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OCT 03 2022

CITY CLERK

In the Matter of the Cigarette/Tobacco –
Product Shop License held by Bright Star
Inc. d/b/a Tom and Joe's Market for the
premises located at 684 Western Avenue
in St. Paul
License No. 20190003653

**BRIGHT STAR'S PETITION TO
STAY ADMINISTRATIVE
ORDER PENDING REVIEW**

Bright Star Inc. d/b/a Tom and Joe's Market, by and through its attorney Derek Thooft,
respectfully petitions the City Council of the City of St. Paul.

PETITION

Petitioners, by their counsel, move the City Council of the City of Saint Paul for a stay of
the determinations made on September 21, 2022, effective until the final adjudication of the
appeal action.

PROCEDURAL HISTORY

1. Husham Alko Furajiji is the owner of Bright Star, which operates a convenience store
located at 684 Western Avenue North, Saint Paul. Bright Star holds a city-issued
cigarette/tobacco license for the convenience store, Tom and Joe's Market.
2. On July 27, 2022, Administrative Law Judge Barbara J. Case provided Findings of Fact,
Conclusions of Law, and Recommendation, recommending the revocation of Licensee's
cigarette/tobacco license be affirmed.
3. On September 21, 2022, Saint Paul City Council adopted the Finding of Fact,
Conclusions of Law, and Recommendation of the Administrative Law Judge.
4. The revocation was adopted by the Saint Paul City Council at the Council's regular
meeting on September 21, 2022.
5. On October, 4, 2022, Bright Star, Inc. d/b/a Tom and Joe's Market filed a Petition for
Writ of Certiorari, appealing from the final decision of the Saint Paul City Council.

**PETITION IN SUPPORT TO STAY THE ADMINISTRATIVE ORDER PENDING
REVIEW**

1. Pursuant to Minnesota Rules of Civil Appellate Procedure 108.02, subd. 1(a), the deciding agency may stay enforcement of the decision in accordance with Rule 108.¹
2. Rule 115.03, subd. 2(b) states a petition for a stay may be made in the first instance to the agency and upon motion, the Court of Appeals may review the agency's decision on a stay.²
3. A stay is supported by judicial economy and may be granted to protect the appellate court's jurisdiction and to avoid a multiplicity of suits.³
4. When deciding to stay a license, the City Council may stay the decision when it is supported by findings that reflect past failure to comply with conditions. Further, they can balance the potential harm to the Petitioner against the potential harm to the community.⁴
5. Mr. Furajiji, while initially being confused by the product definitions and ordinances as evidenced in his hearing, has taken it upon himself and his staff to educate everyone to the numerous ordinances.
6. Subsequent to the violation Bright Star, Inc. has implemented policies and procedures to ensure compliance with all city codes and ordinances. These policies and procedures include weekly meetings to review all product, multiple checks when ordering products, an immediate return of any products which violate or may violate city ordinances.

¹ Minn. R. Civ. App. 108.02, subd. (a)

² Minn. R. Civ. App. 115.03, subd. 2(b)

³ *State v. Northern Pacific Railway Co.*, 221 Minn. 400 (1946).

⁴ *DRJ, Inc. v. City of St. Paul* 741 N.W.2d 141 (2007).

7. Bright Star, Inc. voluntarily returned all of the products which were in violation of St. Paul ordinances and cancelled all future orders that would in any violate the ordinance and incurred significant financial detriment due to that decision.
8. The detriment to deny the stay of the City Council's decision is enormous because Furajiji and the manager of the store rely on the operations of Tom and Joe's Market to support their family. Without the income, there would be substantial economic harm.
9. The continued operations of Tom and Joe's Market will not have a detrimental effect on the public good because Bright Star, Inc. has showed they are now taking affirmative measures to comply fully with all ordinances that may govern them.

