

February 13, 2023

VIA EFILING ONLY

Shari Moore
City Clerk
City of St. Paul
310 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102
cityclerk@ci.stpaul.mn.us

Re: *In the Matter of the Cigarette/Tobacco License Held by MJ Market Inc. for the Premises Located at 922 Thomas Avenue in Saint Paul*
OAH 65-6020-38532

Dear City Clerk Moore:

Enclosed and served upon you is the Administrative Law Judge's **ORDER ON CROSS MOTIONS FOR SUMMARY DISPOSITION** in the above-entitled matter. The official record, along with a copy of the recording of the oral argument, is also enclosed. The Office of Administrative Hearings' file in this matter is now closed.

If you have any questions, please contact me at (651) 361-7857, nichole.helmuelle@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



NICHOLE HELMUELLER
Legal Assistant

Enclosure

cc: Docket Coordinator
Therese Skarda
Craig J. Beuning

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MN 55164-0620

CERTIFICATE OF SERVICE

In the Matter of the Cigarette/Tobacco License Held by MJ Market Inc. for the Premises Located at 922 Thomas Avenue in Saint Paul	OAH Docket No.: 65-6020-38532
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On February 13, 2023, a true and correct copy of the **ORDER ON CROSS MOTIONS FOR SUMMARY DISPOSITION** was served by United States mail, unless otherwise indicated below, addressed to the following:

VIA EFILING ONLY

Shari Moore
City Clerk
City of St. Paul
310 City Hall
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST PAUL

In the Matter of the Cigarette/Tobacco License Held by Majid Nitaishoon, d/b/a MJ Market, Inc. for the Premises Located at 922 Thomas Avenue in Saint Paul

ORDER ON CROSS MOTIONS FOR SUMMARY DISPOSITION

This matter came before Administrative Law Judge Ann C. O'Reilly for oral argument on November 15, 2022.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). Craig Beuning, HKB Law, P.A., appeared on behalf of Majid Nitaishoon and MJ Market, Inc. (Licensee).

On October 25, 2022, the City served and filed a Motion for Summary Disposition. Licensee responded to the Motion on November 7, 2022, and the City filed a Reply Brief on November 14, 2022. Oral argument on the City's Motion occurred on November 15, 2022. At the oral argument, Licensee stipulated to the material facts and asserted that summary disposition should be granted in its favor. Accordingly, based upon the agreement of counsel, the Administrative Law Judge granted Licensee leave to file a cross motion for summary disposition.¹

On December 9, 2022, Licensee served and filed its Cross Motion for Summary Disposition. The City responded to the Cross Motion on January 6, 2023, and Licensee filed its Reply Brief on January 11, 2023. The motion record closed with the filing of the last brief on January 11, 2023.

Based on the record, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

1. The City's Motion for Summary Disposition is **DENIED**.
2. Licensee's Cross Motion for Summary Disposition is **GRANTED**.
3. This matter shall be referred to the St. Paul City Council for final disposition pursuant to St. Paul Legislative Code (SPLC) § 310.05.

¹ See Order Granting Leave to File Cross Motion for Summary Disposition (Nov. 22, 2022).

RECOMMENDATION

Based upon an application of the law to the undisputed facts, the Administrative Law Judge recommends that the City Council find Licensee MJ Market, Inc. in violation of SPLC § 324.07(j); impose the presumptive penalty for a first violation and first appearance under SPLC § 324.10(b); and suspend MJ Market's tobacco shop license for 10 days.

Dated: February 10, 2023



ANN C. O'REILLY
Administrative Law Judge

NOTICE

This Report is a recommendation not a final decision. Pursuant to St. Paul Legislative Code § 310.05, the St. Paul City Council (Council) shall consider the evidence contained in the hearing record and the Administrative Law Judge's findings of fact, conclusions of law, and recommendations (Report). The Council shall not consider any factual testimony not previously submitted to and considered by the Administrative Law Judge. After receipt of the Administrative Law Judge's Report, the Council shall provide the Licensee an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or interpretation of facts, and to present argument related to the recommended adverse action, if any. Upon conclusion of that Council hearing, and after considering the record, the Administrative Law Judge's Report, and such additional arguments presented at the Council hearing, the Council shall determine what, if any, adverse action shall be taken. The Council's action shall be made by resolution. The Council may accept, reject, or modify the Administrative Law Judge's findings, conclusions, or recommendations. Parties should contact the St. Paul City Clerk, 310 City Hall, 15 W. Kellogg Blvd., Saint Paul, MN 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

I. Undisputed Facts

Majid Nitaishoon is the owner of MJ Market, Inc. (MJ Market), which is operated out of a building located at 922 Thomas Avenue, St. Paul, Minnesota (the Property).² The Property is owned by Abdul Tel.³

MJ Market, Inc., is a corporation first registered with the Minnesota Secretary of State on June 11, 2021.⁴ Its registered address for service of process is the Property located at 922 Thomas Avenue.⁵ MJ Market is also the name holder for the assumed name Thomas Deli according to a Certificate of Assumed Name filed with the Minnesota Secretary of State's Office by Majid Nitaishoon.⁶

On June 14, 2021, Nitaishoon, acting as the owner of MJ Market, applied for a tobacco shop license in the name of MJ Market for a business he intended to operate on the Property.⁷ As part of the license application, Nitaishoon affirmed that MJ Market would not sell flavored tobacco products or e-cigarette "juice" other than mint, wintergreen, and menthol.⁸ On June 28, 2021, Nitaishoon also signed an acknowledgement of receiving a copy of the St. Paul tobacco ordinances, SPLC §§ 324.295 and 65.535.⁹

The City issued MJ Market a tobacco shop license on June 28, 2021.¹⁰ Two days later, on June 30, 2021, Nitaishoon entered into a commercial lease for the Property.¹¹ Previously, the Property was leased to Mobarek Hamaz, who operated a business on the premises under a cigarette/tobacco license issued to MHH Global, Inc., d/b/a Thomas Grocery.¹² Hamaz's lease for the Property was rescinded on June 11, 2021, with rescission being effective on June 30, 2021.¹³

On August 3, 2021, the City conducted a youth tobacco compliance check at the business operated on the Property.¹⁴ The Notice of Violation alleged that the clerk at the "Thomas Grocery" sold a pack of cigarettes to a female under the age of 21. MHH Global, Inc., d/b/a Thomas Grocery, as the licensee, was cited for violation of Minn. Stat. §§ 461.12, subd. 5, 609.685, and SPLC § 324.07(g).¹⁵

² Ex. 5.

³ Ex. 5 at 14.

⁴ Ex. 5 at 9.

⁵ *Id.*

⁶ Ex. 5 at 10.

⁷ Ex. 5.

⁸ Ex. 5 at 8.

⁹ Ex. 7 at 1.

¹⁰ Ex. 6.

¹¹ Ex. 5 at 15-28.

¹² Ex. 3.

¹³ Ex. 5 at 14.

¹⁴ Ex. 3.

¹⁵ Ex. 3.

The Notice of Violation advised MHH Global, Inc., that, as licensee, it could contest the violation and receive a hearing or admit the violation and pay a \$300 penalty.¹⁶ On or about October 6, 2021, a \$300 penalty was paid, and the City deemed the violation admitted.¹⁷

On or around August 26, and September 1, 2021, the City mailed a Notice of Public Hearing to all tobacco license holders in the City, including Licensee, advising them of a public hearing regarding changes to SPLC Chapter 324, the City's tobacco ordinance.¹⁸ The amendments to Chapter 324 included increased penalties for repeat violations of underage tobacco sales and the sale, display, or possession of flavored cigarette products.¹⁹ The effective date of the amendments to Chapter 324 was December 11, 2021.²⁰

On May 6, 2022, St. Paul Department of Safety and Inspection (DSI) inspector Joseph Voyda conducted an inspection in response to a complaint that flavored tobacco products were being sold at the Property.²¹ When he arrived at the store, inspector Voyda observed the following tobacco products for sale in the store behind the counter:²²

- 2 boxes of Dutch - Sweet Fusion cigarettos
- 2 Cartons of American Spirits – Black cigarettes
- 1 box of individual singles of Black & Mild Casino wood tip cigars
- 31 varieties of vape pens

The City contends, and Licensee stipulates for purposes of its Cross Motion, that these products are “flavored tobacco products,” which the SPLC prohibits Licensee from selling.²³

On June 10, 2022, the City issued a Notice of Violation and Request for Revocation of the Cigarette/Tobacco License to MJ Market, for the premises located at 922 Thomas Avenue.²⁴ The Notice of Violation asserted that Licensee violated SPLC § 324.07(j) and referenced SPLC § 324.10(b)(2) as the basis for the imposition of “presumptive penalties,” including the revocation of MJ Market’s tobacco shop license.²⁵

¹⁶ *Id.* at 3.

¹⁷ Ex. 4-1.

¹⁸ Exs. 9, 10.

¹⁹ Ex. 10.

²⁰ *Id.*

²¹ Ex. 1. For purposes of its Cross Motion for Summary Disposition, Licensee is not contesting the factual basis for the June 10, 2022 Notice of Violation. See Digital Recording of Oral Argument (Nov. 15, 2022).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

On June 22, 2022, Licensee timely sent the City a request for hearing, disputing the violations and proposed penalty.²⁶ A Notice of Prehearing Telephone Conference was issued on August 1, 2022, thereby commencing this administrative action.²⁷

II. Standard of Review

Summary disposition is the administrative law equivalent of summary judgment.²⁸ A motion for summary disposition may be granted when there is no genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law.²⁹ The Office of Administrative Hearings follows the summary judgment standards developed in the state district courts when considering motions for summary disposition of contested case matters.³⁰

The function of the administrative law judge on a motion for summary disposition, like a trial court's function on a motion for summary judgment, is not to decide issues of fact, but to determine whether genuine factual issues exist.³¹ In other words, the administrative law judge does not weigh the evidence; instead, the judge views the facts and evidence in a light most favorable to the non-moving party.³²

The moving party has the initial burden to show the absence of any genuine issue regarding any material fact.³³ A fact is material if its resolution will affect the outcome of the case.³⁴ If the moving party meets the initial burden, then the burden shifts to the non-moving party to prove the existence of any genuine issue of any material fact.³⁵ A genuine issue is not a "sham or frivolous" one, and it cannot rely on mere allegations or denials.³⁶ Instead, a genuine issue requires presentation of specific facts demonstrating a need for resolution in a hearing or trial.³⁷

Summary disposition cannot be used as a substitute for a hearing or trial on the facts of a case.³⁸ Thus, summary disposition is only proper when no factual issues need to be resolved.³⁹

²⁶ Ex. 8.

²⁷ Notice of Prehearing Telephone Conference (Aug. 1, 2022).

²⁸ *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); see also Minn. R. 1400.5500(K) (2021).

²⁹ *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985).

³⁰ Minn. R. 1400.6600 (2021).

³¹ *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).

³² *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).

³³ *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

³⁴ *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

³⁵ *Thiele*, 425 N.W.2d at 583.

³⁶ *Highland Chateau, Inc. v. Minn. Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

³⁷ See Minn. R. Civ. P. 56.05.

³⁸ *Sauter*, 70 N.W.2d at 353.

³⁹ *Id.*

III. Legal Analysis

Both parties assert that summary disposition is warranted in this case. The City contends that: (1) Licensee's sale or display of flavored cigarettes is uncontroverted; (2) a prior violation (on August 3, 2021) was established by the payment of the fine without an appearance; and (3) an application of the law, including the presumptive penalty matrix contained in the tobacco ordinance, mandates the revocation of MJ Market's tobacco shop license. Licensee, on the other hand, argues that the penalty matrix contained in SPLC § 324.10(b) is ambiguous and must be interpreted to mean that only violations of the same type or kind can be aggravated, especially when the result is as severe as license revocation.

The City requires a license for the retail sale of any tobacco product.⁴⁰ The City issues two types of tobacco licenses: a tobacco shop license and a tobacco products shop license.⁴¹ Any tobacco license issued under SPLC Chapter 324 shall be issued "to the person, firm, or corporation that operates the principal business at that address."⁴²

SPLC § 324.07(j) states that "[n]o person may sell, offer for sale, or otherwise distribute any flavored products, unless excepted under [SPLC] section 324.07(l)." Section 324.07(l) exempts holders of tobacco products shop licenses from this regulation.⁴³

Licensee holds a tobacco shop license, not a tobacco products shop license. Therefore, Licensee is prohibited from selling, offering for sale, or distributing flavored tobacco products.

"Flavored product" is a defined term under SPLC § 324.03(5). For purposes of the cross motions for summary disposition only, Licensee does not dispute that the products observed for sale at its store on May 6, 2022, were "flavored products."⁴⁴

SPLC § 324.10 sets forth the presumptive penalties for violations of the tobacco ordinance (SPLC Chapter 324). These presumptive penalties are set out in a penalty matrix as follows:

⁴⁰ SPLC § 324.01(a). This provision requires a license to sell any "licensed product." "Licensed product" includes any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product. SPLC § 324.03(6).

⁴¹ SPLC § 324.03(15), (16), (17).

⁴² SPLC § 324.01(c).

⁴³ SPLC § 324.07(j) and (l).

⁴⁴ See Digital Recording of Oral Argument (Nov. 15, 2022).

Type of Violation	Appearance			
	1 st	2 nd	3 rd	4 th
(1) Sale to a person under 21 years of age	\$500 fine	\$1,000 fine	\$2,000 fine and 7-day suspension	Revocation
(2) Display, possession, or multiple incidents of sales of: <ul style="list-style-type: none"> • Single cigarettes; • Menthol tobacco products; or • Flavored tobacco products 	10-day suspension	Revocation		

SPLC § 324.01(c) provides that a licensee making a first or second appearance before the council may elect to pay the fine to the DSI without a hearing. Payment of the recommended fine is considered a waiver of the hearing and an “appearance” for the purpose of determining the presumptive penalties for subsequent violations.⁴⁵ Further:

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.⁴⁶

Chapter 324 of the code does not specify whether “violation” means a violation of the same code provision, a violation of any provision of the tobacco ordinance, or a violation of any other law or code related to the license.

With respect to the presumption, section 324.10(a) provides that:

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

⁴⁵ SPLC § 324.10(c).

⁴⁶ SPLC § 324.10(d).

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 [sic] [shall apply].⁴⁷

SPLC Chapter 310, entitled “Uniform License Procedures,” addresses licensing violations in general and has its own presumptive penalty matrix for licensing violations. Under SPLC § 310.05(m), a first appearance for a violation of any provision of the SPLC relating to licensed activity has a presumptive \$500 fine and a second appearance has a presumptive \$1,000 penalty.

Unlike with the penalty matrix in section 324.10, the penalty matrix in the general licensing chapter, section 310.05, provides a definition of “violation” to mean “either one of those violations listed in paragraph m or a violation of section 409.26(b).”⁴⁸ In addition, section 310.05(m)(iv) states:

Upon a second, third, or fourth appearance before the council *by a particular licensee*, the council shall impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance.⁴⁹

In other words, the penalty matrix in SPLC § 310.05(m) expressly provides that violations of different kinds can result in increased penalties when a particular licensee makes a second, third, or fourth appearance before the council.

Based upon the undisputed facts in this case, the sale or the offer to sell flavored tobacco that occurred on May 6, 2022, was Licensee’s first violation and is, thus, its first “appearance” before the City council. The prior violation involving the sale of tobacco to an underage person on August 3, 2021, was issued to a different license holder – MHH Global, Inc., a company owned and operated by Hamza Mobarak. There is no evidence presented that MHH Global or Mobarak have any connection to MJ Market or its owner Majid Nataishoon.

While Licensee MJ Market could well have been operating the store at the time of the August 3, 2021 violation, the fact remains that a different licensee was cited for that violation. It is unknown who paid the \$300 fine for that violation. Regardless, the payment of the fine for the August 3, 2021 violation resulted in an appearance by MHH Global. It was not a citation issued to *this* Licensee, MJ Market.

⁴⁷ The last sentence in SPLC § 324.10(a) is incomplete in the code.

⁴⁸ SPLC § 310.05(m)(iv)(6).

⁴⁹ Emphasis added.

Pursuant to SPLC § 324.01(c), a tobacco shop license is issued to “a person, firm or corporation” that operates a business at an address. The license is not issued to the premises and does not run with the property.⁵⁰

Here, Licensee MJ Market is making its first appearance on a tobacco violation that occurred on May 6, 2022. It cannot be held responsible for a prior citation that was issued to an entirely different licensee. This is not a case where the two licensed entities have a common owner and are merely changing a corporate name to avoid enhanced penalties. Based upon the evidence presented, MHH Global and MJ Market are two different entities owned by two different individuals.

Thus, while the parties have requested a decision as to whether a violation means a violation of the tobacco ordinance generally or the violation of the same provision of that ordinance, such issue is not reached in this case due to the different licensees cited for the violations.

Licensee MJ Market does not dispute the fact that it offered flavored tobacco products for sale in its store on May 6, 2022. Because this was Licensee’s first citation and, thus, first appearance, the matrix in SPLC § 324.10(b) provides for a presumptive penalty of a 10-day suspension of Licensee’s license. Accordingly, the Administrative Law Judge recommends that the City Council impose a 10-day suspension of MJ Market’s tobacco shop license.

Finally, the City argues in its response to Licensee’s Cross Motion that even if the May 6, 2022 violation is considered a first appearance and first violation by Licensee, the City has grounds for an upward departure to revoke the license. This argument is without merit. SPLC § 324.10(a) specifically states that the penalties in the matrix “are presumed to be appropriate for every case.” The provision goes on to state that “[w]hen deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.”⁵¹ The Notice of Violation cites only to the matrix and alleges that this was Licensee’s “second violation” in 24 months.⁵² The Notice does not state that the City is seeking an upward departure for a first appearance nor does it assert any bases for an upward departure.⁵³ Because the City has not provided notice to Licensee of an upward departure, it should be precluded from justifying such a departure at this time.

IV. Conclusion

An application of the law to the undisputed facts warrants a finding that Licensee violated SPLC § 324.07(j) on May 6, 2022, and that the presumptive penalty matrix in Section 324.10 applies. Because this is Licensee’s first appearance and first violation of

⁵⁰ A revocation of a license for an individual or business operating at a particular property can result in the denial of future license applications submitted by individuals or businesses who intend to operate at that same property. See SPLC § 324.01(d).

⁵¹ SPLC § 324.10(a).

⁵² Ex. 1.

⁵³ *Id.*

the tobacco ordinance, the presumptive penalty of a 10-day suspension is appropriate. Licensee's Cross Motion for Summary Disposition is, therefore, **GRANTED**. The Administrative Law Judge recommends that the City Council find Licensee in violation of SPLC § 324.07(j); impose the presumptive penalty for a first appearance and first violation; and suspend MJ Market's tobacco shop license for 10 days.

Given that the question of what constitutes a prior "violation" and "appearance" in SPLC § 324.10 is likely to arise again, it is recommended that the City consider amending Chapter 324 to make clear: (1) whether any prior violation of the SPLC justifies aggravation of a tobacco penalty; (2) whether a different kind of tobacco violation is considered an "appearance" for aggravation purposes; and (3) whether the prior violation must be of the same type before it counts as a second appearance for enhancement purposes. In other words: does a prior violation for underage sale of tobacco serve as a first "appearance" and prior "violation" if the same licensee is later cited for selling flavored products (a different type of violation) and vice versa? These questions cannot be answered based upon the plain language of the code. A vague code is subject to inconsistent enforcement. Consequently, clarification of these terms is recommended for SLPC Chapter 324. At the same time, the City may also wish to amend Section 324.10(a) to complete the last sentence of that provision.

A.C.O.

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

OAH Docket No. 65-6020-38532

FOR RELATOR

In the Matter of the
Cigarette/Tobacco License Held by
MJ Market for the Premises Located
At 922 Thomas Avenue in Saint Paul.

REPLY MEMORANDUM OF LAW**ARGUMENT**

After subjecting Relator to arbitrary and capricious action by attempting to revoke his license under an ambiguous presumptive penalty matrix, the City changes course in its responsive memorandum to argue for the first time for an upward departure from the presumptive penalty matrix. Albeit without the benefit of a transcript, undersigned counsel's recollection is that at the summary disposition hearing, the Court directly asked the City if it was seeking an upward deviation and the question was answered in the negative. There was, moreover, no argument made for an upward deviation in either the City's Memorandum of Law in Support of City's Motion for Summary Disposition or its Response to Memorandum in Opposition to Saint Paul's Motion for Summary Disposition. Relator's counsel relied on the City's good faith when he stated to the Court that his client would agree to a first violation and 10-day suspension under the presumptive penalty matrix without an upward deviation. Relator contends that the City's conduct is actionable bad faith that should not be condoned by this Court.

It is Relator's position that the City cannot arbitrarily and capriciously change the presumptive penalty for a purported violation of SPLC section 324.10(b)(2) to a purported violation of SPLC section 324.10(a) without running afoul of Relator's due process rights. *City*

of Hutchinson v. Otto, 306 Minn. 136, 235 N.W. 2d 604 (1978) (A municipality’s method for enforcing its ordinances cannot be arbitrary, unreasonable or discretionary.) The June 10, 2022 Notice of Violation identifies that the presumptive penalty matrix section that is being enforced by the City is Saint Paul Legislative Code section 324.10(b)(2), as it sets the penalty standard for flavored tobacco violations. The City moved for summary disposition based on its erroneous interpretation of SPLC 324.10(b)(2) as it relates to the ambiguous “Appearance” and “Violation” language of the code section. Under the circumstances of this case, the City’s new argument for revocation is arbitrary, unreasonable and discretionary in violation of Relator’s right to due process. *Id.*

In order to effectuate its new revocation argument at this juncture in the proceedings, the City must concede that the SPLC 324.10(b)(2), as argued in Relator’s memoranda, is ambiguous. Relator contends that the Court should recommend dismissal of any remaining action by the City against Relator related to any deviation or departure from the presumptive penalty on due process grounds based on the City’s bad faith. In the alternative, Relator respectfully requests that the Court re-open the record in this matter in order that Relator has the opportunity to conduct further discovery into the underlying facts surrounding the City’s NOV.

CONCLUSION

For all the aforementioned reasons, the Court should, respectfully, grant Relator’s Motion for Summary Disposition and recommend to the city council that it implement the presumptive penalty for a first violation of SPLC section 324.10(b)(2).

Dated: January 11, 2023

/s/ Craig J. Beuning
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OFFICE OF ADMINISTRATIVE HEARINGS

OAH File 65-6020-38532

In re the Cigarette/Tobacco License held by
MJ Market for the premises located at
922 Thomas Avenue
in Saint Paul.

**CITY’S RESPONSE TO CROSS
MOTION FOR SUMMARY
DISPOSITION**

I. The meaning of the term “appearance” in Saint Paul Legislative Code §324.10 is clear, unambiguous and the plain language in the Ordinance supports only one meaning as to what constitutes an “appearance”.

The city respectfully disagrees that there is more than one reasonable interpretation of what constitutes an “appearance” under Saint Paul Legislative Code (“SPLC”) §324.

“Appearances” are resolved violations under the penalty matrixes set out in SPLC §§310 and 324. SPLC §§310 and 324 do not state that violation types should be distinguished or computed separately within one penalty matrix for the sake of computing an “appearance”. The penalty matrix is a disciplinary tool that exists to progressively address inappropriate behavior and ensure compliance with the regulations that govern licenses issued by the Department of Safety and Inspections (“Department”). Under the code, City Council can adjust penalties and depart from the penalty matrix – either upward or downward.

Saint Paul’s Uniform License procedures are laid out in SPLC §310, which also contains a general penalty matrix under §310.05 (m). SPLC §324 regulates Tobacco Licenses and

contains a separate penalty matrix specifically related to tobacco offenses. SPLC §324.10 titled “Presumptive Penalties”, discusses the purpose of the penalties section, lays out the presumptive penalty matrix, discusses what is considered an appearance and how time between appearances is computed. SPLC §324.07 (m) penalizes tobacco violations and mandates that “Any violation of this chapter will subject the licensee to provisions of chapter 310 and section 324.10 of the Saint Paul Legislative Code.”

Chapter 324 of the SPLC was amended by City Council in 2021. The change became effective in December 2021.¹ Notice of the amendments to SPLC §324 was sent to all Tobacco Licensees including the Respondent, Majid Nitashoon, and a public hearing was held on the proposed amendments before they were passed by City Council.²

When it amended Chapter 324, City Council distinguished certain tobacco related offenses from the standard penalty matrix laid out in SPLC §310.05 (m) by adding a new violation and increasing penalties. The City Council added a new violation type to the existing tobacco penalty matrix for the “Display, possession or multiple incidents of sales of single cigarettes; menthol tobacco products; or flavored tobacco products” (“New Violation Type”) and increased the penalties for underage sales.³ The City Council did not change the formula for the computation of time between an appearance.

Within both the 310 and 324 matrixes, an “appearance” occurs each time that a Licensee resolves an adverse action with either a fine, suspension or some combination thereof as neither SPLC §§ 310.05(m) nor 324.10 (c) or (d) differentiates between what is an “appearance” by

¹ Ex. 10-5 – 10-12.

² Exhibits 10-1, 9-1 – 9-10.

³ SPLC 324.10(b)(2), Exhibit 10-12.

violation type nor does it state that violations between matrixes are to be treated separately.

SPLC §324.10 (c) and (d) state:

(c) “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 the presumptive penalties for subsequent violations.

(d)(1) a “second violation within 24 months shall be treated as a second appearance”.

(d)(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 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.”

The lack of differentiation between types of violations that comprise an appearance in the text of SPLC §324 shows the lack of ambiguity in the term “appearance” as well as the intent of City Council to treat “appearances” as progressive without regard to the violation type. The matrix as written is unambiguous and is intended to treat each resolved violation that occurred within SPLC §§ 310.05 (m) and 324.10 (b) as an “appearance” for the sake of computing the presumptive penalty without regard to the violation or violations that were the subject of the first or prior appearance. Any other reading would lead to absurd results. In this matter, both violations occurred under the same penalty matrix in Chapter 324 and within 12 months of each other so this is clearly a second violation within the 324 penalty matrix.

Respondent’s argument stems from his perceived harshness of the penalty. Under the amended penalty matrix in SPLC §324.10 (b), if the second appearance is related to the “Display, possession or multiple incidents of sales of single cigarettes, menthol tobacco products or flavored tobacco products”, the presumed penalty is revocation. While revocation might seem harsh, it is within the matrix set by the City Council and given the seriousness of the offenses in this penalty matrix, revocation is reasonable.

II The Penalty Recommended for Respondent’s Second Violation of the Tobacco Penalty Matrix is Consistent with the Method that the Department Uses to Recommend Penalties.

On August 3, 2021, Respondent’s business failed a tobacco compliance check when it sold cigarettes to an underage individual.⁴ The City initiated an adverse action against Respondent and imposed a \$300 penalty.⁵ Respondent did not contest the violation and paid the \$300 penalty in October 2021.⁶ The payment of the fine following this violation constitutes Respondent’s an “appearance” for the purpose of determining presumptive penalties for subsequent violations under SPLC § 324.10(c). The October 2021 “appearance” occurred less than 24 months before the appearance currently before the Court, so Respondent is on his second “appearance” for purposes of imposing a penalty under SPLC § 324.10(b). Because the current “appearance” is related to a violation of flavored tobacco products, and Respondent is making a second appearance, the unambiguous presumed penalty is revocation.

The City’s application of the penalties laid out in SPLC §324.10 is consistent with the method it uses to determine other licensing penalties under SPLC §310. Except for the now unused food code, the City’s licensing code has always used the number of appearances to determine which box of the penalty matrix contains the applicable penalty. The City is applying the penalty matrix laid out in SPLC § 324.10 in the same manner that it has historically applied the matrix in SPLC § 310.05 (m) by recommending the presumptive penalty for the violation or violations giving rise to the subsequent appearance.

III Respondent’s Due Process Rights Were Not Violated.

⁴ Exhibit 3-6.

⁵ Exhibit 3-3.

⁶ Exhibit 4-1.

Respondent alleges a due process violation, which hinges on Respondent’s argument that the ordinance is “void for vagueness.” As discussed above, the ordinance language is not vague, and Respondent was provided notice of the 2021 changes to Chapter 324. Notice regarding the 2021 amendments to SPLC §324 was mailed to all licensees, including Respondent.⁷ The process for amending the Ordinance complied with the procedures laid out in SPLC and included a public hearing on the proposed changes. With respect to the flavored product violations, the City complied with its provisions, sent a Notice of Violation that clearly laid out its recommendation for Revocation, the basis for that request and the actions that Respondent needed to take in order to address the violation. Respondent choose to contest the violation and is before this Court for an Administrative Hearing. The ordinance is not vague and Respondent had proper notice of the ordinance amendments in 2021, Respondent’s due process claim must fail.

IV Grounds Exist to Support a Recommendation for Upward Departure to Revocation.

Even if the Court found that the ordinance was ambiguous, the City maintains that the recommended penalty of revocation is supported by the facts of this case. While the Department believes that the standard matrix penalty of revocation is the applicable penalty and made that recommendation in its June 10, 2022, Notice of Violation, there are also more than ample grounds in this case for a recommendation for an upward departure to revocation. As laid out in SPLC §324.10 (a), while the penalties are presumed appropriate, the council may deviate in an existing case when the council finds substantial and compelling reasons. Grounds for an upward departure in this case include:

- Two tobacco related violations within 1 year on a license that became active in June of 2021;⁸

⁷ Exhibit 10-1

⁸ Exhibits 1-4, 1-9 – 1-15, 4-1.

- the amount of prohibited flavored tobacco products found during Inspector Voyda's complaint inspection on May 6, 2022;⁹
- the failure of the Respondent to manage the Licensed Premises in a manner that would have ensured that violations did not occur.

V Conclusion

The facts of this case are not in dispute. SPLC §324 is not ambiguous as demonstrated by the plain language of the ordinance and the Department is requesting an Order for Summary Disposition and recommendation that the presumptive penalty of revocation of Respondent's Cigarette/Tobacco License is warranted. Even if the Court finds the presumptive penalty is ambiguous, the Department requests a recommendation of revocation because it is supported by the facts of this case.

Dated: January 5, 2023

Respectfully submitted,

Therese Skarda

Therese A. Skarda
Assistant City Attorney
400 City Hall/Courthouse
15 West Kellogg Blvd.
Saint Paul, MN 55102
(651)266-8710
Atty. ID: 240989

⁹ Exhibits 1-4, 1-9 – 1-15.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

OAH Docket No. 65-6020-38532

FOR RELATOR

In the Matter of the
Cigarette/Tobacco License Held by
MJ Market for the Premises Located
At 922 Thomas Avenue in Saint Paul.

**NOTICE OF CROSS MOTION AND
CROSS MOTION FOR SUMMARY
DISPOSITION**

To: Department of Safety and Inspections, City of Saint Paul, by its attorney, Therese Skarda.

PLEASE TAKE NOTICE that Majid Nitaishoon d/b/a MJ Market, Inc. ("Relator") brings the following Cross Motion before the administrative law judge in the above-captioned matter.

MOTION

Relator moves the Administrative Law Judge for summary disposition and a recommendation that Relator's Cigarette/Tobacco license for the premises located at 922 Thomas Avenue, Saint Paul, MN is suspended for 10 days.

Grounds do not exist for revocation of Relator's Cigarette/Tobacco license pursuant to Saint Paul Legislative Code Sections 310, 324.07 and 324.10(b)(2).

Grounds exist for a 10-day suspension of Relator's Cigarette/Tobacco license based on a first violation of Saint Paul Legislative Code Section 324.10(b)(2).

This motion is made pursuant to Minnesota Rules 1400.5500(k) and 1400.660 and Rule 56.03 of the Minnesota Rules of Civil Procedure. The Motion is based on all the files, exhibits, memoranda, testimony and records of the underlying proceeding.

Dated: December 9, 2022

Respectfully submitted,

/s/ Craig J. Beuning
Craig J. Beuning (#0316660)
Attorney for Relator

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

OAH Docket No. 65-6020-38532

FOR RELATOR

In the Matter of the
Cigarette/Tobacco License Held by
MJ Market for the Premises Located
At 922 Thomas Avenue in Saint Paul.

**MEMORANDUM OF LAW IN SUPPORT
OF RELATOR'S CROSS MOTION
FOR SUMMARY DISPOSITION**

INTRODUCTION

Licensee, Majid Nitashoon (“Respondent”) d/b/a MJ Market, Inc., respectfully submits this Memorandum of Law in Support of Cross Motion for Summary Disposition. On June 10, 2022, the City of Saint Paul (“City”) initiated an adverse action against the tobacco shop license held by Respondent for the premise located at 922 Thomas Avenue in Saint Paul by filing a Notice of Violation (“Notice”) of Saint Paul Legislative Code section 324.07(j). Respondent sought a hearing before the Administrative Law Judge, Ann C. O’Reilly. On October 24, 2022, the City of Saint Paul, on behalf of the Department of Safety and Inspections, brought a Motion for Summary Judgment scheduled for November 15, 2022. Respondent submitted his Memorandum of Law in Opposition to the City of Saint Paul’s Motion for Summary Judgment and arguments were heard by Judge O’Reilly on November 15, 2022.

At the November 15, 2022 hearing, Respondent stipulated that there were no disputed fact issues that would preclude the granting of a motion for summary judgment as a matter of law. However, Respondent did not make a cross motion for summary judgment. The tribunal, after arguments were presented, granted Respondent permission to submit the instant Cross Motion for Summary Judgment. This Memorandum of Law primarily clarifies Respondent’s relevant legal argument contained in his Memorandum of Law in Opposition to Summary Judgment.

Respondent contends that SPLC section 324.10 is ambiguous. The penalty matrix found in SPLC section 324.10(b)(2) identifies that the first appearance for an alleged flavored tobacco product violation is a 10-day suspension, not revocation. In order to support an unsupportable position, the City conflates SPLC Chapter 310, Chapter 324 sections 324.10(b)(1), 324.10(b)(2), 324.10(d)(1) and Minn. Stat. §461.12, subd. 2 to reach an erroneous conclusion that Respondent's alleged first violation for the sale of flavored tobacco products results in revocation of his license. The City's interpretation and application of an ambiguous ordinance results in arbitrary and capricious action on the part of the City that violates Respondent's due process rights.

STATEMENT OF DOCUMENTS COMPRISING THE RECORD

1. Documents provided as Exhibits with City of Saint Paul's Memorandum of Law in Support of City's Motion for Summary Disposition served October 24, 2022.
2. Supplemental Documents provided by the City of Saint Paul as Exhibits 18-20.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Respondent agrees with City of Saint Paul that there are no disputed material facts which would preclude granting a motion for summary judgment as a matter of law.
2. Under SPLC section 324.10(b)(2) the presumptive penalty matrix identifies that a first appearance for display, possession or multiple incidents of sale of flavored tobacco products is a 10-day suspension. A second appearance is revocation.
3. On September 10, 2021, the Department of Safety and inspections ("Department") issued a Notice of Violation ("NOV") to Respondent recommending for the imposition of a \$300.00 administrative penalty for a tobacco youth compliance check failure. (See Beuning Declaration, Exhibit A.)

4. On June 10, 2022, the Department issued a NOV to Respondent recommending revocation of his cigarette/tobacco license. (See Beuning Declaration, Exhibit B.)

STANDARD OF REVIEW

Summary disposition is the administrative equivalent of summary judgment.” *Pietsch v. Minn. Bd. of Chiropractic Exam’rs*, 683 N.W.2d 303, 306 (Minn. 2004). A party is entitled to summary judgment when “there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005); see also Minn. R. Civ. P. 56.01. Court’s view the evidence in the light most favorable to the nonmoving party. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76- 77 (Minn. 2002).

1. Saint Paul Legislative Code Chapter 324.10 is Ambiguous.

The foremost rule of construction is that “courts generally strive to construe a term according to its plain and ordinary meaning.” *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). “When interpreting an ordinance, courts first examine its language to determine if it is ambiguous. *Motokazie! Inc. v. Rice Cnty.*, 824 N.W.2d 341, 344 (Minn. App. 2012). An ordinance is ambiguous if there is “more than one reasonable interpretation.” *Id.* (quotation omitted). If an ordinance is ambiguous, courts “may apply the canons of statutory construction to determine its meaning.” *Id.* Under the canons of construction, courts interpret the words used in an ordinance “according to their common approved usage.” Minn. Stat. § 645.08(1) (2020). Courts must avoid interpretations that would render a word or phrase “superfluous, void, or insignificant.” *In re Admin. Ord. Issued to Wright Cnty.*, 784 N.W.2d 398, 403 (Minn. App. 2010) (quotation omitted). Moreover, A municipality’s method for enforcing its ordinances cannot

be arbitrary, unreasonable or discretionary. *See, City of Hutchinson v. Otto*, 306 Minn. 136, 235 N.W. 2d 604 (1978).

The operative language in SPLC §324.10 reads as follows:

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			
	1 st	2 nd	3 rd	4 th
(1) Sale to a person under	\$500.00	\$1,000.00	\$2,000.00	Revocation
	fine	fine	fine and 7-day suspension	
(2) Display, possession or Multiple incidents of sales of:	10-day suspension	Revocation		
* single cigarettes,				
* menthol tobacco products,				
or				
* flavored tobacco products.				

(c) Fines payable without hearing. Notwithstanding the provisions of section 310.05(1), 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.

Respondent contends SPLC section 324.10(b)(2) is ambiguous. There is more than one reasonable interpretation of what constitutes a second "Appearance" for an alleged first "Violation" for offering for sale any flavored tobacco product violation under the presumptive penalties contained in SPLC 324.10. In its June 10, 2022, Notice of Violation and Request for Revocation of Your Cigarette/Tobacco License, the Department of Safety and Inspections ("Department") recommended adverse action against the premise located at 922 Thomas Avenue, Saint Paul for a first "Violation" for allegedly offering for sale a flavored tobacco product. In its NOV, the Department states that SPLC 324.10(b)(2) sets the presumptive penalties for violations of the provisions of the Legislative Code relating to the display, possession, or multiple incidents of sales of menthol or flavored tobacco products. *Id.* The Department goes on to state "Under 324.10(b)(2), the presumptive penalty for a second violation within a 24-month period is revocation of the license." *Id.* There is nothing in the NOV that indicates the Department is deviating from the presumptive penalty as conditionally allowed under SPLC section 324.10(a).

The City takes the untenable position that each violation regardless of the type of violation identified in the presumptive penalty matrix of SPLC section 324.10(b)(2) is cumulative for

purposes of constituting a second “Appearance” for the sale of flavored tobacco products under SPLC section 324.10(b)(2). In the instant matter, the City issued a NOV on September 10, 2021 for an alleged sale of tobacco products to a person under 21 years of age. (*See* Declaration of Beuning, Exhibit A.) The NOV indicates that an adverse action was brought under a former version of SPLC section 310.06(b)(c) and a \$300.00 administrative penalty was imposed pursuant to Minn. Stat. §461.12, subd. 2. *Id.* At the time of the September 10, 2021 NOV, there was no presumptive penalty matrix for the violation of the sale of flavored tobacco contained in SPLC section 324.10, it only addressed the violation for a sale of tobacco products to persons under 21 years of age.

In its June 10, 2022 NOV, the City is applying the provisions of the amended version of SPLC section 324.10. The Department requests a presumptive penalty of revocation for a second “Appearance” for an alleged first “Violation” of the sale of flavored tobacco products under the penalty matrix of SPLC section 324.10(b)(2). (*See* Declaration of Beuning, Exhibit B.) In order to reach the second “Appearance” presumptive penalty of revocation for a first “Violation” for the sale of flavored tobacco products under SPLC section 324.10(b)(2), the City relies on the September 10, 2021 NOV for the sale of tobacco products to person(s) under 21 years of age that was enforced under the penalty framework of SPLC section 310.06(b)(c), Minn. Stat. §461.12 subd. 2 and the former version of SPLC section 324.07(g). *Id.* It is the City’s position that no matter the type the first “Violation” is it can treat any subsequent “Violation” as a second “Appearance” for purposes of enforcing the presumptive penalty of revocation identified in SPLC section 324.10(b)(2). Respondent contends the ordinance is ambiguous and its application is being applied arbitrarily and capriciously.

A plain reading of SPLC section 324.10(b)(2) lends credence to Respondent's argument that the presumptive penalty for a flavored tobacco products violation such as the alleged violation identified in the Department's June 10, 2022, NOV, is a 10-day suspension for a first appearance. The Department does not expressly identify SPLC section 324.10(d)(1) in its NOV, but rather, states "Under section 324.10(b)(2), the presumptive penalty for a second violation within a 24-month period is revocation of the license." *Id.* The Department's interpretation of the presumptive penalty provision of SPLC 324.10 unlawfully renders the "Appearance" language in SPLC 324.10(b)(2) superfluous, void or insignificant. *See, In re Admin. Ord. Issued to Wright Cnty.*, 784 N.W.2d 398, 403 (Minn. App. 2010) (quotation omitted).

SPLC sections 324.10(c) addresses fines for each appearance for violation of SPLC section 324(b)(1) under the penalty matrix. Section (c) indicates that a licensee making a first or second appearance before the council may elect to pay the matrix fine 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." Section (c) is addressing the presumptive penalty under SPLC section 324.10(b)(1) which groups "Appearance" fines for violations of section (1) into 4 distinct categories for sale of tobacco products to a person under twenty-one years of age. There are no monetary "fines" for the alleged sale of flavored tobacco products identified in the presumptive penalty matrix. The section goes on to state that a licensee may elect to pay the fine and payment of the fine constitutes an appearance for the purpose of determining presumptive penalties for subsequent violations for sale of tobacco to person(s) under 21-years of age.

Under SPLC section 324.10(d)(1), there is no clarity regarding what constitutes an "Appearance" with respect to SPLC section 324.10(b)(2). Indeed, the City's interpretation as it

relates to an “Appearance” under SPLC 324.10(b)(2), improperly renders the presumptive penalty language contained in the penalty matrix for a violation of the sale of flavored tobacco moot. Section (d)(1), which was identified in the City’s legal argument but not the June 10, 2022, NOV, cannot be reconciled with the presumptive penalty for an alleged violation for the sale of flavored tobacco products. Under the presumptive penalty matrix, an “Appearance” for an alleged first “Violation” of SPLC section 310.10(b)(2) is a 10-day suspension. An “Appearance” for a second “Violation” for the alleged sale of flavored tobacco products is revocation. Section 324.10(d)(1), does not expressly reference the presumptive penalty matrix for a violation of the sale of flavored tobacco products. Instead, it generally addresses the computation of time for subsequent violations, i.e., a second violation within 24-months is treated as a second appearance, a third within 24-months a third appearance, and a fourth within 24-months treated as a fourth appearance for the purposes of determining the presumptive penalty. With respect to computation of time, the City is arbitrarily applying the ordinance akin to a criminal violation such as a DUI, rather than an administrative action brought under the municipal code. *See, City of Hutchinson v. Otto*, 306 Minn. 136, 235 N.W. 2d 604 (1978)(A municipality’s method for enforcing its ordinances cannot be arbitrary, unreasonable or discretionary.)

2. The City’s Application of the Presumptive Penalties in SPLC Section 324.10 Violates Respondent’s Due Process Rights.

Legislation is declared unconstitutional and “void for vagueness” by the United States Supreme Court as a violation of the Due Process Clause “where its language does not convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices, or stated otherwise, where its language is such that people of common intelligence must necessarily guess at its meaning.” *Keyishian v. Board of Regents.*, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967). It is an objective standard based on what the person subject

to the legislation would understand defined by the United States Supreme court as when an “[o]rdinary person exercising ordinary common sense can sufficiently understand and comply.” *Broadrick v. Oklahoma*, 413 U.S. 601, 93 S. Ct. 2908, 37 L. Ed. 2d 830 (1973).

Both the United States Constitution and the Minnesota Constitution provide that no person shall be deprived of “property without due process of law.” U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. There can be no dispute that the City of Saint Paul is attempting to deprive Respondent of a property interest by revoking his tobacco license. *See, e.g., Trumbull Div., Owens-Corning Fiberglass Corp. v. City of Minneapolis*, 445 F. Supp. 911, 916 (D. Minn. 1978) (concluding that a city’s failure to renew an asphalt manufacturing license deprived the plaintiff of a property interest). Generally, due process requires adequate notice and a meaningful opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976).

Courts will consider three factors to determine the due process rights of a relator: [f]irst, the private interest that will be affected by the official action; second the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews*, 424 U.S. at 335, 96 S. Ct. at 903.

SPLC section 324.10 is unconstitutionally vague. Respondent’s previous argument herein related to the ambiguity in SPLC section 324.10 is also relative to a finding that the ordinance is unconstitutionally vague. Respondent did not receive adequate and proper notice that an alleged violation of the ordinance for selling flavored tobacco products would result in the revocation of his tobacco license. The June 10, 2022, NOV only expressly identified SPLC section 324.10(b)(2) for its determination that revocation was the proper presumptive penalty. The Department

conflates SPLC sections 324.10(b)(1), 324.10(b)(2) and 324.10(d)(1) to reach an erroneous conclusion that the proper presumptive penalty is revocation. The presumptive penalty of revocation is an erroneous deprivation of Respondent's property interest through the procedures that were used by the Department.

CONCLUSION

Saint Paul Legislative Code section 324.10 is ambiguous. The City's application of SPLC section 324.10(b)(2) as the basis for revocation of Respondent's tobacco shop license is an arbitrary and capricious action. Based on the foregoing arguments, the City's Summary Judgment Motion should be denied, and Respondent's Cross Motion for Summary Judgment should be granted.

Dated: December 9, 2022

By: /s/ Craig J. Beuning
Craig J. Beuning, (#0316660)
Holstad & Knaak, PLC
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St. Paul, MN 55127
Phone: (601) 594-0924
Email: klawcraig@gmail.com

STATE OF MINNESOTA
COUNTY OF RAMSEY

ADMINISTRATIVE HEARING
OAH 65-0020-38532

In the Matter of the
Cigarette/Tobacco License Held by
MJ Market for the Premises Located
At 922 Thomas Avenue in Saint Paul.

OAH File No. 65-6020-38532

DECLARATION OF CRAIG J. BEUNING

I, Craig J. Beuning, under penalty of perjury, state and declare as follows:

1. I am the attorney for Majid Nitaishoon and MJ Markets Inc in the above-captioned matter.
2. Attached hereto as Exhibit A is a true and correct copy of September 10, 2021, Notice of Violation, Recommendation for Imposition of \$300 Administrative Penalty for Tobacco Youth Compliance Check Failure.
3. Attached hereto as Exhibit B is a true and correct copy of June 10, 2022, Notice of Violation and Request for Revocation of Your Cigarette/Tobacco License.

Dated: December 9, 2022

/s/ Craig J. Beuning
Craig J. Beuning, #0316660
4501 Allendale Drive
St. Paul, MN 55127
Phone: (601) 594-0924
Email: klawcraig@gmail.com



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDBEY 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 10, 2021

**NOTICE OF VIOLATION
RECOMMENDATION FOR IMPOSITION
OF \$300 ADMINISTRATIVE PENALTY FOR TOBACCO YOUTH COMPLIANCE
CHECK FAILURE**

MHH Global Inc
d/b/a Thomas Grocery
922 Thomas Avenue
Saint Paul, MN 55104

RE: Cigarette/Tobacco license held by MHH Global Inc. d/b/a Thomas Grocery for the premises located at 922 Thomas Avenue in Saint Paul
License ID #: 20200001611

MHH Global Inc.:

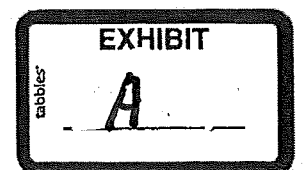
The Department of Safety and Inspections ("Department") will recommend adverse action against the Cigarette/Tobacco license held by MHH Global Inc. d/b/a Thomas Grocery ("Licensee") for the premises located at 922 Thomas Avenue in Saint Paul. ("Licensed Premises").

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 "

Minnesota Statute §461.12, Subd 2 states; "If a licensee or employee of a licensee sells, give, 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."

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

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SAINT PAUL
CITY ATTORNEY

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

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
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Saint Paul Legislative Code Section 310.06 sets forth a variety of reasons under which adverse actions can be based. Section 310.06(b)(c) says 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 §324.07(g) prohibits the sale of tobacco products to person under the age of twenty-one (21) years.

The Department asserts the following facts along with attachments herein constitute proof of a violation of Minnesota Statute § 461.12, Subd. 2 and Saint Paul Legislative Code §324.07(g) by a preponderance of the evidence.

Synopsis of alleged facts:

On August 3, 2021 at 11:36am, a tobacco compliance check was conducted at Thomas Grocery located at 922 Thomas Avenue. A twenty-year-old female entered your store and attempted to purchase cigarettes. She was not asked to show her identification which indicated she was underage. Nevertheless, the clerk sold her a package of American Spirit cigarettes. Inspector Yang came into the establishment afterward and spoke to the clerk, Haidar Hussein. He was informed that he failed the youth compliance check by selling American Spirit cigarettes to an underage person.

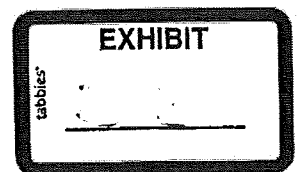
Sale of tobacco to an underage person is a violation of Minn. Stat. § 609.685 and Saint Paul Legislative Code § 324.07(g)

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 **September 24, 2021**, 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 \$300.00 administrative 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 **September 24, 2021**. A self-addressed envelope is enclosed for your

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

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convenience. Payment of the \$300.00 administrative 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 \$300.00 administrative penalty, you may have a public 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 public hearing no later than **September 24, 2021**. The matter will then be scheduled before the City Council to determine whether to impose the \$300.00 administrative 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 **September 24, 2021**. 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 § 310.05 (k).

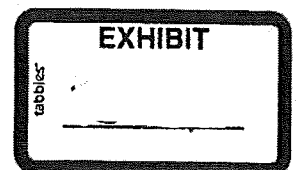
If you have not contacted me by September 24, 2021, I will assume that you do not contest the imposition of the \$300.00 administrative penalty. In that case, the matter will be placed on the City Council Consent Agenda for approval of the recommended penalty.

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 Shawn McDonald, my Legal Assistant at (651) 266-8729.

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

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SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDESE 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

June 10, 2022

**NOTICE OF VIOLATION AND
REQUEST FOR REVOCATION OF
YOUR CIGARETTE/TOBACCO LICENSE**

MJ Market Inc.
922 Thomas Avenue
Saint Paul, MN 55104
Attn: Majid Nitaishoon

RE: Cigarette/Tobacco license held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul.
License ID # 20210001131

Dear Licensee:

The Department of Safety and Inspections (the "Department") is recommending adverse action against the Cigarette/Tobacco license held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul (the "Licensed Premises") for a second appearance due to a flavored tobacco product violation.

Saint Paul Legislative Code section 324.07(j) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored tobacco products. Under Saint Paul Legislative Code section 310.17, the conduct of any clerk, employee, manager, or agent working for or on behalf of a licensee is treated as the conduct of the licensee for the purpose of adverse action.

Saint Paul Legislative Code section 324.10(b)(2) sets the presumptive penalties for violations of provisions of the Legislative Code relating to the display, possession, or multiple incidents of sales of menthol or flavored tobacco products. Under section 324.10(b)(2), the presumptive penalty for a second violation within a 24-month period is revocation of the license.

Records from the Department show that on August 3, 2021, during a youth compliance check conducted at the Licensed Premises, a store clerk sold tobacco products to an individual who was less than twenty-one (21) years old, in violation of local ordinance

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

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SAINT PAUL
CITY ATTORNEY

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

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-256-8710 | Fax: 651-298-5619

The Department asserts that the following facts, along with photos of the violations attached herein, constitute proof of a violation of Saint Paul Legislative Code section 324.07(j) by a preponderance of the evidence

Synopsis of Alleged Facts:

On August 3, 2021, during a Department-conducted youth compliance check, an individual who was less than twenty-one (21) years old successfully purchased tobacco products from the Licensed Premises. Based on these findings, the Department recommended adverse action against your Cigarette/Tobacco license and the imposition of a \$300 fine. By paying the \$300 fine, you admitted to the violation.

On May 6, 2022, a Department inspector went to the Licensed Premises for a complaint inspection. The inspector spoke with the store clerk, Ahmed Aizadgir, and informed him that the Department received a complaint of the business selling flavored tobacco products. During the inspection, the inspector observed and documented with photographs multiple flavored tobacco products located behind the counter/cash register. After the inspection, the inspector educated the clerk on these violations and advised him to remove all flavored tobacco products into a back storage and call a distributor to pick them up.

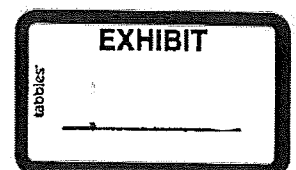
You have three (3) options to proceed:

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 **June 24, 2022**, 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 revocation of your license.

2. If you wish to admit the facts but you contest the penalty of revocation, you may have a public 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 public hearing no later than **June 24, 2022**. The matter will then be scheduled before the City Council to determine whether to revoke the license. You will have an opportunity to appear before the Council and make a statement.

CITY OF SAINT PAUL
MELVIN CARTER, MAJOR

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SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNOSEY 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

3. If you dispute the facts outlined above, you may request a hearing before an Administrative Law Judge (the "ALJ"). You will need to send me a letter disputing the facts and requesting an administrative hearing no later than **June 24, 2022**. At that hearing, both you and the City will appear and present witnesses and 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 the public hearing, 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 reserves the right to request that City Council impose the costs of the administrative hearing, per Saint Paul Legislative Code section 310.05(k).

If you have not contacted me by June 24, 2022, I will assume that you do not contest the revocation of your license. In that case, the matter will be placed on the City Council Consent Agenda for approval of the recommended penalty.

Sincerely,

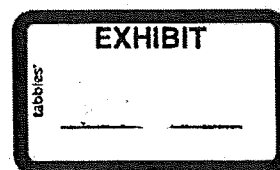
Stephen Earnest
Assistant City Attorney
License No.: 0402652

cc: Majid Nitaishoon, 466 82nd Avenue NE, Spring Lake Park, MN 55432
Anas Tei, 4456 Van Buren Street NE, Columbia Heights, MN 55421
Caty Royce, Co-Executive Director, Frogtown Neighborhood Association, 501 Dale Street, Saint Paul, MN 55117
Tia Williams, Co-Executive Director, Frogtown Neighborhood Association, 501 Dale Street, Saint Paul, MN 55117

Attachments: Inspector's Report
List of Tobacco Products Found on Licensed Premises
Licensee information on Eclips System
License Group Comments Text
STAMP - Ownership/Zoning Information
Photos of Tobacco Products

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

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November 22, 2022

VIA EMAIL ONLY

Therese Skarda
St. Paul City Attorney's Office
400 City Hall & Courthouse
15 W Kellogg Blvd
Saint Paul, MN 55102
Therese.Skarda@ci.stpaul.mn.us;
shawn.mcdonald@ci.stpaul.mn.us

VIA EMAIL ONLY

Craig J. Beuning
Holstad & Knaak, PLC
4501 Allendale Sr
St. Paul, MN 55127
klawcraig@gmail.com

Re: *In the Matter of the Cigarette/Tobacco License Held by MJ Market Inc. for the Premises Located at 922 Thomas Avenue in Saint Paul*
OAH 65-6020-38532

Dear Parties:

Enclosed and served upon you please find the **ORDER GRANTING LEAVE TO FILE CROSS MOTION FOR SUMMARY DISPOSITION** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7857, nichole.helmuelle@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



NICHOLE HELMUELLER
Legal Assistant

Enclosure

cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Cigarette/Tobacco License Held by MJ Market Inc. for the Premises Located at 922 Thomas Avenue in Saint Paul	OAH Docket No.: 65-6020-38532
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On November 22, 2022, a true and correct copy of the **ORDER GRANTING LEAVE TO FILE CROSS MOTION FOR SUMMARY DISPOSITION** was served by United States mail, unless otherwise indicated below, addressed to the following:

VIA EMAIL ONLY

Therese Skarda
St. Paul City Attorney's Office
400 City Hall & Courthouse
15 W Kellogg Blvd
Saint Paul, MN 55102
Therese.Skarda@ci.stpaul.mn.us;
shawn.mcdonald@ci.stpaul.mn.us

VIA EMAIL ONLY

Craig J. Beuning
Holstad & Knaak, PLC
4501 Allendale Sr
St. Paul, MN 55127
klawcraig@gmail.com

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST PAUL

In the Matter of the Cigarette/Tobacco License Held by MJ Market, Inc. for the Premises Located at 922 Thomas Avenue in Saint Paul

**ORDER GRANTING LEAVE
TO FILE CROSS MOTION FOR
SUMMARY DISPOSITION**

The above-entitled matter came before Administrative Law Judge Ann O'Reilly for a summary disposition motion hearing on November 15, 2022.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). Craig Beuning, HKB Law, P.A., appeared on behalf of Respondent MJ Market, Inc. (Respondent)

Given the parties' stipulation as to undisputed material facts and the dispute regarding the application of applicable law to the facts,

IT IS HEREBY ORDERED:

1. Respondent shall serve and file its cross Motion for Summary Disposition on or before **December 15, 2022**. The City shall serve and file its response, if any, by **January 16, 2023**.

2. The evidentiary hearing scheduled for February 15 and 16, 2023, is **CANCELLED** stricken from the court calendar, pending the Judge's recommendation on the parties' cross Motions for Summary Disposition.

Dated: November 22, 2022



ANN C. O'REILLY
Administrative Law Judge

**OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COUNCIL OF
THE CITY OF SAINT PAUL**

In Re: The Cigarette/Tobacco Licenses held by MJ Market for the premises located at 922 Thomas Avenue in Saint Paul.

**CITY'S
EXHIBIT LIST**

DATE: November 17, 2022

TO: Judge Ann C. O'Reilly - Office of Administrative Hearings, 600 North Robert Street.

Exhibit No.	Description
Ex. No. 1-1-1-3	Notice of Violation and Request for Revocation of the Cigarette/Tobacco License dated 6/22/2022
Ex. No. 1-4 - 1-15	Inspector Joseph Voyda Report with attachments including photographs
Ex. No. 2	Complaint
Ex. No. 3-1-3-11	September 10, 2021 Prior Notice of Violation and Supporting docs
Ex. No. 4-1	October 6, 2021 email indicating that September 10, 2021 matrix penalty is paid
Ex. No. 5-1-5-28	License Application and Supporting Documents including Lease
Ex. No. 6-1	Signed License Conditions
Ex. No. 7-1 - 7-9	Signed Acknowledgement and Ordinance Handout
Ex. No. 8-1	Letter requesting ALJ Hearing
Ex. No. 9-1 - 9-10	Mailing list for Tobacco Licensees with address information
Ex. No. 10-1 - 10-12	9-1-2021 and 8-26-2021 Notices for Public Hearing on 324 Amendments
Ex. No. 11-1 - 11-31	Saint Paul Legislative Code Section 310
Ex. No. 12-1 - 12-7	Saint Paul Legislative Code Section 324
Ex. No. 13-1 - 13-11	Updated DSI Tobacco Handout
Ex. No 14-1 - 14-12	Joseph Voyda notes/research on certain flavored tobacco products and flavored products
Ex. No 15-1 - 15-8	Signed and Notarized Affidavit of Eric Hudak
Ex. No. 16-1 - 16-5	Signed and Notarized Affidavit of Joseph Voyda
Ex. No. 17-1 - 17-3	Signed and Notarized Affidavit of Therese Skarda
Ex. No. 18-1 - 18-9	Saint Paul Legislative Code Chapter 324 as it read on December 2, 2021
Ex. No. 19-1 - 19-49	Saint Paul Legislative Code Chapter 310 as it read on December 2, 2021
Ex. No 20-1 - 20-2	Email from Shari Moore about 2021 version of Saint Paul Legislative Code Chapters 310 and 324

Respectfully submitted the 17th day of November 2022



Therese Skarda, Assistant City Attorney
License No: 0240989
Office of the City Attorney
400 City Hall & Courthouse
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102

Chapter 324. - Tobacco

Sec. 324.01. - License required.

- (a) No person shall sell or offer for sale at retail within the city any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product or in any manner represent or hold himself or herself out as one who sells or offers for sale at retail any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product or maintain a tobacco vending machine for the sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products without a license.
- (b) A tobacco vending machine may be located in a public accommodation, provided that:
 - (1) All tobacco vending machines shall be operable only by the activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of a token provided to the purchaser by an employee of the licensee;
 - (2) Any machine shall be located in the immediate vicinity, plain view and control of a responsible employee so that all tobacco purchases will be readily observable by that employee. The tobacco vending machine shall not be located in a coatroom, restroom, unmonitored hallway, outer waiting area or similar unmonitored areas. The tobacco vending machine shall be inaccessible to the public when the establishment is closed.
 - (3) Any tobacco vending machine shall have posted on or near it a sign with the statement, in letters at least one-half (½) inch high, "The sale of tobacco products or electronic delivery devices to persons under twenty-one is prohibited."
- (c) Any license issued pursuant to this chapter shall be issued to the person, firm or corporation that operates the principal business at that address. Each vending machine shall be required to have a separate license.
- (d) No license may be issued pursuant to this chapter for a location or place of sale if a tobacco license previously issued for that location or place of sale has been revoked for any reason other than nonpayment of license fees within the past five (5) years, subject to the following exceptions:
 - (1) Notwithstanding subdivision (d), a license may be issued if the new applicant:
 - a. Currently holds another tobacco license in the city;
 - b. Has held the license for at least five (5) years; and



- c. The license:
1. Has not been subject to adverse action within the past two (2) years;
 2. Has been subject to no more than one (1) adverse action within the past five (5) years; and
 3. Is not the subject of any pending adverse actions.
- (2) Notwithstanding subdivision (d), a license may be issued if the new applicant is otherwise able to demonstrate at least five (5) years of previous experience operating a tobacco retail establishment in a law abiding manner in the State of Minnesota. In considering an application made pursuant to this subsection, the factors to be considered by the council include, but are not limited to:
- a. Any adverse or disciplinary actions against any business licenses held by the applicant in the previous five (5) years; and
 - b. Any violations of the law related to operating a retail establishment, committed by the applicant in the previous five (5) years, regardless of whether any criminal charges have been brought in connection therewith.
- (3) Any license granted pursuant to subpart (d)(1) or (d)(2) must be approved by the affirmative vote of no less than five (5) members of the council.

(Code 1956, § 366.02; Ord. No. 17714, § 1, 2-20-90; C.F. No. 94-341, § 1, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-12, § 1, 4-22-15; Ord 15-57, § 1, 1-6-16; Ord 19-57, § 1, 10-16-19)

Sec. 324.02. - License for each location or vending machine.

