

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

In re all Licenses Held by WHT, Inc., d/b/a
American Sport Café – Playground for the
premises located at 2550 Como Avenue
in the City of Saint Paul
License ID # 19990006821

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

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis, acting as a hearing officer for the Saint Paul City Council, on July 8 and July 11, 2005, at the Saint Paul City Hall/Ramsey County Courthouse, Room 40A, 15 West Kellogg Boulevard, St. Paul, Minnesota. The hearing was held pursuant to a Notice of Administrative Hearing dated December 17, 2004, an Amended Notice of Hearing dated May 20, 2005,^[1] and a Notice of Rescheduled Administrative Hearing issued on June 1, 2005.^[2] After the hearing, the parties filed written submissions in lieu of closing arguments and the record closed August 17, 2005, with the filing of reply briefs and proposed findings of fact.

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 or City). Richard C. Scattergood and Richard T. Franks, Attorneys at Law, Rider Bennett, LLP, 33 South Sixth Street, Suite 4900, Minneapolis, MN 55402, appeared on behalf of the Licensee, WHT, Inc., d/b/a American Sports Café – Playground (WHT or Licensee).

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 Don Luna, St. Paul City Clerk, 170 City Hall, St. Paul, Minnesota 55102, to inquire about the procedure for presenting argument to the City Council.

STATEMENT OF ISSUE

Whether the City of St. Paul should take adverse action against the licenses held by WHT, Inc., d/b/a American Sports Café – Playground.

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

FINDINGS OF FACT

1. Steven Foss is the president and sole owner of WHT. WHT operates two businesses, the Warehouse Nightclub and the American Sports Café, out of a building located at 2554 Como Avenue in St. Paul. The building is divided into two spaces, with the American Sports Café operating out of one space and the Warehouse Nightclub operating out of the other. A set of interior doors connects the two businesses. These doors are kept locked on nights when the Warehouse Nightclub is open for business to prevent patrons from going back and forth between the sports bar and nightclub. The building is located in an industrial area of St. Paul surrounded by warehouses near Highway 280 and the Minneapolis border. The area is part of the St. Paul Police Department's Western District patrol area.^[3]

2. WHT holds the following licenses: Liquor On Sale; Liquor On Sale Sunday; Liquor On Sale – 2:00 a.m.; Gambling Location; Alarm Permit; Cigarette/Tobacco; Entertainment (B) and Restaurant (D).^[4]

3. The Warehouse Nightclub began operating in late 1998. It is open approximately three nights a week from 9:00 p.m. until 2:00 a.m. The nightclub is approximately 3,000 square feet with a large bar, kitchen and dance floor. In addition, it has a very large parking lot, which is approximately the size of two football fields. After 1:30 a.m., new customers are denied access to the club's parking lot.^[5]

4. Shortly after the Warehouse Nightclub opened, its manager, Paul "PJ" Augustyn, talked to Saint Paul Police Officer Rondell Townsend about hiring off-duty police officers for crowd control. Officer Townsend spoke to then Saint Paul Police Chief William Finney. Chief Finney called Augustyn and told him that he would allow Saint Paul police officers to work off-duty at the Warehouse Nightclub with the understanding that the officers may need to leave to respond to emergency calls. Augustyn told Chief Finney that the club was planning on advertising on the B-96 radio station in an attempt to attract a more "urban clientele." This radio station typically plays hip hop, rap and "gangster" rap music. Chief Finney told Augustyn that he would regularly send the Saint Paul Police Gang Task Force through the nightclub and check license plates in the parking lot. Finney explained to Augustyn that if the police were looking for someone or if there was a problem, they would come into the Warehouse Nightclub and take into custody whoever they were looking for.^[6]

5. After Augustyn's discussion with Chief Finney, the Warehouse Nightclub began employing off-duty Saint Paul police officers to provide security and crowd control in the parking lot area. The Saint Paul Police Department prohibits uniformed off-duty police officers from working inside licensed liquor establishments.^[7] About four off-duty police officers work each night the club is open from approximately 11:00 p.m. until 2:30 a.m. The officers provide crowd control when the club closes at 2:00 a.m. and they assist in clearing the parking lot. The officers also monitor the club's entrances and assist the club's security when a patron is asked to leave the establishment. Once a patron is escorted outside by security, the police officers ensure that the individual leaves the property. The presence of the officers and the visibility of their squad cars also act as a deterrent to disorderly or unlawful conduct.^[8]

