

July 16, 2019

VIA EFILING ONLY

Shari Moore
City Clerk
City of St. Paul
310 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102
cityclerk@ci.stpaul.mn.us

Re: *In the Matter of the Cigarette/Tobacco and Gas Station Licenses held by Midway University & Hamline, LLC d/b/a Midway Amoco for the premises located at 1347 University Avenue West in Saint Paul*
OAH 5-6020-36135

Dear City Clerk Moore:

Enclosed and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION UPON DEFAULT** in the above-entitled matter. The official record is also enclosed. The Office of Administrative Hearings' file in this matter is now closed.

If you have any questions, please contact me at (651) 361-7857, ian.lewenstein@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



IAN LEWENSTEIN
Legal Assistant

Enclosure

cc: Lisa L. Veith
Khaled Aloul



STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF SAINT PAUL

In the Matter of the Cigarette/Tobacco
and Gas Station Licenses held by
Midway University & Hamline, LLC d/b/a
Midway Amoco for the premises located
at 1347 University Avenue West in Saint
Paul

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
UPON DEFAULT**

This matter came on for a hearing before Administrative Law Judge Jim Mortenson on July 16, 2019.

Terese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). Midway University & Hamline, LLC (Licensee) did not appear.

The City moved for default because Licensee did not appear at the hearing and requested the \$500 matrix penalty be recommended to the St. Paul City Council (City Council). The motion was granted pursuant to Minn. R. 1400.6000 (2017). The record in this matter closed on July 16, 2019.

STATEMENT OF THE ISSUE

Should the Licensee pay a matrix penalty of \$500 as a result of the September 4, 2018, inspection and seizure of contraband tobacco products from the premises located at 1347 University Avenue West, Saint Paul, Minnesota, by the Minnesota Department of Revenue?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Licensee is in default because it did not send a representative to appear at the hearing duly scheduled and noticed for July 16, 2019. As a result of the default, the allegations set forth in the Notice and Order for Hearing are deemed true or deemed proved without further evidence, and the Licensee should be required to pay a matrix penalty of \$500.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:



FINDINGS OF FACT

1. On June 4, 2019, a Notice of Prehearing Telephone Conference was mailed to the Licensee at 1347 University Avenue West, St. Paul, Minnesota 55104, and Khaled Aloul at 231 – 105th Street East, Bloomington, Minnesota 55420.¹

2. On June 14, 2019, a prehearing conference was held before Administrative Law Judge LauraSue Schlatter. Lisa Veith, Assistant City Attorney, appeared on behalf of the City, and Khaled Aloul appeared on behalf of the Licensee. The hearing was scheduled to begin at 9:30 a.m. on July 16, 2019.²

3. A prehearing order was issued and sent to the parties after the prehearing conference. The prehearing order included the date, time, and location of the hearing.³

4. On July 3, 2019, a Notice of Administrative Hearing was mailed to the Licensee at both the St. Paul address and Khaled Aloul's Bloomington address.⁴

5. In conformity with Minn. R. 1400.5600 (2017), all three documents (the Notice of Prehearing Telephone Conference, the First Prehearing Order, and the Notice of Administrative Hearing) included a statement that failure to appear at the hearing may be considered a default, that the allegations in the notice may be accepted as true, and that proposed action may be approved.⁵

6. No one appeared on behalf of the Licensee at the hearing. The Judge was not informed before the hearing that Licensee could not be present at the scheduled hearing. Counsel for the City advised the Judge that she was not informed that Licensee could not appear.

7. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of Administrative Hearing, a copy of which is attached as Attachment A, are taken as true, deemed proven without further evidence, and incorporated by reference into the findings of fact.

8. The presumptive penalty is \$500 for a first-time violation of the legislative code that relates to the licensed activity.⁶

Based upon the findings of fact, the Administrative Law Judge makes the following:

¹ Affidavit of Service (Aff.) by Shawn McDonald (June 4, 2019).

² First Prehearing Order (June 17, 2019).

³ *Id.*; Certificate of Service by Lisa Armstrong (June 17, 2019).

⁴ Aff. of Service by Shawn McDonald (July 3, 2019).

⁵ Notice of Prehearing Telephone Conference (June 4, 2019); First Prehearing Order (June 17, 2019); Notice of Administrative Hearing (July 3, 2019).

⁶ Saint Paul Legislative Code Section 310.05(m)(2).



CONCLUSIONS OF LAW

1. The City Council and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. § 14.50 (2017) and the Saint Paul Legislative Code Section 310.05.
2. The Licensee received timely and proper notice of the hearing.
3. The City has complied with all relevant procedural requirements of statute and rule.
4. Under Minn. R. 1400.6000, the Licensee is in default as a result of failure to appear at the hearing.
5. Under Minn. R. 1400.6000, when a party defaults by failing to appear at a hearing, the allegations and the issues set out in the Notice of Administrative Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore deems the allegations to be true.
6. Saint Paul Legislative Code Section 310.06 provides that the City Council may take adverse action against any or all licenses where the licensee has failed "to comply with laws reasonably related to the licensed activity. . . ."⁷
7. Saint Paul Legislative Code Section 310.05(m) provides a matrix of presumptive penalties for certain violations. Under the matrix, the first violation based on a violation of the legislative code relating to the licensed activity is a presumptive \$500 fine.

Based upon the foregoing conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the City Council issue a \$500 penalty against the cigarette/tobacco license held by Midway University & Hamline, LLC d/b/a Midway Amoco for the premises located at 1347 University Avenue West, Saint Paul.

Dated: July 16, 2019



JIM MORTENSON
Administrative Law Judge

Reported: Default

⁷ Saint Paul Legislative Code Section 310.06(b)(6)(c).



