

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE SAINT PAUL CITY COUNCIL

In re all Licenses Held by Dinner Club
2000, Inc., d/b/a Dinner Club 2000,
License ID # 19990005357

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

A hearing in this matter was conducted on July 9, 2002, at 9:30 a.m. at St. Paul City Hall by Administrative Law Judge Kenneth A. Nickolai, serving as a hearing examiner for the St. Paul City Council. A second day of hearing was held on August 1, 2002, in St. Paul.

Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Blvd., St. Paul, MN 55102, appeared on behalf of the St. Paul Office of License, Inspections and Environmental Protection (LIEP). Robert J. Fowler, Esq., of the firm of Kelly and Fawcett, P.A., 2350 U.S. Bancorp, Piper Jaffray Plaza, 444 Cedar Street, St. Paul, MN 55101, appeared on behalf of the Licensee, Dinner Club 2000. The record closed on August 29, 2002, upon receipt of the final written submission.

NOTICE

This Report is a recommendation, not a final decision. The City Council of the City of St. Paul will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Section 310.05(e)(1) of the City's Legislative Code, the City Council will provide the Licensee an opportunity to present oral or written arguments to the City Council before it takes final action. Parties should contact the City Council to determine the procedure for filing argument or appearing before the City Council.

STATEMENT OF ISSUE

The issue in this proceeding is whether or not the City of St. Paul should take adverse action against the licenses held by Dinner Club 2000, Inc.

Based upon all of the proceedings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Dinner Club 2000, Inc. was first issued licenses for on-sale liquor, liquor-outdoor service, and entertainment for the premises at 1177 Clarence Street on November 4, 1999^[1]. Dinner Club 2000 is located on the east side of St. Paul and is co-owned by Ge Vang and Pao Hang. The clientele of the business is predominantly from the Hmong community. The establishment has been described as, until recently, the only Hmong club in Minnesota.

2. Dinner Club 2000 operates a restaurant and bar at 1177 Clarence Street. The building is surrounded by parking lots, with other retail uses located to the East and South of the premises.^[2] To the West is a City-owned parking lot, isolated from the business premises by a storm fence.^[3] North of the business premises is a bar and an apartment building.^[4]

3. On the premises, Dinner Club 2000 has a lower floor that is a bar where alcoholic beverages are served. The upper area has the restaurant, a dining room, three pool tables and a dance floor.

4. Dinner Club 2000 does not exclude persons younger than the legal drinking age from the premises. To comply with the prohibition against serving alcohol to minors, patrons with ID's showing them to be 21 years of age or older can receive a wristband from staff at the door. The policy is that only those persons with wristbands are allowed to purchase drinks. Minors are admitted to the premises without a wristband. Dinner Club 2000 has a policy restricting minors from the bar on the lower level.

5. The business exhibited problems immediately after opening, including noncompliance with the standards required of businesses that serve alcohol. As a result of these problems, conditions were placed upon the licenses issued to Dinner Club 2000 shortly after the business opened in 1999. These conditions included using the wristband system described above to control the sale of alcohol to minors and to monitor the doors to monitor patrons entering and leaving the premises.

6. Dinner Club 2000 has been subject to repeated prior adverse actions. In May of 2000 it received a two-day suspension for a failure to wand patrons as they entered the club. The City also found an after-hours sale at the club in January of 2001 and the club failed a compliance check in March of 2001. These two violations were considered by the City Council together on March 28, 2001. The City Council imposed a 30-day closure but stayed 25 days and imposed a \$1,000 fine, so that the club was only required to close for five days.^[5] On October 24, 2001, the City Council imposed an eighteen-day suspension on the club, running until December 15, 2001 for failure to comply with the wristband condition of the license and allowing underage patrons to drink alcohol.^[6] A one-day closure was imposed when Dinner Club 2000 erroneously failed to start a required closure on time.

7. On July 1, 2001, Sergeant Mercado of the Saint Paul Police Department (SPPD) responded to a noise complaint citing Dinner Club 2000.^[7] Sergeant Mercado noted that the bass sound emanated well off of the business premises. She entered

Dinner Club 2000 and instructed the DJ present to turn down the music. After the music was turned down, Sergeant Mercado left the premises.

8. On August 24, 2001, Michael Christensen, working security for Dinner Club 2000, called the SPPD to report a fight between ten males in the Wells Fargo parking lot and south side of the business premises. SPPD officers responded, but the confrontation ended before they arrived.

