

STATE OF MINNESOTA)

) ss.

**AFFIDAVIT OF SERVICE BY E-MAIL & U.S.
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COUNTY OF RAMSEY)

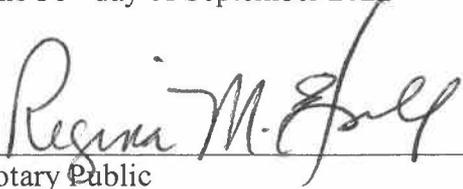
Shawn McDonald, being first duly sworn, deposes and says that on the 30th day of September, he served the attached **CITY'S CLOSING ARGUMENT** and a correct copy thereof in an envelope addressed as follows:

A.L. Brown
Capitol City Law Group, LLC
The Allen Building
287 East Sixth Street, Suite 20
Saint Paul, Minnesota 55101

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.


Shawn McDonald

Subscribed and sworn to before me
This 30th day of September 2022


Notary Public



OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COUNCIL OF THE
CITY OF SAINT PAUL

In re the Matter of Liquor on Sale - 291 or More
Seats, Liquor on Sale - Sunday, Liquor On Sale - 2AM
Closing, Liquor Outdoor Service Area - Patio and
Entertainment B licenses held by Randall Johnson,
RJMP Group d/b/a Billy's On Grand for the premises
Located at 857 Grand Avenue in Saint Paul
OAH Docket No.: 71-6020-38398

CITY'S CLOSING ARGUMENT

I. **INTRODUCTION**

Adverse action is defined as “the revocation or suspension of a license, the imposition of conditions upon a license, the denial of an application for the grant, issuance or renewal of a license, the imposition of a fine, the assessment of the costs of a contested hearing, and any other disciplinary or unfavorable action taken with respect to a license, licensee or applicant for a license.”¹

On May 9, 2022, the Department of Safety and Inspections (“Department”) initiated adverse action on behalf of the City of Saint Paul (“City”), against the Liquor on Sale - 291 or More Seats, Liquor on Sale - Sunday, Liquor On Sale - 2AM Closing, Liquor Outdoor Service Area - Patio and Entertainment B licenses (“Licenses”) held by Randall Johnson and Matthew Prendergast, RJMP Group d/b/a Billy's On Grand (“Licensee”) for the premises located at 857 Grand Avenue in Saint Paul (“Licensed Premises”) by serving a copy of a Notice of Violation and Request for Imposition of \$1,000 Matrix Penalty (“NOV”) on Licensee.²

¹ St. Paul Leg. Code § 310.01.

² Exhibit 5-1 - 5-9.

Saint Paul Legislative Code (“SPLC”) § 310.05(m)(v) contains the applicable penalty matrix for adverse actions, the first violation of the penalty matrix is a presumptive penalty of \$500, the presumptive penalty for a second violation in twelve (12) months is a \$1,000 fine, the third violation within eighteen (18) months is a 10 day suspension and a \$2,000 fine and a fourth violation within twenty-four (24) months is revocation. The penalties are presumed to be appropriate in every case, but the code does allow Council to deviate. Under SPLC § 310.05 (ii) all violations alleged and/or incorporated in the NOV are considered under the presumptive penalty for the applicable appearance, although the “occurrence of multiple violations shall be grounds for departure from such penalties in the council’s discretion”.

The NOV sent to the Licensee indicated that the Department was requesting the imposition of the presumptive penalty for a second violation which is a \$1,000.00 matrix penalty based on 4 (four) separate violations of License Conditions and SPLC.³

II. FACTS

The Licensed Premises at 857 Grand is owned by East Mall Associates/Bill Wengler.⁴ On June 1, 2020 RJMP Group Inc. was granted License Number 20200000158.⁵ License Number 20200000158 covers the Licenses held by the RJMP Group Inc. for the Licensed Premises. Randall Johnson and Matthew Prendergast (“Licensee”) are equal owners in RJMP Group Inc.⁶ Wesley Spearman (“Spearman”) is currently the managing operator of the Licensed Premises. He has a management agreement with the Licensee and has applied for the Licenses currently held by Licensee for the Licensed Premises.⁷

³ Exhibit 5-1 - 5-10.

⁴ Exhibit 6-1, Testimony of Bill Wengler, August 16, 2022, 1:42.

⁵ Exhibit 8-1.

⁶ Exhibit 8-1 (4-7-2020 entry), Testimony Hudak 8-15-2022, 39:50 - 40:00.

