



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

January 19, 2017

NOTICE OF VIOLATION AND INTENT TO IMPOSE LICENSE CONDITIONS

John Rupp
6 West 5th Street, Suite 900
St. Paul, MN, 55102-1420

RE: All licenses held by The University Club of St Paul d/b/a The Commodore for the premises located at 79 Western Avenue North in Saint Paul
License ID #: 0043940

Dear Licensee:

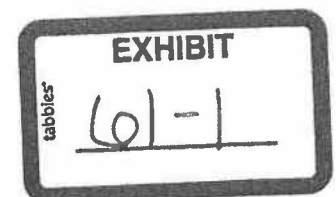
The Department of Safety and Inspections (DSI) has recommended adverse licensing action against all licenses held by The University Club of St Paul d/b/a The Commodore for the premises located at 79 Western Avenue in Saint Paul. The basis for the recommendation is as follows:

On October 26, 2015, you received a letter from Stephen Ubl, the Building Official of the City of Saint Paul (attached). This letter was sent after a meeting you had with a number of staff members from DSI. In the letter, Mr. Ubl memorialized the discussions that took place at the meeting. Among other issues, Mr. Ubl's letter clearly outlined the items that you would need to complete before occupancy would be allowed in the proposed west expansion space addition at 79 Western.

On May 25, 2016, you received a letter from Travis Bistodeau, the Deputy Director for the Department of Safety and Inspections (attached). This letter followed a second meeting you had with DSI staff. In attendance at that meeting were Director Ricardo Cervantes, Steve Ubl and Travis Bistodeau. As outlined in the letter, the purpose of the meeting was to discuss the lack of a Certificate of Occupancy in the proposed western expansion and what would need to be accomplished prior to allowing occupancy of that space.

You have been informed a number of times that the proposed western expansion area lacked a certificate of occupancy for the use as a restaurant (A-2 occupancy), and you have been given clear direction regarding the steps you need to take before you are allowed to occupy the space.

On 9/16/16 inspector Tom Ferrara from DSI visited the Commodore and documented the following:



On 9/13/16, I arrived at 79 Western Ave N and the building's parking lot was literally full. I was able to park in their lot after a car exited from a space.

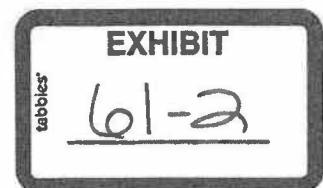
When entering the building I observed a flier for the event posted in the lobby window (see photo). At approximately 6:33pm I was greeted by a hostess who was just inside the establishment's door. I asked her if the Whiskey A Go-Go event was put on by another group or the Commodore itself and she told me it was put on by the "Commodore."

Inside the establishment I observed that the large set(s) of centermost interior doors along the west side of a large public dining area were closed (see photo). I believe this was to separate it from the west room where the Whiskey A Go-Go event was taking place. While facing the west room from that public dining space, I observed that the far right door in the set closest to the kitchen area was propped open for entry (see photos). Inside that door to the immediate left was a staff person at a table checking in attendees. I approached the table and found that a list of names for all that pre-purchased tickets was kept at the table. At approximately 6:46 pm I spoke with the staff person maintaining the list of ticketholders and asked if I could add a guest. I was informed that there was no means to purchase a ticket onsite and I would not be able to add a guest.

Based on my observations and my interaction with that staff person, I concluded that as long as staff at that table performed their duty, the west room was closed to the general public. Anyone who had not purchased a ticket in advance was not allowed entry into the west room.

Because I had pre-purchased my ticket long enough in advance, my name was on the list and I was allowed to proceed farther into the west room where the Whiskey A Go-Go event was being held. Once inside I observed the following evidence of use or occupation:

- Nearly the entire west room was full of tables and chairs. Circular tables took up the majority of floor space and the room was at virtually full seating capacity (see photos). Only a limited number of unfilled chairs remained. The table seating covered the most floor space. There was a freestanding bar in the corner to the far left when entering into the room through the propped open doors, a banquet table that displayed some whiskey product in front of a projector screen on the far west side of the room, and a hard surfaced open floor area between the table seating and the front/west banquet table (see photos).
- I observed that servers were pouring alcohol at the banquet table in front of the projection screen and that wait staff was then bringing servings of the different whiskeys to those seated at the circular tables. Some attendees walked to the front table and were provided a sample from event staff there, but most of the whiskey was brought to the tables by wait staff. Other drinks and liquor could be purchased by attendees at the cash bar in room and/or bring them from other bars in establishment into the west room space.



