: Okay.

Linsey Nessen: So I could tell him.

Attorney Ericson: Do you know what this document is?

Linsey Nessen: Yes.

Attorney Ericson: What is it?

Linsey Nessen: That's the email I sent to our City Attorney.

Attorney Ericson: Okay. Please read the email that you sent and tell us what the date of that email is?

Linsey Nessen: Okay. The date was Friday, March 28, 2014. It just says: "Hi Dustin, I received a call from a gentleman who is wanting to buy one of our e-cigarette stores in Tremonton. The Huff-N-Puff-N-Stuff, located behind the Bank of Utah. I explained to him that a change in ownership would require a new Business License to be approved, as our Licenses are non transferrable. Which would mean they would lose their grandfather status and would have to move their store somewhere else that meets the requirements for specialty tobacco stores. He called back today and asked if just buying into the business and becoming a co-owner with the current owner would still mean they would lose their grandfather status. They also want to change the name and we weren't sure if that could be done without getting a new license. I've attached our Ordinance

on Licensing for your review.”

Attorney Ericson: Okay. Do you recall what occurred next?

Linsey Nessen: I got another phone call; I hadn't heard back from the City Attorney. So I go another phone call from Mr. Bench on Thursday, April 3rd, just asking if we'd figured out what he needed to do. So I emailed City Attorney Ericson again just to ask if he had a chance to look at the Ordinance.

Attorney Ericson: And what was the date on that email.

Linsey Nessen: That was Thursday, April 3, 2014.

Attorney Ericson: And do you have a copy of that email with you?

Linsey Nessen: I do.

Attorney Ericson: Could you please read that at this time?

Linsey Nessen: It says: “Hi Dustin, our computers have been down since Tuesday morning, so I wasn't sure if I had missed an email from you or not. Just curious if you had figured anything about Huff-N-Puff-N-Stuff and whether they would lose their grandfather status by adding a co-owner and/or changing their name?”

Attorney Ericson: And did you receive a response from that email?

Linsey Nessen: I did.

Attorney Ericson: What was the date on that response?

Linsey Nessen: It was also Thursday, April 3, 2014.

Attorney Ericson: Okay, and do you have a copy of that response with you?

Linsey Nessen: I do

Attorney Ericson: Could you please read that at this time?

Linsey Nessen: It says: “Linsey, if a new owner purchases, then pursuant to the City's Ordinance, a new Business License would be necessary. Because the Huff-N-Puff was grandfathered as a non-conforming use, if it needs a new Business License it will have to find a new location that complies with current Zoning Codes for smoke shops. If a partner is brought in, so long as the same EIN number and Utah entity number are used as are currently in place, there would be no need for a new Business License. Let me know if you have any other questions and my apologies for the delayed response.”

Attorney Ericson: And was there any follow up to that email?

Linsey Nessen: Yes, one response from me.

Attorney Ericson: Okay, and what was the date on that response?

Linsey Nessen: Also, Thursday, April 3, 2014.

Attorney Ericson: And do you have a copy of that?

Linsey Nessen: I do.

Attorney Ericson: Could you please read that for the Council?

Linsey Nessen: It says: "That's great, thank you for your help."

Attorney Ericson: Okay. What if anything did you do next?

Linsey Nessen: I made a phone call to Mr. Jason Bench to tell him what I had learned from the City Attorney.

Attorney Ericson: Okay.

Linsey Nessen: What needed to be done.

Attorney Ericson: And specifically, what was told to Mr. Bench as to what he would need to do?

Linsey Nessen: I told him that the name had to remain the same, the tax ID's had to remain the same, and that the owner had to remain the same.

Attorney Ericson: So you specifically told him that the owner would have to remain the same?

Linsey Nessen: Yes. That he could sign on as a co-owner, but that the original owner had to stay the same.

Attorney Ericson: And who was that original owner?

Linsey Nessen: Shane Moates.

Attorney Ericson: Okay. Following that phone conversation, did you ever have occasion to talk to either Mr. Bench or Mr. Braegger again?

Linsey Nessen: I did. They came into the City Office, both of them.

Attorney Ericson: Both of them did? And did they meet with you?

Linsey Nessen: They did, just up at the front counter.

Attorney Ericson: And do you recall the date on that?

Linsey Nessen: I don't. Sometime in April.

Attorney Ericson: Of this year?

Linsey Nessen: Yes.

Attorney Ericson: So roughly in the same . . .

Linsey Nessen: Sometime after this.

Attorney Ericson: And what was the date on the last email?

Linsey Nessen: April 3rd.

Attorney Ericson: April 3rd. So sometime after April 3rd but in the month of April?

Linsey Nessen: Yes.

Attorney Ericson: And what was the basis of that conversation. What occurred during that conversation?

Linsey Nessen: They were just checking again what they needed to do to keep their grandfather status. So I explained again that they had to keep the same owner, same tax ID's, and same business name.

Attorney Ericson: So on the second occasion it was explained to them that Mr. Moates needed to stay involved?

Linsey Nessen: Yes.

Attorney Ericson: And I'm going to mark the email exchange between Ms. Nessen and myself, as Exhibit 5, and I'm going to give that to the City Recorder for the record.

Ms. Nessen, after the phone calls and the face to face meeting with Mr. Bench and/or Mr. Braegger, what if anything occurred thereafter?

Linsey Nessen: We received a citizen complaint

Attorney Ericson: Okay. Specifically, Specifically regarding what?

Linsey Nessen: That the ownership had changed.

Attorney Ericson: From whom did that complaint come?

Linsey Nessen: Hayden Grover.

Attorney Ericson: Okay. How was that received?

Linsey Nessen: By phone.

Attorney Ericson: And, after receiving that complaint, what, if anything, did you do?

Linsey Nessen: I contacted the City Attorney and the City Recorder and explained what we had talked about.

Attorney Ericson: And when you say “what we had talked about,” referring to your conversation with Mr. Grover?

Linsey Nessen: Yes.

Attorney Ericson: Okay. And, what was the specific allegation that Mr. Grover made?