⁷ Testimony of Wesley Spearman, August 16, 2022, 32:45, Testimony Hudak, 8-15-2022, 1:01:32.

On February 1, 2022 the City took adverse action against the Licenses held by Licensee for the following violations:

- Failure to maintain order under SPLC 409.08(5) and SPLC 310.06 (b)(8) operating the licensed premises in a manner that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public in relation to a sex act on the patio area of the Licensed Premises.
- Failure to maintain order under SPLC 409.08(5) and SPLC 310.06 (b)(8) operating the licensed premises in a manner that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public in relation to a fight inside the Licensed Premises that involved multiple people and security using a chemical irritant to control the crowd; and
- Failure to take reasonable and adequate steps to prevent alcohol from leaving the Licensed Premises under SPLC 409.08 (15).⁸

This matter was resolved by the payment of a fine and agreement to additional license conditions. The additional license conditions were imposed by the Saint Paul City Council through RES 22-311 on March 2, 2022.⁹

Just 3 months later, on May 9, 2022, the Department again initiated adverse action against the Licenses held by Licensee for the Licensed Premises after a number of violations of license conditions and SPLC were identified by the Department. The license conditions and SPLC sections that support the current adverse action include:

- Every licensee is hereby made responsible for the conduct of his place of business and required to maintain order and sobriety in such place of business.¹⁰
- Each on-sale shall have the responsibility of taking reasonable and adequate steps to prevent persons from leaving the licensed premises with a bottle, can or glass containing any alcoholic beverage, and the failure to do so may subject such licensee to adverse action against his or her license.¹¹
- License condition #3 which requires that the "Licensee will create a video surveillance camera and lighting placement plan (video surveillance plan) for

⁸ Exhibit 1-4, 1-5.

⁹ Exhibit 2-1, 3-1 - 3-2, 4-1 - 4-3.

¹⁰ SPLC 409.08 (5)

¹¹ SPLC 409.08(15)

the interior and exterior of the licensed premises. Licensee will submit the video surveillance plan to the Saint Paul Police Department (SPPD) liaison with the Department of Safety and Inspection (DSI) for review and approval. In accordance with the approved video surveillance plan, licensee will ensure that video surveillance camera system is in good working order, ensure it is recording 24 hours per day, ensure it can produce recorded surveillance video in a commonly used, up-to-date format, and ensure that accurate date and time of day are visible on all recorded video. Licensee will retain surveillance video for a minimum of thirty (30) days. If an incident is deemed serious by SPPD, licensee shall make surveillance video immediately available for viewing by SPPD. If a copy of the surveillance video for a serious incident is requested by SPPD, Licensee shall have the technology, materials, and staff available to immediately make the copy. In all other cases, licensee shall provide a copy of the surveillance video to the requester within 48 hours.¹²

- License condition #6 which requires that the “License holder shall ensure no alcoholic beverages leave the licensed liquor service area(s)”.¹³
- Failure to comply with any condition set forth in the license, violation of any of the provision of SPLC or of any statute, ordinance or regulation reasonably related to the licensed activity.¹⁴
- Engaging in or permitting a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.¹⁵
- When the activities of the licensee in the licensed activity created or have created a serious danger to the public health, safety or welfare, or the licensee performs or has performed his or her work or activity in an unsafe manner.¹⁶
- The licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.¹⁷

The Department, through the NOV requested the presumptive penalty of \$1,000.

The NOV listed 4 (four) separate incidents as the basis for adverse action:¹⁸

¹² Exhibit 3-1

¹³ Exhibit 3-1

¹⁴ SPLC 310.06(b)(6)(a)

¹⁵ SPLC 310.06(b)(6)(c)

¹⁶ SPLC 310.06(b)(7)

¹⁷ SPLC 310.06 (b)(8).

¹⁸ Exhibit 5-6 - 5-8.

- Alcohol leaving the liquor service area on March 5, 2022 in violation of license condition #6 and SPLC section 409.08.
- Failure to provide access to all cameras on the property and failure to have the means to make a copy of video requested by SPPD officers on March 13, 2022 in violation of license condition #3.
- Failure to provide a complete copy of video, specifically channels 24 and 29 when requested by DSI on March 18, 2022 and failure to maintain the surveillance systems in violation of license condition #3.
- Failure to manage the Licensed Premises in a manner that provides a safe environment for patrons and the public.