6. In approximately January of 2000, WHT installed a metal detector at the entrance of the Warehouse Nightclub.^[9]

7. The Warehouse Nightclub is not open every night of the week. During 2003-2004, the Warehouse Nightclub was open Sunday, Tuesday and Saturday nights. On Sunday nights, the club played an “urban” musical format of hip hop, rap and “gangster” rap. Approximately 250-450 people would attend the Warehouse Nightclub on a typical Sunday night. On Saturday nights, the club hosted “Teen Night”, an alcohol-free dance party for 15-18 year old teenagers. WHT stopped having Teen Nights in September of 2004, following the shooting of a juvenile.^[10]

8. Sometime in the summer of 2003, (then) St. Paul Police District Commander John Harrington^[11] called Augustyn and told him that Officer Steve Parsons would be WHT’s police liaison officer. Officer Parsons has been a Saint Paul Police Officer for 15 years, and has worked in the crime prevention division of the FORCE unit for the last seven years. The FORCE unit focuses on problem properties, street level narcotics, and general quality of life issues. As part of his duties, Officer Parsons works with properties that generate four or more nuisance type police calls in a 30-day period.^[12]

9. In late June or July of 2003, about a week after Harrington’s phone call, Officer Parsons came out to the Warehouse Nightclub to meet with Augustyn. Parsons discussed with Augustyn the high number of police calls generated by the nightclub and he made suggestions for additional security measures. Officer Parsons suggested that WHT purchase a hand-held metal detector (wand), upgrade its surveillance system, add lighting in the parking lot, and post signs informing people that the parking lot was under surveillance. Officer Parsons also suggested that WHT eliminate the urban or “gangster” rap musical format it played on Sunday nights.^[13]

10. Officer Parsons saw a correlation between the nights when the club played a more urban rap musical format and the number of police calls made to the club. According to Parsons, hip hop and “gangster” rap music tends to attract a more trouble-prone or disorderly crowd than other music.^[14]

11. After Augustyn’s meeting with Officer Parsons, WHT purchased a hand-held metal detector (wand) to use at the Warehouse Nightclub and posted signs reading: “Notice: These premises are under 24 hour video surveillance.”^[15] WHT also added more lighting in the parking lot and purchased additional surveillance cameras to monitor the parking lot.^[16] In addition, WHT began playing versions of rap songs edited for explicit content. The intent of the change in musical format was to lessen the amount of the extreme “gangster” rap music played at the club.^[17]

12. In addition to the off-duty police officers, the Warehouse Nightclub also employs security personnel to work inside the club. Typically, the Warehouse Nightclub has 12-15 security persons working on nights it is open. A security person, or “bouncer,” is stationed at the entrance of the club to check the IDs of persons entering the club and to make sure that everyone entering is either patted down or screened by a hand held metal detector or wand. The bouncers also enforce the Warehouse Nightclub dress code, which prohibits the wearing of sport jerseys, excessively baggy clothes, hats and bandanas.^[18] The dress code is intended to prevent patrons from wearing clothing or colors identified with gangs.^[19] Security personnel also monitor the club’s surveillance cameras, which scan the entrance and parking lot of the building.^[20]

13. In late 2003, the Warehouse Nightclub changed its musical format from the type of urban hip hop and rap music played on the B-96 radio station to the top-40 dance type music played on the KDWB-101.3 radio station. Although the two radio stations share a majority of the songs on their play lists, including rap songs, KDWB plays slightly less extreme urban or “gangster” rap music.^[21]

14. Between June 13, 2003 and September 19, 2004, the Warehouse Nightclub had 13 police calls for incidents including assault, assault with a dangerous weapon, disorderly conduct, inciting a riot, and weapons possession.^[22] In one incident, an unruly patron assaulted an off-duty police officer.^[23] In another incident, a patron assaulted another patron with a beer bottle.^[24] In another incident, a patron was arrested for inciting a riot after a “large fight” broke out at the Warehouse Nightclub.^[25] And on the evening of September 14, 2004, police arrested a fugitive in the parking lot of the Warehouse Nightclub who was wanted in Milwaukee for a car jacking. The individual had several felony warrants and was in possession of a handgun when he was arrested. Police learned from an informant that the suspect was heading to the Warehouse Nightclub and was possibly armed.^[26] The arrest of this individual from Milwaukee was one of three incidents the Saint Paul Police responded to in September of 2004 that involved possession of handguns at the Warehouse Nightclub.^[27]

