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CITY OF SAINT PAUL

# LICENSING FUNDAMENTALS



# Agenda

- Process Overview
- Legal Authority and Framework
- Saint Paul Licensing Laws
  - Education and Support
  - Complaints, Inspections, and Investigations
  - Adverse License Action
- Penalties
- Legislative Hearings
- Adverse Action — a deeper dive
- Balancing Customer Service and Enforcement

# Process Overview

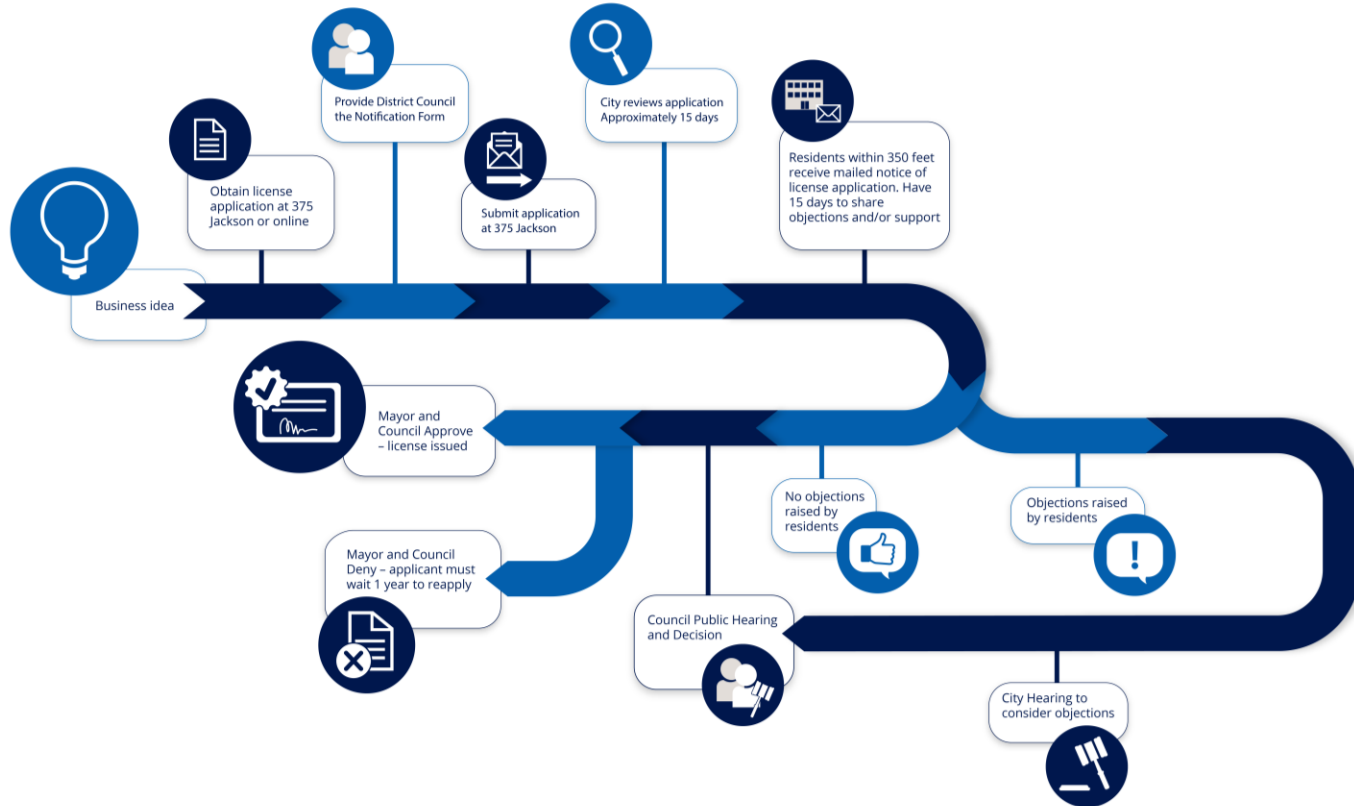


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# Process Overview



Timeline showing the Class N Business License application process

# Legal Authority and Framework



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- The City of Saint Paul, under the broad grant of legislative power conferred by its home charter, has extensive power to license and regulate occupations and businesses whose impact or potential impact on the public health, safety and welfare require such action.
- These powers include actions to correct and discipline license holders for violations of the law, and the determination, subject to law, of who is and who is not fit to engage in such businesses and occupations.



# Examples of Licenses Issued by the City

- Liquor
- Tobacco
- Auto Repair
- Taxicab/driver/company/transportation network
- Massage practitioner
- Refuse Hauler
- Recycling Dealer
- Transportation Networks



# Examples of Licenses Issued by the State

- The State also issues some licenses — and have authority over them.
- Doctor
- Attorney
- Teacher
- Engineer

NOTE: This PowerPoint covers ONLY city issued licenses.





# Through the Ordinance Process

Council also has the authority to:

- Adjust presumptive penalties,
- Change ordinance processes,
- Decide whether a license is a Class R or N,
- Change Notice etc.

# Saint Paul Licensing Laws



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# Saint Paul Ordinances - Regulating Licensing

- Identify business activities that require a license to operate in Saint Paul
  - Licensed business activities include brick and mortar and non-brick and mortar establishments that can be operated from inside or outside the city.
  - License holders vary from business owners to individual professional or trade workers.
- Establish regulations licensed persons/businesses must follow
  - Chapter 310 – defines uniform regulations that cover all licenses, e.g.
    - Compliance with Zoning and other codes
    - Process for application review, approval, and/or adverse licensing action
    - Licenses are not transferable, and payment is required upon application/renewal
    - Lists license fees
  - Other Chapters define specific regulations for each license type. E.g.
    - Chapter 324 regulates tobacco sales, including different license types
    - Chapters 409 and 410 regulate liquor sales, including different types of liquor licenses (based on business size, type of alcohol, etc.) and permitted locations



# Chapter 310 - Uniform License Procedures

- Chapter 310 lays out the following procedures related to licenses:
  - Applications for the Grant or Issuance of a License
  - New Application Investigation and Review, Application Denial
  - Notice Requirements
  - Levels of Approval
  - Due Process - what kind of hearing is required, what authority does DSI have and what authority has the Council retained
  - What to do if there is an objection to a New Application or Proposed license condition,
  - Renewal Procedures,
  - Transfer Procedures,
  - Process to impose conditions on a license,
  - Disciplinary process to impose penalties on a license including fines, suspension, and revocation,
  - The matrix of appropriate penalties
- Chapter 310 defines three different license types: Class R, Class N and Class T.



# Class R Licenses

Licenses and certain permits which can be ***issued by the director without council approval if no conditions are imposed*** upon the license and which ***do not require a hearing if there is an objection.***

Examples:

Business Licenses	Fee	Legislative Code
Amusement Rides — Annual	\$85.00	317
Animal Day Care (Commercial)	\$83.00	348
Recycling Processing Center	\$958.00	408
Second-Hand Dealer	\$85.00	355
Short-Term Rental Platform	\$11,181.00	379
Tobacco Products Shop/Tobacco Shop	\$535.00	324



# Class T Licenses

Licenses which can be ***approved or denied by the director, if no conditions are imposed upon the license and which do not require a hearing if there is an objection.***



Business Licenses	Fee	Legislative Code
Amusement Rides — Temporary	\$32.00	317
Bingo/Raffles/Pull-Tabs/Tipboards/Paddlewheels	\$59.00	402
Close Out Sale	\$85.00	325
Entertainment — Temporary	\$35.00	411
Liquor Catering (State Cater Only)	\$59.00	409
Liquor — Extension of Service Area	\$68.00	410



# Class N Licenses

Licenses that can only be ***approved or denied by the City Council***. These licenses require neighborhood notification.