- I further observed that the projector screen behind the banquet table along the far west had a "Whiskey A-Go-Go" image on it during the course of the event (see photos). At about 6:50pm, the distiller, who I learned was Bob McManus, began speaking over an amplified sound system using a microphone. His purpose was to conduct a questions and answers session with the attendees primarily regarding the featured whiskey products, distilling methods, etc. I left the room for a short while and Bob's Q & A was still going on when I returned at approximately 7:12pm.
- At about 7:15pm, I spoke with Bob McManus off microphone. He confirmed he was with the distiller, Eleven Wells Spirits. He handed me a sample from the west banquet table. I asked him how such a promotional event is arranged and he told me that the "...commodore brought me in..." and "...it's their (Licensee's) event..."
- At approximately 7:31pm a white male in a gray suitcoat began using the mic (see photo) and made a statement that included "dancing." The white male in gray suit coat then led a group of attendees in a dance session to music on an apparent internal sound system (see photos and video). The group dance session concluded after one song then the white male that led the dance session handed out tickets for a dance lesson at his studio.
- At about 7:38pm a white female, an apparent attendee, sang one song on the microphone to accompanying music on the internal sound system (see video) then at about 7:41pm there was swing music alone on the sound system that concluded by 7:50pm.
- At about 8:18pm I spoke with a white female who identified herself as Shannon McBride, she told me she was the Assistant General Manager. She stated it was only her second week at the job and when questioned about the license conditions for the establishment she stated she had "not seen conditions." I informed her that no west room use is permitted because it did not have a Certificate of Occupancy. I further told her that I had observed activity/use that evening that was in violation of the license.
- I also informed her of the entertainment requirements for the license there. I noted that I would report observing one song danced to by a group led by an instructor and one song sung by a woman through a small sound system. She confirmed and/or stated multiple times that all liquor service was done through the Commodore. She confirmed the Commodore was responsible for what observed at the event, but indicated she did not regard it as entertainment.

Saint Paul Legislative Code Section 310 provides that adverse action may be taken against your licenses based on any one or more of the following grounds:

Section 310.06 (b)(3): *"the license was issued in violation of the provisions of the zoning code, or the premises which are licensed or which are to be licensed do not comply with applicable health, housing, fire, zoning or building codes and regulations"*.

Section 310.06 (b) (5): *"the licensee or applicant has failed to comply with any condition set forth in the license, or set forth in the resolution granting or renewing the license."*

Section 310.06 (b) (6) (a): *“the license or applicant (or any person whose conduct may by law be imputed to the licensee of applicant) has violated, or performed any act which is a violation of, any of the provision of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith...”*

Section 310.06 (b) (6) (c): *“the licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.”*

Section 310.06 (b) (8): *“the licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.”*

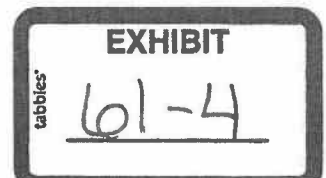
Due to the fact the violations are directly related to the licensed activity, per Saint Paul Legislative Code § 310.05 (m) (5) the licensing department will recommend a \$700.00 matrix penalty as well as the following additional license conditions on the liquor and entertainment licenses to ensure that occupancy of the proposed west expansion will not occur until a certificate of occupancy has been issued by the Building Official.

Additional Conditions –By February 3, 2017, the licensee will have applied for a permit and have walled off the proposed west expansion to ensure that occupancy will not continue until a Certificate of Occupancy is issued by the Building Official or have worked with the Building Official to come up with an alternate plan and timetable for occupancy. Any alternate plan must be signed off on by the Building Official and must be filed in both the licensing and building files.

Use of any unapproved space including but not limited to the proposed west expansion, the courtyard and the roof will immediately cease until approved by the proper city departments including but not limited to the Building Official, Zoning, Plan Review, Public Works....

