

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 July 5, 2019, he served the attached **NOTICE OF VIOLATION, RECOMMENDATION FOR IMPOSITION OF \$500.00 MATRIX PENALTY** and a correct copy thereof in an envelope addressed as follows:

Speedway #4038
390 Maryland Avenue
Saint Paul, MN 55130

Northern Tier Retail LLC
19100 Ridgewood Parkway
San Antonio, TX 78259

Realty Income Properties 3 Llc
11995 El Camino Real, Ste 101
San Diego, CA 92130

Jack Byers, Executive Director
Payne Phalen Community Council
567 Payne Avenue
Saint Paul, MN 55130

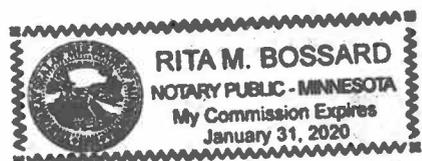
(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.



Shawn McDonald

Subscribed and sworn to before me
This 5th day of July 2019


Notary Public



OFFICE OF THE CITY ATTORNEY

Lyndsey M. Olson, City Attorney



CITY OF SAINT PAUL

Mayor Melvin Carter

*Civil Division
400 City Hall and Court House
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102*

*Telephone: 651 266-8710
Facsimile: 651 298-5619*

July 5, 2019

**NOTICE OF VIOLATION
RECOMMENDATION FOR IMPOSITION
OF \$500 MATRIX PENALTY**

Speedway #4038
390 Maryland Avenue
Saint Paul, MN 55130
Attn: Northern Tier Retail LLC

RE: Cigarette/Tobacco license held by Northern Tier Retail LLC d/b/a Speedway #4038 for the premises located at 390 Maryland Avenue in Saint Paul
License ID #: 4038

Dear Northern Tier Retail LLC:

The Department of Safety and Inspections (“Department”) will recommend adverse action against the Cigarette/Tobacco license held by Northern Tier Retail LLC (“Licensee”) for the premises known as Speedway #4038 located at 390 Maryland Avenue in Saint Paul. (“Licensed Premises”).

Saint Paul Legislative Code §310.05(m)(2) provides for a presumptive penalty of \$500 for a first-time violation of a provision of the legislative code related to the licensed activity.

Saint Paul Legislative Code §324.07(f) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored products.

The Department asserts the following facts along with attachments herein constitute proof of a violation of Saint Paul Legislative Code §324.07(f) by a preponderance of the evidence.

On April 4, 2019 all cigarette/tobacco licensees in the City of Saint Paul were notified by letter that cigar pricing, flavored tobacco, temporary window sign and tobacco display requirement compliance checks would be conducted during the week of April 8th through May.

On April 16, 2019, Inspector Muhammad conducted a cigarette/tobacco and price compliance inspection at 390 Maryland Avenue East. Inspector Muhammad observed and documented violations of Saint Paul Legislative Code §324.07(f). Specifically, he observed a flavored product Optimo Sweet Cigars – Blue Vanilla being offered for sale.

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 **July 19, 2019**, I will presume that you have chosen not to contest the proposed adverse action and the matter will be placed on the **August 7, 2019** City Council Consent Agenda for approval of the proposed remedy.
2. You can admit to the violation and pay the \$500.00 matrix 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 **July 17, 2019**. A self-addressed envelope is enclosed for your convenience. Payment of the \$500.00 matrix 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 \$500.00 matrix 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 **July 19, 2019**. The matter will then be scheduled before the City Council to determine whether to impose the \$500.00 matrix 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 **July 19, 2019**. 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 July 19, 2019, I will assume that you do not contest the imposition of the \$500.00 matrix penalty. In that case, the matter will be placed on the August 7, 2019 City Council Consent Agenda for approval of the recommended penalty.

If you have questions about these options, please contact Shawn McDonald, my Legal Assistant at (651) 266-8729.

Sincerely,

A handwritten signature in blue ink that reads "Therese Skarda / sm".

Therese Skarda
Assistant City Attorney
License No.: 0240989

d/b/a Speedway #4038

July 5, 2019

Page 3

cc: Northern Tier Retail LLC; 19100 Ridgewood Parkway; San Antonio, TX 78259
Realty Income Properties 3 Llc; 11995 El Camino Real, Ste 101; San Diego, CA 92130
Jack Byers, Executive Director, Phalen Community Council; 567 Payne Avenue; Saint Paul, MN 55130

Attachments: Inspector's Report and supporting documentation.