15. Six of the 13 police calls that were placed to the Warehouse Nightclub between June 13, 2003, and September 19, 2004, involved assaults and disorderly conduct incidents that occurred on Sunday nights or in the early hours of Monday mornings, during or at the close of evenings featuring the club’s urban or “gangster” rap format.^[28]

16. Tyrone Strickland, Saint Paul Police Department’s Patrol Commander for the Western District (which includes the Warehouse Bar) considered the Warehouse Bar to be one of his “problem properties” based on the number of police calls for service to the property and the type of incidents involved.^[29]

17. Since August of 2003, the Licensee has installed outside surveillance cameras located across the front of the building, and more lighting in the parking lot at the Warehouse Nightclub. The Licensee also posted signs stating that the premises are under 24-hour surveillance and the Licensee stopped serving beer and other alcoholic beverages in glass bottles to prevent their use as weapons in assaults. The Licensee now serves all beverages in plastic cups.^[30]

18. In 2004, (then) District Commander Harrington called a meeting with the Licensee to discuss safety concerns related to the number and type of police calls to the Warehouse Bar. Patrol Commander Strickland, Officer Parsons, Christine Rozek, Director of LIEP, Kristina Schweinler, Senior License Inspector with LIEP, and Assistant City Attorney Virginia Palmer also attended the meeting.^[31] Steven Foss and Paul Augustyn attended on behalf of WHT. After this meeting, LIEP requested that the Saint Paul City Attorney’s Office pursue an adverse action against WHT. LIEP recommended that the City fine WHT \$2,000 and impose conditions on WHT’s licenses.^[32]

19. In October of 2004, the Warehouse Nightclub stopped being open on Sunday nights. WHT’s decision to close the club on Sunday nights was due in part to competition from another club that began operating with a similar urban rap musical

format on Sunday nights. Currently, the Warehouse Nightclub is open on Tuesday, Thursday and Friday nights from 9:00 p.m. until 2:00 a.m.^[33] On the nights it is open, the Warehouse Nightclub draws approximately “a couple hundred” patrons.^[34]

20. At the October 27, 2004, St. Paul City Council meeting, Officer Parsons testified on a resolution to assess WHT for excessive police and nuisance enforcement services for properties located at 2554 Como Avenue (Warehouse Nightclub). Officer Parsons informed the Council that there had been a significant number of calls to the Warehouse Nightclub on weapons, disorderly conduct and assaults. In fact, Parsons stated that the Warehouse Nightclub was considered to be “the most dangerous bar in the city.” Parsons stated further that he believed the biggest problem with the nightclub was its “18+ night” format, where the club allowed patrons over 18 years of age to enter the club. The club identified those old enough to drink alcoholic beverages by checking their identification and then providing them with a wristband. However, Parsons testified that on these nights, the club was so crowded it was not possible for the club to effectively monitor the wristbands and alcohol consumption. Parsons also stated that the evenings when the nightclub played a rap music format generated the most calls for service. Parsons told the City Council that he believed it was only a matter of time before someone, either a patron or an off-duty police officer, was killed at the Warehouse Nightclub.^[35]

21. On October 29, 2004, the St. Paul City Attorney’s Office issued a Notice of Violation to Steven Foss regarding the large number of police calls to the Warehouse Nightclub between June 13, 2003 and September 19, 2004. The Notice summarized each incident and concluded that there was an extremely high level of assaultive behavior taking place between patrons, and that the incidence of weapons being used on the premises posed a danger to patrons and the responding officers. The Notice cited Saint Paul Legislative Code § 310.06(b)(8) as permitting adverse action against the business licenses of WHT. The Notice further stated that it was the recommendation of LIEP that WHT be fined \$2,000 and that conditions to address the assaults and weapons use of its patrons be placed on its license. The Notice of Violation advised WHT of its right to a hearing, if the underlying facts of the violation were disputed.^[36]