At this time, you have four (4) options to proceed:

1. If I have not heard from you by **Monday, January 30, 2017**, I will presume that you have chosen not to contest the proposed adverse action, and the matter will be placed on the City Council Agenda for approval of the proposed remedy which will include the additional license conditions.
2. You must pay the recommended \$700.00 matrix penalty and sign the attached license condition affidavit. If this is your choice, you should return a signed license condition affidavit and make payment directly to the Department of Safety and Inspections, at 375 Jackson Street, Ste. 220, St. Paul, Minnesota 55101-1806 no later than **Monday, January 30, 2017**. A self-addressed envelope is enclosed for your convenience. Payment of the \$700.00 matrix penalty and return of the signed license condition affidavit will be considered to be a waiver of the hearing to which you are entitled.
3. 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 **Monday, January 30, 2017**. The matter will then be scheduled before the City Council to determine whether to impose the \$700.00 matrix penalty and proposed license conditions. You will have an opportunity to appear before the Council and make a statement on your own behalf.



4. 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 **Monday, January 30, 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 Monday, January 30, 2017, I will assume that you do not contest the imposition of the \$700.00 matrix penalty and revised license conditions. In that case, the matter will be placed on the 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 A. Skarda
Assistant City Attorney

Cc: Ricardo Cervantes, DSI Director
Stephen Ubl, DSI Building Official
Travis Bistodeau, DSI Deputy Director
Dan Nizolek, DSI Deputy Director
Eric Hudak, DSI Licensing Manager
Jens Werner, Executive Director, Summit-University Planning Council, 627 A Selby Avenue, St. Paul, MN 55104

Attachments: Revised License Condition Affidavit
October 26, 2015 letter from Stephen Ubl
May 25, 2016 letter from Travis Bistodeau





CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220
St Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

Condition Affidavit

I agree to the following conditions being placed on the licenses issued to
The University Club of St. Paul DBA The Commodore at 79 N. Western Avenue:

- 1, Entertainment will be provided by persons renting the licensed premises for wedding, anniversary, retirement, or similar family and/or social function(s).
2. The licensee shall be responsible for compliance by all renters and users of the licensed and contiguous premises.
3. Install storm windows to reduce the penetration of noise on windows facing Holly Avenue and install locking mechanisms to insure that these windows cannot be opened during events with music or other entertainment within six months.
4. Install drapery capable of absorbing sound, reducing sound penetration and preventing strobe light penetration on windows facing Holly Avenue within six months.
5. The south (Holly Avenue) door will be secured and a Crash Bar and sounding device installed to insure that this door is used as an emergency exit only. This condition must be met immediately.
6. All loading and unloading will be done through the service entrance located on the north side of the building. Blocking of driveways and exits by vehicles will be prohibited and unattended vehicles will not be allowed to remain in the fire lane.
7. A qualified security guard will be on the premises before, during and after the scheduled time of the event in order to prevent excessive noise, illegal parking, public drunkenness or violations of rules for use of the property. One security guard will be on duty for events less than 100 persons and two security guards or one guard in direct communication with staff for events over 100 persons.
8. Entertainment will end at 12:00 midnight.
9. There will be full compliance with City ordinances including the noise ordinance and those regulating the consumption of alcohol outside of the building.
10. A phone line will be maintained to allow residents to contact Commodore staff directly during all events.
11. A smoking area will be designated that is agreeable to the residents association. Smoking in and around other entrances and/or exits will be prohibited.
12. The property and ground will be cleaned up by the morning following any event.

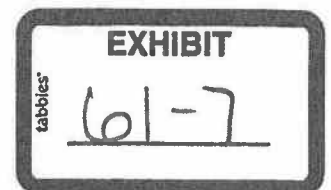
- 13. Appropriate signage will be installed to assist in enforcement of City ordinances, license restrictions and rules regarding use of the property.
- 14. A listing of upcoming events will be posted in an appropriate location. A weekly update is suggested.
- 15. The licensee shall fully comply with and be subject to the requirements of section 411.04 (b) (5), (6), & (7).

Conditions revised 1/19/2017:

- 16. By February 3, 2017 the licensee will have applied for a permit and have walled off the proposed west expansion to ensure that occupancy will not continue until a Certificate of Occupancy is issued by the Building Official or have worked with the Building Official to come up with an alternate plan and timetable for occupancy. Any alternate plan must be signed off on by the Building Official and must be filed in both the licensing and building files.
- 17. Use of any unapproved space including but not limited to the proposed west expansion, the courtyard and the roof will immediately cease until approved by the proper city departments including but not limited to the Building Official, Zoning, Plan Review, and Public Works....

