

CITY OF SAINT PAUL Mayor Melvin Carter

Civil Division 400 City Hall 15 West Kellogg Blvd. Saint Paul, Minnesota 55102

Telephone: 651 266-8710 Facsimile: 651 298-5619

October 16, 2018

# NOTICE OF COUNCIL HEARING

Kavin Choua Thao, Owner Pupraya Thai Restaurant 945 Rice Street, Unit A St. Paul, MN 55117

RE: Liquor On Sale –101-180 seats, Liquor On Sale-2AM Closing, Liquor On Sale-Sunday and Entertainment (B) licenses held by Kavin Choua Thao d/b/a Pupraya Thai Restaurant for the premises located at 945 Rice Street, Unit A in Saint Paul. License ID #: 20140001202

Dear Licensee:

Please take notice that this matter has been set on the Public Hearing Agenda for a City Council meeting on Wednesday, November 7, 2018 at 5:30 p.m., in the City Council Chambers, Third Floor, Saint Paul City Hall and Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, MN 55102.

Enclosed are copies of the letter you sent on October 2, 2018, indicating that you were not contesting the facts related to the incident, but were requesting the opportunity to address the Council regarding the penalty, the resolution and any supporting documents. This information will be presented to City Council for their consideration.

This is an uncontested matter related to the Department of Safety and Inspections receipt of documents from your insurance company indicating a seven (7) day lapse in liquor liability insurance coverage from August 24, 2018 to August 30, 2018.

Pursuant to Saint Paul Legislative Code § 409.26 (b) (12), the licensing office will recommend a ten (10) day suspension of your Liquor On Sale –101-180 seats, Liquor On Sale-2AM Closing, Liquor On Sale-Sunday and Entertainment (B) licenses.

Sincerely,

Therese Skarda Assistant City Attorney

Cc: Kavin Choua Thao, 947 Lawson Avenue East, St. Paul, MN 55106-3221 Kerry Antrim, Executive Director, North End Neighborhood Organization, 171 Front Avenue, St. Paul, MN 55117 Tk2, LLC, 10341 Waterfront Drive, Woodbury, MN 55129-8534

"The Saint Paul City Attorney's Office does not discriminate based on race, color, national origin, religion, sex/gender, disability, sexual orientation, gender identity, age, or veteran status in the delivery of services or employment practices."

# 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 16<sup>th</sup> day of October, she served the attached NOTICE OF COUNCIL HEARING and a correct copy thereof in an envelope addressed as follows:

Kavin Choua Thao, Owner Pupraya Thai Restaurant 945 Rice Street, Unit A St. Paul, MN 55117

Kavin Choua Thao 947 Lawson Avenue East St. Paul, MN 55106-3221

Kerry Antrim, Executive Director North End Neighborhood Organization 171 Front Avenue St. Paul, MN 55117

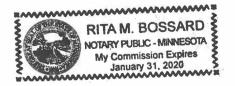
Tk2, LLC, 10341 Waterfront Drive Woodbury, MN 55129-8534

(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 16<sup>TH</sup> day of October 2018

Notary Public



# **UNCONTESTED LICENSE MATTER**

Licensee Name:	Pupraya Thai Restaurant
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- Address: 945 Rice Street, Unit A St. Paul, MN 55117
- Council Date: Wednesday, November 7, 2018 at 5:30 p.m.
- Violation: Lapse in liquor liability insurance coverage from August 24, 2018 to August 30, 2018

Recommendation of Assistant City Attorney on behalf of client, Department of Safety and Inspections:

Ten (10) suspension of Liquor On Sale-101-180 Seats, Liquor On Sale-2AM Closing, Liquor On Sale-Sunday and Entertainment (B) licenses.

