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CITY ATTORNEY

MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

Mailing Address:
P.O. Box 64620
St. Paul, Minnesota 55164-0620

August 31, 2015

Voice: (651) 361-7900
TTY: (651) 361-7878
Fax: (651) 539-0300

Shari Moore
City Clerk
City of St. Paul
310 City Hall
15 Kellogg Blvd W
Saint Paul, MN 55102

Re: *In the Matter of Fleetwood Motors, LLC d/b/a/ Fleetwood Motors, LLC*
OAH 68-6020-32570

Dear Ms. Moore:

Enclosed and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** in the above-entitled matter. The official record, with the exception of the recording of the hearing, is also enclosed. If you would like a copy of the recording, please contact the Office of Administrative Hearings in writing, by telephone at (651) 361-7870, or by e-mail at kendra.mccausland@state.mn.us. The Office of Administrative Hearings' file in this matter is now closed.

If you have any questions, please contact my legal assistant Kendra McCausland at (651) 361-7870 or kendra.mccausland@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,

A handwritten signature in black ink that reads "Jeanne M. Cochran".

JEANNE M. COCHRAN
Administrative Law Judge

JMC:klm
Enclosure
cc: Geoffrey S. Karls
Phillip Smith

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of Second Hand Dealer-
Motor Vehicle License Held By Fleetwood
Motors, LLC d/b/a/ Fleetwood Motors for
the Premises Located at 550 Como
Avenue in St. Paul, Minnesota
License No. 20150000001

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

The above-entitled matter came before Administrative Law Judge Jeanne M. Cochran for a hearing on August 3, 2015, at the Office of Administrative Hearings. The record closed upon the conclusion of the hearing that same day.

Geoffrey S. Karls, Assistant City Attorney, appeared on behalf of the city of St. Paul (City). Phillip Smith, owner of Fleetwood Motors, LLC (Licensee), appeared on behalf of the Licensee and was not represented by counsel.

STATEMENT OF THE ISSUES

1. Did the Licensee violate Conditions 1 and 4 of its license by allowing nine vehicles to be parked in the display area on April 22 and May 4, 2015?
2. Did the Licensee violate Condition 4 of its license by allowing four vehicles offered for sale to be parked in the spaces reserved for customer parking on April 22, 2015?
3. Did the Licensee violate Condition 7 of its license by allowing one for-sale vehicle to be parked in the public right-of-way on April 22, 2015?

SUMMARY OF RECOMMENDATION

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

FINDINGS OF FACT

1. Licensee is a second-hand dealer of motor vehicles located at 550 Como Avenue in the city of St. Paul (St. Paul or City). Licensee was granted a conditional use

permit for the location. The conditions on use of the premises are also attached to the second-hand motor vehicle dealer license issued by the City to the Licensee.¹

2. As a condition of Licensee's conditional use permit and second-hand dealer license, Licensee was required to, and did, obtain approval of a site plan. The approved site plan designated areas for: (1) displaying vehicles offered for sale; (2) customer parking; and (3) drive lanes to be kept clear of vehicles.²

3. Licensee's conditional use permit and secondhand vehicle dealership license include the following conditions:³

(1) Licensee cannot display more than eight vehicles for sale at any one time and customer parking, employee parking, and drive lanes must be generally consistent with the site plan;

...

(4) all customer, for-sale, and employee vehicles must be parked in accordance with the approved site plan; and

...

(7) customer, employee, and for-sale vehicles cannot be parked in the public right-of-way.

4. The approved site plan shows a large rectangular paved area with eight parking spaces for vehicles for sale and three parking spaces for customer vehicles.⁴ One side of the parking area abuts a building and the other side is open space. The three customer parking spaces are in a row at the rear of the lot, beginning near the building and extending across the paved area. Approximately twenty feet in front of the customer spaces are spaces for the display of for-sale vehicles, in two rows of four vehicles each. The site plan requires drive lanes at least twenty feet wide between the end of the display rows and the edge of the parking area, as well as between the display area and the customer parking area. The latter drive lane permits access to the customer parking area and the back row of for-sale vehicles. This drive lane also provides access to a garage door in the side of the building.⁵

5. On April 22, 2015, Zoning/Licensing Inspector Anthony Johnson (Inspector) of the St. Paul Department of Safety and Inspections (DSI) conducted an inspection of Licensee's premises. The Inspector took photographs and initiated vehicle licensing data queries.⁶ The Inspector observed that nine vehicles were parked in the

¹ Exhibit (Ex.) 1, 2, 4, 10.

² Exs. 2, 4, 10.

³ Ex. 2.

⁴ Ex. 10 and Testimony (Test.) of Anthony Johnson.

⁵ Ex. 10.

⁶ Exhibits (Exs.) 1, 3, 5, 10; Test. of A. Johnson.

display area with the ninth vehicle partially obstructing the drive lane.⁷ Four vehicles were parked in the area reserved for customers.⁸ One for-sale vehicle was parked in the public right-of-way.⁹

6. By letter dated April 23, 2015, Inspector Johnson notified Licensee that it was in violation of Conditions 1, 4, and 7. The Inspector gave Licensee ten days to comply with the license conditions.¹⁰

7. The Inspector returned to the premises on May 4, 2015.¹¹ The Inspector again observed nine vehicles in the vehicle display area with the ninth vehicle partially obstructing the drive lane along the side of the parking area.¹²

8. By letter dated July 2, 2015, the City noticed Licensee of this hearing and informed Licensee that: "[a]s a result of this violation, per Saint Paul Legislative Code § 310.05(m)(1), the licensing office will recommend a \$500.00 matrix penalty."¹³

