

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

OAH Docket No.: 60-6020-37157

In Re: Cigarette/Tobacco licenses held by Zakariya Abukhudeer d/b/a The One Stop Market LLC for the premises located at 1541 Maryland Avenue in Saint Paul.

License ID #: 20190001624

POST-TRIAL BRIEF

TO: THE HONORABLE LAURASUE SCHLATTER, ADMINISTRATIVE LAW JUDGE, OFFICE OF ADMINISTRATIVE HEARINGS, 600 NORTH ROBERT STREET, SAINT PAUL, MINNESOTA 55102; AND THE CITY OF SAINT PAUL, THROUGH ITS CITY ATTORNEY, LYNDSY M. OLSON AND ASSISTANT CITY ATTORNEY, THERESE SKARDA, OFFICE OF THE SAINT PAUL CITY ATTORNEY, 400 CITY HALL, 15 WEST KELLOGG BLVD., SAINT PAUL, MINNESOTA 55102:

INTRODUCTION

For its summation of the contested case hearing conducted on July 25, 26, and 27, 2022, licensee, Zakariya Abukhudeer d/b/a The One Stop Market LLC for the premises located at 1541 Maryland Avenue in Saint Paul, License ID #: 20190001624 (“The One Stop”) respectfully submits this Post-Trial brief.

The City of Saint Paul (“City”) failed to show that on March 30, June 1, and July 20, 2020¹: 1) The One Stop did not take reasonable steps to discourage loitering; 2) That The One Stop engaged in a pattern or practice that inferred it lacked fitness or good character; 3) That The One Stop’s licensed activities created a serious danger to public health, safety or welfare; 4) That The One Stop was operated, maintained or permitted conditions that unreasonably

¹ No evidence or testimony was provided by the City that related to the July 20, 2020 allegations and this charge should be considered abandoned and waived and accordingly dismissed.

annoyed, injured or endangered the safety, health, morals, comfort or repose of any considerable number of the public. Further, the evidence does not support the City's charge that The One Stop failed to maintain video surveillance cameras and provide a copy of the footage for an incident on March 30, 2020. Because of this, supported by the following details, the City has failed to establish any further bases to take any adverse action against The One Stop beyond what is in the Court's Recommendation and Order on Motion for Summary Disposition dated September 7, 2021. As a result, there is no basis to support a recommendation of the revocation of The One Stop's license or any other adverse action at all.

PROCEDURAL POSTURE/ISSUES PRESENTED

A. Location

The One Stop is a convenience store located at 1541 Maryland Avenue East in St. Paul. The One Stop is located next to (in the same building as) a laundromat and shares a parking lot with it. It is on the corner of Maryland Avenue East and Hazelwood Street. It is on a corner with a stoplight and bus stop for Metro Transit. The One Stop's immediate neighbors consist of apartment buildings (formally known as projects) and currently housing low-income residents.

B. The Neighborhood

The City's Licensing Manager at the Saint Paul Department of Safety and Inspections, Eric Hudak, testified he was not familiar with the neighborhood where The One Stop is located. The law enforcement officer called by the City, Saint Paul Police Sergeant Robert A. Stanway, testified that the neighborhood had drug and gang problems. The law enforcement officer called

by The One Stop, Saint Paul Police Sergeant Michael Dunaski, a third-generation resident of the eastside, provided testimony that agreed with Sergeant Stanway's and provided more context. With his experience on the Gang Task Force and related and ongoing investigations in that part of the City, Sergeant Dunaski testified to the ongoing gang activity, violence, drug transactions, and firearm problems in the area. Sergeant Dunaski agreed it was a "rougher" neighborhood as its reputation confirms.

C. License Conditions

The City granted The One Stop a Cigarette/Tobacco license subject to the relevant conditions of:

- 2) The licensee shall take reasonable steps to discourage loitering in front of or on the property of the licensed business; and
- 3) The license holder shall maintain video surveillance cameras inside and outside the establishment in accordance with Saint Paul Police Department (SPPD) recommendations. The video recording shall be kept by the license holder for at least thirty (30) days and shall be available for viewing by the SPPD immediately upon request. *** In other cases, if the SPPD or the Department of Safety and Inspections (DSI) requests copies of the surveillance tapes, licensee shall have a 48-hour period in which to provide such copies.

Exhibit (Ex.) 1-14. No evidence was presented that established what the Saint Paul Police Department recommendations were for the video surveillance cameras at The One Stop. Testimony by the City's witnesses, and The One Stop's witnesses, established that the City has requested, and The One Stop has provided, footage from the video surveillance cameras numerous times before and after the incidents at issue.