Attachments:

- 1. Resolution
- 2. Certificate of Liability Insurance dated 9/26/2017 (1 page)
- 3. Liquor Liability Certificate of Insurance received 9/04/2018 (1 page)
- 4. Notice of Intent to Suspend Licenses with Affidavit of Service dated 9/25/2018 (3 pages)
- 5. Letter from the Department of Safety and Inspections to the licensee dated 10/02/2018 (1 page)
- 6. Letter from licensee requesting a public hearing dated 10/02/2018 (1 page)
- 7. License Group Comments Text and licensee information from ECLIPS System dated 9/14/2018 (6 pages)
- 8. License Group Conditions Texts from ECLIPS System dated 9/14/2018 (1 page)
- 9. STAMP Ownership/Zoning Information (1 page)
- 10. Saint Paul Legislative Code § 409.065
- 11. Saint Paul Legislative Code § 409.26

WHEREAS, the Liquor On Sale – 101-180 seats, Liquor On Sale-2AM Closing, Liquor On Sale-Sunday and Entertainment (B) licenses held by Kavin Choua Thao d/b/a Pupraya Thai Restaurant (License ID #20140001202) for the premises located at 945 Rice Street, Unit A in Saint Paul were the subject of a Notice of Intent to Suspend Licenses dated September 25, 2018; and

WHEREAS, Department of Safety and Inspections (DSI) records show the licensee submitted a Certificate of Liability Insurance dated September 26, 2017 with a coverage period of August 24, 2017 to August 24, 2018; and

WHEREAS, on September 4, 2018 the Department of Safety and Inspections (DSI) received a Liquor Liability Certificate of Insurance from Associated Insurance Counselors with a coverage period of August 30, 2018 to July 23, 2019; and

WHEREAS, the new Liquor Liability Certificate of Insurance showed a seven (7) day lapse in coverage from August 24, 2018 to August 30, 2018; and

WHEREAS, on October 2, 2018, the Department of Safety and Inspections sent a letter to the licensee giving notice not to serve intoxicating beverages until a current certificate of liquor liability insurance with no lapse in coverage was submitted; and

WHEREAS, Saint Paul Legislative Code § 409.065 requires licensees hold current liquor liability insurance without a lapse in coverage in order to continue operating the business; and

WHEREAS, per Saint Paul Legislative Code § 409.26 (b) (12) the licensing office recommended a ten (10) day suspension of all licenses; and

WHEREAS, the licensee responded to the Notice of Intent to Suspend Licenses to request a public which was held on November 7, 2018; now therefore be it

RESOLVED, the Liquor On Sale – 101-180 seats, Liquor On Sale-2AM Closing, Liquor On Sale-Sunday and Entertainment (B) licenses held by Kavin Choua Thao d/b/a Pupraya Thai Restaurant (License ID #20140001202) for the premises located at 945 Rice Street, Unit A in Saint Paul are hereby suspended for a period of ten (10) days due to a seven (7) day lapse in liquor liability coverage from August 24, 2018 to August 30, 2018.

FURTHER RESOLVED, said suspension will begin at 12:00 a.m. (midnight) on Wednesday, November 28, 2018 and end at 11:59 p.m. on Friday, December 10, 2018.

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## LIQUOR LIABILITY

## CERTIFICATE OF INSURANCE

## MINNESOTA JOINT UNDERWRITING ASSOCIATION

12400 PORTLAND AVE S, STE 190 Page 1 BURNSVILLE, MN 55337

This certificate of insurance is issued as a matter of information only and confers no rights upon the Certificate Holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed below.

Policy Number: L180366	Policy Period: FROM 8/30/2018 TO 7,	23/ RECEIVED IN D
	12:01 AM Standard	Time
INSURED:	AGENT: 960	SEP 0 4 2018
KAVIN CHOUA THAO	WELLE INC	0 4 2010
PUPRAYA THAI RESTAURANT	DBA ASSOCIATED INSUR	ANCE COUNSELORS
945 RICE ST, STE A	1646 EAST CTY RD E.	
ST. PAUL MN 55117	WHITE BEAR LAKE, MN	551107
		1

THE MJUA IS PROHIBITED BY STATUTE FROM PROVIDING PRODUCTS AND COMPLETED OPERATIONS COVERAGE NEW POLICY

## LIQUOR LIABILITY

Phis is an audited policy and premium adjustments are made at the end of the policy period.