9. In a letter received by the City on May 29, 2005, the Licensee disputed the inspector's finding that Condition 1 had been violated on both April 22 or May 4, 2015, asserting that only eight vehicles were for sale.¹⁴ According to the Licensee, the ninth vehicle observed on either of those dates may have been vehicles taken in trade, or waiting to be sent for auction, or possibly a vehicle associated with the automotive repair shop adjacent to Licensee's premises. Licensee leased its premises from the owner of the repair shop.¹⁵

10. On July 2, 2015, the City issued a Notice of Administrative Hearing (Notice) to the Licensee. The Notice stated that an administrative hearing would be held on Monday, August 3, 2015 at 9:30 a.m., at the Office of Administrative Hearings before Administrative Law Judge Jeanne M. Cochran.¹⁶

11. At the start of the hearing on August 3, 2015 at 9:30 a.m., Licensee requested a continuance because his attorney was not available. At the time the request was made, no attorney had filed a notice of appearance for the Licensee. Nor had any attorney contacted the undersigned Administrative Law Judge to request a continuance. Licensee stated that he thought his attorney might be available after lunch on August 3, 2015. The City did not object to continuing the hearing until 1:30 p.m. to give Licensee additional time to secure counsel. However, Licensee's counsel did not appear at the appointed time and the hearing proceeded.

⁷ Exs. 3-3 to 3-8, 10; Test. of A. Johnson.

⁸ Exs. 3-2, 10; Test. of A. Johnson.

⁹ Exs. 3-1, 10; Test. of A. Johnson.

¹⁰ Ex. 4.

¹¹ Exs. 5, 6-1 and Test. of Phillip Smith.

¹² Exs. 5-1, 5-3, 6-1, 10; Test. of Johnson.

¹³ Ex. 6-1.

¹⁴ Ex. 7.

¹⁵ Ex. 7; *see also* Test. of P. Smith.

¹⁶ Ex. 8; On July 27, 2015, the City issued an Amended Notice of Administrative Hearing, but withdrew the Amended Notice at the August 3, 2015 hearing.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Saint Paul City Council and the Administrative Law Judge have jurisdiction over this matter under the City of St. Paul's Legislative Code § 310.05-.06 (2015).

2. The hearing was conducted in accordance with the requirements of Minn. Stat. §§ 14.57-.62 (2014), and applicable portions of the procedures set forth in section 310.05 of the St. Paul Legislative Code.

3. The City has given proper and timely notice of the hearing in this matter and has fulfilled all procedural requirements of law and rule.

4. The St. Paul Legislative Code authorizes the City Council to take adverse action against a license when the licensee "has failed to comply with any condition set forth in the license, or set forth in the resolution granting or renewing the license."¹⁷ "Adverse action" is defined in the Code to include the imposition of a fine.¹⁸

5. The City has the burden of proving that Licensee violated a condition of its license.¹⁹

6. On April 22, 2015, Licensee violated Conditions 1, 4, and 7 of its license by: 1) having nine vehicles, rather than eight, parked in the vehicle display area and partially occupying the adjacent area that the site plan indicates is to be kept clear; 2) by having four vehicles parked in the customer parking area; and 3) by parking one for-sale vehicle in the public right-of-way.

7. On May 4, 2014, Licensee violated Conditions 1 and 4 of its license by having nine vehicles parked in the vehicle display area and partially obstructing the adjacent drive lane.

8. The St. Paul Legislative Code prescribes a presumptive fine of \$500.00 for first time violations of conditions placed on a license.²⁰

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

¹⁷ St. Paul Legislative Code § 310.06(b)(5).

¹⁸ St. Paul Legislative Code § 310.01 (2015).

¹⁹ St. Paul Legislative Code § 310.06(b)(5).

²⁰ St. Paul Legislative Code § 310.05(m)

RECOMMENDATION

The St. Paul City Council take adverse action against Licensee's license and assess a fine of \$500.00.

Dated: August 31, 2015


JEANNE M. COCHRAN
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Saint 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, and Recommendation. Pursuant to Saint 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 Saint Paul, 310 City Hall, 15 Kellogg Blvd. W., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

The City has proven by a preponderance of the evidence that Fleetwood Motors LLC was in violation of Conditions 1, 4, and 7 of its license on April 22, 2015 and in violation of Conditions 1 and 4 on May 4, 2015.

The approved site plan allows for two rows of four vehicles each for the display of for-sale vehicles. From the vantage point of a person viewing the parking area from the street, to the right side of the vehicle display rows, the site plan requires a minimum of twenty feet of clearance for a drive lane.²¹ The plan further allows for three customer vehicles to be parked in a row behind the for-sale vehicles, with a drive lane separating the for-sale vehicle display area and the customer vehicle parking area.²² The drive lanes permit customers to drive past the display rows and park behind them, and also allow vehicles to access a garage door between the display rows and the customer parking area.²³

²¹ Ex. 10.

²² *Id.*

²³ *Id.*

On April 22, 2015, three vehicles were parked in the customer parking area with a fourth vehicle parked next to them in violation of the site plan and license.²⁴ In addition, on that date, a for-sale vehicle belonging to Licensee was parked in the public right-of-way. This too violated the license. Finally, on April 22 and May 4, 2015, the display area contained nine vehicles, with one in the drive lane, in violation of the site plan and license. As noted above, the site plan only allows for eight for-sale vehicles.²⁵

At the hearing, the Licensee's owner acknowledged that on occasion, he had more vehicles than permitted by the site plan. With regard to the extra vehicle in the customer parking area, the Licensee's owner maintained that the vehicle belonged to the Licensee's landlord. While the Administrative Law Judge appreciates that Licensee does not wish to antagonize its landlord, nonetheless, Licensee is ultimately responsible for complying with the conditions of its license.

J. M. C.

²⁴ See Ex. 10.

²⁵ *Id.*