



CITY OF SAINT PAUL

Christopher B. Coleman, Mayor

Civil Division  
400 City Hall  
15 West Kellogg Blvd.  
Saint Paul, Minnesota 55102

Telephone: 651 266-8710  
Facsimile: 651 298-5619

January 7, 2011

NOTICE OF COUNCIL HEARING

Boris Parker  
Parker & Wenner, P.A.  
220 South Sixth Street  
1700 U.S. Bank Plaza  
Minneapolis, MN 55402-3707

RE: All licenses held by Mazatlan, LLC d/b/a Mazatlan for the premises located at 567 Stryker Avenue in Saint Paul  
License ID #: 20070001948  
OAH Docket #: 47-6020-21585-3

Dear Mr. Parker:

Please take notice that a public hearing to discuss the report of the Administrative Law Judge concerning the above-mentioned licenses has been scheduled for **Wednesday, February 2, 2011, at 5:30 p.m.** in the City Council Chambers, Third Floor, Saint Paul City Hall and Ramsey County Courthouse.

You have the opportunity to file exceptions to the report with the City Clerk at any time during normal business hours. You may also present oral or written arguments to the council at the hearing. No new evidence will be received or testimony taken at this hearing. The Council will base its decision on the record of the proceedings before the Administrative Law Judge and on the arguments made and exceptions filed, but may depart from the recommendations of such Judge as permitted by law in the exercise of its judgment and discretion.

Sincerely,

Rachel Tierney  
Assistant City Attorney

cc: Diane Nordstrom, Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620  
Christine Rozek, Deputy Director of DSI  
Jorge Sanchez, Mazatlan, 567 Stryker Avenue, St. Paul, MN 55107  
Lydia Nobello, Community Organizer, West Side Citizens Organization, 127 Winifred Street West  
St. Paul, MN 55107-2128

STATE OF MINNESOTA)  
 ) ss.

**AFFIDAVIT OF SERVICE BY U.S. MAIL**

COUNTY OF RAMSEY )

Julie Kraus, being first duly sworn, deposes and says that on the 7<sup>th</sup> day of January, she served the attached **NOTICE OF COUNCIL HEARING** placing a true and correct copy thereof in an envelope addressed as follows:


Boris Parker  
Parker & Wenner, P.A.  
220 South Sixth Street  
1700 U.S. Bank Plaza  
Minneapolis, MN 55402-3707

Diane Nordstrom  
Office of Administrative Hearings  
P.O. Box 64620  
St. Paul, MN 55164-0620

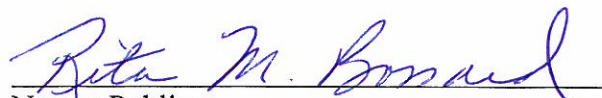
Jorge Sanchez  
Mazatlan  
567 Stryker Avenue  
St. Paul, MN 55107

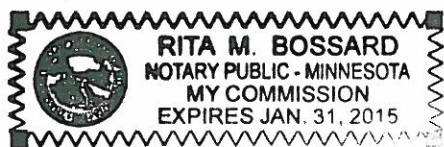
Lydia Nobello, Community Organizer  
West Side Citizens Organization  
127 Winifred Street West  
St. Paul, MN 55107-2128

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

  
Julie Kraus

Subscribed and sworn to before me  
this 7<sup>th</sup> day of January 2011

  
Notary Public





## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street  
Saint Paul, Minnesota 55101

Mailing Address:  
P.O. Box 64620  
St. Paul, Minnesota 55164-0620

Voice: (651) 361-7900  
TTY: (651) 361-7878  
Fax: (651) 361-7936

December 17, 2010

Shari Moore  
St. Paul City Clerk  
290 City Hall  
15 W Kellogg Blvd  
St. Paul, MN 55102

Re: ***In the Matter of Adverse Action Against all licenses held by Mazatlan, LLC, d/b/a Mazatlan***  
OAH No. 47-6020-21585-3

Dear Ms. Moore:

Enclosed herewith and served upon you by mail is the Administrative Law Judge's **Findings of Fact, Conclusions and Recommendation** 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,

A handwritten signature in cursive script that reads "Mary E. McGinnis/dsc".

