

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNEAPOLIS CITY COUNCIL

In the Matter of the On-Sale Liquor  
License, Class B, Held by T.J.  
Management of Minneapolis d/b/a  
Gabby's Saloon and Eatery

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

The above matter came on for hearing before Administrative Law Judge Raymond R. Krause on October 9, 2007, October 10, 2007, and October 11, 2007, at the Office of Administrative Hearings in St. Paul, Minnesota. The parties submitted Post-Hearing Memoranda on October 25, 2007, and the record closed on that date.

Lee C. Wolf, Assistant City Attorney, 333 South Seventh Street, Suite 300, Minneapolis, Minnesota, 55402, appeared on behalf of the Division of Licenses and Consumer Services of the City of Minneapolis (the City). Scott Harris, Leonard Street & Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, appeared on behalf of T.J. Management of Minneapolis d/b/a Gabby's Saloon and Eatery (Gabby's).

**STATEMENT OF ISSUES**

1. Whether the City has authority to revoke or restrict the Class B On-Sale Liquor License of T.J. Management of Minneapolis d/b/a Gabby's Saloon and Eatery.
2. If the City has the authority, whether grounds exist for the City to revoke or restrict the Class B On-Sale Liquor License of T.J. Management of Minneapolis d/b/a Gabby's Saloon and Eatery.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. T.J. Management of Minneapolis operates Gabby's Saloon and Eatery ("Gabby's"), at 1900 Marshall Street NE in the City of Minneapolis.

Gabby's sells alcohol under a Class B On-Sale Liquor License issued by the City.<sup>1</sup>

2. Gabby's first began operations in 1986 when it obtained the Class B On-Sale Liquor License. The City renewed the license in April 2007. There are no conditions on the license.<sup>2</sup>

3. Gabby's is licensed to stay open until 2:00 a.m. Gabby's permitted occupancy, including the outdoor patio, is 689 patrons. Gabby's employs 84 people.<sup>3</sup>

4. Other than one instance in 1999, Gabby's has never been cited for a violation of any liquor law or ordinance. Gabby's received letters of commendation for its compliance with liquor regulations in 1998, 2000, 2001, and 2004. The City does not allege that Gabby's has violated any statute, rule, ordinance or condition pertaining to the provision of on-sale liquor.<sup>4</sup>

### **Complaints and Incidents**

5. In the past two years, a number of residents living near Gabby's have complained to City officials that Gabby's is causing negative livability issues in their neighborhood. Residents have complained that patrons leaving Gabby's after closing are loud, disorderly and generally disruptive.<sup>5</sup>

6. The City Department of Regulatory Services has received twelve community impact statements from residents residing near Gabby's. Their complaints include: noise generated by Gabby's patrons, including loud music, yelling and talking; patrons urinating on residential lawns; patrons committing sexual acts in public; burglary, vandalism and loitering; drunken patrons knocking on doors of houses in the neighborhood and demanding to be let in; patrons fighting and using drugs; gunfire; obstructed driveways; unacceptable amounts of litter; unsafe driving conditions; and delayed police response.<sup>6</sup>

7. Many of the complaints were in response to Gabby's Thursday and Saturday night venues. On these nights Gabby's plays hip hop and rap music and usually draws capacity crowds. Gabby's also hosts "Ladies Night" on Thursday nights; women pay a \$10 cover charge and drink for free from 9 p.m. to midnight.<sup>7</sup>

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<sup>1</sup> Ex. R.

<sup>2</sup> Testimony of Jeffrey Ormond, pp. 618, 622-23.

<sup>3</sup> Exs. S, Q; test. of J. Ormond, pp 621, 624.

<sup>4</sup> Ex. T; test. of J. Ormond, p. 623.

<sup>5</sup> Testimony of Travis Glampe; Testimony of Ricardo Cervantes, pp. 250-51.

<sup>6</sup> Ex. 5; test. of R. Cervantes, p. 263.

<sup>7</sup> Test. of J. Ormond, pp. 633, 641-42.

8. Based on the public complaints, Travis Glampe, a Lieutenant in the Minneapolis Police Licensing Division, compiled and analyzed the police reports generated from activity occurring on or near Gabby's premises.<sup>8</sup>

9. Between November 1, 2005, and November 5, 2006, 62 police reports were generated from activity occurring on or near Gabby's premises. The incidents reported were directly connected to Gabby's. Most of the reports named Gabby's, and the activity either happened at Gabby's or across the street from it. Further analysis of the reports reveals that:

- 52 of the reported incidents occurred at times coincident with Gabby's Thursday or Saturday night venues.
- 52 of the reported incidents occurred after midnight, and 20 of those incidents occurred after 2:00 a.m.
- 30 of the incidents were handled by on-duty police officers.
- The incidents included: four reports of narcotics; four reports of second-degree assault; two weapons violations; one alcohol consumption by a minor; two reports of public urination; seven reports of disorderly conduct, and eight fifth-degree assault reports. The reports also included a shooting on October 29, 2006, in which a patron leaving Gabby's was shot in the street in front of the bar by an unknown suspect.<sup>9</sup>

