

October 28, 2016

**VIA E-FILING ONLY**

Shari Moore  
City Clerk  
City of St. Paul  
310 City Hall  
15 W Kellogg Blvd  
Saint Paul, MN 55102  
[shari.moore@ci.stpaul.mn.us](mailto:shari.moore@ci.stpaul.mn.us)

**Re: *In the Matter of Cigarette/Tobacco License held by Maryam, Inc. d/b/a Mounds Park Market for the Premises Located at 241 Earl Street in Saint Paul***  
**OAH 5-6020-33765**

Dear Ms. 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 my legal assistant Sheena Denny at (651) 361-7881 or [Sheena.Denny@state.mn.us](mailto:Sheena.Denny@state.mn.us), or facsimile at (651) 539-0310.

Sincerely,



JIM MORTENSON  
Administrative Law Judge

JRM:sd

Enclosure

cc: Therese Skarda  
Maryam, Inc. d/b/a Mounds Park Market

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF SAINT PAUL

In the Matter of the Cigarette/Tobacco  
License Held by Maryam, Inc. d/b/a  
Mounds Park Market for the Premises  
Located at 241 Earl Street 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 October 19, 2016.

Terese Skarda, Assistant City Attorney, appeared on behalf of the City of Saint Paul (city). Maryam, Inc. (licensee) did not appear.

The city moved for default because licensee did not appear at the hearing. The motion was granted pursuant to Minn. R. 1400.6000 (2015). The record in this matter closed on October 19, 2016.

**STATEMENT OF THE ISSUE**

Should a matrix penalty of \$700<sup>1</sup> be required of licensee as a result of the April 18, 2016 seizure of contraband tobacco products by the Minnesota Department of Revenue from the premises located at 241 Earl Street, Saint Paul, Minnesota?

**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 October 19, 2016. As a result of the default, the allegations of or the issues set out in the Notice of Administrative Hearing are deemed true or deemed proved without further evidence, and a matrix penalty of \$500 should be required of the licensee.

Based upon the evidence in the hearing record, the administrative law judge makes the following:

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<sup>1</sup> The requested amount is based on a citation error in the Notice of Administrative Hearing. See findings of fact numbers 6 and 7.

## FINDINGS OF FACT

1. On September 7, 2016, a Notice of Administrative Hearing was mailed to the licensee at its last known address.<sup>2</sup>

2. The hearing was scheduled for Wednesday, October 19, 2016, at 9:30 a.m. at the Office of Administrative Hearings, 600 Robert Street North, Saint Paul.<sup>3</sup>

3. In conformity with Minn. R. 1400.6000, the Notice of Administrative Hearing includes the following statement:

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.<sup>4</sup>

4. No one appeared on behalf of the licensee at the hearing. The judge was not informed prior to the hearing that licensee could not be present at the scheduled hearing. Counsel for the city advised the judge at the hearing that on October 18, 2016, the licensee's owner, Naiel Alyasiri, called her and asked if he had to appear at the hearing. Counsel for the city advised Mr. Alyasiri that if he did not appear, she would request the recommended matrix penalty be ordered.

5. 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 these findings of fact, with the exception noted below.

6. The Notice of Administrative Hearing stated the violation of having tobacco products seized as contraband by the Department of Revenue is "directly related to the licensed activity" (the sale of tobacco).<sup>5</sup> The notice then cites Saint Paul Legislative Code Section 310.05 (m)(5), which concerns the commission of a crime other than a felony, and recommends a presumptive \$700 penalty.<sup>6</sup> This is an error in the notice because the alleged violation was the civil seizure of tobacco product contraband, pursuant to Minn. Stat. § 297F (2016), concerning the administration of cigarette and tobacco taxes.<sup>7</sup>

7. The correct presumptive penalty is \$500 for a violation of the legislative code that relates to the licensed activity.<sup>8</sup>

Based upon the findings of fact, the administrative law judge makes the following:

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<sup>2</sup> Exhibit (Ex.) 4-5, Affidavit of Service by Julie Krause (Sept. 7, 2016).

<sup>3</sup> Notice of Administrative Hearing (Sept. 7, 2016).

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2-3.

<sup>8</sup> *Id.* at 3; Saint Paul Legislative Code Section 310.05 (m)(2) and (3).

## CONCLUSIONS OF LAW

1. The City of Saint Paul and the administrative law judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 (2016) and 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 (b) provides bases for adverse action against licenses including, in relevant part:

(6)(a) The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or 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;...

(6)(c) The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.

...

(8) The licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.

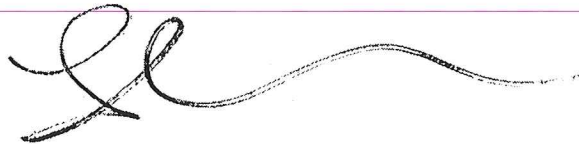
7. Saint Paul Legislative Code Section 310.05 (m) provides a matrix of presumptive penalties for certain violations. Under the matrix, the first violation based on a violation of the legislative code relating to the licensed activity is a presumptive \$500 fine.

Based upon the foregoing conclusions of law, the administrative law judge makes the following:

### RECOMMENDATION

**IT IS HEREBY RECOMMENDED** that the Saint Paul City Council issue a \$500 presumptive penalty against the cigarette/tobacco license held by Maryam, Inc. d/b/a Mounds Park Market for the premises located at 241 Earl Street in Saint Paul.

Dated: October 28, 2016.