A license shall permit the licensee to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at retail at the one (1) location specified in said license, and a separate license shall be required for each location or tobacco vending machine.

(Code 1956, § 366.05; C.F. No. 94-341, § 2, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-57, § 1, 1-6-16)

Sec. 324.03. - Definitions.

The following words and phrases, as used in this chapter, shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those cases where the context clearly indicates a different meaning:

- (1) *Cigar* means any roll of tobacco that is wrapped in tobacco leaf, or in any other substance containing tobacco, with or without a



tip or mouthpiece, that is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

- (2) *Electronic delivery device* means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (3) *Flavored product* means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco shall constitute presumptive evidence that the product or device is a flavored product.
- (4) *Nicotine or lobelia delivery product* means any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a tobacco product or an electronic delivery device, as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (5) *Sale* means and includes any transfer, conditional or otherwise, of title or possession.
- (6) *Sale at retail* means and includes all sales except those where the merchandise is sold for the purpose of resale by a person principally engaged in selling merchandise for resale.
- (7) *Tobacco or tobacco product* means 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 cigarettes, cigars, little cigars; cheroots; stogies;



periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

- (8) *Tobacco-related devices* means cigarette papers, 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 vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.
- (9) *Tobacco vending machine* means a machine for vending tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices by the insertion of money, tokens, or other form of payment.

(Code 1956, § 336.01; C.F. No. 94-341, § 3, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 10-1014, § 1, 10-13-10; Ord 13-8, § 1, 4-24-13; Ord 14-34, § 1, 8-27-14; Ord 15-57, § 1, 1-6-16; Ord 17-28, § 1, 11-1-17)

Sec. 324.04. - Fee, duration, limitation on number of licenses.

The annual license fee for each location of sale or each tobacco vending machine shall be established by ordinance as specified in section 310.09(b) of the Legislative Code. The license shall expire one (1) year from the date of issuance during each calendar year. The annual license fee shall be prorated for licenses in force less than a full year.

The total number of licenses issued by the city for the retail sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products shall not exceed two hundred forty-two (242). Establishments or locations holding licenses on July 1, 2018, or with an application of a license pending on July 1, 2018, that is ultimately granted shall not be affected by this limitation, but shall be entitled to have such licenses renewed or new license granted, subject to the following exceptions:

1. The establishment or location is in compliance with all other requirements of law and there exist no grounds for adverse actions against such licenses;
2. The previous license has not terminated or expired more than two (2) years before the new license had been first applied for;
3. A previous license has not been revoked by the council.



(Code 1956, § 336.03; Ord. No. 17386, § 1, 8-19-86; C.F. No. 92-1930, § 1, 1-14-93; C.F. No. 94-341, § 4, 4-13-94; C.F. No. 95-1271, § 1, 11-8-95; C.F. No. 97-314, § 1, 4-20-97; Ord 18-19, § 1, 6-27-18)

Sec. 324.05. - Application.

In addition to any other information required by the director, the applicant shall state the true name of the applicant, the name under which he or she shall conduct his or her business, whether such business is that of an individual, sole trader, firm, partnership, or corporation, and the address where such business is to be conducted. Any person applying for more than one (1) license shall file with the department of safety and inspections a list of all locations of sale and/or the location of each vending machine for which license applications are being filed. Any change in the location of the place of sale shall be reported to the director within five (5) days of said change.

(Code 1956, § 336.04; C.F. No. 94-341, § 5, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 07-149, § 81, 3-28-07)

Sec. 324.06. - License to be displayed.

The license shall be displayed by the licensee in a prominent and conspicuous place at the licensed location. In the case of a tobacco vending machine, the operator shall also affix his or her name, address and telephone number in a conspicuous place on each machine.

(Code 1956, § 336.06; C.F. No. 94-341, § 6, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-57, § 1, 1-6-16)

Sec. 324.07. - Sales prohibited.

- (a) No person shall sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes shall be sold in packages of fewer than twenty (20) cigarettes.
- (b) No person shall sell or dispense tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices from a motor vehicle or other movable place of business.
- (c) No person shall sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery 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 shall offer for sale tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in



any open displays which are accessible to the public without the intervention of a store employee. This restriction shall not apply to retail stores which derive at least ninety (90) percent of their revenue from tobacco and tobacco-related devices, and where the retailer ensures that no person younger than twenty-one (21) years of age is present, or permitted to enter, at any time.

- (e) No person shall 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 shall 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 shall sell, offer for sale, or otherwise distribute any flavored products.
- (g) Sale to persons under the age of twenty-one (21) years prohibited.
 - (1) Whoever sells or furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of twenty-one (21) years is guilty of a misdemeanor for the first violation. Whoever violates this section a subsequent time within five (5) years of a previous conviction is guilty of a gross misdemeanor.
 - (2) 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. Stat. § 340A.503, subd. 6.
- (h) Exceptions.
 - (1) Notwithstanding section (g), individuals exempted under Minn. Stat. § 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 tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.
 - (3) Retail stores that derive at least ninety (90) percent of their revenue from the sale of tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products and where the retailer ensures that no person under twenty-one (21) years of age is permitted to enter, at any time are permitted to sell and offer for sale flavored tobacco products.
 - (4) Establishments holding an off-sale intoxicating liquor license issued by the City of Saint Paul under chapter 409 of the Saint Paul Legislative Code who also hold a license for tobacco sales under this chapter shall be permitted to sell and offer for sale flavored tobacco products only in the following flavors: menthol, mint, and wintergreen.



(i) Any violation of this chapter shall 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)

Editor's note— Ord 17-28, § 2, adopted November 1, 2017, shall take effect and be in force beginning November 1, 2018.

Sec. 324.08. - Distribution of free products prohibited.

No person in the business of selling or promoting tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products or agent or employee of such person shall distribute any products free to any person on the sidewalks, pedestrian concourses, pedestrian malls or pedestrian skyway systems within the city.

(Code 1956, § 336.08; Ord. No. 17714, § 1 2-20-90; C.F. No. 92-1930, § 2, 1-14-93; C.F. No. 94-341, § 8, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-57, § 1, 1-6-16)

Sec. 324.09. - Use of false identification by minors prohibited.

No person under the age of twenty-one (21) years shall purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products using a driver's license, a Minnesota identification card, or other form of identification which is false, fictitious, altered or counterfeited as to age or any other material fact of identification. Use of false identification to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products is a misdemeanor.

(Ord. No. 17733, § 1, 5-8-90; C.F. No. 94-341, § 9, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 13-8, § 3, 4-24-13; Ord 15-57, § 1, 1-6-16; Ord 19-57, § 3, 10-16-19)

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. 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. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.

(b) *Presumptive penalties for violations.* Adverse penalties 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	\$200.00 fine	\$400.00 fine	\$800.00 fine and 7-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.

- (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)

Editor's note— 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.



Chapter 310. - Uniform License Procedures

Sec. 310.01. - Definitions.

For the purposes of this chapter, any chapter of the Legislative Code pertaining to licenses as hereinafter mentioned, and subsequently enacted ordinances establishing or relating to the requirements for Class R, for routinely issued licenses, Class T for temporary licenses and Class N for licenses in which neighbors are required to be notified, under authority of the City of Saint Paul, the terms defined in this section shall have the meanings ascribed to them:

Adverse action means the revocation or suspension of a license, the imposition of conditions upon a license, the denial of an application for the grant, issuance or renewal of a license, the imposition of a fine, the assessment of the costs of a contested hearing, and any other disciplinary or unfavorable action taken with respect to a license, licensee or applicant for a license. "Adverse action" includes any of the foregoing directed at one (1) or more licenses held by a licensee at any location in the city. "Adverse action" also includes disapproval of licenses issued by the state under statutory provisions which permit the governing body to disapprove the issuance of the license.

Bond means a bond meeting the requirements of section 310.07 and indemnifying the city against all claims, judgments or suits caused by, resulting from or in connection with any licensed business, activity, premises, thing, facility, occurrence or otherwise under these chapters.

Building official means the official in the department of safety and inspections charged with the responsibility of enforcement of the building code.

Chapters and these chapters shall mean this uniform license ordinance, any chapter of the Legislative Code pertaining to licenses as hereinafter mentioned, and subsequently enacted ordinances establishing or relating to the requirements for class R, class T and class N licenses under authority of the city.

Class R licenses means those licenses which can be approved and issued or denied by the director of the department of safety and inspections, subject to the procedures required by these chapters. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Class R Licenses	Legislative Code Chapter
Animal Foods Manufacturing and Distributing	<u>316</u>
Amusement Rides	<u>317</u>
Mechanical Amusement Devices	<u>318</u>



Bed and Breakfast	<u>378</u>
Bituminous Contractors	<u>320</u>
Rooming and Boardinghouses; Dormitories	<u>321</u>
Christmas Tree Sales	<u>323</u>
Cigarettes/Tobacco	<u>324</u>
Commercial Vehicles	<u>167</u>
Building Contractors	<u>326</u>
Courtesy Bench	<u>127</u>
Dry Cleaning Establishments and Pickup Stations; Laundries	<u>327</u>
Alarm Devices	<u>329</u>
Food Protection Standards	<u>331A</u>
Fuel Dealers—Liquid Fuel	<u>332</u>
Fuel Dealers—Solid Fuel	<u>333</u>
Pest Control	<u>334</u>
House Sewer Contractors	<u>338</u>
Keeping of Animals	<u>198</u>
Lawn Fertilizer and Pesticide Application	<u>377</u>
Mercantile Broker	<u>340</u>
Oil—Bulk Storage	<u>342</u>
Peddlers	<u>345</u>
Solicitors	<u>345</u>
Pet Grooming Facility	<u>382</u>
Pet Shops	<u>347</u>
Solid Waste Hauler	<u>357</u>
Rental of Hospital Equipment	<u>350</u>
Rental of Kitchenware	<u>351</u>
Rental of Trailers	<u>352</u>
Roller Rinks	<u>353</u>
Sanitary Disposal Vehicle	<u>354</u>
Secondhand Dealers (Single Location, Multiple Dealers)	<u>355</u>
Sidewalk Cafe	<u>106</u>
Sidewalk Contractors	<u>356</u>
Solid Waste Transfer Station	<u>357</u>
Sign and Billboard Construction	<u>66 and 33</u>



Sound Trucks and Broadcasting Vehicles	<u>359</u>
Public Swimming Pools	<u>360</u>
Tanning Facility	<u>380</u>
Wreckers and Tow Trucks	<u>361</u>
Taxicab Driver	<u>376</u>
Taxicab Vehicle	<u>376</u>
Tree Trimming	<u>362</u>
Food Vending Machines	<u>363</u>
Veterinary Hospital	<u>364</u>
Window Cleaning	<u>365</u>
Block Parties	<u>366</u>
Wrecking of Buildings	<u>368</u>
Building Trades Business Licenses	<u>369</u>
Building Trades Certificates of Competency	<u>370</u>
Finishing Shop	<u>371</u>
Tire Recapping Plants	<u>372</u>
Massage Center	<u>412</u>
Therapeutic Massage Practitioner	<u>414</u>
Vehicle Immobilization	<u>383</u>
Short-term Rental Platform	<u>379</u>
Short-term Rental Host	<u>379</u>

Class T licenses means those licenses which must be approved or denied by the director, subject to the procedures required by these chapters. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Class T Licenses	Legislative Code Chapter
Amusement Rides—Temporary	<u>317</u>
Close-Out Sales	<u>325</u>
Transient Merchants	<u>345</u>
Gambling—Temporary	<u>402.06</u>
Entertainment—Temporary	<u>411</u>
Extension of Service Area-Liquor	<u>409</u>



Soliciting Funds—Tag Days	<u>391</u>
Temporary On-Sale Malt (3.2)	410
Temporary Wine, Wine Licenses for Festivals and Liquor	<u>409</u>
Secondhand Dealer—Exhibition	<u>355</u>

Class N licenses means those licenses which can be approved or denied only by the council, subject to the procedures required by these chapters. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Class N Licenses	Legislative Code Chapter
Automobile Repair Garage and Body Shop	<u>423</u>
Pool Hall, Bowling Center	<u>322</u>
New Motor Vehicle Dealer	401
Bingo	402
Bingo Halls	403
Cabaret	<u>426</u>
Private Clubs - Liquor	<u>409</u>
Dance or Rental Halls	405
Firearms Dealer	<u>225</u>
Gambling Hall	<u>278</u>
Game Rooms	<u>406</u>
Gas Station	<u>424</u>
Gambling Location	<u>409</u>
Hotel/Motel	<u>407</u>
Health/Sports Club	<u>427</u>
Infectious Waste Processing	<u>429</u>
Recycling Collection Center/Recycling Processing Center	408
Second Hand Dealer—Motor Vehicle Parts	401
Motor Vehicle Salvage Dealer	<u>422</u>
Intoxicating Liquor—On and Off Sale	<u>409</u>
Brewpub/Off-Sale	<u>409</u>
Off-Sale Brewery	<u>409</u>
Motorcycle Dealer	401



Pawn Shop	<u>344</u>
Nonintoxicating Liquor-On and Off Sale	<u>410</u>
Entertainment	<u>411</u>
Conversation/Rap Parlors	<u>413</u>
Steam Room/Bathhouse	<u>428</u>
Theatres and Movie Theaters	<u>415</u>
Motion Picture Drive-In Theatres	<u>416</u>
Second Hand Dealer—Motor Vehicle	<u>401</u>
Parking Lots and Parking Garages	<u>417</u>
Scrap and Metal Processor	<u>420</u>
Liquor Extension of Service Hours	<u>409</u>
Liquor Outdoor Service Area (Patio)	<u>409</u>
Currency Exchange	<u>381</u>

Department means the department of safety and inspections.

Director means the director of the department of safety and inspections, unless otherwise defined in the specific chapter, section or subdivision referred to.

Fee means and includes both the license fee and application fee unless otherwise provided.

Inspector as used in these chapters means the director of the department of safety and inspections or his or her designee.

License means and includes all licenses and permits provided for or covered by these chapters. License also includes licenses issued by the state under statutory provisions which permit the governing body to disapprove the issuance of such licenses, for the purposes of making procedures in chapter 310 of the Legislative Code applicable to the approval or disapproval of such licenses.

Person means and includes any person, firm, corporation, partnership, company, organization, agency, club or any group or association thereof. It shall also include any executor, administrator, trustee, receiver or other representative appointed by law.

Zoning administrator means the official in the department of safety and inspections charged with responsibility for enforcement of the zoning code.

(Code 1956, § 510.01; Ord. No. 17085, § 1, 12-6-83; Ord. No. 17303, § 3, 10-29-85; Ord. No. 17569, § 1, 6-7-88; Ord. No. 17919, § 1, 3-31-92; C.F. No. 93-1645, § 8, 12-30-93; C.F. No. 94-46, § 6, 2-2-94; C.F. No. 94-500, § 2, 7-6-94; C.F. No. 94-898, § 1, 7-13-94; C.F. No. 95-473, § 1, 5-31-95; C.F. No. 99-500, § 1, 7-7-99; C.F. No. 01-400, § 1, 11-7-01; C.F. No. 02-1031, § 1, 11-27-02; C.F. No. 03-102, § 1, 3-12-03; C.F. No. 03-694, § 1, 9-3-03; C.F. No. 06-574, § 1, 7-26-06; C.F. No. 06-821, § 1, 9-27-06; C.F. No. 07-149, § 71, 3-28-07; Ord 12-50, § 1, 9-12-12; Ord 17-48, § 1, 10-25-17; Ord 16-68, § 1, 1-9-19)



Sec. 310.02. - Application.

- (a) *Form.* All applicants for licenses or permits issued pursuant to these chapters shall make both original and renewal applications to the inspector on such forms as are provided by the division. Such applications shall not be received by the inspector until completely filled out, accompanied by all fees, insurance policies, bonds, deposits, sureties, and indemnifications or certificates required by these chapters, together with the certification required in paragraph (b) below.
- (b) *Taxes.* No person shall be granted a license or a renewal of a license required by the Saint Paul Legislative Code unless, prior to and in addition to any other requirements, rules or ordinances heretofore or hereafter required, the Ramsey County Department of Property Taxation certifies that said applicant has paid any and all taxes, real or personal, before said taxes become delinquent, on any property, real or personal, situated within the City of Saint Paul and used in connection with the business operated under said license.

Notwithstanding the previous paragraph, the council, the director or the inspector may issue or renew a license if it is found that:

- (1) The applicant has made an agreement satisfactory to the Ramsey County attorney to pay delinquent taxes in periodic installments;
- (2) The applicant has properly commenced a proceeding to contest the amount of tax due or the valuation of his property, and has made all partial payments required by law in connection with such proceeding; or
- (3) The business property with respect to which taxes are delinquent is not owned by the applicant, but by a lessor, and it would be inequitable to require the lessee to pay such taxes.

If a license is issued or renewed because of the existence of an agreement as described in subsection (1) above, the license may be revoked if the licensee defaults upon such agreement.

- (c) *Additional information.* The inspector shall prescribe the information required to be submitted by each applicant in their application, in addition to that required by specific sections in these chapters, as may be necessary to carry out and enforce any provision hereunder. The inspector shall require in every case the applicant to submit their name; business or corporate name; names of partners, officers, directors, shareholders or trustees involved in the business; age; address; description or blueprint of the premises, if any, and the owner thereof, and locations and addresses of other business locations in Minnesota.
- (d) *No reapplication within one (1) year after denial or revocation.* Unless an applicant is claiming that they have evidence of rehabilitation as outlined in Minnesota Statute 364.03, subd. 3, no person may apply for any license within one (1) year of the denial or revocation of the same or similar license by the city council, if such denial or revocation was based solely or partially upon misconduct or unfitness of the applicant,



evidence of violations of law involving licensed premises, evidence that the applicant had been involved in the operation of a nuisance, or fraud or deception in the license application. A license is "similar," within the meaning of this paragraph, if the basis upon which the revocation or denial of the original license was made would have been a relevant basis on which to deny or revoke a license of the type subsequently applied for.

- (e) *Reapplication after denial; "interest" of applicant in revoked license.* An application by a person having an interest in, or whose shareholders or officers have an interest in, any premises or enterprise whose license has been revoked or to which a license has been denied shall be treated as an application by the person whose license was denied or revoked. The term "interest," as used in this paragraph, includes any pecuniary interest in the ownership, operation, management or profits of an establishment, but does not include: bona fide loans; bona fide rental agreements; bona fide open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to such establishment; an interest in a corporation owning or operating a hotel but having at least one hundred fifty (150) or more rental units holding a license in conjunction therewith; or ten (10) percent or less interest in any other corporation holding a license.
- (f) *Prohibition on reapplication; exception.* The prohibition on reapplication herein provided shall not apply in cases where it is otherwise expressly provided by statute or ordinance.
- (g) *Waiting period after filing of petition.* Any petition required to be filed with the application for any license shall not be considered as officially filed and irrevocable until seven (7) working days after a petition is received in the inspector's office. During the seven-day waiting period, any signator of any petition may withdraw their name therefrom by written request, and such request shall be appended to the subject petition and made a part thereof. After the seven-day waiting period, signatures may not be withdrawn unless it is shown they were obtained by fraud or duress. Signatures withdrawn or obtained by fraud or duress shall not be counted in determining the sufficiency of the petition. This subdivision shall apply in any case where the applicant for a license must present a statement in writing signed by a specified number or percentage of persons that they have given their consent to the grant of the license.

(Code 1956, § 510.02; C.F. No. 95-473, § 2, 5-31-95; Ord. 21-26, § 2, 7-28-21)

Sec. 310.03. - Investigation and review of new applications, etc.

The inspector shall determine the sufficiency and accuracy of each new application and obtain such criminal history information as may be used under Minnesota Statutes, chapter 364, and is otherwise available by law. The inspector shall make reasonable and appropriate investigation of the premises or personal property, vehicles or facilities, as may be involved in or related to the licensed activity, and shall request, where appropriate, the assistance of other city divisions or departments in making additional investigations for the purpose of determining whether the applicant is or will be in compliance with all applicable ordinances and statutes. The approval of such other divisions or departments is not required for issuance of a license unless otherwise



required by specific sections in these chapters. All new applications shall be reviewed by the zoning administrator or his designee for compliance with all requirements of the Saint Paul Zoning Code, and no new license shall be granted without full compliance with said requirements. All new applications involving a premises, location, building or structure shall be referred to the department of safety and inspections for investigation and recommendation.

(Code 1956, § 510.03; Ord. No. 17361, § 1, 6-5-86; C.F. No. 07-149, § 72, 3-28-07)

Sec. 310.04. - Levels of approval; recommendations.

- (a) *Class R licenses.* Where an application for the grant, issuance or renewal of a Class R license meets all the requirements of law, and there exists no ground for denial, revocation or suspension of, or the imposition of conditions upon, such license, the director shall grant, issue or renew said license in accordance with the application.
- (b) *Class T licenses.* Where an application for the grant, issuance or renewal of a Class T license meets all the requirements of law, and there exists no ground for denial, revocation or suspension of, or the imposition of conditions upon, such license, the director shall grant, issue or renew said license in accordance with the application.
- (c) *Class R and Class T licenses, if denied by director.* In the event the director, in the case of both Class R and Class T licenses, determines that the application for grant, issuance or renewal of the license does not meet all the requirements of law or that there exist grounds for denial, revocation, suspension or other adverse action against the license or the licensee, the director shall recommend denial of the application and follow the procedures for notice and hearing as set forth in [section 310.05](#).
- (d) *Class N licenses.*
 - (1) *Grant, issuance or transfer.* Upon receipt of a fully completed application and required fees for a Class N license, the director shall conduct such investigation as is required to determine whether the application meets all the requirements of law or whether there exist grounds for denial or imposition of conditions on the license. The director shall, in writing, notify the council, and the affected neighborhood organization(s) established for citizen participation purposes, of the existence of the application for all Class N licenses. In any case where the director recommends denial of the grant, issuance or renewal of a Class N license, the director on his or her own initiative, or at the direction of the council, shall follow the procedures for notice and hearing as set forth in [section 310.05](#). If the director is recommending issuance of the license, but the affected neighborhood organization(s) or other interested persons give notice within thirty (30) days of receipt of notice of the existence of the application (or within forty-five (45) days if the application involves a liquor license) of objection to issuance of the license, the matter shall be referred for a hearing before the legislative hearing officer, who shall give notice of the time, place and date of the hearing to the affected neighborhood organization(s) and the applicant. The legislative hearing officer shall take testimony from all interested persons and shall make a recommendation to the council as to whether the matter should be referred for a hearing before an independent hearing



examiner in accordance with the procedures set forth in section 310.05. Where the application for the grant, issuance or renewal of a Class N license meets all the requirements of law, and where there exists no ground for adverse action, the director shall issue such license in accordance with law.

- (2) *Renewal*. The director shall in writing notify the council, and the affected neighborhood organization(s) established for citizen participation purposes, at least sixty (60) days before the expiration date of all Class N licenses. A public hearing on the renewal of any such license shall not be held except on the request of a councilmember, which request shall be incorporated in the form of a council resolution. Upon the passage of such resolution, the director shall give written notice of such hearing to the affected neighborhood organizations. Such public hearing does not replace or amend any of the procedures set forth in section 310.05 of the Legislative Code. If no request for a public hearing is made before the expiration of any such license, and where there exists no ground for adverse action, the director shall issue the license in accordance with law.
- (e) *Appeal; Class R or Class T licenses*. An appeal to the city council may be taken by any person aggrieved by the grant, issuance or renewal of a Class R or Class T license; provided, however, that the appeal shall have been filed with the city clerk within thirty (30) days after the action by the director. The only grounds for appeal shall be that there has been an error of law in the grant, issuance or renewal of the license. The appeal shall be in writing and shall set forth in particular the alleged errors of law. The council shall conduct a hearing on the appeal within thirty (30) days of the date of filing and shall notify the licensee and the appellant at least ten (10) days prior to the hearing date. The procedures set forth in section 310.05, insofar as is practicable, shall apply to this hearing. Following the hearing, the council may affirm or remand the matter to the inspector or director, or may reverse or place conditions upon the license based on the council's determination that the decision was based on an error of law. The filing of an appeal shall not stay the issuance of the license.
- (f) *No waiver by renewal*. The renewal of any license, whether Class R, T or N, shall not be deemed to be a waiver of any past violations or of any grounds for imposition of adverse action against such license.

(Code 1956, § 510.04; Ord. No. 17455, § 1, 5-21-87; Ord. No. 17551, § 1, 4-19-88; C.F. No. 94-500, § 1, 7-6-94; C.F. No. 95-473, § 3, 5-31-95; C.F. No. 95-1517, 1-31-96; C.F. No. 97-1446, § 1, 12-30-97; C.F. No. 99-500, § 2, 7-7-99)

Sec. 310.05. - Hearing procedures.

- (a) *Adverse action; notice and hearing requirements*. In any case where the council may or intends to consider any adverse action, including the revocation or suspension of a license, the imposition of conditions upon a license, or the denial of an application for the grant, issuance or renewal of a license, or the disapproval of a license issued by the State of Minnesota, the applicant or licensee shall be given notice and an opportunity to be heard as provided herein. The council may consider such adverse actions when recommended by the inspector, by the director, by the director of any executive department established pursuant to Chapter 9 of the Charter, by the city attorney or on its own initiative.



- (b) *Notice.* In each such case where adverse action is or will be considered by the council, the applicant or licensee shall have been notified in writing that adverse action may be taken against the license or application, and that he or she is entitled to a hearing before action is taken by the council. The notice shall be served or mailed a reasonable time before the hearing date, and shall state the place, date and time of the hearing. The notice shall state the issues involved or grounds upon which the adverse action may be sought or based. The council may request that such written notice be prepared and served or mailed by the inspector or by the city attorney.
- (c) *Hearing.* Where there is no dispute as to the facts underlying the violation or as to the facts establishing mitigating or aggravating circumstances, the hearing shall be held before the council. Otherwise the hearing shall be conducted before a hearing examiner appointed by the council or retained by contract with the city for that purpose. The applicant or the licensee shall be provided an opportunity to present evidence and argument as well as meet adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The hearing examiner may in its discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing.
- (c-1) *Procedure; hearing examiner.* The hearing examiner shall hear all evidence as may be presented on behalf of the city and the applicant or licensee, and shall present to the council written findings of fact and conclusions of law, together with a recommendation for adverse action.

The council shall consider the evidence contained in the record, the hearing examiner's recommended findings of fact and conclusions, and shall not consider any factual testimony not previously submitted to and considered by the hearing examiner. After receipt of the hearing examiner's findings, conclusions, and recommendations, the council shall provide the applicant or licensee an opportunity to present oral or written arguments alleging error on the part of the examiner in the application of the law or interpretation of the facts, and to present argument related to the recommended adverse action. Upon conclusion of that hearing, and after considering the record, the examiner's findings and recommendations, together with such additional arguments presented at the hearing, the council shall determine what, if any, adverse action shall be taken, which action shall be by resolution. The council may accept, reject or modify the findings, conclusions and recommendations of the hearing examiner.

- (c-2) *Ex-parte contacts.* If a license matter has been scheduled for an adverse hearing, council members shall not discuss the license matter with each other or with any of the parties or interested persons involved in the matter unless such discussion occurs on the record during the hearings of the matter or during the council's final deliberations of the matter. No interested person shall, with knowledge that a license matter has been scheduled for adverse hearing, convey or attempt to convey, orally or in writing, any information, argument or opinion about the matter, or any issue in the matter, to a council member or his or her staff until the council has taken final action on the matter; provided, however, that nothing herein shall prevent an inquiry or communications regarding status, scheduling or procedures concerning a license matter. An interested person, for the purpose of this paragraph, shall mean and include a person who is an officer or employee of the licensee which is the subject of the scheduled adverse hearing, or a person who has a financial interest in such licensee.
- (d) *Licensee or applicant may be represented.* The licensee or applicant may represent himself or choose to be represented by another.
- (e) *Record; evidence.* The hearing examiner shall receive and keep a record of such proceedings, including testimony and exhibits, and shall receive



and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

- (f) *Council action, resolution to contain findings.* Where the council takes adverse action with respect to a license, licensee or applicant for a license, the resolution by which such action is taken shall contain its findings and determination, including the imposition of conditions, if any. The council may adopt all or part of the findings, conclusions and recommendations of the hearing examiner, and incorporate the same in its resolution taking the adverse action.
- (g) *Additional procedures where required.* Where the provisions of any statute or ordinance require additional notice or hearing procedures, such provisions shall be complied with and shall supersede inconsistent provisions of these chapters. This shall include, without limitation by reason of this specific reference, Minnesota Statutes, Chapter 364 and Minnesota Statutes, Section 340A.415.
- (h) *Discretion to hear notwithstanding withdrawal or surrender of application or license.* The council may, at its discretion, conduct a hearing or direct that a hearing be held regarding revocation or denial of a license, notwithstanding that the applicant or licensee has attempted or purported to withdraw or surrender said license or application, if the attempted withdrawal or surrender took place after the applicant or licensee had been notified of the hearing and potential adverse action.
- (i) *Continuances.* Where a hearing for the purpose of considering revocation or suspension of a license or other disciplinary action involving a license has been scheduled before the council, a continuation of the hearing may be granted by the council president or by the council at the request of the licensee, license applicant, an interested person or an attorney representing the foregoing, upon a showing of good cause by the party making the request.
- (j) If the council imposes an adverse action as defined in section 310.01 above, a generic notice of such action shall be prepared by the license inspector and posted by the licensee so as to be visible to the public during the effective period of the adverse action. The licensee shall be responsible for taking reasonable steps to make sure the notice remains posted on the front door of the licensed premises, and failure to take such reasonable precautions may be grounds for further adverse action.
- (k) *Imposition of costs.* The council may impose upon any licensee or license applicant some or all of the costs of a contested hearing before an independent hearing examiner. The costs of a contested hearing include, but are not limited to, the cost of the administrative law judge or independent hearing examiner, stenographic and recording costs, copying costs, city staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The council may impose all or part of such costs in any given case if (i) the position, claim or defense of the licensee or applicant was frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment; (ii) the nature of the violation was serious, or involved violence or the threat of violence by the licensee or employees thereof, or involved the sale of drugs by the licensee or employees thereof, and/or the circumstances under which the violation occurred were aggravated and serious; (iii) the violation created a serious danger to the public health, safety or welfare; (iv) the violation



involved unreasonable risk of harm to vulnerable persons, or to persons for whose safety the licensee or applicant is or was responsible; (v) the applicant or licensee was sufficiently in control of the situation and therefore could have reasonably avoided the violation, such as but not limited to, the nonpayment of a required fee or the failure to renew required insurance policies; (vi) the violation is covered by the matrix in section 409.26 of the Legislative Code; or (vii) the violation involved the sale of cigarettes to a minor.

- (l) *Imposition of fines.* The council may impose a fine upon any licensee or license applicant as an adverse license action. A fine may be in such amount as the council deems reasonable and appropriate, having in mind the regulatory and enforcement purposes embodied in the particular licensing ordinance. A fine may be in addition to or in lieu of other adverse action in the sole discretion of the council. To the extent any other provision of the Legislative Code provides for the imposition of a fine, both provisions shall be read together to the extent possible; provided, however, that in the case of any conflict or inconsistency, the other provision shall be controlling.
- (m) *Presumptive penalties for certain violations.* The purpose of this section is to establish a standard by which the city council determines the amount of fines, the length of license suspensions and the propriety of revocations, and shall apply to all license types, except that in the case of a violation involving a liquor license § 409.26 shall apply where a specific violation is listed. In the case of an adverse action filed for a violation of chapter 331A, the licensee shall be given a fine for each individual violation of chapter 331A. The total fine amount for violations of chapter 331A may exceed the maximum fine outlined below due to multiple violations in one (1) appearance. All penalty recommendations for chapter 331A violations shall be based on the food penalty guideline referred to in chapter 331A. 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 making it more appropriate to do so. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.

Type of Violation	Appearance			
	1st	2nd	3rd	4th
(1) Violations of conditions placed on the license	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 10-day suspension	Revocation



(2) Violation of provisions of the legislative code relating to the licensed activity	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 10-day suspension	Revocation
(3) Violation of provisions of the legislative code relating to the licensed activity, other than violations of the food code	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 10-day suspension	Revocation
(4) Failure to permit entrance or inspection by DSI inspector or police	5-day suspension	10-day suspension	15-day suspension	Revocation
(5) Commission of a crime other than a felony on the premises by a licensee or employee	\$700.00	\$1,500.00	5-day suspension	Revocation
(6) Commission of a felony on the premises by a licensee or employee	\$2,000.00	Revocation	n/a	n/a



(7) Death or great bodily harm in establishment related to violation of law or license conditions	30-day suspension	60-day suspension	Revocation	n/a
(8) Failure to pay license fees	Suspension	Revocation		
(9) Critical violations under <u>331A</u>	\$250.00	\$500.00	\$1,000.00, 5-day suspension	Revocation
(10) Non-critical violation under <u>331A</u>	\$150.00	\$250.00	\$500.00	\$1,000.00
(11) Taxi fail to display driver's license as required by <u>376.16(f)</u>	\$100.00	\$250.00	\$500.00	Revocation
(12) Taxi fail to display number of information and complaint office as required by <u>376.11(v)</u>	\$100.00	\$250.00	\$500.00	Revocation
(13) Violation of restrictions upon sidewalk café license under <u>106.01(b)</u>	\$200.00	\$400.00	\$800.00	Revocation



(i) *Fines payable without hearing.*

- A. Notwithstanding the provisions of section 310.05(c), 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.
- B. For adverse action initiated under chapter 331A of this Code, a fine may be paid without a hearing regardless of how many prior appearances that licensee has made before the council. The above council hearing requirement applies to violations under chapter 331A unless the fine recommended by the department of safety and inspections is equal to or less than the fine amount outlined in the above matrix. 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. A non-critical violation under chapter 331A shall not be considered an "appearance" for purposes of determining presumptive penalties for non-331A violations. A council hearing is required if the department of safety and inspections recommends a fine that is an upward departure for the amount outlined above.
- (ii) *Multiple violations.* At a licensee's first appearance before the city council, the council shall consider and act upon all the violations that have been alleged and/or incorporated in the notices sent to the licensee under the administrative procedures act up to and including the formal notice of hearing. The council in that case shall consider the presumptive penalty for each such violation under the "1st Appearance" column in paragraph (b) above. The occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion.
- (iii) *Violations occurring after the date of the notice of hearing.* Violations occurring after the date of the notice of hearing that are brought to the attention of the city attorney prior to the hearing date before an administrative law judge (or before the council in an uncontested facts hearing) may be added to the notice(s) by stipulation if the licensee admits to the facts, and shall in that case be treated as though part of the "1st Appearance." In all other cases, violations occurring after the date of the formal notice of hearing shall be the subject of a separate proceeding and dealt with as a "2nd Appearance" before the council. The same procedures shall apply to a second, third or fourth appearance before the council.
- (iv) *Subsequent appearances.* Upon a second, third or fourth appearance before the council by a particular licensee, the council shall impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance. However, non-critical violations of chapter 331A shall not be counted as an "appearance" before the council in relation to any violation other than another violation of chapter 331A.



(v) *Computation of time.*

- (1) *Second appearance.* A second violation within twelve (12) months shall be treated as a second appearance for the purpose of determining the presumptive penalty.
- (2) *Third appearance.* A third violation within eighteen (18) months shall be treated as a third appearance for the purpose of determining the presumptive penalty.
- (3) *Fourth appearance.* A fourth violation within twenty-four (24) months shall be treated as a fourth appearance for the purpose of determining the presumptive penalty.
- (4) Any appearance not covered by subsections (1), (2) or (3) above shall be treated as a first appearance. Measurement of the twelve-, eighteen-, or twenty-four-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.
- (5) Notwithstanding subsections (iv)(1), (2), (3) or (4) above, a second appearance before the council regarding a death or great bodily harm in a licensed establishment that is related to a violation of the law or license conditions shall be counted as a second appearance, regardless of how much time has passed since the first appearance if the first appearance was also regarding a death or great bodily harm in a licensed establishment. A third appearance for the same shall be counted as a third appearance regardless of how much time has passed since the first or second appearance.
- (6) For the purpose of a second, third or fourth appearance under this section, "violation" shall mean either one of those violations listed in paragraph (m) or a violation of section 409.26(b).

(Code 1956, § 510.05; Ord. No. 17551, § 2, 4-19-88; Ord. No. 17559, §§ 1, 2, 5-17-88; Ord. No. 17659, § 1, 6-13-89; Ord. No. 17911, § 1, 3-10-92; C.F. No. 94-46, § 7, 2-2-94; C.F. No. 94-898, §§ 2, 3, 7-13-94; C.F. No. 94-1340, § 2, 10-19-94; C.F. No. 95-473, § 4, 5-31-95; C.F. No. 05-180, § 1, 4-6-05; C.F. No. 06-954, § 1, 11-8-06; C.F. No. 06-1072, § 1, 12-27-06; C.F. No. 07-149, § 73, 3-28-07; C.F. No. 07-1053, § 1, 11-28-07; C.F. No. 08-1208, § 1, 12-17-08; C.F. No. 10-665, § 1, 7-28-10; Ord. No. 11-93, § 1, 9-28-11; Ord. No. 11-94, § 1, 10-12-11; Ord 12-42, § 1, 8-22-12; Ord 12-85, § 1, 1-23-13)

Sec. 310.06. - 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 shall be initiated and carried out in accordance with the procedures outlined in section 310.05; provided, however, that the formal notice of hearing shall be used to initiate the adverse action without the use of prior procedural steps.

- (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 inspector 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 310.05(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.
- (14) The licensee has failed to pay license fees within sixty (60) days of the date the fees are due. Licensee must pay any outstanding fees and delinquent fees in total. Failure to do so within sixty (60) days of the due date may result in revocation of the license. A revocation for this reason, however, is not considered a revocation resulting from misconduct or unfitness of the licensee, evidence of violations of law involving licensed premises, evidence that the applicant had been involved in the operation of a nuisance, or fraud or deception in the license application. Therefore, the requirement of § 310.02(d) prohibiting re-application within one year of revocation shall not apply to revocations under this paragraph.

The terms "licensee" or "applicant" for the purpose of this section shall mean and include any person who has any interest, whether as a holder of more than five (5) percent of the stock of a corporation, as a partner, or otherwise, in the premises or in the business or activity which are licensed or proposed to be licensed.

With respect to any license for activities entitled to the protection of the First Amendment, notwithstanding the foregoing provisions, neither the lack of good moral character or fitness of the licensee or applicant nor the content of the protected speech or matter shall be the basis for adverse action against the license or application.

(c) *Imposition of reasonable conditions and/or restrictions.* When a reasonable basis is found to impose reasonable conditions and/or restrictions



upon a license issued or held under these chapters, any one (1) or more such reasonable conditions and/or restrictions may be imposed upon such license for the purpose of promoting public health, safety and welfare, of advancing the public peace and the elimination of conditions or actions that constitute a nuisance or a detriment to the peaceful enjoyment of urban life, or promoting security and safety in nearby neighborhoods. Such reasonable conditions and/or restrictions may include or pertain to, but are not limited to:

- (1) A limitation on the hours of operation of the licensed business or establishment, or on particular types of activities conducted in or on said business or establishment;
- (2) A limitation or restriction as to the location within the licensed business or establishment where particular type of activities may be conducted;
- (3) A limitation as to the means of ingress or egress from the licensed establishment or its parking lot or immediately adjacent area;
- (4) A requirement to provide off-street parking in excess of other requirements of law;
- (5) A limitation on the manner and means of advertising the operation or merchandise of the licensed establishment;
- (6) Any other reasonable condition or restriction limiting the operation of the licensed business or establishment to ensure that the business or establishment will harmonize with the character of the area in which it is located, or to prevent the development or continuation of a nuisance.

The inspector may impose such conditions on Class R licenses with the consent of the license holder, or may recommend the imposition of such conditions as an adverse action against the license or licenses; the inspector has the same power with respect to Class T licenses. The council may impose such conditions on Class N licenses with the consent of the license holder, or upon any class of license as an adverse action against the license or licenses following notice and hearing as may be required. Such conditions may be imposed on a license or licenses upon issuance or renewal thereof, or upon and as part of any adverse action against a license or licenses, including suspension. Conditions imposed on a license or licenses shall remain on such licenses when renewed and shall continue thereafter until removed by the council in the case of conditions on Class N licenses or conditions imposed by adverse action, and by the inspector in the case of Class R and T licenses.

- (d) *Standards for multiple license determination.* In any case in which the council is authorized to take adverse action against less than all of the licenses held by a licensee, or applied for by an applicant, the following standards may be used:
- (1) The nature and gravity of the grounds found by the council to exist upon which the adverse action would be based;
 - (2) The policy and/or regulatory goals for the particular licenses involved, either as embodied in the Legislative Code or as found and determined by the council;
 - (3) The interrelationship of the licenses and their relative importance to the overall business enterprise of the licensee or applicant;
 - (4) The management practices of the licensee or applicant with respect to each of such licenses;



- (5) The extent to which adverse action against less than all of the licenses or applications would result in difficulty in enforcing and monitoring the action taken;
- (6) The hardship to the licensee or applicant that would be caused by applying adverse action to all licenses or applications; and
- (7) The hardship and/or danger to the public, or to the public health and welfare, that would result from adverse action against less than all of the licenses or applications.

(Code 1956, § 510.06; Ord. No. 17584, § 1, 8-25-88; Ord. No. 17657, § 15, 6-8-89; Ord. No. 17659, § 2, 6-13-89; Ord. No. 17901, §§ 2, 3, 1-14-92; Ord. No. 17917, §§ 2, 3, 3-31-92; Ord. No. 17922, § 1, 4-28-92; C.F. No. 94-500, § 3, 7-6-94; C.F. No. 94-1340, § 3, 10-19-94; C.F. No. 95-473, § 5, 5-31-95; C.F. No. 99-500, § 3, 7-7-99; C.F. No. 06-954, § 2, 11-8-06; C.F. No. 06-1072, § 2, 12-27-06)

Sec. 310.07. - Termination of licenses; surety bonds; insurance contracts.

- (a) Automatic termination, reinstatement; responsibility of licensee. All licenses or permits which must, by the provisions of these chapters or other ordinances or laws, be accompanied by the filing and maintenance of insurance policies, deposits, guarantees, bonds or certifications shall automatically terminate on cancellation or withdrawal of said policies, deposits, bonds or certifications. No licensee may continue to operate or perform the licensed activity after such termination. The licensee is liable and responsible for the filing and maintenance of such policies, deposits, guarantees, bonds or certifications as are required in these chapters, and shall not be entitled to assert the acts or omissions of agents, brokers, employees, attorneys or any other persons as a defense or justification for failure to comply with such filing and maintenance requirements. In the event the licensee reinstates and files such policies, bonds or certifications without a lapse within thirty (30) days, the license is automatically reinstated on the same terms and conditions, and for the same period as originally issued. After thirty (30) days, the applicant must apply for a new license as though it were an original application.

If there is a lapse in insurance, the licensee is subject to adverse action in accordance with Saint Paul Legislative Code § 310.05. License is null and void during the lapse.

(b) *Bonds and insurance requirements:*

- (1) Surety Companies: All surety bonds running to the City of Saint Paul shall be written by surety companies authorized to do business in the State of Minnesota. All insurance policies required by these chapters shall be written by insurance companies authorized to do business in the State of Minnesota.
- (2) Approved as to Form: All bonds filed with the City of Saint Paul in connection with the issuance of licenses for whatever purpose, and all policies of insurance required to be filed with or by the City of Saint Paul in connection with the issuance of licenses for any purpose whatsoever, shall first be approved as to form by the city attorney.



- (3) Uniform Endorsement: Each insurance policy required to be filed pursuant to these chapters shall contain the endorsement set forth in Chapter Saint Paul Legislative Code.
- (4) Conditions: All bonds required by these chapters shall be conditioned that the licensee shall observe all ordinances and laws in relation to the licensed activity, business, premises or facilities and that he shall conduct all such activities or business in conformity therewith. Such bonds shall also indemnify the City of Saint Paul against all claims, judgments or suits caused by, resulting from or in connection with the licensed business, premises, activity, thing, facility, occurrence or otherwise licensed under these chapters.
- (c) *Termination of bonds and insurance required by city.* Termination of bonds and insurance required to be filed with the city pursuant to these chapters shall be in accordance with the requirements of Chapter 8 of the Saint Paul Legislative Code.
- (d) *Expiration date to be concurrent with term of license or permit.* The expiration date of all such policies, bonds, guarantees or certifications shall be concurrent with the expiration date of the license or permit.

(Code 1956, § 510.07; Ord 12-74, § 1, 11-28-12)

Sec. 310.08. - Terms of licenses; uniform dates.

- (a) All licenses or permits shall be valid for a period of one (1) year from the date of issuance by the inspector, except as otherwise provided herein or in these chapters or in cases of revocation, suspension or termination under section 310.06.
- (b) Licensees may continue to operate their business after the expiration date of their license; provided, that the licensee has filed with the inspector on or before the expiration date the appropriate license application, license fees, insurance and bonds. The inspector shall process the renewal application in the manner provided for in this Code.
- (c) Whenever any licensee is the holder of the two (2) or more licenses of the City of Saint Paul which expire on different dates, the inspector is authorized, at the request of the licensee, to determine a uniform date for the expiration of all or any number of such licenses, notwithstanding the term and expiration dates of such licenses as originally issued, and notwithstanding any provision as to term of license of any ordinance of the city heretofore or hereafter enacted. The provisions hereof shall govern the issuance of any new license to one already holding a license.
- (d) In order to conform to the foregoing provisions, new licenses may be issued for a term of less than one (1) year, and the license fee therefor shall be prorated for the period of issuance.

(Code 1956, § 510.08; Ord. No. 17360, § 1, 6-5-86)

Sec. 310.09. - Fees.

- (a) *Exempt organizations.* The Legislative Code exempts certain organizations from paying the customary license or permit fees or establishes a



nominal fee of less than seven dollars (\$7.00). The terms and conditions of such exemptions are stated within the applicable chapters. Such organizations shall pay a five dollars (\$5.00) minimum processing fee for each and every application for a license or permit to be issued by the division manager, director or council of the city.

- (b) *Fee schedule.* The council may by ordinance determine and establish one (1) fee schedule for any or all licenses and permits issued pursuant to these chapters, and a separate fee schedule for applications for such licenses and permits, which may include fees to cover costs incurred by reason of the late filing. Such fees, in either schedule, shall be reasonably related to the costs of administration incurred in connection with each such application, license or permit. Costs of administration shall mean and include, but without limitation by this specification, both direct and indirect costs and expenses, such as salaries, wages, benefits and all personnel costs including training, seminars and schooling, expenses of investigations and inspections, handling of inquiries and requests for assistance, telephone and communications, stationery, postage, paper, reproduction, office capital equipment and all office supplies. Such fee schedules as adopted by ordinance and posted in the office of the inspector shall supersede inconsistent fee provisions in these chapters or in other ordinances or laws.
- (c) *Fee for one year; may be prorated.* Unless otherwise specifically provided, the license fee stated is for a period of one (1) year. Such fee may be prorated where a license is issued for a period of less than a year.
- (d) *Late fee.* Unless otherwise specifically provided by the particular licensing provisions involved, an applicant for the renewal of a license who makes application for such renewal after the expiration date of such license shall be charged a late fee for each such license. The late fee shall be in addition to any other fee or payment required, and shall be ten (10) percent of the annual license fee for such license for each thirty-day period or portion thereof which has elapsed after the expiration date of such license. The late fee shall not exceed fifty (50) percent of the annual license fee. If any provision of these chapters imposes more stringent or additional requirements for the issuance of an original license than would be the case for mere renewal, those requirements must be met when the license has lapsed by reason of expiration.
- (e) *Environmental change of ownership fee.* Unless otherwise stated, the environmental change of ownership fee shall be 25% of the environmental plan review fee for each license type.

(Code 1956, § 510.09; Ord. No. 16884, 2-11-82; Ord. No. 17802, § 1, 1-10-91; C.F. No. 03-893, § 1, 11-5-03)

Sec. 310.10. - Refunds of fees.

- (a) *Refund where application withdrawn; service charge.* Unless otherwise specifically provided by the particular licensing provisions involved, where an application for any license is withdrawn, the inspector shall refund to the applicant the license fee submitted less a service charge to recover in part the costs incurred in processing the application in the amount of twenty-five (25) percent of the annual license fee.
- (b) *Limitation on refund; other cases.* In all other cases as provided in paragraph (c), the director of the department of safety and inspections, or his designee, may upon receipt of a written request refund the license fee, less a service charge to recover in part the costs incurred in processing



the application up to twenty-five (25) percent of the annual licensee fee.

(c) *Bases for refunds.* Refunds under paragraph (b) may be made to the licensee or his estate:

- (1) Where the place of business of the licensee or his principal equipment is destroyed or so damaged by fire or any other cause that the licensee ceases for the remainder of the licensed period to engage in the licensed activity or business;
- (2) Where the business or licensed activity ceases by reason of the death or illness of the licensee or the sole employee or manager; or
- (3) Where it has become unlawful for the licensee to continue in the business or licensed activity other than by cancellation, termination, revocation, suspension, denial or any criminal activity on the part of the licensee.

(Code 1956, § 510.10; C.F. No. 09-516, § 1, 6-10-09; Ord. No. 11-69, § 1, 8-24-11; Ord 12-33, § 1, 6-27-12)

Sec. 310.11. - Transfers; general.

- (a) *License a privilege, not property.* All licenses or permits issued by the City of Saint Paul pursuant to these chapters or other ordinances or laws confer a privilege on the licensee to engage in the activity or occupation so licensed, and do not constitute property or property rights or create any such rights in any licensee. No such license or permit may be seized, levied upon, attached, executed upon, assessed or in any manner taken for the purpose of satisfaction of any debt or obligation whatever.
- (b) *Licenses not transferable; conditions.* Notwithstanding any other provision of the Saint Paul Legislative Code to the contrary, no licenses issued by the City of Saint Paul shall be transferable.
- (c) *Transfer; definition.* "Transferable" means the ability to transfer a license or licenses from one (1) person to another, or from one (1) location to another. "Transfer," as used in these chapters, shall include a transfer from person to person, or from place to place, or a transfer of stock in a corporate licensee, or of shares or interests in a partnership or other legal entity. "Transfer," as used in these chapters, shall not include the instance where a license is held by an individual or partnership and the transfer is by said individual or partnership to a corporation in which the majority of the stock is held by said individual or by the members of said partnership.
- (d) *Deceased licensee.* Notwithstanding any other provision of these chapters, in any case where a liquor license is held by a person not incorporated and where the license would, by reason of the death of said licensee, lapse to the city in the absence of this paragraph, the authorized representative of the estate of the deceased licensee may consent to and seek to reissue said license to the beneficiary to the licensed establishment. The reissuance shall be subject to all applicable requirements of these chapters and existing law.

(Code 1956, § 510.11; Ord. No. 16822, 9-3-81; Ord. No. 17551, § 3, 4-19-88; C.F. No. 95-473, § 6, 5-31-95)

Sec. 310.12. - Inspection of premises.



The premises, facilities, place, device or anything named in any license issued pursuant to any provision of the Saint Paul Legislative Code or other law shall at all times while open to the public or while being used or occupied for any purpose be open also to inspection and examination by any police, fire, or health officer or any building inspector of the city, as well as the inspector.

(Code 1956, § 510.12)

Sec. 310.13. - Renewal.

Every license renewal under these chapters may be denied for any licensee who is delinquent in any payment or contribution to a health and welfare trust or pension trust, or similar program, established for the benefit of his employees.

(Code 1956, § 510.13)

Sec. 310.14. - Savings clause.

- (a) If any provision in these chapters is held unconstitutional or invalid by a court of competent jurisdiction, the invalidity shall extend only to the provision involved and the remainder of these chapters shall remain in force and effect to be construed as a whole.
- (b) The repeal of any ordinance by this ordinance (which enacts the Uniform License Ordinance) shall not affect or impair any act done, any rights vested or accrued, or any suit, proceeding or prosecution had or commenced in any matter, prior to the date this ordinance became effective. Every such act done or right vested or accrued shall remain in full force and effect to all intents and purposes as if the repealed ordinances had themselves remained in force and effect. Every such suit, proceeding or prosecution may be continued after repeal as though the repealed ordinances were fully in effect. A suit, proceeding or prosecution which is based upon an act done, a right vested or accrued, or a violation committed prior to repeal of the repealed ordinances, but which is commenced or instituted subsequent to repeal of the repealed ordinances, shall be brought pursuant to and under the provisions of such repealed ordinances as though they continued to be in full force and effect.

(Code 1956, § 510.14)

Sec. 310.15. - Penalty.

Any person who violates any provision of these chapters, or other ordinances or laws relating to licensing, or who aids, advises, hires, counsels or conspires with or otherwise procures another to violate any provision of these chapters or other ordinances or laws relating to licensing is guilty of a misdemeanor and may be sentenced in accordance with section 1.05 of the Saint Paul Legislative Code. The term "person," in addition to the definition in



section 310.01, shall for the purpose of this section include the individual partners or members of any partnership or corporation, and as to corporations, the officers, agents or members thereof, who shall be responsible for the violation.

(Code 1956, § 510.15)

Sec. 310.16. - Reserved.

Editor's note— Section 310.16, pertaining to license fees and annual increases, and derived from Ord. No. 16885, adopted Feb. 11, 1982; Ord. No. 17059, adopted Oct. 20, 1983; and Ord. No. 17303, adopted Oct. 29, 1985, was repealed by Ord. No. 17884, § 1, adopted Nov. 19, 1991.

Sec. 310.17. - Licensee's responsibility.

Any act or conduct by any clerk, employee, manager or agent of a licensee, or by any person providing entertainment or working for or on behalf of a licensee, whether compensated or not, which act or conduct takes place either on the licensed premises or in any parking lot or other area adjacent to (or under the lease or control of) the licensed premises, and which act or conduct violates any state or federal statutes or regulations, or any city ordinance, shall be considered to be and treated as the act or conduct of the licensee for the purpose of adverse action against all or any of the licenses held by such licensee. To the extent this section is in conflict with sections 409.14 and 410.09 of the Legislative Code, this section shall be controlling and prevail; but shall not otherwise amend, alter or affect such sections.

(Ord. No. 17629, § 1, 1-31-89)

Sec. 310.18. - License fee schedule.

Notwithstanding the provision of any other ordinance or law to the contrary, the following fees are hereby provided for all the licenses listed herein. These fees supersede all inconsistent provisions, including, but not limited to, graduated fee provisions, in these chapters and in other ordinances and laws, and include the fee for the license application as part of the license fee; provided, however, that this section does not amend or modify sections 310.09(a) or 310.09(d) of the Legislative Code with respect to exempt organizations or late fees. Pursuant to section 310.09(b) of the Legislative Code, these schedules shall be posted in the office of the director. These fees shall be effective for license renewals and new license applications occurring on and after January 1, 1995, or on the effective date of this section, whichever is later; provided, however, that with respect to all licenses whose renewal dates occur after the effective date of this new schedule, there shall be no increases in, nor offsets or refunds of, the existing fees paid, or due and owing.

