

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A06-2172**

Amina, Inc., d/b/a 4-You Foods,  
Relator,

vs.

City of Minneapolis,  
Respondent.

**Filed January 29, 2008  
Affirmed  
Huspeni, Judge\***

Minneapolis City Council

Daniel L.M. Kennedy, Kennedy Law Group, PLLC, 4103 East Lake Street, Minneapolis,  
Minnesota 55406 (for relator)

Jay M. Heffern, Minneapolis City Attorney, Joel M. Fussy, Assistant City Attorney, 333  
South Seventh Street, Suite 300, Minneapolis, Minnesota 55402-2453 (for respondent)

Considered and decided by Toussaint, Chief Judge; Dietzen, Judge; and Huspeni,  
Judge.

**UNPUBLISHED OPINION**

**HUSPENI**, Judge

On writ of certiorari from revocation of its business licenses by respondent City of  
Minneapolis, relator Amina, Inc. argues that the decision must either be remanded for

---

\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

further proceedings or reversed by this court because it was based on unlawful procedure, on illegal grounds or other error of law, and was unsupported by substantial evidence. Because respondent's decision to revoke relator's licenses followed appropriate procedure, was supported by substantial evidence, and not based on illegal grounds or other error or law, we affirm.

## FACTS

During November 2005, relator applied for grocery, food manufacturing, and tobacco dealer business licenses from respondent to operate a convenience store and deli in North Minneapolis, a location that under its previous owner had "a lengthy history of problems with loitering and drug trafficking." On December 1, 2005, relator agreed that its licenses would be subject to 11 voluntary conditions. These voluntary conditions included, among other provisions:

(1) "No Trespassing" signs will be posted. Staff will immediately ask people loitering to leave. If they refuse, staff will call 9-1-1 and cooperate with police once they arrive. Mpls. Ord. 259.250(1)(I)[.]

(2) The business will ensure that a minimum of (2) staff, in addition to the security person, are working to ensure monitoring of the exterior and to reduce negative behaviors. Mpls Ord. 259.250(1)(I)(3) and (4)[.]

(3) The business agrees to actively address security concerns to include loitering, drug activity, trespassing and management of the trespassing program. The business agrees to cooperate fully in the prosecution of criminal activity.

(4) The business agrees not to sell single cigars sometimes referred to as blunts.

(5) The business agrees not to sell items which are commonly used by drug users and drug dealers. These items include glass pipes (sometimes with roses inside), Brillo Pads or Chore Boy, small zip lock bags also known as jewelry

bags, dice, single use tobacco products to include rolling papers. . . .

The agreement of the parties stated that relator's licenses, if granted, were based on these conditions and that failure to comply could result in adverse action, including revocation of its licenses. Relator began operating its business on December 5, 2005, while its license applications were pending. On December 23, 2005, the city council approved the licenses subject to the voluntary conditions.

Between December 2005 and March 2006, the Minneapolis Police Department responded to several hundred service calls to relator's store. Most of the calls related to drug activity in front of relator's store or in its parking lot. Throughout the same period, Minneapolis inspectors conducted licensing inspections and discovered several violations of both the operating conditions and Minneapolis Code of Ordinances (the MCO).<sup>1</sup>

On February 23, 2006, the police responded to a shooting incident in the vicinity of relator's store. When the police asked relator to provide video surveillance of the area at the time of the shooting, relator was unable to produce any taped recording of the premises.

On March 2, 2006, the police department, with the assistance of news media, conducted a reverse sting by having an informant sell narcotics to individuals in front of relator's store for two to three hours while the police conducted surveillance. An

---

<sup>1</sup> The inspectors observed relator selling single cigars and tobacco rolling papers in violation of the voluntary conditions, having more than 30% of the windows blocked in violation of the MCO, and permitting loitering in violation of the MCO and the voluntary conditions. Inspection also revealed litter on the property, and the dumpster enclosure open and in need of repair.

employee of relator at one point approached the informant and stated, “The police are watching you. You shouldn’t sell it right here.” During the sting operation, the police did not observe a security person approach the informant and the police arrested approximately five individuals for loitering with intent to purchase narcotics.

After March 2006, relator substantially changed its practices, and the number of police service calls to relator’s store address “dropped dramatically.” Relator also posted signs prohibiting loitering and trespassing and had its employees tell people standing in front of the store to move or the police would be called. Relator admitted, however, that it never hired a security person and had no plans to do so.

