



Request for City Council Committee Action from Licenses and Consumer Services

Date: February 25, 2014

To: Council Member Lisa Goodman, Chair
Community Development and Regulatory Services Committee

Subject: Deny Renewal of Business License for Champions Saloon & Eatery

Recommendation: That the Community Development and Regulatory Services Committee deny the renewal of the On-Sale Liquor, Class E, (L20604988) license held by Starmac, Inc. and Richard P. Nelson, dba Champions Saloon & Eatery, at 105 West Lake Street, Minneapolis, MN 55408.

Department Information

Prepared by: Grant Wilson, Manager of Business Licenses, 673-3902

Approved by:

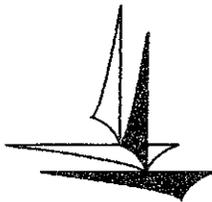
Cathy Polasky, Director of Economic Policy and Development

Grant Wilson, Manager of Business Licenses

Presenters in Committee: Joel Fussy, Assistant City Attorney, 673-2939 and Grant Wilson

Supporting Information

Starmac, Inc. and Richard P. Nelson currently hold an On-Sale Liquor, Class E license at 105 West Lake Street doing business as Champions Saloon & Eatery. Attached is a Notice of Hearing and a Finding of Fact, Conclusions of Law, and Recommendation prepared by Administrative Law Judge Jeannie M. Cochran related to Champions Saloon & Eatery.



Minneapolis
City of Lakes

Office of the City Attorney

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February 10, 2014

Edward T. Matthews
Matthews Law Office, PLLC
First National Bank Building
332 Minnesota Street, Suite W2355
St. Paul, MN 55101

Re: In the Matter of the Class E On Sale Liquor License held by Starmac, Inc. and Richard P. Nelson d/b/a Champions Saloon & Eatery. OAH Docket No. 68-6010-30397.

NOTICE OF LICENSE HEARING

Dear Mr. Matthews:

The Community Development & Regulatory Services Committee of the Minneapolis City Council will conduct a license hearing on **Tuesday, February 25, 2014 at 1:30 p.m.** to hear arguments from the parties and to consider the Findings of Fact, Conclusions of Law, and Recommendation issued by Administrative Law Judge Jeanne Cochran on February 6, 2014 in the above-entitled matter. The hearing will take place during the regularly-scheduled meeting of the Community Development & Regulatory Services Committee in the City Council chambers, Room 317 Minneapolis City Hall which commences at 1:30 p.m.



The Licensee is further notified that counsel may represent it at the hearing and that written exceptions to the ALJ's Findings, Conclusions and Recommendation may be filed with the City Clerk (c/o: Irene Kasper, City Clerk's Office, Rm. 304, 350 5th Street S., Minneapolis, MN 55415) **on or before 4:30 p.m. on February 20, 2014**, with a courtesy copy to be provided by electronic mail to *Joel.Fussy@minneapolismn.gov*.

Sincerely,



JOEL M. FUSSY

Assistant Minneapolis City Attorney

(612) 673-2939

Joel.Fussy@minneapolismn.gov

cc: Irene Kasper, City Clerk Committee Coordinator
Grant Wilson, Licensing Official

t.f.p.

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February 6, 2014

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Minneapolis City Clerk
City Hall Rm 304
350 S 5th St
Minneapolis, MN 55415

**Re: *In the matter of the Class E Liquor License held by Starmac, Inc. and
Richard P. Nelson d/b/a Champions Saloon & Eatery
OAH 68-6010-30397***

Dear City Clerk:

Enclosed herewith and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** in the above-entitled matter. Also enclosed is the official record, with the exception of the recording of the hearing. If you would like a copy of that recording, please contact our office in writing or by telephone at 651-361-7898. Our file in this matter is now closed.

If you have any questions, please contact my legal assistant, Kendra McCausland, at (651) 361-7870 or kendra.mccausland@state.mn.us.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne M. Cochran".

JEANNE M. COCHRAN
Administrative Law Judge

JMC:klm
Enclosure
cc: Joel M. Fussy
Edward T. Matthews

RECEIVED

FEB 06 2014

Mpls. City Attys. Office

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

In the Matter of the Class E Liquor License
held by Starmac, Inc. and Richard P.
Nelson d/b/a Champions Saloon & Eatery

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

The above-entitled matter came before Administrative Law Judge Jeanne M. Cochran (ALJ) for an evidentiary hearing on October 7-10, 2013, at the Office of Administrative Hearings in St. Paul, Minnesota. On December 2, 2013, the parties submitted post-hearing briefs. The hearing record closed on January 8, 2014, with the filing of the last reply brief.

Joel M. Fussy, Assistant Minneapolis City Attorney, appeared on behalf of the City of Minneapolis (City). Edward T. Matthews, Matthews Law Office, PLLC, appeared on behalf of Starmac, Inc. and Richard P. Nelson d/b/a Champions Saloon & Eatery (Champions or Licensee).

STATEMENT OF THE ISSUE

Whether the City has established a legally adequate basis to deny the renewal of or take other adverse action against the Class E On-Sale Liquor License with Sunday Sales held by Starmac, Inc. and Richard P. Nelson d/b/a Champions Saloon & Eatery?

SUMMARY OF CONCLUSION

The City has demonstrated by a preponderance of the evidence that sufficient grounds exist to deny renewal of Champions' Class E liquor license, or alternatively, to impose strict conditions on Champions' license if renewed.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Starmac, Inc. operates Champions Saloon & Eatery at 105 West Lake Street in Minneapolis, Minnesota. Richard P. Nelson (Rick Nelson) is the sole owner, officer and operator of Starmac, Inc., and has been since January 2008.¹

2. Champions is a neighborhood bar, situated on the corner of West Lake Street and Blaisdell Avenue.² Champions is located approximately two blocks from the Fifth Police Precinct headquarters.³

3. Champions sells alcohol under a Class E On-Sale Liquor License issued by the City.⁴ Dancing is not allowed at an establishment with a Class E license. A Class B license is required for an establishment with dancing. The annual license fee for a Class B license is significantly more expensive than the annual fee paid by Champions for its Class E license. In addition, the licensing process for a Class B license is more intensive.⁵

4. Champions' liquor license was initially granted in 1981.⁶ At the time, Starmac, Inc. was doing business as LaPizzeria. Soon thereafter, LaPizzeria changed its name to Champions Saloon & Eatery.

5. Champions has an indoor bar area and an outside patio area with seating. The patio has a rooftop and bars that go from the floor to ceiling. The bars face north onto Lake Street.⁷

6. Respondent Richard Nelson began working for Champions in 1986. In 2001, Mr. Nelson purchased a 10percent interest in Starmac, Inc. At the time, Thomas McNamee was the majority owner of Starmac, Inc. In January 2008, Mr. Nelson became the sole owner of Champions.⁸

7. Champions' license has been annually renewed by the City between 1982 and June 30, 2012.⁹

8. Champions' most recent liquor license expired on June 30, 2013. Champions applied for renewal of its license on May 29, 2013. The City has not yet taken action on Champions' renewal application but instead has permitted Champions to continue to operate pending the outcome of this proceeding.¹⁰

¹ Exhibit (Ex.) 1; Testimony (Test.) of Richard Nelson; Test. of Grant Wilson.

² Test. of R. Nelson.

³ Test. of Marvin Schumer; Test. of Troy Dillard.

⁴ Ex. HH.

⁵ Test. of G. Wilson; Ex. 48.

⁶ *Id.*

⁷ Test. of R. Nelson; Ex. 17.

⁸ Test. of R. Nelson.

⁹ Ex. II.

¹⁰ Ex. 1; Test. of G. Wilson.

Prior Licensing Actions and Compliance Checks

9. On February 14, 2006, Minneapolis Business Licensing and Police Department staff convened a license settlement conference with representatives of Champions to discuss narcotics and nuisance activity occurring at Champions. A license settlement conference is a meeting between the City and the business to discuss the violations alleged by the City and provides an opportunity for the parties to attempt to reach agreement on how to resolve the situation from a licensing perspective. Thomas McNamee and Richard Nelson were present for Champions, along with a consultant and a representative of the property owner.¹¹

10. As a result of the settlement conference, in March 2006, Champions signed a document entitled "Findings of Fact, Conclusions, and Recommendations" (herein after 2006 Settlement Agreement). The 2006 Settlement Agreement states that a number of controlled buys of narcotics were completed on the premises of Champions by undercover Minneapolis Police Department officers and confidential reliable informants in October and November of 2005. The controlled buys were conducted in response to numerous complaints. By signing the 2006 Settlement Agreement, Champions agreed to a one-day license suspension and a \$10,000 sanction. The 2006 Settlement Agreement also provided that Champions would upgrade its video surveillance equipment and make recordings available within one working day of a request by the City, and that Champions would provide adequate security to "hinder the sale of narcotics and to deter other illegal activity."¹²

11. The 2006 Settlement Agreement provided that its terms would remain in effect until February 20, 2007.¹³

12. On February 12, 2007, another license settlement conference with Champions was held to discuss continued instances of narcotics sales and criminal activity upon the business premises. Mr. McNamee and Mr. Nelson were again present at the conference. A representative of the property owner was also present. At the meeting, the City reported that since the 2006 Settlement Agreement was signed, there were eight instances of controlled buys within Champions. The conference resulted in the execution of another settlement agreement (2007 Settlement Agreement), which was signed by Mr. Nelson on behalf of Champions.¹⁴

13. The 2007 Settlement Agreement provided that "licensee continues to be in violation of their business license and are not in compliance with Minneapolis Code of Ordinances 259.250 Business license management responsibilities." The 2007 Settlement Agreement specifically stated that the signatories "have read the above findings of fact, conclusions, and recommendations" and "agree with their contents...." The 2007 Settlement Agreement also put Champions on notice that failure "to adhere to

¹¹ Ex. 2.

¹² *Id.*

¹³ *Id.*

¹⁴ Ex. 3; Test. of G. Wilson; Test. of R. Nelson.

this agreement may be cause for further suspension, revocation, or denial of my license.”¹⁵

14. Pursuant to the terms of the 2007 Settlement Agreement, Champions agreed to a 14-day suspension of its license from February 21 through March 6, 2007 and agreed to pay a \$5,000 sanction. Champions also agreed to “implement security and business strategies to hinder the sale of narcotics and to deter other illegal activity, both inside and outside the premises.” Finally, Champions agreed to “call 911 to report all crimes in progress.”¹⁶ The 2007 Settlement Agreement was signed by Rick Nelson on behalf of Champions.¹⁷

15. According to Grant Wilson, Manager of Business Licensing for the City of Minneapolis, it is rare for an establishment with a liquor license to be subject to a license suspension. Mr. Wilson is not aware of any business in Minneapolis with a liquor license that has served two executed license suspensions and remained in business.¹⁸ Five bars in the same general area as Champions have closed voluntarily since 2005 after the City gave them the option to either to close down voluntarily or have their license revoked. They include Porters, Westrum's, Joe's Bar, Sonny's and Irish Pub 2.¹⁹

16. On September 25, 2007, after the 2007 Settlement Agreement was signed, Champions failed a Youth Alcohol Compliance check.²⁰

17. In November 2008, two Minneapolis Business License Inspectors visited Champions and met with Mr. Nelson and bar manager, Courtney Lerdon. The License Inspectors reported that since March 2008, criminal activity at Champions had fallen to “an average to below-average amount.” Mr. Nelson and Ms. Lerdon attributed this change to Champions improved security efforts. As a result, the License Inspectors recommended that Champions be removed from the Licensing Department's informal “problem establishment” list.²¹

18. Champions passed Youth Alcohol Compliance Checks in 2009, 2010, 2011, and 2013. Champions was not checked by the City in 2008 or 2012.²²

19. In 2013, Champions received a “Responsible Tobacco Retailer” award from the City.²³

¹⁵ Ex. 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Test. of G. Wilson.

¹⁹ Test. of R. Nelson; Test. of G. Wilson.

²⁰ Ex. F.

²¹ Ex. E; Test. of G. Wilson.

²² Exs. F, XX.

²³ Ex. WW.

