



## Legislation Text

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**File #:** RES PH 20-12, **Version:** 1

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Considering and adopting the Recommendation and Order on Cross Motions for Summary Disposition submitted by the Administrative Law Judge concerning all licenses held by the University Club of St. Paul, d/b/a The Commodore at 79 Western Avenue North.

WHEREAS, the licenses held by the University Club of St. Paul d/b/a The Commodore (“Licensee”) for the premises located at 79 Western in Saint Paul (“Licensed Premises”) were the subject of a Notice of Violation and Intent to Impose License Conditions (“NOV”) on January 19, 2017, herein incorporated by reference as Exhibit 61; and

WHEREAS, the NOV outlined the basis for the recommendation for adverse action and imposition of license conditions; and

WHEREAS, the NOV further stated “Please note: If you choose an administrative hearing, the Department of Safety and Inspections reserves the right to request that the City Council impose the costs of this administrative hearing, per Saint Paul Legislative Code §310.05(k); and

WHEREAS, Saint Paul Legislative Code §310.05(k) allows for council to impose the costs of an administrative hearing stating:

“The council may impose upon any licensee or license applicant some or all of the costs of a contested hearing before an independent hearing examiner. The costs of a contested hearing include, but are not limited to, the cost of the administrative law judge or independent hearing examiner, stenographic and recording costs, copying costs, city staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The council may impose all or part of such costs in any given case if (i) the position, claim or defense of the licensee or applicant was frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment; ...”

WHEREAS, the Licensee responded to the NOV with a request for a hearing before an Administrative Law Judge in an email herein incorporated as Exhibit 62; and

WHEREAS, on October 24, 2018, the parties each filed Amended Motions for Summary Disposition; and

WHEREAS, in support of its Amended Motion for Summary Disposition the City filed supporting information herein incorporated as Exhibits 1 through 63; and

WHEREAS, the City’s NOV and Amended Motion for Summary Disposition alleged that adverse action and the

imposition of license conditions was appropriate due to 7 separate violations of the Saint Paul Legislative Code, and

WHEREAS, on November 28 and 29, 2018 the parties each filed responsive briefs; and

WHEREAS, on August 21, 2019 oral arguments on the Amended Motions for Summary Disposition were held after attempts to settle the matter were not successful; and

WHEREAS, on December 5, 2019, the Administrative Law Judge issued her Recommendation and Order on Cross Motions for Summary Disposition herein incorporated as Exhibit 64; and

WHEREAS, the Administrative Law Judge's Recommendation and Order on Cross Motions for Summary Disposition denied the Licensee's Motion for Summary Disposition and; and

WHEREAS, the Administrative Law Judge's Recommendation and Order on Cross Motions for Summary Disposition granted the City's Motion for Summary Disposition finding that there was no genuine issue of material fact in dispute on violations 1, 3, 4, 5 and 6; and

WHEREAS, the Administrative Law Judge's Recommendation and Order on Cross Motions for Summary Disposition dismissed violation number 2; and

WHEREAS, the Administrative Law Judge's Recommendation and Order on Cross Motions for Summary Disposition recommended that violation number 7 be continued to an evidentiary hearing or be dismissed in the interest of efficient resolution of the matter; and

WHEREAS, Administrative Law Judge's Recommendation and Order on Cross Motions for Summary Disposition stated that "It is undisputed that Licensee has continued to use and keep the Western Dining Area open to the public for restaurant, bar, and dining purposes continuously throughout the pendency of this action, despite (1) the City's clear admonition on May 25, 2016, that the Western Dining Area may not be used for such purposes, and (2) the City's refusal to issue any certificates of occupancy authorizing such use of the space." (Exhibit 64, page 30); and

WHEREAS, Administrative Law Judge's Recommendation and Order on Cross Motions for Summary Disposition stated that "There is an old adage that states, "It is better to ask forgiveness than permission." In this case the adage is proven wrong. Had Licensee in 2012, clearly advised the City, in its Building Permit Application, that it intended to significantly remodel of the Western Dining Area, make it a part of The Commodore restaurant, and change its use to an A-2 occupancy, Licensee may have been able to obtain the approvals it needed to operate the dining area lawfully. Instead, Licensee attempted to obscure the facts at the time of its Permit Application, proceed with costly renovation, and hope the City would forgive its expansion of use and occupancy." (Exhibit 64, page 33).

