



December 6, 2023

Mr. Wesley E. Spearman  
Ms. Darcy Golish  
DWD Group LLC, d/b/a Gather Eatery & Bar  
857 Grand Avenue  
Saint Paul, MN 55105

VIA EMAIL: wes@gatherstpaul.com

**Re: DWD Group LLC (ID# 20230000453), d/b/a Gather Eatery & Bar, 857 Grand Avenue  
Liquor On Sale-291 or More Seats, Liquor On Sale-Sunday, Liquor Outdoor Service Area  
(Patio), Entertainment (B), and Gambling Location licenses**

Dear Mr. Spearman and Ms. Golish:

I have completed my review of your contested license application and arrived at the findings and recommendation I will be forwarding to the City Council. The recommendation includes revised license conditions from those most recently put forward by the Department of Safety and Inspections (DSI). I outline these in the pages which follow and conclude with an affidavit for your signature indicating your agreement to abide by the proposed license conditions. Of course, you have the option to choose to make or not make this agreement. I will need to include your position on the affidavit in my recommendation to Council as a part of the resolution which will go before them for their consideration. Therefore, I ask that you provide me the signed affidavit or a statement indicating your reasons for choosing not to move forward with the proposed conditions by 4:30 PM on Wednesday, December 13.

What follows are my findings and recommendation on your application to consider before the City Council vote on the matter.

#### **BACKGROUND**

**Location/Address:** 857 Grand Avenue; Council Ward 2; District Council 16

**PIN:** 022823420125

**Existing Primary Use:** C-Restaurant/Bar

**Occupancy Group Type:** A-2

**Zoning:** B2 / HPC: Historic / General: EG East Grand Ave / Sign: SSD-GA Grand Ave

**Heritage Preservation:** HP Inventory # RA-SPC-1344 / HP Property Name Bingham & Norton / HP Architect/Builder Day, Beaver Wade / General Construction Company / HP Date Built 1915

**Legal Desc:** Summit Park Addition to, ST. PA LOTS 15 16 17 and LOT 18 BLK 18

**Owner:** East Mall Associates/Billy Wengler

**Tax Owner:** East Mall Associates

**Certificate of Occupancy Responsible Party:** East Mall Assoc/Bill Wengler

This license application is for a business you are currently operating under a management agreement with RJMP Group Inc. (RJMP), d/b/a as Billy's on Grand (Billy's), which holds the following licenses: Liquor On Sale-291 or More Seats, Liquor On Sale-Sunday, Liquor on Sale 2AM Closing, Liquor Outdoor Service Area (Patio), Entertainment (B), and Gambling Location. This summer, you applied for these licenses: Liquor On Sale-291 or More Seats, Liquor On Sale-Sunday, Liquor Outdoor Service Area

(Patio), Entertainment (B), and Gambling Location. You did not apply for a Liquor on Sale 2AM Closing license.

During the 15-day notification period, correspondence of concern/objection was received that triggered the June 1, 2023 hearing. Letters of support were also received. More letters were also received outside of the notification period and leading up to the hearing date.

At the June 1, 2023 legislative hearing, DSI Licensing and Zoning staff reviewed your application and recommended approval with conditions. You were afforded an opportunity to present your plan and spoke on matters concerning your application. Others who chose to comment in favor of or in opposition to the issuance of your business licenses were also provided an opportunity to make statements. Following the hearing and review of subsequent materials provided by you and others, these are the key questions which required further analysis and deliberation:

- Is there sufficient evidence to warrant a denial of the application for a Liquor On Sale-291 or More Seats, Liquor On Sale-Sunday, Liquor Outdoor Service Area (Patio), Entertainment (B), and Gambling Location licenses?
- Can this business be held accountable for the increase in nuisance activities and gun violence on Grand Avenue/Summit Hill Neighborhood as compared to increase in crimes to other parts of the city?
- Does the earlier closing time of other businesses on Grand Avenue provide the basis for a mandate that DWD change its hours of operations from what had been allowed for as previously held by past license holders conducting business at this location?
- Are the business's hours of operation, including late night closing, reasonably connected to an increase in crime between the hours of 12 a.m. and 2 a.m.; e.g., is the relationship correlational/coincidental or can it be shown to be causal in nature?
- Is the neighborhood unduly targeting a black-owned business on Grand Avenue and basing its positions on that, rather than objective criteria?
- Is there sufficient parking for Gather Eatery & Bar and should the business be responsible for monitoring a shared parking space with mixed use?
- Can a city mobile camera unit be permanently placed on Grand Avenue to deter nuisance activities?
- Can DWD's past actions be reasonably used to predict if it will fail to comply with future city requirements?
- Are safety issues created by having an open, outdoor space with overgrown landscaping?