9. On August 25, 2001, security for Dinner Club 2000 called the SPPD to report an assault on the premises. Two women had been fighting inside Dinner Club 2000. When security ejected them, one woman drove her car at the other combatant. One of the security guards was injured as a result of this conduct. The driver was arrested by SPPD and booked on a charge of aggravated assault.^[8]

10. At about this time, Dinner Club 2000 was identified as a "problem property" by the SPPD. As a result, any SPPD officer dispatched to DC2K was required to write a report as to the result of the call.

11. On September 22, 2001, Officer Ryan of the SPPD responded to a noise complaint citing Dinner Club 2000.^[9] He found the bass "a little loud."^[10] Officer Ryan instructed the DJ present to turn down the music. The music was turned down, and Officer Ryan left the premises.

12. On October 21, 2001, Officers Henry and Jerue of the SPPD responded to a noise complaint citing Dinner Club 2000.^[11] The bass was audible from Rose Avenue, a block from the premises.^[12] The officers instructed the DJ present to turn down the music. The music was turned down and the exterior doors were closed. The officers left the premises.

13. On October 27, 2001, numerous SPPD officers were dispatched to Dinner Club 2000 on a report of 20 people fighting in the parking lot.^[13] When the officers arrived they were informed by a witness that the fight had started in Dinner Club 2000. The fight continued in the parking lot after the patrons were ejected. Some of the combatants began smashing car windows. Several of these persons were arrested when the officers arrived on the scene.^[14]

14. On November 1, 2001, security for Dinner Club 2000 called the SPPD to report an assault on the premises. Christensen and Pao Vang Hang (an owner of Dinner Club 2000) told the responding officers that a former security guard and another male struck a male patron with a bottle. The female patron accompanying the victim was assaulted and struck with a baseball bat. She was unconscious when the officers arrived and required hospital treatment.^[15] Another male victim was found at the hospital, who had been injured in the initial assault by assailants using bats and chains.^[16]

15. On November 21, 2001, Sergeant McNamara of the SPPD was called to Dinner Club 2000 on a report of an assault on the premises. The victim was the owner, Pao Vang Hang, who had been punched in the face by a patron. The patron was identified as a gang member who had recently been released from prison.^[17]

16. On November 24, 2001, several officers of the SPPD were called to Dinner Club 2000 on a report of an assault on the premises. A melee had broken out

on the dance floor and the victim had been struck on the head with a bottle. Officers described the crowd as “unruly.”^[18] Several persons out of a crowd in the parking lot were threatening the suspect in the assault while he was in the back of an officer’s squad car. When an officer intervened to prevent harm to the suspect, the crowd became hostile to the officers.^[19] The individual who tried to enter the squad car with the suspect was cited for obstructing legal process and the officers transported the suspect to SPPD headquarters for booking.^[20]

17. On December 30, 2001, another melee took place in the parking lot of Dinner Club 2000. On this occasion, a group assaulted several self-identified gang members who were leaving the business premises. The assault resulted in at least two persons injured and an automobile damaged.^[21] A number of officers of the SPPD responded to Dinner Club 2000 upon receiving this report. The SPPD responded the following night to a noise complaint regarding Dinner Club 2000.^[22] As usual, the bass was turned down and the exterior doors were closed.

18. On January 20, 2002, officers of the SPPD responded to a call describing “100 people fighting in (Dinner Club 2000’s) parking lot.”^[23] The responding officers cleared approximately 80 people from the parking lot without further incident. The officers observed several people injured in the fight, including some who work at Dinner Club 2000, but no one provided information to enable the officers to investigate the incident.

19. On January 27, 2002, officers of the SPPD responded to a call indicating a fight at Dinner Club 2000.^[24] The responding officers cleared a large crowd from the parking lot without further incident. All of the persons present were uncooperative. Security from Dinner Club 2000 identified some of the persons who had been involved in confrontations that night.^[25] The officers observed signs that a fight had occurred, including damage to a vehicle, but none of the occupants provided information about the incident.^[26]

20. On February 9, 2002, two officers of the SPPD were doing a routine premises check of Dinner Club 2000 when they spotted a man urinating in a stairwell of the business. He was cited for public urination and booked on an unrelated warrant.^[27]

21. On February 16, 2002, numerous officers of the SPPD responded to a call of a shooting at Dinner Club 2000. Three victims were identified as having been shot while walking out of Dinner Club 2000.^[28]

22. On February 16, 2002, Officer Meyer of the SPPD responded to a noise complaint citing Dinner Club 2000.^[29] Officer Meyer instructed the security staff present to turn down the music. The music was turned down, and Officer Meyer left the premises.

