



Legislation Text

File #: RES PH 19-89, **Version:** 1

Approving the request for revocation notwithstanding the surrender of the Liquor On Sale 101-180 Seats, Liquor On Sale-Sunday, Entertainment (A), and Gambling Location licenses held by Bamboo Hut, LLC, d/b/a Bamboo Hut at 1626 White Bear Avenue (License No. 20170002881).

WHEREAS, Saint Paul Legislative Code Section 409.03 regulates the number, location and duration of liquor licenses and subsection (a)(1)(a) mandates that:

“A new license may be issued for a location in such other areas of the city if there had previously been an on-sale intoxicating liquor license issued for that location, unless:

” The previous license had been revoked by the council for any reason other than nonpayment of license fees within the previous fifteen (15) years”; and

WHEREAS, the Department of Safety and Inspections records show that the premises located at 1626 White Bear Avenue previously held two on-sale intoxicating liquor licenses that were both surrendered after the Department initiated adverse action to revoke the licenses; and

WHEREAS, Saint Paul Legislative Code Section 310.05(h) entitled “Discretion to hear notwithstanding withdrawal or surrender of application of license.” provides that “The council may, at its discretion, conduct a hearing or direct that a hearing be held regarding revocation or denial of a license, notwithstanding that the applicant or licensee has attempted or purported to withdraw or surrender said license or application, if the attempted withdrawal or surrender took place after the applicant or licensee had been notified of the hearing and potential adverse action; and

WHEREAS, by this Resolution the Department of Safety and Inspections (“Department”) is requesting that the council conduct a public hearing regarding the recommendation of the Department for revocation of all licenses held at the location of 1626 White Bear Avenue (“Licensed Premises”); and

WHEREAS, the Department bases its request for revocation notwithstanding the surrender on the attached records which show a pattern of surrender to avoid revocation by the two previous on-sale intoxicating liquor licensees at the Licensed Premises; Teng and Futchy Ly, Ly Brothers LLC d/b/a Red Wok from November 30, 2015 to June 2, 2017 (Attachment # 1) and Tzianeng Vang, Bamboo Hut, LLC d/b/a Bamboo Hut from January 3, 2018 to June 29, 2018 (Attachment #2); and

WHEREAS, the Department also bases its request for revocation notwithstanding the surrender on the attached records which show that the property owners have failed to manage the property in a way that protects public health, safety and welfare all of which has caused the Department to expend its limited resources to ensure that the public health, safety and welfare are protected; and

WHEREAS, the Department has attached police reports, licensing records and other documentation to support its request which show the following:

BAMBOO HUT

- On July 5, 2017, Tzianeng Vang submitted an application for a Wine/Malt (Strong) On-sale license, Entertainment (A) license and Gambling Location license. (Attachment 5)
- As part of his licensing request, Tzianeng Vang submitted a letter to the Department on July 18, 2017 which included information that the “previous business operators” who were Teng and Futchy Ly “would have no involvement with the business”. (Attachment 11)
- On August 17, 2017, by RES 17-1252, Tzianeng Vang was granted a Wine/Malt (Strong) On-sale license, Entertainment (A) license and Gambling Location license. (Attachment 7)
- On November 6, 2017, Tzianeng Vang made a request to upgrade his Wine/Malt (Strong) On-sale licenses to a Liquor On Sale 101-180 Seats and Liquor On Sale-Sunday License. (Attachment 11)
- On January 3, 2018, Tzianeng Vang’s request to upgrade his license to Liquor On Sale 101-180 Seats, Liquor On Sale-Sunday and an Entertainment (A) license was granted. (Attachment 11)
- The Entertainment A, Gambling Location, Liquor On Sale - 101 - 180 Seats and Liquor On Sale - Sunday licenses issued to Tzianeng Vang contained 6 conditions (Attachment 11)
- On June 29, 2018, Tzianeng Vang voluntarily surrendered the license for Bamboo Hut, LLC d/b/a Bamboo Hut, located at 1626 White Bear Avenue (“Licensed Premises”). (Attachment 11)
- This surrender took place after Tzianeng Vang had been notified that the department was taking adverse action to revoke his license by way of a Notice of Intent to Revoke Licenses dated April 23, 2018 (“Notice”). (Attachment 3)
- The Notice was also sent to contacts for the owners of the Licensed Premises, Larry M. Salterman, at 5005 Old Cedar Lake Road, St. Louis Park, MN 55416-1621 and Bryan Larson at 375 Jackson Street, Ste. 700W, Saint Paul, MN 55101-1810. (Attachment 3)
- The Notice indicated that the Department was taking adverse action to upwardly depart and revoke all licenses held by Licensee based on the serious nature of the activities that Tzianeng Vang had allowed on the Licensed Premises and Tzianeng Vang’s disregard for the license conditions. (Attachment 3)
- The Notice indicated that on February 24, 2018 at approximately 0033 hours a call was made to the Saint Paul Emergency Operations Center reporting a riot/shooting at the Licensed Premises. Saint Paul Police Officers (“SPPD”) responded and asked to see the video. SPPD learned that the manager on duty was Teng Ly, one of the Previous Licensees who was to have no involvement with Bamboo Hut, this Previous Licensee told officers he could not immediately

provide a copy of the video. (Attachment 3)