(a) ENFORCEMENT LEVEL 1

Chapter/Section	
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No.	License Description	Fee
<u>165</u>	Agricultural Vehicle Parking Permit	\$20.00
<u>316.02</u>	Animal Foods Manufacturing and Distribution	78.00
<u>317.01</u>	Amusement Rides	78.00
<u>323.02</u>	Christmas Tree Sales	78.00
<u>325.02</u>	Close Out Sale	78.00
<u>327.03</u>	Laundry Dry Cleaning Pickup Station	78.00
<u>332.03</u>	Liquid Fuel Vehicle	78.00
<u>333.03</u>	Solid Fuel Vehicle	78.00
<u>340.04</u>	Mercantile Broker	78.00
<u>345.04</u>	Peddler (Solicitor/Transient)	78.00
<u>346.03</u>	Mobile Retail Vehicle	78.00
<u>348.01</u>	Animal Day Care	76.00
<u>348.01</u>	Animal Boarding	76.00
<u>350.02</u>	Rental of Hospital Equipment	78.00



<u>350.02</u>	Rental of Hospital Equipment Vehicle	78.00
<u>351.03</u>	Rental of Kitchenware	78.00
<u>353.02</u>	Roller Rinks	78.00
<u>355.02</u>	Secondhand Dealer-Single Location	78.00
<u>357.03</u>	Solid Waste Hauler—Each Vehicle Over One	78.00
<u>359.03</u>	Sound Trucks and Broadcast Vehicles	78.00
<u>371.02</u>	Finishing Shop	78.00
<u>361.01</u>	Tow Truck/Wrecker Vehicle	78.00
<u>362.02</u>	Tree Trimmer—Additional Vehicle	78.00
<u>372.02</u>	Tire Recapping Plant	78.00
<u>377.03</u>	Lawn Fertilizer and Pesticide Application	78.00
<u>382.03</u>	Pet Grooming Facility	78.00
<u>409.05(b), 410.07(c)</u>	Liquor-Outdoor Service Area (Patio)	78.00
<u>424.02</u>	Gas Stations	102.00



(b) ENFORCEMENT LEVEL 2

Chapter/Section		
No.	License Description	Fee
<u>320.03</u>	Bituminous Contractor	\$191.00
<u>322.02(a)</u>	Pool Halls	191.00
<u>322.02(b)</u>	Bowling Centers	191.00
<u>326.06</u>	Building Contractors	191.00
<u>327.03</u>	Laundry/Dry Cleaning Plants	191.00
<u>332.03</u>	Fuel Dealers—Liquid	191.00
<u>333.03</u>	Fuel Dealers—Solid	191.00
<u>334.03</u>	Pest Control	191.00
<u>338.02</u>	House Sewer Contractors	191.00
<u>342.02</u>	Bulk Oil Storage	191.00
<u>347.03</u>	Pet Shop	191.00
<u>352.03</u>	Rental of Trailers	191.00
<u>355.02</u>	Secondhand Dealer—Exhibitions	191.00



<u>356.02</u>	Sidewalk Contractors	191.00
<u>362.02</u>	Tree Trimming (with One Vehicle)	191.00
<u>364.02</u>	Veterinary Hospital	191.00
<u>365.02</u>	Window Cleaning	191.00
<u>401.02</u>	Motorcycle Dealer	191.00
<u>405.02</u>	Dance or Rental Hall	293.00
<u>406.04</u>	Game Room	191.00
<u>408.03</u>	Recycling Collection Center	191.00
<u>415.04</u>	Theaters and Movie Theaters	191.00
<u>416.03</u>	Motion Picture Drive-in Theater	191.00
<u>426.04</u>	Cabaret (Class A and B)	191.00

(c) ENFORCEMENT LEVEL 3

Chapter/Section		
No.	License Description	Fee



<u>225.04(a)</u>	Firearms	\$369.00
<u>324.04</u>	Cigarettes	488.00
<u>354.02</u>	Sanitary Disposal Vehicle	369.00
<u>355.02</u>	Secondhand Dealer-Multiple Dealers	369.00
<u>357.03</u>	Solid Waste Hauler and Vehicle	369.00
<u>360.03</u>	Public Swimming Pools	369.00
<u>360.03</u>	Whirlpools	369.00
<u>361.13</u>	Tow Truck/Wrecker Operator	369.00
<u>383.03</u>	Vehicle Immobilization Service	369.00
<u>376.04</u>	Taxicabs	428.00
<u>376.05</u>	Taxicabs (Reciprocity Event)	33.00
<u>379.02</u>	Short-term Rental Platform License	10,200.00
<u>379.02</u>	Short-term Rental Host License	41.00
<u>381.02(d)</u>	Currency Exchanges	369.00
<u>401.02</u>	New Motor Vehicle Dealer	369.00



<u>401.02</u>	Secondhand Dealer Motor Vehicle Parts	462.00
<u>401.02</u>	Secondhand Motor Vehicle Dealer	462.00
<u>407.03</u>	Hotel/Motel—To 50 rooms	369.00
<u>407.03</u>	Hotel—Each additional room over 50	12.00
<u>409.07.1(a), 410.04(c)</u>	Liquor—Extension of Service Hours	369.00
<u>412A.03</u>	Massage Center—Adult	369.00
<u>412A.03</u>	Environmental Plan Review Massage Center Adult	407.00
<u>413.04</u>	Conversation/Rap Parlor (A and B)	369.00
<u>415.04</u>	Mini-Motion Picture Theater—Adult	369.00
<u>417.04</u>	Parking Lots and Parking Garages	369.00
<u>417.04</u>	Parking Garages (Government)	0.00
<u>417.04</u>	Parking Garages (Private)	362.00
<u>422.02</u>	Motor Vehicle Salvage Dealer	369.00
<u>423.02(b)</u>	Auto Body Repair Garage	462.00
<u>423.02(a)</u>	Auto Repair Garage	462.00



<u>427.04</u>	Health/Sports Clubs	369.00
<u>427A.04</u>	Health/Sports Club (Adult)	369.00
<u>428.04</u>	Steam Room/Bath House (Class A and B)	369.00
<u>423.02(b)</u>	Auto Body Repair/Painting Shop	462.00

(d) ENFORCEMENT LEVEL 4

Chapter/Section		
No.	License Description	Fee
<u>331A.04</u>	Catering-Limited	\$ 326.00
<u>331A.04</u>	Environmental Plan Review—Catering—Limited	380.00
<u>331A.04</u>	Catering	570.00
<u>331A.04</u>	Environmental Plan Review—Catering	625.00
<u>331A.04</u>	Catering—Add on	250.00
<u>331A.04</u>	Environmental Plan Review—Catering—Add on	380.00
<u>331A.04</u>	Customer Appreciation—Food Sales	55.00



<u>331A.04</u>	Day Care Food	109.00
<u>331A.04</u>	Food Give-Away	55.00
<u>331A.04</u>	Food Processing/Packaging/Distributing	217.00
<u>331A.04</u>	Environmental Plan Review—Food Processing/Packaging/Distributing	380.00
<u>331A.04</u>	Food Vehicle	92.00
<u>331A.04; 363.02(a)</u>	Food Vending Machine	16.00
<u>331A.04; 363.02(a)</u>	Food Vending Machine Operator	136.00
<u>331A.04</u>	Food/Boarding Facility	353.00
<u>331A.04</u>	Environmental Plan Review—Food/Boarding Facility	380.00
<u>331A.04</u>	K—12 School Food Service	217.00
<u>331A.04</u>	Environmental Plan Review — K—12 School Food Service	272.00
<u>331A.04</u>	K—12 School Food Service—Limited	109.00
<u>331A.04</u>	Environmental Plan Review—K—12 School Food Service—Limited	136.00
<u>331A.04</u>	Mobile Food Vehicle	244.00
<u>331A.04</u>	Mobile Food Cart—Limited	110.00



<u>331A.04</u>	Mobile Food Cart—Full	217.00
<u>331A.04</u>	Environmental Plan Review—Restaurant (1)	381.00
<u>331A.04</u>	Environmental Plan Review—Restaurant (2)	381.00
<u>331A.04</u>	Environmental Plan Review—Restaurant (3)	625.00
<u>331A.04</u>	Environmental Plan Review—Restaurant (4)	625.00
<u>331A.04</u>	Environmental Plan Review—Restaurant (5)	625.00
<u>331A.04</u>	Restaurant (D)—Add-On	272.00
<u>331A.04</u>	Environmental Plan Review Restaurant (D) Add-On	381.00
<u>331A.04</u>	Restaurant (D)—Add-on (Bar Only)	109.00
<u>331A.04</u>	Environmental Plan Review Restaurant (D) Add-On (Bar Only)	190.00
<u>331A.04</u>	Restaurant (E)—Extension	164.00
<u>331A.04</u>	Environmental Plan Review—Restaurant (E)—Extension	136.00
<u>331A.04</u>	Environmental Plan Review—Restaurant (L)—Limited	381.00
<u>331A.04</u>	Restaurant (L)—Limited	272.00
<u>331A.04</u>	Restaurant (1)—no seats	435.00



<u>331A.04</u>	Restaurant (2)—1—12	478.00
<u>331A.04</u>	Restaurant (3)—13—50	580.00
<u>331A.04</u>	Restaurant (4)—51—150	631.00
<u>331A.04</u>	Restaurant (5)— 151 and over	673.00
<u>331A.04</u>	Retail Food Establishment (A)—1 to 100 Sq. Ft.	82.00
<u>331A.04</u>	Environmental Plan Review—Retail Food Establishment (A)	136.00
<u>331A.04</u>	Retail Food Establishment (B)—101 to 1000 Sq. Ft.	109.00
<u>331A.04</u>	Environmental Plan Review Retail Food Establishment (B)	272.00
<u>331A.04</u>	Retail Food Establishment (C)—1001 to 3000 Sq. Ft.	408.00
<u>331A.04</u>	Environmental Plan Review Retail Food Establishment (C)	408.00
<u>331A.04</u>	Retail Food Establishment (D)—3001 to 6000 Sq. Ft.	652.00
<u>331A.04</u>	Environmental Plan Review Retail Food Establishment (D)	516.00
<u>331A.04</u>	Retail Food Establishment (E)—6001 to 10,000 Sq. Ft.	978.00
<u>331A.04</u>	Environmental Plan Review Retail Food Establishment (E)	652.00
<u>331A.04</u>	Retail Food Establishment (F)—over 10,000 Sq. Ft.	1,413.00



<u>331A.04</u>	Environmental Plan Review Retail Food Establishment (F)	816.00
<u>331A.04</u>	Retail Food Establishment—Farmers' Market	164.00
<u>331A.04</u>	Retail Food Establishment—Temporary	65.00
<u>331A.04</u>	Retail Food Establishment—Nonprofit	27.00
<u>331A.04</u>	Environmental Plan Review—Retail Food Establishment—Nonprofit	55.00
<u>331A.04</u>	Retail Food Establishment—Secondary Facility	82.00
<u>331A.04</u>	Environmental Plan Review Retail Food Establishment—Secondary Facility	381.00
<u>331A.04</u>	Retail Food Establishment—Restricted Food Service	79.00
<u>331A.04</u>	Special Event Food Sales—1 to 3 days (up to <u>150</u> sq. feet)	190.00
<u>331A.04</u>	Special Event Food Sales—4 to 10 days (up to <u>150</u> sq. feet)	217.00
<u>331A.04</u>	Special Event Food Sales—Up to 3 events (up to <u>150</u> sq. feet)	217.00
<u>331A.04</u>	Special Event Food Sales—late fee	50% of special event food sales fee
<u>331A.04</u>	Special Event Food Sales (Nonprofit) (up to <u>150</u> sq. feet)	55.00
<u>331A.04</u>	Special Event Food Sales—Extension (up to <u>150</u> sq. feet)	109.00



<u>331A.04</u>	Special Event Food Sales—Each additional <u>150</u> square feet portion thereof	25% of special event foods sales fee
<u>331A.04</u>	Special Event Food Sales—Each additional location fee	85.00
<u>331A.04</u>	Nonprofit 1 Day Special Event—1—10 Stands	275.00
<u>331A.04</u>	Nonprofit 1 Day Special Event—Each Additional 10 Stands or Portion of 10 Stands	275.00
<u>331A.04</u>	Seasonal Temporary Food Stand	244.00

(e) ENFORCEMENT LEVEL 5

Chapter/Section		
No.	License Description	Fee
<u>409.27</u>	2:00 a.m. closing	\$54.00
<u>409.05(i)</u>	Intoxicating Liquor—Fee waived for government agencies	0.00
<u>409.01(c)</u>	Liquor Catering Permit—Annual	175.00
<u>409.02</u>	Off-Sale Microdistillery	187.00
<u>409.05(b)</u>	Liquor Catering Permit—Temporary	54.00



<u>409.05(b)</u>	On-Sale—100 seats or less	4,891.00
<u>409.05(b)</u>	On-Sale—101—180 seats	5,416.00
<u>409.05(b)</u>	On-Sale—181—290 seats	5,802.00
<u>409.05(b)</u>	On-Sale—291 or more seats	5,882.00
<u>409.05(b)</u>	On-Sale—Theater	1,746.00
<u>409.25(b)</u>	Temporary Liquor	54.00
<u>409.05(f)</u>	On-sale Club—Under 200 members	300.00
<u>409.05(f)</u>	On-sale Club—201—500 members	500.00
<u>409.05(f)</u>	On-sale Club—501—1,000 members	650.00
<u>409.05(f)</u>	On-sale Club—1,001—2,000 members	800.00
<u>409.05(f)</u>	On-sale Club—2,001—4,000 members	1,000.00
<u>409.05(f)</u>	On-sale Club—4,001—6,000 members	2,000.00
<u>409.05(f)</u>	On-sale Club—6,000+ members	3,000.00
<u>409.05(h)</u>	Additional family members	56.00
<u>409.02</u>	Brewpub/Off-sale (Growler)	187.00



<u>409.02</u>	Off-Sale Brewery	187.00
<u>409.05</u>	Off-Sale	1,377.00
<u>409.07(b)(2)</u>	Sunday On-Sale	200.00
<u>409.11(b)</u>	Extension of Service Area—Temporary	62.00
<u>410.07(a)(8), 409.15(b)</u>	Wine On-Sale	2,000.00
<u>409.25</u>	Temporary Wine	54.00
<u>409.25</u>	Wine Licenses for Festivals	54.00
<u>409.15(d)</u>	On-Sale Malt (Strong)	649.00
<u>409.28</u>	Brewery Taproom	649.00
<u>409.31</u>	Microdistillery Cocktail Room	649.00
<u>410.02</u>	On-Sale Malt (3.2)	649.00
<u>410.02, 410.11</u>	On-Sale Malt—Fee waived for municipal golf courses	0.00
<u>410.02</u>	Off-Sale Malt	205.00
<u>410.10(a)</u>	Temporary Malt	54.00
<u>411.03</u>	Entertainment—Class A	253.00



<u>411.03</u>	Entertainment—Class B	613.00
<u>411.03</u>	Entertainment—Class C	2,911.00
<u>411.05</u>	Entertainment Temporary	31.00
<u>409.08</u>	Live Music Event—18 and Up	31.00
<u>409.15(e)</u>	Culinary On-sale	233.00
<u>409.01</u>	Private Event—Restaurant/Liquor Caterer	31.00

(f) ENFORCEMENT LEVEL 6

Chapter/Section		
No.	License Description	Fee
<u>329.02</u>	Alarm Permits	\$39.00
<u>317.01</u>	Amusement Rides—Temporary	29.00
<u>106.01(b)</u>	Sidewalk Café—Food Only	36.00
<u>106.01(b)(4)</u>	Sidewalk Café—Liquor	36.00
<u>127.04</u>	Courtesy Benches	24.00



<u>127</u>	Courtesy Benches Transfer	15.00
<u>293.09</u>	Noise Variance	175.00
<u>368.02</u>	Wrecking of Buildings	59.00
<u>369.03</u>	Building Trades Business License	171.00
<u>370.09</u>	Building Trades Certificates of Competency	22.00
<u>370.17</u>	Trade Worker—Tier 1	33.00
<u>370.17</u>	Trade Worker—Tier 2	64.00
<u>278.03</u>	Gambling Hall	412.00
<u>318.02</u>	Mechanical Amusement Device	19.00
<u>318.02</u>	Music Machine	19.00
<u>318.02</u>	Amusement Rides	19.00
<u>318.02</u>	T.V. Units	19.00
<u>344.02(a)</u>	Pawn Shops	2,911.00
<u>344.02(b)</u>	Pawn Shop Billable Transaction Fee	3.00
<u>373</u>	Transportation Network Companies	37,506.00



<u>374.3</u>	Commercial Pedal Car Driver	46.00
<u>374.3</u>	Commercial Pedal Car Vehicle	107.00
<u>374.3</u>	Commercial Pedal Car Business	321.00
<u>375.2(a)</u>	Pedicab Vehicle	103.00
<u>375.2(b)</u>	Pedicab Driver	46.00
<u>376</u>	Taxicab Vehicle—Duplicate Sticker	19.00
<u>376</u>	Taxicab Replacement Vehicle Sticker	51.00
<u>376.05</u>	Taxicab Driver (Reciprocity Event)	33.00
<u>376.16(d)</u>	Taxicab Driver (new)	46.00
<u>376.16(i)</u>	Taxicab Driver Renewal	46.00
<u>376</u>	Taxicab Driver Duplicate Identification Card	6.00
<u>376.17(d)</u>	Taxicab Driver (provisional)	46.00
<u>391.02</u>	Soliciting Funds—Tag Days	24.00
<u>402.08</u>	Temporary Gambling (3 types)	54.00
<u>403.03</u>	Bingo Halls	209.00



<u>409.05(g)</u>	Gambling Location	77.00
<u>409.08(11)</u>	Modification of Parking	438.00
<u>359.03</u>	Sound Trucks and Broadcast Vehicles Nonprofit Organizations)	29.00
<u>380.04</u>	Tanning Facility	97.00
<u>380.04</u>	Environmental Plan Review Tanning Facility	175.00
<u>414.02</u>	Massage or Bodywork Practitioner—One Location	97.00
<u>414.02</u>	Massage or Bodywork Practitioner—Each Additional Location	29.00
<u>414.02</u>	Massage Center (Class A)—One practitioner	93.00
<u>412.04</u>	Massage Center (Class A)—Two or more practitioners	239.00
<u>412.04</u>	Environmental Plan Review Massage Center (Class A)	431.00
<u>412.04</u>	Massage Center (Class B)	97.00
<u>412.04</u>	Environmental Plan Review Massage Center (Class B)	175.00
<u>357.03</u>	Solid Waste Transfer Station	1,745.00
<u>408.03</u>	Recycling Processing Center	874.00
<u>429.03</u>	Infectious Waste Processing Facility	1,745.00



<u>198.04(c)</u>	Keeping of Animal (includes more than three (3) chickens	76.00
<u>198.04(c)</u>	Keeping of Animal—Renewal	28.00
<u>198.04(c)</u>	Tier 1 Chicken Permit	26.00
<u>198.04(c)</u>	Tier 1 Chicken Permit Renewal	15.00
<u>198.04(c)</u>	Tier 2 Chicken Permit	74.00
<u>198.04(c)</u>	Tier 2 Chicken Permit Renewal	15.00
<u>198.04(c)</u>	Keeping of More than Three (3) Cats	75.00
<u>198.04(c)</u>	Keeping of More than Three (3) Cats (Renewal)	28.00
<u>200.03</u>	Dog License—Altered	20.00
<u>200.03</u>	Dog License—Unaltered	80.00
<u>200.03</u>	Dog License—Reduced Rate, altered	10.00
<u>200.03</u>	Dog License—Reduced Rate, unaltered	40.00
<u>200.03</u>	Dog License—Lifetime (with Microchip, altered)	140.00
<u>200.03</u>	Dog License—Reduced Rate, Lifetime (with Microchip and altered)	70.00
	Dog License—Reduced Rate, Lifetime (with Microchip, unaltered)	34.00



	Dangerous or Potentially Dangerous Animal, altered	140.00
	Dangerous or Potentially Dangerous Animal, unaltered	280.00
<u>200.04</u>	Dog License—Replacement	10.00
<u>200.07</u>	Impounding Fee	35.00
<u>200.02(a)</u>	Unlicensed Dog	58.00
<u>200.121(e)</u>	Dangerous Dog Registration	300.00
<u>200.07</u>	Boarding Fee—Per Day	19.00
	Animal Adoption—St. Paul Resident	50.00
	Animal Adoption—Nonresident	228.00
	Rabies Vaccination for impounded dogs, cats, ferrets	30.00
	Microchipping for impounded animals	30.00
	Delinquent License Renewal fee (per month)	5.00
<u>376.17</u>	Taxicab Service Company	416.00



(C.F. No. 92-1742, § 1, 12-8-92; C.F. No. 93-1650, § 1, 12-9-93; C.F. No. 94-201, § 1, 3-16-94; C.F. No. 94-1447, § 1, 12-14-94; C.F. No. 95-519, § 2, 6-7-95; C.F. No. 95-1457, § 1, 1-3-96; C.F. No. 96-391, § 3, 5-8-96; C.F. No. 96-1095, § 1, 10-2-96; C.F. No. 97-912, § 1, 8-20-97; C.F. No. 99-500, § 4, 7-7-99; C.F. No. 99-812, § 1, 9-8-99; C.F. No. 00-457, § 1, 6-7-00; C.F. No. 00-1064, § 1, 12-12-00; C.F. No. 00-1065, § 1, 12-20-00; C.F. No. 01-613, §§ 1, 2, 7-5-01; C.F. No. 01-1244, § 1, 12-26-01; C.F. No. 02-770, § 1, 10-2-02; C.F. No. 1031, § 2, 11-27-02; C.F. No. 03-102, § 2, 3-12-03; C.F. No. 03-694, § 2, 9-3-03; C.F. No. 03-695, § 1, 9-3-03; C.F. No. 03-893, § 2, 11-5-03; C.F. No. 04-670, § 1, 8-4-04; C.F. No. 04-960, § 1, 11-3-04; 04-961, § 1, 11-10-04; C.F. No. 05-631, § 1, 8-10-05; C.F. No. 05-697, § 1, 8-24-05; C.F. No. 06-409, § 1, 5-24-06; C.F. No. 06-574, § 2, 7-26-06; C.F. No. 06-752, § 1, 9-13-06; C.F. No. 06-821, § 2, 9-27-06; C.F. No. 07-149, § 74, 3-28-07; C.F. No. 07-966, § 1, 12-12-07; C.F. No. 07-967, § 1, 12-12-07; C.F. No. 08-382, § 1, 5-14-08; C.F. No. 08-568, § 1, 6-25-08; C.F. No. 08-1009, § 1, 10-8-08; C.F. No. 08-1208, § 2, 12-17-08; C.F. No. 09-478, § 1, 5-27-09; C.F. No. 09-684, § 1, 7-22-09; C.F. No. 09-893, § 1, 10-14-09; C.F. No. 09-987, § 1, 10-14-09; Ord No. 11-56, § 1, 7-13-11; Ord No. 11-63, § 1, 4-25-12; Ord No. 12-24, § 1, 6-13-12; Ord 12-49, § 1, 9-12-12; Ord 12-45, § 1, 10-10-12; Ord 12-83, § 1, 1-9-13; Ord 13-1, § 1, 1-23-13; Ord 13-31, § 1, 5-22-13; Ord 13-34, § 1, 6-26-13; Ord 14-33, § 1, 8-27-14; Ord 14-40, § 1, 12-3-14; Ord 15-29, § 7, 5-27-15; Ord 15-65, § 1, 12-2-15; Ord 16-9, 4-20-16; Ord 16-16, § 2, 7-27-16; Ord 16-66, § 1, 1-4-16; Ord 17-47, § 1, 10-25-17; Ord 17-53, § 1, 11-8-2017; Ord 17-25, § 1, 8-2-17; Ord 18-65, § 1, 1-9-19; Ord 18-68, § 2, 1-9-19; Ord 19-78, § 1, 1-8-20; Ord 20-5, § 1, 2-20-20)

Sec. 310.19. - Discount from certain license fees.

- (a) A discount will be provided for on-sale and off-sale liquor licenses, on-sale and off-sale 3.2 malt liquor licenses and on-sale strong beer and wine licenses. Such fees mentioned shall be reduced seven (7) percent, contingent upon each of the following conditions:
- (1) *Driver's license guide; compilation of laws.* The licensee shall maintain on the premises, in a location accessible at all times to all employees of the licensed establishment:
 - a. A current driver's license guide, which shall include license specifications for both adults and minors for each state (including Canadian provinces), and shall list such information from at least five (5) years prior to the present date; and
 - b. A current compilation of the laws relating to the sale and possession of alcoholic beverages in the state as outlined in Chapter 7515 of the State of Minnesota Rules and Minn. Stat. Ch. 340A. This compilation must also include chapters 240 through 246, 409 and 410 of the Saint Paul Legislative Code.
 - (2) *Signage.* The licensee shall maintain on the premises, in all customer areas, current signage relating to underage consumption of alcoholic beverages, and relating to driving under the influence of alcohol. One (1) sign must be located behind the bar, and one (1) sign must be present in each additional room or section within the lounge area in which the writing on the sign behind the bar is not clearly legible. The sign(s) must have dimensions of at least one (1) foot by one (1) foot with letters at least one-half (½) inch in height. All signs must be comfortably readable from a distance of fifteen (15) feet.
 - (3) *Contract with security agency.*



- a. *Generally.* The licensee shall participate in a training program with an approved private security agency, firm or association (hereafter "security agency" which is selected and contracts with the city for the purpose of providing investigations and training to the licensee pursuant to this subsection. The contract shall provide (i) that the security agency shall not be reimbursed by the city, but that it shall recover its costs and profit by fees collected from licensees which choose to receive the training program and investigative services, and (ii) that the security agency shall charge the same amount to all licensees who choose to receive such services, so that all such licensees are treated equally and without discrimination.
- b. *Investigation.* The contract with the city shall provide for and require one (1) or more investigations by the security agency each calendar year into the practices of the licensee with respect to (i) age identification of customers in order to prevent sales of alcoholic beverages to minors, and (ii) preventing the sale of alcoholic beverages to persons who are obviously intoxicated. The contract shall require that the security agency disclose the results of all such investigations to both the licensee and, at no cost to the city, to the department, within ten (10) days after such investigations are concluded. Failure to do so will be grounds for adverse action against the licensee's licenses. The contract shall require that all such investigations shall include unannounced and random attempts by minors to purchase alcoholic beverages in the licensed premises, and surveillance within the licensed premises. The security agency shall employ reasonable measures to minimize or eliminate conflicts of interest in providing and reporting on investigations of licensees.
- c. *Training.* The contract shall also provide for alcohol awareness training by the security agency of all officers, employees or agents of the licensee who work in the licensed premises at least once during the calendar year. All newly hired employees or new officers or agents hired during the calendar year shall receive such training within four (4) weeks following their hiring, and shall not work in the premises after that four-week period until they have received such training.
- d. *Standards for approval.* In addition to the requirements specified elsewhere in this subsection, the security agency and its investigations and training must meet or exceed the following:
 1. The alcohol awareness course shall cover all of the topics listed herein. The content of each training course shall include, but need not be limited to:
 - (a) Pertinent laws and ordinances regarding the sale of alcohol.
 - (b) Verification of age, forms of identification, and forms of false or misleading age identification.
 - (c) The effect of alcohol on humans and the physiology of alcohol intoxication.
 - (d) Recognition of the signs of intoxication.
 - (e) Strategies for intervention to prevent intoxicated persons from consuming further alcohol.
 - (f) The licensee's policies and guidelines, and the employee's role in observing these policies.
 - (g) Liability of the person serving alcohol.



- (h) Effect of alcohol on pregnant women and their fetuses, and in other vulnerable situations.
 - (i) Training available in languages other than English that are spoken by the license holders and/or the license holders employees.
2. The security agency shall have a minimum of two (2) years actual experience in alcohol awareness training. The courses may be given by one (1) or more instructors, but each instructor must have a formal education and/or training in each area they teach. The courses may be supplemented by audio-visual instruction.
 3. The security agency shall have sufficient personnel and physical resources to provide an alcohol awareness training course to newly hired employees within four (4) weeks after their hiring by the licensee with whom there is a contract. The cost covering the training and investigation service provided to license holders shall be identified and charged equally to each participant.

The (7) seven percent shall be applied to the following licenses:

- Brew pub
- Off-sale brewery
- Liquor catering permit
- On-sale—Over 200 seats
- On-sale—Over 100 seats
- On-sale—100 seats or less
- On-sale club—Under 200 members
- On-sale club—201—500 members
- On-sale club—501—1,000 members
- On-sale club—1,001—2,000 members
- On-sale club—2,001—4,000 members
- On-sale club—4,001—6,000 members
- On-sale club—6,000+ members
- On-sale extended service hours



On-sale theatre
Off-sale
Sunday on-sale
Liquor—Outdoor service area
Wine on-sale
On-sale malt (strong)
On-sale malt (3.2)
Off-sale malt

- (b) A discount will be provided for restaurant and catering licenses issued under Chapter 331A. Such fees shall be reduced seven (7) percent, contingent upon each of the following conditions:
- (1) The licensee shall employ a person in charge, who, in the absence of the certified food manager, shall be on duty at all times and who can demonstrate that he/she have viewed a video concerning food allergies. The video presentation shall be provided by and will be viewed at the department of safety and inspections. If the person in charge leaves the licensee's employment, the establishment will have two months to either:
 - a. Have the new person in charge view the video on food allergy at a presentation by the department of safety and inspection; or
 - b. If there is no presentation within two months of that person being hired, ensure that the new person in charge is registered for the next available video presentation.
 - (2) Allergic customer alert process. The licensee shall produce a written procedure to alert all employees of an allergic customer. That policy shall, at a minimum, require that once a customer has notified any employee of an allergy to particular food item(s) or group(s), the establishment shall notify the above-referenced person in charge or certified food manager, and all employees who may handle any food item served to that customer of the food allergy.

(C.F. No. 94-1447, § 2, 12-14-94; C.F. No. 00-237, § 1, 4-5-00; C.F. No. 01-1260, § 1, 12-26-01; C.F. No. 02-107, 3-6-02; C.F. No. 04-1093, § 1, 12-15-04; C.F. No. 06-821, § 3, 9-27-06; C.F. No. 07-149, § 75, 3-28-07; C.F. No. 09-1290, § 1, 12-9-09)



From: Moore, Shari (CI-StPaul) <shari.moore@ci.stpaul.mn.us>
Sent: Wednesday, November 16, 2022 1:04 PM
To: Skarda, Therese (CI-StPaul) <therese.skarda@ci.stpaul.mn.us>
Subject: RE: Can you assist with prior versions of SPLC 324 and 310?

Attached is Chapter 324 of the Legislative Code as it read on December 2, 2021. Below is a screen print of where it was located at [Chapter 324. - Tobacco | Code of Ordinances | St. Paul, MN | Municode Library](#)

St. Paul, Minnesota - Code of Ordinances PART II - LEGISLATIVE CODE Title XXIX - LICENSES Chapter 324. - Tobacco

VERSION: DEC 2, 2021 (ARCHIVE) ▾

Sec. 324.10. - Presumptive penalties.

- > Chapter 320. - Bituminous Contractors
- > Chapter 321. - Rooming and Boardinghouses: Dormitories
- > Chapter 322. - Bowling Centers; Pool Halls
- > Chapter 323. - Christmas Tree Sales
- ▾ **Chapter 324. - Tobacco**
 - Sec. 324.01. - License required.
 - Sec. 324.02. - License for each location or vending machine.
 - Sec. 324.03. - Definitions.
 - Sec. 324.04. - Fee, duration, limitation on number of licenses.
 - Sec. 324.05. - Application.
 - Sec. 324.06. - License to be displayed.
 - Sec. 324.07. - Sales prohibited.
 - Sec. 324.08. - Distribution of free

(a) *Purpose.* The purpose of this section is to establish a standard by which the city council determines the amount of fine penalties are presumed to be appropriate for every case, however, the council may deviate therefrom in an individual and compelling reasons which make it appropriate to do so. When deviating from these standards, the council shall find appropriate.

(b) *Presumptive penalties for violations.* Adverse penalties for violations or convictions shall be presumed as follows:

Type of Violation	Appearance	
	1st	2nd
(1) Sale to a person under twenty-one (21) years of age	\$200.00 fine	\$400.00 fine

(c) *Fines payable without hearing.* Notwithstanding the provisions of [section 310.05\(l\)](#), a licensee who would be making a appearance to the department of safety and inspections without a council hearing, unless the notice of violation has indicated that a deviation from the presumptive fine amount. Payment of the recommended fine will be considered to be a waiver of "appearance" for the purpose of determining presumptive penalties for subsequent violations.

(d) *Computation of time.*

(1) Second, third and fourth appearances. A second violation within twenty four (24) months shall be treated as a second appearance, and a fourth within twenty four (24) months treated as a fourth appearance for the purpose of determining penalties.

(2) Any appearance not covered by subsections (1) above shall be treated as a first appearance. Measurement of the



Attached is Chapter 310 of the Legislative Code as it read on December 2, 2021. Below is a screen print of where it was located at [Chapter 310. - Uniform License Procedures | Code of Ordinances | St. Paul, MN | Municode Library](#)

St. Paul, Minnesota - Code of Ordinances PART II - LEGISLATIVE CODE Title XXIX - LICENSES Chapter 310 - Uniform License Proced.

VERSION: DEC 2, 2021 (ARCHIVE) ▾

Chapter 310. - Uniform License Procedures

Sec. 310.05. - Hearing procedures.

Sec. 310.06. - Revocation; suspension; adverse actions; imposition of conditions.

Sec. 310.07. - Termination of licenses; surety bonds; insurance contracts.

Sec. 310.08. - Terms of licenses; uniform dates.

Sec. 310.09. - Fees.

Sec. 310.10. - Refunds of fees.

Sec. 310.11. - Transfers; general.

Sec. 310.12. - Inspection of premises.

Sec. 310.13. - Renewal.

Sec. 310.14. - Savings clause.

Sec. 310.15. - Penalty.

Sec. 310.01. - Definitions.

For the purposes of this chapter, any chapter of the Legislative Code pertaining to licenses ordinances establishing or relating to the requirements for Class R, for routinely issued licens which neighbors are required to be notified, under authority of the City of Saint Paul, the term them:

Adverse action means the revocation or suspension of a license, the imposition of conditio issuance or renewal of a license, the imposition of a fine, the assessment of the costs of a cor action taken with respect to a license, licensee or applicant for a license, "Adverse action" incl held by a licensee at any location in the city, "Adverse action" also includes disapproval of lice permit the governing body to disapprove the issuance of the license.

Bond means a bond meeting the requirements of [section 310.07](#) and indemnifying the city from or in connection with any licensed business, activity, premises, thing, facility, occurrence

Building official means the official in the department of safety and inspections charged wit

Chapters and these chapters shall mean this uniform license ordinance, any chapter of the mentioned, and subsequently enacted ordinances establishing or relating to the requirement city.

Class R licenses means those licenses which can be approved and issued or denied by the to the procedures required by these chapters. The following licenses are so classified, and the the Legislative Code pertaining to each license:

Shari Moore, MMC
City Clerk
Pronouns: she/her/hers
City Clerk's Office
15 Kellogg Boulevard West, 310 City Hall
Saint Paul, MN 55102
P: 651-266-8686
shari.moore@ci.stpaul.mn.us
www.StPaul.gov



**SAINT PAUL
MINNESOTA**

Proud member of IIMC



STATE OF MINNESOTA
COUNTY OF RAMSEY

ADMINISTRATIVE HEARING
OAH 65-6020-38532

In the Matter of the Cigarette/Tobacco
License Held by MJ Market for the
Premises Located at 922 Thomas
In Saint Paul.

**CITY’S RESPONSE TO
MEMORANDUM OF LAW IN
OPPOSITION TO SAINT
PAUL’S MOTION FOR
SUMMARY DISPOSITION**

I. The meaning of the term “appearance” in Saint Paul Legislative Code §324.10 is clear and unambiguous.

The city respectfully disagrees that there is more than one reasonable interpretation of what constitutes an “appearance”. Saint Paul Legislative Code (“SPLC”) §324.10 is not ambiguous. SPLC §324.10 is clear and concise. Under SPLC §324.10(d)(1) a “second violation within 24 months shall be treated as a second appearance”. An appearance occurs each time that a Licensee resolves an adverse action with either a fine, suspension or some combination thereof. When it amended SPLC §324.10 City Council laid out its intention to treat youth sales and prohibited flavor violations more harshly than some of the more germane violations laid out in the penalty matrix in SPLC §310.01(m) as reflected in the amendments passed by City Council¹. Under the amended penalty matrix in SPLC §324.10 (b), if the second appearance is related to the “Display, possession or multiple incidents of sales of single cigarettes, menthol tobacco products or flavored tobacco products”, the presumed penalty is revocation. While revocation might seem harsh, it is within the matrix set by the city council and given the seriousness of the offenses in this penalty matrix, revocation is reasonable.

Contrary to Respondent’s argument, the City’s method for enforcing licensing penalties is not arbitrary, unreasonable or discretionary. The City’s application of the penalties laid out in

¹ Ex. 10-12.

SPLC §324.10 is consistent with the method it uses to determine other licensing penalties. The Department has always used the number of appearances to determine which box of the penalty matrix contains the applicable penalty. The Department is applying the penalty matrix laid out in SPLC § 324.10 in the same manner that it has historically applied the matrix in SPLC § 310.05 (m) by recommending the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance.²

When City Council amended SPLC §324.10 it increased the penalties for youth sales, added the violations and penalty for display, possession or multiple incidents of sales of single cigarettes, menthol tobacco products or flavored tobacco products, and increased the look back period for the tobacco related offenses covered under this section. Through these actions, City Council clearly expressed its intent to apply more stringent standards and penalties to tobacco offenses. For example, multiple violations related to related to display, possession or multiple incidents of sales of single cigarettes, menthol tobacco products or flavored tobacco products are handled differently from the standards codified in SPLC §310.05. Applying the facts in Respondent’s case – under 310.05 (m)(ii) the presence of the multiple prohibited flavored tobacco products found during the May 6, 2022, inspection would have either been treated as a first appearance, or the Department would have needed to argue that grounds for upward departure existed under the following language: “The occurrence of multiple violations shall be grounds for departure from such penalties in the council’s discretion.” By amending the penalty matrix in SPLC §324.10, City Council made it clear that it wished for all incidents which involved the display, possession or multiple incidents of sales of single cigarettes, menthol

² See SPLC §310.05 (m).

tobacco products or flavored tobacco products to be subject to the more stringent penalties laid out in the matrix. Another example of Council clearly articulating its intent for more stringent penalties comes from a comparison of SPLC §324.10 (d) with SPLC §310.05 (m)(v) which shows that City Council expressed a clear intent to increase the look back period for youth compliance failures and prohibited flavored tobacco of violations as it doubled the look back period for these serious prohibited tobacco related offenses from 12 to 24 months for enhancement purposes.

II. **The Notice of Violation sent to the Licensee clearly articulated the penalty recommended by the Department as well as the basis for the recommendation.**

Respondent argues that the wording of the June 10, 2022, Notice of Violation indicates that this would be Respondents first appearance.³ This is incorrect. The Notice of Violation states that SPLC §324.10 (b)(2) “sets the presumptive penalties for violations of provisions of the Legislative Code relating to the display, possession, or multiple incidents of sales of menthol or flavored tobacco products.” and goes on to state that “under section §324.10 (b)(2) the presumptive penalty for a second violation within a 24-month period is revocation of the license.” The Notice of Violation goes on to list the prior violation that occurred on August 3, 2021. The Synopsis of Alleged Facts in the Notice of Violation also references both the August 3, 2021, youth tobacco compliance failure and the May 6, 2022, complaint inspection which substantiated the complaint received by the Department that alleged that Respondent was selling prohibited flavored tobacco products.⁴

³ Exhibit 1-1 – 1-15.

⁴ Exhibit 2-1.

III. Respondent's Due Process Rights were not violated.

Respondent argues that the City's application of the presumptive penalties in SPLC §324.10 somehow violate the Respondent's due process rights. Respondent and all tobacco licensees were sent notice of the proposed ordinance amendments along with the dates for public hearings and the proposed ordinance language.⁵ As to the current Notice of Violation, when the Department sent the Respondent the June 10, 2022, Notice of Violation, the City fulfilled its due process requirement for notice of the Department's desire to take adverse action against the Licenses held by the Respondent as Respondent was given notice of the recommendation of the Department for adverse action against the Tobacco Shop License he holds and given options to be heard.⁶ There was no confusion as Respondent, through his attorney, exercised his right to a hearing.⁷

IV. Respondent does not have a property right in the License that the City granted him.

Respondent argues that he has a property right under his license. Respondent is mistaken. Under SPLC §310.11 (a) a license is a privilege, not property and the license confer the privilege of engaging in the licensed activity. Licenses belong to the City.

V. Respondent has not alleged facts that are in dispute and the City is entitled to Summary Disposition.

Respondent has failed to show that specific facts are in dispute that would have a bearing on the outcome of this case. Respondent argues that there is a factual dispute that requires an administrative hearing so that he can "cross-examine Department Licensing Manager, Eric Hudak, and DSI Inspector Joseph Voyda regarding the facts surrounding the investigation of MJ

⁵ Exhibits 9-1 -10-12.

⁶ Exhibits 1-2, 1-3, see also Minn. Stat. 14.58

⁷ Exhibit 8.

Market, Inc., and the procedure the Department used when they determined that the alleged violation of the sale of flavored tobacco warranted revocation under the penalty matrix of SPLC section 324.10 (b)(2). Respondent's argument is not an allegation of a factual dispute. The function of the Administrative Law Judge on a motion for summary disposition, like a trial court's function on a motion for summary judgment, is not to decide issues of fact, but to determine whether genuine factual issues exist.⁸ Respondent may not offer mere denials, general assertions, or speculation in attempting to defeat summary disposition. *See Gutbrod v. Cty. Of Hennepin, 529 N.W. 2d 720, 723 (Minn. Ct. App. 1995)*. The City has provided a copy of the complaint received by the Department as well as all investigative reports and photographs and ample additional documentation to support the affidavits of Licensing Manager Eric Hudak and Inspector Joseph Voyda. Their affidavits were based on their personal knowledge of issues after reviewing the evidence and applicable ordinances. Summary disposition is appropriate in this matter because investigative reports, photographs and affidavits show there is no genuine issue of material fact in dispute. A recommendation for summary disposition of this matter including a recommendation for revocation of the Tobacco Shop License held by Respondent is appropriate and the City would request such a recommendation be issued.

Dated: November 14, 2022

By: /s/ Therese Skarda
Therese Skarda #240989
Assistant City Attorney
City of Saint Paul
15 West Kellogg Blvd.
Saint Paul, MN 55102
(651) 266-8755

⁸ See, e.g., DLH, Inc. v. Russ, 566 N.W.2d 60, 70 (Minn. 1997).

STATE OF MINNESOTA

ADMINISTRATIVE HEARING

COUNTY OF RAMSEY

OAH 65-0020-38532

In the Matter of the
Cigarette/Tobacco License Held by
MJ Market for the Premises Located
At 922 Thomas Avenue in Saint Paul.

OAH File No. 65-6020-38532

**MEMORANDUM OF LAW IN
OPPOSITION TO CITY OF SAINT PAUL'S
MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

Licensee, Majid Nitashoon (“Respondent”) d/b/a MJ Market, Inc., respectfully submits this Memorandum of Law in Opposition to City of Saint Paul’s Motion for Summary Judgment. On June 10, 2022, the City of Saint Paul (“City”) initiated an adverse action against the tobacco shop license held by Respondent for the premise located at 922 Thomas Avenue in Saint Paul by filing a Notice of Violation (“Notice”) of Saint Paul Legislative Code section 324.07(j). The City, in its Notice (and its Memorandum in Support of City’s Motion for Summary Judgment) misconstrues the plain language of SPLC section 324.10, by stating that Respondent’s purported violation relating to the display, possession, or multiple incidents of sales of menthol or flavored tobacco products constitutes a second violation within a 24-month period and consequently, license revocation.

Respondent, as identified herein, contends that SPLC section 324.10 is ambiguous. The penalty matrix found in SPLC section 324.10(b)(2) identifies that the first appearance for an alleged flavored tobacco violation is a 10-day suspension, not revocation. In order to support an unsupportable position, the City conflates SPLC sections 324.10(b)(1), 324.10(b)(2) and SPLC section 324.10(d)(1) to reach its erroneous conclusion that Respondent’s alleged violation results in revocation of his license. The City’s interpretation and application of a vague ordinance results

in arbitrary and capricious action on the part of the City that violates Respondent's due process rights.

STATEMENT OF DOCUMENTS COMPRISING THE RECORD

1. Documents provided as Exhibits with City of Saint Paul's Memorandum of Law in Support of City's Motion for Summary Disposition served October 24, 2022.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Respondent agrees with City of Saint Paul's undisputed facts 1 through 23 as stated in its Memorandum of Law in Support of City's Motion for Summary Disposition.
2. Under SPLC section 324.10(b)(2) the presumptive penalty matrix identifies that a first appearance for display, possession or multiple incidents of sale of flavored tobacco products is a 10-day suspension. A second appearance for the same violation is revocation.
3. SPLC section 324.10(d)(1) states that a second violation within 24 months shall be treated as a second appearance...
4. On May 6, 2022, Department of Safety and Inspections ("Department") inspector Joseph Voyda conducted an inspection at the licensed premises.
5. On June 10, 2022, the Department issued a Notice of Violation ("NOV") to Respondent.
6. The June 10, 2022, NOV did not differentiate "Appearance" and "Violation" under SPLC section 324.10(b)(2) and SPLC section 324.10(d)(1).
7. The June 10, 2022, NOV stated that revocation of Respondent's tobacco license was the penalty for Respondent's alleged violation.

STANDARD OF REVIEW

Summary disposition is the administrative equivalent of summary judgment." *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004). A party is entitled to summary

judgment when “there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005); see also Minn. R. Civ. P. 56.01. “Summary judgment is a blunt instrument that is inappropriate when reasonable persons might draw different conclusions from the evidence presented.” *Montemayor*, 898 N.W.2d at 628 (quotations omitted). Court’s view the evidence in the light most favorable to the nonmoving party. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76- 77 (Minn. 2002). Court’s must not weigh facts or make credibility determinations, and “[a]ll doubts and factual inferences must be resolved against the moving party.” *Montemayor*, 898 N.W.2d at 628 (quotation omitted).

1. Saint Paul Legislative Code Chapter 324.10 is Ambiguous.

The foremost rule of construction is that “courts generally strive to construe a term according to its plain and ordinary meaning.” *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). “When interpreting an ordinance, courts first examine its language to determine if it is ambiguous. *Motokazie! Inc. v. Rice Cnty.*, 824 N.W.2d 341, 344 (Minn. App. 2012). An ordinance is ambiguous if there is “more than one reasonable interpretation.” *Id.* (quotation omitted). If an ordinance is ambiguous, courts “may apply the canons of statutory construction to determine its meaning.” *Id.* Under the canons of construction, courts interpret the words used in an ordinance “according to their common approved usage.” Minn. Stat. § 645.08(1) (2020). Courts must avoid interpretations that would render a word or phrase “superfluous, void, or insignificant.” *In re Admin. Ord. Issued to Wright Cnty.*, 784 N.W.2d 398, 403 (Minn. App. 2010) (quotation omitted). Moreover, A municipality’s method for enforcing its ordinances cannot be arbitrary, unreasonable or discretionary. *See, City of Hutchinson v. Otto*, 306 Minn. 136, 235 N.W. 2d 604 (1978).

The operative language in SPLC §324.10 reads as follows:

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			
	1 st	2 nd	3 rd	4 th
(1) Sale to a person under	\$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(1), 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.

Respondent contends there is more than one reasonable interpretation of what constitutes an “Appearance” under the presumptive penalties contained in SPLC 324.10. In its June 10, 2022, Notice of Violation and Request for Revocation of Your Cigarette/Tobacco License, the Department of Safety and Inspections (“Department”) recommended adverse action against the premise located at 922 Thomas Avenue, Saint Paul for a second appearance due to a flavored tobacco product violation. In its NOV, the Department states that SPLC 324.10(b)(2) sets the presumptive penalties for violations of provisions of the Legislative Code relating to the display, possession, or multiple incidents of sales of menthol or flavored tobacco products. *Id.* The Department goes on to state “Under 324.10(b)(2), the presumptive penalty for a second violation within a 24-month period is revocation of the license.” *Id.* There is nothing in the NOV that indicates the Department is deviating from the presumptive penalty as conditionally allowed under SPLC section 324.10(a).

A plain reading of SPLC section 324.10(b)(2) lends credence to Respondent’s argument that the presumptive penalty for a flavored tobacco products violation such as the alleged violation identified in the Department’s June 10, 2022, NOV, is a 10-day suspension for a first appearance. The Department does not expressly identify SPLC section 324.10(d)(1) in its NOV, but rather, states “Under section 324.10(b)(2), the presumptive penalty for a second violation within a 24-month period is revocation of the license.” The Department’s interpretation of the presumptive

penalty provision of SPLC 324.10 unlawfully renders the Appearance language in SPLC 324.10(b)(2) superfluous, void or insignificant. *See, In re Admin. Ord. Issued to Wright Cnty.*, 784 N.W.2d 398, 403 (Minn. App. 2010) (quotation omitted).

SPLC sections 324.10(c) addresses fines for each appearance for violation of SPLC section 324(b)(1) under the penalty matrix. Section (c) indicates that a licensee making a first or second appearance before the council may elect to pay the matrix fine 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.” Section (c) is addressing the presumptive penalty under SPLC section 324.10(b)(1) which groups “Appearance” fines for violations of section (1) into 4 distinct categories for sale of tobacco products to a person under twenty-one years of age. There are no monetary “fines” for the alleged sale of flavored tobacco products identified in the presumptive penalty matrix. The section goes on to state that a licensee may elect to pay the fine and payment of the fine constitutes an appearance for the purpose of determining presumptive penalties for subsequent violations.

Under SPLC section 324.10(d)(1), there is no clarity regarding what constitutes an “Appearance” with respect to SPLC section 324.10(b)(2). Indeed, City’s interpretation as it relates to an “Appearance” under SPLC 324.10(b)(2), improperly renders the presumptive penalty language contained in the penalty matrix for the sale of flavored tobacco moot. Section (d)(1), which was identified in the City’s legal argument but not the June 10, 2022, NOV, cannot be reconciled with the presumptive penalty for an alleged violation for the sale of flavored tobacco products. Under the presumptive penalty matrix, an “Appearance” for an alleged first violation of SPLC section 310.10(b)(2) is a 10-day suspension. An “Appearance” for a second violation for the alleged sale of flavored tobacco products is revocation. Section 324.10(d)(1), does not

expressly reference the presumptive penalty matrix for a violation of the sale of flavored tobacco products. Instead, it generally addresses the computation of time for subsequent violations, i.e., a second violation within 24-months is treated as a second appearance, a third within 24-months a third appearance, and a fourth within 24-months treated as a fourth appearance for the purposes of determining the presumptive penalty. With respect to computation of time, the City is arbitrarily applying the ordinance akin to a criminal violation such as a DUI, rather than an administrative action brought under the municipal code. *See, City of Hutchinson v. Otto*, 306 Minn. 136, 235 N.W. 2d 604 (1978)(A municipality's method for enforcing its ordinances cannot be arbitrary, unreasonable or discretionary.)

A review of Uniform License Procedures found in SPLC Chapter 310, is illustrative of Respondent's position in this matter. In SPLC section 310.05(m), appearances under a presumptive penalties matrix for certain violations, including violations under SPLC Chapter 324.10, are *specifically* addressed. In pertinent part, SPLC section 310.05(m)(ii)(iii)(iv)(v) and (vi) read as follows:

(ii) Multiple violations. At a licensee's first appearance before the city council, the council shall consider and act upon all the violations that have been alleged and/or incorporated in the notices sent to the licensee under the administrative procedures act up to and including the formal notice of hearing. The council in that case shall consider the presumptive penalty for each such violation under the "1st Appearance" column in paragraph (b) above. The occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion.

(iii) Violations occurring after the date of the notice of hearing. Violations occurring after the date of the notice of hearing that are brought to the attention of the city attorney prior to the hearing date before an administrative law judge (or before the council in an uncontested facts hearing) may be added to the notice(s) by stipulation if the licensee admits to the facts, and shall in that case be treated as though part of the "1st Appearance." In all other cases, violations occurring after the date of the formal notice of hearing shall be the subject of a separate proceeding and dealt with as a "2nd Appearance" before the council. The same procedures shall apply to a second, third or fourth appearance before the council.

(iv) Subsequent appearances. Upon a second, third or fourth appearance before the council by a particular licensee, the council shall impose the presumptive penalty for the violation or

violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance. However, non-critical violations of chapter 331A shall not be counted as an "appearance" before the council in relation to any violation other than another violation of chapter 331A. (Emphasis added.)

(v) *Computation of time.*

(1) *Second appearance.* A second violation within twelve (12) months shall be treated as a second appearance for the purpose of determining the presumptive penalty.

(2) *Third appearance.* A third violation within eighteen (18) months shall be treated as a third appearance for the purpose of determining the presumptive penalty.

(3) *Fourth appearance.* A fourth violation within twenty-four (24) months shall be treated as a fourth appearance for the purpose of determining the presumptive penalty.

(4) Any appearance not covered by subsections (1), (2) or (3) above shall be treated as a first appearance. Measurement of the twelve-, eighteen-, or twenty-four-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.

(5) Notwithstanding subsections (iv)(1), (2), (3) or (4) above, a second appearance before the council regarding a death or great bodily harm in a licensed establishment that is related to a violation of the law or license conditions shall be counted as a second appearance, regardless of how much time has passed since the first appearance if the first appearance was also regarding a death or great bodily harm in a licensed establishment. A third appearance for the same shall be counted as a third appearance regardless of how much time has passed since the first or second appearance.

(6) **For the purpose of a second, third or fourth appearance under this section, "violation" shall mean either one of those violations listed in paragraph (m) or a violation of section 409.26(b).** (Emphasis added.)

In stark contrast to SPLC section 310.05(m) identified above, SPLC section 324.10 omits "Appearance" clarifying language altogether. Language such as that found above in section (v)(6) that connects "appearances" with "violations" under the presumptive penalty matrix is essential notice language for any NOV. The Department's NOV failed to identify SPLC section 324.10(d)(1), and without express clarifying language as illustrated above in SPLC section 310.05, renders SPLC section 324.10 susceptible to more than one meaning when read in

conjunction with the presumptive penalty matrix. As a direct consequence of the ambiguity in the legislative code, Respondent argues that under the circumstances of this case, anything other than a first appearance violation for purposes of determining the presumptive penalty is arbitrary and capricious.

2. The City's Application of the Presumptive Penalties in SPLC Section 324.10 Violates Respondent's Due Process Rights.

Legislation is declared unconstitutional and "void for vagueness" by the United States Supreme Court as a violation of the Due Process Clause "where its language does not convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices, or stated otherwise, where its language is such that people of common intelligence must necessarily guess at its meaning." *Keyishian v. Board of Regents.*, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967). It is an objective standard based on what the person subject to the legislation would understand defined by the United States Supreme court as when an "[o]rdinary person exercising ordinary common sense can sufficiently understand and comply." *Broadrick v. Oklahoma*, 413 U.S. 601, 93 S. Ct. 2908, 37 L. Ed. 2d 830 (1973).

Both the United States Constitution and the Minnesota Constitution provide that no person shall be deprived of "property without due process of law." U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. There can be no dispute that the City of Saint Paul is attempting to deprive Respondent of a property interest by revoking his tobacco license. *See, e.g., Trumbull Div., Owens-Corning Fiberglass Corp. v. City of Minneapolis*, 445 F. Supp. 911, 916 (D. Minn. 1978) (concluding that a city's failure to renew an asphalt manufacturing license deprived the plaintiff of a property interest). Generally, due process requires adequate notice and a meaningful opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976).

Courts will consider three factors to determine the due process rights of a relator: [f]irst, the private interest that will be affected by the official action; second the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews*, 424 U.S. at 335, 96 S. Ct. at 903.

SPLC section 324.10 is unconstitutionally vague. Respondent's previous argument herein related to the ambiguity in SPLC section 324.10 is also relative to a finding that the ordinance is unconstitutionally vague. Respondent did not receive adequate and proper notice that an alleged violation of the ordinance for selling flavored tobacco products would result in the revocation of his tobacco license. The June 10, 2022, NOV only expressly identified SPLC section 324.10(b)(2) for its determination that revocation was the proper presumptive penalty. The Department conflates SPLC sections 324.10(b)(1), 324.10(b)(2) and 324.10(d)(1) to reach an erroneous conclusion that the proper presumptive penalty is revocation. The presumptive penalty of revocation is an erroneous deprivation of Respondent's property interest through the procedures that were used by the Department. An after-the-fact affidavit by the Department that does address SPLC section 324.10(d)(1) only enhances Respondent's argument that the NOV was inadequate for purposes on proper notice.

3. There is a Dispute as to the Facts Underlying the Alleged Violation.

"The foundational principle of the right to due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked." *Gams v. Houghton*, 884 N.W.2d 611, 618 (Minn. 2016) (quotation omitted). "Sufficient due process generally requires reasonable notice and a hearing." *CUP Foods*,

Inc. v. City of Minneapolis, 633 N.W.2d 557, 563 (Minn. App. 2001), review denied (Minn. Nov. 13, 2001). The City cannot rely on anonymous hearsay to support its actions. *Greene v. McElroy*, 360 U.S. 474 , 79 S. Ct. 1400, 3 L.Ed.2d 1377 (1959).

The Respondent is entitled to cross-examine Department Licensing Manager, Eric Hudak, and DSI Inspector, Joseph Voyda regarding the facts surrounding the investigation at MJ Market, Inc., and the procedure the Department used when they determined that the alleged violation of the sale of flavored tobacco warranted revocation under the penalty matrix of SPLC section 324.10(b)(2). *See* Minn. Stat. § 14.60, subd. 3 (2014). The October 20, 2022, Affidavit of Eric Hudak, is a self-serving affidavit that fails to adequately address procedural due process in regard to the decision to apply a vague ordinance in support of the decision to seek revocation of the Respondent's tobacco license as identified in the June 10, 2022, NOV. The facts surrounding the investigation include, but not limited to, the investigator's knowledge of SPLC section 323.10 at the time of the investigation, the validity of the complaint that alleged a violation of the sale of flavored tobacco that initiated the investigation and the actions of the investigator upon arriving at the licensed premises.

CONCLUSION

Revocation of Respondent's tobacco license is an unlawful deprivation of Respondent's property interest that violates his due process rights. The City's application of SPLC section 324.10(b)(2) as a basis for revocation is an arbitrary and capricious action. Respondent is entitled to a hearing in order to cross-examine the Department and City's witnesses. Based on the foregoing arguments, the City's summary judgment motion should, respectfully, be denied.

Dated: November 7, 2022

By: /s/ Craig J. Beuning
Craig J. Beuning, (#0316660)
Holstad & Knaak, PLC
4245 White Bear Parkway, #225
White Bear Lake, MN 55110
Phone: (601) 594-0924
Email: klawcraig@gmail.com

STATE OF MINNESOTA

ADMINISTRATIVE HEARING

COUNTY OF RAMSEY

OAH 65-0020-38532

In the Matter of the
Cigarette/Tobacco License Held by
MJ Market for the Premises Located
At 922 Thomas Avenue in Saint Paul.

OAH File No. 65-6020-38532

DECLARATION OF CRAIG J. BEUNING

I, Craig J. Beuning, under penalty of perjury, state and declare as follows:

1. I am the attorney for Majid Nitaishoon and MJ Markets Inc in the above-captioned matter.
2. Attached hereto as Exhibit A is a true and correct copy of June 10, 2022, Notice of Violation and Request for Revocation of Your Cigarette/Tobacco License.

Dated: November 7, 2022

/s/ Craig J. Beuning
Craig J. Beuning, #0316660
4245 White Bear Parkway, #225
White Bear Lake, MN 55110
Phone: (601) 594-0924
Email: klawcraig@gmail.com



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNNE 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

June 10, 2022

**NOTICE OF VIOLATION AND
REQUEST FOR REVOCATION OF
YOUR CIGARETTE/TOBACCO LICENSE**

MJ Market Inc.
922 Thomas Avenue
Saint Paul, MN 55104
Attn: Majid Nitaishoon

RE: Cigarette/Tobacco license held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul.
License ID # 20210001131

Dear Licensee:

The Department of Safety and Inspections (the "Department") is recommending adverse action against the Cigarette/Tobacco license held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul (the "Licensed Premises") for a second appearance due to a flavored tobacco product violation.

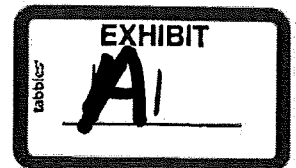
Saint Paul Legislative Code section 324.07(j) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored tobacco products. Under Saint Paul Legislative Code section 310.17, the conduct of any clerk, employee, manager, or agent working for or on behalf of a licensee is treated as the conduct of the licensee for the purpose of adverse action.

Saint Paul Legislative Code section 324.10(b)(2) sets the presumptive penalties for violations of provisions of the Legislative Code relating to the display, possession, or multiple incidents of sales of menthol or flavored tobacco products. Under section 324.10(b)(2), the presumptive penalty for a second violation within a 24-month period is revocation of the license.

Records from the Department show that on August 3, 2021, during a youth compliance check conducted at the Licensed Premises, a store clerk sold tobacco products to an individual who was less than twenty-one (21) years old, in violation of local ordinance

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

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SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDEY 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

The Department asserts that the following facts, along with photos of the violations attached herein, constitute proof of a violation of Saint Paul Legislative Code section 324.07(j) by a preponderance of the evidence.

Synopsis of Alleged Facts:

On August 3, 2021, during a Department-conducted youth compliance check, an individual who was less than twenty-one (21) years old successfully purchased tobacco products from the Licensed Premises. Based on these findings, the Department recommended adverse action against your Cigarette/Tobacco license and the imposition of a \$300 fine. By paying the \$300 fine, you admitted to the violation.

On May 6, 2022, a Department inspector went to the Licensed Premises for a complaint inspection. The inspector spoke with the store clerk, Ahmed Aizadgir, and informed him that the Department received a complaint of the business selling flavored tobacco products. During the inspection, the inspector observed and documented with photographs multiple flavored tobacco products located behind the counter/cash register. After the inspection, the inspector educated the clerk on these violations and advised him to remove all flavored tobacco products into a back storage and call a distributor to pick them up.

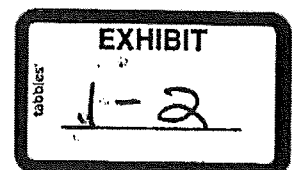
You have three (3) options to proceed.

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 **June 24, 2022**, 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 revocation of your license.

2. If you wish to admit the facts but you contest the penalty of revocation, you may have a public 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 public hearing no later than **June 24, 2022**. The matter will then be scheduled before the City Council to determine whether to revoke the license. You will have an opportunity to appear before the Council and make a statement.

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

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SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDBEY 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

3. If you dispute the facts outlined above, you may request a hearing before an Administrative Law Judge (the "ALJ"). You will need to send me a letter disputing the facts and requesting an administrative hearing no later than **June 24, 2022**. At that hearing, both you and the City will appear and present witnesses and 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 the public hearing, 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 reserves the right to request that City Council impose the costs of the administrative hearing, per Saint Paul Legislative Code section 310.05(k).

If you have not contacted me by June 24, 2022, I will assume that you do not contest the revocation of your license. In that case, the matter will be placed on the City Council Consent Agenda for approval of the recommended penalty.

Sincerely,

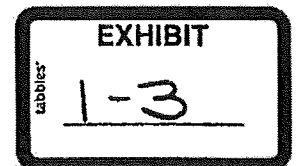
Stephen Earnest
Assistant City Attorney
License No.: 0402652

cc: Majid Nitaishoon, 466 82nd Avenue NE, Spring Lake Park, MN 55432
Anas Tel, 4456 Van Buren Street NE, Columbia Heights, MN 55421
Caty Royce, Co-Executive Director, Frogtown Neighborhood Association, 501 Dale Street, Saint Paul, MN 55117
Tia Williams, Co-Executive Director, Frogtown Neighborhood Association, 501 Dale Street, Saint Paul, MN 55117

Attachments: Inspector's Report
List of Tobacco Products Found on Licensed Premises
Licensee information on Eclips System
License Group Comments Text
STAMP - Ownership/Zoning Information
Photos of Tobacco Products

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

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STATE OF MINNESOTA

ADMINISTRATIVE HEARING

COUNTY OF RAMSEY

OAH 65-0020-38532

In the Matter of the
Cigarette/Tobacco License Held by
MJ Market for the Premises Located
At 922 Thomas Avenue in Saint Paul.

OAH File No. 65-6020-38532

DECLARATION OF MAJID NITAISHOON

I, Majid Nitaishoon, under penalty of perjury, declare and state as follows:

1. I am holder of the tobacco shop licensee (“Respondent) for the licensed premises MJ Market Inc.
2. On June 10, 2022, I received a Notice of Violation from the Department of Safety and Inspections wherein it stated that I was in violation of Saint Paul Legislative Code section 324.07(j). (See Declaration of Beuning, Exhibit A.)
3. The June 10, 2022, Notice of Violation states that Saint Paul Legislative Code section 324.10(b)(2) sets the presumptive penalties for “violations of provisions of the Legislative Code relating to the display, possession, or multiple incidents of sales of menthol or flavored tobacco products. Under section 324.10(b)(2), the presumptive penalty for a second violation within a 24-month period is revocation of the license.”
4. I have reviewed the presumptive penalties provisions including the penalty matrix in Saint Paul Legislative Code section 324.10(b)(2).
5. That based on the presumptive penalty matrix, I do not believe revocation of my license is appropriate for an alleged first violation for the sale of flavored tobacco. I do not think a first violation for the alleged sale of flavored tobacco products is an “appearance” for a determination of revocation.

6. I do not believe that the Department of Safety and Inspections knew what tobacco products were “flavored” tobacco products and which were not flavored tobacco products that it alleged I was selling. I believe the Department had to look up on the internet what products might be flavored products and relied on an internet interpretation of flavored products as its basis for alleging I was in violation of the Legislative Code.
7. I do not know the identity of the individual that reported me to the Department of Safety and Inspections, but believe the complaint could have come from a competitor who wanted to sell tobacco products in an area close to MJ Markets Inc.
8. I do not believe that my license should be revoked for the alleged sale of flavored tobacco products when I was not aware that the alleged flavored tobacco products in MJ Markets Inc. were flavored tobacco products restricted by the Legislative Code.

Dated: November 7, 2022

/s/ Majid Nitaishoon
Majid Nitaishoon

OAH Docket Number: 65-0020-38532

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Cigarette/Tobacco
License held by MJ Market for the Premises
Located at 922 Thomas Avenue in
Saint Paul

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that:

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the Party/Agency chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. **Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.**¹

3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

Party's/Agency's Name: Craig J. Beuning

Email: klawcraig@gmail.com Telephone: (601) 594-0924

Mailing Address: 4501 Allendale Drive, St. Paul, MN 55127

Party's/Agency's Attorney: Craig J. Beuning

Firm Name: Holstad & Knaak, PLC

Email: klawcraig@gmail.com Telephone: (601) 594-0924

Mailing Address: 4501 Allendale Drive, St. Paul, MN 55127

Respondent's/Opposing Party's Name: City of Saint Paul

Email: therese.skarda@ci.stpaul.mn.us Telephone: (651) 266-8729

Mailing Address: Saint Paul City Attorney's Office, Civil Division, 15 W. Kellogg Blvd., Suite 400, Saint Paul, MN 55102

Dated: November 7, 2022



Signature of Party/Agency or Attorney

¹ In order to opt in to electronic notice, this form must be emailed to OAH.efiling.support@state.mn.us. If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. See 2015 Minn. Laws Ch. 63, Minn. R. 1400.5550, subps. 2-5 (2021).

Note: This form must be served upon the opposing party/agency. Counsel may not withdraw from representation without written notice.

Helmuelle, Nichole (OAH)

From: Severson, Michelle (OAH)
Sent: Wednesday, October 26, 2022 9:41 AM
To: Therese.Skarda@ci.stpaul.mn.us; McDonald, Shawn (CI-StPaul); cbeuning@klaw.us
Subject: 65-6020-38532 ITM of MJ Market Inc. -Conference Call-In Update

Dear Counsel,

The call-in number for the oral argument scheduled for **November 15, 2022**, at **9:30 a.m.** has changed. However, the conference code remains the same, as noted below.

At the time of the conference, the parties are directed to dial the new call-in number, **1-877-304-9269**, and when prompted, enter conference code **252044#**.

Thank you,

Michelle Severson

Legal Secretary

Office of Administrative Hearings

600 Robert St N

PO Box 64620

St. Paul, MN 55164-0620

P: 651-361-7874

mn.gov/oah

 MINNESOTA

OAH Docket No. 65-6020-38532

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF SAINT PAUL

In the Matter of the Cigarette/Tobacco
License held by MJ Market Inc. for the
Premises Located at 922 Thomas Avenue in
Saint Paul.

**NOTICE OF MOTION
AND MOTION FOR
SUMMARY DISPOSITION**

To: Majid Nitaishoon d/b/a MJ Market, by its attorney, Craig J. Beuning.

PLEASE TAKE NOTICE that the Department of Safety and Inspections (“Department”) of the City of Saint Paul, Minnesota (“City”) brings the following motion before the Administrative Law Judge in the above-entitled matter.

MOTION

The Department moves the Administrative Law Judge to issue an order for summary disposition and a recommendation for revocation of the Cigarette/Tobacco Licenses held by Majid Nitaishoon d/b/a MJ Market for the premises located at 922 Thomas in Saint Paul.

The Department asserts that grounds for Adverse Action and revocation of Respondent’s license exist under Saint Paul Legislative Code Sections 310 and 324 including 324.07 (j) and 324.10 (b)(2).

This motion is made pursuant to Minnesota Rules 1400.5500(k) and 1400.660 and Rule 56.03 of the Minnesota Rules of Civil Procedure. It is based upon the files, records and

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proceeding herein, together with the Attached Memorandum of Law in Support of City's Motion for Summary Disposition, and all supporting affidavits and exhibits.