Champions' Security Efforts

20. After Rick Nelson became the sole owner of Champions in early 2008, he implemented several new security measures at Champions. Mr. Nelson added a perimeter fence, installed security cameras, improved the lighting, tripled the number of security staff, hired off-duty police officers to work at Champions on busy nights, implemented a "no in/out" policy for the bar after 9:00 p.m. every night, purchased a card scanner for use at the front door, purchased a metal detection wand for use by security staff at the front door, and implemented other measures.²⁴

21. Champions employs a number of security personnel. Champions' security personnel:

- Wear bright yellow fluorescent shirts that say "Security" on them;
- Use walkie-talkies with ear pieces;
- Use metal-detection wands at the front door;
- Rotate every 15 to 30 minutes; and
- Maintain a log of nightly security events.²⁵

22. Champions also maintains a "Trespass List" or an "86'd" list of persons who are not allowed into Champions. When a person wants to enter Champions, the security staff checks the person's identification against the Trespass list. The list includes known gang members, drug dealers, persons who have had past problems at the bar, and other persons who Champions has determined could be a problem if allowed into the bar. If security staff allow a person on the Trespass List into Champions, the security staff can be fired.²⁶

23. Champions also has a policy of no drugs on its premises. It has signs in the bar that say "Drug Free Area."²⁷ People who smell like marijuana are not allowed into Champions.²⁸

24. Until March 22, 2012, Champions employed off-duty police officers to work at Champions on its busiest nights (Wednesdays, Fridays, and Saturdays). On Friday and Saturday nights, one off-duty officer worked at Champions. On Wednesdays, two off-duty officers worked at Champions. The officers worked from approximately 10:30 p.m. to 2:30 a.m. on those nights and were paid in cash.²⁹ The officers who worked off-duty at Champions included Troy Dillard, Dennis Hamilton, David Roiger, and Marvin Schumer.³⁰

²⁴ Test. of R. Nelson; Exs. A, B.

²⁵ Test. of R. Nelson.

²⁶ Test. of R. Nelson; Exs. B, OO, PP, QQ, RR

²⁷ Test. of R. Nelson; Affidavit of Richard P. Nelson (June 26, 2013).

²⁸ Test. of T. Dillard.

²⁹ Test. of T. Dillard; Test. of Dennis Hamilton; Test. of David Roiger; Test. of Marvin Schumer.

³⁰ Test. of T. Dillard; Test. of D. Hamilton; Test. of D. Roiger; Test. of M. Schumer.

25. When they worked at Champions, the officers wore their full police uniform, including the hat, and carried a gun. They also parked a marked police car in front of Champions.³¹

26. The officers' normal routine while working off-duty at Champions was to walk through the inside of the bar and around the outside perimeter of the bar upon arrival to establish a police presence. The officer(s) then remained outside the bar near the front door, but occasionally checked the parking lot. If the off-duty officer(s) saw individuals loitering or causing problems near the outside of the bar or at the bus stop, the officer(s) would clear the people out. If an off-duty officer saw drug dealing, the officer would intervene. Champions' security staff would come and get the off-duty officer(s) if they needed assistance with a situation inside the bar.³²

27. The officers stopped working off-duty at Champions in March 2012 when then-Inspector Matthew Clark prohibited off-duty officers from working at Champions. These officers believe their presence enhanced security at Champions and helped to deter crime.³³

28. Isadore Randle, former head of security, believes that Champions had an effective security program. He believes that security was not as strong after March 2012, when off-duty officers were no longer allowed to work at Champions. He feels that Champions security staff had a strong partnership with the off-duty officers.³⁴ The police officers who worked off-duty at Champions agree that they worked well with Champions' security staff and believe Champions' security staff were generally effective.³⁵

29. Mr. Nelson believes that Champions is the safest bar in Minneapolis. He noted that Champions has a bouncer for every ten to fifteen people in the bar. In addition, Champions has seventeen cameras and a lot of lights.³⁶

30. Officer Troy Dillard, one of the police officers who worked off-duty at Champions, described the security situation at Champions as similar to any other bar with "drunks, fights, and alleged [drug] dealing." He also noted that the police get a lot of "gun calls" for Champions, more than for other bars.³⁷ Officer Dennis Hamilton stated that he felt that Champions' security situation was like a typical neighborhood bar.³⁸ Officer Schumer also stated that the security situation at Champions is similar to other bars.³⁹

³¹ *Id.*

³² *Id.*

³³ Test. of T. Dillard; Test of D. Hamilton; Test. of M. Schumer.

³⁴ Test. of Isadore Randle.

³⁵ Test. of T. Dillard; Test. of D. Hamilton; Test. of M. Schumer.

³⁶ Test. of R. Nelson.

³⁷ Test. of T. Dillard.

³⁸ Test. of D. Hamilton.

³⁹ Test. of M. Schumer.

Concerns About Drug Dealing in the Area of Champions in 2011

31. In the spring of 2011, Mr. Nelson became concerned that the bus stop on the corner of West Lake Street and Blaisdell Avenue was being used by drug dealers and gang members. On June 23, 2011, Mr. Nelson sent an email regarding his concerns to Minneapolis City Council Member Meg Tuthill. Mr. Nelson noted that about five years ago a similar situation existed and the bus shelter was moved, but the shelter was put back in 2010 with the revitalization of Lake Street. Mr. Nelson suggested that the bus stop be moved one block east to the corner of West Lake Street and Nicollet where no business was located.⁴⁰ The bus stop has not been moved.⁴¹

32. In January 2011, Matthew Clark was appointed to the position of Inspector of the Fifth Precinct in Minneapolis.⁴² The Fifth Precinct includes Champions.⁴³ In December 2012, Inspector Clark was appointed Assistant Minneapolis Police Chief.⁴⁴

33. One of the main responsibilities of the Inspector, as the head of the precinct, is to reduce crime.⁴⁵

34. Shortly after he started as Inspector, Matthew Clark reviewed crime data for the precinct. Based on his review of police data, Inspector Clark identified the area around Champions as being an area with a high incidence of violent crime and drug dealing.⁴⁶ In addition, the Police Department was getting complaints about drug dealing inside and outside of Champions.⁴⁷

35. Inspector Clark was particularly concerned about drug dealing in the area of Champions because he learned there was a shooting in the summer of 2011 that occurred between two known drug dealers at approximately 4:00 p.m. in the afternoon on a weekday. One of the drug dealers was in Champions' parking lot and fired several rounds across Lake Street at the other dealer.⁴⁸

36. Because of the high level of rush hour traffic and pedestrians on Lake Street near Champions, Inspector Clark decided that "something had to be done to shut down those drug dealers working in that area."⁴⁹

37. Inspector Clark did not know, prior to the hearing in this matter, that Mr. Nelson had contacted Council Member Tuthill regarding his concerns about drug

⁴⁰ Test. of R. Nelson; Ex. G.

⁴¹ Test. of R. Nelson.

⁴² Test. of Matthew Clark.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*; Ex. 11 (Supplement 2).

⁴⁸ *Id.*

⁴⁹ *Id.*

dealing at the bus stop near Champions. Inspector Clark never received any direction from City Council members regarding taking action against Champions.⁵⁰

Police Efforts to Address Drug Dealing in the Area of Champions

38. As a result of his concerns regarding drug dealing and violent crime in the area of Champions, Inspector Clark came up with a strategy with the police Community Response Team (CRT) to address the drug dealers through an undercover operation. Inspector Clark also set up a high visibility patrol in the area of Champions and set up a trailer with a mobile police camera on Blaisdell Avenue.⁵¹

39. Around late August or early September 2011, Inspector Clark initiated an undercover operation with the CRT. The Fifth Precinct CRT frequently work in plain clothes and undercover in response to various crimes in the community including narcotics and prostitution.⁵² The purpose of the undercover operation was to determine who was dealing drugs in the area, to complete purchases from the drug dealers, and to bring serious and effective charges against them. Inspector Clark communicated this strategy to Sergeant (Sgt.) Metcalf and Lieutenant Diaz.⁵³

40. The undercover operation also had a "licensing angle." If the undercover officers engaged in narcotics deals at Champions, that information would be used for licensing purposes.⁵⁴

41. Sgt. Metcalf instructed the members of the undercover operation "to determine if narcotics were being sold in or around the area of Champions"⁵⁵ Undercover officers were directed to make purchases of narcotics if possible.⁵⁶ Prior to the start of the undercover operation, Sgt. Metcalf had observed narcotics dealing by hand-to-hand transaction outside of Champions.⁵⁷

42. The police undercover operation in the area of Champions lasted approximately four months, from early September 2011 until early January 2012. In that time period, the Minneapolis undercover officers purchased drugs in Champions, on Champions premises, and near Champions on a number of occasions as described in more detail below.⁵⁸

43. On Saturday, September 3, 2011, an individual sold crack cocaine to an undercover officer in the bus shelter near Champions, as detailed in Minneapolis Police Department report MP-11-266005. Two undercover officers were standing in the bus

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Test. of Sara Metcalf; Test. of M. Clark; Ex. 11.

⁵³ *Id.*

⁵⁴ Test. of S. Metcalf; Ex. H.

⁵⁵ Ex. 9 (Off. Sosnowski Supplement 3); Test. of S. Metcalf; Test. of M. Clark.

⁵⁶ Test. of S. Metcalf; Exs. 9, 10.

⁵⁷ Test. of S. Metcalf.

⁵⁸ Test. of M. Clark; Exs. 4, 9-11, 13-15, 17-18, 22—26, and 28.

shelter at Lake Street and Blaisdell Avenue on the southwest corner, next to Champions. The officers were approached by the dealer, Araya Woldeselassie, in the bus shelter. The dealer said he could get them drugs. One officer asked if he could get a "twenty," which is street jargon for \$20 worth of crack cocaine. The dealer told the undercover officers that he would go get a twenty from his cousin. The dealer then went into the Champions' parking lot to obtain the crack cocaine, returned a couple minutes later with the crack, and delivered it to the officer in the bus shelter. Mr. Woldeselassie has been charged with and convicted of felony narcotics sale pursuant to Minn. Stat. § 152.023, subd. 1(1) in Hennepin County District Court Case No. 27-cr-12-8797.⁵⁹

44. On Wednesday, September 7, 2011, individuals sold crack cocaine to an undercover officer, as detailed in Minneapolis Police Department report MP-12-270401. At approximately 10:00 p.m., two undercover police officers were walking on the sidewalk on Blaisdell Avenue near Champions' parking lot when they were approached by an individual later identified as Vera Denise Drew. Ms. Drew was standing in the Champions parking lot and then walked up to the undercover officers. She asked if they were "straight" and if they "needed any help." A short time later, Ms. Drew asked them what sort of drugs they wanted. One of the officers told Ms. Drew that they wanted a "twenty." Ms. Drew told them to walk with her. They then met up with the other individual, who told them to come with him. The male suspect told the undercover officers that there were security cameras in the Champions' parking lot and pointed out the City of Minneapolis surveillance camera that had been placed at the northeast corner of Lake Street and Blaisdell Avenue. The narcotics sale was completed approximately twenty or thirty feet south of the Champions' parking lot on the Blaisdell Avenue sidewalk. Ms. Drew was subsequently convicted of felony narcotics sale pursuant to Minn. Stat. § 152.023, subd. 1(1) in Hennepin County District Court Case No. 27-cr-12-8796.⁶⁰

45. On Thursday, September 22, 2011, an individual sold crack cocaine to an undercover officer, as detailed in Minneapolis Police Department report MP-11-287374. Two undercover officers went into Champions "in response to complaints of narcotics dealing in and around the bar." While inside Champions, one of the undercover officers called a dealer whom the officer had bought drugs from two weeks prior. The dealer asked the undercover officer what the officer wanted and told the officer that he was "right outside Champions Bar." The officer went outside and saw the dealer, Aaron Anton Davis, standing in the east driveway of Champions. The officer met with Mr. Davis on the sidewalk nearby. The dealer told the officer that he was "86'd" from Champions and led the officer into the bus shelter at the corner of Lake Street and Blaisdell Avenue. The narcotics sale was completed at the bus shelter on that corner. Mr. Davis was subsequently convicted of felony narcotics sale pursuant to Minn. Stat. § 152.023, subd. 1(1) in Hennepin County District Court Case No. 27-cr-12-6027.⁶¹

⁵⁹ Exs. 9, 46.