Business Licenses	Fee	Legislative Code
Auto Body Repair Shop/Painting Shop	\$507.00	423
Entertainment (A   B   C)	\$278   \$672   \$3,191	411
Gambling Location	\$84.00	225
Gas Station	\$154.00	424
Liquor Off Sale	\$1,500.00	409
Liquor On Sale—181-290 Seats	\$6,360.00	409



# Other Chapters – License Type Specific

## **Example: Saint Paul Legislative Code Chapter 324 - Tobacco**

### **Sec. 324.01. License required.**

- a) No person may sell or offer for sale at retail within the city any licensed product or in any manner represent or hold themselves out as one who sells or offers for sale at retail any licensed product without a license from the city.
- b) Any license issued pursuant to this chapter must be issued to the person, firm or corporation that operates the principal business at that address.
- c) No license may be issued pursuant to this chapter for a location or place of sale if a tobacco license previously issued for that location or place of sale has been revoked for any reason other than nonpayment of license fees within the past five (5) years.

### **Sec. 324.02. License for each location.**

A license permits the licensee to sell licensed products at retail at the one (1) location specified in said license, and a separate license is required for each location.





# DSI's Role

- Ordinance defines the Department of Safety and Inspections (DS) as the department responsible for licensing and regulating specific business activities.
  - Business Licensing is the primary DSI division
- DSI approaches this responsibility in terms of both public safety/neighborhood livability and economic justice
  - We strive to ensure licensed businesses operate in a safe manner for customers and the community
  - We know that support and education of business owners results in well run businesses that in turn create safe neighborhoods



# Business Licensing – Primary Responsibilities

- Review and process license applications
- Provide ongoing business support and education
- Ensure regulatory compliance of businesses
- Investigate and resolve complaints
- Conduct compliance inspections
- Initiate enforcement action when necessary
- Focus on regulatory improvements to promote safe, livable, and successful business activity in Saint Paul



# Education and Support



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## Ongoing Entrepreneur Education

- Focused on ensuring operators understand laws as well as current issues, opportunities, and industry best practices

## Opening Inspection of Brick & Mortar Establishments

- Review regulations and license conditions

## Law Changes

- Lead and provide technical assistance in the development and revision of ordinances and statutes

## Community

- Work closely with businesses, community, city departments and outside agencies to prevent, address and resolve neighborhood safety and livability issues



**DSI Project Facilitators**

# Complaints, Inspections, and Investigations



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# Investigations conducted prior to Adverse Action...

Notification of a potential violation via:

- Assigned Case - SPPD Incident Report
- Proactive DSI or SPPD Interaction
  - Liquor or tobacco compliance check
  - PPV (Proactive Police Visit).
- Email
  - SPPD - RMS incident (daily) report - licensed premises
  - SPPD - Tour / Shift (daily) summary
- Citizen Complaint
  - DSI or SPPD Complaint Portal
  - Phone call, community meeting, email, etc.



Sergeant  
Charles Graupman  
SPPD/DSI Liaison



# Investigations (continued...)

## Review of business licensing conditions – *Questions to consider ?*

- Was the licensed business operating within their required conditions?
- Are there potentially new conditions that should be added?
- Is there any outdated conditions that should be updated or removed ?

### Example:

License type	Conditions
Feb 20, 2024 Pending Liquor On Sale - 2 AM Closing	<ol style="list-style-type: none"> <li>1. The back door shall be kept closed at all times. All doors shall be closed when entertainment is provided.</li> <li>2. There shall be no dumping of bottles after 9PM and before 7AM.</li> <li>3. No alcohol is permitted outside of the establishment.</li> <li>4. Motorcycle parking shall not be permitted on the sidewalk.</li> <li>5. Bar staff will regularly monitor patron behavior outside of the establishment (including the parking lot) to prevent loitering, excessive noise, and illegal drinking.</li> </ol>
Feb 20, 2024 Active Gambling Location	
Feb 20, 2024 Active Entertainment (B)	
Feb 20, 2024 Active Liquor On Sale - Sunday	
Feb 20, 2024 Active Liquor On Sale - 181- 290 Seats	
	<ol style="list-style-type: none"> <li>6. Bar staff will pick up litter daily outside of the establishment.</li> <li>7. The bar will provide 3 security staff on nights when entertainment is offered and 2 security on other nights. Security staff shall wear clothing that clearly identifies them as security.</li> <li>8. License holder will create a video surveillance camera and lighting placement plan (video surveillance plan) for the interior and exterior of the licensed premises. License holder will submit the video surveillance plan to the Saint Paul Police Department (SPPD) liaison with the Department of Safety and Inspection (DSI) for review and approval. In accordance with the approved video surveillance plan, license holder will ensure that video surveillance camera system is in good working order, ensure it is recording 24 hours per day, ensure it can produce recorded surveillance video in a commonly used, up-to-date format, and ensure that accurate date and time of day are visible on all recorded video. License holder will retain surveillance video for a minimum of thirty (30) days. If an incident is deemed serious by SPPD, license holder shall make surveillance video immediately available for viewing by SPPD. If a copy of the surveillance video for a serious incident is requested by SPPD, license holder shall have the technology, materials and staff available to immediately make the copy. In all other cases, license holder shall provide a copy of the surveillance video to the requester within 48 hours.</li> </ol>

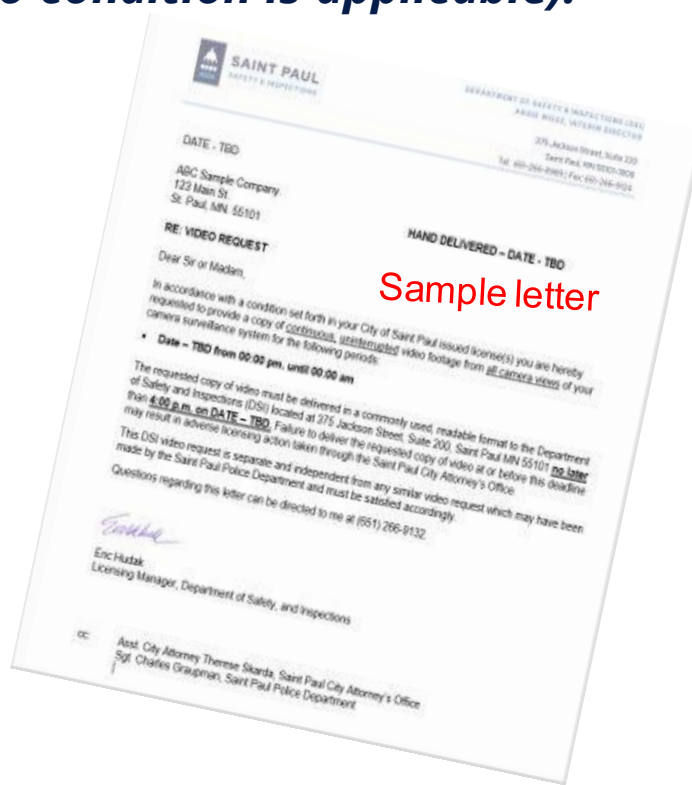


# Investigations (continued...)

- The Issuance of a DSI official video request letter to Licensed Business.*(when video condition is applicable).*

## Violations of Video Conditions:

- Fail to return video within 48 Hours to DSI as requested.
- Fail to provide video to SPPD immediately if an incident is deemed serious.
- Fail to record or maintain recordings for a period of 30 days.



## Reasons for a video request:

- To determine if an alleged incident occurred & shed further details.
- To help ensure that all licensing conditions were followed.





