



# City of Saint Paul

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## Master

**File Number: RLH FCO 11-559**

**File ID:** RLH FCO 11-559

**Type:** Resolution LH Fire C of O

**Status:** Filed

**Version:** 1

**Contact  
Number:**

**In Control:** Legislative  
Hearings

**File Created:** 10/21/2010

**File Name:** 651 Cleveland Ave S - Cecil's

**Final Action:** 04/12/2011

**Title:** Appeal of David Leventhal of Cecil Delicatessen to a Fire Certificate of  
Occupancy Correction Order at 651 Cleveland Avenue South.

### Notes:

**Agenda Date:** 04/12/2011

**Indexes:** Fire C of O Letter; Ward - 3

**Agenda Number:**

**Sponsors:** Harris

**Enactment Date:**

**Attachments:** 651 Cleveland Ave S.Appeal.10-19-10.pdf, 651  
Cleveland Ave S.Fire Inspection Ltr.10-12-10, 651  
Cleveland Ave S.PC ltr.10-26-10.doc, 651 Cleveland  
Ave S.PC ltr.12-13-10.doc, 651 Cleveland Ave S.PC  
ltr.3-31-11.doc

**Financials Included?:**

**Contact Name:**

**Hearing Date:**

**Entered by:** marcia.moermond@ci.stpaul.mn.us

**Ord Effective Date:**

### Approval History

Version	Date	Approver	Action
1	10/26/2010	Moermond, Marcia	Approve

### History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Legislative Hearings	10/26/2010	Laid Over	Legislative Hearings	12/14/2010		
<b>Action Text:</b> Laid Over to the Legislative Hearings, due back on 12/14/2010							
<b>Notes:</b> Laid over to December 14. The appellant will attempt to locate a floor plan. Ms. Moermond will review the records from the 2009 remodeling, and will consult with licensing and CAO staff.							
David Leventhal appeared representing Cecil's Delicatessen.							
Inspector Shaff gave a staff report. She said the order being appealed reduced the occupant load to 44 from 85, and was from a Fire Certificate of Occupancy reinspection conducted by Inspector							

Skow-Fiske on October 12. She said the occupant load for the 660 ft<sup>2</sup> restaurant was 44, and she didn't know how 85 had ever been allowed. Records showed the occupant load had been changed to 65 in 2003 and 2004 and then to 85 in September 2006 and December 2008, but there was no explanation for the changes. Ms. Shaff provided a drawing from the inspector.

Ms. Shaff asked when the exterior freezer had been built. Mr. Leventhal said it was added in June 2009 and the plan had been approved by the City. Ms. Shaff said exiting through the rear door required passing through the serving area and food preparation area which the code didn't allow.

Ms. Moermond and Mr. Leventhal reviewed photographs provided by Mr. Leventhal. Mr. Leventhal said the restaurant had had seating for 85 for 40 years with no problems, and no significant changes to the restaurant's structure. He provided a copy of an undated City-issued sign allowing an occupancy load of 85 and signed by Inspector Zaccard.

Ms. Shaff and Mr. Leventhal reviewed an old file diagram of the restaurant showing a deli counter. Mr. Leventhal said the restaurant had had the current configuration since 1990 when the counter was removed and replaced by tables. He said he felt the current occupancy allowed plenty of room for the customers, and he would not jeopardize the safety of himself or family members who worked there every day. He said a 44 seat restaurant was not sustainable, and because he didn't own the property on either side of his building he couldn't change the configuration of the restaurant. He said the exit to the rear of the building was approved by the City in June 2009, was handicapped accessible, and provided easy egress. He said he felt it was unreasonable for the City to reduce the occupancy from 85 when it had been approved for many years.

Ms. Moermond asked whether the building was sprinkled. Mr. Leventhal said it wasn't. Ms. Shaff noted that there was a variance on the front door swing and vestibule.

Ms. Moermond asked whether Inspector Skow-Fiske had considered changing the occupant load to 65 rather than 44 since it had been 65 in the past. Ms. Shaff said the occupancy was determined based on the square footage calculation. Ms. Moermond said it looked as though the occupancy calculation had been made using 1090 ft<sup>2</sup> in the past. Ms. Shaff said that was total area and not just the dining area.

Ms. Moermond asked whether measuring the square footage was standard practice. Ms. Shaff said it was if the space looked tight.

Mr. Leventhal said the seating hadn't changed since 1990 when the restaurant was remodeled and was approved by building inspectors. Ms. Moermond asked how long the restaurant had been at its present location. Mr. Leventhal said it had been there since 1949.

Ms. Moermond said she would like to check the records from the 2009 remodeling to see whether there was a floor plan. Mr. Leventhal said he would try to locate one too. Ms. Moermond said she would also consult with licensing about the occupancy history and with the City Attorney's office about possible grandfathering. She laid the matter over until December 14.

