

December 21, 2022

VIA EFILING ONLY

Shari Moore
City Clerk
City of St. Paul
310 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102
cityclerk@ci.stpaul.mn.us

Re: *In 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 71-6020-38398

Dear City Clerk Moore:

Enclosed and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** in the above-entitled matter. The official record, along with a copy of the recording of the hearing, is also enclosed. Please note that Exhibits 24-27 are contained on a flash drive that will be mailed under separate cover. The Office of Administrative Hearings' file in this matter is now closed.

If you have any questions, please contact me at (651) 361-7943, dara.xiong@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



DARA XIONG
Legal Assistant

Enclosure

cc: Docket Coordinator
Therese Skarda
A.L. Brown

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In 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

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge Jessica A. Palmer-Denig for a hearing on August 15 and 16, 2022, held at the Office of Administrative Hearings in St. Paul, Minnesota. The record closed upon the filing of the parties' final submission on October 5, 2022.¹

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City) Department of Safety and Inspections (DSI). A.L. Brown, Capitol City Law Group, LLC, appeared on behalf of Randall Johnson, RJMP Group, Inc. (RJMP Group) d/b/a Billy's On Grand (Billy's) acting through DWD Group, LLC (DWD Group) and Wesley Spearman (collectively, Licensee).

STATEMENT OF THE ISSUES

1. Has DSI established by a preponderance of the evidence that Licensee violated the St. Paul Legislative Code and the conditions of its licenses by:
 - a. Allowing customers to leave the premises with alcoholic beverages on March 5, 2022;
 - b. Failing to provide access to and a copy of video footage of the premises in response to a request from a St. Paul Police Department (SPPD) officer on March 13, 2022;

¹ The parties filed written closing arguments and responses to public comments on October 3, 2022. The parties were permitted to file responsive closing arguments by October 7, 2022. See Amended Post-Hearing Schedule Order (Sept. 22, 2022). On October 5, 2022, the parties submitted a letter waiving the opportunity to make an additional filing because they believed that their arguments had been sufficiently addressed in their initial briefs. See Letter from A.L. Brown and Therese A. Skarda to the Administrative Law Judge (Oct. 5, 2022). The record closed upon receipt of the parties' letter.

- c. Failing to maintain surveillance cameras and provide complete video footage related to an incident on March 18, 2022, in response to a request made by DSI; and
 - d. Failing to maintain the licensed premises in a manner that provides a safe environment for patrons and the public.
2. If so, may the City impose a matrix penalty of \$1,000?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that DSI has not established by a preponderance of the evidence that patrons were permitted to leave the licensed premises with alcoholic beverages on March 5, 2022. DSI has established that Licensee failed to provide all video camera footage and a copy of footage to an SPPD officer on March 13, 2022, and failed to provide complete video camera footage to DSI related to an incident that occurred on March 18, 2022, in violation of applicable licensing conditions. The Administrative Law Judge also concludes that Licensee has failed to operate in a manner that provides a safe environment for patrons and the public, in violation of the St. Paul Legislative Code. As these are Licensee's second instance of licensing violations within one year, the City may impose a penalty of \$1,000 related to this conduct.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. The Parties

1. DSI is the agency with licensing authority over various businesses operating within the City.² DSI engages in investigative work related to its licensing responsibilities.³ This investigative work is "complaint based," meaning that staff review and take action based on complaints DSI receives about licensed businesses.⁴ Eric Hudak is DSI's Licensing Manager.⁵ Sergeant Charles Graupman is an officer with the SPPD who is assigned as a liaison to DSI.⁶

2. Billy's is a restaurant and bar located at 857 Grand Avenue in St. Paul, Minnesota.⁷ At this time, 857 Grand Avenue houses three other businesses besides Billy's.⁸

² Testimony (Test.) of Eric Hudak.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Test. of Charles Graupman.

⁷ *Id.*; Test. of William Wengler.

⁸ Test. of W. Wengler.

3. The building where Billy's is located is owned by East Mall Associates and the responsible party for that entity is William Wengler.⁹ Mr. Wengler is the prior owner of Billy's, and he operated the business for 35 years.¹⁰

4. Billy's operates under several licenses issued and regulated by DSI:

- Liquor on Sale-291 of More Seats;¹¹
- Liquor on Sale-Sunday;
- Liquor on Sale 2AM Closing;
- Liquor Outdoor Service Area-Patio; and
- Entertainment B.¹²

5. The current licenses were issued around June of 2020.¹³ The licensee for these licenses is RJMP Group, which is owned by Randall Johnson and Matthew Prendergast.¹⁴ Mr. Johnson was usually DSI's contact regarding the license in the past.¹⁵

6. RJMP Group entered into a management agreement with DWD Group in approximately April or May of 2021, through which DWD Group now operates Billy's.¹⁶ DWD Group began its operation of Billy's on May 28, 2021.¹⁷ DWD Group continues to operate Billy's under the license issued to RJMP Group while it seeks a license of its own.¹⁸

7. Wesley Spearman is one of the owners of DWD Group.¹⁹ During the time DWD Group has operated Billy's, Mr. Spearman has been DSI's primary contact.²⁰ Mr. Hudak has had numerous contacts with Mr. Spearman and has found Mr. Spearman to be responsive and cooperative.²¹

⁹ Ex. 6-1; Test. of W. Wengler; Test. of E. Hudak.

¹⁰ Test. of W. Wengler.

¹¹ The designation "on-sale" means the sale of liquor by the glass for consumption on the premises only. St. Paul Legislative Code § 409.02.

¹² Test. of E. Hudak. Respondent also holds a gambling-related license which is ancillary to the licenses at issue here. *Id.*

¹³ *Id.*

¹⁴ *Id.*; Ex. 7-1.

¹⁵ Test. of E. Hudak.

¹⁶ *Id.* According to Mr. Spearman, he purchased Billy's from Mr. Johnson, and the purchase included the interior of Billy's, its equipment, and products. Test. of W. Spearman. Mr. Spearman signed a lease for the space. *Id.* Even so, the licenses under which Billy's operates belong to the City and remain in the name of RJMP Group. *Id.* Though the business arrangements between these various entities and individuals are complex, there is no dispute that DWD Group and Mr. Spearman have the authority to operate the business and defend against this action. RJMP Group, Mr. Johnson, and Mr. Prendergast did not appear for the hearing or otherwise participate in this matter.

¹⁷ Test. of Chuck Gilbert.

¹⁸ Test. of E. Hudak

¹⁹ Test. of W. Spearman.

²⁰ Test. of E. Hudak.

²¹ *Id.*

II. The Prior Licensing Matter

8. On February 1, 2022, DSI Issued a Notice of Violation of License Conditions and \$500 Matrix Penalty (First Violation Notice) to Licensee.²²

9. DSI identified three violations based on its determination that in October and November of 2021, Licensee: failed to maintain order; permitted a person on the licensed premises to touch, caress, or fondle the breasts, buttocks, anus, or genitals of another person; operated the premises in a manner that maintained or permitted conditions that unreasonably annoy, injure, or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public; and 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.²³

10. DSI asserted that Sgt. Graupman reviewed surveillance footage of the licensed premises and observed a couple engaging in sexual intercourse on a bench in the closed patio bar at approximately 1:24 a.m. on October 31, 2021.²⁴ During the time in which this behavior could be seen, the footage did not show any security personnel conducting sweeps or monitoring the patio in any way.²⁵

11. DSI also asserted that surveillance footage showed a fight on the premises, that resulted in a 911 call, during which several patrons threw drinks, and then chairs, at one another and pushed and punched each other.²⁶ Several patrons were knocked to the ground. A man who appeared to be heavily intoxicated slipped to the floor and hit his head after being pushed, and while he lay on the floor another patron physically assaulted him by kicking him in the groin area.²⁷ Security staff deployed chemical irritants to disperse the crowd and the fight ended as patrons made their way toward the exits.²⁸

12. Finally, Sergeant Graupman observed footage of an incident in which a patron purchased a beer and left the licensed premises with the alcoholic beverage.²⁹ The patron could be seen leaving the front patio area at 1:05 a.m. and was captured on footage again walking through the parking lot and off the property.³⁰ Staff failed to stop the patron from leaving.³¹

13. In response to these concerns, DSI proposed changes and additions to Licensee's licensing conditions. Among the changes, the license conditions required that Licensee's wait staff and managers check identification to ensure that patrons

²² Ex. 1.

