

ALAMOSA CITY COUNCIL  
Wednesday, May 26, 2010  
Minutes of the Meeting

A Special Meeting of the Alamosa City Council was called to order on the above date by Mayor Kathy Rogers at 7:36 p.m. The Pledge of Allegiance was recited. Present were: Mayor Rogers, Councilors Greg Gillaspie, Rusty Johnson, Josef Lucero, Leland Romero, and Marcia Tuggle. Councilor Griego was excused as the spouse of a liquor license holder. A quorum was declared. Also present: City Attorney Erich Schwiesow, and City Clerk Judy Egbert.

BUSINESS

A. Show Cause Hearing – Othello LLC d/b/a Othello

Mayor Rogers opened the hearing at 7:37 p.m. and turned the proceedings over to Erich Schwiesow as Hearing Officer.

Counselor Schwiesow reviewed the procedure by saying that City will present evidence and witnesses; the licensee will have the right to cross examine witnesses and present any witnesses on his own behalf.

In response to a question from Counselor Schwiesow, Prosecutor Farish said that owner Panitan Kamjanapun is present and has agreed to stipulate that the events occurred. This is a series of events that occurred between September 2009 and May 2010. This hearing is different from compliance check violation hearings in that the events occurred over a period of time. Because of the stipulation, it is not necessary to bring in the police officers involved. Chief John Jackson will present a summary of the reports. In addition, Mr. Garcia will testify to an incident that happened to his son, and Mrs. Smith will testify on behalf of the church. It is appropriate to hear the extent of what has gone on at this establishment.

Police Chief John Jackson was sworn in. In response to questions from Prosecutor Farish, Chief Jackson made the following statements.

He has been a certified police officer for 25 years, and Chief of Police for the City of Alamosa for 3 years. Othello's is located at 407 State Avenue. These events have occurred from September 2009 to May 2010. There have been more than 40 calls for service. The business is not responsible for all those calls, but there are 20 calls that are directly related to the business.

These calls are summarized on a document that was presented for consideration as Exhibit 1. Mr. Kamjanapun was given time to read this document. He noted that he believed that some of the content is not true, and will address that during testimony. The document entitled "Summary of Incidents and Important Events, Othello's Restaurant and Nightclub/bar" was admitted as Exhibit 1 with the acknowledgement that Mr. Kamjanapun will be refuting portions of the statements.

Chief Jackson continued, saying that this summary is only a few of the incidents that represent the more critical and applicable ones. He will walk through the events, then show how these statistics compare to other similar businesses.

On September 24, 2009 Officer Cooper was dispatched to large fight at the location. He estimated there to be about 125 people outside on the sidewalk fighting. As he began to break up the fight, he found people to be uncooperative. He was struck on the right side of his head and ear. He did not seek medical attention, and was not able to identify the person who struck him.

On November 1 there was an assault of a similar nature. Four police officers were dispatched for 20 – 30 people fighting in the intersection of 4<sup>th</sup> and State. The fight started inside the club, and worked its way outside. The fight was quelled without any officers injured, but there were citizens injured in the face and head. Four people were arrested.

That same night, Officer Rendon did a walk-through prior to fight and saw two females fighting. They were asked to leave by the management and officer. One was very angry. Once outside, Officer Rendon tried to separate them. He sent one ahead and the other turned on him and said "let's you and me go one on one". She was prepared to fight him. She was taken to jail, cited and released. While she was being arrested she repeatedly refused to do anything asked of her. This became the norm of what we were beginning to see.

On November 29 there was again a large fight outside. Officers found a large group again, with more people running from the scene. They found a person laying on the ground bleeding from the face. Of the five arrested, two were under 21. Gang implications were involved. This is the first time we have seen that, and it concerned us greatly. A 19-year-old blew a .162 on the breath test. It could not be proven whether the person had drank at Othello's or prior to being there.

On the same night, Officer Dominguez asked four people to leave the bar. He saw the blood on the sidewalk. Another fight broke out behind him. He was not able to make any arrests because he was by himself. We began to ask for help from agency partners. Othello's used literally all our resources every weekend at closing time. We asked for help from the sheriff and highway patrol. The goal at this point is to get through closing time on Friday and Saturday nights.

We began to meet with the owner, and were able to see some progress for a short time, but it would always slide back after a while.

