**City of Saint Paul – Office of the City Council**

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# LICENSE HEARING MEMORANDUM

May 21, 2010

TO: Councilmember Dave Thune, Ward 2
Councilmember Melvin Carter III, Ward 1
Councilmember Pat Harris, Ward 3
Councilmember Russ Stark, Ward 4
Councilmember Lee Helgen, Ward 5
Councilmember Dan Bostrom, Ward 6
Councilmember Kathy Lantry, Ward 7

FROM: Nhia Vang, Deputy Legislative Hearing Officer

SUBJECT: **Grand American Restaurant Company**, doing business as **The Wild Onion** (ID #19990002357)

Location: 788 Grand Avenue (Ward 2)

Request: To add a **Liquor-Outdoor Service Area (Patio) license to the existing** Liquor On Sale – 181-290 Seats, Liquor On Sale – Sunday, Liquor On Sale – 2 AM Closing, Entertainment (B), Gambling Location, Restaurant (5) – 151 and Over, Restaurant (D) – Add-on (Bar Only), Sidewalk Cafe, and Cigarette/Tobacco licenses. *(NOTE: This license would permit the establishment to extend liquor service onto the existing outdoor patio seating area. There is no proposal to expand this seating area. Additionally, because the applicant obtained only 33% of the potential required supportive neighborhood signatures, the applicant must also obtain written support for this request from the Summit Hill Association, which is the district council representing the area in which this business is located.)*

Applicant: Jay Salmen and Joseph Schaefer, co-owners

## RECOMMENDATION

The application requests license approval to allow an extension of services for an outdoor patio for liquor sales as permitted under Chapter 409. The restaurant is located in Ward 1 and the Summit Hill Association District Planning Council. Department of Safety and Inspection (DSI) is recommending approval subject to conditions and the Summit Hill Association (SHA) is also recommending approval subject to conditions. Consistent with their findings, I am also recommending approval of the license request with the agreed-upon conditions and include my concerns in the analysis section of this memo.

## BACKGROUND

The Wild Onion has been operating on Grand Avenue for fourteen (14) years and there is a long history of contention between the owners of the Wild Onion and the residents living within the vicinity. The Wild Onion is requesting outside service to the patio so that they may be competitive with similar drinking establishments in the area. Chapter 409.06 (g)(2) requires that the licensee

obtain support of the surrounding neighborhood or the alternative support of the district council. In this case, the Wild Onion was unable to meet both the 90% or the 60% or more neighborhood support thresholds. Attempts on the part of the Wild Onion resulted in 33% of residents' support and ultimately that of the Summit Hill Association provided that the Wild Onion agreed to meet certain conditions necessary to work for the Grand Avenue location. SHA's Zoning and Land Use Committee held a full board meeting in March 2010 where the Wild Onion was also in attendance and SHA supported the Wild Onion by a 15-3 vote with the following agreed-upon conditions:

SHA License Conditions

1. That the patio liquor license will expire and sunset on November 14, 2010.
2. That all service (both food and drink) must end by 9:30 p.m. and the patio must be cleared of all patrons by 9:30 p.m.
3. That the Wild Onion will provide food and drink service on the patio only at tables and only to those seated at tables. No stand-up service for any patron on the patio and no loitering allowed by patrons on the patio for those not seated.
4. That no music shall be played on the patio (live or recorded).
5. That no liquor service be provided to any patron who does not order food.
6. That the Wild Onion participates in a task force to be created by SHA to include neighborhood resident representatives to address and minimize problems associated with late night patron behavior.
7. That the Wild Onion assign full-time security to continuously monitor all Wild Onion patron parking lots from 9:30 p.m. to ½ hour after 2 a.m. closing five days a week, Tuesday night through Saturday evening/early Sunday morning.

The above recommended conditions were also presented at the April 15, 2010 legislative hearing and, once again, the Wild Onion agreed to those conditions. At this hearing, DSI also recommended the following conditions which the Wild Onion agreed to:

DSI License Conditions

1. The outdoor patio seating area shall close at 9:30 p.m. each night of the week, and there shall be no customers, patrons and/or employees allowed on the patio for any reason after this time.
2. There shall be no music (recorded or live) on the patio.
3. The licensee shall implement sufficient security measures to insure that alcohol is not consumed in the parking lot or public right-or-way.
4. There shall be no bar (temporary or permanent) outside on the patio unless prior written approval and the proper license(s) are first obtained from DSI.

Following the April 15, 2010 legislative hearing, DSI met with SHA to combine both sets of conditions and also met with the Wild Onion to discuss the rewritten conditions. Again, the Wild Onion agreed to the rewritten conditions and the newly agreed-upon conditions are as follows:

Combined License Conditions

1. The outdoor patio seating area shall closed at 9:30 p.m. each night of the week, and there shall be no customers, patrons and/or employees (other than management and security personnel patrolling the area) allowed on the patio

for any reason after this time. These restrictions do not include the smoking area.

2. There shall be no music (recorded or live) on the patio.
3. The licensee shall implement sufficient security measures to insure that alcohol is not consumed in the parking lot or public right-or-way. The Wild Onion will assign full-time security to continuously monitor all Wild Onion patron parking lots from 9:30 p.m. to ½ hour after 2 AM closing, five (5) days per week, Tuesday night through Saturday evening/early Sunday morning.
4. There shall be no bar (temporary or permanent) outside on the patio unless prior written approval and the proper license(s) are first obtained from DSI.
5. The Wild Onion will provide food and drink service on the patio only to patrons seated at tables. No stand-up service will be provided for any patron and no loitering is allowed by patrons who are not seated.
6. No liquor service will be provided to patrons who do not order food.
7. The Wild Onion will participate in a task force to be created by the Summit Hill Association (SHA) to address and minimize problems associated with late night patron behavior.
8. The patio liquor license will expire on November 14, 2010. The licensee will be required to reapply one (1) time for the patio liquor permit to continue liquor service in 2011 and future seasons. In order to get the license reissued, the licensee will be required to go through the regular license application process for patio liquor licenses with the exception of the requirement for submission of a petition. Standard notification procedure will be followed for neighborhood review. After review, a recommendation on the application will be made by SHA to the city council. The Saint Paul City Council has the final authority to reissue the license.
   **(NOTE: Condition raises concerns and will be addressed below.)**

## ISSUE

The issue before you is not about the Wild Onion agreeing to condition#8. Instead, the issue is whether the City can support a condition that is overreaching in regulatory authority.