⁶⁰ Exs. 10, 46.

⁶¹ Exs. 11, 46; Test. of S. Metcalf.

46. On Friday, September 23, 2011, individuals sold and provided crack cocaine to undercover police officers, as detailed in Minneapolis Police Department reports MP-11-287378 and MP-11-287377. Two undercover officers were walking north on Blaisdell Avenue toward Champions when they saw several men standing at the bus stop on the corner of Lake Street and Blaisdell. As the two officers walked onto the premises of Champions, they were followed into the parking lot by one of the males who was at the bus stop, later identified as Michael Joseph Duke. Mr. Duke approached the officers and asked them what they needed. When the officers responded that they wanted to purchase crack cocaine, Mr. Duke told the undercover officers to keep walking. Mr. Duke did not want to complete the transaction in the parking lot because "the bar has cameras." Instead, Mr. Duke accepted the cash payment and told the undercover officers to follow him. A short distance away, on Pillsbury Avenue, the officers were provided with the crack cocaine that they had purchased. After the drug transaction was completed, another individual, Araya Woldeselassie, who had spoken with one of the officers at Champions earlier in the night, told the officers they should not buy their crack from Mr. Duke. He told the undercover officers that they should buy from another dealer named Medallion. Medallion then introduced himself to the officers and provided each with a small sample of his crack and his cell phone number. Mr. Duke was subsequently convicted of felony narcotics sale pursuant to Minn. Stat. § 152.023, subd. 1(1) in Hennepin County District Court Case No. 27-cr-12-8799.⁶²

47. On Friday, September 30, 2011, two undercover officers observed marijuana smoking on the patio on the premises of Champions, with bar security present, as detailed in Minneapolis Police Department report MP-11-296870. The two undercover officers sat at a large table in Champions' patio area at approximately 11:00 p.m. Four individuals, whom the officers did not know, subsequently sat at their table. At the time, there was a strong smell of marijuana in the patio area, which was remarked on by all at the table. Approximately a half-hour later, one of the women sitting at the officers' table proceeded to smoke a marijuana cigarette with other members of her party at the table. The officers were offered the marijuana but declined. During this time, there was a Champions' security officer sitting in the patio by the door approximately 25 feet from the table where the individuals were openly smoking marijuana. One of the undercover officers mentioned that she was nervous about the Champions' security staff. A woman who had smoked marijuana at the officers' table told the officers that the security guards were "cool about it" as long as it was not smoked "right in their faces."⁶³

48. On Thursday, October 13, 2011, an individual sold crack cocaine to an undercover officer, as detailed in Minneapolis Police Department report MP-11-310832. The dealer, Aaron Anton Davis, approached two undercover officers on the sidewalk near Champions as the officer was walking to Champions. Mr. Davis asked the officers if they needed anything. One officer told Mr. Davis that they did not have any money and were going to meet someone in the bar. The officer stated that they would be in the "cage," the outside patio area of the bar. At approximately 10:50 p.m., while they were

⁶² Exs. 13, 14, 46; Test. of S. Metcalf.

⁶³ Test. of S. Metcalf; Ex. 15.

on the patio, one of the officers saw Mr. Davis on the sidewalk approaching the patio. The officer waved to him and said hello. The officer talked to Mr. Davis and told him that the officer now had some money. Mr. Davis said he was worried about the security cameras at Champions but agreed to "shake hands" through patio bars. The undercover officer gave him money and he gave the officer a rock of crack cocaine through the bars and then left.⁶⁴

49. On Friday, October 14, 2011, an undercover officer purchase crack cocaine from a dealer at the bus stop near Champions, as detailed in Minneapolis Police Department report MP-11-312063. At approximately 11:00 p.m., the undercover officer and a partner were on Blaisdell Avenue in front of Champions. The officer observed a known narcotics dealer, Michael Joseph Duke, standing next to the bouncer at the front door, not coming or going. The officer continued to walk northbound on Blaisdell to the southwest corner of Lake Street and Blaisdell Avenue. While there, the officer called a drug dealer, known as Medallion, who had previously given the officer his phone number. Medallion agreed to come there and sell the officer \$40 worth of crack cocaine. While the officer was waiting for Medallion, Mr. Duke walked out of Champions premises and over to the officer. Mr. Duke asked the officer what the officer needed. Mr. Duke directed the officer to the bus shelter in front of Champions, and arranged for a sale of crack cocaine. Duke took the cash from the officer and walked back into the Champions' parking lot and then out of the officer's sight. The officer waited for about ten minutes but Mr. Duke had not returned. Another dealer, Araya Woldeselassie, then walked up to the undercover officer and the officer's partner and told them that he had some drugs. The undercover officers told the dealer that they were waiting for another dealer to bring some drugs. When Mr. Duke failed to arrive, the officer's partner purchased crack cocaine for \$20 from Araya Woldeselassie, and departed before Mr. Duke returned to complete the delivery. Mr. Woldeselassie was subsequently charged with and convicted of felony narcotics sale pursuant to Minn. Stat. § 152.023, subd. 1(1) in Hennepin County District Court Case No. 27-cr-12-8797.⁶⁵

50. On Friday, October 28, 2011, an undercover officer completed purchases of crack cocaine in Champions parking lot, at the bus shelter near Champions, and inside of Champions, as detailed in Minneapolis Police Department reports MP-11-326906 and MP-11-326908. At 8:20 p.m., an undercover officer observed a male and female, subsequently identified as Sidney Hornes and Lawanda Oliver, standing at the front door of Champions. The officer thought they were engaging in a drug transaction and asked them if they had any narcotics to sell. Both Mr. Hornes and Ms. Oliver asked the undercover officer what he was looking for and the officer stated that he wanted a "twenty," which is 0.1 gram of cocaine. When the two began to argue about which one would sell crack cocaine to the officer, the officer agreed to buy the cocaine from Mr. Hornes. Mr. Hornes then went inside of Champions and retrieved the crack cocaine, which he then sold to the officer in Champions' parking lot. After the sale was completed, Mr. Hornes went back inside Champions. After the initial crack cocaine sale was completed, Ms. Oliver took the officer from the parking lot to the bus shelter in front

⁶⁴ Ex. 17.

⁶⁵ Ex. 18.

of Champions. She facilitated a sale of crack cocaine between the undercover officer and her contact, Aaron Anton Davis. The sale occurred at the bus shelter. Mr. Davis gave Ms. Oliver a rock of suspected crack cocaine for being the go-between in the sale. Later that night, the undercover officer went back inside Champions to see if Mr. Hornes was still in the bar. The officer saw Mr. Hornes seated with two other men at a table inside the bar. A short time later, the undercover officer purchased additional crack cocaine from Mr. Hornes inside the bar. Ms. Oliver was subsequently convicted of felony narcotics possession pursuant to Minn. Stat. § 152.025(2)(a)(1) in Hennepin County District Court Case No. 27-cr-12-8802. Mr. Hornes has subsequently been charged with felony narcotics sale pursuant to Minn. Stat. § 152.023, subd. 1(1) in Hennepin County District Court Case No. 27-cr-12-8803.⁶⁶

51. On Friday, November 4, 2011, individuals sold crack cocaine to an undercover officer, as detailed in Minneapolis Police Department report MP-11-334349. At approximately 10:10 p.m., the officer exited Champions and was approached by an older male. The undercover officer engaged in conversation with the male and told him that "nothing was happening inside Champions." The man asked if the undercover officer was looking for drugs and the officer said yes. The man then took the officer to a vehicle parked at the entrance to Champions' parking lot. There were several individuals around the vehicle. A man in a black stocking cap subsequently identified as Otis Price, exited the vehicle and sold the undercover officer crack cocaine. Mr. Price was subsequently convicted of felony narcotics sale pursuant to Minn. Stat. § 152.023, subd. 1(1) in Hennepin County District Court Case No. 27-cr-12-7959.⁶⁷

52. On Saturday, December 10, 2011, an undercover officer purchased crack cocaine from a dealer inside the premises of Champions, as detailed in Minneapolis Police Department report MP-11-368297. At approximately 8:30 p.m., the officer entered the bar and observed several males engaging in activity consistent with narcotics dealing. At approximately 10:30 p.m., an individual, later identified as Mitchell Pierre Douglas, sold crack cocaine to the undercover officer in the patio area of the bar. The officer observed Douglas to be carrying 20 to 25 bundled rocks of crack and he told the officer that "security ain't gonna do nothing, I'm here all the time." Later that night, the undercover officer observed Mr. Douglas attempt to negotiate another sale of crack cocaine with a different Champions' patron. At the time, a Champions' employee was seated nearby, smoking. Mr. Douglas placed the crack cocaine in open view of the Champions' employee and the employee commented on the crack after Mr. Douglas told the potential customer that the crack was "A1." During this same night, another undercover officer working inside of Champions observed a known crack dealer, Aaron Anton Davis, inside the bar. The officer observed Mr. Davis enter Champions, make contact with one of Champions' security staff, and then quickly exit the bar after shaking hand with the security staff person. At the time he entered the bar, Mr. Davis was on Champions' Trespass list. A different officer, who was conducting surveillance, saw Aaron Anton Davis "working the area outside the bar." He was meeting with people in the Champions' parking lot, next to the front door, and under the awning of the bar.

⁶⁶ Exs. 22, 23, 46.

⁶⁷ Exs. 24, 46.

Mr. Douglas has subsequently been charged with felony narcotics sale pursuant to Minn. Stat. § 152.023, subd. 1(1) in Hennepin County District Court Case No. 27-cr-12-9677.⁶⁸

53. On Friday, January 6, 2012 at approximately 1:25 a.m., an undercover officer purchased marijuana from a dealer at Champions, as detailed in Minneapolis Police Department report MP-12-005088. The officer met an individual inside of Champions later identified as Oscar Junior Lee. Mr. Lee said that he was looking to unload the remainder of the hydroponic marijuana he had been selling, and sold an amount of the marijuana to the officer in the patio area of Champions. Mr. Lee then asked the officer to follow him to his vehicle in the parking lot on the premises of Champions so he could give the officer his business card. While at Mr. Lee's vehicle, Mr. Lee offered to arrange for a prostitute for a price. On January 12, 2012, the undercover officer called Mr. Lee to find out if Mr. Lee would sell him additional drugs. Mr. Lee agreed to sell drugs to the undercover officer and said he would meet the undercover officer at the White Castle on Lake Street, near Champions. A sale was later made in the parking lot of a nearby Supervalu, but the suspected crack cocaine sold to the undercover officer did not test field positive for cocaine. Mr. Lee has subsequently been charged with felony narcotics sale pursuant to Minn. Stat. § 152.023, subd. 1(1) in Hennepin County District Court Case No. 27-cr-12-1239.⁶⁹

54. On Friday, January 6, 2012 at approximately 11:30 p.m., an individual sold simulated crack cocaine to an undercover officer inside Champions, as detailed in Minneapolis Police Department report MP-12-006223. The undercover officer entered Champions at approximately 10:00 p.m. that day. The officer noted that bar security were being "very diligent and observant to bar activity." The officer also noted that there were people dancing, drinking, and playing video games. While sitting on the bar patio later in the night, the undercover officer noticed an individual, subsequently identified as Cornelius Wendell Johnson, wandering around the premises of Champions engaging in conduct that the undercover officer knew to be consistent with dealing of narcotics. Mr. Johnson approached the undercover officer, and asked what the undercover officer needed. Mr. Johnson then told the undercover officer to wait there, and Mr. Johnson then headed towards the rear bathroom area. About five minutes later, Mr. Johnson returned and told the undercover officer to follow him outside to the patio area. When they were in the patio area, Mr. Johnson kept looking towards the door area to the patio and told the undercover officer to "hurry up because the security was 'tight' at the bar." Mr. Johnson then gave the crack cocaine to the undercover agent. After the sale, Mr. Johnson continued to talk about how security at Champions was "on point and don't fuck around." The undercover officer also noted that he observed bar security eject several patrons who were "very drunk and causing problems inside the bar." The substance that Mr. Johnson sold to the undercover officer as crack cocaine was determined to be simulated narcotics. Mr. Johnson was subsequently convicted of

⁶⁸ Exs. 25, 46; Test. of S. Metcalf.