On April 18, Officers Gonzales and Black were injured in a fight. They arrived there in a marked police car and tried to get an intoxicated person out. He lunged at Officer Gonzales, and pushed her against wall. She tried to push him away. He struck her in the nose with a closed fist. She fought her way out of it. After she fights back, he takes off running. Several people from the bar stepped in to assist our officer, and gave chase. They caught him, punching, kicking, and screaming, and he was taken to jail. The same night we ended up with another individual that Corporal Anderson was trying to get to leave the area. This individual encouraged Anderson to taze him, but he did not. He began to try to whip the crowd into frenzy against the police. Sgt. Black tells him he is under arrest, but he resists. Officer Anderson is struck in the face. St. Black is also struck in the face by same person. Officer Gonzales tries to taze him but misfires.

Officer Anderson ends up tazing him for three cycles. He is on the ground still continuing to fight. Eventually he is taken into custody and arrested.

On April 20<sup>th</sup> he wrote the letter to Council asking for a show cause hearing. He made a forecast that has come true by saying that if changes are not made we will experience more violence on or near this property. He feared more citizens and officers would be injured. This wasn't going to just stop. An effort was made toward additional resources and overtime there on Friday and Saturday nights. They have continued citing for underage consumption, public urination, and fighting. Police have been proactive in their work on Friday and Saturday nights.

On April 26 police officers were working the bar closing. Captain Robert Jackson found employees of the bar walking out of bar and setting down a bottle of blue tequila that appeared to have come from inside bar. Neither employee claimed it. The owner said that is probably was theirs when it was returned to him. The same night Lt. Oakes was standing on the west side in the parking lot. He found a 20 year old walking down the sidewalk with bottle of Heineken which he assumed had come out of Othello's. The 20 year old said that it did come from Othello's but he did not buy it, a friend bought it. He blew at breath test of .053. When Lt. Oakes walked up to the bar at 2:07 a.m. to speak to the bartender about it, he saw another man standing in front of the bar drinking. When Lt. Oakes told the man the he couldn't drink after 2:00 a.m., he told him "it's okay, I work here". It is not okay after 2:00. He wanted the bottle of Heineken, but Lt. Oakes kept it as evidence. They discussed the issue of underage drinking and consumption after hours.

On May 1 there was an attempted homicide. Two persons inside the bar had a problem stemming from relationships. One leaves and the other follows. There is a confrontation in the parking lot. There is a confrontation with a friend of the person in the bar and the ultimate victim. He declined to speak further about this, as he is under a gag order and out of respect for the Court and legal obligations. The written summary speaks to this incident. The incident received publicity in the newspaper. Mr. Farish presented a news article as Exhibit 2, which Chief Jackson verified as the same incident. A copy was provided to Mr. Kamjanapun and Council. Mr. Kamjanapun was given time to read the article and he offered no objection. Counselor Schwiesow admitted the article as Exhibit 2.

On May 9, a quadriplegic patron visited Othello's. His friends and staff at the bar were providing, serving, and feeding alcohol to him. He became incredibly intoxicated, to the point where his friends left. His father began to look for him because he had not contacted him to let him know he was ready to go home. When his father went to Othello's he found his son in his wheelchair behind the bar slumped over and drooling, barely breathing. The lights were on, the bar was closed, and staff was working around him. His father got resistance when he arrived. An officer and his father took him to the hospital. At the emergency room, they worked to keep him alive. Toxicology results showed a BAC of .389, and also found barbiturates. He spent 4 days in the intensive care unit and currently is still experiencing problems as a result.

That is the summary of incidents to date. You might ask does this compare. Is it out of the norm? It is. He presented different statistical pieces to show how different this is.

He displayed a graph showing all the crime in four different bars. Othello's is in red, Weekends is blue, the Purple Pig is nonexistent because there is no crime for this period, and The Office is yellow. This represents from June 1 2009 to May 4, 2010. This time frame allows a greater perspective. The red is violent crime. At Othello's this category includes assault, resisting arrest, assault on a law enforcement officer and attempted homicide. Four disorderly conducts. Blue spike in the middle is criminal trespass at Weekends. It is one individual who did all 8 of them, and we caught him for stealing from cars. The blue spike doesn't represent any violent crime.

Othello's has 12 violent crimes, Weekends has 4, the Purple Pig has zero and The Office has zero. Violent crime is the column all the way to right. Violent crime is disorderly conduct, assault, resisting arrest, assaulting a law enforcement office, and attempted homicide. Six, three, two, and one make twelve violent crime. Making sure we compare apples to apples, we have 12 to 4 in those categories.

Counselor Farish presented a printout of the slide projected by Chief Jackson, and requested that it be marked as Exhibit 3. There were no objections, and Exhibit 3 was admitted.

In response to questions from Council, Chief Jackson said that he chose these particular bars for comparison because they are where the majority of activity takes place and are the most similar in nature to Othello's.