10. Between November 1, 2005, and November 5, 2006, 27 police reports were generated from activity occurring near Gabby's, in a geographical area defined by 23rd Avenue SE, 17th Avenue NE, Marshall Street NE, and Grand Street NE. These reports were indirectly connected to Gabby's. According to the reports:

- all of the reports were generated from activity Glampe attributed to the actions of Gabby's patrons off the premises, based on three factors: 1) the type of violation alleged in the report (i.e., whether the alleged violation could potentially affect the livability of the neighborhood); 2) the geographic location of the violation; and 3) the day and time the violation occurred;
- 25 of the incidents corresponded with Gabby's Thursday and Saturday night venues;
- 22 of the incidents occurred after midnight; 15 of those incidents occurred after 2:00 a.m.;
- 24 of the reports were handled by on-duty officers;
- the incidents included: two rapes; four second-degree assaults; two reports of public urination; and two disorderly conducts.<sup>10</sup>

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<sup>8</sup> Test. of R. Cervantes, p. 253.

<sup>9</sup> Ex. A; test. of T. Glampe, pp. 20-25; 61; test. of R. Cervantes, p. 256.

<sup>10</sup> Exs. 1; 2; 3; A; E; test. of T. Glampe, pp. 20; 27-32.

11. Between November 1, 2005, and November 5, 2006, 152 calls for Minneapolis Police service were attributed to Gabby's address. These did not necessarily result in a police report being filed. The calls included seventeen disturbances, eleven assaults, nine fights, three reports of a person with a gun; two reports of shots fired; and one stabbing. A police call for service generally notes the nearest address. That does not necessarily mean the incident is connected directly to the address.<sup>11</sup>

12. Lieutenant Glampe, in his expert opinion as a police licensing officer, believes that based on the number of reported incidents and the effect on the livability of the nearby residential neighborhood, adverse action should be taken against Gabby's. Glampe believes some of the problems could be alleviated or reduced by requiring Gabby's to: 1) close earlier; 2) reduce the capacity to allow 400 patrons; 3) change the venue; 4) limit drink specials; and 5) raise the cover charge.<sup>12</sup>

13. On September 30, 2006, and October 1, 2006, Dan Niziolek, the Manager of the City's Problem Property Unit, recorded the following activity in the area surrounding Gabby's between 11:45 p.m. and 2:45 a.m.: thirteen vehicles played amplified music; a woman leaving Gabby's urinated in the street; and four Gabby's patrons were yelling on the sidewalk as they left the bar. At 2:35 a.m. on October 1, 2006, police parked a squad car, with lights flashing, near the intersection of 22nd Avenue NE and Grand Street NE. The officers used the squad car and a loudspeaker to control and disperse people and traffic exiting Gabby's.<sup>13</sup>

14. Inspector Niziolek's opinion is that the activities at Gabby's and the patron behavior that he observed pose a problem for the neighboring residential community that negatively impacts the livability of the neighborhood and warrants City intervention.<sup>14</sup>

15. Some restaurants and bars located in downtown Minneapolis, e.g., the "Block E" area, generate more calls for service and police reports than does Gabby's.<sup>15</sup>

16. Thirty people attended the Bottineau Neighborhood Association meeting in September 2006. Twelve neighbors raised concerns about the continued operation of Gabby's. Many of those residents never filed police reports or citizen complaints. No neighbor spoke in support of Gabby's.<sup>16</sup>

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<sup>11</sup> Ex. 1; test. of T. Glampe, p. 36.

<sup>12</sup> Test. of T. Glampe, pp. 33; 38-42.

<sup>13</sup> Testimony of Dan Niziolek, p. 160; Ex. 1.

<sup>14</sup> Test. of D. Niziolek, p. 177.

<sup>15</sup> Test. of T. Glampe, p. 33; Ex. E.

<sup>16</sup> Test. of R. Cervantes, pp. 250-52; Ex. H.

17. On March 31, 2007, Inspectors Linda Roberts and Michelle Harvet conducted an inspection of Gabby's and the surrounding neighborhood from 11 p.m. to 3 a.m. (April 1). They observed the following activity in the neighborhood surrounding Gabby's near closing time: Gabby's patrons urinating in public, playing loud music from parked cars, loitering in groups of four or five around parked cars, an automobile accident, automobiles "burning rubber," two people kissing against a car; a person trespassing through someone's yard; police squad car lights flashing to direct traffic, and patrons fighting.<sup>17</sup>

18. On May 5, 2007, License Inspector Phil Schliesman and Minneapolis Fire Department Fire Marshall Inspector Mike Rumppe inspected Gabby's. Upon arriving at approximately 12:30 a.m., they observed that no patron appeared over-intoxicated or under the age of 21. The total number of patrons was within the occupancy limits. As they were leaving, they observed Minneapolis police officers deny entry to an unwanted patron.<sup>18</sup>

19. On July 10, 2007, Inspectors Roberts and Harvet conducted an inspection of Gabby's. They observed patrons were just arriving and the line to enter was long. There were approximately 400 patrons inside and Gabby's was not over-occupied. The upstairs level was very crowded and security staff was telling people to "move along" near the restroom area. The off-duty police officers in the parking area were responsive to issues in the parking lot.<sup>19</sup>