# Investigations (continued...)

## Collection & review of business surveillance video.

### ➤ **What types of things are being looked at in the footage?**

1. All video cameras were online at the time of incident.
2. The footage contains all camera angles (On file w/DSI).
3. All cameras recorded throughout the duration of the requested time frame.
4. The video footage was not altered, deleted or corrupted in any way.
5. The footage substantiates or discredits any alleged licensing violations.
6. Business staff took proper steps to deter, intervene and report incident to DSI & SPPD.

### ➤ **What things were found?**

1. Licensing violations.
2. Camera footage failures.
3. Security concerns.
4. Criminal behavior.

### ➤ **What results did it have?**

1. Adverse Action.
2. Exoneration.
3. Education.





# Investigations (continued...)

## Review of additional evidence collected (SPPD)

- Police call & incident reports.
- Photographs.
- BWC (Body Worn Camera Footage).
- ICC (In Car Camera Footage).



**Saint Paul Police Department**

Search Filter: Date Range: Column: CAD Data, Date Range Type: Exact From: 1/1/2024 12:00:00 AM To: 1/2/2024 1:59:00 PM  
Location Filter: House Number: From: 367 Street Search Type: Street Name: (All)

ID	ON	CALLDATE	DISPOSITION	PRIMARY OFFENSES	ADDRESS	
1	24000222	01/01/2024	1354	A	SPECIAL OR OTHER DETAIL	367 GROVE ST , St Paul
2	24000223	01/01/2024	1355	A	INVESTIGATE AND ALL OTHER	367 GROVE ST , St Paul
3	24000226	01/02/2024	0609	A	HARASSMENT- PHONE CALLS	367 GROVE ST , St Paul
4	24000570	01/02/2024	0845	00	ADMIN/HRM SIGINT/ ADMINISTRATIVE RECORD	367 GROVE ST , St Paul
5	24000599	01/02/2024	0858	A	SPECIAL OR OTHER DETAIL	367 GROVE ST , St Paul
6	24000895	01/02/2024	1344	A	SPECIAL OR OTHER DETAIL	367 GROVE ST , St Paul
7	24000782	01/02/2024	0621	A	MISSING PERSONS	367 GROVE ST , St Paul
8	24000915	01/02/2024	0942	A	ASSAULT CITIZEN CALLS, ALL	367 GROVE ST , St Paul



# Investigations (continued...)

Meet with City Attorney's Office to determine if a request for Adverse Action is merited.

- Recommended adverse actions follow the escalating penalty matrix prescribed in City Ordinance
  - Fine, suspension, suspension and fine, and then revocation
  - May also include imposing conditions on license
- Depending on violation severity, recommended action can depart from the matrix
- Violations are remedied through options provided to license holder:
  - Admit facts – serve the penalty
  - Admit facts – appear before City Council to appeal for penalty reduction
  - Dispute facts – appear before an Administrative Law Judge and then City Council
- All adverse actions are ultimately decided by the City Council
- Council may adjust any recommended penalty



# Investigations (continued...)

## Case Example: The Foundry, 1201 Jackson St. N.

In May 2021, an investigation was conducted during in which a violation of the Ramsey County Clean Indoor Act and violations of the St. Paul Legislative Code were discovered including, but not limited to 1) the assault of a customer by a bartender who forcibly threw a liquor bottle at the customer's head causing injury and, 2) security staff denying SPPD Officers immediate entry into the bar following the customer assault.

### ➤ Investigation resulted in Adverse Action – Upward Departure \$1,000 Fine.

*December of 2021- Settlement reached.*

*Licensee Agreed to the following:*

- *(6) New/Amended licensing conditions*
- *\$500 penalty*



### Post Adverse Action Measurables:

- 2021 - 177 Police Calls
- 2022 - 54 Police Calls
- 2023 - 33 Police Calls
- 2024 - 13 Police Calls

# Adverse Licensing Action



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# Adverse Licensing Action

- Covers all possible restrictions and penalties that can be imposed on a license holder, includes imposition of conditions, fines, fees, denials, suspension, or revocation.
- Defined in the Saint Paul Legislative Code in section 310.01 as:  
*"...the **revocation or suspension** of a license, the **imposition of conditions** upon a license, the denial of an application for the grant, issuance or renewal of a license, the **imposition of a fine**, the assessment of the costs of a contested hearing, and any other disciplinary or unfavorable action taken with respect to a license, licensee, or applicant for a license. Adverse action includes any of the foregoing directed at one (1) or more licenses held by a licensee at any location in the city. Adverse action also includes disapproval of licenses issued by the state under statutory provisions which permit the governing body to disapprove the issuance of the license."*



# Adverse Licensing Action (continued...)

- The Council is authorized to take adverse action against any license or permit under section 310.04 (a) of the Legislative Code:

"Council may take adverse action. The council is authorized to take adverse action, as defined in section 310.01 above, against any or all licenses or permits, licensee or applicant for a license, as provided in and by these chapters. Such actions must be initiated and carried out in accordance with the procedures outlined in section 310.03; provided, however, that the formal notice of hearing must be used to initiate the adverse action."

(Specific 310.03 procedures will be covered in detail later.)

- Reasonable Basis is required to take any adverse licensing action.



# Adverse Licensing Actions (continued...)

- The Council's basis for adverse action must be based on one (1) or more of the reasons specifically provided by law or in these chapters. Examples related to applications:
  - The license or permit was procured by misrepresentation of material facts, fraud, deceit or bad faith.
  - The applicant or one acting in his or her behalf made oral or written misstatements or misrepresentations of material facts in or accompanying the application.
  - The license was issued in violation of any 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 and building codes and regulations.

(See Sec. 310.04 (b) for complete listing of reasons.)





# Revocation, Suspension or Imposition of Conditions

- Whenever there is a possibility that adverse action will be taken, the procedures in section 310.03 of the Legislative Code are followed.
- Council can impose a penalty including fine, suspension or revocation or conditions to which a licensee may object.
  - Such an action would warrant an Independent Hearing Officer or “independent hearing examiner” to review.



# Independent Hearing Officer

- In response to appellate court mandates, and in an effort to make the adverse hearing process fairer and more efficient, the Council in 1988 required the use of an independent hearing examiner in all contested cases to hear evidence and make findings, conclusions and a recommendation.
- Use of an independent hearing examiner achieves two primary goals.
  - More efficient use of the Council's time
  - Establish a fair and equitable procedure whose result will likely survive court challenge



# Adverse Licensing Actions (continued...)

Basis Examples, related to behavior or actions attributed to Licensee:

- The licensee (or person who by law may be imputed to the licensee) 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 can be inferred a lack of fitness or good character
- The activities of the licensee in the licensed activity created a serious danger to the public health, safety or welfare, or the licensee performs or has performed work/activity in an unsafe manner.
- 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.



# Council Action, After Hearing

- Use of a hearing examiner takes no power away from the Council.
- The Administrative Law Judge (aka "independent hearing examiner") produces Findings of Fact, Conclusions of Law and Recommendations.
- The City Council retains the ultimate decision-making power in all adverse actions.
- The City Council may choose to adopt or modify the report of the examiner, and may, depending upon its view of the record in the case, adopt and/or modify the findings, conclusions and recommendations made by the hearing officer.
- The Council may not, however, consider evidence outside the record in its ultimate decision.

# Penalties



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# Presumptive penalties

What are Presumptive Penalties?

- Saint Paul Legislative Code section 310.03(m) provides interpretation for Presumptive Penalties.
- "Presumptive Penalties" are penalties for convictions or violations that are presumed to be appropriate for every case.
- General Presumptive Penalty Matrix applies to various types of licenses.