MARY E. MCGINNIS  
Administrative Law Judge

Telephone: (651) 492-2980

MEM:dsc  
Enclosure  
cc: Rachel G. Tierney  
Boris Parker

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

In the Matter of Adverse Action  
Against all licenses held by Mazatlan, LLC,  
d/b/a Mazatlan

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATIONS**

On November 9, 2010, the above matter came on for hearing before Administrative Law Judge Mary E. McGinnis at City Hall, St. Paul, Minnesota. The hearing originally was scheduled for October 26, 2010; however, pursuant to the parties' agreement the matter was rescheduled. The hearing record remained open until November 17, 2010, for the City to furnish the criminal history of an undisclosed witness, and any rebuttal argument.

Rachel G. Tierney, Assistant St. Paul City Attorney, appeared on behalf of the Department of Safety and Inspection. Boris Parker, Attorney at Law, appeared on behalf of the Licensee, Mazatlan, LLC, d/b/a Mazatlan. Aldo Ramos appeared as the certified Spanish interpreter.

**STATEMENT OF THE ISSUES**

1. Whether adverse action should be taken against the licenses held by Mazatlan, LLC, d/b/a Mazatlan, because, on June 28, 2010, it allowed the after-hours display and consumption of alcohol in violation of Minn. Stat. § 340A.504, subd. 2 (2009), and St. Paul Legislative Code § 409.07(a)?

2. Whether adverse action should be taken against the licenses held by Mazatlan, LLC, d/b/a Mazatlan, because, on September 14, 2010, it failed to "wand" (use a metal detector) and check all handbags and packages carried by patrons entering the premises after 9:00 P.M., in violation of Condition #5 imposed on the Licensee on June 18, 2007, pursuant to St. Paul Legislative Code § 310.06 (c)?

Based upon the record in this matter, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Mazatlan, LLC, d/b/a Mazatlan, (hereafter "Mazatlan") is located at 567 Stryker Avenue, St Paul, Minnesota. It is a bar and restaurant. On August 2, 2007, the City of St. Paul (the City) issued Mazatlan licenses for On Sale Liquor (100 seats or less); Restaurant (51-150 seats); On Sale Liquor (2 AM Closing); On Sale Liquor

(Sunday); Cigarette/Tobacco; and, Entertainment (B). As part of the licenses the City imposed eight conditions on Mazatlan's licenses.<sup>1</sup>

2. On June 28, 2010, at 2:18 A.M., St. Paul Police Officer Michael Whisler responded to a report of loud music and loud people in the Mazatlan parking lot. Upon arriving there at approximately 2:20 A.M. he did not observe any disturbances. He continued to remain on Stevens Avenue, which is adjacent to Mazatlan, to watch patrons leave the bar. Shortly after 2:30 A.M., after observing patrons leave the bar and parking lot, he drove his fully marked police car eastbound on Stevens, and north on Stryker, stopping in front of Mazatlan on Stryker Avenue. There he was positioned to see where the drivers of the remaining parked cars might be located. At the evidentiary hearing Officer Whisler could not remember the number of parked cars remaining nor was the number recorded in his report. From his position within his vehicle, which was one lane from the premises, he observed through the front glass door a female bartender with a curly "updo" pour a liquid from a long-neck bottle into a short glass. He did not recall the color of the liquid poured into the glass. Officer Whisler exited his car, knocked on the glass door, cut his finger across his throat, and pointed to his watch indicating that it was past 2:00 A.M. Within two to five minutes every light went out in the bar. He did not see anyone leave the bar. The glass was never recovered. Officer Whisler never entered the premises.<sup>2</sup>