Linsey Nessen: That Shane Moates was no longer involved in the business.

Attorney Ericson: Okay. And, after your conversation with Ms. Grover, and also your conversations with the City Recorder and the City Attorney, what did you do next?

Linsey Nessen: I went on the Department of Commerce’s website and got some forms that the business had turned into the Department of Commerce.

Attorney Ericson: Okay. And when you say the business, what business?

Linsey Nessen: Huff-N-Puff-N-Stuff.

Attorney Ericson: Huff-N-Puff-N-Stuff. And you got a couple of documents. Do you know what these documents are?

Linsey Nessen: Yes.

Attorney Ericson: What’s this top document?

Linsey Nessen: This is to change the owner, the Business Name and the Business Name Registration for Huff-N-Puff-N-Stuff.

Attorney Ericson: And who’s registration is this?

Linsey Nessen: Huff-N-Puff-N-Stuff.

Attorney Ericson: Okay. And who is it, the City’s registration, State’s registration?

Linsey Nessen: The State’s.

Attorney Ericson: The State’s registration?

Linsey Nessen: Yes, the Department of Commerce.

Attorney Ericson: So this is not a document the City receives.

Linsey Nessen: No.

Attorney Ericson: Okay. How did the City obtain this document?

Linsey Nessen: By going to the Department of Commerce's website and purchasing it.

Attorney Ericson: And when you say the Department of Commerce, is that for the State of Utah?

Linsey Nessen: Yes.

Attorney Ericson: Okay. And who from the City specifically went on the Department of Commerce's website?

Linsey Nessen: I did.

Attorney Ericson: Okay. That was you. And what did you learn from this document?

Linsey Nessen: That the business had been transferred to a new owner, Moonlight Project Co. by Shane Moates.

Attorney Ericson: Okay. So what business had been transferred?

Linsey Nessen: Huff-N-Puff-N-Stuff.

Attorney Ericson: So it had been transferred from Mr. Moates to the Moonlight Project?

Linsey Nessen: Yes.

Attorney Ericson: Okay. And when was that done?

Linsey Nessen: April 22nd of 2014.

Attorney Ericson: And how do you know that?

Linsey Nessen: It is the date that the Department of Commerce stamped on the documents when they received them.

Attorney Ericson: Okay. So that stamp is not done by Tremonton City.

Linsey Nessen: No

Attorney Ericson: Okay. And that stamp was there when you received this document.

Linsey Nessen: Yes.

Attorney Ericson: Okay. And behind that document is a second document. What is that document?

Linsey Nessen: That's the Letter of Transfer for Huff-N-Puff-N-Stuff from Shane R. Moates transferred to Moonlight Project Co.

Attorney Ericson: Okay. And so this Letter of Transfer, with what department was this filed?

Linsey Nessen: That is also the State of Utah Department of Commerce.

Attorney Ericson: And what is your understanding regarding this type of, when these type of documents are submitted to the State of Utah?

Linsey Nessen: That Shane R. Moates is no longer owner and the new owner would be Moonlight Project Co. of Huff-N-Puff-N-Stuff.

Attorney Ericson: And in your search of the Utah Department of Commerce records did you find that to be the case?

Linsey Nessen: Yes.

Attorney Ericson: So you found that Shane Moates was no longer an owner of Huff-N-Puff-N-Stuff?

Linsey Nessen: Yes.

Attorney Ericson: I am going to mark this document as Exhibit 6 and give it to the City Recorder.

So, in summary, Ms. Nessen, directly speaking, were Mr. Braegger and/or Mr. Bench notified that Mr. Moates needed to remain an owner of Huff-N-Puff-N-Stuff.

Linsey Nessen: Yes, in two conversations.

Attorney Ericson: In two separate conversations. And who informed them of that?

Linsey Nessen: I did.

Attorney Ericson: And, based on your research with the State Department of Commerce, do you find that to be the case?

Linsey Nessen: Yes

Attorney Ericson: And is Shane R. Moates still an owner of Huff-N-Puff-N-Stuff per State records?

Linsey Nessen: No.

Attorney Ericson: I don't have any more questions for Ms. Nessen. I don't know if Mr. Braegger has any for her.

Warren Braegger: Oh, I just have one. When you were explaining this to us, did you say that he needed to stay an owner or remain on the Business License?

Linsey Nessen: They needed to stay an owner.

Attorney Ericson: I don't have any other questions for Ms. Nessen, does any of the Council or the Mayor?

Councilmember Doutre: Shane, when did you actually sell out, then?

Shane R. Moates: I don't remember the exact date. If we had a copy of the Contract, I could tell you, but I don't have the exact date.

Councilmember Doutre: Do any of you know?

Jason Bench: It was sometime in April.

Councilmember Doutre: In April?

Jason Bench: End of April or something like that.

Councilmember Doutre: You're totally out of it?

Recorder Hess: I need everyone that's speaking to be on a microphone to pick up on the recording.

Attorney Ericson: Councilwoman Doutre, I think we'll have Mr. Moates come up and give some testimony in a minute so that he can explain from that. Are there any other questions for Ms. Nessen at this time?

Councilmember Holmgren: What was Ms. Grover's name? I didn't catch the first name.

Linsey Nessen: Hayden.

Councilmember Doutre: That's a woman.

Councilmember Holmgren: Oh, that's a woman.

Attorney Ericson: Any other questions? Thank you.

At this point in time, we are going to ask the City Recorder, Darlene Hess, to answer a few questions today.

Ms. Hess, where are you currently employed?

Recorder Hess: Tremonton City as the Tremonton City Recorder.

Attorney Ericson: Okay. And as one of your job responsibilities, when there is a finding of violation with Business Ordinance, are you required to serve notice on the ownership?

Recorder Hess: I am. We do research to find out if the complaint is true and then we send a letter to the owner.

Attorney Ericson: Okay. I am handing you a document right now. Are you familiar with this document?

Recorder Hess: I am.

Attorney Ericson: What is this document?