- The details of the riot/shooting call on February 24, 2018 are detailed in Police CN 18039132. They include information that the manager had let a group called the Midwest Monsters book a party in the back room, that Teng Ly had admitted he had rented the Bamboo Hut, that Bamboo Hut was open past midnight, that a Facebook post located by officers contained information that the Red Wok/Bamboo Hut was having a show, that the doors opened at 10 pm and the event ended at 2:00 am, that admission was \$20.00, that one police officer estimated that approximately 400 people were inside the Bamboo Hut after restaurant hours, that a large fight occurred, that individuals were assaulted by members of the Midwest Monsters which is a "Crip Crew", that a male was shot and that at least 15 gunshots were heard, that Teng Ly was not able to pull up video for police related to the timeframe when the incident took place as requested by SPPD, that officers eventually located a male who had been shot twice as he was running across the street outside of the Bamboo Hut and that gun casings were located on the west side of Bamboo Hut's parking lot. (Attachment 8)
- The Notice indicated that not immediately making video available was a violation of license condition #6 which required that surveillance video immediately be made available for viewing by SPPD following a serious incident. (Attachment 3)
- The Notice indicated that on February 27, 2018, the Department sent a letter to Tzianeng Vang requesting a copy of all interior and exterior video surveillance from February 23, 2018 at 9:00 p.m. to 1:00 a.m. on February 24, 2018. (Attachment 3, Attachment 9)
- The Notice indicated that the Department and SPPD staff viewed the video and found that the video's time stamp display was inaccurate as it was one hour later than the actual time which was a violation of the license condition # 6 which required that Tzianeng Vang ensure that accurate date and time of day were visible on all recorded video. (Attachment 3, Attachment 8, Attachment 10)
- The Notice indicated that the video showed that Tzianeng Vang was not operating the establishment as a Restaurant in accordance with Saint Paul Legislative Code Section 409.02. (Attachment 3, Attachment 8, Attachment 10)
- The Notice indicated that Department staff observed that the video showed that alcohol was being consumed alcohol outside of the seating area, that the majority of dining tables and seating areas were unused, customers were standing and many of them were consuming alcohol. (Attachment 3, Attachment 10)
- The Notice indicated that this was a violation of Tzianeng Vang's license condition #1 under which the Tzianeng Vang had agreed to operate the establishment in compliance with Section 409.02 of the City of Saint Paul Legislative Code as a "Restaurant" as well as license condition #3 which required the sale, service, consumption, and/or display of alcohol be limited to the seating area shown on the plans dated 07/17/2017 and submitted with the application. (Attachment 3, Attachment 10, Attachment 11)
- The Notice indicated that the video showed customers in the premises after 12:30 a.m. and that alcohol was served after 12:00 a.m. which was a violation of the Tzianeng Vang's license condition #2 which required Tzianeng Vang to close the establishment at 12:00 a.m. midnight and all patron/customers to vacate the premises by 12:30 a.m. each day of the week as per Section 409.02 of the City of Saint Paul Legislative Code. (Attachment 3, Attachment 10, Attachment 11)

