

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE ST. PAUL CITY COUNCIL**

In the Matter of All Licenses Held by
Billy Neng Yang, d/b/a Asian
Cuisine, for the Premises Located at
945 Rice Street in St. Paul,
Minnesota 55117

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter was heard by Administrative Law Judge Richard C. Luis, acting as a hearing officer for the St. Paul City Council, on April 3, 2007 at the St. Paul City Hall/Ramsey County Courthouse, Room 40B, 15 West Kellogg Blvd., St. Paul, Minnesota. The hearing was held pursuant to a Notice of Administrative Hearing dated March 16, 2007.

Rachel Gunderson, Assistant City Attorney, 400 City Hall, 15 West Kellogg Blvd., St. Paul, Minnesota 55102, appeared on behalf of the St. Paul City Office of License, Inspections and Environmental Protection ("City", "LIEP"). Billy Neng Yang ("Licensee", "Owner"), d/b/a Asian Cuisine, 945 Rice Street, St. Paul, Minnesota 55117, appeared without counsel. Licensee was assisted by Thai Vue, manager of Asian Cuisine.

The Hearing record closed at the conclusion of the hearing on April 3.

STATEMENT OF ISSUES

The issues presented at the hearing were:

Should adverse action be taken against the licenses held by Billy Neng Yang, d/b/a Asian Cuisine, because it allowed the after-hours display and consumption of alcohol in violation of St. Paul Legislative Code § 409.07(c); and

Should adverse action be taken against the licenses held by Billy Neng Yang, d/b/a Asian Cuisine, for failing to maintain a video surveillance camera to observe the parking lot and outside of the licensed premises and the failure to provide video surveillance tapes to St. Paul Police in violation of Condition #3 of its license; and

Should adverse action be taken against the licenses held by Billy Neng Yang, d/b/a Asian Cuisine, for the failure to provide security on a night when entertainment was present from 6:00 p.m. to close in violation of Condition #4 of its license; and

What is the appropriate discipline for these violations?

As discussed more fully below, the Administrative Law Judge concludes that the Licensee did allow the display and consumption of alcohol after hours and did violate Condition #3 of its license, so an adverse licensing action is justified.

Based on all of the proceedings, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Billy Yang is the owner of Asian Cuisine. Thai Vue is the manager of Asian Cuisine.

2. Asian Cuisine is a restaurant located at 945 Rice Street, St. Paul, Minnesota 55117. 945 Rice Street is the location of a strip mall. Asian Cuisine occupies Suite A of the strip mall.

3. Licensee holds the following licenses: Wine On Sale, Malt On Sale Strong, Restaurant B, Entertainment B, Catering Add-On and Food Vehicle.

4. Billy Neng Yang, d/b/a Asian Cuisine, has the following conditions placed on his licenses:

1. "The sale of wine and beer will take place only in conjunction with the sale and service of food. Alcoholic beverages cannot be sold, provided, or poured when the kitchen is closed. Patrons must purchase food with a drink purchase."¹
2. "Provide copies of gross receipts from the sales of food, wine and beer, showing at least sixty (60) percent attributable to the sale of food, annually at time of license renewal."²
3. "Video cameras will be installed on the outside of the building to monitor and record the activity in the parking lot and outside of the licensed premises. Tapes will be maintained and available to SPPD and City Inspector for 14 days."³

¹ Ex. 2, Copy of License Group Conditions for Billy Neng Yang, d/b/a Asian Cuisine, Condition #1.

² Ex. 2, Copy of License Group Conditions for Billy Neng Yang, d/b/a Asian Cuisine, Condition #2.

³ Ex. 2, Copy of License Group Conditions for Billy Neng Yang, d/b/a Asian Cuisine, Condition #3.