²³ *Id.* at 1-5-1-6.

²⁴ *Id.* at 1-4.

²⁵ *Id.*

²⁶ *Id.* at 1-4-1-5.

²⁷ *Id.* at 1-5.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

under the age of 21 would not consume alcohol.³² The revised licensing conditions also mandated that:

License holder shall retain clearly identifiable and appropriately trained security personnel. Clearly identifiable security personnel shall mean a uniform or marked outerwear. Security personnel shall be assigned to each entrance/exit of the licensed liquor service area(s) as well as sufficient roving security to appropriately address minor conflicts to prevent escalation. Security personnel shall start at 10:00 p.m. during any day of operation and shall remain until the establishment has closed and all patrons have left the licensed property and parking lot.

Security or staff will conduct outside sweeps of the building and parking lot at least twice an hour to disperse and discourage loitering from 10:00 p.m. during any day of operation until closing and shall remain at the licensed premises until all patrons have left the property/parking lot. All customers/patrons must be off the property/parking lot within 15 minutes after closing time.

License Holder shall ensure no alcoholic beverages leave the licensed liquor service area(s).

Whenever the establishment is open past 11.00 p.m. no patrons shall be admitted into the establishment 30 minutes prior to closing time. Last call will be given 30 minutes prior to closing time.³³

14. The First Violation Notice explained that Licensee could pay the penalty and agree to the conditions, or if Licensee wished to appeal, it could contest the underlying facts, the \$500 penalty, and the conditions.³⁴

15. Licensee did not request a hearing, but instead Mr. Spearman paid the penalty amount and accepted the additional licensing conditions.³⁵

16. The additional license conditions were adopted by City Council Resolution 22-311 on March 2, 2022, which was approved by St. Paul's Mayor on March 3, 2022.³⁶

³² *Id.* at 1-6. Previously the licensing condition only referenced ensuring minors were not served alcohol, without reference to consumption.

³³ *Id.* at 1-6–1-7.

³⁴ *Id.* at 1-7.

³⁵ Exs. 2, 3, 4 at 4-3; Test. of E. Hudak.

³⁶ Ex. 4.

III. The Current Violation Notice

17. On May 9, 2022, DSI issued a Notice of Violation and Request for Imposition of \$1,000 Matrix Penalty (Second Violation Notice) to Licensee, identifying four violations.³⁷

18. The Second Violation Notice resulted from an investigation conducted by DSI in response to several police calls involving Billy's or originating nearby its location.³⁸ These calls were detailed in police reports or incident narratives³⁹ regarding: (1) an instance in which a person was driving while under the influence (DWI) on March 4, 2022; (2) a shooting that occurred on March 5, 2022; (3) a police visit to Billy's regarding an assault on March 13, 2022; and (4) a call in response to a fight that occurred on March 18, 2022.⁴⁰ In connection with investigating these incidents, DSI determined that violations of the St. Paul Legislative Code and of licensing conditions had occurred at Billy's.⁴¹

19. DSI routinely requests that licensed businesses provide it with video camera surveillance footage to aid in its investigations.⁴²

20. Licensee's license conditions require that it have a video surveillance system. Specifically, the relevant license condition states that:

Licensee will create a video surveillance camera and lighting placement plan (video surveillance plan) for 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 requestor within 48 hours.⁴³

³⁷ Ex. 5.

³⁸ Ex. 5 at 5-4; Test. of E. Hudak; Test. of C. Graupman.

³⁹ Incident narratives are not a full report, but contain information from a police report that is deemed to be public. Test. of C. Graupman.

⁴⁰ Ex. 5 at 5-4-5-5; Exs. 18-21.

⁴¹ Ex. 5.

⁴² Test. of E. Hudak.

⁴³ Ex. 3 at 3-1; Ex. 4 at 4-2.

21. After DWD Group began operating Billy's, Mr. Spearman submitted a copy of a camera and lighting placement plan for the property for approval.⁴⁴ The plan Mr. Spearman submitted was the same plan that had been previously used by RJMP Group.⁴⁵ Sgt. Graupman reviewed the camera plan and determined it was sufficient because the plan had not changed.⁴⁶

A. Violation #1

22. On March 8, 2022, Mr. Hudak provided a written request to DWD Group by hand delivery and email for "continuous, uninterrupted video footage from all views of [its] camera surveillance footage" from 9:30 p.m. until 11:00 p.m. on Friday, March 4, 2022, and from 12:30 a.m. until 2:00 a.m. on Saturday, March 5, 2022.⁴⁷ DWD Group satisfied this request by providing video footage.⁴⁸

23. A review of this footage did not establish a connection between Billy's and the DWI or the shooting.⁴⁹ Mr. Hudak and Sgt. Graupman, however, believed the video footage showed evidence of licensing violations.⁵⁰

24. Both Mr. Hudak and Sgt. Graupman believed they saw four instances in which patrons of Billy's left the premises with open containers of alcoholic beverages on March 5, 2022.⁵¹ In three instances, they observed patrons leaving with a cup in hand.⁵² In one instance, they observed a patron leave the premises with a canned beverage.⁵³

25. With regard to the patron who left with a can, Sgt. Graupman located videos taken from different cameras and angles showing the patron purchasing a beverage in a can at the bar and then leaving the premises minutes later with the can in hand.⁵⁴

⁴⁴ Test. of C. Graupman; Test. of W. Spearman.

⁴⁵ Test. of C. Graupman; Test. of W. Spearman.

⁴⁶ Test. of C. Graupman. Sgt. Graupman had previously reviewed the RJMP Group camera plan and reviewed the same plan when it was submitted by Mr. Spearman. *Id.*

⁴⁷ Ex. 9 at 9-1. The letter was sent to Mr. Johnson as a representative of RJMP Group as well. *Id.*; Test. of E. Hudak.

⁴⁸ Test. of E. Hudak.

⁴⁹ *Id.*

⁵⁰ *Id.*; Test. of C. Graupman.

⁵¹ Test. of E. Hudak; Test. of C. Graupman.

⁵² Test. of E. Hudak; Test. of C. Graupman; Ex. 5 at 5-6.

⁵³ Test. of E. Hudak; Test. of C. Graupman; Ex. 5 at 5-6.

⁵⁴ Test. of C. Graupman. Exs. 23-24. Exhibit 23 is a set of still photographs gleaned from the video footage showing the individual purchasing the can at the bar and leaving the premises. Exhibit 24 contains video clips from various security cameras showing the same event. The relevant video clips in Exhibit 24 are from March 5, 2022, and are identified with the channel, last digits of the video number, and time stamp as follows: Channel 9 Video 4240 at 01:40; Channel 8 Video 0047 at 01:41-01:46; Channel 3 Video 5034 at 01:47; Channel 5 at 3000 at 01:43; Channel 1 Video 3242 at 01:47.

26. Neither Mr. Hudak nor Sgt. Graupman were able to determine what was actually in the containers or establish that they contained alcohol.⁵⁵

27. Sgt. Graupman believed that the canned beverage contained alcohol based on his experience with how alcohol is served in bars, and his belief that bars generally do not serve non-alcoholic beverages in cans.⁵⁶

28. Billy's sells 18 stock-keeping-units, or SKUs, of non-alcoholic beverages that come in cans, such as Red Bull, Rockstar, non-alcoholic beers, and sodas.⁵⁷

29. Mr. Hudak and Sgt. Graupman expect licensees that sell alcohol to station security staff at exits, and to provide trash cans for patrons to throw away beverages as they leave.⁵⁸ Sgt. Graupman did not see security staff or trash cans at the exit on the video footage he reviewed.⁵⁹

30. Billy's generally stations security staff at the exits and provides trash cans for patrons to throw away beverages.⁶⁰

31. At the time that the four individuals identified by DSI left Billy's, security staff were actively responding to assist the victim in the shooting incident on March 5, 2022.⁶¹ The victim was shot in the vicinity and then entered the common area of 857 Grand Avenue.⁶² Approximately nine of the security staff worked to assist the shooting victim, while approximately three security staff members remained to cover security within the bar and patio.⁶³

⁵⁵ Test. of E. Hudak (regarding allegations that patrons left with alcohol in cups, testifying he has no evidence that the cups contained alcohol); Test. of C. Graupman (testifying that he suspects the can contained alcohol, but could not identify the label, and so is unable to say with certainty that it was an alcoholic beverage, and further that he was unable to determine as to any of the individuals that the containers held alcoholic beverages).

