



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDSEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

September 15, 2023

**NOTICE OF VIOLATION
RECOMMENDATION FOR IMPOSITION OF \$500 MATRIX PENALTY
FOR TOBACCO YOUTH COMPLIANCE CHECK FAILURE**

Northern Tier Retail, LLC
d/b/a Speedway #4419
925 Grand Avenue
Saint Paul, MN 55105
Attn: Rex Dutcher

RE: Tobacco Shop, Gas Station and Malt Off-Sale licenses held by Northern Tier Retail, LLC d/b/a Speedway #4419
for the premises located at 925 Grand Avenue in Saint Paul
License ID #: 20100004253

Mr. Dutcher:

The Department of Safety and Inspections ("Department") will recommend adverse action against the Tobacco Shop license held by Northern Tier Retail, LLC d/b/a Speedway #4419 ("Licensee") for the premises located at 925 Grand Avenue in Saint Paul ("Licensed Premises").

Minnesota Statute § 461.12, Subd. 5 states: "A licensing authority shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold to test compliance with sections 609.685 and 609.6855."

Saint Paul Legislative Code Section 310.04 sets forth a variety of reasons under which adverse actions can be based. Section 310.04(b)(6)(c) states that adverse action can be pursued for failure to comply with laws related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.

Saint Paul Legislative Code Section 310.04 (b) (8) states that adverse action can be pursued because "the licensed business, or the way such business is operated, maintains or permits conditions that unreasonable annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public."

Saint Paul Legislative Code §324.07(i) prohibits the sale of tobacco products to person under the age of twenty-one (21) years.

Minnesota Statute §609.685, Subd. 1.a also prohibits the sale of tobacco to persons under age 21.

Saint Paul Legislative Code §324.10 (b) (1) sets forth the penalty of \$500 for a first-time violation for the sale of tobacco products to a person under twenty-one (21) years of age.

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

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*The Saint Paul City Attorney's Office does not discriminate
based on race, color, national origin, religion, sex/gender, disability, sexual orientation, gender identity, age, or veteran status
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The Department asserts the following facts along with attachments herein constitute proof of a violation of Saint Paul Legislative Code §324.07(i) and Minnesota Statute § 609.685, Subd. 1.a by a preponderance of the evidence.

Synopsis of alleged facts:

On August 21, 2023 at 11:02 a.m., a tobacco compliance check was conducted at Speedway #4419 at 925 Grand Avenue. An eighteen (18) year-old female entered your store to purchase cigarettes. She was not asked her age or to show her identification which would have indicated she was underage. The clerk then sold her a package of Natural American Spirit (Blue) cigarettes. Inspector Vang came into the establishment after the sale and spoke to the clerk, Stephon Troter. He was informed that he failed the youth compliance check by selling Natural American Spirit (Blue) cigarettes to an underage person.

As the Licensee you have four (4) options:

1. If you do not contest the imposition of the proposed adverse action, you may do nothing. If I have not heard from you by **Monday, September 25, 2023**, I will presume that you have chosen not to contest the proposed adverse action and the matter will be placed on the City Council Consent Agenda for approval of the proposed remedy.
2. You can admit to the violation and pay the \$500 matrix penalty. If this is your choice, send the payment directly to DSI at 375 Jackson Street, Ste. 220, St. Paul, Minnesota 55101-1806 no later than **Monday, September 25, 2023**. A self-addressed envelope is enclosed for your convenience. Payment of the \$500 matrix penalty will be considered a waiver of the hearing to which you are entitled.
3. If you wish to admit the facts but you contest the \$500 matrix penalty, you may have a hearing before the Saint Paul City Council. You will need to send me a letter with a statement admitting to the facts and requesting a hearing no later than **Monday, September 25, 2023**. The matter will then be scheduled before the City Council to determine whether to impose the \$500 matrix penalty. You will have an opportunity to appear before the Council and make a statement on your own behalf.
4. If you dispute the facts outlined above, you may request a hearing before an Administrative Law Judge (ALJ). You will need to send me a letter disputing the facts and requesting an administrative hearing no later than **Monday, September 25, 2023**. At that hearing both you and the City will appear and present witnesses, evidence and cross-examine each other's witnesses. After receipt of the ALJ's report (usually within 30 days), a public hearing will need to be scheduled. At that time, the City Council will decide whether to adopt, modify or reject the ALJ's report and recommendation.

