

March 9, 2020

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 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 St. Paul OAH 60-6020-36320*

Dear City Clerk 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, along with a copy of the recording of the hearing, 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) 361-7881, at anne.laska@state.mn.us; or via fax at (651) 539-0310.

Sincerely,



ANNE LASKA
Legal Assistant

Enclosure

cc: Docket Coordinator
Therese Skarda
James C. MacGillis



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

In the Matter of 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 St. Paul

License ID #: 20100000243

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

This matter came on for hearing on November 13, 14, and 19, 2019, before Administrative Law Judge James E. LaFave at the Office of Administrative Hearings in St. Paul, Minnesota. The record closed on January 10, 2020, with the filing of the parties' post-hearing briefs.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). James C. MacGillis, Trepanier, MacGillis, Battina, P.A., appeared on behalf of Midway University & Hamline, LLC d/b/a Midway Amoco BP (Midway Amoco or Licensee).

STATEMENT OF THE ISSUES

1. Did Licensee violate statutes, ordinances, or conditions related to its licensed activity?
2. If so, has the City demonstrated that substantial and compelling reasons exist to depart upward from its penalty matrix and to revoke Midway Amoco's licenses?

SUMMARY OF RECOMMENDATIONS

The City demonstrated by a preponderance of the evidence that Licensee violated Saint Paul ordinances related to its licensed activity. The City has also demonstrated that substantial compelling reasons exist to upwardly depart from the presumptive penalty and severe aggravating circumstances exist to revoke the licenses held by Midway Amoco.

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



FINDINGS OF FACT

I. Background

1. Midway Amoco is a gas station and convenience store located at 1347 University Avenue in St. Paul.¹ Midway Amoco sits at the corner of University and Hamline Avenues across from the Green Line light rail Hamline Avenue Station.²

2. Khaled Aloul (Aloul) is the owner of Midway Amoco.³ Aloul purchased Midway Amoco in May of 2010.⁴

3. The City granted Midway Amoco Cigarette/Tobacco and Gas Station licenses on May 15, 2010, subject to the following conditions:

- (1) The licensee shall maintain working video surveillance cameras and recorders on the premises (both inside and outside) 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 between 6:00 a.m. and 10:00 p.m.
- (5) The licensee shall maintain a clean site, with all trash and litter picked up daily.⁵
- (6) Midway Amoco's franchise agreement with British Petroleum (BP) requires that business be open 24 hours a day, seven days a week.⁶

¹ Exhibit (Ex.) 5; Testimony (Test.) of Khaled Aloul.

² Test. of K. Aloul; Ex. 24-2.

³ Ex. 6; Test. of K. Aloul.

⁴ Test. of K. Aloul; Exs. 3, 4, 5, 6.

⁵ Ex. 4: Test. Of Eric Hudak.

⁶ Test. of K. Aloul.



4. Typically, Midway Amoco has only one employee on staff after 10:00 p.m.⁷

5. Eric Hudak is a Licensing Manager with the City's Department of Safety and Inspections (DSI).⁸

6. DSI conducts tobacco compliance checks of businesses licensed to sell tobacco products to ensure they are not selling such products to individuals under the legal purchasing age.⁹ In conducting compliance checks, DSI staff work with underage "decoys" who, at the direction of DSI investigators, attempt to purchase tobacco products from licensed businesses.¹⁰

7. Over the years, DSI has conducted tobacco compliance checks at Midway Amoco.¹¹ Since 2010, Licensee has passed most of its tobacco compliance checks.¹² However, it failed a tobacco compliance check in 2014 and again in 2017.¹³

II. Alleged Violations

8. Beginning in 2019, criminal activity, including aggravated assaults, shots fired, and narcotics trafficking, increased on or within a half-block of the Licensee's premises.¹⁴ The increase in noise disturbances, drug dealing, fighting, and gun-related activity at the Licensee's premises was particularly notable in the early morning hours of the weekend - Saturday and Sunday between 1:00 a.m. and 4:00 a.m.¹⁵

9. In early 2019, Licensee hired a private security company to provide security services at Midway Amoco on the weekends from 10:00 p.m. until 4:00 a.m.¹⁶ The company, Wrangler Protection Agency (Wrangler), provided two armed security guards to patrol and guard the interior and exterior premises of Midway Amoco. Among other services, the security guards watched for shoplifters and directed people to leave Licensee's lot if they were loitering or causing disturbances.¹⁷

10. On March 23, 2019, the owner of Wrangler informed Midway Amoco's manager, that it would no longer provide security services to Midway Amoco.¹⁸

⁷ *Id.*

⁸ Test. of E. Hudak.

⁹ Minn., St. Paul Legis. Code § 324.07(g). (In October of 2019, the St. Paul City Council voted to raise the legal tobacco purchasing age from 18 to 21 years.)

¹⁰ Test. of E. Hudak; Test. of Akbar Muhammad.

¹¹ Test. of E. Hudak; Ex. 20.

¹² Ex. 20.

¹³ *Id.*

¹⁴ Test. of Eric Vang-Sitcler; Ex. 23-6.

¹⁵ Test. of E. Vang-Sitcler; Test. of Carlos Mauricio.

¹⁶ Test. of Ala Asia; Ex. 106. (Typically, one security guard arrived at 10:00 p.m. and the other arrived at 1:30 a.m.)

¹⁷ Test. of A. Asia; Ex. 106.

