## AFFIDAVIT OF SERVICE BY U.S. MAIL

## **COUNTY OF RAMSEY)**

Riddhi Mistry, being first duly sworn, deposes and says that on the fifteenth day of July she served the attached NOTICE OF VIOLATION AND REQUEST FOR IMPOSITION OF \$500 MATRIX PENALTY FOR AN UNDERAGE BUYER FAILURE and a correct copy thereof in an envelope addressed as follows:

Seventh Street Liquor INC d/b/a Seventh Street Liquor Barrel 665 7<sup>th</sup> St W St Paul, MN 55102-3123 Attn: Duane Wienke

Duane Wienke 8517 28<sup>th</sup> Ave N New Hope, MN 55427

Garry Minor 7951 Harvest Dr Elko, MN 55020-8520

Julia McColley, Executive Director West 7<sup>th</sup>/Fort Road Federation 395 West Superior Street Saint Paul, MN 55102

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

Riddhi Mistr

Subscribed and sworn to before me

This 15<sup>th</sup> day of July 2025

Notary Public





July 15,2025

# NOTICE OF VIOLATION AND REQUEST FOR IMPOSITION OF \$500 MATRIX PENALTY - UNDERAGE BUYER FAILURE

Seventh Street Liquor INC d/b/a Seventh Street Liquor Barrel 665 7<sup>th</sup> St W St Paul, MN 55102-3123

**Attn: Duane Wienke** 

RE: Tobacco Shop and Liquor Off Sale license held by Seventh Street Liquor INC d/b/a Seventh Street Liquor Barrel for the premises located at 665 7<sup>th</sup> St W., in Saint Paul. License ID #: 20120005702

## Dear Licensee:

The Department of Safety and Inspections ("DSI") has recommended adverse action against the Tobacco Shop and Liquor Off Sale license held by Seventh Street Liquor INC ("Licensee"). Seventh Street Liquor Barrel located at 665 7<sup>th</sup> St W. ("Licensed Premises").

## **Legal Basis for Action:**

Saint Paul Legislative Code §310.01, defines Adverse Action as:

"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."

Saint Paul Legislative Code §324.07(i) prohibits the sale of tobacco products to a person under 21:

"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 is prohibited."

CITY OF SAINT PAUL MELVIN CARTER, MAYOR





Saint Paul Legislative Code §310.03 (m) 3 contains the Tobacco Presumptive Penalty Matrix and computation quidelines for tobacco related violations:

3.**Tobacco Presumptive Penalties Matrix** – *Tobacco Presumptive Penalties*. Penalties for convictions or violations are presumes to be appropriate for every case; however, the council may deviate therefrom in an individual case where the council finds and determines that there exists substantial and compelling reasons making it more appropriate to do so.

Type of Violation	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>
(1) Sale to a person	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and	Revocation
under twenty-one			7-day suspension	
(21) years of age.				

(a) Computation of time for violations under the tobacco presumptive penalties matrix. If a violation is not covered under this penalty matrix, the general presumptive penalty matric should be used. Except as otherwise provide by Minn. Stats. §461.12, subd. 2, subsequent tobacco violations are subject to the following:

Saint Paul Legislative Code §310.14 makes a licensee responsible for a violation by a clerk, employee, manager or agent of a licensee:

"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 compensates 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, must be considered to be and treated as the act of 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 must be controlling and prevail; but must not otherwise amend, alter or affect such sections."

Minnesota Statute §461.12 Subd. 2 also sets minimum statutory penalties for the sale of tobacco to an underage person:

CITY OF SAINT PAUL MELVIN CARTER, MAYOR





"If a licensee or employee of a licensee sells, gives, 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. An administrative penalty of \$600 must be imposed for a second violation at the same location within 36 months after the initial violation. For a third or any subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 must be imposed, and the licensee's authority to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at that location must be suspended for not less than seven days and may be revoked. No suspension, revocation, or other penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing."

## **Adverse Action Recommendation:**

The Department of Safety and Inspections will recommend a \$500.00 matrix penalty for violating Saint Paul Legislative Code § 310.01, §310.03 (m) 3 (1) (a), §310.14, §324.07(i), and Minnesota Statute §461.12 Subd. 2. This is due to failing the Underage Buyer Compliance Check.

## Factual basis for \$500.00 matrix penalty:

On May 14, 2025, at 10:09 a.m. DSI Inspector Luis Sanchez-Panadero, conducted a Tobacco Underage Buyers Compliance Check at Seventh Street Liquor INC d/b/a Seventh Street Liquor Barrel located at 665 7<sup>th</sup> St W. A nineteen-year-old male, retained by DSI to perform underage compliance checks, entered your store to purchase cigarettes. The clerk did not request his identification nor was he asked of his age. Nevertheless, the clerk sold him a pack of Marlboro Light cigarettes.

On May 16, 2025, a letter was sent to Seventh Street Liquor Barrel, Duane Wienke, and to Garry Minor., from DSI Inspector, Joseph Voyda. The letter informed you that you failed the state mandated underage tobacco check as (DSI), had recently conducted a State mandated annual inspection and the person under the age of 21, hired by DSI to conduct the check was able to purchase cigarettes. You were also informed to expect a Notice of Violation from the City Attorney's Office providing options on how to proceed with your adverse action.

You have four (4) 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 **July 25,2025,** I will presume that you have chosen not to contest the proposed

CITY OF SAINT PAUL MELVIN CARTER, MAYOR





adverse action and the matter will be placed on the City Council Consent agenda for imposition of the \$500 matrix penalty.

- 2. You can pay the \$500 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 **July 25,2025**, please contact the Department immediately.
- 3. If you wish to admit the facts but you contest the \$500 matrix penalty, you may have a 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 Council hearing no later than **July 25,2025**, the matter will then be scheduled before the City Council to determine whether to impose the \$500 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 25,2025**. 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 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 § 310.03 (k).

If you have not contacted me by July 25,2025, I will assume that you do not contest the imposition of the \$500 matrix penalty. In that case, the matter will be placed on the City Council Consent Agenda for approval of the recommended penalty.

