

OFFICE OF THE CITY ATTORNEY

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CITY OF SAINT PAUL

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July 26, 2019

**NOTICE OF VIOLATION AND
RECOMMENDATION FOR UPWARD DEPARTURE
TO REVOCATION**

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

RE: Gas Station and Cigarette/Tobacco licenses held by Midway University & Hamline, LLC d/b/a Midway Amoco BP for the premises located at 1347 University Avenue in Saint Paul
License ID #: 20100000243

Dear Licensee:

The Department of Safety and Inspections (“Department”) will recommend adverse action against the Gas Station and Cigarette/Tobacco licenses held by Midway University & Hamline, LLC (“Licensee”) for the premises known as Midway Amoco BP located at 1347 University Avenue in Saint Paul. (“Licensed Premises”).

The Penalty Matrix contained in Saint Paul Legislative Code §310.05(m)(1) and (2) provide presumptive penalties for violations of a provision of the legislative code related to the licensed activity and for violations of conditions placed on a license.

Saint Paul Legislative Code §324.07(a) prohibits the sale of a cigarette outside of its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes shall be sold in packages of fewer than twenty (20) cigarettes.

Saint Paul Legislative Code §324.07(f) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored products.

Saint Paul Legislative Code §324.07(g) and Minnesota Statute §609.685 prohibit the furnishing or sale of tobacco to persons under the age of eighteen years.

The Saint Paul City Attorney's Office does not discriminate based on race, color, national origin, religion, sex/gender, disability, sexual orientation, gender identity, age, or veteran status in the delivery of services or employment practices.



Saint Paul Legislative Code §310.06 (b)(6)(c) supports adverse action when “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”.

Saint Paul Legislative Code §310.06 (b)(7) supports adverse action when “the activities of the licensee in the licensed activity created or have created a serious danger to the public health, safety or welfare, or the licensee performs or has performed his or her work or activity in an unsafe manner”.

Saint Paul Legislative Code §310.06 (b)(8) supports adverse action when “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”.

While matrix penalties are presumed to be appropriate for every case, the council can deviate from them in individual cases where the council finds and determines that there exist substantial and compelling reasons that make it more appropriate to do so.

This is the second adverse action against the Licensee within the past 12 months. On July 23, 2019 Saint Paul City Council adopted RES 19-1273 which imposed a first time matrix penalty and costs against the Licensee for possession of items deemed contraband by the Department of Revenue and flavored products.

The Department believes that substantial and compelling reasons support its recommendation for upward departure from the second matrix penalty of \$1,000 to the fourth matrix penalty which is revocation. Those reasons include but are not limited to:

- shots fired calls;
- casings recovered on the Licensed Premises;
- the production and sale of drug kits at the Licensed Premises by an employee;
- the sale of cigarettes outside of their original packaging by an employee;
- the sale of flavored products by an employee;
- the sale of tobacco to a minor by an employee;
- the repeated failures to comply with license conditions;
- the propensity of the Licensee to operate the Licensed Premises in such a manner that permits 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;
- the propensity of the Licensee to operate the Licensed Premises in a manner that creates a serious danger to the public health, safety or welfare;
- the propensity of the Licensee to operate the Licensed Premises in an unsafe manner and a manner which 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.

EXHIBIT

tabbies

1-2

The licenses for this location contain the following conditions:

1. The licensee shall provide and maintain working video surveillance cameras and recorders on the premises (both inside and out) in accordance with Saint Paul Police Department (SPPD) recommendations. The number of cameras, their placement and their quality must be approved by SPPD. This equipment must be in operation during all business hours. Tapes/recordings must be maintained for a minimum of thirty (30) days, and copies of recordings shall be available to SPPD and/or the Department of Safety and Inspections (DSI) staff within twenty-four (24) hours of such a request.
2. The licensee agrees to provide adequate lighting to support the camera placement, and to provide sufficient visibility of the premises in accordance with SPPD recommendations.
3. Licensee agrees to provide and maintain adequate fencing to comply with applicable City Ordinances, and to prevent access from the alley to the property.
4. Licensee agrees to limit the car wash hours of operation to between 6:00 a.m. and 10:00 p.m.
5. The licensee shall maintain a clean site, with all trash and other litter picked up daily.

The Department asserts the following facts along with attachments herein constitute proof of violations of Saint Paul Legislative Code sections 310.05(m)(1), 310.05(m)(2), 324.07(a), 324.07(f), 324.07(g), 310.06(b)(6)(c), 310.06(b)(7) and 310.06(b)(8) by a preponderance of the evidence.