D. No Priors

The One Stop began its current operations in about July 2019. Prior to this case, The One Stop has had no violations related to its license and has never appeared before the City Council on any adverse action related to its license.

The One Stop has successfully complied numerous times with the City's requests for video footage from its store surveillance cameras. The One Stop has had no complaints by the City regarding compliance with providing video footage whenever requested. There have been no prior issues with The One Stop's compliance with its license condition #3.

The One Stop has policies in place for its employees to address loitering at the store. Two employees of The One Stop, Faris Abukhadeer and Mohamad Abukhadeer,² testified that the store's policies include asking people to move along if they are not making purchases and have been on the premises for an extended period of time.

The One Stop's owner, Zakariya Abukhadeer, testified about the difficulties in determining if a person is loitering or if they are patronizing the laundromat next door and are simply waiting for their laundry to finish drying. Zak also testified that some people accused of loitering by store employees have used the laundromat as an excuse.

The owner of One Stop Wireless, a cellular phone business located at a counter within The One Stop, Maan Abukhadeer, testified how his customers sometimes wait for his services while he is working on their phones. Because sometimes those serves can take over an hour or two, it would be easy to mistake Maan's legitimate customers for someone who is loitering.

E. Violations Alleged

² Due to the number of individuals with the last name *Abukhadeer*, they will each be referenced by their first names only for ease of reference to distinguish between them. There is no disrespect meant by not using the *Abukhadeers'* last names.

On about September 10, 2020, the City issued its Notice of Violation to The One Stop. The City alleged violations of its license conditions and city ordinances related to the operation of The One Stop. The City cited The One Stop with violating license conditions #2 and #3 above. Ex. 1-1. The City alleged The One Stop failed to take reasonable steps to discourage loitering and failed to provide a copy of surveillance footage. *Id.*³

The City further alleged that The One Stop was operating the business in a manner that creates a serious danger to public health or safety, and permits conditions that unreasonably annoy the comfort or repose of the public. *See* St. Paul Legis. Code § 310.06(b)(6), (7), and (8). No testimony or other evidence from any neighbors of the business or other members of the public was presented.

F. Firearms Present

Although the City has been keen to emphasize the firearms present in the video footage shown at trial, no charges are at issue regarding any violations related to The One Stop having firearms on its premises. The testimony established all firearms were lawfully on the premises and were safely handled. The shotgun shown in one video was never loaded and there were not even any shells for it at the store. Further, all people handling the firearms were either licensed to carry firearms or have had training or experience with the safe handling of firearms. One remarkable display of the conscious care that occurred while a handgun was handled was demonstrated by Mohammad. In the March 30, 2020, video, Mohammad is seen handing his

³ The City also cited The One Stop with violating city ordinances by selling single cigarettes, flavored tobacco products, and by allowing patrons to smoke inside the business premises. These issues were resolved via summary disposition motion with violations found and an upward departure from the City's penalty matrix recommended with a fine of \$1,000.00.

handgun to his brother and co-employee Faris before going into the middle of a fight occurring in the parking lot to break it up.

G. Penalty Requested & Revised

Originally, the City requested an upward departure from the penalty matrix to a \$2,000.00 fine and a 10-day suspension of all licenses with imposition of additional conditions. *See* St. Paul Legis. Code § 310.05(m) (penalty matrix).⁴ On about April 8, 2021, the City filed an Amended Notice of Violation and Request for Upward Departure to Revocation (Amended Notice). The City claimed that upon further review, the videos allegedly showed additional violations.⁵ As a result, the City revised its requested penalty to the “ultimate” penalty of license revocation.

H. Summary Disposition

On about September 7, 2021, the prior Administrative Law Judge, the Honorable James E. LaFave, issued the Court’s Recommendation and Order on Motion for Summary Disposition (“Summary Disposition Order”). The City had moved for summary disposition on all charges. As noted, the Court granted in part and denied in part the City’s motion.

