

May 7, 2020

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

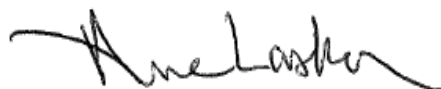
Re: *In the Matter of On Sale Liquor 101-180 Seats, Liquor On Sale-Sunday, 2AM Closing and Entertainment (B) licenses held by Kavin Choua Thao d/b/a Pupraya Thai Restaurant, 945 Rice Street, Saint Paul*
OAH 5-6020-36685

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, will follow. The Office of Administrative Hearings' file in this matter is now closed.

If you have any questions, please contact me at (651) 361-7881, Anne.Laska@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



ANNE LASKA
Legal Assistant

Enclosure

cc: Docket Coordinator
Therese Skarda
Kavin Choua Thao

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

In the Matter of the Liquor On Sale - 101-
180 Seats, Liquor On Sale-Sunday, On
Sale 2AM Closing, and Entertainment (B)
Licenses held by Kavin Choua Thao, d/b/a
Pupraya Thai Restaurant, 945 Rice Street,
Saint Paul

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

License ID #20140001202

This matter came on for hearing before Administrative Law Judge Jim Mortenson on April 21, 2020, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The hearing record closed on that date.

Therese Skarda, Assistant St. Paul City Attorney, appeared for the City of St. Paul (City). Kavin Choua Thao (Licensee) appeared on his own behalf and without counsel.

Two witnesses testified at the hearing. Eric Hudak, Licensing Manager, Department of Safety and Inspections (DSI), testified on behalf of the City. Licensee testified on his own behalf. Sixteen exhibits were admitted to the record. The parties stipulated to some facts. The material stipulations are cited in the Findings of Fact below.

STATEMENT OF ISSUE

Should adverse action, including a penalty of \$1,000.00, be taken against the licenses held by Licensee for the premises known as Pupraya Thai Restaurant, 945 Rice Street, St. Paul, because Licensee failed to provide DSI with (1) requested proof of compliance with the license requirement that he operate his establishment within the definition of "restaurant" under City Code and (2) requested video surveillance in accordance with license condition #2?¹

¹ The issue is slightly modified from the issue as described following the prehearing conference. At the prehearing conference, the Judge understood the issue to be whether Licensee failed to operate as a restaurant and failed to maintain video surveillance equipment. At the hearing it became clear, particularly through factual stipulations of the parties, that the questions are as stated here. This is consistent with the Notice of Violation, dated December 2, 2019 (Exhibit 1).

SUMMARY OF RECOMMENDATION

Licensee failed to provide DSI with all of the video surveillance it requested. This was a violation of one of Licensee's license conditions. Licensee also failed to provide DSI with the information DSI requested regarding Licensee's sales for 2018. This was a violation of Saint Paul Legislative Code § 310.12. These violations are Licensee's second appearance before the City Council within a year and the presumptive penalty of \$1,000.00 is appropriate.

Based upon the evidence in the hearing record, the Judge makes the following:

FINDINGS OF FACT

I. License History

1. Licensee owns and operates Pupraya Thai Restaurant at 945 Rice Street in St. Paul.² Licensee serves food and liquor and has a dance floor and entertainment at his establishment.³

2. Prior to the peacetime emergency in Minnesota, Pupraya Thai Restaurant operated from 7:00 p.m. to 2:00 a.m., Thursdays through Sundays.⁴ Licensee served 200 to 250 customers on busy nights.⁵

3. Licensee was granted License No. 20140001202 (the License) on May 22, 2014.⁶ The License consists of four licenses: Entertainment (B); Liquor On Sale – 101-180 Seats; Liquor On Sale – 2 AM Closing; and Liquor On Sale – Sunday.⁷

4. The License includes six conditions, two of which are implicated in this proceeding.⁸ License condition #1 states:

Per Section 409.03 of the City of Saint Paul Legislative Code, a new liquor on-sale license shall only be issued to a restaurant as defined under Chapter 409 of the City Code. Licensee agrees to operate the establishment in compliance with the definition of a restaurant as defined under Chapter 409 of the City's Code, acknowledges having been given a copy of this definition, and understands this definition.⁹

² Testimony (Test.) of Kavin Thao; Exhibit (Ex.) 6; Stipulation (Stip.) 1.