20. On August 18, 2007, Inspectors Roberts and Harvet conducted a drive-through inspection of the residential area near Gabby's. They witnessed a vehicle at 22nd Avenue and 2nd Street NE. The rear passenger door was open and male legs hung out the door. As the Inspectors pulled next to the vehicle, they saw a man and woman having sex in the back seat. The inspectors reported the incident to the off-duty officers working at Gabby's and the officers responded to the scene.<sup>20</sup>

21. Gabby's circulated a petition on its own behalf, to neighbors and patrons, from July to October 2007, and 142 people, including employees and 23 neighbors, signed the petition in show of their support. Those who signed the petition stated they believe Gabby's "is an asset to the community" and that they are "comfortable with its management and operations."<sup>21</sup>

22. More neighbors (23) signed the petition in support of Gabby's than submitted Community Impact Statements to the City (12) complaining about various problems arising from the operation of Gabby's.<sup>22</sup>

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<sup>17</sup> Exs. 7; 8; Testimony of Linda Roberts, p. 474-77.

<sup>18</sup> Ex. 7.

<sup>19</sup> Ex. 7.

<sup>20</sup> Ex. 7; Testimony of David Garman, pp. 575-76.

<sup>21</sup> Ex. Z.

<sup>22</sup> Exs. 5; F; Z.

## **Gabby's Security Policies and Off-Duty Police Officers**

23. Gabby's has implemented preventative measures to address security concerns. It retained the services of off-duty police officers and expanded the patrol of those officers in the surrounding neighborhood. In addition, Gabby's has a private security staff of 25 people and has installed over 40 video cameras inside and outside the premises.<sup>23</sup>

24. Gabby's endeavors to have eight to ten off-duty police officers employed on Thursday and Saturday nights to maintain security at Gabby's and address neighborhood livability issues.<sup>24</sup>

25. Gabby's is located within the City's Second Precinct. Robert Skomra, Commander of the Second Precinct, has been employed in the Minneapolis Police Department for 36 years. According to Commander Skomra, Gabby's receives more City police resources than any other bar or business on the east side of Minneapolis. In Commander Skomra's opinion, Gabby's requires the deployment of excessive city resources and police officers. Usually, on Thursday and Saturday nights, Commander Skomra assigns his entire non-emergency, community response team (CRT), consisting of up to eight officers, to Gabby's and the surrounding area. The Second Precinct has the smallest number of personnel and at full staff the Precinct has just enough police officers to respond to 911 calls; they do not have enough officers to respond to non-emergency incidents occurring at Gabby's. The demand for staffing the area around Gabby's on Thursday and Saturday nights affects the availability of officers in other areas of the Precinct.<sup>25</sup>

26. Because of the shortage of police officers within the Second Precinct, Gabby's usually retains six or eight off-duty officers on Thursday and Saturday nights.<sup>26</sup>

27. Lieutenant Glampe knows of no other bar in Minneapolis that hires as many as ten off-duty officers an evening.<sup>27</sup>

28. Two off-duty police officers patrol the neighborhood on busy nights from 18th to 22nd Avenues, and from Marshall to Grand Streets. Gabby's private security staff sweeps litter from the streets after closing.<sup>28</sup>

29. Off-duty police officers direct and reroute traffic on Marshall Street and Grand Street on Thursday and Saturday nights (Friday and Sunday

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<sup>23</sup> Test. of J. Ormond, pp. 658-60.

<sup>24</sup> Test. of T. Glampe, pp. 34-35; 88; test. of D. Garman.

<sup>25</sup> Testimony of Robert Skomra, pp. 417; 428; 435-37.

<sup>26</sup> Test. of R. Cervantes, pp. 257; 269-70; test. of R. Skomra, p. 416.

<sup>27</sup> Test. of T. Glampe, p. 88; test. of R. Cervantes, p. 270.

<sup>28</sup> Test. of D. Garman, pp. 565-66, 572.

mornings). It takes approximately 55 minutes (1:45 a.m. to 2:40 a.m.) to empty the parking lots and get Gabby's patrons out of the area.<sup>29</sup>

30. Gabby's maintains a "Trespassing List" by which they maintain the names, dates-of-birth, and driver's license numbers of all people who have been banned from Gabby's for life. The list is 29 pages long and contains the names of 1640 people who have been banned. Gabby's uses a computerized system, which verifies the identification of anyone who enters, to maintain the list<sup>30</sup>

31. Gabby's security staff uses a metal detector to check for weapons on all patrons entering Gabby's. They also check patrons' handbags and purses.<sup>31</sup>

32. Gabby's has distributed a telephone hotline number so its neighbors can call with any complaints.<sup>32</sup>

33. Gabby's spends approximately \$500,000 a year on security services. It pays approximately \$310,000 a year to retain the services of off-duty police officers, and it pays approximately \$200,000 a year to employ its security personnel.<sup>33</sup>

34. Lieutenant Glampe and Ricardo Cervantes, Deputy Director of Minneapolis Licensing and Consumer Services, believe the security and off-duty police officers performed their duties as expected, and generally responded adequately to the incidents which occurred on Gabby's premises from November 2005 to November 2006.<sup>34</sup> Cervantes is concerned, however, that although Gabby's security reacts quickly to remove troublesome patrons from the premises, the patrons are then exited into the neighborhood where problems can ensue.<sup>35</sup>

35. Gabby's has also worked with the Bottineau Neighborhood Association to address neighborhood livability concerns. Christopher Gams, Director of the Association, believes Gabby's has generally been cooperative with the neighborhood, and has done all it can to minimize problems to the community. Despite Gabby's best efforts, however, activity around Gabby's still generates complaints from neighbors.<sup>36</sup>

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<sup>29</sup> Test. of D. Garman, pp. 564-65; test. of R. Skomra, pp. 410, 414.