WHEREAS, the Administrative Law Judge's Recommendation and Order on Cross Motions for Summary Disposition recommended that the City impose a fine of \$500 and reasonable conditions on the Licenses held by the Licensee; and

WHEREAS, on December 18, 2019 the City filed a letter with the Administrative Law Judge dismissing violation number 7 in the interest of efficiency, herein incorporated as Exhibit 66; and

WHEREAS, the invoices received from the Administrative Law Judge for the costs of the contested hearing, herein incorporated as Exhibit 65, total \$21,907; and

WHEREAS, the invoices for copies of depositions demanded by the Licensee, herein incorporated as Exhibit 65, total \$2,551.51; and

WHEREAS, the Department is recommending that Licensee reimburse the City for the costs of the contested hearing and deposition copy costs; and

WHEREAS, although reimbursement for city staff and attorney time is permissible under Saint Paul Legislative Code §310.05(k)m the Department is not recommending that the Council require the Licensee to reimburse the City for city staff and attorney time; now therefore be it

RESOLVED, that the Council has considered the Recommendation and Order on Cross Motions For Summary Disposition of the Administrative Law Judge and hereby adopts it as the Memorandum and Conclusions of the City Council in this matter; and be it

FURTHER RESOLVED, that a fine of \$500.00 is imposed against 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; and be it

FURTHER RESOLVED, that Council finds that the recommendation for the imposition of costs of the administrative action and deposition copy costs under Saint Paul Legislative Code §310.05(k) is supported by:

The Recommendation and Order on Cross Motions for Summary Disposition of the Administrative Law Judge as a whole;

The determination of the Administrative Law Judge that there was no genuine issue of material fact in dispute with respect to violations 1, 3, 4, 5 and 6;

The recommendation for the imposition of a \$500 fine and reasonable license conditions;

The finding that Licensee continued to use and keep the Western Dining Area open to the public for restaurant, bar, and dining purposes continuously throughout the pendency of this action, despite (1) the City's clear admonition on May 25, 2016, that the Western Dining Area may not be used for such purposes, and (2) the City's refusal to issue any certificates of occupancy authorizing such use of the

space;

Her belief that Licensee attempted to obscure the facts at the time of its Permit Application, proceed with costly renovation, and hoped that the City would forgive its expansion of use and occupancy; and be it

FURTHER RESOLVED, that costs of the Administrative Hearing in the amount of \$21,907.00 be paid by the Licensee; and be it

FURTHER RESOLVED, that the City's costs of copies for depositions in the amount of \$2,551.51 be paid by the Licensee; and be it

FURTHER RESOLVED, that the following conditions be imposed on the Licenses held by Licensee:

1. Within 5 days of passage and approval of this resolution, Licensee must present evidence to the Building Official that he has safely separated and secured the area known as the Western Dining Area from the Main Dining Area in a manner that ensures no use or occupancy of the space will occur. This evidence must include a mechanical design for approval which shows that the Main Dining Area of the Licensed Premises can be safely occupied without the use of the mechanical system he recently installed in the Western Dining Area.
2. If upon review the Building Official determines that additional measures are necessary to safely separate and secure the Western Dining Area from the Main Dining Area he will convey these additional measures to the Licensee in a letter.
3. The Licensee must implement these additional measures within 5 days of the receipt of the letter from the Building Official or discontinue occupying the Main Dining Area as well as the Western Dining Area.
4. Use or occupancy of the Western Dining Area is prohibited until the Building Official grants a Certificate of Occupancy for the space.

FINALLY RESOLVED that the \$500 fine, the \$21,907.00 administrative hearing costs and the \$2,551.51 deposition costs be paid within 30 days of the passage and approval of this resolution.

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