Please note: If you choose an administrative hearing, the Department of Safety and Inspections reserves the right to request that City Council impose the costs of the administrative hearing, per Saint Paul Legislative Code § 310.03 (k).

If you have not contacted me by Monday, September 25, 2023, I will assume that you do not contest the imposition of the \$500 matrix penalty. In that case, the matter will be placed on the City Council Consent Agenda for approval of the recommended penalty.

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MELVIN CARTER, MAYOR

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Please be advised the clerk who made the sale on this date and will be charged a \$50.00 administrative penalty pursuant to Minn. Stat. §461.12, subd. 3. This is a separate action from this license matter.

If you have questions about these options, please contact Julie Kraus my Legal Assistant at (651) 266-8776.

Sincerely,

/s/

Therese Skarda
Assistant City Attorney
License No.: 0240989

cc: Rex Dutcher, 106 Dodingtown Road, Bethel, CT 06801
Realty Income Properties 3, LLC, P.O. Box 182597, Columbus, OH 43218-2597
Monica Haas, Executive Director, Summit Hill Association, Linwood Recreation Center
860 St. Clair Avenue West, Saint Paul, MN 55105

Attachments: Inspector's Report
Adverse Action Comments Text
License Group Conditions Text
License Group Comments Text
Tobacco Youth Compliance Check Purchase Form
Clerk Identification Form
Photo of purchased cigarettes
Saint Paul Legislative Code §310.04
Saint Paul Legislative Code §324.07
Saint Paul Legislative Code §324.10
Minnesota Statute §461.12
Minnesota Statute §609.685

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

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STATE OF MINNESOTA)

) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Julie Kraus, being first duly sworn, deposes and says that on the 15th day of September she served the attached **NOTICE OF VIOLATION AND REQUEST FOR IMPOSITION OF \$500 MATRIX PENALTY FOR TOBACCO YOUTH COMPLIANCE CHECK FAILURE** as follows:

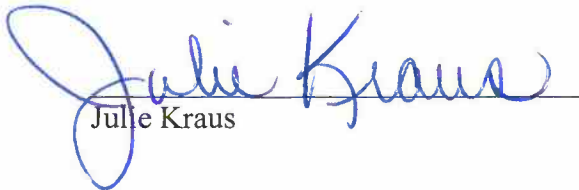
Northern Tier Retail, LLC
d/b/a Speedway #4419
925 Grand Avenue
Saint Paul, MN 55105
Attn: Rex Dutcher

Rex Dutcher
106 Dodingtown Road
Bethel, CT 06801

Realty Income Properties 3, LLC
P.O. Box 182597
Columbus, OH 43218-2597

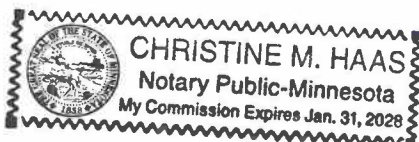
Monica Haas, Executive Director
Summit Hill Association
Linwood Recreation Center
860 St. Clair Avenue West
Saint Paul, MN 55105

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.