III. **The City has met its burden and shown by a preponderance of the evidence that on March 5, 2022 alcohol left the service area in violation of license condition #6 and SPLC §409.08.**

Sergeant Graupman (“Graupman”) and Licensing Manager Eric Hudak (“Hudak”) provided testimony on this violation. Hudak testified that he reviewed the March 5, 2022 incident and observed violations related to alcohol leaving the service area.¹⁹ Graupman testified that he has been with SPPD for just over 22 years, has held a number of different assignments, and is currently assigned as the police liaison to the Department. Graupman testified that he understands the legislative code, understands licensing requirements, that he has been to and investigated many incidents related to alcohol and understands why alcohol is regulated.²⁰

Graupman testified that a normal part of his job is to review citizen complaints, district summary reports related and other information related to licensed premises in the city. He stated that he reviewed a number of Saint Paul Police case numbers (“CN”) after incidents involving the Licensed Premises were brought to his attention.²¹ He

¹⁹ Testimony Hudak, 8/15/2022 1:26:29.

²⁰ Testimony Graupman, 8/15/2022 2:49:42

²¹ Exhibits 18-1, 19-1, 20-1, 21-1 -21-6, Testimony of Graupman 8/15/2022 2:53:13.

created a report detailing the cases he reviewed, his findings and pulled still photos off of video to support his findings.²² While he found the violations identified in the NOV, he testified that he did not find violations in all of the CN's he reviewed. For example, a potential violation under CN 22036672 was unfounded.²³

The CN for the incident that gave rise to the allegation that alcohol was allowed to leave the Licensed Premises was CN 22036746.²⁴ Graupman testified that he reviewed that CN as part of an aggravated assault report in which an individual had been shot on March 5, 2022. He documented in his report and testified that he and Hudak drafted a letter requesting video, obtained the video from Spearman, that it took a couple days of his time to review the video and that while there was no evidence to infer that the aggravated assault took place on the Licensed Premises, he did observe alcohol leaving the Licensed Premises.²⁵ Graupman testified as to the process he used to identify the specific incidents where alcohol was allowed to leave the Licensed Premises. He testified that while he could not say for certain that there was alcohol in the cups and that the can was an alcoholic beverage, based on his knowledge, it was his opinion that that he identified incidents where alcoholic beverages were allowed to leave the Licensed Premises in his report and in the snipped photos he provided. As for the can, Graupman testified that due to the low quality of the video he was unable to identify the brand.²⁶ Graupman also testified that Exhibit 23-4 was significant to him because this was an exit and he did not see security persons in this area and he did not see any trash

²² Exhibit 22-1 - 22-12, 23-1 - 23-8.

²³ Exhibit 18-1.

²⁴ Exhibit 19, Testimony Graupman, 8-15-2022, 3:05:09.

²⁵ Testimony Graupman, 8-15-2022, 3:11- 3:39, Exhibit 22-4, Exhibit 23-1 - 23-8, Exhibit 24

²⁶ Testimony Graupman, 8-15-2022, 3:29 - 3:30:40.

cans in the area and that it was concerning to him that the individual with the can in his hand was allowed to exit the Licensed Premises because he was exiting onto Grand Avenue and a residential neighborhood.²⁷ He testified that he looked for security people and trash cans because trash cans are very often an easy way for security to deal with someone who has paid for an alcoholic beverage. Often they don't want to get rid of the beverage because they paid for it and security can give them the option of either throwing it or consuming it without littering. He also testified that he sees this type of set up "a lot".²⁸

Luke Ponder ("Ponder"), the head of security for the Licensed Premises, testified about the security procedures in place at the Licensed Premises. He stated that the primary concern was safety and that they had security posted at each door and trash cans at individual exits. It appears from Ponder's testimony that the goal of the policies are to have security present at each exit at all times and have patron's dump their drinks in the trash can to ensure that no alcoholic beverages leave the building.²⁹ Ponder indicated that a shooting took place outside of Billy's on March when the shooting incident took place 10-12 security guards responded and estimated that this left 2 or 3 security guards to monitor the rest of the Licensed Premises.³⁰

General Manager Charles Gilbert ("Gilbert") testified that he looks to Mr. Ponder for security issues, and that Billy's has 18 (eighteen) stock keeping units (SKU's) that reflect beverages served in cans. Gilbert also highlighted that while he wasn't present when the March 5, 2022 shooting took place, the Licensed Premises has a number of

²⁷ Testimony Graupman, 8-15-2022, 3:41:54 - 3:42:51.

²⁸ Testimony Graupman, 8-15-2022, 3:42:51 - 3:43:55.

