



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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November 10, 2011

Ms. Shari Moore
St. Paul City Clerk
310 City Hall
15 West Kellogg Boulevard
St. Paul, Minnesota 55102

Re: *In the Matter of All licenses held by Axmed S. Cali d/b/a Iftiin Hookah Lounge for the premises located at 2418 University Avenue West in St. Paul*
OAH Docket No. 119-6020-22169-3

Dear Ms. Moore:

Enclosed herewith and served upon you by mail is the Administrative Law Judge's **Findings of Fact, Conclusions and Order** in the above-entitled matter. Also enclosed is the official record, with the exception of the recording of the hearing. If you would like a copy of that recording, please contact our office in writing or by telephone at 651-361-7906. Our file in this matter is now closed.

Sincerely,


TIMOTHY J. O'MALLEY
Assistant Chief Administrative Law Judge

Telephone: (651) 361-7856

TJO:kp

Enclosure

cc: Joseph A. Fru, Attorney at Law
Kyle Lundgren, Assistant City Attorney

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

All licenses held by Axmed S. Cali
d/b/a Iftiin Hookah Lounge for the
premises located at 2418 University
Avenue West in St. Paul

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was originally scheduled for a hearing on August 25, 2011. A motion for continuance by the Licensee's attorney was granted on that day. The matter was rescheduled for September 6, 2011, and subsequently continued by Order of the Court. A hearing on this matter was held on October 13, 2011, before Administrative Law Judge Timothy J. O'Malley at the Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota. The hearing was held pursuant to a Notice of Second Rescheduled Administrative Hearing dated September 8, 2011.

Kyle Lundgren, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). Joseph A. Fru, of Fru Law LLC, appeared on behalf of Axmed S. Cali d/b/a Iftiin Hookah Lounge.

The City called three witnesses to testify: Officer Darin McDonald, Officer Kurt Roettjer, and Deputy Director Christine Rozek. The City offered, and the Court accepted into evidence, Exhibits A1 through A10 and B1 through B9.

The Licensee called one witness: Mr. Axmed S. Cali, the Lounge's owner and license holder (Licensee). The Licensee did not offer any exhibits into evidence. The hearing record closed at the end of the October 13, 2011, hearing.

STATEMENT OF THE ISSUES

1. Did the City prove by a preponderance of the evidence that on April 10, 2011, the Licensee violated License Condition No. 6 ("The establishment shall close no later than 2 a.m. every day and all patrons shall leave the establishment no later than 2 a.m. every day. The establishment shall open no earlier than 8 a.m. every day.")?

The ALJ finds that the City proved that the Licensee violated License Condition No. 6

2. Did the City prove by a preponderance of the evidence that on July 1, 2011, the Licensee violated License Conditions No. 1 (“The number of patrons and employees inside the establishment shall be limited to 52 in compliance with fire regulations.”); No. 2 (“No one under the age of 18 shall be permitted inside the establishment. The establishment shall verify the age of all patrons using government issued identification.”); No. 3 (“The business shall monitor the sidewalk and parking lot for loitering or other unlawful behavior. Any persons gathering on the sidewalk surrounding the property or in the parking lot shall be asked to leave the area. The business shall report any refusal to leave the area or other suspicious activity to SPPD.”); and No. 5 (“Music inside the establishment shall not be audible on the exterior of the premises.”)?

The ALJ finds that the City proved that the Licensee violated License Condition Nos. 1, 2 and 5. The ALJ finds that the City did not prove that Condition No. 3 was violated.

