



## Legislation Text

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**File #:** RES 11-2173, **Version:** 1

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Memorializing City Council action taken on October 19, 2011 sustaining adverse licensing action against all licenses held by V & HM Plus LLC, d/b/a El Pantano Plus at 586 Rice Street.

WHEREAS, V & HM Plus LLC d/b/a El Pantano Plus (License ID # 20080002369) (hereinafter "licensee") located at 586 Rice Street in Saint Paul received a Notice of Violation dated March 8, 2011, (hereinafter "Notice"); and

WHEREAS, the Notice alleged a violation of condition number eleven (11) occurring in May of 2010; and

WHEREAS, license condition number eleven (11) requires that

[T]he license holder will not allow anyone under the age of twenty-one (21) to enter the establishment except in accordance with Minnesota State Statute 340A.503(4), and Section 409.08 of the City of Saint Paul Legislative Code. Events held for individuals under the age of twenty-one (21) require a special permit from DSI, and require that such events are held in a portion of the establishment where liquor is not permitted, consumed, sold or served. The licensee shall be responsible for ensuring that individuals under the age of twenty-one (21) who attend such events cannot gain access to an area where liquor is sold, served, permitted, or consumed;  
and

WHEREAS, licensee denied all the allegations and requested a hearing before an Administrative Law Judge;  
and

WHEREAS, licensee subsequently received a second Notice of Violation dated March 18, 2011; and

WHEREAS, the second Notice alleged a violation of condition number two (2) occurring on November 20, 2010, and a subsequent, related violation of condition number six (6) occurring on November 24, 2010; and

WHEREAS, license condition number two (2) requires that:

[T]he licensee will provide and maintain working video surveillance cameras and equipment to record activity on these premises prior to issuance of the license and in accordance with Saint Paul Police Department (SPPD) recommendations. Tapes and recordings must be maintained for a minimum of thirty (30) days, and there shall be an employee on-staff at all times during business hours with the ability to make them immediately available to the SPPD and/or the Department of Safety and Inspections (DSI) upon request; and

WHEREAS, license condition number six requires that:

[S]ecurity personnel shall be assigned to each entrance and remain until all patrons have left the licensed premises, which include the parking lot(s). Security personnel shall "wand" (using a metal detector) each patron and check all handbags and packages carried by patrons. Security personnel shall verify the age of patrons by checking state or federally issued identification cards (no picture I.D., no entrance). Customers re-entering the establishment shall be subject to the same security measures as customers entering the establishment for the first time; and

WHEREAS, licensee denied all the allegations and requested a hearing before an Administrative Law Judge; and

WHEREAS, a combined hearing addressing all of the above allegations was held before an Administrative Law Judge on June 8, 2011, at which each party was represented by Counsel and presented testimony; and

WHEREAS, the Administrative Law Judge issued a Report on August 31, 2011, in which the Administrative Law Judge issued Findings of Fact, Conclusions of Law, a Recommendation and a Memorandum; and

WHEREAS, the Administrative Law Judge found that there was insufficient proof that licensee had committed the violation in the March 8, 2011 Notice; and

WHEREAS, the Administrative Law Judge found that there was sufficient proof that licensee had committed both of the violations in the March 18, 2011 notice; and

WHEREAS, the licensee was given notice that a public hearing would be held before the City Council on October 5, 2011, at which time licensee would have an opportunity to present oral or written argument to the Council; and

WHEREAS, licensee did not file any exceptions to the report of the Administrative Law Judge; and

WHEREAS, the Department of Safety and Inspections filed exceptions to the report of the Administrative Law Judge; and

WHEREAS, at the public hearings on October 5, 2011 and October 19, 2011, Council File # PH 11-27, the Council of the City of Saint Paul considered all the evidence contained in the record, the arguments of licensee's attorney at the public hearing, the Administrative Law Judge's Findings of Fact, Conclusions of Law, Recommendation and Memorandum, and the exceptions filed by the Department of Safety and Inspections; now, therefore, be it

RESOLVED, that the Council of the City of Saint Paul issues this decision based upon consideration of the record of the entire proceedings herein, including the hearing before the Administrative Law Judge, all the documents and exhibits introduced therein, the Findings of Fact, Conclusions of Law and Recommendation as referenced above, the exceptions filed by the Department of Safety and Inspections, and the deliberations of the council in open session of that hearing; and be it