Violation of Conditions Placed on the License - Saint Paul Legislative Code §310.05(m)(1)

On April 27, 2019 Saint Paul Police (“SPPD”) were called to the Licensed Premises on a report of a theft of a wallet at the front counter of the Licensed Premises (CN 19086028). SPPD reported that only the manager had access to the video. An SPPD Sergeant attempted to follow up and get the video. She reports that she attempted to contact the Licensed Premises by phone and that every time she identified herself as SPPD, the person on the other end of the line hung up. On May 1, 2019, the Department of Safety and Inspections sent a letter to the Licensee at the licensed premises requesting the video from April 27, 2019 from 0001 to 0100. The letter gave the licensee until no later than 4:30 p.m. on May 10, 2019 to produce and deliver the video to the DSI offices. The Licensee failed to produce and deliver the video. This was a violation of license condition #1.

On June 18, 2019 at 1:00 p.m. Licensing Manager Eric Hudak from the DSI hand delivered a letter to the Licensed Premises. This letter requested video from June 12, 2019 from 2:30 – 4:30 p.m. and was issued in conjunction with DSI’s attempt to investigate the sale of single cigarettes witnessed by Inspector Muhammed on June 12, 2019. The letter stated that a representative from the DSI would come to the Licensed Premises on Wednesday June 19, 2019 at 4:00 p.m. to pick up the video footage. Licensing Manager Hudak returned to the Licensed Premises on June 19, 2019 at 4:00 p.m. to pick up the video. His report documents that he spoke with the same clerk. This clerk called an individual named Alex who indicated that they had given the video to an individual named Mark who works with the police. Inspector Hudak told Alex that this was a DSI request and that the letter he hand delivered to the Licensed Premises required it to be ready for pick up. Licensing Manager Hudak further explained that this was a violation of license condition #1.



On June 18, 2019 and June 19, 2019, Licensing Manager Hudak also witnessed and documented violations of license condition #3 which requires the Licensee to provide and maintain adequate fencing to comply with applicable City Ordinances and to prevent access from the alley to the property and license condition #5 which requires that the Licensee maintain a clean site, with all trash and other litter picked up daily. On June 18, 2019 Licensing Manager Hudak observed and photographed litter and filled trash bags next to the dumpster, a fence board with nails pointing upward on the ground and a fence which was not maintained in a professional state of maintenance and repair. When he returned on June 19, 2019 he observed the same litter, the same filled trash bags next to the dumpster, the same fence board and the same fence which was not maintained in a professional state of maintenance and repair.

Violations of provisions of the legislative code relating to the licensed activity §310.05(m)(2).

The Licensee holds a license to sell tobacco. The violations alleged under Saint Paul Legislative Code §§'s 324.07(a), 324.07(f) and 324.07(g) are all violations of the legislative code related to the licensed activity.

Violations of Saint Paul Legislative Code §324.07(a) – Sale of a cigarette outside its original packaging.

On June 12, 2019 Inspector Akbar R. Muhammad was conducting a tobacco age compliance check. While speaking with the clerk about the underage failure, Inspector Akbar R. Muhammad observed the clerk handing two (2) single, unpackaged Marlboro cigarettes to a customer. While he did not see any money exchanging hands, Inspector Akbar R. Muhammad reported this to his supervisor through an email.

Saint Paul Police CN 19-115-335 reports that on June 1, 2019 two people were arrested leaving the Licensed Premises with a firearm. During a subsequent interview one of those individuals indicated that she chose to go to the Licensed Premises because she knew she could purchase single cigarettes there and had bought one there this night.

Saint Paul Police CN 19-134-455 details the work of Sergeant Rigo Aguirre on June 22, 2019 at approximately 02:30 hours. Sergeant Aguirre responded to the Licensed Premises to officially request video from June 22, 2019 between 2:00 and 3:30 a.m. At that time the clerk was locked in the store. Sergeant Aguirre's body worn camera and report documents that he knocked on the door and the clerk let him in. Sergeant Aguirre then officially requested the video and began talking with the clerk about how closing down the store clears out the parking lot. Sergeant Aguirre asked the clerk if he could look in the area behind the bullet proof enclosed counter. Sergeant Aguirre noted that the clerk had two open packages of cigarettes (menthol flavored Newport Marlboro brands). Sergeant Aguirre asked the clerk about them and the clerk told Sergeant Aguirre that a package retails for \$10 but he sells the individual cigarettes for \$1, double the price that they would be if they were sold in the original package.

Violation of Saint Paul Legislative Code §324.07(f) – Offering for sale and selling flavored products.