¹⁸ Test. of A. Asia; Ex. 106.



11. Licensee did not hire another security company to provide security services after Wrangler terminated its services in March of 2019.¹⁹

12. From late April to July of 2019, the SPPD received more than 100 calls for service to Licensee's address.²⁰ Many of the calls concerned reports of disorderly conduct, fighting, and noise.²¹

13. Ala "Alex" Asia (Asia) is employed to manage the Midway Amoco and another gas station Aloul owns, located in New Brighton, Minnesota.²² Asia visits the Midway Amoco location approximately every other day.²³ Among his other managerial duties, Asia is the primary contact for surveillance video requests.²⁴ Midway Amoco receives requests for surveillance video from both the SPPD and DSI. Pursuant to the conditions of Midway Amoco's license, it must provide a copy of surveillance video within 24 hours of a request.²⁵

14. Asia can access and download video footage from the security cameras at Midway Amoco by inputting a specific username and code.²⁶ Aloul knows the code and has full access to surveillance video footage.²⁷

15. The SPPD requested copies of video footage from Midway Amoco approximately three times per week during 2019.²⁸ DSI requested video from Midway Amoco approximately once every two months in 2019.²⁹ Upon receiving a request for a copy of surveillance video, Asia copied video from the requested time frame onto a flash drive and left it at the gas station for retrieval by the SPPD or DSI.³⁰ Sometimes a police officer asked to review video footage at Midway Amoco. On those occasions, Asia entered the code to access the video and played it for the police officer in the store.³¹ Asia has also given the username and code to an employee of the SPPD's IT department named "Mark" so that he may view the video.³²

16. On or about April 27, 2019, a person reported to the SPPD that his wallet was stolen while he was at Midway Amoco.³³ By letter dated May 1, 2019, a DSI License Inspector requested that Licensee provide her with a copy of video footage from

¹⁹ Test. of A. Asia.

²⁰ Ex. 23. (The SPPD calls for service report lists 168 calls, but some are "proactive" police visits and some concern the intersection of Hamline and University and not necessarily Midway Amoco.)

²¹ *Id.*

²² Test. of A. Asia.

²³ *Id.*

²⁴ *Id.*

²⁵ Ex. 6.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*; Test. of K. Aloul; Exs. 104, 105.

²⁹ Test. of K. Aloul; Test. of A. Asia.

³⁰ Test. of A. Asia.

³¹ *Id.*

³² *Id.*

³³ Ex. 23-5.



12:01 a.m. to 1:00 a.m. on April 27, 2019.³⁴ The letter directed Licensee to provide the video no later than May 10, 2019.³⁵ However, the letter contained an incorrect mailing address for Midway Amoco.³⁶ As a result, Licensee never saw the letter and was unaware of the request.³⁷

17. On June 1, 2019, two people were arrested leaving Midway Amoco with a firearm.³⁸ When questioned by a police officer following the arrest, one of the individuals stated that she went to the Midway Amoco because the clerks there sell single cigarettes.³⁹

18. On June 12, 2019, DSI Inspector Akbar Muhammad conducted a tobacco age compliance check at Midway Amoco.⁴⁰ The minor decoy, working with Inspector Muhammad, entered Midway Amoco alone and purchased a pack of cigarettes for \$9.45 from the Licensee's clerk, Nagdy Ahmed (Ahmed), despite that the clerk requested to see and reviewed the minor's identification.⁴¹

19. After the minor exited Midway Amoco and gave the pack of cigarettes and change to Inspector Muhammad, he realized he failed to get a receipt.⁴² The minor re-entered the store with the pack of cigarettes and asked Ahmed for a receipt. At this point, Ahmed asked to see the minor's identification again. When Ahmed determined the minor was under the age of 18, he took back the pack of cigarettes.⁴³

20. Inspector Muhammad informed Ahmed that he had failed the tobacco compliance check.⁴⁴ Muhammad also took a photograph of Ahmed's identification next to the pack of Marlboro cigarettes Ahmed sold to the minor.⁴⁵

21. While inside the gas station, Inspector Muhammad observed Ahmed hand two single unpackaged cigarettes to an adult male.⁴⁶ Inspector Muhammad did not see any exchange of money for the cigarettes.⁴⁷

22. In the early morning hours of June 15, 2019, between 2:00 a.m. and 3:30 a.m., Saint Paul Police Sergeant Vang-Sitcler with the SPPD's Gun and Gang Unit

³⁴ Ex. 8.

³⁵ *Id.*

³⁶ *Id.* (The letter was addressed to Midway Amoco at 1337 University Ave. W. Midway Amoco is located at 1347 University Avenue West.)

³⁷ Test. of K. Aloul; Test. of A. Asia.

³⁸ Ex. 10.

³⁹ *Id.*

⁴⁰ Ex. 9-3.

⁴¹ Test. of A. Muhammad; Exs. 9-1, 9-3.

⁴² Test. of A. Muhammad; Ex. 9-3.

⁴³ Test. of A. Muhammad.

⁴⁴ *Id.*

⁴⁵ Ex. 9; Test. of A. Muhammad.

⁴⁶ Ex. 9-3; Test. of A. Muhamad.