FURTHER RESOLVED, that the Findings of Fact of the Administrative Law Judge issued on August 31, 2011, with the exception of Findings number 11 and 14 in this matter are hereby adopted as the Findings of the City Council in this matter and be incorporated herein by reference; and be it

FURTHER RESOLVED, that Finding of Fact number 11 be adopted as amended below:

11. DSI received Officer Redmond's report regarding this incident on May 10, 2010. Seven months later, after delay caused by waiting for the police reports to become public, on December 28, 2010, DSI requested more information about his discussions with the Licensee's employees. Officer Redmond replied that he had only a vague memory of employees at the door stating that Jacobo was causing problems inside the bar before he was asked to leave.

and be it

FURTHER RESOLVED that Finding of Fact number 14 be adopted as amended below:

14. El Pantano's manager also asserted that their practice is to have security personnel ask customers for identification; after identification is provided, the customer is allowed to pay the cover charge. He also said that ~~After the cover charge is paid, the customer's wrist or top of the hand is marked with a stamp that says "Admit" and that El Pantano~~ The Licensee does not mark the wrists of customers with an "X" made by marker pen. and be it

FURTHER RESOLVED, that the Conclusions of Law of the Administrative Law Judge issued on August 31, 2011, with the exception of Conclusions number 5, 10, and 11 in this matter are hereby adopted as the Findings of the City Council in this matter and be incorporated herein by reference; and be it

FURTHER RESOLVED, that the Conclusion of Law number 5 be adopted as amended below:

5. The City has ~~not~~ demonstrated by a preponderance of the evidence that on May 8, 2010, the Licensee violated condition #11 by allowing an underage person into the bar without a special event permit; and be it

FURTHER RESOLVED, that Conclusion of Law number 10 be adopted as amended below:

10. Pursuant to § 310.05(m)(v) of the St. Paul Legislative Code, this would be either the Licensee's third appearance within 18 months and fourth appearance within ~~18~~24 months, or fourth and fifth appearance within 24 months, depending on whether the case that is currently on appeal is counted. The presumptive penalty for a third appearance for violations of license conditions is a \$2,000 fine and ten (10) day suspension; the presumptive penalty for a fourth appearance is revocation. The City Council may deviate from the presumed penalties in an individual case where the council finds and determines that there exist substantial and compelling reasons making it more appropriate to do so; and be it

FURTHER RESOLVED, that Conclusion of Law number 11 be adopted as amended below:

11. ~~Assuming this~~ As this is a fourth appearance regardless of whether the case on appeal is counted (based on those appearances from February, March, May and November of 2010), the City's recommendation to revoke all licenses is supported by the penalty matrix contained in § 310.05, and revocation of all licenses is warranted. There are substantial and compelling reasons, however, to impose sanctions other than revocation in this matter; and be it

FURTHER RESOLVED, that Conclusion of Law number 12 be adopted as follows:

12. Even if both the case on appeal and the May 20th, 2010 violation were discounted, and El Pantano only was before the Council for a third appearance within eighteen (18) months, there exist substantial and compelling reasons making it appropriate for the City Council to deviate from the penalty matrix and impose revocation. Those reasons include:

A. Pursuant to § 310.05(m)(ii) of the Saint Paul Legislative Code, "the occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion". Multiple violations are present in the November 20, 2010 adverse action in that Licensee violated condition #6 of its license when it failed to warn its patrons, and also violated condition #2 when it failed to provide all security video requested from that day;

B. Given that El Pantano's first adverse action in February 2010 also involved multiple violations (no worker's compensation insurance and allowing a 19-year-old to be present), El Pantano generated five (5) separate violations within the space of ten (10) months.

C. El Pantano's licenses were issued on August 19, 2009, which means that it generated five (5) separate violations within the first sixteen (16) months it was open, four of which were violations of its license conditions;

and be it

FURTHER RESOLVED, that all licenses held by V & HM Plus LLC d/b/a El Pantano Plus (License ID # 20080002369) are hereby revoked; and be it

FURTHER RESOLVED that said license revocation shall begin at 12:01 a.m. on December 3, 2011; and be it

FINALLY RESOLVED, that the Findings of Fact and Conclusions of Law of the Administrative Law Judge in this matter, as amended above, are hereby adopted as the Findings and Conclusions of the City Council in this matter.

A copy of this resolution, as adopted, shall be sent by first class mail to the Administrative Law Judge and to the license holder.