22. The City subsequently suggested that the following conditions be placed on WHT’s licenses:

- (1) 18+ language (unknown what form this may take in light of recent ordinance change);
- (2) All customers must be wanded or must walk through a metal detector prior to entry. Weapons will not be permitted in the establishment;
- (3) The business will have surveillance cameras both inside and outside the establishment. Equipment will be maintained in good working condition and all tapes will be kept for at least 7 days. Tapes will be immediately available to police officers and/or license inspectors upon request;

- (4) The club will be closed to new customers after 1:00 a.m. Last call will be 1:30 a.m.;
- (5) The ID of every customer must be checked prior to entry into the club. The licensee must not permit anyone under the age of 21 to consume alcohol in the establishment. If a customer does not provide a legitimate ID, the customer will be denied entry.
- (6) The licensee is responsible for patron behavior on the licensed premises, including the parking lot; and
- (7) During the hours of 9:00 p.m. until closing, the licensee, on those nights when the club portion of the establishment is open, will provide for staffing and monitoring of all entrances and exits, it being the intent that at all times indicated at least one employee of the licensee will be physically present at each entrance and exit to monitor patrons entering and exiting the establishment.^[37]

23. WHT already complies with many of the conditions suggested by the City. WHT does oppose, however, the City's proposed conditions 4, 6, and 7. Specifically, WHT objects to closing the Warehouse Nightclub to new customers at 1:00 a.m. and to stopping service at 1:30 a.m. WHT also objects to being required to place security personnel at the entrance of the American Sports Café when patrons are unable to go between the café and the nightclub. And WHT believes it should not be held responsible for all patron behavior, particularly criminal behavior, on its premises as a condition of its license.^[38]

24. There have been no significant incidents of disorderly conduct or assaults at the Warehouse Nightclub since October of 2004, when the Licensee discontinued Teen Night and closed the establishment on Sunday nights.^[39]

25. In June of 2005, the Saint Paul City Council passed an ordinance restricting clubs and bars from hosting 18+ nights. The ordinance requires clubs to separate underage customers from areas where alcohol is being served.^[40] After the ordinance was passed, WHT discontinued its 18+ nights at the Warehouse Nightclub.

26. Assistant City Attorney Virginia Palmer advised the Saint Paul City Council on the adoption of the ordinance restricting 18+ nights. There is no evidence in the record that Ms. Palmer discussed any issues relating to this particular licensing matter with any council member or his or her staff.

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

CONCLUSIONS

1. The Administrative Law Judge and the Saint Paul City Council have jurisdiction in this matter under Minnesota law and Saint Paul City ordinance.^[41]

2. The City substantially complied with all relevant substantive and procedural legal requirements.

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

4. The Saint Paul Legislative Code authorizes the City Council to take 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.”^[42]

5. “Adverse action” is defined in the Saint Paul Legislative Code to include the imposition of conditions on 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.^[43]

6. The City has the burden of proof to establish by a preponderance of the evidence that WHT has operated Warehouse Nightclub in a manner that maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals or comfort of considerable number of members of the public.

7. The City has proved by a preponderance of the evidence that between June 13, 2003, and September 19, 2004, the Licensee operated Warehouse Nightclub in a manner that maintained or permitted conditions that unreasonably endangered the safety, health, morals or comfort of considerable number of members of the public.

8. The Saint Paul Legislative Code states in part that

No interested person shall, with knowledge that a license matter has been scheduled for adverse hearing, convey or attempt to convey, orally or in writing, any information, argument or opinion about the matter, or any issue in the matter, to a council member or his or her staff until the council has taken final action on the matter; ... ^[44]

10. The Licensee has failed to establish that Assistant City Attorney Palmer engaged in ex parte contacts in violation of the Saint Paul Legislative Code.

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

RECOMMENDATION

IT IS RECOMMENDED that the City Council order that adverse action be taken against the licenses held by WHT, Inc., and that appropriate conditions be placed on licensure for future operations.

Dated this 16th day of September 2005.

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped (4 tapes). No transcript prepared.

MEMORANDUM

The City of St. Paul's Office of License Inspections and Environmental Protection (LIEP) has recommended that adverse action be taken against WHT's licenses. The City has established that between June 13, 2003 and September 19, 2004, the Warehouse Nightclub generated at least 13 police calls for service concerning assaults and disorderly conduct on the nightclub's premises.