In March 2006, the public safety and regulatory services committee (committee) issued relator a notice to appear before the committee regarding whether relator’s licenses should be revoked because it failed to comply with the voluntary conditions and the MCO.

An administrative law judge (ALJ) heard the license revocation matter in August 2006, and concluded that relator violated both the conditions imposed on its licenses and the MCO provisions by selling single cigars and tobacco rolling papers; blocking windows and failing to post “no trespassing” signs; allowing loitering outside the store during a period when police made numerous drug-related arrests at the location; failing to maintain its surveillance camera and to provide a recording at the request of the police; failing to clear the premises of litter; and failing to have at least two employees and a security person on duty throughout the entire period of licensure. The ALJ also concluded that relator “failed to provide adequate security between December 5, 2005,

and March 9, 2006, to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises,” and failed to take appropriate action to prevent the store from “being used to maintain a public nuisance.” The ALJ concluded that there was good cause to revoke relator’s licenses and recommended that adverse action be taken against relator.

On October 25, 2006, the committee, after a hearing, adopted the ALJ’s findings and conclusions; recommended that the council revoke relator’s licenses, recommended that the city council deny relator’s request for a stay of the revocation decision, and issued written findings of fact, conclusions of law, and recommendation for adverse license action. On November 3, 2006, the Minneapolis City Council approved the committee’s actions and revoked relator’s licenses. This appeal follows.

## **D E C I S I O N**

Generally, decisions of municipalities “enjoy a presumption of correctness” and as long as the municipality “engaged in reasoned decision-making, a reviewing court will affirm its decision even though the court may have reached another conclusion.” *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 562 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001).

Respondent conducted this adverse license action pursuant to the contested case procedures set forth in the Minnesota Administrative Procedures Act (MAPA), Minn. Stat. §§ 14.001-.69 (2006). *See Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 172 (Minn. App. 2001) (stating that because the city chose MAPA to

govern its contested case procedures, the court will conduct its analysis pursuant to MAPA). When reviewing a decision from a contested case hearing, this court

may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69 (2006). Applying this standard of review, we address each of relator's arguments in turn.

## I.

### **Due process of law**

Relator contends that it was denied procedural due process of law because respondent violated Minn. Stat. § 14.61 (2006) when the committee prevented relator from providing a complete presentation of its argument and when a majority of the city council was not present at the committee hearing. But to receive sufficient due process, only reasonable notice and a hearing are generally required. *CUP Foods*, 633 N.W.2d at 562 (holding that because relator had a property interest in his business license, the due process owed to relator was reasonable notice and a hearing). Here, relator received reasonable notice, a hearing before an impartial ALJ, and a hearing before the committee

before the city council revoked its licenses. As a result, relator was not deprived of due process of the law.

Further, respondent did not otherwise violate Minn. Stat. § 14.61, subd. 1, under which a final decision cannot be made until the ALJ's report is made available to the parties for at least ten days "and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the officials who are to render the decision." On October 25, 2006, the committee conducted a hearing and allowed relator to present its arguments, but limited relator to orally presenting arguments that were not already addressed in its written exceptions. At the hearing, five out of six members of the committee were present and voted to recommend that the city council revoke relator's licenses. The committee specifically found that relator "properly filed written exceptions . . . [and the] Committee, in hearing, heard argument from [relator's] counsel regarding such exceptions." Relator does not contend that these findings were unsupported by substantial evidence.

The committee has authority under Minneapolis Rule of City Council 11(D) to have at least three members of the committee "conduct a hearing, obtain evidence, and make a report and recommendation directly to the full council" on licensing actions. Here, relator presented his argument to a majority of the committee and the committee then issued its recommendation to the full city council in accordance with the city council rules. Further, the city council received the official record of relator's adverse license action. Therefore, respondent did not violate section 14.61 so as to deny relator due process of law.

### **Arbitrary and capricious**

Relator next argues that the city council, in violation of MAPA, arbitrarily and capriciously considered and revoked relator's licenses based on a document that was not part of the record. Relator contends that the committee relied on a "7-page Findings Document" and cites to the committee hearing transcript in support of its argument. But the document relator claims was outside the record was the committee's own written findings, conclusions, and recommendation.

