



CITY OF SAINT PAUL

Christopher B. Coleman, Mayor

Civil Division

400 City Hall

15 West Kellogg Blvd.

Saint Paul, Minnesota 55102

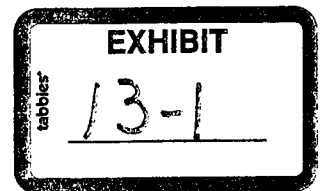
Telephone: 651 266-8710

Facsimile: 651 298-5619

October 13, 2017

**NOTICE OF VIOLATION
NOTICE OF INTENT TO SUSPEND LICENSES**

Harry Erkenbrack, CEO
El Alamo
429 Robert Street South
St. Paul, MN 55107



RE: Liquor On Sale – 100 seats or less, Liquor –Outdoor Service Area (Patio), Liquor On Sale-Sunday, Entertainment A and Gambling Location licenses held by El Alamo, LLC d/b/a El Alamo for the premises located at 429 Robert Street South in Saint Paul.
License ID #: 20080004592

Dear Licensee:

The Department of Safety and Inspections (DSI) has recommended adverse action against the Liquor On Sale – 100 seats or less, Liquor –Outdoor Service Area (Patio), Liquor On Sale-Sunday, Entertainment A and Gambling Location licenses held by El Alamo, LLC d/b/a El Alamo for the premises located at 429 Robert Street South in Saint Paul. The basis for the recommendation is as follows:

On July 17, 2017, as part of a settlement agreement for an outstanding licensing violation, you signed a Revised License Conditions Affidavit. As part of the settlement of the violation, the \$500.00 matrix penalty for a violation of one of your license conditions was waived condition #1 of your license was revised and three (3) new conditions were added to your license.

On September 6, 2017, the Department of Safety and Inspections sent you a Warning letter concerning unlicensed activity occurring at El Alamo Bar. That warning letter was based on information received from the Saint Paul Police Department that patrons of your establishment were engaging in dancing prior to an assault incident on August 5, 2017.

As stated in the letter the Entertainment A license you currently hold does not allow for patron dancing. This license allows only amplified music or non-amplified music and/or singing by performers without limitation as to number and group singing participated in by patrons of the establishment.

On September 9, 2017, Saint Paul Police responded to 429 Robert Street South on a report of shots fired (CN #17-213-213). Officers found 45 casings from various weapons in the parking lot. The sergeant immediately asked to view the video. The officer who reviewed the video reported that while watching surveillance of the bar at the time of the incident, he did not see staff go outside and check the parking lot. This is a violation of license condition #3: "Loitering in the parking lot shall not be permitted. The parking lot must be regularly patrolled to insure compliance with this condition."

The video also showed patrons entering the bar from the patio door that came from Robert Street who were not checked by security. This is a violation of license condition #8: "....Security personnel shall "wand" (using a functional metal detector) each patron and check all handbags and packages carried by patrons. The requirement to wand patrons includes those who are returning to the establishment...."

On September 21, 2017, DSI received a complaint that the door facing Isabel Street was being used for a non-emergency purpose at 7:15 p.m. on September 1, 2017. This would be a violation of license condition #6: "The following shall apply to the operation of the side door facing Isabel Street West effective August 20, 2017. Door shall remain closed daily and be operated solely as an emergency exit equipped with functional Saint Paul Fire Safety approved crash/panic bar and alarm equipment from 6:00 p.m. until 6:00 a.m. the following calendar day. During this period no patrons, security personnel, employees, vendors or other parties may use the door for any purpose other than to exit in case of a life-safety emergency."

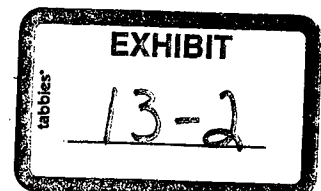
On September 28, 2017, DSI sent you a letter requesting a copy of all video surveillance both inside and outside for September 1, 2017 from 6:30 p.m. to 8:00 p.m. You were asked to deliver a copy no later than 4:30 p.m. on October 2, 2017.

On October 1, 2017, DSI received a letter from you stating that you were unable to provide the requested video surveillance because the recorder was only recording ten (10) days' worth of video. This is a violation of license condition #1: ".....In accordance with the approved video surveillance plan, licensee will ensure that video surveillance cameras are in working order, ensure that they are recording 24 hours per day and capable of producing surveillance video in a commonly used, up-to-date format."

As a result of these violations, and per Saint Paul Legislative Code §310.05 (m) (1), the licensing department will recommend an upward departure to a \$2,000 matrix penalty and a ten (10) day suspension of your licenses.

At this time, you have three (3) options to proceed:

1. If you do not contest the imposition of the proposed adverse action, you may do nothing. If I have not heard from you by **October 27, 2017**, I will presume that you have chosen not to contest the proposed adverse action, and the matter will be placed on the next available City Council agenda for approval of the proposed remedy.



