



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

February 8, 2011

NOTICE OF VIOLATION

Nicole Cherry
The Cherry Pit
735 White Bear Avenue North
St. Paul, MN 55102

RE: All licenses held by Cherry's Minnehaha Tavern, Inc. d/b/a The Cherry Pit for the premises located at 735 White Bear Avenue North in Saint Paul.
License ID #: 20040000032

Dear Ms. Cherry:

The Department of Safety and Inspections (DSI) has recommended adverse action against all licenses held by Cherry's Minnehaha Tavern, Inc. d/b/a The Cherry Pit for the premises located at 735 White Bear Avenue North in Saint Paul. The basis for the recommendation is as follows:

On January 9, 2011, at approximately 2:36 a.m., Saint Paul Police officers came to your establishment on a proactive visit based on complaints of after hours drinking in the bar (CN #11-005-349). When the officers reached the bar, they observed numerous cars in the back parking lot and several cars in the parking lot directly across the street from the front entrance of the bar on White Bear Avenue.

One of the officers went to the front door and could hear music coming from inside. The officer knocked numerous times but did not get an answer because the music was so loud that the patrons could not hear the officer knocking. After several more attempts to knock on the door, the other officer shone his flashlight into the bar to get the patrons attention and noticed a male sitting at the bar drinking out of a bottle. As soon as patrons saw the officer, the bottle was slid across the bar to the bartender. The bartender took the beer and turned his back to the officer and put the bottle out of sight somewhere under the bar. Once the bottle was out of sight someone opened the door.

The male the officer saw drinking out of the bottle let the officers in and told them he had been drinking alcohol just before he let them in. He told the officers he is an employee of the bar, but not working that night.

Another employee told the officers there was a Christmas party in the basement that night. The officers told him they had been getting complaints of after hours drinking inside the bar. He told the officers he knew of the complaints and that officer had been stopping by nightly to do compliance checks. He thought the bar had fixed the problem.

The bartender told the officers he was not a regular employee of the bar just filling in because of the employee Christmas party that night. He also told the officers that he works as a bartender at other locations and knows when to stop serving alcohol, but he thought things were more lax tonight because it was an employee party. This is a violation of Saint Paul Legislative Code § 409.26 (b) (6) – *After hours display or consumption of alcoholic beverages.*

On January 10, 2011, you sent an email to Kris Schweinler at 10:13 a.m. indicating that you were aware of the violation the previous evening and would provide video to DSI proving that alcohol was not poured or consumed after 2:00 a.m. Later that same day, you sent a second email to Kris Schweinler stating that you could not provide the video because you found out from the technician that the DVR had not plugged in that night.

This is a violation of license condition #1 (affidavit signed on July 21, 2006) which states: *“Maintain in good working order, video surveillance cameras and recorder on the interior and exterior of the establishment during business hours. Tapes must be maintained for 7 days and available to police and inspector when requested.”*

As a result of these two violations, per Saint Paul Legislative Code § 310.05(m) (1), the licensing office will recommend a \$500.00 matrix penalty and modification to license condition #1 to read as follows: *“License holder shall maintain video surveillance cameras inside and outside the establishment. The video recordings shall be kept by the license holder for at least thirty (30) days and shall be available for viewing by the Saint Paul Police Department (SPPD) immediately upon request. In addition, if the SPPD responds to a call at the licensed premises, and due to the crime, requests that a copy of the surveillance footage be immediately provided, the license holder shall have technology available to make the copy at the time of the request and shall have it for the police without delay. In other cases, if the SPPD or the Department of Safety and Inspections (DSI) requests copies of the surveillance tapes, licensee shall have a 48-hour period in which to provide such copies.”*

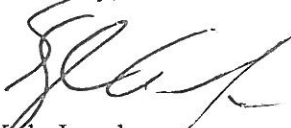
At this time, you have three options on how to proceed:

1. If you wish to admit to the violation you can pay the \$500.00 matrix penalty. You can send the payment to the Department of Safety and Inspections (DSI) located at 375 Jackson Street, Ste. 220, St. Paul, Minnesota 55101-1806 no later than **Friday, February 18, 2011**. Information should be directed to the attention of Christine Rozek. A self-addressed envelope is enclosed for your convenience. Payment of the \$500.00 matrix penalty will be considered a waiver of the hearing to which you are entitled.
2. If you wish to admit the facts but you contest the \$500.00 matrix penalty, you may have a public hearing before the Saint Paul City Council. You will need to send me a letter with a statement admitting to the facts and requesting a public hearing. I will need to receive your letter by **Friday, February 18, 2011**. The matter will then be scheduled before the City Council for a public hearing to determine whether to impose the \$500.00 matrix penalty and modification to license condition #1. You will have an opportunity to appear before the Council and make a statement on your own behalf.
3. If you dispute the facts outlined above, you may request a hearing before an Administrative Law Judge (ALJ). At that hearing both you and the City will appear and present witnesses, evidence and cross-examine each other's witnesses. After receipt of the ALJ's report (usually within 30 days), a public hearing will need to be scheduled. At that time, the City Council will decide whether to adopt, modify or reject the ALJ's report and recommendation. If this is your choice, please advise me no later than **Friday, February 18, 2011**. and I will take the necessary steps to schedule the administrative hearing.

If you do not respond to this letter by February 18, 2011, the matter will be placed on the City Council Consent Agenda for imposition of the \$500.00 matrix penalty and modification to license condition #1.

If you have questions about these options, please feel free to contact me at 266-8710.

Sincerely,



Kyle Lundgren
Assistant City Attorney

cc: Christine Rozek, Deputy Director of DSI
Nicole Cherry, 1701 Olene Avenue North, Stillwater, MN 55082
Lisa Heilman, Community Organizer, District 2 Community Council Greater East Side
1961 Sherwood Avenue, St. Paul, MN 55119-3230

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 8th day of February, she served the attached **NOTICE OF VIOLATION** true and correct copy thereof in an envelope addressed as follows:

Nicole Cherry
The Cherry Pit
735 White Bear Avenue North
St. Paul, MN 55102

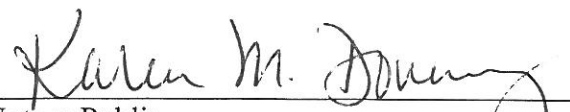
Nicole Cherry
1701 Olene Avenue North
Stillwater, MN 55082

Lisa Heilman, Community Organizer
District 2 Community Council Greater East Side
1961 Sherwood Avenue
St. Paul, MN 55119-3230

(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 8th day of February 2011


Notary Public