The disputed document clearly indicates in the first paragraph that the matter came before the committee on October 25, 2006, and that the record before the committee consisted of the record before the ALJ and the arguments presented by relator at the hearing. Moreover, the committee is required under Minn. Stat. § 14.62, subd. 1 (2006), and Minneapolis R. City Council 11(D) to present written factual findings and conclusions. Thus, the committee's recommendation was properly part of the record before the city council and respondent did not arbitrarily and capriciously consider material outside the record when it revoked relator's licenses.

### **Unlawful procedure**

Relator also argues that the decision to revoke its licenses was based on unlawful procedure because the city council voted to reconsider the revocation of relator's licenses after it had approved the committee's recommendation and then took no further action. There is no merit to this argument.

At the November 3, 2006 city council meeting, the city council voted to approve the committee's recommendation to revoke relator's licenses. But later, Councilman

Johnson requested a vote for reconsideration because “Council Member Hofstede needs to be recorded as voting ‘aye’ on that item.” After the vote for reconsideration passed, Councilman Johnson stated: “On item 11 on the reconsideration, any discussion; all in approval say ‘aye.’” To which the council voted, “Aye,” and councilman Johnson concluded: “[T]hat carries. Then on Item 11, does Council Member Hofstede just need to indicate that she would be voting yes, or do we have to take a whole new roll call? . . . Okay, with that, then, Item 11 is handled.”

Relator is correct that respondent’s city council meetings are to be conducted in accordance with the Robert’s Rules of Order. Minneapolis, Minn. R. City Council 20. Relator is also correct that a successful vote for reconsideration replaces the motion before the deciding committee as if they had not voted on it originally. *See* Henry M. Robert, III, et al., *Robert’s Rules of Order, Newly Revised* § 36, at 309 (9th ed. 1990) (explaining motion to reconsider). A motion for reconsideration, however, exists to allow a member of a prevailing side of a former vote to open debate again and call for a new vote in light of new information. *Id.* Here, it is clear that the council did not have any new information before it, but wanted one additional councilmember’s “aye” vote to be recorded.

Under Minn. Stat. § 14.69, this court may affirm, remand, reverse, or modify the decision if relator’s substantial rights were prejudiced by this allegedly unlawful procedure. In this instance, a remand would be inappropriate because it is clear that respondent intended to vote to revoke relator’s licenses. A reversal or modification is also inappropriate because relator does not indicate how his substantial rights were

prejudiced by the two votes and the reconsideration process. Therefore, while the city council, if complying strictly with Robert's Rules of Order, likely should have re-voted to revoke relator's licenses, we decline to remand, reverse, or modify based on this minor parliamentary procedural error. The intent of the city council to revoke relator's licenses is patently clear from the transcript.

## II.

Relator next argues that respondent's decision to revoke its licenses was based on factual findings by the ALJ that were unsupported by substantial evidence. The substantial evidence test under Minn. Stat. § 14.69 is satisfied when there is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *In re Interstate Power Co.*, 574 N.W.2d 408, 415 (Minn. 1998) (quotation omitted). Substantial evidence is defined as: "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

Relator contends that there was not substantial evidence in the record for (1) the ALJ to find relator's license was subject to the voluntary license conditions, and that the voluntary conditions applied to relator's conduct prior to receiving its licenses, and relator failed to provide security between December 5, 2005 and March 9, 2006; (2) the committee to make certain findings; and (3) the ALJ to find relator did not post proper "no trespassing" and "no loitering" signs.

When reviewing whether respondent's decision to revoke relator's licenses was supported by substantial evidence, this court looks to see whether the entire record supports respondent's decision to find good cause to revoke relator's licenses. Minn. Stat. § 14.69. Thus, to reverse or modify respondent's decision to revoke relator's licenses, "relator must show that the evidence, considered in its entirety, and drawing inferences in favor of the decision, is not substantial, and, therefore, does not adequately support respondent's finding that good cause existed to take adverse action against his business licenses." *CUP Foods*, 633 N.W.2d at 563.