If you have questions about these options, please contact my Paralegal Riddhi Mistry at riddhi.mistry@ci.stpaul.mn.us, (651) 266-8835.

Sincerely,

/s/ Therese Skarda Assistant City Attorney License No.: 0240989

CITY OF SAINT PAUL MELVIN CARTER, MAYOR





Cc: Duane Wienke, 8517 28<sup>th</sup> Ave N., New Hope, MN 55427 Garry Minor, 7951 Harvest Dr., Elko, MN 55020–8520 Julia McColley, Executive Director, West 7<sup>th</sup>/Fort Road Federation, 395 West Superior Street, Saint Paul, MN 55102

Attachments: Inspector's Report - 05/14/2025

Tobacco Underage Buyer Compliance Check Form - 05/14/2025

Letter from Inspector, Joseph Voyda to Seventh Street Liquor Barrel - 05/16/2025

Letter from Inspector, Joseph Voyda to Duane Wienke – 05/16/2025 Letter from Inspector, Joseph Voyda to Garry Minor– 05/16/2025

License Group Comments Text - 07/08/2025

Photo Evidence

Saint Paul Legislative Code §310.01

Saint Paul Legislative Code §310.03 (m) 3 (1) (a),

Saint Paul Legislative Code §310.14

Saint Paul Legislative Code §324.07(i)

Minnesota Statute §461.12 Subd.



## **Tobacco Underage Buyers Compliance Check Inspector's Report**

	Inspectors Name: Luis Sanchez-Panadero Date & Time: 5/14/2025	
	Doing Business As/DBA Name: SEVENTH STREET LIQUOR BARREL	
	Property Address: 665 7TH ST W ST PAUL, MN 55102-3123	
	Reason for Visit: State mandatory tobacco compliance inspection	_
	Photos Taken: ☑ Yes ☐ No – Area(s) of where the Photo(s) where taken: Tobacco product and	
am	ount spent	

Details, Notes and Observations of Inspection:

On 5/14/2025 at 10:09 a.m, while conducting a State mandated underage buyer check for tobacco inspection, located at 665 7th St W Saint Paul, Minnesota 55102. I instructed the trained underage buyer to enter the licensed business in an attempt to purchase of a pack of Marlboro lights cigarettes. The underage buyer was given a twenty-dollar (\$20) bill for the attempted tobacco purchase. I observed the underage buyer enter the front entrance.

I observed the underage buyer leave the licensed establishment with a pack of Marlboro lights cigarettes. The underage buyer reported back to me that the licensed business failed the State mandated tobacco compliance check. I asked the underage buyer if the clerk asked for their age, underage buyer responded with no. I asked if the clerk requested their identification, underage buyer responded with no, the clerk sold to me anyways, I asked the underage buyer the description and gender of the clerk, race, facial hair, hair color, approximate height, weight and if the clerk had a name tag on. After documenting the above-mentioned questions and answers on the inspection form. I took photos of the tobacco product and the amount spent, this transaction was in the amount of thirteen dollars (\$13.00).



May 16, 2025

SEVENTH STREET LIQUOR BARREL 665 7TH ST W ST PAUL, MN 55102-3123

# Underage Buyer Tobacco Compliance Check RE: 665 7TH ST W - DBA: SEVENTH STREET LIQUOR BARREL - License ID 20120005702

SEVENTH STREET LIQUOR BARREL,

This letter is to inform you that the Department of Safety and Inspections (DSI) recently conducted a State mandated annual inspection in the attempt to purchase of tobacco products to persons under the age of 21 hired by DSI in accordance with State Statutes 461.12.

As a result, your tobacco licensed location has **Failed** the underage buyer attempted purchase of tobacco.

These mandated inspections consist of an underage buyer between the ages of 17 and 20 entering licensed establishments in attempting to purchase tobacco products or tobacco related devices as defined in State Statutes Section 609.685 and in the City of Saint Paul Legislative Code Section 324.

## Details of the attempted purchase:

On 5/14/2025 at 10:09 a.m., a pack of Marlboro Lights Cigarettes was successfully purchased from the clerk on duty. The clerk on duty was a Latino male who was wearing a black mask, a long black sleeved shirt, was described as having short black hair and being short in stature.

In the weeks to come, you should expect a Notice of Violation mailed to you by the City of Saint Paul Attorney's Office with options. Typically, violations for the sale of tobacco products to an underage buyer is a \$500 for the first offence, \$1,000 for the Second, \$2,000 with a seven (7) day suspension and up to revocation of tobacco license within the three (3) years of the first offense.

Questions or regulatory information regarding annual underage tobacco compliance checks, you may contact me directly at phone number 651-266-9014.

Joseph Voyda DSI Licensing Inspector

## C: GARRY MINOR - 7951 HARVEST DR ELKO MN 55020-8520

SEVENTH STREET LIQUOR INC Attn: Duane Wienke - 8517 28th Ave N New Hope, MN 55427



May 16, 2025

SEVENTH STREET LIQUOR INC Attn: Duane Wienke 8517 28th Ave N New Hope, MN 55427

# Underage Buyer Tobacco Compliance Check RE: 665 7TH ST W - DBA: SEVENTH STREET LIQUOR BARREL - License ID 20120005702

Attn: Duane Wienke,

This letter is to inform you that the Department of Safety and Inspections (DSI) recently conducted a State mandated annual inspection in the attempt to purchase of tobacco products to persons under the age of 21 hired by DSI in accordance with State Statutes 461.12.

As a result, your tobacco licensed location has **Failed** the underage buyer attempted purchase of tobacco.

These mandated inspections consist of an underage buyer between the ages of 17 and 20 entering licensed establishments in attempting to purchase tobacco products or tobacco related devices as defined in State Statutes Section 609.685 and in the City of Saint Paul Legislative Code Section 324.