This is to certify that the Policy described herein has been issued to the Insured named above and is in force at this time. Notwithstanding any requirement, term or condition of any Policy or other document with respect to which this certificate may be issued or may pertain, the coverage afforded by the Policy described herein is subject to all terms, exclusions and conditions of such Policy.

The Described Location(s) covered by this policy are as follows:

#### 945 RICE STREET, SUITE A, ST. PAUL, MN 55117 COVERAGE LIMIT Deductible Amount: NONE Bodily Injury (Each Person) \$50,000 L. (Each Occurrence) \$100,000 \$10,000 (Each Occurrence) Property Damage Loss of Means of Support (Each Person) \$50,000 (Each Occurrence) \$100,000 (Each Person) \$50,000 Pecuniary Loss (Each Occurrence) \$100,000 Annual Aggregate \$300,000 Per Claimant NONE

Business Description: RESTAURANT - LONG TERM, LIQUOR LIQUOR LIABILITY

Certificate Holder: CITY OF ST PAUL 375 JACKSON STREET, STE 220 SAINT PAUL MN 55101

Should the above policy be cancelled before the expiration date thereof, the Association will endeavor to mail 60 days written notice to the above named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the Association. In the event the cancellation is for non payment of premium, the Association will mail a 10 day written notice

8/30/18	Engly School	arry Hordon
COUNTERSIGNATURE DATE	OUR AUTHORIZED REPRESENTATIVE	OUR EXECUTIVE DIRECTOR
8/30/18	* CERTIFICATE HOLDER *	8/30/18
	nd of Certificate For Location 1 Bui	



CITY OF SAINT PAUL Mayor Melvin Carter

Civil Division 400 City Hall 15 West Kellogg Blvd. Saint Paul, Minnesota 55102

Telephone: 651 266-8710 Facsimile: 651 298-5619

September 25, 2018

# NOTICE OF INTENT TO SUSPEND LICENSES

Kavin Choua Thao, Owner Pupraya Thai Restaurant 945 Rice Street, Unit A St. Paul, MN 55117

RE: Liquor On Sale –101-180 seats, Liquor On Sale-2AM Closing, Liquor On Sale-Sunday and Entertainment (B) licenses held by Kavin Choua Thao d/b/a Pupraya Thai Restaurant for the premises located at 945 Rice Street, Unit A in Saint Paul. License ID #: 20140001202

Dear Licensee:

The Department of Safety and Inspections (DSI) has recommended adverse action against the Liquor On Sale-101-180 seats, Liquor On Sale-2AM Closing, Liquor On Sale-Sunday and Entertainment (B) licenses held by Kavin Choua Thao d/b/a Pupraya Thai Restaurant for the premises located at 945 Rice Street, Unit A in Saint Paul. The basis for the recommendation is as follows:

On September 4, 2018, the Department of Safety and Inspections (DSI) received a Liquor Liability Certificate of Insurance from Welle, Inc. d/b/a Associated Insurance Counselors showing a policy period of August 30, 2018 to July 23, 2019. The previous Certificate of Liability Insurance on file with DSI dated September 26, 2017 showed a coverage period from August 24, 2017 to August 24, 2018.

The new certificate now indicates a seven (7) day lapse in liquor liability coverage from August 24, 2018 to August 30,2018.

Saint Paul Legislative Code § 409.065 states: "No license under this chapter may be issued, maintained or renewed unless the licensee or applicant therefor complies with the insurance requirements imposed by Minn. Stat. § 340A.409. Such insurance coverage shall comply with the requirements of Minn. Stat. § 340A.409 and Chapters 7 and 8 of this Legislative Code. "

You are required to hold current liquor liability insurance without a lapse in coverage to continue operating your business. Per Saint Paul Legislative Code § 409.26 (b) (12), the licensing department will recommend a ten (10) day suspension of your Liquor On Sale –101-180 seats, Liquor On Sale-2AM Closing, Liquor On Sale-Sunday and Entertainment (B) licenses.

