

WHEREAS, the Notice alleged that the Licensee sold single cigarettes and flavored tobacco products in violation of sections 324.07(a) and (f) of the Saint Paul Legislative Code; and

WHEREAS, the Notice further alleged that the Licensee allowed patrons to smoke cigarettes inside of the Licensed Premises in violation of the Minnesota Clean Indoor Air Act and section 310.06(b)(6)(a) of the Saint Paul Legislative Code; and

WHEREAS, the Notice further alleged that the Licensee violated License condition #3 and section 310.06(b)(6) of the Saint Paul Legislative Code by failing to properly maintain his surveillance equipment and by failing to provide a copy of surveillance video footage as requested by the City; and

WHEREAS, the Notice further alleged that the Licensee violated License condition #2 and sections 310.06(b)(5)-(8) of the Saint Paul Legislative Code based on the following incidents:

March 30, 2020	Assault and shots fired in parking lot
June 1, 2020	Crowd of individuals fighting in store
July 20, 2020	Large group of males gambling outside store

which occurred on and near the Licensed Premises; and

WHEREAS, the Notice stated that the City was taking adverse action against the License based on the aforementioned allegations and indicated that it would seek a double upward departure from the presumptive penalty to a \$2,000.00 fine and a 10-day suspension of the License; and

WHEREAS, on March 21, 2021, an amended Notice was sent to the Licensee was stating that the City intended to seek a greater-than-double upward departure from the presumptive penalty to revocation of the License based on evidence of additional incidents of sales of single cigarettes and flavored tobacco products identified in the videos already provided to you; and

WHEREAS, the Licensee responded to the amended Notice with a request for a hearing before an Administrative Law Judge; and

WHEREAS, on April 26, 2021, the City filed a Motion for Summary Disposition ("Motion"), seeking summary disposition on all of the violations alleged in the amended Notice; and

WHEREAS, a hearing was held on the Motion before Administrative Law Judge James E. LaFave ("Judge LaFave") on May 28, 2021; and

WHEREAS, on September 7, 2021, Judge LaFave issued a Recommendation and Order on Motion for Summary Disposition ("Recommendation"); and

WHEREAS, within his Recommendation, Judge LaFave found that there was sufficient proof that the Licensee had violated sections 310.06(b)(6)(a), 324.07(a), and 324.07(f) of the Saint Paul Legislative Code and the Minnesota Clean Indoor Air Act, but denied summary disposition on the remaining allegations and recommended that violations of Saint Paul Legislative Code sections 310.06(b)(5)-(8) and licensing condition #2 relating to the Licensee's conduct on March 30, 2020, June 1, 2020, and July 20, 2020 be continued to an evidentiary hearing; and

WHEREAS, Judge LaFave found that these violations were the Licensee's first violations of the Saint Paul Legislative Code; and

WHEREAS, under the penalty matrix contained in section 310.05(m) of the Saint Paul Legislative Code, the presumptive penalty for a first violation of the Legislative Code is a fine of \$500.00; and

WHEREAS, section 310.05(m) of the Saint Paul Legislative Code provides that the City Council "may deviate [from a presumptive penalty] in an individual case where [it] finds and determines that there exist substantial and compelling reasons making it more appropriate to do so"; and

WHEREAS, within his Recommendation, Judge LaFave observed that "[t]he requirement that the City Council have 'substantial and compelling reasons' to depart from the presumptive penalty provided in the matrix is similar to language found in the Minnesota Sentencing Guidelines that requires 'substantial and compelling circumstances' to depart from the presumptive sentence for criminal convictions"; and

WHEREAS, Judge LaFave further 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; and

WHEREAS, based on the foregoing analysis and the record before him, Judge LaFave recommended that "an upward departure to the second penalty box, a \$1,000.00 fine, be imposed"; and

WHEREAS, Judge LaFave explained his recommendation for an upward departure, concluding that the Licensee's "multiple sales of single cigarettes and flavored tobacco products" and "allowing patrons to smoke cigarettes while inside the store" provided the "substantial and compelling reasons" for an upward departure beyond the presumptive penalty of \$500.00; and

WHEREAS, Judge LaFave further explained that a greater-than-double upward departure to a penalty of revocation was inappropriate based on these violations because they did not constitute the "severe, aggravating, and atypical circumstances" that were required to support revocation; and

WHEREAS, Judge LaFave also indicated that the remaining allegations, even if proven at an evidentiary hearing, would not support revocation of the License; and

WHEREAS, a prehearing conference was held by telephone on September 27, 2021 to review the status of

the case and the parties agreed to certify the Motion to Council for consideration pursuant to Minnesota Rule 1400.7600; and

WHEREAS, at a public hearing on November 17, 2021, the City Council considered all the evidence contained in the record, including Judge LaFave's Findings of Fact, Conclusions of Law, and Recommendation, and the oral arguments presented before the City Council; and

WHEREAS, the City Council agrees that the Licensee's repeated sales of single cigarettes and flavored tobacco products, as well as his allowance of patrons to smoke cigarettes while inside the Licensed Premises, are substantial and compelling reasons to depart upward from the presumptive penalty of a \$500.00 fine and to impose a \$1,000.00 fine; now, therefore, be it

RESOLVED, that the City Council issues this decision based upon consideration of the record of the entire proceedings herein, including the oral argument from the Licensee and his attorney from the November 17, 2021 public hearing; and be it

FURTHER RESOLVED, that the Recommendation of Judge LaFave issued on September 7, 2021 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 1541 Maryland Avenue in Saint Paul, OAH 60-6020-37157, is hereby adopted as the Findings of the City Council in this matter; and be it

FURTHER RESOLVED, that a fine of \$1,000.00 is hereby imposed against the cigarette/tobacco license held by the Licensee for the premises located at 1541 Maryland Avenue East in Saint Paul.

A copy of this resolution, as adopted, shall be sent by first class mail to Judge LaFave and the Licensee.