Chief Jackson continued with a slide that showed all crime in all four bars broken down by percentage. Resisting arrest, assault on a law enforcement officer and attempted homicide comprise a large percentage. The next slide shows that 66% of the crime in Othello's is violent crime. At Weekends, it is 25% violent crime. There are no assaults on law enforcement officer, nothing that serious. The Pig has zero. The Office has no violent crime.

Chief Jackson continued in response to questions from Prosecutor Farish. Efforts have been made to talk with the owner several times. They have had many open discussions about the problems and what to do about it. On April 20, Chief Jackson wrote a letter to Council asking for a Show Cause Hearing. Council has a copy of this letter. The notice cited Regulation 47-900 that mandates certain conductg by owners. Prosecutor Farish read the Regulation. Chief Jackson did not have a calculation of the time spent on the calls, but verified that there were 40 calls since last fall, and 4 officers have been injured. After talking with the owner, there has been short-term improvement when practices were changed, but it reverts back after a short period of time. No lasting solution has been found.

Chief Jackson recommended revoking this license.

Counselor Schwiesow offered Mr. Kamjanapun the opportunity to ask questions of Chief Jackson.

Mr. Kamjanapun stated that he hadn't seen the statistics before, and it was surprising. In Exhibit 1, was Officer Cooper's dashcam requested? Chief Jackson responded that the dashcam video was look at in regard to the November 1 incident, but not that one.

Mr. Kamjanapun said that he didn't see 20 – 30 people on the dashcam video. Chief Jackson responded that there were numerous people, but couldn't say exactly how many. It could have been closer to 10 – 15.

Mr. Kamjanapun asked Chief Jackson to describe what he viewed as a "large fight". Chief Jackson replied that he considered that to be more than 3 people.

Mr. Kamjanapun asked Chief Jackson to clarify the April 15 date of using State Patrol for assistance. Chief Jackson said that was the date they began formally coordinating resources, but had been using their assistance before that time.

Mr. Kamjanapun asked when he became concerned about underage drinking. Chief Jackson said that it was after the November 29 incident when the 19 year old was out of control.

Mr. Kamjanapun asked if a compliance check had been conducted. Chief Jackson replied that there had been and that Othello's did pass. He was unsure of the date.

Mr. Kamjanapun said that at the April 26 incident Chef said that he assumed the person had walked out with the bottle of Heineken. Chief Jackson clarified that the person had told the police that he had came from Othello's. He was intoxicated and underage.

Mr. Kamjanapun stated that the last time he had ordered Heineken was in February 2010, and the stock sells out within a week or two. He didn't believe the bottle came from Othello's. The reason the bartender asked for the numbers on the bottle is that they can trace where it came from. Many times underage persons try to bring their own alcohol in. Also the bottles that are served from Othello's are marked. Chief Jackson said that during their discussion he gave Mr. Kamjanapun the number so it could be researched.

Mr. Kamjanapun asked what a barbiturate is. Chief Jackson described it as a drug, typically in pill form and is a depressant. It was found in Pete Garcia's bloodstream.

Mr. Kamjanapun asked Chief Jackson to describe what type of resistance he experienced from staff. Chief Jackson said that they were repeatedly shining a strobe light in the officers' face and asked to put it down. The officers nearly charged staff for obstructing, but eventually they did comply. Another experience was when Mr. Garcia was trying to get his son, and when he tried to get his son out.

Mr. Kamjanapun asked for clarification on the violent crimes described in Exhibit 3. Chief Jackson said that they occurred either on the property or outside the property. All are related to patrons of Othello's.

In response to a questions from Council, Chief Jackson said that on November 1 no BAC readings were taken, but the persons were clearly intoxicated in the officers' opinion.

Chief Jackson again answered the reason for choosing the four bars that he did for comparison, saying that they were the best comparative value.

He described working with the owner to explore solutions. Mr. Kamjanapun has voluntarily restricted entry to those over 21, as it is the underage persons causing some of the problems. He did that for two weeks, during which time no violent crimes were reported. He told Chief Jackson that he could not continue this practice for financial reasons. His business plan requires having young girls there to attract other patrons. They talked about ways to restrict access of alcohol to minors. They have been asked that when a fight breaks out to turn off the music and turn on the lights. The bar is smoke-filled, blacked out, and has strobe lights. This environment has contributed to the lack of security. The best solution is to make this restricted to over 21, but Mr. Kamjanapun could not do that long-term. No long-term solution has been found. Chief Jackson clarified that the smoke is from a machine, not from tobacco. There is techno music and strobe lights along with the smoke.