NOTICE

This report is a recommendation, not a final decision. The City Council will make a final decision after a review of the record and may adopt, reject, or modify the findings of fact, conclusions of law, and recommendation. Pursuant to St. Paul Legislative Code § 310.05(c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact Shari Moore, City Clerk, City of St. Paul, 170 City Hall, 15 W. Kellogg Blvd., St. Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.



ATTACHMENT A

OFFICE OF THE CITY ATTORNEY
Lyndsey M. Olson, City Attorney



CITY OF SAINT PAUL
Mayor Melvin Carter

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

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

July 3, 2019

RCUD OAH '19 JUL 5

NOTICE OF ADMINISTRATIVE HEARING

Midway University & Hamline LLC – Licensee
d/b/a Midway Amoco BP
1347 University Avenue West
St. Paul, MN 55104-4002
Attn: Khaled Aloul

RE: 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 West in Saint Paul
License ID #: 20100000243
OAH Docket No.: 80-6020-36135

Dear Licensee:

Please take notice that an **ADMINISTRATIVE HEARING** has been scheduled concerning the 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 West in Saint Paul

Date: Tuesday, July 16, 2019
Time: 9:30 a.m.

The hearing will be presided over by an Administrative Law Judge from the State of Minnesota Office of Administrative Hearings:

Name: Judge LauraSue Schlatter
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101
Telephone: (651) 361-7857

The Council of the City of Saint Paul has the authority to provide for hearings concerning adverse action against such licenses, under Chapter 310, including sections 310.05 and 310.06, of the Saint Paul Legislative Code. Adverse action may include revocation, suspension, denial, fines and other penalties or conditions.



Evidence will be presented to the administrative law judge that may lead to adverse action against 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 West in Saint Paul

The Department of Safety and Inspections (DSI) received a Notice of Seized Contraband letter from the Minnesota Department of Revenue dated November 13, 2018. The Notice related to an inspection and seizure of contraband flavored tobacco products at the licensed premises on September 4, 2018.

During this inspection the following flavored tobacco products were found to be offered for sale or held as inventory without an invoice from a licensed seller and were seized as contraband under the authority granted in Minn. Stat. §297F.21(j). All time periods for judicially challenging the seizure have since expired:

5	Boxes	Black & Mild Wood Tip Wine Cigars
13	Cigars	Black & Mild Wood Tip Wine Cigars
10	Boxes	Black & Mild Plastic Tip Wine Cigars
3	Cigars	Black & Mild Plastic Tip Wine Cigars

Under Minn. Stat. 297F.21 (j) "Any cigarette packages or tobacco products offered for sale or held as inventory for which there is not an invoice from a licensed seller as required under section 297F.13, subdivision 4" are contraband.

Saint Paul Legislative Code Section 310 provides that adverse action may be taken against your licenses when:

Section 310.06 (b) (6) (a): "the license or applicant (or any person whose conduct may by law be imputed to the licensee of applicant) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith..."

Pursuant to Saint Paul Legislative Code Section 310.05 (m)(2) the Department is recommending a \$500.00 matrix penalty.

The licensee has the right to be represented by an attorney before and during the hearing or can represent him/herself. The licensee may also have a person of his/her choice representing his/her interests, to the extent not prohibited as unauthorized practice of law.

The hearing will be conducted in accordance with the requirements of Minnesota Statutes sections 14.57 to 14.62 and such parts of the procedures under section 310.05 of the Saint Paul Legislative Code as may be applicable.

At the hearing, the Administrative Law Judge will have all parties identify themselves for the record. The City will then present its witnesses and evidence, each of whom the licensee or attorney may cross-examine. The licensee may then offer in rebuttal any witnesses or evidence it may wish to present, each of whom the City's attorney may cross-examine. The Administrative Law Judge may in addition hear relevant and material testimony from persons not presented as witnesses by either party who have a substantial interest in the outcome of the proceeding; for example, the owners or occupants of property located near the licensed premises may have substantial interest in the outcome of the proceeding. Concluding arguments may be made by the parties. Following the hearing, the Judge will prepare Findings of Fact, Conclusions of Law, and a specific recommendation for action to be taken by the City Council.

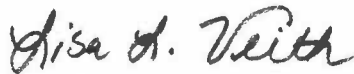
The licensee should bring to the hearing all documents, records and witnesses which may be needed to support its position. Subpoenas may be available to compel the attendance of witnesses or the production of documents in conformity with Minnesota Rules, part 1400.7000.

If you think that this matter can be resolved or settled without a formal hearing, please contact the undersigned. If a stipulation or agreement can be reached as to the facts, that stipulation will be presented to the Administrative Law Judge for incorporation into his or her recommendation for Council action.

If you fail to appear at the hearing, your ability to challenge the allegations will be forfeited and the allegations against you which have been stated earlier in this notice may be taken as true. If non-public data is received into evidence at the hearing, it may become public unless objection is made and relief requested under Minnesota Statutes, Section 14.60, subdivision 2.

If you have any questions, you can call me at (651) 266-8710.

Sincerely,



Lisa Veith
Assistant Saint Paul City Attorney
License No.: 0205060

cc: LauraSue Schlatter, Administrative Law Judge, Office of Administrative Hearings, P.O. Box 64620
St. Paul, MN 55164-0620
Khaled Aloul, 231-105th Street East, Bloomington, MN 55420
Kate Mudge, Executive Director, Hamline Midway Coalition, Hamline Midway Library
1558 W. Minnehaha Avenue, St. Paul, MN 55104
Midway University & Hamline Properties, LLC, Attn: Khal Aloul & Ibrahim Aqel
1347 University Avenue West, St. Paul, MN 55104-4002