Julie Kraus

Subscribed and sworn to before me
This 15th day of September 2023


Notary Public





Inspector's Report

Inspectors Name: Allan Vang

Date & Time: 8/21/2023 at 11:02 AM Staff Member's Name: Stephon Troter

Business/DBA Name: Speedway #4419

Property Address: 925 Grand Avenue- St. Paul, MN 55105

Reason for Visit: 2023 Tobacco compliance check

Observations: _____

Photos Taken: ☒ Yes ☐ No – Area(s) of where the Photo(s) where taken: _____

Action Taken: ☐ Education / warning

☒ Request for Adverse Action

Other: _____

Details of Conversations (Statements to and by Person Responsible for Property):

Upon arrival I spoke to the clerk Stephon, I introduced myself as a Licensing Inspector for the City of Saint Paul Department of Safety & Inspections. I informed Stephon that he had failed a tobacco compliance check, an attempted purchase of a Natural American Spirit (Blue) was successfully made from an underage buyer at 11:02 am.



Adverse Action Comments Text

09/08/2023

Licensee: NORTHERN TIER RETAIL LLC

DBA: SPEEDWAY #4419

License #: 20100004253

6/12/2019- Sent Notice of Violation with a 6/25/2019 deadline to respond. SM

License Group Comments Text

09/08/2023

Licensee: NORTHERN TIER RETAIL LLC

DBA: SPEEDWAY #4419

License #: 20100004253

8/21/2023 Tobacco compliance check Failed. AYV
7/20/2022 Passed underage buyers' tobacco compliance check JNV
8/31/2021 Youth Tobacco compliance pass KY
12/10/2020 Delinquent letter sent. Response deadline date is December 31, 2020. SLH
8/15/2019 letter sent for violation withdraw JNV
7/25/2019 Adverse Action withdraw after review - there is no penalty fee for violation JNV
6/21/19 Youth tobacco compliance check, pass. ARM
5/1/19 To CAO 1st violation/flavor.KS
04/17/2019 Flavor and Price Compliance Check: Failed. DC
12/7/2018 Per renewal invoice- Name was changed from Northern Tier Retail LLC DBA SuperAmerica #4419 to Northern Tier Retail LLC DBA Speedway #4419. rdd.
8/6/2018 Tobacco youth compliance check-Pass JNV
4/25/2018 Menthol education / inspection Pass JNV
07/07/2017 Passed tobacco compliance check BLB
8/02/2016 Passed Tobacco Compliance Check BLB
7/16/2015 passed tobacco compliance check BLB
08/20/2014 Passed tobacco comp. check. TPF/akn
10/09/2013 - Sent letter passed liquor compliance check done by SPPD on 10/07/2013. ML
08/22/2013 passed tobacco compliance check. TPF
10/19/2012 Passed tobacco compliance check. TPF
07/31/2012 Passed tobacco compliance check. PF
03/29/2012 Sent congratulation letter for passing liquor compliance check done by S.P.P.D on Mach 1, 2012. ml
08/09/2011 Passed tobacco compliance check. JWF
12/20/2010 No objections to license notification per Nhia Vang's office, Leg. Hearing Officer. Received signed license condition affidavit. JWF
11/02/2010 License notification sent, 63M/35EM, response date 12/17/2010. JWF

Licensee: NORTHERN TIER RETAIL LLC

DBA: SPEEDWAY #4419

License #: 20100004253

1. Pick up litter once a day.
Per Conditional Use Permit #01-208086
2. No drive-up pay phone is permitted on this site, but a walk-up pay phone affixed to the exterior of the building is permitted.
3. An ornamental metal fence along the sidewalk with a hedge planted behind the fence shall be installed and maintained as approved through the site plan review process of the Department of Safety and Inspections (DSI).



SAINT PAUL
SAFETY & INSPECTIONS

DEPARTMENT OF SAFETY & INSPECTIONS (DSI)
ANGIE WIESE, DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8989 | Fax: 651-266-9124

Tobacco Underage Buyers/Minor Compliance Check Purchase Form

20100004253
SPEEDWAY #4419
925 GRAND AVE

16

Fail

Business Type:

☐ Convenience ☒ Convenience / Gas ☐ Gas ☐ Drug Store / Pharmacy ☐ Tobacco Product Shop
☐ Supermarket / Grocery ☐ General Merchant ☐ Liquor Store / Bar Restaurant ☐ Other (private club, bowling, etc.)