# Penalties – Council's Discretion

Although there are Presumptive Penalties:

- In determining the appropriate penalty, Council may, in its discretion, deviate from the individual case where the Council finds and determines that there exist substantial and compelling reasons making it appropriate to do so.
  - When deviating from these standards, Council must provide written reasons that specify why the penalty selected was more appropriate.
- Council deviation may involve:
  - the amount of fines,
  - the length of license suspensions, and
  - the propriety of revocations.



# Penalties

## General Presumptive Penalties



TYPE OF VIOLATION	APPEARANCE			
	1st	2nd	3rd	4th
(1) Violations of conditions placed on the license	\$500 fine	\$1,000 fine	\$2,000 fine and 10-day suspension	Revocation
(2) Violation of provisions of the legislative code relating to the licensed activity	\$500 fine	\$1,000 fine	\$2,000 fine and 10-day suspension	Revocation
(3) Violation of provisions of the legislative code relating to the licensed activity, other than violations of the food code	\$500 fine	\$1,000 fine	\$2,000 fine and 10-day suspension	Revocation
(4) Failure to permit entrance or inspection by DSI inspector or police	5-day suspension	10-day suspension	15-day suspension	Revocation

(5) Commission of a crime other than a felony on the premises by a licensee or employee	\$700 fine	\$1,500 fine	5 day suspension	Revocation
(6) Commission of a felony on the premises by a licensee or employee	\$2,000 fine	Revocation	n/a	n/a
(7) Death or great bodily harm in establishment related to violation of law or license conditions	30 day suspension	60 day suspension	Revocation	n/a
(8) Failure to pay license fees	Suspension	Revocation		

(9) Taxi fail to display driver's license as required by 376.16(f)	\$100 fine	\$250 fine	\$500 fine	Revocation
(10) Taxi fail to display number of information and complaint office as required by 376.11(v)	\$100 fine	\$250 fine	\$500 fine	Revocation
(11) Violation of restrictions upon sidewalk café license under 106.01(b)	\$200 fine	\$400 fine	\$800 fine	Revocation

# Penalties

## Intoxicating Liquor



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TYPE OF VIOLATION	APPEARANCE			
	1st	2nd	3rd	4th
(1) Commission of a felony related to the licensed activity	Revocation	NA	NA	NA
(2) Sale of alcohol beverages while license is under suspension	Revocation	NA	NA	NA
(3) Sale of alcoholic beverages to underage person	\$500 fine	1,000 fine	Up to 18-day suspension	Revocation
(4) Sale of alcoholic beverage to intoxicated person	\$500 fine	1,000 fine	Up to 18-day suspension	Revocation
(5) After hours sale of alcoholic beverages	\$500 fine	6-day suspension	18-day suspension	Revocation
(6) After hours display or consumption of alcoholic beverage	\$500 fine	4-day suspension	12-day suspension	Revocation

(7) Refusal to allow city inspectors or police admission to inspect premises.	5-day suspension	15-day suspension	Revocation	NA
(8) Illegal gambling on premises.	\$500 fine	6-day suspension	18-day suspension	Revocation
(9) Failure to take reasonable steps to stop person from leaving premises with alcoholic beverage.	\$500 fine	4-day suspension	12-day suspension	Revocation
(10) Failure to make application for license renewal prior to license expiration date.	\$500 fine	6-day suspension	18-day suspension	Revocation
(11) Sale of intoxicating liquor where only license is for nonintoxicating liquor.	\$500 fine	6-day suspension	18-day suspension	Revocation
(12) Failure to comply with statutory, and ordinance requirements for liability insurance.	10 day suspension	Revocation	NA	NA



# Under SPLC 409.03 if a Liquor License is Revoked – No New Liquor License for 15 Years....

## Sec. 409.03. Number of licenses.

(1) 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:

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

\*The location can get a wine and/or beer license.

# Penalties

Tobacco



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TYPE OF VIOLATION	APPEARANCE			
	1st	2nd	3rd	4th
(1) Sale to a person under twenty-one (21) years of age	\$500 fine	\$1000 fine	\$2,000 fine and 7-day suspension	Revocation
(2) Display, possession or multiple incidents of sales of: <ul style="list-style-type: none"> <li>• single cigarettes, menthol tobacco products, or</li> <li>• flavored tobacco products.</li> </ul>	10- day suspension	Revocation		



# Council's Role in Licensing

- Central, and responsibilities are complex and varied
  - These duties and responsibilities are covered in detail in the Licensing manual
- Sits as the judge and ultimate fact-finder in taking action against license holders
- Decisions are memorialized by Resolutions
  - The final decision to discipline and/or correct a license holder or applicant is embodied in a resolution
  - The Mayor's signature is required for both ordinances and resolutions according to the City's Charter



# Council's Role in Licensing (continued)

- The Council is authorized to take adverse action, Council may consider such adverse actions when recommended typically by the Director of DSI, or by the city attorney, or by any director of an executive department defined in Chapter 9 of the City's Charter.
- The Council may impose a fine upon any licensee or license applicant as an adverse license action.
  - A fine may be in such amount as the Council deems reasonable and appropriate, having in mind the regulatory and enforcement purposes embodied in the particular licensing ordinance.
  - A fine may be in addition to or in lieu of other adverse action in the sole discretion of the Council.
  - As previously discussed, this includes setting a standard that deviates from the Penalty Matrix.

# Legislative Hearings

Applies only to new applications  
for *contested* Class N licenses



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# Legislative Hearings (applies only to contested Class N licenses)

- During the 15-day notification period, a hearing is triggered when objections are received from interested parties, i.e., residents, neighborhood organizations, nearby businesses, etc.
- A hearing date is set and notice of the time, place, and date of the hearing are sent out to the affected and interested parties
- Objections can be sent to
  - Legislative Hearing Team (Nhia Vang and Greg Weiner)
  - Ward Offices (forwarded to Legislative Hearing)
  - Department of Safety & Inspection (forwarded to Legislative Hearing)
- License conditions may address:

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  - Public safety
  - Litter/Trash
  - Noise
  - Nuisance behavior
  - Lighting

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# Role of the Legislative Hearing Officer (LHO)

- Acting on behalf of the City Council, LHO will
  - set a hearing date within one week of the closing date and notify affected parties of the hearing date, time, and place
  - conduct the hearing and consider
    - Testimony from all interested persons,
    - Relevant materials and supporting documents,
    - Photographs, etc.
- The hearing officer's recommendation may include:
  - Approval with no condition(s),
  - Approval with condition(s), OR
  - Referral to the City Attorney's Office (CAO) for adverse action to an independent examiner

**NOTE:** Ex-parte rule applies. Pending licensing matters received from affected residents, businesses or district councils to the ward offices should be forwarded to Nhia or emailed to [LH-licensing@ci.stpaul.mn.us](mailto:LH-licensing@ci.stpaul.mn.us). AND shared with CAO and DSI.



# Role of the City Council

- A resolution regarding the hearing officer's recommendation will be placed on the Council's Consent Agenda.
- **Council action** can include the following:
  - **Adopt** the hearing officer's recommendation for approval of the license application with no condition(s),
  - **Adopt and/or modify** the hearing officer's recommendation for approval of the license application with condition(s),
  - *(if new information is introduced after the hearing)* **Refer the matter back to legislative hearing**, OR
  - **Adopt** the hearing officer's recommendation to **refer the matter to the City Attorney's Office for adverse action** to an independent examiner regarding a contested matter (See, Past History Slide)
- **Council has the final authority on whether a license is issued or denied.**



# Past History

- In response to appellate court mandates, and in an effort to make the adverse hearing process fairer and more efficient, the Council in 1988 required the use of an independent hearing examiner in all contested cases to hear evidence and make findings, conclusions and a recommendation.
- Use of an independent hearing examiner achieves two primary goals.
  - More efficient use of the Council's time
  - Establish a fair and equitable procedure whose result will likely survive court challenge



# Adverse Action

*A deeper dive*



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# Procedures

Many proceedings to impose adverse actions initially stem from complaints made by citizens. The City does not have sufficient staff to conduct comprehensive, periodic inspections and investigations of the conduct of all licensed businesses or persons within the City of Saint Paul.