Municipalities have broad discretion in determining "the manner in which liquor licenses are issued, regulated, and revoked."^[45] The Saint Paul Legislative Code § 310.06(b)(8) permits adverse action against a license when "[t]he 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." Minnesota courts have upheld adverse actions against licensed businesses based on actions occurring in the licensed business's parking lot, alley, or surrounding area.^[46]

The record in this matter contains clear evidence of disorderly conduct, assaults, and weapons possession occurring at the Warehouse Nightclub or in its parking lot on a frequent basis between June 13, 2003 and September 19, 2004. The record also established that on a typical night, nightclub staff, off-duty police officers, and a couple hundred patrons would be at the Warehouse Nightclub. The City maintains that this evidence is sufficient to find WHT operated the Warehouse Nightclub in a manner that maintained or permitted conditions that endangered the health and safety of a considerable number of members of the public.

As an initial matter, WHT contends that patrons of the Warehouse Nightclub are not "members of the public" within the meaning of section 310.06(b)(8). Based on case law interpreting public nuisance crimes under Minn. Stat. § 609.74, WHT asserts that only neighbors of the licensed premises who have property with which the alleged nuisance activity could interfere qualify as "members of the public." Because patrons do not have property that could be interfered with by the Warehouse Nightclub, WHT contends that they are not "members of the public." And since the Warehouse Nightclub is located in an industrial area with no affected adjoining landowners or neighbors, WHT maintains that the City has failed to meet its burden of proving that the Warehouse Nightclub unreasonably annoys, injures or endangers the safety or health of *any* members of the public, let alone a considerable number.

WHT also argues that it responsibly managed the Warehouse Nightclub and that the City has failed to show it maintained or permitted conditions that caused the disorderly behavior at issue. WHT points out that it cooperated with the Saint Paul Police Department and implemented a majority of the security measures suggested by Officer Parsons. For example, WHT purchased a hand-held metal detector (wand), upgraded its surveillance equipment, posted signs on its property notifying persons that the premises were under 24-hour surveillance, added lighting to the parking lot, and stopped serving beverages in glass bottles. According to WHT, it is not enough to demonstrate that disorderly conduct occurred at the licensed premises in order to

establish a violation of section 310.06(b)(8). Instead, WHT argues that the City must show a nexus between the actions of the licensee and the disorderly behavior.

With respect to WHT's first argument, the Administrative Law Judge is not persuaded that patrons of the Warehouse Nightclub are not "members of the public" within the meaning of the St. Paul Legislative Code. The Warehouse Nightclub is a place of public accommodation that invites patronage of the general public. As such, patrons are "members of the public" within the meaning of section 310.06(b)(8).^[47]

As to WHT's other arguments, the record did establish that WHT implemented many of the security measures suggested by the Saint Paul Police Department. However, the record also established that numerous assaults continued to take place in and around the premises of the Warehouse Nightclub even after these security measures were adopted and that WHT was aware it had an ongoing problem with assaultive behavior on the part of its patrons. Although the nightclub itself did not violate any laws, illegal activity that posed a threat to public safety occurred on its premises for an extended period of time. Only after the Warehouse Nightclub discontinued its Teen Nights and closed on Sunday nights in October of 2004 did serious incidents of disorderly conduct or assaults decrease. This evidence suggests that there were additional measures or changes WHT could have implemented earlier in order to reduce the unlawful behavior occurring at the Warehouse Nightclub.

The City has demonstrated by a preponderance of the evidence that the assaults at the Warehouse Nightclub endangered the health and safety of patrons, employees, and the off-duty police officers. The Administrative Law Judge concludes that the conduct was sufficiently severe and frequent to support adverse action in this matter, such as imposition of a fine and conditions on the licenses.