Dated: 10-24-22

Respectfully submitted,

Therese A. Skarda

THERESE A. SKARDA
#240989
Assistant Saint Paul City Attorney

#SRY6PSM60D9W1Yv1

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR CITY OF SAINT PAUL

In the Matter of the Cigarette/Tobacco
License held by Majid Nitaishoon
d/b/a MJ Market Inc. for the
Premises Located at 922 Thomas
Avenue in the City of Saint Paul

**MEMORANDUM OF LAW IN
SUPPORT OF CITY'S MOTION
FOR SUMMARY DISPOSITION**

INTRODUCTION

The City of Saint Paul (“City”), by its Department of Safety and Inspections (“Department”), respectfully submits this Memorandum of Law in Support of its Motion for Summary Disposition. On June 10, 2022, the Department initiated adverse action against the tobacco shop license (“License”) held by Majid Nitaishoon (“Respondent”) d/b/a MJ Market Inc. (“MJ Market” or “Licensed Premises”) by filing a Notice of Violation (“Notice”) that recommended the imposition of the standard matrix penalty for a second tobacco related violation. The standard matrix penalty for a second matrix penalty is revocation of the License held by Respondent. The recommendation was based on the undisputed facts that Respondent holds a tobacco shop license not a tobacco product shop license, Respondent failed a youth tobacco compliance check on August 3, 2021 and paid the matrix penalty on October 6, 2021 and then on May 6, 2022, Respondent was found to be offering a variety of prohibited flavored tobacco products at the Licensed Premises.

**UNDISPUTED STATEMENT OF FACTS SUPPORTING
THE CITY'S MOTION FOR SUMMARY DISPOSITION**

1. Respondent is the owner and operator of MJ Market Inc., located at 922 Thomas Avenue in the City of Saint Paul.¹

¹ Exhibit # 1-5, 5-1 – 5-28, Voyda affid. p. 3, #13.

2. Respondent d/b/a MJ Market Inc. holds a tobacco shop license, ID 20210001131 under Saint Paul Legislative Code (“SPLC”) § SPLC §324.03 (16).²
3. Respondent applied for his tobacco Shop license on June 14, 2021.³
4. Respondent received his tobacco shop license on June 28, 2021.⁴
5. Although signed under an older version of SPLC 324, Respondent’s business plan indicates that he would not be selling flavored tobacco products, or e-cigarette “juice”.⁵
6. Business Record Details from the Minnesota Secretary of State indicate that MJ Market Inc. was registered as of June 11, 2021.⁶
7. A Certificate of Assumed Name from the Office of the Minnesota Secretary of State shows that the assumed name of MJ Market was Thomas Deli, the Principal Place of Business is 922 Thomas Ave W, St. Paul, MN 55104 and is electronically signed by Majid Nitaishoon.⁷
8. The Minnesota Business Corporation/Articles of Incorporation from the Office of the Secretary of State show a Corporate Name of MJ Market Inc. and Majid Nitaishoon is the incorporator.⁸
9. A document from the Minnesota Department of Revenue shows the legal name of the business at 922 Thomas as Thomas Deli and that the date of incorporation was June 11, 2021.⁹
10. A document titled Recission of Lease and signed by tenant Mobarak Hamaz and landlord Abdul Tel shows that effective June 30, 2021, tenant Mobarak Hamaz rescinded the lease

² Exhibits # 6.

³ Exhibit #5-1 – 5-28, Affid. Voyda, p. 3, #14.

⁴ Exhibit #6, Affid. Voyda, p. 3, #15.

⁵ Exhibit #5-8

⁶ Exhibit #5-9

⁷ Exhibit #5-10

⁸ Exhibit #5-11

⁹ Exhibit #5-12

he had for the licensed premises with landlord, Abdul Tel and surrendered possession of the Licensed Premises.¹⁰

11. A document titled Commercial Lease Agreement shows that Majid Nitaishoon signed the lease agreement as the tenant of 922 Thomas Avenue on June 14, 2021.¹¹
12. Majid Nitaishoon signed an acknowledgement of receipt of the City of Saint Paul's Tobacco Ordinance on June 21, 2021.¹²
13. SPLC §310.06 (b)(6)(a) states that a basis for action exists when “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.”¹³
14. SPLC §324.03 (5) defines a flavored product as “any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery

¹⁰ Exhibit # 5-14

¹¹ Exhibit # 5-15 – 5-28

¹² Exhibit #7-1

¹³ Exhibit # 12-2, Affid. Hudak, p. 3, #11(c).

product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product or device is a flavored product.¹⁴

15. SPLC §324.03 (14) defines tobacco or tobacco products as 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, cigarettes, cigars, little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snus, snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.”¹⁵
16. SPLC §324.03 (16) defines a tobacco shop license as a license issued to a person, firm, or corporation for an establishment that allows the licensee to offer for sale, licensed products which are accessible to the public only with the intervention of a store employee and allows persons who are under the age of twenty-one (21) to enter the Licensed Premises.¹⁶

¹⁴ Exhibit # 12-2.

¹⁵ Exhibit # 12-3.

¹⁶ Exhibit # 12-2.

17. SPLC §324.03 (17) defines tobacco product shop license as means a license issued to a person, firm, or corporation for an establishment that:
- derives “at least ninety (90) percent of its revenue from the sale of licensed products”
 - prohibits “persons who are under the age of twenty-one (21) from entering the establishment”;
 - is “accessible only through a door opening directly to the outside”; and
 - is “staffed by at least one individual solely dedicated to the tobacco products shop during all operating hours.”¹⁷
18. SPLC §324.07(j) prohibits a person from selling, offering for sale, or otherwise distributing any flavored products unless excepted under section 324.07 (l) of the chapter.¹⁸
19. SPLC §324.07(l)(3) exempts “retail stores holding a tobacco products shop license” from the flavored product prohibition.¹⁹
20. Presumptive penalties for Tobacco shop license violations are laid out in SPLC §324.10.²⁰
21. SPLC §324.10 (a) states that its purpose 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

¹⁷ Exhibit # 12-3.

¹⁸ Exhibit # 12-5.

¹⁹ Exhibit # 12-6.

²⁰ Exhibit # 12-6, 12-7.

penalty is listed below, the presumptive penalty under Saint Paul Legislative Code Section 310.²¹

22. SPLC § 324.10(b)(2) sets out presumptive penalties for certain tobacco related violations of SPLC.²²
23. Under SPLC § 324.10(b)(2) the presumptive penalties for display, possession or multiple incidents of sales of single cigarettes; menthol tobacco products; or flavored products are:
 - a 10 day suspension for the first tobacco related violation under the matrix;
 - revocation for the second tobacco related violation.²³
24. SPLC §324.10 (d) addresses the computation of time between violations and states that “A second violation within twenty four (24) months shall be treated as a second appearance...”.²⁴
25. On May 6, 2022, Department of Safety and Inspections (“DSI”) Inspector Joseph Voyda (“Voyda”) conducted an inspection in response to a complaint²⁵ that flavored products were being sold at the Licensed Premises and documented his inspection and findings in a report.²⁶
26. Upon arriving for his complaint inspection, Voyda introduced himself as a licensing inspector for the City of Saint Paul with the DSI and explained he was there because a complaint was received that flavored tobacco products were being sold at the Licensed Premises.²⁷
27. Voyda observed and documented in his report and with photos, multiple flavored tobacco

²¹ Exhibit # 12-6.

²² Exhibit #12-7.

²³ Exhibit #12-7.

²⁴ Exhibit #12-7.

²⁵ Exhibit #2, Affid. Voyda p. 3, #19.

²⁶ Exhibit #1-4 – 1-15, Affid. Voyda p. 3-4, #20-27.

²⁷ Exhibit # 1-4, Affid. Voyda p. 3-4, #20-27.

violations in plain sight, behind the counter.²⁸

28. Voyda asked the clerk, Ahmad Aizadgir (“Aizadgir”) if there were any other flavored tobacco products present or hidden and responded “no not that I am aware of”.²⁹
29. Voyda then advised Aizadgir to move all flavored tobacco products to the back storage room in the bathroom and advised him to call the owner, Majid Nitaishoon (Respondent) to have the distributor pick them up.³⁰
30. Voyda’s report and photographs document the following prohibited flavored tobacco products:
 - 2 boxes of Dutch - Sweet Fusion,
 - 2 Cartons American Spirits - Black
 - 1 box of individual singles - Black & Mild Casino wood tip
 - 31 different varieties of Vape Pens.³¹
31. The 2 boxes of Dutch - Sweet Fusion are prohibited products under SPLC because its product description describes it flavored with “delicious fruits.”³²
32. The 2 Cartons American Spirits - Black are prohibited products under SPLC because the product description states it is a Perique product.³³
33. The box of individual singles – Black and Mild Wine is a prohibited products because the product description indicates that it is flavored with the “sweet taste of red wine”.³⁴
34. The box of individual singles – Black and Mild Casino and Black and Mild Casino Wood Tip are prohibited products under SPLC because the casino flavor contains a coca, spices

²⁸ Exhibit #1-4, 1-9 - 1-15

²⁹ Exhibit # 1-4

³⁰ Exhibit # 1-4, 1-15

³¹ Exhibit # 1-4, 1-9 – 1-15

³² Voyda Affidavit p. 4 (#28), Exhibit #1-14, 14-2

³³ Voyda Affidavit p. 4 (#29), Exhibit #1-14, 14-3, 14-4

³⁴ Voyda Affidavit p. 4 (#30), Exhibit # 1-14, 14-7 – 14-12

and chocolate.³⁵

35. The 31 different varieties of Vape Pens are prohibited flavored products under SPLC because their boxes photographed by Inspector Voyda show very specific flavor names.³⁶
36. On August 3, 2021, the Respondent failed a youth tobacco compliance check, this is a prior violation within the past 24 months.³⁷
37. With regard to the prior violation, on September 10, 2021, DSI sent a Notice of Violation (NOV) with respect to the failed youth tobacco compliance check.³⁸
38. The September 10, 2021, NOV listed four (4) options to resolve the violation:
- 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 **September 24, 2021**, 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 \$300.00 administrative 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 **September 24, 2021**. A self-addressed envelope is enclosed for your convenience. Payment of the \$300.00 administrative 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 \$300.00 administrative penalty, you may have a public 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 public hearing no later than **September 24, 2021**. The matter will then be scheduled before the City Council to determine whether to impose the \$300.00 administrative 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 **September 24, 2021**. 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

³⁵ Voyda Affidavit p. 4 (#31), Exhibit # 1-14, 14-6 – 14-12

³⁶ Voyda Affidavit p. 4, 5 (#32), Exhibit # 1-9 – 1-12, 1-15

³⁷Exhibit # 1-6, 3-1 – 3-11, 4-1

³⁸ Exhibit # 3-1 – 3-5

(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.³⁹

39. On October 6, 2021, the prior violation, youth compliance check failure matter was resolved when the licensee admitted the violation by paying the \$300 matrix penalty.⁴⁰
40. Records from DSI show that Respondent was included on the mailing merge list that was used to provide licensees with notice of relevant changes to ordinances, updates to ordinance language and educational materials.⁴¹
41. Records from DSI show that on August 26, 2021, and September 1, 2021 Respondent was mailed a notice of the public hearing regarding the changes to SPLC section 324 along with the proposed changes, including the amended penalty matrix.⁴²
42. Records from DSI show that on December 2, 2021 a letter was sent to tobacco license holders that informed them of the changes to SPLC 324 and let them know that the effective date for the changes was December 11, 2021.⁴³

STANDARD OF REVIEW

Minnesota Rule 1400.5500(K) gives an administrative law judge the authority to “recommend a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact . . .” Summary disposition is the administrative equivalent of summary judgment. *Pietsch v. Minn. Bd. of Chiropractic Exam’rs*, 683 N.W.2d 303, 306 (Minn. 2004).⁴⁴ Summary disposition is appropriate where “the pleadings, depositions, answers to interrogatories, and

³⁹ Exhibit # 3-3, 3-4

⁴⁰ Exhibit # 4-1

⁴¹ Exhibit # 9-2

⁴² Exhibit #10-1, 10-4 - 10-12

⁴³ Exhibit # 10-2, 10-3,

⁴⁴ See also GEORGE A. BECK, MINNESOTA ADMINISTRATIVE PROCEDURE 114 (2d ed. 1998) (observing that the Office of Administrative Hearings has generally followed summary judgment standards in considering motions for summary disposition).

admissions on file, together with the affidavits . . . show that there is no genuine issue of material fact and that either party is entitled to judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). No genuine issue of material fact exists “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). The Department as the moving party has the initial burden of demonstrating that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *See Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). To avoid summary disposition, Respondent must show that specific facts that specific facts that would have a bearing on the outcome of the case are in dispute. *See Hunt v. IBM Mid Am. Emps. Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986). The evidence must be viewed in the light most favorable to Respondent, the nonmoving party. *Grondahl v. Bulluck*, 318 N.W.2d 240, 242 (Minn. 1982). Importantly, Respondent may not offer mere denials, general assertions, or speculation in attempting to defeat summary disposition. *See Gutbrod v. Cty. of Hennepin*, 529 N.W.2d 720, 723 (Minn. Ct. App. 1995).

ALJ’s duties include presiding at a contested case hearing and preparing findings of fact, conclusions, and recommendations.⁴⁵

ARGUMENT

ISSUE 1. Undisputed facts demonstrate that this is Respondent’s second violation within 24 months and that the presumptive penalty is revocation.

Respondent is the owner and operator of MJ Market Inc., located at 922 Thomas Avenue in the City of Saint Paul.⁴⁶ Respondent applied for his Tobacco Shop license on June 14, 2021.⁴⁷

⁴⁵ Minn. Admin. Rules 1400.5500.

⁴⁶ Exhibit #1-5, 5-1 – 5-28, Affid. Voyda, p. 3, #13.

⁴⁷ Exhibit #5-1 – 5-28.

Respondent received his Tobacco shop license on June 28, 2021.⁴⁸ Respondent's first matrix penalty violation occurred on August 3, 2021 when the Respondent failed a youth tobacco compliance check.⁴⁹ This violation was resolved on October 6, 2021 when the fine associated with the youth compliance failure was paid.⁵⁰ Just 7 months later, on May 6, 2022, Department of Safety and Inspections ("DSI") Inspector Joseph Voyda ("Voyda") conducted an inspection in response to an April 11, 2022 complaint that flavored products were being sold at the Licensed Premises.⁵¹ Voyda documented prohibited flavored products on the Licensed Premises and a NOV was sent to Respondent outlining the prior violation and informing him that this is his second violation.⁵² Pursuant to SPLC §324.10 (b) (2) the presumptive penalty for a 2nd violation on the penalty matrix for the "display, possession or multiple incidents of sales of: single cigarettes; menthol tobacco products; or flavored tobacco products" is revocation.⁵³ SPLC §324.10 (d) addresses the computation of time between violations and states that "A second violation within twenty four (24) months shall be treated as a second appearance...".⁵⁴

ISSUE 2. Undisputed facts demonstrate that Respondent violated SPLC section 324.07(j) by allowing the sale of flavored tobacco products.

SPLC §310.06 (b)(6)(a) states that a basis for adverse action exists when "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."⁵⁵ Tobacco

⁴⁸ Exhibit #1-6, 6.

⁴⁹ Exhibit #1-6,

⁵⁰ Exhibit #4-1.

⁵¹ Exhibit #2, Voyda Affid., p. 3, #22.

⁵² Exhibit # 1-1 – 1-15, Voyda Affid., p. 3-5, #23-32.

⁵³ Exhibit #12-6, Hudak Affid., p. 4, #11 (f)(g).

⁵⁴ Exhibit #12-6 – 12-7, Hudak Affid., p. 4 #11 (h).

⁵⁵ Exhibit #11-13, Hudak Affid., p. 3, #(b), (c).

products are regulated under Chapter 324 of the SPLC. SPLC §324.07(j) provides in part that “[n]o person shall sell, offer for sale, or otherwise distribute any flavored [tobacco] products”.⁵⁶

Respondent does not hold a tobacco products shop license as defined under SPLC §324.03(17), so he is not exempted from selling flavored products under SPLC §324.07(1)(3).⁵⁷ Respondent holds a tobacco shop license as defined under SPLC §324.03(16), therefore he must comply with the requirements of SPLC §324.07(j).⁵⁸ The types of flavored products that Tobacco shop licensees are prohibited from selling are defined in SPLC §324.03(5). On April 11, 2022, DSI received a complaint that Respondent was selling flavored tobacco products in violation of SPLC.⁵⁹ On May 6, 2022, DSI sent Inspector Voyda out to investigate the complaint. Based on his training and experience, Voyda verified the complaint and documented the flavored tobacco products violations with a report and photographs.⁶⁰ A description of the prohibited flavored products that Voyda found are listed under Voyda’s inspection report and photos.⁶¹ DSI provides education and training for licensees both when they receive their licenses and when licensing ordinances are amended by City Council and Respondent received that education and training.⁶² Both Inspector Voyda and Licensing Manager Hudak’s (“Hudak”) understand the types of items prohibited by SPLC and are trained to recognize flavored products prohibited under SPLC.⁶³ Because Respondent has violated SPLC section 324.07(j), despite being informed about the applicable rules and regulations summary disposition and a recommendation supporting adverse action and revocation of Respondent’s license is appropriate.

⁵⁶ Exhibit #12-5.

⁵⁷ Affid. Hudak 3, #11(d), Exhibit #6, Exhibit 5-1.

⁵⁸ Affid. Hudak p. 3, #11 (e)(i).

⁵⁹ Exhibit 2, Affid Voyda p. 3, #19, 20, Affid. Hudak p.5 #16.

⁶⁰ Affid. Voyda p. 3-5 # 21 – 32, Affid. Hudak p. 5-7 #18-23, Exhibit #1-4, 1-9 – 1-15, 14-1 – 14-12.

⁶¹ Exhibit #4.

⁶² Affid. Voyda p. 3, #15, 16, Affid Hudak p. 6, #25, p. 7 #30, Exhibit # 9-1 – 9-10, 10-1 – 10-12, 13-1 – 13-14.

⁶³ Affid. Voyda p. 1-2 #4-7, Exhibits #14-1 – 14-14, Affid. Hudak p. 1, #2, p. 2 #9, 10.

CONCLUSION

The City has a duty to ensure that individuals licensed to sell cigarettes and tobacco products comply with their license conditions and the laws related to the licensed activity. It is beyond dispute that Respondent knowingly and blatantly engaged in activities that violate the ordinances that regulate his Tobacco Shop license. The penalty matrix adopted by Saint Paul City Council clearly expresses their intent to ensure that minors are protected from the dangers of tobacco. This includes both underage sales and ensuring that flavored tobacco products are not accessible to individuals under the age of 21. Under these circumstances, allowing Respondent to retain his Tobacco Shop license would be a gross dereliction of the Department's public protection function and a betrayal of the trust placed in the City by its citizens. Accordingly, the City respectfully requests an order for summary disposition by entry of a recommendation that revocation of Respondent's license is warranted.

DATE: _____

Respectfully submitted,

Therese A. Skarda

Therese A. Skarda, #2409089
Assistant City Attorney
City of Saint Paul
15 West Kellogg Blvd.
Saint Paul, MN 55102
(651)266-8755



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

October 24, 2022

Craig L. Beuning
Attorney at Law
HKB Law, PA
4525 White Bear Pkwy
White Bear Lake, MN 55110

RE: Cigarette/Tobacco License held by MJ Market for the premises located at 922 Thomas Avenue in Saint Paul
License ID #20210001131
OAH Docket No.: 65-6020-38532

Dear Mr. Beuning:

Below is the list of witnesses the City may call to testify. If I add any witnesses to this list, I will provide you with that information as well.

1. Eric Hudak, DSI Licensing Manager, 375 Jackson Street, Ste. 220, St. Paul, MN 55101 (651)-266-9110
2. Joseph Voyda, DSI Inspector, 375 Jackson Street, Ste. 220, St. Paul, MN 55101 (651) 266-9014

Sincerely,

Therese Skarda
Assistant City Attorney
License No: 0240989

Cc: Ann C. O'Reilly, Administrative Law Judge, Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620

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 in the delivery of services or employment practices.

OAH-0144

STATE OF MINNESOTA)
) ss.

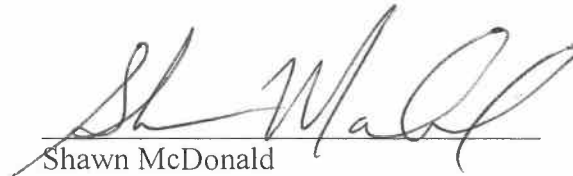
**AFFIDAVIT OF SERVICE BY E-MAIL & U.S.
MAIL**

COUNTY OF RAMSEY)

Shawn McDonald, being first duly sworn, deposes and says that on the 24th day of October, he served the attached **CITY'S PROPOSED EXHIBITS, EXHIBIT LIST, AND WITNESS LIST** and a correct copy thereof in an envelope addressed as follows:

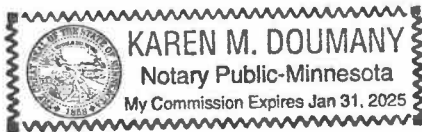
Craig L. Beuning
Attorney at Law
HKB Law, PA
4525 White Bear Pkwy
White Bear Lake, MN 55110

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


Shawn McDonald

Subscribed and sworn to before me
This 24th day of October 2022


Notary Public



**OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COUNCIL OF
THE CITY OF SAINT PAUL**

In Re: The Cigarette/Tobacco Licenses held by MJ Market for the premises located at 922 Thomas Avenue in Saint Paul.

**CITY'S
EXHIBIT LIST**

DATE: October 24, 2022

TO: Judge Ann C. O'Reilly - Office of Administrative Hearings, 600 North Robert Street.

The following constitutes a list of the City's exhibits submitted in conjunction with the October 24, 2022 Motion for Summary Disposition:

Exhibit No.	Description
Ex. No. 1-1- 1-3	Notice of Violation and Request for Revocation of the Cigarette/Tobacco License dated 6/10/2022
Ex. No. 1-4 - 1-15	Inspector Joseph Voyda Report with attachments including photographs
Ex. No. 2	Complaint
Ex. No. 3-1-3-11	September 10, 2021 Prior Notice of Violation and Supporting docs
Ex. No. 4-1	October 6, 2021 email indicating that September 10, 2021 matrix penalty is paid
Ex. No. 5-1-5-28	License Application and Supporting Documents including Lease
Ex. No. 6-1	Signed License Conditions
Ex. No. 7-1 - 7-9	Signed Acknowledgement and Ordinance Handout
Ex. No. 8-1	Letter requesting ALJ Hearing
Ex. No. 9-1 - 9-10	Mailing list for Tobacco Licensees with address information
Ex. No. 10-1 - 10-12	9-1-2021 and 8-26-2021 Notices for Public Hearing on 324 Amendments
Ex. No. 11-1 - 11-31	Saint Paul Legislative Code Section 310
Ex. No. 12-1 - 12-7	Saint Paul Legislative Code Section 324
Ex. No. 13-1 - 13-11	Updated DSI Tobacco Handout
Ex. No. 14-1 - 14-12	Joseph Voyda notes/research on certain flavored tobacco products and flavored products
Ex. No. 15-1 - 15-8	Signed and Notarized Affidavit of Eric Hudak
Ex. No. 16-1 - 16-5	Signed and Notarized Affidavit of Joseph Voyda
Ex. No. 17-1 - 17-3	Signed and Notarized Affidavit of Therese Skarda

Respectfully submitted the 24th day of October 2022



Therese Skarda, Assistant City Attorney
License No: 0240989
Office of the City Attorney
400 City Hall & Courthouse
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102



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

June 10, 2022

**NOTICE OF VIOLATION AND
REQUEST FOR REVOCATION OF
YOUR CIGARETTE/TOBACCO LICENSE**

MJ Market Inc.
922 Thomas Avenue
Saint Paul, MN 55104
Attn: Majid Nitaishoon

RE: Cigarette/Tobacco license held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul.
License ID # 20210001131

Dear Licensee:

The Department of Safety and Inspections (the "Department") is recommending adverse action against the Cigarette/Tobacco license held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul (the "Licensed Premises") for a second appearance due to a flavored tobacco product violation.

Saint Paul Legislative Code section 324.07(j) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored tobacco products. Under Saint Paul Legislative Code section 310.17, the conduct of any clerk, employee, manager, or agent working for or on behalf of a licensee is treated as the conduct of the licensee for the purpose of adverse action.

Saint Paul Legislative Code section 324.10(b)(2) sets the presumptive penalties for violations of provisions of the Legislative Code relating to the display, possession, or multiple incidents of sales of menthol or flavored tobacco products. Under section 324.10(b)(2), the presumptive penalty for a second violation within a 24-month period is revocation of the license.

Records from the Department show that on August 3, 2021, during a youth compliance check conducted at the Licensed Premises, a store clerk sold tobacco products to an individual who was less than twenty-one (21) years old, in violation of local ordinance

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

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The Department asserts that the following facts, along with photos of the violations attached herein, constitute proof of a violation of Saint Paul Legislative Code section 324.07(j) by a preponderance of the evidence.

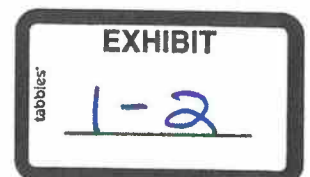
Synopsis of Alleged Facts:

On August 3, 2021, during a Department-conducted youth compliance check, an individual who was less than twenty-one (21) years old successfully purchased tobacco products from the Licensed Premises. Based on these findings, the Department recommended adverse action against your Cigarette/Tobacco license and the imposition of a \$300 fine. By paying the \$300 fine, you admitted to the violation.

On May 6, 2022, a Department inspector went to the Licensed Premises for a complaint inspection. The inspector spoke with the store clerk, Ahmed Aizadgir, and informed him that the Department received a complaint of the business selling flavored tobacco products. During the inspection, the inspector observed and documented with photographs multiple flavored tobacco products located behind the counter/cash register. After the inspection, the inspector educated the clerk on these violations and advised him to remove all flavored tobacco products into a back storage and call a distributor to pick them up.

You have three (3) options to proceed:

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 **June 24, 2022**, 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 revocation of your license.
2. If you wish to admit the facts but you contest the penalty of revocation, you may have a public 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 public hearing no later than **June 24, 2022**. The matter will then be scheduled before the City Council to determine whether to revoke the license. You will have an opportunity to appear before the Council and make a statement.





SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNOSEY 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

3. If you dispute the facts outlined above, you may request a hearing before an Administrative Law Judge (the "ALJ"). You will need to send me a letter disputing the facts and requesting an administrative hearing no later than **June 24, 2022**. At that hearing, both you and the City will appear and present witnesses and 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 the public hearing, 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 reserves the right to request that City Council impose the costs of the administrative hearing, per Saint Paul Legislative Code section 310.05(k).

If you have not contacted me by June 24, 2022, I will assume that you do not contest the revocation of your license. In that case, the matter will be placed on the City Council Consent Agenda for approval of the recommended penalty.

Sincerely,

Stephen Earnest
Assistant City Attorney
License No.: 0402652

cc: Majid Nitaishoon, 466 82nd Avenue NE, Spring Lake Park, MN 55432
Anas Tel, 4456 Van Buren Street NE, Columbia Heights, MN 55421
Caty Royce, Co-Executive Director, Frogtown Neighborhood Association, 501 Dale Street, Saint Paul, MN 55117
Tia Williams, Co-Executive Director, Frogtown Neighborhood Association, 501 Dale Street, Saint Paul, MN 55117

Attachments: Inspector's Report
List of Tobacco Products Found on Licensed Premises
Licensee information on Eclips System
License Group Comments Text
STAMP - Ownership/Zoning Information
Photos of Tobacco Products

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV





Inspector's Report

Inspectors Name: Joseph Voyda

Date & Time: 5/6/2022 - 11:30pm

Staff Member's Name: Ahmad Aizadgir

Business/DBA Name: MJ Market INC

Property Address: 922 Thomas Avenue

Reason for Visit: Complaint Inspection

Observations: Selling Flavored Tobacco Products

Photos Taken: Yes No – Area(s) of where the Photo(s) were taken: Behind the counter and shelving

Action Taken: Education / warning

Request for Adverse Action

Other: -

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

Upon arrival on May 6, 2022 at 11:30pm I spoke with the clerk Ahmad Aizadgir I introduced myself as a licensing Inspector for the City of Saint Paul with Department of Safety and Inspections. I explained I was there for an inspection from a complaint that was received by DSI for flavor tobacco product being sold.

In plain sight located behind the counter/cash register were multiple flavor tobacco product violations (See Attached Photos – 9 Total). I asked Ahmad if there were any other flavor products that were present or hidden, Ahmad response was "no not that I am aware of". Continuing the inspection, I advised Ahmad to move all products that were flavor violation into the back storage room/locked bathroom and advised him to have Majid Nitaishoon (owner) call the distributor for a pickup. I educated Ahmad on the flavor violations that were discovered.

Types of flavored tobacco products found: 2 boxes of 'Dutch' - Sweet Fusion, 2 cartons 'American Spirits' - Black, 1 box of individual singles for sale of 'Black & Mild' - Wine, 1 box of individual singles for sale of 'Black & Mild' - Casino black tip, 1 box of individual singles for sale of 'Black & Mild' - Casino wood tip and 31 different variations of Vape Pens.



License	Licensee	License Type	Insurance	Bond	Requirements
License Name	M MARKET INC				
DBA	M MARKET INC				
Sales Tax ID		Non-Profit	Workers Comp	01000000	
AA Contract Rec'd	00.000000	AA Training Rec'd	00.000000		
AA Fee Collected	00.000000	Discount Rec'd			

Other Agency Licenses				Financial Hist Reasons	
Other Licensing Agency Name	License Type	License #	Expiration	Reason	Date

Contacts for this Licensee						May include To	
Last Name	First Name	Title	Bus Phone	Home Phone	Contact Address	May include To	
M MARKET INC			922 THOMAS AVE		M MARKET INC	• May include To	• May include To
						License Address	License Address

Background Check Required Contact Properties

License # 922 THOMAS AVE Save Changes to History OK Cancel Help

License	Licensee	License Type	Insurance	Bond	Requirements
License Name	M MARKET INC				
DBA	M MARKET INC				
Sales Tax ID		Non-Profit	Workers Comp	01000000	
AA Contract Rec'd	00.000000	AA Training Rec'd	00.000000		
AA Fee Collected	00.000000	Discount Rec'd			

Other Agency Licenses				Financial Hist Reasons	
Other Licensing Agency Name	License Type	License #	Expiration	Reason	Date

Contacts for this Licensee						May include To	
Contact Address	City	State	Zip	DOB	Last Check	May include To	
922 THOMAS AVE	SPRING	55104			01000000	• May include To	• May include To
M MARKET INC	M MARKET INC				01000000	License Address	License Address

Background Check Required Contact Properties

License # 922 THOMAS AVE Save Changes to History OK Cancel Help



License Group Comments Text

05/09/2022

Licensee: MJ MARKET INC

DBA: MJ MARKET INC

License #: 20210001131

10/06/2021 \$300 fine paid SLH

8/24/2021 Sent to the CAO for a TYCC for a \$300 & \$50 fine to the clerk from an inspection held on 8/13/2021 JNV

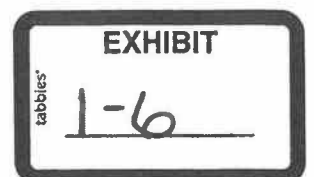
08/13/2021 Sent to JNV for AA review KY

8/03/2021 Youth Tobacco compliance fail KY

6/28/2021 Received tobacco acknowledgment form for hand out JNV

5/28/2021 Sent the Acknowledgment form for the cit handout JNV

5/28/2021 Sent license conditions to applicant for signature JNV



Licensee: MJ MARKET INC

DBA: MJ MARKET INC

License #: 20210001131

Temporary window signs placed between the height of four (4) to seven (7) feet above grade shall not cover more than thirty (30) percent of this window space area and cannot block views into the clerk or cashier station.



STAMP - Ownership / Zoning Information

[New Search](#)

[Help using this report](#)

Run Date: 05/09/22 11:46 AM

House#:

Last updated from Ramsey County data on:

Street Name:

Click on "Other Application" links below to access GISmap, MapIT, and Ramsey County Info

922 Thomas Ave - Super Convenient Store - 55104-2634 - [Other Applications](#)

PIN: 352923240108

Census Tract: 32500

Census Block: 4004

Council Ward: 1 District Council: 7

Year Built:

Foundation Sq Feet: Loan Company: 90
Western Ba

Land Value: 25400

Building Value: 168200

Existing Primary Use: C- Grocery/Convenience Store

Legality of Use: Legal Non-Conforming

Occupancy Group Type: M

Units:

Zoning: RT1

Legal Desc: FRANKLIN ADDITION TO,ST. PAUL, FRANKLIN ADDITION TO,ST. PAUL, LOT 1 BLK 1

Owner:

Anas Tel
4456 Van Buren St Ne
Columbia Heights MN 55421-2951
763-670-1993

Tax Owner:

Anas Tel
4456 Van Buren St Ne
Columbia Heights MN

Certificate of Occupancy Responsible Party:

Abul Tel
4456 Van Buren St NE
Columbia Heights MN 55421





EXHIBIT
tabbies® 19



EXHIBIT
tabbies 1-10



tabbics®
EXHIBIT
 1-11



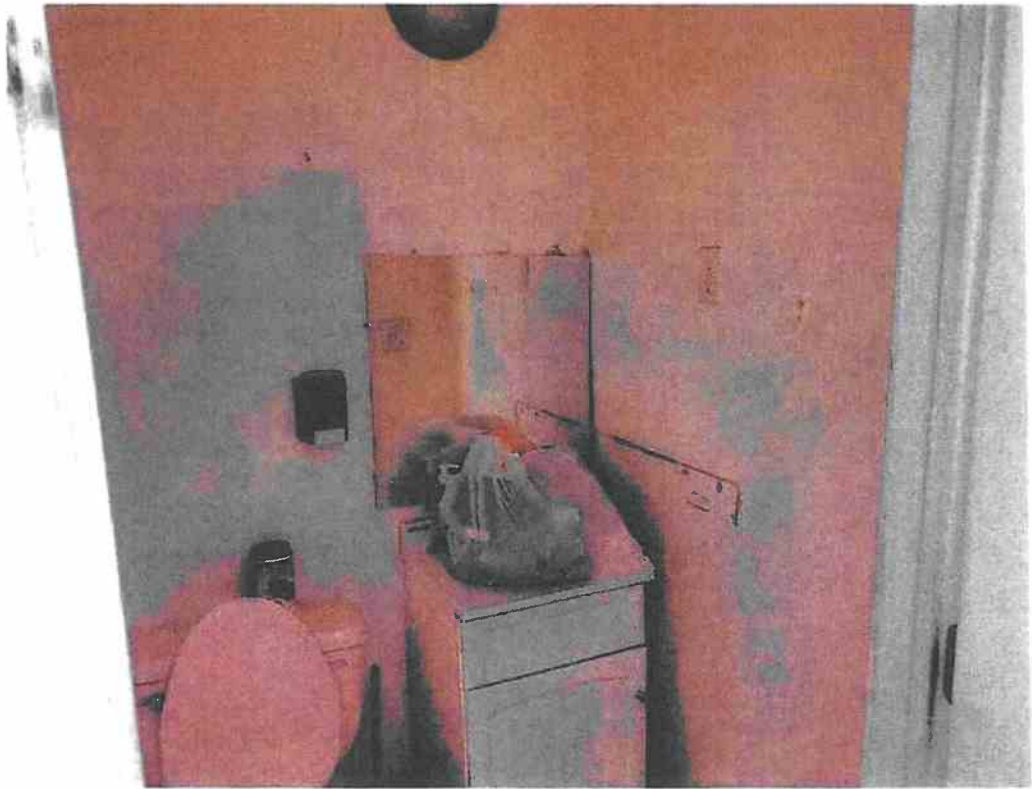
EXHIBIT
 1-12
 tabbies



EXHIBIT
tabbles
1-13



EXHIBIT
1-14
tabbles



tabbles®
EXHIBIT
1-15

Folder #: 2022 043517 LIC PIN: 352923240108 Status: Under Review
 In Date: 4/11/22 Ward: 1 Zoning: RT1 Subtype: License
 Dist Council: 7 Owner: Worktype: Complaint
 Complaint Location: 922 THOMAS AVE
 Census Tract: 32500 Anas Tel 763- 670- 1993
 Census Block: 4004 4456 Van Buren St Ne Columbia Heights MN 55421
 Homesteader:
 Tax Owner:

Legal Desc: FRANKLIN ADDITION TO,ST. PAUL, LOT 1 BLK 1
 Complainant:
 Details: Tobacco - selling flavored products from under the counter to the left while facing the cashier

This complaint has been referred to the following departments:

DSI Licensing Response - Scheduled Date: 4/11/22

Comment:

Inspector Assigned: Joseph Voyda, Phone: 651- 266- 9014

Results	Entered By	Comment
5/6/22 Closed with Comments	Voyda, Joseph	Found Flavor tobacco products

Comment:

Inspector Assigned: Joseph Voyda, Phone: 651- 266- 9014

Results	Entered By	Comment
7/14/22 Under Review	Voyda, Joseph	License Holder Requested an ALJ

Comment:

Inspector Assigned: Joseph Voyda, Phone: 651- 266- 9014

Results	Entered By	Comment
5/9/22 Under Review	Voyda, Joseph	Sent to the CAO for AA



STATE OF MINNESOTA)

) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Shawn McDonald, being first duly sworn, deposes and says that on the 10th day of September, he served the attached **NOTICE OF VIOLATION RECOMMENDATION FOR IMPOSITION OF \$300 ADMINISTRATIVE PENALTY FOR TOBACCO YOUTH COMPLIANCE CHECK FAILURE** and a correct copy thereof in an envelope addressed as follows:

MHH Global Inc.
d/b/a Thomas Grocery
922 Thomas Avenue
Saint Paul, MN 55104

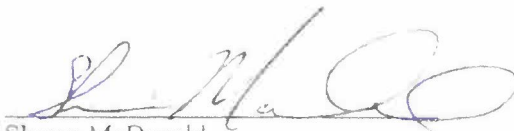
Hamza Mobarak
3100 135th Street West
Burnsville, MN 55337

Anas Tel/Co Amin Tel
4456 Van Buren Street Ne
Columbia Heights, MN 55421

Caty Royce, Co-Executive Director
Frogtown Neighborhood Association
501 Dale Street
Saint Paul, MN 55117

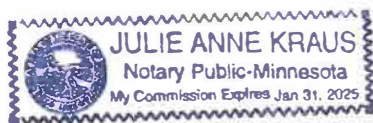
Tia Williams, Co-Executive Director
Frogtown Neighborhood Association
501 Dale Street
Saint Paul, MN 55117

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


Shawn McDonald

Subscribed and sworn to before me
This 10th day of September 2021


Notary Public





SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDESEY 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 10, 2021

**NOTICE OF VIOLATION
RECOMMENDATION FOR IMPOSITION
OF \$300 ADMINISTRATIVE PENALTY FOR TOBACCO YOUTH COMPLIANCE
CHECK FAILURE**

MHH Global Inc.
d/b/a Thomas Grocery
922 Thomas Avenue
Saint Paul, MN 55104

RE: Cigarette/Tobacco license held by MHH Global Inc. d/b/a Thomas Grocery for the premises located at 922 Thomas Avenue in Saint Paul
License ID #: 20200001611

MHH Global Inc.:

The Department of Safety and Inspections ("Department") will recommend adverse action against the Cigarette/Tobacco license held by MHH Global Inc. d/b/a Thomas Grocery ("Licensee") for the premises located at 922 Thomas 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."

Minnesota Statute §461.12, Subd 2 states; "If a licensee or employee of a licensee sells, give, 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."

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV





Saint Paul Legislative Code Section 310.06 sets forth a variety of reasons under which adverse actions can be based. Section 310.06(b)(c) says 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 §324.07(g) prohibits the sale of tobacco products to person under the age of twenty-one (21) years.

The Department asserts the following facts along with attachments herein constitute proof of a violation of Minnesota Statute § 461.12, Subd. 2 and Saint Paul Legislative Code §324.07(g) by a preponderance of the evidence.

Synopsis of alleged facts:

On August 3, 2021 at 11:36am, a tobacco compliance check was conducted at Thomas Grocery located at 922 Thomas Avenue. A twenty-year-old female entered your store and attempted to purchase cigarettes. She was not asked to show her identification which indicated she was underage. Nevertheless, the clerk sold her a package of American Spirit cigarettes. Inspector Yang came into the establishment afterward and spoke to the clerk, Haidar Hussein. He was informed that he failed the youth compliance check by selling American Spirit cigarettes to an underage person.

Sale of tobacco to an underage person is a violation of Minn. Stat. § 609.685 and Saint Paul Legislative Code § 324.07(g)

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 **September 24, 2021**, 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 \$300.00 administrative 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 **September 24, 2021**. A self-addressed envelope is enclosed for your





convenience. Payment of the \$300.00 administrative 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 \$300.00 administrative penalty, you may have a public 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 public hearing no later than **September 24, 2021**. The matter will then be scheduled before the City Council to determine whether to impose the \$300.00 administrative 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 **September 24, 2021**. 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 § 310.05 (k).

If you have not contacted me by September 24, 2021, I will assume that you do not contest the imposition of the \$300.00 administrative penalty. In that case, the matter will be placed on the City Council Consent Agenda for approval of the recommended penalty.

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 Shawn McDonald, my Legal Assistant at (651) 266-8729.





SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDSSEY 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

Sincerely,

Therese Skarda
Assistant City Attorney
License No.: 0240989

Cc: Hamza Mobarak, 3100 135th Street West, Burnsville, MN 55337
Anas Tel/Co Amin Tel, 4456 Van Buren Street Ne, Columbia Heights, MN 55421
Caty Royce, Co-Executive Director, Frogtown Neighborhood Association, 501 Dale Street, Saint Paul, MN 55117
Tia Williams, Co-Executive Director, Frogtown Neighborhood Association, 501 Dale Street, Saint Paul, MN 55117

Attachments: Inspector's Report
Screenshots EClips System
License Group Comments Text
License Group Conditions Text
STAMP – Ownership/Zoning Information
Tobacco Youth Compliance Check Purchase Form
Clerk Identification form
Photos of purchased cigarettes

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV





CITY OF SAINT PAUL

Business Licensing
375 Jackson Street, Suite 229
Saint Paul, Minnesota 55101-1608

Telephone: 651-266-5989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsa

Inspector's Report

Inspectors Name: Kaozouapang Yang

Time & Date: 8/3/2021 at 11:36AM

Business/Property Name: Thomas Grocery

Property Address: 922 Thomas Avenue - Saint Paul, MN 55104

Reason for Visit: Annual Cigarette Tobacco Youth Compliance Check

Observations: Youth purchased a Pack of American Spirit Cigarettes

Photos Taken: Yes No - Area(s) of where the Photo(s) where taken

Action Taken: Education / warning

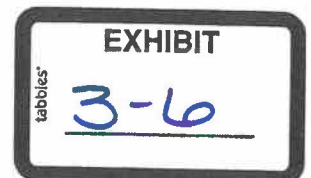
Request for Adverse Action

Other: -

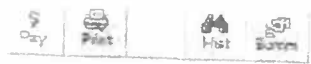
Details of Conversations (Statements to and by Person Responsible for Property)

Upon arrival I spoke to the clerk Haidar Hussem. I introduced myself as a DSI Licensing Inspector for the City of Saint Paul. I informed him that he failed a youth compliance check, an attempted purchase of a pack of American Spirts cigarettes was successfully made from an underage buyer at 11:36 a.m. I asked the clerk for his ID and he told me he did not have it with him. The clerk informed me that he does not work there and was watching the shop for the owner.

AA-ADA-EEO Employer



Properties for License: ALL THINGS AUTO



License: ALL THINGS AUTO
 DB: ALL THINGS AUTO

License: ALL THINGS AUTO
 License Name: ALL THINGS AUTO
 DB: ALL THINGS AUTO
 Sales Type: [Blank]
 License Type: [Blank]
 License Status: [Blank]

Properties

Other Licensing Agency Name License Type License Description

Reason	Action	Date

Contacts for this License

License Type	License Number	First Name	Last Name	Phone	Business Address	Home Address	Other License To

License # [Blank] Title [Blank]

Properties for License: ALL THINGS AUTO



License: ALL THINGS AUTO
 DB: ALL THINGS AUTO

License: ALL THINGS AUTO
 License Name: ALL THINGS AUTO
 DB: ALL THINGS AUTO
 Sales Type: [Blank]
 License Type: [Blank]
 License Status: [Blank]

Properties

Other Licensing Agency Name License Type License Description

Reason	Action	Date

Contacts for this License

Contact Address	City	Zip	DOB	Last Check	Other License To

License # [Blank] Title [Blank]



License Group Conditions Text

08/05/2021

Licensee: MJ MARKET INC

DBA: MJ MARKET INC

License #: 20210001131

1. Temporary window signs placed between the height of four (4) to seven (7) feet above grade shall not cover more than thirty (30) percent of this window space area and cannot block views into the clerk or cashier station.

License Group Comments Text

08/05/2021

Licensee: MJ MARKET INC

DBA: MJ MARKET INC

License #: 20210001131

8/03/2021 Youth Tobacco compliance fail KY
8/28/2021 Received tobacco acknowledgment form for hand out JNV
8/28/2021 Sent the Acknowledgment form for the oh handout JNV
8/28/2021 Sent license conditions to applicant for signature JNV

8/5/2021

STAMP - Ownership - Zoning Information

STAMP - Ownership / Zoning Information

[New Search](#)

[Help using this report](#)

Run Date: 08/05/21 09:41 AM

House#: 922

Last updated from Ramsey County data on:

Street Name: thomas

Click on "Other Application" links below to access GISmap, MapIT, and Ramsey County Info

922 Thomas Ave - Super Convenient Store - 55104-2634 - [Other Applications](#)

PIN: 352923240108

Census Tract: 32500

Census Block: 4004

Council Ward: 1 District Council: 7

Year Built:

Foundation Sq Feet:

Loan Company: 90
Western Ba

Land Value: 25400

Building Value: 168200

Existing Primary Use: C- Grocery/Convenience Store

Legality of Use: Legal Non-Conforming

Occupancy Group

Units:

Type: M

Zoning: RT1

Legal Desc: FRANKLIN ADDITION TO,ST. PAUL, LOT 1 BLK 1

Owner:

Anas Tel/Co Amin Tel

4456 Van Buren St NE

Columbia Heights MN 55421-2951

Certificate of Occupancy Responsible Party:

Abul Tel

4456 Van Buren St NE

Columbia Heights MN 55421





CITY OF SAINT PAUL

Business Licensing
113 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1906

Telephone: 651.266.4955
Facsimile: 651.268.9124
Web: www.stpaul.gov/dsl

Tobacco Youth Compliance Check Purchase Form

20200001611
THOMAS GROCERY
922 THOMAS AVE
ST PAUL MN 55104-2634
7

Handwritten mark

Business Type:

- Convenience
- Convenience / Gas
- Gas
- Drug Store / Pharmacy
- Tobacco Product Shop
- Supermarket / Grocery
- General Merchant
- Liquor Store / Bar / Restaurant
- Other (specify date, business, etc.)

Inspector: Kaozunpang Yang
Name

Date: 08 / 03 / 2021
MM DD YYYY

Time: 11:30 / p.m.

Was purchase attempted?
 Yes No

- IF NO, check reason
- Does not sell tobacco
 - After business hours
 - Not applicable
 - Unsatisfactory/unsafe conditions
 - Out of business
 - Other

Buyer: _____
Name

Age: 20
Sex: Female

Did adult or 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: 30+

Name of Clerk: Haider Hussien Address: 137 Mississippi Pl

City & State: Fridley, MN Zip Code: _____

Driver's license # or State I.D.#: _____ Date of Birth: July 28, 85

Description / Notes: Middle Eastern man w/ beard

AA ADA EEO Employer





CITY OF SAINT PAUL

Business License
375 Jackson Street, Suite 120
Saint Paul, Minnesota 55101-1806

Phone: 651-44-9134
Web: www.stpaul.gov/dsl

Tobacco Youth Compliance Check Purchase Form

20200001611
THOMAS GROCERY
922 THOMAS AVE
ST PAUL, MN 55104-2634
7

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: Koozouyang Yang
Name

Date: 08 / 03 / 2021
MM DD YYYY

Time: 11:30 a.m. / p.m.

- If NO, check reason:
- Does not sell tobacco
 - After business hours
 - Not applicable

Sex
Female

Asked? No

Type of
City
State
Country

Gender: Female Male App

Name of Clerk: _____

City & State _____

Driver's license # or State ID _____

Description / Notes: 04/12/21

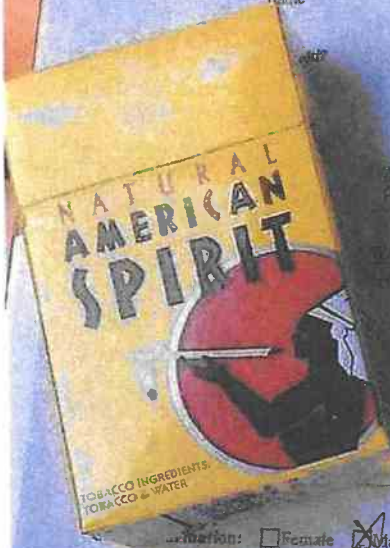


EXHIBIT
tabbies 3-10



EXHIBIT
3-11

McDonald, Shawn (CI-StPaul)

From: Harrington, Stephanie (CI-StPaul)
Sent: Wednesday, October 6, 2021 11:24 AM
To: Voyda, Joseph (CI-StPaul)
Cc: Yang, Kaozouapang (CI-StPaul); Hudak, Eric (CI-StPaul); McDonald, Shawn (CI-StPaul); Skarda, Therese (CI-StPaul)
Subject: MJ Market (20210001131)

The \$300 fine was paid. Notes are in ECLIPS.

Thank you,



SAINT PAUL
MINNESOTA

Stephanie Harrington
Pronouns: she/her/hers
Customer Service Specialist
Department of Safety and Inspections
375 Jackson Street, Suite 220
Saint Paul, MN 55101
P: 651-266-1913
F: 651-266-9124
E: stephanie.harrington@ci.stpaul.mn.us
DSI Customer Service Center Hours
7:30 am - 4:30 pm (Mon - Fri)

In person service is not available at this time due to the potential spread of COVID-19. Please see our website under 'Topics of Interest' for alternate methods of Front Counter Service Deliveries.





CITY OF SAINT PAUL
 Department of Safety and Inspections
 Ricardo X. Cervantes, Director
 375 Jackson Street, Suite 220
 Saint Paul, Minnesota 55101
 Phone: 651-266-8989
 Web: www.stpaul.gov/dsi

Class "R" License Application

LICENSES ARE NOT TRANSFERRABLE

Payment must be received with Each Application
 This application is subject to review by the public

Types of License(s) being applied for:

Fee(s):

- a. Cigarette/Tobacco license \$ 488.00
- b. Alarm Permits \$ 39.00
- c. _____
- d. _____
- e. _____

Total: \$ 527.00.

Business/Applicant Information

Business Address: 922 Thomas Avenue St. Paul MN 55104
Street City State Zip

Company Name: MJ Market Inc Doing Business As: MJ Market Inc

Company Type: Corporation Partnership _____ Sole Proprietorship _____

Licensee/Owner Name: Maid A Mitai Shoon
(Responsible Party) First Middle Last

Title: Owner Driver's License: MN P786168204421
State License #

Date of Birth: 05 / 01 / 1978

Applicant Home Address: 466 8nd Ave NE Spring Lake Park MN 55432
Street City State Zip

Home Phone #: (612) 669-9387 Business Phone #: N/A

Fax #: N/A Email: maidubed8@gmail.com

Supplemental Required Information

Business Manager, if different from Applicant

Manager's Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: 1 / 1 Phone #: _____

Email Address: _____

(Continued on back)





CITY OF SAINT PAUL
 Department of Safety and Inspections
 Ricardo X. Cervantes, Director
 375 Jackson Street, Suite 220
 Saint Paul, Minnesota 55101
 Phone: 651-266-8989
 Web: www.stpaul.gov/dsi

Class "R" License Application

LICENSES ARE NOT TRANSFERRABLE

Payment must be received with Each Application
 This application is subject to review by the public.

Types of License(s) being applied for:

Fee(s):

- a. Cigarette/Tobacco license \$ 488.00
- b. Alarm Permits \$ 39.00
- c. _____
- d. _____
- e. _____

Total: \$ 527.00.

Business/Applicant Information

Business Address: 922 Thomas Avenue St. Paul MN 55104
Street City State Zip

Company Name: MJ Market Inc Doing Business As: MJ Market Inc

Company Type: Corporation Partnership _____ Sole Proprietorship _____

Licensee/Owner Name: Majid A Nitai Shoon
(Responsible Party) First Middle Last

Title: Owner Driver's License: MN P786168204421
State License #

Date of Birth: 05 / 01 / 1978

Applicant Home Address: 466 8nd Ave NE Spring Lake Park MN 55432
Street City State Zip

Home Phone #: (612) 669-9387 Business Phone #: N/A

Fax #: N/A Email: Majidabd8@gmail.com

Supplemental Required Information

Business Manager, if different from Applicant

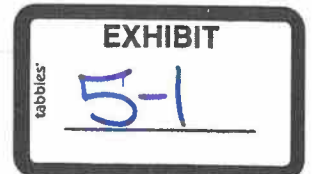
Manager's Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: / / Phone #: _____

Email Address: _____

(Continued on back)



Please list all other Person(s) to Appear on the Business License (Attach another sheet if applicable.)

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: ____ / ____ / ____ Phone #: _____

Email Address: _____

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: ____ / ____ / ____ Phone #: _____

Email Address: _____

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: ____ / ____ / ____ Phone #: _____

Email Address: _____

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

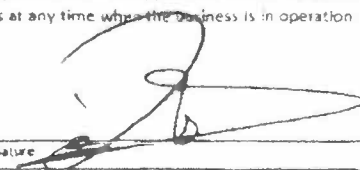
Home Address: _____
Street City State Zip

Date of Birth: ____ / ____ / ____ Phone #: _____

Email Address: _____

FALSIFICATION OF ANSWERS GIVEN OR MATERIAL SUBMITTED WILL RESULT IN DENIAL OF APPLICATION

I hereby state that I have answered all of the preceding questions and that the information contained herein is true and correct to the best of my knowledge and belief. I hereby state further that I have received no money or other consideration by way of loan, gift, contribution, or otherwise, other than already disclosed in the application which I herewith submitted. I also understand this premise may be inspected by police, fire, health and other city officials at any time when the business is in operation.

Applicant Signature:  _____ Title: owner Date: 6-14-21





CITY OF SAINT PAUL
Department of Safety and Inspection
875 Jackson Street, Suite 220
Saint Paul, Minnesota 55101
Phone: 651-266-6309
Web: www.saintpaul.gov/dsi

License Number: 2020001611

Zoning Addendum

An applicant must provide details related to the physical layout of the business for which a license is being requested. Please complete the following document and attach supporting documents.

*Zoning approval will not be granted for this license request without this information.

Business Name: MJ Market Inc

Business Address: 922 Thomas Avenue

Business Type: Grocery

Licensee Name: Maid Nitaishoon

Phone: (612) 669-8387

Please answer the following questions (if business is located in St. Paul proper):

- a. What is the gross floor area for this business?
- b. What was the previous use of this space?
- c. How many off-street parking spaces are provided for this business only?
- d. Is the parking leased or owned?
- e. How many different uses are in the building?
 - i. What are these uses? What is the gross floor area for each?

3000 Square feet

grocery store

NONE

N/A

Grocery Store / Deli

a. 2000 grocery Area 2000 Area

b. Deli 1000 Area

c. N/A N/A Area

- ii. Are there any bar/restaurants in the building operating after midnight?

Yes

No

If Yes, Please list them:

- f. Do you own the property or are you leasing it?

LEASE

Answer these questions if you are applying for a restaurant license:

- a. Do you intend to have a drive-thru window?
- b. Will you have a permanent menu board?
- c. Do you intend to serve liquor?
- d. Is this a restaurant associated with a Chain or Franchised business?
- e. Will customers pay for their food before consuming it?
- f. Is a self-service condiment bar proposed?
- g. Are trash receptacles provided for self-service bussing?
- h. Will there be hard finished, stationary seating?
- i. Are your main course food items...

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Pre Packaged

To Order

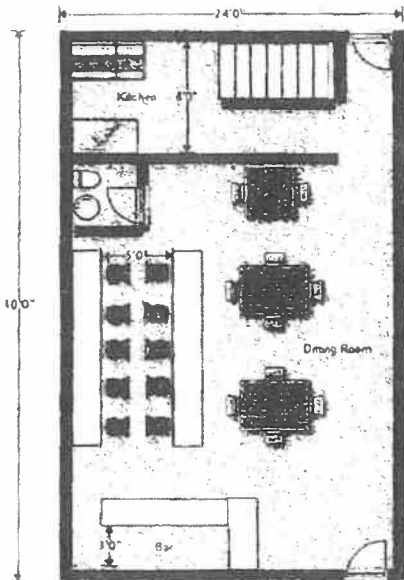


From:

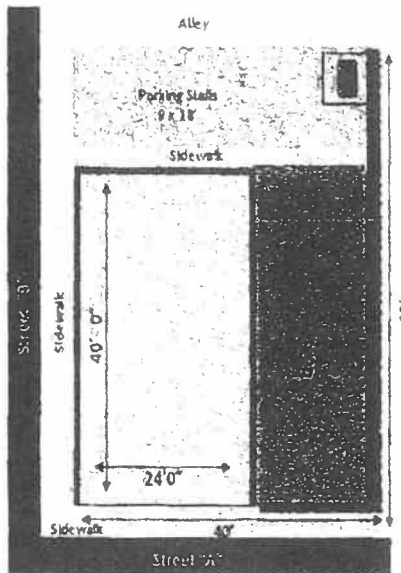
Please attach the following documents:

- a. Floor Plan Pertaining to License Area (Please see examples below)
 - i. Drawn to scale
 - ii. Showing dimensions
 - iii. Furniture
 - iv. All spaces/rooms labeled for use including Ingress & Egress
 - v. Showing placement of all equipment (ex. Kitchen equipment, work tables, entertainment devices)
- b. Site Plan Pertaining to Licenses Property (Please see example below)
 - i. Drawn to scale
 - ii. Showing dimensions
 - iii. Showing all property lines
 - iv. Showing the parking lot
 - v. Label all rooms/spaces

Floor Plan



Site Plan



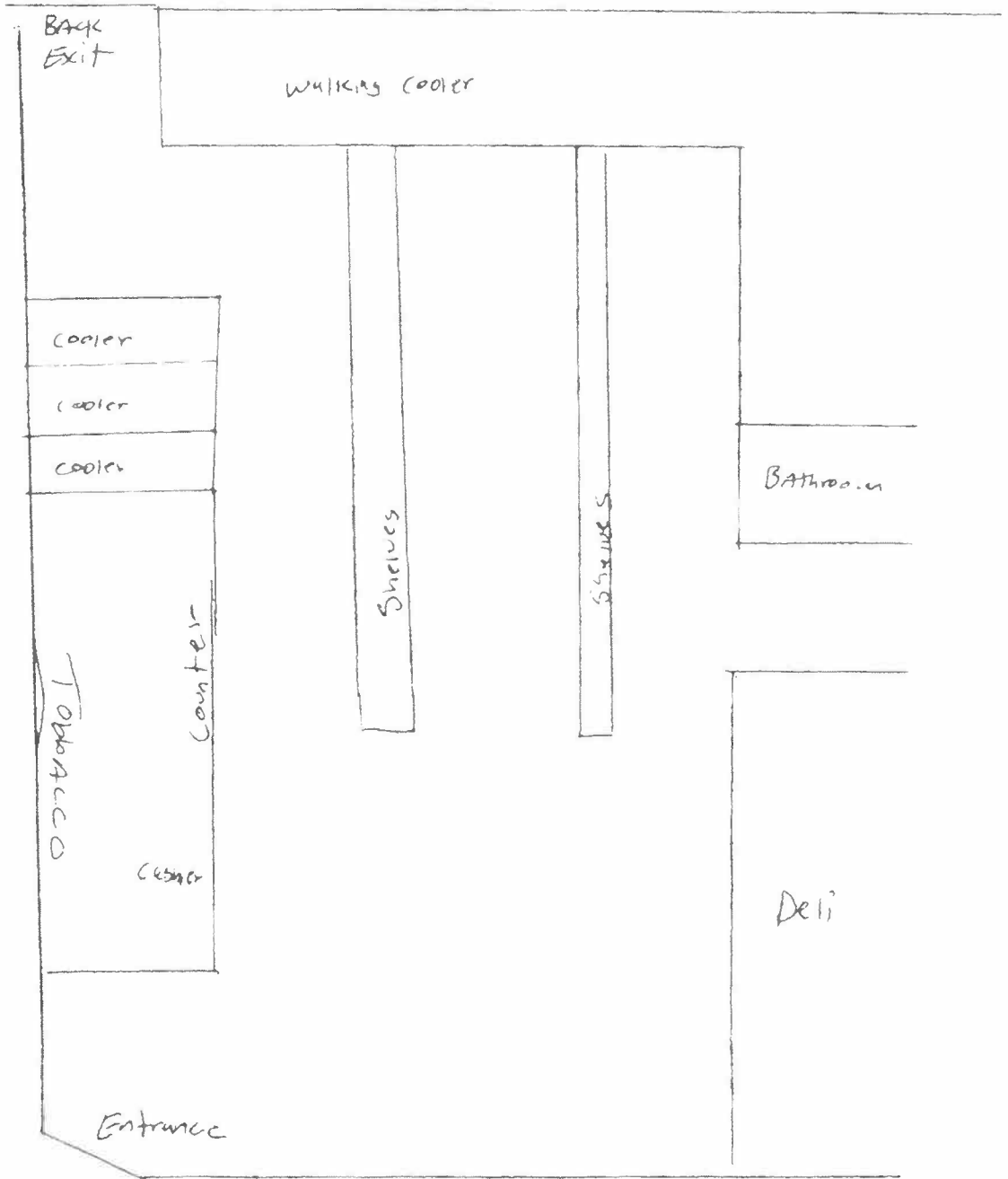
Employee Sign Off

Date

6-14-21



922 Thomas Avenue St. Paul MN 55104





ADDENDUM TO LICENSE APPLICATION

CONTAINS NONPUBLIC DATA

Please Type or Print in Ink

CITY OF SAINT PAUL
Department of Safety & Inspections
375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806
(651) 266-8989 Fax (651) 266-9124
www.stpaul.gov/dsi

Licensee's Name: Muth Nitaishoon

DBA: MT Market Inc

Business Address: 922 Thomas Avenue St. Paul MN 55104

Business Phone: (612) 669-8387 Preferred Phone: (612) 669-8387

TAX IDENTIFICATION NUMBER

Minnesota Statutes section 270C.72 requires licensing authorities to collect a tax identification number for each license applicant. You may provide one of the following three identification types: a Minnesota Tax Identification Number, a Federal Tax Identification Number (FEIN), or a Social Security Number (SSN).