<sup>30</sup> Exs. U; V; test. of T. Glampe, p. 71.

<sup>31</sup> Test. of J. Ormond, p. 646.

<sup>32</sup> Test. of R. Cervantes, p. 257.

<sup>33</sup> Test. of J. Ormond, p. 659.

<sup>34</sup> Test. of T. Glampe, p. 68; test. of R. Cervantes, p. 268.

<sup>35</sup> Test. of R. Cervantes, p. 268.

<sup>36</sup> Testimony of Christopher Gams, pp. 592-94.

## **Settlement Negotiations and the City's Notice of Hearing**

36. The City initiated settlement negotiations with Gabby's and conducted a licensing settlement conference in November 2006. The City sought to impose conditions on Gabby's liquor license. The City recommended such changes as an increased cover charge; a reduced occupancy (400); the elimination of drink specials; and an earlier closing time (midnight).<sup>37</sup>

37. The imposition of these suggested conditions would impact the profits Gabby's generates. Most of the clientele do not arrive until 11 p.m., and the kitchen serves food until 12:30 a.m. each evening. Most likely, the imposition of the suggested conditions would reduce Gabby's revenues so severely it would be forced to close.<sup>38</sup>

38. Gabby's rejected the suggested conditions.<sup>39</sup>

39. The City renewed Gabby's liquor license without restrictions in April 2007.<sup>40</sup>

40. The City then initiated an adverse license action against Gabby's. On July 11, 2007, the City issued a Notice and Order for Hearing to Gabby's, seeking a recommendation as to whether the City has the authority to revoke or restrict Gabby's Class B On-Sale Liquor License, and if so, whether grounds exist for revocation or restriction. The hearing was continued twice at the parties' requests, and concluded on October 11, 2007.

41. The City stipulates that Gabby's has not violated its license or any statute, rule or ordinance relating to the provision of liquor on its premises.

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

### **CONCLUSIONS**

1. The Administrative Law Judge and the Minneapolis City Council have jurisdiction in this matter under Minnesota law and the Minneapolis City Charter.<sup>41</sup>

2. The Administrative Law Judge and the Minneapolis City Council have authority to consider the charges against the Licensee and the adverse

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<sup>37</sup> Test. of R. Cervantes, pp. 254, 258-62; Ex. 4.

<sup>38</sup> Test. of J. Ormond, pp. 678-81.

<sup>39</sup> Test. of R. Cervantes, p. 273.

<sup>40</sup> Test. of R. Cervantes, p. 281.

<sup>41</sup> Minn. Stat. §§ 14.50, 14.55, 340A.402(3), and 340A.412(2)(b); Minneapolis Charter Chapter 4, Section 5, and Minneapolis Code of Ordinance §§ 259.250, 362.100, 362.260, 362.290, 362.500, and 362.510.

action, if any, that should be imposed by the City pursuant to Chapter 4, Section 16 of the Minneapolis City Charter.

3. The City has complied with all relevant substantive and procedural legal requirements.

4. The City gave the Licensee adequate and timely notice of the hearing and of the charges against it.

5. As the party proposing that certain action be taken, the City has the burden of proving facts at issue by a preponderance of the evidence.<sup>42</sup>

6. The Minneapolis Charter authorizes the City Council to license and regulate all bars, taverns, restaurants and cafes. According to Chapter 4, Section 5 of the Charter:

Nothing herein shall limit the authority of the City Council to impose by ordinance further restrictions or limitations on the granting of any liquor license....Except as herein provided, all such on-sale and off-sale liquor establishments shall continue to be subject to the pertinent statutes of the State of Minnesota and the City ordinances of the City of Minneapolis.

7. The Minneapolis City Charter, Chapter 4, Section 16, states:

Licenses May Be Revoked. Any license issued by authority of the City Council may be revoked by the City Council at any time upon proper notice and hearing for good cause; and upon conviction before any court of any person holding such a license for the violation of the provisions of any law, ordinance or regulation relating to the exercise of any right granted by such license, the city council may revoke such license in addition to the penalties provided by law or by ordinance for any such violation.

8. The Minneapolis Code of Ordinance, § 259.250, contains the following provisions related to the minimum standards and conditions required to hold a license under Titles 10, 13, and 14 of the Minneapolis Code.<sup>43</sup> Failure to comply with any of these standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation or suspension of the license:

- (1) It shall be the responsibility of the licensee to take appropriate action to prevent further violations following conduct by any persons on the business premises, including

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<sup>42</sup> Minn. R. 1400.7300, subp. 5.