## Details of the attempted purchase:

On 5/14/2025 at 10:09 a.m., a pack of Marlboro Lights Cigarettes was successfully purchased from the clerk on duty. The clerk on duty was a Latino male who was wearing a black mask, a long black sleeved shirt, was described as having short black hair and being short in stature.

In the weeks to come, you should expect a Notice of Violation mailed to you by the City of Saint Paul Attorney's Office with options. Typically, violations for the sale of tobacco products to an underage buyer is a \$500 for the first offence, \$1,000 for the Second, \$2,000 with a seven (7) day suspension and up to revocation of tobacco license within the three (3) years of the first offense.

Questions or regulatory information regarding annual underage tobacco compliance checks, you may contact me directly at phone number 651-266-9014.

Joseph Voyda DSI Licensing Inspector

C: SEVENTH STREET LIQUOR BARREL - 665 7TH ST W ST PAUL, MN 55102-3123

GARRY MINOR - 7951 HARVEST DR ELKO MN 55020-8520



May 16, 2025

GARRY MINOR 7951 HARVEST DR ELKO MN 55020-8520

# Underage Buyer Tobacco Compliance Check RE: 665 7TH ST W - DBA: SEVENTH STREET LIQUOR BARREL - License ID 20120005702

GARRY MINOR,

This letter is to inform you that the Department of Safety and Inspections (DSI) recently conducted a State mandated annual inspection in the attempt to purchase of tobacco products to persons under the age of 21 hired by DSI in accordance with State Statutes 461.12.

As a result, your tobacco licensed location has **Failed** the underage buyer attempted purchase of tobacco.

These mandated inspections consist of an underage buyer between the ages of 17 and 20 entering licensed establishments in attempting to purchase tobacco products or tobacco related devices as defined in State Statutes Section 609.685 and in the City of Saint Paul Legislative Code Section 324.

## Details of the attempted purchase:

On 5/14/2025 at 10:09 a.m., a pack of Marlboro Lights Cigarettes was successfully purchased from the clerk on duty. The clerk on duty was a Latino male who was wearing a black mask, a long black sleeved shirt, was described as having short black hair and being short in stature.

In the weeks to come, you should expect a Notice of Violation mailed to you by the City of Saint Paul Attorney's Office with options. Typically, violations for the sale of tobacco products to an underage buyer is a \$500 for the first offence, \$1,000 for the Second, \$2,000 with a seven (7) day suspension and up to revocation of tobacco license within the three (3) years of the first offense.

Questions or regulatory information regarding annual underage tobacco compliance checks, you may contact me directly at phone number 651-266-9014.

Joseph Voyda DSI Licensing Inspector

C: SEVENTH STREET LIQUOR BARREL - 665 7TH ST W ST PAUL, MN 55102-3123

SEVENTH STREET LIQUOR INC Attn: Duane Wienke - 8517 28th Ave N New Hope, MN 55427

Licensee: SEVENTH STREET LIQUOR INC

DBA: SEVENTH STREET LIQUOR BARREL

License #: 20120005702

5/16/2025 tobacco compliance fail letter sent. LSP

05/14/2025 Tobacco compliance check- failed LSP

10/11/2024 Tobacco compliance check- Pass. AYV/LS

9/13/2023 Tobacco compliance check passed. AYV

12/9/2022 Underage buyers tobacco compliance check- Pass AYV

08/03/2021 Rec'd \$300.00 for fine payment. LAB

08/02/2021 Rcvd \$50.00 from Cesaria Deleon, Clerk, for cig sales violation. AMW

7/1/2021 Sent to the CAO for AA for a \$200 + \$50 fine JNV

6/23/2021 Youth compliance check fail JNV

6/12/2019 Youth Compliance Check Pass JNV

04/12/2019 Flavor and Price Compliance Check: Passed. DC

8/7/2018 Tobacco youth compliance check-Pass JNV

4/30/2018 Menthol education / inspection Pass JNV

08/31/2017 pased tobacco compliance recheck BLB

03/07/2017 failed tobacco compliance check BLB / DHS grant, no fines

07/27/2016 passed tobacco compliance check BLB

07/08/2015 Passed Tobacco Comp check BLB/TF

12/23/14 Passed tobacco compliance check. AAJ

10/18/2013 Passed tobacco compliance check. PF

09/27/2013 2013-7% Liquor Discount applied to full paid fee. \$76.00 refund submitted. LAB

09/26/2013 Took alcohol awareness training on 09/23/2013. CAR

09/05/2013 Sent failure warning letter with Awareness date of 09/30/2013. Liquor compliance check done by SPPD on 08/15/2013. ML

08/15/2013 CN13174383 indicates that Ithe establishment failed an alcohol compliance check conducted by SPPD. First failure. Must take alcohol awareness training by 09/30/2013. CAR

02/28/2013 Licenses were prorated 4 months to expire with liquor liability. Authorized adjustment made and \$1,072.00 refund left on account to be applied to renewal fees which will invoice May 2013. LAB

01/22/2013 EH fee paid, JWF

12/24/2012 Rcvd. signed cond. affidavit. JWF

12/17/2012 License notification sent, 87M/35EM, response date 02/01/2012. JWF



Route Number 7 20120005702

375 Jackson Street, Suite 220 Saint Paul, MN 55101-1806 Tel: 651-266-8989 | Fax: 651-266-9124

# Tobacco Underage Buyers Compliance Check Inspection Form Pass BARREL

Tobacco Shop					
SEVENTH STREET LIQUOR BARR 665 7TH ST W ST PAUL, MN 55102-3123	ΞL				
Business Type:  Convenience Convenie  Supermarket/Grocery Convenie	nçe/Gas 🔲 Gas Station General Merchant 🛴 Liqu	ı ☐ Drug Stor Jor Store/Bar Re	e / Pharmacy Estaurant  Oth	Tobacco Products Shoer (private club, bowling	op g, etc.)
Inspector: Luis Sanchez-Panade Name		4 / 2025 MM DD YY	Time: D : O 4	am pm	
Was purchase attempted?  Yes No	If NO, check reason Does not sell to After business  Not applicable	tobacco [ s hours [	Out of business	/unsafe conditions s	
Underage Buyer: Name	Age	Male Did the Gender	he Inspector or Of	ficer view transaction? ] No	
<b>Was sale made?</b> Yes ☐ No	Was age asked?  Yes Mo	Was ID re	equested?	Was ID shown?  Yes No	
Type of product:  Cigarettes: A A hw ()  Shisha:  Other (cigarette papers, light		13.00	Cigai	rs: 'Delta:	
Clerk Information: Gender:	Approximate	• <b>Age:</b> 18 or	Under 18 Ac	tual age if known	
Name of Clerk if known:	Approximate  Approximate  De  have, Short-1	escription/Note  height/	s: Latma, long be	blok mask	<i>/</i>