²⁹ Testimony Ponder, 8-16-2022, 11:58 - 13:05.

³⁰ Testimony Ponder, 8-16-2022, 19:55 - 20:38.

measures in place to ensure that alcohol doesn't leave the Licensed Premises including staff trained to keep eyes on the patio, entrances and exits and that staff apparently moves in a figure 8, from point to point observing entries and exits.³¹

The video, testimony of Graupman, Ponder and Gilbert show that security left the patio exit depicted in exhibits 23-4 - 23-8 unattended after an individual was shot just outside of the Licensed Premises.³² While the Licensed Premises had measures in place to ensure that alcohol did not leave the Licensed Premises, the security measures that Ponder and Gilbert referred to failed on March 5, 2022 and patrons exited the premises with alcoholic beverages. Common knowledge and experience supports the conclusion that individuals present in a bar close to the 2 a.m. closing are not drinking soda pop. Graupman's observations and the violations he flagged in his report were based on his experience and training, he has no stake in the outcome of this matter and his testimony was credible. The City has met its burden and a finding that on March 5, 2022 the Licensee allowed alcoholic beverages to leave the Licensed Premises is warranted.

IV. **The City has met its burden and shown by a preponderance of the evidence that on March 13, 2022 Licensee failed to provide access to all cameras on the property and failed to have the means to make a copy of the video requested by Saint Paul Police Officer Albert Lyfoung who was investigating an assault on a patron at the licensed premises that had occurred on March 12, 2022.**

SPPD Officer Albert Lyfoung ("Lyfoung") offered testimony regarding this violation. He stated that he has been a Saint Paul Police Officer for 12 years and discussed the various roles he has held within SPPD. Lyfoung testified that on March 13, 2022, he was investigating a call for service regarding an assault at Billy's. He

³¹ Testimony Gilbert, 8-16-2022, 21:38 - 26:00.

³² Exhibits 23-4 - 23-8.

stated that he created a report as part of his investigation and identified his report.³³ He testified that it was not a complete copy, just a public narrative. He also stated that he had reviewed his report and that the incident was fresh in his mind. Lyfoung testified that he and his partner had responded to an assault call at Billy's and that they met with a victim. The victim told them that she was assaulted the night before by another client at Billy's. Lyfoung testified that he investigated the assault by talking to the victim. The victim told Lyfoung that she was assaulted between the bar area and the hallway leading to the bathroom area. He testified that when he saw that there were cameras on the premises he approached one of the staff members to see if he could access the video. Lyfoung testified that staff told him that at that moment there was no one at the scene - but they would make a phone call and someone would come. Staff did call someone and Lyfoung was able to identify Spearman as the individual who showed up and assisted with the video. Officer Lyfoung stated that Spearman guided them to the upper level where the CCTV system was and showed them cameras. Lyfoung testified that he believed that Spearman was cooperative and doing his best, but he was not able to show 2 cameras. Lyfoung testified that he asked for a copy of the video and that Spearman was not able to make that copy for him. Lyfoung testified that he was aware of the license condition related to the video and that he asked for the video because it was an assault and that, in his opinion was a serious incident.³⁴ Lyfoung testified that it was his opinion that if the cameras that were not functioning, were functioning, he would have

³³ Exhibit 20-1.

³⁴ Testimony Officer Lyfoung, 8-15-2022, 2:24 - 2:33.

been able to find out more about the assault he was investigating in that he would have had a clearer view of where the assault happened.³⁵

Lyfoung's testimony highlights the importance of maintaining working security cameras. Given their importance, simple measures, like checks before a shift change with a requirement for an immediate call for service should have been part of the Licensee's procedures for managing the Licensed Premises. The Licensee should have also ensured that the thumb drives necessary to provide video footage were available for managing operator Spearman or required that Spearman had these items on hand.

Lyfoung has no stake in the outcome of this matter. He testified that he wrote his report because there was a victim who wanted to make a report of an assault.³⁶ His testimony was credible and he appeared genuine. Spearman's testimony was also credible on this issue. He admitted that he was unable to make the copy requested by Lyfoung because he didn't have a thumb drive in stock.³⁷ Spearman also testified that he understands the security plan the Licensee is responsible for and knows which cameras that are a part of it and that when cameras were offline, he investigated. Spearman testified that Exhibit 12-17 was part of the results of that investigation.³⁸

The testimony of both sides established that the Licensee failed to provide access to all cameras and failed to provide a copy of video after a serious incident. As such a finding that the City has met its burden and proven that on March 12, 2022, the Licensee violated license condition #3 when he failed to provide access to all cameras

³⁵ Testimony Officer Lyfoung, 8-15-2022, 02:45:45.

