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August 21, 2019

VIA EMAIL ONLY (therese.skarda@ci.stpaul.mn.us; rachel.tierney@ci.stpaul.mn.us)

Saint Paul City Council
Therese Skarda
Rachel Tierney
Office of the City Attorney
400 City Hall, 15 West Kellogg Blvd.
Saint Paul, MN 55102

Re: JC & MTM, Inc. v. City of Saint Paul
Appellate Court File No. A19-1311

Dear City Council, Ms. Skarda and Ms. Tierney:

JC & MTM, Inc. respectfully requests that the City Council stay enforcement of its adverse action from RES 19-963 pending appeal by the licensee to the Minnesota Court of Appeals through Writ of Certiorari. JC & MTM, Inc. has obtained a Writ, which has been served on the City today. Courtesy copies of the Petition and Statement of the Case were sent by email to Assistant City Attorneys at the time of filing. If the Council were to deny the requested stay, JC & MTM, Inc. would be deprived of any meaningful rights of appellate review, and therefore the due process to which it is entitled.

JC & MTM, Inc. received final notice of the City's decision on August 6, 2019. While Minnesota law and the Rules of Civil Appellate Procedure allow for a period of 60 days within which to file an appeal of the City's determination, the City's insistence on having the suspension served starting no later than two weeks after the service of the notice of the adverse action has effectively shortened that appeal time to an unreasonably brief period of time. JC & MTM, Inc. believes such a truncated time to appeal violates fundamental fairness and due process, and the Council should stay

imposition of the adverse action to permit JC & MTM, Inc. a meaningful opportunity to exercise its right to appeal.

JC & MTM, Inc. understands that the final determination of the adverse action is the responsibility of the City Council. JC & MTM, Inc., however, was provided no opportunity to address Council Member Thao's plan to have the license suspension extended and be required to be served within such a short period of time. It is apparent that Council Member Thao knew of his intended proposed resolution, but it is also apparent that by not providing this information to the licensee, JC & MTM, Inc. was deprived of the opportunity to fully address what was in store for it. The Council's decision to impose a more serious, and more immediate, penalty without an opportunity to address this issue deprived JC & MTM, Inc. of its right to dispute, discuss or argue against the penalty, but instead put JC & MTM, Inc. in the position of arguing for acceptance of an agreed upon resolution, complete with waivers of its rights to contest its violations, that was essentially dead on arrival.

JC & MTM, Inc. has attempted in good faith to resolve the underlying issues with the City. The issue of "wanding" is complicated by the lack of any clear standard for how to comply with the regulatory requirement. Nonetheless, JC & MTM, Inc. has sought to assist the City in developing better training and understanding of how to best implement practices that will aid the City's imposition of its regulations and increase the safety of the citizens of St. Paul and visitors to the City. JC & MTM, Inc. waived its rights to contest the determination, before an Administrative Law Judge, that it did not "wand" properly, whatever that might mean, on the belief that the City was recommending credit for time that the business had already voluntarily closed in the interest of public safety. If that consideration from the City is removed, JC & MTM, Inc. wishes the opportunity to more fully address its liability, which it would have done had it known that the agreement with the Department was not intended to be accepted by the Council before it was heard from on July 24, 2019.

JC & MTM, Inc. does not relish putting itself, or the City, through the time and expense of an appeal—an amicable settlement is of course preferable. Throughout the process, JC & MTM, Inc. has operated in good faith in the interest of safety and cooperation with the Department and the City. But the principle of being permitted to address its arguments to the true resolution intended by the Council, to know the resolution that Council Member Thao clearly intended to propose prior to making the arguments it was allowed to make against a resolution that was not actually going to be imposed, strikes at such a sense of fundamental fairness, that it is compelled to seek appellate review. JC & MTM, Inc. respectfully requests that Council not also deprive it of its right

to a meaningful appeal, and respectfully requests that the Council stay imposition of the adverse action pending completion of the review of the City's adverse action by Writ of Certiorari to the Minnesota Court of Appeals.

Very truly yours,

CHESTNUT CAMBRONNE PA

Gary K. Luloff

GKL:dp