Saint Paul Police CN 19-134-455 and the body worn camera footage of Sergeant Aguirre from June 22, 2019 at approximately 02:30 hours shows Newport menthol cigarettes, Marlboro menthol cigarettes, Backwoods Berry Flavor Cigars, Backwoods Russian Cream Flavor Cigars, Dutch Master Rum Fusion Cigars and Dutch Master Berry Fusion Cigars were available for purchase at the Licensed Premises on June 22, 2019.

Violation of Saint Paul Legislative Code §324.07(g) and Minnesota Statute §609.685 - Sale of tobacco to a minor.

On June 12, 2019 Inspector Akbar R. Muhammad conducted a tobacco age compliance checks with an underage decoy at the Licensed Premises. The underage decoy entered the Licensed Premises and was sold a



pack of Marlboro cigarettes by the clerk. Inspector Akbar R. Muhammad documented this violation in his report.

Violation of Saint Paul Legislative Code Sections 310.06(b)(6)(c), 310.06(b)(7) and 310.06(b)(8).

Saint Paul Police CN 18-198-767 details that on August 31, 2018, officers responded to a shots fired incident in which a complainant who was working security at 1305 University reported that 12 shots were fired in the parking lot of the Licensed Premises. While investigating this incident, officers observed an individual who was providing security for the Licensed Premises, Jonathan Leandrew Paige ("Paige") using a flashlight, looking at the ground under vehicles and standing with several other people at the rear of a large black Tahoe with an open trunk. Officers later spoke with Paige. When questioned, Paige changed his story a few times and was acting "cagey". He told officers that "nothing was going on", "no one was shooting in the lot" that he "never saw or heard anything" and that he was "inside the whole time". Paige eventually said he was "off the clock" and left abruptly. Officers then spoke with the complainant who stated that Paige was lying to the officers and stated that he thought that Paige was picking up casings. Officers also spoke with the clerk, Carlos Mauricio ("Mauricio") who told them he "never heard or saw anything", that Paige was inside the entire time and that he "knew nothing". Officers asked if he knew how to work the cameras and he did not. Mauricio called someone who said he would text the password for the cameras to Mauricio. The password sent was incorrect and officers documented that they were unable to get video. Officers did identify through CCTV camera that a black infinity SUV and a purple Impala with large rims were involved.

Under Saint Paul Police CN 19-128-009 Sergeant Vang-Sitcler reported that he is in the Gun and Gang Unit and that on the nights of May 31, 2019 and June 14, 2019 he was working details that focused on the area around University and Hamline. The detail was created to address ongoing calls of fights, open-air drug dealing, weapons violations and aggravated assaults. In his report he detailed the following incidents which involved activities at the Licensed Premises:

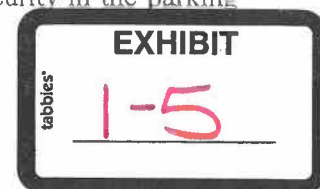
CN 19-115-335 – On June 1, 2019 two people were arrested leaving the Licensed Premises with a firearm.

CN 19-115-394 – On June 1, 2019 shots were fired in the direction of cars that had just left the Licensed Premises.

CN 19-128-086 – On June 15, 2019 a man walked from the gas station to the parking lot directly south of the Licensed Premises and got into a van and purchased drugs. Subsequently, the men were stopped and cited for possession of marijuana.

CN 19-128-132 – On June 15, 2019, Sergeant Vang-Sitcler saw two men in between the pumps at the Licensed Premises. He observed them transferring a firearm with a high capacity magazine while they were in between the pumps at the gas station. At one point he documented that he saw the men notice something and the man with the gun stopped what he was doing and grab the grip of his gun. It appeared to Sergeant Vang-Sitcler that the man recognized a threat and was preparing to address it. These individuals were arrested for DWI and weapons violations.

Sergeant Vang-Sitcler also documented that on both June 1 and June 15 between 2:00 and 3:30 a.m. he could see 20-30 cars in the parking lot. He noted that there was no room to move. He observed cars driving through the lot bumper to bumper. He estimated over 100 people standing around in the parking lot dancing and observed fights. He also saw hand to hand drug transactions, people drinking alcohol and people smoking marijuana. Sergeant Vang-Sitcler also noted that at no time did he see anyone working security in the parking

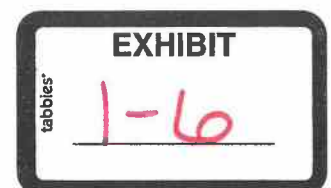


lot – but he did notice that store employees controlled access to the store and that it appeared that they were only allowing a small number of people in the store at one time and that many people in the lot never entered the store and did not purchase gas at the pumps. Sergeant Vang-Sitcler also viewed CCTV footage from May 11, 18 and 25 and observed that many of the above activities also occurred on those nights. He ordered CCTV footage for these dates.