<sup>43</sup> Title 14 of the Minneapolis Code, entitled "Liquor and Beer," sets forth the City's regulations for liquor licenses. See Minneapolis Code, Chapter 362.

parking areas, in violation of any of the following statutes or ordinances:

...  
h. Minnesota Statutes, Section 609.72 and Section 385.90 of this Code, which prohibits disorderly conduct.

...  
j. Minnesota Statutes, Sections 609.74 and 609.745, which prohibit public nuisance and permitting a public nuisance.

...  
l. Any other criminal activity arising out of the conduct of the business.

(2) It shall be the responsibility of the licensee to maintain and operate the business in compliance with all applicable laws and ordinances, including the zoning, fire, environmental health, environmental management, license, food, liquor, housing and building codes.

...  
(4) It shall be the responsibility of the licensee to provide adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, including parking areas.

...  
(9) The provisions of this section are not exclusive. Adverse license action may be based upon good cause as authorized by Chapter 4, Section 16 of the Charter. This section shall not preclude the enforcement of any other provisions of this Code or state and federal laws and regulations.

7. The Minneapolis Code of Ordinances provides that any liquor license may be revoked by the City Council for any violation of City Ordinance Chapter 362 or state law, or because "of the conduct of the business of the licensee." A liquor license may also be revoked "as otherwise provided" by the City Code.<sup>44</sup>

8. Minn. Stat. § 340A.415 provides that a municipality may revoke a liquor license for any of five violations: 1) selling alcoholic beverages to another retail licensee for resale; 2) purchasing alcoholic beverages from another retail licensee for resale; 3) conducting or allowing unlawful gambling on licensed premises; 4) the failure to remove or dispose of alcoholic beverages pursuant to commissioner's order; or 5) the failure to comply with an applicable statute, rule or ordinance relating to alcoholic beverages.

9. Minn. Stat. § 340A.415 and Minneapolis Ordinance §362.340 contain express terms that are irreconcilable with each other. Minneapolis

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<sup>44</sup> Minneapolis Code of Ordinances, § 362.340.

Ordinance § 362.340 impermissibly conflicts with a state statute and is therefore preempted by Minn. Stat. § 340A.415.<sup>45</sup>

10. The City has stipulated that Gabby's has not violated any of the provisions of Minn. Stat. §340A.415.

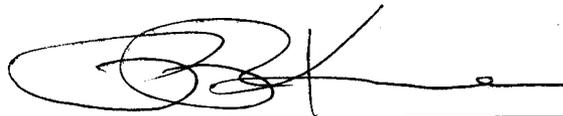
11. The City does not have the authority to revoke its Class-B Liquor License.

12. The City has demonstrated by a preponderance of the evidence that good cause exists for the City to impose conditions or restrictions against Gabby's license pursuant to Minneapolis Ordinance § 259.250(9).

### RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Minneapolis City Council take appropriate action against the liquor license held by T.J. Management of Minneapolis d/b/a Gabby's Saloon and Eatery.

Dated: November 21, 2007



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RAYMOND R. KRAUSE  
Chief Administrative Law Judge

Reported: Digitally Recorded (Transcript Prepared)

### NOTICE

This Report is a recommendation, not a final decision. The Minneapolis City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Pursuant to Minn. Stat. § 14.61, the City Council will not make its final decision until after it has provided each party adversely affected an opportunity to file exceptions and present argument to the Minneapolis City Council. Parties should contact the City Clerk, Council Information Division, 350 South Fifth Street, Room 304, Minneapolis Minnesota 55415-1382; telephone number 612-673-3136 to find out the process for filing exceptions or presenting argument.

The Minneapolis City Council is requested to serve notice of its final decision upon each party and the Administrative Law Judge by first-class mail.

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<sup>45</sup> See *Power v. Nordstrom*, 150 Minn. 228, 232, 184 N.W. 967, 969 (1921); *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 352, 143 N.W.2d 813, 816 (1966).

## MEMORANDUM

### Background

The City of Minneapolis is seeking to revoke or restrict Gabby's liquor license. Gabby's has operated at its address in Northeast Minneapolis since 1986. After the City received numerous complaints from Gabby's residential neighbors, it culled and compiled police reports and calls for service attributable to Gabby's from November 2005 to November 2006. In November 2006, the City initiated settlement negotiations with Gabby's and suggested the imposition of conditions on Gabby's Class B Liquor License. Gabby's rejected the suggested conditions. The City renewed Gabby's liquor license in April 2007 without conditions. In July 2007, it initiated this action to revoke or restrict the license.

The City admits Gabby's has violated no statute, rule, ordinance or license condition regarding the sale of alcohol. Instead, the City alleges that Gabby's patrons are causing negative livability issues within the neighborhood, and that Gabby's operation drains the Second Precinct of much needed police resources. The City contends the livability issues attributable to Gabby's warrant the revocation of, or the imposition of sanctions upon, its liquor license.