23. On February 22, 2002, Officer Hagen of the SPPD responded to a report of a fight with weapons at Dinner Club 2000. Officer Meyer spoke to Pao Vang Hang when he arrived, and was told that several males, one carrying a pool cue, had left the business after an argument, but no fight occurred. Sergeant McNamara responded to that call and observed a vehicle being driven fast away from Dinner Club 2000. Sergeant McNamara stopped the vehicle and observed the odor of alcohol on the

occupants. The driver was 20 years of age. The driver told Sergeant McNamara that he had consumed beer at Dinner Club 2000, but had not gotten it from staff there.^[30]

24. On February 22, 2002, Officer Hagen responded to a noise complaint citing Dinner Club 2000.^[31] Officer Hagen told Hang and Ge Vang (another part owner) that a complaint had been received regarding the volume of the music. The music was turned down, and officer left the premises.

25. On February 24, 2002, Officer Hagen responded to another noise complaint citing Dinner Club 2000.^[32] Officer Hagen told an employee that a complaint had been received regarding the volume of the music. The music was turned down, and officer left the premises.

26. On March 3, 2002, Officer Kantorowicz of the SPPD responded to a noise complaint citing Dinner Club 2000.^[33] He made sure to approach the premises with his squad window down to determine the sound level at a distance equivalent to that of the apartment building nearby. Officer Kantorowicz spoke with security staff at Dinner Club 2000 about the noise complaint that had been received. The music was turned down, and officer left the premises.

27. On March 31, 2002, several officers of the SPPD responded to a report of shots fired at Dinner Club 2000.^[34] Security confirmed the sound of gunshots, but no other evidence of gunshots was found. The officers did find a 17-year-old male with bruises, scrapes, and cuts. He told the officers that he had been assaulted by four or five males. The juvenile told the officers that he had been served alcohol in Dinner Club 2000. When asked how he was served alcohol, the juvenile responded that he merely went up to the bar and ordered the drink. The officers spoke to the juvenile's sister and she told them that it is easy for minors to drink at Dinner Club 2000 without being carded.^[35] Officer Reginek stopped a vehicle speeding away from Dinner Club 2000 to determine if the occupants were involved with the shooting. None of the three occupants were of legal drinking age. Two of the occupants, ages 16 and 19, were intoxicated. Both of them told the officers that they had been served at Dinner Club 2000 without showing proof of age. The juvenile stated that he was known at Dinner Club 2000 and served there regularly.^[36]

28. On April 19, 2002, the Assistant City Attorney sent the Licensee a Notice of Violation concerning eight police calls for loud music, reports of underage drinking, and eight police calls for "assaults or fights among large groups of people fighting inside the bar and outside the bar."^[37] The Notice of Violation cited Saint Paul Legislative Code (Code) § 310.06(b)(8) as permitting adverse action against the business licenses of Dinner Club 2000.^[38] The Notice of Violation advised the Licensee of its right to a hearing, if the underlying facts of the violation were disputed.

29. By a letter dated April 23, 2002, the Licensee requested an evidentiary hearing before an Administrative Law Judge, and advised the City that it disputed all the allegations in the Notice of Violation.^[39]

30. A Notice of Hearing dated April 26, 2002 was served on counsel for the Licensee and set the hearing date for Tuesday, June 4, 2002.^[40] A notice that the hearing was rescheduled was served on counsel for the Licensee.^[41]

31. On the July 4 weekend, a major festival for the Hmong community is held at the Como Park soccer fields in St. Paul. As a result of the influx of attendees to the festival, Dinner Club 2000 experiences extraordinary traffic. To address the recurring problems at the business, the SPPD devoted a number of officers to observe the premises over that weekend. On July 4, 2002, officers counted at least 407 persons leaving the premises between midnight and 1:30 a.m. Other persons were on the premises. The maximum occupancy of the premises is 301.^[42] Officers cited a number of persons for public urination. One of the persons cited was 19 years of age and wearing one of Dinner Club 2000's orange wristbands.^[43]