I. *Midway Amoco*

As to the requested penalty, Judge LaFave, had recent, relevant, and significant experience with penalty matrix departures. Judge LaFave had presided over *In re the Matter of the*

⁴ St. Paul Code of Ordinances provides a penalty matrix for licensing violations. St. Paul, Minn., Legislative Code § 310.05(m)(1) (2020). Under the penalty matrix, a first violation is a \$500 fine. *Id.* For a second violation, the penalty is set at a \$1,000 fine. *Id.* For a third violation, the penalty is a \$2,000 fine and a 10-day license suspension. *Id.* For a fourth violation, the penalty is revocation of the license. *Id.*

⁵ All additional alleged violations were related to the charges previously decided in the Summary Disposition Order. *See Amended Notice.*

Cigarette/Tobacco and Gas Station Licenses Held by Midway University & Hamline LLC d/b/a Midway Amoco BP for the premises located at 1347 University Avenue in St. Paul License ID # 2010000243 (“Midway Amoco”). After a three-day evidentiary hearing, Judge LaFave decided and then authored the Court’s issued Findings of Fact, Conclusions of Law and Recommendation. *See Midway Amoco* (Minn. Office of Admin. Hearings Mar. 9, 2020).

The *Midway Amoco* decision was appealed to the Minnesota Court of Appeals and its Nonprecedential Opinion affirming Judge LaFave was issued on about February 16, 2021. *See Matter of Cigarette/Tobacco & Gas Station licenses held by Midway Univ. & Hamline, LLC*, No. A20-0581, 2021 WL 562416 (Minn. Ct. App. Feb. 16, 2021).

In *Midway Amoco*, revocation of the licensee’s license was recommended and subsequently adopted by the City Council. *Id.* at 1. That revocation was recommended on findings that supported violations of St. Paul Legislative Code sections 310.06(b)(6)(c), 310.06(b)(7), and 310.06(b)(8) that had occurred over seven dates in June 2019. *Id.* at 3. The findings of severe aggravating circumstances supporting a greater than double upward departure from the presumptive penalty included:

- 1) Gunfire;
- 2) Shots fired from the gas station parking lot into neighboring buildings on multiple occasions;
- 3) Neighbors who feared for their safety;
- 4) Large disruptive crowds repeatedly gathering in the early morning hours dancing and smoking marijuana;
- 5) Drug deals in the parking lot;
- 6) Physical assaults; and
- 7) Ultimately a homicide.

Summary Disposition Order, p. 14. In *Midway Amoco* the gas station already had one violation, it was selling “drug kits,” and in a little over two months had more than 100 calls to police. *Id.* at p. 15.

In this case, Judge LaFave found that the violations determined to have occurred in the Summary Disposition Order were not severe, aggravating and atypical, the factors he found necessary to support a more than double upward departure from the penalty matrix. *Id.* The Summary Disposition Order further provided:

Moreover, the remaining allegations, while more troubling, even if established at hearing, would not support revocation. The violations here are not as persistent, pervasive, or dangerous as those in the *Midway Amoco* [] case. This recommendation should not be taken as condoning the actions of [The One Stop], but rather a reasoned judgment that the violations established together with the violations alleged, are not so severe, aggravating, atypical, and rare as to meet the high legal standard necessary for a greater-than-double upward departure in the City’s penalty matrix.

Id.

J. Allegations Remanded

This matter and the recommendations in the Summary Disposition Order were on the City Council’s agenda for its meeting on December 22, 2021. The City Council considered this matter and the Summary Disposition Order and remanded this case back to the Office of Administrative Hearings in Resolution No. 21-1813 of the City of St. Paul dated December 22, 2021 (filed 1/12/2022).

K. Issues Tried

As a result, this contested case hearing was held on July 25, 26, and 27, 2022, “on the allegations on which the Administrative Law Judge denied summary disposition.” Res. No. 21-1813. Those issues, as agreed to by the parties through counsel at the start of the hearing, are:

- 1) Whether The One Stop violated licensing condition #3 and the St. Paul legislative code § 310.06(b)(5) relating to the alleged failure to maintain video surveillance equipment and to provide a copy of surveillance video as requested by the City; and
- 2) Whether The One Stop violated licensing condition #2 and the St. Paul legislative code § 310.06(b)(5)-(8) relating to The One Stop’s conduct on March 30, 2020, June 1, 2020, and July 20, 2020, in allegedly permitting dangerous behavior and loitering on or near the licensed premises.

Ex. 1-14. At the contested case hearing over three days, the City put on three witnesses, Mr. Hudak, Sergeant Stanway and a City-employed video technician, James Legarski. The One Stop put on as witnesses its owner Zak, its employees who were present for the events alleged, Mohammad and Faris, Sergeant Dunaski, and Maan, who was also present at one of the incidents.