RESERVE

**Route Number 7** 20120005702 Tobacco Shop

SEVENTH STREET LIQUOR BARR 665 7TH CT ST PAU Busine FILTER CIGARETTES Con Sup Inspect Was pui Y

3 12	9	
7		
	T 20873884B	
	Lynn Roberge Malesta	2
	Transurerof the United States.	N. W. N.
		-
THE REAL PROPERTY.	The state of the s	

I 20873884 Liquor Store/Bar Restaurant Other (private club, bowling, etc.)

ete:	5 / 14 / 2025	
	MM DD YY	

Time: D : O am pm

## mheck reason: 15 not sell tobacco r business hours applicable

Unsatisfactory/unsafe condition:
Out of business
Other

9	
Ag	e

Male Gender

Did the Inspector or Officer view transaction? Yes No

Was	sale r	nade?
X	Yes	nade?

**Underag** 

Was age asked? Yes No

Was ID requested? Yes No

Was ID shown?

Type of product:  Ggarettes:  Shisha:  Other (cigarette papers, lighter, etc.):	E-juice:	Cigars: THC/Delta:	
Clerk Information: Gender:		or Under 18 Actual age if known	
Name of Clerk if known:  Shart black have,		tes: Lating, blok mask,	

## **Ordinance & State Statutes Violations**

## Sec. 324.07. Sales prohibited.

(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.

## Sec. 310.03. Hearing procedures.

(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, the general presumptive penalty matrix applies to all license types, except that in the case of a violation involving a liquor license the penalty matrix for intoxicating liquor; nonintoxicating malt liquor applies and for a violations involving tobacco, the penalty matrix for tobacco applies. 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 must provide written reasons that specify why the penalty selected was more appropriate.

## 3. Tobacco presumptive penalties matrix.

Tobacco presumptive penalties. Penalties for convictions or violations 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 must provide written reasons that specify why the penalty selected was more appropriate (unless specified, numbers below indicate consecutive days' suspension):

Type of Violation	Appearance			
	1st	2nd	3rd	4th
<ul><li>(1) Sale to a person under twenty-one</li><li>(21) years of age</li></ul>	\$500.00 fine	\$1000.00 fine	\$2,000.00 fine and 7- day suspension	Revocation

(a) Computation of time for violations under the tobacco presumptive penalties matrix. If a violation is not covered under this penalty matrix, the general presumptive penalty matrix should be used. Except as otherwise provided by Minn. Stats. § 461.12, subd. 2, subsequent tobacco violations are subject to the following:

## Sec. 310.14. 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, must 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 must be controlling and prevail; but must not otherwise amend, alter or affect such sections.

## **State Statutes Violations**

## 461.12 MUNICIPAL LICENSE OF TOBACCO, TOBACCO-RELATED DEVICES, AND SIMILAR PRODUCTS.

Subd. 2. Administrative penalties for sales and furnishing; licensees. If a licensee or employee of a licensee sells, gives, 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. An administrative penalty of \$600 must be imposed for a second violation at the same location within 36 month after the initial violation. For a third or any subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 must be imposed, and the licensee's authority to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at that location must be suspended for not less than seven days and may be revoked. No suspension, revocation, or other penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

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 have the following meanings:

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 <u>section 310.05</u> 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 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 and certain permits which can be issued by the director without council approval if no conditions are imposed upon the license and which do not require a hearing if there is an objection. Class R Licenses follow the Procedures for Application for the Grant or Issuance of a License, New Application Investigation and Review, Application Denial, Notice, Levels of Approval, Objections, and Renewal Procedures laid out in <u>Section 310.02(1)</u>. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Business Licenses	Fee	Class	Ordinance/ Legislative Code
CLASS R			

about:blank 1/13

Agricultural Vehicle Permit	\$23.00	R	<u>165</u>
Amusement Rides—Annual	\$85.00	R	317
Animal Boarding (Commercial)	\$83.00	R	348
Animal Boarding (Home Occupation)	\$83.00	R	348
Animal Day Care (Commercial)	\$83.00	R	348
Animal Day Care (Home Occupation)	\$83.00	R	348
Animal Foods Manufacturing and Distribution	\$85.00	R	316
Bituminous Contractor	\$210.00	R	320
Bowling Centers	\$210.00	R	426
Building Contractors	\$210.00	R	326
Building Trade Business License	\$188.00	R	369
Building Trades Certificate of Competency	\$24.00	R	<u>370</u>
Bulk Oil Storage	\$210.00	R	342
Christmas Tree Sales	\$85.00	R	323
Commercial Vehicle	\$78.00	R	<u>158</u>
Commercial Vehicle—Exempt	\$0.00	R	<u>158</u>
Courtesy Bench	\$26.00	R	127
Courtesy Benches Transfer	\$17.00	R	127
Finishing Shop	\$85.00	R	<u>371</u>

about:blank 2/13

Game Room	\$210.00	R	406
House Sewer Contractor	\$210.00	R	338
Laundry/Dry-cleaning Plant	\$210.00	R	327
Laundry/Dry-cleaning Pick Up Station	\$85.00	R	327
Lawn Fertilizer and Pesticide Applicator	\$85.00	R	377
Liquid Fuel Dealer	\$210.00	R	332
Liquid Fuel Dealer Vehicle	\$85.00	R	332
Liquor Catering (State Cater/City Liq)	\$192.00	R	409
Mechanical Amusement Device	\$21.00	R	318
Massage Center—A (1 Practitioner)	\$100.00	R	414
Massage Center—A (Commercial)	\$262.00	R	412
Massage Center—B (Home Location)	\$106.00	R	412
Massage Practitioner	\$106.00	R	414
Massage Practitioner-Additional Location	\$31.00	R	412
Mercantile Broker	\$85.00	R	340
Mobile Retail Vehicle	\$85.00	R	346
Pedal Car	\$118.00	R	374
Pedal Car Business	\$352.00	R	<u>374</u>
Pedal Car Driver	\$51.00	R	374