⁴⁷ Ex. 9-3.



observed approximately 100 people present on Midway Amoco's lot.⁴⁸ Sergeant Vang-Sitcler saw people drinking alcohol, dancing, fighting, smoking what appeared to be marijuana, and engaging in hand-to-hand drug transactions.⁴⁹ Sergeant Vang-Sitcler recognized some people in the crowd as members of particular street gangs.⁵⁰ Sergeant Vang-Sitcler also observed approximately 20 to 30 cars parked in Midway Amoco's lot, making it difficult for any car to drive through the lot or up to the gas pumps.⁵¹

23. Sergeant Vang-Sitcler did not see Licensee's clerk make any effort to direct the crowd to leave the premises.⁵² There is no evidence that the clerk called 911 or the SPPD to report the disorderly crowd gathered at Midway Amoco.⁵³

24. On June 18, 2019 at approximately 1:00 p.m., DSI Licensing Manager Hudak hand-delivered a letter to Ahmed at Midway Amoco.⁵⁴ The letter requested a copy of surveillance video footage from June 12, 2019, from 2:30 p.m. to 4:30 p.m.⁵⁵ The letter stated that a DSI representative would return to the gas station on June 19, 2019, at 4:00 p.m. to pick up the video footage.⁵⁶ Aloul was copied on Hudak's letter, along with the SPPD and Saint Paul Assistant City Attorney Therese Skarda.⁵⁷

25. Hudak requested video from June 12, 2019, to determine whether Ahmed sold single cigarettes to a patron, as observed by DSI Inspector Muhammad.⁵⁸

26. Ahmed left Hudak's letter along with the rest of Licensee's mail at Midway Amoco for Asia to pick up.⁵⁹

27. Before leaving Midway Amoco on June 18, 2019, Hudak inspected the Licensee's exterior premises.⁶⁰ Hudak observed pieces of litter alongside a metal fence on one side of Licensee's property; full trash bags stacked next to a dumpster that was overflowing with cardboard boxes and garbage; and a wooden fence that was in disrepair with missing boards, including one board that was lying on the ground with nails protruding from it.⁶¹ Hudak took a series of photographs to document the conditions he observed.⁶²

⁴⁸ Test. of E. Vang-Sitcler; Exs. 10-3, 21.

⁴⁹ Exs. 10, 21.

⁵⁰ Test. of E. Vang-Sitcler.

⁵¹ Ex. 10-3.

⁵² Test. Of E. Vang-Sitcler.

⁵³ *Id.*

⁵⁴ Test. of E. Hudak; Exs. 13, 14.

⁵⁵ Ex. 13.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Test. of E. Hudak.

⁵⁹ Test. of A. Asia.

⁶⁰ Ex. 14.

⁶¹ Exs. 14-2 to 14-6.

⁶² Ex. 14-1 to 14-6.



28. Carlos Mauricio (Mauricio) works as a clerk/cashier at Midway Amoco.⁶³ He typically works 12-hour shifts from 8:00 p.m. to 8:00 a.m. every day.⁶⁴ In addition to his cashier duties, Mauricio is responsible for putting trash in the dumpster and picking up litter around Midway Amoco's exterior premises.⁶⁵ On occasion, his brother, Manuel, performs cleaning and maintenance services for Licensee.⁶⁶

29. Sometime in early or mid-June of 2019, a car ran into Licensee's wooden fence, damaging several boards and a post.⁶⁷

30. At approximately 3:00 a.m. on June 19, 2019, Asia received a call on his cell phone from the SPPD requesting that he come to Midway Amoco immediately.⁶⁸ The police informed Asia that someone was shot and killed in the Midway Amoco parking lot.⁶⁹ The police wanted Asia to come to the gas station to allow them access to video footage of the parking lot.⁷⁰

31. Asia arrived at Midway Amoco approximately 30 minutes later.⁷¹ Several police officers were waiting at the gas station when Asia arrived.⁷² Asia accessed the surveillance video and allowed the police officers to view the footage. At about 7:30 a.m. the same morning, Mark, the SPPD's IT employee, arrived.⁷³ Asia allowed Mark to log into the system and assisted Mark in downloading copies of video footage onto flash drives. At approximately 8:30 a.m., the police officers told Asia they did not need any more assistance from him and that he could leave.⁷⁴

32. Asia did not check the mail at the Midway Amoco before leaving at 8:30 a.m. on June 19, 2019. As a result, he did not see the letter that Hudak left at the station the day before.⁷⁵

33. Sometime later in the afternoon of June 19, 2019, Aloul called Asia and asked if Asia made a copy of the requested video.⁷⁶ Aloul was referring to the video Hudak requested in his letter of June 18, 2019. Asia replied "yes," assuming Aloul was referring to the video he provided to the SPPD a few hours earlier.⁷⁷

⁶³ Test. of C. Mauricio.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*; Test. of Manuel Mauricio.

⁶⁷ Test. of K. Aloul.

