

Business license snafu

By Drew Brien

With our statewide membership, members receive an array of business license applications from small mom and pop shops to corporate enterprises, and even the occasional unconventional business. Let us explore one member's experience with a long-standing adult cabaret operating within the City.

By the end of 2019, the City had received many complaints about illegal activities taking place in and around this business, which prompted the member to act. The member investigated what actions it could take from a civil standpoint, including the possibility of revocation of the business license. To the member's surprise, the adult cabaret had failed to renew their business license two years prior and thus was operating without a license. The member immediately closed the business on the basis that they were operating without an active license.

Just as quickly as the business was shut down, the owner filed a lawsuit in federal court seeking a temporary restraining order (TRO) to allow them to stay open while they applied for a new license. The owner also alleged violations of due process. The business applied for a new license with the City, which was denied. The court also denied its motion for a TRO. The business then appealed the denial of the license to the Hearing Examiner. After review of the appeal, the Hearing Examiner sent the denial back to the City Manager to decide whether the license denial was also to extinguish the adult cabaret's non-conforming use rights. This would have essentially barred them from ever re-opening under the current land use regulations.

By early 2020, the plaintiff was moving full steam ahead with the lawsuit claiming due process violations against the member, while the business license appeal was also underway. Then the pandemic hit. All non-essential businesses closed their doors for months. Even had the City allowed the business to operate through the appeal, the pandemic (and subsequent statewide mandates and stay home orders) would have forced the business to close its doors indefinitely, as it was not an 'essential' business.

In the end, the pandemic was the downfall of the business. The owner sold the property to a neighboring business and agreed to voluntarily dismiss the lawsuit against the member and gave up the appeal of the business license.

Whether your entity is in the process of reviewing business license applications or making other land use decisions and needs guidance, the use of the WCIA Pre-defense and Risk Consultation programs can be valuable tools. These programs can help prevent potential future claims or litigation stemming from these types of decisions. Contact WCIA Risk Services Manager, [Robin Aronson](#), to discuss if the use of WCIA's Pre-defense and Risk Consultation programs are right for your entity's needs.