This data will be provided to the Minnesota Department of Revenue for tax administration purposes and may be used to deny the issuance or renewal of your license in the event you owe Minnesota sales, employer's withholding or motor vehicle excise taxes. Refusal to provide a tax identification number will result in denial of your license application. Under the Federal Exchange of Information Agreement, the Department of Revenue may also supply this information to the Internal Revenue Service.

More information can be obtained from the Minnesota Department of Revenue at 651-296-6181 or www.revenue.state.mn.us

Tax Identification Number: [Redacted] Circle Type: MN Tax Id / FEIN / SSN

PAYMENT INFORMATION

You must pay all applicable fees before your license will be issued. You may pay by cash, check or credit card. Account information will be used to process your payment, either by the City or a third-party service provider. The City will not share nonpublic account information with other individuals or agencies unless required to do so by a court or other competent authority.

CREDIT CARD PAYMENT



Certificate of Compliance Minnesota Workers' Compensation Law

PRINT IN INK or TYPE.

Minnesota Statutes Section 176.182 requires every state and local licensing agency to withhold the issuance or renewal of a license or permit to operate a business or engage in any activity in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Chapter 176. The required workers' compensation insurance information is the name of the insurance company, the policy number, and the dates of coverage, or the permit to self-insure. If the required information is not provided or is falsely stated, it shall result in a \$2,000 penalty assessed against the applicant by the commissioner of the Department of Labor and Industry.

A valid workers' compensation policy must be kept in effect at all times by employers as required by law.

BUSINESS NAME (Individual name only if no company name used) MJ Market Inc.	LICENSE OR PERMIT NO (if applicable) 2020001611
DBA (doing business as name) (if applicable) MJ Market Inc.	
BUSINESS ADDRESS (PO Box must include street address) CITY STATE ZIP CODE 922 Thomas Avenue St. Paul MN 55104	

YOUR LICENSE OR CERTIFICATE WILL NOT BE ISSUED WITHOUT THE FOLLOWING INFORMATION. You must complete number 1, 2 or 3 below.

NUMBER 1 COMPLETE THIS PORTION IF YOU ARE INSURED:

INSURANCE COMPANY NAME (not the insurance agent)		
WORKERS' COMPENSATION INSURANCE POLICY NO.	EFFECTIVE DATE	EXPIRATION DATE

NUMBER 2 COMPLETE THIS PORTION IF SELF-INSURED:

I have attached a copy of the permit to self-insure.

NUMBER 3 COMPLETE THIS PORTION IF EXEMPT:

I am not required to have workers' compensation insurance coverage because.

I have no employees.

I have employees but they are not covered by the Workers' Compensation law (See Minn. Stat § 176.041 for a list of excluded employees.) Explain why your employees are not covered:

Other:

ALL APPLICANTS COMPLETE THIS PORTION:

I certify that the information provided on this form is accurate and complete. If I am signing on behalf of a business, I certify that I am authorized to sign on behalf of the business.

APPLICANT SIGNATURE (mandatory)	TITLE	DATE
<i>[Signature]</i>	OWNER	6-14-21

NOTE: If your Workers' Compensation policy is cancelled within the license or permit period, you must notify the agency who issued the license or permit by resubmitting this form.

This material can be made available in different forms, such as large print, Braille or on a tape. To request, call 1-800-342-5354 (DIAL-DLI) Voice or TDD (651) 297-4198. MN LIC 04 (11/08)





Business Plan Addendum (Cigarette/Tobacco Sales)

BUSINESS ADDRESS: 922 Thomas Avenue BUSINESS NAME: MJ Market Inc

All applicants must provide details related to the business plan at the establishment for which a license is being requested. Please complete the following document and attach supporting documents as needed.

a. List hours of operation (Sunday - Saturday): Monday through Saturday

7 days A week 8 AM - 10 PM

b. List/check-off the typical products to be sold in the establishment (use additional pages if necessary) and note any additional licenses you will be obtaining:

- Cigarettes Electronic cigarettes Pop or candy Clothing
- Cigarette wrapping paper Electronic cigarette parts Bottled water Household items
- Cigars Chewing tobacco Groceries
- Other Products and Licenses: _____

c. Will any food consumption be allowed on the premises? YES NO (circle one)

If yes, describe in detail what type of food service will be provided and/or consumption allowed. If applicable, provide a copy of your menu:

d. Will there be any seating in the establishment for customers/patrons? YES NO (circle one)

If yes, explain what the seating will be used for, and the anticipated length of time people will spend in the establishment

e. Will any of the following occur on the premises:

i. Sale of flavored tobacco products or e-cigarette "juice" other than mint, wintergreen and menthol? YES NO (circle one)

ii. Sampling of tobacco products including e-cigarette "juice"? YES NO (circle one)

If yes to either of the questions under "e." please provide the following additional information:

1. What is the estimated percentage of your total sales that will come from tobacco related products? 8% MN

2. What will the minimum age be to enter the establishment? All Ages MN

Describe what actions will be taken to enforce the minimum age requirement:

State or Federal ID for all tobacco sales. Must be 21 or older. MN

3. Describe how the sampling will occur (e.g., at the counter, sitting in chairs, etc.) and how you will regulate the sampling, including the estimated length of time customers will be on the premises sampling product.

Print Name: Majid Nitaishours Signature: _____

Date: 6-14-21

Revised Jan 2019

AA-ADA EEO Employer



Business Record Details »

Minnesota Business Name
MJ Market Inc

Business Type
Business Corporation (Domestic)

MN Statute
302A

File Number
1239503100024

Home Jurisdiction
Minnesota

Filing Date
6/11/2021

Status
Active / In Good Standing

Renewal Due Date
12/31/2022

Registered Office Address
922 Thomas Ave W
St Paul, MN 55104
USA

Number of Shares
100

Registered Agent(s)
(Optional) Currently No Agent

Filing History

Filing History

Select the item(s) you would like to order: [Order Selected Copies](#)

<input type="checkbox"/>	Filing Date	Filing	Effective Date
<input type="checkbox"/>	6/11/2021	Original Filing - Business Corporation (Domestic) (Business Name: MJ Market Inc)	

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The Office of the Secretary of State is an equal opportunity employer

Subscribe for email updates!

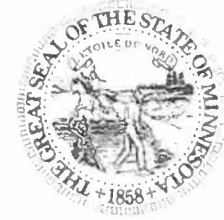


<https://mblsportal.sos.state.mn.us/Business/SearchDetails?filingGuid=ef6d50f8-f1ca-eb11-...> 6/28/2021

Office of the Minnesota Secretary of State

Certificate of Assumed Name

Minnesota Statutes, Chapter 333



The filing of an assumed name does not provide a user with exclusive rights to that name. The filing is required for consumer protection in order to enable customers to be able to identify the true owner of a business.

ASSUMED NAME: Thomas Deli

PRINCIPAL PLACE OF BUSINESS: 922 Thomas Ave W St Paul MN 55104 USA

NAMEHOLDER(S):

Name:	Address:
MJ Market Inc	922 Thomas Ave W St Paul MN 55104 USA

If you submit an attachment, it will be incorporated into this document. If the attachment conflicts with the information specifically set forth in this document, this document supersedes the data referenced in the attachment.

By typing my name, I, the undersigned, certify that I am signing this document as the person whose signature is required, or as agent of the person(s) whose signature would be required who has authorized me to sign this document on his/her behalf, or in both capacities. I further certify that I have completed all required fields, and that the information in this document is true and correct and in compliance with the applicable chapter of Minnesota Statutes. I understand that by signing this document I am subject to the penalties of perjury as set forth in Section 609.48 as if I had signed this document under oath.

SIGNED BY: Majid Nitaisboon

MAILING ADDRESS: None Provided

EMAIL FOR OFFICIAL NOTICES: support@taxshopmn.com



Office of the Minnesota Secretary of State
Minnesota Business Corporation/Articles of Incorporation
Minnesota Statutes, Chapter 302A



The individual(s) listed below who is (are each) 18 years of age or older, hereby adopt(s) the following Articles of Incorporation:

ARTICLE 1 - CORPORATE NAME:

MJ Market Inc

ARTICLE 2 - REGISTERED OFFICE AND AGENT(S), IF ANY AT THAT OFFICE:

Name: Address:
922 Thomas Ave W St Paul MN 55104 USA

ARTICLE 3 - MAXIMUM SHARES THE CORPORATION MAY ISSUE: 100

ARTICLE 4 - INCORPORATOR(S):

Name: Address:
Majid Nitaishoon 466 82nd Ave NE Spring Lake Park MN 55432

DURATION: PERPETUAL

If you submit an attachment, it will be incorporated into this document. If the attachment conflicts with the information specifically set forth in this document, this document supersedes the data referenced in the attachment.

By typing my name, I, the undersigned, certify that I am signing this document as the person whose signature is required, or as agent of the person(s) whose signature would be required who has authorized me to sign this document on his/her behalf, or in both capacities. I further certify that I have completed all required fields, and that the information in this document is true and correct and in compliance with the applicable chapter of Minnesota Statutes. I understand that by signing this document I am subject to the penalties of perjury as set forth in Section 609.48 as if I had signed this document under oath.

SIGNED BY: Majid Nitaishoon

MAILING ADDRESS: None Provided

EMAIL FOR OFFICIAL NOTICES: support@taxshopmn.com





Legal name THOMAS DELI
Federal ID number 87-1166210

Business address:

Address 922 THOMAS AVE
Address (continued)
City SAINT PAUL
State MN
Zip Code 55104-2634

Contact information:

Contact name MAJID NITAISHOON
Telephone number (612) 669-8387
Alternate number
Fax number
Primary e-mail SUPPORT@TAXSHOPMN.COM
Alternate e-mail
Alternate e-mail
Website address

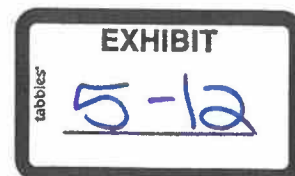
Tax year ending month December
State of incorporation MINNESOTA
Date of incorporation 11-Jun-2021

NAICS codes:

First NAICS 722211 Deli
Second NAICS
Third NAICS
Fourth NAICS

Owners, officers, personal representatives, or business owners:

Officer/Business Name
MAJID A NITAISHOON



If you are required to deposit for employment taxes (Forms 941, 943, 940, 944, 945, CT-1, or 1042), excise taxes (Form 720), or income taxes (Form 1120), you will receive a Welcome Package shortly, which includes instructions for making your deposits electronically through the Electronic Federal Tax Payment System (EFTPS). A Personal Identification Number (PIN) for EFTPS will also be sent to you under separate cover. Please activate the PIN once you receive it, even if you have requested the services of a tax professional or representative. For more information about EFTPS, refer to Publication 966, *Electronic Choices to Pay All Your Federal Taxes*. If you need to make a deposit immediately, you will need to make arrangements with your Financial Institution to complete a wire transfer.

The IRS is committed to helping all taxpayers comply with their tax filing obligations. If you need help completing your returns or meeting your tax obligations, Authorized e-file Providers, such as Reporting Agents (payroll service providers) are available to assist you. Visit the IRS Web site at www.irs.gov for a list of companies that offer IRS e-file for business products and services. The list provides addresses, telephone numbers, and links to their Web sites.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at www.irs.gov. If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.

IMPORTANT REMINDERS:

- * Keep a copy of this notice in your permanent records. This notice is issued only one time and the IRS will not be able to generate a duplicate copy for you. You may give a copy of this document to anyone asking for proof of your EIN.
- * Use this EIN and your name exactly as they appear at the top of this notice on all your federal tax forms.
- * Refer to this EIN on your tax-related correspondence and documents.

If you have questions about your EIN, you can call us at the phone number or write to us at the address shown at the top of this notice. If you write, please tear off the stub at the bottom of this notice and send it along with your letter. If you do not need to write us, do not complete and return the stub.

Your name control associated with this EIN is MJMA. You will need to provide this information, along with your EIN, if you file your returns electronically.

Thank you for your cooperation.



RESCISSION OF LEASE

THIS RESCISSION OF LEASE AGREEMENT ("Agreement") is made as of this ____ of June (the "Effective Date"), by and between Abdul Tel ("Landlord") and Mobarak M. Hamaz ("Tenant").

RECITALS

WHEREAS, Landlord, and Tenant, entered into that certain Lease Agreement for three years, dated December 19, 2019, (the "Lease"), governing Tenant's lease of 922 Thomas Avenue, St. Paul, MN 55106 (the "Premises"); and

WHEREAS, Tenant desires end the Lease before its expiration date and surrender the Premises to Landlord;

WHEREAS, Landlord desires end the Lease and retake the Premises from Tenant; and

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound, hereby covenant and agree as follows:


AGREEMENT

1. Effective June 30, 2021, the Lease shall be rescinded by mutual consent of Landlord and Tenant.
2. Tenant shall surrender possession of the Premises to Landlord at 5:00 p.m. on June 30, 2021.
3. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the undersigned parties have executed and delivered multiple counterparts of the foregoing Rescission of Lease, each of which is an original intending to be legally bound hereby.

TENANT

Dated: June 11, 2021


By: Mobarak M. Hamaz

LANDLORD

Dated: June 11, 2021


Abdul Tel



Commercial Lease Agreement

This LEASE AGREEMENT (hereinafter referred to as the "Lease") is by and between Abdul Tel ("Landlord"), and Majid A. Nitaishoon ("Tenant").

1. **PREMISES AND POSSESSION.** The Landlord hereby leases to the Tenant and the Tenant hereby takes from the Landlord, for the Term and upon the conditions hereinafter provided, the Premises consisting of: 922 Thomas Avenue, St. Paul, MN 55106 and the appurtenant portions of the property, located in Ramsey County, Minnesota (the "Premises"). Tenant's taking possession of the Premises shall be conclusive evidence that on that date the Premises were tenantable, clean, and satisfactory to Tenant.
2. **TERM.** This lease shall begin on the 1st day of July, 2021, and end on the last day of June, 2029, unless sooner terminated as provided herein, subject to the terms and conditions set forth below. This shall be known as the Initial Term.
3. **LEASEHOLD IMPROVEMENTS.** Tenant is taking the Premises and accepting the condition of the Premises "AS IS" and Landlord is under no obligation to make any structural or other alterations, decoration, additions or improvements. Tenant shall not make, and shall not commence, any improvement that has not been previously approved by the Landlord. If any improvement is made or commenced without the Landlord's consent, and the Landlord does not give subsequent approval thereof, the Tenant shall, upon receiving written notice from the Landlord, restore that portion of the Premises affected by the improvement to its preexisting condition at Tenant's expense.
4. **BASE RENT.** The Tenant agrees to pay to the Landlord at such other place as the Landlord may hereafter from time to time designate in writing, without demand, monthly Base Rent in the initial amount of three thousand five hundred Dollars (\$3,500.00), which shall be increase according to the below schedule:

Date	Annual Base Rent	Monthly Base Rent
July, 2021 – June, 2023	\$42,000.00	\$3,500.00
July 2023 – June, 2025	\$45,600.00	\$3,800.00
July 2025 – June, 2029	\$50,160.00	\$4,180.00

- a. **Due Date.** All monthly installments of Base Rent shall be payable in advance on or before the first day of each calendar month during the Term. In the event any fractional months occur during the Term, the Tenant shall pay Base Rent on a pro rata basis calculated on the ratio of the actual number of days the Tenant is in possession to the total days in the month in question. The Base Rent and Operating Costs are sometimes here in collectively referred to as the rent.



- b. **Independent Covenant.** Tenant's obligation to pay the Base Rent, Operating Costs and other amounts due under this Lease is an independent covenant, and is and shall not be subject to any abatement, deduction, counterclaim, reduction, set-off or defense of any kind whatsoever. The covenants and obligations of Landlord under this Lease are dependent upon the performance by Tenant of all of its covenants and obligations hereunder.
5. **SECURITY DEPOSIT.** Tenant shall pay three months base rent security deposit totaling ten thousand five hundred dollars (\$10,500.00).
6. **OPERATING COSTS.** Tenant shall assume responsibility for all gas, electric, telephone, cable, security systems, trash removal, sewer, satellite, and internet utilities for the Premises, and shall immediately notify all such utility companies that Tenant is assuming responsibility for all usage and other charges due for the Premises. Tenant shall also be responsible for the following "Operating Costs" for the Premises: all regular property taxes and special assessments or other governmental impositions which shall accrue or are payable in respect of any part of the Premises during the Term of this Lease; all other governmental impositions, including but not limited to amounts payable under assessment agreements relating to the Premises; fees for professional services; fees for professional plumbing, electrical, or cleaning services for common areas. All utilities and trash removal shall be placed in the Tenant's name and account, and shall be paid directly by Tenant to the utility supplier. Tenant shall pay premiums for all insurance, procured by Tenant pursuant to paragraph 20 below, directly to its insurance agent or insurance carrier. All taxes and special assessments shall be paid by Landlord and assessed to Tenant on a monthly basis, and shall be due from Tenant as Additional Rent immediately upon Tenant's receipt of an invoice from Landlord, unless the invoice indicates that the payments are due in installments (e.g., an invoice for real estate taxes may state that 1/12 of the taxes is due each month). If monthly installments are due, they are due on the first day of each month unless otherwise indicated by the Landlord. If taxes or special assessments apply retroactively, they shall be assessed to Tenant retroactively. Landlord shall be responsible for all water utilities.
7. **TENANT'S SIGNAGE.** Any signage, displays, or graphics of any nature whatsoever relative to the business conducted on the Premises, whether located on the Premises, in the Premises, or elsewhere, as well as all other portions of the Premises that may be observed from outside of the Premises, shall be provided at the expense of the Tenant, but shall be subject, however, to the written approval of the Landlord, which approval shall not be unreasonably withheld. All signage existing at the commencement of this Lease is deemed approved. As to any signage which Tenant proposes to implement after the date of execution of this Lease, the Tenant shall submit to the Landlord the plans, for the Landlord's approval, for any such signage, displays, or graphics prior to their implementation. If the Landlord's approval is obtained, the Tenant may not thereafter modify the same without again obtaining the Landlord's approval. This provision shall specifically apply to such signage, display, or graphics placed in any window of the Premises, or elsewhere in



the Premises, which may be seen from outside the Premises. All signage in place at the time this Lease is executed is specifically approved.

- 8. TENANT'S ADDITIONAL WARRANTIES.** In addition to any warranties or covenants made or to be kept by the Tenant pursuant to any other provision contained elsewhere herein, the Tenant hereby agrees:
- a. To not commit any nuisance or waste on the Premises, throw foreign substances in plumbing facilities, or waste the services, if any, furnished by the Landlord;
 - b. To not place any items in or otherwise obstruct entries, halls, stairways, sidewalks, or other Common Areas, and not use the same for anything other than their intended purpose;
 - c. To pay when due all installments of rent, and to comply with any and all of the Tenant's other covenants and agreements contained in this Lease;
 - d. To store all trash and garbage and make the same available for regular pick-up;
 - e. To conduct its business at all times in good faith, and in a high grade and reputable manner; and
 - f. To comply with any Rules or regulation promulgated for the Premises by the Landlord for the general safety, comfort, and convenience of the public, Landlord, Tenant, or guests.
- 9. LANDLORD'S RIGHT TO FIX OR REPAIR.** If the Tenant shall fail to keep and preserve the Premises in the state of condition required by any provision of this Lease, the Landlord may, at its option, provide Tenant with written notice of such failure as provided here in. If the condition specified in any such notice shall continue for a period of ten (10) days after the date of the notice, Landlord may, at its option, put or cause the same to be put in the required condition and state of repair without liability to Tenant for any loss or damage that may accrue to Tenant's property or business by reason thereof. In such case, the Tenant, on demand, shall pay as additional rent, the cost thereof together with interest thereon from the date paid.
- 10. USE.** Subject to the Tenant's ability and obligation to obtain all necessary governmental approvals and permits, the Tenant may use and occupy the Premises for the use of a snack shop and grocery. Landlord disclaims any warranty that the Premises are suitable for Tenant's use and Tenant acknowledges that it has had a full opportunity to make its own determination in this regard.

Compliance with Laws. The Tenant further warrants that it will not commit or permit any act to be performed, or any omission to occur on the Premises or Premises that will be in violation of any present or future law, ordinance, regulation or order of any governmental unit having jurisdiction over the Premises or Premises. This section shall specifically apply to the conformance with all health, safety, and building codes as the same may relate to any equipment or fixtures on the Premises or to any other aspect of the operation of the Tenant's business.



Landlord hereby also grants to Tenant, its employees, customers, and invitees, a non-exclusive right to use of any parking lot spaces appurtenant to the Premises. Tenant shall have the right, at its own expense, to tow any illegally parked vehicle from such parking spaces.

11. MAINTENANCE AND REPAIR- Tenant's Maintenance Obligations. Tenant shall be responsible for all maintenance and repair of the Premises, including but not limited to the foundations, exterior walls (including plate glass or other breakable material used in structural portions which shall be the responsibility of the Tenant as to that portion of such plate glass or other structural materials that may be located within or form part of the boundary of the Premises) and roof of the Premises. Tenant shall keep the Premises in good repair, ordinary wear and tear excepted. The costs of all maintenance and repair, routine or otherwise, of the Premises shall be paid directly by the Tenant.

The Tenant, at its own expense, shall maintain the Premises at all times in as good condition and repair of equal quality with the original work and condition, ordinary wear and tear excepted, and in a clean, sanitary, and safe condition in accordance with all applicable laws, ordinances, and regulations; including, without limitation, all plumbing, sewage, ventilating, and electrical systems serving the Premises, doors, windows, floors and floor coverings, interior walls and all interior painting and decorating, and all equipment, facilities, fixtures, and appurtenances. The Tenant shall permit no waste, damage, or injury to the Premises.

If the Tenant refuses or neglects to commence necessary repairs within a reasonable period (no longer than ten (10) consecutive days) after written request, or does not adequately complete such repairs within a reasonable period (no longer than ten (10) consecutive days) after written request, or does not adequately complete such repairs within a reasonable time thereafter, the Landlord may make the repairs without liability to the Tenant for any loss or damage that may occur to the Tenant's stock or business by reason thereof, and if the Landlord makes such repairs, the Tenant shall pay to the Landlord amount so paid by the Landlord and/or all costs and expenses incurred by the Landlord in making the above maintenance or repair, including reasonable attorneys' fees, shall be deemed to be additional rent for the Premises and shall be due and payable by the Tenant to the Landlord on demand.

a. **Glass Windows.** The Tenant shall replace, forthwith, any cracked or broken glass with glass of the same quality, including plate glass or glass and other breakable materials used in structural portions in any interior or exterior windows and doors in the Premises. If not covered by insurance, the Tenant shall bear the expense of any such glass replacement directly.

12. LANDLORD'S RIGHT OF ACCESS. The Landlord, its employees, and agents shall have the right to enter the Premises at all reasonable times for the purpose of inspecting, cleaning, or repairing the Premises, or any portion thereof, or to exhibit the Premises to prospective tenants, purchasers, or others the Landlord may deem appropriate. Specifically, the Landlord, its



employees, or agents shall also be permitted to install on or through the Premises conduits or other utility lines or services as the Landlord may deem necessary or appropriate.

- 13. ALTERATIONS.** Tenant shall not make any alterations, additions, or improvements in or to the Premises, or add, disturb, or in any way change any plumbing or wiring therein without the written consent of the Landlord as to the character and detailed plans of the alteration, addition, or improvement to be made, the manner of doing the work, the appropriate indemnifications for the Landlord, the persons to do the work, the providing of the costs therefor, the returning of the Premises to the condition in which they were at the commencement (if required by the Landlord), and other requirements or assurances that may be required by the Landlord.
- 14. ASSIGNMENT OR SUBLETTING.** Tenant will not assign, transfer, mortgage or encumber this Lease or sublet or rent or permit occupancy or use of the Premises, or any part thereof by any third party; nor shall any assignment or transfer of this Lease be effectuated by operation of law or otherwise, (any of the foregoing being hereinafter referred to as an "Assignment") without in each such case obtaining the prior written consent of Landlord. Consent by the Landlord is at Landlord's discretion and Landlord may deny consent for any reason. The consent by Landlord to any Assignment shall not be construed as a waiver or release of Tenant from the terms of any covenant or obligation under this Lease, nor shall the collection or acceptance of rent from any transferee under an Assignment constitute an acceptance of the Assignment or a waiver or release of Tenant or any transferee of any covenant or obligation contained in this Lease, nor shall any Assignment be construed to relieve Tenant from the requirement of obtaining the consent in writing of Landlord to any further Assignment.
- 15. FIRE OR OTHER CASUALTY.** If fire or other casualty shall render the Premises untenantable for a period in excess of ninety (90) days, either party shall have the right to terminate this Lease forthwith, in which case all rent owed to the Landlord shall be calculated and paid to the Landlord within ten (10) days of the Landlord's request therefor and any prepayments of rent shall be credited against the rent owed to the Landlord. If the Premises can be restored to a tenantable condition within ninety (90) days from the date of such event, then, at the Landlord's option, by notice in writing to the Tenant, mailed within thirty (30) days after such event, this Lease shall remain in full force and effect, with the exception that the Base Rent for the period during which the Premises were untenantable shall be abated pro rata.
- 16. CONDEMNATION: EMINENT DOMAIN.** If the whole of the Premises shall be taken by any public authority under the power or threat of eminent domain, then the Term of this Lease shall cease as of the day possession shall be taken by such public authority, and the rent shall be paid up to that date with a proportionate refund by Landlord of such rent as may have been paid in advance, if any. If a portion of the Premises shall be taken by any public authority under the power



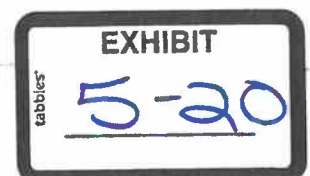
or threat of eminent domain, the Base Rent shall be abated pro rate based on the percentage of square footage taken.

17. SURRENDER AND TREATMENT OF IMPROVEMENTS On the last day of the Term or on the sooner termination thereof, the Tenant shall peaceably surrender the Premises in the condition required of the Tenant and consistent with the Tenant's duty to make alterations, modifications, or repairs pursuant to this Lease. All permanent alterations, additions, improvements and fixtures, other than trade fixtures, that may be made or installed by either of the parties hereto on the Premises shall, at the time of such installation, become the property of the Landlord and shall remain on and be surrendered with the Premises as a part thereof, without damage or injury and without compensation or credit to the Tenant unless the Landlord, at its option, requires the removal of any such alterations, additions, improvements, or fixtures. All nonpermanent alterations, additions, improvements, and fixtures that may be made or installed by the Tenant on the Premises shall remain at all times the property of the Tenant and shall be removed by the Tenant on termination of this Lease.

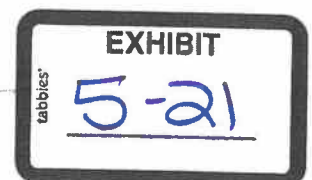
- a. **Designation by Landlord.** At the time the Tenant applies for the Landlord's written consent to any alterations, additions, improvements, and fixtures, the Landlord shall determine, in its reasonable discretion, which are to be deemed permanent and which are nonpermanent for purposes hereof, provided, however, that failure of the Landlord to do so shall not be deemed a waiver of its right to do so at a later time, or of any of its other rights with respect thereto pursuant to statute or common law.
- b. **Tenant's Failure to Surrender.** If the Premises are not surrendered at the end of the Term or sooner termination thereof, the Tenant shall indemnify the Landlord against any loss or liability from delay by the Tenant in so surrendering the Premises, including, without limitation, claims made by any succeeding Tenant founded on such delay. The Tenant shall promptly surrender all keys for the Premises to the Landlord at the place then fixed for payment of rent and shall inform the Landlord of combinations on any locks and safes on the Premises.
- c. **Holding over.** In the event that the Tenant, with the Landlord's express permission, remains in possession of the Premises after the expiration of its Lease and the Renewal Terms as set forth in Paragraph 2, without the execution of a new Lease, it shall be deemed to be occupying the Premises as a tenant from month-to-month, subject to all the conditions and provisions of this Lease, insofar as the same can be applicable to a month-to-month tenancy, except that the Base Rent shall be double the amount of Base Rent for the Third Renewal Term stated herein.

18. DEFAULT.

- I. **Events of Default.** The following shall constitute an "Event of Default" under the terms of this Lease:
 - a. If the Tenant shall fail to timely pay, when due, any rent or other sums due under this Lease, and any such rent or other sums shall remain unpaid for five (5) days after the same becomes due;



- b. If the Tenant shall fail to observe or perform any of the covenants, terms or conditions of this Lease;
- c. The existence of any collusion, fraud, dishonesty or bad faith by or with the acquiescence of the Tenant, which in any way relates to or affects this Lease or the Premises;
- d. If at any time any material representation, statement, report or certificate made now or hereafter by the Tenant is not true and correct, or if at any time any statement or representation made by the Tenant is not true and correct, and such representation, statement, report or certificate is not corrected within ten (10) days after written notice thereof;
- e. If all or a substantial part of the assets of the Tenant are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within thirty (30) days;
- f. If the Tenant is enjoined, restrained or in any way prevented by court order from performing any of its obligations hereunder or conducting all or a substantial part of its business affairs; or if a proceeding seeking such relief is not dismissed within thirty (30) days of being filed or commenced;
- g. If a notice of lien, levy or assessment is filed of record with respect to all or any part of the property of the Tenant by the United States, or any other governmental authority, unless contestable and actually and diligently contested in accordance herewith;
- h. If the Tenant shall file a voluntary petition for bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter in effect;
- i. If the Tenant shall file an answer or other pleading or any proceeding admitting insolvency, bankruptcy, or inability to pay its debts as they mature;
- j. If, within thirty (30) days after the filing against it of any involuntary proceedings under the Federal Bankruptcy Code or similar law, state or federal, now or hereafter in effect, the Tenant shall fail to have such proceeding vacated;
- k. If the Tenant shall fail to vacate, within thirty (30) days following the entry thereof, any order appointing a receiver, trustee or liquidator for it or all or a major part of its property, either on or off the Premises;
- l. If the Tenant shall be adjudicated as bankrupt;
- m. If the Tenant shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises;
- n. If the Tenant shall die, or shall be judicially declared to be incompetent if a natural person, or if such Tenant is a firm, partnership, or corporation, be dissolved, terminated or merged, except as the same shall constitute an Assignment pursuant to Section 15 hereof to which the Landlord gives consent;
- o. If the Tenant shall sell, convey, transfer or assign all or a major portion of its inventory, fixtures or other personal property, either on or off the Premises, without replacing same with comparable equivalents within thirty (30) days;



- p. If the Tenant shall sell, convey, transfer or assign any of the Tenant's rights, title, or interest in the Premises or this Lease, unless with the consent of Landlord in accordance with Section 15 hereof;
- q. If the Tenant abandons the Premises before the end of the Term;
- r. If the Tenant shall, at any time during the Term of this Lease, fail to carry in full force and effect any of the insurance coverage required by Paragraph 20 of this Lease.

II. Default -Nonpayment of Rent. If any installment of rent is not paid by Tenant when it becomes due: (i) a late charge in the amount of fifty dollars (\$50.00) shall become immediately due and payable for each day rent or other sums shall remain unpaid as compensation to Landlord for administrative costs; and (ii) the unpaid balance due Landlord shall bear interest at the Interest Rate from the date such installment became due and payable to the date of payment thereof by Tenant, and such late charge(s) and interest shall constitute additional rent hereunder which shall be immediately due and payable. The "Interest Rate" as used herein means the lesser of: the maximum rate permitted by law; and eighteen percent (18%) per annum.

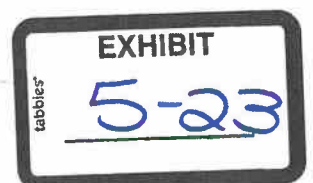
III. Waiver. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installments of rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent be deemed an accord and satisfaction, nor shall acceptance of rent with knowledge of breach constitute a waiver of the breach, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent, to terminate this Lease, to repossess the Premises or to pursue any other remedy provided in this Lease. No re-entry by Landlord, and no acceptance by Landlord of keys from Tenant shall be considered an acceptance of a surrender of the Lease.

IV. Remedies. Upon the occurrence of any Event of Default, the Landlord shall have any one or more of the following remedies:

- a. The Landlord may immediately terminate this Lease by notice to the Tenant. Upon such termination by the Landlord, the Tenant will at once surrender possession of the Premises to the Landlord and remove all of the Tenant's effects therefrom; and the Landlord may forthwith re-enter the Premises and repossess itself thereof, and remove all persons and effects therefrom using such force as may be necessary without being guilty of trespass, forcible entry or detainer or other tort.
- b. Enter upon and take possession of the Premises by picking or changing the locks if necessary, and lock out, expel or remove the Tenant or any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor, with or without having terminated this Lease;
- c. Landlord may enter upon the Premises by force if necessary without being liable for prosecution or any claim for damages therefor, and remedy such default for the account and at the expense of the Tenant without thereby waiving such default, and the Tenant further agrees that the Landlord shall not be liable for any damages resulting to the Tenant from such action;



- d. Whether or not this Lease has been terminated, Landlord may, but shall not be obligated to, attempt to relet the Premises for the account of Tenant in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and for such terms (which may include concessions or free rent) and for such uses as Landlord, in its uncontrolled discretion, may determine, and may collect and receive the rent therefor.
- e. No termination of this Lease pursuant to Subsection (a) or repossession of the Premises pursuant to Subsection (b) shall relieve Tenant of its liabilities and obligations under this Lease, all of which shall survive any such termination or repossession. In the event of any such termination or repossession, whether or not the Premises shall have been relet, Tenant shall pay to Landlord the Base Rent, Operating Costs, and other sums and charges to be paid by Tenant up to the time of such termination or repossession, and thereafter Tenant, until the end of what would have been the Term in the absence of such termination or repossession, shall pay to Landlord, as and for liquidated and agreed current damages for Tenant's default, the equivalent of the amount of the Base Rent, Operating Costs, and such other sums and charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds, if any, of any reletting effected pursuant to the provisions of Subsection (d) after deducting all of Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, attorneys' fees, alteration costs, and expenses of preparation for such reletting. Tenant shall pay such current damages to Landlord monthly on the days on which the Base Rent would have been payable under this Lease if this Lease were still in effect, and Landlord shall be entitled to recover the same from Tenant on each such day.
- f. In the event the Tenant deserts, vacates or abandons the Premises, the Landlord may remove and store any property which remains in the Premises. In addition to the Landlord's other rights, the Landlord may dispose of the stored property if the Tenant does not claim the property within ten (10) days after the date the property is stored. The Landlord may charge a reasonable storage fee, which fee Tenant must pay before claiming the property. The Landlord shall deliver by certified mail to the Tenant, at the address specified for notice to the Tenant herein, a notice that the Landlord may dispose of the property if the Tenant does not claim it within ten (10) days after the date the property is stored.
- g. The Landlord may bring an action in a court of competent jurisdiction to collect any amounts due and owing under this Lease and/or to compel the Tenant to perform any and all of Tenant's obligations under this Lease.
- h. The Landlord may charge all costs to cure any default or offset any loss caused by the Tenant's default to the Tenant as additional rent; and
- i. The Tenant shall pay, in addition to the rent and other sums agreed to be paid hereunder, all costs, including without limitation reasonable attorneys' fees, incurred by the Landlord that result from enforcing the provisions of this Lease.



19. **ENSURANCE.** The Tenant agrees to secure and keep in force from and after the Commencement Date of this Lease and throughout the full Term of the Lease, at the Tenant's own cost and expense, the following:

- a. "All Risk" property insurance on the Tenant's Premises, as well as the entire Premises. Such insurance shall include coverage for the full replacement value of all of Tenant's leasehold improvements, trade fixtures and personal property within the premises. Landlord shall be named as loss payee under all such policies.
- b. Commercial general liability insurance on the Premises as well as the Premises, providing coverage on an "occurrence" rather than a "claims made" basis, which policy shall include coverage for Bodily Injury, Property Damage, Personal Injury, Contractual Liability (applying to this Lease), and Independent Contractors, in current Insurance Services Office form or other form which provides coverage at least as broad. Tenant shall maintain a combined policy limit of at least \$1,000,000 applying to Bodily Injury, Property Damage and Personal Injury, which limit may be satisfied by Tenant's basic policy, or by the basic policy in combinations with umbrella or excess policies so long as the coverage is at least as broad as that required herein. Such liability, umbrella and/or excess policies may be subject to aggregate limits so long as the aggregate limits have not at any pertinent time been reduced to less than the policy limit stated above, and provided further that any umbrella or excess policy provides coverage from the point that such aggregate limits in the basic policy become reduce or exhausted. Landlord shall be name as an additional insured under all such policies.
- c. **Other Requirements.** All policies of insurance procured by the Tenant shall:
 - i. Be issued by insurance companies reasonably acceptable to the Landlord;
 - ii. Be written as primary policies not contributing with and not in excess of coverage that the Landlord may carry;
 - iii. All comprehensive general liability insurance procured by the Tenant under this section shall be issued for the benefit of the Landlord, the Tenant and the owner of the Premises, as their respective interests may appear;
 - iv. Contain endorsements providing as follows:
 - A. That such insurance may not be materially changed, amended, or canceled with respect to the Landlord except after twenty (20) days' prior written notice from the insurance company to the Landlord, sent by registered mail; and
 - B. That the Tenant be solely responsible for the payment of all premiums under such policy and that the Landlord shall have no obligation for the payment thereof notwithstanding that the Landlord is or may be named as an insured.
- d. **Proof of Coverage.** The original policy or policies, or duly executed certificates for the same, together with reasonably satisfactory evidence of payment of the premium thereof, shall be delivered to the Landlord within five (5) days of the date of execution of this Lease, and on renewals of such policies not less than twenty (20) days prior to the expiration of the term of any such coverage.



20. SUBORDINATION AND ATTORNMENT. Landlord may cause this Lease to be subordinated to any lease or mortgage, whether heretofore or hereafter created. If title to the land containing the leased premises is hereafter vested in the holder of such lease or mortgage, Tenant shall, at the option of such holder, attorn to such holder on the terms of this lease. Such attornment shall be upon the express condition that this Lease shall be recognized by the holder of such lease or mortgage, and that the rights of the Tenant shall remain in full force and effect during the term of the Lease so long as Tenant shall continue to perform all of Tenant's covenants, agreements, and obligations under this Lease. For confirmation of such subordination or attornment, or for any other similar lawful purpose, Tenant shall promptly execute and deliver to Landlord any such documents or agreements as may be required by Landlord.

21. ESTOPPEL CERTIFICATE. Tenant agrees that at any time and from time to time, within 10 days after written request by Landlord, Tenant shall execute and deliver to Landlord or Landlord's designee a document or certificate ratifying this Lease, and further certifying: the date of entry into the Lease; that the Lease remains in full force and effect; that the Lease has not been modified, assigned, supplemented, or amended in any way (save those, if any, noted in the Certificate); that the Lease (and any supplements, if any, noted in the Certificate) comprises the entire agreement between Tenant and Landlord; the expiration date for the Lease or any renewals of the Lease; that all conditions of the Lease have been satisfied; that to the knowledge of the Tenant, no default exists under the Lease; the amount, if any, which Tenant has prepaid or paid in advance; the amount, if any, of any security deposit paid by Tenant; and the date through which rents have been paid under this Lease.

22. GENERAL PROVISIONS.

a. **Waiver and indemnity.** Notwithstanding anything apparently to the contrary in this Lease, Landlord and Tenant hereby release one another and their respective partners, officers and employees from any and all liability (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage covered by property insurance or coverable by a customary form of policy of the insurance required by Paragraph 20, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

Tenant shall indemnify and hold Landlord harmless from any claim or damage arising out of this Lease, unless caused by the intentional or negligent conduct of Landlord.

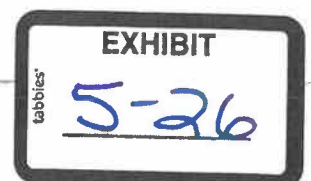
b. **Mechanic's liens.** The Tenant agrees to promptly pay all sums of money in respect of labor, services, materials, supplies, or equipment furnished or alleged to have been furnished to the Tenant in or about the Premises, and the Tenant shall not permit any mechanic's, material man's, or other lien to arise or be filed against the Premises or the Landlord's interest therein. The Tenant shall save, hold harmless, and defend the Landlord from liability or other damage that the Landlord may incur as a result of such liens in the event the same arise or are filed in contravention of the immediately preceding sentence. If any such mechanic's lien shall at any



time be filed, the Tenant shall forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, provided the Tenant first posts a bond in favor of the Landlord in a form and substance acceptable to the Landlord, which shall be conditioned on the successful contest by the Tenant of any such lien. The Tenant shall have the right to contest in good faith, any and all such liens. If the Tenant shall fail to cause such lien to be discharged within thirty (30) days after being notified of the filing thereof and before judgment or sale thereunder, then, in addition to any other right or remedy the Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by the Landlord, and the amount so paid by the Landlord and/or all costs and expenses incurred by the Landlord in procuring the discharge of such lien, including reasonable attorneys' fees, shall be deemed to be additional rent for the Premises and shall be due and payable by the Tenant to the Landlord on demand. Nothing contained in this Lease shall be construed as a consent on the part of the Landlord to subject the Landlord's estate in the Premises or any portion of the Premises to any lien or liability under the lien laws of the state of Minnesota. The Landlord shall have the right to post and maintain on the Premises notices of non-responsibility under the laws of Minnesota.

- c. **Keys.** Any and all keys to the Premises shall be surrendered to Landlord on the termination of this Lease.
- d. **No partnership, joint venture, or fiduciary relationship created.** Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Landlord and the Tenant, it being understood that the sole relationship created hereby is one of landlord and tenant.
- e. **Cumulative rights.** No right or remedy herein conferred on or reserved to the Landlord is intended to be exclusive of any other right or remedy provided by law, but each shall be cumulative in and in addition to every other right or remedy given herein or elsewhere, or hereafter existing at law, in equity, or by statute.
- f. **Notices.** All communications, demands, notices, or objections permitted or required to be given or served under this Lease shall be in writing and shall be deemed to have been duly given or served if delivered in person to the other party or its duly authorized agent, or deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, and if to an entity not a party to this Lease, to the address designated by a party to this Lease in the foregoing manner. Any party may change its address by giving notice in writing, stating its new address, to any other party as provided in the foregoing manner. Commencing on the tenth (10th) day after the giving of such notice, such newly designated address shall be such party's address for the purposes of all communications, demands, notices, or objections permitted or required to be given or served under this Lease.

Unless and until changed in writing, the following are the addresses for notice to the Parties:



Landlord:

Abdul Tel
4456 Van Buren Street
Columbia Heights, MN 55421

Tenant:

Majid A. Nitaishoon
466 82nd Ave NE
Spring Lake Park, MN 55432

- g. **Successors and assigns.** This Lease shall be binding on and inure to the benefit of the parties hereto and their respective assigns, executors, heirs, personal representatives, and successors, provided, however, that nothing in this section shall be interpreted as granting the Tenant the right to assign this Lease or sublet the Premises.
- h. **Amendment, modification, or waiver.** No amendment, modification, or waiver of any condition, provision, or term of this Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or its duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default shall not affect or impair any right arising from any subsequent default.
- i. **Severable provisions.** Each provision, section, sentence, clause, phrase, and word of this Lease is intended to be severable. If any provision, section, sentence, clause, phrase or word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Lease.
- j. **Entire agreement.** This Lease contains the entire understanding of the parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.
- k. **Captions, headings, or titles.** All captions, headings, or titles in the paragraphs or sections of this Lease are inserted for convenience of reference only and shall not constitute a part of this Lease as a limitation of the scope of the particular paragraphs or sections to which they apply.
- l. **Minnesota law: Construction.** This Lease shall be construed and enforced in accordance with the laws of the state of Minnesota. No provision of this Lease shall be construed by any court against either party by reason of such party being deemed to have drafted or structured such provision.
- m. **Personal guaranty.** The individual signing this Lease Agreement for the Tenant, as an inducement to Landlord to enter into this lease, agrees to unconditionally guarantee the prompt payment and performance of the Tenant under this Lease Agreement and to be liable for any amounts due to the Landlord from the Tenant.
- n. **Time of the essence.** Time is of the essence of this Lease, and of each and every covenant, term, condition, and provision hereof.

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ACKNOWLEDGMENT OF LANDLORD

[Signature]
Abdul Tel

Dated: 6-14-21

STATE OF MINNESOTA
COUNTY OF RAMSEY

On this 14th day of June, 2021, before me came Abdul Tel, the _____ of the Landlord named within, who acknowledged the signing and attesting to of this instrument to be his free act and deed of said company.

[Signature]
Notary Public



ACKNOWLEDGMENT OF TENANT

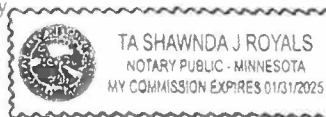
[Signature]
Majid A. Nitaishoon

Dated: 6-14-21

STATE OF MINNESOTA
COUNTY OF RAMSEY

On this 14th day of June, 2021, before me came Majid Nitaishoon, the _____ of the Tenant named within, who acknowledged the signing and attesting to of this instrument to be his free act and deed of said company.

[Signature]
Notary Public





CITY OF SAINT PAUL

Department of Safety & Inspections

Ricardo X. Cervantes Director
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1808

Telephone: 651-266-8989
Facsimile: 651-266-9124

Web Site Address: www.stpaul.gov/dsi

I agree to the following conditions being placed on the following license(s):

License #: 20210001131
Type of Business: Cigarette/Tobacco
Applied for by: MJ MARKET INC
Doing Business As: MJ MARKET INC
at: 922 THOMAS AVE
ST PAUL MN 55104

Conditions are as follows:

- 1. Temporary window signs placed between the height of four (4) to seven (7) feet above grade shall not cover more than thirty (30) percent of this window space area and cannot block views into the clerk or cashier station.

Licensee

Date

6-28-21





CITY OF SAINT PAUL

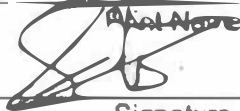
Business Licensing
175 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1886

Telephone: 651-266-4989
Facsimile: 651-266-9124
Web: www.sppaul.gov/ds

**ACKNOWLEDGEMENT OF RECEIPT
CITY OF SAINT PAUL'S TOBACCO ORDINANCE**

The undersigned, and applicant for a Cigarette/Tobacco (Product Shop) license located at 1027 W. MAS AVE ST PAUL, MN 55104, acknowledges that he/she was given a copy of the Department of Safety and Inspections (DSI) City of Saint Paul's Legislative code 324, 295 & 65.535 of the Tobacco ordinance. The applicant understands that he/she is responsible for reading, understanding and complying with the information contained therein.

Majid nitashoon



Signature

6/28/21

Date

AA-ADA-EEO Employer



Tobacco Ordinance





CITY OF SAINT PAUL

Business Licensing
375 Jackson Street, Suite 320
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8969
Facsimile: 651-266-9134
Web: www.stpaul.gov/dsi

**ACKNOWLEDGEMENT OF RECEIPT
CITY OF SAINT PAUL'S TOBACCO ORDINANCE**

The undersigned, and applicant for a Cigarette/Tobacco (Product Shop) license located at _____, acknowledges that he/she was given a copy of the Department of Safety and Inspections (DSI) City of Saint Paul's Legislative code 324, 295 & 65.535 of the Tobacco ordinance. The applicant understands that he/she is responsible for reading, understanding and complying with the information contained therein.

Print Name

Signature

Date

AA-ADA-EEO Employer



Chapter 324. – Tobacco

Sec. 324.01. - License required.

- (a) No person shall sell or offer for sale at retail within the city any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product or in any manner represent or hold himself or herself out as one who sells or offers for sale at retail any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product or maintain a tobacco vending machine for the sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products without a license.
- (b) A tobacco vending machine may be located in a public accommodation, provided that:
 - (1) All tobacco vending machines shall be operable only by the activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of a token provided to the purchaser by an employee of the licensee;
 - (2) Any machine shall be located in the immediate vicinity, plain view and control of a responsible employee so that all tobacco purchases will be readily observable by that employee. The tobacco vending machine shall not be located in a coatroom, restroom, unmonitored hallway, outer waiting area or similar unmonitored areas. The tobacco vending machine shall be inaccessible to the public when the establishment is closed.
 - (3) Any tobacco vending machine shall have posted on or near it a sign with the statement, in letters at least one-half (½) inch high, "The sale of tobacco products or electronic delivery devices to persons under twenty-one is prohibited."
- (c) Any license issued pursuant to this chapter shall be issued to the person, firm or corporation that operates the principal business at that address. Each vending machine shall be required to have a separate license.
- (d) No license may be issued pursuant to this chapter for a location or place of sale if a tobacco license previously issued for that location or place of sale has been revoked for any reason other than nonpayment of license fees within the past five (5) years, subject to the following exceptions:
 - (1) Notwithstanding subdivision (d), a license may be issued if the new applicant:
 - a. Currently holds another tobacco license in the city;
 - b. Has held the license for at least five (5) years, and
 - c. The license:
 - 1. Has not been subject to adverse action within the past two (2) years;
 - 2. Has been subject to no more than one (1) adverse action within the past five (5) years, and
 - 3. Is not the subject of any pending adverse actions.
 - (2) Notwithstanding subdivision (d), a license may be issued if the new applicant is otherwise able to demonstrate at least five (5) years of previous experience operating a tobacco retail establishment in a law abiding manner in the State of Minnesota. In considering an application made pursuant to this subsection, the factors to be considered by the council include, but are not limited to:
 - a. Any adverse or disciplinary actions against any business licenses held by the applicant in the previous five (5) years; and
 - b. Any violations of the law related to operating a retail establishment, committed by the applicant in the previous five (5) years, regardless of whether any criminal charges have been brought in connection therewith.
 - (3) Any license granted pursuant to subpart (d)(1) or (d)(2) must be approved by the affirmative vote of no less than five (5) members of the council.

Sec. 324.02. - License for each location or vending machine.

A license shall permit the licensee to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at retail at the one (1) location specified in said license, and a separate license shall be required for each location or tobacco vending machine.



Sec. 324.03 - Definitions

The following words and phrases, as used in this chapter, shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those cases where the context clearly indicates a different meaning:

- (1) *Cigar* means any roll of tobacco that is wrapped in tobacco leaf, or in any other substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.
- (2) *Electronic delivery device* means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (3) *Flavored product* means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco shall constitute presumptive evidence that the product or device is a flavored product.
- (4) *Nicotine or lobelia delivery product* means any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a tobacco product or an electronic delivery device, as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (5) *Sale* means and includes any transfer, conditional or otherwise, of title or possession.
- (6) *Sale at retail* means and includes all sales except those where the merchandise is sold for the purpose of resale by a person principally engaged in selling merchandise for resale.
- (7) *Tobacco or tobacco product* means 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, cigarettes, cigars, little cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine cut and other chewing tobacco, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
- (8) *Tobacco-related devices* means cigarette papers, 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 vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.
- (9) *Tobacco vending machine* means a machine for vending tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices by the insertion of money, tokens, or other form of payment.

Sec. 324.04. - Fee, duration, limitation on number of licenses.

The annual license fee for each location of sale or each tobacco vending machine shall be established by ordinance as specified in section 310.09(b) of the Legislative Code. The license shall expire one (1) year from the date of issuance during each calendar year. The annual license fee shall be prorated for licenses in force less than a full year.

The total number of licenses issued by the city for the retail sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products shall not exceed two hundred forty-two (242). Establishments or



locations holding licenses on July 1, 2018, or with an application of a license pending on July 1, 2018, that is ultimately granted shall not be affected by this limitation, but shall be entitled to have such licenses renewed or new license granted, subject to the following exceptions:

1. The establishment or location is in compliance with all other requirements of law and there exist no grounds for adverse actions against such licenses.
2. The previous license has not terminated or expired more than two (2) years before the new license had been first applied for.
3. A previous license has not been revoked by the council.

Sec. 324.05. - Application.

In addition to any other information required by the director, the applicant shall state the true name of the applicant, the name under which he or she shall conduct his or her business, whether such business is that of an individual, sole trader, firm, partnership, or corporation, and the address where such business is to be conducted. Any person applying for more than one (1) license shall file with the department of safety and inspections a list of all locations of sale and/or the location of each vending machine for which license applications are being filed. Any change in the location of the place of sale shall be reported to the director within five (5) days of said change.

Sec. 324.06. - License to be displayed.

The license shall be displayed by the licensee in a prominent and conspicuous place at the licensed location. In the case of a tobacco vending machine, the operator shall also affix his or her name, address and telephone number in a conspicuous place on each machine.

Sec. 324.07. - Sales prohibited.

- (a) No person shall sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes shall be sold in packages of fewer than twenty (20) cigarettes.
- (b) No person shall sell or dispense tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices from a motor vehicle or other movable place of business.
- (c) No person shall sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery 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 shall offer for sale tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in any open displays which are accessible to the public without the intervention of a store employee. This restriction shall not apply to retail stores which derive at least ninety (90) percent of their revenue from tobacco and tobacco-related devices, and where the retailer ensures that no person younger than twenty-one (21) years of age is present, or permitted to enter, at any time.
- (e) No person shall 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 shall 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 shall sell, offer for sale, or otherwise distribute any flavored products.
- (g) Sale to persons under the age of twenty-one (21) years prohibited.
 - (1) Whoever sells or furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of twenty-one (21) years is guilty of a misdemeanor for the first violation. Whoever violates this section a subsequent time within five (5) years of a previous conviction is guilty of a gross misdemeanor.
 - (2) 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. Stat. § 340A.503, subd. 6.
- (h) Exceptions.



- (1) Notwithstanding section (g), individuals exempted under Minn. Stat. § 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 tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.
 - (3) Retail stores that derive at least ninety (90) percent of their revenue from the sale of tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products and where the retailer ensures that no person under twenty-one (21) years of age is permitted to enter, at any time are permitted to sell and offer for sale flavored tobacco products.
 - (4) Establishments holding an off-sale intoxicating liquor license issued by the City of Saint Paul under chapter 409 of the Saint Paul Legislative Code who also hold a license for tobacco sales under this chapter shall be permitted to sell and offer for sale flavored tobacco products only in the following flavors: menthol, mint, and wintergreen.
- (i) Any violation of this chapter shall subject the licensee to provisions of chapter 310 and section 324.10 of the Saint Paul Legislative Code.

Sec. 324.08. - Distribution of free products prohibited.

No person in the business of selling or promoting tobacco, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery products or agent or employee of such person shall distribute any products free to any person on the sidewalks, pedestrian concourses, pedestrian malls or pedestrian skyway systems within the city.

Sec. 324.09. - Use of false identification by minors prohibited.

No person under the age of twenty-one (21) years shall purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products using a driver's license, a Minnesota identification card, or other form of identification which is false, fictitious, altered or counterfeited as to age or any other material fact of identification. Use of false identification to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products is a misdemeanor.

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. 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. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.
- (b) *Presumptive penalties for violations.* Adverse penalties 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	\$200.00 fine	\$400.00 fine	\$800.00 fine and 7-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.



- (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.

Chapter 295. - Sale of Imitation Tobacco Products and Novelty Lighters

Sec. 295.01. - Purpose and findings of fact.

The city council finds that:

Studies in journals such as BMJ (formerly British Medical Journal), Pediatrics, and Preventive Medicine have demonstrated that candy cigarettes and other imitation tobacco products predispose children to use tobacco later in life by desensitizing them and promoting tobacco use as culturally or socially acceptable. One such study concluded that 22% of adults who had regularly consumed candy cigarettes were regular or former smokers, compared with only 12% of adults who had never consumed candy cigarettes.

The World Health Organization's Framework Convention on Tobacco Control, which has been ratified by more than 160 countries which represent 85% of the world's population, lists the prohibition of "the manufacture and sale of sweets, snacks, toys or any other objects in the form of tobacco products which appeal to minors" as an effective legislative measure that discourages youth tobacco use.

Several countries, including Australia, Canada, Finland, Kuwait, Norway, Saudi Arabia, Thailand, and the United Kingdom have prohibited the sale of candy cigarettes. Several national retailer chains, including Conoco-Phillips, CVS, Exxon-Mobil, and Wal-Mart have agreed not to sell candy cigarettes and/or other imitation tobacco products.

Internal tobacco company documents disclosed as part of Minnesota's 1998 tobacco settlement reveal that tobacco manufacturers consented to the use of their trademarks by candy cigarette manufacturers in the hopes that such products would encourage children to become smokers. Tobacco companies viewed candy cigarettes as "effective advertising for future smokers."

Under the terms of the 1998 Master Settlement Agreement between 46 states and the largest tobacco manufacturers, the manufacturers agreed not to oppose the passage of any state or local legislative proposals "intended by their terms to reduce youth access ... to tobacco products." A specific example of such a proposal is "limitations on non-tobacco products which are designed to look like tobacco products, such as bubble gum cigars, candy cigarettes, etc."

Sec. 295.02. - Definitions.

- (a) *Imitation tobacco product* means either: any edible non-tobacco product designed to resemble a tobacco product; or any non-edible non-tobacco product designed to resemble a tobacco product that is intended to be used by children as a toy.

Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic cigarette is not an imitation tobacco product.



- (b) *Novelty lighter* means a mechanical or electrical device typically used for lighting cigarettes, cigars or pipes that is designed to appear to be a toy, has entertaining audio or visual effects, or that resembles, in physical form or function, articles commonly recognized as appealing to or intended for use by children. Examples of novelty lighters include, but are not limited to, lighters that resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food or beverages, or that play musical notes or have flashing lights or other entertaining features.

Sec. 295.03. - Prohibitions.

No person shall sell or offer for sale any imitation tobacco product or novelty lighter within the city. No licensed establishment shall give away any imitation tobacco product or novelty lighter within the city.

This section shall not apply to cigarette lighters that were made before January 1, 1980, or that are considered to be collectable items.

Sec. 295.04. - Violations and penalties.

- (a) It is a violation for any person to fail to comply with the requirements of this chapter.
- (b) Penalties. Failure to comply with the requirement of this chapter shall be a basis for adverse action under Saint Paul Legislative Code § 310.06.
- (c) A violation of any provision of this chapter shall be a misdemeanor.

Sec. 295.05. - Severability and savings clause. If any portion of this chapter, or its application to any circumstances, is held invalid, the remaining portions shall be considered severable, and shall be given effect to the maximum effect possible.

ZONING

Sec. 65.535. - Tobacco products shop.

A retail establishment with a principal entrance door opening directly to the outside that derives more than ninety (90) percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, electronic cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

Standards and conditions

- (a) No tobacco products shop shall be located within one-half (½) mile (2,640 feet) of another tobacco products shop.
- (b) In the BC community business (converted) and T2 traditional neighborhood districts, a conditional use permit is required for tobacco products shops with a floor area greater than two thousand five hundred (2,500) square feet.



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**Also licensed in IA



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Joel M. Holstad****

***Also licensed in IA
Fed Ct. of Claims &
US Ct. of App. DC
****Licensed in CA

Paralegal
Beth Ann Hanson

June 22, 2022

Office of the City Attorney
Attn: Stephen Earnest, Esq.
Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102

RE: MJ Market Inc., Majid Nitaishoon, Cigarette/Tobacco License for the premises located at 922
Thomas Avenue, St. Paul, MN. License ID# 20210001131

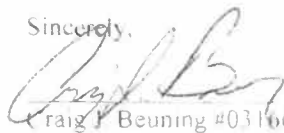
Dear Mr. Earnest,

This firm represents Mr. Nitaishoon/MJ Market, Inc. I am in receipt of a document sent to MJ Market Inc. dated June 10, 2022, wherein you request a letter disputing the facts in this matter no later than June 24, 2022, should there be a request for a hearing with an Administrative Law Judge. Please consider this a formal request for a hearing before an Administrative Law Judge.

It is our client's position that St. Paul Legislative Code section 324.07(j), in conjunction with St. Paul Legislative Code 324.10 (b)(2), has been improperly applied with respect to MJ Market, Inc. and Majid Nitaishoon by the City of St. Paul. There are also issues regarding, among other things, the ordinance's vagueness and possible selective enforcement.

If you have any questions or concerns, please contact me via email address cbeuning@klaw.us or by phone at (601) 594-0924. Thank you.

