

**WORTHINGTON CITY COUNCIL
SPECIAL MEETING, MAY 29, 2007**

The meeting was called to order at 6:00 p.m. in City Hall Council Chambers by Mayor Alan E. Oberloh with the following members present: Lyle Ten Haken, Mike Woll, Ron Wood, Mike Kuhle, Bob Petrich.

Staff members present: Joseph Parker, City Administrator; Mike Cumiskey, Director of Public Safety; Kevin Flynn, Detective Sergeant; Mark Shepherd, City Attorney; Janice Oberloh, City Clerk.

Others present: Jesus Leon and Antonio Duenas, Club De Leones; Manuel Guerrero, Attorney; Martha Cardenas; Maritza Gibbs, Interpreter; Darrell Stitt, KWOA Radio; Ryan McGaughey, Daily Globe.

PUBLIC HEARING - CLUB DE LEONES

Pursuant to notice this was the time set for a public hearing on Club De Leones. The basis for the hearing is the licensee's violation of Title XI of the City Code of the City of Worthington, Nobles County, Minnesota, Chapter 119 Section 119.09 - J. Noise.

The motion was made by Alderman Kuhle, seconded by Alderman Petrich and unanimously carried to open the hearing.

Mark Shepherd, City Attorney, presented the case, referring to the history of police calls to the Club De Leones. He noted there were two levels to consider in determining whether a violation of the ordinance exists: the first being the number of complaints and second, that Mr. Leon had entered a guilty plea to some of the charges against him. There had only been one additional complaint call to the club since the list of calls was compiled, which Mike Cumiskey, Director of Public Safety, noted was for loud exhaust fans. Mr. Leon noted his club had not been open for dances since the arrest to avoid repetition of the same thing, adding the level of music was not very loud - the neighbors across the alley had no problem, just the neighbor upstairs. Mike Cumiskey noted there had been three different complainants. Alderman Woll noted he had attended the Club De Leones with some friends and found it to be very, very loud. Mr. Leon questioned why he was granted a dance license if he was going to have this trouble - that he has invested a lot in the club and owes the bank a lot. He believes it is a racist situation - discrimination. Mr. Leon said the City should look at what's going on in the Long Branch Saloon - they have minors there until 2:00 a.m., about 90% of the people there are minors. He has never had a minor in his place. Mayor Oberloh pointed out that Council had a lengthy discussion with a group of Club De Leones' neighbors at the time the license application was being considered, all concerned with the potential noise problem. The City had no choice but to grant the license as the property was already zoned for assembly - had we denied the license, that would have been racism. Alderman Ten Haken noted the noise ordinance was in place when the license was granted; compliance was mandatory. His recollection of the discussion on granting the license was that Council asked Mr. Leon if he would have any problem operating within the law, to which he responded "yes". Mr. Leon indicated the police were asking for green cards when they were at the Club on calls. Chief Cumiskey denied that statement, saying they may have asked to see i.d.'s but not green cards. Mr. Leon said he can't win against the state, and he will respect the Council's decision.

Alderman Wood asked if there was adequate sound proofing done as part of the dance license requirement. Mayor Oberloh said no special requirement for sound proofing was made as this business was no different from any other business applying for a dance license - but the property has close proximity to a residential neighborhood and they knew that going in. Mark Shepherd, City Attorney, said it would not be easy to require the sound proofing as it is not imposed on other businesses. The Ordinance requires him to comply. Alderman Woll stated that Council does not take this lightly - he had voted for granting the dance license to Mr. Leon with great apprehension, but Mr. Leon's investment in the property was done prior to gaining Council approval of the license.

