



Legislation Text

File #: RES 18-335, **Version:** 1

Adopting the Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge as amended, and revoking all licenses held by El Alamo for the premises located at 429 Robert Street South.

WHEREAS, El Alamo, (License #20080004592), received a Notice of Violation/Notice of Intent to Suspend Licenses dated October 13, 2017 seeking adverse action for multiple violations of the terms and conditions of its license; and

WHEREAS, a hearing was held on the Notice of Violation/Notice of Intent to Suspend Licenses before Administrative Law Judge Eric L. Lipman (herein after "Judge Lipman") on December 7, 2017. Each party was represented by Counsel, submitted oral testimony and documents into the record, and made closing arguments; and

WHEREAS, on January 8, 2018, Judge Lipman issued Findings of Fact, Conclusions of Law and a Recommendation including finding that the City had grounds to take adverse action against El Alamo for violation of license conditions 3, 6, and 8 on September 9, 2017, and license condition 1 on September 28, 2017; and

WHEREAS, Judge Lipman found that El Alamo had previous adverse licensing actions from August of 2013 (failure to pass an alcohol compliance check) and April 26, 2017 (failure to abide by license condition number 1); and

WHEREAS, under the penalty matrix in Chapter 310.05 (m) of the Legislative Code the presumptive penalty for a second violation within twelve (12) months is a fine of \$1,000.00; and

WHEREAS, Saint Paul Legislative Code section 310.05 (m) provides "the council may deviate [from a presumptive penalty] 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; and

WHEREAS, within his Summary of Conclusions, Judge Lipman explained his recommendation for an upward departure beyond the presumptive penalty of \$1,000 concluding that "the number of serious and recent failures to abide by El Alamo's licensing conditions" provide "substantial and compelling reasons," for an upward departure beyond the presumptive penalty of \$1,000"; and

WHEREAS, Judge Lipman's recommendation did not articulate the extent to which he believed deviation from the matrix penalty was appropriate stating that "[t]he St. Paul City Council should take appropriate action against the licenses held by El Alamo for the premises at 429 Robert Street South in Saint Paul, Minnesota"; and

WHEREAS, at a public hearing on February 7, 2018, the City Council considered all the evidence contained in the record including Judge Lipman's Findings of Fact, Conclusions of Law and Recommendation and the oral

arguments presented before the City Council; now, therefore, be it

RESOLVED, that the City Council issues this decision based upon consideration of the record of the entire proceedings herein, including the oral argument from the Licensee and his attorney from the February 7 public hearing; and be it

FURTHER RESOLVED, that the Findings of Fact, Conclusions of Law and Recommendation of Judge Lipman issued on January 8, 2018 in the Matter of the Licenses Held by El Alamo for the Premises at 429 Robert Street South in Saint Paul, OAH 8-6020-34820 with the exception of Conclusions of Law eight (8), nine (9), ten (10) and eleven (11) and the Memorandum are hereby adopted as the Findings of Fact and Conclusions of the City Council in this matter and be incorporated herein by reference; and be it

FURTHER RESOLVED that Conclusions of Law eight (8), nine (9), ten (10) are deleted in their entirety; and be it

FURTHER RESOLVED - that Conclusion of Law eleven (11) is hereby amended as follows:

11. The City did not demonstrate by a preponderance of the evidence that El Alamo either promoted dancing among patrons, held itself out to the public as a dance hall, or specially-provided spaces for its patrons to dance, in violation of the limitations of its Entertainment Class A license. ~~Further, section 405.01 (a) arguably exempts El Alamo from the requirement to separately obtain an Entertainment Class B license before it may host dancing at the Robert Street site. Under such circumstances, finding a regulatory violation of El Alamo's Entertainment license would be unfair, unjust and at odds with the hearing record.~~

and be it

FURTHER RESOLVED, that the Memorandum section of Judge Lipman's Findings of Fact, Conclusions of Law and Recommendation is hereby amended as follows:

The parties diverge on two key points in the hearing record; whether: (a) the joyful swaying back and forth of a few El Alamo customers on the evening of Friday, September 8, 2017, signifies operation of an unlicensed dance hall; and (b) the fine and suspension period proposed by the Department is proportional to El Alamo's failures to meet the conditions of its licenses.

...