Sincerely,

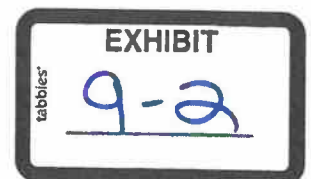

Craig J. Beuning #0310660
Attorney for Majid Nitaishoon



lic_no	dba_nm	Address
20180001675	35E GAS ARCO	306 LARPENTEUR AVE E
20170000483	7 WHITE BEARS LIQUOR	1785 7TH ST E
20160003802	75 MARKET AND DELI INC	1189 MINNEHAHA AVE E
20140002629	7TH GROCERY	43 7TH ST W
20170000328	A A MARKET	191 WESTERN AVE N STE 2
20010001028	ADAM'S FOOD & FUEL	1390 3RD ST E
20160002665	AIDAN CONVENIENCE STORE INC	400 ROBERT ST N
20070004801	AIRPORT BP	2526 7TH ST W
20160003307	ANNAPOLIS SUPER USA #002	1333 THOMAS AVE
20210000282	ARCADE WINE & SPIRITS	1100 ARCADE ST
20180001260	ARMON SUPER USA	97 ANNAPOLIS ST E UNIT 1
20160002560	ASIAN MARKET	1423 RICE ST
20210001553	AVALON ON GRAND	1652 GRAND AVE
20080003854	BIG DISCOUNT LIQUOR	945 RICE ST STE C
20180002156	BIG TOP LIQUORS	1544 UNIVERSITY AVE W
20210001384	BLAIZE LIQUOR	137 MARYLAND AVE W
20150002465	BLAIZE LIQUOR CORPORATION	137 MARYLAND AVE W
20040000866	CAPITAL WINE & SPIRIT	531 RICE ST
20070002376	CAPITOL CITY STATION	1205 HOMER ST
20060003657	CARTER'S BP	623 COMO AVE
20060001417	CASE MINI MARKET	933 CASE AVE
20180002499	CHARLIE'S	444 CEDAR ST UNIT 207
20140000142	CHI-TOWN GRILL AND GROCERY	1201 EDGERTON ST
0021293	CHRISTINE LIQUORS	111 CESAR CHAVEZ ST
20060001908	COMO RAYMOND BP	2102 COMO AVE
0077411	COOPER'S FOODS	633 7TH ST W
20080003333	CUB FOODS	1177 CLARENCE ST
0064490	CUB FOODS	1440 UNIVERSITY AVE W
20040001004	CUB FOODS SUNRAY	2197 OLD HUDSON ROAD
20130000151	CUB LIQUOR	2215 OLD HUDSON ROAD
20130003588	D & L FOOD AND GAS	626 LARPENTEUR AVE W
20070004714	DANNECKER'S GROCERY & LIQUORS	793 RANDOLPH AVE
20170002905	DOLLAR GENERAL STORE #19171	1990 SUBURBAN AVE
20170002904	DOLLAR GENERAL STORE #19172	1055 PAYNE AVE
20170002903	DOLLAR GENERAL STORE #19173	1546 WHITE BEAR AVE N
20010005079	DOUBLE DRAGON FOODS	121 MARYLAND AVE W
20140001795	DOWNTOWN BP	542 ROBERT ST N
20150003728	DRAGON STAR ORIENTAL FOOD	633 MINNEHAHA AVE W
20120003366	EAST 7TH LIQUOR	385 7TH ST E UNIT 1
20200001880	EAST MARKET GROCERY AND TOBACCO	913 PAYNE AVE
20190003644	EAST SIDE GROCERY	1340 PAYNE AVE UNIT B
0018084	EAST SIDE LIQUOR STORE	1361 MARYLAND AVE E
20170004641	EASTERN HEIGHTS BP	1785 SUBURBAN AVE
20030004635	FAMILY DOLLAR STORE #25718	1536 UNIVERSITY AVE W
20010001023	FAMILY DOLLAR STORES	2463 7TH ST W
0063580	FIRST GRAND AVENUE LIQUORS	918 GRAND AVE
20170003741	FOOD PLANET	842 WHITE BEAR AVE N
20130003695	FORD PKWY BP	2005 FORD PKWY STE 2
20200001735	FRESH FOOD MARKET	65 GEORGE ST W
20150001660	FRIENDLY GROCERY	537 RICE ST
20200002430	GARSO MINI MART	189 7TH ST E



20130003229	GRAND STOP	236 GRAND AVE
20210000366	GREENWOLF HEMP & ORGANICS	55 5TH ST E STE 315
0097163	HASKELL'S	2221 FORD PKWY
20190001092	HEIMIE'S HABERDASHERY	400 ST PETER ST
20030003255	HIGHLAND PARK AMOCO	1191 RANDOLPH AVE
19980007193	HIGHLAND SERVICE/MINNOCO	485 SNELLING AVE S
20210000873	HILLCREST LIQUOR	1511 WHITE BEAR AVE N
20120000274	HILLCREST LIQUORS INC	1511 WHITE BEAR AVE N
20170001478	HOLIDAY 3503	1770 OLD HUDSON ROAD
20140002290	HOLIDAY STATION STORE #3587	281 SNELLING AVE N
0016584	HOLIDAY STATIONSTORE	500 7TH ST E STE 1
0014986	HOLIDAY STATIONSTORE	600 SNELLING AVE N
0018094	HOLIDAY STATIONSTORE	1444 MINNEHAHA AVE E
20000002046	HOLIDAY STATIONSTORE #167	1608 RICE ST
0014862	HOLIDAY STATIONSTORE #31	1400 ARCADE ST
20030004160	HOLIDAY STATIONSTORE #341	1345 MARSHALL AVE
20190003256	HOLIDAY STATIONSTORE #45	200 WABASHA ST S STE 1
0014861	HOLIDAY STATIONSTORE #5	629 RICE ST STE 1
20060000288	HOLIDAY STATIONSTORES INC	2199 UNIVERSITY AVE W
20210000510	INTERNATIONAL WINES & LIQUORS	710 CLEVELAND AVE S
0078350	JIMMY'S FOOD MARKET	532 WHITE BEAR AVE N Unit B
0012161	JUBILEE - ST MARIE'S	101 5TH ST E
0044113	KAMP'S	1059 WESTERN AVE N
20180003614	KELLOGG GROCERY	111 KELLOGG BLVD E STE 230
20160000243	KITTY'S CORNER 2	1530 SHERWOOD AVE
20190002709	LEXINGTON CONVENIENCE STORE INC	374 LEXINGTON PKWY N
20120000541	LIQUOR VILLAGE	2289 FORD PKWY
20040001923	LOWERTOWN WINE & SPIRITS	262 4TH ST E
20120002023	LUCKY'S STATION #6	1351 RANDOLPH AVE
0000231	M & H GAS STATION	721 ARCADE ST
0042028	MAHARAJA'S	205 7TH ST W
19980003487	MARSHALL CRETIN MINNOCO	2178 MARSHALL AVE
0033515	MARSHALL LIQUORS	2027 MARSHALL AVE
20150000203	MARSHALL STOP	2057 MARSHALL AVE UNIT A
20050003472	MARYLAND AMOCO/BP MARKET PLACE	1200 WHITE BEAR AVE N
20170001259	MARYLAND FUEL & AUTO SERVICE	406 MARYLAND AVE E
20160002943	MARYLAND SUPERMARKET INC	444 MARYLAND AVE W STE C
20010005143	MCCAFFERTY'S LIQUOR STORE	1325 RANDOLPH AVE
20090000223	MCKNIGHT MARKET	275 MCKNIGHT ROAD S
20040004319	METRO LIQUOR WAREHOUSE	854 7TH ST E
0016385	MGM LIQUOR WAREHOUSE	275 WHITE BEAR AVE N
20110004129	MIDWAY LIQUOR STORE	1955 UNIVERSITY AVE W UNIT 104
20190002891	MIDWEST AMERICAN SHAMAN	729 7TH ST E
20210000750	MINI PAC	1184 MARYLAND AVE E
20180004316	MINI PAC	1184 MARYLAND AVE E
20130000384	MINNEHAHA GROCERY	1818 MINNEHAHA AVE W
20200001653	MINNEHAHA LIQUORS	945 MINNEHAHA AVE W
20130005314	MINNOCO	1200 RICE ST
* 20210001131	MJ MARKET INC	922 THOMAS AVE
20160003381	MOUNDS LIQUOR	1047 HUDSON ROAD
20170000776	MOUNDS PARK MARKET	241 EARL ST
20190003616	NEW HOPE GROCERY LLC	1132 PAYNE AVE



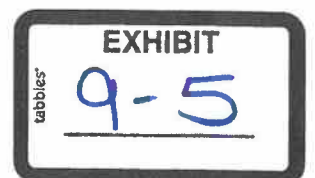
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20130000654	PARKWAY LIQUOR BARREL	301 WHEELOCK PKWY E
0011821	PAT & MIKE'S LOBBY SHOPPE	85 7TH PLACE E
20010001998	PAT & MIKE'S LOBBY SHOPPE III	401 ROBERT ST N
20140001898	PAYNE AVENUE WINE & SPIRITS	980 PAYNE AVE
20200000171	PAYNE GROCERY	993 PAYNE AVE
20190003743	PAYNE ORIENTAL MARKET	1048 PAYNE AVE
20120000515	PERRIER WINES & LIQUORS	666 GRAND AVE
20200001649	PETERS MARKET	530 ST PETER ST
0028333	PHOENIX MARKET	685 3RD ST E
20030003402	PREMIUM STOP	1529 WHITE BEAR AVE N
20190002725	RED SEA MARKET	348 WABASHA ST N
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20120005384	RITE LIQUOR	645 SNELLING AVE S
20150004127	RSS	180 5TH ST E UNIT 215
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19980007002	SELBY WINES & SPIRITS	778 SELBY AVE
20120005702	SEVENTH STREET LIQUOR BARREL	665 7TH ST W
19990006428	SHAMROCK PLAZA LIQUOR	289 MCKNIGHT ROAD S
20150002552	SHANGHAI MARKET	1546 COMO AVE
0016227	SHARRETT'S LIQUORS	2389 UNIVERSITY AVE W
20000003940	SKINNER'S PUB	919 RANDOLPH AVE
20200000610	SKY WAY MINI MART	55 5TH ST E STE 313
20200000417	SNACK SHOP MARKET	879 FREMONT AVE
20190001517	SNAP MARKET	957 RICE ST
20150003726	SNELLING AVE FINE WINES	500 SNELLING AVE N
20190000981	SNELLING ONE CO	717 SNELLING AVE N
20100004235	SPEEDWAY #4020	399 LEXINGTON PKWY N
20100004236	SPEEDWAY #4023	577 SMITH AVE S
20100004242	SPEEDWAY #4030	1625 RICE ST
20100004269	SPEEDWAY #4032	1734 7TH ST W
20100004245	SPEEDWAY #4038	390 MARYLAND AVE E
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20130001466	SPEEDWAY #4126	1445 7TH ST W
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20100004249	SPEEDWAY #4358	756 SNELLING AVE N
20100004250	SPEEDWAY #4359	950 LEXINGTON PKWY N
20100004251	SPEEDWAY #4413	2051 GRAND AVE
20100004253	SPEEDWAY #4419	925 GRAND AVE
20100004254	SPEEDWAY #4420	1125 7TH ST W
20100004256	SPEEDWAY #4421	970 UNIVERSITY AVE W
20100004262	SPEEDWAY #4428	232 FAIRVIEW AVE S
20100004268	SPEEDWAY #4430	846 JOHNSON PKWY
20100004264	SPEEDWAY #4601	296 7TH ST E
20190002472	SPEEDY FOOD	968 DALE ST N
20190001709	SPEEDY MARKET	589 DALE ST N
20090000399	SUN FOODS II INC	544 UNIVERSITY AVE W
20150000438	SUNRAY BP	344 RUTH ST N



20200000955	SUNRISE GROCERY	440 UNIVERSITY AVE W STE 1
20140000218	SUNSHINE MARKET	1658 7TH ST E
20200001856	SUPER FOOD	896 RICE ST
0016326	SWEENEY'S SALOON	96 DALE ST N
20200002119	THE COURT SHOPPE	2550 UNIVERSITY AVE W 129 N
20130000044	THE LIQUOR VAULT	170 10TH ST E
20190001624	THE ONE STOP MARKET	1541 MARYLAND AVE E
0013412	THE ST PAUL HOTEL	350 MARKET ST
20130004840	THE TURF CLUB	1601 UNIVERSITY AVE W
20200001333	THE WHITE SQUIRREL BAR	974 7TH ST W
0078142	THOMAS LIQUORS	1941 GRAND AVE
20130000138	TOASTED WINE+SPIRITS+ALES	560 COMO AVE
20000005568	TOBASI STOP #2	933 MINNEHAHA AVE W
0096215	TOBASI STOP 1	809 SELBY AVE STE A
20190003653	TOM AND JOES MARKET	684 WESTERN AVE N
20090004071	TOWN MART	1980 STILLWATER AVE
20160002240	TWINS MARKET & MEAT	1055 4TH ST E
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20190000978	UNIVERSITY ONE	525 LAFAYETTE ROAD
20210001128	W & T INC	604 WESTERN AVE N
0018370	WALGREENS #03665	1401 MARYLAND AVE E
20020005083	WALGREENS #06995	1788 OLD HUDSON ROAD
20030004339	WALGREENS #07388	1665 WHITE BEAR AVE N
20070004951	WALGREENS #11421	1180 ARCADE ST
20110000828	WALGREENS #13690	2099 FORD PKWY
20120003757	WALGREENS #15272	1110 LARPENTEUR AVE W
20170004001	WALGREENS #16476	398 WABASHA ST N
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20080004170	WEST ST PAUL BP INC	675 7TH ST W
20100001282	WINNER GAS	2233 ENERGY PARK DRIVE STE 900 A
20210000879	WINNIPEG GROCERY	864 RICE ST
0036114	WOLTER BROTHERS PHARMACY & LIQUOR	438 UNIVERSITY AVE W
20100001866	YARMO LIQUOR	2489 7TH ST W
20020000728	YASIN FOOD MARKET	741 EDMUND AVE
20180003823	A A TOBACCO	191 WESTERN AVE N STE 1
20180004391	ARMON SUPER USA- TOBACCO	97 ANNAPOLIS ST E UNIT 2
20160002078	BEST OF TIMES	201 7TH ST W
20160002087	BEST OF TIMES	385 7TH ST E UNIT 2
20190002473	DALE TOBACCO	968 DALE ST N
20170004292	DOWNTOWN SMOKE SHOP	381 MINNESOTA ST
20190000870	EAST SIDE TOBACCO	1198 EARL ST UNIT 2
20180004216	EASTERN HEIGHTS SMOKE SHOP	1785 SUBURBAN AVE
20180002292	GO GET IT TOBACCO LLC	2484 UNIVERSITY AVE W
20180002285	HOLIDAY STATIONSTORE	629 RICE ST STE 2
20180002280	HOLIDAY STATIONSTORE	200 WABASHA ST S STE 2
20160001630	IMPERIAL VAPOR	227 SNELLING AVE N
20210000025	JIMMY'S TOBACCO	532 WHITE BEAR AVE N
20200002452	MARSHALL STOP	2057 MARSHALL AVE
20200002242	MARYLAND TOBACCO	1375 MARYLAND AVE E
20180003636	MARYLAND TOBACCO	444 MARYLAND AVE W STE B

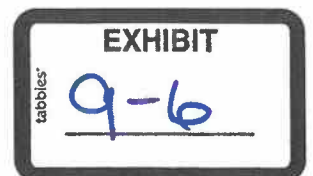


20190001565	MAX TOBACCO	516 RICE ST STE 1
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20140002749	MCKNIGHT TOBACCO	279 MCKNIGHT ROAD S
20190002389	METRO TOBACCO	664 PAYNE AVE
20140000379	MIDWAY TOBACCO	1418 UNIVERSITY AVE W
20160001653	MIDWAY TOBACCO AND VAPOR	1475 UNIVERSITY AVE W
20180003005	MINI TOBACCO 2	929 MINNEHAHA AVE W
20180000598	MINNI MARKET TOBACCO	2019 MINNEHAHA AVE E UNIT 1
20200000433	MSP TOBACCO & VAPOR	2439 7TH ST W
20150001586	RICE ST TOBACCO	956 RICE ST
20180001947	RICE STREET TOBACCO	1196 RICE ST
20100002067	STOGIES ON GRAND	961 GRAND AVE
20140001530	SUNRAY TOBACCO OUTLET PLUS	2111 OLD HUDSON ROAD
20170003892	THIRD STREET TOBACCO LLC	937 3RD ST E
20180002265	TOBACCO	162 PENNSYLVANIA AVE W STE A
20070000804	TOBACCO & BEYOND	898 ARCADE ST
20190000924	TOBACCO SHOP	1390 3RD ST E STE 2
20170004026	TOBACCO SHOP	440 UNIVERSITY AVE W UNIT 2
20180004026	TOBASI STOP 1	809 SELBY AVE
20180003705	TWONES TOBACCO	2005 FORD PKWY STE 1
20200002181	UNION TOBACCO INC	567 STRYKER AVE
20160000960	VAPE PROS	681 SNELLING AVE N
20140001994	WHITE BEAR TOBACCO	1662 WHITE BEAR AVE N

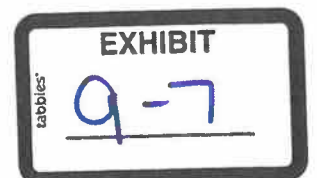


City, State & Zip

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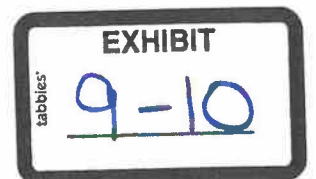
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CITY OF SAINT PAUL

Business Licensing
375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

September 1, 2021

MJ MARKET INC
922 THOMAS AVE
ST PAUL, MN 55104-2634

NOTICE OF PUBLIC HEARING – DATE CHANGE

Cigarette/Tobacco License Holder:

The City recently mailed a Notice of Public Hearing dated August 26, 2021 providing notice that the Saint Paul City Council will hold a public hearing to consider ordinance amendments to Chapter 324 – Tobacco.

The public hearing date provided in that notice has been changed. The public hearing will now be held:

Date: October 20, 2021
Time: 3:30 P.M.
Location: Remote

The public may comment on public hearing items in writing or via voicemail. Any comments and materials submitted by 12:00 pm of the day before the meeting will be attached to the public record and available for review by the City Council. Comments may be submitted as follows:

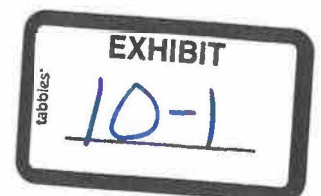
Written public comment on public hearing items can be submitted to Contact-Council@ci.stpaul.mn.us, CouncilHearing@ci.stpaul.mn.us, or by voicemail at 651-266-6805. Comments can also be mailed to:

Offices of the Saint Paul City Council
310 City Hall
15 Kellogg Boulevard West
Saint Paul, MN 55102

More information regarding public comment can be found at: <https://www.stpaul.gov/departments/city-council>

If you have questions, please call the Department of Safety and Inspections at 651-266-8989.

An Equal Opportunity Employer





CITY OF SAINT PAUL

Business Licensing
375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dst

December 2, 2021

[ADDRESS]

Cigarette/Tobacco License Holder,

The Saint Paul City Council recently amended Chapter 324 – Tobacco of the Saint Paul Legislative Code which governs the sale of tobacco, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery products. **The amended Chapter goes into effect December 11, 2021.** Primary changes to the Chapter include:

- Off-Sale liquor store operators may no longer offer any flavored Licensed Products to include menthol, mint and wintergreen flavors.
- Definition of a *Licensed Product* is collectively any tobacco, tobacco-related device, electronic delivery device or nicotine or lobelia delivery product.
- Definition of a *Tobacco License* is either a Tobacco Shop or a Tobacco Products Shop license.
- Definition of *Tobacco Shop License* is a license that may offer Licensed Products only through the intervention of a store employee AND may allow persons under the age of 21 into the establishment.
- Definition of *Tobacco Products Shop License* is a license for an establishment that must derive at least 90% of its revenue from licensed products; must prohibit persons under the age of 21 from entering; must be accessible only through a door opening directly to the outside; and must be staffed by a least one individual solely dedicated to it during all hours of operation.
- The City will issue no more than 150 Tobacco Shop licenses going forward.
- The City will issue no more than 25 Tobacco Products Shop licenses going forward.
- No Tobacco License will be issued to an establishment within one-half mile of an existing establishment possessing a Tobacco License.

AA-ADA-EEO Employer

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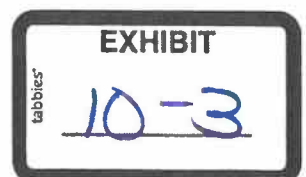
- Any change of location of an establishment possessing a Tobacco License will require a new license application.
- No cigarettes may be sold individually or in packages of less than 20.
- The minimum price for a package of cigarettes (individually or in cartons) is \$10.
- The minimum price for a package of moist snuff is \$10 per 1.2 ounce package.
- The minimum package size for moist snuff and smokeless tobacco is 1.2 ounces. The price floor for packages larger than 1.2 ounces shall be computed by adding \$2.50 for each 0.3 ounces or any fraction in excess of 1.2 ounces.
- The minimum price for a package of snus is \$10 per .32 ounce package.
- The minimum package size for snus is .32 ounces. The price floor for packages larger than .32 ounces shall be computed by adding \$2.50 for each 0.08 ounces or any fraction in excess of .32 ounces.
- Price promotions and/or the acceptance of coupons to reduce the price of any Licensed Product below the minimum price required by Chapter 324 is prohibited.
- Distribution of free Licensed Products is prohibited.
- Increase penalties for the sale of Licensed Products to person under the age of 21, and for the display, possession or multiple sales of single cigarettes or flavored products where prohibited.

License holders who have questions regarding this notice or questions regarding tobacco regulations or requirements may be directed to DSI Inspector Joseph Voyda at phone number (651) 266-9014.

Respectfully,



Eric Hudak
Licensing Manager, City of Saint Paul





CITY OF SAINT PAUL

Business Licensing
375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

August, 26 2021

[ADDRESS]

NOTICE OF PUBLIC HEARING

Cigarette/Tobacco License Holder:

The Saint Paul City Council will hold a public hearing to consider ordinance amendments to Chapter 324 – Tobacco to create separate licenses for Tobacco Products Shops and Tobacco Shops, to restrict pricing discounts or coupons, and to create a distance requirement between establishments licensed to sell tobacco. Ordinance language for the proposed revisions can be found below.

The public hearing will be held:

Date:	October 13, 2021
Time:	3:30 P.M.
Location:	Remote

The public may comment on public hearing items in writing or via voicemail. Any comments and materials submitted by 12:00 pm of the day before the meeting will be attached to the public record and available for review by the City Council. Comments may be submitted as follows:

Written public comment on public hearing items can be submitted to Contact-Council@ci.stpaul.mn.us, CouncilHearing@ci.stpaul.mn.us, or by voicemail at 651-266-6805. Comments can also be mailed to:

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15 Kellogg Boulevard West
Saint Paul, MN 55102

More information regarding public comment can be found at: <https://www.stpaul.gov/department/city-council>

If you have questions, please call the Department of Safety and Inspections at 651-266-8989.



..Title

An Ordinance amending Chapter 324 of the Saint Paul Legislative Code in order to create separate licenses for Tobacco Products Shops and Tobacco Shops, to restrict pricing discounts or coupons, and to create a distance requirement between establishments licensed to sell tobacco.

..Body

SECTION 1

WHEREAS, the Saint Paul Zoning Code has a separate use identified as a "Tobacco Products Shop", St. Paul Leg. Code § 65.535; and

WHEREAS, Saint Paul Legislative Code, Chapter 324 regulates tobacco licenses in general, but does not distinguish between or define a Tobacco Products Shop and a Tobacco Shop; and

WHEREAS, the Council wishes to distinguish between a retail store that that is accessible to minors and can sell limited products (Tobacco Shop) and a retail store that that can only be entered by persons who are age 21 or over that can sell additional types of products (Tobacco Products Shop); and

WHEREAS, a clearer definition will allow the City to more easily enforce existing regulations; and

WHEREAS, Minnesota Statute § 609.685 regulates the sale of tobacco to persons under 21 imposing administrative, petty misdemeanor, and misdemeanor penalties and it is not necessary for a separate ordinance penalty; and

WHEREAS, price is the single most important factor in reducing smoking; and

WHEREAS, tobacco is a leading cause of premature, preventable death in Minnesota and high prices are the single most effective way of preventing youth from starting to smoke and encouraging adults to quit; and

WHEREAS, cigarettes, e-cigarettes, cigars and smokeless tobacco, contain nicotine, which is highly addictive; and

WHEREAS, Minnesota's progress in reducing smoking among youth and adults is undermined by price discounts and price promotions and in 2018 the rate of tobacco used among youth increased for the first time in 17 years; and

WHEREAS, tobacco companies spent \$9.1 billion in 2018 to lower the price of tobacco products by using strategies like coupons and retail promotions; and they send coupons in birthday cards, pass them out at events and bars, promote them inside stores, and send emails and text alerts through their smartphone apps; and

WHEREAS, Minnesota adult smokers who redeemed cigarette coupons were less likely to quit smoking than those who didn't use coupons; and Minnesota adult nonsmokers who receive tobacco coupons are twice as likely to become smokers; and

WHEREAS, young smokers, women, and African Americans are more likely to use tobacco coupons or promotions; and

WHEREAS, Saint Paul already has a minimum price of \$2.60 per cigar; and

WHEREAS, Youth who lived in neighborhoods with more tobacco outlets were more likely to try smoking and studies recommend tobacco prevention policies to decrease the number of tobacco outlets; and

WHEREAS, 41% of US teens (ages 13-16) lived within ½ mile of a tobacco outlet, and 44.4% attended school within 1,000 feet of tobacco outlet; and

WHEREAS, young adults ages 18-24 who lived in neighborhoods with more tobacco outlets were more likely to try non-cigarette combustible products like cigars, and adults ages 25-34 who lived in neighborhoods with high tobacco outlet density were more likely to try cigarettes; and



WHEREAS, combining density policies with menthol sales restrictions has the greatest potential to reduce cigarette smoking in communities disproportionately impacted by the tobacco industry and the general Minnesota population; and

WHEREAS, research has also shown that density of tobacco outlets normalizes tobacco use, increases the amount of tobacco advertising and promotion that youth encounter, and that communities with higher density of tobacco outlets have higher smoking rates; now, therefore be it

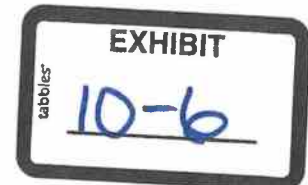
RESOLVED, that the Council of the City of Saint Paul does hereby ordain:

SECTION 2

Section 324.01 of the Saint Paul Legislative Code is hereby amended as follows:

Sec. 324.01. License required.

- (a) No person shall sell or offer for sale at retail within the city any ~~tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery~~ licensed product or in any manner represent or hold himself or herself out as one who sells or offers for sale at retail any licensed ~~tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery~~ product or maintain a tobacco vending machine for the sale of ~~tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products without a license from the city.
- (b) A tobacco vending machine may be located in a public accommodation, provided that:
 - (1) All tobacco vending machines shall be operable only by the activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of a token provided to the purchaser by an employee of the licensee;
 - (2) Any machine shall be located in the immediate vicinity, plain view and control of a responsible employee so that all ~~tobacco~~ purchases will be readily observable by that employee. The tobacco vending machine shall not be located in a coatroom, restroom, unmonitored hallway, outer waiting area or similar unmonitored areas. The tobacco vending machine shall be inaccessible to the public when the establishment is closed.
 - (3) Any tobacco vending machine shall have posted on or near it a sign with the statement, in letters at least one-half (½) inch high, "The sale of tobacco products or electronic delivery devices to persons under twenty-one is prohibited."
- (c) Any license issued pursuant to this chapter shall be issued to the person, firm or corporation that operates the principal business at that address. Each vending machine shall be required to have a separate license.
- (d) No license may be issued pursuant to this chapter for a location or place of sale if a tobacco license previously issued for that location or place of sale has been revoked for any reason other than nonpayment of license fees within the past five (5) years, ~~subject to the following exceptions:~~
 - (1) ~~Notwithstanding subdivision (d), a license may be issued if the new applicant:~~
 - a. ~~Currently holds another tobacco license in the city;~~
 - b. ~~Has held the license for at least five (5) years; and~~
 - c. ~~The license:~~
 1. ~~Has not been subject to adverse action within the past two (2) years;~~
 2. ~~Has been subject to no more than one (1) adverse action within the past five (5) years; and~~
 3. ~~Is not the subject of any pending adverse actions.~~
 - (2) ~~Notwithstanding subdivision (d), a license may be issued if the new applicant is otherwise able to demonstrate at least five (5) years of previous experience operating a tobacco retail establishment in a law abiding manner in the State of Minnesota. In considering an application made pursuant to this subsection, the factors to be considered by the council include, but are not limited to:~~



- a. ~~Any adverse or disciplinary actions against any business licenses held by the applicant in the previous five (5) years; and~~
 - b. ~~Any violations of the law related to operating a retail establishment, committed by the applicant in the previous five (5) years, regardless of whether any criminal charges have been brought in connection therewith.~~
- (3) ~~Any license granted pursuant to subpart (d)(1) or (d)(2) must be approved by the affirmative vote of no less than five (5) members of the council.~~

SECTION 3

Section 324.02 of the Saint Paul Legislative Code is hereby amended as follows:

Sec. 324.02. License for each location or vending machine.

A license shall permit the licensee to sell ~~tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products at retail at the one (1) location specified in said license, and a separate license shall be required for each location or tobacco vending machine. SECTION 4

Section 324.03 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 324.03. - Definitions.

The following words and phrases, as used in this chapter, ~~shall will~~, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those cases where the context clearly indicates a different meaning:

- (1) Cigar means any roll of tobacco that is wrapped in tobacco leaf, or in any other substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.
- (2) Cigarette means and includes any roll for smoking, made wholly or in part of tobacco, irrespective of size and shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except whole tobacco leaf, and includes any cigarette as defined in Minn. Stat. § 297F.01, subd. 3.
- (3) Drug paraphernalia means drug paraphernalia as defined in Saint Paul Legislative Code Section 255.01.
- (23) Electronic delivery device means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (3)4 Flavored product means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco shall will constitute presumptive evidence that the product or device is a flavored product.
- (5) Licensed products means collectively any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.
- (46) Nicotine or lobelia delivery product means any product containing or delivering nicotine, whether natural or synthetic, intended for human consumption, or any part of such a product, that is n



product or an electronic delivery device, as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

(7) Non-discounted price means the higher of the price listed for licensed products on a package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the sale price.

(8) Price reduction instrument means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, not included in the nondiscounted price, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.

(59) Sale means and includes any transfer, conditional or otherwise, of title or possession.

(610) Sale at retail means and includes all sales except those where the merchandise is sold for the purpose of resale by a person principally engaged in selling merchandise for resale.

(11) Snuff means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

(12) Snus means any smokeless tobacco product marketed and sold as snus, and sold in ready-to-use pouches or loose as a moist powder.

(713) Tobacco or tobacco product means 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 cigarettes, cigars, little cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snus, snuff, snuff flour, cavendish, plug and twist tobacco, fine cut and other chewing tobacco, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

(14) Tobacco License means either a Tobacco Shop or a Tobacco Products Shop license.

(15) Tobacco Shop License means a license issued to a person, firm, or corporation for an establishment that:

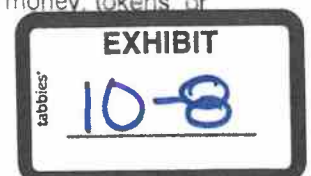
- a. May offer for sale licensed products which are accessible to the public only with the intervention of a store employee, and
- b. May allow persons who are under the age of 21 to enter the establishment; and

(16) Tobacco Products Shop License means a license issued to a person, firm, or corporation for an establishment that:

- a. Must derive at least ninety (90) percent of its revenue from the sale of licensed products;
- b. Must prohibit persons who are under the age of 21 from entering the establishment;
- c. Must be accessible only through a door opening directly to the outside; and
- d. Must be staffed by at least one individual solely dedicated to the tobacco products shop during all operating hours.

(817) Tobacco-related devices means cigarette papers, 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 vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

(18) Tobacco vending machine means a machine for vending tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices licensed products by the insertion of money, tokens, or other form of payment.



SECTION 5

Section 324.04 of the Saint Paul Legislative Code is hereby amended to read as follows.

Sec. 324.04. - Fee, duration, limitation on number of licenses.

(a) License fee, duration: The annual license fee for each location of sale or each tobacco vending machine license issued under this chapter shall will be established by ordinance as specified in section 310.09(b) of the Legislative Code. The Each license shall will expire one (1) year from the date of issuance during each calendar year. The annual license fee shall will be prorated for licenses in force less than a full year. (b) Limitation on number of licenses and location:

(1) The total number of Tobacco Shop licenses issued under this chapter by the city for the retail sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products shall will not exceed ~~two hundred forty two (242)~~ one hundred fifty (150). The total number of Tobacco Products Shop licenses issued under this chapter will not exceed twenty-five 25. Establishments or locations holding either Tobacco Shop or Tobacco Product Shop licenses on ~~July 1, 2018, July 31, 2021,~~ or with an application of a license pending on ~~July 1, 2018, July 31, 2021,~~ that is ultimately granted shall will not be affected by this limitation, but shall will be entitled to have such licenses renewed or new license granted, subject to the following conditions exceptions:

- (a) The establishment or location is in compliance with all other requirements of law and there exist no grounds for adverse actions against such licenses;
- (b) The previous license has not terminated or expired more than ~~one two (12)~~ years before the new license had been first applied for;
- (c) A previous license has not been revoked by the council

(2) No Tobacco License may be issued to a person, firm, or corporation for any establishment located within one-half mile (2,640 feet) of another establishment possessing a Tobacco License. Said one-half mile being calculated and computed as the distance measured from the property line of the premises or building proposed as the location for the Tobacco License to the property line of any other Tobacco License.

SECTION 6

Section 324.05 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 324.05. - Application.

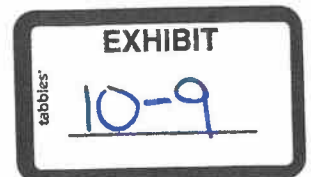
In addition to any other information required by the director, the applicant shall must state the true name of the applicant, the name under which he or she shall will conduct his or her business, whether such business is that of an individual, sole trader, firm, partnership, or corporation, and the address where such business is to be conducted. Any person applying for more than one (1) license shall must file with the department of safety and inspections a list of all locations of sale and/or the location of each vending machine for which license applications are being filed. Any change in the location of the place of sale shall will require a new license application be reported to the director within five (5) days of said change.

SECTION 7

Section 324.07 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 324.07. - Sales prohibited.

(a) No person shall may sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes shall may be sold individually or in packages of fewer than twenty (20) cigarettes.



(b) ~~No person shall may sell or dispense tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices licensed products~~ from a motor vehicle or other movable place of business.

(c) ~~No person shall may sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery 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 shall may offer for sale tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery licensed products~~ in any open displays which are accessible to the public without the intervention of a store employee. This restriction ~~shall does~~ not apply to establishments holding a Tobacco Products Shop license, retail stores which derive at least ninety (90) percent of their revenue from tobacco and tobacco-related devices, and where the retailer ensures that no person younger than twenty one (21) years of age is present, or permitted to enter, at any time.

(e) ~~No person shall 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 shall 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) 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) 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 \$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) per .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 .32 ounces shall be computed by adding \$2.50 for each 0.08 ounces or any fraction thereof in excess of .32 ounces, excluding all applicable taxes.

(i) ~~Sale to persons under the age of twenty one (21) years prohibited.~~

~~(1) ——— Whoever sells or furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of twenty one (21) years is guilty of a misdemeanor for the first violation. Whoever violates this section a subsequent time within five (5) years of a previous conviction is guilty of a gross misdemeanor.~~

~~(2) ——— 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. Stat. § 340A.503, subd. 6.~~

(j) ~~No person shall may sell, offer for sale, or otherwise distribute any flavored products, unless excepted under section 324.07(k) 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 prod



for less than the listed or non-discounted price in exchange for the purchase of any other licensed products.

Nothing in this ordinance is intended to prohibit communication of pricing information or other truthful, nonmisleading information to consumers.

(hk) Exceptions

(1) Notwithstanding section (g), individuals exempted under Minn. Stat. § 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 ~~tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia 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 that derive at least ninety (90) percent of their revenue from the sale of tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products and where the retailer ensures that no person under twenty-one (21) years of age is permitted to enter, at any time are permitted to sell and offer for sale flavored tobacco products.

(4) ~~Establishments holding an off-sale intoxicating liquor license issued by the City of Saint Paul under chapter 409 of the Saint Paul Legislative Code who also hold a license for tobacco sales under this chapter shall be permitted to sell and offer for sale flavored tobacco products only in the following flavors: menthol, mint, and wintergreen.~~

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

SECTION 8

Section 324.08 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 324.08. Distribution of free products prohibited.

~~No person in the business of selling or promoting tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products or agent or employee of such person shall distribute any products free to any person on the sidewalks, pedestrian concourses, pedestrian malls or pedestrian skyway systems within the city.~~

SECTION 9

Section 324.09 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 324.09. ~~Use of false identification by minors prohibited.~~ Reserved.

~~No person under the age of twenty one (21) years shall purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery licensed products using a driver's license, a Minnesota identification card, or other form of identification which is false, fictitious, altered or counterfeited as to age or any other material fact of identification. Use of false identification to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products is a misdemeanor.~~

SECTION 10

Section 324.10 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 324.10. Presumptive penalties.



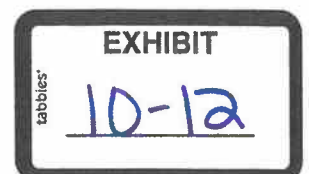
- (a) Purpose. The purpose of this section is to establish a standard by which the city council determines the amount of fines, length of license suspensions and the propriety of revocations for licensees. These penalties are presumed to be appropriate for every case; however, the council may deviate 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	\$500.00 200.00 fine	\$1000.00 400.00 fine	\$2,000.00 800.00 fine and 7-day suspension	Revocation
(2) <u>Display, possession or multiple incidents of sales of:</u> <ul style="list-style-type: none"> • <u>single cigarettes,</u> • <u>menthol tobacco products,</u> <u>or</u> • <u>flavored tobacco products.</u> 	<u>10- day suspension</u>	<u>Revocation</u>		

- (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. Stat. § 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.

SECTION 11

This Ordinance will take effect and be in force thirty (30) days following passage, approval, and publication.



Chapter 310. Uniform License Procedures

Sec. 310.01. Definitions.

For the purposes of this chapter, any chapter of the Legislative Code pertaining to licenses as hereinafter mentioned, and subsequently enacted ordinances establishing or relating to the requirements for Class R, for routinely issued licenses, Class T for temporary licenses and Class N for licenses in which neighbors are required to be notified, under authority of the City of Saint Paul, the terms defined in this section shall have the meanings ascribed to them:

Adverse action means the revocation or suspension of a license, the imposition of conditions upon a license, the denial of an application for the grant, issuance or renewal of a license, the imposition of a fine, the assessment of the costs of a contested hearing, and any other disciplinary or unfavorable action taken with respect to a license, licensee or applicant for a license. "Adverse action" includes any of the foregoing directed at one (1) or more licenses held by a licensee at any location in the city. "Adverse action" also includes disapproval of licenses issued by the state under statutory provisions which permit the governing body to disapprove the issuance of the license.

Bond means a bond meeting the requirements of section 310.07 and indemnifying the city against all claims, judgments or suits caused by, resulting from or in connection with any licensed business, activity, premises, thing, facility, occurrence or otherwise under these chapters.

Building official means the official in the department of safety and inspections charged with the responsibility of enforcement of the building code.

Chapters and these chapters shall mean this uniform license ordinance, any chapter of the Legislative Code pertaining to licenses as hereinafter mentioned, and subsequently enacted ordinances establishing or relating to the requirements for class R, class T and class N licenses under authority of the city.

Class R licenses means those licenses which can be approved and issued or denied by the director of the department of safety and inspections, subject to the procedures required by these chapters. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

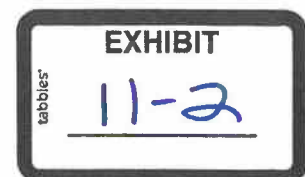
Class R Licenses	Legislative Code Chapter
Animal Foods Manufacturing and Distributing	316
Amusement Rides	317
Mechanical Amusement Devices	318
Bed and Breakfast	378
Bituminous Contractors	320
Rooming and Boardinghouses; Dormitories	321
Christmas Tree Sales	323
Cigarettes/Tobacco	324
Commercial Vehicles	167
Building Contractors	326
Courtesy Bench	127



Dry Cleaning Establishments and Pickup Stations; Laundries	327
Alarm Devices	329
Food Protection Standards	331A
Fuel Dealers—Liquid Fuel	332
Fuel Dealers—Solid Fuel	333
Pest Control	334
House Sewer Contractors	338
Keeping of Animals	198
Lawn Fertilizer and Pesticide Application	377
Mercantile Broker	340
Oil—Bulk Storage	342
Peddlers	345
Solicitors	345
Pet Grooming Facility	382
Pet Shops	347
Solid Waste Hauler	357
Rental of Hospital Equipment	350
Rental of Kitchenware	351
Rental of Trailers	352
Roller Rinks	353
Sanitary Disposal Vehicle	354
Secondhand Dealers (Single Location, Multiple Dealers)	355
Sidewalk Cafe	106
Sidewalk Contractors	356
Solid Waste Transfer Station	357
Sign and Billboard Construction	66 and 33
Sound Trucks and Broadcasting Vehicles	359
Public Swimming Pools	360
Tanning Facility	380
Wreckers and Tow Trucks	361
Taxicab Driver	376
Taxicab Vehicle	376
Tree Trimming	362
Food Vending Machines	363
Veterinary Hospital	364
Window Cleaning	365
Block Parties	366
Wrecking of Buildings	368
Building Trades Business Licenses	369
Building Trades Certificates of Competency	370
Finishing Shop	371
Tire Recapping Plants	372
Massage Center	412
Therapeutic Massage Practitioner	414
Vehicle Immobilization	383
Short-term Rental Platform	379
Short-term Rental Host	379

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(Supp. No. 122, Update 2)



Class T licenses means those licenses which must be approved or denied by the director, subject to the procedures required by these chapters. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Class T Licenses	Legislative Code Chapter
Amusement Rides—Temporary	317
Close-Out Sales	325
Transient Merchants	345
Gambling—Temporary	402.06
Entertainment—Temporary	411
Extension of Service Area-Liquor	409
Soliciting Funds—Tag Days	391
Temporary On-Sale Malt (3.2)	410
Temporary Wine, Wine Licenses for Festivals and Liquor	409
Secondhand Dealer—Exhibition	355
Temporary World Cup Soccer License	409, 410

Class N licenses means those licenses which can be approved or denied only by the council, subject to the procedures required by these chapters. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Class N Licenses	Legislative Code Chapter
Automobile Repair Garage and Body Shop	423
Pool Hall, Bowling Center	322
New Motor Vehicle Dealer	401
Bingo	402
Bingo Halls	403
Cabaret	426
Private Clubs - Liquor	409
Dance or Rental Halls	405
Firearms Dealer	225
Gambling Hall	278
Game Rooms	406
Gas Station	424
Gambling Location	409
Hotel/Motel	407
Health/Sports Club	427
Infectious Waste Processing	429
Recycling Collection Center/Recycling Processing Center	408
Second Hand Dealer—Motor Vehicle Parts	401
Motor Vehicle Salvage Dealer	422
Intoxicating Liquor—On and Off Sale	409



Brewpub/Off-Sale	409
Off-Sale Brewery	409
Motorcycle Dealer	401
Pawn Shop	344
Nonintoxicating Liquor-On and Off Sale	410
Entertainment	411
Conversation/Rap Parlors	413
Steam Room/Bathhouse	428
Theatres and Movie Theaters	415
Motion Picture Drive-In Theatres	416
Second Hand Dealer—Motor Vehicle	401
Parking Lots and Parking Garages	417
Scrap and Metal Processor	420
Liquor Extension of Service Hours	409
Liquor Outdoor Service Area (Patio)	409
Currency Exchange	381
Small Brewer Off-Sale—128 Ounces License	409

Department means the department of safety and inspections.

Director means the director of the department of safety and inspections, unless otherwise defined in the specific chapter, section or subdivision referred to.

Fee means and includes both the license fee and application fee unless otherwise provided.

Inspector as used in these chapters means the director of the department of safety and inspections or his or her designee.

License means and includes all licenses and permits provided for or covered by these chapters. License also includes licenses issued by the state under statutory provisions which permit the governing body to disapprove the issuance of such licenses, for the purposes of making procedures in chapter 310 of the Legislative Code applicable to the approval or disapproval of such licenses.

Person means and includes any person, firm, corporation, partnership, company, organization, agency, club or any group or association thereof. It shall also include any executor, administrator, trustee, receiver or other representative appointed by law.

Zoning administrator means the official in the department of safety and inspections charged with responsibility for enforcement of the zoning code.

(Code 1956, § 510.01; Ord. No. 17085, § 1, 12-6-83; Ord. No. 17303, § 3, 10-29-85; Ord. No. 17569, § 1, 6-7-88; Ord. No. 17919, § 1, 3-31-92; C.F. No. 93-1645, § 8, 12-30-93; C.F. No. 94-46, § 6, 2-2-94; C.F. No. 94-500, § 2, 7-6-94; C.F. No. 94-898, § 1, 7-13-94; C.F. No. 95-473, § 1, 5-31-95; C.F. No. 99-500, § 1, 7-7-99; C.F. No. 01-400, § 1, 11-7-01; C.F. No. 02-1031, § 1, 11-27-02; C.F. No. 03-102, § 1, 3-12-03; C.F. No. 03-694, § 1, 9-3-03; C.F. No. 06-574, § 1, 7-26-06; C.F. No. 06-821, § 1, 9-27-06; C.F. No. 07-149, § 71, 3-28-07; Ord 12-50, § 1, 9-12-12; Ord 17-48, § 1, 10-25-17; Ord 16-68, § 1, 1-9-19; Ord 22-35, § 2, 8-3-22)

Sec. 310.02. Application.

- (a) *Form*. All applicants for licenses or permits issued pursuant to these chapters shall make both original and renewal applications to the inspector on such forms as are provided by the division. Such applications shall

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not be received by the inspector until completely filled out, accompanied by all fees, insurance policies, bonds, deposits, sureties, and indemnifications or certificates required by these chapters, together with the certification required in paragraph (b) below.

- (b) *Taxes.* No person shall be granted a license or a renewal of a license required by the Saint Paul Legislative Code unless, prior to and in addition to any other requirements, rules or ordinances heretofore or hereafter required, the Ramsey County Department of Property Taxation certifies that said applicant has paid any and all taxes, real or personal, before said taxes become delinquent, on any property, real or personal, situated within the City of Saint Paul and used in connection with the business operated under said license.

Notwithstanding the previous paragraph, the council, the director or the inspector may issue or renew a license if it is found that:

- (1) The applicant has made an agreement satisfactory to the Ramsey County attorney to pay delinquent taxes in periodic installments;
- (2) The applicant has properly commenced a proceeding to contest the amount of tax due or the valuation of his property, and has made all partial payments required by law in connection with such proceeding; or
- (3) The business property with respect to which taxes are delinquent is not owned by the applicant, but by a lessor, and it would be inequitable to require the lessee to pay such taxes.

If a license is issued or renewed because of the existence of an agreement as described in subsection (1) above, the license may be revoked if the licensee defaults upon such agreement.

- (c) *Additional information.* The inspector shall prescribe the information required to be submitted by each applicant in their application, in addition to that required by specific sections in these chapters, as may be necessary to carry out and enforce any provision hereunder. The inspector shall require in every case the applicant to submit their name; business or corporate name; names of partners, officers, directors, shareholders or trustees involved in the business; age; address; description or blueprint of the premises, if any, and the owner thereof, and locations and addresses of other business locations in Minnesota.
- (d) *No reapplication within one (1) year after denial or revocation.* Unless an applicant is claiming that they have evidence of rehabilitation as outlined in Minnesota Statute 364.03, subd. 3, no person may apply for any license within one (1) year of the denial or revocation of the same or similar license by the city council, if such denial or revocation was based solely or partially upon misconduct or unfitness of the applicant, evidence of violations of law involving licensed premises, evidence that the applicant had been involved in the operation of a nuisance, or fraud or deception in the license application. A license is "similar," within the meaning of this paragraph, if the basis upon which the revocation or denial of the original license was made would have been a relevant basis on which to deny or revoke a license of the type subsequently applied for.
- (e) *Reapplication after denial; "interest" of applicant in revoked license.* An application by a person having an interest in, or whose shareholders or officers have an interest in, any premises or enterprise whose license has been revoked or to which a license has been denied shall be treated as an application by the person whose license was denied or revoked. The term "interest," as used in this paragraph, includes any pecuniary interest in the ownership, operation, management or profits of an establishment, but does not include: bona fide loans; bona fide rental agreements; bona fide open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to such establishment; an interest in a corporation owning or operating a hotel but having at least one hundred fifty (150) or more rental units holding a license in conjunction therewith; or ten (10) percent or less interest in any other corporation holding a license.
- (f) *Prohibition on reapplication; exception.* The prohibition on reapplication herein provided shall not apply in cases where it is otherwise expressly provided by statute or ordinance.



- (g) *Waiting period after filing of petition.* Any petition required to be filed with the application for any license shall not be considered as officially filed and irrevocable until seven (7) working days after a petition is received in the inspector's office. During the seven-day waiting period, any signator of any petition may withdraw their name therefrom by written request, and such request shall be appended to the subject petition and made a part thereof. After the seven-day waiting period, signatures may not be withdrawn unless it is shown they were obtained by fraud or duress. Signatures withdrawn or obtained by fraud or duress shall not be counted in determining the sufficiency of the petition. This subdivision shall apply in any case where the applicant for a license must present a statement in writing signed by a specified number or percentage of persons that they have given their consent to the grant of the license.

(Code 1956, § 510.02; C.F. No. 95-473, § 2, 5-31-95; Ord. 21-26, § 2, 7-28-21)

Sec. 310.03. Investigation and review of new applications, etc.

The inspector shall determine the sufficiency and accuracy of each new application and obtain such criminal history information as may be used under Minnesota Statutes, chapter 364, and is otherwise available by law. The inspector shall make reasonable and appropriate investigation of the premises or personal property, vehicles or facilities, as may be involved in or related to the licensed activity, and shall request, where appropriate, the assistance of other city divisions or departments in making additional investigations for the purpose of determining whether the applicant is or will be in compliance with all applicable ordinances and statutes. The approval of such other divisions or departments is not required for issuance of a license unless otherwise required by specific sections in these chapters. All new applications shall be reviewed by the zoning administrator or his designee for compliance with all requirements of the Saint Paul Zoning Code, and no new license shall be granted without full compliance with said requirements. All new applications involving a premises, location, building or structure shall be referred to the department of safety and inspections for investigation and recommendation.

(Code 1956, § 510.03; Ord. No. 17361, § 1, 6-5-86; C.F. No. 07-149, § 72, 3-28-07)

Sec. 310.04. Levels of approval; recommendations.

- (a) *Class R licenses.* Where an application for the grant, issuance or renewal of a Class R license meets all the requirements of law, and there exists no ground for denial, revocation or suspension of, or the imposition of conditions upon, such license, the director shall grant, issue or renew said license in accordance with the application.
- (b) *Class T licenses.* Where an application for the grant, issuance or renewal of a Class T license meets all the requirements of law, and there exists no ground for denial, revocation or suspension of, or the imposition of conditions upon, such license, the director shall grant, issue or renew said license in accordance with the application.
- (c) *Class R and Class T licenses, if denied by director.* In the event the director, in the case of both Class R and Class T licenses, determines that the application for grant, issuance or renewal of the license does not meet all the requirements of law or that there exist grounds for denial, revocation, suspension or other adverse action against the license or the licensee, the director shall recommend denial of the application and follow the procedures for notice and hearing as set forth in section 310.05.
- (d) *Class N licenses.*
- (1) *Grant, issuance or transfer.* Upon receipt of a fully completed application and required fees for a Class N license, the director shall conduct such investigation as is required to determine whether the application meets all the requirements of law or whether there exist grounds for denial or imposition of conditions on the license. The director shall, in writing, notify the council, and the affected

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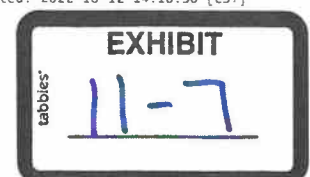
neighborhood organization(s) established for citizen participation purposes, of the existence of the application for all Class N licenses. In any case where the director recommends denial of the grant, issuance or renewal of a Class N license, the director on his or her own initiative, or at the direction of the council, shall follow the procedures for notice and hearing as set forth in section 310.05. If the director is recommending issuance of the license, but the affected neighborhood organization(s) or other interested persons give notice within thirty (30) days of receipt of notice of the existence of the application (or within forty-five (45) days if the application involves a liquor license) of objection to issuance of the license, the matter shall be referred for a hearing before the legislative hearing officer, who shall give notice of the time, place and date of the hearing to the affected neighborhood organization(s) and the applicant. The legislative hearing officer shall take testimony from all interested persons and shall make a recommendation to the council as to whether the matter should be referred for a hearing before an independent hearing examiner in accordance with the procedures set forth in section 310.05. Where the application for the grant, issuance or renewal of a Class N license meets all the requirements of law, and where there exists no ground for adverse action, the director shall issue such license in accordance with law.

- (2) *Renewal.* The director shall in writing notify the council, and the affected neighborhood organization(s) established for citizen participation purposes, at least sixty (60) days before the expiration date of all Class N licenses. A public hearing on the renewal of any such license shall not be held except on the request of a councilmember, which request shall be incorporated in the form of a council resolution. Upon the passage of such resolution, the director shall give written notice of such hearing to the affected neighborhood organizations. Such public hearing does not replace or amend any of the procedures set forth in section 310.05 of the Legislative Code. If no request for a public hearing is made before the expiration of any such license, and where there exists no ground for adverse action, the director shall issue the license in accordance with law.
- (e) *Appeal; Class R or Class T licenses.* An appeal to the city council may be taken by any person aggrieved by the grant, issuance or renewal of a Class R or Class T license; provided, however, that the appeal shall have been filed with the city clerk within thirty (30) days after the action by the director. The only grounds for appeal shall be that there has been an error of law in the grant, issuance or renewal of the license. The appeal shall be in writing and shall set forth in particular the alleged errors of law. The council shall conduct a hearing on the appeal within thirty (30) days of the date of filing and shall notify the licensee and the appellant at least ten (10) days prior to the hearing date. The procedures set forth in section 310.05, insofar as is practicable, shall apply to this hearing. Following the hearing, the council may affirm or remand the matter to the inspector or director, or may reverse or place conditions upon the license based on the council's determination that the decision was based on an error of law. The filing of an appeal shall not stay the issuance of the license.
- (f) *No waiver by renewal.* The renewal of any license, whether Class R, T or N, shall not be deemed to be a waiver of any past violations or of any grounds for imposition of adverse action against such license.

(Code 1956, § 510.04; Ord. No. 17455, § 1, 5-21-87; Ord. No. 17551, § 1, 4-19-88; C.F. No. 94-500, § 1, 7-6-94; C.F. No. 95-473, § 3, 5-31-95; C.F. No. 95-1517, 1-31-96; C.F. No. 97-1446, § 1, 12-30-97; C.F. No. 99-500, § 2, 7-7-99)

Sec. 310.05. Hearing procedures.

- (a) *Adverse action; notice and hearing requirements.* In any case where the council may or intends to consider any adverse action, including the revocation or suspension of a license, the imposition of conditions upon a license, or the denial of an application for the grant, issuance or renewal of a license, or the disapproval of a license issued by the State of Minnesota, the applicant or licensee shall be given notice and an opportunity to be heard as provided herein. The council may consider such adverse actions when recommended by the



inspector, by the director, by the director of any executive department established pursuant to Chapter 9 of the Charter, by the city attorney or on its own initiative.

- (b) *Notice.* In each such case where adverse action is or will be considered by the council, the applicant or licensee shall have been notified in writing that adverse action may be taken against the license or application, and that he or she is entitled to a hearing before action is taken by the council. The notice shall be served or mailed a reasonable time before the hearing date, and shall state the place, date and time of the hearing. The notice shall state the issues involved or grounds upon which the adverse action may be sought or based. The council may request that such written notice be prepared and served or mailed by the inspector or by the city attorney.
- (c) *Hearing.* Where there is no dispute as to the facts underlying the violation or as to the facts establishing mitigating or aggravating circumstances, the hearing shall be held before the council. Otherwise the hearing shall be conducted before a hearing examiner appointed by the council or retained by contract with the city for that purpose. The applicant or the licensee shall be provided an opportunity to present evidence and argument as well as meet adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The hearing examiner may in its discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing.
- (c-1) *Procedure; hearing examiner.* The hearing examiner shall hear all evidence as may be presented on behalf of the city and the applicant or licensee, and shall present to the council written findings of fact and conclusions of law, together with a recommendation for adverse action.

The council shall consider the evidence contained in the record, the hearing examiner's recommended findings of fact and conclusions, and shall not consider any factual testimony not previously submitted to and considered by the hearing examiner. After receipt of the hearing examiner's findings, conclusions, and recommendations, the council shall provide the applicant or licensee an opportunity to present oral or written arguments alleging error on the part of the examiner in the application of the law or interpretation of the facts, and to present argument related to the recommended adverse action. Upon conclusion of that hearing, and after considering the record, the examiner's findings and recommendations, together with such additional arguments presented at the hearing, the council shall determine what, if any, adverse action shall be taken, which action shall be by resolution. The council may accept, reject or modify the findings, conclusions and recommendations of the hearing examiner.

- (c-2) *Ex-parte contacts.* If a license matter has been scheduled for an adverse hearing, council members shall not discuss the license matter with each other or with any of the parties or interested persons involved in the matter unless such discussion occurs on the record during the hearings of the matter or during the council's final deliberations of the matter. No interested person shall, with knowledge that a license matter has been scheduled for adverse hearing, convey or attempt to convey, orally or in writing, any information, argument or opinion about the matter, or any issue in the matter, to a council member or his or her staff until the council has taken final action on the matter; provided, however, that nothing herein shall prevent an inquiry or communications regarding status, scheduling or procedures concerning a license matter. An interested person, for the purpose of this paragraph, shall mean and include a person who is an officer or employee of the licensee which is the subject of the scheduled adverse hearing, or a person who has a financial interest in such licensee.
- (d) *Licensee or applicant may be represented.* The licensee or applicant may represent himself or choose to be represented by another.
- (e) *Record; evidence.* The hearing examiner shall receive and keep a record of such proceedings, including testimony and exhibits, and shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.



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- (f) *Council action, resolution to contain findings.* Where the council takes adverse action with respect to a license, licensee or applicant for a license, the resolution by which such action is taken shall contain its findings and determination, including the imposition of conditions, if any. The council may adopt all or part of the findings, conclusions and recommendations of the hearing examiner, and incorporate the same in its resolution taking the adverse action.
- (g) *Additional procedures where required.* Where the provisions of any statute or ordinance require additional notice or hearing procedures, such provisions shall be complied with and shall supersede inconsistent provisions of these chapters. This shall include, without limitation by reason of this specific reference, Minnesota Statutes, Chapter 364 and Minnesota Statutes, Section 340A.415.
- (h) *Discretion to hear notwithstanding withdrawal or surrender of application or license.* The council may, at its discretion, conduct a hearing or direct that a hearing be held regarding revocation or denial of a license, notwithstanding that the applicant or licensee has attempted or purported to withdraw or surrender said license or application, if the attempted withdrawal or surrender took place after the applicant or licensee had been notified of the hearing and potential adverse action.
- (i) *Continuances.* Where a hearing for the purpose of considering revocation or suspension of a license or other disciplinary action involving a license has been scheduled before the council, a continuation of the hearing may be granted by the council president or by the council at the request of the licensee, license applicant, an interested person or an attorney representing the foregoing, upon a showing of good cause by the party making the request.
- (j) If the council imposes an adverse action as defined in section 310.01 above, a generic notice of such action shall be prepared by the license inspector and posted by the licensee so as to be visible to the public during the effective period of the adverse action. The licensee shall be responsible for taking reasonable steps to make sure the notice remains posted on the front door of the licensed premises, and failure to take such reasonable precautions may be grounds for further adverse action.
- (k) *Imposition of costs.* The council may impose upon any licensee or license applicant some or all of the costs of a contested hearing before an independent hearing examiner. The costs of a contested hearing include, but are not limited to, the cost of the administrative law judge or independent hearing examiner, stenographic and recording costs, copying costs, city staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The council may impose all or part of such costs in any given case if (i) the position, claim or defense of the licensee or applicant was frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment; (ii) the nature of the violation was serious, or involved violence or the threat of violence by the licensee or employees thereof, or involved the sale of drugs by the licensee or employees thereof, and/or the circumstances under which the violation occurred were aggravated and serious; (iii) the violation created a serious danger to the public health, safety or welfare; (iv) the violation involved unreasonable risk of harm to vulnerable persons, or to persons for whose safety the licensee or applicant is or was responsible; (v) the applicant or licensee was sufficiently in control of the situation and therefore could have reasonably avoided the violation, such as but not limited to, the nonpayment of a required fee or the failure to renew required insurance policies; (vi) the violation is covered by the matrix in section 409.26 of the Legislative Code; or (vii) the violation involved the sale of cigarettes to a minor.
- (l) *Imposition of fines.* The council may impose a fine upon any licensee or license applicant as an adverse license action. A fine may be in such amount as the council deems reasonable and appropriate, having in mind the regulatory and enforcement purposes embodied in the particular licensing ordinance. A fine may be in addition to or in lieu of other adverse action in the sole discretion of the council. To the extent any other provision of the Legislative Code provides for the imposition of a fine, both provisions shall be read together to the extent possible; provided, however, that in the case of any conflict or inconsistency, the other provision shall be controlling.



(m) *Presumptive penalties for certain violations.* The purpose of this section is to establish a standard by which the city council determines the amount of fines, the length of license suspensions and the propriety of revocations, and shall apply to all license types, except that in the case of a violation involving a liquor license § 409.26 shall apply where a specific violation is listed. In the case of an adverse action filed for a violation of chapter 331A, the licensee shall be given a fine for each individual violation of chapter 331A. The total fine amount for violations of chapter 331A may exceed the maximum fine outlined below due to multiple violations in one (1) appearance. All penalty recommendations for chapter 331A violations shall be based on the food penalty guideline referred to in chapter 331A. 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 making it more appropriate to do so. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.

Type of Violation	Appearance			
	1st	2nd	3rd	4th
(1) Violations of conditions placed on the license	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 10-day suspension	Revocation
(2) Violation of provisions of the legislative code relating to the licensed activity	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 10-day suspension	Revocation
(3) Violation of provisions of the legislative code relating to the licensed activity, other than violations of the food code	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 10-day suspension	Revocation
(4) Failure to permit entrance or inspection by DSI inspector or police	5-day suspension	10-day suspension	15-day suspension	Revocation
(5) Commission of a crime other than a felony on the premises by a licensee or employee	\$700.00	\$1,500.00	5-day suspension	Revocation
(6) Commission of a felony on the premises by a licensee or employee	\$2,000.00	Revocation	n/a	n/a

(Supp. No. 122, Update 2)

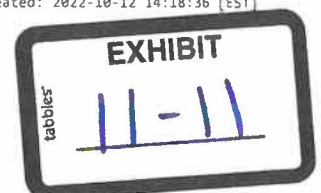
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(7) Death or great bodily harm in establishment related to violation of law or license conditions	30-day suspension	60-day suspension	Revocation	n/a
(8) Failure to pay license fees	Suspension	Revocation		
(9) Critical violations under 331A	\$250.00	\$500.00	\$1,000.00, 5-day suspension	Revocation
(10) Non-critical violation under 331A	\$150.00	\$250.00	\$500.00	\$1,000.00
(11) Taxi fail to display driver's license as required by 376.16(f)	\$100.00	\$250.00	\$500.00	Revocation
(12) Taxi fail to display number of information and complaint office as required by 376.11(v)	\$100.00	\$250.00	\$500.00	Revocation
(13) Violation of restrictions upon sidewalk café license under 106.01(b)	\$200.00	\$400.00	\$800.00	Revocation

(i) *Fines payable without hearing.*

- A. Notwithstanding the provisions of section 310.05(c), 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.
- B. For adverse action initiated under chapter 331A of this Code, a fine may be paid without a hearing regardless of how many prior appearances that licensee has made before the council. The above council hearing requirement applies to violations under chapter 331A unless the fine recommended by the department of safety and inspections is equal to or less than the fine amount outlined in the above matrix. 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"

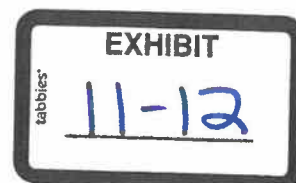


for the purpose of determining presumptive penalties for subsequent violations. A non-critical violation under chapter 331A shall not be considered an "appearance" for purposes of determining presumptive penalties for non-331A violations. A council hearing is required if the department of safety and inspections recommends a fine that is an upward departure for the amount outlined above.