⁶⁸ Test. of A. Asia.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*



34. Licensing Manager Hudak returned to Midway Amoco at approximately 4:00 p.m. on June 19, 2019, to collect the requested video.⁷⁸ Ahmed was the clerk on duty. Hudak asked Ahmed for the video. Ahmed called for Asia who came up to the counter and asked Hudak how he could help.⁷⁹ Hudak asked for the video he had requested, and Asia responded that he had given the video on flash drives to the SPPD.⁸⁰ Hudak showed Asia a copy of his letter and explained that he was with the DSI and not the SPPD. Hudak stated that he had dropped off the letter the day before.⁸¹

35. Asia then realized that Licensing Manager Hudak was referring to a different video request, and he told Hudak he was out of flash drives but would run up across the street to get one.⁸² Asia stated that it would take him five minutes to get a flash drive and he would download the video for Hudak then.⁸³ Asia explained to Hudak that he not seen the letter and had been busy helping the police with their video request in the early morning hours.⁸⁴

36. Hudak told Asia that Asia should already have the video copied and that his failure to do so was a violation of Midway Amoco's licensing conditions.⁸⁵ Hudak told Asia that he would not wait for him to get a flash drive and Hudak left the store.⁸⁶

37. Before departing Midway Amoco on June 19, 2019, Hudak again photographed the gas station's exterior premises.⁸⁷ The photographs depict the wooden fence board still lying on the ground by the fence and approximately seven trash bags of garbage stacked next to the dumpster.⁸⁸ The dumpster appears to have been emptied and was no longer overflowing with cardboard boxes and garbage.⁸⁹

38. After Hudak left Midway Amoco, Asia obtained a flash drive and downloaded the video from June 12, 2019, as Hudak Requested.⁹⁰ Asia left the flash drive with the video at Midway Amoco on June 19, 2019. No one from DSI ever came back to Midway Amoco to collect the requested video.⁹¹

39. Licensee's wooden fence was ultimately repaired sometime after June 19, 2019, and approximately ten days after it was damaged by the car.⁹²

⁷⁸ Ex. 14-1; Test. of E. Hudak.

⁷⁹ Test. of A. Asia.

⁸⁰ *Id.*; Test. of E. Hudak; Ex. 14-1.

⁸¹ Test. of E. Hudak; Test. of A. Asia; Ex. 14-1.

⁸² Test. of A. Asia.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*; Test. of E. Hudak.

⁸⁶ Test. of E. Hudak; Test. of A. Asia.

⁸⁷ Ex. 14-1, 14-7 to 14-12.

⁸⁸ Exs. 14-7 to 14-12.

⁸⁹ *Id.*

⁹⁰ Test of A. Asia.

⁹¹ *Id.*

⁹² Test. of K. Aloul; Test. of M. Mauricio.



40. On or about June 20, 2019, Aloul called Midway Amoco to confirm that the video Hudak requested had been copied.⁹³ Mauricio told Aloul that the copy had been made and was available to be picked up at the store.⁹⁴

41. In the early morning hours of June 22, 2019, several large groups of people gathered in Midway Amoco's lot talking loudly, yelling, playing music, and socializing.⁹⁵ Eventually several fights broke out between different groups of people.⁹⁶ A woman in the crowd recorded the fights on her cell phone and later posted the video stream on Facebook.⁹⁷ The recording shows separate groups of two and three individuals, both men and women, fighting and screaming. In one instance, assailants knocked a woman down on the ground, punched her repeatedly in the face, and pulled her hair.⁹⁸ The woman later appears, with her face bloodied, struggling to rise from the ground, and then again sitting on the sidewalk near the street.

42. On June 22, 2019, at approximately 2:00 a.m., the SPPD received a call reporting fighting at Midway Amoco.⁹⁹

43. On June 22, 2019, at approximately 2:15 a.m., Saint Paul Police Sergeant Rigo Aguirre was on routine patrol near Midway Amoco when he observed the large number of people and cars in the Licensee's lot. Some cars were parked by the gas pumps, while others were parked randomly in the lot. Groups of people were loudly talking and yelling. Sergeant Aguirre parked his squad car near the Hamline Avenue entrance. He activated the lights on his squad car and announced to the crowd that if they were not purchasing gas, they needed to leave the area immediately.¹⁰⁰

44. After Sergeant Aguirre activated the lights on his squad car, he noticed Licensee's clerk, Mauricio, lock the door to the gas station store.¹⁰¹ Mauricio was the only employee working at the Midway Amoco in the early morning hours of June 22, 2019.¹⁰²

45. It took approximately 15 minutes for the crowd to disperse from Midway Amoco's lot once Sergeant Aguirre arrived.¹⁰³ After the crowd left, Sergeant Aguirre observed two pairs of shoes and a woman's wig on the ground by the gas pumps, which he presumed was evidence of a physical brawl.¹⁰⁴

⁹³ Test. of K. Aloul.

⁹⁴ *Id.*

⁹⁵ Ex. 22.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Ex. 11-3.

¹⁰⁰ *Id.*; Test. of Rigo Aguirre.

¹⁰¹ Ex. 11-3.

¹⁰² Test. of R. Aguirre.

¹⁰³ *Id.*

¹⁰⁴ Ex. 11-3.



46. Sergeant Aguirre left Midway Amoco but returned approximately 30 minutes later to request video of the disturbance.¹⁰⁵ Prior to exiting his squad car to talk to Mauricio, Sergeant Aguirre activated his body-worn camera.¹⁰⁶

47. Sergeant Aguirre knocked on the door of Licensee's store and Mauricio unlocked it and let him in. Sergeant Aguirre informed Mauricio that he was officially requesting a copy of video for June 22, 2019 video from 2:00 a.m. to 3:30 a.m.¹⁰⁷ After requesting the video, Sergeant Aguirre spoke with Mauricio about the pattern of fighting and other disturbances at Midway Amoco and asked whether closing the store counter would limit incidents. Sergeant Aguirre requested to enter the clerk's counter area behind the glass. Sergeant Aguirre observed two open packages of menthol flavored cigarettes.¹⁰⁸ Sergeant Aguirre asked Mauricio about the open cigarette packages, and Mauricio stated that he sells single cigarettes for \$1 and single "Swisher Sweet" cigars for \$2.80.¹⁰⁹ Sergeant Aguirre also observed flavored tobacco products on the shelves behind the counter.¹¹⁰ The flavored tobacco products on Licensee's shelves included 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.¹¹¹