- Complaints of alleged violations are most often received directly by the City department which has the investigation and enforcement responsibilities. For example...
  - complaints about unsanitary conditions in a restaurant will likely be received by the Health Department
  - complaints about underage drinking in a bar or the sale of prohibited tobacco products will likely be handled by the Department of Safety and Inspections in conjunction with the SPPD



# Procedures (continued)

## Complaints may also be sent to Councilmembers

- It is also possible that citizens will choose to contact their Councilperson to register a complaint.
- Caution should be exercised in dealing with complaints or charges of violations in any matter likely to wind up before the Council in a license hearing.
- **Preferred Process: Council members should refer complaints to DSI or direct the complainant to call DSI, rather than seek to investigate or develop the facts for action themselves.**



# Procedures (continued)

## Why it's important that Council Members refer rather than investigate complaints:

- Due process requires that the Council remain unprejudiced as to the particulars of any case before the public hearing. **Each member should refrain from discussing the evidence or opinions about any case outside of the hearing process.**
- The Council is required to make decisions as to the appropriate penalty in every case without any Council person having either a preexisting opinion or facts not received in the established hearing process. Neither the Council member nor their aide may talk to any party about the merits of the case outside of the public hearing.
- It is always permissible for a Council person to discuss and ask questions related to the policies and procedures of the adverse action process in general, licensing ordinances and regulations, and all other matters of concern, where there is no focus on a particular establishment against which an adverse action might be sought.



# Successful adverse action

- DSI has the staff capacity to investigate and prepare information needed for a successful adverse action





# Sample information received as part of DSI's Investigation:

## Inspector's Report

Inspectors Name: Kaozouapang Yang

Time & Date: 01/06/2022 @ 12:30 p.m.

Name of Clerk: Gamal Zaji

Business/Property Name: Tom & Joe's

Property Address: 684 Western Avenue North

Reason for Visit: Complaint Inspection

Observations: Flavor Violations

Photos Taken:  Yes  No – Area(s) of where the Photo(s) where taken:

-

Action Taken:  Education / warning

Request for Adverse Action

Other: -

### Details of Conversations (Statements to and by Person Responsible for Property):

Upon arrival, I noticed the display of flavored disposable vapes of THC Delta 8, Delta 9 and Delta 10 next to the cash register. I introduced myself as a DSI licensing inspector and handed him my business card. MN State inspector introduced herself that she is from the MN Department of Revenue, and that we were accompanied by SPPD, to the clerk Gamal Zaji. I informed him that I was here today due to a complaint that DSI received for selling flavor tobacco products. I asked if I could go behind the counter to conduct flavor inspection, he replied, "yes" and stepped out. No one was in the store at the time, and we advise the clerk to lock the door as we conduct the inspection. Located behind the counter/cash register, under the plastic chair's seat were hidden flavored products. The drawers underneath the cash register were filled with tobacco flavored disposable vapes and an open boxed of "Newport" cigarettes. We found menthol cigarettes hidden in a green jacket hanging by the wall. Some of the cigarettes found in the green jacket did not have the MN Stamp on the box. MN State inspector then asked the clerk if there were any other flavored tobacco products in the store and he said he was not sure, but he will check the back room. She followed him to the back and found a box of flavored tobacco



# Successful adverse action (continued)

- DSI gathers photos, videos and any other relevant evidence:







# Successful adverse action (continued)

The reports and photos are necessary to prove the case if the Licensee requests a hearing and help lay out the rationale for DSI's penalty request.







# Formal Proceedings — Who requests An Adverse Action?

Initiation – DSI, Departments, Council

Section 310.03 of the Code states:

(a) *Adverse action; notice and hearing requirements.* In any case where the council may or intends to consider any adverse action, including the revocation or suspension of a license, the imposition of conditions upon a license, or the denial of an application for the grant, issuance or renewal of a license, or the disapproval of a license issued by the State of Minnesota, the applicant or licensee must be given notice and an opportunity to be heard as provided herein. **The council may consider such adverse actions when recommended by the director, by the director of any executive department established pursuant to Chapter 9 of the Charter, by the city attorney or on its own initiative.**



# Investigation Outcome

Most often, DSI and SPPD's investigation leads to a request for an adverse action.

## Report Example:

### Notice Information:

Date: 01/26/2022  
To: Therese Skarda  
DBA Address: 684 Western Avenue - Saint Paul, MN 55103  
Approved by: Eric Hudak  
Note: include city, state & zip for the DBA Address

DBA Name: Tom and Joe's Market  
Prepared by: Joseph Voyda

License Number: 20190003653  
License Type(s) Note: List all licenses: Cigarette/Tobacco  
-

Licensee Name: Husham Alko Al Furai  
Licensee Address: 7762 Lakeview Lane NorthEast - Minneapolis, MN 55432  
Note: include city, state & zip

### Stamp Information (if different from Licensees information in Eclips) Note: include city, state & zip:

Property Owner Name: Dadders Estates Llc  
Property Owner Address: 351 Kellogg Boulevard East - Saint Paul, MN 55101-1411  
District Council Number: 1

### License Action Requested:

Type of Violation - i.e. Tobacco, Liquor, Auto Etc.: Cigarette/Tobacco  
 First Violation  Second Violation (within 12 months)  
 Third Violation (within 18 months)  Fourth Violation (within 24 months)

Requested Penalty: 10-day suspension  
Is this an upward departure? Yes  No  Rationale for upward departure: License holder intentionally hide contraband with the intent of selling flavor products  
 Suspension  Revocation  Application: Approval  Denial

Brief Description of Action: Concealing Flavor products in hidden compartments in a couch  
-

### Cause for Action:

Brief Description of violation(s): Selling Flavors from a business that isn't a Tobacco Product Shop  
License holder intentionally hide contraband with the intent of selling flavor products  
-

Ordinance Violation(s): 324  
License Condition Violation Number(s): -  
Ordinance Number(s): 324.07 (j) & 324.10 (b)

### Supporting Documentation Included:

- Inspectors Report(s)
- Driver's License Information
- License Conditions
- License Type Requirement Comments
- License Group Comments
- Adverse Action Comments
- Snips for ECLIPS
- Stamp Information
- Photograph(s) or Snips of other Evidence
- Law Enforcement Data and Report(s)
- CN: -



# City Attorney Role

- The Request for Adverse Action is reviewed by the City Attorney for (1) sufficiency of evidence and (2) adequate legal basis for action. If the case meets both criteria, a proceeding for adverse action will be started.
- In addition, when a case involves use of criminal history information, the City Attorney will also review and determine if the criminal history information is both relevant and a legally permissible use of such information.
- The Assistant City Attorney assigned licensing will prepare a Notice of Violation which will be sent to the Licensee. It contains information about the request for Adverse Action.