- (ii) *Multiple violations.* At a licensee's first appearance before the city council, the council shall consider and act upon all the violations that have been alleged and/or incorporated in the notices sent to the licensee under the administrative procedures act up to and including the formal notice of hearing. The council in that case shall consider the presumptive penalty for each such violation under the "1st Appearance" column in paragraph (b) above. The occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion.
- (iii) *Violations occurring after the date of the notice of hearing.* Violations occurring after the date of the notice of hearing that are brought to the attention of the city attorney prior to the hearing date before an administrative law judge (or before the council in an uncontested facts hearing) may be added to the notice(s) by stipulation if the licensee admits to the facts, and shall in that case be treated as though part of the "1st Appearance." In all other cases, violations occurring after the date of the formal notice of hearing shall be the subject of a separate proceeding and dealt with as a "2nd Appearance" before the council. The same procedures shall apply to a second, third or fourth appearance before the council.
- (iv) *Subsequent appearances.* Upon a second, third or fourth appearance before the council by a particular licensee, the council shall impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance. However, non-critical violations of chapter 331A shall not be counted as an "appearance" before the council in relation to any violation other than another violation of chapter 331A.
- (v) *Computation of time.*
 - (1) *Second appearance.* A second violation within twelve (12) months shall be treated as a second appearance for the purpose of determining the presumptive penalty.
 - (2) *Third appearance.* A third violation within eighteen (18) months shall be treated as a third appearance for the purpose of determining the presumptive penalty.
 - (3) *Fourth appearance.* A fourth violation within twenty-four (24) months shall be treated as a fourth appearance for the purpose of determining the presumptive penalty.
 - (4) Any appearance not covered by subsections (1), (2) or (3) above shall be treated as a first appearance. Measurement of the twelve-, eighteen-, or twenty-four-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.
 - (5) Notwithstanding subsections (iv)(1), (2), (3) or (4) above, a second appearance before the council regarding a death or great bodily harm in a licensed establishment that is related to a violation of the law or license conditions shall be counted as a second appearance, regardless of how much time has passed since the first appearance if the first appearance was also regarding a death or great bodily harm in a licensed establishment. A third appearance for the same shall be counted as a third appearance regardless of how much time has passed since the first or second appearance.
 - (6) For the purpose of a second, third or fourth appearance under this section, "violation" shall mean either one of those violations listed in paragraph (m) or a violation of section 409.26(b).

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(Supp. No. 122, Update 2)



(Code 1956, § 510.05; Ord. No. 17551, § 2, 4-19-88; Ord. No. 17559, §§ 1, 2, 5-17-88; Ord. No. 17659, § 1, 6-13-89; Ord. No. 17911, § 1, 3-10-92; C.F. No. 94-46, § 7, 2-2-94; C.F. No. 94-898, §§ 2, 3, 7-13-94; C.F. No. 94-1340, § 2, 10-19-94; C.F. No. 95-473, § 4, 5-31-95; C.F. No. 05-180, § 1, 4-6-05; C.F. No. 06-954, § 1, 11-8-06; C.F. No. 06-1072, § 1, 12-27-06; C.F. No. 07-149, § 73, 3-28-07; C.F. No. 07-1053, § 1, 11-28-07; C.F. No. 08-1208, § 1, 12-17-08; C.F. No. 10-665, § 1, 7-28-10; Ord. No. 11-93, § 1, 9-28-11; Ord. No. 11-94, § 1, 10-12-11; Ord 12-42, § 1, 8-22-12; Ord 12-85, § 1, 1-23-13)

Sec. 310.06. 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 shall be initiated and carried out in accordance with the procedures outlined in section 310.05; provided, however, that the formal notice of hearing shall be used to initiate the adverse action without the use of prior procedural steps.
- (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.

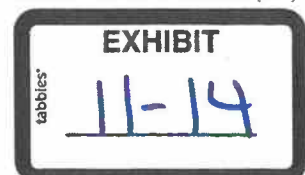


- (8) The licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.
- (9) Failure to keep sidewalks or pedestrian ways 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 inspector 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 310.05(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.
- (14) The licensee has failed to pay license fees within sixty (60) days of the date the fees are due. Licensee must pay any outstanding fees and delinquent fees in total. Failure to do so within sixty (60) days of the due date may result in revocation of the license. A revocation for this reason, however, is not considered a revocation resulting from misconduct or unfitness of the licensee, evidence of violations of law involving licensed premises, evidence that the applicant had been involved in the operation of a nuisance, or fraud or deception in the license application. Therefore, the requirement of § 310.02(d) prohibiting re-application within one year of revocation shall not apply to revocations under this paragraph.

The terms "licensee" or "applicant" for the purpose of this section shall mean and include any person who has any interest, whether as a holder of more than five (5) percent of the stock of a corporation, as a partner, or otherwise, in the premises or in the business or activity which are licensed or proposed to be licensed.

With respect to any license for activities entitled to the protection of the First Amendment, notwithstanding the foregoing provisions, neither the lack of good moral character or fitness of the licensee or applicant nor the content of the protected speech or matter shall be the basis for adverse action against the license or application.

- (c) *Imposition of reasonable conditions and/or restrictions.* When a reasonable basis is found to impose reasonable conditions and/or restrictions upon a license issued or held under these chapters, any one (1) or more such reasonable conditions and/or restrictions may be imposed upon such license for the purpose of promoting public health, safety and welfare, of advancing the public peace and the elimination of conditions or actions that constitute a nuisance or a detriment to the peaceful enjoyment of urban life, or promoting



security and safety in nearby neighborhoods. Such reasonable conditions and/or restrictions may include or pertain to, but are not limited to:

- (1) A limitation on the hours of operation of the licensed business or establishment, or on particular types of activities conducted in or on said business or establishment;
- (2) A limitation or restriction as to the location within the licensed business or establishment where particular type of activities may be conducted;
- (3) A limitation as to the means of ingress or egress from the licensed establishment or its parking lot or immediately adjacent area;
- (4) A requirement to provide off-street parking in excess of other requirements of law;
- (5) A limitation on the manner and means of advertising the operation or merchandise of the licensed establishment;
- (6) Any other reasonable condition or restriction limiting the operation of the licensed business or establishment to ensure that the business or establishment will harmonize with the character of the area in which it is located, or to prevent the development or continuation of a nuisance.

The inspector may impose such conditions on Class R licenses with the consent of the license holder, or may recommend the imposition of such conditions as an adverse action against the license or licenses; the inspector has the same power with respect to Class T licenses. The council may impose such conditions on Class N licenses with the consent of the license holder, or upon any class of license as an adverse action against the license or licenses following notice and hearing as may be required. Such conditions may be imposed on a license or licenses upon issuance or renewal thereof, or upon and as part of any adverse action against a license or licenses, including suspension. Conditions imposed on a license or licenses shall remain on such licenses when renewed and shall continue thereafter until removed by the council in the case of conditions on Class N licenses or conditions imposed by adverse action, and by the inspector in the case of Class R and T licenses.

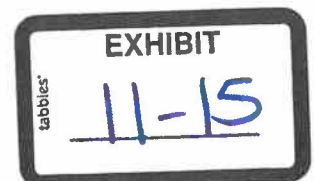
(d) *Standards for multiple license determination.* In any case in which the council is authorized to take adverse action against less than all of the licenses held by a licensee, or applied for by an applicant, the following standards may be used:

- (1) The nature and gravity of the grounds found by the council to exist upon which the adverse action would be based;
- (2) The policy and/or regulatory goals for the particular licenses involved, either as embodied in the Legislative Code or as found and determined by the council;
- (3) The interrelationship of the licenses and their relative importance to the overall business enterprise of the licensee or applicant;
- (4) The management practices of the licensee or applicant with respect to each of such licenses;
- (5) The extent to which adverse action against less than all of the licenses or applications would result in difficulty in enforcing and monitoring the adverse action taken;
- (6) The hardship to the licensee or applicant that would be caused by applying adverse action to all licenses or applications; and
- (7) The hardship and/or danger to the public, or to the public health and welfare, that would result from adverse action against less than all of the licenses or applications.

(Code 1956, § 510.06; Ord. No. 17584, § 1, 8-25-88; Ord. No. 17657, § 15, 6-8-89; Ord. No. 17659, § 2, 6-13-89; Ord. No. 17901, §§ 2, 3, 1-14-92; Ord. No. 17917, §§ 2, 3, 3-31-92; Ord. No. 17922, § 1, 4-28-92; C.F. No. 94-500, § 3, 7-6-94; C.F. No. 94-1340, § 3, 10-19-94; C.F. No. 95-473, § 5, 5-31-95; C.F. No. 99-500, § 3, 7-7-99; C.F. No. 06-954, § 2, 11-8-06; C.F. No. 06-1072, § 2, 12-27-06)

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Sec. 310.07. Termination of licenses; surety bonds; insurance contracts.

- (a) Automatic termination, reinstatement; responsibility of licensee. All licenses or permits which must, by the provisions of these chapters or other ordinances or laws, be accompanied by the filing and maintenance of insurance policies, deposits, guarantees, bonds or certifications shall automatically terminate on cancellation or withdrawal of said policies, deposits, bonds or certifications. No licensee may continue to operate or perform the licensed activity after such termination. The licensee is liable and responsible for the filing and maintenance of such policies, deposits, guarantees, bonds or certifications as are required in these chapters, and shall not be entitled to assert the acts or omissions of agents, brokers, employees, attorneys or any other persons as a defense or justification for failure to comply with such filing and maintenance requirements. In the event the licensee reinstates and files such policies, bonds or certifications without a lapse within thirty (30) days, the license is automatically reinstated on the same terms and conditions, and for the same period as originally issued. After thirty (30) days, the applicant must apply for a new license as though it were an original application.

If there is a lapse in insurance, the licensee is subject to adverse action in accordance with Saint Paul Legislative Code § 310.05. License is null and void during the lapse.

- (b) *Bonds and insurance requirements:*
- (1) *Surety Companies:* All surety bonds running to the City of Saint Paul shall be written by surety companies authorized to do business in the State of Minnesota. All insurance policies required by these chapters shall be written by insurance companies authorized to do business in the State of Minnesota.
 - (2) *Approved as to Form:* All bonds filed with the City of Saint Paul in connection with the issuance of licenses for whatever purpose, and all policies of insurance required to be filed with or by the City of Saint Paul in connection with the issuance of licenses for any purpose whatsoever, shall first be approved as to form by the city attorney.
 - (3) *Uniform Endorsement:* Each insurance policy required to be filed pursuant to these chapters shall contain the endorsement set forth in Chapter 7 of the Saint Paul Legislative Code.
 - (4) *Conditions:* All bonds required by these chapters shall be conditioned that the licensee shall observe all ordinances and laws in relation to the licensed activity, business, premises or facilities and that he shall conduct all such activities or business in conformity therewith. Such bonds shall also indemnify the City of Saint Paul against all claims, judgments or suits caused by, resulting from or in connection with the licensed business, premises, activity, thing, facility, occurrence or otherwise licensed under these chapters.
- (c) *Termination of bonds and insurance required by city.* Termination of bonds and insurance required to be filed with the city pursuant to these chapters shall be in accordance with the requirements of Chapter 8 of the Saint Paul Legislative Code.
- (d) *Expiration date to be concurrent with term of license or permit.* The expiration date of all such policies, bonds, guarantees or certifications shall be concurrent with the expiration date of the license or permit.

(Code 1956, § 510.07; Ord 12-74, § 1, 11-28-12)

Sec. 310.08. Terms of licenses; uniform dates.

- (a) All licenses or permits shall be valid for a period of one (1) year from the date of issuance by the inspector, except as otherwise provided herein or in these chapters or in cases of revocation, suspension or termination under section 310.06.



- (b) Licensees may continue to operate their business after the expiration date of their license; provided, that the licensee has filed with the inspector on or before the expiration date the appropriate license application, license fees, insurance and bonds. The inspector shall process the renewal application in the manner provided for in this Code.
- (c) Whenever any licensee is the holder of the two (2) or more licenses of the City of Saint Paul which expire on different dates, the inspector is authorized, at the request of the licensee, to determine a uniform date for the expiration of all or any number of such licenses, notwithstanding the term and expiration dates of such licenses as originally issued, and notwithstanding any provision as to term of license of any ordinance of the city heretofore or hereafter enacted. The provisions hereof shall govern the issuance of any new license to one already holding a license.
- (d) In order to conform to the foregoing provisions, new licenses may be issued for a term of less than one (1) year, and the license fee therefor shall be prorated for the period of issuance.

(Code 1956, § 510.08; Ord. No. 17360, § 1, 6-5-86)

Sec. 310.09. Fees.

- (a) *Exempt organizations.* The Legislative Code exempts certain organizations from paying the customary license or permit fees or establishes a nominal fee of less than seven dollars (\$7.00). The terms and conditions of such exemptions are stated within the applicable chapters. Such organizations shall pay a five dollars (\$5.00) minimum processing fee for each and every application for a license or permit to be issued by the division manager, director or council of the city.
- (b) *Fee schedule.* The council may by ordinance determine and establish one (1) fee schedule for any or all licenses and permits issued pursuant to these chapters, and a separate fee schedule for applications for such licenses and permits, which may include fees to cover costs incurred by reason of the late filing. Such fees, in either schedule, shall be reasonably related to the costs of administration incurred in connection with each such application, license or permit. Costs of administration shall mean and include, but without limitation by this specification, both direct and indirect costs and expenses, such as salaries, wages, benefits and all personnel costs including training, seminars and schooling, expenses of investigations and inspections, handling of inquiries and requests for assistance, telephone and communications, stationery, postage, paper, reproduction, office capital equipment and all office supplies. Such fee schedules as adopted by ordinance and posted in the office of the inspector shall supersede inconsistent fee provisions in these chapters or in other ordinances or laws.
- (c) *Fee for one year; may be prorated.* Unless otherwise specifically provided, the license fee stated is for a period of one (1) year. Such fee may be prorated where a license is issued for a period of less than a year.
- (d) *Late fee.* Unless otherwise specifically provided by the particular licensing provisions involved, an applicant for the renewal of a license who makes application for such renewal after the expiration date of such license shall be charged a late fee for each such license. The late fee shall be in addition to any other fee or payment required, and shall be ten (10) percent of the annual license fee for such license for each thirty-day period or portion thereof which has elapsed after the expiration date of such license. The late fee shall not exceed fifty (50) percent of the annual license fee. If any provision of these chapters imposes more stringent or additional requirements for the issuance of an original license than would be the case for mere renewal, those requirements must be met when the license has lapsed by reason of expiration.
- (e) *Environmental change of ownership fee.* Unless otherwise stated, the environmental change of ownership fee shall be 25% of the environmental plan review fee for each license type.

(Code 1956, § 510.09; Ord. No. 16884, 2-11-82; Ord. No. 17802, § 1, 1-10-91; C.F. No. 03-893, § 1, 11-5-03)



Sec. 310.10. Refunds of fees.

- (a) *Refund where application withdrawn; service charge.* Unless otherwise specifically provided by the particular licensing provisions involved, where an application for any license is withdrawn, the inspector shall refund to the applicant the license fee submitted less a service charge to recover in part the costs incurred in processing the application in the amount of twenty-five (25) percent of the annual license fee.
- (b) *Limitation on refund; other cases.* In all other cases as provided in paragraph (c), the director of the department of safety and inspections, or his designee, may upon receipt of a written request refund the license fee, less a service charge to recover in part the costs incurred in processing the application up to twenty-five (25) percent of the annual licensee fee.
- (c) *Bases for refunds.* Refunds under paragraph (b) may be made to the licensee or his estate:
 - (1) Where the place of business of the licensee or his principal equipment is destroyed or so damaged by fire or any other cause that the licensee ceases for the remainder of the licensed period to engage in the licensed activity or business;
 - (2) Where the business or licensed activity ceases by reason of the death or illness of the licensee or the sole employee or manager; or
 - (3) Where it has become unlawful for the licensee to continue in the business or licensed activity other than by cancellation, termination, revocation, suspension, denial or any criminal activity on the part of the licensee.

(Code 1956, § 510.10; C.F. No. 09-516, § 1, 6-10-09; Ord. No. 11-69, § 1, 8-24-11; Ord 12-33, § 1, 6-27-12)

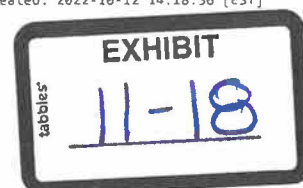
Sec. 310.11. Transfers; general.

- (a) *License a privilege, not property.* All licenses or permits issued by the City of Saint Paul pursuant to these chapters or other ordinances or laws confer a privilege on the licensee to engage in the activity or occupation so licensed, and do not constitute property or property rights or create any such rights in any licensee. No such license or permit may be seized, levied upon, attached, executed upon, assessed or in any manner taken for the purpose of satisfaction of any debt or obligation whatever.
- (b) *Licenses not transferable; conditions.* Notwithstanding any other provision of the Saint Paul Legislative Code to the contrary, no licenses issued by the City of Saint Paul shall be transferable.
- (c) *Transfer; definition.* "Transferable" means the ability to transfer a license or licenses from one (1) person to another, or from one (1) location to another. "Transfer," as used in these chapters, shall include a transfer from person to person, or from place to place, or a transfer of stock in a corporate licensee, or of shares or interests in a partnership or other legal entity. "Transfer," as used in these chapters, shall not include the instance where a license is held by an individual or partnership and the transfer is by said individual or partnership to a corporation in which the majority of the stock is held by said individual or by the members of said partnership.
- (d) *Deceased licensee.* Notwithstanding any other provision of these chapters, in any case where a liquor license is held by a person not incorporated and where the license would, by reason of the death of said licensee, lapse to the city in the absence of this paragraph, the authorized representative of the estate of the deceased licensee may consent to and seek to reissue said license to the beneficiary to the licensed establishment. The reissuance shall be subject to all applicable requirements of these chapters and existing law.

(Code 1956, § 510.11; Ord. No. 16822, 9-3-81; Ord. No. 17551, § 3, 4-19-88; C.F. No. 95-473, § 6, 5-31-95)

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Sec. 310.12. Inspection of premises.

The premises, facilities, place, device or anything named in any license issued pursuant to any provision of the Saint Paul Legislative Code or other law shall at all times while open to the public or while being used or occupied for any purpose be open also to inspection and examination by any police, fire, or health officer or any building inspector of the city, as well as the inspector.

(Code 1956, § 510.12)

Sec. 310.13. Renewal.

Every license renewal under these chapters may be denied for any licensee who is delinquent in any payment or contribution to a health and welfare trust or pension trust, or similar program, established for the benefit of his employees.

(Code 1956, § 510.13)

Sec. 310.14. Savings clause.

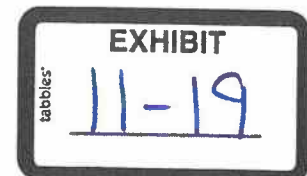
- (a) If any provision in these chapters is held unconstitutional or invalid by a court of competent jurisdiction, the invalidity shall extend only to the provision involved and the remainder of these chapters shall remain in force and effect to be construed as a whole.
- (b) The repeal of any ordinance by this ordinance (which enacts the Uniform License Ordinance) shall not affect or impair any act done, any rights vested or accrued, or any suit, proceeding or prosecution had or commenced in any matter, prior to the date this ordinance became effective. Every such act done or right vested or accrued shall remain in full force and effect to all intents and purposes as if the repealed ordinances had themselves remained in force and effect. Every such suit, proceeding or prosecution may be continued after repeal as though the repealed ordinances were fully in effect. A suit, proceeding or prosecution which is based upon an act done, a right vested or accrued, or a violation committed prior to repeal of the repealed ordinances, but which is commenced or instituted subsequent to repeal of the repealed ordinances, shall be brought pursuant to and under the provisions of such repealed ordinances as though they continued to be in full force and effect.

(Code 1956, § 510.14)

Sec. 310.15. Penalty.

Any person who violates any provision of these chapters, or other ordinances or laws relating to licensing, or who aids, advises, hires, counsels or conspires with or otherwise procures another to violate any provision of these chapters or other ordinances or laws relating to licensing is guilty of a misdemeanor and may be sentenced in accordance with section 1.05 of the Saint Paul Legislative Code. The term "person," in addition to the definition in section 310.01, shall for the purpose of this section include the individual partners or members of any partnership or corporation, and as to corporations, the officers, agents or members thereof, who shall be responsible for the violation.

(Code 1956, § 510.15)



Sec. 310.16. Reserved.

Editor's note(s)—Section 310.16, pertaining to license fees and annual increases, and derived from Ord. No. 16885, adopted Feb. 11, 1982; Ord. No. 17059, adopted Oct. 20, 1983; and Ord. No. 17303, adopted Oct. 29, 1985, was repealed by Ord. No. 17884, § 1, adopted Nov. 19, 1991.

Sec. 310.17. Licensee's responsibility.

Any act or conduct by any clerk, employee, manager or agent of a licensee, or by any person providing entertainment or working for or on behalf of a licensee, whether compensated or not, which act or conduct takes place either on the licensed premises or in any parking lot or other area adjacent to (or under the lease or control of) the licensed premises, and which act or conduct violates any state or federal statutes or regulations, or any city ordinance, shall be considered to be and treated as the act or conduct of the licensee for the purpose of adverse action against all or any of the licenses held by such licensee. To the extent this section is in conflict with sections 409.14 and 410.09 of the Legislative Code, this section shall be controlling and prevail; but shall not otherwise amend, alter or affect such sections.

(Ord. No. 17629, § 1, 1-31-89)

Sec. 310.18. License fee schedule.

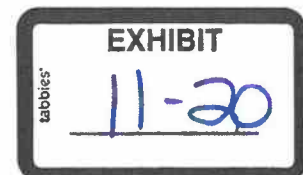
Notwithstanding the provision of any other ordinance or law to the contrary, the following fees are hereby provided for all the licenses listed herein. These fees supersede all inconsistent provisions, including, but not limited to, graduated fee provisions, in these chapters and in other ordinances and laws, and include the fee for the license application as part of the license fee; provided, however, that this section does not amend or modify sections 310.09(a) or 310.09(d) of the Legislative Code with respect to exempt organizations or late fees. Pursuant to section 310.09(b) of the Legislative Code, these schedules shall be posted in the office of the director. These fees shall be effective for license renewals and new license applications occurring on and after January 1, 1995, or on the effective date of this section, whichever is later; provided, however, that with respect to all licenses whose renewal dates occur after the effective date of this new schedule, there shall be no increases in, nor offsets or refunds of, the existing fees paid, or due and owing.

(a) ENFORCEMENT LEVEL 1

Chapter/Section		
No.	License Description	Fee
165	Agricultural Vehicle Parking Permit	\$21.00
316.02	Animal Foods Manufacturing and Distribution	79.00
317.01	Amusement Rides	79.00
323.02	Christmas Tree Sales	79.00
325.02	Close Out Sale	79.00
327.03	Laundry Dry Cleaning Pickup Station	79.00
332.03	Liquid Fuel Vehicle	79.00
333.03	Solid Fuel Vehicle	79.00
340.04	Mercantile Broker	79.00
345.04	Peddler (Solicitor/Transient)	79.00
346.03	Mobile Retail Vehicle	79.00
348.01	Animal Day Care	77.00

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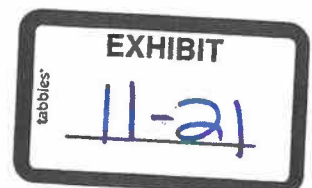
348.01	Animal Boarding	77.00
350.02	Rental of Hospital Equipment	79.00
350.02	Rental of Hospital Equipment Vehicle	79.00
351.03	Rental of Kitchenware	79.00
353.02	Roller Rinks	79.00
355.02	Secondhand Dealer-Single Location	79.00
357.03	Solid Waste Hauler—Each Vehicle Over One	79.00
359.03	Sound Trucks and Broadcast Vehicles	79.00
371.02	Finishing Shop	79.00
361.01	Tow Truck/Wrecker Vehicle	79.00
362.02	Tree Trimmer—Additional Vehicle	79.00
372.02	Tire Recapping Plant	79.00
377.03	Lawn Fertilizer and Pesticide Application	79.00
382.03	Pet Grooming Facility	79.00
409.05(b), 410.07(c)	Liquor-Outdoor Service Area (Patio)	79.00
424.02	Gas Stations	104.00

(b) ENFORCEMENT LEVEL 2

Chapter/Section		
No.	License Description	Fee
320.03	Bituminous Contractor	\$194.00
322.02(a)	Pool Halls	194.00
322.02(b)	Bowling Centers	194.00
326.06	Building Contractors	194.00
327.03	Laundry/Dry Cleaning Plants	194.00
332.03	Fuel Dealers—Liquid	194.00
333.03	Fuel Dealers—Solid	194.00
334.03	Pest Control	194.00
338.02	House Sewer Contractors	194.00
342.02	Bulk Oil Storage	194.00
347.03	Pet Shop	194.00
352.03	Rental of Trailers	194.00
355.02	Secondhand Dealer—Exhibitions	194.00
356.02	Sidewalk Contractors	194.00
362.02	Tree Trimming (with One Vehicle)	194.00
364.02	Veterinary Hospital	194.00
365.02	Window Cleaning	194.00
401.02	Motorcycle Dealer	194.00
405.02	Dance or Rental Hall	297.00
406.04	Game Room	194.00
408.03	Recycling Collection Center	194.00

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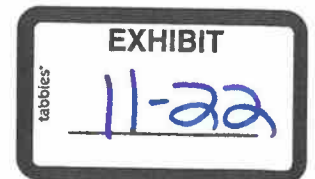
415.04	Theaters and Movie Theaters	194.00
416.03	Motion Picture Drive-in Theater	194.00
426.04	Cabaret (Class A and B)	194.00

(c) ENFORCEMENT LEVEL 3

Chapter/Section		
No.	License Description	Fee
225.04(a)	Firearms	\$375.00
324.04	Cigarettes	495.00
354.02	Sanitary Disposal Vehicle	375.00
355.02	Secondhand Dealer-Multiple Dealers	375.00
357.03	Solid Waste Hauler and Vehicle	375.00
360.03	Public Swimming Pools	375.00
360.03	Whirlpools	375.00
361.13	Tow Truck/Wrecker Operator	375.00
383.03	Vehicle Immobilization Service	375.00
376.04	Taxicabs	434.00
376.05	Taxicabs (Reciprocity Event)	34.00
379.02	Short-term Rental Platform License	10,353.00
379.02	Short-term Rental Host License	42.00
381.02(d)	Currency Exchanges	375.00
401.02	New Motor Vehicle Dealer	375.00
401.02	Secondhand Dealer Motor Vehicle Parts	469.00
401.02	Secondhand Motor Vehicle Dealer	469.00
407.03	Hotel/Motel—To 50 rooms	375.00
407.03	Hotel—Each additional room over 50	13.00
409.07.1(a), 410.04(c)	Liquor—Extension of Service Hours	375.00
412A.03	Massage Center—Adult	375.00
412A.03	Environmental Plan Review Massage Center Adult	413.00
413.04	Conversation/Rap Parlor (A and B)	375.00
415.04	Mini-Motion Picture Theater—Adult	375.00
417.04	Parking Lots and Parking Garages	375.00
417.04	Parking Garages (Government)	0.00
417.04	Parking Garages (Private)	367.00
422.02	Motor Vehicle Salvage Dealer	375.00
423.02(b)	Auto Body Repair Garage	469.00
423.02(a)	Auto Repair Garage	469.00
427.04	Health/Sports Clubs	375.00
427A.04	Health/Sports Club (Adult)	375.00
428.04	Steam Room/Bath House (Class A and B)	375.00
423.02(b)	Auto Body Repair/Painting Shop	469.00

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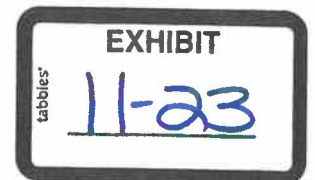


(d) ENFORCEMENT LEVEL 4

Chapter/Section		
No.	License Description	Fee
331A.04	Catering-Limited	\$ 326.00
331A.04	Environmental Plan Review—Catering—Limited	380.00
331A.04	Catering	570.00
331A.04	Environmental Plan Review—Catering	625.00
331A.04	Catering—Add on	250.00
331A.04	Environmental Plan Review—Catering—Add on	380.00
331A.04	Customer Appreciation—Food Sales	55.00
331A.04	Day Care Food	109.00
331A.04	Food Give-Away	55.00
331A.04	Food Processing/Packaging/Distributing	217.00
331A.04	Environmental Plan Review—Food Processing/Packaging/Distributing	380.00
331A.04	Food Vehicle	92.00
331A.04; 363.02(a)	Food Vending Machine	16.00
331A.04: 363.02(a)	Food Vending Machine Operator	136.00
331A.04	Food/Boarding Facility	353.00
331A.04	Environmental Plan Review—Food/Boarding Facility	380.00
331A.04	K—12 School Food Service	217.00
331A.04	Environmental Plan Review — K—12 School Food Service	272.00
331A.04	K—12 School Food Service—Limited	109.00
331A.04	Environmental Plan Review—K—12 School Food Service—Limited	136.00
331A.04	Mobile Food Vehicle	244.00
331A.04	Mobile Food Cart—Limited	110.00
331A.04	Mobile Food Cart—Full	217.00
331A.04	Environmental Plan Review—Restaurant (1)	381.00
331A.04	Environmental Plan Review—Restaurant (2)	381.00
331A.04	Environmental Plan Review—Restaurant (3)	625.00
331A.04	Environmental Plan Review—Restaurant (4)	625.00
331A.04	Environmental Plan Review—Restaurant (5)	625.00
331A.04	Restaurant (D)—Add-On	272.00
331A.04	Environmental Plan Review Restaurant (D) Add-On	381.00
331A.04	Restaurant (D)—Add-on (Bar Only)	109.00
331A.04	Environmental Plan Review Restaurant (D) Add-On (Bar Only)	190.00
331A.04	Restaurant (E)—Extension	164.00
331A.04	Environmental Plan Review—Restaurant (E)—Extension	136.00
331A.04	Environmental Plan Review—Restaurant (L)—Limited	381.00

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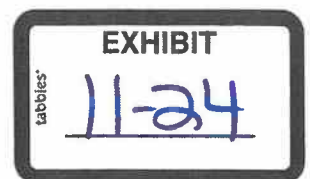
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331A.04	Restaurant (L)—Limited	272.00
331A.04	Restaurant (1)—no seats	435.00
331A.04	Restaurant (2)—1—12	478.00
331A.04	Restaurant (3)—13—50	580.00
331A.04	Restaurant (4)—51—150	631.00
331A.04	Restaurant (5)— 151 and over	673.00
331A.04	Retail Food Establishment (A)—1 to 100 Sq. Ft.	82.00
331A.04	Environmental Plan Review—Retail Food Establishment (A)	136.00
331A.04	Retail Food Establishment (B)—101 to 1000 Sq. Ft.	109.00
331A.04	Environmental Plan Review Retail Food Establishment (B)	272.00
331A.04	Retail Food Establishment (C)—1001 to 3000 Sq. Ft.	408.00
331A.04	Environmental Plan Review Retail Food Establishment (C)	408.00
331A.04	Retail Food Establishment (D)—3001 to 6000 Sq. Ft.	652.00
331A.04	Environmental Plan Review Retail Food Establishment (D)	516.00
331A.04	Retail Food Establishment (E)—6001 to 10,000 Sq. Ft.	978.00
331A.04	Environmental Plan Review Retail Food Establishment (E)	652.00
331A.04	Retail Food Establishment (F)—over 10,000 Sq. Ft.	1,413.00
331A.04	Environmental Plan Review Retail Food Establishment (F)	816.00
331A.04	Retail Food Establishment—Farmers' Market	164.00
331A.04	Retail Food Establishment—Temporary	65.00
331A.04	Retail Food Establishment—Nonprofit	27.00
331A.04	Environmental Plan Review—Retail Food Establishment—Nonprofit	55.00
331A.04	Retail Food Establishment—Secondary Facility	82.00
331A.04	Environmental Plan Review Retail Food Establishment—Secondary Facility	381.00
331A.04	Retail Food Establishment—Restricted Food Service	79.00
331A.04	Special Event Food Sales—1 to 3 days (up to 150 sq. feet)	190.00
331A.04	Special Event Food Sales—4 to 10 days (up to 150 sq. feet)	217.00
331A.04	Special Event Food Sales—Up to 3 events (up to 150 sq. feet)	217.00
331A.04	Special Event Food Sales—late fee	50% of special event food sales fee
331A.04	Special Event Food Sales (Nonprofit) (up to 150 sq. feet)	55.00
331A.04	Special Event Food Sales—Extension (up to 150 sq. feet)	109.00
331A.04	Special Event Food Sales—Each additional 150 square feet portion thereof	25% of special event foods sales fee
331A.04	Special Event Food Sales—Each additional location fee	85.00
331A.04	Nonprofit 1 Day Special Event—1—10 Stands	275.00

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331A.04	Nonprofit 1 Day Special Event—Each Additional 10 Stands or Portion of 10 Stands	275.00
331A.04	Seasonal Temporary Food Stand	244.00

(e) ENFORCEMENT LEVEL 5

Chapter/Section		
No.	License Description	Fee
409.27	2:00 a.m. closing	\$55.00
409.05(i)	Intoxicating Liquor—Fee waived for government agencies	0.00
409.01(c)	Liquor Catering Permit—Annual	178.00
409.02	Off-Sale Microdistillery	190.00
409.05(b)	Liquor Catering Permit—Temporary	55.00
409.05(b)	On-Sale—100 seats or less	4,964.00
409.05(b)	On-Sale—101—180 seats	5,497.00
409.05(b)	On-Sale—181—290 seats	5,889.00
409.05(b)	On-Sale—291 or more seats	5,970.00
409.05(b)	On-Sale—Theater	1,772.00
409.25(b)	Temporary Liquor	55.00
409.05(f)	On-sale Club—Under 200 members	300.00
409.05(f)	On-sale Club—201—500 members	500.00
409.05(f)	On-sale Club—501—1,000 members	650.00
409.05(f)	On-sale Club—1,001—2,000 members	800.00
409.05(f)	On-sale Club—2,001—4,000 members	1,000.00
409.05(f)	On-sale Club—4,001—6,000 members	2,000.00
409.05(f)	On-sale Club—6,000+ members	3,000.00
409.05(h)	Additional family members	57.00
409.02	Brewpub/Off-sale (Growler)	190.00
409.02	Off-Sale Brewery	190.00
409.05	Off-Sale	1,398.00
409.07(b)(2)	Sunday On-Sale	200.00
409.11(b)	Extension of Service Area—Temporary	63.00
410.07(a)(8), 409.15(b)	Wine On-Sale	2,000.00
409.25	Temporary Wine	55.00
409.25	Wine Licenses for Festivals	55.00
409.15(d)	On-Sale Malt (Strong)	659.00
409.28	Brewery Taproom	659.00
409.31	Microdistillery Cocktail Room	659.00
410.02	On-Sale Malt (3.2)	659.00
410.02, 410.11	On-Sale Malt—Fee waived for municipal golf courses	0.00
410.02	Off-Sale Malt	208.00
410.10(a)	Temporary Malt	55.00

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411.03	Entertainment—Class A	257.00
411.03	Entertainment—Class B	622.00
411.03	Entertainment—Class C	2,955.00
411.05	Entertainment Temporary	32.00
409.08	Live Music Event—18 and Up	32.00
409.15(e)	Culinary On-sale	236.00
409.01	Private Event—Restaurant/Liquor Caterer	32.00
409	Small Brewer Off-Sale—128 Ounces License	30.00
409, 410	Temporary World Cup Soccer	250.00 Per event

(f) ENFORCEMENT LEVEL 6

Chapter/Section		
No.	License Description	Fee
329.02	Alarm Permits	\$40.00
317.01	Amusement Rides—Temporary	30.00
106.01(b)	Sidewalk Café—Food Only	37.00
106.01(b)(4)	Sidewalk Café—Liquor	37.00
127.04	Courtesy Benches	24.00
127	Courtesy Benches Transfer	16.00
293.09	Noise Variance	178.00
368.02	Wrecking of Buildings	60.00
369.03	Building Trades Business License	174.00
370.09	Building Trades Certificates of Competency	22.00
370.17	Trade Worker—Tier 1	34.00
370.17	Trade Worker—Tier 2	65.00
278.03	Gambling Hall	412.00
318.02	Mechanical Amusement Device	19.00
318.02	Music Machine	19.00
318.02	Amusement Rides	19.00
318.02	T.V. Units	19.00
344.02(a)	Pawn Shops	2,955.00
344.02(b)	Pawn Shop Billable Transaction Fee	3.00
373	Transportation Network Companies	38,069.00
374.3	Commercial Pedal Car Driver	47.00
374.3	Commercial Pedal Car Vehicle	109.00
374.3	Commercial Pedal Car Business	326.00
375.2(a)	Pedicab Vehicle	105.00
375.2(b)	Pedicab Driver	47.00
376	Taxicab Vehicle—Duplicate Sticker	19.00
376	Taxicab Replacement Vehicle Sticker	52.00
376.05	Taxicab Driver (Reciprocity Event)	33.00
376.16(d)	Taxicab Driver (new)	47.00

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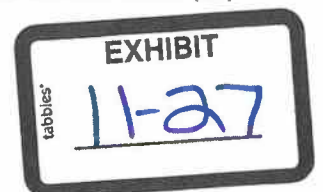
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376.16(i)	Taxicab Driver Renewal	47.00
376	Taxicab Driver Duplicate Identification Card	6.00
376.17(d)	Taxicab Driver (provisional)	47.00
391.02	Soliciting Funds—Tag Days	24.00
402.08	Temporary Gambling (3 types)	55.00
403.03	Bingo Halls	212.00
409.05(g)	Gambling Location	78.00
409.08(11)	Modification of Parking	445.00
359.03	Sound Trucks and Broadcast Vehicles Nonprofit Organizations)	29.00
380.04	Tanning Facility	98.00
380.04	Environmental Plan Review Tanning Facility	178.00
414.02	Massage or Bodywork Practitioner—One Location	98.00
414.02	Massage or Bodywork Practitioner—Each Additional Location	29.00
414.02	Massage Center (Class A)—One practitioner	93.00
412.04	Massage Center (Class A)—Two or more practitioners	243.00
412.04	Therapeutic Massage Practitioner—Temporary	46.00
412.04	Environmental Plan Review Massage Center (Class A)	437.00
412.04	Massage Center (Class B)	98.00
412.04	Environmental Plan Review Massage Center (Class B)	178.00
357.03	Solid Waste Transfer Station	1,771.00
408.03	Recycling Processing Center	887.00
429.03	Infectious Waste Processing Facility	1,771.00
198.04(c)	Keeping of Animal (includes more than three (3) chickens	77.00
198.04(c)	Keeping of Animal—Renewal	28.00
198.04(c)	Tier 1 Chicken Permit	26.00
198.04(c)	Tier 1 Chicken Permit Renewal	16.00
198.04(c)	Tier 2 Chicken Permit	77.00
198.04(c)	Tier 2 Chicken Permit Renewal	28.00
198.04(c)	Keeping of More than Three (3) Cats	77.00
198.04(c)	Keeping of More than Three (3) Cats (Renewal)	28.00
200.03	Dog License—Annual Altered	20.00
200.03	Dog License—Annual Unaltered	81.00
200.03	Dog License—Annual Altered Reduced	10.00
200.03	Dog License—Lifetime (with Microchip, altered)	142.00
200.03	Dog License—Reduced, Lifetime (with Microchip and altered)	71.00
	Dog License—Reduced Rate, Lifetime (with Microchip, unaltered)	34.00
	Declared, Animal (microchip and altered	142.00
	Declared, Animal (microchip and altered	284.00
200.04	Dog License—Replacement	10.00

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200.07	Impounding Fee	36.00
200.02(a)	Unlicensed Dog	59.00
200.121(e)	Dangerous Dog Registration	305.00
200.07	Boarding Fee—Per Day	19.00
	Animal Adoption—St. Paul Resident	51.00
	Rabies Vaccination for impounded dogs, cats, ferrets	30.00
	Microchipping for impounded animals	30.00
	Delinquent License Renewal fee (per month)	5.00
376.17	Taxicab Service Company	422.00

(C.F. No. 92-1742, § 1, 12-8-92; C.F. No. 93-1650, § 1, 12-9-93; C.F. No. 94-201, § 1, 3-16-94; C.F. No. 94-1447, § 1, 12-14-94; C.F. No. 95-519, § 2, 6-7-95; C.F. No. 95-1457, § 1, 1-3-96; C.F. No. 96-391, § 3, 5-8-96; C.F. No. 96-1095, § 1, 10-2-96; C.F. No. 97-912, § 1, 8-20-97; C.F. No. 99-500, § 4, 7-7-99; C.F. No. 99-812, § 1, 9-8-99; C.F. No. 00-457, § 1, 6-7-00; C.F. No. 00-1064, § 1, 12-12-00; C.F. No. 00-1065, § 1, 12-20-00; C.F. No. 01-613, §§ 1, 2, 7-5-01; C.F. No. 01-1244, § 1, 12-26-01; C.F. No. 02-770, § 1, 10-2-02; C.F. No. 1031, § 2, 11-27-02; C.F. No. 03-102, § 2, 3-12-03; C.F. No. 03-694, § 2, 9-3-03; C.F. No. 03-695, § 1, 9-3-03; C.F. No. 03-893, § 2, 11-5-03; C.F. No. 04-670, § 1, 8-4-04; C.F. No. 04-960, § 1, 11-3-04; 04-961, § 1, 11-10-04; C.F. No. 05-631, § 1, 8-10-05; C.F. No. 05-697, § 1, 8-24-05; C.F. No. 06-409, § 1, 5-24-06; C.F. No. 06-574, § 2, 7-26-06; C.F. No. 06-752, § 1, 9-13-06; C.F. No. 06-821, § 2, 9-27-06; C.F. No. 07-149, § 74, 3-28-07; C.F. No. 07-966, § 1, 12-12-07; C.F. No. 07-967, § 1, 12-12-07; C.F. No. 08-382, § 1, 5-14-08; C.F. No. 08-568, § 1, 6-25-08; C.F. No. 08-1009, § 1, 10-8-08; C.F. No. 08-1208, § 2, 12-17-08; C.F. No. 09-478, § 1, 5-27-09; C.F. No. 09-684, § 1, 7-22-09; C.F. No. 09-893, § 1, 10-14-09; C.F. No. 09-987, § 1, 10-14-09; Ord No. 11-56, § 1, 7-13-11; Ord No. 11-63, § 1, 4-25-12; Ord No. 12-24, § 1, 6-13-12; Ord 12-49, § 1, 9-12-12; Ord 12-45, § 1, 10-10-12; Ord 12-83, § 1, 1-9-13; Ord 13-1, § 1, 1-23-13; Ord 13-31, § 1, 5-22-13; Ord 13-34, § 1, 6-26-13; Ord 14-33, § 1, 8-27-14; Ord 14-40, § 1, 12-3-14; Ord 15-29, § 7, 5-27-15; Ord 15-65, § 1, 12-2-15; Ord 16-9, 4-20-16; Ord 16-16, § 2, 7-27-16; Ord 16-66, § 1, 1-4-16; Ord 17-47, § 1, 10-25-17; Ord 17-53, § 1, 11-8-2017; Ord 17-25, § 1, 8-2-17; Ord 18-65, § 1, 1-9-19; Ord 18-68, § 2, 1-9-19; Ord 19-78, § 1, 1-8-20; Ord 20-5, § 1, 2-20-20; Ord 21-65, § 2, 12-22-21; Ord 22-35, § 2, 8-3-22)

Sec. 310.19. Discount from certain license fees.

- (a) A discount will be provided for on-sale and off-sale liquor licenses, on-sale and off-sale 3.2 malt liquor licenses and on-sale strong beer and wine licenses. Such fees mentioned shall be reduced seven (7) percent, contingent upon each of the following conditions:
 - (1) *Driver's license guide; compilation of laws.* The licensee shall maintain on the premises, in a location accessible at all times to all employees of the licensed establishment:
 - a. A current driver's license guide, which shall include license specifications for both adults and minors for each state (including Canadian provinces), and shall list such information from at least five (5) years prior to the present date; and
 - b. A current compilation of the laws relating to the sale and possession of alcoholic beverages in the state as outlined in Chapter 7515 of the State of Minnesota Rules and Minn. Stat. Ch. 340A. This compilation must also include chapters 240 through 246, 409 and 410 of the Saint Paul Legislative Code.
 - (2) *Signage.* The licensee shall maintain on the premises, in all customer areas, current signage relating to underage consumption of alcoholic beverages, and relating to driving under the influence of alcohol. One (1) sign must be located behind the bar, and one (1) sign must be present in each additional room or section within the lounge area in which the writing on the sign behind the bar is not clearly legible.



The sign(s) must have dimensions of at least one (1) foot by one (1) foot with letters at least one-half (½) inch in height. All signs must be comfortably readable from a distance of fifteen (15) feet.

(3) *Contract with security agency.*

- a. *Generally.* The licensee shall participate in a training program with an approved private security agency, firm or association (hereafter "security agency") which is selected and contracts with the city for the purpose of providing investigations and training to the licensee pursuant to this subsection. The city contract shall provide (i) that the security agency shall not be reimbursed by the city, but that it shall recover its costs and profit by fees collected from the licensees which choose to receive the training program and investigative services, and (ii) that the security agency shall charge the same amount to all licensees who choose to receive such services, so that all such licensees are treated equally and without discrimination.
- b. *Investigation.* The contract with the city shall provide for and require one (1) or more investigations by the security agency each calendar year into the practices of the licensee with respect to (i) age identification of customers in order to prevent sales of alcoholic beverages to minors, and (ii) preventing the sale of alcoholic beverages to persons who are obviously intoxicated. The contract shall require that the security agency disclose the results of all such investigations to both the licensee and, at no cost to the city, to the department, within ten (10) days after such investigations are concluded. Failure to do so will be grounds for adverse action against the licensee's licenses. The contract shall require that all such investigations shall include unannounced and random attempts by minors to purchase alcoholic beverages in the licensed premises, and surveillance within the licensed premises. The security agency shall employ reasonable measures to minimize or eliminate conflicts of interest in providing and reporting on investigations of licensees.
- c. *Training.* The contract shall also provide for alcohol awareness training by the security agency of all officers, employees or agents of the licensee who work in the licensed premises at least once during the calendar year. All newly hired employees or new officers or agents hired during the calendar year shall receive such training within four (4) weeks following their hiring, and shall not work in the premises after that four-week period until they have received such training.
- d. *Standards for approval.* In addition to the requirements specified elsewhere in this subsection, the security agency and its investigations and training must meet or exceed the following:
 1. The alcohol awareness course shall cover all of the topics listed herein. The content of each training course shall include, but need not be limited to:
 - (a) Pertinent laws and ordinances regarding the sale of alcohol.
 - (b) Verification of age, forms of identification, and forms of false or misleading age identification.
 - (c) The effect of alcohol on humans and the physiology of alcohol intoxication.
 - (d) Recognition of the signs of intoxication.
 - (e) Strategies for intervention to prevent intoxicated persons from consuming further alcohol.
 - (f) The licensee's policies and guidelines, and the employee's role in observing these policies.
 - (g) Liability of the person serving alcohol.
 - (h) Effect of alcohol on pregnant women and their fetuses, and in other vulnerable situations.

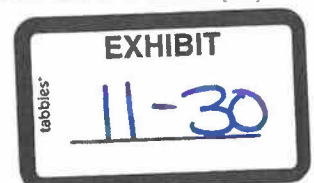


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- (i) Training available in languages other than English that are spoken by the license holders and/or the license holders employees.
2. The security agency shall have a minimum of two (2) years actual experience in alcohol awareness training. The courses may be given by one (1) or more instructors, but each instructor must have a formal education and/or training in each area they teach. The courses may be supplemented by audio-visual instruction.
3. The security agency shall have sufficient personnel and physical resources to provide an alcohol awareness training course to newly hired employees within four (4) weeks after their hiring by the licensee with whom there is a contract. The cost covering the training and investigation service provided to license holders shall be identified and charged equally to each participant.

The (7) seven percent shall be applied to the following licenses:

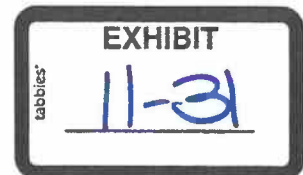
Brew pub
Off-sale brewery
Liquor catering permit
On-sale—Over 200 seats
On-sale—Over 100 seats
On-sale—100 seats or less
On-sale club—Under 200 members
On-sale club—201—500 members
On-sale club—501—1,000 members
On-sale club—1,001—2,000 members
On-sale club—2,001—4,000 members
On-sale club—4,001—6,000 members
On-sale club—6,000+ members
On-sale extended service hours
On-sale theatre
Off-sale
Sunday on-sale
Liquor—Outdoor service area
Wine on-sale
On-sale malt (strong)
On-sale malt (3.2)
Off-sale malt

- (b) A discount will be provided for restaurant and catering licenses issued under Chapter 331A. Such fees shall be reduced seven (7) percent, contingent upon each of the following conditions:



-
- (1) The licensee shall employ a person in charge, who, in the absence of the certified food manager, shall be on duty at all times and who can demonstrate that he/she have viewed a video concerning food allergies. The video presentation shall be provided by and will be viewed at the department of safety and inspections. If the person in charge leaves the licensee's employment, the establishment will have two months to either:
- a. Have the new person in charge view the video on food allergy at a presentation by the department of safety and inspection; or
 - b. If there is no presentation within two months of that person being hired, ensure that the new person in charge is registered for the next available video presentation.
- (2) Allergic customer alert process. The licensee shall produce a written procedure to alert all employees of an allergic customer. That policy shall, at a minimum, require that once a customer has notified any employee of an allergy to particular food item(s) or group(s), the establishment shall notify the above-referenced person in charge or certified food manager, and all employees who may handle any food item served to that customer of the food allergy.

(C.F. No. 94-1447, § 2, 12-14-94; C.F. No. 00-237, § 1, 4-5-00; C.F. No. 01-1260, § 1, 12-26-01; C.F. No. 02-107, 3-6-02; C.F. No. 04-1093, § 1, 12-15-04; C.F. No. 06-821, § 3, 9-27-06; C.F. No. 07-149, § 75, 3-28-07; C.F. No. 09-1290, § 1, 12-9-09)



Chapter 324. Tobacco

Sec. 324.01. License required.

- (a) No person shall sell or offer for sale at retail within the city any licensed product or in any manner represent or hold himself or herself out as one who sells or offers for sale at retail any licensed product or maintain a tobacco vending machine for the sale of licensed products without a license from the city.
- (b) A tobacco vending machine may be located in a public accommodation, provided that:
- (1) All tobacco vending machines shall be operable only by the activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of a token provided to the purchaser by an employee of the licensee;
 - (2) Any machine shall be located in the immediate vicinity, plain view and control of a responsible employee so that all purchases will be readily observable by that employee. The tobacco vending machine shall not be located in a coatroom, restroom, unmonitored hallway, outer waiting area or similar unmonitored areas. The tobacco vending machine shall be inaccessible to the public when the establishment is closed;
 - (3) Any tobacco vending machine shall have posted on or near it a sign with the statement, in letters at least one-half ($\frac{1}{2}$) inch high, "The sale of tobacco products or electronic delivery devices to persons under twenty-one is prohibited."
- (c) Any license issued pursuant to this chapter shall be issued to the person, firm or corporation that operates the principal business at that address. Each vending machine shall be required to have a separate license.
- (d) No license may be issued pursuant to this chapter for a location or place of sale if a tobacco license previously issued for that location or place of sale has been revoked for any reason other than nonpayment of license fees within the past five (5) years.

(Code 1956, § 366.02; Ord. No. 17714, § 1, 2-20-90; C.F. No. 94-341, § 1, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-12, § 1, 4-22-15; Ord 15-57, § 1, 1-6-16; Ord 19-57, § 1, 10-16-19; Ord 21-29, § 2, 11-3-21)

Sec. 324.02. License for each location or vending machine.

A license shall permit the licensee to sell licensed products at retail at the one (1) location specified in said license, and a separate license shall be required for each location or tobacco vending machine.

(Code 1956, § 366.05; C.F. No. 94-341, § 2, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-57, § 1, 1-6-16; Ord 21-29, § 3, 11-3-21)

Sec. 324.03. Definitions.

The following words and phrases, as used in this chapter, will, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those cases where the context clearly indicates a different meaning:

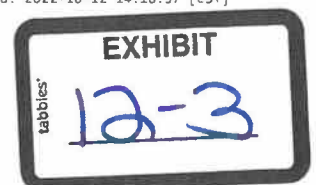


- (1) *Cigar* means any roll of tobacco that is wrapped in tobacco leaf, or in any other substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minn. Stats. § 297F.01, subd. 3, as may be amended from time to time.
- (2) *Cigarette* means and includes any roll for smoking, made wholly or in part of tobacco, irrespective of size and shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except whole tobacco leaf, and includes any cigarette as defined in Minn. Stats. § 297F.01, subd. 3.
- (3) *Drug paraphernalia* means drug paraphernalia as defined in Saint Paul Legislative Code Section 255.01.
- (4) *Electronic delivery device* means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (5) *Flavored product* means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product or device is a flavored product.
- (6) *Licensed products* means collectively any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.
- (7) *Nicotine or lobelia delivery product* means any product containing or delivering nicotine or lobelia, whether natural or synthetic, intended for human consumption, or any part of such a product, that is not a tobacco product or an electronic delivery device, as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (8) *Non-discounted price* means the higher of the price listed for licensed products on a package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the sale price.
- (9) *Price reduction instrument* means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, not included in the non-discounted price, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.
- (10) *Sale* means and includes any transfer, conditional or otherwise, of title or possession.



-
- (11) *Sale at retail* means and includes all sales except those where the merchandise is sold for the purpose of resale by a person principally engaged in selling merchandise for resale.
- (12) *Snuff* means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.
- (13) *Snus* means any smokeless tobacco product marketed and sold as snus, and sold in ready-to-use pouches or loose as a moist powder.
- (14) *Tobacco or tobacco product* means 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, cigarettes, cigars, little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snus, snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
- (15) *Tobacco license* means either a tobacco shop or a tobacco products shop license.
- (16) *Tobacco shop license* means a license issued to a person, firm, or corporation for an establishment that:
- a. May offer for sale licensed products which are accessible to the public only with the intervention of a store employee; and,
 - b. May allow persons who are under the age of twenty-one (21) to enter the establishment; and
- (17) *Tobacco products shop license* means a license issued to a person, firm, or corporation for an establishment that:
- a. Must derive at least ninety (90) percent of its revenue from the sale of licensed products;
 - b. Must prohibit persons who are under the age of twenty-one (21) from entering the establishment;
 - c. Must be accessible only through a door opening directly to the outside; and
 - d. Must be staffed by at least one individual solely dedicated to the tobacco products shop during all operating hours.
- (18) *Tobacco-related devices* means cigarette papers, 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 vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.
- (19) *Tobacco vending machine* means a machine for vending licensed products by the insertion of money, tokens, or other form of payment.

(Code 1956, § 336.01; C.F. No. 94-341, § 3, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 10-1014, § 1, 10-13-10; Ord 13-8, § 1, 4-24-13; Ord 14-34, § 1, 8-27-14; Ord 15-57, § 1, 1-6-16; Ord 17-28, § 1, 11-1-17; Ord 21-29, § 4, 11-3-21)



Sec. 324.04. Fee, duration, limitation on number of licenses.

- (a) *License fee, duration.* The annual license fee for each license issued under this chapter will be established by ordinance as specified in section 310.09(b) of the Legislative Code. Each license will expire one (1) year from the date of issuance during each calendar year. The annual license fee will be prorated for licenses in force less than a full year.
- (b) *Limitation on number of licenses and location.*
 - (1) The total number of tobacco shop licenses issued under this chapter will not exceed one hundred fifty (150). The total number of tobacco products shop licenses issued under this chapter will not exceed twenty-five (25). Establishments or locations holding either tobacco shop or tobacco product shop licenses on July 31, 2021, or with an application of a license pending on July 31, 2021, that is ultimately granted will not be affected by this limitation but will be entitled to have such licenses renewed or new license granted, subject to the following conditions:
 - a. The establishment or location is in compliance with all other requirements of law and there exist no grounds for adverse actions against such licenses;
 - b. The previous license has not terminated or expired more than one (1) year before the new license had been first applied for;
 - c. A previous license has not been revoked by the council.
 - (2) No tobacco license may be issued to a person, firm, or corporation for any establishment located within one-half mile (2,640 feet) of another establishment possessing a tobacco license. Said one-half mile being calculated and computed as the distance measured from the property line of the premises or building proposed as the location for the tobacco license to the property line of any other tobacco license.

(Code 1956, § 336.03; Ord. No. 17386, § 1, 8-19-86; C.F. No. 92-1930, § 1, 1-14-93; C.F. No. 94-341, § 4, 4-13-94; C.F. No. 95-1271, § 1, 11-8-95; C.F. No. 97-314, § 1, 4-20-97; Ord 18-19, § 1, 6-27-18; Ord 21-29, § 5, 11-3-21)

Sec. 324.05. Application.

In addition to any other information required by the director, the applicant must state the true name of the applicant, the name under which he or she will conduct his or her business, whether such business is that of an individual, sole trader, firm, partnership, or corporation, and the address where such business is to be conducted. Any person applying for more than one (1) license must file with the department of safety and inspections a list of all locations for which license applications are being filed. Any change in the location of the place of sale will require a new license application.

(Code 1956, § 336.04; C.F. No. 94-341, § 5, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 07-149, § 81, 3-28-07; Ord 21-29, § 6, 11-3-21)

Sec. 324.06. License to be displayed.

The license shall be displayed by the licensee in a prominent and conspicuous place at the licensed location. In the case of a tobacco vending machine, the operator shall also affix his or her name, address and telephone number in a conspicuous place on each machine.

(Code 1956, § 336.06; C.F. No. 94-341, § 6, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-57, § 1, 1-6-16)

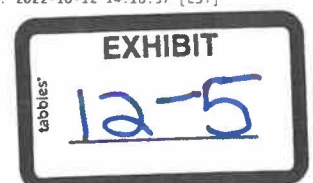
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Sec. 324.07. Sales prohibited.

- (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. 324.08. Distribution of free products prohibited.

No person shall distribute any tobacco products free to any person on the sidewalks, pedestrian concourses, pedestrian malls or pedestrian skyway systems within the city.

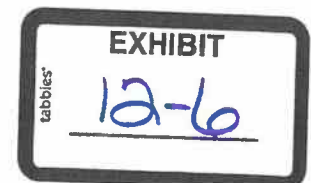
(Code 1956, § 336.08; Ord. No. 17714, § 1 2-20-90; C.F. No. 92-1930, § 2, 1-14-93; C.F. No. 94-341, § 8, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-57, § 1, 1-6-16; Ord 21-29, § 8, 11-3-21)

Sec. 324.09. Reserved.

Editor's note(s)—Ord 21-29, § 9, adopted November 3, 2021, repealed § 324.09. Former § 236.09 pertained to the use of false identification by minors is prohibited and derived from Ord. No. 17733, § 1, adopted May 8, 1990; C.F. No. 94-341, § 9, adopted April 13, 1994; C.F. No. 97-314, § 1, adopted April 20, 1997; Ord 13-8, § 3, adopted April 24, 2013; Ord 15-57, § 1, adopted January 6, 2016; and Ord 19-57, § 3, adopted October 16, 2019.

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; <ul style="list-style-type: none"> • 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.



Tobacco Ordinance





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

ACKNOWLEDGEMENT OF RECEIPT
CITY OF SAINT PAUL'S TOBACCO ORDINANCE

I acknowledge that I was given a copy of the City of Saint Paul's Legislative code 324, 295 & 65.535 of the Tobacco ordinance and & State Statutes 461.21, by the Department of Safety and Inspections (DSI).

The below signed license holder/applicant understands that he/she is responsible for reading, understanding and complying with the information contained therein for the establishment located at;

Business Address: _____

Doing Business As (DBA): _____

Print Name

Signature

Date



Chapter 324. Tobacco

Sec. 324.01. License required.

- (a) No person shall sell or offer for sale at retail within the city any licensed product or in any manner represent or hold himself or herself out as one who sells or offers for sale at retail any licensed product or maintain a tobacco vending machine for the sale of licensed products without a license from the city.
- (b) A tobacco vending machine may be located in a public accommodation, provided that:
- (1) All tobacco vending machines shall be operable only by the activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of a token provided to the purchaser by an employee of the licensee;
 - (2) Any machine shall be located in the immediate vicinity, plain view and control of a responsible employee so that all purchases will be readily observable by that employee. The tobacco vending machine shall not be located in a coatroom, restroom, unmonitored hallway, outer waiting area or similar unmonitored areas. The tobacco vending machine shall be inaccessible to the public when the establishment is closed;
 - (3) Any tobacco vending machine shall have posted on or near it a sign with the statement, in letters at least one-half (½) inch high, "The sale of tobacco products or electronic delivery devices to persons under twenty-one is prohibited."
- (c) Any license issued pursuant to this chapter shall be issued to the person, firm or corporation that operates the principal business at that address. Each vending machine shall be required to have a separate license.
- (d) No license may be issued pursuant to this chapter for a location or place of sale if a tobacco license previously issued for that location or place of sale has been revoked for any reason other than nonpayment of license fees within the past five (5) years.

(Code 1956, § 366.02; Ord. No. 17714, § 1, 2-20-90; C.F. No. 94-341, § 1, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-12, § 1, 4-22-15; Ord 15-57, § 1, 1-6-16; Ord 19-57, § 1, 10-16-19; Ord 21-29, § 2, 11-3-21)

Sec. 324.02. License for each location or vending machine.