48. Mauricio showed Sergeant Aguirre boxes of glass vials and a container of molded, cylinder steel wool fragments. Mauricio told Sergeant Aguirre that the glass vials cost about \$0.35 each and that he sells the vials with the steel wool pieces to customers for \$5 or \$6.¹¹²

49. Glass vials, like the ones sold at Midway Amoco, are known as "drug kits" because they are used commonly to smoke crack cocaine or methamphetamine (meth).¹¹³ When inserted into the glass vial, the steel wool acts as a filter.¹¹⁴

50. Mauricio told Sergeant Aguirre that on a typical Saturday night, he sells a full box of glass vials - about 36 units.¹¹⁵

51. On June 25, 26, 28 and 29, 2019, the SPPD received calls reporting fighting and disorderly conduct at Midway Amoco.¹¹⁶

¹⁰⁵ Ex. 11-3; Test. of R. Aguirre.

¹⁰⁶ Test. of R. Aguirre; Ex. 12.

¹⁰⁷ Ex. 11-3; Test. of R. Aguirre.

¹⁰⁸ Ex. 11-7 to 11-9.

¹⁰⁹ Ex. 11-3.

¹¹⁰ Test. of R. Aguirre; Exs. 11-5, 11-6.

¹¹¹ Test. of R. Aguirre; Exs. 11-5, 11-6.

¹¹² Test. of R. Aguirre; Ex. 11-3.

¹¹³ Test. of R. Aguirre; Ex. 11-3.

¹¹⁴ Test. of R. Aguirre.

¹¹⁵ Test. of R. Aguirre; Ex. 12.

¹¹⁶ Ex. 23-3.



52. On July 31, 2019, Asia contacted the SPPD to inquire about hiring a police officer to work off-duty at Midway Amoco on the weekends providing security services.¹¹⁷ Asia was informed a few days later that Licensee's request to hire off-duty police officers was denied.¹¹⁸

53. SPPD Senior Commander John Bandemer denied Licensee's request to hire an off-duty police officer to provide security at Midway Amoco. Commander Bandemer believed that Licensee's employees had been documented violating tobacco sales regulations and had not fully cooperated with the police by providing video footage.¹¹⁹ In addition, Commander Bandemer was concerned that, given the problems with unruly crowds gathering on the weekends at Midway Amoco, a sole police officer working security would be placed at risk.¹²⁰

III. Disciplinary Actions Related to Licensee

54. This matter is the second adverse action taken against Licensee's licenses within the past 12 months. On March 12, 2019, the City served Licensee with a Notice of Violation related to its possession of flavored tobacco products.¹²¹ The Minnesota Department of Revenue seized such products from Midway Amoco as contraband in September 2018.¹²² Licensee contested the violation, but failed to appear for the administrative hearing scheduled for July 16, 2019.¹²³ As a result, an administrative law judge found Licensee in default and deemed the allegations against it proven.¹²⁴

55. The City's penalty matrix provides that the presumptive penalty for a first-time violation of the legislative code relating to licensed activity is \$500.¹²⁵ On July 24, 2019, the Saint Paul City Council imposed a first appearance matrix penalty of \$500 against Licensee for possession of prohibited flavored tobacco products.¹²⁶

56. On July 26, 2019, the City served Licensee with a Notice of Violation and Recommendation for Upward Departure to Revocation (Notice of Revocation).¹²⁷ This is the notice at issue here. The City alleges Licensee violated city ordinances by:

- selling single cigarettes outside of their original packaging;

¹¹⁷ Test. of A. Asia; Ex. 107.

¹¹⁸ Test. of A. Asia; Ex. 108.

¹¹⁹ Test. of John Bandemer.

¹²⁰ *Id.*

¹²¹ Ex. 2-1.

¹²² Ex. 2-1, 19, 20. (Contraband products are those for which a licensee is unable to produce an invoice from a licensed seller.)

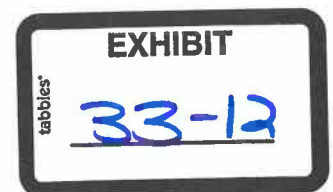
¹²³ Ex. 2-1.

¹²⁴ *Id.*; See *In re the Cigarette/Tobacco and Gas Station Licenses held by Midway University & Hamline, LLC d/b/a Midway Amoco*, No. 5-6020-36135, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION UPON DEFAULT (Minn. Office Admin. Hearings July 16, 2019).

¹²⁵ Saint Paul, Minn. Legis. Code § 310.05(m)(2).

¹²⁶ Ex. 2-1, 19, 20.

¹²⁷ Ex. 1.



- selling or distributing flavored tobacco products;
- furnishing or selling tobacco products to persons under the age of eighteen years;
- engaging in or permitting a pattern or practice of failing to comply with laws related to the licensed activity;
- operating a business in a manner that unreasonably annoys or endangers the comfort or repose of the public; and,
- permitting unsafe conduct or conditions that present a serious danger to the public health, safety or welfare.¹²⁸

57. The City also alleges that Midway Amoco violated its license conditions by failing to provide DSI with copies of surveillance video as requested, and by failing to maintain a clean site with adequate fencing.¹²⁹

58. All the alleged violations identified in the Notice of Revocation occurred between April and July of 2019.¹³⁰

59. Licensee admits to selling flavored tobacco products and operating a business in a manner that unreasonably annoys the comfort and repose of the public.¹³¹ Licensee contests the other alleged violations.