Here, there was evidence in the record that relator's operations were subject to the voluntary conditions and the MCO as soon as he opened for business. On December 1, 2005, relator signed an agreement stating that its licenses would be based on the listed voluntary conditions and that failure to abide by the conditions could result in revocation of the licenses. Based on testimony of two license inspectors, the ALJ found that relator "agreed to these conditions being imposed as an inducement for the City to grant its license applications. The [relator] received explicit warning from the City that failure to adhere to the operating conditions could constitute grounds for license revocation." Relator began conducting business on December 5, 2005, before receiving the official approval of his licenses. Relator's argument that it should not be held responsible for any contract violations occurring before actual approval of its application is without merit. As soon as relator opened its store, regardless of the application status, it had a duty to abide by the voluntary conditions and the MCO.

Relator's argument that the city had no authority to place voluntary conditions on its business licenses is also without merit. Municipal authorities have police power "to license and regulate a business[,] . . . determine where and within what limits the business may be conducted . . . [and] may impose reasonable restrictions as to the time, place, and manner of conducting the business." *Power v. Nordstrom*, 150 Minn. 228, 230, 184 N.W. 967, 968 (1921) (citations omitted). Further, there is nothing in the MCO or the Minneapolis City Charter to preclude respondent from entering into an agreement with relator to require relator to do more than what is required under the MCO. Relator could have continued to seek license approval without agreeing to the voluntary conditions, but did not.

Relator also argues that the committee erred in finding that by not appealing a January 31, 2006 citation, relator admitted to the violation and that it failed to pay the citation for more than five months. We note initially that the committee is empowered to make its own factual findings and legal conclusions. Minn. Stat. § 14.62 (2006). Also, the ALJ noted that relator did not appeal the citation and did not pay it until the day of the hearing. Relator also argues that the committee erred in finding that relator had fewer than two employees on March 28, 2006, and failed to provide security personnel throughout the period of licensure. Again, the ALJ found, based on the March 28, 2006 inspection and testimony presented at the hearing, that relator never hired a security person and had no plans to do so. Therefore, the committee's findings are supported in the record by substantial evidence.

Relator further contends that respondent did not list a failure to post proper signage as grounds to revoke relator's licenses and the ALJ's finding on that issue was not supported by the record. Relator is correct that respondent did not specifically notify relator that it failed to post proper "no trespassing" signs on January 31, 2006, in accordance with Minn. Stat. § 14.58 (2006). Relator is also correct that the evidence the ALJ relied on to find no proper posting of signs on January 31, 2006, is not supported by the record. The single photograph on which the ALJ relied does not indicate what kinds of signs were posted on the front of the building on that date. Further, the reason for taking this photograph that day was to establish that relator had more than 30% of his windows blocked in violation of the MCO, not to ask whether relator posted proper signs.

Even though one of the ALJ's findings was not supported by substantial evidence, relator does not explain how, when viewing the record in its entirety, there was not substantial evidence to support respondent's determination that good cause existed to revoke relator's licenses. Our exhaustive review of the record indicates that there was substantial evidence that relator did not abide by the voluntary operating conditions, considerable criminal activity occurred in the area directly surrounding relator's store, and relator violated provisions of the MCO. Further, both the ALJ and the committee recommended that respondent revoke relator's licenses. The committee found that relator's store was "poorly-managed," "had a deleterious impact on its community," and consumed "a disproportionate and unreasonable amount of City enforcement and regulatory resources." The committee also found that while relator took some steps to address the problems related to criminal activity occurring around the store, the "lengthy

negative impact upon the community and upon City resources” outweighed any mitigating efforts presented by relator. These findings are supported by evidence in the record. *See CUP Foods*, 633 N.W.2d at 564 (holding that, while the evidence was “hardly overwhelming,” there was substantial evidence to reasonably support respondent’s decision to revoke relator’s business license). Therefore, when viewing the entire record, we conclude that the decision to revoke relator’s licenses for good cause was supported by substantial evidence.

### III.

Relator raises several constitutional issues. It claims (1) to have had inadequate notice of the alleged violations of its licenses and, as a result, the good-cause standard to revoke was unconstitutionally vague; (2) that it was denied due process of law by being held responsible for criminal activity that occurred on public property surrounding its establishment; (3) that the ALJ clearly erred in concluding that it violated the surveillance camera ordinance and the surveillance camera ordinance is unconstitutionally vague; and (4) that respondent’s imposition of voluntary conditions on the licenses violated the equal protection clauses of the federal and state constitutions.