⁶⁹ Exs. 26, 46.

felony simulated narcotics sale pursuant to Minn. Stat. § 152.097, subd. 1(3) in Hennepin County District Court Case No. 27-cr-12-6017.⁷⁰

55. The results of the undercover operation were released to the public and the media through a March 19, 2012 Media Release summarizing the operation. The release stated that between September 2011 and January 2012, undercover officers made numerous narcotics purchases inside the bar, on the bar premises, and in the area surrounding the bar.⁷¹ The undercover operation resulted in charges being filed against fourteen adults.⁷²

56. The off-duty police officers who worked at Champions during the time-frame of the undercover operation observed that undercover officers were present at the bar. The off-duty officers did not have any contact with the undercover officers because the off-duty officers did not want to "blow" their cover. The off-duty officers did not know who the undercover officers were targeting on many occasions. If they knew who the target was, they would not interfere.⁷³

57. According to Rick Nelson, Champions' security staff also knew undercover police were working at Champions during this time period because the metal detection wand went off when the undercover officers entered the bar. Mr. Nelson stated that Champions' security would let the undercover officers into the bar, and did not interfere with their work. In addition, Mr. Nelson noted that if Champions' security saw a bad actor at Champions when the undercover officers were in the bar, they would not take any action towards the bad actor.⁷⁴

58. Mr. Nelson did not become aware of the full scope and nature of the undercover operation until he saw a report on the television news on March 19, 2012.⁷⁵

59. Sometime between March 19, 2012 and March 22, 2012, Sgt. Marvin Schumer made a statement to a newspaper reporter about the undercover operation at Champions. Sgt. Schumer headed the off-duty police work at Champions. He told the reporter that he supports the Police Department's investigation but attributes much of the trouble to the bus stop.⁷⁶ According to Minneapolis Police Department Policy, Sgt. Schumer should not have spoken with the media about the undercover operation without clearance from the Police Department Public Relations Officer.⁷⁷

⁷⁰ Exs. 28, 46.

⁷¹ Ex. 4.

⁷² Ex. 4.

⁷³ Test. of M. Schumer.

⁷⁴ Test. of R. Nelson.

⁷⁵ Test. of R. Nelson.

⁷⁶ Test. of M. Schumer; Ex. P.

⁷⁷ Test. of M. Clark; Test. of M. Schumer.

60. On March 22, 2012, then-Inspector Clark notified Sgt. Schumer that Minneapolis Police Officers could no longer work off-duty at Champions. Inspector Clark asked Sgt. Schumer to let Champions know of the change.⁷⁸

61. Inspector Clark gave several reasons for his decision to end off-duty work at Champions including: 1) Sgt. Schumer talked to the media about narcotics cases that were still under investigation and his comments could have affected those cases; 2) the off-duty officers were not effective in stopping the drug dealing that was occurring in the area; 3) Sgt. Schumer used city computers to run background checks for Champions on its security staff; and 4) Sgt. Schumer provided non-public police data to Champions.⁷⁹

62. Since the completion of the undercover operation in January 2012, Minneapolis police have reported five additional incidents at Champions involving drugs or simulated drugs as detailed below.⁸⁰

63. On Friday, July 27, 2012, an illegal sale of purported narcotics occurred in the Champions parking lot, as detailed in Minneapolis Police Department report MP-12-233940. An individual, later identified as Abshir Adam Ali, informed the undercover officer that narcotics could be procured at Champions. The officer observed the suspect obtain narcotics from two males in the southwest corner of Champions' parking lot. Mr. Ali then gave the suspected narcotics to the officer in the parking lot. After the narcotics sale was completed, the suspect propositioned the officer for prostitution. In addition, the two males who provided the simulated narcotics to Ali were identified inside of Champions. Ali was charged with felony simulated controlled substance sale and gross misdemeanor prostitution in a public place in Hennepin County District Court Case No. 27-cr- 12-42565.⁸¹

64. On Wednesday, August 29, 2012, an undercover officer purchased crack cocaine from a Bogus Boy gang member in the area of Champions.⁸²

65. On Wednesday, November 28, 2012, an illegal sale of narcotics occurred at Champions, as detailed in Minneapolis Police Department report MP-12-368280. At approximately, 7:00 p.m., two undercover officers met an individual inside Champions who informed them that he knew of individuals in the bar that could sell them narcotics, stating that he had "hook-ups in the bar." The officers were directed to an individual seated at a table in the bar. The individual told one of the officers that he could get the officer some crack cocaine but would not give it to her inside the bar. A short time later, the dealer signaled the undercover officer to follow him and they went outside to Champions' parking lot where the sale of crack cocaine was completed. The dealer, Isaiah Terrell Hall, was subsequently charged with felony narcotics sale by the Hennepin County Attorney. Additionally, while conducting surveillance of this

⁷⁸ *Id.*; Ex. O.

⁷⁹ Test. of M. Clark.

⁸⁰ Exs. 32, 37, 41, 43; Test. of S. Metcalf; Ex. PP.

⁸¹ Ex. 32.

⁸² Ex. 38 (Supplement 4).

transaction, Sgt. Metcalf observed a known gang member and narcotics dealer, Larry Maurice Taylor, enter the bar. Sgt. Metcalf noted that she had seen this known drug dealer interact with a bouncer at Champions on several occasions. Larry Taylor was on Champions' Trespass list at the time he entered the bar.⁸³

66. On Tuesday, February 5, 2013, as detailed in Minneapolis Police report MP-13-033692, an individual who was arrested inside of Champions was found to be carrying two baggies of marijuana. At approximately 3:30 p.m. that afternoon, an officer was patrolling the Champions' parking lot and saw Titus "Tony" Taylor standing in the parking lot. The officer knew the individual had a gross misdemeanor warrant out for his arrest. The individual went inside before the officer could get out of the squad car. So, the officer followed him into Champions. Customers at Champions told the officer that he had gone into the restroom. When Mr. Taylor came out, he was arrested. Two baggies of marijuana were found in Mr. Taylor's possession during the search incident to arrest.⁸⁴

67. On Wednesday, April 24, 2013, an officer smelled marijuana smoke inside Champions and saw a "heavy cloud of smoke" as detailed in Minneapolis Police report MP-13-124408.⁸⁵ At approximately 11:20 p.m., patrol officers were flagged down by a woman walking out of the Champions parking lot. The woman was waving her cane at the officers and staggering out into the street. The woman was extremely intoxicated. Her eyes were bloodshot and watery; she smelled heavily of alcoholic beverages; and got extremely close to the officer as she spoke and spoke very loudly. The woman advised police that she had come from Champions and customers were smoking marijuana and crack cocaine inside the premises. An experienced narcotics officer then walked through the bar. The officer detected a strong odor of marijuana in the bar which he described as "very heavy in the bar area as if more than one person(s) were smoking the drug." The officer also observed a "heavy cloud of smoke" produced by the marijuana. The officer was not able to verify the allegations of crack smoking in the bar. The woman who waved down the police was a frequent customer of Champions. On this day, she kept asking the owner and other customers for free drinks. She told the bartender that if Rick, the owner, would not buy her a free drink, she was going to go to the police and tell them that people were smoking crack and marijuana at the bar. A short time later, she was asked to leave. She then told the head of security that she would go to the police if Champions would not pay for a cab ride home for her. Champions declined to pay for the cab ride.⁸⁶

68. Other individuals have also reported smoking of marijuana on Champions' premises. Officer David Roiger, who worked off-duty at Champions, saw people smoking marijuana at Champions. The marijuana smoking tended to be on the patio, according to Officer Roiger. When he saw people smoking marijuana in Champions, he would require those individuals to leave the bar. Officer Schumer also observed people

⁸³ Ex. 37; Test. of S. Metcalf; Ex. PP.

⁸⁴ Ex. 41.

⁸⁵ Ex. 43.

⁸⁶ Ex. 43; Ex. ZZ; Test. of R. Nelson.

smoking marijuana in Champions while he was working off-duty. He would either issue a citation to those individuals, or require them to leave the bar and destroy the marijuana. Isadore Randle, the former head of security, has seen customers at Champions smoking marijuana, usually in the parking lot. Mr. Randle also noted that there have been people who have sold drugs at Champions and people who come into Champions looking to buy drugs.⁸⁷ Mr. Nelson, the owner of Champions, claims that he has never seen marijuana smoked in Champions.⁸⁸

Other Types of Incidents at Champions since January 2012

69. On Friday, January 6, 2012, dancing was observed at Champions in violation of its Class E liquor license. On that date, a police officer saw customers dancing on the "dance floor." Champions was issued a Citation Notice for the January 6, 2012 dancing, with no attached fine or sanction.⁸⁹

70. On Wednesday, February 8, 2012, an assault occurred in Champions' parking lot, as detailed in Minneapolis Police Department report MP-12-037564. In the middle of the afternoon, a female was assaulted by five female suspects, and sustained cuts, bruises and a swollen eye. The police officer reported that the female who was assaulted appeared intoxicated. The dispute started as a verbal confrontation inside the bar and escalated to a violent assault in the parking lot. Security for Champions did not call 911 to report the crime in progress.⁹⁰

71. On Thursday, February 9, 2012, a violent fight occurred near the front entrance of Champions, as detailed in Minneapolis Police Department report MP-12-039619. The fight resulted in serious injuries to two victims. The victims had just exited from Champions, when they were attacked by multiple individuals from a party bus parked on Blaisdell Avenue in front of Champions. Champions' owner, Rick Nelson, observed the fight while monitoring the video cameras at the bar. He then notified Adam Barnes, one of the security staff on duty, and called 911. The police were on the scene approximately two minutes later. Two juveniles were arrested and a third individual, Marquise Marvin Mitchelle, was charged with felony assault in violation of Minn. Stat. § 609.223. The police were able to utilize surveillance footage from Champions security system while on scene to aid in their investigation. The police requested copies of the surveillance footage from Champions on February 13, 2012 and were provided copies on February 20, 2012.⁹¹

⁸⁷ Test. of D. Roiger; Test. of M. Schumer; Test. of I. Randle.

⁸⁸ Test. of R. Nelson.

⁸⁹ Ex. 48; Ex. 28; Test. of G. Nelson.

⁹⁰ Exs. 29, AAA. Rick Nelson claims that the woman was kicked out mid-afternoon for being drunk and then came back to Champions at closing time even more drunk. He claims this is when the assault happened. Mr. Nelson's testimony is not accurate because the police report shows that the assault occurred sometime prior to 1:46 p.m. in the afternoon. Mr. Nelson's recollection seems to be affected by the passage of time or perhaps he is confusing this incident with another incident.

⁹¹ Ex. 30; Test. of R. Nelson.