³ Test. of K. Thao; Ex. 14.

⁴ Test. of K. Thao.

⁵ Id.

⁶ Stip. 2; Ex. 8.

⁷ Stip. 1; Ex. 8.

⁸ Ex. 1; Ex. 8.

⁹ Ex. 8; Stip. 3.

5. License condition #2 states:

The licensee shall provide and maintain working video surveillance cameras and recorders on the premises (both inside and outside) in accordance with Saint Paul Police Department (SPPD) recommendations. The number of cameras, their placement and their quality must be approved by SPPD; and there shall be adequate lighting to support the camera placement. This equipment must be in operation during all business hours. The video recordings shall be kept by the license holder for at least thirty (30) days and shall be available for viewing by the [SPPD] immediately upon request. In addition, if the SPPD responds to a call at the licensed premises, and due to the crime, requests that a copy of the surveillance footage be immediately provided, the license holder shall have technology available to make the copy at the time of the request and shall have it for the police without delay. In other cases, if the SPPD or the [DSI] requests copies of the surveillance tapes, licensee shall have a 48-hour period in which to provide such copies.¹⁰

6. Licensee is required to maintain insurance coverage for liquor liability.¹¹ Licensee's liquor liability coverage lapsed for seven days in August 2018.¹² On November 7, 2018, Licensee appeared before the City Council concerning this lapse and the Council suspended his license for ten days.¹³

7. In 2019, due to disturbances at Pupraya Thai Restaurant involving weapons and assaults, DSI flagged the establishment as a "mandatory report address" for police calls.¹⁴

II. July 21, 2019

8. Early on Sunday morning, July 21, 2019, a few minutes before the 2:00 a.m. closing time, an automobile parked in the lot in front of Licensee's establishment backed out of its stall and struck a waiting Uber vehicle causing minor damage.¹⁵

9. Police arrived within five to six minutes of the collision and began investigating.¹⁶ Several police units appeared on the scene due to the establishment's recent history of disturbances.¹⁷

¹⁰ Ex. 8; Stip 3.

¹¹ Ex. 7; St. Paul Legislative Code § 409.065.

¹² Ex. 7.

¹³ Id.

¹⁴ Ex. 2-18.

¹⁵ Ex. 2; Ex. 14; Ex. 16.

¹⁶ Ex. 2; Ex. 14.

¹⁷ Ex. 2; Ex. 14.

10. The collision occurred near the front doorway of the restaurant and as patrons were leaving, some stopped to watch the commotion.¹⁸ Up to approximately a dozen people stood to watch, some of whom were passengers in the two cars involved in the collision.¹⁹

11. The establishment's security staff and the police attempted to get the spectators to move along.²⁰ At least two individuals interfered with the police officers' investigation by yelling at them while they were questioning other people.²¹

12. By 2:30 a.m. the scene cleared and the suspect believed to be the driver of the car that backed into the Uber was arrested under suspicion of driving while intoxicated.²²

13. A police supervisor, Sgt. Jeremiah McQuay, observed the investigation outside Pupraya Thai Restaurant and was dissatisfied with the security the establishment provided.²³ He provided his report to Sgt. Robert Stanway, liaison with DSI.²⁴

14. On July 22, 2019, Sgt. Stanway prepared a report on the events of July 21, 2019, at Pupraya Thai Restaurant and provided it to DSI.²⁵

III. DSI Investigation and Appeal

15. Eric Hudak (Hudak), Licensing Manager for DSI, received Sgt. Stanway's first report concerning possible licensing issues at Pupraya Thai Restaurant.²⁶

16. On July 24, 2019, Hudak delivered a letter to Licensee requesting:

a copy of all interior and exterior camera surveillance video recorded during the entire following period,

July 21, 2019 from 1:00 a.m. (0100 hours) to 3:00 a.m. (0300 hours)

The requested copy of video must be made available before 3:00 p.m. on Monday, July 29, 2019, at 945 Rice Street where city staff will pick it up. Failure to make the requested copy of video available at this time and

¹⁸ Ex. 14; Ex. 16.

¹⁹ Ex. 14; Ex. 16. (Camera footage shows there were never more than approximately a dozen individuals watching the investigation at one time.)