L. March 30, 2020 Video

According to the City, The One Stop’s failure to intervene on March 30, 2020 when a fight broke out in the parking lot that escalated to gunshots fired by two groups, violated license condition #2. The City maintains that the video demonstrates that The One Stop operates the business in a manner that endangers the public in violation of Saint Paul Legislative Code § 310.06(b)(5)-(8). The City also asserted that had The One Stop’s store manager taken action to disperse the individuals on March 30, 2020, the shooting incident would have been avoided. The City supports this position based on Mr. Hudak’s and Sergeant Stanway’s review of the video

footage taken from camera number 12 on March 30, 2020. Both testified that had The One Stop acted the gun fire would have been avoided.

The One Stop's witnesses regarding this incident, Faris and Mohammad, were both present at the event and are seen in the video. Both witnesses were questioned as the video played and were able to ask for it to be paused whenever they wanted to point something out.⁶

As the video begins, it shows one of the occupants from the SUV that the City alleges was loitering, exiting the store with a full beverage in his hand that was just purchased. Cam 12: 16:46:13-24. A few minutes later, Mohammad is seen exiting the store to smoke a cigarette in the front of the store where another employee and a person who the store uses as a security guard are located. *Id.* 16:49:30. Another customer of the store is also seen. *Id.*

Mohammad greets a group of customers arriving a short time later and then two people from the SUV exit the vehicle and enter the store followed by a couple more right after that. *Id.* 16:50:00-32. The SUV's occupants are seen leaving the store thereafter with at least one of them carrying a beverage that was apparently purchased in the store and getting back into the SUV. *Id.* 16:50:40-16:51:07.

Next, another SUV is seen entering the parking lot from the north and driving past the parked SUV. *Id.* 16:51:11-16:51:21. Mohammad finishes his cigarette and goes back into the store leaving only the security person seated out front. *Id.* 16:51:40-50. Zak Abukhadeer, an employee and not the owner with the same name, goes out to his truck and brings in a 12 pack of soda

⁶ The same process was utilized during Mr. Hudak's testimony and Sergeant Stanway's testimony, at least on cross examination.

before the second SUV is seen coming back through the parking lot from the east, the direction it had just drove off towards. *Id.* 16:52:34-16:53:37.

A third SUV is entering the parking lot from the west when the second SUV drives past it and then backs up and stops. *Id.* 16:53:34-16:53:45. As soon as the two SUVs are stopped, driver's window to driver's window, the security guard seated outside begins waving at them with a "keep moving" gesture. *Id.* 16:53:45-47. The security guard then gets up and begins walking towards the SUVs continuing to wave at them as he is saying something in that same direction. *Id.* 16:53:48-16:54:04. The second and third SUVs stop with people getting out of both vehicles. *Id.* 16:54:05-45.

A woman in a yellow sweatshirt, that both Faris and Mohammad identified as an instigator of the incident, approaches the first SUV and is yelling at people outside it. *Id.* 16:54:34-16:55:00. A man with crutches gets out of the second SUV as all three employees from the store come outside and start observing the woman yelling. *Id.* 16:55:00-15.

Mohammad begins yelling in the direction of the gathering telling the people to move along, and they begin to disperse, as he walks towards the first SUV. *Id.* 16:55:18-30. Mohammad tells the people in the first SUV to move along as he is walking past. *Id.* Although they appear to be leaving, the woman continues yelling and Mohammad continues to walk south towards the second SUV. *Id.* 16:55:30-33.

As Mohammad approaches the passenger side window of the second SUV, still telling them to move on, it pulls out of the parking lot. *Id.* 16:55:34-16:56:00. Mohamad continues walking, now east towards the third SUV, telling its occupants to move along too. *Id.* 16:56:00-

16:56:17. After the third SUV moves towards the east parking lot exit, Muhammad walks back towards the store with the situation apparently diffused. *Id.* 16:56:19-40. At this same time, the first SUV appears to be getting ready to leave the parking lot. *Id.*

But about a minute later the second SUV comes back into the parking lot's west entrance going fast and stops in front of the store. *Id.* 16:57:54-16:58:00. Mohammad remained outside and saw the second SUV come back. *Id.* Once again, the woman in the yellow sweatshirt gets out and begins walking towards the first SUV yelling at a person in the parking lot as the whole crowd begins to move to the east end of the parking lot and then disappear off camera. *Id.* 16:58:07-27. Mohammad and Faris are seen in front of the store watching what both testified was a fight breaking out. *Id.*