Chief Jackson continued to address questions from Council, saying that on the May 9 incident the bar staff did admit to serving the quadriplegic customer. He does not have use of his arms and hands, so can't drink on his own. His father is here and will provide testimony.

Chief Jackson said that there are many more incidents not shown on the summary that have required the full police force on Friday and Saturday nights. All officers are at one place during that time. If another need arises, they must leave Othello's to deal with it.

Only one compliance check has been conducted, but Othello's did pass it.

Othello's allows young girls entry to act as a magnet for other customers because it is an economic benefit. The owner described it to Chief Jackson as having "18-year old bait".

Other bars do allow entry for persons under 21, but Chief Jackson did not equate this to the same business practice. All the bars comply with the City's ordinance.

Chief Jackson did not know the number of underage incidents inside the bar.

Joe Garcia was sworn and provided the following testimony.

He lives at 904 10<sup>th</sup> Street. His son is the quadriplegic customer described earlier. On May 9 he dropped his son off at 11:30 to meet friends to either stay there or go to Club 17. By 1:45 a.m. he had expected to get a call or text from his son asking to be picked up. When he didn't hear from him, he tried to call but got no answer. Sometimes he will go with friends, so he began to look for him. When he arrived at Othello's, he recognized his son's shirt behind the bar and went in. The owner is a good friend. There are lots of times he comes home quite drunk. This time the bouncer said that he had a little too much to drink and needed help to get out. He was behind the bar and

slouched over unconscious with his eyes rolled back in his head. He started yelling at his son's friends, asking why they didn't call for help. He looked for the bartender, started pushing his son's wheelchair out. He called 911 and when the police got there, he had made it outside. He took him to the emergency room. He was on a respirator for 7 days, 4 of which were in intensive care. Barbiturates or any kind of downer can kill him. At the bar, the workers were going around him to restock and clean. It is a sad thing to find, as he thought the owner was his friend. They could have prevented it if they saw he was in distress and cut him off. He is still not back to normal because he lost oxygen to the brain. He graduated from high school with a 3.8 GPA. When he had his accident, doctors told him that he would be with them only about 5 years, but it has been 19.

He clarified that at the time of his arrival, his son was sitting in the wheelchair drooped over with saliva dripping from his nose and mouth. He had dropped him off at Othello's at 11:30 p.m. with \$5.00. Just the owner was there at the time, no bartenders or bounders. He isn't sure how he got behind the bar, but no one there seemed to be concerned. Employees said that they tried to get him up but he was too drunk. The employees were drinking while they were cleaning. His son can't hold a drink for himself, so someone had to hold the drink and give it to him. His friends said that he was getting lap dances from girls and he was talking just fine. In the past, he would take him and pick him up and has seen lots of intoxicated people, guys trying to get girls to go with them, and fights. His son had a bottle of Budweiser in his lap when he left to go the emergency room. When asked what he would like to see happen, he said that he would like to see Othello's not able to serve alcohol again. He believes that somebody should be charged for giving alcohol to his son when he can't drink for himself, and equated it to giving alcohol to a baby.

Mr. Kamjanapun asked if he was outside the building when he described seeing his son behind the bar, and Mr. Garcia replied yes. Mr. Kamjanapun said that this is impossible unless the person behind the bar would be standing up. He added that it was never mentioned that there were no bartenders.

In response to a question from Council, Mr. Garcia said that his son had not been drinking prior to being dropped off at Othello's, but his BAC was .389 when he left. It is not known who exactly provided drinks, whether it was the bartender or friends. Two friends admitted to giving him alcohol, 1 or 2 shots, but beyond that it is not known. His son has no memory of anyone giving him pills. He does drink alcohol and has a red card for marijuana, but barbiturates will kill him.

He continued responding to Council's questions, saying that if any of his friends recognized that he needed help they knew to call. They would use his cell phone to call the numbers stored in it.

Erin Smith was sworn and gave the following testimony in response to question from Prosecutor Farish.

She is the Bishop's Warden of St. Thomas Episcopal Church across the street from Othello's. She wrote the letter to Council that Prosecutor Farish presented as Exhibit 4. Ms. Smith said that she is concerned for the safety of church members. These

members are mainly women and many of them widows. Bottles and cans litter the sidewalk and street in the area. She said that her concerns are minor in comparison to Mr. Garcia's, but members are concerned for their safety during church events at night.

There was no objection raised, and Counselor Schwiesow admitted Exhibit 4.