⁵⁶ Test. of C. Graupman. Sgt. Graupman did not investigate what kind of beverages Billy's sells in cans or interview the bartender who sold the can to the patron to see if the bartender remembered what was sold.
Id.

⁵⁷ Test. of C. Gilbert.

⁵⁸ Test. of E. Hudak; Test. of C. Graupman.

⁵⁹ Test. of C. Graupman. Neither Mr. Hudak, nor Sgt. Graupman, testified as to their personal observations of the space at Billy's, rather their testimony was based on the video footage. The record does not establish how much of the space at Billy's can be seen on camera versus the areas that may be out of camera range. In particular, it is not clear how much of the exit area the camera views show or whether security staff and trash cans could be located beyond the view of the camera.

⁶⁰ Test. of Luke Ponder.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*; Test. of W. Spearman. The record does not reflect the exact number of security staff on site that night. Mr. Ponder and Mr. Spearman's estimates ranged at about 12-13 security staff members. It is clear that a majority of the security staff went to assist the victim, leaving the lesser number at their posts providing security in the licensed premises.

B. Violation #2

32. DSI received an SPPD public narrative report regarding a visit SPPD Officer Albert Lyfoung made to Billy's on March 13, 2022, responding to a report of an assault that was no longer in progress.⁶⁴ The report notes that Billy's was unable to provide access to all of the cameras on the property and did not have the means to make a copy of camera footage at Officer Lyfoung's request.⁶⁵

33. On March 13, 2022, Officer Lyfoung visited Billy's with his partner related to an assault that the victim reported occurred the night before.⁶⁶ The officers spoke to the victim and determined that a fight occurred near the area of the restrooms in the mall portion of the building, which is in the common area used by all tenants of 857 Grand Avenue.⁶⁷ The common area is not within the licensed premises of Billy's.⁶⁸

34. The officers observed that Billy's had surveillance cameras.⁶⁹ The officers spoke to staff regarding obtaining video footage and staff called Mr. Spearman, who arrived at Billy's to meet them within ten minutes.⁷⁰

35. Mr. Spearman cooperated with the officers.⁷¹ He showed the officers some camera footage, but was unable to show footage from two of the cameras they wished to see.⁷² Officer Lyfoung believed that camera footage from the missing cameras would have afforded the officers a clearer view of the area where the assault happened.⁷³

36. Officer Lyfoung considered the assault to be a serious incident because it was a crime of violence.⁷⁴

37. The officers requested that Mr. Spearman provide a copy of video footage, but Mr. Spearman was unable to make a copy at that time because he did not have a thumb drive.⁷⁵

C. Violation #3

38. On March 28, 2022, DSI hand-delivered a request for video camera surveillance footage to DWD Group, and a copy was sent to Mr. Johnson.⁷⁶ In this request, DSI sought recorded footage from 11:00 p.m. on Saturday, March 12, 2022,

⁶⁴ Ex. 20 at 20-1.

⁶⁵ *Id.*

⁶⁶ Test. of Albert Lyfoung.

⁶⁷ *Id.*; see Ex. 100; Test. of W. Wengler.

⁶⁸ Test. of W. Spearman.

⁶⁹ Test. of A. Lyfoung.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*; Test. of W. Spearman.

⁷⁶ Ex. 10 at 10-1.

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, 2022.⁷⁷

39. DSI requested this footage to examine the alleged assault on March 12, 2022, to which Officer Lyfoung responded, as discussed above, and a fight that occurred at Billy's on March 18, 2022.⁷⁸

40. The fight broke out at Billy's while Ramsey County Sheriff's Office (RCSO) deputies were working there off duty to provide security.⁷⁹ The deputies called on SPPD for emergency assistance and, in response to that call, 19 SPPD squad cars responded to or toward the scene, and ten SPPD officers ultimately arrived and met with the deputies, who had a person in custody.⁸⁰

41. DSI received some of the requested video camera recordings, but the video footage provided was not complete.⁸¹

42. On April 20, 2022, DSI hand delivered a follow-up letter to DWD Group notifying it that the footage submitted for March 12-13, 2022, and March 18-19, 2022, did not include views from camera #24 and #29-1, 2, 3, 4.⁸² The letter requested that the missing footage be provided by April 22, 2022.⁸³

43. On April 21 and 22, 2022, Mr. Hudak and Mr. Spearman had an email exchange in which Mr. Spearman sent service reports related to maintenance issues with the camera system.⁸⁴ However, Mr. Hudak wrote in an email to Mr. Spearman on April 21, 2022:

Three of the five service reports you provided appear completely unrelated to the missing video request and do not substantiate your inability to provide footage from cameras #24 and #29 on 3/12/2022 and 3/18/2022.

The other two reports appear identical (copies of one another) and note work performed only on camera #29, not #24. That order seemingly explains that camera #29 could have been inoperable on 3/12/2022 but notes that i[t] was verified as operational on 3/17/2022 and therefore does not explain your inability to provide footage from it on 3/18/2022.

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 3/18/2022.⁸⁵

⁷⁷ *Id.*

⁷⁸ Test. of C. Graupman.

⁷⁹ Ex. 21 at 21-1.

⁸⁰ *Id.* at 21-2.

⁸¹ Test. of E. Hudak.

⁸² Ex. 11 at 11-1.

⁸³ *Id.*

⁸⁴ Ex. 12 at 12-1-12-2. See also Exs. 13-16.

⁸⁵ Ex. 12 at 12-1.

44. DSI considered the failure to provide video footage from cameras 24 and 29 to be a violation of Licensee's license condition regarding the requirement that Licensee provide video footage upon request.⁸⁶

45. Camera 24 and camera 29 are included in the approved camera surveillance plan for Billy's.⁸⁷ Camera 24 covers the hallway in the common area where the restroom is located, and camera 29 includes views from four cameras covering the mall area and back alley.⁸⁸

46. These cameras were part of the original camera network in place for Billy's.⁸⁹ At some point, Mr. Wengler had a camera in the mall area of the building removed.⁹⁰ Mr. Spearman had sought to place additional cameras in the common areas, but was not permitted to do so.⁹¹

47. Until the time when he received requests for footage, Mr. Spearman was not aware that cameras 24 and 29 were not in working order.⁹²

D. Violation #4

48. Sgt. Graupman reviewed police call records for 857 Grand Avenue between May 6, 2021, and May 6, 2022.⁹³

49. Based on this review, Sgt. Graupman determined that there were 128 calls for service, of which 31 would be considered "quality of life" calls that he concluded were related to Billy's.⁹⁴

50. Sgt. Graupman reviewed police reports created for these calls to assess the underlying facts and determine which of the 31 calls were actually attributable to operations at Billy's.⁹⁵ Based on this assessment, he determined approximately 75 percent of the 31 quality of life calls were events that operations at Billy's created or that Licensee could have prevented.⁹⁶

51. Quality of life calls directly and negatively impact the neighboring residential community.⁹⁷ This category does not include calls made by individuals

⁸⁶ Test. of E. Hudak.

⁸⁷ Test. of W. Spearman.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Test. of W. Wengler. The record does not reflect which camera was removed, or show that cameras designated as numbers 24 or 29 were removed.

⁹¹ Test. of W. Spearman.

⁹² *Id.*

⁹³ Test. of C. Graupman; Ex. 5 at 5-8, Ex. 17.