Recorder Hess: It's a letter that I sent to Huff-N-Puff-N-Stuff.

Attorney Ericson: And what . . .

Recorder Hess: . . . regarding the investigation into their Business License.

Attorney Ericson: Okay. And, in summary, what did you tell the owners of Huff-N-Puff-N-Stuff in this letter?

Recorder Hess: That we discovered that Shane Moates sold to Moonlight Project Company who is managed by Jason Bench and Warren Braegger; and that due to that, we were going to hold a hearing.

Attorney Ericson: As part of this letter, did you invite Mr. Bench and/or Mr. Braegger to come and meet with City Staff?

Recorder Hess: Yes. We sent a letter out on August the 1st. The letter was returned to us on about August the 7th. Chief Nance hand delivered it and that same day Mr. Braegger and Mr. Bench came into the office to discuss the letter.

Attorney Ericson: Okay. And did they ask to make arrangements for a meeting?

Recorder Hess: Yes.

Attorney Ericson: And did that meeting occur?

Recorder Hess: It did.

Attorney Ericson: And were you a participant in that meeting?

Recorder Hess: I was.

Attorney Ericson: And to the best of your recollection, when did that meeting occur?

Recorder Hess: August the 18th.

Attorney Ericson: Okay. I am going to mark this letter from August the 1st that was sent from Ms. Hess to the owners of Huff-N-Puff-N-Stuff as Exhibit 7 for the record.

Ms. Hess, are you familiar with this document?

Recorder Hess: Yes.

Attorney Ericson: What is this?

Recorder Hess: At the meeting we held on the 18th, I took notes of what was said so that I could remember what was going on.

Attorney Ericson: And in summary, what was said in that meeting?

Recorder Hess: That we would hold a hearing and that they would be notified by letter we would send in a couple of days of the time. The hearing will be on September the 2nd between 5:00 and 6:00 p.m., and at that time the Council would determine to revoke, no revoke, or table this issue.

Attorney Ericson: And when were these minutes from that meeting created - or notes from that meeting - when were these created?

Recorder Hess: I typed them right after the meeting.

Attorney Ericson: So, just as soon as the meeting ended?

Recorder Hess: Yes.

Attorney Ericson: And who was in attendance at that meeting?

Recorder Hess: The City Attorney, the City Manager Shawn Warnke, Jason Bench, Warren Braegger, and myself.

Attorney Ericson: I am going to mark these notes as Exhibit 8.

Ms. Hess, are you familiar with this document?

Recorder Hess: I am.

Attorney Ericson: What's that document?

Recorder Hess: This is notifying Shane Moates, Warren Braegger, and Jason Bench of the Hearing, and listing what the Code was.

Attorney Ericson: And when you say “Code,” what Code? To which Code do you refer?

Recorder Hess: To the City, or the Revised Ordinances of Tremonton City, Title 9, the Licensing, Control and Regulation of Business and Construction, Chapter 9-100. Licensing, Control and Regulations of Businesses, Part 9-110. General Provisions, and 9. Transfer of License Prohibited.

Attorney Ericson: Thank you. So, essentially, this is the Ordinance. You sent them a copy of the Ordinance that we’re talking about this evening.

Recorder Hess: Right.

Attorney Ericson: That states that Business Licenses are non transferrable.

Recorder Hess: Right.

Attorney Ericson: And what was the date on this letter?

Recorder Hess: It was August 19th.

Attorney Ericson: Of this year?

Recorder Hess: Yes.

Attorney Ericson: Okay. And to whom was that letter sent?

Recorder Hess: I sent one to Shane Moates and one to Warren Braegger and Jason Bench together at Moonlight Project Company.

Attorney Ericson: Okay. And in that letter, did it inform Mr. Moates, Mr Braegger, and Mr. Bench of this hearing tonight?

Recorder Hess: It did.

Attorney Ericson: Provided them the time?

Recorder Hess: Yes.

Attorney Ericson: And the date?

Recorder Hess: Yes.

Attorney Ericson: Okay. Provided them the allegation?

Recorder Hess: Yes.

Attorney Ericson: Okay. I’ll mark that as Exhibit 9 and provide it to the City

Recorder for the record.

I am going to put one more document in front of Ms. Hess. Do you know what this is, Ms. Hess?

Recorder Hess: Yes.

Attorney Ericson: What is it?

Recorder Hess: I sent both the letters Certified and this is the return on both of them, that they received them.

Attorney Ericson: Okay. And are there signatures on both of those Certified mailings?

Recorder Hess: Yes.

Attorney Ericson: So, what does this . . . what does this indicate to you if anything?

Recorder Hess: That they knew about the hearing and they received the information.

Attorney Ericson: Okay. I am going to mark that as Exhibit 10.

At this time, I don't have any other questions for Ms. Hess. Mr. Braegger, have you . . .

Warren Braegger: No, I haven't.

Attorney Ericson: Council, does anybody from the Council have any questions for Ms. Hess?

At this time, I would like to ask Mr. Shane Moates to come up and answer a few questions for us if he would . . .

Attorney Ericson: And Mr. Moates, I'll apologize. I wasn't sure you would be here tonight, so I am not . . .

Shane Moates: I wasn't sure, either.

Attorney Ericson: I wasn't as well prepared for you, but, Mr. Moates, were you the owner of the Huff-N-Puff-N-Stuff?

Shane Moates: I was.

Attorney Ericson: Then, at some point in time did you sell that business?

Shane Moates: I did.

Attorney Ericson: And to whom did you sell that business?

Shane Moates: Warren Braegger and Jason Bench.

Attorney Ericson: And approximately when did that transaction take place?

Shane Moates: It took place over a period of time because of the issues that they dealt with trying to get grandfathered in, I don't know the exact date, but it was early in mid-August, err, April, I mean.

Attorney Ericson: Of this year?

Shane Moates: Yes.

Attorney Ericson: So during that time you remained as part of the business?

Shane Moates: Yes.

Attorney Ericson: And then at some point in time in April, you were no longer a part of the business?