# Anatomy of a Notice Of Violation



**SAINT PAUL**  
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY  
LYNDESE M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall  
Saint Paul, MN 55102  
Tel: 651-266-8710 | Fax: 651-298-5619

March 22, 2022

**NOTICE OF VIOLATION AND**  
**REQUEST FOR UPWARD DEPARTURE TO**  
**REVOCAION**

Bright Star Inc.  
d/b/a Tom and Joe's Market  
684 Western Avenue North  
Saint Paul, MN 55103  
Attn: Husham Alko Al Furajji

RE: Cigarette/Tobacco license held by Bright Star Inc. d/b/a Tom and Joe's Market for the premises located at 684 Western Avenue in Saint Paul.  
License ID #: 20190003653

Dear Licensee:

The Department of Safety and Inspections ("Department") is recommending adverse action against the Cigarette/Tobacco license held by Bright Star Inc. ("Licensee") for the premises known as Tom and Joe's Market located at 684 Western Avenue in Saint Paul ("Licensed Premises"), including an upward departure to Revocation, based on the following violations:

- Evidence of flavored tobacco products being hidden under a plastic chair seat;
- Evidence of "Newport" cigarettes and tobacco-flavored disposable vapes found in a drawer under the cash register;



# Penalty and rationale for recommended penalty...

Saint Paul Legislative Code section 324.10(b)(2) sets the presumptive penalties for violations of provisions of the Legislative Code relating to the display, possession, or multiple incidents of sales of

CITY OF SAINT PAUL  
MELVIN CARTER, MAYOR

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menthol or flavored tobacco products. Under section 324.10(b)(2), the presumptive penalty for a first-time violation is a 10-day license suspension. The presumptive penalty for a second violation within a 24-month period is revocation of the license.

Although matrix penalties are presumed to be appropriate, Saint Paul Legislative Code section 324.10(a) allows the City Council to upwardly depart where the Council finds that there are substantial and compelling reasons to do so. Even though this is a first-time violation, the Department believes that the following factors constitute substantial and compelling reasons to upwardly depart to Revocation of your Cigarette/Tobacco license:

- The amount of flavored tobacco products found on the Licensed Premises; and
- The blatant, intentional nature of the violations and the total disregard for ordinances.



# Facts are laid out for the licensee...

## **Synopsis of Alleged Facts:**

On January 6, 2022, Department Inspector Yang and an inspector from the Minnesota Department of Revenue (“MDR”) went to the Licensed Premises for a complaint inspection. Upon their arrival, Inspector Yang noticed flavored disposable vapes of THC Delta 8, Delta 9, and Delta 10 next to the cash register. Inspector Yang spoke with the store clerk, Gamal Zaji, and informed him that the Department received a complaint of the business selling flavored tobacco products. Yang asked the clerk to go behind the counter to conduct a flavor inspection and the clerk said “Yes”.

During the inspection, Inspector Yang located and photographed flavored tobacco products under a plastic chair, an open box of “Newport” cigarettes under the cash register, and unstamped menthol cigarettes found in a green jacket. The inspector from MDR asked the clerk whether there were any other flavored tobacco products in the store and the clerk responded that he would check the back room. The MDR inspector followed him to the back room and found a box of flavored tobacco products. The clerk was advised to remove all flavored products into a back storage and to call a distributor to pick them up.



# Options to proceed and deadlines....

You have three (3) options to proceed:

1. If you do not contest the imposition of the proposed adverse action, you may do nothing. If I have not heard from you by **April 5, 2022**, I will presume that you have chosen not to contest the proposed adverse action and the matter will be placed on a City Council Consent Agenda for revocation of the licenses.

2. If you wish to admit the facts but you contest the upward departure to revocation, 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 no later than **April 5, 2022**. The matter will then be scheduled before the City Council to determine whether to revoke the license. You will have an opportunity to appear before the Council and make a statement.

3. 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 **April 5, 2022**. 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 section 310.05(k).

**If you have not contacted me by April 5, 2022, I will assume that you do not contest the Revocation of your licenses. In that case, the matter will be placed on a City Council Consent Agenda for approval of the recommended penalty.**



# Response of License holder

- The response of the license holder to the Notice of Violation Letter determines the future course of action. In the majority of the cases there are **two choices**:
  - Admit the facts, and either pay the fine where presumptive penalties have been established or schedule a hearing in front of the City Council to argue what the penalty, if any, should be; or
  - Deny the facts and request a hearing before an administrative law judge for the purpose of presenting testimony and witnesses and confronting the witnesses on behalf of the license inspector.
- If the licensee does not contest the facts or fails to respond to the Notice, a hearing is scheduled before the City Council at the earliest possible date.
- If the licensee does contest the facts or does not wish to admit that they are true, a hearing is arranged before an independent hearing examiner. The City, by agreement with the Minnesota Office of Administrative Hearings, uses both the full-time and contract administrative judges employed by that office. Assignment of judges is controlled by the state office, and not by either party to the hearing.





# Licensee admits to the violation monetary fine:

- When the Licensee admits to the violation as laid out in the Notice of Violation Letter and the penalty is a fine, the Licensee may pay the penalty directly to DSI.



# Licensee admits the facts – but asks to address Council regarding the penalty...

- Licensee admits to the violation and asks for a hearing on the penalty.
- The matter will be brought directly before the City Council, where the appropriate punishment or corrective action can be determined.
- The Office of the City Attorney drafts a resolution and enters it into Legistar, a hearing date and the licensee is notified of the time and date they are to appear before the City Council.
- At the Council hearing, the City Attorney provides a staff report with the Department's rationale for the requested violation.
- The Licensee addresses Council and lays out their argument for a different penalty.
- Council determines the penalty and either amends the Resolution or adopts it as written.



# If the Recommended Penalty is Revocation, the Licensee may ask Council to surrender the license

Under 310.03 (h) Council has retained the authority to allow a Licensee to surrender their license rather than have it revoked.

*(h) Discretion to hear notwithstanding withdrawal or surrender of application or license.* 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.



# Process for surrender notwithstanding the recommendation for Revocation...

- Licensee officially requests surrender or attempts to surrender license.
- Resolution is placed on the Council Agenda laying out facts as alleged in the Notice of Violation.
- Sometimes two versions of the Resolution are entered – one that allows for the surrender and one that directs DSI to proceed with the Adverse Action.
- City Attorney and Licensee or their attorney addresses City Council and lay out rationale for request.
- City Council discusses and determines whether to allow the surrender or not.
- If there are two resolutions, the version that supports the Council's recommendation is adopted.



# City Attorney drafts the Resolution and enters it into Legistar for a Council Action related to Adverse Action.

- The city attorney prepares several attachments to the resolution laying out the adverse action. The packet may contain:
  - a) the police report(s) or other factual information which make up the facts in the case;
  - b) the letter from the licensee stating that he or she does not contest the facts, together with any additional information in the letter or attachments that the licensee may wish to submit in advance;
  - c) a summary of the past actions of the Council in cases involving similar violations;
  - d) a summary of current license information on the licensee or licensed business; and
  - e) a resolution for consideration by Council.
- The licensee is notified by first class mail of the date, time and place of the Council Hearing, and given a copy of the proposed resolution and attached materials prior to the hearing. This letter is also sent to the community organizer for the district organization covering the area in which the licensed activity is located.



## Council Hearing – When Licensee admits to the facts but requests an opportunity to be heard on recommended penalty:

- The City Attorney's office prepares a resolution, and it is entered into Legistar. The matter is scheduled and the agenda notes that Licensee or Licensee's Attorney may address Council.
- The City Attorney gives a staff report – discussing the procedural history and DSI's recommendation.
- At the Council hearing the licensee and/or counsel for the licensee is given the opportunity to make a presentation on what penalty, if any, the Council should impose. No evidence is received since the licensee has already admitted to the facts and does not dispute that a violation occurred. The Council is free to ask questions of either side during and after the arguments are made.
- After the hearing the staff report and arguments from the Licensee, the hearing is concluded and the Council then deliberates as to the appropriate penalty, if any, to impose. The sanction imposed will be in the form of a resolution. It has been customary for the Council to make this decision at the conclusion of the hearing in an open discussion. If the Council chooses to depart either upward or downward from the presumptive penalty matrix provided in the Code, then the Council must state the specific reasons for the departure, and they will be included in the Resolution.