As the fight continues, Mohammad turned towards Zak the employee and hands Zak the handgun Mohammad had concealed in his waistband. *Id.* 16:58:50-54. Then Mohammad turns and goes towards the people fighting. *Id.* 16:58:54-16:59:00. Zak goes back in the store and Faris follows Mohammad but keeps his distance. *Id.*

The woman is seen again getting a crutch out of the second SUV as Mohammad is nearby. *Id.* 16:59:03-05. She then rushes towards the first SUV brandishing the crutch and yelling. *Id.* 16:59:08-10. She begins beating on the first SUV with the crutch near the open rear passenger window as Mohammad begins walking in that direction. *Id.* 16:59:11-16. As another person confronts the woman at the rear of the first SUV she swings the crutch at him but he is able to take it from her as they fight and both go down to the ground. *Id.* 16:59:17-29.

At the same time, Mohammad has come around the rear of the fight and Faris is in front of it. *Id.* Also at this same time, a second fight is breaking out as Mohammad picks up the loose crutch and takes it out of the way and leans it up against the second SUV. *Id.* 16:59:30-39.

Mohammad testified he yelled at the other employees to call the police at this time as seen on the video, but Faris testified they had called the police before that time. *Id.* 16:59:40-42.

Mohammad then turns and gets in the middle of the people fighting and takes a direct hit from the crutch. *Id.* 16:59:43-49. At the same time, a handgun is handed off to a man without a shirt in front of the store on the other side of the parking lot. *Id.* The shirtless man then points the firearm in the air, but it appears to not fire. *Id.*

Immediately thereafter everyone in the crowd is seen wincing and ducking as a shot was fired from the east end of the parking lot. *Id.* 16:59:49-51. The crowd then begins to flee getting into their cars, going into The One Stop, and running down the street behind the store. *Id.* 16:59:51-54.

The shirtless man runs into the frame from the east towards the first SUV. *Id.* 16:59:53-55. Once he gets close, he appears to point the handgun and open fire into the passenger front window of the first SUV. *Id.* 16:59:55-57. He then runs behind the west end of the store heading north. *Id.*

At the same time, a passenger in the rear seat of the first SUV reaches out the window with a handgun and opens fire in the direction of the shirtless man. *Id.* 16:59:56-17:00:02.

Thereafter, Mohammad comes out of the store with his handgun in his right hand pointed at the ground and away from the parking lot. *Id.* 17:00:04-08. The second SUV then drives off frame to

the east and the third SUV comes in from the east and speeds around behind the first SUV and heads north behind the west end of the store. *Id.* 17:00:17-30.

M. June 1, 2020 Video

On June 1, 2020, rioting and looting was ongoing in Minneapolis and Saint Paul in reaction to the killing of George Floyd by a Minneapolis police officer a few days earlier. The One Stop was one of only a few metro area convenience stores open. Looting and arson had occurred about a mile away from The One Stop.

Maan was present working at the counter for the Wireless One Stop until they were instructed to close the store by a Saint Paul Police Officer with a gas mask on who came into the store at about 9:35 pm after being called much earlier that evening. 21:34:34 and 21:36:34. Maan testified that people at the incident that night stated that Iyanna Dior took a car without consent, crashed it into several parked cars while driving drunk with many people witnessing it from nearby apartments and on the street. Dior then attempted to flee the scene of the crash and the witnesses followed/chased her. Dior apparently then ran down the block away from the scene and crowd of people to The One Stop convenience store where store employees called police shortly after she arrived at about 9:15 pm.

As soon as the incident began around 9:15 pm, Maan and the other employees began trying to control the crowd that came in immediately. At 21:15:25, Dior is seen in the blue jean shorts and white tube top on the video footage. She said from the start that she told

the crowd of people that followed her to The One Stop that she wanted to use The One Stop's ATM to get money to pay for the damage her accident caused. In fact, she called the cops right away in order to not be charged with leaving the scene of an accident and was at The One Stop in order to be in a public place to wait for the cops and not be hurt by the angry crowd.

Dior, who is the instigator of the ruckus, came into view of the camera and then at 21:15:33 you can see Maan raising his hands as he addressed the crowd and attempted to control the situation. As shown on the video, Maan then walked from behind the counter and went into the main floor area and directly addressed Dior. In doing so, Maan immediately interjected himself in between Dior and the group of a half dozen people or more that followed her into the store and were trying to confront her.