### **PROCEDURAL HISTORY**

The current licenses are held by RJMP under Mr. Randall Johnson's management doing business as Billy's on Grand. RJMP has held the licenses since 2020 for the licensed premises of 857 Grand Avenue. After a series of incidents in 2020, RJMP decided to cease operating Billy's on Grand.

Mr. Wesley Spearman of DWD Group LLC (DWD) entered into a management agreement with RJMP making him the managing operator of Billy's (See, Management Agreement - Billy's on Grand). DWD also applied for its own Liquor on Sale – 291 seats or more, Liquor on Sale – Sunday, Liquor on Sale 2AM Closing, Liquor Outdoor Service Area (Patio), Entertainment (B), and Gambling Location licenses and to continue operating as Billy's on Grand in the summer of 2021. A hearing was conducted in October and a recommendation for approval to the City Council was made per RES 21-1575 in November. The matter was laid over without a Council decision.

On February 1, 2022, the city took adverse action against the licensee, RJMP, and the matter was resolved by the payment of a \$500 fine and additional license conditions as voted by the City Council per RES 22-311 at its March 2, 2022, meeting.

On March 9, 2022, three months after the first offense, the city took another adverse action against the licenses held by RJMP citing various violations of conditions and legislative codes. DSI, through its

Notice of Violation (NOV), requested the presumptive penalty of \$1,000 based on 4 separate incidents of violations. The NOV also provided an option for the licensee, RJMP, to request a hearing before an Administrative Law Judge (ALJ) if licensee disputed the facts. An administrative hearing was held and the ALJ determined that it was appropriate for the City Council to impose the standard matrix penalty of \$1,000 for the second offense. The City Council voted to approve the \$1,000 penalty for the second offense per RES 23-183.

Per RES 23-417, the City Council on April 5, 2023, voted to direct DSI to proceed with the application submitted by Mr. Spearman of DWD Group LLC as the current licenses were held by Mr. Johnson of RJMP Group Inc. The resolution took into account the two previous adverse actions where the licensee was RJMP, noting a licensee is the responsible party accountable for violation of conditions and legislative codes. Deputy Director Dan Niziolek stated that per city ordinance, the management agreement between Mr. Johnson (RJMP) and Mr. Spearman (DWD) would be voided once DWD got its licenses. Deputy Director Niziolek explained that the City Council is the only entity that can decide to accept the relinquishment of a license. DSI was directed to proceed with the application process. The resolution also directed that if the licenses were denied, DSI was to immediately take up the adverse action for revocation. Saint Paul Legislative Code sets presumptive penalties for violations under which the City Council could consider adverse action. The penalty matrix dictates that the penalty for a first violation is \$500, the second violation is \$1,000, the third violation is a \$2,000 fine and 10-day suspension, and the fourth violation is revocation. In this case, the city imposed the penalty matrix for the first and second violations and had requested an upward departure one level up on the penalty matrix to revocation.

DSI's review of DWD's application to do business as Gather Eatery & Bar, resulted in the recommendation to approve the Liquor On Sale-291 or More Seats, Liquor On Sale-Sunday, Liquor Outdoor Service Area (Patio), Entertainment (B), and Gambling Location licenses with the following conditions:

1. Wait staff, security and/or managers will check government-issued photo identification to ensure that customers/patrons under the age of 21 will not be served or consume alcohol.
2. Per Fire Inspection Certificate of Occupancy requirements, total occupancy limit is 297. Any addition of billiard tables or other table games will require license holder to notify the Department of Safety and Inspections for reassessment of the total occupancy limit.
3. 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 videos. 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.
4. License holder shall retain clearly identifiable and appropriately trained security personnel. Clearly identifiable security personnel shall mean a uniform or marked outerwear. Security personnel staffing shall be sufficient to manage each entrance/exit of the licensed liquor service area(s) as well as conduct 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.
5. Security and/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.