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

FINDINGS OF FACT

Lounge and Licensing Background

1. Iftiin Hookah Lounge (Lounge) is located at 2418 University Avenue West in St. Paul, Minnesota.¹ The Lounge occupies space on the east end of the building located on the south side of University Avenue; an alley runs from University Avenue to a parking area behind the building and abuts the east side of the building.² Other rental businesses, including a grocery store (immediately west of the Lounge), a pool hall and another hookah lounge (2430 University Avenue West) also occupy the building.³ The grocery store is sometimes open at night.⁴ The parking lot is available for use by patrons of businesses located in the building.⁵

2. Mr. Cali is the owner of the Lounge and is the holder of cigarette/tobacco license number 20090003176 (“license”) issued by the City of St. Paul for the Lounge.⁶

3. The license was issued to Mr. Cali in July 2009.⁷

¹ Testimony of Axmed S. Cali; Testimony of Christine Rozek; Testimony of Darin McDonald; Testimony of Kurt Roettjer.

² Test. of A. Cali; Test. of D. McDonald; Test. of K. Roettjer; Ex. B4.

³ Test. of A. Cali; Test. of D. McDonald; Test. of K. Roettjer.

⁴ Test. of K. Roettjer; Test. of A. Cali.

⁵ Test. of A. Cali.

⁶ Test. of A. Cali; Test. of C. Rozek; Exs. A3, A4, A5, A6, B2, B3, and B5.

4. Representatives from the City of St. Paul met with Mr. Cali in April and May of 2010 and Condition Nos. 1 through 5 were placed on the license.⁸ Condition Nos. 1 through 5 are as follows:

Condition No. 1

The number of patrons and employees inside the establishment shall be limited to 52 in compliance with fire regulations.

Condition No. 2

No one under the age of 18 shall be permitted inside the establishment. The establishment shall verify the age of all patrons using government issued identification.

Condition No. 3

The business shall monitor the sidewalk and parking lot for loitering or other unlawful behavior. Any persons gathering on the sidewalk surrounding the property or in the parking lot shall be asked to leave the area. The business shall report any refusal to leave the area or other suspicious activity to SPPD.

Condition No. 4

Dancing inside the establishment is not permitted.

Condition No. 5

Music inside the establishment shall not be audible on the exterior of the premises.⁹

5. Mr. Cali was aware of these five conditions on his license and accepted the license with those conditions in place.¹⁰ He did not challenge these conditions for any reason, including, their reasonableness or fairness.¹¹

6. In August 2010, the St. Paul City Council added Condition No. 6 to the license.¹²

⁷ Test. of A. Cali; Ex. A3.

⁸ Test. of A. Cali; Test. of C. Rozek; Ex. A3.

⁹ Test. of C. Rozek; Ex. A4.

¹⁰ Test. of A. Cali; Test. of C. Rozek.

¹¹ Test. of C. Rozek; Test. of A. Cali.

¹² Test. of C. Rozek; Ex. A3.

7. Condition No. 6 states: "The establishment shall close no later than 2 a.m. every day and all patrons shall leave the establishment no later than 2 a.m. every day. The establishment shall open no earlier than 8 a.m. every day."¹³

8. Mr. Cali was aware of Condition No. 6 on his license and knew he was required to comply with this condition.¹⁴ Mr. Cali did not challenge the placement of Condition No. 6 on his license for any reason, including the reasonableness and fairness of that condition.¹⁵

Prior Licensing Enforcement

9. On December 18, 2009, tobacco was sold to a minor at the Lounge in violation of the City of St. Paul license. This violation resulted in a City Council resolution imposing a fine. Mr. Cali did not challenge this adverse action.¹⁶

10. The December 18, 2009, violation is outside the scope of time to be considered for penalty purposes in the current matter.¹⁷

11. In May 2010, the St. Paul Police Department billed the Lounge for "excessive consumption" of police services.¹⁸

12. On May 30, 2010, music could be heard outside of the Lounge in violation of License Condition No. 5.¹⁹ On June 21, 2010, 90 persons were inside the Lounge in violation of License Condition No. 1.²⁰ The May 30, 2010, and June 21, 2010, incidents were combined into a single violation and adverse action.²¹ These combined violations resulted in an August 18, 2010, City Council resolution imposing a fine and adding Condition No. 6 to the license.²² Mr. Cali did not challenge this adverse action.²³ These combined violations are within the scope of time to be considered for penalty purposes in the current matter and constitute a first appearance for the purpose of determining a presumptive penalty in the current matter.²⁴