Inspector: Allan Vang
Name

Date: 8 / 21 / 2023
MM DD YY

Time: 11:02 a.m. / p.m.

Was purchase attempted?

☒ Yes ☐ No

If NO, check reason:

☐ Does not sell tobacco ☐ Unsatisfactory/unsafe conditions
☐ After business hours ☐ Out of business
☐ Not applicable ☐ Other _____

Underage Buyer:

Name

Age
18

Sex
F

Did adult or Inspector/Officer view transaction?

☒ Yes ☐ No

Was sale made?

☒ Yes ☐ No

Was age asked?

☐ Yes ☒ No

Was ID requested?

☐ Yes ☒ No

Was ID shown?

☐ Yes ☒ No

Type of purchase:

☐ Self Service
☐ Clerk assisted
☐ Vending machine - Unlocked
Location of machine _____
☐ Vending machine - Locked
Location of machine _____

Type of product:

☐ Cigarettes _____
☐ Smokeless _____
☐ Cigars _____
☐ Shisha _____
☐ E-juice _____
☐ Other (cigarette papers, lighter, etc.) _____

Amount spent: \$.

Clerk Information: ☒ Female ☐ Male Approximate Age: ☒ 18 or ☐ Under 18 Actual age if known _____



Clerk Identification Form

As it appears on Driver's License or State I.D. Card

Name: Stephon Troter

Primary address: -

Secondary address: -

City: -

State: -

Zip code: -

DOB: - / - / -

Identification Number: -

Place Snip of I.D. below





SAINT PAUL
SAFETY & INSPECTIONS

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8989 | Fax: 651-266-9124

Tobacco Underage Buyers/Minor Compliance Check Purchase Form

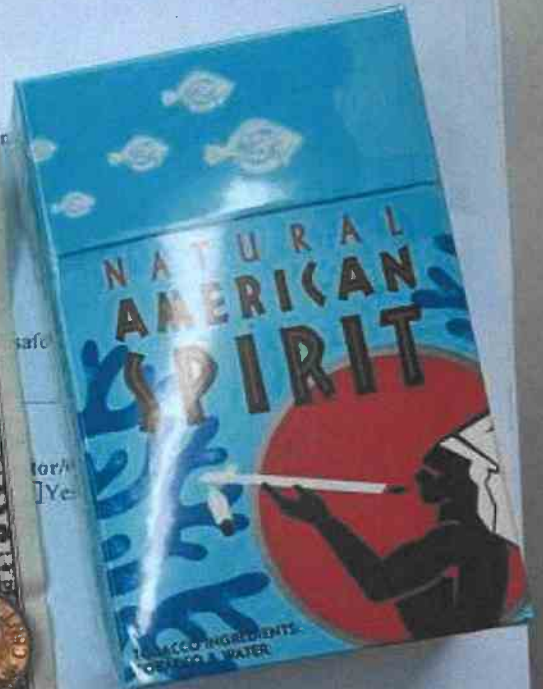
20100004253
SPEEDWAY #4419
925 GRAND AVE

16

Business Type:

☐ Convenience ☒ Convenience ☐ Supermarket

Inspector: A



Amount spent: \$

Clerk
Name
City &
Driver
Desc

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

AN AFFIRMATIVE ACTION &
EQUAL OPPORTUNITY EMPLOYER

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SECTION 5

Section 310.06 is renumbered as 310.04 and amended as follows:

Sec. 310.04. Revocation; suspension; adverse actions; imposition of conditions.