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Peddler	\$85.00	R	<u>345</u>
Peddler—Fee Waived	\$0.00	R	<u>345</u>
Pedicab Driver	\$51.00	R	374
Pedicab Vehicle	\$113.00	R	374
Pest Control	\$210.00	R	334
Pet Grooming Facility	\$85.00	R	382
Pet Shop	\$210.00	R	347
Pool & Billiard Hall	\$210.00	R	322
Recycling Collection Center	\$210.00	R	408
Recycling Processing Center	\$958.00	R	408
Rental of Hospital Equipment	\$85.00	R	350
Rental of Hospital Equip-Vehicle	\$85.00	R	<u>350</u>
Rental of Kitchenware	\$85.00	R	<u>351</u>
Roller Rink	\$85.00	R	<u>353</u>
Sanitary Disposal Vehicle	\$405.00	R	<u>354</u>
Second-Hand Dealer	\$85.00	R	<u>355</u>
Second-Hand Dealer (Comp/Elec)	\$85.00	R	<u>355</u>
Second-Hand Dealer (Antiques/Comp/Elec)	\$85.00	R	<u>356</u>
Second-Hand Dealer (Antiques)	\$85.00	R	<u>355</u>

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Second Hand Dealer—Motor Vehicle Parts	\$507.00	R	<u>355</u>
Second-Hand Dealer—Multiple Dealers	\$405.00	R	<u>355</u>
Short-Term Rental (Non-Owner Occupied)	\$45.00	R	379
Short-Term Rental (Owner Occupied)	\$45.00	R	379
Short-Term Rental Platform	\$11,181.00	R	379
Sidewalk Cafe	\$40.00	R	106
Sidewalk Contractor	\$210.00	R	<u>356</u>
Solicitor	\$85.00	R	<u>345</u>
Solid Fuel Dealer	\$210.00	R	333
Solid Fuel Dealer Vehicle	\$85.00	R	333
Solid Waste Hauler & Vehicle	\$405.00	R	<u>357</u>
Solid Waste Hauler (Ea Add'l Veh)	\$85.00	R	<u>357</u>
Solid Waste Transfer Station	\$1,913.00	R	357
Sound Trucks & Broadcast Vehicle	\$85.00	R	359
Swimming Pool—Public	\$405.00	R	360
Tanning Facility	\$106.00	R	380
Taxicab Driver	\$51.00	R	376
Taxicab Vehicle	\$469.00	R	<u>376</u>
Taxicab Vehicle (Reciprocity Event)	\$37.00	R	<u>376</u>

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Taxicab Service Company	\$456.00	R	376
Theaters and Movie Theaters	\$210.00	R	416
Tire Recapping Plant	\$85.00	R	<u>372</u>
Tobacco Products Shop	\$535.00	R	324
Tobacco Shop	\$535.00	R	324
Tow Truck/Wrecker (Operator)	\$405.00	R	<u>361</u>
Tow Truck/Wrecker (Vehicle)	\$85.00	R	<u>361</u>
Trade Worker Registration—Tier 1	\$37.00	R?	370
Trade Worker Registration—Tier 2	\$70.00	R	370
Trade Worker Registration—Tier 3	\$59.00	R	370
Trailer Rental	\$210.00	R	352
Tree Trimmer & 1 Vehicle	\$210.00	R	362
Tree Trimmer—Each Add'l Vehicle	\$85.00	R	<u>362</u>
Vehicle Immobilization Service	\$405.00	R	383
Veterinary Hospital	\$210.00	R	<u>364</u>
Window Cleaning	\$210.00	R	<u>365</u>
Wrecking of Buildings	\$65.00	R	368

Class T licenses means those licenses which can be approved or denied by the director, if no conditions are imposed upon the license and which do not require a hearing if there is an objection. Class T Licenses follow the Procedures for Application for the Grant or Issuance of the License, New Application Investigation

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and Review, Application Denial, Notice, Levels of Approval, Objections, and Renewal Procedures laid out in <u>Section 310.02(3)</u>. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Business Licenses	Fee	Class	Ordinance/ Legislative Code
CLASS T		-	
Amusement Rides—Temporary	\$32.00	Т	317
Bingo/Rfls/P-Tabs/Tpbrds/Pdlwhls	\$59.00	Т	402
Close Out Sale	\$85.00	Т	325
Entertainment—Temporary	\$35.00	Т	411
Liquor Catering (State Cater Only)	\$59.00	Т	409
Liquor—Extension of Service Area	\$68.00	Т	410
Liquor—Under Age Access (Temporary)	\$35.00	Т	409
Liquor On Sale—Temporary	\$59.00	Т	409
Malt On Sale (3.2)—Temporary	\$59.00	Т	410
Massage Practitioner—Temporary	\$50.00	Т	412
Second Hand Dealer—Exhibition	\$210.00	Т	<u>355</u>
Tag Days	\$26.00	Т	<u>391</u>
Temp On Sale Malt Brewery/Distillery	\$59.00	Т	410
Transient Merchant	\$85.00	Т	345

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Wine On Sale-Temporary	\$59.00	Т	<u>409</u>
Winery Annual Festival—Temporary	\$59.00	Т	<u>409</u>

