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March 22, 2011

Via E-Mail
Kyle.Lundgren@ci.stpaul.mn.us

Kathy Lantry
President, St. Paul City Council
Third Floor, City Hall
15 West Kellogg Blvd.
St. Paul, MN 55102

Kyle Lundgren, Esq.
Assistant City Attorney
400 City Hall
15 West Kellogg Blvd.
St. Paul, MN 55102

RE: Adverse action taken against all Licenses held by *V & HM Plus, LLC d/b/a El Pantano Plus* for the premises located at 586 Rice Street in St. Paul; License ID No: 20080002369; St. Paul City Council Resolution No. 11-295.

Dear Council President and Mr. Lundgren:

I am writing to you in your capacity as President of the St. Paul City Council and as Assistant St. Paul City Attorney handling this matter for the City.

As you know, the City Council voted on February 16, 2011 to suspend licenses held by V & HM Plus, LLC d/b/a El Pantano Plus ("El Pantano") for ten (10) days, as well as to enforce a \$2,000 penalty against the same. I am writing to request that enforcement of this license suspension and monetary penalty be stayed.

El Pantano is in the process of seeking a Writ of Certiorari with the Minnesota Court of Appeals regarding this issue and requests that the license suspension and monetary penalty be stayed pending the final determination of this case by the Minnesota Court of Appeals. This is consistent with a request for a stay under Rule 108.02 of the Rules of Civil Appellate Procedure. That rule contemplates a request be made to the trial court but, since there is no trial court in this case, I am directing this request to your offices, as representatives of the City of St. Paul.

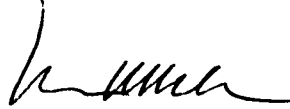
Attached you will find El Pantano's Petition for Writ of Certiorari, proposed Writ of Certiorari and Statement of the Case to supplement the Petition as is required under Rule 115.03 of the Rules of Civil Appellate Procedure. The attachment of these documents is not meant to act as service of these documents, but only to show that El Pantano is in fact, petitioning for a Writ of Certiorari that will be filed this week, and as such, a stay of execution in the above referenced matter is appropriate. We will serve the appellate pleadings when they are filed with the Minnesota Court of Appeals.

The issues that El Pantano seek to be reviewed by the Minnesota Court of Appeals are outlined in the Statement of the Case. In summary, El Pantano wishes the Court to review (1) whether the City Council of St. Paul came to the conclusion that El Pantano violated its license conditions upon arbitrary or capricious consideration and other error of law, or upon unlawful procedure as enumerated under Minn. Stat. § 14.62; (2) whether consular identification cards should be considered a form of “proper picture identification” for purposes of determining age when entering an establishment serving alcohol, and if not, whether licensees should be affirmatively notified that consular identification cards are not a form of “proper picture identification” prior to being assessed a penalty.

A denial of this request to stay execution of the aforementioned penalties would result in irreparable harm to El Pantano as it would inevitably be subjected to those penalties before final disposition of the issues before the appropriate authorities. Further, since there is no cost to the city involved in staying the execution in the above referenced matter, a supersedeas bond is inappropriate and unnecessary at this juncture.

Thank you for your consideration of this request.

Sincerely,



Nicholas M. Wenner
Attorney at Law

NW/bm

Enclosures:

Petition for Writ of Certiorari
Proposed Writ of Certiorari
Relator’s Statement of the Case

cc: V & HM, LLC
Shari Moore (via e-mail: cityclerk@ci.stpaul.mn.us)

STATE OF MINNESOTA
IN COURT OF APPEALS

V & HM Plus LLC
d/b/a/ El Pantano Plus

WRIT OF CERTIORARI

Relator,

COURT OF APPEALS NO: _____

vs.

City of St. Paul City Council Resolution
Number: 11-295

City of St. Paul,

DATE OF DECISION: February 15, 2011

Respondent

TO: The City of St. Paul:

You are hereby ordered to return to the Court of Appeals and serve on all parties in accordance with Rule 115.04, subd. 3, within 30 days after service of the petition or 14 days after delivery of a transcript, whichever is later, and itemized statement of the record, exhibits and proceedings in the above-entitled matter so that this court may review the decision of the St. Paul City Council issued on the date noted above.

You are further directed to retain the actual record, exhibits, and transcript of proceedings (if any) until requested by the clerk of the appellate courts to deliver them in accordance with Rule 115.04, subd. 5.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the Respondent:

City Council of St. Paul
15 Kellogg Blvd., West
Room 310
Saint Paul, MN 55102

And their attorney:

Kyle Lundgren
400 City Hall and Courthouse
15 Kellogg Blvd., West
St. Paul, MN 55102

Proof of service of the writ and of the itemized list shall be filed with the clerk of the
appellate courts.