²⁰ Ex. 2; Ex. 14; Ex. 16.

²¹ Ex. 2; Ex. 14; Ex. 16.

²² Ex. 2; Ex. 14; Ex. 16.

²³ Ex. 2-18.

²⁴ Ex. 2.

²⁵ Ex. 2-5 – 2-7; Test. of Eric Hudak.

²⁶ Ex. 2-7; Test. of E. Hudak. (Sgt. Stanway prepared a second report on August 20, 2019.)

location may result in adverse licensing action taken through the City Attorney's Office.²⁷

17. The July 24 letter also requested Licensee to "provide copies of your MN Revenue monthly sales tax filings for the entire 2018 calendar year to verify compliance with the associated minimum 60% food sales requirement" to show, in turn, compliance with license condition #1.²⁸

18. DSI examines the tax filings for all restaurants in the City on an annual basis to determine whether they are operating primarily as purveyors of prepared food. However, in July of 2019, the City had not yet conducted this review for Pupraya Thai Restaurant's 2018 tax year.²⁹

19. Licensee called Hudak and inquired why the video surveillance was requested.³⁰ Hudak advised Licensee that video surveillance was requested because of the July 21, 2019, car collision in the establishment's parking lot.³¹

20. On July 30, 2019, DSI received some video from Licensee.³² The video came from eight different cameras at Pupraya Thai Restaurant.³³ The cameras viewed the following areas:³⁴

- a. Camera 1: outside front door and parking lot
- b. Camera 2: inside front door
- c. Camera 3: inside tables and door
- d. Camera 4: interior from behind counter
- e. Camera 5: kitchen
- f. Camera 6: front parking lot (view of collision)
- g. Camera 7: outside rear door and trash area
- h. Camera 8: side lot and sidewalk

21. All of the footage Licensee provided to DSI came from all eight cameras. However, the timeframe for the footage from each camera only came from between

²⁷ Ex. 3; Stip. 6. (Emphasis in original.)

²⁸ Ex. 3; Stip. 6.

²⁹ Test. of E. Hudak.

³⁰ Test. of K. Thao.

³¹ *Id.*

³² Ex. 10; Test. of E. Hudak.

³³ Ex. 14.

³⁴ *Id.*

1:56 a.m. and 2:30 p.m. on July 21, 2019.³⁵ Further, only the footage from Camera 6 contained all the footage during that timeframe.³⁶

22. Hudak reviewed the video with Sgt. Stanwick, but never made another request for the missing footage.³⁷

23. Licensee filed his taxes quarterly in 2018, so on August 19, 2019, Licensee provided DSI with a one-page Sales Summary Report for the 2018 calendar year.³⁸ The report states the total sales for Pupraya Thai Restaurant for the year were \$71,253.57.³⁹ Sales tax paid is reported as \$5,575.52.⁴⁰ The beer and liquor tax paid is reported as \$24.94.⁴¹

24. Because Licensee did not provide a monthly breakdown of sales, as requested, DSI sent another letter to Licensee on August 23, 2019.⁴² In the letter, Hudak stated:

You are again hereby instructed to provide “confirmation of return” or other documentation provided from the Minnesota Department of Revenue detailing Pupraya’s sales tax filings for the 2018 calendar year. This information can be obtained electronically from the Department of Revenue website or by calling (651) 556-3000.

Failure to deliver the requested document(s) to the address noted on the letterhead above on or before Friday, September 6, 2019, may result [in] adverse licensing action taken through the City Attorney’s Office.⁴³

25. On August 27, 2019, Licensee provided DSI with some of the restaurant’s tax filings for 2018.⁴⁴ The filings covered the first three quarters of 2018.⁴⁵

26. Licensee does not know why only three quarters of the requested information was provided and has not provided or offered detail as to the last quarter of 2018.⁴⁶

³⁵ Id.

³⁶ Id.

³⁷ Test. of E. Hudak; See e.g. Ex. 4.

³⁸ Ex. 10; Ex. 13; Test. of K. Thao.

³⁹ Ex. 13.

⁴⁰ Id.

⁴¹ Id.

⁴² Test. of E. Hudak; Ex. 4.

⁴³ Ex. 4.