13. On September 11, 2010, the Lounge was open for business after 2 a.m. in violation of License Condition No. 6 and the Lounge also failed to adequately monitor activity outside the Lounge in violation of License Condition No. 3.²⁵ On September 17, 2010, music could be heard outside the Lounge in violation of License Condition No. 5 and the Lounge failed to conduct age identification checks on patrons in violation of

¹³ Test. of C. Rozek; Ex. A4.

¹⁴ Test. of C. Rozek; Test. of A. Cali; Ex. A3.

¹⁵ Test. of A. Cali.

¹⁶ Test. of C. Rozek; Test. of A. Cali; Ex. A3.

¹⁷ Test. of C. Rozek; St. Paul Legislative Code § 310.05(m).

¹⁸ Test. of C. Rozek; Ex. A3.

¹⁹ Test. of C. Rozek; Ex. A3.

²⁰ Test. of C. Rozek; Ex. A3.

²¹ Test. of C. Rozek; Ex. A3.

²² Test. of C. Rozek; Ex. A3.

²³ Test. of A. Cali; Test. of C. Rozek.

²⁴ City of St. Paul Legislative Code § 310.05(m).

²⁵ Test. of C. Rozek; Ex. A3.

License Condition No. 2.²⁶ The September 11, 2010, and September 17, 2010, incidents were combined into a single violation and adverse action.²⁷ These combined violations resulted in a November 10, 2010, City Council resolution imposing a fine and suspending the license. Mr. Cali did not challenge this adverse action.²⁸ These combined violations are within the scope of time to be considered for penalty purposes in the current matter and constitute a second appearance for the purpose of determining a presumptive penalty in the current matter.²⁹

Licensing Authority

14. The St. Paul Legislative Code authorizes the imposition of “reasonable conditions and/or restrictions . . . for the purpose of promoting public health, safety and welfare, of advancing the public peace and the elimination of conditions or actions that constitute a nuisance or a detriment to the peaceful enjoyment of urban life, or promoting security and safety in nearby neighborhoods.”³⁰ The St. Paul legislative code establishes standards by which the City Council determines penalties for licensing violations.³¹ The presumed penalty for a third appearance is a \$2,000.00 fine and 10 day suspension, and the presumed penalty for a fourth appearance is revocation of the license.³²

15. It is a customary practice of the St. Paul Police Department to have patrol officers conduct proactive police visits.³³ Police officers are encouraged to enter businesses to develop relationships, establish good will, and offer assistance to business owners and employees as well as to monitor for problems; although patrol officers are encouraged to conduct police proactive visits at all businesses, particular emphasis is placed on businesses that have frequent calls for service and/or are located in problem areas of the city.³⁴

Witnesses

16. Officer Darin McDonald has been a police officer with the City of St. Paul for four years, and for the past two years has been assigned to the midnight shift (10 p.m. to 8 a.m.) conducting patrol duties in the Western District, which is an area of the city that includes the Lounge. Officer McDonald is familiar with the neighborhood where the Lounge is located and has been to the Lounge at least 30 times over the past two years. In this same time period, Officer McDonald has been to the hookah lounge located at 2430 University Avenue West approximately 20 times.³⁵

²⁶ Test. of C. Rozek; Ex. A3.

²⁷ Test. of C. Rozek; Ex. A3.

²⁸ Test. of C. Rozek; Ex. A3.

²⁹ St. Paul Legislative Code § 310.05(m).

³⁰ St. Paul Legislative Code § 310.06(c).

³¹ St. Paul Legislative Code § 310.05(m).

³² St. Paul Legislative Code § 310.05(m).