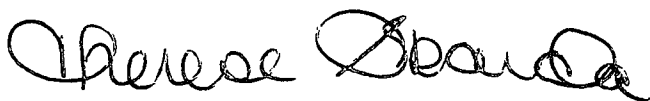
2. If you wish to admit the facts but you contest the penalty, you may have a public hearing before the Saint Paul City Council. You will need to send me a letter with a statement admitting to the facts and requesting a public hearing. I will need to receive your letter by **October 27, 2017**. The matter will then be scheduled before the City Council to determine whether to impose the \$2,000.00 matrix penalty and ten (10) license suspension of your licenses. 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). You will need to send me a letter disputing the facts and requesting an administrative hearing no later than **October 27, 2017**. 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.

Please note: If you choose an administrative hearing, the Department of Safety and Inspections reserves the right to request that City Council impose the costs of the administrative hearing per Saint Paul Legislative Code § 310.05 (k).

If you have not contacted me by October 27, 2017, I will assume that you do not contest the imposition of the \$2,000.00 matrix penalty and ten (10) day suspension of your licenses. . In that case, the matter will be placed on the next available City Council Consent Agenda for approval of the recommended penalty.

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

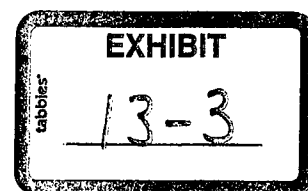
Sincerely,



Therese Skarda
Assistant City Attorney

cc Harry Erkenbrack, 1737 – 122nd Lane NW, Coon Rapids, MN 55448
Monica Bravo, Executive Director, West Side Community Organization, Baker Center, 209 Page Street
West, Saint Paul, MN 55107

Enc: Revised License Conditions Signed July 19, 2017
Settlement Agreement signed July 19, 2017



SETTLEMENT AGREEMENT

The Department of Safety and Inspections ("DSI") and Harry Erkenbrack ("Erkenbrack") enter into this Settlement Agreement as outlined below.

WHEREAS, Erkenbrack is Chief Operating Officer of El Alamo, LLC which holds a Liquor On Sale – 100 seats or less, Liquor – Outdoor Service Area (Patio), Liquor On Sale – Sunday, Entertainment A and Gambling Location licenses (#20080004592) issued by the City for the premises located at 429 Robert Street South in Saint Paul; and,

WHEREAS, on April 26, 2017, Sergeant Rob Stanway delivered a letter to El Alamo that officially requested the video surveillance tapes in a readable format from 12:00 a.m. to 1:30 a.m. on April 23, 2017 and gave Erkenbrack until April 28th to deliver the requested video in a readable format to DSI; and,

WHEREAS, on April 27, 2017, Erkenbrack delivered the video to DSI; and,

WHEREAS, Erkenbrack has verified that the time stamp on the video he produced was inaccurate because the video system was still operating on daylight savings time; and,

WHEREAS, this is a violation of license condition #1 of Erkenbrack's license conditions which reads: "Interior and exterior video surveillance cameras must be operating during all hours the establishment is open. Tapes must be saved for a period of at least 30 days, and the dates and times of recording must be accurate and visible on the videotapes."; and,

WHEREAS, the above violation represents Erkenbrack's first (1st) violation within a twelve (12) month period punishable by a \$500.00 matrix penalty; and,

WHEREAS, Erkenbrack admits to a violation of license condition #1 as described above; and,

WHEREAS, this Settlement Agreement will provide certainty regarding the violation and accompanying penalties; and,

WHEREAS, the parties agree that settling this matter as described below is beneficial to both parties; and

WHEREAS, both parties knowingly and voluntarily enter into this Settlement Agreement; and,

NOW THEREFORE, in consideration of the terms herein set forth, the parties agree:

1. Erkenbrack agrees that a \$500.00 matrix penalty could be assessed for violating license condition #1 in accordance with Saint Paul Legislative Code §310.05(m)(2); and,



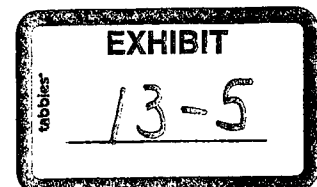
2. DSI agrees to waive the \$500.00 fine associated with the violation of condition #1; and,
3. Erkenbrack agrees that this is a first violation under the matrix penalty; and,
4. Erkenbrack agrees to sign the attached Revised License Conditions dated July 14, 2017 and return them to DSI by July 20, 2017; and,
5. Erkenbrack agrees that another license condition violation or violation of any provisions of the legislative code relating to the licenses he holds prior to July 20, 2018 will be considered a second or higher violation under the matrix penalty; and,
6. Erkenbrack understands that the Administrative Hearing scheduled for July 26, 2017 will be cancelled and waives all further hearings and other claims related to this matter such as appeal, collateral attacks, and lawsuits of any kind. Erkenbrack understands that he does have a right to a hearing and other forms of relief on this matter, but voluntarily and knowingly waives the right to a hearing and to pursue other forms of relief; and,
7. DSI agrees that, in accordance with Saint Paul Legislative Code §310, the violation in this Settlement Agreement will not be tracked after the end of the twelve (12) month period ending July 20, 2018; and,
8. DSI agrees that any Administrative Fees resulting from the July 26, 2017 Administrative Hearing will be paid by the DSI.