Manuel Guerrero spoke to two points - first, prior to the granting of the license, there was some supervision by Brad Chapulis, Director of Community/Economic Development and Armand Eshleman, Building Official, for soundproofing requirements which Mr. Leon complied with. The second point was that the problem was not a noise problem but a percussion problem, which shakes the building. The chief complainant of the noise moved into his apartment in January of 2007, knowing the Club was there. Essentially, he noted, one person and his spouse would be shutting down a business here in Worthington. Mr. Leon had received names of engineers that could help with the base/noise problem, but did not want to put any more money in it. If he can be reimbursed for what he has already put in, he would get out of it. If the City wants the building back he will sell it to them and dismiss the suit. Mayor Oberloh gave an explanation of Mr. Chapulis's and Mr. Eshleman's jobs. Mr. Guerrero thanked Council for their time.

Alderman Ten Haken asked if Mr. Leon's Club could function on a retail level without the dance. Mr. Leon responded it could not and that he would just continue to run his other store and doesn't want any further problems with the City. Alderman Petrich stated the City has no desire to own the building. Mayor Oberloh added that the initial purchasers of the building had planned for four apartments. Martha Cardenas noted that those two men had never told that to Mr. Leon. Mr. Leon stated he had told Council it was going to be a bar, everyone knew that. Alderman Wood said there wasn't just one business being affected, that if the apartment that belongs to an adjacent business becomes unusable we would be denying that business rental income. They have the right to be protected. Mayor Oberloh asked if there were any further comments from anyone.

The motion was made by Alderman Ten Haken, seconded by Alderman Wood and unanimously carried to close the hearing.

Mayor Oberloh asked if there was a motion. Alderman Ten Haken asked City Attorney Mark Shepherd what the City's options were. Mr. Shepherd responded you could vote to revoke the license, you could suspend it for a time, you could decide to continue this hearing for a time to determine if there were any further violations, pretty much anything you wanted to do. Alderman Wood asked for clarification that we could continue the hearing and if further violations occurred we could revoke the license. Mr. Shepherd responded Council could even have a new hearing. Alderman Woll expressed concern that Mr. Leon had indicated that he could not function with a dance at a lower volume. Mr. Guerrero discussed the way our

noise ordinance was structured, referring to decibels as opposed to noise level, adding that he has advised his client not to operate. In response to a question from Alderman Kuhle, Mr. Guerrero stated he didn't believe the ordinances were clear to Mr. Leon, but knew he was liable to comply even if he was not aware of them. Mr. Guerrero also stated he was not aware of the dance ordinance until today.

Mayor Oberloh noted the hearing was closed and dialog should be shut. Council should move to continue or take action. Alderman Wood suggested that if the partners were aware that if violations continue until a citation is given, the license would be suspended, and then revoked upon an additional violation. Alderman Petrich was uncomfortable with making the decision but noted that repeated offenses are not the answer. Chief Cumiskey stated that his officers have been called to Club De Leones 20 times and he doesn't want them to go back. Mr. Leon has stated he doesn't want to put anymore money into it, it's his opinion to revoke if he isn't going to do anything about it. He's a wise businessman, it's the location, it's not prudent to keep putting the police in that position- either abatement by engineering or by revoking the license. Alderman Ten Haken noted he also heard that nothing will be different if continued and we owe it to the system, our citizens, and the police officers to support them. Alderman Kuhle agreed. Alderman Wood stated he understood the Chief's position but we could put it in their court, their choice to abate or go back to court. If we revoke we don't give them that choice. Alderman Kuhle responded they already made that decision. Alderman Woll questioned if the partners chose to invest additional money in the club at a later date could they reapply for the license. Mr. Shepherd responded they could.

The motion was made by Alderman Woll and seconded by Alderman Ten Haken to approve the following resolution revoking the dance license of Club De Leones. The following Aldermen voted in favor of the motion: Woll, Ten Haken, Kuhle, Petrich, with the following Alderman voting against the same: Wood:

RESOLUTION NO. 3287

A RESOLUTION TO REVOKE THE DANCE LICENSE (NO. 2007-3) ISSUED TO CLUB DE LEONES

(Refer to Resolution file for complete copy of Resolution)

ADJOURNMENT

The motion was made by Alderman Woll, seconded by Alderman Wood and unanimously carried to adjourn the meeting at 6:54 p.m.

Janice Oberloh
City Clerk