A license shall permit the licensee to sell licensed products at retail at the one (1) location specified in said license, and a separate license shall be required for each location or tobacco vending machine.

(Code 1956, § 366.05; C.F. No. 94-341, § 2, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-57, § 1, 1-6-16; Ord 21-29, § 3, 11-3-21)

Sec. 324.03. Definitions.

The following words and phrases, as used in this chapter, will, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those cases where the context clearly indicates a different meaning:

- (1) *Cigar* means any roll of tobacco that is wrapped in tobacco leaf, or in any other substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minn. Stats. § 297F.01, subd. 3, as may be amended from time to time.
- (2) *Cigarette* means and includes any roll for smoking, made wholly or in part of tobacco, irrespective of size and shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which



is made of paper or any other substance or material except whole tobacco leaf, and includes any cigarette as defined in Minn. Stats. § 297F.01, subd. 3.

- (3) *Drug paraphernalia* means drug paraphernalia as defined in Saint Paul Legislative Code Section 255.01.
- (4) *Electronic delivery device* means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (5) *Flavored product* means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product or device is a flavored product.
- (6) *Licensed products* means collectively any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.
- (7) *Nicotine or lobelia delivery product* means any product containing or delivering nicotine or lobelia, whether natural or synthetic, intended for human consumption, or any part of such a product, that is not a tobacco product or an electronic delivery device, as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (8) *Non-discounted price* means the higher of the price listed for licensed products on a package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the sale price.
- (9) *Price reduction instrument* means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, not included in the non-discounted price, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.
- (10) *Sale* means and includes any transfer, conditional or otherwise, of title or possession.
- (11) *Sale at retail* means and includes all sales except those where the merchandise is sold for the purpose of resale by a person principally engaged in selling merchandise for resale.
- (12) *Snuff* means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.
- (13) *Snus* means any smokeless tobacco product marketed and sold as snus, and sold in ready-to-use pouches or loose as a moist powder.
- (14) *Tobacco or tobacco product* means 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, cigarettes, cigars, little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snus, snuff; snuff

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(Supp. No. 119, Update 2)



flour; cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

- (15) *Tobacco license* means either a tobacco shop or a tobacco products shop license.
- (16) *Tobacco shop license* means a license issued to a person, firm, or corporation for an establishment that:
- May offer for sale licensed products which are accessible to the public only with the intervention of a store employee; and,
 - May allow persons who are under the age of twenty-one (21) to enter the establishment; and
- (17) *Tobacco products shop license* means a license issued to a person, firm, or corporation for an establishment that:
- Must derive at least ninety (90) percent of its revenue from the sale of licensed products;
 - Must prohibit persons who are under the age of twenty-one (21) from entering the establishment;
 - Must be accessible only through a door opening directly to the outside; and
 - Must be staffed by at least one individual solely dedicated to the tobacco products shop during all operating hours.
- (18) *Tobacco-related devices* means cigarette papers, 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 vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.
- (19) *Tobacco vending machine* means a machine for vending licensed products by the insertion of money, tokens, or other form of payment.

(Code 1956, § 336.01; C.F. No. 94-341, § 3, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 10-1014, § 1, 10-13-10; Ord 13-8, § 1, 4-24-13; Ord 14-34, § 1, 8-27-14; Ord 15-57, § 1, 1-6-16; Ord 17-28, § 1, 11-1-17; Ord 21-29, § 4, 11-3-21)

Sec. 324.04. Fee, duration, limitation on number of licenses.

(a) *License fee, duration.* The annual license fee for each license issued under this chapter will be established by ordinance as specified in section 310.09(b) of the Legislative Code. Each license will expire one (1) year from the date of issuance during each calendar year. The annual license fee will be prorated for licenses in force less than a full year.

(b) *Limitation on number of licenses and location.*

(1) The total number of tobacco shop licenses issued under this chapter will not exceed one hundred fifty (150). The total number of tobacco products shop licenses issued under this chapter will not exceed twenty-five (25). Establishments or locations holding either tobacco shop or tobacco product shop licenses on July 31, 2021, or with an application of a license pending on July 31, 2021, that is ultimately granted will not be affected by this limitation but will be entitled to have such licenses renewed or new license granted, subject to the following conditions:

- The establishment or location is in compliance with all other requirements of law and there exist no grounds for adverse actions against such licenses.
- The previous license has not terminated or expired more than one (1) year before the new license had been first applied for.
- A previous license has not been revoked by the council.



- (2) No tobacco license may be issued to a person, firm, or corporation for any establishment located within one-half mile (2,640 feet) of another establishment possessing a tobacco license. Said one-half mile being calculated and computed as the distance measured from the property line of the premises or building proposed as the location for the tobacco license to the property line of any other tobacco license.

(Code 1956, § 336.03; Ord. No. 17386, § 1, 8-19-86; C.F. No. 92-1930, § 1, 1-14-93; C.F. No. 94-341, § 4, 4-13-94; C.F. No. 95-1271, § 1, 11-8-95; C.F. No. 97-314, § 1, 4-20-97; Ord 18-19, § 1, 6-27-18; Ord 21-29, § 5, 11-3-21)

Sec. 324.05. Application.

In addition to any other information required by the director, the applicant must state the true name of the applicant, the name under which he or she will conduct his or her business, whether such business is that of an individual, sole trader, firm, partnership, or corporation, and the address where such business is to be conducted. Any person applying for more than one (1) license must file with the department of safety and inspections a list of all locations for which license applications are being filed. Any change in the location of the place of sale will require a new license application.

(Code 1956, § 336.04; C.F. No. 94-341, § 5, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 07-149, § 81, 3-28-07; Ord 21-29, § 6, 11-3-21)

Sec. 324.06. License to be displayed.

The license shall be displayed by the licensee in a prominent and conspicuous place at the licensed location. In the case of a tobacco vending machine, the operator shall also affix his or her name, address and telephone number in a conspicuous place on each machine.

(Code 1956, § 336.06; C.F. No. 94-341, § 6, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-57, § 1, 1-6-16)

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 (l), 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. 324.08. Distribution of free products prohibited.

No person shall distribute any tobacco products free to any person on the sidewalks, pedestrian concourses, pedestrian malls or pedestrian skyway systems within the city.

(Code 1956, § 336.08; Ord. No. 17714, § 1 2-20-90; C.F. No. 92-1930, § 2, 1-14-93; C.F. No. 94-341, § 8, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-57, § 1, 1-6-16; Ord 21-29, § 8, 11-3-21)



Sec. 324.09. Reserved.

Editor's note(s)—Ord 21-29, § 9, adopted November 3, 2021, repealed § 324.09. Former § 236.09 pertained to the use of false identification by minors is prohibited and derived from Ord. No. 17733, § 1, adopted May 8, 1990; C.F. No. 94-341, § 9, adopted April 13, 1994; C.F. No. 97-314, § 1, adopted April 20, 1997; Ord 13-8, § 3, adopted April 24, 2013; Ord 15-57, § 1, adopted January 6, 2016; and Ord 19-57, § 3, adopted October 16, 2019.

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; <ul style="list-style-type: none"> • 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.

Chapter 295. - Sale of Imitation Tobacco Products and Novelty Lighters

Sec. 295.01. - Purpose and findings of fact.

The city council finds that:

Studies in journals such as BMJ (formerly British Medical Journal), Pediatrics, and Preventive Medicine have demonstrated that candy cigarettes and other imitation tobacco products predispose children to use tobacco later in life by desensitizing them and promoting tobacco use as culturally or socially acceptable. One such study concluded that 22% of adults who had regularly consumed candy cigarettes were regular or former smokers, compared with only 12% of adults who had never consumed candy cigarettes.

The World Health Organization's Framework Convention on Tobacco Control, which has been ratified by more than 160 countries which represent 85% of the world's population, lists the prohibition of "the manufacture and sale of sweets, snacks, toys or any other objects in the form of tobacco products which appeal to minors" as an effective legislative measure that discourages youth tobacco use.

Several countries, including Australia, Canada, Finland, Kuwait, Norway, Saudi Arabia, Thailand, and the United Kingdom have prohibited the sale of candy cigarettes. Several national retailer chains, including Conoco-Phillips, CVS, Exxon-Mobil, and Wal-Mart have agreed not to sell candy cigarettes and/or other imitation tobacco products.

Internal tobacco company documents disclosed as part of Minnesota's 1998 tobacco settlement reveal that tobacco manufacturers consented to the use of their trademarks by candy cigarette manufacturers in the



hopes that such products would encourage children to become smokers. Tobacco companies viewed candy cigarettes as "effective advertising for future smokers."

Under the terms of the 1998 Master Settlement Agreement between 46 states and the largest tobacco manufacturers, the manufacturers agreed not to oppose the passage of any state or local legislative proposals "intended by their terms to reduce youth access ... to tobacco products." A specific example of such a proposal is "limitations on non-tobacco products which are designed to look like tobacco products, such as bubble gum cigars, candy cigarettes, etc."

Sec. 295.02. - Definitions.

(a) *Imitation tobacco product* means either: any edible non-tobacco product designed to resemble a tobacco product; or any non-edible non-tobacco product designed to resemble a tobacco product that is intended to be used by children as a toy.

Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic cigarette is not an imitation tobacco product.

(b) *Novelty lighter* means a mechanical or electrical device typically used for lighting cigarettes, cigars or pipes that is designed to appear to be a toy, has entertaining audio or visual effects, or that resembles, in physical form or function, articles commonly recognized as appealing to or intended for use by children. Examples of novelty lighters include, but are not limited to, lighters that resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food or beverages, or that play musical notes or have flashing lights or other entertaining features.

Sec. 295.03. - Prohibitions.

No person shall sell or offer for sale any imitation tobacco product or novelty lighter within the city. No licensed establishment shall give away any imitation tobacco product or novelty lighter within the city.

This section shall not apply to cigarette lighters that were made before January 1, 1980, or that are considered to be collectable items.

Sec. 295.04. - Violations and penalties.

- (a) It is a violation for any person to fail to comply with the requirements of this chapter.
- (b) Penalties. Failure to comply with the requirement of this chapter shall be a basis for adverse action under Saint Paul Legislative Code § 310.06.
- (c) A violation of any provision of this chapter shall be a misdemeanor.

Sec. 295.05. - Severability and savings clause. If any portion of this chapter, or its application to any circumstances, is held invalid, the remaining portions shall be considered severable, and shall be given effect to the maximum effect possible.



ZONING

Sec. 65.535. - Tobacco products shop.

A retail establishment with a principal entrance door opening directly to the outside that derives more than ninety (90) percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, electronic cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

Standards and conditions:

- (b) In the BC community business (converted) and T2 traditional neighborhood districts, a conditional use permit is required for tobacco products shops with a floor area greater than two thousand five hundred (2,500) square feet.

STATE STATUTES

461.21 KIOSK SALES PROHIBITED.

No person shall sell tobacco, tobacco-related devices, or electronic delivery devices as defined in section [609.685, subdivision 1](#), or nicotine or lobelia delivery products as described in section [609.6855](#), from a moveable place of business. For the purposes of this section, a moveable place of business means any retail business whose physical location is not permanent, including, but not limited to, any retail business that is operated from a kiosk, other transportable structure, or a motorized or nonmotorized vehicle.

History: [2014 c 291 art 6 s 32](#)





Dutch Masters

Sweet Fusion Red 4.50 × 28 DMSF99

★★★★☆ 1 Review

Dutch Masters Sweet Fusion Red cigars are mellow smokes from one of the most famous names in machine made cigars. Sweet Fusion combines the classic, mellow and smooth Dutch Masters tobacco flavors with a tapestry of delicious fruits that will appeal to just about every flavor infused cigar fan.



These tasty treats are available in affordable packs of 30, with two cigars in each foil fresh pack.



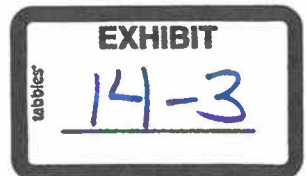


American Spirit Perique Black Box

Grown only in St. James Parish, Louisiana, the robust flavor of Perique tobacco is crafted with our American Spirit Blend to provide a 100% additive-free natural cigarette unlike any other. First cultivated by Choctaw and Chickasaw Indians more than 400 years ago, the Perique tradition has been carried down through generations. The distinct qualities of Perique don't just come from a rare variety of tobacco, but traditional farming methods and skillful processing techniques along with a year's aging in oak barrels. These practices, honed over centuries, still rely on one timeless tool: hands. Skilled workers are integral to every step of the process, from harvesting the mature tobacco to de-stemming the aged leaves. This dedication to quality and craftsmanship combined with a unique blend creates the distinctive rich, robust taste found in our Black pack.

REQUEST ADDITIONAL INFORMATION

SHARE  





Perique



Perique is a type of tobacco from Saint James Parish, Louisiana, known for its strong, powerful, and fruity aroma. When the Acadians made their way into this region in 1776, the Choctaw and Chickasaw tribes were cultivating a variety of tobacco with a distinctive flavor.



The Black & Mild Wine features the same combination of Black Cavendish and Virginia tobaccos as the Original, but with a **sweet taste of red wine** added to create a unique flavor profile. The Black & Mild Select cigar is a sweet, smooth smoke with a slightly fruity aftertaste.





MIDDLETON'S BLACK & MILD CASINO BOX OF 25 CIGARS

\$18.99

★★★★★ 1 review

− 1 + Add to cart

The best cigars come from a place that manufactures pipe tobacco that is perfectly cured, comprised of the highest in quality dark Virginia and Black Cavendish tobacco leaves. The spirit of the 1960s when John Middleton's commenced the manufacturing of these fine cigars still lingers, for their perfect homogenized tobacco leaves that comprise their wrapper and binder still make their presence known, greatly prevailing over the competition. With flavors of cocoa, spice and dark chocolate, this product greatly appeals to those that wish to top off their full course meal with something that'll do the perfect job replacing dessert. Each **Black & Mild Casino** cigar comes in the dimensions of 5 x30, TOBACCO STOCK features this product with both plastic tips and wood tips accordingly. Conveniently packaged into **boxes of 25** cigars, Middleton's has done an amazing job with the preservation of the integrity of each cigar.



BLACK AND MILD FLAVORS

THE HISTORY, NUMEROUS VARIETIES AND EXOTIC FLAVORS OF BLACK & MILD CIGARS

Black and Mild is a pipe tobacco **cigar brand** that manufactures all kinds of cigars and cigarillos. A wide variety of cigar versions and *flavors of Black and Milds* has made the brand extremely popular among smokers in America.

With so many **tobacco products** on the market, each of them have their own dedicated fans. Many smokers stick mainly to smoking cigars, cigarillos, cigarettes, or even pipes. As the oldest traditional form of consuming tobacco, pipe smoking is slowly becoming replaced with modern, more convenient ways of smoking. However, many middle-aged and older admirers still prefer lighting a pipe instead of a stogie.

The Black & Mild cigars are machine-made **pipe tobacco cigars** that were the result of an experiment by the **John Middleton** Company. They were eager to create a brand-new product for those who enjoy smoking a pipe yet do not have the time to do so during the day. Besides, pipe smoking isn't just about the enjoyment – it also involves cleaning, filling, tamping the pipe, which is quite time-consuming and, frankly, pretty annoying. So, people at John Middleton wanted to come up with a cigar that would be as flavorful and aromatic as a pipe but wouldn't require all that faff.

HISTORY OF THE BLACK & MILD BRAND

Indeed, the Black & Mild cigar wasn't the first product manufactured by the company. Its roots go back to 1856 when "Middleton" was a famous name among **pipe tobaccos**. A small shop in **King of Prussia**, Pennsylvania, owned by John Middleton himself, used to sell all sorts of cigars and pipes that were so popular back then. John was more than just a great entrepreneur – he loved to experiment with tobacco flavors and blends, always surprising his customers.

However, the John Middleton company never intended to make a revolutionary tobacco product that would blow smokers' minds. They focused on the quality of their products and their consumers' satisfaction, rather than always being first at everything. So, the business grew steadily, without making much noise or commotion, up until the 1960s.



In 1968, tobacco smoking was widely accepted worldwide, and a cigar or cigarette was a sign of one's class and status. The folks at John Middleton realized that many smokers were actually willing to try a pipe to get the magnificent aroma that regular cigs could not provide them with. Eventually, someone got an idea to create a cigar reminiscent of the real pipe-smoking experience.

Still, there was no goal to make a breakthrough in the tobacco industry. It was just another experiment with blends and flavors that the company had become famous for a century before.

The experiment was quite challenging since pipe tobacco and cigar leaf come from different parts of the world. Pipe tobacco is cultivated pretty much everywhere, from North to South. The largest producers of tobacco are China, India, and Brazil. From climate to climate, pipe tobacco varies in thickness, texture, and taste, and that is what makes blend experiments never-ending yet so exciting!

Cigar leaves, on the other hand, are primarily produced in Central America, where the tropical climate provides ideal conditions to grow thick, bountiful plants.

So, after multiple attempts, the company came up with the perfect tobacco blend, tucked it into the **homogenized wrapper**, added a white plastic tip, and created the revolutionary cigar with the tremendous flavor and strength of a top-quality pipe. The revolutionary blend consists of a mix of Cavendish, thick-cubed Burley from Kentucky, and some of the best **golden Virginia** tobaccos. All of these provide the smooth pipe tobacco aroma and flavor.

Since then, **Black & Mild cigars** have been widely smoked both by cigar smokers and pipe smokers. The latter finally got the chance to enjoy their favorite tobacco product without wasting their time dealing with the pipe. At the same time, stogie admirers finally had an opportunity to try even more robust, deeper-flavored cigars they could smoke on the go. By the mid-90s, the cigar had become the most popular cigar in the US, and it is still considered one of the top-selling products on the market. In 1997, the company opened a second production facility in Limerick, PA, to manufacture Black & Mild cigars.

After the success of their invention, the John Middleton company didn't stop there. They kept on experimenting and began to expand their assortment with additional flavors. In 2001, John Middleton introduced a lighter, milder version of the product, the Black & Mild cigar, perfect for beginners and those unfamiliar with or not ready for the strong pipe tobacco blend. The shorter



Black & Mild **Fast Break** cigar was invented three years later, perfect to smoke during a busy day. The following year, the company finally decided on its direction in flavored **pipe tobacco blends**.

Today, the brand offers over 20 flavor options, which we are going to discuss further below. In addition, Black & Mild cigars and cigarillos come in different versions, with a **plastic or wood tip** or with no tip whatsoever.

In November 2007, the John Middleton company was purchased by Altria Group, the parent company of Philip Morris.

BLACK & MILD VARIETIES

Black & Mild cigars come as singles, in a pack of 5, or a **box of 25**. As of 2021, John Middleton has the following versions of their best-selling cigar in their assortment:

- Black & Mild (Original)
- Prince Albert
- Mild
- Black & Mild FT 110 (Filtered Tips), rolled in a 100mm cigar
- Black & Mild FT 85, rolled in an 85mm cigar
- Wood Tip
- Natural Wrap Wood Tip, natural-wrapped and finished with a wood tip

Plus, they now offer cigarillos for smokers who have very little time during their break to enjoy Black & Milds. These cigarillos replaced the Black & Mild Fast Break cigar, a shorter version of the original.

BLACK & MILD FLAVORS

Here are the best 15 of *all Black and Mild flavors*:

1. Original. This is the exceptional mix of black Cavendish and Virginia tobaccos produced in Pennsylvania, which gives smokers an excellent opportunity to enjoy the solid flavor of a tobacco pipe.
2. Deluxe. Truly classic taste touched with a hint of chocolate.



3. Apple. Sweet and delicious, just like apple pie.
4. Select. This one provides a smooth, sweet smoke with a persistent fruity flavor that endures throughout the entire burn.
5. Blues. A Black & Mild with the gentle flavor of mint.
6. Cherry. The spicy Virginia blend is combined with a hint of cherry liquor, finished with a touch of tartness.
7. Casino. The perfect mix of chocolate and cocoa. It's a little spicy, too.
8. Wine. The classic Black & Mild flavor featuring Cavendish and Virginia tobaccos is finished with a sweet, tart red wine flavor.
9. Royale. A mild, smooth smoke that is rich in taste and finished with a creamy flavor.
10. Sweets. It's a more traditional flavor that was created using air-cured tobacco. The mellow smoke has a lovely sweet touch to it.
11. Cream. Being the most decadent flavor of the Black & Mild cigars, "Cream" is a mix of the fresh creamy taste and mild flavor of the pipe tobacco.
12. Gold & Mild. The famous tobacco blend by John Middleton is touched with a hint of sweet vanilla and nut flavor.
13. Jazz. The Jazz flavor has a very interesting, unique sweet taste to it.
14. Soft Vanilla. A great combination of Burley and **Black Cavendish**, finished with a strong vanilla flavor and a fruity taste.
15. Cherry Vanilla. A delicious, sweet vanilla taste with a nice touch of tartness.

Other *Black and Milds* flavors include:

- Cruise
- Rhythm
- Summer Blend (discontinued)
- Dark Blend (discontinued)
- *Black and Mild Wood Tip Flavors* (a category of flavors)

WHY BLACK & MILD CIGARS?

Clearly, the Black & Mild cigar is one of a kind, as it even falls into the category of pipe tobacco cigars, which aren't prevalent on the market. What makes their cigars so special is the **plastic**



tip that mimics the pipe-smoking experience without needing one. Light a Black & Mild cigar, and you'll get all the joy of a pipe and none of the fuss.

The quality of John Middleton products has been proven many-many times for the past 150 years, especially when it comes to Black & Milds. Only high-quality ingredients are used in the production of Black & Mild cigars. They are considered some of the least annoying gas station cigar brands in the tobacco industry because of the black Cavendish pipe tobacco used in their products.

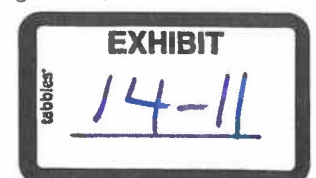
Honestly, it's no wonder that the brand has become a household name in such a short period of time. It has a lot to offer to both cigar lovers and pipe smokers. In addition, it also has milder products for those who are just beginning to enjoy their smoking experience. Even the design of the packs and cigars themselves clearly shows how detail-oriented the brand is and how well they understand their consumers.

Another reason why these cigars are still so popular among smokers is the number of *different flavors of Black and Milds* and the varieties they offer. It's interesting that many of the *Black and Mild best flavors* John Middleton offers today were originally created back in the 19th century. The company was initially run by a person who was eager to experiment with blends and flavors, and the business fully adopted this concept, creating its most successful product literally by accident. John Middleton would be so proud!

People at the company always make customers' satisfaction their main priority, so they listen carefully to the feedback they receive from Black & Mild cigars' consumers, constantly coming up with new ideas on how to make their smoking experience even more exciting. That's why they keep adding different kinds of cigars to their assortment, be it **wood-tipped**, untipped, **filter-tipped**, or short cigars. Thus, anyone can find a type to their taste.

Smoking a cigar is considered a personal experience, but not all smokers would agree with this. Surely, many enjoy having a cigar at night, as it's very relaxing and stress-relieving, but inviting old friends over and lighting a few Black & Milds doesn't sound too bad either, does it? Again, whatever your mates prefer in terms of tobacco products, you can always find the right cigar and flavor for them.

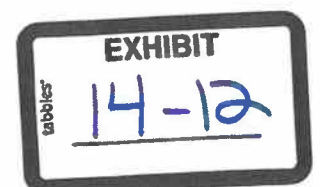
John Middleton also never forgets its other group of customers who can't wait the entire day to have a stogie at home. Those hard workers will love the idea of shorter cigars or cigarillos,



which they can smoke during the day, at any time. Black & Milds are generally smaller in size, which makes them the perfect option for any occasion.

As for the price, you certainly will appreciate the affordability of Black & Mild cigars. The budget-friendly cigars conveniently come in compact packs of 5 and boxes of 25. The great variety and low prices make the brand attract thousands of consumers all around the US.

Are you still not sure which one of the Black & Mild cigars is best for you? Take your time, explore the *Black and Mild flavor list* on tobaccostock.com, and choose among the best *Black and Mild flavors*. Make sure to read a short description for each flavor so that you don't order "Wine" if you can't stand the smell of liquor.



STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF SAINT PAUL

In the Matter of the Cigarette/Tobacco License
Held by MJ Market Inc. for the Premises
Located at 922 Thomas Avenue in Saint Paul.

**AFFIDAVIT OF
ERIC HUDAK**

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Eric Hudak, being first duly sworn on oath, deposes and states as follows:

1. I am a duly appointed Licensing Manager at the Saint Paul Department of Safety and Inspections (“Department”). I provide this Affidavit in support of the Department’s Motion for Summary Disposition.

2. My duties include in part, the management of seven (7) staff members who are responsible for assisting prospective business owners apply for and gain the required authorizations to conduct licensed business in Saint Paul, provide ongoing education and support to existing business owners, investigate complaints, conduct compliance inspections, create reports, and maintain records of licensed business activity throughout the City. I am also involved in the recommendation of adverse licensing action against businesses found in violation of the SPLC

3. I have served as the Licensing Manager for the City of Saint Paul from October 5, 2015 - Present.

4. My previous work experience includes ten (10) years of private sector employment as an operations manager for a national, full-service ground transportation



company, and fifteen (15) years as an operations manager with the Metropolitan Airports Commission at MSP International Airport.

5. My education and training includes a bachelor's degree in Business Administration, board of director positions with various Airport and Law Enforcement associations. Numerous continuing education and workplace related conferences, workshops and seminars and other trainings.

6. I understand that this matter involves adverse action and a request for revocation of the Cigarette/Tobacco Shop License ("License") held by Majid Mitaishoon ("Respondent" or "Licensee") for the premises known as MJ Market located at 922 Thomas ("Licensed Premises").

7. Attached as Exhibit # 11-1 - 11-31 is a true and correct copy of Saint Paul Legislative Code ("SPLC") § 310 titled Uniform License Procedures.

8. Attached as Exhibit # 12-1 - 12-7 is a true and correct copy of Saint Paul of SPLC § 324 titled Tobacco.

9. I am familiar with the Minnesota Statutes, Rules and SPLC pertaining to licenses and use these materials as a guide when I review potential licensing violations and make penalty recommendations.

10. As part of my work on this adverse action, I reviewed the information contained in the attached Exhibits 13-11 which includes:

- a. relevant ordinances,
- b. license history,
- c. reports for past and present violations,
- d. Notice of violations and supporting documentation sent to Respondent,



- e. educational materials and information on license changes sent to licensees including Respondent,
11. I believe that the following sections of SPLC are relevant to this adverse action.
- a. SPLC § 310.05(m)(2) which supports adverse action when there is a violation of the provisions of the legislative code relating to the licensed activity.
 - b. SPLC § 310.06 titled Revocation; suspension; adverse actions; imposition of conditions lays out basis for adverse actions.
 - c. SPLC § 310.06 (b)(6)(a) titled Basis for Action supports adverse when “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.”
 - d. SPLC § 324.03 which defines the types of flavored tobacco products which are prohibited in Tobacco Shops under the heading “Flavored Products”.
 - e. SPLC § 324.07 (f) which states that “No person may sell, offer for sale, or otherwise distribute any flavored products, unless excepted under section 324.07(1)”.
 - i. Respondent does not meet any of the exceptions laid out in SPLC § 324.07 (1) nor has he applied for a Tobacco Product Shop License and is therefore prohibited from selling, offering for sale, or otherwise distributing any flavored products.



- f. SPLC § 324.10 which lays out presumptive matrix penalties for tobacco violations and addresses the computation of time for subsequent violations.
- g. SPLC § 324.10 (b)(2) which states that the presumptive penalty for a second appearance if the violation is display, possession or multiple incidents of sales of single cigarettes, menthol tobacco products or flavored tobacco products is revocation.
- h. SPLC § 324.10 (d)(1) which addresses computation of time and state that subsequent violations are subject to “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.”

12. Attached as Exhibit #1-5 is a true and correct copy of a document titled properties for License pulled from AMANDA, our case management system which provides the owner’s name and mailing addresses. Respondent is listed as the owner.

13. Attached as Exhibit #1-6 is a true and correct copy of a document titled License Group Comments Text pulled from our case management system which provides the License history for this licensee.

14. Attached as Exhibit #1-7 is a true and correct copy of the License Group Conditions text from our computer system. It lists the license conditions on the License held by Respondent.



15. Attached as Exhibit #6 is a true and correct copy of the License conditions for MJ Market, signed and agreed to by the Respondent on June 28, 2021. There is one condition on the Tobacco Shop License held by Respondent:

- a. "Temporary window signs placed between the height of four (4) to seven (7) feet above grade shall not cover more than thirty (30) percent of this window space area and cannot block views into the clerk or cashier station."

16. In May of 2022 I became aware of a complaint that MJ Market Inc. was selling flavored tobacco products.

17. I am aware that flavored tobacco products are prohibited under our Saint Paul Legislative Code.

18. Attached as Exhibit #2 is a true and correct copy of that complaint which was received in DSI on April 11, 2022 for selling flavored products from under the counter.

19. I requested that DSI Inspector, Joseph Voyda ("Voyda") investigate the complaint.

20. Voyda visited the Licensed Premises on May 6, 2022 and documented that multiple prohibited flavored tobacco products were present behind the counter in the Licensed Premises.

21. Voyda documented his findings in a report and with photographs.

22. Attached as Exhibit # 1-4 is a true and correct copy of Voyda's report.

23. Attached as Exhibit #1-9 - 1-15 is a true and correct copy of the photographs taken by Voyda of the prohibited flavored tobacco products he observed at the licensed premises.



24. After reviewing Voyda's report and photos, I reviewed the following documents in order to come to a determination about the violation and make a recommendation about adverse action. Those documents are described below.

25. Attached as Exhibit #1-6 is a true and correct copy of the License Group Comments which lay out the licensing history for the License that Respondent holds for the Licensed Premises. This shows me that the license conditions affidavit and acknowledgement form for the cigarette/tobacco handout ("c/t") was sent to Respondent on June 28, 2021, that the Respondent had a previous youth tobacco compliance failure on August 3, 2021, that a request for adverse action related to that failure was sent to the City Attorney's Office on June 24, 2021 and that the fine was paid on October 6, 2021.

26. Attached as Exhibit #3-1 - 3-11 is a true and correct copy of a September 10, 2021 Notice of Violation Recommendation for Imposition of \$300 Administrative Penalty for Tobacco Youth Compliance Check Failure with attachments relating to the failure. This is the previous violation that made the current violation a revocation under the penalty matrix.

27. Attached as Exhibit #4-1 is a true and correct copy of an email from DSI staff member, Stephanie Harrington show that on October 6, 2021 the \$300 fine for the youth compliance check failure was paid for MJ Market.

28. This fine was the fine requested in the September 10, 2021 Notice of Violation Recommendation for Imposition of \$300 Administrative Penalty for Tobacco Youth Compliance Check Failure.

29. Attached as Exhibit #5-1 - 5-28 is a true and correct copy of the license application submitted by Respondent. It includes lease agreements, ownership information, store layout and other critical information.



30. Attached as Exhibits #7-1 7-9 is a true and correct copy of the acknowledgement form that Respondent signed saying he was given a copy of our codes and understand that he was responsible for understanding them along with the copy of the code he was given.

31. Based on SPLC and the Documentation I had reviewed, including the SPLC; I determined that this was the Respondents second violation of SPLC and that the presumptive penalty under the tobacco penalty matrix was revocation of the licenses held by Respondent.

32. I included this as part of my recommendation and the matter was then forwarded to the Saint Paul City Attorney's Office for review and creation of a Notice of Violation ("NOV").

33. Attached as Exhibit #1-1 - 1-15 is a true and correct copy of the June 10, 2022 document titled Notice of Violation and Request for Revocation of Your Cigarette Tobacco License with attachments that was served on the Licensee on September 10, 2020.

34. As part of my duties, I work with staff to ensure that tobacco licensees are notified of ordinance changes and that we make efforts to educate licensees.

35. Attached as Exhibit #9-1 - 9-10 is a true and correct copy of an an expert from the DSI spreadsheet that contains the Tobacco Shop Licensee information that is merged with documents when we need to notify Licensees of ordinance changes or send educational materials. This document shows that MJ Market is on that list and tells me that mailings are sent to the Respondent.

36. Attached as Exhibit 10-1 - 10-12 is a true and correct copy of the original and amended notice of public hearing with supporting ordinance language that was sent to all tobacco licensees. This document tells licensees of the proposed changes (including matrix penalties) and lets them know how to provide comment.



37. Attached as Exhibit #13-1 - 13-14 is true and correct copy of the updated pamphlet we provide to licensees.

38. Attached as Exhibit #8 is a true and correct copy of the letter that opposing counsel sent to Assistant City Attorney, Stephen Earnest requesting an ALJ hearing.

39. I have reviewed the Affidavit of Joseph Voyda, along with the supporting documents and I agree with his conclusions as to what we identified as prohibited products and why.

FURTHER YOUR AFFIANT SAYETH NOT.

ERIC HUDAK

Subscribed and sworn to before me

DATE 10/20/2022

Notary Public



STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF SAINT PAUL

In the Matter of the Cigarette/Tobacco License
Held by MJ Market Inc. for the Premises
Located at 922 Thomas Avenue in Saint Paul.

**AFFIDAVIT OF
JOSEPH VOYDA**

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Joseph Voyda, being first duly sworn on oath, deposes and states as follows:

1. I am a duly appointed Inspector at the Saint Paul Department of Safety and Inspections (“Department”). I provide this Affidavit in support of the Department’s Motion for Summary Disposition.

2. My duties vary by license type and what license type is getting an inquiry about. I am an inspector for many different license types. It is core to our business licensing function to regularly help drop-in customers that visit DSI’s offices seeking general business requirement information.

3. I have served as an Inspector for the City of Saint Paul from February 2018 to the present.

4. My tobacco related duties include identifying flavor and price violations, license application review and issuance, licensee education, general licensing compliance, underage buyers compliance checks, working with licensees to answer their questions including tobacco and flavor related questions, and general complaint inspections of all licensed tobacco establishments within the City of Saint Paul.



5. With respect to Tobacco Licenses and Licensees, I am the primary contact for tobacco inquires including tobacco requirements. I provide initial information on tobacco vendor regulations, provide updates on ordinance changes, answer questions, review complaints, conduct complaint inspections and work with the MN Department of Revenue on tobacco related issues.

6. My general tobacco related education and training includes Obtaining general knowledge of flavor tobacco products by extensive hours of studying how tobacco manufacturers create, make and distribute tobacco products.

7. My education and training related to city of Saint Paul prohibited tobacco products and flavored products includes Internet studies, conversations with tobacco manufacturer representatives and working with ANSR the Association for Nonsmokers-MN and the RTC Ramsey Tobacco Coalition. This is very easy task to accomplish in the year 2022, with the use of your cell phone, you may look up a tobacco product online or on the manufactures home page, punch in the desired product and a description will populate your cell phone screen. If a flavor tobacco product shows, that will mean that it is prohibited for sale under a tobacco shop license within the city of Saint Paul per chapter 324 of the City of Saint Paul's Legislative Code. For example, please see the image contained in Exhibit 14-1 which is a true and correct copy of an image with its description that I pulled off of my phone.

8. Attached as Exhibit #11-1 - 11-31 is a true and correct copy of Saint Paul Legislative Code ("SPLC") § 310 titled Uniform License Procedures.

9. Attached as Exhibit #12-1 - 12-7 is a true and correct copy of SPLC § 324 titled Tobacco.

10. I am familiar with the Minnesota Statutes, Rules and SPLC pertaining to licenses and use these materials as a guide when I investigate complaints, conduct compliance reviews and review potential licensing violations.

11. As part of my duties I receive and review tobacco complaints. When I receive a complaint I review the licensed business address through one of DSI's data programs, collecting licensing information such as license holders name, phone number, business address, license conditions if there are any, how many violations the business has had. Once I have all information needed including the anonymous compliant, I print all documents and two sets of license conditions copies to review with the license holder or employee(s) present of the inspection.

12. I then go out and conduct an on-site inspection based on the complaint.



13. I am familiar with Majid Nitaishoon (“Respondent” or “Licensee”) because I helped facilitate his tobacco license and reviewed what tobacco flavor products are with him.

14. Attached as Exhibit 5-1 - 5-28 is a true and correct copy of the license application for MJ Market, 922 Thomas Avenue (“Licensed Premises”) that I received for the Tobacco Shop License held by Licensee. I personally processed this application.

15. Attached as Exhibit 6 is a true and correct copy of the license conditions signed by Licensee on June 28, 2021.

16. Attached as Exhibit 7-1 is a true and correct copy of an acknowledgement signed by Licensee. The acknowledgment form from of the DSI’s Tobacco handout which includes the full tobacco ordinance that the license holder read and understands that flavor tobacco products are prohibited for a (Cigarette/Tobacco) – Tobacco Shop License within the City of Saint Paul.

17. Attached as Exhibit 7-2 - 7-9 is a true and correct copy of the tobacco ordinance I provide to Licensees. I gave a copy to Licensee when I met with him and reviewed what tobacco flavor products are according to the Saint Paul’s Legislative Code Section 324 definitions.

18. I received and reviewed files, police reports, videos, statutes contained in Exhibits #1-1 - 13-11 (“Documentation”) including the relevant code provisions related to violations and the basis for potential adverse action against the (Cigarette/Tobacco) Tobacco Shop License (“License”) held by Licensee for the Licensed Premises.

19. I have reviewed Exhibit 2 and it is a true and correct copy of a complaint that DSI received on April 11, 2022.

20. The complaint alleged that the Respondent was selling flavored products from under the counter.

21. Because of my expertise in recognizing menthol and non-menthol prohibited flavored products, one of my job duties is to investigate complaints related to prohibited flavored products.

22. I visited the Licensed Premises on May 6, 2022 in order to investigate the complaint.

23. Upon entering the Licensed Premises I immediately observed a number of prohibited flavored products behind the counter.

24. I documented my findings in my report which is attached as Exhibit 1-4 - 1-15.



25. I have reviewed the section of my report titled “Details of Conversations (Statements to and by Person Responsible for Property)” and it accurately describes my inspection, who I talked with, the prohibited products I found and what actions I took.

26. I also took photographs of the violations I observed and true and correct copies of them are attached as Exhibits #1-9 - 1-15.

27. Exhibits # 1-9 - 15 accurately depict the prohibited products I found when I investigated the complaint.

28. Attached as Exhibit #13 is a true and correct copy of a photograph I took of the 2 boxes of prohibited product Dutch - Sweet Fusion. I know that Dutch - Sweet Fusion is a prohibited flavored tobacco product based on its product description that among other descriptors talks about “delicious fruits”. I have included the description I keep in my records as Exhibit #14-2.

29. Attached as Exhibit #1-14 is a true and correct copy of a photograph I took of the 2 cartons of prohibited tobacco product American Spirits Black that I observed and photographed during my complaint inspection. I know that American Spirits Black is a prohibited flavored tobacco product based on its product description. I have included as Exhibits #14-3 and 14-4 descriptions of this Perique product that I keep in my files.

30. Attached as exhibit 1-14 is a true and correct copy of a photograph I took of the 1 box of individual singles - Black and Mild Wine during my inspection. I know that Black and Mild Wine is a prohibited flavored tobacco product based on its product description which talks about a sweet taste of red wine. I have included as Exhibits #14-7 through 14-12 descriptions of this prohibited product and also included a Definitions Article/Letter from the manufacturer.

31. Attached as Exhibit # 1-14 is a true and correct copy of a photograph I took of the prohibited products individual singles Black & Mild Casino and Black & Mild Casino Wood Tip during my inspection. I know that Black & Mild Casino Black Tip and Black & Mild Casino Wood Tip are prohibited flavored tobacco products. I have included as Exhibits 14-6 and 14-7 descriptions of this prohibited product from my files.

32. Attached as Exhibit # 1-9 - 1-12 and 1-15 are true and correct copies of photographs I took of the 31 different variations of vape pens I observed while on my complaint inspection. These different variations of vape pens are prohibited flavored products because section 324.03(5) defines flavored products: “Flavored product means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or



lobelia delivery product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product or device is a flavored product.” I would also note that the very specific flavor names are listed/labeled on the tobacco products packaging.

33. Based on my findings I forwarded my reports, photographs and all other investigative materials to Licensing Manager, Eric Hudak and recommended that the Licenses held by the Licensee be revoked as this was his second violation on the penalty matrix.

34. After Licensing Manager, Eric Hudak approved my recommendation, I forwarded the request for adverse action to the City Attorney’s office so that a Notice of Violation could be sent.

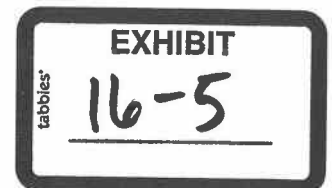
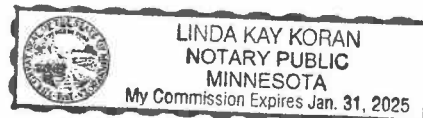
FURTHER YOUR AFFIANT SAYETH NOT.



Joseph Voyda

Subscribed and sworn to before me
DATE 10/29/2022


Notary Public



STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF SAINT PAUL

**AFFIDAVIT OF
THERESE A. SKARDA**

In the Matter of the Cigarette/Tobacco License
Held by MJ Market for the Premises Located
At 922 Thomas Avenue in Saint Paul.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

THERESE A. SKARDA, being first duly sworn on oath, deposes and states as follows:

1. I am a duly appointed Assistant City Attorney with the City of Saint Paul, and I represent the Department of Safety and Inspections (“the Department”) in this matter. I provide this Affidavit in support of the Department’s Motion for Summary Disposition.
2. Attached as Exhibit 1-1 – 1-3 is a true and correct copy of the June 10, 2022 Notice of Violation.
3. Attached as Exhibits 1-4 – 1-15 are true and correct copies of Inspector Voyda’s report and attachments, including his photographs from his inspection that were sent to Respondent along with the June 10, 2022, Notice of Violation.
4. Attached as Exhibit 2 is a true and correct copy of the complaint that the Department of Safety and Inspections received that alleged that Respondent was selling prohibited flavored tobacco products.

#SEPE5F360DSJQIv1



5. Attached as Exhibit 3-1 3-11 is a true and correct copy of a Notice of Violation and supporting documents from a prior violation that was sent to Respondent on September 10, 2021.
6. Attached as Exhibit 4-1 is a true and correct copy of an October 6, 2021 email from DSI staff member, Stephanie Harrington which indicates that the \$300 fine was paid.
7. Attached as Exhibit 5-1 – 5-28 is a true and correct copy of the license application and supporting documents submitted by Respondent.
8. Attached as Exhibit 6 is a true and correct copy of the license conditions that Respondent signed on June 28, 2021.
9. Attached as Exhibit 7-1 – 7-9 is a true and correct copy of acknowledgment signed by Respondent along with the ordinance handout he received.
10. Attached as Exhibit 8 is a true and correct copy of the letter sent to former Assistant City Attorney, Stephen Earnest by opposing counsel, Craig Beuning requesting an ALJ hearing.
11. Attached as Exhibit 9-1 – 9-10 is a true and correct copy of the mailing list of tobacco licensees used by DSI when they need to send out notifications to licensees.
12. Attached as Exhibits 10-1 – 10-12 are true and correct copies of the August 26, 2021 and September 1, 2021 Notices of Public Hearings on proposed changes to SPLC section 324 that was sent to all relevant license holders and the December 2, 2021 letter that was sent to all relevant license holders letting them know about the amended ordinance sections along with the effective date of the changes.
13. Attached as Exhibit 11-1 – 11-31 is a true and correct copy of Saint Paul Legislative Code Section 310 titled Uniform License Procedures.



14. Attached as Exhibit 12-1 – 12-7 is a true and correct copy of Saint Paul Legislative Code Section 324 titled Tobacco
15. Attached as Exhibit 13-1 – 13-11 is a true and correct copy of the handout for tobacco licensees that was updated after SPLC 324 was amended in 2021.
16. Attached as Exhibit 14-1 – 14-12 are notes submitted by Inspector Joseph Voyda in support of his affidavit.
17. Attached as Exhibit 15 is a true and correct copy of the Affidavit of Licensing Manager, Eric Hudak.
18. Attached as Exhibit 16 is a true and correct copy of the Affidavit of Inspector Joseph Voyda.

FURTHER YOUR AFFIANT SAYETH NOT.

Therese A. Skarda

THERESE A. SKARDA

Subscribed and sworn to before me

Julie Anne Kraus

Notary Public



August 31, 2022

VIA EMAIL ONLY

Therese Skarda
St. Paul City Attorney's Office
400 City Hall & Courthouse
15 W Kellogg Blvd
Saint Paul, MN 55102
Therese.Skarda@ci.stpaul.mn.us;
shawn.mcdonald@ci.stpaul.mn.us

Craig L. Beuning
HKB Law, PA
4525 White Bear Pkwy
White Bear Lake, MN 55110

Re: *In the Matter of the Cigarette/Tobacco License Held by MJ Market Inc. for the Premises Located at 922 Thomas Avenue in Saint Paul*
OAH 65-6020-38532

Dear Parties:

Enclosed and served upon you please find the **FIRST PREHEARING ORDER** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7853, majeste.phillip@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,


MAJESTE PHILLIP
Legal Specialist

Enclosure

cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Cigarette/Tobacco License Held by MJ Market Inc. for the Premises Located at 922 Thomas Avenue in Saint Paul	OAH Docket No.: 65-6020-38532
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On August 31, 2022, a true and correct copy of the **FIRST PREHEARING ORDER** was served by United States mail, unless otherwise indicated below, addressed to the following:

VIA EMAIL ONLY

Therese Skarda
St. Paul City Attorney's Office
400 City Hall & Courthouse
15 W Kellogg Blvd
Saint Paul, MN 55102
Therese.Skarda@ci.stpaul.mn.us;
shawn.mcdonald@ci.stpaul.mn.us

Craig L. Beuning
HKB Law, PA
4525 White Bear Pkwy
White Bear Lake, MN 55110

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST PAUL

In the Matter of the Cigarette/Tobacco
License Held by MJ Market Inc. for the
Premises Located at 922 Thomas Avenue
in Saint Paul

FIRST PREHEARING ORDER

This matter came before Administrative Law Judge Ann C. O'Reilly for a prehearing conference on August 22, 2022.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). Craig Beuning, HKB Law, P.A., appeared on behalf of Respondent. Erik Hudak, Licensing Manager for the City of St. Paul Department of Safety and Inspections, also appeared.

Based upon the submissions of counsel and the hearing record,

IT IS HEREBY ORDERED:

1. **Initial Disclosures.** Pursuant to Minn. R. 1400.6700 (2021), each party shall, within ten (10) days of a written demand by another party, disclose the following:

- The names and addresses of all witnesses that a party intends to call at the hearing, along with a brief summary of the testimony for each witness. (All witnesses unknown at the time of said disclosure shall be disclosed as soon as they become known.)
- Any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall also be permitted to inspect and reproduce any such statements.
- All documents that the party intends to offer as exhibits at the hearing. (The exhibits themselves need not be produced until one week before the hearing unless otherwise ordered.)

Any party unreasonably failing, upon demand, to make the disclosure required by this subpart may, in the discretion of the judge, be foreclosed from presenting any evidence at the hearing through witnesses or exhibits not disclosed, or through witnesses whose statements are not disclosed.

2. **Discovery.** The period for discovery shall close on **October 24, 2022**. All discovery shall be completed by that date. The parties are encouraged to resolve any discovery disputes between themselves but may request a telephone conference if their efforts are unsuccessful. Before bringing a discovery motion, the parties are required to confer and provide evidence to the Judge that attempts to resolve the matter have been unsuccessful. To obtain copies of the agency's file, a party should make a written demand pursuant to Minn. R. 1400.6700. The parties should not copy the Administrative Law Judge on discovery requests or responses unless such documents are the subject of a filed motion.

3. **Dispositive Motions.** Dispositive motions are motions that seek to dispose of all or part of the claims or parties, except motions for default judgment. They include motions to dismiss a party or claim and motions for summary disposition. All dispositive motions shall be served and filed by **October 24, 2022**. Responses to the motion shall be served and filed by **November 7, 2022**. Replies, if any, shall be served and filed by **November 14, 2022**. Oral argument shall be heard on **November 15, 2022**.

The procedure for motion practice is set forth in Minn. R. 1400.6600 (2021). The Administrative Law Judge requests that all memoranda submitted with motions for summary disposition comply with the format set forth in Minn. Gen. R. Prac. 115.03(d), and include, most importantly, a numbered recital by the moving party of all material facts as to which there is no genuine dispute, along with a specific citation to that part of the record supporting each fact. The party opposing the motion shall, in like manner, make a recital of any material facts claimed to be in dispute.

4. **Motion Hearing.** Oral argument on dispositive motions filed shall be heard on **November 15, 2022, at 9:30 a.m.** In the interest of economy and efficiency, the motion hearing shall be conducted by telephone conference. At the time of the hearing, the parties shall call **1-866-705-2554** and enter passcode **252044** to join the conference. If no dispositive motions are filed, this hearing will be cancelled.

5. **Alternative Dispute Resolution.** The deadline to request mediation or a settlement conference shall be **January 6, 2023**. The parties are encouraged to consider settlement and/or mediation. See Minn. R. 1400.5950, and 1400.6550 (2021), regarding the difference between a mediation and a settlement conference. For example, all parties must join in a request for mediation, but a joint request is not required for scheduling a settlement conference. Requests for settlement conferences or mediation must be made to using the electronic submission form on the OAH website: <https://mn.gov/oah/lawyers-and-litigants/administrative-law/mediation.jsp>. Upon

receipt of the request, the Chief Judge will appoint a mediator or settlement conference judge to conduct the mediation or settlement conference. The Administrative Law Judge assigned to the case as the trial judge will not serve as the mediator or settlement conference judge.

6. **Subpoenas.** The deadline to request subpoenas for the attendance of witnesses or the production of documents shall be **January 24, 2023**. Requests for subpoenas for the attendance of witnesses or for the production of documents shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000 (2021). The subpoena request form is available at <http://mn.gov/oah/forms-and-filing/forms/>. A copy of the subpoena request shall be served on the other parties.

7. **Recordings and Transcripts.** Hearings are ordinarily digitally recorded. A copy of the digital recording of the hearing can be obtained by a party who makes a written request for the same to the Office of Administrative Hearings (OAH). There is no charge for a copy of the digital recording. Parties may use the digital recordings to make a transcript of the proceeding. A party who wishes to make a transcript from a digital recording is responsible for arranging for such transcription and covering all costs of the same. The OAH does not provide court reporters at its hearings. Any party may arrange to have a court reporter present at the hearing to prepare an official transcript. All court reporter and transcript costs shall be paid by the party procuring court reporting or transcription services. A party who retains a court reporter for a proceeding shall notify the OAH of the same in writing prior to the hearing to ensure that sufficient space is available in the assigned courtroom for the court reporter. All logistical arrangements and costs related to court reporter or transcription services are the responsibility of the party retaining such services. If a transcript of a proceeding is created, the party who obtained the transcript must provide a copy of the transcript to the Administrative Law Judge. An official copy of the transcript shall be eFiled in the hearing record. Pursuant to Minn. R. 1400.7400, subp. 2 (2021), the assigned Administrative Law Judge may require the presence of a court reporter and/or the preparation of a transcript; in which case, the costs of such services shall be paid by the agency bringing the action.

8. **Exhibits and Lists.** By **4:30 p.m. on February 7, 2023**, the parties shall exchange and file with the OAH their proposed pre-labeled exhibits, an index of the proposed exhibits, and their witness lists. See Minn. R. 1400.6950 (2021). The City shall label its exhibits sequentially using numbers 1 through 99. Respondent shall label its exhibits sequentially beginning with the number 100. Any party filing proposed hearing exhibits using the eFiling system or by fax shall also provide a paper copy of the proposed hearing exhibits to the Administrative Law Judge on the date of hearing. Paper copies of exhibits shall be tabbed and placed in three-ring binders. Parties shall also bring a separate binder of exhibits to hearing for the witness stand.

9. **Foundation Objections.** To the extent possible, the parties shall enter into prehearing stipulations regarding the facts involved in the hearing and the

foundation for anticipated exhibits. Any party objecting to the foundation for any written exhibit shall notify the offering party and the judge in writing at least two (2) working days prior to the hearing or the foundation objection is considered waived.

10. **Hearing Date and Time.** A hearing in this matter will be held at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101, on **February 15 and 16, 2023**, beginning at **9:30 a.m.** The hearing shall be scheduled for two (2) consecutive days. If the parties agree, the hearing may be conducted, in whole or in part, by videoconference using Microsoft Teams (Teams). If the parties agree to use this option, they should notify the Administrative Law Judge **at least one month prior to the hearing date** to advise her of the parties' stipulation for a video hearing or the appearance of one or more witnesses by video. The parties must submit their request in the form of a letter motion.

11. **Accommodations/interpreters.** The parties have not requested accommodation for a disability nor the appointment of an interpreter. Please advise the OAH in writing as soon as possible if either an accommodation or an interpreter is needed. The OAH requires that any party requesting an accommodation for a disability fill out a request for accommodations form **as soon as possible** to ensure that all accommodation requests are fulfilled. That form can be found at: https://mn.gov/oah/assets/ada-accommodation-request-form-title-ii_tcm19-440435.pdf.

12. **Continuances.** Pursuant to Minn. R. 1400.7500 (2021), requests for continuances of a hearing shall be granted only upon a showing of good cause. A request for a continuance filed within five (5) business days of the hearing shall be denied unless the reason for the request could not have been earlier ascertained or unless good cause is shown.

13. **Default.** Under Minn. R. 1400.6000 (2021), the failure of a party to appear at a prehearing conference or hearing without the prior consent of the Administrative Law Judge shall be considered a default by that party. Upon default, the allegations contained in the Notice and Order for Prehearing Conference or Hearing may be accepted as true, and the City's proposed action may be upheld.

14. **Settlement.** If the matter is resolved prior to hearing, please provide written notice to the OAH immediately, and provide notice to the Administrative Law Judge by contacting Judge O'Reilly at ann.oreilly@state.mn.us.

1. **How to File Documents.** Any document filed with the Office of Administrative Hearings, or which a party wishes to make part of the record in this case, may be filed with the OAH in any one of the following ways: (1) by eFiling through the OAH's eFiling system at <http://mn.gov/oah/forms-and-filing/efiling/>; (2) by mail; (3) by fax; or (4) by personal delivery. See Minn. Stat. § 14.58 (2020); Minn. R. 1400.5550,

subp. 5 (2021). Attorneys must use the eFile system. Filings are effective on the date the OAH receives the filing. See Minn. R. 1400.5550, subp. 5, .5500 J, Q (2021).

Dated: August 31, 2022

A handwritten signature in black ink, appearing to read 'A. O'Reilly', is positioned above a horizontal line.

ANN C. O'REILLY
Administrative Law Judge

STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)


Shawn McDonald, being first duly sworn, deposes and says that on the 1st day of August, he served the attached **AMENDED NOTICE OF PREHEARING TELEPHONE CONFERENCE** and a correct copy thereof in an envelope addressed as follows:

Craig J. Beuning
Attorney at Law
4525 White Bear Parkway
White Bear Lake, MN 55110

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


Shawn McDonald

Subscribed and sworn to before me
This 1st day of August 2022


Notary Public





August 1, 2022

NOTICE OF PREHEARING TELEPHONE CONFERENCE

MJ Market Inc.
922 Thomas Avenue
St. Paul, MN 55104
Attn: Craig J. Beuning, Attorney at Law, 4525 White Bear Parkway, White Bear Lake, MN 55110

RE: Cigarette/Tobacco License held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul
License ID #: 20210001131
OAH Docket No.: 65-6020-38532

Dear Mr. Beuning:

Please take notice that a **PREHEARING TELEPHONE CONFERENCE** has been scheduled concerning the Cigarette/Tobacco License held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul.

Date: Monday, August 22, 2022
Time: 10:30 a.m.

Call in information: 1-(866)-705-2554
Conference Code: 252 044#

The hearing will be presided over by an Administrative Law Judge from the State of Minnesota Office of Administrative Hearings:

Name: Judge Ann O'Reilly
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101
Telephone: (651) 361-7900

Evidence will be presented to the administrative law judge that may lead to adverse action against the Cigarette/Tobacco License held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul.



The Department of Safety and Inspections (the "Department") is recommending adverse action against the Cigarette/Tobacco license held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul (the "Licensed Premises") for a first-time flavored tobacco product violation.

Saint Paul Legislative Code section 324.07(j) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored tobacco products.

Saint Paul Legislative Code section 324.10(b)(2) sets the presumptive penalties for violations of provisions of the Legislative Code relating to the display, possession, or multiple incidents of sales of menthol or flavored tobacco products. Under section 324.10(b)(2), the presumptive penalty for a first-time violation is a 10-day license suspension.

The Department asserts that the following facts, along with photos of the violations attached herein, constitute proof of a violation of Saint Paul Legislative Code section 324.07(j) by a preponderance of the evidence.

Synopsis of Alleged Facts:

On May 6, 2022, Department Inspector Voyda went to the Licensed Premises for a complaint inspection. Voyda spoke with the store clerk, Ahmed Aizadgir, and informed him that the Department received a complaint of the business selling flavored tobacco products. During the inspection, Inspector Voyda observed and documented with photographs multiple flavored tobacco products located behind the counter/cash register. After the inspection, Voyda educated the clerk on these violations and advised him to remove all flavored tobacco products into a back storage and call a distributor to pick them up.

If you think that this matter can be resolved or settled without a formal hearing, please contact the undersigned. If a stipulation or agreement can be reached as to the facts, that stipulation will be presented to the Administrative Law Judge for incorporation into his or her recommendation for Council action.

If you fail to appear at the hearing, your ability to challenge the allegations will be forfeited and the allegations against you which have been stated earlier in this notice may be taken as true. If non-public data is received into evidence at the hearing, it may become public unless objection is made and relief requested under Minnesota Statutes, Section 14.60, subdivision 2.



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

If you have any questions, you can call me at (651) 266-8710.

Sincerely,

Therese Skarda
Assistant City Attorney

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

*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
in the delivery of services or employment practices.*

STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Shawn McDonald, being first duly sworn, deposes and says that on the 25th day of July, he served the attached **NOTICE OF PREHEARING TELEPHONE CONFERENCE** and a correct copy thereof in an envelope addressed as follows:

Craig J. Beuning
Attorney at Law
4525 White Bear Parkway
White Bear Lake, MN 55110

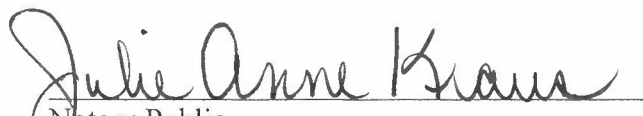
Caty Royce, Co-Executive Director
Frogtown Neighborhood Association
501 Dale Street
Saint Paul, MN 55117

Tia Williams, Co-Executive Director
Frogtown Neighborhood Association
501 Dale Street
Saint Paul, MN 55117

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


Shawn McDonald

Subscribed and sworn to before me
This 25th day of July 2022


Notary Public





July 25, 2022

NOTICE OF PREHEARING TELEPHONE CONFERENCE

MJ Market Inc.
922 Thomas Avenue
St. Paul, MN 55104
Attn: Craig J. Beuning, Attorney at Law, 4525 White Bear Parkway, White Bear Lake, MN 55110

RE: Cigarette/Tobacco License held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul
License ID #: 20210001131
OAH Docket No.: 65-6020-38532

Dear Mr. Beuning:

Please take notice that a **PREHEARING TELEPHONE CONFERENCE** has been scheduled concerning the Cigarette/Tobacco License held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul.

Date: Friday, August 26, 2022
Time: 3:00 p.m.

Call in information: 1-(866)-705-2554
Conference Code: 252 044#

The hearing will be presided over by an Administrative Law Judge from the State of Minnesota Office of Administrative Hearings:

Name: Judge Ann O'Reilly
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101
Telephone: (651) 361-7900

Evidence will be presented to the administrative law judge that may lead to adverse action against the Cigarette/Tobacco License held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul.



The Department of Safety and Inspections (the "Department") is recommending adverse action against the Cigarette/Tobacco license held by MJ Market Inc. for the premises located at 922 Thomas Avenue in Saint Paul (the "Licensed Premises") for a first-time flavored tobacco product violation.

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The Department asserts that the following facts, along with photos of the violations attached herein, constitute proof of a violation of Saint Paul Legislative Code section 324.07(j) by a preponderance of the evidence.

Synopsis of Alleged Facts:

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If you think that this matter can be resolved or settled without a formal hearing, please contact the undersigned. If a stipulation or agreement can be reached as to the facts, that stipulation will be presented to the Administrative Law Judge for incorporation into his or her recommendation for Council action.

If you fail to appear at the hearing, your ability to challenge the allegations will be forfeited and the allegations against you which have been stated earlier in this notice may be taken as true. If non-public data is received into evidence at the hearing, it may become public unless objection is made and relief requested under Minnesota Statutes, Section 14.60, subdivision 2.



SAINT PAUL
CITY ATTORNEY

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

If you have any questions, you can call me at (651) 266-8710.

Sincerely,

Therese Skarda
Assistant City Attorney

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

*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
in the delivery of services or employment practices.*

OAH Docket Number: _____

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Cigarette/Tobacco license held by MJ Market
for the premises located at 922 Thomas
Avenue in Saint Paul

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that:

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the Party/Agency acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings' e-Filing policy and chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. **Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.**

3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

Party's/Agency's Name: Department of Safety and Inspections

Email: eric.hudak@ci.stpaul.mn.us Telephone: (651) 266-9132

Mailing Address: 375 Jackson Street, Ste. 220, Saint Paul, MN 55101-1806

Party's/Agency's Attorney: Therese Skarda

Firm Name: City of Saint Paul – Office of City Attorney

Email: therese.skarda@ci.stpaul.mn.us Telephone: (651) 266-8755

Mailing Address: 400 City Hall & Courthouse, 15 W. Kellogg Blvd., Saint Paul, MN 55102

Party's/Agency's Legal Assistant: Shawn McDonald

Firm Name: City of Saint Paul – Office of City Attorney

Email: Shawn.mcdonald@ci.stpaul.mn.us Telephone: (651) 266-8729

Mailing Address: 400 City Hall & Courthouse, 15 W. Kellogg Blvd., Saint Paul, MN 55102

Respondent's/Opposing Party's Name: Craig Beuning

Email: cbeuning@klaw.us Telephone: (601) 594-0924

Mailing Address: 4525 White Bear Parkway, White Bear Lake, MN 55110

Dated: 7-25-22 Therese Skarda / s.m.
Signature of Party/Agency or Attorney

Note: This form must be served upon the opposing party/agency. Counsel may not withdraw from representation without written notice.