32. Counsel for the Licensee was permitted to review the police reports relied upon by City prior to the hearing in this matter.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The St. Paul City Council and the Administrative Law Judge have jurisdiction in this matter under Minnesota law and St. Paul City ordinance.^[44]

2. The City gave the Licensee proper and timely notice of the hearing in this matter.

3. Minn. Stat. § 340A.503, subd. 1(a)(2) prohibits consumption of alcohol by persons under 21 years of age. Subdivision 2 prohibits the sale of alcohol to persons under 21 years of age. Persons on the premises of establishments such as Dinner Club 2000, who are between 18 and 21 years of age, are not engaging in unlawful behavior *per se*. Minn. Stat. § 340A.503, subd. 4(b).

4. The City has proved by a preponderance of the evidence that the Licensee has operated Dinner Club 2000 in a manner that maintains or permits conditions that unreasonably annoy a substantial number of people and endanger the safety, health, and morals of considerable numbers of members of the public.

5. The St. Paul Legislative Code authorizes adverse action against a license when the manner in which a business is operated allows "conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public."^[45]

6. Under the St. Paul Legislative Code, failure to comply with the conditions of a license is grounds for adverse action.^[46]

7. The Legislative Code provides that violations occurring after the date of the notice of hearing that are brought to the attention of the City Attorney before a City Council appearance may be added to that notice if the licensee admits to the facts, and may be treated as a part of that appearance.^[47] The Code also provides that the occurrence of multiple violations shall be grounds for departure from the penalty matrix.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED: That the City Council order that adverse action be taken against the licenses held by Dinner Club 2000, Inc.

Dated this 8th day of October, 2002.

s/Kenneth A. Nickolai

KENNETH A. NICKOLAI

Chief Administrative Law Judge

Reported: Taped. No transcript prepared.

MEMORANDUM

Dinner Club 2000 maintains that the basis for the City's license action is the number of police calls involving the establishment. The source of these calls, in Dinner Club 2000's view, is relevant. It argues, for example, that the bar owner should not be penalized for seeking police assistance. However, the City has shown that the events underlying the calls are serious and related to the operation of Dinner Club 2000. The source of the calls is not relevant when the reasons for summoning the police are related to the operation of the licensed business.

The City has demonstrated by a preponderance of the evidence that fights, some with serious injuries, have occurred on or in the vicinity of Dinner Club 2000. Licensee maintains that bar fights happen with establishments that serve alcohol and these incidents do not support adverse action. Licensee also maintains that only fights inside the business premises should be considered in assessing the responsibility of the business.

Adverse action is not supported against a Licensee by an occasional instance of bad conduct by a patron. But the record in this matter demonstrates that bad conduct occurs on or near this business on a regular basis. The frequency and severity of the assaults support taking adverse against the business. Actions occurring in the parking lot of the business or even off of the business property altogether can support adverse action, where the business is the focus or cause of those actions.^[48] The assaults at Dinner Club 2000 endanger the health and safety of patrons, employees, and passersby. The conduct is sufficiently severe to support adverse action in this matter.

Providing alcohol to underage persons is a *per se* ground for adverse action against a Licensee, since such conduct violates both State law and the St. Paul Legislative Code. Licensee asserts that the evidence on such violations is insufficient because it would not be admitted in a criminal proceeding. Further, Licensee maintains that there was no opportunity to challenge the veracity and credibility of the young underage persons.^[49]

The evidence of underage drinking consisted of officer testimony and police reports relating what the officers were told and what additional evidence could be gathered. In each case of underage drinking, the officers identified the name of the person cited. Additionally, the address and date of birth of the person cited are listed in the report. The source of the information, typically a Minnesota driver's license, is identified. There has been ample opportunity for the Licensee to investigate these allegations and call these persons as witnesses in this matter.

The record in this matter demonstrates that Dinner Club 2000 failed to properly check identification before issuing wristbands. This failure defeated the purpose of the system, which is a condition of licensure. Underage persons repeatedly obtained the wristbands, which allowed these patrons to purchase alcohol without a subsequent check of their ages. The police identified other underage patrons, including juveniles, who indicated that they were served at Dinner Club 2000 on a regular basis, without obtaining wristbands.