60. After receiving the Notice of Revocation, the Licensee stopped selling glass vials and began closing Midway Amoco on the weekend between approximately 1:00 a.m. and 4:00 a.m.¹³²

61. During the month of August 2019, the SPPD received additional reports of assaults and disorderly conduct at or near Midway Amoco.¹³³

IV. Licensee's Proposed Remodel

62. Aloul plans to extensively remodel Midway Amoco.¹³⁴ Aloul has spent over \$80,000 on architectural design and permit fees.¹³⁵ The architectural plans for the remodel were completed on July 9, 2019.¹³⁶ Aloul has had several meetings with City officials about the proposed remodel.¹³⁷ Aloul's plan involves tearing down the existing

¹²⁸ *Id.*

¹²⁹ Ex. 1-3, 1-4.

¹³⁰ Ex. 1.

¹³¹ Saint Paul, Minn. Legis. Code. §§ 324.07(f) and 310.06(b)(8).

¹³² Test. of K. Aloul; Test. of C. Mauricio; Test. Of A. Asia.

¹³³ Exs. 30-1 to 30-96.

¹³⁴ Test. of K. Aloul; Exs. 101, 102, 103.

¹³⁵ Test. of K. Aloul; Exs. 101, 102.

¹³⁶ Ex. 101.

¹³⁷ *Id.*



store and constructing a new 3,000 square foot building with a car wash, coffee shop, and bakery.¹³⁸ The estimated cost of construction is \$1.6 million.¹³⁹

63. On August 15, 2019, Aloul received an invoice from the City in the amount of \$35,650 for the building permit fee related to his proposed tear down and new construction at Midway Amoco.¹⁴⁰ Aloul is waiting for the outcome of this license disciplinary matter before he decides whether to move forward with his construction plans.¹⁴¹

V. Community Impacts

64. The Hamline Midway Coalition (HMC) is a neighborhood organization that advocates for residents and businesses located in the Hamline Midway neighborhood.¹⁴² HMC has a district council that meets monthly with the SPPD, residents, and city council members to discuss and address neighborhood concerns.¹⁴³ HMC has held numerous meetings with local residents and business owners regarding Midway Amoco.¹⁴⁴

65. Many residents have expressed concern about increasing crime and escalating violent disturbances occurring at Midway Amoco. Residents have informed members of HMC that they avoid walking or driving past Midway Amoco out of fear for their safety. Some residents are considering moving out of the neighborhood because of the negative impact Midway Amoco is having on their community. A long-time resident in her eighties indicated that she is moving to be near family in Arizona because her daughter fears for her safety living near Midway Amoco.¹⁴⁵

66. Although other business owners in the Hamline Midway area engage regularly with HMC's district council and attend HMC's meetings, Licensee has not communicated with HMC or attended its monthly meetings.¹⁴⁶ Kate Mudge, Executive Director of HMC, made several attempts to contact Aloul by telephone in 2019 to discuss the escalating problems at Midway Amoco, without success.¹⁴⁷

67. Within the last 12 months, HMC has received increased complaints from residents and other businesses in the neighborhood about fighting, aggressive panhandling, noise, drug use, public urination, trash, and shots fired at Midway Amoco.¹⁴⁸

¹³⁸ Test. of K. Aloul; Ex. 101.

¹³⁹ Ex. 102.

¹⁴⁰ Ex. 103.

¹⁴¹ Test. of K. Aloul.

¹⁴² Test. of Kate Mudge.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*; Test. of Dan Buck.

¹⁴⁶ Test. of K. Mudge.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*



68. The nonprofit organization Project for Pride in Living (PPL) has a residential building located across the street from Midway Amoco.¹⁴⁹ Tenants who reside in the PPL building have voiced concerns about fighting at Midway Amoco spilling over to their building.¹⁵⁰ The PPL building has been hit by gun fire exchanged at or near Midway Amoco on at least three occasions.¹⁵¹ PPL has spent over \$20,000 to increase security by adding lighting and bullet-proof glass.¹⁵²

69. Sergeant Vang-Sitcler has had five or six conversations with residents of the Midway Hamline neighborhood who expressed fear for their safety and welfare due to the increase in fights and gun violence occurring on Licensee's premises.¹⁵³

70. Any finding of fact contained in the following Memorandum is hereby adopted as such.

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction to consider this matter pursuant to Minn. Stat. § 14.55 (2018) and St. Paul Legislative Code §§ 310.05, .06 (2019).

2. The hearing in this matter was conducted in accordance with the St. Paul Legislative Code § 310.05 and the contested case procedures of Minn. Stat. §§ 14.57, .62 (2018).

3. The City provided proper notice of the hearing and complied with all relevant procedural requirements of ordinance, rule or law.

4. Because the City is proposing that disciplinary action be taken, it has the burden of proving by a preponderance of the evidence that adverse action is warranted against the licenses held by Midway Amoco.¹⁵⁴

5. Under the Saint Paul Legislative Code, the City Council may take adverse action against a City-issued license if the licensee violates a statute or ordinance related to the licensed activity, or if the licensee violates conditions placed on its license.¹⁵⁵

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Test. of E. Vang-Sitcler.