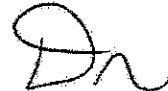
CONCLUSION

Bright Star, Inc. will suffer substantial economic harm in the denial of the stay of the decision to revoke the license while the decision is being appealed. The potential harm to Bright Star, Inc. is substantially greater than the low potential harm to the public good.

WHEREFORE, Petitioner respectfully requests the City Council of the City of Saint Paul stay the effective date of the determinations until the final adjudication of the appeal action.

Date: 10/04/22

THOOFT LAW, LLC



Derek D. Thooft, (#0398561)
Attorney for Plaintiff
3460 Washington Dr., Suite 212
Eagan, MN 55122
(651) 485-1254
ThooftLaw@gmail.com

STATE OF MINNESOTA
IN THE COURT OF APPEALS

RECEIVED
OCT 03 2022
CITY CLERK

CASE TITLE:

Bright Star Inc. d/b/a Tom and Joe's Market

vs.

City of Saint Paul; City Council

PETITION FOR
WRIT OF CERTIORARI

Agency Case # RES PH 22-233

Date of Decision 09/21/2022

TO: The Court of Appeals of the State of Minnesota:

Bright Star Inc. d/b/a Tom and Joe's Market (your name)

hereby petitions the Court of Appeals for a Writ of Certiorari

pursuant to (choose one): ☒ Minn. Stat. §§ 14.63, 14.64 ☐ Minn. Stat. § 606.01

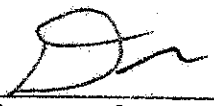
to review a decision of Saint Paul City Council (agency name)

issued on the date noted above, upon the grounds that:

The violation at issue was the first flavored product violation for Bright Star Inc. Pursuant to St. Paul Legislative Code § 324.10(b), the presumptive penalty for the first violation is a 10-day suspension. Further § 324.10(a) states that "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." There was not a substantial and compelling reason to issue an upward departure and revoke the cigarette/tobacco license.

(Summarize why you are appealing in a sentence or two. You will make a detailed argument in the brief that you will be filing later.)

Dated: 10/4/22


(Signature of you or your attorney)

Derek D. Thooft

(Printed name)

3460 Washington Dr. #212, Eagan, MN 55122

(Address)

651-485-1254

(Telephone number)

thooftlaw@gmail.com

(Email Address)

**STATE OF MINNESOTA
IN THE COURT OF APPEALS**

CASE TITLE:

Bright Star Inc. d/b/a Tom and Joe's Market

**STATEMENT OF THE CASE
OF RELATOR**

VS.

City of Saint Paul; City Council

Agency Case # RES PH 22-233

Appellate Case #A -
(If known)

This form is provided for the benefit of self-represented litigants, and conforms to the Statement of the Case form required by Rule 133.03 of the Minnesota Rules of Civil Appellate Procedure and to Form 133, found at the end of the Minnesota Rules of Civil Appellate Procedure. Some questions on this form may require you to complete some basic legal research about your appeal before you can complete them. Instructions for completing this form are available at <http://mncourts.gov/CourtOfAppeals.aspx#Tab08Resources>.

1. **Agency where case originated:** Minnesota Department of Revenue

Name of presiding judge or hearing officer: Administrative Law Judge Barbara J. Case

2. **Jurisdictional statement for a certiorari appeal:**

1. Statute, rule, or other authority authorizing certiorari appeal (choose one):

☒ Minn. Stat. §§ 14.63, 14.64 ☐ Minn. Stat. § 606.01
☐ Other _____

2. Authority (statutory section) fixing time limit and date of event triggering appeal time (mailing of decision, receipt of decision, or receipt of other notice):

☒ Minn. Stat. §§ 14.63, 14.64 ☐ Minn. Stat. § 606.01
☐ Other _____

3. **Type of litigation and any statutes at issue:**

Saint Paul Legislative Code § 324.10; Saint Paul Legislative Code § 310.05-.06

4. **Brief description of issues that were raised before the administrative or agency decision maker, and how the administrative or agency decision maker decided those issues:** Administrative Law Judge Barbara J. Case recommended revocation of the cigarette/

tobacco license held by Bright Star, Inc. d/b/a Tom and Joe's Market. Pursuant to St. Paul Legislative Code § 324.10, revocation of the license is an upward departure. Saint Paul City Council adopted the findings of ALJ Case and revoked the license.