4. "Security will be provided on nights when entertainment is scheduled from 6:00pm to close."⁴
5. "Entertainment will only be provided on Friday, Saturday, and Sundays."⁵
6. "Licensee must supply proof of shared parking agreement with Northend Appliance for 33 spaces prior to the issuance of this license and annually at time of license renewal."⁶

5. Asian Cuisine is licensed to close at 1:00 a.m.⁷

6. On December 27, 2006, St. Paul City Police Officer Steve Petron was dispatched to 945 Rice Street in St. Paul, to respond to a robbery. The robbery occurred in the parking lot of Asian Cuisine. The robber fled on foot. Asian Cuisine has three working surveillance cameras, but none of their surveillance cameras cover the area of the parking lot where the robbery occurred. Officer Petron requested a video surveillance tape from Asian Cuisine from another surveillance camera, located over an alley to the rear of the premises, but was informed by someone he believed to be the manager that the camera did not have a videotape in it at the time of the robbery.⁸

7. The undated videotape provided at the hearing by Licensee⁹ shows three views: one inside the bar/club room, and two of different areas in the front-strip mall parking lot. The two front views do not cover the whole parking lot. There is an area missing on the video coverage between the north end of one camera's view and the south end of the other's view. No part of the alley behind the licensed premises is pictured.

8. On January 20, 2007 St. Paul City Police Officer Phuong Chung was working undercover for the City of St. Paul Police Vice Unit. Officer Chung arrived at Asian Cuisine to conduct a compliance check regarding the licenses held by Asian Cuisine. Officer Chung was accompanied by Community Liaison Officer ("CLO") Vang.¹⁰

9. Officer Chung and CLO Vang entered Asian Cuisine at approximately 1:15 a.m. and observed patrons inside, drinking beer and dancing. Officer Chung estimated that between 150-175 people were inside Asian Cuisine.¹¹ Officer Chung approached the counter and asked an employee to

⁴ Ex. 2, Copy of License Group Conditions for Billy Neng Yang, d/b/a Asian Cuisine, Condition #4.

⁵ Ex. 2, Copy of License Group Conditions for Billy Neng Yang, d/b/a Asian Cuisine, Condition #5.

⁶ Ex. 2, Copy of License Group Conditions for Billy Neng Yang, d/b/a Asian Cuisine, Condition #6.

⁷ Testimony of Christine Rozek, Deputy Director, City of St. Paul LIEP Office.

⁸ Testimony of St. Paul Police Officer Steven Petron.

⁹ Licensee's Ex. 9.

¹⁰ Testimony of St. Paul Police Officer Phuong Chung.

¹¹ Testimony of St. Paul Police Officer P. Chung.

purchase a beer. The employee, an Asian male, told Officer Chung that the counter was closed.¹² Officer Chung did not see anyone else inside Asian Cuisine purchase alcohol.¹³

10. On January 20, 2007, a live band was playing inside Asian Cuisine. Officer Chung observed the band playing when he entered Asian Cuisine at 1:15 a.m., and the band continued playing through 1:45 a.m., at which time the officers left Asian Cuisine. Officer Chung was not aware of the presence of any security personnel. Officer Chung did not ask anyone inside or outside Asian Cuisine whether security was present or who was working security.¹⁴

11. Asian Cuisine employed security personnel on the evening in question, and they were present during the time between 1:15 a.m. and 1:45 a.m.

12. At 1:45 a.m., Officer Chung and CLO Vang left Asian Cuisine. At that time, Officer Chung observed a handful of people still drinking beer. Officer Chung estimated that approximately 100-120 patrons were still inside Asian Cuisine when they left.¹⁵

13. The St. Paul LIEP Office has an unwritten policy that is explained to liquor licensees at the time of license application.¹⁶ Although city ordinance prohibits the sale and display or consumption of alcohol after 1:00 a.m.¹⁷ (where a licensee has not been authorized for a 2:00 a.m. closing time), on nights when entertainment is present, the LIEP Office requires only that such licensees stop serving alcohol by 1:00 a.m. and stop allowing people to enter the premises after 1:00 a.m.; licensees have another half hour, until 1:30 a.m., to clear customers from the premises and ensure that no alcohol is being consumed or displayed. Under the City's policy, patrons who were in the bar by 1:00 a.m. are permitted to remain until 1:30 a.m. to finish their drinks; however, everyone must be out by 1:31 a.m.¹⁸

14. A live band constitutes "entertainment" within the meaning of Asian Cuisine's license.¹⁹

¹² Ex. 5, Supplemental Police Report of Officer Phuong Chung.

¹³ Testimony of Officer P. Chung.

¹⁴ Testimony of Officer Chung.

¹⁵ Ex. 5, Supplemental Police Report of Officer P. Chung.

¹⁶ Testimony of C. Rozek.

¹⁷ St. Paul Legislative Code § 409.07(a), (c).