(a) *Council may take adverse action.* The council is authorized to take adverse action, as defined in section 310.01 above, against any or all licenses or permits, licensee or applicant for a license, as provided in and by these chapters. Adverse actions against entertainment licenses issued under chapter 411 of the Legislative Code may be initiated for the reasons set forth in subsection (b) below, or upon any lawful grounds which are communicated to the license holder in writing prior to the hearing before the council. Such actions must be initiated and carried out in accordance with the procedures outlined in section 310.03; provided, however, that the formal notice of hearing must be used to initiate the adverse action.

(b) *Basis for action.* Such adverse action may be based on one (1) or more of the following reasons, which are in addition to any other reason specifically provided by law or in these chapters:

(1) The license or permit was procured by misrepresentation of material facts, fraud, deceit or bad faith.

(2) The applicant or one acting in his or her behalf made oral or written misstatements or misrepresentations of material facts in or accompanying the application.

(3) The license was issued in violation of any of the provisions of the zoning code, or the premises which are licensed, or which are to be licensed do not comply with applicable health, housing, fire, zoning and building codes and regulations.

(4) The license or permit was issued in violation of law, without authority, or under a material mistake of fact.

(5) The licensee or applicant has failed to comply with any condition set forth in the license or set forth in the resolution granting or renewing the license.

(6) a. The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith;

b. The licensee or applicant has been convicted of a crime that may disqualify said applicant from holding the license in question under the standards and procedures in Minnesota Statutes chapter 364; or

c. The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.

(7) The activities of the licensee in the licensed activity created or have created a serious danger to the public health, safety or welfare, or the licensee performs or has performed his or her work or activity in an unsafe manner.

(8) The licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.

(9) Failure to keep sidewalks or pedestrian ways reasonably free of snow and ice as required under chapter 114 of the Saint Paul Legislative Code.

(10) The licensee or applicant has shown by past misconduct or unfair acts or dealings: physical abuse, assaults or violent actions done to others, including, but not limited to, actions meeting the definition of criminal sexual conduct pursuant to Minnesota Statutes sections 609.342 through 609.3451; sexual abuse, physical abuse or maltreatment of a child as defined in Minnesota Statutes section 626.556, subdivisions 2 and 10e, including, but not limited to, acts which constitute a violation of Minnesota Statutes sections 609.02, subdivision 10; 609.321 through 609.3451; or 617.246; neglect or endangerment of a child as defined in Minnesota Statutes section 626.557, subdivision 2; the manufacture, distribution, sale, gift, delivery, transportation, exchange or barter of a controlled substance as defined in Minnesota Statutes chapter 152; the possession of a controlled substance as defined in Minnesota Statutes chapter 152 in such quantities or under circumstances giving rise to a reasonable inference that the possession was for the purpose of sale or distribution to others; or by the abuse of alcohol or other drugs, that such licensee or applicant is not a person of the good moral character or fitness required to engage in a licensed activity, business or profession.

(11) The licensee or applicant has materially changed or permitted a material change in the design, construction or configuration of the licensed premises without the prior approval of the city council in the case of Class N licenses, the Director in the case of Class T licenses, and the Director in the case of Class R licenses, or without first having obtained the proper building permits from the city.

(12) The licensee or applicant has violated section 294.01 of the Legislative Code or has made or attempted to make a prohibited ex-parte contact with a council member as provided in section 310.03 (c-2) of the Legislative Code.

(13) The licensee violated the law, or any license condition and that violation is related to a death or great bodily harm, as defined in Minnesota Statute section 609.02, subd. 8, in or near the establishment.

Sec. 324.07. Sales prohibited.