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Pupraya Thai Restaurant September 25, 2018 Page 2

You have four (4) 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 **Friday**, **October 5**, **2018**, I will presume that you have chosen to contest the proposed adverse action, and the matter will be placed on the **October 24**, **2018** City Council Consent agenda for approval of the proposed remedy.
- 2. If you wish to admit the facts but contest the ten (10) day suspension of you licenses, 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 by **Friday**, **October 5**, **2018**. The matter will then be scheduled before the City Council to determine whether to suspend your Liquor On Sale –101-180 seats, Liquor On Sale-2AM Closing, Liquor On Sale-Sunday and Entertainment (B) licenses for a period of ten (10) days. You will have an opportunity to appear before the Council and make a statement on your own behalf.
- 3. If you <u>dispute the facts</u> 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 Friday, October 5, 2018. 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).

4. If you no longer wish to do business in the City of Saint Paul, you will need to complete and return the enclosed REQUEST TO CANCEL LICENSE with the CITY OF SAINT PAUL to the Department of Safety and Inspections, at 375 Jackson Street, Ste. 220, St. Paul, Minnesota 55101-1806 by Friday, October 5, 2018.

If you have not contacted me by Friday, October 5, 2018, I will assume that you do not contest a ten (10) day suspension of your Liquor On Sale –101-180 seats, Liquor On Sale-2AM Closing, Liquor On Sale-Sunday and Entertainment (B) licenses. In that case, the matter will be placed on the October 24, 2018 City Council Consent Agenda for approval of the recommended penalty.

If you have questions about these four (4) options, please contact my Legal Assistant, Julie Kraus at (651) 266-8776.

Sincerely,

thereas SKarda/gr

Therese Skarda Assistant City Attorney License No. 0240989

cc Kavin Choua Thao, 947 Lawson Avenue East, St. Paul, MN 55106-3221 Kerry Antrim, Executive Director, North End Neighborhood Organization, 171 Front Avenue, St. Paul, MN 55117 Tk2, LLC, 10341 Waterfront Drive, Woodbury, MN 55129-8534

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# 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  $25^{TH}$  day of September, she served the attached **NOTICE OF INTENT TO SUSPEND LICENSES** and a correct copy thereof in an envelope addressed as follows:

Kavin Choua Thao, Owner Pupraya Thai Restaurant 945 Rice Street, Unit A St. Paul, MN 55117

Kavin Choua Thao 947 Lawson Avenue East St. Paul, MN 55106-3221

Kerry Antrim, Executive Director North End Neighborhood Organization 171 Front Avenue St. Paul, MN 55117

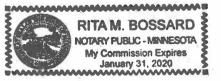
Tk2, LLC 10341 Waterfront Drive Woodbury, MN 55129-8534

(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 25<sup>TH</sup> day of September 2018

Notary Public



CITY OF SAINT PAUL

375 Jackson Street, Suite 220 St Paul, Minnesota 55101-1806 
 Telephone:
 651-266-8989

 Facsimile:
 651-266-9124

 Web:
 www.stpaul.gov/dsi

October 2, 2018

AINT

Kavin Choua Thao Pupraya Thai Restaurant 945 Rice St. St. Paul, MN 55117

Mr. Thao,

We have received a notice of cancelation for you Liquor Liability Insurance. This letter serves as your notice that you should not be serving or providing any intoxicating beverages until you have provided us with a valid certificate of Liquor Liability Insurance. Any lapse within the policy will be grounds for further adverse action.

Please contact me with any questions.