This court reviews questions of law regarding its interpretation and its application to undisputed facts de novo. *Staheli v. City of St. Paul*, 732 N.W.2d 298, 306-07 (Minn. App. 2007). With respect to constitutional issues, these issues “could not have been presented to or passed upon by the administrative bodies below” and a party raising a constitutional challenge for the first time on appeal is properly raising “the issue at the first opportunity in a forum possessing subject matter jurisdiction.” *Neeland v.*

*Clearwater Mem'l Hosp.*, 257 N.W.2d 366, 368 (Minn. 1977). In general, however, a municipal ordinance is presumed constitutional and the burden of proving that it is unconstitutional rests on the party claiming it is invalid. *City of St. Paul v. Dalsin*, 245 Minn. 325, 329, 71 N.W.2d 855, 858 (1955); *Hard Times Cafe*, 625 N.W.2d at 171.

### **Notice of violations**

Relator argues that it had no notice that lurking or loitering occurred on its premises or that its premises presented a public nuisance, and that the MCO does not require business owners to prevent criminal activity on public property. But the ALJ found that by signing the voluntary conditions, relator received notice of the problems with crime in the area and that his noncompliance with the conditions was grounds to revoke its licenses. The voluntary conditions specifically required relator to take certain steps to prevent criminal activity in and around its store. Moreover, the ALJ found that she was “not persuaded by [relator’s owner’s] testimony that he did not know when he took over the store that there were problems with crime in the area. Loitering and drug dealing occurred frequently at and around [the store] both before and after December 2005, when [relator] began operations.” Further, relator had notice that criminal activity on the public property directly surrounding its property and its responses to it were important factors in maintaining its business licenses.

Relator contends, however, that because it did not receive notice of its violations until the commencement of the license-revocation proceedings, respondent’s good-cause standard is unconstitutionally vague as applied to relator. We disagree, although we are not insensitive to relator’s argument that it should have been given an opportunity to

remedy violations (and had actually remedied certain conditions) before revocation proceedings were commenced. But we recognize, first, that respondent has authority to revoke business licenses at any time so long as good cause exists. Minneapolis, Minn. City Charter ch. 4, § 16 (allowing city council to revoke licenses “at any time upon proper notice and a hearing for good cause”); *see also* Minneapolis Code of Ordinances § 259.250 (outlining the minimum business license management responsibilities and noting that the provisions of the ordinance “are not exclusive” and that “[a]dverse license action may be based upon good cause” as authorized by the City Charter). Merely because respondent could have followed a more prolonged procedure to take adverse action against relator does not mean respondent acted improperly.

Second, this court has held that respondent’s good-cause standard to revoke licenses is not unconstitutionally vague. *Hard Times Cafe*, 625 N.W.2d at 172 (holding that Minneapolis’ good-cause standard to revoke licenses is constitutional). Thus, to prevail on its vagueness-as-applied argument, relator must show that the standard is vague as to its own behavior. *Id.* Here, however, relator knew that it agreed to voluntary conditions and that its noncompliance with the conditions would provide grounds to revoke its licenses. Therefore, relator cannot argue that the good-cause standard was vague as to its own activity. *See, e.g., id.* (holding that because of relator’s association with illegal activity that occurred on its premises, “it did not have to ‘guess’ that it might be subject to license revocation”).

## **Criminal Activity on Surrounding Property**

Relator also contends it was improperly held responsible for criminal activity occurring on the public property surrounding its business establishment. We disagree, and note that good cause may exist to impose adverse license action based on evidence of narcotics transactions, criminal activity, and loitering taking place around the licensee's premises. *CUP Foods*, 633 N.W.2d at 562-65 (analyzing a due-process argument with respect to the revocation of business licenses). Here, relator is being held responsible not for the criminal activity itself, but instead for having failed to comply with the voluntary conditions that clearly informed relator both of its duties under the agreement, and that its ability to maintain its business licenses was conditioned on responding appropriately to criminal activity occurring in and around its property. There was no denial of due process of law resulting from the voluntary conditions.

## **Surveillance camera ordinance**

Relator contends that the ALJ clearly erred when concluding that relator violated the surveillance camera ordinance. We disagree. Under Minneapolis Code of Ordinances § 259.230, certain businesses must have a camera or cameras "capable of producing a retrievable image on film, tape or digital video" that can be provided to police upon request. In its brief, relator "acknowledges that these cameras were not taping because nobody had replaced the previous day's videocassette tape with a blank tape", but claims that "other cameras, including all of the interior cameras, were properly taping when the police came on that day."