- (a) No person may sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes may be sold individually or in packages of fewer than twenty (20) cigarettes.
- (b) No person may sell or dispense licensed products from a motor vehicle or other movable place of business.
- (c) No person may sell licensed products from vending machines unless the vending machines are in a facility that cannot be entered at any time by persons younger than twenty-one (21) years of age.
- (d) No person may offer for sale licensed products in any open displays which are accessible to the public without the intervention of a store employee. This restriction does not apply to establishments holding a tobacco products shop license.
- (e) No person may sell, offer for sale, or otherwise distribute cigars in original packages containing three (3) or fewer cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than two dollars and sixty cents (\$2.60) per cigar contained within. In addition, no person may sell, offer for sale, or otherwise distribute cigars in original packages of four (4) or more cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than ten dollars and forty cents (\$10.40) per package.
- (f) No person may sell or offer for retail sale cigarette packages or cartons for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per pack.
- (g) No person may sell or offer for retail sale moist snuff retail packages or multipacks for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per 1.2 ounce package. No person may sell or offer for retail sale any smokeless tobacco/moist snuff unless it is sold in a package of at least 1.2 ounces minimum package size. The price floor for packages larger than 1.2 ounces shall be computed by adding two dollars and fifty cents (\$2.50) for each 0.3 ounces or any fraction thereof in excess of 1.2 ounces, excluding all applicable taxes.
- (h) No person may sell or offer for sale or otherwise distribute snus for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per 0.32 ounce package. No person may sell or offer for retail sale any snus unless it is sold in a package of at least 0.32 ounces minimum pack size. The price floor for packages larger than 0.32 ounces shall be computed by adding two dollars and fifty cents (\$2.50) for each 0.08 ounces or any fraction thereof in excess of 0.32 ounces, excluding all applicable taxes.
- (i) No holder of a license issued under this chapter, nor any employee or agent of same may sell tobacco products to a person under the age of twenty-one (21) years. Sale to persons under the age of twenty-one (21) years prohibited.
 - (1) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in Minn. Stats. § 340A.503, subd. 6.
- (j) No person may sell, offer for sale, or otherwise distribute any flavored products, unless excepted under section 324.07(l) of this chapter.
- (k) *Coupons and price promotions.* No holder of a license issued under this chapter, nor any employee or agent of same, may:
 - (1) Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any price reduction instrument or other offer that provides any licensed product without charge or for less than the listed or non-discounted price; or

-
- (2) Sell or offer to sell licensed products, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any licensed products, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other licensed products.

Nothing in this chapter is intended to prohibit communication of pricing information or other truthful, non-misleading information to consumers.

(l) *Exceptions.*

- (1) Notwithstanding section (i), individuals exempted under Minn. Stats. § 609.685 are also exempt from this section.
- (2) The penalties in this section do not apply to a person under the age of twenty-one (21) years who purchases or attempts to purchase licensed products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.
- (3) Retail stores holding a tobacco products shop license are permitted to sell and offer for sale flavored tobacco products.

(m) Any violation of this chapter will subject the licensee to provisions of chapter 310 and section 324.10 of the Saint Paul Legislative Code.

(Code 1956, § 336.07; Ord. No. 17714, § 1, 2-20-90; C.F. No. 94-341, § 7, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 06-872, § 1, 10-11-06; C.F. No. 10-1014, § 2, 10-13-10; Ord 13-8, § 2, 4-24-13; Ord 14-34, § 2, 8-27-14; Ord 15-57, § 1, 1-6-16; Ord 17-28, § 2, 11-1-17; Ord 19-57, § 2, 10-16-19; Ord 21-29, § 7, 11-3-21)

Sec. 324.10. Presumptive penalties.

- (a) *Purpose.* The purpose of this section is to establish a standard by which the city council determines the amount of fines, length of license suspensions and the propriety of revocations for licensees. These penalties are presumed to be appropriate for every case; however, the council may deviate therefrom in an individual case where the council finds and determines that there exist substantial and compelling reasons which make it appropriate to do so, except, the council may not deviate below statewide minimum penalties for licensees. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate. Where no penalty is listed below, the presumptive penalty under Saint Paul Legislative Code Section 310.
- (b) *Presumptive penalties for licensees for violations.* Adverse penalties for licensees for violations or convictions shall be presumed as follows:

Type of Violation	Appearance			
	1st	2nd	3rd	4th
(1) Sale to a person under twenty-one (21) years of age	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 7-day suspension	Revocation
(2) Display, possession or multiple incidents of sales of; • single cigarettes; • menthol tobacco products; or • flavored tobacco products	10-day suspension	Revocation		

- (c) *Fines payable without hearing.* Notwithstanding the provisions of section 310.05(l), a licensee who would be making a first or second appearance before the council may elect to pay the fine to the department of safety and inspections without a council hearing, unless the notice of violation has indicated that a hearing is required because of circumstances which may warrant deviation from the presumptive fine amount. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled, and will be considered an "appearance" for the purpose of determining presumptive penalties for subsequent violations.
- (d) *Computation of time.* Except as otherwise provided by Minn. Stats. § 461.12, subd. 2, subsequent violations are subject to the following:
- (1) *Second, third and fourth appearances.* A second violation within twenty four (24) months shall be treated as a second appearance, a third within twenty four (24) months treated as a third appearance, and a fourth within twenty four (24) months treated as a fourth appearance for the purpose of determining the presumptive penalty.
 - (2) *Any appearance not covered by subsections (1) above shall be treated as a first appearance.* Measurement of the twenty four (24) month period shall be as follows: The beginning date shall be the earliest violation's date of appearance before the council, and the ending date shall be the date of the new violation. In case of multiple new violations, the ending date to be used shall be the date of the violation last in time.

(Ord. No. 17733, § 3, 5-8-90; C.F. No. 94-341, § 11, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 02-898, § 1, 11-6-02; C.F. No. 07-149, § 82, 3-28-07; Ord. No. 11-114, § 1, 12-28-11; Ord 15-57, § 1, 1-6-16; Ord 19-57, § 5, 10-16-19; Ord 21-29, § 10, 11-3-21)

Editor's note(s)—Ord 19-57, §§ 4, 5, repealed § 324.10 and renumbered § 324.11 as § 324.10. Former § 324.10 pertained to the use of tobacco prohibited and derived from Ord. No. 17733, § 2, adopted May 8, 1990; C.F. No. 94-341, § 10, adopted April 13, 1994; C.F. No. 97-314, § 1, adopted April 20, 1997; Ord 13-8, § 4, adopted April 24, 2013; and Ord 15-57, § 1, adopted January 6, 2016.

461.12 MUNICIPAL LICENSE OF TOBACCO, TOBACCO-RELATED DEVICES, AND SIMILAR PRODUCTS.

Subdivision 1. **Authorization.** A town board or the governing body of a home rule charter or statutory city may license and regulate the retail sale of tobacco, tobacco-related devices, and electronic delivery devices as defined in section 609.685, subdivision 1, and nicotine and lobelia delivery products as described in section 609.6855, and establish a license fee for sales to recover the estimated cost of enforcing this chapter. The county board shall license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products in unorganized territory of the county except on the State Fairgrounds and in a town or a home rule charter or statutory city if the town or city does not license and regulate retail sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products. The State Agricultural Society shall license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products on the State Fairgrounds. Retail establishments licensed by a town or city to sell tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products are not required to obtain a second license for the same location under the licensing ordinance of the county.

Subd. 2. **Administrative penalties for sales and furnishing; licensees.** If a licensee or employee of a licensee sells, gives, or otherwise furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years, or violates any other provision of this chapter, the licensee shall be charged an administrative penalty of \$300 for the first violation. An administrative penalty of \$600 must be imposed for a second violation at the same location within 36 months after the initial violation. For a third or any subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 must be imposed, and the licensee's authority to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at that location must be suspended for not less than seven days and may be revoked. No suspension, revocation, or other penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

Subd. 3. **Administrative penalty for sales and furnishing; individuals.** An individual who sells, gives, or otherwise furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years may be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

Subd. 4. **Alternative penalties for use of false identification; persons under age 21.** The licensing authority shall consult with interested persons, as applicable, including but not limited to educators, parents, guardians, persons under the age of 21 years, and representatives of the court system to develop alternative penalties for persons under the age of 21 years who purchase, or attempt to purchase, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products using a driver's license, permit, Minnesota identification card, or any other type of false identification to misrepresent the person's age, in violation of section 609.685 or 609.6855. The licensing authority and the interested persons shall consider a variety of alternative civil penalties, including, but not limited to, tobacco-free education; tobacco cessation programs; notice to schools and parents or guardians; community service; and court diversion programs. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.