6. License Holder shall ensure no alcoholic beverages leave the licensed liquor service area(s).
7. 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.
8. License holder understands that Saint Paul Legislative Code sets presumptive penalties for violations under which the City Council could consider adverse action and while these penalties are presumed to be appropriate, the City Council may deviate from the presumptive penalties when City Council finds and determines that there exist substantial and compelling reasons for upward departure. License holder acknowledges that past adverse actions under which the Licensee was managing the Licensed Premises may be considered as a basis for upward departure if new violations occur in the future.
9. License holder will ensure all amplified music and all other establishment generated sounds and/or noises are compliant with all pertinent Saint Paul Legislative Code and Minnesota Statutes.

## FINDINGS

**There is not sufficient evidence to warrant a denial of the application for a Liquor On Sale-291 or More Seats, Liquor On Sale-Sunday, Liquor Outdoor Service Area (Patio), Entertainment (B), and Gambling Location licenses.** DSI Licensing and Zoning staff reviewed DWD's application and recommended approval with conditions. The use is a permitted use and has been established for over 30 years. Likewise, a follow-up discussion with Saint Paul Police Department (SPPD) on their enforcement experience and records did not yield evidence which directly ties the business to any alleged nuisance or crime activities. Nor did it reveal that management was unresponsive or had failed to comply with SPPD's request since January 2023. In fact, SPPD stated that DWD has been responsive to their inquiries. Based on the recommendation of DSI Licensing and Zoning and police's satisfaction with DWD's responsiveness, there is no evidence to warrant license denial for this reason. DSI's recommendation of approval with nine conditions being imposed on the licensed premises more than meets many of the neighborhood concerns. Notably, there were two May 2023 public safety incidents prior to the legislative hearing, which are still under investigation. If there is conclusive evidence to tie the two incidents to DWD, the city will take further enforcement actions for violations of conditions or legislative codes. In addition, the two noteworthy 2022 violations mentioned in the objection letters and testimonials have been resolved by the City Council per RES 22-311 and RES 23-183 and will not be revisited in this analysis.

**Data reviewed does not support a conclusion that DWD is responsible for the increase in nuisance activities and gun violence on Grand Avenue/Summit Hill Neighborhood as compared to increase in crimes to other parts of the city.** The issue of public safety was raised by the Grand Avenue/Summit Hill neighborhood at the legislative hearing. This issue is not unique to this neighborhood or the City of Saint Paul. Indeed, there is a spike in crime which is documented in citywide crime statistics. The pandemic is one of several critical factors contributing to an unusual increase in robberies and shoplifting from businesses, including those on Grand Avenue. These incidents occur not at the fault of a business or resident. Both residents and business owners alike experienced the same negative effects of the increase in crime. Many affected being nearby residents, business neighbors, and customers, employees, and owners of Gather (aka, Billy's).

Relative to other businesses (See, Table of Crime Breakdown for period 04-01-2022 to 05-02-2023 and Citywide Data<sup>1</sup>) in Saint Paul, businesses in the Grand Avenue/Summit Hill neighborhood have experienced some nuisance activities though relatively small.

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<sup>1</sup> <https://information.stpaul.gov/datasets/stpaul::crime-incident-report/about>

**04/01/2022 to 05/02/2023**

| <b>Crime Type</b>                             | <b>Citywide</b> | <b>Summit Hill</b> |
|---|-----------------|--------------------|
| Aggravated Assault                            | 263             | 6                  |
| Motor Vehicle Theft                           | 500             | 12                 |
| Robbery                                       | 64              | 2                  |
| Simple Assault                                | 345             | 6                  |
| Theft From Building                           | 80              | 3                  |
| Theft From Motor Vehicle                      | 303             | 13                 |
| Theft From Motor Vehicle<br>Parts/Accessories | 537             | 18                 |
| Weapon Law Violations                         | 229             | 1                  |

Attachment A – Sample Grand Avenue Businesses, Current Licenses and License Conditions showed many businesses with different licenses, hours of operations, closing hours restriction, and license conditions (as applicable). Some businesses shared similar but not exact characteristics. Many of those businesses are not housed within a large mall complex of mixed use with more activities like Gather.

