

OFFICE OF THE CITY ATTORNEY
Sara Grewing, 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

April 29, 2011

NOTICE OF VIOLATION

Basher Elwagi
MNA Food Mart
361 Earl Street
St. Paul, MN 55106

RE: Cigarette/Tobacco license held by Elwagie Foods Corp. d/b/a MNA Food Mart for the premises located at 361 Earl Street in Saint Paul
License ID #20080000534

Dear Basher Elwagi:

The Department of Safety and Inspections (DSI) has recommended adverse action against the Cigarette/Tobacco license held by Elwagie Foods Corp. d/b/a MNA Food Mart for the premises located at 361 Earl Street in Saint Paul. The basis for the recommendation is as follows:

On April 12, 2011, a tobacco compliance check was conducted at MNA Food Mart on 361 Earl Street. A fifteen year old male entered your store and asked to buy cigarettes. He was asked to show his identification, and did so. It correctly stated his date of birth, which 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 Subd. 1 (a) and Saint Paul Legislative Code § 324.07 (c).

This is the second (2nd) violation for the sale of cigarettes to an underage person since December 14, 2010, therefore, per Saint Paul Legislative Code §324.11 (b) (1) the licensing office will recommend a \$400.00 matrix penalty.

At this time you have three options on how to proceed:

1. If you wish to admit to the violation and you do not contest the penalty you can pay the \$400.00 matrix penalty. You can send the payment to the Department of Safety and Inspections (DSI) located at 375 Jackson Street, Ste. 220, St. Paul, Minnesota 55101-1806 no later than **Monday, May 9, 2011**. A self-addressed envelope is enclosed for your convenience. All information should be directed to the attention of Christine Rozek. Payment of the \$400.00 matrix penalty will be considered a waiver of the hearing to which you are entitled.

MNA Food Mart
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2. If you wish to admit the facts but you 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 to the facts and requesting a public hearing. I will need to receive your letter by **Monday, May 9, 2011**. The matter will then be scheduled before the City Council for a public hearing to determine whether to impose the \$400.00 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 facts outlined above, you may request a hearing before an Administrative Law Judge (ALJ). 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. If this is your choice, please advise me no later than **Monday, May 9, 2011**, and I will take the necessary steps to schedule the administrative hearing.

If you have not contacted me by Monday, May 9, 2011, I will assume that you do not contest the imposition of the \$400.00 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,



Kyle Lundgren
Assistant City Attorney

cc: Christine Rozek, Deputy Director of DSI
Basher Elwagi, 8908 Nicollet Avenue South, Apt. #2, Bloomington, MN 55420
Karen DuPaul, Community Organizer, Dayton's Bluff District 4 Community Council
798 East Seventh Street, St. Paul, MN 55106-6625

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 29th day of April, she served the attached **NOTICE OF VIOLATION** and correct copy thereof in an envelope addressed as follows:

Basher Elwagi
MNA Food Mart
361 Earl Street
St. Paul, MN 55106

Basher Elwagi
8908 Nicollet Avenue South, Apt. #2
Bloomington, MN 55420

Karen DuPaul, Community Organizer
Dayton's Bluff District 4 Community Council
798 East Seventh Street
St. Paul, MN 55106-6625

(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 29th day of April, 2011


Notary Public