¹⁵⁴ Minn. R. 1400.7300, subp. 5 (2019).

¹⁵⁵ Saint Paul, Minn. Legis. Code §§ 310.05(m); 310.06(a), (b)(6)(a).



6. 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 cigarette shall be sold in packages of fewer than 20 cigarettes.

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

8. For all times relevant to this matter, the Saint Paul Legislative Code § 324.07(g) and Minn. Stat. § 609.685 (2018) prohibit the furnishing or sale of tobacco to persons under the age of eighteen years.¹⁵⁶

9. Saint Paul Legislative Code § 310.06(b)(6)(c) supports adverse action when the licensee has engaged in or permitted a pattern or practice of conduct or 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.

10. Saint Paul Legislative Code § 310.06(b)(7) supports adverse action when the activities of the licensee in the licensed activity create a serious danger to the public health, safety, or welfare.

11. Saint Paul Legislative Code § 310.06(b)(8) supports adverse action when the way in which a licensed 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.

12. The penalty matrix of the Saint Paul Legislative Code includes presumptive penalties for particular code violations.¹⁵⁷

13. Saint Paul Legislative Code § 310.05(m) provides a matrix of penalties for first, second, third, and fourth appearances before the city council. For a first violation, the matrix penalty is a \$500 fine. For a second violation, the penalty is a \$1,000 fine. For a third violation, the penalty is a \$2,000 fine and a 10-day suspension. For a fourth violation, the penalty is revocation of the license.¹⁵⁸

14. Saint Paul Legislative Code § 310.05 (m) provides that the matrix penalties are presumed to be appropriate for every case, but also notes that the City Council may deviate in an individual case where the council finds substantial and compelling reasons making it more appropriate to do so. Multiple violations shall be grounds for departure from the presumptive penalties in the council's discretion.¹⁵⁹ If the City Council deviates,

¹⁵⁶ In October of 2019, the City of Saint Paul raised the legal age for purchasing tobacco products from 18 years to 21 years.

¹⁵⁷ Saint Paul, Minn. Legis. Code § 310.05(m).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at § 310.05(m)(ii).



it must provide written reasons why the penalty selected was more appropriate than the presumptive penalty.¹⁶⁰

15. The City demonstrated by a preponderance of the evidence that Midway Amoco violated Saint Paul Legislative Code §§ 324.07(a), 324.07(f), 324.07(g), 310.06(b)(6)(c), 310.06(b)(7), and 310.06(b)(8) as alleged.

16. The City failed to demonstrate by a preponderance of the evidence that Midway Amoco violated the conditions of its license by failing to provide requested surveillance video to DSI.

17. The City failed to demonstrate by a preponderance of the evidence that Midway Amoco violated the conditions of its license by failing to maintain a clean site with adequate fencing.

18. The City has shown substantial and compelling reasons to upwardly depart from the presumptive penalty and revoke Licensee's cigarette/tobacco and gas station licenses.

19. The attached Memorandum explains the reasons for these conclusions and is incorporated by reference.

Based on the Conclusions of Law, and for the reasons explained in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The St. Paul City Council should upwardly depart from the presumptive penalty and **REVOKE** Midway Amoco's licenses for the violations of law cited above.

Dated: March 9, 2020


JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared

¹⁶⁰ *Id.* at § 310.05(m); Ex. 10.



NOTICE

This report is a recommendation, not a final decision. The Saint Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions of Law, and Recommendation issued by the Administrative Law Judge. Pursuant to Saint Paul Legislative Code § 310.05, 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. The parties should contact Shari Moore, City Clerk, City of Saint Paul, 290 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, to find out the procedure for filing exceptions and presenting argument.

MEMORANDUM

I. Overview

Licensee has operated Midway Amoco for over nine years. Based on the record, the City did not have any significant concerns with the management of the business prior to late 2018. Beginning in early 2019, however, there was a substantial increase in criminal activity and calls for police service at and near the Licensee's premises, along with documented concerns about Licensee's ability and willingness to manage the business in a safe and law-abiding manner.

In July of 2019, the City cited Licensee with multiple violations of city ordinances and licensing conditions related to the operation of its business. Licensee admits to two violations – selling flavored tobacco products and operating the business in a manner that permits conditions to exist that unreasonably annoy the comfort or repose of the public. Licensee contests the remaining citations.

This is the second adverse action against Licensee within the past 12 months.¹⁶¹ Under the City's penalty matrix, the presumptive penalty for a second appearance is a \$1,000 fine.¹⁶² The City, however, seeks revocation of Midway Amoco's licenses, which is an upward departure of more than two steps on the penalty matrix. Licensee concedes an upward departure is warranted but maintains that the appropriate penalty is an upward departure to the third level of the penalty matrix, a \$2,000 penalty and a ten-day suspension.

II. Violations

Licensee's first licensing action, for selling flavored cigarettes, was finalized in July of 2019. That violation related to a November 2018 seizure of flavored tobacco products carried out by the Department of Revenue. This case is Licensee's second disciplinary action and concerns six alleged violations of city ordinances and two alleged violations of licensing conditions. Under the matrix used by the City, the presumptive penalty for a "second appearance" is a \$1,000 fine. However, the City seeks to upwardly depart from

¹⁶¹ See Ex 2.