At 21:15:45, Maan is seen corralling these people out of the store by moving them towards the front door with Maan in between Dior and those wanting to confront her. 21:16:04. By 21:16:28, Maan had the people chasing Dior pushed back towards the door but the crowd was growing larger and more were pushing their way into the store. As the testimony showed, Dior, who was quite intoxicated, was attempting to create a dramatic situation where she was the center of attention and then she devolved into playing a victim later on.

At about 21:17:21 Dior is coming back into the picture and she is visibly agitated and yelling at the crowd of people instigating the disruption even further. From 21:17:31 through 21:17:39 Maan is seen continuing to try and talk to Dior and get her out of there.

At 21:17:40, Maan comes back into camera view and is seen attempting to calm the disruption and get the crowd out of the store. Additionally, you can see a friend of Maan's in a white shirt behind the counter who is not an employee but was simply stepping in to watch the merchandise and cash register while Maan was out on the store floor trying to quell the situation.

About this time, Maan talked to Dior and showed her how she could leave out through the back door of the store or the side door into the laundromat and miss the ever-growing crowd out front. Dior refused to go out the back door and leave the store. If she would have just left at this point, Dior could have avoided the growing crowd of people in the front parking lot and not been assaulted by them. If she would have left through the back door, that would have been the end of it.

Between 21:26:12 and 21:28:00 Dior continues to taunt people and then eventually a woman hits her and Dior spits back at the woman before another male spits at Dior. At 21:28:03 Maan steps in between the woman and man that spat at Dior to stop the confrontation, but then Dior starts throwing garbage cans at the group of people that she confronted and the group pushed their way towards her and there was nothing Maan could do to stop it without causing people more harm.

After Dior was drug out of the store by a patron, she was assaulted by the crowd outside and then Dior came back into the store. The One Stop employees and others eventually were able to put up a makeshift barricade to keep the people out of the store but by about then the crowd was starting to leave. Shortly thereafter the police arrived.

ARGUMENT

I. THE CITY FAILED TO PROVE *THE ONE STOP* VIOLATED ANY LICENSE CONDITION OR LAW ON JULY 20, 2020.

Although it was initially alleged, remained after the Summary Disposition Order, and was remanded by the City Council to be decided at this hearing, the City failed to put on any evidence or testimony in support of the allegations regarding street gambling on July 20, 2020 on The One Stop's premises. The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence. Minn. R. 1400.7300, Subp. 5 (2022). Because the City failed to present any evidence on this issue at the contested case hearing, it should be deemed waived and dismissed. "Waiver is the voluntary and intentional relinquishment of a known right." *Illinois Farmer Ins. v. Glass Service*, 683 N.W.2d 792, 798 (Minn. 2004). Waiver requires "knowledge of the right in question and the intent to waive that right." *Id.*

The City raised street gambling on July 20, 2020 as a basis to take adverse action against The One Stop's license. The City was represented by counsel. The City knowingly chose not to present any witnesses or evidence in support of street gambling on July 20, 2020. As such, the City has waived its right to have any issues of The One Stop's conduct on July 20, 2020 decided.

If this tribunal does examine the issue substantively, The One Stop reasserts its position as contained in its Responsive Memorandum of Law in Opposition to the City's Motion for

Summary Disposition at pages 18-19. On July 20, 2020, SPPD officers drove by The One Stop and, “observed several males loitering on the west side of the building . . . gambling and shooting dice with a large pile of U.S. currency between them as prize money.” City Summary Disposition Memo, p. 7, ¶29. The City further contends that, “the gambling was occurring in broad daylight and in a place where The One Stop employees could easily view them by looking out a window.” *Id.* These “facts” are supported by the sworn affidavit of a Saint Paul police officer. See Exhs. 11-1-2; 2-105.

The following photograph shows the South and West sides of The One Stop (1541 Maryland Avenue East in Saint Paul, Minnesota):



This second photograph shows the West side:



Contrary to the City’s allegations, sworn to by a licensed police officer, there are no windows that an employee may easily look out and view any activity on the West Side of The One Stop. The City has failed to demonstrate that The One Stop failed to take reasonable steps to

discourage loitering on July 20, 2020 or that it was even reasonable for The One Stop to have been aware of any loitering occurring. For all of these reasons, no adverse action recommendation should be issued related to the alleged street gambling on July 20, 2020 because the City has waived it and substantively cannot prove the allegations. This issue should be recommended to be dismissed with no action taken by the City.

II. THE ONE STOP DID NOT FAIL TO MAINTAIN ITS VIDEO SURVEILLANCE EQUIPMENT AND PROVIDED A COPY OF REQUESTED SURVEILLANCE VIDEO TO THE CITY.