72. On Thursday, March 8, 2012, at approximately 10:50 p.m., Minneapolis City Business License Inspectors Casey and Anderson observed that Champions had a disk jockey, strobe lights, and a dance floor on its premises, in violation of its Class E liquor license. Administrative Citation No. 12-0899481 in the amount of \$500.00 was issued to Champions.⁹²

73. On Friday, August 3, 2012, a shooting took place in the alley by Champions' dumpsters and near the adjacent H&R Block building, as detailed in Minneapolis Police Department report MP-12-241636. Multiple discharged cartridges were found in Champions' parking lot, on both the south and west sides. There is no evidence that the persons involved in the shooting were in Champions prior to the shooting.⁹³

74. On Saturday, October 20, 2012, an assault occurred in the parking lot on the premises of Champions, as detailed in Minneapolis Police Department report MP-12-331306. The victim and suspect had a verbal disagreement in the bar and then went out to the parking lot. The victim was struck on the head, and sustained a cut that required five stitches to close. The officer reported that the victim was drunk and belligerent upon the officer's arrival at Champions.⁹⁴

75. On Tuesday, December 4, 2012, Isadore Randle (also known as Tim Randle), who was Champions' chief security officer at the time, solicited an undercover female police officer at Champions for prostitution, as detailed in Minneapolis Police Department report MP-12-374356. Two female undercover officers went into Champions that night at approximately 8:00 p.m. as part of an undercover narcotics operation. While at the bar, they began conversing with a man at the bar. The man was Tim Randle, head of security at Champions. Mr. Randle was in Champions that evening working on scheduling. The undercover officers then moved to a different area of the bar to attempt to purchase narcotics from individuals in the bar. Later that night, Mr. Randle offered to pay the undercover officer for oral sex and suggested that they go out to his truck. Mr. Randle then met the undercover officer by the front door and took her to his truck. He was then arrested. Mr. Randle pled guilty in an Alford plea to gross misdemeanor solicitation of prostitution in Hennepin County District Court Case No. 27-cr-12-42780 on September 16, 2013. At the evidentiary hearing in this matter, Mr. Randle claimed that he never intended to pay the undercover officer for sex. He claimed that he asked these questions to figure out whether this unknown woman was "working" the bar because he was head of security at the time. He admitted, however, that he made the following statements, which are transcribed in the police report: "how much for sex," "how about sex and head," and "how about I give you 50 right now and we go out to my truck?" Mr. Randle told Rick Nelson about the incident the day after it happened. Mr. Randle remained employed by Champions as chief of security until March 19, 2013, when he was terminated by Mr. Nelson.⁹⁵

⁹² Ex. 48; Test. of G. Wilson.

⁹³ Ex. 33; Test. of R. Nelson.

⁹⁴ Exs. 36.

⁹⁵ Exs. 38, 46; Test. of S. Metcalf; Test. of I. Randle; Ex. BBB; Test. of R. Nelson.

76. On December 4, 2012, a different undercover officer, who was doing surveillance, observed a member of the Bogus Boys standing by the front door of Champions and talking to the bouncer. The officer also noted that the week before, she had seen Bogus Boy Gang members going into Champions.⁹⁶

77. On Thursday, December 20, 2012, two individuals were shot in an area proximate to the premises of Champions, as detailed in Minneapolis Police Department report MP-12-388349. One of the victims died from the gunshot wound. The suspects involved in the shooting were in Champions immediately prior to the shooting. One of the suspects was charged with murder in the second degree.⁹⁷

78. On Sunday, February 3, 2013, a fight occurred early in the afternoon in the parking lot of Champions resulting in serious injuries to an individual, as detailed in Minneapolis Police report MP-13-032056. On that date, a male customer at Champions became visibly intoxicated in the bar over the course of several hours and was making racist remarks. The customer was escorted out for making threatening and racist comments, but was allowed to return into the bar twice after being escorted out. When he was escorted out for the third time, another customer followed him out. A fight ensued. Security staff from Champions used mace and separated them. One of the individuals then lunged at the security staff, who pushed him back. As result, the man fell backwards and hit his head. When the officers arrived, he had blood coming out of his ears and was unconscious. The other customer was allowed to return back into the bar after the fight. Champions was issued a Violation Notice as a result of the incident for violating Minneapolis City Code of Ordinances Sections 259.250(4) and (9).⁹⁸

79. On Sunday, April 14, 2013, Minneapolis Police officers responded to a large fight involving two groups of women inside of Champions. The fight took place by the dance floor.⁹⁹

80. Early in the morning of Thursday, August 8, 2013, a homicide occurred inside Champions, as detailed in Minneapolis Police Department report MP-13-257349.

⁹⁶ Ex. 38; Test. of S. Metcalf.

⁹⁷ Ex. 39.

⁹⁸ Ex. 40; Ex. AAA; Test. of R. Nelson. Ex. 40 and Ex. AAA have slightly different accounts of how many times the customer was escorted out from the bar and the circumstances under which he re-entered the bar. The information in Ex. 40 is based on statements made by Champions' security staff, Adam Barnes, to the officer on the scene. Mr. Barnes witnessed the events and broke up the fight. These statements were made immediately after the incident. The information in Ex. AAA is from an incident log kept by Champions, but Ex. AAA is not a precise version of that log. Test. of R. Nelson. Ex. AAA was prepared for the evidentiary hearing in this proceeding. The actual incident log, upon which it is based, was not entered into evidence. Rick Nelson's testimony regarding how accurate Ex. AAA is compared to the actual incident log was vague. Thus, it is unknown whether Ex. AAA accurately reflects the actual entries in the incident log or whether any information is missing. Mr. Nelson also testified that he was not at Champions when the incident occurred. For these reasons, the Administrative Law Judge deems Ex. 40 more reliable than Ex. AAA in terms of the number of times the customer was allowed to re-enter the bar after being escorted out and the circumstances under which that occurred.

⁹⁹ Exs. 42, 48, AAA.

A customer shot and killed another customer with a firearm. The murder occurred within the bar, shortly before 12:30 a.m., while the bar was full. A second victim was also shot, and suffered a non-life threatening wound. A third shot struck behind the bar, narrowly missing the bartender and customers. The shooter started firing after being punched by another customer. The customer who died was not involved in the fight.¹⁰⁰

81. Rick Nelson, the owner of Champions, believes that the firearm was hidden in the shooter's prosthetic leg. When the individual came to Champions' front door that night, the metal detection wand used by security staff went off. The security staff patted down the individual and discovered he had a prosthetic leg with metal parts. The security staff did not find anything of concern on the individual and he was allowed to enter the bar.¹⁰¹

82. The video of the incident shows that after being punched several times, the shooter fell to the floor, quickly pulled the gun, and began shooting. The shooter fled the bar after the shooting. Champions worked with police after the shooting to review Champions' security video of the shooting.¹⁰²

83. Grant Wilson, who has almost 30 years of experience with Minneapolis licensing, does not recall another homicide occurring inside of a Minneapolis bar or restaurant.¹⁰³

2012 License Settlement Conference

84. Before the results of the Minneapolis Police Department undercover operation were announced on March 19, 2012, the City prepared a "NOTICE TO APPEAR AT A LICENSE SETTLEMENT CONFERENCE" (Notice) for Champions. This Notice stated that the "Settlement Conference" was scheduled for March 23, 2012. The Notice also stated that "Failure to appear may jeopardize your license." The Notice was dated March 1, 2012.¹⁰⁴

85. The Notice stated that the purpose of the meeting was to consider corrective action to Champions' liquor license to address the following: Minneapolis Police reports of drug dealing in and around Champions' premises; reports of assaults and disorderly conduct at Champions; the alleged failure of Champions to call 911 to report incidents at the establishment; and allegedly operating outside of the Class E license. Information in the Notice was provided to the Licensing Department by the Police Department.¹⁰⁵

¹⁰⁰ Ex. 45; Ex. GGG; Test. of Christopher Thomsen; Test. of R. Nelson.

¹⁰¹ Test. of R. Nelson.

¹⁰² Ex. 45; Ex. GGG; Test. of R. Nelson; Test. of C. Thomsen.

¹⁰³ Test. of G. Wilson.

¹⁰⁴ Ex. 5.

¹⁰⁵ *Id.*; Test. of G. Wilson.

86. Although the Notice is dated March 1, 2012, the City delivered the Notice to Rick Nelson on or about March 20, 2012.¹⁰⁶ At Champions' request, the Licensing Settlement Conference was rescheduled to April 10, 2012.¹⁰⁷

87. At the April 2012 license settlement conference, the City made a proposal to resolve the matter. The proposal was made pursuant to the City's progressive disciplinary strategy. Given that Champions had two prior licensing actions in 2006 and 2007, the City Business Licenses Department proposed that Champions agree to: a license suspension of 30 days, a fine of \$10,000, closure of the outdoor patio for a period of one year, and new conditions regarding security.¹⁰⁸

88. Champions and the City exchanged emails between April and October 2012 regarding possible resolution of the allegations by the City, but were not able to reach an agreement during that time period.¹⁰⁹

89. On October 29, 2012, the City issued a Notice of Adverse License Action to Champions. The document states that "[t]he notice is being issued to advise you that the Regulatory Services Department is making a recommendation to the Minneapolis City Council" that Champions' liquor license be "revoked." The document listed a number of alleged violations and incidents that served as the basis of the recommendation. The document advises Champions that the matter has been referred to the Minneapolis City Attorney for adverse license action and that a hearing would be held before an administrative law judge. The document also states that Champions could take one of four approaches to resolving the matter: (1) surrender its business license and close the business; (2) stipulate that the violations did occur and allow the City Council to determine if any adverse license action should be taken; (3) opt to have the entire case heard by an administrative law judge; or (4) agree to and sign the draft conditions from the license settlement agreement held on April 10, 2012.¹¹⁰

90. Attached to the Notice of Adverse License Action was a document entitled Business License Operating Conditions dated October 29, 2012 for Champions' signature. This document would require Champions to agree to a license suspension of 30 days, to pay a fine of \$10,000, to close the outdoor patio for one year, and to implement additional security measures including employing two off-duty police officers from 8:00 p.m. to close every day. Mr. Wilson believes that the conditions contained in this October 29, 2012 Notice of Adverse License Action are the same as those proposed at the April 10, 2012 settlement conference.¹¹¹

91. The parties continued to discuss a possible resolution in November and December 2012, but did not reach an agreement. The document setting forth the City's

¹⁰⁶ Test. of R. Nelson.

¹⁰⁷ *Id.*

¹⁰⁸ Test. of G. Wilson.

¹⁰⁹ Test. of G. Wilson; Exs. R, U, W, CCC.

¹¹⁰ Ex. 6; Test. of G. Wilson.

¹¹¹ Ex. 8; Test. of G. Wilson; Test. of R. Nelson.

proposed conditions was never signed by Champions. Rick Nelson, Champions' owner, stated that the cost of the additional off-duty security officers would be so expensive that they would put Champions out of business. Mr. Nelson also noted that closing the patio would force customers who smoke to smoke in front of the building. He believes this would create numerous security problems because of the crowd of people that would be in front of the building.¹¹²

92. Throughout these discussions, Champions made repeated requests that off-duty police officers be permitted to work at Champions again.¹¹³ To date, the City has not lifted the prohibition.

93. On January 28, 2013, the City issued a Notice and Order for Hearing. The Notice and Order for Hearing was amended three times by the City, the last time being on September 5, 2013.

Community Impact

94. As part of the City's renewal investigation in this matter, Mr. Wilson and his staff also received three community impact statements from area residents opposed to the continued licensure of Champions. One resident, who lives on Lake Street, indicated that Champions is a "pariah." Another resident stated that he dreads summers because "over-served patrons from the Champions Bar engage in loud threatening arguments which sometimes break out into fights." A third resident stated that "Champions brings criminals and drug addicts into my neighborhood....This spills over into the whole neighborhood, lowering property values, creating dangerous situations and making the neighborhood seem trashy."¹¹⁴

95. Champions currently employs twenty-five (25) people and serves as a gathering spot for people in the area. Champions also supports several charities, including the YMCA, a youth basketball program, a food foundation, and the March of Dimes. In addition, Incarnation Catholic Church runs a pull tab operation inside Champions. Since it has been affiliated with Champions, Incarnation has donated nearly \$2,000,000 to a local food shelf.¹¹⁵

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Minneapolis City Council have authority to consider the allegations against the Licensee and the action to be taken

¹¹² Test. of G. Wilson; Exs. 7- 8; Exs. CC, DD, EE, GG; Test. of R. Nelson.

¹¹³ Test. G. Wilson, Exs. O, CC, DD, GG.

¹¹⁴ Ex. 47; Test. of G. Wilson.

¹¹⁵ Test. of R. Nelson.

pursuant to Minn. Stat. §§ 14.50, 14.55, and 340A.412, subd. 2 and the Minneapolis City Charter and Code of Ordinances.¹¹⁶

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

3. The Licensee received adequate and timely notice of the hearing and of the charges against it.

4. As provided in Minn. Stat. § 340A.412, the City may not renew Champions' Class E on-sale liquor license with Sunday sales if the results of its investigation of Champions shows that "renewal would not be in the public interest."

