

OFFICE OF THE CITY ATTORNEY
John J. Choi, City Attorney



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

*Civil Division
400 City Hall
15 West Kellogg Blvd.
Saint Paul, Minnesota 55102*

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

November 25, 2009

NOTICE OF VIOLATION

David Povolny
Super Day, Inc.
281 Snelling Avenue North
St. Paul, MN 55104

RE: Cigarette/Tobacco license held by Super Day, Inc. d/b/a Super Day, Inc. for the premises located at 281 Snelling Avenue North in Saint Paul
License ID #20070002366

Dear Mr. Povolny:

The Department of Safety and Inspections (DSI) has recommended adverse action against the Cigarette/Tobacco license held by Super Day, Inc. d/b/a Super Day, Inc. for the premises located at 281 Snelling Avenue North in Saint Paul. The basis for the recommendation is as follows:

On November 13, 2009, a tobacco compliance check was conducted at Super Day, Inc. located at 281 Snelling Avenue North. A seventeen year old male entered and asked to buy cigarettes. He was not asked to show his identification, which would have indicated he was underage. Nevertheless, the clerk sold him a package of Marlboro cigarettes.

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

This is your first violation for the sale of cigarettes to an underage person, therefore, per Saint Paul Legislative Code §324.11 (b) (1) the licensing office will recommend a \$200.00 matrix penalty.

Super Day, Inc.
November 25, 2009
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At this time you have three options on how to proceed:

1. You can pay the recommended \$200.00 matrix penalty. If this is your choice, you should make payment directly to the Department of Safety and Inspections, at 375 Jackson Street, Ste. 220, St. Paul, Minnesota 55101-1806 no later than **Monday, December 7, 2009**. Information should be directed to the attention of Christine Rozek. A self-addressed envelope is enclosed for your convenience. Payment of the \$200.00 matrix penalty will be considered to be a waiver of the hearing to which you are entitled.
2. If you wish to admit the facts but contest the 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 the facts and requesting a public hearing. We will need to receive your letter by **Monday, December 7, 2009**. The matter will then be scheduled before the City Council for a public hearing to determine whether to impose the \$200.00 matrix penalty. You will have an opportunity to appear before the Council and make a statement on your own behalf.
3. If you dispute the above facts, you may request a hearing before an Administrative Law Judge. At that hearing both you and the City will be able to appear and present witnesses, evidence and cross-examine the other's witnesses. The St. Paul City Council will ultimately decide the case. If this is your choice, please let me know by **Monday, December 7, 2009**, and I will take the necessary steps to schedule the administrative hearing.

If I have not heard from you by that date, I will assume that you do not contest the imposition of the \$200.00 matrix penalty. In that case, the matter will be placed on the City Council Consent Agenda for approval of the recommended penalty.

Please be advised that the clerk who was identified as having made the sale on this date is also being 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 any questions, please feel free to contact me at (651) 266-8710.

Sincerely,

Virginia D. Palmer (JK)

Virginia D. Palmer
Assistant City Attorney

cc: Christine Rozek, Deputy Director of DSI
Super Day, Inc. c/o 295 Snelling Avenue North, St. Paul, MN 55104
Roger Bromander, Exec. Director, Union Park District Council, 1570 Concordia Avenue,
Ste. LL100, St. Paul, MN 55104

STATE OF MINNESOTA

, ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)


Julie Kraus, being first duly sworn, deposes and says that on the 25th day of November, she served the attached **NOTICE OF VIOLATION** by placing a true and correct copy thereof in an envelope addressed as follows:

David Povolny
Super Day, Inc.
281 Snelling Avenue North
St. Paul, MN 55104

Super Day, Inc.
c/o 295 Snelling Avenue North
St. Paul, MN 55104

Roger Bromander, Exec. Director
Union Park District Council
1570 Concordia Avenue, Ste. LL100
St. Paul, MN 55104

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


Julie Kraus

Subscribed and sworn to before me
this 25th day of November, 2009


Notary Public