The City has broad discretion in selecting an appropriate penalty.^[48] However, WHT strongly objects to what it claims is the City's unofficial or implied condition that it stop playing rap music at the Warehouse Nightclub. WHT points out that it already "softened" the musical format at the Warehouse Nightclub by playing radio-edited versions of rap songs. WHT contends that any attempt to ban the playing of rap music on the part of the City amounts to censorship and would violate the First Amendment. The City asserts that it is not requesting that WHT ban rap music from the Warehouse Nightclub's playlist. Rather, the City maintains that it presented testimony that the clientele attracted to the urban rap format the Warehouse played on Sunday nights was more prone to disorderly conduct than the clientele on other nights. This testimony was supported by evidence that problems at the Warehouse were greatly reduced or eliminated after WHT discontinued its urban rap entertainment format on Sunday nights. Although Saint Paul Police Officer Parsons suggested to P.J. Augustyn that the Warehouse Nightclub eliminate its "gangster" rap music format on Sunday nights, the City did not list such a ban as one of the license conditions it subsequently proposed. Because the City is not seeking to prohibit WHT from playing rap music at the Warehouse Nightclub as a condition of its license, the Administrative Law Judge will not address whether such a ban would render section 310.06(b)(8) unconstitutional as applied to WHT.

Finally, WHT argues that section 310.06(b)(8) of the Saint Paul Legislative Code is unconstitutionally vague on its face. WHT contends that the ordinance lacks specificity as to what conduct on the part of WHT amounted to “maintaining or permitting conditions” that violate the ordinance. Moreover, WHT asserts that there is no objective standard for determining when a licensee “unreasonably annoys, injures or endangers safety, health, morals, comfort or repose.”

Municipal ordinances are presumed constitutional^[49] and the ALJ notes that similar vagueness challenges to the Minneapolis City Charter, which permits revoking licenses for “good cause,” have failed. In *Hard Times Café v. City of Minneapolis*,^[50] for example, the Minnesota Court of Appeals found the “good cause” standard to be sufficiently definite to permit the licensee to know that it would be subject to adverse action. The *Hard Times Café* case involved multiple drug transactions in and around the café’s premises. The Court of Appeals determined that the Licensee would not have to guess that such activity was the type that constituted good cause for license disciplinary action.^[51] Likewise, it was or should have been clear to WHT, and beyond the realm of guesswork, that assaults, violent disturbances and other criminal conduct on its premises were the type of activity that might subject its license to adverse action. In any event, a facial challenge to the constitutionality of the Saint Paul ordinance is beyond the scope of this hearing, as such a challenge is within the exclusive province of the judicial branch of government.^[52] WHT’s constitutional arguments are noted for the record and preserved for possible appeal.

The City has demonstrated that between June 13, 2003 and September 19, 2004, WHT operated the Warehouse Nightclub in a manner that maintained or permitted conditions that unreasonably endangered the safety or health of a considerable number of members of the public. However, the security measures implemented by WHT in its attempt to cooperate with the police and lessen the unlawful conduct at its nightclub are mitigating factors the City Council may consider to determine what sanctions and/or conditions to impose.

In that connection, the ALJ is persuaded that reasonable license conditions on closing, security at entrances to the “Warehouse” premises and responsibility for parking lot security are appropriate. WHT notes that it already operates the Warehouse Nightclub in a manner consistent with many of the conditions proposed by the City. WHT opposes the City’s suggested condition that the Warehouse Nightclub close its doors to new customers at 1:00 a.m. and institute a last call at 1:30 a.m. because these conditions are more restrictive than Minnesota law and (WHT contends) the City has failed to present evidence of a nexus between patrons entering between 1:00 a.m. and 1:30 a.m. and conditions that unreasonably endanger the health and safety of the public. Moreover, WHT points out that the Warehouse Nightclub already denies access to its parking lot after 1:30 a.m., so if patrons wish to park at the Warehouse Nightclub they must arrive before that time. WHT also objects to the suggested condition that it place staff at the entrance of the American Sports Café on the nights when the Warehouse Nightclub is open. WHT maintains that such a requirement is unnecessary when security personnel are already at every entrance and exit of the Warehouse Nightclub and patrons are prevented from going between the nightclub and the Sports Café. WHT also objects to the broad language of proposed condition #6, which would

seem to hold WHT strictly liable for all patron conduct, even criminal conduct, in the club or on the parking lot. These are all additional considerations that the Council might weigh in deciding what conditions to impose on WHT.

R.C.L.

^[1] Ex. 22.

^[2] Ex. 23.

^[3] Testimony of Schweinler, Strickland, Parsons, Townsend, and Williams; Ex. 1.