But in the police report of the shooting incident, the officer stated he checked with the store to see if the security cameras were working, and discovered that “the system was on but NOT IN THE RECORD MODE. This system was not able to replay any information nor aid in the recovery of any information involving the shooting incident.” The ALJ did not credit the relator’s owner’s testimony regarding video cameras, and specifically found that relator “was unable to produce any playback or taped recordings. A cassette tape was in the VCR, but the VCR was not recording because the tape ran out.” These factual findings are supported in the record by substantial evidence, and the ALJ’s conclusion that relator violated the surveillance camera ordinance was not based on an error of law.

Relator further argues that the camera surveillance ordinance is unconstitutionally vague as applied,<sup>2</sup> because it does not contain any specific requirements as to the number or placement of cameras required to be in compliance with the ordinance.

An ordinance may be unconstitutionally vague “if it defines the forbidden or required act or acts in terms so vague that individuals must guess at its meaning, or it defines an act in a manner that encourages arbitrary and discriminatory enforcement.”

*Humenansky v. Minn. Bd. Med. Exam’rs*, 525 N.W.2d 559, 564 (Minn. App. 1994),

---

<sup>2</sup> Respondent contends that this issue was not raised in relator’s statement of the case and not filed in his written exceptions with the Minneapolis City Council. This argument lacks merit. This court has specifically “decline[d] to hold that a statement of the case must include all issues to be addressed in the briefs.” *In re Salkin*, 430 N.W.2d 13, 15 (Minn. App. 1988), *review denied* (Minn. Nov. 23, 1988). And because the city council lacks authority to decide constitutional issues, such issues may be raised for the first time on appeal. *Seemann v. Little Crow Trucking*, 412 N.W.2d 422, 425 (Minn. App. 1987). Moreover, respondent had an opportunity to address the issue in its appellate brief.

*review denied* (Minn. Feb. 14, 1995). An ordinance is not vague because it uses general language and the party attacking its validity must show that it is vague as to its own behavior. *Hard Times Cafe*, 625 N.W.2d at 171-72.

Contrary to relator's contention regarding vagueness, the camera surveillance ordinance clearly requires that relator have at least one camera recording the premises and that the recording be provided to police on request. Minneapolis Code of Ordinances § 259.230. The ALJ found that relator was unable to provide any recording of any part of its business premises when requested by police. By not having any recording available, relator clearly violated the ordinance and had no occasion to guess what the ordinance required. Therefore, relator has not established that the camera surveillance ordinance is unconstitutionally vague.

### **Constitutionality of the voluntary conditions**

Finally, relator argues that the classification scheme presented by respondent, subjecting relator's licenses to voluntary conditions but not subjecting other similarly situated businesses to such conditions, violates the equal protection clauses of the federal and state constitutions. The equal protection clauses of the federal and state constitution require that all similarly situated persons be treated equally under the law, but "legislative classifications of persons will be sustained under the equal protection clauses if rationally related to a legitimate state interest." *In re Harhut*, 385 N.W.2d 305, 310 (Minn. 1986). To present an equal protection claim, persons claiming disparate treatment must show that they are "similarly situated to those to whom they compare themselves." *State v. Richmond*, 730 N.W.2d 62, 71 (Minn. App. 2007) (quoting *Peterson v. Minn. Dep't of*

*Labor & Indus.*, 591 N.W.2d 76, 79 (Minn. App. 1999), *review denied* (Minn. May 18, 1999)), *review denied* (Minn. June 19, 2007).

Here, also, relator failed to show that other businesses to which he was similarly situated did not have their licenses subject to voluntary conditions. Further, once relator agreed to abide by the voluntary conditions, the city acquired the authority to take adverse action for activities that would not necessarily justify such action in the absence of the voluntary conditions. Thus, relator would not be similarly situated to other businesses in the area that did not agree to voluntary conditions on their licenses. *See, e.g., Billy Graham Evangelistic Ass'n v. City of Minneapolis*, 667 N.W.2d 117, 126-27 (Minn. 2003) (holding that properties were not similar to each other because they sought different relief and were situated differently within the relevant geographic area). Relator did not meet its burden to show that the alleged classification scheme created by imposing voluntary conditions on its licenses deprived relator of equal protection of the laws.

**Affirmed.**