³³ Test. of D. McDonald; Test. of K. Roettjer.

³⁴ Test. of D. McDonald.

³⁵ Test. of D. McDonald.

17. Officer Kurt Roettjer has been a police officer with the City of St. Paul for four years and has also been assigned to the midnight shift conducting patrol duties in the Western District. Officer Roettjer is familiar with the neighborhood where the Lounge is located and has been to the Lounge several times over the past two years.³⁶

18. Christine Rozek is the Deputy Director of the Department of Safety and Inspection for the City of St. Paul. She has been an employee of this department since 1986. Currently, her main responsibilities relate to issuing licenses and handling other license related matters.³⁷

19. Mr. Cali purchased the Lounge in July of 2009 and has been the license holder at the time of each violation or other action involving the Lounge addressed in this matter.³⁸

April 10, 2011 Incident

20. Officer McDonald was aware of the license condition requiring the Lounge to close and have all patrons leave by 2 a.m.³⁹

21. At approximately 2:51 a.m. on April 10, 2011,⁴⁰ while on duty and conducting patrol in the Western District, Officer McDonald observed five people standing in front of the Lounge.⁴¹ He also observed foot and vehicular traffic in the parking lot behind the Lounge and in the area of Pelham Avenue that leads to that parking lot.⁴²

22. Officer McDonald drove to the rear parking lot and observed several people in that lot, and also saw people entering and exiting the rear door of the Lounge.⁴³

23. Based on prior visits to the Lounge, Officer McDonald was familiar with Mr. Hassibullah Farooq, a security officer employed by the Lounge. He saw Mr. Farooq in the rear parking lot, approached him, and asked him if he knew what time the Lounge was required to close. Mr. Farooq knew the required closing time was 2 a.m.⁴⁴

24. Officer McDonald, accompanied by Mr. Farooq, entered the rear door of the Lounge and saw activity in the Lounge that was "normal" for when the Lounge was open for business. Officer McDonald saw a "decent amount of people," in excess of 20,

³⁶ Test. of K. Roettjer.

³⁷ Test. of C. Rozek.

³⁸ Test. of A. Cali.

³⁹ Test. of D. McDonald; Ex. A4

⁴⁰ Test. of D. McDonald; Exs. A1, A2.

⁴¹ Test. of D. McDonald.

⁴² Test. of D. McDonald.

⁴³ Test. of D. McDonald.

⁴⁴ Test. of D. McDonald; Ex A2.

in the Lounge. Music was playing and several people were smoking tobacco through pipes.⁴⁵

25. Ali Sharif Mohamed and Abdulkadir Sharif Mohamed are employees of the Lounge.⁴⁶ Based on prior visits to the Lounge, Officer McDonald was familiar with both of them. Officer McDonald talked with them and confirmed that both knew the Lounge was required to close by 2 a.m. Neither stated explicitly that the Lounge was open for business. Neither offered any excuse for the activity in the Lounge and both agreed to clear out people immediately.⁴⁷

26. Officer McDonald remained at the Lounge for several more minutes until nonemployees left.⁴⁸

27. The St. Paul Police Department computer generated dispatch report indicates that Officer McDonald arrived at the Lounge at 2:51 a.m. and cleared the call at 3:11 a.m.⁴⁹

28. Based on prior visits to the Lounge, Officer McDonald was familiar with Mr. Cali and did not observe Mr. Cali at the Lounge on April 10, 2011.⁵⁰

29. Mr. Cali claimed to be at the Lounge during the early morning hours of April 10, 2011, when Officer McDonald came in the Lounge and required people to leave. Further, Mr. Cali claimed that all patrons had left the Lounge at 1:45 a.m. and that only 8 people were present (6 employees and 2 girlfriends of employees) when Officer McDonald was at the Lounge that morning.⁵¹

July 1, 2011, Incident

30. During a roll call meeting a few weeks prior to July 1, 2011, a sergeant reminded Western District patrol officers of the license conditions for the Lounge.⁵²

31. At approximately 11:30 p.m. on July 1, 2011, Officer McDonald and Officer Roettjer were about one block from the Lounge after having responded to a "man with a gun" call. After clearing that call, Officers McDonald and Roettjer went to the Lounge to conduct a proactive police visit.⁵³

⁴⁵ Test. of D. McDonald.