Licensee

Date





CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

October 26, 2015

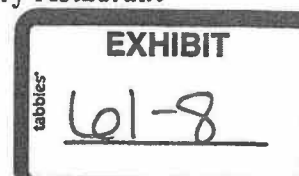
Good afternoon John,

Thank you very much for meeting with our team Wednesday afternoon. I hope the meeting helped you better understand the situation at the Commodore building regarding the renovation and proposed expansion of the A-2 use on the main level and the remaining open permits. A building permit was obtained in 2012 for some remodeling of the restaurant facility and you raised some questions regarding whether the permit included the expansion of the restaurant into a space to the west of the primary restaurant space. Many questions were brought up in the meeting with answers still outstanding. This letter is to summarize the issues at hand to be addressed before occupancy can be allowed in the A-2 (restaurant) facility of the Commodore building.

The proposed west expansion of the restaurant to the west of the primary A-2 space is not part of the 2012 permit. The 2012 building permit, along with other complimentary trade permits for the primary restaurant, have not been finalized. The blueprints reference work to be completed inside the existing restaurant footprint with rework of two openings (enlargement of existing openings) leading into the space to the west of the primary restaurant area. Additional notes specify future work to be completed under separate permits. The plans do show that the west space addition specifically states "future west dining", meaning the space buildout in the west space expansion is not part of the scope of work. There does not appear to be any notes or specifications indicating the type of construction of the building or the type of materials to be used to apply a finished ceiling in the future space to the west of the primary restaurant space (we did view a photo of a weight room with steel bar joists exposed). Furthermore, any expansion of an A-2 use with this amount of occupants would require additional active and/or passive life-safety systems to be installed such as an alarm system or sprinkler system. Neither is identified on the approved plans to be installed, indicating that DSI had not allowed this added space to be used. No inspections were requested before the ceiling work was covered up – no permit has been obtained to date for this work. Because this was unpermitted work, our field staff did not have an opportunity to exercise our expertise and ask questions and now we are at a point where occupancy is requested by you with outstanding issues.

In addition to the above concerns, other key issues are outstanding that need to be resolved prior to occupancy of the proposed west space expansion and the primary restaurant space. The Fire Certificate of Occupancy for the primary restaurant space has been revoked because of the extended time that the facility has not been in use. A reinspection of the entire facility (primary and proposed west expansion) will be needed prior to the reinstatement of the Fire Certificate of Occupancy of the primary restaurant space. Records indicate that the proposed west expansion space of the primary A-2 use is not, nor has it ever been, part of the allowed A-2 restaurant space. Additionally, records from our office, as well as records provided by Met Council, show no SAC determination for an A-2 use in the proposed west expansion space to the west of the primary restaurant facility.

You will need to complete the following items in order to be allowed occupancy in the primary restaurant space at 79 Western Ave. N.:



- 1.) Obtain final permits for all open permits reflective of the A-2 space.
- 2.) The Fire Certificate of Occupancy has been revoked. Coordinate an inspection from our Fire Inspection division to perform a walk-through of the facility to remove the Fire Certificate of Occupancy revocation and pay any outstanding fees associated with a Fire Certificate of Occupancy.

You will need to complete the following items in order to be allowed occupancy in the proposed west expansion space addition at 79 Western Ave. N.:

- 1.) Provide a design and apply for a permit to remodel the proposed west expansion space.
- 2.) Provide a design and apply for a permit to install an alarm system per the current 2015 building code in an A-2 occupancy.
- 3.) Provide a design and apply for a permit to install a sprinkler system per the current 2015 building code in an A-2 occupancy.
- 4.) Obtain a SAC determination of the proposed west space expansion for a restaurant. Paid all required fees.
- 5.) Provide accessibility to the proposed west expansion space.
- 6.) Provide evidence that establishes all the prior uses of the restaurant expansion space. Secure any necessary zoning approvals.
- 7.) A balance report of the A-2 occupancy space from a licensed contractor or a design professional.

We understand that this facility is in need of approval in very short order. Our staff is available for inspections should you or your contractors request our services. Please feel free to contact me for any clarification or to answer any questions that you may have.

