



Legislation Text

File #: RES PH 23-19, **Version:** 1

Considering and adopting the Findings of Fact, Conclusions of Law, and Recommendation of the Administrative Law Judge, and revoking the Cigarette/Tobacco license held by Moundsview Retail Inc., d/b/a Mounds Park Market, for the premises located at 241 Earl Street.

WHEREAS, the Cigarette/Tobacco license held by Moundsview Retail Inc., d/b/a Mounds Park Market (the "Licensee"), for the premises located at 241 Earl Street (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 June 7, 2022; and

WHEREAS, the Notice outlined the City's basis for the recommendation for adverse action and imposition of the standard matrix penalty of revocation for a second violation of the City's tobacco ordinance related to flavored products within 24 months; and

WHEREAS, the Notice alleged that, during a complaint-based inspection on May 12, 2022, a DSI inspector observed and documented with photographs multiple prohibited flavored product violations that were located behind the counter/cash register, hidden in boxes of candy, in a tote/tub and in drawers under the base of the service counter in violation of Saint Paul Legislative Code section 324.07(j); and

WHEREAS, pursuant to the options to proceed outlined in the Notice, on June 15, 2022, the City received a letter from the Licensee's attorney requesting an hearing before an administrative law judge; and

WHEREAS, on November 3, 2022, a hearing was held before Administrative Law Judge Jessica A. Palmer-Denig (the "ALJ"); and

WHEREAS, the official record from that hearing, titled OAH 71-6020-38502 ITM Tobacco License Moundsview Retail Official Record is attached and adopted by City Council ; and

WHEREAS, in support of the allegations contained in the Notice, the City filed exhibits with the Office of Administrative Hearings, (OAH 71-6020-38502 ITM Tobacco License Moundsview Retail Official Record, pages 36 -163) ; and

WHEREAS, on January 11, 2023, 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, the ALJ found that on June 27, 2019, DSI issued a Notice of Violation and Recommendation for Imposition of \$500 Matrix Penalty, notifying Licensee that it would seek adverse action against Licensee's license arising from a failed compliance check for flavored tobacco products on April 12, 2019. Specifically,

DSI stated that tobacco licensees had been given prior notice that DSI would be conducting compliance checks, and that when an inspector visited Mounds Park Market, the inspector observed several different flavored tobacco products were being offered for sale; and

WHEREAS, the ALJ found that at a public hearing on October 2, 2019, the Licensee appeared and explained that his distributor advised him that the products at issue were not flavored tobacco products, and he provided evidence that he returned the prohibited products to the distributor and obtained a refund and that based on the information before it, the City Council determined that the violation resulted from genuine confusion and therefore, City Council stayed imposition of the \$500 matrix penalty for one year on the condition that the Licensee not engage in any same or similar violations; and

WHEREAS, the ALJ found that on August 24, 2021, DSI issued a Notice of Violation and Recommendation for Imposition of a \$300 Matrix Penalty for a failed underage compliance check and a \$500 Matrix Penalty for flavored tobacco products that the inspector observed in plain sight when he went into the Licensed Premises to talk with the clerk who failed the underage compliance check; and

WHEREAS, the ALJ found that the Licensee paid the penalty amounts for these violations in September of 2021; and

WHEREAS, the ALJ further found that on May 12, 2022, a DSI Inspector conducted an inspection based on a complaint that the Licensee was selling flavored tobacco products; and

WHEREAS, the ALJ further found that during this complaint inspection the Inspector found numerous flavored tobacco products, including products identified with fruit, honey, and liquor flavorings totaling over 300 individual items; and

WHEREAS, the ALJ further found that approximately 60 percent of the tobacco products found in the store were prohibited items; and

WHEREAS, the ALJ found that that Licensee offered flavored tobacco products for sale in violation of the St. Paul Legislative Code Section 324.07(j); and

WHEREAS, the ALJ recommended that the Licensee's license to sell tobacco products be revoked pursuant to St. Paul Legislative Code § 324.10(b), as this is Licensee's second flavored tobacco violation within 24 months; and

WHEREAS, at a public hearing on February 1, 2023, 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 Moundsview Retail Inc., d/b/a Mounds Park

Market, for the premises located at 241 Earl Street 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.