⁹⁴ Test. of C. Graupman; Ex. 5 at 5-5.

⁹⁵ Test. of C. Graupman. The record does not contain details, beyond minimal summary data, as to the underlying facts of these police calls. See *id.*; Ex. 17.

⁹⁶ Test. of C. Graupman.

⁹⁷ *Id.*; Ex. 5-5.

working at Billy's in which they seek police assistance.⁹⁸ It also does not include calls in response to alarms or proactive police visits.⁹⁹

52. Sgt. Graupman noted that the number and types of calls related to Billy's have generated concern in the surrounding community and have required substantial police resources.¹⁰⁰

53. DSI has also received complaints from residents who have found drink cups in their yards or who report incidents of public urination.¹⁰¹

54. DWD Group employs a security staff supervised by its head of security, Luke Ponder.¹⁰² At various times, DWD Group has had between seven and twelve employees on its security staff.¹⁰³ DWD Group has also contracted with a private security firm, LIB Security.¹⁰⁴

55. The RCSO previously contracted to provide sheriff's deputies on site, but the RCSO is no longer providing security at Billy's.¹⁰⁵

56. Saturday nights are the busiest night for Billy's.¹⁰⁶ On Saturday nights, between its internal security staff and contracted security, Billy's usually has 13 or 14 security staff working on site.¹⁰⁷ They are generally posted at the front door, on the patio, and at various stations inside the bar area.¹⁰⁸ Security staff members communicate with each other using radios tuned to the same channel.¹⁰⁹

57. Mr. Ponder views safety as the primary focus for the security team.¹¹⁰

58. Security staff checks identification as patrons enter and denies entry to anyone who appears to be intoxicated.¹¹¹ Security staff members are also posted at exits to prevent patrons from leaving with alcoholic beverages.¹¹²

59. DWD Group has spent as much as \$16,000 per month on security costs in order to address security concerns.¹¹³

⁹⁸ Test. of C. Graupman.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Test. of W. Spearman, Test. of L. Ponder.

¹⁰³ Test. of L. Ponder.

¹⁰⁴ *Id.*

¹⁰⁵ Test. of W. Spearman.

¹⁰⁶ Test. of L. Ponder.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*; Test. of C. Gilbert.

¹¹³ Test. of W. Spearman.

IV. Penalty

60. In St. Paul Legislative Code § 310.05(m), the City has adopted a matrix of presumptive penalties for licensing violations. A second violation within twelve months is treated as a second appearance for determining the presumptive penalty.¹¹⁴ For violations of license conditions or of provisions of the Legislative Code related to the licensed activity, the presumptive penalty for a second violation is \$1,000.¹¹⁵

61. DSI determined that imposition of the standard matrix penalty for a second violation, which is \$1,000, was the appropriate penalty to apply in the Second Violation Notice.¹¹⁶

62. Though the Second Violation Notice included multiple alleged violations, DSI did not seek an upward departure as to the proposed penalty amount.¹¹⁷

V. Public Comments

63. St. Paul Legislative Code § 310.05(c) provides for participation by members of the public in a licensing matter. The Administrative Law Judge permitted members of the public to offer comments in person at the evidentiary hearing on August 15, 2022. The Administrative Law Judge also established a written comment period following the hearing to allow interested members of the public to submit comments.¹¹⁸

64. Three members of the public spoke during the public comment portion of the hearing on August 15, 2022.¹¹⁹

65. Commenters Val and Richard Cohn live on Lincoln Avenue near Billy's, and both offered statements in support of Respondent.¹²⁰ Ms. Cohn noted that Billy's has been operating for many years and that its presence benefits the neighborhood.¹²¹ Mr. Cohn was concerned about disruptive and dangerous behaviors related to operations at Billy's, so he visited the restaurant to observe matters for himself.¹²² Mr. Cohn felt reassured by Mr. Spearman's efforts to provide a safe and positive environment for patrons and the neighborhood, and particularly noted the presence of security staff on the premises.¹²³

66. Julia Livingstone lives on Lincoln Avenue with her family, having moved to St. Paul only a few years ago.¹²⁴ She was very concerned about the safety of the

¹¹⁴ St. Paul Legislative Code § 310.05(m)(v).

¹¹⁵ *Id.*, § 310.05(m).

¹¹⁶ Test. of E. Hudak.

¹¹⁷ *Id.*

¹¹⁸ All of the comments received at or after the hearing are summarized in this recommendation, but the content of each commenter's statements is not fully recited.

¹¹⁹ Hearing Digital Recording (Aug. 15, 2022) (on file with the Minn. Office Admin. Hearings).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

neighborhood following a murder that occurred outside Billy's.¹²⁵ She personally reached out to the current owners of Billy's to arrange a meeting with a group of neighbors.¹²⁶ She now feels confident about the commitment that they have made to ensure a safe environment.¹²⁷ She also believes that the owners have experienced racism in connection with the City's process and that this inequity should be addressed.¹²⁸

67. The Office of Administrative Hearings also received 31 written comments after the hearing.¹²⁹

68. Milton G. Nichols, Jr. and Brent Teclaw each submitted comments describing an incident in June 2022, in which they report that a bullet came through their kitchen window, spraying Mr. Nichols' legs with glass and nearly striking him.¹³⁰ Mr. Nichols indicates they are still trying to repair the physical damage to their home.¹³¹ Mr. Teclaw states that he is unable to walk into his kitchen without thinking about this event, and he instinctively ducks or avoids the area where the bullet traveled.¹³² He asserts that he and the entire neighborhood are experiencing trauma attributable to Billy's, and that it should not be permitted to continue operating with late night licensing.¹³³ Mr. Nichols contends that, while the management at Billy's may be mostly successful at containing violence within the establishment, "they are failing horribly around their establishment."¹³⁴

69. Chris Arlandson describes a recent incident of gunfire after midnight requiring that his family take cover and stay away from the windows of their home.¹³⁵ He states that the "range of criminal activity centered around Billy's is profound," and that a "community tragedy feels inevitable" unless Billy's is closed.¹³⁶ He describes viewing drug dealing in the parking lot at Billy's in plain sight within the last year, and states that at closing time cars loudly and recklessly speed through the side streets of the

¹²⁵ *Id.* This event occurred in the vicinity of Billy's, but was not related to Billy's. Test. of E. Hudak.

¹²⁶ Hearing Digital Recording (Aug. 15, 2022) (on file with the Minn. Office Admin. Hearings).

¹²⁷ Hearing Digital Recording (Aug. 15, 2022) (on file with the Minn. Office Admin. Hearings).

¹²⁸ *Id.*

¹²⁹ The deadline for submission of public comments was August 26, 2022. Notice of Public Comment Period and Post-Hearing Scheduling Order (Aug. 16, 2022). The Office of Administrative Hearings received several public comments after that deadline. The Administrative Law Judge determines that neither party is prejudiced by consideration of the late-filed comments. Therefore, these comments are included within the record and have been considered in making this recommendation.

¹³⁰ Comment of Milton G. Nichols, Jr. (Aug. 24, 2022); Comment of Brent Teclaw (Aug. 24, 2022).

¹³¹ Comment of Milton G. Nichols, Jr. (Aug. 24, 2022).

¹³² Comment of Brent Teclaw (Aug. 24, 2022).

¹³³ *Id.*

¹³⁴ Comment of Milton G. Nichols, Jr. (Aug. 24, 2022).

¹³⁵ Comment of Chris Arlandson (Aug. 23, 2022). Note that this comment was submitted twice, once by facsimile and then by U.S. Mail. In tallying the number of comments, this comment was counted only once.