CITY OF SAINT PAUL

Business Licensing
373 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

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

Inspector's Report

Inspectors Name: Akbar R. Muhammad

Date of Inspection: April 16th, 2019

Date sent to the CAO: May 1, 2019

Business/Property Name: Northern Tier Retail LLC

Property Address: 19100 Ridgewood Pkwy, San Antonio, TX 78259

License #: 20100004245

Reason for Visit: Flavor/Price Compliance Check

Observations: Flavor Violations: _____ Optimo Sweet Cigar
Blue vanilla

Photos Taken: Yes, Location of Photo(s):

No

Action Taken: Citation

Warning

Other: Sent to the CAO for Adverse Licensing Action

Details of Conversations (Statements to and by Person Responsible for Property): Upon arrival for a cigarette/tobacco flavor and price compliance inspection, I Akbar R. Muhammad, an inspector for the DSI, introduced myself as inspector from DSI to the clerk, Ms. Clark. I asked her if she received the letter that was mailed out dated April 4, 2019. As I conducted my inspection I observed Optimo Sweet Cigars Blue (vanilla)

. I advised her that these were all flavor violations and needed to be removed asap to be in compliance with ordinance 324.

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CITY OF SAINT PAUL

Business Licensing
375 Jackson Street, Suite 230
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

April 4, 2019

Dear Cigarette/Tobacco License Holder,

The Saint Paul Legislative Code establishes minimum cigar prices, prohibits the sale of flavored tobacco products at most retail locations, limits the size of temporary window signs in stores, and regulates customer access to the tobacco and tobacco-related products on display. Compliance checks for these items are typically conducted a minimum of once per calendar year where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold. These checks consist of a DSI Licensing Inspector visiting the establishment unannounced then observing product placement and labeling, speaking with clerks, taking photos, etc. to monitor for compliance with retail tobacco requirements.

Please consider this letter formal notice that the Department of Safety and Inspections (DSI) will begin to conduct the 2019 routine compliance checks for cigar pricing, flavored tobacco, temporary window sign, and tobacco display requirements the week of April 8th and expects to complete the initial checks of all vendors by late May. Of further note, compliance checks may be conducted at any time during the year in response to complaints or reported violations of these or other applicable requirements. Ordinance violations will be forwarded to the City Attorney's Office for adverse action against your license(s) that will result in fines and potential license suspension.

A link to the Cigarette/Tobacco License webpage is further below for your reference and if you have any questions about license requirements or inspection procedures, contact me at 651-266-9014 or joseph.voyda@ci.stpaul.mn.us. Other DSI Licensing Inspectors are available during my absence at 651-266-8989 to answer questions as well.

Cigarette / Tobacco License | Saint Paul, Minnesota
<https://www.stpaul.gov/departments/safety-inspections/licenses/business/cigarette-tobacco-license>

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Voyda".

Joseph Voyda,
Inspector, DSI Licensing



CITY OF SAINT PAUL

Business Licensing
375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9174
Web: www.spsaintpaul.gov/dsl

Tobacco Compliance Check

Business Type:
20100084245
SPEEDWAY #4038
390 MARYLAND AVE E
651-774-7270

✓✓

- Convenience
 Convenience / Gas
 Gas
 Drug Store / Pharmacy
 Tobacco / Smoke Shop
 Supermarket / Grocery
 General Merchant
 Liquor Store / Bar Restaurant
 Other (private club, bowling, etc.)

Cigar prices: Single 2 Pack 3 Pack 4 Pack or More

\$ 2.60 \$ _____ \$ _____ \$ _____ \$ _____

Menthol, mint & wintergreen
flavored products on premises?
Yes or No

Flavored tobacco issues present
during inspection?
 Yes or No (if Yes, list below)

Were pictures taken of
flavored items/issues?
 Yes or No

More than thirty (30) percent
of the store window / doors
covered by temporary signs?
Yes or No

Were pictures taken of the
windows / doors?
Yes or No

Name of (Owner) or (Clerk): Celeste Clark

Notes/Issues: Optimo Sweet Cigars blue vanilla

Reason no inspection was conducted:

- Does not sell tobacco
 Unsatisfactory/unsafe conditions
 Out of business
 After business hours
 Refused Inspection Why? _____
 Other _____

Inspector: Akbar R. Muhammad
 Date: 4 / 16 / 19
 Time: 2:04 a.m. (p.m.)