Shane Moates: That is correct.

Attorney Ericson: I don't have any other questions for Mr. Moates. Do you have any questions? Does Council have any questions for Mr. Moates? Thanks Mr. Moates, I appreciate that.

At this point in time, the City doesn't have any other witnesses to call so, if Mr. Braegger would like to either provide some testimony himself or he and Mr. Bench, however you guys want to do it.

Warren Braegger: Yes.

Attorney Ericson: And you are welcome to use either seat. There is a microphones at both places here. So let me gather my stuff so you guys can see each other.

Jason Bench: First I just want to say thanks for allowing us the opportunity to come in and tell our side of the story, and I just wanted to tell you that from day one, we intended on cooperating with the City. We intended on doing things the correct way. Warren and I are kind of new to the business world; we aren't attorneys; we don't do any of this stuff on a day-to-day basis and so, by contacting the City and asking them the questions on "Hey, what do we need to do in order to move this forward," we relied on those answers to dictate what it was we were going to do. And, at no time did I understand that Shane had to remain an actual owner of the business with the State. The way we understood it was that he needed be on the City Business License with Tremonton City.

And, so, those were the parameters that we were given: that the tax ID number and the business name had to stay the same and Shane had to stay on the Business

License with Tremonton City. And so we paid an attorney; we drew up a contract with Mr. Moates, and, where he agreed to do whatever he had to do to make this thing happen and cooperate in any way that he could. And, had we known that he actually had to stay on the business, we would have made a partnership, and he would still be on the business, and he could still be on the business tomorrow, if that's what it took to rectify the situation.

And so our intention is to do good for the citizens of your City. One of the reasons we bought the business was because many of the people that lived here in Tremonton drove all the way to our other store in Ogden to have some kind of alternative to tobacco because they are sick of it, and it's a deadly thing. That's the whole reason we are in business is to try to help people. And so our intention has never been to try to pull one over on you, or do something shady; but we are respectable, hard working people, and we wanted to do this right from day one. So that's why we are here and we would appreciate any consideration. I don't know if we could get some kind of variance, or Conditional Use thing, or if we could just go ahead and put Shane back on as a partner, or . . . I think there are some other options that we can do besides just a flat out revocation. That's all I have to say.

The Hearing was closed brought to a close.

3. Discussion and consideration based upon preponderance of the evidence and pursuant to Title 9, Licensing, Control and Regulation of Business and Construction, Chapter 9-100 Licensing Control and Regulation of Businesses, Part 9-119 Transfer of License Prohibited – Exception and Part 9-120 Revocation or Denial of Business License of the Revised Ordinances of Tremonton City

Councilmember Holmgren: I guess I have a question to Dustin. I guess my thought is, the reason why we are going through all of this process in the first place is because, as I understand it, maybe you can clarify it, is there was a change in our zoning and . . . with regard to smoke shops and this sort of thing. And to renew this license, all of a sudden you are in violation in terms of where you are located. Is that right, Dustin?

Jason Bench: In terms with the State regulations, is that...

Councilmember Holmgren: In terms with the State regulations.

Attorney Ericson: I think the first reason we are here, Councilmember Holmgren, is based on the change in ownership on the Business License.

Councilmember Holmgren: And the revoke . . .

Attorney Ericson: Yes, on the revocation. I think the difficulty for these two gentlemen is, because of the type of specialty business that they are conducting, they fall under the category of both some State Codes and a City Ordinance regarding the distribution of tobacco products. We have explained it to them. They know that, and, certainly, the City is not trying to hide anything, but if they were a pet store, or something like that, they could have just simply made the re-application. And it's unfortunate for them; it truly is that because of the type of business that they have . . .

Councilmember Holmgren: So in order for them to be able to operate in our City what do they have to do? Do they have to be in a different location? What do they have to do . . . is there anything they can do that to make it so that they can operate in our City?

Attorney Ericson: Well, the Council has a decision that the Council can make that, per the City Ordinance and per the State Code their current location would not satisfy the distance requirements.

Councilmember Holmgren: From where...distance from what?

Attorney Ericson: It can be any public place: the City Library, residential areas are prohibited – there is a distance prohibition, schools, churches, agricultural areas. And, frankly speaking, I don't know if there is a location within the Tremonton City limits that fits. Someone else might know.

Jason Bench: I happen to know. There isn't.

Attorney Ericson: There isn't?

Jason Bench: Honestly, there's no place left in the State of Utah to open a brand new vapor shop. That's why we went this direction.. . . we got shot down twelve times in twelve different cities.

Councilmember Holmgren: That was my question.

Councilmember Doutre: So even if Shane was on the ownership with you, at this point, could they even stay?

Attorney Ericson: Had Shane remained on the license from day one and stayed, not on the license but on the ownership, had he remained an owner of that business throughout the process, then the City had made a decision that they would be grandfathered in. Other Cities in the State who allowed some tobacco specialty shops to be licensed in error have gone back and revoked those licenses just based on the distance.

Jason Bench: Can you name one of those?

Attorney Ericson: Yes. Brigham City did that. Within the last three years Brigham City revoked a Business License from a tobacco specialty store based on the distance.

Jason Bench: That law has only been in effect for three years.

Attorney Ericson: Yes. That's why I say within the last three years Brigham City has done that one.

Councilmember Wood: And that was a state law that's just been changed and . . .

Jason Bench: Yes. About two and a half years ago.

Warren Braegger: There is, though, several cities that are allowing vape shops to remain

open despite the law.

Jason Bench: In fact Bountiful is all over the news because of it.

Warren Braegger: Half of the vape shops in the State of Utah do not meet the State requirements.

Attorney Ericson: And, with that in mind, is why the City made a decision to allow them to be grandfathered as long as there was no need to change the Business License, and that's what occurred was there was a Business License . . . or an event that occurred that required the change in a Business License.

Councilmember Rohde: Dustin.

Attorney Ericson: Yes.

Councilmember Rohde: August 2012 is when the license was granted.

Attorney Ericson: The original.