⁴⁴ Ex. 5; Ex. 10.

⁴⁵ Ex. 5.

⁴⁶ Test. of K. Thao.

CONCLUSIONS OF LAW

1. The City of St. Paul and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to St. Paul Legislative Code §§ 310.05 and 310.06.

2. The City has complied with all relevant procedural requirements of ordinance and rule.

3. The City must prove the facts at issue by a preponderance of evidence.⁴⁷

4. Failure to comply with a license condition is grounds for adverse action against the license.⁴⁸

5. Licensee failed to comply with license condition #2 of License No. 20140001202, when he did not provide all the video surveillance footage requested by DSI.

6. The City did not show Licensee failed to comply with license condition #1 of License No. 20140001202. The City did show Licensee failed to comply with Saint Paul Legislative Code § 310.12 when he failed to provide requested tax filings or accounting information in response to a request for this information by DSI.⁴⁹

7. Saint Paul Legislative Code § 310.05(m) provides a matrix of presumptive penalties for various kinds of violations and when the violation occurred in relation to prior violations.⁵⁰

8. Licensee's violations have resulted in Licensee's second appearance before the City Council within one year pursuant to Saint Paul Legislative Code § 310.05(m). A second appearance for a violation of a license condition or violation of the Legislative Code related to the licensed activity carries a presumptive penalty of \$1,000.00.⁵¹

9. There are no substantial and compelling reasons to deviate from the presumptive penalty for a second appearance.

Based upon these conclusions of law and for the reasons explained in the memorandum below, the Administrative Law Judge makes the following:

⁴⁷ Minn. R. 1400.7300, subp. 5 (2019).

⁴⁸ St. Paul Legislative Code § 310.06(b)(5).

⁴⁹ Failure to comply with the Legislative Code is grounds for adverse action. Saint Paul Leg. Code § 310.06(b)(6)(a).

⁵⁰ St. Paul Legislative Code § 310.05(m).

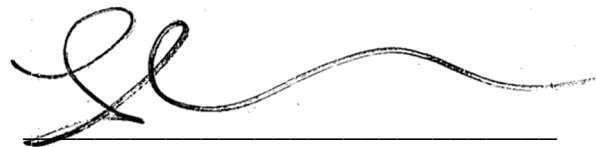
⁵¹ *Id.*

RECOMMENDATION

IT IS HEREBY RECOMMENDED:

1. That the City of Saint Paul find Licensee violated license condition #2 of License No. 20140001202 when, on July 29, 2019, he failed to provide requested video surveillance to DSI;
2. That the City of Saint Paul find Licensee violated Saint Paul Legislative Code 310.12 when he did not cooperate with and provide DSI with requested information demonstrating his compliance with license condition #1 of License No. 20140001202; and,
3. That the City of Saint Paul **ASSESS** Licensee a \$1,000.00 fine, the presumptive penalty for a second appearance.

Dated: May 7, 2020



JIM MORTENSON
Administrative Law Judge

Digitally recorded; no transcript prepared

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, 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 Shari Moore, City Clerk, City of Saint Paul, 170 City Hall, 15 W. Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

I. The Violations

B. License Condition #1

Licensee holds License # 201400001202 for his establishment, Pupraya Thai Restaurant, at 945 Rice Street, Unit A.52 The City provided four license types to Licensee: Entertainment (B); Liquor On Sale – 101-180 Seats; Liquor On Sale – 2 AM Closing; and

⁵² Ex. 8.

Liquor On Sale – Sunday.⁵³ Six conditions apply to Licensee’s license, two of which are at issue here. The first condition is as follows:

Per Section 409.03 of the City of Saint Paul Legislative Code, a new liquor on-sale license shall only be issued to a restaurant as defined under Chapter 409 of the City Code. Licensee agrees to operate the establishment in compliance with the definition of a restaurant as defined under Chapter 409 of the City’s Code, acknowledges having been given a copy of this definition, and understands this definition.⁵⁴