¹⁸ Testimony of C. Rozek. The only exception is for private after-hours parties during the holiday season, in situations where a licensee has provided prior notice to the City. See St. Paul Legislative Code § 409.07(d). There is no evidence that there was a sanctioned after-hours party at the Licensee's establishment on January 20, 2007.

¹⁹ Testimony of C. Rozek.

15. On February 14, 2007, the City Attorney's Office sent Licensee a Notice of Violation relating to the incident on December 27, 2006 and the two incidents (open too late, lack of security personnel) on January 20, 2007. The notice indicated that LIEP would be recommending a \$1500 fine.²⁰

16. On March 1, 2007, Licensee requested a hearing on all three incidents.²¹

17. On March 16, 2007, the City Attorney's Office issued a Notice of Administrative Hearing on all three violations, setting a hearing for April 3, 2007.

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

CONCLUSIONS

1. The Saint Paul City Council and the Administrative Law Judge have jurisdiction in this matter under Minnesota law and St. Paul City ordinance.²²

2. The hearing was conducted in accordance with the requirements of Minnesota Statutes sections 14.57 to 14.62 and applicable portions of the procedures set forth in section 310.05 of the Saint Paul Legislative Code.

3. The City has given proper and timely notice of the hearing in this matter and has fulfilled all procedural requirements of law and rule.

4. The St. Paul Legislative Code authorizes the City Council to take adverse action against a license when the "licensee has failed to comply with any condition set forth in the license, or set forth in the resolution granting or renewing the license."²³

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.²⁴

6. The City bears the burden in this matter of proving by a preponderance of the evidence that "licensee failed to comply with any condition set forth in the license, or set forth in the resolution granting or renewing the license."²⁵

²⁰ Ex. 6.

²¹ Ex. 7.

²² Minn. Stat. §§ 14.50, 14.55; St. Paul Legislative Code § 310.05-.06.

²³ St. Paul Legislative Code § 310.06(b)(5).

²⁴ St. Paul Legislative Code § 310.01.

²⁵ St. Paul Legislative Code § 310.06(b)(5).

7. Any of the Findings more properly considered Conclusions are adopted as such.

8. On December 27, 2006 Asian Cuisine violated Condition #3 of its license by failing to provide video surveillance tapes to the St. Paul Police.

9. On January 20, 2007, Asian Cuisine was open and allowing patrons to enter the business after its authorized closing time.

10. The City has not proven that on January 20, 2007, Asian Cuisine did not provide security in violation of Condition #4 of its license. Accordingly, it is appropriate to reduce the fine imposed on the Licensee in an amount proportionate to that offense.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATIONS

IT IS RECOMMENDED that the St. Paul City Council take appropriate adverse action against the licenses held by Billy Neng Yang, d/b/a Asian Cuisine, for failure to provide video surveillance tapes for December 27, 2006, and for staying open later than authorized on January 20, 2007; and

IT IS RECOMMENDED FURTHER that the St. Paul City Council RESCIND the allegation that the Licensee did not provide security on January 20, 2007, a night when entertainment was scheduled, in violation of Condition #4 of its license, and to reduce the fine imposed on the Licensee accordingly.

Dated this 2nd day of May, 2007

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Taped

NOTICE

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under St. Paul Legislative Code § 310.05(c-1), the City Council shall provide the parties an opportunity to present oral or written arguments to the City Council before it takes final action. Parties should contact Shari Moore, St. Paul City Clerk, 170 City Hall, St. Paul, Minnesota 55102, to inquire about the procedure for presenting argument to the City Council.

MEMORANDUM

The City has proved by a preponderance of the evidence that Asian Cuisine allowed the display and consumption of alcoholic beverages after 1:30 a.m. Though Licensee testified that no one is allowed to purchase beer after 12:45 a.m., Licensee did not provide evidence to dispute Officer Chung's testimony that patrons were still drinking from beer bottles inside Asian Cuisine at 1:45 a.m. It is reasonable to presume without testing that the substance inside the beer bottles was, in fact, beer, and neither Licensee nor Mr. Vue dispute this presumption. The City therefore demonstrated by a preponderance of the evidence that consumption or display of alcohol occurred at Asian Cuisine after 1:30 a.m. on January 20, 2007. Because the City ordinance prohibits consumption or display of liquor at any time when the sale of such liquor is not permitted, it is not necessary for the City to show that police officers observed actual service or sales of liquor.²⁶ Also, Officer Chung and his partner were allowed into the bar after 1:00 a.m., which violates the policy mentioned by Ms. Rozek.