### Authority to Revoke

The City does not have the authority to revoke Gabby's Class B Liquor License under these circumstances. Minn. Stat. § 340A.415 sets forth five grounds upon which a municipality can revoke a liquor license: 1) selling alcohol to another retail licensee; 2) purchasing alcohol from another retail licensee; 3) permitting unlawful gambling on the licensed premises; 4) failure to obey an order to remove alcohol from the premises; or 5) failure to comply with liquor license laws, rules or ordinances. The City has not alleged that Gabby's has violated any of these provisions. In fact, the City has specifically admitted that Gabby's has complied with all statutes, rules and ordinances relating to alcoholic beverages. None of the statutory grounds upon which the license could be revoked exist.

Instead of relying on the statute, the City argues that the license should be revoked under the City Charter and Ordinance. The City, however, cannot rely on its Ordinance when the State has promulgated a statute setting forth specific grounds for revocation.<sup>46</sup> In *A/AI, Inc.*, the Minnesota Court of Appeals invalidated the City of Faribault's ordinance, which prohibited the sale of alcohol on certain holidays, as unauthorized. The court reasoned that cities may only regulate in the area of alcohol sales where no state regulations govern. Because the legislature had promulgated a statute that set forth the hours and days of sale, the city could not further regulate the hours of operation. Here, similarly, the legislature has established the grounds upon which a municipality may

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<sup>46</sup> See *A/AI, Inc. v. City of Faribault*, 569 N.W.2d 546 (Minn. App. 1997).

revoke liquor licenses, and the City may not revoke a license based on additional grounds set forth in its own ordinance or charter.<sup>47</sup>

The City also argues it has the authority to revoke the license because the power to grant a license is coextensive with the power to revoke one.<sup>48</sup> Though this principle may be true generally, it is not true here. The City has the power to grant a license, but it cannot revoke that license on grounds other than those set forth in Minn. Stat. § 340A.415.

The City, therefore, may not revoke Gabby's liquor license.

### **Authority to Restrict or Impose Conditions**

Although the City does not have the power to revoke Gabby's liquor license, it does have the authority to impose conditions thereon. There is no property right in a liquor license.<sup>49</sup> No citizen has an inherent or vested right to sell intoxicating liquors, and municipal authorities have broad discretion within their geographical jurisdiction to determine the manner in which liquor licenses shall be issued, regulated and revoked.<sup>50</sup> In discussing the implied powers of a city to regulate the sale of liquor, the Minnesota Supreme Court has said,

The power to regulate the retail sale of alcohol and alcoholic beverages conferred upon the governing board of a city includes the power to prescribe such reasonable rules and impose such reasonable restrictions as to the manner and circumstances in which the business shall be conducted as will tend to promote order and protect the public from harm.<sup>51</sup>

The City argues that it can impose restrictions pursuant to several Ordinance sections. They first point to Ordinance §§ 259.250(1) and (4). The City does not, however, have authority to impose restrictions under these provisions. Subdivision (1) states in part, "It shall be the responsibility of the licensee to take appropriate action to prevent further violations...on the premises." The subdivision lists specific violations to be prevented, including

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<sup>47</sup> See also *State v. Kuhlman*, 722 N.W.2d 1, 4 (Minn. App. 2006) *aff'd* by 729 N.W.2d 577 (Minn., 2007) (a state statute may preempt a local ordinance in any of three ways: express preemption, field preemption and conflict preemption); *Power v. Nordstrom*, 150 Minn. 228, 232, 184 N.W. 967, 969 (1921) (an ordinance must be in harmony with an enacted statute); *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 352, 143 N.W.2d 813, 816 (1966) (an ordinance conflicts with a statute when they contain irreconcilable terms).

<sup>48</sup> See City Brief, p. 7, citing *In the Matter of the City of LaPrairie Liquor Licenses Issued to DMN, Inc., d/b/a Rainbow Inn, Office of Admin. Hearings*, 89-019-AK (1988); *Bankers Life & Casualty Company v. Alexander*, 45 N.W.2d 258 (la. 1950).

<sup>49</sup> *Country Liquors, Inc. v. City Council of City of Minneapolis*, 264 N.W.2d 821, 826 (Minn. 1978).

<sup>50</sup> *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).

<sup>51</sup> *City of Duluth v. Cerveny*, 218 Minn. 511, 516, 16 N.W.2d 779, 783 (1944).

controlled substance violations, weapons violations, and disorderly conduct.<sup>52</sup> Similarly, subdivision (4) provides: "It shall be the responsibility of the licensee to provide adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, including parking areas."

The City argues it is authorized to impose adverse restrictions under subdivisions (1) and (4) because fourteen violations occurred on Gabby's premises between December 2005 and March 2007, including eight instances of disorderly conduct, four weapons violations, one obstruction of legal process, and one narcotics violation.<sup>53</sup>

Though fourteen violations occurred on the premises, the ALJ finds Gabby's did take "appropriate action" to prevent them. Gabby's employs a full security staff and hires up to ten off-duty officers a night. All evidence demonstrates the staff and officers are well-instructed and professionally execute their duties. In addition, Gabby's maintains a "trespassed" list, which contains the names of all people banned from the premises for life. The list is enforced by an admittance system which requires every patron to swipe an identification card to gain entry. Patrons also must pass through a metal detector upon entry and their handbags are searched for weapons. Gabby's met its duty to "take appropriate action to prevent" criminal violations on its premises. The Ordinance does not require Gabby's to prevent all criminal violations, and such a requirement would be unrealistic. Gabby's implemented appropriate security and adverse action should not be taken against its license based on the grounds set forth in Minn. Stat. §§ 259.250(1) or 259.250(4).