DSI attempts to annually examine the tax filings for all establishments with this licensing condition to ensure they are complying.⁵⁵ The reason for this approach is because the definition of “restaurant” under Saint Paul Legislative Code § 409.02 includes the requirement that “gross receipts are at least sixty (60) percent attributable to the sale of food during each and every calendar month.” Tax records will show an establishment’s breakdown in sales between liquor and other kinds of sales.⁵⁶ On July 24, 2019, DSI provided a letter to Licensee requesting “copies of your [Minnesota] revenue monthly sales tax filings for the entire 2018 calendar year to verify compliance with the associated minimum 60% food sales requirement.”⁵⁷ Licensee only filed his taxes with the Minnesota Department of Revenue quarterly, so he did not have monthly filings to provide.⁵⁸ As a result, on August 19, 2019, Licensee provided a “Sales Summary Report” for 2018, which was a single-page document stating his total sales for the year, sales tax paid, and liquor tax paid.⁵⁹ The document, on its face, was neither compliant with DSI’s request nor a valid accounting. Licensee explained that an error was made.⁶⁰

DSI made a second written request, on August 23, 2019, for “‘confirmation of return’ or other documentation provided from the Minnesota Department of Revenue detailing Pupraya’s sales tax filings for the 2018 calendar year.”⁶¹ Instructions on how to obtain the information from the Department of Revenue and a deadline for submitting – September 6, 2019 – were also included in the letter.⁶² On August 27, 2019, Licensee provided Department of Revenue records for the first three quarters of 2018.⁶³ Licensee, inexplicably, has not provided the fourth quarter records.⁶⁴

⁵³ *Id.*

⁵⁴ Ex. 8.

⁵⁵ Test. of E. Hudak.

⁵⁶ *Id.*; Ex. 5.

⁵⁷ Ex. 3; Ex. 10; Test. of E. Hudak.

⁵⁸ Test. of K. Thao.

⁵⁹ Ex. 13.

⁶⁰ Test. of K. Thao. Licensee’s explanation is a gross understatement. It states only \$24.94 in taxes were paid on liquor sales out of \$71,253.57 in gross sales for the year. Thus, while the document proffers to show that Licensee was operating his establishment as a restaurant, the utter lack of liquor sales for the year appeared suspicious to DSI.

⁶¹ Ex. 4; Test. of E. Hudak.

⁶² Ex. 4.

⁶³ Ex. 5; Ex. 10; Test. of E. Hudak. The tax filings Licensee did ultimately provide are suspicious because the gross sales for liquor equate to only 1.7 percent of gross sales for the first three quarters of 2018.

⁶⁴ Test. of K. Thao; Test. of E. Hudak.

It cannot be presumed Licensee is not operating as a restaurant based on a failure to comply with DSI's records request. License condition #1 does not require Licensee to prove he is compliant with the definition of a restaurant found at Saint Paul Legislative Code § 409.03. It is the City's responsibility to investigate to make a determination about whether Licensee is in compliance. Saint Paul Legislative Code § 310.12 provides, however, that:

The premises, facilities, place, device or anything named in any license issued pursuant to any provision of the Saint Paul Legislative Code or other law shall at all times while open to the public or while being used or occupied for any purpose be open also to inspection and examination by any police, fire, or health officer or any building inspector of the city, as well as the inspector.

This requirement is broad enough to cover DSI's request for records as part of its investigation into Licensee's compliance with license condition #1. Thus, while Licensee's failure to provide the requested records under license condition #1 is not a violation of the license condition, the failure is a violation of the Code. DSI was within its authority to examine the records which would demonstrate whether or not Licensee was in compliance with his license.

While the City did not put Licensee on notice that a violation of Saint Paul Legislative Code § 310.12 is the alleged violation, the error in notice is harmless. The substance of the notice was that "Licensee was in violation of license condition #1 *for failing to provide documentation requested. . . to show compliance with the definition of restaurant under 409 . . .*"⁶⁵ It is clear what DSI wanted and, had Licensee provided it or made an argument or showing at the hearing that the information requested had been provided, the outcome here may be different. Licensee made no such argument. So, the City met its burden of proof that the requested information was not provided. This was a violation of Saint Paul Legislative Code § 310.12, not a violation of a licensing condition.