- The Notice indicated that the video showed wait staff delivering a case of bottled beer to a customer's table and customers removing the bottles from the box and consuming them. Customers at the same table were observed taking bottles of liquor and pouring their own shots and/or drinks which was a violation of Saint Paul Legislative Code § 409.02. (Attachment 3, Attachment 10, Attachment 33)
- The Notice indicated that on March 6, 2018, the District Council Land Use Committee held a meeting at Bamboo Hut about the issues at Bamboo Hut and that Tzianeng Vang admitted that he was aware that alcohol was being served in the vacant retail space at 1624 White Bear Avenue on February 23, 2018 and February 24, 2018 which was not a part of the Licensed Premises. (Attachment 3)
- The Notice indicated that on March 29, 2018, at 12:30 a.m., SPPD were at the Licensed Premises on a proactive police visit and documented that one of the Previous Licensees who was prohibited from being involved with the business was on staff as the manager/bartender and that there were multiple people sitting/standing around the bar with one male observed drinking beer which were violations of Tzianeng Vang's license condition as well as §§'s 409.02 and 409.26(b)(6) of the City of Saint Paul Legislative Code. This proactive police visit was documented in SPPD Case Number 18063754) (Attachment 3, Attachment 12, Attachment 33)
- The Notice indicated that on March 31, 2018, SPPD conducted a proactive police visit at the Licensed Premises at approximately 12:30 a.m. and documented a number of violations of Tzianeng Vang's license conditions including the presence of both of the prohibited Previous Licensees who said they were working there and people inside who were not employees in violation of § 409.02 of the City of Saint Paul Legislative Code. This proactive police visit was documented in SPPD Case Number 18065271. (Attachment 3, Attachment 13, Attachment 33)
- The Notice indicated that on March 31, 2018 at 4:46 p.m. SPPD was called to the Licensed Premises on a disorderly conduct call. While on scene they observed that that restaurant was closed for a private event. While they spoke with the complainant they observed what appeared to be a wedding reception occurring at the address. They recorded their observations under SPPD Case Number 18065610 (Attachment 14)
- The Notice indicated that on April 3, 2018, the Department of Safety and Inspections sent the Licensee a letter requesting a copy of all interior and exterior video camera surveillance for March 28, 2018 11:00 p.m. through 1:00 a.m. on March 29, 2018 and the licensee failed to provide the requested video in violation of license condition #6 which states: In all other cases, licensee shall provide a copy of the surveillance video to the requestor within 48 hours. (Attachment 15)
- The Notice indicated that on April 5, 2018, at approximately 9:35 p.m., while SPPD were conducting a proactive visit at the Licensed Premises Officers came in contact with a patron who admitted to drinking inside the Licensed Premises and noted that this individual appeared to be under the influence of alcohol and possibly overserved. The patron admitted to officers he had been drinking inside the restaurant. The patron was acting disorderly by actively holding the exterior doors shut as customers were trying to enter. Saint Paul Legislative Code § 409.26 (b) (4) prohibits the sale of alcoholic beverages to an obviously intoxicated person. They recorded their observations under SPPD Case Number 18069363. (Attachment 16)
- The Notice indicated that on April 7, 2018, at approximately 12:30 a.m., during a proactive visit SPPD found the front door of the Licensed Premises locked, but they looked in and saw at least six (6) people inside drinking who did not appear to be employees because they were wearing street clothes. An older male came to the front door to tell the officers that the

business was closed and went back inside without allowing the officers inside. One officer saw one of the prohibited Previous Licensees escorting five (5) people out of the Licensed Premises, some of whom appeared to be heavily intoxicated. They recorded their observations under SPPD Case Number 18070390. (Attachment 17)

- The Notice indicated that the Department believed that due to the serious nature of the activities being permitted by the Licensee at the Licensed Premises and the presence of the prohibited Previous Licensees an upward departure to revocation was warranted. (Attachment 3)
- Upon receiving the Notice, the Licensee, through his attorney requested an administrative hearing before an ALJ and a hearing date of July 10, 2018 was set. (Attachment 18)
- That administrative hearing was cancelled after the attorney for the Licensee withdrew the request for a hearing, indicating that the Licensee had relinquished all licenses and been evicted from the Licensed Premises by their landlord. (Attachment 19)

RED WOK

- The Licensed Premises had previously been operated by Teng and Futchy Ly under the name of Ly Brothers LLC d/b/a Red Wok. (Attachment 21)
- Teng and Futchy Ly held Liquor On Sale 101-180 Seats, Liquor On Sale - Sunday, Entertainment A licenses from November 30, 2015 to June 2, 2017. (Attachment 20)
- On April 18, 2017 the Department sent an Amended Notice of Intent to Revoke Licenses ("Amended Notice") to Teng and Futchy Ly which detailed the Department's recommendation to upwardly depart and revoke their Liquor on Sale, Liquor on Sale - Sunday and Entertainment A licenses after the way in which they operated the Licensed Premises violated their license conditions, SPLC and created a danger to the public health, welfare and safety. (Attachment 4)
- A copy of the Amended Notice was also sent to Charles E. Bethel, ("Attorney for Previous Licensees") which notified Teng and Futchy Ly that the Department was taking adverse action to revoke all licenses held by at the Licensed Premises. (Attachment 4)
- A copy of the Amended Notice was also sent to the ownership contacts for the Licensed Premises including Larry M. Salterman, at 5005 Old Cedar Lake Road, St. Louis Park, MN 55416-1621 and Bryan Larson at 375 Jackson Street, Ste. 700W, Saint Paul, MN 55101-1810. (Attachment 4)
- The Amended Notice detailed numerous incidents which constituted violations of the Licenses held by Teng and Futchy Ly at the Licensed Premises. (Attachment 4)
- The Amended Notice included information about the execution of a Search Warrant on February 3, 2017, by the SPPD at the Licensed Premises where over a kilo of cocaine, marijuana, a large amount of U.S. currency and firearms were recovered. (Attachment 4, Attachment 22)
- The Amended Notice included information about the arrest of Teng and Futchy Ly for possessing and selling cocaine and marijuana. (Attachment 4, Attachment 23)
- The Amended Notice included information about an incident on April 9, 2017 where SPPD was dispatched to the Licensed Premises at approximately 12:10 a.m. and officers observed a unconscious, shirtless, intoxicated male, inside the Licensed Premises being carried out by a number of individuals who identified themselves as members of the G-loc gang. This was documented in police