⁴⁶ Test. of D. McDonald; Test. of A. Cali.

⁴⁷ Test. of D. McDonald; Ex. A2.

⁴⁸ Test. of D. McDonald.

⁴⁹ Ex. A1.

⁵⁰ Test. of D. McDonald.

⁵¹ Test. of A. Cali.

⁵² Test. of K. Roettjer.

⁵³ Test. of D. McDonald; Test. of K. Roettjer; Ex. B1.

32. While driving westbound on University Avenue en route to the Lounge, Officer McDonald observed 5 people standing and talking on the sidewalk in front of the Lounge.⁵⁴

33. Officers McDonald and Roettjer arrived at the Lounge in separate squad cars, parked in the rear parking area, and walked through the alley on the east side of the building to the front of the building.⁵⁵ There was a security guard in the rear parking lot.⁵⁶

34. Music from inside the Lounge could be heard from the alley near the front of the building.⁵⁷

35. There were 4 or 5 people standing in front of the building as the officers approached the front entrance. These people were within approximately three feet of the front door and were not acting in a disorderly manner. Neither Officer McDonald nor Officer Roettjer spoke with these people nor identified them.⁵⁸

36. The front door of the Lounge was propped open.⁵⁹

37. No employee of the Lounge was at or near the front door, nor was an employee conducting age identification checks on persons entering the Lounge through the front door.⁶⁰

38. The inside of the Lounge was crowded with people sitting and standing. Aside from a few people walking to and from the bar area where tobacco could be purchased, there was very little movement inside the Lounge – especially once peoples' attention was drawn to the officers' presence.⁶¹

39. Officers McDonald and Roettjer stood next to one another in the middle of the room inside the Lounge and, each accounting for half of the room, counted the number of people present. The vast majority of the people in the Lounge remained stationary during the count. The officers did not include in their count any people who may have been on the stairs leading to the lower level, or people who may have been on the lower level where the bathrooms are located. There were at least 107 people inside the Lounge.⁶²

⁵⁴ Test. of D. McDonald.

⁵⁵ Test. of D. McDonald; Test. of K. Roettjer.

⁵⁶ Test. of D. McDonald.

⁵⁷ Test. of D. McDonald; Test. of K. Roettjer.

⁵⁸ Test. of K. Roettjer.

⁵⁹ Test. of K. Roettjer.

⁶⁰ Test. of D. McDonald; Test. of Roettjer; Ex. B1.

⁶¹ Test. of K. Roettjer; Test. of D. McDonald.

⁶² Test. of D. McDonald; Test. of Roettjer; Ex. B1.

40. After completing the headcount, Officer McDonald radioed to the dispatch center at 11:46 p.m. to obtain a case number.⁶³

41. Officer McDonald spoke with both Lounge managers, Mr. Ali Mohamed and Mr. Abdulkadir Mohamed. Both were aware of the license condition setting maximum capacity at 52 people and both indicated they had “no idea” how many people were in the Lounge. The managers agreed to reduce the number of people present and started to clear some of the people out of the Lounge.⁶⁴

42. A few minutes later, Officers McDonald and Roettjer conducted a second headcount in the same manner as they had conducted the first, and determined there were 70 people present in the Lounge.⁶⁵

43. Neither officer took photographs while in the Lounge, nor did they check identification of anyone in the Lounge to determine if persons under the age of 18 were present.⁶⁶