To better understand the activities regarding public safety for 857 Grand Avenue, the Police Incident Reports for two periods were compared. Comparing the latest one-year report for period 05-09-22 to 05-09-23 (See, Attachment B) under DWD’s management agreement to the period of 05-01-2019 to 05-01-2020 (See, Attachment C) operated under RJMP, the police calls for service did show a significantly higher percentage of calls; however, 70% of those calls were police proactive visits and false alarms. Of the remaining 30%, about half of the calls resulted in a written report. Furthermore, DWD had the extra burden of Billy’s being open during the pandemic when most store front businesses on Grand Avenue were not open or open with limited hours. The two May 2023 incidents resulted in written reports requiring an investigation to substantiate the reported weapons discharge incidents. As there is an ongoing investigation, it is unknown whether these two incidents can be attributed to DWD, especially since Gather is housed within a large mall complex. Should the investigation conclude and determine that DWD violated conditions and/or legislative codes, the city will take further actions as necessary, and the matter will be separately addressed.

Also, comparing the police calls for service (See, Attachment D - Crime Incident Report - 04-01-2022 to 05-02-2023) from Billy’s (now known as Gather) licensed establishment with similar licenses to other parts of the city and focusing on Gabe’s Bar, Plums, St Paul Tap, Sweeney’s, and Tiffany’s for the period of 04-01-2022 to 04-27-2023, the results showed that while Billy’s had received more calls, many of the incidents were related to false alarms, assisting and responding to citizen calls and other agency or doing welfare checks. While there are also more serious crime activities, those are comparable to the other licensed establishments.

**04/01/2022 to 04/28/2023**

| <b>Establishment</b> | <b>Count of Calls for Service</b> |
|----------------------|-----------------------------------|
| Billy's              | 84                                |
| Gabe's Bar           | 14                                |
| Plums                | 20                                |
| St Paul Tap          | 37                                |
| Sweeney's            | 12                                |
| Tiffany's            | 21                                |

In summary, DWD should not be blamed for this increase in nuisance activities or gun violence. To broadly attribute the increase in nuisance activities and gun violence to DWD without conclusive evidence is unreasonable and unfair.

**DWD is legally allowed to stay open until 1 a.m.** Objectors want DWD to close Gather either at 10 p.m. or 11 p.m. to align with other nearby businesses. The State of Minnesota allows on-premises alcohol sales seven days a week from 8 a.m. to 2 a.m. (See, MN 340A.5040). The city does not mandate specific hours of operation. This establishment has been grandfathered in as it previously held a 2 a.m. license so even though they have decided to not apply for the Liquor on Sale 2AM Closing license, DWD can legally open Gather until 1 a.m. During the hearing, Mr. Spearman expressed a willingness to close earlier on some nights but wanted the ability to remain open until 1 a.m. as the law allows. He also stated that he has closed the business early and will continue to assess. A licensee can always voluntarily close earlier than what legislation allows. Again, the city does not mandate specific hours of operation.

Furthermore, businesses on Grand Avenue all hold different licenses, and all have different hours of operations. (See, Attachment A) Some businesses are restaurants, and some are restaurants with liquor sales. Some of those businesses with liquor sales have license conditions attached and conditions vary. The 857 Grand Avenue licensed premises have held Liquor On Sale-291 or More Seats, Liquor On Sale-Sunday, Liquor on Sale 2AM Closing, Liquor Outdoor Service Area (Patio), Entertainment (B), and Gambling Location licenses since the 1990s.

The expectation that for DWD to be granted the licenses, they must adhere to the same hours of operations as other establishments on Grand is unreasonable and infringe on their ability to independently operate. This use, as licensed, is permitted and meets the licensing and zoning requirements. As long as DWD adheres to city requirements, they should be able to operate their business on Grand Avenue without the condition that mandate them to close at 10 p.m. or 11 p.m.