In response to questions from Council, Ms. Smith said that not many church functions occur on Friday or Saturday nights, but sometimes do. AA and NA use the church most evenings, and Saturday nights are commonly used for prepare for Sunday. Church members are fearful. Many also live in the area.

Panitan Kamjanapun was sworn and provided the following testimony.

He resides at 801 State Avenue apartment 6. He is also known as Max. He likes the San Luis Valley. Before coming to Alamosa, he was in business school. He has no intention of harming anyone, and believes that the bartenders and staff at Othello's have been operating in a decent and respectful manner.

The first Exhibit refers to an unclear number of large fights. He wondered if verbal arguments are included. He believes that the video from the police vehicles do not show this.

On Friday and Saturday nights, mainly Saturdays, he holds dance nights at the restaurant. They have 5 security guards hired, 3 on the floor and 2 at the front. They check patrons for weapons by pat down and pockets. They have an area roped off to show the 15 feet area for non-smoking by the entry door. Cigarette butts are not all over the place. Minors are not allowed to go back in if they leave. This helps with the problem of them drinking in their cars. Once they are inside, IDs are double checked by him and a second person. They use a 14-LED flashlight so they can see the ID clearly. Underage persons' hands are marked with an industrial strength marker, and also banded with a wristband. The color of the wristband changes every day so it prevents customers from sharing it. The wristband must be shown before ordering a drink.

He has responded to Chief Jackson's concerns about the dark atmosphere and loud music, and is being cooperative. He is respectful of Chief Jackson's concerns, but is a dance club and the police can't tell him how to run his business. However, he is trying to take their advice. Instead of dark, they now use colored lights in a lookout zone. This is where people go to talk, and they pay extra attention to this area at closing time. The security is mobile, walking from front to back to try to solve tensions. Security only allows one person in the bathroom at a time to avoid swapping drinks. The security is well-trained. Also there are 14-LED lights provided to security staff. Security staff switches from marked shirts to unmarked from night to night. If they feel a fight is going to break out, they are trained to call the police, so they never hesitate to call. Police presence is welcome. They have never resisted any police officer or interfered.

If there is a large fight as mentioned on November 1, security is trained to dismiss one person out at a time, or else the fight just moves outside. They wait 10 minutes to calm the other person down before leaving. He looked online and learned of the hearing request. He believes the photos included with the April 20 letter were taken on the day

of the crime scene investigation. Employees were held in the restaurant until 4:00 a.m. Once they were allowed to leave the premises and being clean-up, the photos were already taken.

Every customer must leave by 2:00 a.m. After that, employees immediately clean parking lots, both of the City and St. Thomas. They clean cigarette butts off the street.

He believes that if he has broken an law, it was not intentional. He has managed a club for 3 years, and a restaurant for 5 years. No citations have been given to him. The Office had an underage drinking violation. It is very difficult to try to contain the noise when they pull in twice as many people as any other place. They do close the doors to try to contain the noise.

He expressed sadness for Mr. Garcia, saying they are friends. Pete usually comes in with not a lot of money, enough for 1 or 2 drinks. He didn't see why he should serve him by giving free drinks. The bartenders know that. His employees have TIPS training, and know exactly what intoxication looks like. They know to question if a person looks young, and have even requested a birth certificate. Underage people have admitted to being able to drink at other places but are turned down there.

He repeated his good intentions and experience.

Pete is also his friend and the best friend of one of the security guard. His bartender will be called as a witness. Mr. Garcia did not get any resistance from staff. Pete was not behind the bar and did not get served more than what he paid for. There was no intention to hurt anyone. He wanted to visit Pete but Captain Jackson suggested that he talk to a lawyer first. He has no idea how Pete got the barbiturates. Pete was very well-liked and had many friends. He doesn't believe it is illegal for a friend to serve drinks when he didn't appear to be intoxicated. Pete enjoyed it. He feels bad for him, and wishes he could speak to him to see how he is doing. There was lots of testimony from intoxicated people. If you listen to them, why not listen to my side.

The Police Department has been doing great. They check for open containers in cars. This should have been done a long time ago. He usually works inside, and the bouncer only saw one cop car that night. He cleared everyone out by 1:57, and then he left. Just one cop car doesn't sound like all the police resources.

He spoke to Chief Jackson last week and came up with a solution to deal with this. He said that he can't prevent things that happen outside his facility, but are trying to do everything to the best of their ability. The solution explored is to close early, maybe 12:00 or 12:30. They will no longer to do the night club. He doesn't know why this happened. The solution will be a team effort to change the nature of the business so it is no longer a night club. It will be a jazz lounge, and offer half priced appetizers and be closed on Friday and Saturday nights. This will prevent kids from coming, and they will go somewhere else.