5. In addition, the Minneapolis Code of Ordinances (M.C.O.) Section 259.250 provides that failure to comply with specified "standards and conditions shall be adequate grounds for ... refusal to renew ... [a liquor] license or license permit." The Ordinance further provides, in relevant part, that:

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

...
c. Minnesota Statutes, Sections 152.01 through 152.025 or Section 152.027 subdivisions 1 and 2, which prohibit the unlawful sale or possession of controlled substances.

...
g. Minnesota Statutes, Sections 97B.021, 97B.045, 609.66 through 609.67 and 624.712 through 624.716 and Section 393.40, 393.50, 393.70, 393.80, 393.90 and 393.150 of this Code, which prohibits the unlawful possession, transportation, sale or use of a weapon.

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,

¹¹⁶ Minneapolis Charter Ch. 4, § 5; Minneapolis Code of Ordinances (M.C.O.) §§ 259.250, 362.100, 362.260, 362.300, 362.365 and 362.510.

including the zoning, fire, environmental health, environmental management, license, food, liquor, housing and building codes.

(3) The licensee is directly and vicariously responsible for any violations on the premises, including parking areas, by any employees, independent contractors, other persons hired by the licensee, or otherwise under the supervision or management of the licensee.

(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) It shall be the responsibility of the licensee to fully comply with all conditions of license or other operational specific requirements duly imposed by the licensing authority or agreed to by the licensee.

...
(13) 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.¹¹⁷

6. Upon finding good cause, the City Council also has authority to impose reasonable conditions or restrictions when renewing a liquor license. The City Council may impose such conditions and restrictions to preserve the public peace and protect and promote good order, livability and security. Reasonable conditions or restrictions may pertain to:

- a. A limitation as to the hours when intoxicating liquor may be sold or consumed on the licensed premises.
- b. A limitation and restriction as to the exact location within a building where intoxicating will be served, sold or consumed.
- c. A limitation and restriction as to the means of ingress to or egress from the licensed establishment.
- d. A limitation as to the patron occupancy level of the entire premises or portions thereof.
- e. A limitation or restriction as to the admittance of persons under the age of twenty-one (21) years to those areas of the premises where alcohol is not sold, possessed or consumed; or a prohibition on the admittance of any persons under the age of twenty-one (21) years except for those purposes expressly recognized pursuant to Minn. Statute Section 340A.503.

¹¹⁷ M.C.O. § 259.250 (emphasis added).

- f. Reasonable conditions limiting the operation of the licensed premises so as to ensure that the licensed business will comport with the character of the district in which it is located or to prevent the occurrence and establishment of public nuisances.

The authority granted to the City Council pursuant to this section is in addition to any other authority otherwise provided by this Code and applicable law.¹¹⁸

7. As the party proposing that certain action be taken, the City has the burden of proving by a preponderance of the evidence that renewal of Champions' liquor license is not in the public interest or, alternatively, that good cause exists to impose conditions on Champions' license.¹¹⁹

8. The City has demonstrated by a preponderance of the evidence that Champions has failed to comply with standards and conditions set forth in M.C.O. § 259.250, and therefore renewal of Champions' license would not be in the public interest.

9. The City has also demonstrated by a preponderance of the evidence that good cause exists to impose conditions on Champions' license if renewed.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the City either not renew Champions' liquor license or renew Champions license with strict conditions as specified in the Memorandum below.

Dated: February 6, 2014


JEANNE M. COCHRAN
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

¹¹⁸ M.C.O. 362.365.

¹¹⁹ Minn. R. 1400.7300(5).

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 612-673-3135 to find out the process for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the City is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The issue in this case is whether the City has demonstrated by a preponderance of the evidence that renewal of Champions' liquor license would not be in the public interest or, alternatively, that good cause exists to impose conditions on Champions' license if it is renewed. The City and Champions disagree as to whether the City has met its burden to take adverse action against Champions' liquor license.

Applicable Legal Standard

A. Renewal

It is well established that there is no property right to a liquor license.¹²⁰ Nor does a licensee have a right to renewal of a liquor license.¹²¹ Cities generally have broad discretion in determining the manner in which liquor licenses are issued, regulated, renewed, and revoked.¹²² The non-renewal of a liquor license, however, must "be based on articulable and legally sufficient reasons."¹²³

¹²⁰ *Hymanson v. City of St. Paul*, 329 N.W.2d 324, 326 n.1 (Minn. 1983).

¹²¹ *Flesner v. City of Ely*, 863 F. Supp. 971, 979 (D. Minn. 1994).

¹²² *Bourbon Bar & Café Corp. v. City of St. Paul*, 466 N.W.2d 438, 440 (Minn. App. 1991).

¹²³ *E.T.O., Inc. v. Town of Marion*, 375 N.W.2d 815, 819 (Minn. 1985).

In addition, the legislature has specifically provided that no liquor license may be renewed if the "results" of an "investigation show, to the satisfaction of the governing body, that ... renewal would not be in the public interest."¹²⁴ In addition, M.C.O. § 259.250 provides that failure to comply with specified "standards and conditions shall be adequate grounds for ... refusal to renew ... [a liquor] license or license permit." Those standards and conditions provide, in part, that:

it is the "responsibility of the licensee to take appropriate action to prevent further violations following conduct by any persons on the business premises, including parking areas, in violation of any of the following statutes or ordinances: ...

c. Minnesota Statutes, Sections 152.01 through 152.025 or Section 152.027 subdivisions 1 and 2, which prohibit the unlawful sale or possession of controlled substances.

...
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.¹²⁵

The licensee also has the responsibility to "provide adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, including parking areas."¹²⁶ The licensee must also comply with all conditions of the license or other requirements "duly imposed by the licensing authority or agreed to by the licensee."¹²⁷ Finally, M.C.O. § 259.250 specifies, in relevant part, that the licensee "is directly and vicariously responsible for any violations on the premises, including parking areas, by any employees, independent contractors, other persons hired by the licensee, or otherwise under the supervision or management of the licensee."¹²⁸ Failure to comply with these standards is grounds for non-renewal.¹²⁹

¹²⁴ Minn. Stat. § 340A.412, subd. 2(b). Champions erroneously maintains that a City only has authority to deny renewal of a liquor license where there are "serious violations of law." See Respondents' Post-Hearing Brief at 31. In support of its position, Champions cites dicta in *Tamarac Inn, Inc. v. City of Long Lake*, 310 N.W. 474, 478 (Minn. 1981). The dicta in this 1981 case, however, has been superceded by Minn. Stat. § 340A.412, which was enacted in 1985. The current standard governing renewal is whether renewal of the license is in the "public interest," not whether there have been serious violations of the law. See Minn. Stat. § 340A.412, subd. 2(b).

¹²⁵ M.C.O. §259.250(1).

¹²⁶ M.C.O. § 259.250(4).

¹²⁷ M.C.O. § 259.250(4).

¹²⁸ M.C.O. § 259.250(3).

¹²⁹ M.C.O. § 259.250.

B. Permit Conditions

Upon finding "good cause," the City has the authority to impose conditions on the liquor license as part of the license renewal process. The conditions shall be designed to "preserve the public peace and protect and promote good order, livability and security."¹³⁰ The conditions or restrictions may pertain to:

- (1) A limitation as to the hours when intoxicating liquor may be sold or consumed on the licensed premises.
- (2) A limitation and restriction as to the exact location within a building where intoxicating will be served, sold or consumed.
- (3) A limitation and restriction as to the means of ingress to or egress from the licensed establishment.
- (4) A limitation as to the patron occupancy level of the entire premises or portions thereof.
- (5) A limitation or restriction as to the admittance of persons under the age of twenty-one (21) years to those areas of the premises where alcohol is not sold, possessed or consumed; or a prohibition on the admittance of any persons under the age of twenty-one (21) years except for those purposes expressly recognized pursuant to Minn. Statute Section 340A.503.
- (6) Reasonable conditions limiting the operation of the licensed premises so as to ensure that the licensed business will comport with the character of the district in which it is located or to prevent the occurrence and establishment of public nuisances.¹³¹

The ordinance also provides that the authority granted pursuant to this section is in addition to other existing licensing authority.¹³² This ordinance became effective on February 22, 2013.¹³³

The Parties' Positions

A. The City's Position

The City argues that it has demonstrated by a preponderance of the evidence that renewal of Champions' license is not in the public interest. The City maintains that

¹³⁰ *Id.*

¹³¹ M.C.O. § 362.365.

¹³² *Id.*

¹³³ *Id.*

the record, dating back to 2006, demonstrates “repeated, multiple and ongoing instances of criminal behavior directly associated with the operation of the bar.”¹³⁴ The City also asserts that there have been a number of incidents at Champions that constitute a “public nuisance” under state law. The City argues that “public nuisance” activity is “antithetical” to the “public interest.”¹³⁵ The City also asserts that Champions has failed to comply with M.C.O. § 259.250, and therefore non-renewal is justified.¹³⁶ The City maintains that it is not necessary to find that Champions intended to allow the criminal and nuisance activity on its premises in order to show that renewal is not in the public interest. Finally, the City argues that it has broad legal authority to deny renewal of a liquor license.¹³⁷

With regard to the alternative licensing action of imposing conditions on Champions’ license, the City maintains that it has the authority to consider events occurring both before and after the enactment of the ordinance on February 22, 2013 in evaluating whether “good cause” exists to impose conditions. The City notes that the ordinance had been in effect for approximately three months before Champions’ renewal application was filed and therefore, it is proper for the City to consider all relevant facts in determining whether conditions should be imposed. The City also maintains that the same facts that support non-renewal of the license also demonstrate that “good cause” exists to impose conditions on Champions’ liquor license.¹³⁸

B. Champions’ Position

Champions counters that the City has failed to meet its burden of proof both as to non-renewal and as to the imposition of conditions on Champions’ license. With regard to renewal of its license, Champions maintains that the City has not demonstrated that renewal would not be in the public interest. Champions argues that Champions has not violated any statute, rule or ordinance which directly affects the sale or provision of alcoholic beverages, other than one minor violation for serving a minor. Champions also claims that M.C.O. § 259.250(1) and (4) cannot serve as a basis for adverse license action because: (1) the City did not provide Champions with formal notice of any of the alleged criminal violations or misconduct prior to March 2012; (2) many of the alleged events took place off Champions’ premises; (3) Champions’ has taken appropriate action and has provided adequate security; and (4) the City caused many of the incidents by prohibiting off-duty officers from working at Champions after March 22, 2012.¹³⁹

With regard to the imposition of conditions, Champions argues that “good cause” does not exist to impose any conditions on its license. In analyzing whether “good cause” exists to impose conditions on its license, Champions argues that the City can

¹³⁴ City of Minneapolis Letter Brief at 2 (December 2, 2013).

¹³⁵ *Id.*

¹³⁶ See City’s Proposed Findings of Fact, Conclusions of Law, and Recommendation at 20-23.

¹³⁷ *Id.* at 2.

¹³⁸ *Id.* at 3.

¹³⁹ Respondents’ Post-Hearing Brief at 32-39.

only consider events that have occurred at Champions after February 22, 2013, the date the ordinance authorizing permit conditions was enacted. Champions maintains that the incidents that have occurred since February 22, 2013 are not sufficient to support the imposition of conditions on its license.¹⁴⁰ Champions argues that it should not be punished for alerting the police to the drug activity at the bus stop near Champions.¹⁴¹

Legal Analysis

The record in this case supports a finding that renewal of Champions' license is not in the "public interest" because Champions is operated in a manner that allows fights to occur, allows illegal drug dealing, allows open marijuana smoking, permits drug dealers on its Trespass List into the bar, serves customers to the point of intoxication, and allows dancing in violation of its license. Champions has failed to provide adequate security, failed to comply with applicable legal requirements, and failed to comply with the provisions of its license, all in violation of M.C.O. § 259.250. The public interest is not served when an establishment operates in such a manner.