## **The City May Take Adverse Action**

### **Livability Concerns**

Minneapolis Code of Ordinances § 259.250(9) provides that an adverse license action may be based upon "good cause as authorized by Chapter 4, Section 16 of the Charter."<sup>54</sup> Accordingly, the City has the authority, pursuant to its ordinance (section 259.250(9)) and its general regulatory power as recognized by the Minnesota Supreme Court in *Cervený*, to take adverse license action against Gabby's upon a finding of "good cause."

Under Minneapolis Ordinance § 259.250(9), the City may impose restrictions or sanctions for "good cause." "Good cause" is not defined in statute and case law is not particularly enlightening with regard to the facts of this case.

<sup>52</sup> See §§ 259.250(1)(c); 259.250(1)(g); 259.250(1)(h).

<sup>53</sup> See City's Post-Hearing Brief p. 8.

<sup>54</sup> This "good cause" standard set forth in the Ordinance has been applied and upheld in other licensing cases. See *Zeman v. City of Minneapolis*, 552 N.W.2d 548 (Minn. 1996); *Hard Times Café v. City of Minneapolis*, 625 N.W.2d 165 (Minn. App. 2001); *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557 (Minn. App. 2001); *In the Matter of the Application for a Class A On-Sale Liquor License with Sunday Sales Submitted by JenRich, Inc., d/b/a Whispers*, OAH Docket No. 3-6010-18054-6.

What is clear is that cities are given substantial discretion in determining whether "good cause" exists.<sup>55</sup>

In this case, the ALJ finds that good cause exists to impose restrictions on Gabby's liquor license for two reasons. First, because Gabby's has had a negative impact on its residential neighbors. Gabby's Thursday and Saturday night venues have become quite successful and Gabby's usually reaches maximum capacity of 689 occupants. Nearly 700 people cannot move into and out of a residential neighborhood unobtrusively, and the residents have complained about the boisterous, inebriated patrons leaving Gabby's after 2:00 a.m. Though Gabby's provides the required number of parking spaces, the provided parking is insufficient for its capacity crowds, and patrons park on the residential streets near Gabby's. The patrons speak loudly and play loud music from their vehicles as they are leaving the neighborhood. Gabby's admits that most of these patrons arrive late – at 11 p.m. or later – and leave after 2 a.m. To control the flow of traffic, police use squad cars, lights flashing, to block intersections, and a loudspeaker to keep people and traffic flowing. It takes nearly an hour to usher the patrons out of the neighborhood after closing. The noise generated during Gabby's closing time, from 1:45 a.m. to 2:40 a.m., is undoubtedly disruptive to nearby residents.

Even more bothersome are the community impact statements, which complain of fighting, public urination, public sexual acts, loitering, delayed police response, and drunken patrons knocking on the doors of houses in the neighborhood and demanding entrance. Inspectors Niziolek, Roberts and Harvet also witnessed public urination, public sexual acts and loitering. The ALJ finds it is reasonable to believe that Gabby's patrons are interfering with the health, safety and welfare of the neighboring residents.

In *BAL, Inc. v. City of St. Paul*,<sup>56</sup> the City of St. Paul revoked a liquor license after finding that the negligent operation of the bar constituted a nuisance. The Court of Appeals affirmed the City's action. Neighboring citizens testified that they saw public intoxication, fights and altercations, sexual acts, loitering, and public urination near the bar. Though the ALJ and the city council in *BAL, Inc.* also determined the bar violated its off-sale liquor license, the same neighborhood livability concerns permit a finding of good cause here.

Gabby's argues it receives more support from residents than opposition. The petition it submits as evidence is unscientific and includes the names of a number of its own employees. Moreover, the City has demonstrated that the neighboring residents bear more than mere dislike or disfavor toward Gabby's. Rather, the City has demonstrated that Gabby's is affecting the residents' health, safety and welfare, and infringing upon their right to enjoy their property. That some people might support Gabby's does not protect Gabby's from the City's

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<sup>55</sup> See Footnote 52.

<sup>56</sup> 469 N.W.2d 341, 344 (Minn. App. 1991).

licensing authority. As Gabby's points out, licensing enforcement is not a popularity contest. The City cannot take licensing action against an entity based only on opposition to that entity; neither does an entity's popularity make it immune from the city's enforcement authority.

Gabby's also vociferously argues that the City should not consider or hold it responsible for a patron's actions which occur off its premises. The effect an establishment and its patrons have on the lives of its neighbors, however, is a legitimate municipal concern.<sup>57</sup> In *Anton's, Inc.*, the Minneapolis City Council denied a Class B liquor license for 1900 Marshall Street NE (ironically, Gabby's address). Residents opposed the licensing application, fearing the bar would cause late-night noise and disturbances, over-parking on residential streets, and litter. The Council concluded that such license "would not be compatible with the surrounding residential area, and would allow an overly intensive use of the premises and greatly increase the likelihood of late night activity which would disturb the residents of the neighborhood."<sup>58</sup> The Court of Appeals affirmed the City's denial of the license. The court held the residents' concerns were valid, and found that establishments with live music and dancing attracted younger, boisterous patrons who arrive late and leave in large numbers. The court held the City Council properly concluded that the residential location was unsuitable for the issuance of a Class B liquor license. Here, the same community concerns regarding late-night noise and disturbances, traffic, and littering have been raised and, under *Anton's*, are properly a factor in the City's licensing determination.