He had no intention of harming the community. He responded to Prosecutor Farish's questions by saying that he does understand that he is not here because of intent but rather the effect of his actions. The security guards mentioned earlier total 8 including

him, and he feels that this has been adequate, even with the knowledge that there were 40 police calls with quite a number of those involving serious incidents. Nothing is perfect. The business has some faults and things that need to be improved, but they are taking steps forward to improve. The changes are still being tested and implemented. There have been no large fights since November. He did not agree with Chief Jackson's opinion that the efforts have not been successful. It is one thing to look at statistics, and another to look at efforts. He asked why there were no citations issued to him if he was breaking the law. He responded to Prosecutor Farish further by saying that he did understand the difference in his establishment allowing disorderly conduct and him personally breaking the law, and he does understand the effect his establishment has had.

Prosecutor Farish noted that Mr. Kamjanapun had spoke of his experience and asked how you get the number of incidents we have, when the statistics are off the chart compared with other establishments when he claims to be experiences. Mr. Kamjanapun replied that his level of security practices are not being done anywhere else in Alamosa. From his experience in Kansas, he is accustomed to the police handling events that occur outside the business. He believes that his staff have done a great job.

Prosecutor Farish asked if he believes that he has done a great job notwithstanding the fact that numerous people have been hurt, almost killed, and four officers wounded, and yet you are maintaining that you have done a good job? Mr. Kamjanapun said that they have done their best effort to the best of their ability. There are some things that they can't prevent.

In response to questions from Council, Mr. Kamjanapun said that he recognizes when someone has had too much to drink by appearance, slurred speech, and walking. It is easy to determine, and if a person comes in drunk they do not serve. The policy is to call a cab.

The happy hour would be similar to the environment in Old Chicago. This is more of a restaurant and would no longer have a dance floor or laser lights.

The economy has affected them, and the prior business plan was needed to deal with financial problems. For the past two or three months, the lunch and dinner business has picked up and he believes they are now able to sustain monthly payments. This is a good time to change. They also have new employees that are very experienced.

The changes were started one week ago, and he intends to keep them. The night club is no longer offered. He will promote food sales.

He said that things have happened that he is concerned about, but is doing his best effort. He added that Chief Jackson told him he is on the right path. He is confident that the changes will solve the problem.

When asked what his hope of outcome would be for tonight, Mr. Kamjanapun said that he does not serve visibly intoxicated persons, and works in a decent, orderly, and respectable manner. His business does not permit any kind of undue noise. He understands the effects of what has been presented, and what happens outside is

beyond his ability to control. The stabbing took place in the City parking lot. He feels bad for the effect, but does not take sole responsibility.

In response to a question from Council, Mr. Kamjanapun said that his responsibility for incidents outside the building would be to call a cab if a person was intoxicated. The environment inside the club should be a safe one. After they leave, he hopes they are in a safe position too. If his security staff respond to a fight outside, they have been told by police officers that they don't have the same jurisdiction as inside and all they can do is talk.

He disagreed with the letter from Erin Smith, saying that while there are lots of bottles and cans littering the area, they did not come from the bar. There are brands of products that they don't sell. Seldom does he find any bottles that are theirs. This is a city-wide problem. He is doing his best to contain it.

When asked how the bottles may be getting out the door, he said that nothing is perfect. Customers can hide bottles in their pockets. If they are caught doing this, they are restricted for entry.

When asked why he didn't call Pete's father to pick him up, he said that he did call him. The phone records should show this, although he did not have the documentation to prove it tonight.

It is correct that when minors go outside, they are not allowed back in.

Councilor Tuggle pointed out that it seems that he is doing everything he can for security on the inside, but is limited on what can be done outside. The Regulation says the licensee is responsible for disturbances that are offensive to the residents of the neighborhood that surrounds the establishment. So he does have some responsibility, and if he can't do it he should call the authorities. She asked him if he had thought of ways to work on that part of it. Mr. Kamjanapun replied yes he had. The security staff know a lot of customers, so they can talk to them on a personal basis. They walk them outside to be sure everything is fine.

He said that he is getting a different group of people with his recent change, noting that he no longer has to spend \$400 on security anymore. The crowd is an older one, and he feels it has good potential.

When asked for his view of the May 9 events, and his theory of how Pete got to the point he did, he said that Pete was fine when he entered. He may appear tipsy, but he liked to have fun that way. By 2:00 he was a little drunk, but he was not behind the bar. No one is allowed to be behind the bar by policy. His father said that he saw him behind the bar from outside the building, but this is impossible. His theory is that he doesn't know if a depressant could suggest a blood alcohol number. Otherwise, the \$5 he came with would buy two shots, and he didn't know how many friends would have fed him drinks. What he saw was a drool. When the security guard called his father, he was not in that condition.