The City of St. Paul has proved by a preponderance of the evidence that Asian Cuisine was in violation of Condition # 3 of its license, for the failure to provide a copy of surveillance video to the St. Paul Police. Though Licensee does maintain three surveillance video cameras on the premises, Condition #3 states specifically that Licensee must install video cameras that monitor the activity in the parking lot and "outside of" the licensed premises.²⁷ There is no evidence the alley behind Asian Cuisine has been monitored at any time relevant to this proceeding. Exhibit 9 shows that a portion of the parking lot was not monitored when that video was made. It sheds no light on the videos taken, if any were, on December 27, 2006, and fails to establish that surveillance tapes were operating that night.

Mr. Vang testified credibly that he had previously installed a video security camera to monitor the alley. According to Licensee, this security camera was

²⁶ In fact, Officer Chung testified that he did not see anyone purchase beer after 1:15 a.m. when he entered. Licensee credibly testified that Asian Cuisine does not serve alcohol after last call, at 12:45 a.m.

²⁷ Ex. 2, Copy of Group License Conditions for Billy Neng Yang, Condition #3.

located in a dangerous area, where the camera was repeatedly broken by passers-by. Licensee testified that he had replaced that camera several times, but it has become too expensive for him to continue replacing it. The Administrative Law Judge believes it appropriate to reduce the fine imposed, in part, to enable Licensee to install and maintain a security camera in this location in the future. During the hearing, Christine Rozek informed Licensee that the St. Paul Police will help Licensee to set up video surveillance of the outside area in a manner which will prevent the cameras from being vandalized again. Licensee was clearly unaware that this service was available. The St. Paul City Council could take this into account in deciding on the appropriate amount of fine.

The City of St. Paul has not met its burden to prove that Asian Cuisine violated Condition #4 of its license, specifically that security must be provided on nights when entertainment is scheduled. Officer Chung testified that when he entered Asian Cuisine on January 20, 2007 he did not see any security personnel. However, Officer Chung also did not ask if security was present that night or who in the restaurant was employed as security personnel. Additionally, Officer Chung testified that at the time he entered Asian Cuisine, there were approximately 150-175 people inside the restaurant. Mr. Vue testified that the capacity of Asian Cuisine was a maximum of 160 people. Therefore, even if "only" 150 people were inside Asian Cuisine at that time on January 20, 2007, it can be presumed that the restaurant was crowded and security could have been present, but out of Officer Chung's sight. Officer Chung testified that when he left Asian Cuisine, there were 100-120 people still present.

Licensee contends, and Mr. Vue agrees, that security was present on January 20, 2007. Licensee stated that he paid security to be there on January 20, 2007. The City did not provide any evidence to dispute this statement. Licensee also stated that Asian Cuisine employs security to check IDs for persons who look young, presumably under the age of twenty-one. Counsel for the City contends that, in that case, security should have checked Officer Chung's ID when he entered. However, Mr. Vue points out that Officer Chung is clearly above the age of twenty-one, so security would not necessarily check his ID. The ALJ concurs - he had the opportunity to observe Officer Chung, and the Officer appears obviously over 21.

Counsel for the City asserts that the purpose of security is to deter wrongdoings from happening, so therefore, even if Asian Cuisine did have security on January 20, 2007, then security must be obvious. However, the condition imposed on the licenses held by Asian Cuisine simply requires that security will be provided on nights entertainment is scheduled until close. The City has not met its burden to show that security was not present on January 20, 2007.

The Administrative Law Judge suggests consideration of a reduction in the proposed fine, from \$1500 to something under \$1000 for the violation of Licensee's 1:00 a.m. closing restriction and the violation of Condition #3 of the

license. Counsel for LIEP suggests the alleged violations merit a \$1500 fine. No specific evidence exists to suggest how much of the \$1500 proposed fine is attributable to each allegation, but it is logical that the fine would be split equally among the three allegations, amounting to \$500 per allegation. Since the Administrative Law Judge recommends that the allegation that no security was present be dismissed, it may be appropriate to reduce the total fine by at least \$500. The Council may also wish to consider yet a smaller fine than \$1000, to help enable Asian Cuisine to afford installation of more sophisticated surveillance.

R. C. L.