Class N licenses means those licenses which must be approved or denied by the council. Class N Licenses follow the Procedures for Application for the Grant or Issuance of the License, New Application Investigation and Review, Application Denial, Notice, Levels of Approval, Objections, and Renewal Procedures laid out in Section 310.02(2). The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Business Licenses	Fee	Class	Ordinance/ Legislative Code
CLASS N			
Auto Body Repair Shop	\$507.00	N	423
Auto Body Repair/Painting Shop	\$507.00	N	423
Auto Repair Garage	\$507.00	N	423
Bingo Hall	\$229.00	N	403
Cabaret—Class A	\$210.00	N	322
Cabaret—Class B	\$210.00	N	426
Conversation/Rap Parlor(A)	\$405.00	N	413
Conversation/Rap Parlor (B)	\$405.00	N	413
Culinary On Sale—Wine/Malt	\$255.00	N	409
Dance or Rental Halls	\$497.00	N	405

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Dance Halls—Exempt	\$0.00	N	405
Entertainment—Extension	\$0.00	N	411
Entertainment (A)	\$278.00	N	411
Entertainment (B)	\$672.00	N	411
Entertainment (C)	\$3,191.00	N	411
Firearms	\$405.00	N	225
Gambling Hall	\$445.00	N	278
Gambling Location	\$84.00	N	225
Gas Station	\$154.00	N	424
Health/Sport Club	\$405.00	N	427
Health/Sport Club—Adult	\$405.00	N	427
Health/Sport Club-Exercise Only Facility	\$405.00	N	427
Infectious Waste Processing Facility	\$1,913.00	N	427
Liquor-Extension of Service Hours	\$405.00	N	409
Liquor—Microdistillery Cocktail Room	\$712.00	N	409
Liquor—Off Sale Micro Distillery	\$205.00	N	409
Liquor Off Sale	\$1,500.00	N	409
Liquor On Sale—100 seats or less	\$5,361.00	N	409
Liquor On Sale—101-180 Seats	\$5,937.00	N	409

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Liquor On Sale—181-290 Seats	\$6,360.00	N	409
Liquor On Sale—291 or more Seats	\$6,448.00	N	409
Liquor On Sale—2 AM Closing	\$59.00	N	409
Liquor On Sale—Exempt	\$0.00	N	409
Liquor On Sale—Over 100 seats (B)	\$5,022.00	N	409
Liquor On Sale—Over 200 seats (A)	\$5,454.00	N	409
Liquor On Sale—Sunday	\$200.00	N	409
Liquor On Sale—Sunday—Exempt	\$0.00	N	409
Liquor On Sale—Theater	\$1,914.00	N	409
Liquor On Sale—Additional Family Members	\$62.00	N	409
Liquor On Sale (Government Agencies)	\$0.00	N	409
Liquor On Sale (Small Brewery—128 oz)	\$30.00	N	409
Liquor On Sale-Club under 200 Mbrs—A	\$300.00	N	409
Liquor On Sale-Club 201-500 Mbrs—B	\$500.00	N	409
Liquor On Sale-Club 501-1000 Mbrs—C	\$650.00	N	409
Liquor On Sale-Club 1001-2000 Mbrs—D	\$800.00	N	409
Liquor On Sale-Club 2001-4000 Mbrs—E	\$1,000.00	N	409
Liquor On Sale-Club 4001-6000 Mbrs—F	\$2,000.00	N	409
Liquor On Sale-Club over 6000 Mbrs—G	\$3,000.00	N	409

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Liquor-Outdoor Service Area (Patio)	\$85.00	N	409
Liquor-Outdoor Service Area (Sidewalk)	\$40.00	N	409
Malt Off Sale (Brewery)	\$205.00	N	410
Malt Off Sale (Growler)	\$205.00	N	410
Malt Off Sale	\$225.00	N	410
Malt On Sale (3.2)	\$712.00	N	410
Malt On Sale (3.2)—Fee Waived	\$0.00	N	410
Malt On Sale (3.2)—2 AM Closing	\$0.00	N	410
Malt On Sale (Brewery Taproom)	\$712.00	N	410
Malt On Sale (Strong)	\$712.00	N	410
Massage Center—C (Adult)	\$405.00	N	412
Mini Motion Picture Theater-Adult (C)	\$405.00	N	<u>415</u>
Minnesota Currency Exchange	\$405.00	N	<u>381</u>
Motor Vehicle Dealer—New Vehicles	\$405.00	N	401
Motor Vehicle Salvage Dealer	\$405.00	N	422
Motorcycle Dealer	\$210.00	N	401
Parking Lot	\$405.00	N	417
Parking Lot/Parking Ramp	\$405.00	N	417
Parking Ramp (Government)	\$0.00	N	417

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Parking Ramp	\$405.00	N	417
Parking Ramp/Garage (Private)	\$396.00	N	417
Pawn Shop	\$3,191.00	N	344
Second Hand Dealer—Motor Vehicle	\$507.00	N	344
Steam Room/Bath House (A)	\$405.00	N	428
Steam Room/Bath House (B)—Adult	\$405.00	N	428
Theaters and Movie Theaters-Drive In	\$210.00	N	416
Transportation Network Company	\$41,115.00	N	<u>373</u>
Wine On Sale	\$2,000.00	N	409
Wine On Sale (Government Agencies)	\$0.00	N	409

*Department* means the department of safety and inspections.

*Director* means the director of the department of safety and inspections and/or the director's designee or designees.

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

*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 <u>chapter 310</u> of the Legislative Code applicable to the approval or disapproval of such licenses.

Class N License District Council Notification Form means the form, provided by the Department to the license applicant as part of the Class N License application packet, which must be mailed or personally delivered to the district council by the license/applicant prior to the submission of the application for a license.

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*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.