## STAFF ANALYSIS

There are several options that you may consider in reviewing the application and related conditions:

Option 1 - Approve the application with all the combined license conditions except for condition#8.

Based upon a reading of the MN statutes and administrative regulations that apply to this license application, I am concern about recommending a condition that exceeds local authority and its due process implication on legitimate businesses. A license approved by the City of St. Paul is given a year to operate subject to renewal determination. Local law is clear with respect to renewals and processes are in placed to handle troubled establishments. Our Code allows DSI to determine whether a license may be renewed. In reviewing a license renewal, DSI may add or remove license conditions if there is sufficient evidence. In this case, condition#8 invokes an automatic revocation of a license without specifying a reason. Under Chapter 310, when "council intends to consider an

adverse action, including...revocation or suspension of a license,...the applicant or licensee shall be given notice and an opportunity to be heard...and the notice shall state the issues involved or grounds upon which the adverse action may be sought or based.". Nothing in our Code suggests that a license may be automatically revoked so long as an applicant agrees to certain conditions. In addition, if a license is revoked, there is a one-year waiting period and it has not been addressed here whether the one-year period would apply before the Wild Onion can reapply.

Option 2 - Approve the application with all the combined license conditions with modification to condition#8.

The problems faced by all are very real. Short of the Wild Onion moving to another location or the affected residents moving out, they must find a way to better resolve their conflicts. I am not in support of condition#8 as it is written and would like to recommend that you review condition#8 and approve it with one of the following modifications:

(1) require renewal review with reinforcing guidelines regarding the possibility of license revocation should the need arise and that the residents be informed of any actions taken by the City, and that the Wild Onion and affected residents be required to go through dispute resolution to resolve continued issues before SHA may recommend for license renewal to DSI, or

(2) require the Wild Onion to go through a probationary period set by Council because of its history of disturbances (A probationary period may give the Wild Onion time to improve bar management and allow DSI, SHA and residents better scrutiny of the Wild Onion's performance).

Despite condition#8 requiring/allowing the Wild Onion to apply one more time after the license expires on November 14, 2010, and waiving petitioning in the reapplication process, I believe that the process is still burdensome. The Wild Onion is subjected to another re-notification process, especially when there is no guarantee that their license application will be approved. Depending on future recommendations, the Council may deny the application request and the Wild Onion will have to wait another year before they can reapply.

Option 3 - Approve the application with all the combined license conditions. (NOTE: This is the Deputy Legislative Hearing Officer's recommendation.)

While the information provided by resident accounts and the long history of complaints and calls for service are persuasive in denying the Wild Onion's request; information provided at the legislative hearing showed that the Wild Onion's request should be approved. The owners of the Wild Onion have taken steps to rectify many of their past management practices and some of those steps are included below:

- hiring of new management and staff;
- a good faith effort to work with the Summit Hill Association and participation in a taskforce set up by SHA to include both staff, Wild Onion owners/managers, and residents to specifically address issues such as noise and patron behavior;
- construction of a fence and installation of acoustic buffers to minimize noise,

- hiring of security staff to help monitor activities inside and outside the establishment, and
- researching landscaping designs to better address noise nuisance.

In addition, many of the issue raised about noise and patron behaviors generated from the Wild Onion are similar to those of many other drinking establishments within the City and along Grand Avenue. It would be difficult to directly point to the Wild Onion as the sole cause of all the noise and patron behaviors along Grand Avenue when there are similar businesses nearby such as Billy's and Dixies (See, Attachments A, B and C). A review of complaints showed that many of the complaints were investigated by DSI and that calls for service with respect to the Wild Onion and similar drinking establishments along Grand Avenue showed that even though the Wild Onion proportionately had more call records, many of the actions were proactive visits and many of the calls did not result in a liquor violation or citation.

While the conditions recommended by the Summit Hill Association and those recommended by DSI may not be ideal for everyone, it may be the only way to keep the dialogue open. Furthermore, since the owners of the Wild Onion fully understand and appreciate the risks and the liabilities associated with the conditions they agreed to, there is no reason to deny their request at this time. From the legislative hearing, it's clear that the Wild Onion's goal is to not promote drunkenness and recklessness in this neighborhood. The Wild Onion's proposed use is reasonable and no different than other similar drinking establishments on Grand Avenue. I respectfully request that you give them full consideration and to give them the same opportunity to be on a level playing field with surrounding businesses by accepting the conditions already agreed-upon by the owners of the Wild Onion.

Option 4 - Deny the application and refer this matter to the City Attorney's Office for further findings from an Administrative Law Judge.

Despite new information that was provided at the legislative hearing regarding the Wild Onion's change in management practices and willingness to work with the residents to resolve patron behavior and noise issues, the long history of past offenses (based on the number of complaint calls and calls for service (See, Attachments A, B, C, D, E, and F) and the distress faced by many residents (See, Attachment G) and have risen to such a level that it has negatively affected their peace and quite enjoyment of their homes. As such, no additional conditions or actions would make the residents whole; therefore, the extension of liquor services for an outdoor patio license for the Wild Onion should be denied.