- |   |                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |           |                      |            |
|---|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------------------|------------|
| 1 | Legislative Hearings | 12/14/2010                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Laid Over | Legislative Hearings | 01/11/2011 |
|   | <b>Action Text:</b>  | Laid Over to the Legislative Hearings, due back on 1/11/2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |           |                      |            |
|   | <b>Notes:</b>        | Laid over to January 11, 2011.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |           |                      |            |
| 1 | Legislative Hearings | 01/11/2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |           |                      |            |
|   | <b>Notes:</b>        | Ms. Moermond said she met with Phil Owens, Assistant Fire Marshall, and Ricardo Cervantes, DSI Director, and also talked with Building Official Jim Bluhm about the seating capacity of Cecil's Delicatessen. She will be writing a letter to Mr. Leventhal offering him a number of options with respect to increasing his seating capacity from 43 (in the orders and 47 in the revised orders) and he would like it higher. Currently his seating is 85. A hearing will be scheduled two to three weeks after he receives the letter when she would like him to chose an option. |           |                      |            |
| 1 | Legislative Hearings | 01/18/2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |           |                      |            |
| 1 | Legislative Hearings | 01/25/2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Laid Over | Legislative Hearings | 02/01/2011 |
|   | <b>Action Text:</b>  | Laid over to February 1, 2011 Legislative Hearing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |           |                      |            |
| 1 | Legislative Hearings | 02/01/2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |           |                      |            |

1	Legislative Hearings	02/08/2011		
1	Legislative Hearings	03/01/2011		
1	Legislative Hearings	03/15/2011	Laid Over	Legislative Hearings 04/12/2011

**Action Text:** Laid Over to the Legislative Hearings due back on 4/12/2011

1	Legislative Hearings	04/12/2011	Referred Under Master Resolution	
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**Action Text:** Referred Under Master Resolution

**Notes:** Appeal denied. Ms. Moermond will approve an occupant capacity of 65 if the door swing is changed, fixed seating is installed, and things are moved to allow for more space/seating. (Kris Skow-Fixe)

*Inspector Leanna Shaff said at the meeting on March 15 it was left that Legislative Hearing Officer Marcia Moermond was going to check the records. Ms. Moermond said Inspector Phil Owens re-did the calculations and came up with different numbers. The first time the restaurant was measured it was 44 seats. Mr. Owens came up with a measurement of 47 which is far shy of the 65 that everyone agrees that he had. The 85 seats that Mr. Leventhal seems to have been operating under is a misconception that that number was allowed.*

*Mr. Leventhal responded saying there was a sheet that said the seating capacity could not exceed 85. It has been posted on the wall by the entrance for many years. He's been in business 49 years and now suddenly he has to change the configuration. He needs a certain number of seats to stay in business, he said.*

*Ms. Moermond told Mr. Leventhal he will have to go to an occupancy less than what it has been. The best outcome in her view would be to install sprinklers which would change what she can do with variances and she could get him to an occupant load of 75. As soon as they go over 50, stricter regulations kick in and the swing of the door and having a second exit become an issue. The "service hallway" that goes by the kitchen would be needed for exiting plus having the screen door and the outer door move in the same direction.*

*Ms. Moermond said she thought there was also an issue with the front door.*

*Ms. Shaff said in her orders she indicates the code does not allow an exit through the kitchen.*

*Ms. Moermond said the door that swings inward would be in the path of travel to exit and if they are talking more than 50 people the doors need to swing in the same direction. If they are going to count going through the kitchen as a second exit, allowing that use and an occupant load of more than 50, then all the doors have to go in the direction of travel.*

*Ms. Moermond said for a 65 occupant load, Mr. Leventhal needs to change the door swing and install some fixed seating, where the chairs stay put, which will help his numbers considerably and make it safer for people to get out in case of an emergency. Also, the big bread rack takes up a lot of room so if that was reconfigured there would be room for more seating. Mr. Leventhal said the bread rack is behind the counter on the wall and does not affect the ability to go through the front door and into the restaurant. Ms. Moermond said she was thinking in terms of square footage and additional seating. Ms. Shaff said it would change the square footage as they only measured the dining area.*

*The area of the entry space also takes away a fair amount of square footage and if that could be reconfigured, there would be more space for seating, Ms. Moermond said. Mr. Leventhal said it's about 25 feet from the entrance to the restaurant. The only change made to the rear entrance was extending it out 9 feet.*

*Ms. Moermond told Mr. Leventhal she is willing to work with him on using the kitchen door as an exit and they will call it a service hallway. She reiterated that all the doors have to swing outward. Mr. Leventhal said the front door can't be opened outward because of the street. Ms. Moermond said they may have to talk to Public Works to see what can be done. Without changing the swing of the door in the front but doing the other things, she felt they could get him to 65 occupants. A diagram needs to be drawn up that will show her more fixed seating and a better arrangement to get more people in. She wants him to think about what plan he wants to go with and suggested he may want to talk to a contractor about options.*

*Inspector Shaff noted that even 50 occupants would require panic hardware on the back door. Ms. Moermond said if they are at 65, she would be comfortable recommending a variance on the panic hardware.*

*Mr. Leventhal asked Ms. Moermond to forward her request for him to review. Ms. Moermond said she will send him a letter confirming her recommendation to the City Council and copies will go to the fire inspectors, DSI, and any other inspectors who go through the building so when they come to inspect they will know what variances he has been given.*

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**Text of Legislative File RLH FCO 11-559**

Appeal of David Leventhal of Cecil Delicatessen to a Fire Certificate of Occupancy Correction Order at 651 Cleveland Avenue South.

[Enter Summary Here]

We dispute the load occupancy being reduced from 85 to 44.