(Ord 22-46, § 2, 11-9-22; Ord 23-32, § 2, 9-6-23)

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Sec. 310.03. - 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 must be given notice and an opportunity to be heard as provided herein. The council may consider such adverse actions when recommended 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 must be notified in writing that adverse action may be taken against the license or application, and that they are entitled to a hearing before action is taken by the council. The notice must be served or mailed a reasonable time before the hearing date, and must state the place, date and time of the hearing. The notice must 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 director 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 must be held before the council. Otherwise the hearing must 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 must 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 will hear all evidence as may be presented on behalf of the city and the applicant or licensee, and must present to the council written findings of fact and conclusions of law, together with a recommendation for adverse action.

The council will consider the evidence contained in the record, the hearing examiner's recommended findings of fact and conclusions, and may 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 must 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,

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- together with such additional arguments presented at the hearing, the council must determine what, if any, adverse action should be taken, which action must 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 will prevent an inquiry or communications regarding status, scheduling or procedures concerning a license matter. An interested person, for the purpose of this paragraph, means and includes 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 must 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 must be complied with and supersede inconsistent provisions of these chapters. This includes, without limitation by reason of this specific reference, Minn. Stats., Chapter 364 and Minn. Stats., § 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

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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 <u>section 310.01</u> above, a generic notice of such action must be prepared by the director 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 intoxicating liquor; nonintoxicating malt liquor; presumptive penalty matrix in subsection (m) below; 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

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discretion of the council. To the extent any other provision of the Legislative Code provides for the imposition of a fine, both provisions must be read together to the extent possible; provided, however, that in the case of any conflict or inconsistency, the other provision must 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, the general presumptive penalty matrix applies to all license types, except that in the case of a violation involving a liquor license the penalty matrix for intoxicating liquor; nonintoxicating malt liquor applies and for a violations involving tobacco, the penalty matrix for tobacco applies. 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 must provide written reasons that specify why the penalty selected was more appropriate.
  - 1. **General presumptive penalties matrix**—The general penalty matrix is to be used if there is not a specific penalty matrix for the license type or a category within the specific penalty matrix does not address the violation.
  - 2. Intoxicating liquor; malt liquor; presumptive penalty matrix.

Presumptive penalties for intoxicating liquor and nonintoxicating malt liquor violations. If a violation is not covered under this penalty matrix, the general presumptive penalty matrix should be used. Penalties for convictions or violations 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 must provide written reasons that specify why the penalty selected was more appropriate (unless specified, numbers below indicate consecutive days' suspension):

- (a) For on-sale intoxicating liquor establishments with a seating capacity of one hundred fifty (150) or more, the monetary penalty for any violation (including violations found in <a href="https://chapter.310">chapter 310</a>) must be doubled.
- (b) For off-sale intoxicating liquor establishments with five thousand one (5,001) or more square feet of retail space, the monetary penalty for any violation (including violations found in <u>chapter 310</u>) must be doubled.
- (c) Other penalties. Nothing in this section restricts or limits the authority of the council to suspend licenses for up to sixty (60) days, revoke the license, or impose a civil fine not to exceed two thousand dollars (\$2,000.00), to impose conditions or take any other adverse action in accordance with law, provided, that the license holder has been afforded an opportunity for a hearing in the manner provided for in section 310.02 of this Code.

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- (d) Effect of responsible business practices in determining penalty. In determining the appropriate penalty, the council may, in its discretion, consider evidence submitted to it in the case of uncontested adverse actions or submitted to a hearing examiner in a contested hearing upon which findings of fact have been made that a licensee has followed or is likely to follow in the future responsible business practices in regard to sales to intoxicated persons and sales to minors.
  - (1) For the purposes of service to intoxicated persons, evidence of responsible business practices may include, but is not limited to, those policies, procedures and actions that are implemented at time of service and that:
    - a) Encourage persons not to become intoxicated if they consume alcoholic beverages on the defendant's premises;
    - b) Promote availability of nonalcoholic beverages and food;
    - c) Promote safe transportation alternatives other than driving while intoxicated;
    - d) Prohibit employees and agents of defendant from consuming alcoholic beverages while acting in their capacity as employees or agents;
    - e) Establish promotions and marketing efforts that publicize responsible business practices to the defendant's customers and community;
    - f) Implement comprehensive training procedures;
    - g) Maintain an adequate, trained number of employees and agents for the type and size of defendant's business;
    - h) Establish a standardized method for hiring qualified employees;
    - i) Reprimand employees who violate employer policies and procedures; and
    - j) Show that the licensee has enrolled in recognized courses providing training to self and one (1) or more employees of the licensed establishment in regard to standards for responsible liquor service.
  - 2) For the purposes of service to minors, evidence of responsible business practices may include, but is not limited to, those listed in subsection (1) and the following:
    - a) Management policies that are implemented at the time of service and that ensure that proof of identification (as established by state law) is examined for all persons seeking service of alcoholic beverages who may reasonably be suspected to be minors;
    - b) Comprehensive training of employees who are responsible for such examination regarding the detection of false or altered identification; and

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Enrollment by the licensee in recognized courses providing training to self and one (1) or more employees of the licensed establishment in regard to standards for responsible liquor service.

## 3. Tobacco presumptive penalties matrix.

Tobacco presumptive penalties. Penalties for convictions or violations 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 must provide written reasons that specify why the penalty selected was more appropriate (unless specified, numbers below indicate consecutive days' suspension):

- (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 the general presumptive penalty matrix will apply.
- (b) *Presumptive penalties for licensees for violations.* Adverse penalties for licensees for violations or convictions shall be presumed as follows:
- (c) Computation of time for violations under the tobacco presumptive penalties matrix. If a violation is not covered under this penalty matrix, the general presumptive penalty matrix should be used. Except as otherwise provided by Minn. Stats. § 461.12, subd. 2, subsequent tobacco violations are subject to the following:
  - (1) Second, third and fourth appearances for violations under the tobacco presumptive penalties matrix. A second violation within twenty four (24) months must 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 must be treated as a first appearance for violations under the tobacco presumptive penalties matrix.

    Measurement of the twenty four (24) month period must 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.