Prosecutor Farish responded to a question from Council, saying that the licensee may choose to modify his business practices, but there is nothing within the licensing structure that prevents him from going back to the other format. Council's concern is that the old format would be brought back if the new changes did not prove profitable.

Councilor Schwiesow confirmed that Council can't set conditions on the license.

Mr. Kamjanapun promised to keep the changes, saying that people are here because they love them. The business supports a local women's club. He promised not to go back to the night club structure.

In response to a question from Council, Ms. Egbert said that the license will expire November 30, and renewal application is required 45 days prior to that.

Kowit Hasauwa was sworn and provided the following testimony in response to questions from Mr. Kamjanapun. Mr. Kamjanapun provided translation for some portions of the testimony.

He was the bartender the night of the incident with Pete Garcia. Pete normally drinks Jagerbombs, and he paid the bartender \$5.00, but the price of the drink was \$6.00. So he only served him one drink that night. Staff will be in trouble if they give free drinks. Tuaca is a liquor that mixes with Red Bull. So he may have had one drink, or two drinks. Pete has many friends, and he saw many girls dancing with him, giving him lap dances. Pete was not behind the bar. They do not allow anyone behind the bar. Mr. Garcia is mistaken. He did not know if anyone else served Pete drinks, and did not know how he might have reached a BAC of .389. His training teaches that a safe limit is one drink per hour. He served Pete one drink, and did not know more than that. Pete was at the side of the bar in front of the restroom.

Oneyda Mestas was sworn and provided the following testimony.

She represents Adams State College faculty, and is co-chair of the Cultural Awareness and Student Achievement Association. This association promotes ethnicity, and offers different venues and events for the Latino community. These events are to promote culture. She was not present at any of the incidents described tonight, but spoke to Max's character, integrity, and honesty. He is a supporter of her organization. She is a Latin dance instructor, and has been mistreated in other establishments when looking for a place to practice. Salsa venues do not involve alcohol. Max has been supportive, and allows the group to come practice there on Wednesday nights. They have class Mondays on campus but need a venue to practice. Max provides the location. He is honest, and does not charge. The participants like to eat, and enjoy the food there. This is a safe venue for her colleagues and students. She has heard that her students attend Othelos on Friday and Saturday nights. The students talk during the Social Responsibility class. She attended once to do research for the class and was there for 30 minutes to 1 hour. She saw that Max runs a tight ship, and saw how he checked the bracelets. Students know that they can't buy there. There is no other place where she feels safe and is treated as a human being. Max is a supporter of the community and the college and would never do any harm.

In response to questions from Prosecutor Farish, she clarified that her comments were representative of her role within her program, not as a representative of ASC as a whole. Dr. Svaldi is aware of her class activities. She understood that intent to harm is not an issue for the hearing tonight, but wanted to offer something positive from her experience. She has not witnessed any of the types of incidents described in this hearing. From her observation on Wednesday nights, there have been no police or phone calls. She has been there every Wednesday night for the past semester from 7:00 to 10:30 p.m. On one occasion she attended late on a weekend night for research.

Joseph Medina was sworn and provided the following testimony.

He has been a patron at Othelo's since the business started, and has a high regard for the professional way it is run. He hasn't been present for any of the incidents discussed tonight, but he likes to eat there because it is the best food in town. Max has always shown that he runs a classy place. He is here because of negative effects, but wants to let Council know that he has been affected in a positive way. He asked what we are doing as a community to help our businesses, to try to make a person run his business in a fashion that we would like. Max is a pillar of the community and we need to give him support and we will see great things happen.

Prosecutor Farish recalled Chief Jackson as a rebuttal witness. Chief Jackson provided the following testimony.

He appreciates the efforts and conversations with Mr. Kamjanapun, but he hasn't seen the follow-through with any kind of success. Success would be defined as no more violent crime. In response to Mr. Media, Chief Jackson said that he is not trying to legislate anyone out of business. He has worked with the business, and realizes that this does take time. His preference is to fix and prevent problems, and this process is painful for him also. He believes that he has tried all the available tools and has not seen results.

The photos described in earlier testimony were taken on Sunday April 19. This was prior to the attempted homicide. On April 20 he got a call from Dave Reske, Manager of Penney's, saying that customers were angry that there were broken bottles in the parking lot. Chief Jackson was able to tell Mr. Reske that he had taken pictures the day before and submitted it with a letter requesting the Show Cause hearing.