MM DD YY

Licensee: NORTHERN TIER RETAIL LLC
 DBA: SPEEDWAY #4038

License	Licensee	Lic. Types	Insurance	Bond	Requirements			
Licensee Name:		NORTHERN TIER RETAIL LLC				<input type="button" value="Browse..."/>		
DBA:		SPEEDWAY #4038						
Sales Tax Id:		*****		Non-Profit:	<input type="checkbox"/>	Worker's Comp:	05/01/2019	<input type="button" value="Properties..."/>
AA Contract Rec'd:		00/00/0000		AA Training Rec'd:		00/00/0000		
AA Fee Collected:		00/00/0000		Discount Rec'd:		<input type="checkbox"/>		

Other Agency Licenses				Financial Hold Reasons		
Other Licensing Agency Name / License Type	License #	Expiration	Reason	Active	Date	

Contacts for this Licensee

Last Name	First Name	Title	Bus. Phone	Home Phone	Contact Address
MARKETING SVCS		CONTACT	(651) 774-7270		390 MARYLAND AVE
CHRISTIAN	PATTY	OFFICE CONT	(866) 876-2455		19100 RIDGEWOOD
DUFFY	CARINA	PRESIDENT	(651) 769-2046	(210) 626-6000	576 BIELENBERG C

Background Check Required

Mail License To:

 Mail To Contact
 License Address

Mail Invoice To:

 Mail To Contact
 License Address

License # 100004245

Licensee: NORTHERN TIER RETAIL LLC
 DBA: SPEEDWAY #4038

License	Licensee	Lic. Types	Insurance	Bond	Requirements			
Licensee Name:		NORTHERN TIER RETAIL LLC				<input type="button" value="Browse..."/>		
DBA:		SPEEDWAY #4038						
Sales Tax Id:		*****		Non-Profit:	<input type="checkbox"/>	Worker's Comp:	05/01/2019	<input type="button" value="Properties..."/>
AA Contract Rec'd:		00/00/0000		AA Training Rec'd:		00/00/0000		
AA Fee Collected:		00/00/0000		Discount Rec'd:		<input type="checkbox"/>		

Other Agency Licenses				Financial Hold Reasons		
Other Licensing Agency Name / License Type	License #	Expiration	Reason	Active	Date	

Contacts for this Licensee

Home Phone	Contact Address	City	Zip	DOB
	390 MARYLAND AVE E	ST PAUL	55130-3624	00/00/0000
	19100 RIDGEWOOD PKWY	SAN ANTONIO	78259	00/00/0000
	576 BIELENBERG DRIVE STE 200	WOODBURY	55125	00/00/0000

Background Check Required

Mail License To:

 Mail To Contact
 License Address

Mail Invoice To:

 Mail To Contact
 License Address

License # 100004245

NEXT REGISTER PLEASE
MINNESOTA LOTTERY



CITY OF RAINY PACE
Tobacco Compliance Check

Business Type:
 2110000-4245
 4510 BAYVIEW #40138
 3910 MARVELLAWAYE E

Convenience Convenience / Shop Club Drug Store / Pharmacy Tobacco / Smoke Shop
 Dispensary / Grocery General Merchant Liquor Store / Bar Restaurant Other (specify in comments)

Cigar prices: Single 2 Pack 3 Pack 4 Pack or More
 \$2.60 \$ \$ \$ \$

Are there, mixed or unfiltered flavored products on premises?
 Yes or No

Are there thirty (30) percent of the above products / items covered by temporary signs?
 Yes or No

Were pictures taken of the store during inspection?
 Yes or No (if Yes, list dates)

Were pictures taken of the store during inspection?
 Yes or No

Name of (Owner) or (Clerk):
 Notes/Issues: Natural American Spirit, Game Red Sweets, and Optimo Sweet Cigars

Reasons an inspection was conducted:
 Does not sell tobacco Unsanitary/unsafe conditions Out of business After business hours
 Refused inspection Why? Other

Inspector: Akbar R. Muhammad Date: 4, 16, 19 Time: 2:04 AM/PM AM

AA-ADA-11103 Employer

STAMP - Ownership / Zoning Information[New Search](#)[Help using this report](#)**Run Date:** 07/05/19 10:18 AM**House#:** 390**Last updated from Ramsey County
data on:** 07/07/2018**Street
Name:** maryland

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

390 Maryland Ave E - Speedway Superamerica Store - 55101-1401 - [Other Applications](#)

PIN: 292922220175	Census Track: 30900	Census Block: 3004	Council Ward: 5	District Council: 5
Year Built:	Foundation Sq Feet:	Loan Company:	Land Value: 0	Building Value: 0

Existing Primary Use: A-Auto Convenience Market**Legality of Use:****Occupancy
Group
Type:** M**Units:** 0**Zoning:** B3**Legal Desc:** Eidsmo Addition Subj To Ave; Lots 1 Thru Lot 6**Owner:**Realty Income Properties 3 Llc/Attn Portfolio Management
11995 El Camino Real Ste 101
San Diego CA 92130-2565**Certificate of Occupancy Responsible Party:**Marketing Svcs - Mail Sto
Speedway #4359
19100 Ridgewood Pkwy
San Antonio TX 78259
651-291-2835