Councilmember Rohde: The original license. That was three years ago that Code passed. Was that in effect when this license was given to them?

Attorney Ericson: Not the August 2012 home license, but when the next license in 2013 was granted for a new location, it was done in contradiction to the State Code.

Jason Bench: Actually, the original was as well, cause the State, um, the State cut-off date is May 8th 2012.

Councilmember Reese: Chief Nance, have we had any issues you care to tell us about?

Police Chief David Nance: No, we've actually done stings throughout the City. I've gone by their shop on several occasions and attempted those. I usually visit the shop on a monthly basis just to see how things are going and observe things, and we have no complaints of any illegal activity or sales to minors... problems that way.

Councilmember Wood: Do you have to be eighteen to purchase these vapor . . . ?

Jason Bench: Nineteen.

Councilmember Wood: Nineteen?

Police Chief David Nance: Just like tobacco.

Councilmember Wood: So it is just like tobacco.

Councilmember Reese: You're legal, Byron. (laughter)

Warren Braegger: But you may have to drive to Ogden, though. I mean . . . (more laughter)

Councilmember Wood: Yea. It's unfortunate.

Councilmember Doutre: This is really hard because we don't want to just put people out of business, but . . .

Jason Bench: And we don't want to take away peoples opportunities to choose something that's healthier. I know the State and the FDA and everybody looks at this as this is tobacco and we look at it as we are the opposite of tobacco. We get people off tobacco which I think is a really good thing, and that's really the only reason we are in this business.

Councilmember Holmgren: What other products are you selling?

Jason Bench: That's it: electronic cigarettes.

Councilmember Holmgren: Vapor cigarettes are the only thing you sell?

Jason Bench: Exactly.

Councilmember Rohde: You don't sell any tobacco?

Jason Bench: No. No. Nothing related to tobacco whatsoever.

Warren Braegger: Nothing that's combustible, as a matter of fact: jJust electronic cigarettes and accessories.

Attorney Ericson: And I think that's the important point.

Councilmember Holmgren: Can vapor cigarettes be bought from a service station?

Warren Braegger: The Generation 1 units can. These are the units that kind of look like a cigarette. You may have seen them in convenience stores and what not. We don't sell anything like that, at all. All our stuff is Generation 2, 3, and 4.

Councilmember Holmgren: Which means?

Jason Bench: Which are bigger batteries, different atomizers . . . they're . . . bottom line is they're much more effective than the ciga lights is what they're coined. They have the refillable liquids and replaceable parts and things like that.

Shane Moates: I have a couple here if you'd like to see.

Councilmember Holmgren: Well, . . . on the liquid's then, are there illegal liquids that you can put into these things? It is a learning process.

Warren Braegger: I suppose you could put anything in it you wanted to, but, as far as we're concerned, we actually have another completely separate business in Ogden, and we manufacture all of our own liquid. So we know exactly what's in all of our stuff and it's all food grade, generally recognized as safe by the FDA, or food grade, or . . . you

know, it's all good stuff. So, we know what's in it, and we did it that way on purpose because there's no regulation on this, yet, as far as the manufacturing of liquid, and there's a lot of juices that come in from China which are really cheap which are the kind you find in convenience stores and smoke shop, that are made in China, and China doesn't care what they put in it. I mean, it's pretty scary.

Councilmember Doutre: So, if there is nothing combustible in this, is the Ordinance the same?

Attorney Ericson: Yes, unfortunately.

Jason Bench: That's kind of why we were like, it's not tobacco. It's not cigarettes. It's very different.

Warren Braegger: But, this battle has been fought on a Federal level, and so that's not something we can fight in this courtroom unfortunately.

Attorney Ericson: The City Ordinance specifically talks about electronic cigarettes and electronic cigarette juice.

Warren Braegger: They're just lumped in with tobacco.

Attorney Ericson: And I think it's important for the Council to note that, as I said earlier, there's been no allegation of wrong, illegal activity by these gentlemen or their business. What we're considering tonight is the transfer of the Business License and not necessarily the nature of the business, though I understand we have to kind of understand the nature of the business because that puts them in a different situation because they can't just simply re-apply. But the basis for this hearing is the transfer of the Business License. So, what the Council's faced with tonight is whether to revoke or not revoke, or table the issue. If the Council were to choose not to revoke the license then we need to draft new legislation for the City that would allow this license . . . the transfer of Business Licenses to accommodate the situation tonight, and then make it retroactive. So that would be . . . I guess what I'm saying is the Council doesn't really have a mechanism tonight to say, "Hey, you're okay, Huff-N-Puff-N-Stuff," but we could enact some sort of legislation that would allow us to do that. But, we would have to make it uniform, not just to these gentlemen but to all businesses.

Councilmember Rohde: Could we revoke their license and, yet, allow them to get another license and allow them to stay in the place they're in?

Attorney Ericson: No.

Councilmember Rohde: We did it before.

Councilmember Reese: No, but we're back to back . . . one thing has been said here, we don't have a place in . . .

Councilmember Holmgren: Yeah. I'd say that's a problem.

Councilmember Reese: ...the City limits...is that a fact that we don't have a place in our City limits that we can allow a business like this?

Police Chief David Nance: With the distance requirements...I can't really think of any place.

Warren Braegger: I think there's a couple of holes in the middle of an open field somewhere (laughter) . . . there's not an actual building where we could actually do it.

Councilmember Wood: The person that made the complaint...are they a neighbor?

Attorney Ericson: They are not.

Councilmember Wood: They are not?

Attorney Ericson: No. In fact, the complainant . . . I don't know that she had ownership in the Blue Sphinx, but, was related to ownership.

Councilmember Wood: Oh, so it's kind of a . . .

Attorney Ericson: Yeah. It was a turf war.

Councilmember Wood: That's interesting.

Attorney Ericson: Yeah. For lack of a better term it was a turf war. I think that's important to note to, that this is not the City going out and picking on the tobacco industry. It was actually some turf war between their competitor or former competitor.

Councilmember Rohde: So, is there anyway we can make an exception and keep them in town with a new license?