44. Officer McDonald did not see Mr. Cali at the Lounge on July 1, 2011.⁶⁷

45. Mr. Cali claimed to be at the Lounge at the time of the July 1, 2011, incident. Further, Mr. Cali claimed that the Lounge was not over capacity at that time, that Officer McDonald and five other police officers, including Officer Roettjer, walked into the Lounge, that the officers did not conduct a headcount, and that the officers left the Lounge after a few minutes.⁶⁸

Allegation of Disparate Treatment

46. Mr. Cali claimed that Officer McDonald improperly and unfairly targeted the Lounge as part of a personal vendetta to “shut down” the Lounge. In support of this claim, Mr. Cali asserted that Officer McDonald came to the Lounge two or three times each week, was involved in all violations alleged by the City of St. Paul, and on one occasion had been ordered by his supervisor to apologize to Mr. Cali for his conduct while interacting with Mr. Cali. Further, Mr. Cali asserted that the Lounge does not play loud music, that by 2 a.m. on April 1, 2011, all patrons had left the Lounge and the Lounge was closed, that the number of people in the Lounge on July 1, 2011, was fewer than the capacity limit of 52, and that he “tries [his] best” to monitor the parking lot and sidewalk area.⁶⁹

⁶³ Test. of D. McDonald; Ex. B1.

⁶⁴ Test. of D. McDonald; Ex. B1.

⁶⁵ Test. of D. McDonald; Test. of K. Roettjer; Ex. B1.

⁶⁶ Test. of D. McDonald.

⁶⁷ Test. of D. McDonald.

⁶⁸ Test. of A. Cali.

⁶⁹ Test. of A. Cali.

47. Based on the observations of Officers McDonald and Roettjer on July 1, 2011, Officer McDonald could have ordered the Lounge to close immediately; he did not do that.⁷⁰

48. Officer McDonald was not aware of any complaint made by Mr. Cali to his supervisor.⁷¹

49. The St. Paul Police Department and the St. Paul Department of Safety and Inspections took actions regarding activities at the Lounge in accordance with city and departmental practices and in a manner consistent with, and responsive to, the progression of impermissible activities and conditions at the Lounge over the past two years.⁷²

50. Police logs and police reports admitted into evidence are consistent with the testimony of Officers McDonald and Roettjer and Deputy Directory Rozek.⁷³ In contrast, critical segments of Mr. Cali's testimony describing what occurred on April 10, 2011, and on July 1, 2011, were unsupported by evidence on the record.⁷⁴

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

CONCLUSIONS

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).

2. The hearing in this matter was conducted in accordance with the applicable portions of the procedures set forth in section 310.05 of the St. Paul Legislative Code.

3. The City gave proper notice of the hearing in this matter and has fulfilled all procedural requirements of rule or law.

4. The City has the burden of proving by a preponderance of the evidence that adverse action is warranted against the license held by Axmed S. Cali d/b/a Iftiin Hookah Lounge.

5. The St. Paul City Council may take adverse action against any or all licenses or permits, licensee or applicant for a license, on the basis that the licensee or applicant has failed to comply with any condition set forth in the license or has violated

⁷⁰ Test. of D. McDonald.

⁷¹ Test. of D. McDonald.

⁷² Test. of D. McDonald; Test. of C. Rozek.

⁷³ Test. of D. McDonald; Test. of K. Roettjer; Test. of C. Rozek; Exs. A1, A2, B1.

⁷⁴ Test. of A. Cali.

any of the provisions of any statute, ordinance or regulation reasonably related to the licensed activity.⁷⁵

6. The City Council may also take adverse action against a license if 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.⁷⁶

7. Adverse action includes the imposition of a fine or the imposition of conditions upon a license.⁷⁷ The City may impose reasonable conditions on a license for the purpose of promoting public health, safety and welfare, of advancing the public peace and the elimination of conditions or actions that constitute a nuisance or a detriment to the peaceful enjoyment of urban life, or promoting security and safety in nearby neighborhoods.⁷⁸ Reasonable conditions may include a limitation on the hours of operation or on the particular types of activities conducted in the establishment, a limitation or restriction as to the location within the establishment where particular activities may be conducted, or any other reasonable condition limiting the operation of the licensed business to ensure that the business will harmonize with the character of the area in which it is located, or to prevent the development or continuation of a nuisance.⁷⁹

8. The conditions on the license are reasonable; promote public health, safety and welfare; and were well-suited to address the recurring, impermissible activities and conditions at the Lounge.