5. Short description of issues you are raising in this appeal (one or two sentences; you may make a more detailed argument in the brief you will be filing later):

The violation at issue was the first flavored product violation for Bright Star Inc. Pursuant to St. Paul Legislative Code § 324.10(b), the presumptive penalty for the first violation is a 10-day suspension. Further, § 324.10(a) states that "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." There was not a substantial and compelling reason to issue an upward departure and revoke the license.

6. Related appeals:

- a. List any prior or pending appeals arising from the same agency case as this appeal (write appeal numbers, or "none"): Unknown

- b. List any pending appeals arising from different agency cases that raise similar issues to this appeal (write appeal numbers, or "none known"): Unknown

7. Contents of record:

- a. Is a transcript necessary to review the issues on appeal? ☒ Yes ☐ No
- b. If yes, is it a full transcript of the hearing(s) before the administrative decision-maker, or a partial transcript? ☒ Full transcript ☐ Partial transcript
- c. Has the transcript been ordered from the court reporter? ☒ Yes ☐ No
- d. If a transcript is unavailable, is a statement of the proceedings under Minnesota Rules of Civil Appellate Procedure 110.03 necessary? ☐ Yes ☐ No
- e. In lieu of the record as defined in Minnesota Rules of Civil Appellate Procedure 110.01, have the parties agreed to prepare a statement of the record pursuant to Minnesota Rules of Civil Appellate Procedure 110.04? ☐ Yes ☐ No

8. Oral argument

- a. If you have an attorney, is oral argument requested? ☒ Yes ☐ No ☐ I do not have an attorney
- b. If yes, where is oral argument requested: ☒ Minnesota Judicial Center in St. Paul ☐ Other: _____

9. Type of brief to be filed (choose one, the type that you plan to file):

☒ Formal brief under Rule 128.02

*(A formal brief includes a table of contents, a statement of the legal issues, a statement of the case and the facts, an argument, a conclusion, and an addendum. * A formal brief must be bound in a specific way, and can't just be stapled. A list of approved binding methods under Minn. R. Civ. App. P. 132.01 is available at <http://mncourts.gov/Clerk-of-Appellate-Courts.aspx#ApprovedBriefBindingMethods>.)*

☐ Informal brief under Rule 128.01, subd. 1.

*(Before filing an informal brief, you must file a motion requesting permission to do so. An informal brief contains a concise statement of your argument and an addendum. * It may be stapled.)*

☐ Trial memoranda, supplemented by a short letter argument under Rule 128.01, subd. 2, and an addendum.

(If you submitted a written Memorandum of Law during your administrative or agency proceeding, you may file that Memorandum as your brief, along with a short argument in letter format that addresses the decision you are appealing. This may be stapled and must include an addendum.)*

** No matter what type of brief you file, the relator's brief must include an addendum (respondents may include an addendum with their brief, but the addendum is only required for relator's brief). The requirements for your addendum are listed in Minn. R. Civ. App. P. 130.02. Your addendum may also contain up to 50 additional pages of documents from the record or statutes, rules, cases or other authorities that would be helpful to the court when reading your brief. However, you cannot include any new evidence that was not presented to the administrative decision-maker.*

10. Names, addresses, and telephone numbers of relator and respondents (or attorneys, if any):

Relator or relator's attorney:

Print name: Derek D. Thooft (#0398561)

Address: 3460 Washington Dr. Suite 212, Eagan, MN, 55122

Email address: thooftlaw@gmail.com

Telephone: (651)-485-1254

Signature: _____

Respondent or respondent's attorney:

Print name: City of Saint Paul City Council

Address: 300 City Hall, 15 Kellogg Boulevard West, Saint Paul, MN 55102

Email address: _____

Telephone: _____

**STATE OF MINNESOTA
IN THE COURT OF APPEALS**

CASE TITLE:

Bright Star Inc. d/b/a Tom and Joe's Market

WRIT OF CERTIORARI

vs.