Respectfully,

Kristina Schweinler Sr. License Inspector

Cc: Eric Hudak, License Manager Therese Skarda, Asst. City Atty. Kavin Choua Thao

Pupraya-Thai Restaurant

945 Rice Street, Suite A

St. Paul, MN 55117

October 2<sup>nd</sup>, 2018

# RECEIVED OCT 0 3 2018 CITY ATTORNEY

City of St. Paul

Office of the City Attorney

400 City Hall

15 Kellogg Blvd.

St. Paul, MN 55102

Attention: Therese Skarda, Assistant City Attorney

Regarding: Notice of Intent to Suspend Licenses

I am writing this letter to respond to suspension of my Liquor On Sale-101-180 seats, Liquor On Sale-2AM Closing, Liquor On Sale-Sunday and Entertainment (B) licenses held by me, Kavin Choua Thao d/b/a Pupraya-Thai Restaurant for the premises located on 945 Rice Street, Suite A, St. Paul, MN 55117.

I have decided to choose option two (2) by admitting to the facts but contest the ten (10) day suspension of my licenses in a public hearing before the Saint Paul City Council members. I will make sn appear in person at a council board members meeting and make my own statement regarding to what went wrong for this matter. It was the Under Writer's fault for not contact me directly, but looked on line and saw the licenses expiration date on August 30<sup>th</sup>, 2018 and coded it that way. I have my agent, David contacted her to make a change, but she said she can't change since it already coded on that date.

I would like to take this opportunity to thank you for your time and consideration

Sincerely,

Kavin Choua Thao-Owner

Licensee: KAVIN CHOUA THAO

## DBA: PUPRAYA THAI RESTAURANT

License #: 20140001202

9/14/18 To CAO for adverse action, lapse in insurance from 8/24/18 to 8/30/18. KS

11/16/17 Request to extend entertainment to Wed. Nov. 22, and Mon. 1/1/18 recd. Dist. Council approval recd. KS

11/18/16 Request to extend entertainment to Wed. Nov.23, 2016 recd. ok from Dist. 6 Planning Council.KS

08/23/2016 License expiration date changed from 7/23 to 8/24 to expire with liquor liability. There is no lapse in coverage. LAB

6/17/16 Approved temp entertainment request for 6/29/16 and 7/4/16 with conditions. KS

02/01/2016 Orders issued submit payment 2nd 1/2 liq. fee, 02/16/2016 response date. JWF

3/2/15 Paid deling. KS

02/20/2015 No response to delinguent 2nd 1/2 Liq. orders, to KS for adverse action. JWF

02/11/2015 Delinquent 2nd 1/2 orders sent (NOW OWE \$\$2,780, 7-30 days late), response date 02/19/2015. JWF

11/17/2014 Lic. issued 07/23/2014. 2nd 1/2 Lig. On Sale due 01/23/2015 (waive late fees if paid by then). Mailed 2nd 1/2 Lig. On Sale invoice. JWF

07/14/2014 No objections to lic. notification per Nhia Vang's office, Leg. Hearing Officer. JWF

07/09/2014 Council file #14-1136 approves 45 day waiver for issuance of licenses. JWF

05/22/2014 Rcvd. signed condition affidavit. Rcvd. DC 45 day waiver letter. KS to follow-up with CC approval. JWF

05/22/2014 EM sent to license applicant informing approval of management agreement (copied current licensee). Reminded them of current license expiration date on 06/24/2014. JWF

05/21/2014 License notification sent, 100M/35EM, response date 07/11/2014. JWF

04/14/2014 Adverse Licensing Action sent due to incident of shots fired outside of bar by an employee. \$1500.00 matrix penalty issued. KS/rjh

License Query

ddress Licensee	Contact License	Cardholder			
icensee Name:	KAVIN CHOUA THA	0	<u></u>	Find Now	
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License #	Tag #	Licensee Name	DBA	License Type	Status
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				Liquor On Sale - 2 AM Closing	Active Pending Ren
				Liquor On Sale - Sunday	Active Pending Ren
				Entertainment (B)	Active Pending Ren

