



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 13, 2011

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

RE: All licenses held by V & HM Plus, LLC d/b/a El Pantano Plus for the premises located at 586 Rice Street in Saint Paul.
License ID #: 20080002369
OAH Docket #: 7-6020-21566-2

Dear Mr. Parker:

Enclosed is a copy of Exceptions to December 29, 2010 Report of Administrative Law Judge I submitted to the Saint Paul City Clerk this morning in preparation for the public hearing scheduled on February 2, 2011.

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
Maria Leon, 2090 Carnelian Lane, Eagan, MN 55122
Tait Danielson Castillo, Executive Director, Frogtown Neighborhood Association, 685 Minnehaha Avenue West
St. Paul, MN 55104

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 13th day of January, she served the attached **EXCEPTIONS TO CITY COUNCIL** placing a true and correct copy thereof in an envelope addressed as follows:

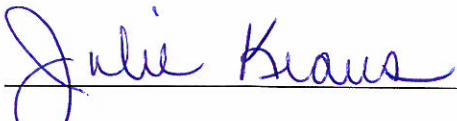
Boris Parker
Parker & Wenner, P.A.
220 South Sixth Street
1700 U.S. Bank Plaza
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Diane Nordstrom
Office of Administrative Hearings
P.O. Box 64620
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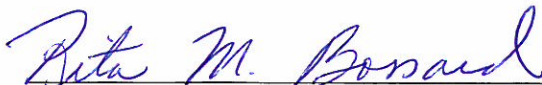
Tait Danielson Castillo, Exec. Director
Frogtown Neighborhood Association
685 Minnehaha Avenue West
St. Paul, MN 55104

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

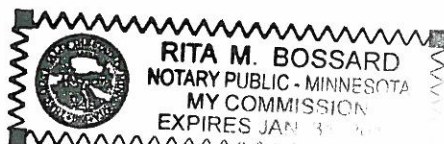


Julie Kraus

Subscribed and sworn to before me
this 13th day of January 2011



Notary Public



SAINT PAUL CITY COUNCIL

In Re adverse action against all licenses held by
V & HM Plus, LLC d/b/a/ El Pantano Plus,

DEPARTMENT OF SAFETY AND
INSPECTION'S EXCEPTIONS TO
DECEMBER 29 2010 REPORT OF
ADMINISTRATIVE LAW
JUDGE

EXCEPTIONS TO DECEMBER 29, 2010 REPORT OF ADMINISTRATIVE LAW JUDGE :

In his Findings of Fact, Administrative Law Judge, Richard Louis, made 20 Findings of Fact. Based on the testimony provided and exhibits submitted at the hearing held on November 16, 2010, the Department of Safety and Inspections submits the following additional and amended:

FINDINGS OF FACT

3a. Kristina Schweinler testified that the licensee was given a copy of the "Liquor Manual" which contains copies of license conditions, and all city and state regulations related to the licensed activity. Specifically, the Liquor Manual includes a copy of Minn. Stat. § 340A.503, Subd. 6(a). Schweinler gave licensee a copy of the Liquor Manual and licensee signed a document affirming receipt of copy of the Liquor Manual.

13. The City maintains that Consular Identification Cards are not "proper I.D." within the meanings of Conditions 6 and 7 placed on El Pantano's License. and are not "proper I.D." under Minn. Stat. § 340A.503, Subd. 6 (a) which states:

Proof of age for purchasing or consuming alcoholic beverages may be established only by one of the following:

(1) a valid driver's license or identification card issued by Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person;

(2) a valid military identification card issued by the United States Department of Defense;

(3) a valid passport issued by the United States; or

(4) in the case of a foreign national, by a valid passport.

14a. Alejandro Perez testified that 2 weeks after the August 14, 2010 incident, "Lopez" was in the establishment. Alejandro Perez allegedly asked "Lopez" to provide identification so licensee could turn it over to the City. Perez testified that the individual was cooperative and agreed he would give a statement. Perez claims that he wrote "Lopez" name and phone number down, but the paper got lost: Perez wanted to photocopy the ID, but the printer was out of ink: and Perez claimed he could not take a photograph on his cell phone because the battery was dead. Perez stated that he remembers the individual gave a last name of "Jota". The identification was a Consular Identification.

18. After the hearing, the Licensee submitted a photo and a surveillance video without any accompanying affidavit or other sworn document explaining their context or relevance. According to a letter from licensee's attorney, both the photograph and the surveillance video were taken on November 20, 2010, of a person Mr. Parra recognized as the same person Officers Kammerer and Ryan had brought into the bar on August 14, as noted at Findings 12 and 14. That person is identified in the submission as "Abel Meza Sanchez."

20. On November 29, 2010, the City submitted Affidavits from Officers Kammerer and Ryan, indicating neither Officer recognizes the individual in the photograph identified as "Abel Maza Sanchez" submitted by counsel for El Pantano on November 23, 2010. The officers stated in their sworn affidavits, however, that the person in the photograph appeared older, larger and had more facial hair than the individual they remember from August 14, 2010.

Based on the Findings of Fact of the Administrative Law Judge, as amended and added above, the Department of Safety and Inspections requests that the Council make the following amended

CONCLUSIONS OF LAW

5. The City has ~~not~~ demonstrated by a preponderance of the evidence that on the evening of August 13-14, 2010, the Licensee Violated Conditions 6 ~~or~~ and 7 of its On-Sale Liquor License by failing to require proper picture identification from ~~anyone~~ an individual appearing younger than 30 years old, by not denying entrance to a person who failed to present proper identification, ~~or and~~ by failing to check identifications cards of ~~people~~ an individual entering its establishment.

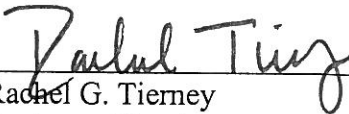
6. It is ~~not~~ appropriate to penalize the Licensee for a third violation of the conditions of its License, which ~~would~~ will result in the imposition of a \$2,000 penalty and suspension of the License for ten days because of the ~~alleged~~ failure to ask a patron "Lopez" for identification on the evening of August 13-14, 2010, that forms the basis for this appeal.

~~7. It is appropriate to dismiss the Citation (Notice of Violation) issued to the Licensee on September 1, 2010, based on the incident of August 13-14, 2010, that forms the basis of this appeal.~~

The Department of Safety and Inspections further requests that the Council decline to adopt the accompanying recommendation and memorandum of the Administrative Law Judge.

Respectfully Submitted,

Dated: 1-13-11



Rachel G. Tierney
Assistant City Attorney
Representing the Dept. of Safety and Inspections