¹³⁶ *Id.*

neighborhood.¹³⁷ He contends that violence and criminal activity associated with Billy's are destroying the neighborhood.¹³⁸

70. Jean T. Johnson notes that she and her husband moved to Grand Avenue five years ago; they love the bustle and life of Grand Avenue, and feel the street's energy helped them survive the solitude imposed by COVID-19.¹³⁹ Their four grandchildren regularly spend time with them to visit shops and restaurants on Grand Avenue and to stay overnight, but due to gunfire and other disturbances outside their home, they wonder "how can we, in good conscience, ask our children to leave their kids in our home overnight on weekends?"¹⁴⁰

71. Kevin W. Johnson recounts incidents of gunfire and reckless driving he associates with Billy's.¹⁴¹ He notes law enforcement statistics related to 911 calls and police responses to Billy's and states:

Regardless of whether these reported and unreported incidents occurred directly within the confines of Billy's business premises, the concentration of the incidents within a one block radius of Billy's establishment is indisputable. The behavior is absent from other blocks away from Billy's. This pattern is not random and not mere coincidence. They are a result of Billy's presence and (some) of the people attracted there.¹⁴²

72. Commenter Peter Caritas describes incidents he associates with Billy's that he asserts have traumatized his family.¹⁴³ Among these, an incident of gunfire resulting in bullet hole in a neighbor's kitchen window,¹⁴⁴ after which he rearranged his daughter's bedroom to move her bed away from the window.¹⁴⁵ During a subsequent incident, he heard loud gunfire nearby and ran into his daughter's room, where they got down on the floor in case more shots were fired.¹⁴⁶ He notes that: "[w]e are not choosing to go out to a bar. The bar is being forced upon us," and further states: "I just don't understand how someone's right to run a business can outweigh our right to a safe environment to live in."¹⁴⁷

73. Jennifer Caritas contends that an uptick in violent crime in the immediate vicinity of Billy's is out of proportion to a general increase of crime in the area, and she believes many of these incidents originate at Billy's.¹⁴⁸ She notes that neighbors in the

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Comment of Jean T. Johnson (Aug. 22, 2022).

¹⁴⁰ *Id.*

¹⁴¹ Comment of Kevin W. Johnson (Aug. 23, 2022).

¹⁴² *Id.*

¹⁴³ Comment of Peter Caritas (Aug. 23, 2022).

¹⁴⁴ This incident is described above in connection with a prior comment.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Comment of Jennifer Caritas (Aug. 22, 2022).

building where she lives have moved away due to violence related to Billy's, and that others are discussing leaving the building.¹⁴⁹

74. Eve Johnson Blackwell states that she has lived nearby Billy's for 25 years.¹⁵⁰ She notes that: "[o]ver our long residency in this area, we have experienced occasional late-night problems. However, we have NEVER seen anything like the recent spate of major, violent and life-threatening issues that sadly, now occur often...."¹⁵¹

75. Kathy Larkins has lived three blocks away from Billy's for 18 years and her husband has maintained an office one block away for over ten years.¹⁵² She believes that there is a correlation between Billy's late night closing time and shootings in the neighborhood, which she asserts occur between midnight and 2 a.m.¹⁵³ She proposes that an 11:00 p.m. closing time be imposed.¹⁵⁴

76. Mark Lindley moved to Grand Avenue five years ago and lives within one block of Billy's.¹⁵⁵ He and his wife believe that a diverse business community benefits Grand Avenue and Saint Paul, and they support the addition of more minority-owned businesses in the area.¹⁵⁶ At the same time, they believe Billy's is no longer a neighborhood pub or bar, but that it has turned into a party venue with loud music and large crowds spilling out from its location.¹⁵⁷ He notes that they knew they were moving to a mixed-use neighborhood and understands that businesses do contribute to both traffic and noise, but he asserts that Billy's does not fit into a residential/mixed-use community, and he supports denying Billy's a liquor license entirely.¹⁵⁸

77. Commenters Margaret and Stephen Gadiant are concerned about gunfire and rowdiness, noting that someone pounded on their door at 1:40 a.m. in the days just prior to their comment, following the sound of gunfire.¹⁵⁹ They expressed their concern that the activities at Billy's will negatively impact nearby businesses and cause people to avoid the neighborhood entirely.¹⁶⁰

78. Gabriel Broner is concerned about repeated shootings in the neighborhood, including a recent incident in which he was told the police found four bullet casings by his bedroom window and another near his garage.¹⁶¹

¹⁴⁹ *Id.*

¹⁵⁰ Comment of Eve Johnson Blackwell (undated, received August 26, 2022).

¹⁵¹ *Id.*

¹⁵² Comment of Kathy Larkins (Aug. 23, 2022).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Comment of Mark Lindley (Aug. 25, 2022).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Comment of Margaret and Stephen Gadiant (Aug. 22, 2022).

¹⁶⁰ *Id.*

¹⁶¹ Comment of Gabriel Broner (Aug. 22, 2022).

79. James Hartnett writes that he and his family have been regular patrons of Billy's since moving to the neighborhood in 1993.¹⁶² He contends Billy's is now responsible for fights and gunfire that terrorize the community.¹⁶³ He maintains that the current owners "cannot (or will not) control what goes on in their establishment and in its immediate surroundings," that Billy's is now a blight on Grand Avenue, and that it should be permanently closed.¹⁶⁴

80. Commenter Paul Schuster regularly frequented Billy's over the past 30 years, but now he also calls for Billy's to be permanently shut down.¹⁶⁵ He notes that he has changed his driving route so that he no longer drives by Billy's due to his concerns about violence and disturbances, and that when biking he crosses Grand Avenue a block away to avoid riding past Billy's.¹⁶⁶

81. Commenter Barry Foy contends that Billy's has become a magnet for trouble, in part because Billy's is open until 2 a.m. and patrons leave bars with midnight closings to frequent Billy's during its later open hours.¹⁶⁷ He maintains that when patrons leave Billy's, they become the neighborhood's problem.¹⁶⁸ He also addressed the concern that racism is prompting the neighborhood's reaction to issues at Billy's, stating that perceptions based on race are not the cause of shootings, assaults, public indecency, and late-night disturbances.¹⁶⁹

82. Don Flanagan contends that neighbors should not be required to endure crime, danger, and noise associated with Billy's, which he considers a night club.¹⁷⁰ He believes that Billy's should be denied the licenses necessary for it to operate.¹⁷¹

83. Commenter Judith Feldman asserts that violence in the neighborhood has increased dramatically in recent years and that if the clientele at Billy's, the late closing time, and the level of noise and music are at the crux of the situation, something must be done.¹⁷²

84. Lori Brostrom notes that other restaurant and bar businesses in the vicinity of Billy's do not generate the same quality of life issues as Billy's.¹⁷³ She states that: "[i]t is clear that Billy's current management group cannot control their patrons" or operate in a manner that is respectful to the surrounding residential community.¹⁷⁴ She proposes

¹⁶² Comment of James Hartnett (Aug. 23, 2022).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Comment of Paul Schuster (Aug. 23, 2022).

¹⁶⁶ *Id.*

¹⁶⁷ Comment of Barry Foy (undated, received Aug. 22, 2022).

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Comment of Don Flanagan (Aug. 23, 2022).

¹⁷¹ *Id.*

¹⁷² Comment of Judith Feldman (Aug. 22, 2022).

¹⁷³ Comment of Lori Brostrom (Aug. 22, 2022).

¹⁷⁴ *Id.*

that Billy's should be denied a liquor license, or if a license is granted, the license be limited to wine and beer and that Billy's should have an 11 p.m. closing time.¹⁷⁵

85. Commenter Patricia Callaghan will no longer walk on Grand Avenue after dusk and feels serious action must be taken regarding Billy's.¹⁷⁶ She proposes taking away the liquor license for Billy's or allowing only a limited license for beer and wine.¹⁷⁷

86. Pamela and Tom Newcome state that disturbances, including gunfire between 1:30 and 2:00 a.m., are "beyond anything we can tolerate."¹⁷⁸ They do not support the continued issuance of a liquor license for Billy's.¹⁷⁹

87. Jason Lien and Emerald Gratz state that they live in the Summit Hill neighborhood with their two children.¹⁸⁰ They have patronized several bars and restaurants on Grand Avenue over the years, including Billy's.¹⁸¹ They note that, in the past, Billy's was a neighborhood bar where residents could get dinner or a drink and watch a sports game with friends and neighbors.¹⁸² They indicate that Billy's now attracts criminal behavior, and they no longer feel safe visiting Grand and Victoria with their family.¹⁸³

88. Trudy Noel Trysla and David Schultz have lived near Grand and Victoria for over 20 years and note that the safety and security issues at Billy's did not occur until the last two years, coinciding with a change of ownership.¹⁸⁴ They are aware that security has been increased at Billy's, but even so, incidents continue to occur.¹⁸⁵ They state: "It has gotten to the point that we have instructed our teenage children who frequently work or attend evening events and have to pass by the area to drive away from the Billy's location after dark[,] but even with those measure[s] we are concerned for their safety."¹⁸⁶ They are actively considering moving away due to safety concerns.¹⁸⁷

89. Commenter Laura Norén indicates that the liquor license for Billy's should not be renewed and that it should not be permitted to remain open until 2 a.m.¹⁸⁸ She states: "whatever efforts Billy's is making, they have not been enough to quell the violence or the drunk driving."¹⁸⁹

¹⁷⁵ *Id.*

¹⁷⁶ Comment of Patricia Callaghan (Aug. 30, 2022).