A. M.C.O. § 259.250(4)

Pursuant to M.C.O. § 259.250(4), it is "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." A failure to meet this standard is grounds for non-renewal of a license.¹⁴² Even without considering the drug purchases by undercover officers at Champions, the facts demonstrate that Champions has failed to provide "adequate security" to prevent criminal activity, loitering and disorderly conduct.

First, customers at Champions were observed smoking marijuana on several occasions. Moreover, the evidence in the record demonstrates that marijuana smoking was tolerated by Champions' security. On September 30, 2011, Sgt. Metcalf observed several customers openly smoking marijuana within 25 feet of a Champions' security staff.¹⁴³ One of the customers reported to Sgt. Metcalf that Champions' security are "cool about it."¹⁴⁴ This statement was confirmed by the open smoking of marijuana in the presence of the security staff on that day. In addition, on April 24, 2013, another

¹⁴⁰ *Id.* at 38-40.

¹⁴¹ *Id.* at 2, 42.

¹⁴² M.C.O. §259.250.

¹⁴³ Ex. 15; Test. of S. Metcalf.

¹⁴⁴ *Id.*

officer smelled and observed a "heavy cloud of marijuana smoke."¹⁴⁵ Moreover, Officer Roiger and Officer Schumer, who worked off-duty at Champions, and Isadore Randle, Champions' former head of security, all testified that they observed people smoking marijuana at Champions.¹⁴⁶ Because the smoking of marijuana is unlawful and Champions failed to maintain adequate security to prevent this criminal activity, the City has demonstrated by a preponderance of the evidence that Champions has failed to comply with M.C.O. § 259.250(4).¹⁴⁷

Second, there have been frequent fights between customers at Champions. Several of the fights have resulted in serious physical harm and one resulted in death. For example, on February 8, 2012, in the middle of the afternoon, a female was assaulted in Champions' parking lot by five female suspects. The victim, who was intoxicated at the time, sustained cuts, bruises and a swollen eye. The dispute started as a verbal confrontation inside the bar and escalated into a violent assault in the parking lot.¹⁴⁸ On February 9, 2012, a fight occurred near Champions' front door. The victims had just exited Champions. The victims sustained serious injuries.¹⁴⁹ On October 20, 2012, two individuals had a verbal disagreement in the bar, and then went outside, where an assault occurred. The victim was struck on the head. The officer also reported that the victim was drunk and belligerent upon the officer's arrival at Champions.¹⁵⁰ On February 3, 2013, a fight occurred after a male customer, who was intoxicated, was making racist remarks. The customer had been escorted out of Champions, but was allowed back into the bar twice after being kicked out.¹⁵¹ When he was escorted out the last time, another customer, who was also intoxicated, followed him and a fight ensued in the parking lot. The intoxicated victim sustained serious head injuries when Champions' security staff broke up the fight.¹⁵² On April 14, 2013, there

¹⁴⁵ Ex. 43. At the hearing, Rick Nelson asserted that the marijuana smelled by the officer was from customers who had smoked marijuana prior to entering Champions. This assertion is not credible because it does not explain the cloud of smoke that existed with the marijuana smell. Also, the officer who observed the "heavy cloud of marijuana smoke" is an experienced CRT officer and knows the smell of marijuana. Test. of R. Nelson; Ex. 43. In addition, Mr. Nelson's assertion is inconsistent with Officer Troy Dillard's testimony that Champions did not let in people who smelled of marijuana. Test. of T. Dillard.

¹⁴⁶ Test. of D. Roiger; Test. of M. Schumer; Test. of I. Randle. Officers Roiger and Schumer, who worked off-duty at Champions, testified that when they saw people smoking marijuana in Champions, they would ask them to leave the bar. Test. of D. Roiger and M. Schumer. Off-duty officers, however, were rarely inside the bar. They spent most of their time outside of the bar, by the front door. *Id.*; Test. of T. Dillard; Test. of D. Hamilton. The fact that they both observed marijuana smoking in the bar during the limited time that they were inside the bar demonstrates that marijuana smoking is tolerated by Champions' security who work inside the bar.

¹⁴⁷ Minn. Stat. § 152.027; M.C.O. § 259.250. In addition, on Tuesday, February 5, 2013, an individual was arrested inside of Champions on an outstanding gross misdemeanor warrant and, incident to arrest, was discovered to be carrying two baggies of marijuana. Ex. 41.

¹⁴⁸ Ex. 29. Rick Nelson claims that this incident happened at closing time and the victim had left Champions and then came back. Test. of R. Nelson. His testimony is not credible because the police report clearly indicates that the police found the victim at Champions in the middle of the afternoon. Ex. 29.

¹⁴⁹ Ex. 30.

¹⁵⁰ Ex. 36.

¹⁵¹ See *supra* footnote 98.

¹⁵² Ex. 40; Ex. AAA; Test. of R. Nelson.

was a fight between two groups of women inside the bar.¹⁵³ Finally, on August 8, 2013, a customer in Champions fired three shots after he was punched by another customer. One of the shots killed a customer, who was not involved in the fight.¹⁵⁴

While Champions' security staff responded to some of these situations, Champions' security was not adequate to prevent the numerous fights at the bar. In one instance in particular, Champions' security contributed to the situation by allowing the intoxicated customer back into the bar.¹⁵⁵ Under Minnesota law, fighting and abusive conduct constitute "disorderly conduct" and are punishable as a misdemeanor.¹⁵⁶ Because Champions did not have adequate security to prevent repeated disorderly conduct at its establishment, sufficient grounds exist for non-renewal of its license pursuant to M.C.O. § 259.250(4).

Third, on Tuesday December 4, 2012, Isadore Randle, Champions' chief security officer at the time, solicited an undercover female police officer for prostitution while at Champions.¹⁵⁷ Mr. Randle's claim that he never intended to solicit sex for money is not credible.¹⁵⁸ Mr. Randle asked an unknown woman repeatedly to have sex for money. He admits to asking the undercover officer: "how much for sex," "how about sex and head," and "how about I give you 50 right now and we go out to my truck?" In addition, after making the last statement, Mr. Randle met the woman by the front door and took her out to his truck.¹⁵⁹ Given these facts, the Administrative Law Judge does not find it credible that Mr. Randle's statements were not intended to solicit sex for money. If Mr. Randle truly did not intend to solicit sex, he would not have gone to his truck with the woman after proposing to pay her for sex. On September 16, 2013, Mr. Randle pled guilty to gross misdemeanor solicitation of prostitution under an Alford plea.¹⁶⁰ In this instance, Champions' own head of security was involved in the criminal activity. Clearly, Champions' security was not adequate to prevent this criminal activity at Champions. This incident provides additional grounds for finding that Champions has failed to comply with the requirements of M.C.O. § 259.250(4), and therefore, grounds exist to not renew Champions' license.

Fourth, Champions' security has allowed known drug dealers to enter Champions and loiter outside of Champions. On December 10, 2011, a police officer observed a known drug dealer enter the bar and converse with Champions' security staff. At the time, Champions was aware that the individual, Aaron Anton Davis, was a

¹⁵³ Ex. 42, 48.

¹⁵⁴ Ex. 45; Ex. GGG.

¹⁵⁵ Ex. 40. Even if one were to rely on the less reliable version of events in Champions' Ex. AAA, the evidence still shows that Champions' security was not adequate because Ex. AAA states that the customer re-entered the bar while security staff was checking the patio area. Even assuming that was the case, Champions clearly did not have adequate security at the door to prevent this customer from entering the bar again after being escorted out.

¹⁵⁶ Minn. Stat. § 609.72.

¹⁵⁷ Ex. 38.

¹⁵⁸ Test. of I. Randle.

¹⁵⁹ *Id.*; Ex. 38.

¹⁶⁰ Ex. 46.

drug dealer and was on Champions' Trespass List.¹⁶¹ Police also observed this known drug dealer meeting with people in Champions' parking lot and near the front door.¹⁶² Similarly, on November 28, 2012, a police officer observed another known drug dealer interact with Champions' security staff in front of the bar. The drug dealer, who was on Champions' Trespass List at the time, was allowed to enter Champions.¹⁶³ These instances show Champions' security allowed known drug dealers into Champions and allowed loitering by one of these drug dealers in front of Champions in violation of M.C.O. § 259.250(4).

Finally, the record shows that a number of illegal drug and simulated drug sales took place at Champions between September 2011 and November 2012. These sales provide additional support for the conclusion that Champions' security is not adequate to prevent criminal activity. The record demonstrates that three separate sales of illegal drugs were completed in Champions' enclosed patio area, and four sales took place in the parking lot at Champions.¹⁶⁴ Champions argues that many of the deals occurred because the undercover officers invited the drug dealer onto Champions' premises. However, with regard to the seven deals referenced above, there is no evidence in the record to support that assertion.¹⁶⁵ The instances where the officer called the drug dealer or otherwise invited the drug dealer to Champions are not counted in these seven instances referenced above.¹⁶⁶ Champions also claims that it knew undercover officers were operating in Champions, and Champions' security did not interfere with the undercover officers' work.¹⁶⁷ Nonetheless, drug dealers clearly were frequently present on Champions' premises and completed a number of drug deals on Champions' premises. The Administrative Law Judge recognizes that it is not reasonable to expect that Champions will be able to prevent all illegal drug activity on its premises, but the level of drug activity at Champions over this 14-month period is concerning. While Champions' security measures provided some deterrence and led to some drug deals being done off-premises, a number of illegal drug sales still occurred on Champions' premises.

¹⁶¹ Ex. 25; Ex.PP; Test. of R. Nelson.

¹⁶² Ex. 25; Test. of S. Metcalf.

¹⁶³ Ex. 37; Test. of S. Metcalf; Ex. PP.

¹⁶⁴ Ex. 25 (sale of crack cocaine in bar on December 10, 2011); Ex. 26 (sale of marijuana in bar on January 5, 2012) (Champions erroneously claims that the undercover officer invited the drug dealer to Champions on this date; the police records indicate that the police officer invited this same dealer to Champions on a later date, January 12, 2012, not on this date); Ex. 28 (sale of simulated crack in bar on January 6, 2012); Exs. 22, 23 (sale of crack cocaine in Champions' parking lot on October 28, 2011); Ex. 24 (sale of crack cocaine in the parking lot on November 4, 2011); Ex. 32 (sale of simulated narcotics in parking lot on July 27, 2012); Ex. 37 (sale of crack cocaine in the parking lot). There was also sale of drugs through bars with dealer on street and the undercover officer in the patio area but this sale is not being counted here as a sale on Champions' premises. See Ex. 17; Test. of S. Metcalf. A number of drug deals also occurred off Champions' premises. Those are not being counted here. See, e.g., Exs. 10, 11, 13.

¹⁶⁵ See *id.*

¹⁶⁶ See, e.g., Exs. 11, 17 (not counted in seven listed above).

¹⁶⁷ Test. of R. Nelson.

Taken together, the frequent fights, open marijuana smoking, admittance of known drug dealers, and solicitation of prostitution at Champions demonstrate that Champions does not have adequate security to prevent criminal activity, disorderly conduct and loitering as required by M.C.O. § 259.250(4). The illegal drug sales at Champions provide additional support for this conclusion. Pursuant to M.C.O. § 259.250(4), Champions failure to comply with this operational standard is grounds for non-renewal of its license.

Champions makes several arguments as to why M.C.O. § 259.250(4) should not serve as the basis for non-renewal of its license.¹⁶⁸ Each of Champions' arguments lack merit. First, Champions argues that before it can be found out of compliance with M.C.O. § 259.250(4), the City is required to give Champions notice of the criminal activity, disorderly conduct, and loitering occurring on its premises. Nothing in the plain language of M.C.O. § 259.250(4), however, requires the City to provide such notice. To the contrary, the ordinance creates an affirmative duty for Champions to have adequate security to *prevent* such conduct in the first place.¹⁶⁹ Moreover, there is no due process violation because the Notice and Order for Hearing, as amended, provided Champions with sufficient notice of the charges against it.¹⁷⁰ Second, Champions argues that most of the criminal activity occurred off Champions' premises. The analysis above, however, does not consider drug deals or other incidents that occurred off Champions' property. There is simply no basis for this argument. Third, Champions claims it has provided adequate security. The record, as discussed above, shows that is not the case. Fourth, Champions claims that the City caused many of the incidents about which it complains by prohibiting Champions from hiring off-duty officers after March 22, 2012. There is no merit to this argument because the City is not legally obligated to provide off-duty officers for security at Champions. It is Champions, as the licensee, that has the duty to provide adequate security.¹⁷¹ Champions could have done so by hiring an outside security firm, but it chose not to do so. Instead, Champions hired its own security staff.¹⁷² Those staff failed to provide adequate security and exercised poor judgment. Champions is responsible for those security lapses at its establishment, not the City.