Regarding the security efforts outside the establishment, Chief Jackson said that was news to him. He knew they offered security at the door, but had never seen any security in the parking lots, streets, or neighborhood to correct any of the problems. Mr. Kamjanapun is correct about jurisdictional limitations of his security staff outside the building.

Responding to Mr. Medina's question about what the community is doing, Chief Jackson said that he has tried to work with Mr. Kamjanapun, but all the changes revert back to the problem situation. Officers are at risk and have been hurt. What else would he be able to do? He takes pride in being pro-active. With his experience, he predicted that it would get worse, and it did. He can't fix all of society's ills, but can provide resources and tools. The responsibility doesn't rest with government doing it for you. He has

worked to try to help them understand the complexity of the problem and injury to citizens and officers. Officers deserve a safe working environment.

This is a substantial danger to the health and safety of the community at certain times and days of the week. It is a danger to police officers. He recommended revocation of the license. After listening to the testimony tonight, he felt that there was no other recommendation that could be made because of the lack of follow-through.

No police calls have been received in the past week since the new change was implemented. Mr. Kamjanapun has described his changes, and I was glad to see this. These changes are some of the things that were talked about. Chief Jackson said that he won't tell Mr. Kamjanapun how to run his business. He is careful to say that follow-through is needed, and he felt that he had to take it to the next level in order to protect citizens and officers.

Prosecutor Farish made the following closing statement.

The City has had numerous Show Cause hearings, but he has never asked for the ultimate sanction until tonight. This transcends the ordinary bar, and there seems to be no approach that will solve the problems for this establishment. Officers have been injured hurt seriously, and one person almost killed. There are situations that reach a level of depravity, such as pouring alcohol into a quadriplegic. If you look at it as a cost/benefit analysis, the benefit is employment and sales tax the expenses being the cost of law enforcement in trying to control. This does not mention the effects on the health, safety, and morals of the community. We have a situation where someone almost died. If we continue this bar situation, what is going to transact next? He asked Council as protectors of the city and its health and safety whether they can even allow this bar to continue in operation one more night. Mr. Kamjanapun says that things have happened because they are outside of his control and that is just the whole point. This bar is outside his control. The Chief has tried to work with him on several occasions and it reverts back. It's not that he is a bad person; I'm sure he is a good person, but he is running an establishment that is outside his control. The problems have genesis in the establishment that transfers to the outside, and spreads like a cancer. This is a classic situation for revocation. You need to send a clear message to the community that you have had enough. He has no reservations about requesting revocation.

Mr. Kamjanapun made the following closing statement.

He can't change the past, but wants to move forward. If things continue it will never be solved. He promised to remove the bar atmosphere, saying it is a promise he will keep. This has been very difficult. The bar was necessary to keep the business afloat when he had only a small amount of money, but it was not what he wanted. He did not say that he could not control it, but that he has no rights to control. It is human nature, and if people like to fight outside, he will do his best, but it is not humanly possible to control. From now on since he can't find a perfect solution for night club, he will change the nature of the business. If the nature is changed, the people that come in will change. He loves this community and wants to be here. He believes that this change will work.

Council called a recess at 10:30 p.m., and resumed at 10:39 p.m.

Councilor Gillaspie said that he appreciates the efforts, but it is too little too late.

Councilor Tuggle offered that she is trying to sort this through and be objective. What happened in the public parking lots may or may not have been from the bar, and, could have been there in different circumstances. She is disturbed by the situation law enforcement is put in. She recognized that the owner is trying to sort things out. He is not argumentative, and has tried to come up with something that is reasonable and still maintain his business.

Councilor Lucero pointed out that liquor licensees are held to higher standards. The owner can say anything he wants, but it is Council's responsibility to make sure change happens. He doesn't like putting people out of business, but this needs effort to correct the problem and protect young people.

Mayor Rogers agreed that the desire is not to shut down a business, but the job is to protect the public.

Councilor Johnson agreed that lots of the incidents happened outside, but the incident with Mr. Garcia is very troublesome. This happened inside, even with five security persons, the owner, and bartender.

It was moved by Councilor Romero and seconded by Councilor Gillaspie to revoke this license. On the roll call the vote was ayes five (Johnson, Lucero, Romero, Gillaspie, Rogers), nays one (Tuggle). The motion carried.

ADJOURNMENT. The meeting adjourned at 10:58 p.m.

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Judy A. Egbert, City Clerk

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Kathleen J. Rogers, Mayor