**Data does not exist to show a correlation between late night closings and an increase in crime between the hours of 12 a.m. and 2 a.m.** During the legislative hearing, Sergeant Charles Graupman stated that many Saint Paul businesses with this same liquor license have chosen to voluntarily close at midnight due to crime concerns. Deputy Director Niziolek also stated that this has put an increase in crime pressures on the businesses who choose to remain open past midnight. There is not enough available data to directly link the increase in crime to DWD. Furthermore, making DWD responsible for the increase in crimes or nuisance activities because they want the option to remain open past midnight while other businesses on Grand choose to close early is arbitrary and meritless without sufficient evidence. DWD is legally allowed to stay open until 1 a.m. with the license it currently holds. As such, a recommendation to mandate an earlier closing time than what DWD is legally allowed to do is unreasonable at this time.

Furthermore, given that nuisance activities and crimes at this business are not substantially different than those at similar businesses in Saint Paul during hours after midnight, there is no reason to single out this business and ascribe more mandate restrictions or to outright deny the licenses application.

There may be other methods to help reduce crime for the city after midnight for bars and restaurants that serve liquor; however, the mandate to require DWD to close earlier than what they are legally allowed to do without concrete evidence is beyond the purview of this matter. Further studies and a larger discussion at the city, county, state, and federal level should be explored to understand whether there is a correlation between crimes and the hours of 12 a.m. and 2 a.m.

**The neighborhood appears to be targeting a black-owned business on Grand Avenue.** Mr. Spearman is black, and Mr. Johnson is white. Although nothing in the record points directly to the neighborhood targeting Gather for being a black-owned business, there may be potential substantiation of racial discrimination. Active campaigning against DWD's application included social media, flyers, and petition. While many objectors stated that their comments were not racially motivated and that they had supported DWD's business, the partners of DWD testified they felt racial discrimination and unwelcome based on race.

The Police Incident Data spreadsheet (See, Attachment D) also captured an increased in number of police calls relative to other Saint Paul businesses; however, there was not an increased volume or severity of

nuisance activities. Many of these police calls did not result in a written report, which may support the applicant's claims of feeling racially discriminated. Incidents that did not result in a written report means that the allegation was unsubstantiated.

Also, the negative neighborhood activity in advance of the license hearing may justify the applicant's claims of racial discrimination hurting their business.

This potential substantiation of racial discrimination contributed to the analysis that denial of the license application is not warranted.

**There is sufficient parking for Gather Eatery & Bar.** The letters and testimonials submitted as part of the legislative hearing process raised concerns about a lack of parking contributing to an increase in crime occurring farther away from the business as patrons must park distantly. Gather is one of several tenants in the large mall complex. They do not own the parking lot, which is managed and owned by East Mall Associates.

Because the parking lot is a shared, open space without hours restrictions, it would be difficult to distinguish Gather's customers from the guests of other businesses in the mall. Also, residents from nearby apartments can also use the parking lot. Deputy Director Niziolek stated that the parking situation is challenging because the property owner is primarily responsible for how the parking lot is used. However, all tenants, including DWD, must shoulder some responsibility. Some responsibility placed on DWD is the imposition of license conditions #4 and #5 to ensure that they provide security personnel (at their expense) to monitor the parking lot starting at 10 p.m. until closing to disperse and discourage loitering. The Legislative Hearing Officer agrees with Deputy Director Niziolek's assessment that when Gather's licenses are granted, more discussions are needed to address parking lot issues and accountability, including alley access.

The city has removed parking minimums and to require DWD to secure more nearby parking spaces is an added burden and contradicts the intention of the ordinance change. There are many businesses and residents on Grand Avenue that share off-street parking, and there is no direct evidence that all the parking spots are taken by Gather customers. Therefore, it is unreasonable and prejudicial to place the sole responsibility on DWD for the increase in parking on Grand Avenue.

**It is questionable as to whether a mobile camera unit would deter nuisance activities.** According to Senior Commander Stacy Murphy, the city currently owns 4 mobile camera units that can be deployed as needed throughout the city. Mobile camera units are a city resource that get deployed based on need and the highest priority for the city. A large event is likely to have a few mobile cameras deployed; however, these placements are temporary. The mobile camera unit can also be redeployed at any time based on high-risk need. In May of 2023, the mobile camera unit was placed on Grand Avenue for the Grand Old Day event, which made the community feel safe and why they are looking to the city to put in a permanent placement.

