



Legislation Text

File #: RES PH 22-233, **Version:** 1

Considering and adopting the Findings of Fact, Conclusions of Law, and Recommendation of the Administrative Law Judge, and request of the Department of Safety and Inspections to upwardly depart to revocation of the Cigarette/Tobacco license held by Bright Star Inc., d/b/a Tom and Joe's Market, for the premises located at 684 Western Avenue. (Public hearing closed and laid over from September 14, 2022.)

WHEREAS, the Cigarette/Tobacco license held by Bright Star Inc., d/b/a Tom and Joe's Market (the "Licensee"), for the premises located at 684 Western Avenue (the "Licensed Premises") was the subject of a Notice of Violation and Request for Upward Departure to Revocation (the "Notice") by the Department of Safety and Inspections ("DSI") on March 22, 2022; and

WHEREAS, the Notice outlined the City's basis for the recommendation for adverse action and upward departure to revocation; and

WHEREAS, the Notice alleged that, during a complaint-based inspection on January 6, 2022, a DSI inspector and an inspector from the Minnesota Department of Revenue ("MDR") observed and documented with photographs multiple flavored product violations that were located next to the counter/cash register in violation of Saint Paul Legislative Code section 324.07(j); and

WHEREAS, the inspector also noticed hidden flavored tobacco products in a bag under a plastic chair, an open box of Newport menthol cigarettes under the cash register, and unstamped cigarettes found in a black jacket; and

WHEREAS, due to the amount of flavored products found on the Licensed Premises and the blatant, intentional nature of the violations and the total disregard for ordinances, DSI believed that substantial and compelling reasons existed to upwardly depart from the presumptive penalty of a 10-day license suspension and recommended an upward departure one box on the penalty matrix to revocation of the Licensee's Cigarette/Tobacco license; and

WHEREAS, on April 11, 2022, the City received a letter from the Licensee's attorney requesting an evidentiary hearing before an administrative law judge; and

WHEREAS, on July 13 and 15, 2022, a hearing was held before Administrative Law Judge Barbara Case (the "ALJ"); and

WHEREAS, in support of the allegations contained in the Notice, the City filed exhibits with the Office of Administrative Hearings, herein incorporated as Exhibits 1-1 through 8; and

WHEREAS, the Licensee also presented an exhibit and testimony for the consideration of the ALJ; and

WHEREAS, on July 27, 2022, the ALJ issued her Findings of Fact, Conclusions of Law, and Recommendation (the "ALJ's Report"), in which she recommended that the revocation of Licensee's Cigarette/Tobacco license be affirmed; and

WHEREAS, at a public hearing on August 17, 2022, the City Council considered all the evidence contained in the record, including the ALJ's Report and exhibits; now therefore be it

RESOLVED, that the Council has considered the ALJ's report and hereby adopts it as the Memorandum and Conclusions of the City Council in this matter; and be it

FINALLY RESOLVED, that the Cigarette/Tobacco license held by Bright Star Inc., d/b/a Tom and Joe's Market, for the premises located at 684 Western Avenue in Saint Paul is hereby Revoked.

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