¹⁷⁷ *Id.*

¹⁷⁸ Comment of Pamela and Tom Newcome (Aug. 23, 2022).

¹⁷⁹ *Id.*

¹⁸⁰ Comment of Jason Lien and Emerald Gratz (Aug. 23, 2022).

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Comment of Trudi Noel Trysla and David Schultz (Aug. 22, 2022).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Comment of Laura Norén (Aug. 23, 2022).

¹⁸⁹ *Id.*

90. Robert Karls proposes, at the least, imposition of a midnight closing time for Billy's, as he asserts Billy's has become a nexus of late-night violence.¹⁹⁰ He addresses a newspaper article in which Mr. Spearman and Mr. Gilbert are quoted referencing their Black late-night clientele and asserting that their patrons are scapegoated for all crime in the neighborhood.¹⁹¹ Mr. Karls denies that the neighborhood's concerns about gunfire and assaults are based on biased perceptions.¹⁹²

91. Susan Hunter, who lives on the same block where Billy's is located, remarks that she is afraid to drive home past Billy's at night when Billy's is in full swing due to altercations on the street.¹⁹³ She notes an event of gunfire in the neighborhood and states that it is "terrifying to walk from our garage door to the back of our building."¹⁹⁴

92. Commenter Tom Quinn lives far enough from Billy's that he hears gunfire, but does not fear for himself as a result.¹⁹⁵ He notes that other friends who live nearer to Billy's hesitate to go out at night and deliberately schedule the time they leave late night outings so that they don't return home at closing time for Billy's.¹⁹⁶ He asks that licenses be denied for Billy's.¹⁹⁷

93. Commenter Jennifer Isernhagen acknowledged that Billy's is not responsible for all of the crime in the surrounding neighborhood, and she credits Mr. Spearman and Mr. Gilbert for working with the neighborhood.¹⁹⁸ At the same time, she is concerned about incidents of gunfire, and she fears that families with young children are traumatized by these incidents and will leave the neighborhood.¹⁹⁹

94. Commenter Curt Isernhagen cites ongoing crime and violence in close proximity to Billy's and requested that this matter not be dismissed.²⁰⁰

95. John C. Wood contends that Billy's should be limited to a license permitting sales and consumption of alcohol until 11:00 p.m.²⁰¹ He posits that this earlier bar time will align Billy's with other businesses in the neighborhood and curtail visits from after-hours patrons who have already consumed too much alcohol.²⁰² He states that he wants to see Grand Avenue businesses succeed, but that the criminal behavior

¹⁹⁰ Comment of Robert Karls (Aug. 22, 2022).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Comment of Susan Hunter (Aug. 24, 2022).

¹⁹⁴ *Id.*

¹⁹⁵ Comment of Tom Quinn (Aug. 23, 2022).

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Comment of Jennifer Isernhagen (Aug. 22, 2022).

¹⁹⁹ *Id.*

²⁰⁰ Comment of Curt Isernhagen (Aug. 22, 2022).

²⁰¹ Comment of John C. Wood (Aug. 22, 2022).

²⁰² *Id.*

occurs primarily after 11:00 p.m. at or around Billy's location, and that an earlier bar closing time will be better for the community.²⁰³

96. Dana Wood notes that she has stopped dining, shopping, and using services on Grand Avenue because of safety concerns related to Billy's.²⁰⁴ She states that no other restaurant, bar, or business on Grand Avenue has negatively impacted the neighborhood as much as Billy's.²⁰⁵ She further states: "We know Billy's management has tried to curtail its problems. For some reason it is not working. Due to the fact that Billy's management is unable to control its problems, and as much as we would like to see Billy's be a successful restaurant/bar we, unfortunately, are convinced that it is in dire need of assistance." She proposes limiting Billy's to a midnight closing time.²⁰⁶

97. Lynn McDaniel does not want Billy's to be permitted to operate until 2 a.m.²⁰⁷ She states that the "good intentions of the business owners are not in question here," but that the persistent problems at Billy's require action.²⁰⁸ She believes Billy's should maximize its food and beverage service during earlier hours of operation.²⁰⁹

98. Any Conclusion of Law more properly considered to be a Finding of Fact is adopted herein.

99. Any portion of the accompanying Memorandum that is more properly deemed to be a Finding of Fact is incorporated herein.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the St. Paul City Council have authority to hear this matter pursuant to St. Paul Legislative Code § 310.05(c), Minn. Stat. § 14.55 (2022).

2. The hearing in this matter was conducted in accordance with St. Paul Legislative Code § 310.05 and the contested case procedures of Minn. Stat. §§ 14.57-.62 (2022).

3. DSI provided proper notice of the hearing and fulfilled all procedural requirements of rule and law.

²⁰³ *Id.*

²⁰⁴ Comment of Dana Wood (Aug. 22, 2022).

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Comment of Lynn McDaniel (Aug. 24, 2022).

²⁰⁸ *Id.*

²⁰⁹ *Id.*

4. DSI must show by a preponderance of the evidence that Licensee committed the violations alleged.²¹⁰

5. St. Paul Legislative Code § 310.06(a) provides that the City Council may take adverse action against a license or licensee as provided by ordinance, including when:

- a. a licensee has failed to comply with any condition set forth in the license;
- b. the licensee or license applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provisions of any statute, ordinance or regulation reasonably related to the licensed activity;
- c. a licensee or applicant has engaged in or permitted 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;
- d. the activities of the licensee in the licensed activity 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; or
- e. 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.²¹¹

6. Section 409.08 of the St. Paul Legislative Code provides additional regulations related to licenses to sell intoxicating liquor, including that every licensee is responsible for the conduct of its place of business and is required to maintain order and sobriety in that place of business.²¹²

7. Additionally, an on-sale licensee is responsible for 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 result in adverse action against its license.²¹³

8. DSI has not shown by a preponderance of the evidence that Licensee allowed patrons to leave with alcoholic beverages on March 5, 2022, or that it failed to

²¹⁰ Minn. R. 1400.7300, subp. 5 (2021).

²¹¹ St. Paul Legislative Code § 310.06(b)(5), (6)(a), (6)(c), (7), (8).

²¹² St. Paul Legislative Code § 409.08(5).

²¹³ St. Paul Legislative Code § 409.08(15).

take reasonable and adequate steps to prevent patrons from leaving with alcohol on that date. Therefore, DSI has not established a violation of Licensee's license conditions or the St. Paul Legislative Code related to the conduct alleged in Violation #1.

9. DSI established by a preponderance of the evidence that Licensee failed to provide complete video footage and a copy of such footage to an SPPD officer on March 13, 2022, in violation of a condition of the license, as alleged in Violation #2.

10. DSI established by a preponderance of the evidence that Licensee failed to provide complete video footage from March 18, 2022, at DSI's request, in violation of a condition of the license, as alleged in Violation #3.

11. DSI established by a preponderance of the evidence that Licensee has operated the licensed establishment or permitted conditions to occur in a manner that does not provide a safe environment for patrons and the public in violation of St. Paul Legislative Code § 310.06(b)(8), as alleged in Violation #4.