B. License Condition #2

License condition #2 requires that Licensee provide and maintain video surveillance of his establishment.⁶⁶ Relevant to this proceeding, the condition requires that "if the SPPD or [DSI] requests copies of the surveillance tapes, licensee shall have a 48-hour period in which to provide such copies."⁶⁷

In the July 24, 2019, letter DSI provided to Licensee, it requested "a copy of all interior and exterior camera surveillance video recorded during the entire following period, **July 21, 2019 from 1:00 a.m. (0100 hours) to 3:00 a.m. (0300)[.]**"⁶⁸ Licensee called

⁶⁵ Stip. 5.

⁶⁶ Ex. 8.

⁶⁷ Id.

⁶⁸ Ex. 3. (Emphasis in original.)

Hudak and asked why DSI wanted the video.⁶⁹ Hudak told him the reason for the request was the collision which occurred in Licensee's parking lot on July 21.⁷⁰ Licensee then provided only a portion of the requested video surveillance to DSI.⁷¹

According to Licensee, his provision of only a portion of the video requested was a misunderstanding resulting from the conversation with Hudak.⁷² It was a gross misunderstanding, to say the least. The letter is perfectly clear about what DSI is requesting. Further, Licensee did not ask Hudak about *what* was being requested, but *why* it was being requested. How Hudak's response translated to the limited amount of video Licensee provided was not explained by Licensee and does not make logical sense. Licensee provided video from all eight of his surveillance cameras as requested, even though only one captured the collision.⁷³ He did provide approximately 30 minutes of footage from the parking lot beginning with the collision and until the police left the scene.⁷⁴ Footage was provided from the other seven cameras for various amounts of time near or during the time the police were on scene.⁷⁵ Yet, no footage for the entire two-hour period was provided.⁷⁶ While DSI never made an additional request for the footage, this fact is irrelevant where the original request was clear and not in need of explanation or interpretation. Licensee failed to comply with License condition #2 when he did not provide the requested surveillance video.

II. Penalty

When a licensee fails to comply with license conditions or violates the law, including city ordinances reasonably related to the licensed activity, there is a basis for adverse action by the City Council.⁷⁷ Saint Paul Legislative Code § 310.05(m) provides for presumptive penalties for certain kinds of violations and when the violations occurred.⁷⁸ Following a first appearance before the City Council for a violation, a second appearance occurs based on a violation within twelve months of the date of the first appearance.⁷⁹ A second appearance for a violation of a licensing condition or violation of the code results in a presumptive penalty of \$1,000.00.⁸⁰ The City Council may deviate from the presumptive penalty if "there exist substantial and compelling reasons making it more appropriate to do so."⁸¹

DSI is not seeking a deviation from the presumptive penalty for a second appearance. Licensee argues that \$1,000.00 is too high of a penalty. Licensee insists

⁶⁹ Test. of K. Thao.

⁷⁰ *Id.*

⁷¹ Ex. 14.

⁷² Test. of K. Thao.

⁷³ Ex. 14.

⁷⁴ *Id.* (Camera 6.)

⁷⁵ Ex. 14.

⁷⁶ *Id.*

⁷⁷ St. Paul Legislative Code § 310.06(a), (b)(5), and (b)(6).

⁷⁸ St. Paul Legislative Code § 310.05(m).

⁷⁹ St. Paul Legislative Code § 310.05(m)(v)(1) and (4).

⁸⁰ St. Paul Legislative Code § 310.05(m).

⁸¹ *Id.*

that he was operating his establishment as a restaurant with entertainment and a dance floor. He failed to provide the requested proof to substantiate these claims during the investigation and during the hearing. Licensee also argues he did not deny DSI the data it requested even though he admits DSI did not receive the full timeframe of data requested. This argument is simply inconsistent on its face because the requested data was for the two-hour timeframe. The request was clearly stated and never controverted or modified by anyone. Licensee also argues that he cannot afford to pay \$1,000.00. No evidence to support this position was entered into the record. Thus, there is no substantial and compelling reason to deviate from the presumptive penalty of \$1,000.00.

III. Conclusion

This is Licensee's second appearance before the City Council because his violations occurred within 12 months of his November 2018 appearance. The evidence overwhelmingly demonstrates Licensee violated license condition #2. The evidence also demonstrates Licensee violated Saint Paul Legislative Code § 310.12 (as opposed to license condition #1). Therefore, and because there is no substantial and compelling reason to deviate, the presumptive penalty of \$1,000.00 should be imposed.

J. R. M.