CN 19-134-455 – On June 22, 2019 Sergeant Rigo Aguirre responded to the Licensed Premises to officially request video from June 22, 2019 between 2:00 and 3:30 a.m. after he observed and documented a large number of cars and people in the parking lot at the licensed premises. His report details that some cars were parked at the gas pumps, some were in parking spaces at the north end of the parking and some were just randomly parked around the lot. He also documented that people were yelling, talking, dancing and loitering and that the noise level and people's demeanor led him to believe that many of them had been drinking and/or using recreational drugs. As evidence of a possible fight he could see at least two pairs of shoes and a wig laying in the lot. To try and move people and vehicles along, he activated his lights and also announced several times that those who were not purchasing gas should leave the area. The store clerk had locked the store's door, which assisted in encouraging people to leave. Sergeant Aguirre's body worn camera and report documents that he knocked on the door and the clerk let him in. Sergeant Aguirre entered the Licensed Premises and requested the video. He then began talking with the clerk about how closing down the store clears out the parking lot. Sergeant Aguirre asked the clerk if he could look in the area behind the bullet proof enclosed counter. The clerk showed him a box of glass vials next to pieces of metal scrubbing sponges and other glass pipes with bubbles on the ends. Based on his experience and training, Sergeant Aguirre knew that the glass pipes and the glass bubbles are stuffed with pieces of the scrubbing pads and used to smoke crack cocaine and methamphetamine. Sergeant Aguirre's body worn camera video shows that the metal scrubbing sponges had been cut into pieces and shaped to fit into the glass pipes. The clerk explained that he was selling a piece of metal scrubbing sponge and a glass pipe as a "kit". The clerk explained that he sold a "kit" with the straight pipe for \$5 and a "kit" with the bubble pipe for \$6.

As the Licensee you have three (3) options:

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 **8/7/2019**, I will presume that you have chosen not to contest the proposed adverse action and the matter will be placed on the **8/21/2019** City Council Consent Agenda for approval of the proposed remedy.
2. If you wish to admit the facts but you contest the upward departure to revocation, you may have a public hearing before the Saint Paul City Council. You will need to send me a letter with a statement admitting to the facts and requesting a public hearing no later than **8/7/2019**. The matter will then be scheduled before the City Council to determine whether to revoke your licenses. You will have an opportunity to appear before the Council and make a statement on your own behalf.
3. If you dispute the facts outlined above, you may request a hearing before an Administrative Law Judge (ALJ). You will need to send me a letter disputing the facts and requesting an administrative hearing no later than **8/7/2019**. At that hearing both you and the City will appear and present witnesses, evidence and cross-examine each other's witnesses. After receipt of the ALJ's report (usually within 30 days), a public hearing will need to be scheduled. At that time, the City Council will decide whether to adopt, modify or reject the ALJ's report and recommendation.



d/b/a Midway Amoco BP
July 16, 2019
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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 § 310.05 (k).

If you have not contacted me by 8/7/2019, I will assume that you do not contest the Department's recommendation for an upward departure to revocation. In that case, the matter will be placed on the 8/21/2019 City Council Consent Agenda for approval of the recommended penalty.

If you have questions about these options, please contact Shawn McDonald, my Legal Assistant at (651) 266-8729.

Sincerely,



Therese Skarda
Assistant City Attorney
License No.: 0240989

cc: Midway University & Hamline, LLC; 1347 University Avenue; Saint Paul, MN 55104
Khaled Aloul; 321 - 105th East Street; Bloomington, MN 55420
Ibrahim Aqel; 1347 University Avenue; Saint Paul, MN 55104
District 11 - Hamline Midway Coalition; 1558 Minnehaha Avenue West; Saint Paul, MN 55104

Attachments: RES 19-1273
Eclips Printouts (3 pages)
Signed License Conditions (1 page)
Business Record Details (3 pages)
STAMP Ownership/Zoning Information (1 page)
CN 19086028 (6 pages)
May 1, 2019 letter from Kristine Schweinler to licensee requesting video (1 page)
Report from June 12, 2019 Tobacco youth compliance check failure (3 pages)
CN 19128009 (3 pages)
CN 19134455 (4 pages)
June 18, 2019 letter from Licensing Manager, Eric Hudak to licensee requesting video (1 page)
Licensing Manager, Eric Hudak June 20, 2019 letter to file and photos (12 pages)
CN 1819867 (5 pages)
Photos from body worn camera of Sergeant Rigo Aguirre documented under CN 19134455(5 pages)
Copy of Sergeant Aguirre's body worn camera footage described in CN19134455 (1 cd)