9. The City demonstrated by a preponderance of the evidence that on April 10, 2011, the Licensee remained open for business later than 2 a.m. in violation of License Condition No. 6.

10. The April 10, 2011, violation constitutes a third appearance under St. Paul Legislative Code § 310.06(m).

11. The presumptive penalty for a third appearance violation is a \$2,000.00 fine and ten day license suspension under St. Paul Legislative Code § 310.06(m).

12. The City's recommendation to impose a \$2,000.00 fine and a ten day license suspension for the April 10, 2011, violation is reasonable and appropriate.

13. The City demonstrated by a preponderance of the evidence that on July 1, 2011: (a) the number of people in the Lounge exceeded the capacity limit of 52 in violation of a License Condition No. 1; (b) the Lounge failed to verify the age of patrons

⁷⁵ St. Paul Legislative Code § 310.06(b)(5) & (b)(6)(a).

⁷⁶ St. Paul Legislative Code § 310.06(b)(8).

⁷⁷ St. Paul Legislative Code § 310.01.

⁷⁸ St. Paul Legislative code § 310.06(c).

⁷⁹ St. Paul Legislative Code § 310.06(c).

in violation of License Condition No. 2; and (c) music from inside the Lounge was audible on the exterior of the premises in violation of License Condition No. 5.

14. By violating the conditions of the license, the Licensee has permitted conditions that endanger the safety and health of a considerable number of members of the public.

15. The July 1, 2011, violations constitute a fourth appearance under St. Paul Legislative Code § 310.06(m).

16. The presumptive penalty for a fourth appearance violation is revocation of the license under St. Paul Legislative Code § 310.06(m).

17. The City's recommendation to revoke the license for the July 1, 2011, violations is reasonable and appropriate.

18. Adverse action is justified because the Licensee has failed to comply with conditions of the license.

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

RECOMMENDATION

It is respectfully recommended that the St. Paul City Council take adverse action against the license held by Mr. Axmed S. Cali d/b/a Iftiin Hookah Lounge.

Dated:

11/10/11


TIMOTHY J. O'MALLEY
Assistant Chief Administrative Law Judge

Reported: Digitally Recorded

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.⁸⁰ 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

⁸⁰ Saint Paul Legislative Code §§ 310.05 (c-1).

Hall, 15 W. Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

April 10, 2011

The evidence is clear that the Lounge did not close prior to 2 a.m. on April 10, 2011. Officer McDonald was familiar with the conditions placed on the Lounge's license. He had been in the Lounge on many occasions prior to April 10, 2011, and was well acquainted with the types of activities that took place in and around the Lounge when it was open for business. He knew the owner and the employees at the Lounge.

The type of activity outside the Lounge, the number of people and types of activities inside the Lounge, as well as the comments and actions by the Lounge employees, all support the conclusion that the Lounge was open for business at 2:51 a.m. on April 11, 2011. Mr. Cali's unsupported testimony to the contrary was not credible.

July 1, 2011

Capacity. A systematic count of the number of people in the Lounge conducted by Officers McDonald and Roettjer established that there were at least 107 people present on July 1, 2011. This is more than double the number permitted under a condition on the license. A second systematic count conducted after employees in the Lounge began ordering some patrons to leave established that at least 70 people were still present. The officers' actions conducting these counts were reasonable and prudent, organized and methodical, and produced an accurate minimum number of people present each time.