Court of Appeals # _____

Agency Case # RES PH 22-233

City of Saint Paul City Council

Date of Decision 09/21/2022

TO: City of Saint Paul City Council (agency name)

You are hereby ordered to return to the Court of Appeals and serve on all parties in accordance with rule 115.04, subdivision 3, within 30 days after service of the petition or 14 days after delivery of a transcript, whichever is later, an itemized statement of the record, exhibits, and proceedings in the above-entitled matter so that this court may review the decision issued on the date noted above.

You are further directed to retain the actual record, exhibits, and transcript of proceedings (if any) until requested by the Clerk of the Appellate Courts to deliver them in accordance with rule 115.04, subdivision 5.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the respondent or its attorney at:

*(Fill in the name and address of the respondent
or respondent's attorney on the lines below)*

Derek D. Thooft (#0398561)

3460 Washington Dr #212, Eagan, MN, 55122

thooftlaw@gmail.com; (651)-485-1254

Proof of service shall be filed with the Clerk of the Appellate Courts.

DATED: _____

Clerk of the Appellate Courts

By: _____

Assistant Clerk



SAINT PAUL
SAFETY & INSPECTIONS

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

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

September 28, 2022

NOTICE OF CITY COUNCIL ACTION

Bright Star Inc.
d/b/a Tom and Joe's Market
684 Western Avenue North
Saint Paul, MN 55103
Attn: Husham Alko Al Furaiji

Husham Alko Al Furaiji:

Enclosed is a copy of City Council Resolution RES PH 22-233 which revokes the Cigarette/Tobacco license issued to you by the City of Saint Paul for the following:

Adopting the Finding of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge.

The revocation was adopted by the Saint Paul City Council at the Council's regular meeting on September 21, 2022. The effect of this notice is that you may not sell tobacco products at your business located at 684 Western Ave. Failure to comply could subject you to criminal charges and prosecution.

If you have any questions regarding this matter, you may contact me at 651-266-9132.

Sincerely,

Eric Hudak, Licensing Manager
Department of Safety and Inspections

Enclosure

cc: Shawn McDonald, Legal Assistant-CAO
Angie Wiese, Director-DSI
Dan Niziolek, Deputy Director-DSI
Joseph Voyda, License Inspector-DSI
Husham Alko Al Furaiji, 7762 Lakeview Ln. NE., Mpls., MN 55432
Dadders Estates LLC, 351 Kellogg Blvd. E., St. Paul, MN 55101



City of Saint Paul

Signature Copy

Resolution-Public Hearing: RES PH 22-233

City Hall and Court
House
15 West Kellogg
Boulevard
Phone: 651-266-8560

File Number: RES PH 22-233

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.

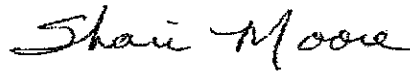
A copy of this resolution as adopted shall be sent by first class mail to the Administrative Law Judge
and to the Licensee.

At a meeting of the City Council on 9/21/2022, this Resolution-Public Hearing was Passed.

Yea: 7 Councilmember Brendmoen, Councilmember Tolbert, Councilmember
Noecker, Councilmember Prince, Councilmember Jalali, Councilmember
Yang, and Councilmember Balenger

Nay: 0

Vote Attested by
Council Secretary



Shari Moore

Date 9/21/2022

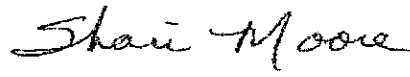
Approved by the Mayor



Melvin Carter III

Date 9/22/2022

Clerk



Shari Moore

Date _____

Test Signature

Shari Moore

Shari Moore

Date