### **Provision of City Resources**

In addition to the livability concerns, good cause also exists to impose license restrictions because of the City resources Gabby's requires to operate safely. Gabby's hires, in addition to its private security personnel, up to ten off-duty officers a night and requires at least eight of them just to direct and reroute traffic at the end of the evening. In addition, on Thursday and Saturday nights, all of the precinct's on-duty, non-emergency officers are assigned to Gabby's and the surrounding area. According to Commander Skomra, Gabby's receives more City resources than any other bar or business on the east side of Minneapolis. The Second Precinct has the smallest number of police personnel in the City and an excessive amount of the limited resources are being expended on policing Gabby's and its patrons, at the expense of other areas within the Precinct. The drain on the City's resources is evidence of good cause.

Minnesota cities and courts have previously considered the use of municipal resources in licensing actions. In *Resolution Determining Certain Findings of Fact Regarding Certain Matters Surrounding And/Or Involving the Establishment Known as Cadillac Jacks*,<sup>59</sup> the Court of Appeals upheld the

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<sup>57</sup> See e.g., *Anton's Inc. v. The City of Minneapolis*, 375 N.W.2d 504, 508 (Minn. App. 1985).

<sup>58</sup> *Id.* at 507.

<sup>59</sup> 2003 WL 1908420 (Minn. App. 2003).

suspension of Cadillac Jack's liquor license imposed by the Chaska City Council. Though the bar was cited for serving alcohol to intoxicated persons, the Court of Appeals found the council's decision was supported by other evidence in the record. Specifically, the court noted that the number of police responses to the bar was inordinately high in comparison to other establishments and caused an undue burden on the Chaska Police Department. Within a period of 18 months, the bar generated four assault reports and three patrons required placement for detoxification. The owners and business manager testified that the bar utilized two identification checkers at the door and behind the bar, and had implemented a documentation system whereby bartenders recorded the persons refused service on a nightly basis. The bar also trained their bartenders to recognize underage and intoxicated persons, and fired bartenders for over-serving patrons. The city council concluded that, despite the bar's efforts to the contrary, its operating procedures posed a significant threat to the health, safety, and welfare of the city's citizens, and the Court of Appeals upheld its determination and affirmed the imposition of the suspension on the license.

Gabby's argues that the police reports culled by Lieutenant Glampe and submitted as evidence of the disruption Gabby's causes to nearby residents do not constitute substantial evidence to support disciplinary action because they include incidents that should not be attributable to Gabby's. Though certain incidents, such as driving after revocation and calls for medical services, may not be attributable to Gabby's, Lieutenant Glampe testified that the calls for police service were included in the reports based on time of day and proximity to Gabby's. Though no individual report alone supports the imposition of sanctions on Gabby's, cumulatively the reports support a finding of good cause.

Gabby's also argues that no adverse action should be taken against Gabby's because other bars in the City have generated as many calls for service. Gabby's arguments are in the nature of an equal-protection or selective enforcement claim. Constitutional claims such as these cannot be raised or adjudicated in administrative hearings, and the ALJ has no jurisdiction to evaluate them. The fact, however, that other bars may generate numerous calls for service does not somehow negate the calls generated by Gabby's. That other bars generate police calls does not make Gabby's impervious to the City's licensing authority.

Here, the City has demonstrated by a preponderance of the evidence that good cause exists for the City to take adverse action against Gabby's Class B On-Sale Liquor License. The City has broad discretion in selecting an appropriate penalty to address the livability problems arising from Gabby's.<sup>60</sup> Although the City does not have the authority to revoke Gabby's license, the ALJ respectfully recommends that the City impose appropriate conditions on the

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<sup>60</sup> *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)); *In re Walker's License*, 210 Minn. 337, 300 N.W. 800, 802 (1941). Should Gabby's then violate conditions imposed by the City, such action would be cause for revocation under Minn. Stat. §340A.415, subd.5.

license to protect neighborhood livability and to ensure a fair provision of City resources within the Second Precinct.

**R.R.K.**

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**CERTIFICATE OF SERVICE**

Case Title: In the Matter of the On-Sale Liquor License, Class B, Held by T.J. Management of Minneapolis d/b/a Gabby's Saloon and Eatery	OAH Docket No.: 2-6010-19003-6
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Denise Collins, certifies that on the 21st day of November, 2007, she served a true and correct copy of the attached **Findings of Fact, Conclusions of Law and Recommendation**; by special delivery and by placing it in the United States mail with postage prepaid, addressed to the following individuals:

Minneapolis City Clerk 304 City Hall 350 South Fifth Street Minneapolis, MN 55415 (special delivery)	Lee C. Wolf Assistant Hennepin County Attorney Suite 300 333 South Seventh St Minneapolis, MN 55402 (U.S. Mail)
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