The evidence and testimony showed that The One Stop promptly repaired its damaged video recording device and provided a copy of the requested video to the City. Contrary to the allegations and the testimony provided, the issue of *who* damaged The One Stop's video recording device is not an issue to be decided. The questions are:

1) Did The One Stop fail to maintain its video recording device?

and

2) Did The One Stop timely provide a copy of the requested video to the City?

On April 24, 2020, James Legarski, a City-employed video technician that collects video footage from businesses, went to The One Stop to collect video of an incident that occurred on April 23, 2020. Ex. 1-17. Mr. Legarski successfully collected that video. To collect the video, Mr. Legarski removed The One Stop's video recording device from its shelf up on a wall in a room at The One Stop. Exh. 105. Mr. Legarski testified and stated in his report that the shelf was about 16 feet high. *Id.* On April 27, 2020, a DSI Inspector sent a letter to The One Stop requesting video

from March 30, 2020 be produced by May 4, 2020. See Exh. 104. Seven days later, The One Stop timely responded and in an email informed the City:

In regards to the letter I received requesting video surveillance for the day of March 30th, unfortunately these tapes are not available on my system hard drive. I do not have any surveillance prior to April 24th when a SPPD officer was at the business retrieving surveillance for a different incident. Due to the mistreatment of my surveillance equipment, my DVR system fell to the floor causing both of my hard drives to fail. From my knowledge, SPPD already has a copy of the incident on March 30th which may be of help to you.

Exh. 104.

The City admitted it received a copy of the video footage from the SPPD. In fact, on April 15, 2020 the City reviewed video from the March 30, 2020 incident provided by The One Stop and used that video to support the City's allegations regarding the March 30, 2020 incident against The One Stop.

Likewise, the day after the video equipment was damaged it was repaired and placed back into service. There was no failure to maintain the video equipment that was damaged. It was repaired as fast as could be reasonably expected.

Obviously from the footage viewed at the contested case hearing, The One Stop provided the requested video from the March 30, 2020 incident to the City. There was no failure to provide a copy of the requested video to the City. The City failed to prove that The One Stop failed to maintain its video equipment under License Condition #2. The City failed to show it did not receive a copy of the video requested from March 30, 2020. The One Stop complied with

License Condition #2. As such, a recommendation should be made that no adverse action be taken against The One Stop.

III. THE ONE STOP TOOK APPROPRIATE ACTIONS ON MARCH 30, 2020.

The City alleges The One Stop violated License Condition #2 when The One Stop failed to intervene on March 30, 2020 when a fight broke out in the parking lot that escalated to gunshots fired by two groups. The City further alleges that the video demonstrates that The One Stop operates the business in a manner that endangers the public in violation of Saint Paul Legislative Code § 310.06(b)(5)–(8). Neither contention was supported by a preponderance of the evidence admitted.

As seen in the video, The One Stop took swift and appropriate actions on March 30, 2020. The entire incident from when the people that fought got out of their vehicles and squared off until the end of the gunshots being fired occurred in a span of about only 5 minutes. The occupants of the first SUV were actively patronizing the store before the incident broke out. As soon as the two SUVs containing people not patronizing the business stopped in the parking lot with their drivers' windows faced off, The One Stop's personnel attempted to get the vehicles to move along and leave the parking lot. Numerous actions taken by The One Stop's employees were taken to keep the people in the SUVs that were not patrons from being on the premises with no legitimate purpose in the parking lot before the fighting broke out.

Once the fight broke out the police were called. After the fighting began, Mohammad tried to intervene multiple times, and risked his own personal safety, to end the fighting. In fact, he was physically assaulted during his attempt to break up the fighting.

Mohammad acted responsibly in not taking the handgun he was licensed to carry into the melee while it was ongoing. Mohammad left his firearm with a fellow employee instead when he attempted to break up the fighting. Immediately following the gunfire, Mohammad was back out in the parking lot making sure no further violence occurred with no regard for his own safety.

The video showed the shirtless man, not seen in the video to be associated with any of the SUVs or with anyone standing in front of the store prior to the shooting, was the gunman that began the shooting. The shirtless man is not seen loitering in any portion of the video. He ran off immediately after the shooting.