A mobile camera unit is a great tool for the city, but there are only a limited number of them available. Since mobile camera units are expensive and temporary, priority consideration is most often allocated to the Police Department and Emergency Management. Mobile camera units only record events and do not offer more protection. Their placement on the ground and size would appear to deter nuisance or criminal activities; however, if a crime happens, the mobile camera unit cannot stop the crime from occurring. Mobile camera units are not interactive and have limitations; they do not record sounds, can only capture events in one direction, and cannot be remotely controlled to rotate or offer zoom-in features.

CCTV cameras may be a better option since they are more affordable, can be permanently placed, and can record events; however, they also share the same limitations. Similarly, CCTVs may also not deter crime from happening. The city currently has multiple CCTV cameras installed (See, CCTVs Location Map) throughout its boundaries. However, the city has budgetary discretion regarding how many more CCTVs can be added, installed, and placed. The ongoing maintenance cost is also a challenge. SPPD

currently uses grant funding for the ongoing maintenance cost of the CCTVs. However, with the grant funding ending soon, the city will need to explore other funding source. As an aside, if there is interest to purchase more CCTVs to monitor Grand Avenue, Neighborhood Star funding may be a resource, noting again, the ongoing maintenance cost will still need to be addressed.

Another option is to have the licensee work with the property owner to install more cameras in the mall. At the ALJ hearing, DSI's attorney stated the property owner of the mall did not allow cameras to be installed throughout the mall. Only Billy's and the bathroom nearby have cameras. Outdoor cameras for the mall and along Grand Avenue may also be considered with further discussions and agreement among the licensee, property owners, city, and nearby businesses to invest in privately-owned cameras to help monitor crime activities.

**DWD is willing to comply with city requirements.** DWD shares the same public safety concerns as those expressed by the community. They want to be a part of the community. While recent events and past incidents have been troubling and have created doubts and distrust about DWD's ability to be a responsible business owner, they have made a good start with their continued compliance with DSI and SPPD's requests and requirements. DWD has also been open and willing to engage with neighbors about their plans to improve the business. These measures exemplify most responsible business owners' efforts to safeguard the community.

Changing the business model is a huge financial investment. DWD is willing to invest more than \$300,000 in this new business rebranding venture. The Gather Business Plan (attached) documents the following:

- remodel the establishment (i.e., security and doors upgrade, new/refinished floors, repaint wall interiors, upgrade furniture, etc.),
- improve security (i.e., training restaurant staff and security personnel, implementing wand and ID scans, proactive monitoring and logging of parking lot sweeps that will occur every two hours from 10 p.m. to closing, enforcing a dress code after 9 p.m., and installing 35- 4K interior and exterior cameras with live feeds and recordings which will be stored for 90 days),
- focus on family gatherings,
- create separate zones for speakeasy zone, sports/entertainment zone (e.g., live band performance, karaoke), and outdoor dining,
- feature local artists' works,
- create space for networking opportunities for the business community, gathering spot for people of diverse backgrounds, and hosting monthly youth events,
- adopt a new menu with more hiring of servers, hosts, chef, and sous chef, and
- become a contributing member of the Grand Avenue Business Association.

If DWD fails to operate Gather responsibly, Saint Paul Legislative Code (SPLC) Sec. 310.06(b) provides the basis for taking adverse action. Portions of the code also enable the city to pursue violation for action under state or federal regulations relevant to the licensee's personal behavior and/or as they relate to the operation of the business. Furthermore, an agreement to condition #8 authorizes the city to deviate from the penalty matrix as emphasized.

8. License holder understands that Saint Paul Legislative Code sets presumptive penalties for violations under which the City Council could consider adverse action and while these penalties are presumed to be appropriate, the **City Council may deviate from the presumptive penalties when City Council finds and determines that there exist substantial and compelling reasons for upward departure. License holder acknowledges that past adverse actions under which the Licensee was managing the Licensed Premises may be considered as a basis for upward departure if new violations occur in the future.**



**Open outdoor space with overgrown landscaping is creating a safety issue.** As part of DWD's proactive safety plan for Gather, they want to create a safe patio space for their customers. They are proposing cutting down the shrubbery to establish a clear line of sight. That proposal is supported by Crime Prevention Specialist Patricia Lammers. She agrees that the shrubs create poor sight lines.