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License L	icensee Li	ic. Types	Insurance	Bond	Requir	ements			
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BA:	PUPRAYA THA	RESTAURANT	•						
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License	Licensee Lic. Types Insurance	Bond Requirements
cense Type:	Liquor On Sale - 101-180 Seats	
surance Type:	Liquor Liability Insurance	< 1 of 1
Policy #:	BKS1857470632	Vehicles
Сотралу:	OHIO SECURITY INS CO	
Address:	davem@associatedinscounselors.com	
Phone #:	() -	
Effective:	08/24/2017 Liability Limits	Insurance Rec'd 09/26/2017
Expiration:	08/24/2018 \$1,000,000	Days To Cancel: 10
Continuous		Canceled: 00/00/0000
City Insured		Cancel Rec'd: 00/00/0000
Адепсу	ASSOC INSURANCE COUNSELORS	
Address	1646 E COUNTY ROAD E, WHITE BEAR LAKE, I	MN 55110
Phone #	(651) 777-7475 Contact: David Masanz	

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License	Licensee Lic.	Types Insurance	Bond	Requirements
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## License Group Conditions Text

## Licensee: KAVIN CHOUA THAO

## DBA: PUPRAYA THAI RESTAURANT

License #: 20140001202

1. Per Section 409.03 of the City of Saint Paul Legislative Code, a new liquor on-sale license shall only be issued to a restaurant as defined under Chapter 409 of the City Code. Licensee agrees to operate the establishment in compliance with the definition of a restaurant as defined under Chapter 409 of the City's Code, acknowledges having been given a copy of this definition, and understands this definition.

2. The licensee shall provide and maintain working video surveillance cameras and recorders on the premises (both inside and outside) in accordance with Saint Paul Police Department (SPPD) recommendations. The number of cameras and recorders on the premises (both inside and outside) in accordance with Saint Paul Police Department (SPPD) recommendations. The number of cameras, their placement and their quality must be approved by SPPD; and there shall be adequate lighting to support the camera placement. This equipment must be in operation during all business hours. The video recordings shall be kept by the license holder for at least thirty (30) days and shall be available for viewing by the Saint Paul Police Department (SPPD) immediately upon request. In addition, if the SPPD responds to a call at the licensed premises, and due to the crime, requests that a copy of the surveillance footage be immediately provided, the license holder shall have technology available to make the copy at the time of the request and shall have it for the police without delay. In other cases, if the SPPD or the Department of Safety and Inspections (DSI) requests copies of the surveillance tapes, licensee shall have a 48-hour period in which to provide such copies.

3. Entertainment will only be provided on Thursday, Friday, Saturday, and Sundays.

4. Doors shall remain closed at all times.

5. In accordance with St Paul Police Dept and the Department of Safety and Inspections, the licensee shall provide security, with appropriate staffing, to ensure that the patron's behavior does not create a disturbance or nuisance. Security will be provided from 6:00 p.m. to the close of business for all scheduled events and when entertainment is provided. Security staff must be clearly identified as security. Security staff shall also ensure that patrons leave the premises in an orderly manner and shall not be permitted to loiter outside the licensed premises or in the parking lots.

6. Licensee shall ensure adequate garbage storage and removal. Emptying bar refuse is expressly forbidden between the hours of 9:00 PM and 7:00 AM.

New Search

 Run Date:
 09/24/18 02:09 PM

 House#:
 945

 Street Name:
 Rice

Click on "Other Application" links below to access GISmo, MapIT, and Ramsey County Info

945 Rice St - 55117-4955 - Other Applications

PIN: 252923410259 Year Built: Census Track: 31300 Foundation Sq Feet:

Unverified Usage: 15- COMMUNITY/STRIP SHOPPING- B- Commercial

Zoning: ' / T2 / B3

Heritage Preservation: HP Inventory #: RA-SPC-3080 / HP Inventory #: RA-SPC-3078 / HP Property Name: residence / H

Legal Desc: WEIDE'S ADDITION AND, REARRANGE VAC ST ACCRUING & EX W 15.5 FT; LOTS 14 & LOT 15 BLK 1 IN MCKENTY'S O

Owner: Tk 2 Llc 10341 Waterfront Dr Woodbury MN 55129-8534

**Certificate of Occupancy Responsible Party:** Tk 2 Llc 10341 Waterfront Dr Woodbury MN 55129-8534 Last upda

Sec. 409.065. - Insurance requirements.