12. In accordance with the penalty matrix in Section 310.05(m) of the St. Paul Legislative Code, a penalty of \$1,000 may be imposed for a second violation within one year.

13. DSI established that a penalty of \$1,000.00 may be imposed for the conduct alleged in Violations #2, #3, and #4.

14. Any Finding of Fact more properly considered to be a Conclusion of Law is adopted herein.

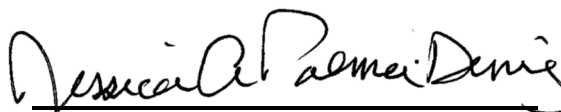
15. Any portion of the accompanying Memorandum that is more properly deemed to be a Conclusion of Law is incorporated herein.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The St. Paul City Council should impose a matrix penalty of \$1,000, based on the conduct alleged in Violations #2, #3, and #4 of the Second Violation Notice.

Dated: December 21, 2022


JESSICA A. PALMER-DENIG
Administrative Law Judge

Reported: Digitally Recorded
Partial Transcript Filed

NOTICE

This Report is a recommendation, not a final decision. The Saint Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions of Law, and Recommendation. Pursuant to Saint Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact the St. Paul City Clerk, 310 City Hall, 15 W. Kellogg Blvd., Saint Paul, MN 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

I. Introduction

DSI alleges four violations of the St. Paul Legislative Code or the licensing conditions under which Billy's is operated and that imposition of a matrix penalty of \$1,000 is warranted. The Administrative Law Judge determines that DSI established three of the alleged violations occurred, and that the record supports imposition of a penalty in the amount of \$1,000.

II. Violations

A. Violation #1 – Failure to Prevent Patrons from Leaving with Alcohol

DSI contends that four patrons were allowed to leave the service area at Billy's with alcoholic beverages in cups and a can on March 5, 2022.²¹⁴ DSI must prove this allegation by a preponderance of the evidence.²¹⁵ To establish a fact by a preponderance of the evidence, it must be more probable than not that a fact exists.²¹⁶ "If evidence of a fact or issue is equally balanced, then that fact or issue has not been established by a preponderance of the evidence."²¹⁷ Therefore, DSI must establish it is more probable than not that the cups and can contained alcohol.

Mr. Hudak and Sgt. Graupman were not able to determine whether the cups or can contained alcohol.²¹⁸ Mr. Hudak testified he had no evidence as to what was in any of the containers.²¹⁹ Sgt. Graupman testified he does not know what was in the containers, but he suspects that they contained alcohol.²²⁰ Sgt. Graupman testified that it is difficult to determine what a cup may contain because cups do not have labels and bars often pour non-alcoholic beverages into cups.²²¹ As to the canned beverage, he was not able to see the label, but he based his suspicion on his understanding as to

²¹⁴ Ex. 5 at 5-6.

²¹⁵ Minn. R. 1400.7300, subp. 5.

²¹⁶ *City of Lake Elmo v. Metropolitan Council*, 685 N.W.2d 1, 4 (Minn. 2004).

²¹⁷ *Id.*

²¹⁸ Test. of E. Hudak; Test. of C. Graupman.

²¹⁹ Test. of E. Hudak.

²²⁰ Test. of C. Graupman.

²²¹ *Id.*

how bars sell alcoholic beverages and his belief that bars generally do not sell non-alcoholic beverages in cans.²²² Billy's, however, sells 18 different non-alcoholic beverages that come in cans.²²³ On this record, DSI has not provided sufficient evidence to establish by a preponderance that Respondent allowed patrons to leave with alcoholic beverages on March 5, 2022.

As a secondary matter, the parties offered evidence relating to whether Respondent took reasonable and adequate steps to prevent persons from leaving the licensed premises with alcoholic beverages.²²⁴ DSI offered examples of the steps that a bar can take, such as by having security staff observe the exit and placing trash cans by the door so that patrons can throw drinks away as they leave.²²⁵ Sgt. Graupman testified that he did not see these precautions being taken in the video footage he reviewed,²²⁶ however Mr. Ponder testified that Respondent does have trash cans by the door and security staff posted at every exit.²²⁷ Mr. Hudak acknowledged that, when these four individuals left Billy's, its security staff members were responding to assist a shooting victim who had entered the common area of the building.²²⁸ Mr. Hudak denied that this would be a basis for leeway as to the efforts that would be considered reasonable, though he allowed that a tornado or an "Act of God" would provide such a basis.²²⁹

The Administrative Law Judge has determined that there is insufficient evidence to show that patrons left the premises on March 5, 2022, with alcoholic beverages, which makes this issue somewhat moot. To be clear, however, the Administrative Law Judge also concludes that there is insufficient evidence to show that Billy's failed to take reasonable and adequate steps to prevent patrons from leaving with alcohol on that date. Sgt. Graupman testified that he did not see trash cans or security staff on the video footage,²³⁰ but Mr. Ponder testified that Billy's did have trash cans by the exits and that a security staff member was covering the patio on March 5, 2022.²³¹ The record does not clearly establish whether the trash cans or security personnel were present, but simply outside of the range of the security cameras. Based on this record, the Administrative Law Judge does not find a violation.

²²² *Id.*

²²³ Test. of C. Gilbert.

²²⁴ St. Paul Legislative Code § 409.08(15).

²²⁵ Test. of E. Hudak; Test. of C. Graupman.

²²⁶ Test. of C. Graupman.

²²⁷ Test. of L. Ponder.

²²⁸ Test. of E. Hudak.

²²⁹ *Id.*

²³⁰ Test. of C. Graupman.

²³¹ Test. of L. Ponder.

B. Violation #2 – Failure to Show Video Footage and Provide a Copy to the SPPD

Licensee's license conditions provide that it is required to maintain a camera surveillance system according to an approved plan.²³² The condition further provides that:

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.²³³

On March 13, 2022, SPPD Officer Albert Lyfoung went to Billy's to investigate an alleged assault that occurred the night before.²³⁴ Officer Lyfoung and his partner determined that a fight occurred near the area of the restrooms in the common area of the building just outside the premises of Billy's.²³⁵ The officers observed video cameras and sought to obtain footage of that area.²³⁶ The staff called Mr. Spearman, who was not there at the time, but who arrived at Billy's to meet the officers within ten minutes.²³⁷ Mr. Spearman was unable to show the officers footage from two cameras,²³⁸ and when they requested a copy of camera footage, he was unable to make a copy immediately because he did not have a thumb drive.²³⁹

Mr. Spearman disputes that he was unable to display footage from all of the cameras for the SPPD officers.²⁴⁰ Officer Lyfoung, however, testified that Mr. Spearman was unable to display footage from several cameras and he believed a missing camera view would have provided a clearer view of the area where the assault occurred.²⁴¹ Camera 24 covers the hallway in the common area where the restroom is located and was one of the camera views missing when DSI later requested footage.²⁴² A preponderance of the evidence supports finding that Mr. Spearman was not able to show the officers footage from camera 24.

Even if that were not true, Mr. Spearman's inability to provide a copy of the footage is an independent violation of the license condition. Officer Lyfoung deemed the alleged assault a serious incident because it is a crime of violence.²⁴³ The Administrative Law Judge agrees that an assault report constitutes a serious incident

²³² Ex. 3 at 3-1; Ex. 4 at 4-2.

²³³ Ex. 3 at 3-1; Ex. 4 at 4-2.

²³⁴ Ex. 20 at 20-1; Test. of A. Lyfoung.

²³⁵ Ex. 100; Test. of W. Wengler; Test. of A. Lyfoung; Test. of W. Spearman.

²³⁶ Test. of A. Lyfoung.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Test. of W. Spearman.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Test. of A. Lyfoung.

entitling the SPPD to obtain a copy of footage immediately. The license condition requires that Licensee have the technology, materials, and staff available to make a copy of footage, but Mr. Spearman did not have a thumb drive available.²⁴⁴

The record reflects that Mr. Spearman was responsive and fully cooperative with the officers in displaying the footage. The failure to show all camera views and provide a copy was not an intentional violation or an effort to obstruct the investigation. However, both the failure to display all camera footage and to provide a copy constitute a license violation.