Attorney Ericson: We would have to make new legislation that allows for transferable Business Licenses and then make it retroactive.

Councilmember Rohde: Well, I'd say, no . . .

Councilmember Holmgren: So what you're saying is that we don't . . .

Councilmember Rohde: . . . we'd revoke this, and let them get a new one, and remain...

Councilmember Reese: No, because there's no place they could get it.

Councilmember Doutre: Yah.

Attorney Ericson: Per State Code...

Councilmember Holmgren: Unless we decide to change the Ordinance in some way. Is that right?

Attorney Ericson: Well, the issue would be the State Code that we have no ability to change and these guys are more educated on that than I am. There's been . . . I've heard

that there's been some argument that e-cigarettes are not tobacco per the State Code. I don't know that that's been successful or not and these guys are more well versed than I am in that.

Warren Braeeger: Well, that's absolutely the same . . .

Chief Nance: If I might say one thing just to answer Councilmember Rohde's question. The previous licenses, both of them, were issued in error, and we found out after they were issued that we really shouldn't have issued them because of the distance problems, and that's when Dustin indicated that we decided not to go back and revoke them – to allow them to stay.

Councilmember Holmgren: So, Dustin, can you explain to me one more time because I'm a little slow at learning this. Explain to me one more time the State . . . the State Ordinance and why that is restricted.

Attorney Ericson: So, the State enacted an Ordinance – it would have been in . . . Mr. Bench is indicating that it was May of 2012 and I have no reason to doubt that – that gave some distance restrictions on what we call tobacco specialty shops – tobacco specialty stores – and they were yardage, footage distances from churches, schools, residential areas, public places, and agricultural areas; and . . .

Councilmember Holmgren: Why agricultural? Because of the risk of what?

Attorney Ericson: The motivation behind the Legislature I am not sure of. (laughter) Just that it exists.

Jason Bench: Just to give you an example, it's 600 feet from any agricultural, any residential area. It's 1,000 feet from any church or park or public place and a few other ones. But not even alcohol licenses have that kind of restrictions in the State of Utah.

Councilmember Holmgren: But you can see how our hands are tied. We are trying to figure out a way.

Jason Bench: Yes, I appreciate it.

Councilmember Holmgren: But really, our hands are tied here. And I don't . . . I've tried to figure . . .

Councilmember Reese: Right now there isn't a way.

Councilmember Holmgren: And that's what is the crying shame here, you know. That's what I think for someone who is trying to make an honest buck here, you know, we're making it so hard.

Jason Bench: The shops that have been allowed to remain in business throughout the State in the restricted areas have been allowed to operate on a Conditional Use basis. I don't know if that applies here or if that helps at all, but there are at least half the shops in the State of Utah that operate on a Conditional Use basis right now, so . . .

Councilmember Holmgren: Now, you say there's three choices we can make: we can

make . . . we can revoke; we can continue on; or we can table.

Attorney Ericson: Correct.

Councilmember Holmgren: I almost wonder if we need a little time to really . . . I mean, this is kind of all so new to me that I . . . I don't know.

Attorney Ericson: My Office's recommendation is to revoke the Business License but to stay the revocation, and give Mr. Bench and Mr. Braegger the opportunity to appeal the Council's decision to the District Court and allow them to stay in business while they go through that appeal process. And then, allow the Court to decide whether their Business License was revoked correctly or not.

Councilmember Holmgren: See, that's what I've been thinking.

Councilmember Holmgren: For these guys and for us as well.

Attorney Ericson: And that's something to consider, and I don't want to pull previous revocation hearings into this matter, but one big difference and I have already pointed this out a couple of times – the reason that we moved more quickly with the other tobacco specialty store was that there was illegal activity occurring, whereas here . . .

Councilmember Holmgren: That was a totally different thing.

Attorney Ericson: Yeah. This is a completely, different. This is apples to oranges. These gentlemen have been above board and there has been open communication with Chief Nance the whole time.

Councilmember Wood: The State's probably going to change their Business License procedure because when they first came out everyone was scared to death of it, you know. I think that's why they went with such strict measures so it will probably change this as it goes forward because it sounds to me like it's a good alternative, I mean, it's way better than smoking, you know, if these ingredients don't hurt you.

Warren Braegger: Undeniable.

Councilmember Wood: And so, I hate to see them leave our City, but . . .

Warren Braegger: We are in contracts with billboards, with radio stations, probably for another four months that are all advertising the shop here.

Councilmember Wood: The billboard out there you know on . . .

Councilmember Wood: On West Main. You've spent a lot of money, it's sad.

Warren Braegger: There's even people I know that are coming from outside of Tremonton to this shop.

Jason Bench: If we brought Shane back in as a part owner would that help anything?

Councilmember Holmgren: That's a question for Dustin.

Attorney Ericson: It would require new legislation from the City to allow that. Where the ownership has been changed, in our current Code, our current Ordinance says that it's prohibited to transfer Business Licenses.

Councilmember Doutre: Yah.

Councilmember Wood: You don't think that we could issue a Conditional Use Permit for this business:

Attorney Ericson: Not without violating State Law.

Councilmember Rohde: Have other people done it?

Attorney Ericson: What they've allowed is grandfathering, much like we did. It's much like when we change zoning and somebody has a pre-existing use, they are allowed to - whether it be a horse property or something like that - they are allowed to . . . as long as they continue that use, they are allowed to keep it. That is an analogous situation. So City's are not granting, as people come in and apply for a Business License for a tobacco specialty shop, City's are not granting Conditional Use Permits - new. What they are doing is they're allowing a non-conforming use to be maintained.

Councilmember Holmgren: So really, at this point, our hands are tied. I mean, because of State Law we can't even figure this out how we can grandfather and we can't go back and make "you" a partner again. Our hands are tied, right?

Attorney Ericson: From my perspective, to follow both City Code and the State Code, my recommendation is that the license be revoked.