## Council Hearing – When Licensee admits to the facts but requests an opportunity to be heard on recommended penalty:

- Evidence as alleged by DSI and admitted to by the Licensee will be attached to the record.
- Argument or presentation refers to the attempt to persuade the Council that the facts require or do not require a particular penalty or other outcome.
- At the hearing, the Council does not hear from members of the public who may have complaints about the licensee or the licensed business at a hearing on uncontested facts.



# Contested Facts — Notice of Administrative Hearing

- If the licensee or applicant, in response to the Notice of Violation Letter, indicates that they contest or disagree with the facts, then the Notice of Hearing Letter is sent to the licensee.

Please be advised that Thooft Law LLC represents the Licensee relating to a letter dated March 22, 2022 and labeled Notice of Violation and Request for Upward Departure to Revocation. The purpose of this correspondence is to dispute the facts, contest the upward departure to revocation, and to request a hearing before an Administrative Law Judge regarding these issues.

- The City contracts with the Office of Administrative Hearings to provide a fair and impartial hearing for both sides and the case will be calendared for a pre-hearing conference and subsequent hearing (which is like a trial).





## Community Participation can occur at the Administrative Hearing if the Administrative Law Judge approves a request.

- Notices of Violation are sent to District Councils.
- Any property owner is also copied.

cc: Husham Alko Al Furaiji, 7762 Lakeview Lane NE, Minneapolis, MN 55432  
Dadders Estates LLC, 351 Kellogg Blvd E, Saint Paul, MN 55101  
Caty Royce, Co-Executive Director, 501 Dale Street, Saint Paul, MN 55117  
Tia Williams, Co-Executive Director, 501 Dale Street, Saint Paul, MN 55117



# No Ex-parte Contacts

- Once a case has been scheduled for a hearing, all members of the Council are subject to the rule forbidding ex parte contacts.
- An ex parte contact occurs when one party to a dispute, or any person with an interest in the outcome of the case, contacts a judge, jury or any other judicial official about the case, and discusses the case or conveys information about the case in the absence of the other side. This is unfair in adversary proceedings, and violates both city ordinance and the basic law on procedural due process.
  - As provided in Section 310.03(c-2) of the Code:
    - “If a license matter has been scheduled for an adverse hearing, Council members shall not discuss the license matter with each other or with any other parties or interested persons involved in the matter unless such discussion occurs on the record during the hearings of the matter or during the Council’s final deliberations of the matter.”



# No Ex-parte Contacts (continued)

- In addition to avoiding ex parte contacts, the Council is required to make its final decision as to the sanction(s) imposed at or after the hearing. No Council member should have made up his or her mind ahead of time. While the ordinance specifically states that the rule barring ex parte contacts applies once a hearing is scheduled, the requirements of due process are applicable at all phases of the process leading to license sanctions.
- Council members function as quasi-judicial officers and are subject to the same due process requirements as judges and other hearing officers.





# Administrative Law Judge (ALJ) Hearings

- The hearings held before the administrative law judge are similar to trials:
  - evidence is introduced through witnesses and documents,
  - witnesses are placed under oath
  - Witnesses are subject to cross-examination.
- The hearing is open to the public and interested parties may attend to observe. Testimony would not normally be taken from the public, except where members of the community can testify to facts that are both relevant to the charges made and personally known to the individual.



# Who is the Administrative Law Judge?

- The administrative law judge is a lawyer who is employed by or under the contract to the Minnesota Office of Hearing Examiners, a state agency.
- The city contracts with that agency to provide an ALJ for each hearing.
- The ALJ hears all evidence presented by the assistant city attorney, the licensee or applicant and the attorney for the license holder or applicant.
- The proceedings are less formal than district court trials but are governed by evidentiary rules and procedures mandated by state law and administrative rules.
- The burden of proof is on the department initiating the proceedings. In other words, the ALJ must be satisfied by a preponderance of evidence that the case against the licensee has been proved. The hearings are taped, and a transcript can be ordered by either party at its own expense.
- An administrative law judge is an independent hearing examiner and satisfies the requirements of the ordinance and of constitutional due process.



# Administrative Law Judge Report

- After the hearing has been closed and the Administrative Law Judge has had the opportunity to review the record, he or she will prepare a written report for the Council.
- While the hearing record is generally closed at the conclusion of the trial, in some cases it will remain open for an additional length of time to allow for the filing of additional evidence or briefs.
- The ALJ Report to the Council will consist of **Findings of Fact, Conclusions of Law, and a Recommendation** for the appropriate penalty to impose or action to take.
- In most cases, the ALJ also prepares a brief memorandum explaining the reasoning behind the findings, conclusions and recommendations in the Report. This Report is sent to the licensee or his or her attorney of record, the City Clerk and the assistant city attorney who presented the City's case.
- If available, the City Attorney's Office attaches the Administrative Hearing to the file to allow the Council Members to do additional research, such as listen to the tapes of the proceeding, study the documents which were received into evidence in the hearing, and read any other materials submitted by the parties at the hearing. The ALJ sends over the complete record of the hearing at roughly the same time as the Report is sent. The tapes of the hearing are not transcribed until there is an appeal and Council Members should not investigate past the available record.



# Written exceptions

- After the parties receive a copy of the ALJ Report, each side has the right to file what are called written exceptions to the Report.
- Written exceptions are a list, description or brief on the points in the ALJ Report that the attorney or his or her client may disagree with. Either or both sides may file written exceptions with the City Clerk, who will then distribute a copy to each Council member. As with the ALJ Report, each Council member must withhold final judgment until after the Council hearing and arguments of the licensee and counsel.



# Notice of Council Hearing

- The City Attorney's Office will draft a Resolution and enter it into Legistar upon receipt of the Report of the ALJ.
- The hearing date will take into account the opportunity for each party to file written exceptions within 10 days from the receipt of the Report.





# Council Hearing

- The attorney for the Council in these hearings is the City Attorney or her designee.
- The attorney for the license office is the assistant city attorney who will be providing a staff report that includes the Department's recommendation.
- There will often be an attorney representing the license holder at contested hearings.
- The Council should recognize and hear arguments only from the parties who appeared at the hearing before the ALJ.
- The hearing before the Council is a public meeting in the sense that anyone may attend or listen, but not a public hearing in which anyone can speak..
- The Council should not consider any factual testimony, witnesses, or evidence at the Council hearing which were not presented earlier at the ALJ hearing.
- The parties can make arguments as to their view of the Report, and what penalties, if any, are appropriate.
- The attorneys who appear before you are advocates for their side. As such they argue the facts, the law, and try to persuade the Council that their view of the ALJ Report and the evidence is correct. They must try to put things in the best possible light for their position. But the Council is finally and ultimately the judge of the facts, laws and recommendations.



# The Basis for the Council Decision

- The Council must make its decision on the “record”. The record consists of all the information that has been submitted to the Council through the hearing processes. The following is a summary of that information.



# Hearing Testimony

- All of the testimony of the witnesses is a part of the record and is available for the Council's consideration. All hearings are recorded and is available for playback of the testimony of witnesses.



# Exhibits and Documents

- All of the exhibits, documents and other physical evidence which is received at the contested ALJ hearing are transmitted to the City Clerk following the Report of the ALJ.
- All of these materials are available for examination by the members of the Council in reaching a decision and are attached to the file in Legistar.



# Administrative Law Judge Report

- The report of the administrative law judge, containing Findings of Fact, Conclusions of Law and a Recommendation for action, together with a Memorandum in support of the Report, are also part of the record.



# Written Exceptions

- The written submissions of the parties, while not factual evidence, are part of the record, and help point out the strengths and weaknesses of the ALJ Report.