C. Violation #3 – Failure to Provide Camera Footage to DSI

DSI subsequently requested footage from Licensee's camera system for the night of March 12, 2022, when the alleged assault occurred, and for the night of March 18, 2022, during which a serious fight broke out at Billy's that resulted in an extensive deployment of law enforcement resources.²⁴⁵ Mr. Spearman provided some footage to DSI, but was unable to provide complete footage because views from camera 24 and camera 29 were missing.²⁴⁶ Both of these cameras are included in the approved camera surveillance plan for Billy's.²⁴⁷ As noted previously, camera 24 covers the hallway in the common area where the restroom is located.²⁴⁸ Camera 29 includes views from four cameras covering the mall area and back alley.²⁴⁹

Licensee argues that DSI does not have the authority to request footage under the language of the license condition in this case, noting that the condition does not specifically name DSI as a party that may request footage. The Administrative Law Judge disagrees. After describing the rights of the SPPD to request footage related to a serious incident, the condition next provides that: "In all other cases, licensee shall provide a copy of the surveillance video to the requestor within 48 hours."²⁵⁰ While this language could be clearer, it is broad enough to permit DSI, the regulatory agency with authority over the licenses Licensee holds, to request footage.

Licensee also argues that it is not responsible for the cameras outside its licensed premises and that the failure to provide footage from such cameras is not a licensing violation. The license condition requires that the camera surveillance plan include the "interior and exterior of the licensed premises."²⁵¹ Mr. Spearman acknowledged that cameras 24 and 29 are included within the surveillance and lighting plan he submitted for approval.²⁵² Sgt. Graupman approved the plan as written.²⁵³ The

²⁴⁴ Test. of W. Spearman.

²⁴⁵ Ex. 10 at 10-1; Ex. 21 at 21-1.

²⁴⁶ Test. of E. Hudak; Ex. 12 at 12-1.

²⁴⁷ Test. of W. Spearman.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ Ex. 3 at 3-1; Ex. 4 at 4-2.

²⁵¹ Ex. 3 at 3-1; Ex. 4 at 4-2.

²⁵² Test. of W. Spearman.

²⁵³ Test. of C. Graupman.

failure to provide footage from cameras that Licensee represented were part of its surveillance system constitutes a violation.

D. Violation #4 – Failure to Operate the Licensed Business in a Manner that is Safe for Patrons and the Public

DSI contends that the overall licensing history of the Licensee, including the violations addressed in the First Violation Notice and the violations identified in this matter, show that Licensee is not operating the business in a safe manner for its patrons and the public. Among DSI's concerns are the number of police calls to Billy's and the type of those calls, particularly those it characterizes as "quality of life" calls.

Sgt. Graupman reviewed police calls to 857 Grand Avenue between May 6, 2021, and May 6, 2022.²⁵⁴ He determined that there were 128 calls for service, of which 31 would be considered "quality of life" calls related to Billy's.²⁵⁵ That qualification applies to calls that directly and negatively impact the neighboring residential community.²⁵⁶ Sgt. Graupman then reviewed the underlying police reports related to these calls and determined approximately 75 percent of the 31 quality of life calls were events that operations at Billy's created or that the owners could have prevented.²⁵⁷

The record does not contain the underlying information that Sgt. Graupman reviewed, making an assessment of the evidence related to this portion of DSI's case difficult. The Administrative Law Judge is unable to definitively find that any particular incident Sgt. Graupman reviewed was correctly attributed to Licensee or properly characterized as a quality-of-life issue. Yet, the evidence in the record is sufficient to establish that a violation exists. Sgt. Graupman noted that the number and types of calls related to Billy's have generated concern in the surrounding community and have required substantial police resources.²⁵⁸ This is supported by evidence in the record.

From May 2021, when DWD Group opened Billy's to the public under its management, to May 2022, there were 128 police calls to 857 Grand Avenue. This averages to one police call every third day over the course of the year. While some of these calls were proactive police visits and responses to alarms, and some of these incidents were not caused directly by the operations at Billy's, this is still an extremely high level of police involvement. Further, the record suggests that the extent of police involvement with Billy's has increased. Sgt. Graupman examined the number of police calls from January 20, 2021, to January 20, 2022, in connection with the First Violation Notice.²⁵⁹ Over that period, there were 78 calls for police service, of which 20 were

²⁵⁴ *Id.*; Ex. 5 at 5-8, Ex. 17.

²⁵⁵ Test. of C. Graupman; Ex. 5 at 5-5.

²⁵⁶ *Id.*; Ex. 5-5.

²⁵⁷ Test. of C. Graupman.

²⁵⁸ *Id.*

²⁵⁹ Ex. 1 at 1-3.

deemed to be quality of life calls.²⁶⁰ The number of total calls from May 2021 until May 2022 is nearly double that of the prior period.

The record also reflects serious and significant concerns about the impact Billy's has had on the surrounding neighborhood, much of which is residential. The comments received at the hearing and during the comment period were not made under oath, and the Administrative Law Judge has recounted those comments without making direct findings that any particular incidents mentioned occurred or were caused by the operations at Billy's. Additionally, the comments cite incidents outside the time frame addressed in the Second Violation Notice. The Administrative Law Judge has confined her conclusion that a violation occurred to the issues addressed in the Second Violation Notice.

Nonetheless, the comments show that many neighbors within the area around Billy's are alarmed and fearful. While many commenters expressed support for Billy's and indicated they want a successful restaurant and bar at that location, they contend that the way that Billy's operates is untenable. Some are considering leaving the neighborhood, while others have altered their daily lives to avoid Billy's or to protect themselves and their families from dangerous conditions they attribute to Billy's.

The record shows that Mr. Spearman and DWD Group have invested heavily in security by hiring a security staff, contracting with outside security, and spending up to \$16,000 per month on security costs.²⁶¹ Mr. Spearman has been fully cooperative with DSI and the SPPD.²⁶² Mr. Gilbert, the manager at Billy's, has met with 13 or 14 neighbors himself to address their concerns.²⁶³ Yet, the record supports the conclusion that Billy's has operated in a manner that unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public.²⁶⁴

III. Penalty

In response to the First Violation Notice,²⁶⁵ Licensee did not request a hearing, and Mr. Spearman paid the \$500 penalty amount and accepted the additional licensing conditions.²⁶⁶ At the hearing, Mr. Spearman denied that he paid the penalty because he agreed the alleged violations occurred.²⁶⁷ Even so, that matter constituted a first appearance and is now final, such that the Administrative Law Judge has no authority to set it aside.

²⁶⁰ *Id.*

²⁶¹ Test. of W. Spearman; Test. of L. Ponder.

²⁶² Test. of W. Spearman; Test. of E. Hudak; Test. of C. Graupman; Test. of A. Lyfoung.

²⁶³ Test. of C. Gilbert.

²⁶⁴ St. Paul Legislative Code § 310.06(b)(8).

²⁶⁵ Ex. 1.

²⁶⁶ Exs. 2, 3, 4 at 4-3; Test. of E. Hudak.

²⁶⁷ Test. of W. Spearman.

The presumptive matrix penalty for a second appearance is \$1,000, which is the penalty amount DSI selected.²⁶⁸ DSI did not seek an upward variance of the penalty, and it aggregated the violations alleged into one violation notice, instead of treating them separately. Imposition of a \$1,000 penalty is lawful based on the St. Paul Legislative Code and the record in this case.

Many commenters requested that additional conditions be attached to the licenses or that the licenses be revoked. This matter considers only the Second Violation Notice and the request for imposition of the \$1000 penalty, and any further actions are not within the Administrative Law Judge's jurisdiction.

IV. Conclusion

DSI failed to establish Violation #1 by a preponderance of the evidence, but did establish Violations #2, #3, and #4. Therefore, the City Council should impose a \$1,000 matrix penalty on Licensee.

J. P. D.

²⁶⁸ St. Paul Legislative Code § 310.05(m).