Councilmember Holmgren: But, if we revoke it and, you know, and, again, I think it has to always come back, has to come back to cause - you have to consider all this stuff, you know, and these guys here, cost has got to be an issue. .

Jason Bench: Well, we don't make the law . . .

(several people speaking, indiscernable)

Councilmember Holmgren: Not this law, and you know, I just don't know which way to turn on this. I don't know. Anybody else got an idea, because I don't.

Councilmember Rohde: We just need to depend on you to find a way that we can keep them here, and if there's no way, you know, maybe we need to table it until the next time and allow you to do some research and see if there's any way that we can reach out and keep these guys here.

Councilmember Reese: That's the only things we can do legal tonight.

Councilmember Holmgren: Is to table it.

Councilmember Reese: Is to table it.

Councilmember Holmgren: That's why . . .

Councilmember Reese: If we don't table it, we are not doing . . . we are not abiding by law.

Councilmember Rohde: Anyone has the right to be in business in Tremonton as long as it meets the law. I don't care what product it sells as long as it's legal.

Councilmember Reese: I agree with Bret.

Attorney Ericson: Well, and I'll say this: There is only one way that they can remain open and that's to bring Mr. Moates back onto the business and then for the City Council to enact new legislation that allows Business Licenses to be transferred from one owner to another.

(Indiscernable – multiple people talking.)

Councilmember Doutre: We can't do that.

Councilmember Holmgren: Well, we're not transferring if he comes back in as an owner.

Attorney Ericson: Well, it is being transferred because it's already . . .

Mayor Fridal: It's gone.

Attorney Ericson: Yeah, it's already been . . .

Councilmember Holmgren: Oh, it's already gone.

Attorney Ericson: It has already been transferred once, so, to bring him back in would be yet another transfer.

Councilmember Holmgren: Would be another transfer?

Attorney Ericson: Yes. I mean, I think I can search all the Council would like, but I think that is the vehicle by which the Council could do this would be to enact new legislation that allows for Business Licenses to be transferred.

(Indiscernible. Multiple people talking at once.)

Jason Bench: Is that an option?

Councilmember Doutre: If we do that – allow Business Licenses to be transferred – we would open up a big can of worms.

(Indiscernible. Multiple people talking at once.)

Attorney Ericson: We would lose the ability to regulate.

Councilmember Doutre: Yah. We cannot do that.

Councilmember Rohde: Yes, you can.

(Indiscernible comment in background.)

Councilmember Holmgren: At this point, my thought is that we make recommendation, or we table this for a couple . . .

Councilmember Reese: Four months . . .

Councilmember Holmgren: . . . table it for a couple of weeks, two or three weeks or whatever, and kind of give Dustin an opportunity to see what's out there and see what options we have. Is that . . .

Councilmember Doutre: But he's already said that there's no opti
Councilmember Holmgren: But he hasn't . . .

(Indiscernible. Multiple people talking at once.)

Councilmember Holmgren: But, I mean are there things . . . He said himself that he didn't, wasn't as up to speed on this law as maybe . . .

(Indiscernible. Multiple People talking at once)

Warren Braegger: I would look into Bountiful City and see what they did, because they were going to go and shut down every vape shop in Bountiful and this was just last year.

Attorney Ericson: I am familiar with both Bountiful and Ogden, and then also Brigham City. The big difference, factually and legally between us and them, was the change in ownership in the business. I mean, we are essentially doing what Bountiful has allowed . . . what Bountiful has done by allowing them to stay grandfathered in. It was until the change in ownership occurred that triggered this chain of events.

Councilmember Reese: We were at fault for . . .

Attorney Ericson: The initial issuance of that the Business License was done in error. Yes. I mean, as you look at the date it was August of 2012 - that law was enacted May 8th of 2012 - it was just a couple of months and it was just . . . the City staff had not been familiarized, yet with that new law. As well as, and comparing us to other cities, I don't want to do that, but other cities made that same error, a lot of other cities.

Councilmember Reese: I understand, no finger pointing . . .

Attorney Ericson: Yeah.

Councilmember Reese: . . . stuff happens, you know.

Attorney Ericson: Yeah.

Jason Bench: You guys feel our frustration.

Warren Braegger: Just know we feel the same way.

Councilmember Reese: But you don't want to close anybody down, you know.

Councilmember Reese: If you were crooks or something, we would.

Councilmember Holmgren: We did, you know, we looked at that one, but there was a lot of illegal stuff going on.

Councilmembers Doutre & Reese: Yes..

Councilmember Holmgren: And here, we're not looking at . . . I mean, they're kind of tracking along, you know, and Chief watches them, and there's no wrong doing, But I don't know what to do. I don't know how to . . . other than, the only thing I can think of right now is to table it for a couple of weeks and see if there's anything out there.

Councilmember Wood: I agree. I think we ought to table it and see if there's any way possible that we can work around it. Has business been good . . . you're doing good?

Jason Bench: Yes. Yeah, well, like I said we just dumped about ten grand into advertising, so it's really just starting to come back and take root, so.

Councilmember Rohde: Dustin, if you know, they've put an investment into advertising, and that, for four months. Would it be wrong to table this for three/four months, allowing them to at least get out the, you know, get out of that investment and get that paid off before we make a decision. What's your thoughts?

Attorney Ericson: The Council has the ability to do that. Additionally, the Council could revoke the license but make the effective date down the road a little ways, too. I mean, the Council, you guys are . . . you have that ability to make those decisions.

Councilmember Doutre: Now, if we do that, could anything come back on Shane? I mean, he's out of this, but, if it's still under his name, legally?

Councilmember Reese: It's not under his name.

Councilmember Doutre: Well, it kind of is.

Attorney Ericson: The Business License was . . .

(Indiscernible. Multiple people talking at once.)

Attorney Ericson: As far business licenses, it is in Mr. Moates' name.

(Indiscernible. Multiple people talking at once.)

Warren Braegger: That's we thought he had the say on so we kept him on the Business License. We just assumed control of the name of Huff-N-Puff-N-Stuff. That was all.