Sincerely,



Stephen Ubl

*City of St. Paul Building
Official*

Department of Safety & Inspections

375 Jackson St

Saint Paul, MN 55101

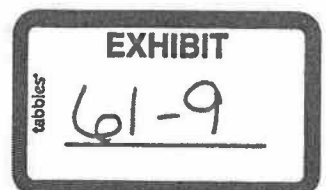
P: 651-266-9021

F: 651-266-9099

stephen.ubl@ci.stpaul.mn.us



Making Saint Paul the Most Livable City in America



DEPARTMENT OF SAFETY AND INSPECTIONS
Ricardo X. Cervantes, Director



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
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May 25, 2016

John Rupp
6 W 5th St Suite 900
St Paul, MN, 55102-1420

RE: 79 Western Avenue - Follow up from previous orders sent by the Saint Paul Building Official and regarding the meeting with DSI Staff on 1/19/2016.

Dear Mr. Rupp:

Thank you for taking the time to meet with the Department of Safety and Inspections Director, Ricardo Cervantes, the Saint Paul Building Official, Steve Ubl and myself earlier this winter. We look forward to working with you to bring your property into full compliance with all relevant codes and ordinances.

As we previously have discussed, the western dining area of the property located at 79 Western Avenue in Saint Paul lacks a Certificate of Occupancy and as such cannot presently be used for any purpose. After our meeting, we conducted an exhaustive search of city records, in an effort to outline the steps that you must complete before you can legally occupy the above referenced space.

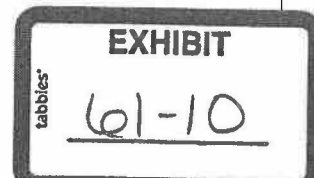
The goal of this letter is to provide you with a clear understanding of what will be required before occupancy of the western dining area is allowed. Occupancy cannot be permitted until the following actions are taken, and ultimately approved, by the Department of Safety and Inspections and/or the Saint Paul Planning Commission:

1. Provide a design and apply for a permit to remodel the proposed western dining area.
2. Provide a design and apply for a permit to install a sprinkler system per the current 2015 building code in an A-2 occupancy. There may be existing city funds to assist in the financing of the required sprinkler system in this building. Please contact Lynn Moser in the city's real estate division (651-266-8851) to discuss further.
3. Provide a design and apply for a permit to install an alarm system per the current 2015 building code in an A-2 occupancy.
4. Provide a design and apply for appropriate permits to ensure accessibility standards are met in the western dining area.
5. Make payment on the SAC determination fees identified in the Metropolitan Council letter dated December 18, 2015 (attached).
6. Provide a balance report for the A-2 occupancy space from a licensed contractor or a design professional, and, if necessary, obtain a permit to complete any additional work to gain compliance per the current 2015 building code.
7. Submit a Change of Non-Conforming Use permit application (attached) to address changes in zoning as a result of the proposed occupancy in the western dining area. Off-street parking for the western dining area will need to be addressed in the context of this zoning review.

For your reference, I have attached previous orders submitted to you. They include a copy of a letter dated October 26, 2015 and an email dated November 04, 2015.

Also, be aware that you currently hold a Liquor On-Sale license for an establishment containing 181- 290 seats. Should the number of seats exceed 290 in this facility, you will need to upgrade to a Liquor On-Sale 291+ seat

An Equal Opportunity Employer



John Rupp
May 25, 2016
Page 2

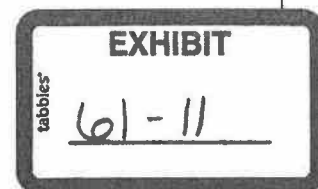
license. You also currently hold a Limited Entertainment license which permits those who rent, lease or use your facility to furnish live, taped or electronically produced entertainment with or without dancing exclusively for members of the social function of which they are associated. If you yourself wish to furnish such entertainment you must apply for the desired class of entertainment license and satisfy the associated consent requirements of neighboring property owners and occupants.

Regards,



Travis Bistodeau
Deputy Director-Department of Safety and Inspections
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
651-266-1922
Travis.bistodeau@ci.stpaul.mn.us

cc: Ricardo Cervantes-Director, Saint Paul Department of Safety and Inspections
Steve Ubl-Saint Paul Building Official
To file



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 19th day of January she served the attached **NOTICE OF VIOLATION AND INTENT TO IMPOSE LICENSE CONDITIONS** and a correct copy thereof in an envelope addressed as follows:

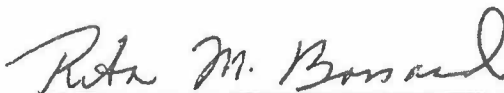
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Jens Werner, Executive Director
Summit-University Planning Council
627A Selby Avenue
St. Paul, MN 55104

(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 19th day of January, 2017


Notary Public