B. M.C.O. § 259.250(2)

Pursuant to M.C.O. § 259.250(2), it is "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." A failure to do so is "adequate grounds for the ... refusal to renew" a license.¹⁷³

¹⁶⁸ Respondents' Post-Hearing Brief at 36.

¹⁶⁹ M.C.O. § 259.250(4).

¹⁷⁰ See *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 562-63 (Minn. Ct. App. 2001).

¹⁷¹ M.C.O. 259.250(4).

¹⁷² Test. of R. Nelson.

¹⁷³ M.C.O. § 259.250.

Minnesota Statutes section 340A.502 provides that “[n]o person may sell, give, furnish, or in any way procure for another alcoholic beverages for the use of an obviously intoxicated person.” In this case, the record shows that, on at least one occasion, Champions served a customer who was obviously intoxicated. On Sunday, February 3, 2013, in the middle of the afternoon, a fight broke out between two customers at Champions. One of the customers was severely injured. During the investigation of the incident, Champions’ cook told the police that the injured individual had been drinking at Champions since the bar opened and was visibly drunk.¹⁷⁴ The bartender confirmed that the individual was in Champions “drinking for most of the day.”¹⁷⁵ In addition, a number of the other fights at Champions involved customers who were visibly intoxicated.¹⁷⁶ Pursuant to Minn. Stat. § 340A.502, it is unlawful for Champions to serve a customer who is obviously intoxicated. Champions’ violation of Minn. Stat. § 340A.502 provides a sufficient basis to not renew Champions’ license because Champions has failed to comply with applicable laws as required by M.C.O. § 259.250(2).

C. M.C.O. § 259.250(9)

M.C.O. § 259.250(9) provides that it is the “responsibility of the licensee to fully comply with all conditions of [its] license....” Champions operates under a Class E license.¹⁷⁷ Dancing is not allowed under a Class E license. A Class B license is required for an establishment to allow dancing.¹⁷⁸ On January 6, 2012, an undercover officer observed customers at Champions dancing on the “dance floor.”¹⁷⁹ Similarly, on March 8, 2012, Minneapolis Business License Inspectors observed that Champions had a disc jockey and stobe lights, and Champions’ staff was setting up a dance floor.¹⁸⁰ Because Champions has failed to comply with the limitation on dancing under its Class E license, Champions is not in compliance with M.C.O. § 259.250(9). This conduct by Champions’ provides further grounds for non-renewal pursuant to M.C.O. § 259.250.

D. Conclusion Regarding Non-Renewal

The Administrative Law Judge recognizes that Champions has put in place some security measures but those measures have not been adequate to prevent frequent criminal activity, disorderly conduct or loitering at Champions. Significantly, Champions’ own staff has added to these problems. For example, Champions’ security staff let in a visibly intoxicated customer who had previously been asked to leave, not once but twice.¹⁸¹ This customer then became involved in a fight with another customer, and ended up with very serious injuries.¹⁸² Champions’ security staff also permitted open

¹⁷⁴ Ex. 40.

¹⁷⁵ Ex. 40.

¹⁷⁶ Exs. 29, 36, 40.

¹⁷⁷ Ex. 48.

¹⁷⁸ Test. of G. Wilson; Ex. 48.

¹⁷⁹ Ex. 26; Ex. 48.

¹⁸⁰ Ex. 48.

¹⁸¹ Ex. 40.

¹⁸² *Id.*

smoking of marijuana, and allowed known drug dealers on the Trespass list to enter Champions, contrary to the bar's own policy.¹⁸³ In addition, Champions' security staff allowed dancing at the bar, even though dancing is not allowed under its Class E license.¹⁸⁴ Moreover, Champions' bar staff has served customers to the point of intoxication.¹⁸⁵ These customers have then become involved in fights at the bar. Finally, Champions' own head of security committed a crime, solicitation of prostitution, while at Champions.¹⁸⁶ Together, the facts demonstrate that Champions' security staff is not effective and have allowed criminal activity and disorderly conduct to persist.

In summary, Champions has failed to provide adequate security as required by M.C.O. § 259.250(4). In addition, as discussed above, the record also demonstrates that Champions has failed to comply with M.C.O. § 259.250(2) and (9).

Because the City has demonstrated that Champions has failed to comply with M.C.O. § 259.250 on repeated occasions, the City has demonstrated sufficient grounds for non-renewal of Champions' liquor license pursuant to that ordinance. Moreover, when the serious and frequent nature of the illegal conduct at Champions (including assaults, drug dealing, open marijuana smoking, loitering, serving customers to the point of intoxication, and dancing) is weighed against the benefits of continued operation (25 jobs and charitable donations), it is clear that the renewal of Champions' license is not in the public interest. Even when the drug deals from the undercover operation are not considered, the record demonstrates that renewal of Champions' license is not in the public interest given the other serious and frequent violations of M.C.O. § 259.250.¹⁸⁷ For these reasons, in the view of the Administrative Law Judge, it is not in the public interest to permit Champions to continue to operate.

License Conditions

One alternative the City could consider to non-renewal of Champions' license is to renew Champions' license with strict conditions. M.C.O. § 362.365 authorizes the City to impose conditions on a liquor license, upon finding "good cause," to "preserve the public peace and protect and promote good order, livability and security." The City could adopt this alternative if it determines that renewal of Champions' license with *new, strict conditions* would be in the public interest. For the reasons discussed above, continued operation of Champions with no new conditions is not in the public interest.

Champions argues that in considering whether "good cause" exists to impose conditions pursuant to M.C.O. § 362.365 the City can only consider events that occurred after February 22, 2013, the date the ordinance went into effect. Champions argues that consideration of events that occurred prior to February 22, 2013 violates the

¹⁸³ Ex. 15; Ex. 25; Ex. 37; Test. of S. Metcalf.

¹⁸⁴ Ex. 48.

¹⁸⁵ Ex. 40; Ex. 29; Ex. 36.

¹⁸⁶ Ex. 38; Test. of S. Metcalf; Test. of I. Randle.

¹⁸⁷ See Minn. Stat. § 340A.412, subd. 2.

prohibition against *ex post facto* laws in the Minnesota Constitution.¹⁸⁸ An *ex post facto* law is a law that “renders an act punishable in a manner in which it was not punishable when it was committed.”¹⁸⁹ The Constitutional prohibition against *ex post facto* laws only applies to a law if it is punitive, not regulatory, and if the law meets the other criteria of an *ex post facto* law.¹⁹⁰ The civil ordinance at issue here, M.C.O. § 362.365, is not punitive in nature. Rather, it is intended to “preserve the public peace and protect and promote good order, livability and security.”¹⁹¹ Therefore, the *ex post facto* prohibition is not applicable.

Champions also argues that consideration of events that occurred prior to February 2012 would violate “Champions’ constitutional right to due process.”¹⁹² Champions, however, cites no legal authority in support of its position other than Constitutional prohibition against *ex post facto* laws. As discussed above, that provision does not apply to the ordinance at issue here. In addition, Champions’ due process argument lacks merit for other reasons. The ordinance at issue here provides a means of addressing conduct at a licensed establishment. This recent authority is in addition to the City’s long-standing authority of non-renewal, suspension, and revocation.¹⁹³ That authority dates back to 1985.¹⁹⁴ Given that Champions knew prior to engaging in the conduct at issue in this case that non-renewal was a possible result, there is no basis to find that Champions might have changed its conduct if it knew that conditions might be added to its license as a result of the same conduct. Moreover, Champions did not file its application for renewal until May 29, 2013, three months after the adoption of the ordinance authorizing the City to impose conditions on a liquor license. Thus, Champions knew or should have known at the time that it requested renewal of its liquor license that conditions could be imposed by the City upon a finding of “good cause.”¹⁹⁵ In summary, there is no basis to find a denial of due process.¹⁹⁶

Finally, nothing in the ordinance limits the City’s consideration to events that occurred after the enactment of the ordinance. Therefore, both events that occurred

¹⁸⁸ Respondents’ Post-Hearing Brief at 39.

¹⁸⁹ *Starkweather v. Blair*, 71 N.W.2d 869, 879 (Minn. 1955).

¹⁹⁰ See *State v. Manning*, 532 N.W.2d 244, 247 (Minn. Ct. App. 1995) (holding that Minnesota’s offender registration statute did not violate the prohibition against *ex post facto* laws because the statute is not punitive; also specifying that “to constitute an *ex post facto* law, a statute must: (1) punish as a crime an act which was innocent when committed; (2) increase the burden of punishment for a crime after its commission; or (3) deprive one charged with a crime of a defense that was available when it was committed”); see also, *Williams v. Commissioner of the Department of Health*, 2008 WL 2168417 (May 27, 2008) (unpublished) (holding that Minnesota’s disqualification statute did not violate the prohibition against *ex-post facto* laws; stating that the *ex post facto* clause only applies to a civil law if it is so “punitive in purpose or effect as to subject it to the [*ex post facto*] prohibition”).

¹⁹¹ M.C.O. § 362.365.

¹⁹² Respondents’ Post-Hearing Brief at 39.

¹⁹³ See Minn. Stat. §§ 340A.412, 340A.415 (enacted in 1985).

¹⁹⁴ 1985 Minn. Laws Ch. 305, Art. 6, § 12.

¹⁹⁵ See Ex. 1 (Champions’ License Renewal Application dated May 29, 2013).

¹⁹⁶ See *Bhalerao v. Illinois Department of Financial and Professional Regulations*, 834 F. Supp. 2d 775 (N.D. Ill. 2011) (finding no due process violation for revocation of a medical license pursuant to a statute that authorizes revocation based on a criminal conviction that occurred prior to the passage of the statute).

before and after the enactment of Minneapolis City Ordinance Section 362.365 are properly considered in determining whether "good cause" exists to impose conditions on Champions' liquor license as part of the renewal process.

Here, the record demonstrates that "good cause" exists to impose conditions on Champions' license if it is renewed. As the facts outlined above show, Champions' security has not been adequate to prevent criminal activity or disorderly conduct. In addition, Champions' staff have themselves violated the law, exercised poor judgment, and failed to comply with license requirements. For these reasons as discussed more fully above in the preceding sections, good cause exists to impose conditions on Champions' license.

If the City does decide to impose conditions on Champions' license, the Administrative Law Judge recommends that the City consider the following conditions:

- Require Champions to hire a professional, outside security firm;
- Require Champions to put in place measures to limit access to the parking lot;
- Have security staff monitor the parking lot on a frequent basis;
- Have the security staff actively monitor the smoking areas for smoking of marijuana;
- Hire off-duty police officers on Wednesdays, Fridays, and Saturdays from 9 p.m. until closing, if the Police Department is agreeable to allowing such off-duty work again; and
- Re-train all staff serving alcohol regarding when to stop serving alcohol to a customer.

Finally, the Administrative Law Judge also respectfully suggests that the City consider moving the bus stop on the corner of West Lake Street and Blaisdell Avenue, near Champions, to an alternative location. The evidence in this case shows that sales of illegal drugs were made both on Champions' premises and at the bus stop. Both locations need to be addressed to reduce the drug activity in the area.

J. M. C.

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CERTIFICATE OF SERVICE

In the matter of the Class E Liquor License held by Starmac, Inc. and Richard P. Nelson d/b/a Champions Saloon & Eatery	OAH Docket No.: 68-6010-30397
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Kendra McCausland, certifies that on February 6, 2014, she served a true and correct copy of the attached **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** by placing it in the United States mail or by courier service with postage prepaid, addressed to the following individuals:

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