³⁶ Testimony, Officer Lyfoung, 8-15-2022, 2:41.

³⁷ Testimony Wesley Spearman, 8-16-2022 41:09.

³⁸ Testimony Spearman 8-16-2022 1:04:51

on the property and failed to have the necessary thumb drive on site to make the copy as requested by SPPD Officer Lyfoung is warranted.

V. **The City has met its burden and shown by a preponderance of the evidence that on March 18, 2022 the Licensee failed to provide a complete copy of video requested by the Department and failed to maintain the surveillance system.**

The exhibits admitted into evidence and testimony of Graupman, Hudak and Spearman established that on March 18, 2022 there was an incident in which the Ramsey County Sheriffs who were working off duty at the Licensed Premises requested emergency assistance. 19 SPPD squad cars responded to or toward the scene and Senior Command staff reviewed the incident.³⁹

It was unrefuted that:

- On March 28, 2022 the Department requested a copy of “continuous, uninterrupted video footage from all camera views of your camera surveillance system” from 11:00 p.m. on Saturday March 12, 2022, until 12:30 a.m. on Sunday March 13, 2022 and from 11:30 p.m. on Friday, March 18, 2022, until 1:00 a.m. on Saturday, March 19, 2022 from the Licensee and Spearman.⁴⁰
- On April 20, 2022 a letter from Hudak was hand delivered to the Licensed Premises notifying Licensee and Spearman that the video request made by the Department on March 28, 2022 was not satisfied in that the “video footage you submitted did not include views from cameras #24 and #29 - 1,2,3,4.”⁴¹
- That Spearman provided Hudak with service invoices from August 18, 2021, November 1, 2021, February 7, 2022 and March 16, 2022.⁴²
- That the service invoice from March 16, 2022 states in the notes “3/17/22 - Quad camera #29 is down. Power cycled quad camera unit and verified that camera is back up.”⁴³
- That Hudak responded to these submissions on April 21, 2022 and told Spearman that “In summary, the reports do not substantiate that camera #24 was inoperable on 3/12/2022 or 3/18/2022, or that camera #29 was inoperable on

³⁹ Exhibit 21-1 - 21-6, Exhibit 22-5.

⁴⁰ Exhibit 10-1.

⁴¹ Exhibit 11-1.

⁴² Exhibits 13-1, 14-1, 15-1 and 16-1.

⁴³ Exhibit 16-1.

3/18/2022 and asked Spearman if there were any other service reports he could provide.⁴⁴

- That the video from cameras #24 and #29 was not produced.
- That Spearman admitted he understood the Licensee's surveillance plan, that he provided a copy of video from all cameras he had available, but that he failed to provide a complete copy of video requested by the Department as cameras #24 and #29 were not working.⁴⁵
- That the Licensee failed to ensure that the security system was in good working order.

The importance of the surveillance system and the need for policies and procedures that ensure it is properly functioning were discussed above. The failure of the Licensee to produce a complete copy of the requested video and the failure to maintain the security system is a violation of license condition #3. As such a finding that the City has met its burden and proven that on March 28, 2022, the Licensee violated license condition #3 when he failed to provide a complete copy of the requested video and failed to maintain the video system is warranted.

VI. **The City has met its burden and shown by a preponderance of the evidence that the Licensee has failed to manage the Licensed Premises in a manner that provides a safe environment for patrons and the public.**

Municipalities have "broad discretion in determining the manner in which liquor licenses are issued, regulated, and revoked." Bourbon Bar & Café Crop. v. City of St. Paul, 466 N.W.2d 438, 440 (Minn. Ct. App. 1991). The City of Saint Paul, through its City Council has adopted specific guidelines as to when adverse action is appropriate including when:

⁴⁴ Exhibit 12-1.

⁴⁵ Exhibit 10-1, Testimony of Graupman, 8-15-2022, 3:54:11 -3:55:39, Testimony of Spearman, 8-16-2022, 56:17 - 1:07.

