

APPEAL HEARING on July 11, 2018 for Childcare License revocation

Re: Iris's Lil Bloomers operated by Iris Eby

Appellant Present:

Iris Eby

Staff and City Agents Present:

Wes Somerton, Attorney for the City of CDA

Renata McLeod, City Clerk and Municipal Services Director

Kelley Setters, Deputy City Clerk

Commissioners Present:

Iris Siegler, Chairman

Chris Bjurstrom

Susie Freligh

Kim Torgerson

Kathleen Shriner

Samantha Tuskan

Jolie Wenglikowski

Absent: Andy Bjurstrom

Commission Chair, Iris Siegler: opened the hearing at 1:00 p.m.

Attorney Somerton: stated the applicable code sections;

5.68.030: LICENSE TYPES AND REQUIREMENTS: After January 1, 1984, no person, partnership, corporation or association shall maintain, operate or permit to be operated within the city any "childcare facility", as defined in this chapter, without first having obtained a license from the city, and no "operator", as defined in this chapter, shall allow or permit the use of a childcare facility unless a proper license for such operation shall have been so obtained. No operator shall permit any person who may have unsupervised contact with children to remain on the premises of a childcare facility unless they obtain and carry a current license issued by the city of Coeur d'Alene. Types of licenses are as follows:

A. On Site Nonprovider: This license is required for any person twelve (12) years of age or older residing with an operator, a person who is employed by a childcare facility, a person eighteen (18) years of age or older who resides at a childcare facility, or any person who is regularly on the premises at a childcare facility, or anyone who may reasonably be expected to have unsupervised contact with children, but does not provide direct care, such as janitorial, lunchroom staff, pastors, immediate family members or operator, children over eighteen (18), friends who are regularly on the premises, etc. The nonprovider must complete a criminal history background check. The nonprovider may not perform any direct care of children. The license expires December 31 annually.

5.68.060: License; Denial Conditions:

No childcare license shall be issued:

C. Where the individual operator, managing agent of a corporation, active partner(s), or any other person required to have a criminal history check under the provisions of this chapter or Idaho Code section 39-1105 have been found guilty of or received a withheld judgment for any offense involving misdemeanor domestic violence charge within the last five (5) years, or an amended charge from felony or misdemeanor domestic violence arrest within the last five (5) years.

Somerton states there was an allegation for a judgement of conviction of the original charge of domestic battery with a child present, the judgement of conviction was reduced to disturbing the peace on March 28, 2016.

Siegler : stated the appellant will present evidence, witness testimony, and their reasons of why the decision to revoke the license was in error; the representative for the City (Kelley Setters) will then provide their evidence, witness testimony, and reasons to uphold the decision to revoke the license; the appellant has an opportunity to provide rebuttal evidence and argument. The decision of the Commission must be supported by substantial evidence.

Iris Eby (the appellant): stated she had no evidence of error since the original charge was dropped from domestic battery in the presence of a child to disturbing the peace. I was not aware that the original charge not the amended charge would be used in the background check. Iris read a letter describing her dream of becoming a childcare provider and studying early childhood development. It was important for her to provide a safe and positive learning environment for children and opened the Iris Lil Bloomers childcare in September of 2017. The relationship with Louis Nodolny started in August of 2013, in 2015 life hardships, drinking and stress took its toll and the call to police was in fear of Louis hurting himself and Iris was never in fear for herself or her children. The judge ordered them to attend meetings together. The move to a new location was determined by a need for more space for their children and the business and plans to marry this summer. Louis is never home during business hours when the children are there, he works long hours 6 days a week. Iris is uncertain if in these types of cases if it is on a case by case bases or black and white where she would be forced to find another location.

City Deputy Clerk, Kelley Setters: stated the City of Coeur d' Alene Municipal Services Department served Iris Eby, owner of Iris' Lil Bloomers Daycare/Home Occupation, a notice of revocation on June 26, 2018. The revocation was based on Iris Eby notifying the City that her facility would be moving to a new location and that her fiancé would be living with her. She was informed that a Health and Fire inspection for the new location, and an application and background check for an "On Site Nonprovider" would be required for any person living in the home. The criminal history background check revealed that Ms. Eby's fiancé had been found guilty of or received a withheld judgment for an offense involving a misdemeanor domestic violence charge or an amended charge from felony or misdemeanor domestic violence arrest within the past five years prior to his application for a license. Ms. Eby's fiancé was, therefore, denied a license and sent notice of denial on June 26th, and did not appealed his denial of

licensing. Ms. Eby decided not to get her inspections due to the denial of the non-provider license denial. Therefore, the city is revoking Iris's Lil Bloomers facility license. Evidence provided to the Commission includes the following:

- the application of Louis Nadolny,
- the criminal history verification confirming the charge of domestic battery and the disposition of the misdemeanor as disturbing the peace
- Revocation notice to Iris Eby
- Notice of Denial to Louis Nodolny
- Police Report of the domestic battery incident dated September 1, 2015
- Court Judgement document dated March 28, 2016
- Idaho Department of Health and Welfare dated June 29, 2018

The City concluded its argument.

The appellant was given a chance for rebuttal and declined.

Commissioners then asked questions and could only ask what is relevant to the judgement.

Kathleen Shriner: asked how a charge with battery is lowered to disturbing the peace what happened in court that lowered that?

Iris Eby: the court findings found since I was there by his side that everything in the police report was not exactly what happened and sometimes things get reported that didn't happen. People make mistakes and the charges were reduced due to the report not being as accurate as to what really happened. I was there to support him to help reduce the charges due to one night when things got blow out of proportion.

Discussion from the Commissioners followed.

It was discussed that it was reduced to a misdemeanor and both have had counseling and they have been living together this whole time and not living together. The inspection were not done due to not having keys to the new house and the background checks for Louise was reject so all inspections were canceled. Samantha Tuskan asked the city attorney what the commission needs to look at as far as the revocation he stated the commission looks at the code and finds whether or not the city followed code or not followed code based on the evidence that was presented. ICCP was taken at the same time as the city revocation.

Motion by **Tuskan,**

Based on the foregoing findings of fact:

1. Iris's Lil Bloomers childcare facility **did** violate Municipal Code 5.68.030 in that a person who resides at the facility was found guilty of or received a withheld judgment for an offense involving misdemeanor domestic violence charge or an amended charge from felony or misdemeanor domestic violence arrest within the five (5) years prior to his application for an On Site Nonprovider license.

2. Municipal Code § 5.68.100 **requires** that Ms. Eby's license be revoked based on the violation of a provision of Title 5, Chapter 68, Coeur d'Alene Municipal Code.

3. The revocation of Ms. Eby's license is **affirmed**.

Seconded by Shriner, to adopt the findings and affirm the revocation of the license.

Discussion from the Commissioners continued.

So we can say yes she violated it can we change the verdict? City attorney stated we are bound by the code. A violation of the code happened when Louis did not pass his background check and under the code a childcare facility cannot operate when a member of the household was denied a license due to the background check qualifications not being meet. The solution would be not having the non-license person in your home or find a separate location to operate the business.

Motion carried with a vote of 4-2 commissioners Bjurstrom and Shriner voting no.

Move to adjourn by **Tuskan seconded by Shriner**.