Mayor Fridal: What I would think, at least it's an idea, is table it for . . . okay, we don't know enough. We're making decisions on stuff that we're a little shaky on here, even though Dustin has done a great job . . .

Councilmember Reese: A ton of work . . . thanks Dustin.

Mayor Fridal: Just an idea that the Council can think on. I would suggest tabling it for – I'm going to say two months, okay? Give us a chance to look at it a little more – okay – so we can make an educated decision.

(Indiscernible. Multiple people talking at once.)

Councilmember Holmgren: . . .kind of recommendation, you know, that is kind of the direction I'm looking to.

Councilmember Reese: Me too.

Councilmember Holmgren: . . . but, it's the time frame that . . . are we just pulling numbers that we, you know, two months, four months, two weeks. What do you kind of need to be able to . . .

Attorney Ericson: Well, . . . and I hesitate to say this, but, I don't know that anything is going to change because I can't look at it as e-cigarette versus a pet store.

Councilmember Holmgren: No.

Attorney Ericson: This is an issue of Business License transfer, and so that's the only . . .

(Indiscernible. Multiple people talking.)

Councilmember Holmgren: . . . but our transfer has to do with, you know . . . If their was a spot in Tremonton that they could go to, they could transfer this thing and this wouldn't even be an issue.

Attorney Ericson: Correct.

Councilmember Holmgren: Problem is, you know, you've got to be 1,000 feet from agriculture and too many places in Tremonton that aren't a 1,000 feet from the . . .

(Indiscernible. Multiple people talking - laughter.)

Jason Bench: Do you know how far 1,000 feet is?

Councilmember Holmgren: . . and, you know, I can kind of see the schools, I can see the churches, I can see . . . I can't agriculture. I'm sorry. My whole professional career is focused on agriculture, and I can't see it. But, you know, it has to do with this distance thing. I understand what your saying, It isn't a pet store versus the e-cigarette store, but

it has to do with this distance issue.

Attorney Ericson: And I did misspeak a little bit, Councilmember Holmgren, it wouldn't be transferrable – the license wouldn't be transferrable if they were a different type of business. What it would be is when they reapplied, they would be issued a new license . . .

Councilmember Holmgren: Right, right. . .

Attorney Ericson: . . .so it's not a transferring the license, it would be . . .

(Indiscernible. Multiple people talking.)

Councilmember Holmgren: That's what I'm saying here, you know we're not, if they were going to try to be on West Tremont Street somewhere, out there, you know, there is no place that's not right by agriculture on West Tremont or East Tremont or south or north. I mean, it just doesn't matter.

Attorney Ericson: Yeah.

Councilmember Doutre: And then, my question still is, does Shane want to stay on there, because, if somebody decided to sue it would go to you. You wouldn't even be involved but it would still go to you . . .

Jason Bench: Well, he kind of is involved.

Councilmember Doutre: . . . as an owner.

Warren Braegger: He's still quite involved.

Jason Bench: He works for us.

Shane Moates: Yeah, I'm actually an employee now.

Attorney Ericson: But I think that is a fair question.

Shane Moates: I do have a question, though . . .

Mayor Fridal: Come up to the speaker please.

Shane Moates: Sorry.

Councilmember Doutre: You can slide your chair up too, either way.

Shane Moates: Previously somebody asked if I was added to the ownership and his response was that then they would be transferring ownership again. I don't understand that part. Why, if they just added me to a co-owner of their company why that would constitute another transfer of ownership.

Attorney Ericson: I think that's a fair question and I don't know that it would. Much like he could have added them and kept them on. We did not consider that a transfer of ownership. I think adding Mr. Moates, and I misspoke, he is correct, adding him would not be another transfer. The transfer already occurred when Mr. Moates was taken off.

Councilmember Doutre: But, and that's our question tonight is not even that these guys are legal, or whatever, it's the transfer.

Attorney Ericson: Correct. Correct. I think that's the focus of what we're doing here more so than the industry in which they participate. Though, as. Councilmember Holmgren has correctly pointed out, because of that industry, it makes it difficult for them to be able to re-apply for a new license.

Councilmember Rohde: I think we ought to make a motion to table this for

Shane Moates: . . . twelve years.

(Indiscernible - laughter)

Warren Braegger: Sold.

Councilmember Reese: Until we figure it out.

Jason Bench: I have one more possible suggestion. Kaysville City allowed a vape shop to go in after the grandfather date, and their reasoning was they did not adopt that particular State Code until after that vape shop had opened. And, so . . .

Councilmember Doutre: Yeah, but we probably already have.

Jason Bench: Have you? That's a question . . .

Attorney Ericson: We've not formally adopted, but we are subject to State Code whether we make a formal adoption of those Codes or not. It's much . . .

Councilmember Holmgren: They'll fall under their . . .

Attorney Ericson: Yeah. I mean most of the criminal activity that we prosecute here in Tremonton City falls under State Code that we've not formally adopted in Tremonton City, but that Tremonton is subject to.

Councilmember Reese: There are a lot of things to look at. I think I agree with Bret.

Motion by Councilmember Rohde to table this for two months, in the meantime give you guys time to figure out this thing of ownership – if you are on there as an owner – you know. Maybe we can come up with some answers. So, that's my motion.. Motion seconded by Councilmember Reese. Roll Call Vote: Councilmember Doutre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, Councilmember Rohde - aye, and Councilmember Wood - aye. Motion approved

4. Adjournment.

Motion by Councilmember Rohde to adjourn the meeting. Motion seconded by Councilmember Holmgren. Vote: Councilmember Doutre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, Councilmember Rohde - aye, and Councilmember Wood - aye. Motion approved.

The meeting adjourned at 6:12 p.m.

The undersigned duly acting and appointed Recorder for Tremonton City Corporation hereby certifies that the foregoing is a true and correct copy of the minutes for the City Council Meeting held on the above referenced date. Minutes were prepared by Norene Rawlings with the editing assistance of Cynthia Nelson.

Dated this _____ day of _____, 2014.

Darlene S. Hess, Recorder