- There is a failure to comply with any condition set forth in the license, violation of any of the provision of SPLC or of any statute, ordinance or regulation reasonably related to the licensed activity;⁴⁶
- The Licensee Engaging in or permitting a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn;⁴⁷
- When the activities of the licensee in the licensed activity created or have created a serious danger to the public health, safety or welfare, or the licensee performs or has performed his or her work or activity in an unsafe manner;⁴⁸
- The licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.⁴⁹

These provisions were noticed as part of the basis for adverse action in the NOV. The evidence and testimony in this matter has highlighted management practices that violate the above sections of the legislative code. The goal of these provisions are to ensure that Licensees manage the Licensed Premises in a manner that protects neighbors from exposure to the side effects detailed in the testimony of Hudak and Graupman. As Hudak testified, while the Department works with managers, the Licensee is the ultimate responsible person for the Licensed Premises.⁵⁰

Oversight of the Licensed Premises is the ultimate responsibility of the Licensee, RJMP. Testimony in this case highlighted a number of unique facts that also contribute to the basis for adverse action:

- The Licensee skipped out on his lease with Wengler. While this didn't concern Spearman who entered into an agreement with the Licensee and paid money for the inside interior and equipment.

⁴⁶ SPLC 310.06(b)(6)(a)

⁴⁷ SPLC 310.06(b)(6)(c)

⁴⁸ SPLC 310.06(b)(7)

⁴⁹ SPLC 310.06 (b)(8).

⁵⁰ Hudak Testimony, 8-15-2022.

- Wengler, who has the ownership for the bricks and mortar of the Licensed Premises failed to notify the Department when the Licensee stopped operating, instead, Wengler entered into a lease agreement with Spearman.
- The Licensee does not appear to be taking any responsibility for the License. He appears to have absented himself wholly from the business. He did not appear before the ALJ in this matter and when asked, Spearman stated he talked with him - but was unaware of where he was.
- The Licensee is attempting to extort \$75,000 for the return of the license.⁵¹

The Department worked with the Licensee after an earlier shooting incident outside the Licensed Premises in an attempt to address issues.⁵² The Department took adverse action on February 1, 2022 for violations that are very similar in nature to the ones in the present NOV. Despite these efforts by the Department, the incidents alleged in the NOV show that the Licensee is failing to manage the Licensed Premises as evidenced by the lack of management practices that failed to ensure security held their posts and maintained oversight over entry and exit points, failed to implement practices that ensured the alcohol stayed on the Licensed Premises, failed to ensure that the Licensed Premises was secured and patrons were safe during an incident that related to a shooting directly outside the Licensed Premises, failed to implement policies that would have prevented multiple instances of video equipment failures - including a failure that potentially impacted an assault investigation, failed to stock media that would have allowed a copy to be made for SPPD and as such, a finding that the Licensee has failed to manage the Licensed Premises in a manner that provides a safe environment for patrons and the public on behalf of the City is warranted.

VII. **Conclusion**

The City submits that it has shown by a preponderance of the evidence that:

⁵¹ Testimony Spearman, 8-16-2022, 48:33 - 50:48.

⁵² Testimony Hudak, 8-15-2022, 55:59.

- the Licensee, as the individual responsible for the conduct of his place of business, has failed to take reasonable and adequate steps to prevent persons from leaving the licensed premises with a bottle, can or glass containing any alcoholic beverage in violation of license condition #6 and SPLC Section 409.08,
- the Licensee the licensee failed to comply with license condition #3 by failing to maintain his video surveillance equipment and failing to provide a complete copy of requested video,
- the Licensee has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity from which an inference of lack of fitness or good character may be drawn,
- the activities of the Licensee in the licensed activity created or have created a serious danger to the public health, safety or welfare and
- the Licensee allowed the licensed business to be operated, maintained or permitted conditions that unreasonable annoyed, injured or endangered the safety, health, morals, comfort or repose of any considerable number of members of the public.⁵³

For all of the foregoing reasons, the City believes it has shown by a preponderance of the evidence that imposition of the presumptive \$1,000 matrix penalty is appropriate. The City respectfully requests this Court recommend imposition of the \$1,000 matrix penalty.

VIII. **Public Comments**

Pursuant to Saint Paul Legislative Code § 310.05 (c), members of the public were permitted to submit written statement regarding this matter. This section provides that “The hearing examiner may in its discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing.” Public testimony was permitted in this matter both in person and through written submission. The Department is not addressing the public statements and testimony presented as it is focusing on the facts alleged to have occurred on the Licensed Premises.

⁵³ SPLC §§ 409.08 (5), (15), Exhibit 3-1 - 3-2, SPLC §§ 310.06 (b)(5), (b)(6)(a), (b)(6)(c), (b)(7) and (b)(8).