No license under this chapter may be issued, maintained or renewed unless the licensee or applicant therefor complies with the insurance requirements imposed by Minn. Stat. § 340A.409. Such insurance coverage shall comply with the requirements of Minn. Stat. § 340A.409 and Chapters 7 and 8 of this Legislative Code.

(Ord. No. 17796, § 1, 12-13-90; C.F. No. 99-730, § 1, 8-25-99)

Sec. 409.26. - Intoxicating liquor; nonintoxicating malt liquor; presumptive penalties.

- (a) Purpose. The purpose of this section is to establish a standard by which the city council determines the length of license suspensions and the propriety of revocations, and shall apply to all on-sale and off-sale licensed premises for both intoxicating liquor under this chapter and nonintoxicating liquor under chapter 410. These penalties are presumed to be appropriate for every case; however the council may deviate therefrom in an individual case where the council finds and determines that there exist substantial and compelling reasons making it more appropriate to do so. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.
- (b) *Presumptive penalties for violations.* Adverse penalties for convictions or violations shall be presumed as follows (unless specified, numbers below indicate consecutive days' suspension):

			Appea	rance	
	Type of Violation	1st	2nd	3rd	4th
(1)	Commission of a felony related to the licensed activity.	Revocation	NA	NA	NA
(2)	Sale of alcohol beverages while license is under suspension.	Revocation	NA	NA	NA
(3)	Sale of alcoholic beverages to underage person.	500.00	1,000.00	Up to 18	Revocation
(4)	Sale of alcoholic beverage to intoxicated person.	500.00	1,000.00	Up to 18	Revocation
(5)	After hours sale of alcoholic beverages.	500.00	6	18	Revocation
(6)	After hours display or consumption of alcoholic beverage.	500.00	4	12	Revocation
(7)	Refusal to allow city inspectors or police admission to inspect premises.	5	15	Revocation	NA
(8)	Illegal gambling on premises.	500.00	6	18	Revocation
(9)	Failure to take reasonable steps to stop person from leaving premises with alcoholic beverage.	500.00	4	12	Revocation
(10)	Failure to make application for license renewal prior to license expiration date.	500.00	6	18	Revocation

(11)	Sale of intoxicating liquor where only license is for nonintoxicating liquor.	500.00	6	18	Revocation
(12)	Failure to comply with statutory, and ordinance requirements for liability insurance.	10	Revocation	NA	NA

For on-sale intoxicating liquor establishments with a seating capacity of one hundred fifty (150) or more, the monetary penalty for any violation (including violations found in chapter 310) shall be doubled.

For off-sale intoxicating liquor establishments with five thousand one (5,001) or more square feet of retail space, the monetary penalty for any violation (including violations found in chapter 310) shall be doubled.

A licensee who would be making a first appearance before the council may elect to pay the fine to the department of safety and inspections without an appearance before the council, unless the notice of violation has indicated that a hearing is required because of circumstances which may warrant deviation from the presumptive penalty. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled, and shall be considered an "appearance" for the purpose of determining presumptive penalties for subsequent violations.

(c) Multiple violations. At a licensee's first appearance before the city council, the council shall consider and act upon all the violations that have been alleged and/or incorporated in the notices sent to the licensee under the administrative procedures act up to and including the formal notice of hearing. The council in that case shall consider the presumptive penalty for each such violation under the "1 st Appearance" column in paragraph (b) above. The occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion.

Violations occurring after the date of the notice of hearing that are brought to the attention of the city attorney prior to the hearing date before an administrative law judge (or before the council in an uncontested facts hearing) may be added to the notice(s) by stipulation if the licensee admits to the facts, and shall in that case be treated as though part of the "1 st Appearance." In all other cases, violations occurring after the date of the formal notice of hearing shall be the subject of a separate proceeding and dealt with as a "2 nd Appearance" before the council.

The same procedures shall apply to a second, third or fourth appearance before the council.