3. Officer Whisler "guessed" that he saw approximately ten people in the bar, and that he recognized the owner/manager at the bar. However, he observed only the one beverage being poured. He did not report seeing other beverages being poured or consumed.<sup>3</sup>

4. While Mazatlan disputed that Officer Whisler could see clearly into the bar at night due to, among many things, a tinting of the glass door, the exact angle at which he observed the bar from his car, lighting conditions, and a small sign attached to the window, it did not deny that the bartender did pour a liquid beverage at that hour, which the bartender conceded would look like pouring an alcoholic drink.<sup>4</sup> On June 28, 2010, bartender Jessica Breault worked her shift at Mazatlan from 6:30 P.M. until closing. She observed Officer Whisler's police car parked in the street. She saw him at the bar's door and pointing to his watch. Also in the bar with her were Jorge and Blanca Sanchez, owners of the building, and Mrs. Sanchez's niece. The Sanchez family lives on the bar's second floor. Before the Officer came to the door, Ms. Breault had prepared a drink for Mrs. Sanchez of Grenadine and Sprite. Ms. Breault had used both hands to prepare the drink; simultaneously pouring the Grenadine from a long-neck bottle with a measured spout, and using a hose which pumped the Sprite into the glass. The Grenadine was in its bottle which looks like a liquor bottle. Mrs. Sanchez never drinks alcohol.<sup>5</sup>

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<sup>1</sup> Exhibits 3-3 and 5-2.

<sup>2</sup> Testimony of Michael Whisler and Exs. 2-1 and 2-2.

<sup>3</sup> Test. of M. Whisler.

<sup>4</sup> Test. of Jessica Breault.

<sup>5</sup> Test. of J. Breault, Blanca Sanchez, and Jorge Sanchez.

5. The June 18, 2007 conditions placed on Mazatlan's licenses included Condition #5 which required that:

Security personnel shall be assigned to each entrance starting at 9 PM and remain until all patrons have left the licensed premises, which include the parking lots. Security personnel shall "wand" (using a metal detector) each patron and check all handbags and packages carried by patrons. Security personnel shall verify the age of patrons by checking state or federally issued identification cards (no picture I.D., no entrance). Customers re-entering the establishment shall be subject to the same security measures as customers entering the establishment for the first time.<sup>6</sup>

6. On September 14, 2010, during early evening hours when it was still light out, St. Paul Police Officers Anthony Spencer, Timothy Pinoniemi, drove their unmarked police vehicle through the Mazatlan parking lots. Officer Spencer observed that an individual who appeared to be a security guard was wandng patrons as they entered the west-side of the premises from the parking lot. Later that night between 9:00 PM and 10:00 PM the Officers returned to the Mazatlan for a proactive police visit. Officer Spencer observed the same security guard outside at the west-side door; however, the security guard was not wandng patrons. Officer Pinoniemi saw two people, who were not wanded, walk directly past the security guard and enter the building. The Officers, who were in their Raid gear with St. Paul Police emblazoned on the back of their shirts, went into the bar and the security guard followed them.<sup>7</sup>

7. The Mazatlan policy is that all wandng is to occur inside the premises at the actual entrance to the barroom between the candy machine and the ATM machine. However, wandng has occurred outside. Patrons must walk through a short hallway which includes the entrance to the men's restroom before reaching the actual barroom entrance. There are fourteen cameras covering the Mazatlan, no videotape was provided to rebut the police officers testimony that they saw no wandng at the west-side door.<sup>8</sup>

8. There was only one security guard, Eric Friederich, wandng on September 14, 2010. Mr. Friederich observed the police officers parked in the Mazatlan lot when Mr. Friederich was outside smoking. Mr. Friederich recalled the time as approximately 9:00 P.M. Mr. Friederich did not recall any patrons entering the premises at that time. At approximately 10:30 to 11:00 P.M., Mr. Friederich saw the officers walking around the parking lot while he was again outside smoking. He had not seen them park in the lot. Mr. Friederich followed the officers into the building. While the police officers were in the bar Mr. Friederich watched the door to see whether any patrons entered.<sup>9</sup>

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<sup>6</sup> Exs. 4, 5-1 and 5-2.