Dated: _____, 2011

Clerk of Appellate Courts

(Clerk's File Stamp)

By: _____
Assistant Clerk

STATE OF MINNESOTA
IN COURT OF APPEALS

V & HM Plus LLC
d/b/a El Pantano Plus,

**STATEMENT OF THE CASE
OF APPELLANT**

vs. Relator,

City of St. Paul City Council Resolution
Number: 11-295

City of St. Paul,

Appellate Court Case No. _____

Respondent.

1. Court or agency of case origination and name of presiding judge or hearing officer.

ANSWER: City Council of Saint Paul, Council members Bostrom, Carter III, Harris, Helgen,
Thune, Stark, and City Council President Lantry, presiding.

2. Jurisdictional statement.

**B. Certiorari appeal.
Statute, rule or other authority authorizing appeal:**

ANSWER: Minn. Stat. §§ 14.63 to 14.68, aggrieved by a final decision in a contested case.
Jurisdiction of such authorized appeal is conferred upon this Court by Minn. Stat.
§ 480A.06 subd. 4, Administrative review.

Authority fixing time limit for obtaining certiorari review (cite statutory section and date of event triggering appeal time):

ANSWER: Minn. Stat. § 14.63; Appellant received the final decision and order of the agency
on March 8, 2011.

**D. Finality of order or judgment.
Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees?**

ANSWER: Yes.

3. **State type of litigation and designate any statutes at issue.**

ANSWER: The matter was initially before an Administrative Law Judge for finding of facts and conclusions of law. The matter was then referred to an administrative hearing before the St. Paul City Council. Minn. Stat. § 340A.503 Subd. 6(a).

4. **Brief description of claims, defenses, issues litigated and results below.**

ANSWER: The issue is whether disciplinary action, in the form of a \$2,000 penalty and ten days' suspension, should be taken against the Licenses of El Pantano Plus for violation of Conditions 6 & 7 of its On-Sale Liquor License issued August 19, 2009. More specifically, did the licensee fail to require a male patron who appears to be younger than 30 years old to produce proper picture identification (state or federally issued identification cards establishing the bearer is over 21 years old) before allowing that patron to enter its establishment? Appellant contends that the person in question ("Lopez") was admitted on the premises in accordance with Conditions 6 & 7 because he ("Lopez") provided a consular identification card, which included his photo and date of birth. The ALJ below found that the senior license inspector for the City of St. Paul ("Kristina Schweinler") discussed with Appellant, the conditions of its licenses, but did not indicate that a consular identification card was not a form of "proper picture identification". The ALJ found that it was reasonable for the personnel at El Pantano Plus to believe that a consular identification card was "proper picture identification" in St. Paul, pursuant to its licensing conditions, absent a specific notice or other substantial evidence to the contrary. That Appellant was allegedly provided a copy of Minn. Stat. § 340A.503 Subd. 6(a) was not enough to show

substantial evidence to the contrary. The Mayor and City Council of St. Paul amended the ALJ's findings and conclusions without written explanation of such amendments, such that Appellant was assessed a penalty of \$2,000 and ten days' suspension on the grounds that § 340A.503 Subd. 6(a) does not specifically enumerate a consular identification card as a form of "proper picture identification". Appellant makes this appeal.

5. List specific issues proposed to be raised on appeal.

ANSWER: Did the City Council of St. Paul come to the conclusion that Appellant violated its license conditions upon arbitrary or capricious consideration or other error of law, or upon unlawful procedure as enumerated under Minn. Stat. § 14.62? Should consular identification cards be considered a form of "proper picture identification" for purposes of determining age when entering an establishment serving alcohol? If not, should licensees be affirmatively notified that consular identification cards are not a form of "proper picture identification" prior to being assessed a penalty?

7. List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state.

ANSWER: None are known

8. Contents or record.

Is a transcript necessary to review the issues on appeal? Yes () No (X)
Has the transcript already been delivered to the parties and filed with the trial court administrator? Not applicable
If not, has it been ordered from the court reporter? Not applicable
If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary? Not applicable
In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04? Yes () No (X)

9. Is oral argument requested? Yes (X) No ()

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? Yes () No (X)

If yes, state where argument is requested: Not applicable

10. Identify the type of brief to be filed.
Formal brief under rule 128.02 (X)
Informal brief under Rule 128.01 subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits). ()
Trial memoranda, supplemented by short letter argument, under Rule 128.01, subd. 2. ()
11. Names, addresses, zip codes, and telephone numbers of attorney for appellant and respondent. (Or, if not represented by counsel, name address, zip code and telephone number of appellant and respondent.)

ANSWER:

PARKER & WENNER, P.A.

**ST. PAUL CITY ATTORNEY'S
OFFICE**

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1700 U.S. Bank Plaza
220 South Sixth Street
Minneapolis, MN 55402
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Attorney for Relator

Kyle Lundgren (License #295577)
400 City Hall and Courthouse
15 Kellogg blvd., West
Saint Paul, MN 55102
Telephone: 651-266-8785
Attorney for Respondent