- (d) Subsequent appearances. Upon a second, third or fourth appearance before the council by a particular licensee, the council shall impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance.
- (e) Computation of time.
  - (1) Second appearance. A second violation within twelve (12) months shall be treated as a second appearance for the purpose of determining the presumptive penalty.
  - (2) *Third appearance*. A third violation within eighteen (18) months shall be treated as a third appearance for the purpose of determining the presumptive penalty.
  - (3) *Fourth appearance*. A fourth violation within twenty-four (24) months shall be treated as a fourth appearance for the purpose of determining the presumptive penalty.

- (4) Any appearance not covered by subsections (1), (2) or (3) above shall be treated as a first appearance. Measurement of the twelve-, eighteen- or twenty-four-month period shall be as follows: The beginning date shall be the earliest violation's date of appearance before the council, and the ending date shall be the date of the new violation. In case of multiple new violations, the ending date to be used shall be the date of the violation last in time.
- (5) For the purpose of a second, third or fourth appearance under this section, "violation" shall mean either one of those violations listed in paragraph (b) or a violation of section 310.05(m).
- (f) Other penalties. Nothing in this section shall restrict or limit the authority of the council to suspend up to sixty (60) days, revoke the license, or impose a civil fine not to exceed two thousand dollars (\$2,000.00), to impose conditions or take any other adverse action in accordance with law, provided, that the license holder has been afforded an opportunity for a hearing in the manner provided for in section 310.05 of this Code.
- (g) Effect of responsible business practices in determining penalty. In determining the appropriate penalty, the council may, in its discretion, consider evidence submitted to it in the case of uncontested adverse actions or submitted to a hearing examiner in a contested hearing upon which findings of fact have been made that a licensee has followed or is likely to follow in the future responsible business practices in regard to sales to intoxicated persons and sales to minors.
  - (1) For the purposes of service to intoxicated persons, evidence of responsible business practices may include, but is not limited to, those policies, procedures and actions that are implemented at time of service and that:
    - a. Encourage persons not to become intoxicated if they consume alcoholic beverages on the defendant's premises;
    - b. Promote availability of nonalcoholic beverages and food;
    - c. Promote safe transportation alternatives other than driving while intoxicated;
    - d. Prohibit employees and agents of defendant from consuming alcoholic beverages while acting in their capacity as employees or agents;
    - e. Establish promotions and marketing efforts that publicize responsible business practices to the defendant's customers and community;
    - f. Implement comprehensive training procedures;
    - g. Maintain an adequate, trained number of employees and agents for the type and size of defendant's business;
    - h. Establish a standardized method for hiring qualified employees;
    - i. Reprimand employees who violate employer policies and procedures; and
    - Show that the licensee has enrolled in recognized courses providing training to self and one (1) or more employees of the licensed establishment in regard to standards for responsible liquor service.
  - (2) For the purposes of service to minors, evidence of responsible business practices may include, but is not limited to, those listed in subsection (1) and the following:
    - a. Management policies that are implemented at the time of service and that ensure the examination of proof of identification (as established by state law) for all persons seeking service of alcoholic beverages who may reasonably be suspected to be minors;
    - b. Comprehensive training of employees who are responsible for such examination regarding the detection of false or altered identification; and
    - c. Enrollment by the licensee in recognized courses providing training to self and one (1) or more employees of the licensed establishment in regard to standards for responsible liquor service.

(Ord. No. 17556, § 1, 4-28-86; Ord. No. 17657, § 14, 6-8-89; Ord. No. 17675, § 1, 8-22-89; Ord. No. 17694, § 2, 11-7-89; Ord. No. 17756, § 1, 8-7-90; Ord. No. 17924, §§ 2, 3, 5-7-92; C.F. No. 92-1929, § 1, 2-9-93; C.F. No. 97-1445, § 1, 12-30-97; C.F. No. 98-866, § 1, 11-4-98; C.F. No. 07-149, § 161, 3-28-07; C.F. No. 10-818, § 1, 8-25-10; Ord. No. 11-92, § 1, 9-28-11; Ord 12-41, § 1, 8-22-12)