



January 17, 2023

Via: cityclerk@ci.stpaul.mn.us

City Council
City of Saint Paul
310 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102

4927 34TH AVENUE SOUTH
100 NOKOMIS PROFESSIONAL BUILDING
MINNEAPOLIS, MINNESOTA 55417

Re: *In the Matter of the Cigarette/Tobacco License held by Zakariya Abukhudeer d/b/a The One Stop Market, LLC, for the premises located at city ward is 1541 Maryland Avenue in Saint Paul License ID # 20190001624 OAH 80-6020-37157*



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Dear City Council Members and Mayor Carter:

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I represent Zakariya Abukhudeer d/b/a The One Stop Market, LLC. As you know, we had a trial on the allegations lodged by the City that was held on July 25, 26, and 27, 2022 before the Honorable Administrative Law Judge Laura Sue Schlatter for the above matter. Judge Schlatter has filed 30 pages of detailed and thorough Findings of Fact, Conclusions of Law, and Recommendation (Opinion). Judge Schlatter concluded that that the City failed to demonstrate by a preponderance of the evidence that the Licensee violated the license conditions, or the related provisions of the Saint Paul Legislative Code. Opinion, p. 30.

This case was previously before you after a summary disposition motion by the City that was decided by the Honorable Administrative Law Judge James LaFave. Judge LaFave had issued a Recommendation and Order dated September 7, 2021 that found The One Stop had violated the Minnesota Clean Indoor Air Act by allowing patrons to smoke in the store and violated Saint Paul Legislative Code § 324.07(a) and (f) relating to the sale of single cigarettes and flavored tobacco products in June and July 2020. Judge LaFave’s Recommendation and Order further denied the City’s motion as it related to the issues that were tried this past summer.

MARK K. THOMPSON



Judge LaFave's Recommendation and Order recommended that the City impose a \$1,000.00 fine against The One Stop and dismiss the remaining allegations that have now been tried. After the Department of Safety and Inspections (DSI) requested Judge LaFave's Recommendation and Order be certified, without objection by The One Stop, it was certified by an Order dated October 8, 2021.

The certified Order was considered by the City Council at a public hearing on November 17, 2021. On December 28, 2021, the City Council and Mayor Carter issued Resolution 21-1813 that remanded the case back to the Administrative Law Judge so that the remaining allegations could be fully tried at the evidentiary hearings that were conducted July 25, 26, and 27, 2022.

Now the matter is before you again with the Administrative Law Judge finding the City failed to meet its burden of proof on any of those remaining allegations and recommending that the same \$1,000.00 fine be imposed as a penalty. I agree and urge you to adopt the recommendation now made by two Administrative Law Judges.

More specifically, regarding the allegations by the City over a shooting that occurred on March 30, 2020, Judge Schlatter found that the City relied on the conclusions made by DSI Licensing Manager Eric Hudak and Sargent Robert A. Stanway from the SPPD after they had reviewed a video recording of the incident. Both gentlemen had concluded that One Stop failed to take reasonable steps to discourage loitering that day.

However, neither one could identify all of The One Stop employees present in the video, both had initially and wrongfully assumed who the shooter was (with Hudak maintaining his belief dispute video evidence to the contrary), and neither had any significant experience (or even knowledge in Hudak's case) of the conditions in One Stop's neighborhood. The Administrative Law Judge found that a One Stop employee put himself too much at risk while attempting to get people to leave the parking lot before the shooting occurred. In the end, the Administrative Law Judge found there was no basis to conclude the source of the shooting was as the

City assumed. Based in part on *highly credible and relevant* testimony in favor of The One Stop by SPPD Sargent Mike Dunaski, who deals with gangs, drugs, and violent crime in that area daily, the Administrative Law Judge found The One Stop took reasonable steps to discourage loitering. Regarding the allegations involving One Stop's failure to produce a video recording, the Administrative Law Judge found:

The DSI has not shown by a preponderance of the evidence that OSM's inability to provide the requested video by May 4 constituted a violation in substance of condition 3. For the City to refuse to excuse a single failure to comply with a request due to an accident, especially when there are no written exceptions for compliance, and the [Hudak's] testimony would have allowed one only for an "act of God or nature" *appears to be an act of the City's whim rather than its judgment.*

Opinion, p. 26 (emphasis provided).

Regarding the allegations over the June 1, 2020 incident, the Administrative Law Judge concluded:

Based on all the evidence in the record, alleged firearms violations, and the alleged loitering violations, including allowing an uncontrolled and dangerous environment, are not supported by a preponderance of the evidence. The evidence shows that the employees of the OSM did all they reasonably could to control an unruly, drunk crowd that invaded the store.

Opinion, p. 29.

I urge you to adopt the Administrative Law Judge's recommendation and impose a \$1,000.00 fine on The One Stop on this first appearance before you.

Sincerely,

MKT LAW, PLC



Mark K. Thompson

Enc. (One Stop's Closing Brief)

Cc: The One Stop