The Lounge was crowded. Patrons were smoking tobacco. Smoking in a crowded establishment poses a public safety risk. Although arguably a second head count was not necessary to gather evidence of a violation of the license condition (the first count served that purpose), a second count was reasonable and prudent to ensure compliance with the occupancy capacity limit set by the City of St. Paul. It would have been irresponsible for the officers not to ensure that the number of occupants was at or below the 52 person limit, thereby reducing the public safety risk to the occupants of the Lounge and to nearby businesses.

Monitoring for Age of Patrons. Checking identifications requires constant monitoring of all patrons seeking admission to the Lounge to determine that only those 18 years of age or older are admitted. At times, this may require posting an employee at each entrance. At other times, for example when there are only a handful of patrons, a single employee inside the establishment may be able to fulfill this monitoring requirement.

The evidence on the record supports the conclusion that the Licensee did not adequately monitor the age of patrons on July 1, 2011, as required by a license condition. A security guard was in the rear parking lot, but was most likely not positioned to monitor both the activities in the parking lot and the ages of people entering through the rear door of the establishment. More persuasive, however, of the age monitoring violation was the evidence regarding people entering through the front door. No employee was in that area and people were able to enter at will without having their identification checked. In light of the crowded conditions at that time, the Licensee should have had an employee stationed at the front door. Failure to do so was a violation of a license condition.

Music Audible on the Exterior of the Lounge. The evidence on the record supports the conclusion that music from inside the Lounge was audible outside. The front door was propped open. Both officers heard the music from the alley.

Monitoring the Sidewalk and Parking Lot for Loitering. The evidence on the record does not support a conclusion that the Licensee failed to monitor the sidewalk and parking lot areas. Similar to monitoring for the age of patrons, monitoring the sidewalk and parking lot areas may require more or less vigilance depending on the conditions at any particular time.

The parking lot was being monitored by a security guard when officers arrived on July 1, 2011.

The officers observed 4 or 5 people gathered on the sidewalk by the front door of the establishment when they arrived on July 1, 2011, and concluded that those people were loitering. No employee of the Lounge was in that area at the time of the officers' observations.

The pertinent question is not whether people were loitering, although a determination of that would be persuasive evidence of inadequate monitoring. The question is whether the Lounge provided adequate monitoring. Evidence did not establish how long the people were gathered on the sidewalk. Evidence did establish that the people on the sidewalk were not disorderly. Although constant monitoring of the sidewalk would clearly have been adequate monitoring, intermittent but frequent checks would have also been adequate considering the conditions at that time. There is no evidence on the record regarding actions by the Licensee in this regard. Thus, the City failed to prove by a preponderance of the evidence that the Lounge provided inadequate monitoring.

Fairness of Investigation. The Licensee makes the argument that he was improperly and unfairly targeted. Actions taken by the City of St. Paul were fair and responsible. The Licensee offered no evidence, other than Mr. Cali's unsupported testimony, that the Lounge was unfairly or improperly targeted. Moreover, evidence on the record weighs heavily in support of an opposite conclusion. Police logs and reports admitted into evidence were consistent with the testimony of Officer McDonald, Officer Roettjer, and Deputy Directory Rozek and bolster the credibility of those witnesses.

Their testimony, as well as police records and reports, lead to a well-founded conclusion that the investigation of possible licensing violations committed by the Licensee was conducted in a reasonable and responsible manner consistent with established policies and procedures of the St. Paul Police Department and the St. Paul Department of Safety and Inspections.

The Licensee had the option to subpoena witnesses to offer testimony in support of his assertions, but opted not to do so. In fact, the continuance granted on the date the hearing was initially scheduled, August 25, 2011, was granted for the specific purpose of allowing the Licensee time to subpoena a witness.

The City has proven by a preponderance of the evidence that the Licensee violated conditions of the license on April 10, 2011, and on July 1, 2011, and that progressive discipline is warranted.

T. J. O.