Mohammad acted as a brave man during the March 30, 2020 incident. The steps Mohammad took were reasonable to deter loitering at The One Stop and do not show The One Stop contributing to any endangerment of the public. The One Stop tried to protect the public by intervening in the fighting and trying to get the SUVs to move along before the fighting broke out. The evidence showed Mohammad unreasonably putting his own life and safety in jeopardy. Neither License Condition #2 nor the City's ordinances require Mohammad to put his own life and safety in jeopardy when complying with the law or regulations.

Nonetheless, the City's position in this proceeding encourages, if not mandates, that such a risk be taken by The One Stop's personnel in order to comply with its licensing laws and conditions. The City's position is not reasonable nor responsible. The One Stop took reasonable steps to discourage loitering on March 30, 2020. The One Stop was not operating the business in a manner that contributed to or created a serious danger to public health or safety on March 30, 2020. Although the City presented no evidence of any annoyance of the public, The One Stop

did not permit conditions that unreasonably annoyed the comfort or repose of the public on March 30, 2020. See St. Paul Legis. Code § 310.06(b)(6), (7), and (8).

As such, the City failed to meet its burden to support any adverse action be taken against The One Stop's license. Accordingly, no adverse action should be recommended from this contested case hearing.

IV. THE ONE STOP TOOK APPROPRIATE ACTIONS ON JUNE 1, 2020.

The City finally contends that The One Stop failed to take reasonable steps to discourage loitering, break up fighting or remove the fighters from The One Stop's business on June 1, 2020. As the video showed, The One Stop's personnel took swift and immediate action again during this incident. As it further shows, this incident had nothing to do with loitering.

Occurring days after George Floyd was killed and in the midst of looting and rioting in the metro area, a car driven by a drunken individual crashed into numerous cars up the street from The One Stop during a block party on June 1, 2020. After crashing into the vehicles, the drunk individual driving, Dior, made promises to pay for the damage she had caused. The police were called about that time and before anything was occurring at The One Stop.

To pay the people whose vehicles she hit and damaged, Dior told the damaged vehicles' owners that she needed to get cash. The nearest cash machine was at The One Stop. Dior said that she would pay for the damage if the growing crowd of people would just let her get to the ATM at The One Stop. As a result, Dior led 15-20 people down the street to The One Stop that evening.

As soon as Dior comes into the store drunk, boisterous, and taunting her victims, The One Stop protected her from the crowd that she led to the store. 21:15:25. The One Stop's employees immediately began corralling people out of the store that appeared to be there to cause trouble and harm Dior and continued to do so throughout the entire event. 21:15:33. The One Stop also began ejecting people that were not actively making purchases at the business and kept doing so until police arrived and instructed the business to close, which it promptly did. 21:15:45, 21:16:04, 21:16:28, 21:17:21, 21:17:31 through 21:17:39.

Maan tried to protect her by having Dior leave the store out of the back door where she could have slipped away unnoticed. She chose instead to stay and further instigate the crowd causing the trouble. The One Stop still took actions to protect Dior and keep the crowd outside at bay.

Even after Ms. Dior taunted the folks whose cars she hit, thereby further agitating the situation and instigating the fighting, The One Stop continued to protect her. 21:26:12 to 21:28:00. She was, appropriately, removed from the premises by a patron of the store after Dior was directly involved in spitting, taunting, and fighting. 21:28:03. But when she forced her way back into the store after being ejected, The One Stop further protected her by keeping the crowd at outside and providing a still unruly Dior sanctuary in the back office. 22:00:00.

At all times, The One Stop personnel appropriately and safely handled the firearms that were present during this tumultuous and dangerous time. The shotgun was unloaded, had never been loaded on the premises, and no shells were even available on site. The shotgun was securely stored when not in The One Stop's personnel's direct possession. The handgun was safely

handled by The One Stop's employees trained and/or licensed to carry it, although not required while in the store. All firearms were secure and safely handled.

The City failed to show by a preponderance of the evidence presented that The One Stop likewise failed to take reasonable steps to intervene when the large group of people began fighting within the licensed premises

Based on surveillance video, The One Stop employees actively attempted to break up the fighting and to remove those fighting from the premises. The One Stop took all reasonable steps to intervene when a large group of people began fighting within the store. Based on surveillance video, The One Stop did not contribute to the event but took all actions it could to quell the situation and protect Dior. As such, no license condition violations have occurred and no laws were violated by The One Stop.

CONCLUSION

For all of the forgoing reasons, The One Stop did not violate any of its License Conditions or any other law. Therefore, no adverse action should be recommended beyond what is set forth in the Summary Disposition Order.

Dated: August 12, 2022

Respectfully submitted,

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