Date: 7-19-17


Harry Erkenbrack, CEO El Alamo, LLC.

Date: 7-19-2017


Eric Hudak, Licensing Manager City of Saint Paul



Revised License Conditions

Revised July 14, 2017

Licensee: El Alamo, LLC.
D/B/A: El Alamo
License #: 20080004592

Condition #1 changed to:

Licensee will create a video surveillance camera and lighting placement plan (Video Surveillance Plan) for the interior and exterior of the licensed premises. Licensee will submit the video surveillance plan to The Saint Paul Police Department (SPPD) liaison with The Department of Safety and Inspection (DSI) for review and approval. In accordance with the approved video surveillance plan, licensee will ensure that video surveillance camera system is in good working order, ensure it is recording 24 hours per day, ensure it can produce recorded surveillance video in a commonly used, up-to-date format, and ensure that accurate date and time of day are visible on all recorded video. Licensee will retain surveillance video for a minimum of thirty (30) days. If an incident is deemed serious by SPPD, licensee shall make surveillance video immediately available for viewing by SPPD. If a copy of the surveillance video for a serious incident is requested by SPPD, Licensee shall have the technology, materials and staff available to immediately make the copy. In all other cases, licensee shall provide a copy of the surveillance video to the requestor within 48 hours.

Additional Conditions:

6. The following shall apply to the operation of the side door facing Isabel Street West effective August 20, 2017. Door shall remain closed daily and be operated solely as an emergency exit equipped with functional Saint Paul Fire Safety approved crash/panic bar and alarm equipment from 6:00 p.m. until 6:00 a.m. the following calendar day. During this period no patrons, security personnel, employees, vendors or other parties may use the door for any purpose other than to exit in case of a life-safety emergency.

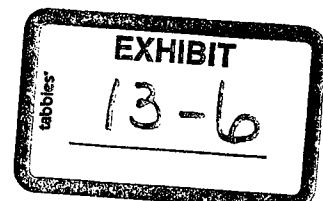
7. Licensee will install, maintain, close and secure a gate or similar device to prohibit motor vehicle access to the parking lot located on the north side of Isabel Street West after business hours or whenever the establishment is closed.

8. Licensee shall retain clearly identifiable security personnel. Clearly identifiable shall mean security personnel wearing identifiable and clearly marked uniform or outerwear. Security personnel shall be assigned to each entrance of the license premises from 9:00 p.m. until closing on Friday and Saturday and whenever entertainment, to include karaoke and disk jockey service, is provided. Security personnel shall "wand" (using a functional metal detector) each patron and check all handbags and packages carried by patrons. The requirement to wand patrons includes those who are returning to the establishment. Security personnel shall verify the age of patrons by checking state or federally issued identification (ID) cards. Licensee shall establish and require that security personnel enforce a no picture ID, no entrance policy. Security personnel shall not allow alcoholic beverages to leave the service area of the licensed establishment.

HARRY R. ERKENBRACK
Printed Name

[Signature]
Signature

7-19-17
Date



STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

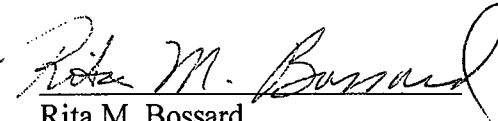
AFFIDAVIT OF SERVICE BY U.S. MAIL

Rita M. Bossard, being first duly sworn, deposes and says that on the 13th day of October, 2017, at the City of Saint Paul, county and state aforementioned, (s)he served the following document(s): **Notice of Violation and Notice of Intent to Suspend Licenses**

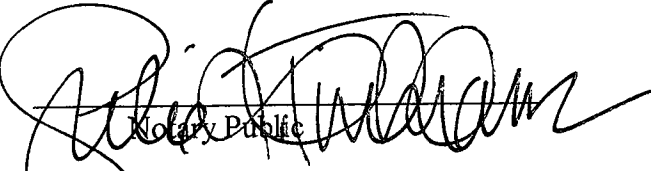
On:

Harry Erkenbrack, CEO
El Alamo
429 Robert Street South
St. Paul, MN 55107

via U.S. Mail to the address listed above.


Rita M. Bossard

Subscribed and sworn to before me
on this 13th day of October, 2017.


Notary Public