# Role and Duty of Council

- The Council sits in these hearings in the same role and to the same extent as appellate judges. The Council should listen carefully to the arguments made by the parties and/or their attorneys. Members may ask questions to clarify points, to test the arguments of the attorneys, or to seek information useful for decisions.
- Council members should not make comments, statements or speeches indicating a position or opinion before the Council hearing is concluded. It is preferable not to argue with the attorneys or the parties, or express reaction to their line of argument before the hearing is concluded.
- The function of the Council is to hear everything first; and then decide. Even tentative opinions or judgments are best left unsaid until after the hearing is closed.



# Decision

- Once the hearing is concluded, the Council should proceed to make the necessary decision. The decision must be based on the record, that is, the Report of the ALJ, the written exceptions, if any, the arguments just made, and the exhibits and documents introduced at the ALJ hearing itself.
- Once the Council hearing is closed, the Council will make its final deliberations and reasoning a matter of public record, immediately following the arguments and questions.
- Before the final decision is made, a majority of those making the decision should have read the ALJ report, read the written exceptions, if any, and listened to the oral argument made at the hearing before the Council. Each member is free in addition to go into the tapes or transcripts, or physical evidence, to the extent that they believe would be helpful.
- The decision must be in writing. This is done in the form of a resolution, which usually incorporates and adopts the findings and conclusions of the ALJ, except as amended by the Council, and which resolution states the grounds for any departure from the penalty matrix.





# Cost of Hearing

Section 310.03 (k) permits the Council to impose some or all of the costs of a contested hearing on the licensee. Keeping in mind that....

- When a licensee has requested a hearing, all costs associated with the hearing are paid for by the City of Saint Paul. The license office maintains the accounting procedures for tracking costs that are a result of the adverse hearing process.
- In every adverse action that is contested by the licensee the city will incur costs for the service of an Administrative Law Judge. In some cases additional expenses will be incurred for transcription of the tape, witness fees, depositions or extensive discovery.
- The State of Minnesota, Office of Administrative Hearings supplies the Administrative Law Judge.
- Our Legislative Code allows for the imposition of costs when....



# Cost of Hearing (continued)

- 1) the position of the licensee was frivolous, made in bad faith or for delay;
- 2) the violation involved violence or threat of violence by the licensee or an employee or involved the sale of drugs;
- 3) the violation caused a serious danger to public health safety or welfare;
- 4) the violation involved unreasonable risk of harm to vulnerable persons;
- 5) the violation reasonably could have been avoided by the licensee (insurance lapse);
- 6) the violation is covered in the matrix; or
- 7) the violation involved sale of cigarettes to minors.

# Adverse Licensing Action

Licensing Conditions



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# Adverse Licensing Action — Licensing Conditions

- City Council may take Adverse Action against licenses, including imposing License Conditions.
- A Reasonable Basis is required to impose reasonable License Conditions and shall be based on the purpose of promoting public health, safety and welfare, of advancing the public peace and the elimination of conditions or actions that constitute a nuisance or a detriment to the peaceful enjoyment of urban life or promoting security and safety in nearby neighborhoods. Reasonable Bases includes:
  - The licensee (or person who by law may be imputed to the licensee) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether there are criminal charges;
  - The licensee (or person who by law may be imputed to the licensee) 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 can be inferred a lack of fitness or good character
  - The activities of the licensee in the licensed activity created a serious danger to the public health, safety or welfare, or the licensee performs or has performed work/activity in an unsafe manner.
  - 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.
  - The licensee violated the law or any license condition and that violation is related to a death or great bodily harm, as defined in Minn. Stats. § 609.02, subd. 8, in or near establishment.



# Adverse Licensing Action — Licensing Conditions

(continued)

- Reasonable Conditions on a licensed establishment/business may include, but are not limited to:
  - Limitation on hours of operation of business or particular types of activities;
  - Restriction on location within the business where activities may be conducted;
  - Defined means of ingress/egress from establishment, its parking lot, or adjacent area;
  - Requirement to provide off-street parking in excess of other requirements of law;
  - Limitation on the manner and means of advertising related to the establishment;
  - Any other reasonable condition limiting the operation of the establishment to ensure that the establishment will harmonize with the character of the area in which it is located, or to prevent the development or continuation of a nuisance.



# Adverse Licensing Action — Licensing Conditions

## (continued)

- Other types of current License Conditions:
  - Installation and maintenance of security cameras, approved by SPPD and requires the licensee to provide video within defined time periods and upon request.
  - Provide regular security presence at points of egress/ingress as well as parking lots and adjacent areas.
  - See accompanying example.
- Conditions imposed on a license or licenses will remain on such licenses when renewed and must continue thereafter until removed by the Council.
- Violation of License Conditions may result in Adverse Licensing Action, up to and including revocation of license.

# License Condition Example



CITY OF SAINT PAUL

Department of Safety & Inspections

Angie Wiess, Director  
375 Jackson Street, Suite 220  
Saint Paul, MN 55101-1806

Telephone: 651-266-8989  
Facsimile: 651-266-9124

Web Site Address: [www.stpaul.gov/dsi](http://www.stpaul.gov/dsi)

I agree to the following conditions being placed on the following license(s):

License #: 20230000453  
Type of Business: Entertainment (B)  
Gambling Location  
Liquor On Sale - 291 or more Seats  
Liquor On Sale - Sunday  
Liquor-Outdoor Service Area (Patio)  
Tobacco Shop  
Applied for by: DWD GROUP LLC  
Doing Business As: GATHER EATERY & BAR  
at: 857 GRAND AVE  
ST PAUL MN 55105

Conditions are as follows:

1. Wait staff, security and/or managers will check government-issued photo identification to ensure that customers/patrons under the age of 21 will not be served or consume alcohol. Licensee will also use an identification card scanner system to record and retain for a minimum of thirty (30) days the identification of all patrons who enter or re-enter the licensed establishment after 10:00 p.m. until closing during any day of operation. If an incident is deemed serious by SPPD, licensee shall make identification card scanner information immediately available for viewing by SPPD. In all other cases, licensee shall provide recorded card scanner information to the authorized requester within 48 hours.
2. Per Fire Inspection Certificate of Occupancy requirements, total occupancy limit is 297. Any addition of billiard tables or other table games will require licensee holder to notify the Department of Safety and Inspections for reassessment of the total occupancy limit.
3. Licensee will create a video surveillance camera and lighting placement plan (video surveillance plan) for the interior and exterior of the licensed premises. Licensee will submit the video surveillance plan to the Saint Paul Police Department (SPPD) liaison with the Department of Safety and Inspection (DSI) for review and approval. In accordance with the approved video surveillance plan, licensee will ensure that video surveillance camera system is in good working order, ensure it is recording 24 hours per day, ensure it can produce recorded surveillance video in a commonly used, up-to-date format, and ensure that accurate date and time of day are visible on all recorded videos. Licensee will retain surveillance video for a minimum of thirty (30) days. If an incident is deemed serious by SPPD, licensee shall make surveillance video immediately available for viewing by SPPD. If a copy of the surveillance video for a serious incident is requested by SPPD, Licensee shall have the technology, materials, and staff available to immediately make the copy. In all other cases, licensee shall provide a copy of the surveillance video to the requestor within 48 hours.
4. Licensee shall retain clearly identifiable and appropriately trained security personnel. Clearly identifiable security personnel shall mean in uniform or marked outerwear. Security personnel staffing shall be sufficient to manage each entrance/exit of the licensed liquor service area(s) as well as conduct roving security to appropriately address minor conflicts to prevent escalation. Security personnel shall start at 10:00 p.m. during any day of operation and shall remain until the establishment has closed and all patrons have left the licensed property and parking lot.

# Balancing Customer Service and Enforcement



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# Questions



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