CN 17076926. (Attachment 4, Attachment 24)

- The Amended Notice included additional observations by the SPPD on April 9, 2017 which included customers entering the Licensed Premises around 12:45 a.m. (Attachment 4)
- The Amended Notice included information about an incident on April 15, 2017 where SPPD officers on routine patrol at approximately 12:30 a.m. observed the “Open” sign at the Licensed Premises on, multiple people coming in and out of and loitering around the Licensed Premises, an SUV in the parking lot around 12:45 a.m. with multiple people getting out of it and entering the Licensed Premises and approximately twenty-three (23) vehicles parked in the lot near the restaurant at 12:57 a.m. This was documented in police CN 17082248. (Attachment 4, Attachment 25)
- The Amended Notice included information about an incident on April 16, 2017 incident where SPPD officers on routine patrol at approximately 12:45 a.m. noticed more than twenty (20) vehicles parked in the parking lot and noted that even though the blinds were down they could see from the front glass door that customers were sitting in the bar area and when they returned to the Licensed Premises at 1:30 a.m. on April 16, 2017 they observed that people were still inside the Licensed Premises. This was documented in police CN 17082974. (Attachment 4, Attachment 26)
- The Amended Notice further alleged that these incidents were each violations of Teng and Futchy Ly’s license conditions and City Ordinances. (Attachment 4)
- The Attorney for Teng and Futchy Ly requested an administrative hearing on the matter before an administrative law judge. (Attachment 27)
- The administrative hearing was set for May 19, 2017. (Attachment 28)
- On May 19, 2017, Therese Skarda, Assistant City Attorney, appeared on behalf of the Department along with numerous witnesses and the Attorney for Previous Licensees, appeared on behalf of Teng and Futchy Ly, before the Honorable Barbara L. Neilson.
- The owners of the Licensed Premises also had representatives and an Attorney present at the hearing.
- As part of a settlement agreement reached between the Department and Teng and Futchy Ly, they agreed to relinquish their Liquor on Sale, Liquor on Sale - Sunday and Entertainment A licenses. (Attachment 29)
- By letter dated June 6, 2017, the Department notified the administrative law judge that Teng and Futchy Ly had relinquished all licenses to the Department. (Attachment 29)
- By letter dated June 12, 2017 the Department notified the administrative law judge that Teng and Futchy Ly had entered into an agreement with the owners of the Licensed Premises to terminate their lease and vacate the Licensed Premises (Attachment 30)
- The City incurred costs for the administrative hearing for Red Wok of \$697.00, this does not include staff or attorney time
- The City incurred costs for the administrative hearing for Bamboo Hut of \$1,653.00, this does not include staff, attorney and witness costs; and now therefore be it

RESOLVED, that the Council finds that the surrender of all licenses by both licensees took place after the they

had been notified of the Department's adverse licensing action; and

FURTHER RESOLVED, the Council has reviewed the Notice and the Amended Notice, the licensing documents, letters and police reports and all attachments and finds that the facts related to the surrender of Licenses by the Tzianeng Vang and Teng and Futchy Ly show a pattern of license surrender to avoid revocation; and

FURTHER RESOLVED, the Council finds that all interested parties, including the property owner received Notice of Violations as well as notice of the Administrative Law Hearings; and

FURTHER RESOLVED, that the Council finds that the City of Saint Paul has incurred expenses in excess of \$2350.00 in an effort to protect the public health, safety and welfare at the Licensed Premises; and

FURTHER RESOLVED, the Council finds that the activities of Tzianeng Vang and Teng and Futchy Ly jeopardized public health, safety and welfare; and

FURTHER RESOLVED, the Council finds that the property owner has a demonstrated propensity to lease to individuals who jeopardize public health, safety and welfare; and

FURTHER RESOLVED, the Council finds that the inability of the property owner to manage activities on his property has exposed the City to continued expenditure of limited resources to address incidents at the property in order to protect public health, safety and welfare; and

FURTHER RESOLVED, the Council finds that it is necessary to revoke all licenses held by Licensee for the Premises in order to protect the City from continued expenditure of limited resources and to ensure continued overall protection of the public health safety and welfare; and

FINALLY RESOLVED, all licenses held by the Licensee on behalf of Bamboo Hut for the Licensed Premises located at 1626 White Bear Avenue in Saint Paul are hereby revoked.