<sup>7</sup> Test. of Officers Anthony Spencer and Officer Timothy Pinoniemi. Exs. 1-1 and 1-2.

<sup>8</sup> Test. of Ruby Valdovinos

<sup>9</sup> Test. of Eric Friederich.

9. Normally Mr. Friederich wands and checks ID at the barroom entrance by the ATM machine. Mr. Friederich would not wand a person at the barroom entrance if the individual was returning from using the men's restroom in the hall. Mr. Friederich would wand and check IDs at the actually parking lot entrance door when he goes outside to smoke a cigarette. Mr. Friederich would not wand a patron at that door if the patron had previously been wanded by Mr. Friederich, and was just outside having a cigarette alongside Mr. Friederich.<sup>10</sup>

10. Mazatlan admitted its first adverse action on September 10, 2008, by paying a \$500.00 fine for failing to provide video tape and allowing a banned person on the premises in violation of Conditions #2 and #7.<sup>11</sup>

11. Mazatlan admitted its second adverse action on December 14, 2008, by paying a \$300.00 fine for environmental health violations.<sup>12</sup>

12. Mazatlan admitted its third adverse action on March 20, 2009 by paying a \$1,000.00 fine plus \$350.00 in costs for a wandng violation and over service of alcohol.<sup>13</sup>

13. On September 2, 2010, Mazatlan was notified by the City of an adverse action against its licenses due to failing to maintain working video surveillance cameras and equipment. Mazatlan admitted this adverse action on September 13, 2010, by paying the \$500.00 fine.<sup>14</sup>

14. On September 16, 2010, the City issued a Notice of Violation for the June 28, 2010, adverse action recommended by the Department of Safety and Inspections (DSI), and on September 24, 2010, the City issued a Notice of Violation for the September 14, 2010 DSI adverse action recommendation.<sup>15</sup> By letter dated September 22, 2010, and September 28, 2010, Mazatlan, through its attorney, requested hearings for both Notices.<sup>16</sup>

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

## CONCLUSIONS

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction to hear this matter pursuant to Minn. Stat. § 340A.415 and St. Paul Legislative Code § 310.05.

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<sup>10</sup> *Id.*

<sup>11</sup> Test. of Christine Rozek and Ex. 3-1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Test. of C. Rozek and Exs. 6-1 and 7.

<sup>15</sup> Exs. 8-1 and 10-1.

<sup>16</sup> Exs. 9 and 11.

2. The City of St. Paul gave proper notice of the hearing and has fulfilled all relevant and substantive and procedural requirements of law and rule.

3. The City has the burden of proving the facts at issue by a preponderance of the evidence.<sup>17</sup>

4. State law and St. Paul ordinance both prohibit the sale of intoxicating liquor between the hours of 2:00 A.M. and 8:00 A.M. on any weekday.<sup>18</sup> In addition, a local authority may impose further restrictions and regulations on the sale and possession of alcoholic beverages within its limits.<sup>19</sup> Pursuant to this authority, the St. Paul Legislative Code further provides that no person shall consume or display or allow consumption or display of liquor upon the premises of an on-sale licensee at any time when the sale of such liquor is not permitted.<sup>20</sup>

5. The City has failed to meet its burden of proof that on June 28, 2010, Mazatlan served, allowed the consumption of, or displayed an alcoholic beverage after 2:00 A.M.

6. The City has met its burden of proof that on September 14, 2010, Mazatlan failed to wand patrons in violation of Condition #5 of its licensing conditions.

7. The September 11, 2010 failure to wand patrons is Mazatlan's second violation of licensing conditions in the year 2010.

8. The St. Paul Legislative Code provides that the sanction for a second violation of conditions placed upon a license is a fine of \$1,000.00.<sup>21</sup>

9. There are no substantial or compelling reasons to justify a deviation from the presumptive penalty in this case.

10. A fine of \$1,000.00 as a sanction for a second violation of licensing conditions is consistent with the authority granted by Minn. Stat. § 340A.415.