As discussed above, serving alcohol to underage patron is a *per se* ground for adverse action against a business license. The penalty imposed by the City Council on October 24, 2001, expressly considered the severity of the violations, the repeated nature of the violations, and the inability of the Licensee to address the problem. All of these aggravating factors are present in the more recent instances of serving underage patrons and these factors support imposition of severe penalties on Dinner Club 2000.

Licensee asserts that the repeated noise complaints should be disregarded because only one person has been identified as contacting the police regarding noise. LIEP responded that the officers applied the noise standard for any business when responding to the complaint. The source of the complaint, in LIEP's view, is irrelevant. The Code provision cited to support adverse action against Licensee expressly requires proof of "conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public."^[50]

Whether the number of individuals who telephone in noise complaints is 1 or 500, the appropriate test is whether noise conditions being created are of such to annoy, injure or endanger any considerable number of members of the public. The evidence established that there are public streets, sidewalks, other buildings and residential dwellings that are within hearing distance of the noise. When responding to a complaint, the officers verified the excessive noise - hearing it before reaching the property. While Dinner Club 2000 cooperated with officers by reducing the volume and closing the exterior doors when asked, Dinner Club 2000 consistently failed to take steps to reduce the volume of noise despite being aware of the many complaints.

Finally, in its brief, Dinner Club 2000 alleges this case is the result of bias and racism. For example, the brief states that Sgt. McNamara is "biased and is a racist".^[51] The Administrative Law Judge disagrees. Sgt. McNamara and other witnesses presented by the City were credible and focused on the nature of the incidents that occurred in and around the licensed establishment. There was no credible evidence that the actions of the City licensing department or police officers were motivated by bias and racism.

The record in this matter supports the adverse licensing action.

K.A.N.

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- ^[1] Ex. 1
^[2] Exs. 28 and 29.
^[3] Ex. 30.
^[4] Ex. 31.
^[5] Ex. 1.
^[6] Ex. 1.
^[7] Ex. 2.
^[8] Ex. 4.
^[9] Ex. 5.
^[10] *Id.*
^[11] Ex. 6.
^[12] *Id.*
^[13] Ex. 7.
^[14] *Id.*
^[15] Ex. 8.
^[16] *Id.*
^[17] Ex. 9.
^[18] Ex. 10.
^[19] *Id.*
^[20] *Id.*
^[21] Ex. 11.
^[22] Ex. 12. The date of the call was also December 30, 2001, but the previous call took place at approximately 2:00 a.m.
^[23] Ex. 13.
^[24] Ex. 14.
^[25] *Id.*
^[26] *Id.*
^[27] Ex. 15.
^[28] Ex. 17. The shooting took place sometime after 2:00 a.m.
^[29] Ex. 16. This visit occurred at approximately 11:00 p.m.
^[30] Ex. 18. These events occurred at approximately 1:00 a.m.
^[31] Ex. 19. This visit occurred at approximately 11:00 p.m.
^[32] Ex. 20. This visit occurred at approximately 11:45 p.m.
^[33] Ex. 21. This visit occurred at approximately 11:15 p.m.
^[34] Ex. 22. The officers responded at approximately 12:45 a.m.
^[35] *Id.*
^[36] *Id.*
^[37] Ex. 23.
^[38] *Id.*
^[39] Ex. 24.
^[40] Ex. 25.
^[41] Ex. 26.
^[42] Ex. 35.
^[43] Ex. 35.
^[44] St. Paul City Legislative Code Sections 310.05-.06; Minn. Stat. §§ 14.50, 14.55.
^[45] St. Paul City Legislative Code Section 310.06(b)(8).
^[46] Section 310.06(b)(5).
^[47] Section 409.26(c).

^[48] ***In the Matter of All Licenses Held by Metro Bar & Grill, Inc., d/b/a Arnelia's, for the Premises at 1183 University Avenue, Saint Paul, License I.D. No. 54523***, OAH Docket No. 9-2111-12640-3 (ALJ Recommendation issued April 2000); ***In the Matter of Tobacco Dealer, Grocery, Food Manufacturer, and Gasoline Filling Station Licenses Held by Imman Conoco, for Premises Located at 2606 Penn Avenue North, Minneapolis***, OAH Docket No. 12-6010-14346-3 (ALJ Recommendation issued January 14, 2002).

^[49] See, Respondent's Post Hearing Brief, at 6.

^[50] St. Paul City Legislative Code Section 310.06(b)(8)(emphasis added).

^[51] Brief of Dinner Club 2000, p. 9.