



Information
Memorandum

CITY OF SAINT PAUL

TO: COUNCILMEMBERS
City of Saint Paul

DATE: November 17, 2021

FROM: STEPHEN EARNEST
Assistant City Attorney

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SUBJECT: ***Background Information for One Stop Resolution***

Before you is a resolution imposing a \$1,000.00 fine against the cigarette/tobacco license (“License”) held by Zakariya Abukhudeer, d/b/a The One Stop Market, LLC (“Licensee”), for the premises located at 1541 Maryland Avenue in Saint Paul (“Licensed Premises”). This memorandum is intended to provide you with background information about the underlying matter so as to give context to the Department of Safety and Inspections’s (“Department”) recommendation.

A. BACKGROUND AND PROCEDURAL HISTORY.

On September 10, 2020, the Department initiated adverse action proceedings against the License by filing a Notice of Violation (“Notice”), in which the Department alleged that the Licensee committed the following violations:

- Selling single cigarettes and flavored tobacco products, in violation of sections 324.07(a) and (f) of the Saint Paul Legislative Code (“Code”);
- Allowing patrons to smoke cigarettes inside the Licensed Premises, in violation of the Minnesota Clean Indoor Air Act and section 310.06(b)(6)(a) of the Code;
- Failing to maintain his store’s surveillance equipment and failing to provide a copy of requested surveillance video footage to the Department, in violation of License condition #3 and section 310.06(b)(6) of the Code; and
- Permitting three separate incidents of loitering and/or violent, dangerous behavior to occur on the Licensed Premises on March 30, June 1, and July 20, 2020, in violation of License condition #2 and sections 310.06(b)(5)–(8) of the Code.

These alleged violations were the Licensee's first violations of the Code. Under the penalty matrix contained in section 310.05(m) of the Code, the presumptive penalty for first-time violations is a \$500.00 fine. However, council is allowed to deviate from the presumptive penalty if there are "substantial and compelling reasons" that make the deviation appropriate.

Due to the number of violations committed by the Licensee, as well as the shocking nature of the violations, the Department believed that "substantial and compelling reasons" to deviate from the presumptive penalty existed and recommended a double upward departure to a \$2,000.00 fine and a 10-day suspension of the License. After identifying additional incidents of sales of single cigarettes and flavored tobacco products by the Licensee, the Department amended the Notice to recommend a greater-than-double upward departure to revocation of the License.

In response to the amended Notice, the Licensee requested an evidentiary hearing before an administrative law judge and the matter was assigned to Administrative Law Judge James E. LaFave ("Judge LaFave"). On April 26, 2021, the Department filed a Motion for Summary Disposition ("Motion") in the matter, seeking summary disposition on all of the violations alleged in the amended Notice.¹ A hearing on the Motion was held before Judge LaFave on May 28, 2021.

B. JUDGE LAFAVE'S RECOMMENDATION.

On September 7, 2021, Judge LaFave issued his Recommendation and Order on the Motion ("Recommendation"). In the Alleged Violations and Argument section of the Recommendation, he found that there was sufficient proof that the Licensee had violated the Minnesota Clean Indoor Air Act and sections 310.05(b)(6)(a), 324.07(a), and 342.07(f) of the Code by selling single cigarettes and flavored tobacco products and by allowing customers to smoke cigarettes inside of the Licensed Premises. Accordingly, he granted summary disposition on these violations. However, he found that there was insufficient proof to support the remaining allegations and ordered that these allegations be continued to an evidentiary hearing.

In the Penalty section of the Recommendation, Judge LaFave highlighted the requirement that council must have "substantial and compelling reasons" to depart from the presumptive penalty and observed that this language is similar to language found in

¹ Summary disposition is a procedural device that allows an administrative law judge to resolve issues on which there is no genuine issue of material. If the judge grants summary disposition on an issue, the issue is decided as a matter of law without an evidentiary hearing. If the judge denies summary disposition, that issue is continued to an evidentiary hearing at which the alleging party has the burden of proving their allegation.

the Minnesota Sentencing Guidelines that requires “substantial and compelling circumstances” to depart from the presumptive sentence for criminal convictions. He also observed that the Minnesota Supreme Court has required “severe, aggravating, and factually atypical circumstances” to warrant a greater-than-double upward departure from the presumptive sentence contained in the Minnesota Sentencing Guidelines.

Based on these observations, Judge LaFave recommended that a \$1,000.00 fine be imposed against the License for the violations on which he granted summary disposition. He explained that this penalty was appropriate because these violations provided the “substantial and compelling reasons” for an upward departure beyond the presumptive penalty of a \$500.00 fine. He further explained that a greater-than-double upward departure to revocation—which is what the Department had recommended—based on these violations was inappropriate because they did not constitute the “severe, aggravating, and atypical circumstances” that, according to his judgment, were required to support revocation. Importantly, Judge LaFave indicated that even if the remaining allegations were proven at an evidentiary hearing, they would likely not support revocation either, for the same reasons.

C. THE DEPARTMENT’S RECOMMENDATION.

The resolution imposes a \$1,000.00 fine against the License for the violations on which Judge LaFave granted summary disposition. In light of the background information presented in the paragraphs above, including the reasoning behind Judge LaFave’s recommendation, the Department recommends that you adopt this resolution and not move forward on the remaining allegations against the License. However, if you would prefer to explore other options, such as upwardly departing to revocation of the License based on the remaining allegations, the Department requests that you allow it to first try these allegations at an evidentiary hearing before you take such action.