11. The Licensee's position, claim or defense in this proceeding was not frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment. The costs of this hearing should not be imposed on the licensee pursuant to St. Paul Legislative Code § 310.05 (k).

The Memorandum that follows explains the reasons for these Conclusions, and, to that extent, the Administrative Law Judge incorporates that Memorandum into these Conclusions.

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<sup>17</sup> Minn. R. 1400.7300, subp. 5.

<sup>18</sup> Minn. Stat. § 340A.504 Subd. 2 and St. Paul Legislative Code § 409.07 (a).

<sup>19</sup> Minn. Stat. § 340A.509.

<sup>20</sup> *Id.* and St. Paul Legislative Code § 409.07 (d).

<sup>21</sup> St. Paul Legislative Code § 310.05 (m).



The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### RECOMMENDATION

The Administrative Law Judge recommends that the St. Paul City Council take appropriate action against the license of Mazatlan, LLC, d/b/a Mazatlan.

Dated: December 17, 2010



MARY E. MCGINNIS  
Administrative Law Judge

Reported: Digitally Recorded

### NOTICE

The St. Paul City Council is requested to serve notice of its final decision upon each party and the Administrative Law Judge by first-class mail.

### MEMORANDUM

The first issue is whether the police officer observed the service, consumption or display of an alcoholic beverage after 2:00 A.M., on June 28, 2010. Despite Mazatlan bartender Jessica Breault admitting, without any hesitation, that she had executed just the action the police officer observed, an extraordinary amount of time was committed to disputing that the officer would not have been able to see clearly into the Mazatlan at the time. There is no question that Ms. Breault poured liquid from a long-neck Grenadine bottle into a glass for Mrs. Sanchez. Even if the officer could not see the Sprite being poured, the issue is the liquid in the Grenadine bottle, not whether there were other liquids. The City was able only to provide the sighting of a liquid being poured from a long-neck bottle, which looked like a liquor bottle, after hours in Mazatlan. The officer never entered the premises. The glass was never recovered. There was no evidence regarding the actual chemical nature of the liquid, the odor of the liquid or the color. It was never reported that Ms. Breault appeared to be defensive or evasive when acknowledging the officer's hand signals. The officer reported that the bartender did acknowledge his gestures, but the exact nature of the acknowledgement was never explained. Even if Ms. Breault's credible testimony were ignored, the City failed to meet

its burden of proof, relying instead on the flawed supposition that the only liquid poured from a long-neck bottle in a bar after 2:00 A.M. must be alcoholic.

The second issue is whether on September 14, 2010, after 9:00 P.M., Mazatlan's security guard wanded patrons entering the premises from the parking lot as he stood outside smoking. The security guard Eric Friederich was a credible witness. He had just started working at Mazatlan in August 2010, and was genuinely concerned about making a good impression on his new employer. He made statements against his own interests, and Mazatlan's interests, by candidly reporting that he did not re-wand patrons returning to the barroom from the men's restroom, or patrons who re-entered after standing outside with him smoking. It was very clear that Mr. Friederich was obviously unaware of the strict nature of the re-wanding requirement.

The two police officers clearly saw the security guard at the west-side entrance to the building. The security guard agreed that he was there both times the officers noted. While there was some dispute as to the actual hour, there is no dispute that the second time the officers appeared it was after 9:00 P.M. The security guard did not immediately observe the police officer when they arrived for the second time. He was not aware of them until he saw them walking in the parking lot. However the police officers were aware of him. Officer Spencer saw two people walk right past the security guard who did not wand them. It was never clear whether these two had been smoking with the guard. Although well meaning and eager to do a good job, Mr. Friederich's testimony supported the officers' testimony, by admitting that he would not re-wand individuals who were outside smoking with him and within his sight.

**M. E. M.**