~~Lastly, as noted above, it is arguable that the requirement to obtain an Entertainment Class B license applies only to the would-be dance hall operators that do not already hold an on-sale liquor license. The regulators at the Department do not read the ordinances in this way, to be sure; but both the law and the facts underlying the Department's claim are sufficiently shaky that the City Council should not base any regulatory discipline of El Alamo on this ground.~~

With that said, there were a series of other regulatory violations at El Alamo in September and October of 2017. These violations were more significant, and close in time, and require a robust response from El Alamo's management.

~~The Department describes this enforcement action as its effort to deliver a "wake-up call." In that characterization the Department is right. While a 10-day suspension of El Alamo's operations would, undoubtedly, be a stinging punishment, it is the regulatory choice that is most likely to focus the bar's management on the need to significantly improve controls over the doorways to the bar and the activities in the accompanying parking lot. It is far less likely that~~

~~the next presumptive step in the penalty matrix – a \$1,000 fine – would have the same focusing effect.~~ The hearing record thus includes "substantial and compelling reasons" for an upward departure beyond the presumptive penalty of \$1,000." and be it

FURTHER RESOLVED, that the City Council adopts the following additional Findings of Fact:

- 24a. That Licensing Manager, Eric Hudak testified at the hearing that Exhibit 8 was a note that he created to memorialize complaints from a resident who wished to remain anonymous regarding a violation of license condition six (6) on September 1, 2017 at 7:15 p.m. Specifically, the complainant alleged that at that date and time the Isabel door at El Alamo was being used in violation of license condition six (6).
- 24b. That the failure of El Alamo to produce the video in accordance with the September 28, 2017 request from the Department's attempt to investigate the September 1, 2017 violation should not preclude a finding of license condition six (6).
- 24c. That Exhibit 8 provides sufficient detail as to date, time, location of the violation that on September 1, 2017, El Alamo violated condition six (6) of their license by allowing use of the side door facing Isabel Street.

and be it

FURTHER RESOLVED, that City Council finds that the following form a substantial and compelling basis for upward departure to revocation of all licenses held by El Alamo:

- 1. The fact that El Alamo committed numerous license condition violations just days after the Department had sent Licensee a warning letter.
- 2. The police calls for service at El Alamo in 2017 including, 33 calls to the Saint Paul Police Department in the first 11 months of 2017 including six which involved use of a weapon; five which involved an aggravated assault; one which involved a robbery; two which involved an intoxicated person; and 19 calls which involved a disturbances of the peace.
- 3. The number of serious failures to abide by license conditions less than two months after the July 17, 2017 settlement agreement, and the close time period in which they occurred and the threat to public safety and health they created.
- 4. The shots fired incident on September 9, 2017 in which 45 casings from various weapons were recovered by officers and the threat to public safety and health it created.
- 5. The inability to produce video in response to a request from the Department after the September 28, 2017 request, less than a month after the September 9, 2017 shots fired incident.
- 6. The September 1, 2017 violation of license condition six (6) sent in by an anonymous complainant.
- 7. The license violations observed on video after the September 9, 2017 shootout in the parking lot of El Alamo demonstrate that El Alamo is operating in a way that poses a threat to public safety. These violations include violation of license conditions three (3) (a failure to routinely patrol and secure the bar's outdoor parking lot), six (6) (a failure to prevent non-emergency patron entrance and egress from an emergency exit door that faced Isabel street), and eight (8) (a failure to consistently subject patrons to security "wandering" and checks of handbags for weapons).

and be it

FURTHER RESOLVED, in addition to the above-stated substantial and compelling reasons for an upward departure to revocation, the City Council also finds that licensee should not benefit from the short time frame in which three serious incidents occurred after the violation that was settled on July 17, 2017; and be it

FURTHER RESOLVED, that the Council of the City of Saint Paul believes that the recommendation of the Department of Safety and Inspections for an upward departure to a \$2,000 matrix penalty and a ten (10) day suspension of El Alamo's licenses will not ensure the safety of the public; and be it

FURTHER RESOLVED, that based on the record before the Judge Lipman and the license history, the Council of the City of Saint Paul finds that substantial and compelling reasons exist to support an upward departure to revocation of El Alamo's licenses; and be it

FINALLY RESOLVED, all licenses held by El Alamo are hereby revoked effective upon passage and signature of this resolution pursuant to Chapter 6 of the Saint Paul City Charter for the reasons set forth above and contained in the record.

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