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JIM MORTENSON  
Administrative Law Judge

Reported: Default

### NOTICE

This report is a recommendation, not a final decision. The St. Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these 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

RECEIVED

16 SEP 12 AM 7:59

OFFICE OF THE CITY ATTORNEY  
*Samuel J. Clark, City Attorney*



CITY OF SAINT PAUL ADMINISTRATIVE HEARINGS  
*Christopher B. Coleman, Mayor*

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

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

September 7, 2016

## NOTICE OF ADMINISTRATIVE HEARING

Naiel Alyasiri, President/Owner  
Mounds Park Market  
241 Earl Street  
Saint Paul, MN 55106-6402

RE: Cigarette/Tobacco license held by Maryam, Inc. d/b/a Mounds Park Market for the premises located at 241 Earl Street in Saint Paul.  
License ID #: 20100001072  
OAH Docket No.: 5-6020-33765

Dear Licensee:

Please take notice that an administrative hearing has been scheduled for the following date, time and location concerning the Cigarette/Tobacco license held by Maryam, Inc. d/b/a Mounds Park Market for the premises located at 241 Earl Street in Saint Paul:

**Date:** Wednesday, October 19, 2016  
**Time:** 9:30 a.m.

**Location:** Office of Administrative Hearings  
600 Robert Street North  
St. Paul, MN 55101

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

**Name:** Judge James Mortenson  
Office of Administrative Hearings  
600 North Robert Street  
St. Paul, MN 55101

**Telephone:** (651) 361-7870

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 the Cigarette/Tobacco license held by Maryam, Inc., d/b/a Mounds Park Market:

**On June 24, 2016, the Department of Safety and Inspections received a NOTICE OF SEIZURE OF CONTRABAND from the Minnesota Department of Revenue regarding an inspection at 241 Earl Street on April 18, 2016. During the inspection the following items were seized as contraband:**

- 4 – All American E Juice Hawaiian Punch 15ml 20mg
- 4 – All American E Juice Honey Dew 15ml 10mg
- 4 – All American E Juice Honey Dew 15ml 20mg
- 4 – All American E Juice Ry4 15ml 10mg
- 4 – All American E Juice Ry4 15ml 20 mg
- 3 – All American E Juice Watermelon 15ml 10mg
- 4 – All American E Juice Watermelon 15ml 20mg
- 3 – All American E Juice Pomegranate 15ml 10mg
- 3 – All American E Juice Pomegranate 15ml 20mg
- 4 – All American E Juice Butter Rum 15ml 10mg
- 4 – All American E Juice Rum Butter 15ml 20 mg
- 4 – All American E Juice Blueberry 15ml 10mg
- 2 – All American E Juice Blueberry 15ml 20mg
- 2 – All American E Juice Bubble Gum 15ml 10 mg
- 4 – All American E Juice Bubble Gum 15ml 20mg
- 2 – All American E Juice Red Bull 15ml 10mg
- 4 – All American E Juice Red Bull 15ml 20mg
- 4 – All American E Juice Honeydew 15ml 10mg
- 4 – All American E Juice Honeydew 15ml 20mg
- 2 – All American E Juice Red Bully 15ml 10mg
- 3 – All American E Juice Menthol Green 15ml 10mg
- 4 – All American E Juice Menthol Green 15ml 20mg
- 5 – All American E Juice Melon 15ml 10mg
- 3 – All American E Juice Melon 15ml 20mg
- 4 – All American E Juice Gold Tobacco 15ml 10mg
- 4 – All American E Juice Gold Tobacco 15ml 20mg
- 4 – All American E Juice Strawberry Banana 15ml 10mg
- 3 – All American E Juice Strawberry Banana 15ml 20mg
- 3 – All American E Juice Element Tobacco 15ml 10mg
- 5 – All American E Juice Element Tobacco 15ml 20mg
- 3 – All American E Juice Fruit Punch 15ml 10mg
- 4 – All American E Juice Fruit Punch 15ml 20mg
- 4 – All American E Juice Vanilla 15ml 20mg
- 7 – All American E Juice Strawberry Kiwi 15ml 10mg
- 1 – All American E Juice Strawberry Kiwi 15ml 20mg
- 4 – All American E Juice Cappuccino Latte 15ml 10mg
- 4 – All American E Juice Cappuccino Latte 15mil 20 mg
- 4 – All American E Juice Barley Tobacco 15ml 10mg
- 4 – All American E Juice Barley Tobacco 15ml 20mg
- 3 – All American E Juice Hawaiian Punch 15ml 10mg

These items were seized as contraband by the Commissioner of Revenue under the authority granted in Chapter 297F of the Minnesota Statutes. The specific section(s) of the law under which this property is declared to be contraband are Minn. Stat. § 297F.21, Subd. (1-3) which states: "*Subd. 2. Seizure – Cigarettes, tobacco products, or other property made contraband by subdivision 1 (Contraband defined) may be seized by the commissioner or authorized agents or by any sheriff or other police officer, with or without process, and are subject to forfeiture as provided in subdivision 3 (Inventory, judicial determination; appeal; disposition of seized property).*"

Saint Paul Legislative Code Section 310 provides that adverse action may be taken against your licenses based on any one or more of the following grounds:

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 provision 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...*"

Section 310.06 (b) (6) (c): "*the licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.*"

Section 310.06 (b) (6) (8): "*the licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.*"

Due to the fact the violations are directly related to the licensed activity, per Saint Paul Legislative Code § 310.05 (m) (5) the licensing department will recommend a \$700.00 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 in close proximity to 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.



Mounds Park Market  
September 7, 2016  
Page 4

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 266-8710.

Sincerely,



Therese Skarda  
Assistant City Attorney

cc: Eric Hudak, DSI Licensing Manager  
✓ Judge James Mortenson, Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620  
Dezmond Juan, Lead Community Organizer, Dayton's Bluff Community Council  
804 Margaret Street, St. Paul, MN 55106