She has also recommended some changes to the patio entry points after she visited the site and noted the following:

The current patio space is located at the front of the establishment. There are "three access points-- one on the east side of parking lot that allows patrons to directly enter and exit from the patio, one from the west side next to main entry space that allows direct access to the patio, [and] the final access is from the bar where a door that rolls up allows direct access to the entire patio area. The area is shielded with large greenery that surrounds the sidewalk facing the south side and part of the east side."

Ms. Lammers recommends the creation of an egress and ingress plan to address issues involving all points of entry/exit. As such, the recommendation is to add one more condition to the existing 9 proposed conditions from DSI to address crime prevention through environmental design standards, the proposed condition is as follows:

10. Licensee will create and implement an egress and ingress plan for the licensed premise that will 1) ensure individuals and/or groups entering and exiting the premise will be observed by staff and 2) eliminate the gathering of patrons in exterior spaces not readily observable or controllable by staff and/or the licensee. Specifically, the licensee will a) make the front door (facing Grand Avenue) the main entrance of the licensed premises, b) make the back door (into the mall) to be as limited access as is reasonably possible, c) improve observability and eliminate unobservable areas in the patio area as is reasonably possible (minimally moving the sidewalk entrance to the patio to a location which is clearly observable from the interior active areas of the licensed premises, and d) prevent vehicular alley access as is reasonably possible. Reasonably possible shall encompass and not be limited to actions and changes the property owner will or will not allow. Within 6 months of license issuance, the licensee will submit the plan to the SPPD liaison with DSI for review and approval. Implementation of the plan shall occur within 9 months of license issuance. In accordance with this condition, licensee will obtain approval from SPPD for any substantive changes to the approved plan.

Please contact Specialist Lammers with questions or to assist you with other crime prevention methods through environmental design standards. You may email Ms. Patricia Lammers at [patricia.lammers@ci.stpaul.mn.us](mailto:patricia.lammers@ci.stpaul.mn.us), 651-266-5455 (Office), or 612-322-3209 (mobile).

### **Other Consideration**

While DSI's recommendation of approval with 9 license conditions more than meets the many neighborhood concerns, my recommendation is to modify condition #1 to address the allegations that customers of Gather are contributing to the crime and nuisance activities on Grand Avenue, reflect and strengthen DWD's proactive safety plan that includes wand and ID scans, and align with similarly licensed establishments. The recommended modification to condition #1 is as follows:

1. Wait staff, security and/or managers will check government-issued photo identification to ensure that customers/patrons under the age of 21 will not be served or consume alcohol. Licensee will also use an identification card scanner system to record and retain for a minimum of thirty (30) days the identification of all patrons who enter or re-enter the licensed establishment after 10:00 p.m. until closing during any day of operation. If an incident is deemed serious by SPPD, licensee shall make identification card scanner information immediately available for viewing by SPPD. In all other cases, licensee shall provide recorded card scanner information to the authorized requester within 48 hours.

**RECOMMENDATION**

Your application request for a Liquor On Sale-291 or More Seats, Liquor On Sale-Sunday, Liquor Outdoor Service Area (Patio), Entertainment (B), and Gambling Location licenses is approved with conditions.

Approval of your licenses is predicated on your agreement to the following conditions:

1. Wait staff, security and/or managers will check government-issued photo identification to ensure that customers/patrons under the age of 21 will not be served or consume alcohol. Licensee will also use an identification card scanner system to record and retain for a minimum of thirty (30) days the identification of all patrons who enter or re-enter the licensed establishment after 10:00 p.m. until closing during any day of operation. If an incident is deemed serious by SPPD, licensee shall make identification card scanner information immediately available for viewing by SPPD. In all other cases, licensee shall provide recorded card scanner information to the authorized requester within 48 hours.
2. Per Fire Inspection Certificate of Occupancy requirements, total occupancy limit is 297. Any addition of billiard tables or other table games will require licensee ~~holder~~ to notify the Department of Safety and Inspections for reassessment of the total occupancy limit.
3. 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 videos. 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~~ 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.
4. Licensee ~~holder~~ shall retain clearly identifiable and appropriately trained security personnel. Clearly identifiable security personnel shall mean a uniform or marked outerwear. Security personnel staffing shall be sufficient to manage each entrance/exit of the licensed liquor service area(s) as well as conduct 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.
5. Security and/or staff will conduct outside sweeps of the building, including the patio 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.
6. Licensee ~~Holder~~ shall ensure no alcoholic beverages leave the licensed liquor service area(s).
7. 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.
8. Licensee ~~holder~~ understands that Saint Paul Legislative Code sets presumptive penalties for violations under which the City Council could consider adverse action and while these penalties are presumed to be appropriate, the City Council may deviate from the presumptive penalties when City Council finds and determines that there exist substantial and compelling reasons for upward departure. Licensee ~~holder~~ acknowledges that past adverse actions under which the Licensee was managing the Licensed Premises may be considered as a basis for upward departure if new violations occur in the future.

9. Licensee ~~holder~~ will ensure all amplified music and all other establishment generated sounds and/or noises are compliant with all pertinent Saint Paul Legislative Code and Minnesota Statutes.
10. Licensee will create and implement an egress and ingress plan for the licensed premise that will 1) ensure individuals and/or groups entering and exiting the premise will be observed by staff and 2) eliminate the gathering of patrons in exterior spaces not readily observable or controllable by staff and/or the licensee. Specifically, the licensee will a) make the front door (facing Grand Avenue) the main entrance of the licensed premises, b) make the back door (into the mall) to be as limited access as is reasonably possible, c) improve observability and eliminate unobservable areas in the patio area as is reasonably possible (minimally moving the sidewalk entrance to the patio to a location which is clearly observable from the interior active areas of the licensed premises, and d) prevent vehicular alley access as is reasonably possible. Reasonably possible shall encompass and not be limited to actions and changes the property owner will or will not allow. Within 6 months of license issuance, the licensee will submit the plan to the SPPD liaison with DSI for review and approval. Implementation of the plan shall occur within 9 months of license issuance. In accordance with this condition, licensee will obtain approval from SPPD for any substantive changes to the approved plan.

You have two options to proceed by 4:30 PM on Wednesday, December 13, 2023:

1. If you agree to the recommendation with imposition of conditions, please sign the attached conditions affidavit and return it to the Legislative Hearing Office. You may email the signed conditions affidavit provided the scanned copy is legible or you may mail it. The matter will be placed on the City Council Consent Agenda for approval with conditions.
2. If you disagree with the recommendation with imposition of conditions, please contact the Legislative Hearing Office. The matter will be placed on the City Council Consent Agenda to refer it the City Attorney's Office for adverse action on the application, which could involve review by an administrative law judge.

If you have questions, please direct them to Legislative Hearing Coordinator and Executive Assistant Greg Weiner at 651-266-8512 or email [LH-Licensing@ci.stpaul.mn.us](mailto:LH-Licensing@ci.stpaul.mn.us).

Sincerely,

/s/

Nhia Vang

Legislative Hearing Officer

cc: Business Partners and Consultants VIA EMAIL: Darcy Golish ([dgolish@comcast.net](mailto:dgolish@comcast.net)) and R. Lynn Pingol ([rlynnp@makeecompany.com](mailto:rlynnp@makeecompany.com))

Ward 2

Department of Safety & Inspection: Director Angie Wiese, Deputy Director Dan Niziolek, Licensing Manager Eric Hudak, Zoning Manager YaYa Diatta, Ross Haddow, Farhan Omar, and Frances Birch

Saint Paul Police Department: Senior Commander Stacy Murphy and Sergeant Charles Graupman

City Attorney's Office: Therese Skarda

Hearing Folder

Attachments: [MN 340A.5040](#), [Chapter 310](#), [RES 21-1575](#), [RES 22-311](#), [RES 23-183](#), [RES 23-417](#), Unsigned Conditions Affidavit, [SR 23-105](#), [Management Agreement - Billy's on grand](#), [Gather Business Plan](#), CCTVs Location Map - Downtown & Citywide, Attachments A to D, and [ALL City Crime Data Records \(2014 to 2023\)](#).