Subd. 5. **Compliance checks.** A licensing authority shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco, tobacco-related devices, electronic delivery

devices, or nicotine or lobelia delivery products are sold to test compliance with sections 609.685 and 609.6855. Compliance checks conducted under this subdivision must involve persons at least 17 years of age, but under the age of 21, who, with the prior written consent of a parent or guardian if the person is under the age of 18, attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products under the direct supervision of a law enforcement officer or an employee of the licensing authority. The age requirements for persons participating in compliance checks under this subdivision shall not affect the age requirements in federal law for persons participating in federally required compliance checks of these locations.

Subd. 6. **Defense.** It is an affirmative defense to the charge of selling tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years in violation of subdivision 2 or 3 that the licensee or individual making the sale relied in good faith upon proof of age as described in section 340A.503, subdivision 6.

Subd. 7. **Judicial review.** Any person aggrieved by a decision under subdivision 2 or 3 may have the decision reviewed in the district court in the same manner and procedure as provided in section 462.361.

Subd. 8. **Notice to commissioner.** The licensing authority under this section shall, within 30 days of the issuance of a license, inform the commissioner of revenue of the licensee's name, address, trade name, and the effective and expiration dates of the license. The commissioner of revenue must also be informed of a license renewal, transfer, cancellation, suspension, or revocation during the license period.

History: 1941 c 242 s 3; 1941 c 405 s 3; 1951 c 382 s 1; Ex1959 c 73 s 2; 1973 c 123 art 5 s 7; 1982 c 572 s 2; 1997 c 227 s 4; 1Sp2001 c 5 art 7 s 63; 2010 c 255 s 7; 2010 c 305 s 4-9; 2014 c 291 art 6 s 28; 2020 c 88 s 4-8

609.685 SALE OF TOBACCO TO PERSONS UNDER AGE 21.

Subdivision 1. **Definitions.** For the purposes of this section, the following terms shall have the meanings respectively ascribed to them in this section.

(a) "Tobacco" means cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

(b) "Tobacco-related devices" means cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of aerosol or vapor of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

(c) "Electronic delivery device" means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. Electronic delivery device includes but is not limited to devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, tank systems, or under any other product name or descriptor. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device excludes drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

Subd. 1a. **Penalty to sell or furnish.** (a) Any person 21 years of age or older who sells, gives, or otherwise furnishes tobacco, tobacco-related devices, or electronic delivery devices to a person under the age of 21 years is guilty of a petty misdemeanor for the first violation. Whoever violates this subdivision a subsequent time within five years of a previous conviction under this subdivision is guilty of a misdemeanor.

(b) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in section 340A.503, subdivision 6.

Subd. 2. **Use of false identification.** A person under the age of 21 years who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices and who uses a driver's license, permit, Minnesota identification card, or any type of false identification to misrepresent the person's age, shall only be subject to an alternative civil penalty, in accordance with subdivision 2a.

Subd. 2a. **Alternative penalties.** Law enforcement and court system representatives shall consult, as applicable, with interested persons, including but not limited to parents, guardians, educators, and persons under the age of 21 years, to develop alternative civil penalties for persons under the age of 21 years who violate this section. Consulting participants shall consider a variety of alternative civil penalties including but not limited to tobacco-free education programs, community service, court diversion programs, and tobacco cessation programs, and for persons under the age of 18 years, notice to schools and to parents or guardians. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.