^[4] Testimony of Schweinler; Ex. 1.

^[5] Testimony of Schweinler and Augustyn.

^[6] Testimony of Augustyn.

^[7] Testimony of Strickland.

^[8] Testimony of Williams and Sims.

^[9] Testimony of Augustyn; Ex. 29L.

^[10] Testimony of Lee and Augustyn; Ex. 11.

^[11] Harrington since has succeeded Finney as St. Paul's Police Chief.

^[12] Testimony of Parsons and Augustyn.

^[13] Testimony of Parsons and Augustyn.

^[14] Testimony of Parsons.

^[15] Testimony of Augustyn; Ex. 29A, 29G and 29H.

^[16] Testimony of Augustyn; Exs. 29C, 29D, 29F, 29I and 29K.

^[17] Testimony of Augustyn.

^[18] Testimony of Pikala.

^[19] Testimony of Townsend and Pikala.

^[20] Testimony of Pikala; Exs. 29B, 29C, 29F, 29I, and 29K.

^[21] Testimony of Augustyn.

^[22] Exs. 2-14.

^[23] Ex. 7.

^[24] Ex. 3.

^[25] Ex. 6.

^[26] Ex. 13.

^[27] Exs. 11, 13-15.

^[28] Exs. 3-5, 7-9, and 15.

^[29] Testimony of Strickland.

^[30] Testimony of Williams and Townsend; Ex. 3.

^[31] Testimony of Strickland.

^[32] Testimony of Schweinler and Strickland.

^[33] Testimony of Augustyn.

^[34] Testimony of Lee.

^[35] Ex. 26; Testimony of Parsons.

^[36] Ex. 15.

^[37] Ex. 24.

^[38] Testimony of Augustyn.

^[39] Testimony of Parsons.

^[40] Exs. 31 and 32.

^[41] Minn. Stat. §§ 14.50, 14.55; St. Paul Legislative Code § 310.05-.06.

^[42] St. Paul Legislative Code Section 310.06(b)(8).

^[43] St. Paul Legislative Code § 310.01.

^[44] Saint Paul Legislative Code § 310.05 (c-2).

^[45] *Bourbon Bar & Café Corp. v. City of St. Paul*, 466 N.W.2d 438, 440 (Minn. App. 1991) (citing, *Sabes v. City of Minneapolis*, 265 Minn. 166, 171, 120 N.W.2d 871, 875 (1963)).

^[46] See, *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557 (Minn. App. 2001); *Metro Bar & Grill, Inc., d/b/a Arnellia's v. City of St. Paul*, C6-00-1156 (Minn. App. May 1, 2001) (unpublished).

^[47] See, *In re Licenses of Lucky Star, Inc., d/b/a Bangkok City Supper Club*, OAH Docket No. 4-6020-14825-3 (Recommended Decision issued August 2, 2002) (conditions that facilitated potential for underage drinking unreasonably endangered safety and health of "those young people and other members of the public."); *In re all Licenses Held by Dinner Club 2000, Inc., d/b/a Dinner Club 2000*, OAH Docket No. 10-6020-14868-3 (Recommended Decision, October 8, 2002) (Assaults at the club endangered "the health and safety of patrons, employees, and passersby.")

^[48] *Bergmann v. City of Melrose*, 420 N.W.2d 663, 665 (Minn. App. 1988) (citing, *Cleveland v. Rice County*, 238 Minn. 180, 183, 56 N.W.2d 641, 643 (1952).)

^[49] *Hard Times Café v. City of Minneapolis*, 625 N.W.2d 165 (Minn. App. 2001).

^[50] 625 N.W.2d 165 (Minn. App. 2001).

^[51] *Id.* at 172; See also, *City of Saint Paul v. Franklin*, 286 Minn. 194, 198, 175 N.W.2d 16, 18 (1970)(ordinance prohibiting keeping a disorderly house was not unconstitutionally vague as applied to appellant).

^[52] *Neeland v. Clearwater Memorial Hospital*, 257 N.W.2d 366, 369 (Minn.1977); *In re Rochester Ambulance Service, a Div. Of Hiawatha Aviation of Rochester*, 500 N.W.2d 495, 499-500 (Minn. App. 1993) (Administrative Law Judge lacks jurisdiction to declare a statute unconstitutional on its face).