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- (i) Fines payable without hearing.
  - A. Notwithstanding the provisions of section 310.03(c), a licensee who would be making a first or second appearance on a violation that calls for a monetary fine 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.
- (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 the Penalty Matrixes above. The occurrence of multiple violations is 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) up to twenty (20) days before the hearing, and may in that case be treated as though part of the "1st Appearance" unless grounds for upward deviation from the presumptive penalties outlined in the presumptive penalty matrix outlined in 310.03(m) are included in the amended notice of the violation. In all other cases, violations occurring after the date of the formal notice of hearing must be the subject of a separate proceeding and dealt with as a "2nd Appearance" before the council. The same procedures must 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.
- (v) Computation of time.

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- (1) Second appearance. A second violation within twelve (12) months must be treated as a second appearance for the purpose of determining the presumptive penalty.
- (2) *Third appearance.* A third violation within eighteen (18) months must 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 must 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 must be treated as a first appearance. Measurement of the twelve-, eighteen-, or twenty-four-month period is as follows: The beginning date shall be the earliest violation's date of appearance before the council or payment of the fine related to the violation, 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 must 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 must be counted as a third appearance regardless of how much time has passed since the first or second appearance.
- (6) Violations of the general presumptive penalty matrix, the intoxicating liquor, malt liquor presumptive penalty matrix and the tobacco presumptive penalty matrix are meant to be cumulative. For the purpose of a second, third or fourth appearance under this section, "violation" shall must mean either one of those violations listed in paragraph (m)1, 2, or 3.

(Ord 22-46, § 3, 11-9-22)

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Sec. 310.14. - 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, must 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 must be controlling and prevail; but must not otherwise amend, alter or affect such sections.

(Ord 22-46, § 16, 11-9-22)

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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)

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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 <u>chapter 310</u> and <u>section</u> 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)

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# 461.12 MUNICIPAL LICENSE OF TOBACCO, TOBACCO-RELATED DEVICES, AND SIMILAR PRODUCTS.

Subdivision 1. **Authorization.** A town board or the governing body of a home rule charter or statutory city may license and regulate the retail sale of tobacco, tobacco-related devices, and electronic delivery devices as defined in section 609.685, subdivision 1, and nicotine and lobelia delivery products as described in section 609.6855, and establish a license fee for sales to recover the estimated cost of enforcing this chapter. The county board shall license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products in unorganized territory of the county except on the State Fairgrounds and in a town or a home rule charter or statutory city if the town or city does not license and regulate retail sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products. The State Agricultural Society shall license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products on the State Fairgrounds. Retail establishments licensed by a town or city to sell tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products on the State Fairgrounds. Retail establishments licensed by a town or city to sell tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products are not required to obtain a second license for the same location under the licensing ordinance of the county.

- Subd. 2. Administrative penalties for sales and furnishing; licensees. If a licensee or employee of a licensee sells, gives, 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. An administrative penalty of \$600 must be imposed for a second violation at the same location within 36 months after the initial violation. For a third or any subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 must be imposed, and the licensee's authority to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at that location must be suspended for not less than seven days and may be revoked. No suspension, revocation, or other penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.
- Subd. 2a. **Penalties for sales of certain products; licensees.** (a) A licensee's authority to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at that location must be suspended for not less than seven days and may be revoked if the licensee:
- (1) holds a license or registration issued pursuant to chapter 342 or section 151.72, subdivision 5b, and the license or registration is revoked;
  - (2) is convicted of an offense under section 151.72, subdivision 7; or
- (3) has been convicted under any other statute for the illegal sale of marijuana, cannabis flower, cannabis products, lower-potency hemp edibles, hemp-derived consumer products, or edible cannabinoid products and the sale took place on the premises of a business that sells tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.
- (b) No suspension, revocation, or other penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.
- Subd. 3. Administrative penalty for sales and furnishing; individuals. An individual who sells, gives, 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 may be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

- Subd. 4. Alternative penalties for use of false identification; persons under age 21. The licensing authority shall consult with interested persons, as applicable, including but not limited to educators, parents, guardians, persons under the age of 21 years, and representatives of the court system to develop alternative penalties for persons under the age of 21 years who purchase, or attempt to purchase, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products using a driver's license, permit, Minnesota identification card, or any other type of false identification to misrepresent the person's age, in violation of section 609.685 or 609.6855. The licensing authority and the interested persons shall consider a variety of alternative civil penalties, including, but not limited to, tobacco-free education; tobacco cessation programs; notice to schools and parents or guardians; community service; and court diversion programs. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.
- Subd. 5. Compliance checks. 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. Compliance checks conducted under this subdivision must involve persons at least 17 years of age, but under the age of 21, who, with the prior written consent of a parent or guardian if the person is under the age of 18, attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products under the direct supervision of a law enforcement officer or an employee of the licensing authority. The age requirements for persons participating in compliance checks under this subdivision shall not affect the age requirements in federal law for persons participating in federally required compliance checks of these locations.
- Subd. 6. **Defense.** It is an affirmative defense to the charge of selling tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years in violation of subdivision 2 or 3 that the licensee or individual making the sale relied in good faith upon proof of age as described in section 340A.503, subdivision 6.
- Subd. 7. **Judicial review.** Any person aggrieved by a decision under subdivision 2 or 3 may have the decision reviewed in the district court in the same manner and procedure as provided in section 462.361.
- Subd. 8. **Notice to commissioner.** The licensing authority under this section shall, within 30 days of the issuance of a license, inform the commissioner of revenue of the licensee's name, address, trade name, and the effective and expiration dates of the license. The commissioner of revenue must also be informed of a license renewal, transfer, cancellation, suspension, or revocation during the license period.

**History:** 1941 c 242 s 3; 1941 c 405 s 3; 1951 c 382 s 1; Ex1959 c 73 s 2; 1973 c 123 art 5 s 7; 1982 c 572 s 2; 1997 c 227 s 4; 1Sp2001 c 5 art 7 s 63; 2010 c 255 s 7; 2010 c 305 s 4-9; 2014 c 291 art 6 s 28; 2020 c 88 s 4-8; 2023 c 63 art 6 s 53