¹⁶² Minn. St. Paul Legis. Code § 310.05(m).



the presumptive penalty and revoke Licensee's licenses based on substantial and compelling reasons.

The City maintains that it has provided sufficient compelling evidence to support revocation of Licensee's tobacco and gas station licenses. The City notes the close proximity between the violations at issue here and in the July 2019, violation related to the seizure of flavored tobacco products. And the City emphasizes that, under its Legislative Code, the occurrence of multiple violations shall be grounds for an upward departure at the Council's discretion.¹⁶³

The City established by a preponderance of the evidence that Licensee violated city ordinances by selling cigarettes to an underage individual, and by selling single cigarettes and flavored tobacco products. The body camera video taken by Sergeant Aguirre on June 22, 2019, shows numerous flavored tobacco products on Licensee's shelves despite that the City cited Licensee for selling flavored tobacco products just months before. Further, Licensee's clerk's conversation with Sergeant Aguirre leaves no doubt that Midway Amoco was selling single cigarettes and single "Swisher Sweet" cigars to patrons for \$1.00 and \$2.80, respectively. Additionally, the June 1, 2019, police report notes that an arrested individual stated she went to Midway Amoco to purchase single cigarettes, and DSI Investigator Muhammad's observed Licensee's clerk handing individual single cigarettes to a patron. This evidence is sufficient to support finding that the Licensee engaged in, or permitted a pattern of non-compliance with licensing regulations, from which an inference of lack of fitness may be drawn.

Sergeant Aguirre's body camera video also establishes that Licensee fostered or promoted illegal drug use by selling glass vials and steel wool, which are routinely used for smoking crack cocaine and meth. The sale of drug paraphernalia contributed to creating an environment that attracted gatherings of large groups that became unruly, disruptive, and dangerous. The City demonstrated that on several occasions in June and July of 2019, large groups of people gathered in Midway Amoco's parking lot and engaged in fighting, aggravated assaults, drug transactions, the exchange of firearms, and the discharge of weapons.

The City has shown that Licensee failed to manage the business appropriately. The business was routinely understaffed. Licensee failed to secure alternative security services after its private security firm terminated services to Midway Amoco in March of 2019. Licensee also did not close the store between 1:00 a.m. and 4:00 a.m. on the weekends. The record supports finding the Licensee failed to appropriately manage its business and permitted conditions on its premises, including loud, disruptive, and dangerous gatherings in the early morning hours, that unreasonably annoyed and endangered the safety, health, comfort or repose of the public.

The City failed to establish, however, that Licensee violated the conditions of its license related to the condition of the property. The photographs of litter and trash taken

¹⁶³ Saint Paul, Minn. Legis. Code § 310.05(m).



over one 27-hour period are insufficient to establish that Licensee failed to maintain a clean site in violation of condition #5. Moreover, given that a homicide had occurred on the premises hours earlier and Licensee's staff was busy assisting the police, it is possible the litter and trash removal was temporarily overlooked during that short window of time. Similarly, photographs of a fence in disrepair taken over one 27- hour period does not establish Licensee violated license condition #3. Instead, Licensee's employees persuasively testified that the wooden fence was repaired reasonably quickly after it was damaged by a car.

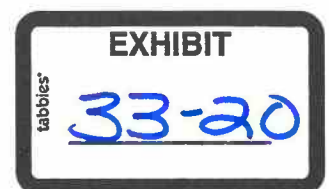
The City also did not establish that Licensee failed to provide DSI copies of requested surveillance video pursuant to its license conditions. DSI initially sent its April 2019 letter requesting video footage to an incorrect address. There is no evidence that the letter was ever delivered to Midway Amoco. Licensee's manager's confusion regarding Inspector Hudak's June 18, 2019 video request was understandable and excusable given that a shooting took place on the premises in the early morning hours of June 19, 2019. The SPPD called Licensee's manager, Alex Asia, to the gas station at 3:00 a.m. to provide access to video, and he remained there until 8:30 a.m. assisting the police officers. Given these circumstances, it is reasonable that Asia had not seen Licensing Manager Hudak's hand-delivered letter from the prior afternoon. Moreover, once Asia realized that Licensing Manager Hudak's request was separate from the SPPD's request hours earlier, he offered to immediately obtain a flash drive and make a copy of the requested video. Licensing Manager Hudak's unwillingness to wait 15 minutes for the video to be provided, and his decision to cite Licensee with a license condition violation, was unreasonably inflexible given the circumstances. The fact that the video was not ready at 4:00 p.m. on June 19, 2019, as requested, is at most a technical violation. Asia prepared a drive with the footage, which remained at Midway Amoco awaiting pickup, but Licensing Manager Hudak never returned for it or requested it again.

During the hearing, Licensee acknowledged that it violated the prohibition against selling flavored tobacco products. Licensee also admits it operated its business in a manner that unreasonably annoyed the comfort or repose of a considerable number of members of the public, particularly the surrounding neighbors and community. Licensee contests the other violations and argues that, by combining seven violations into one Notice of Revocation, it had no opportunity to take appropriate action and institute managerial changes to correct the problems. Nevertheless, Licensee asserts that it has instituted several changes at Midway Amoco to address the City's concerns. For example, beginning in late July of 2019, it stopped selling the glass vials identified as drug kits and it began closing the store in the early morning hours on the weekends.

III. Legal Standard for Upward Departure

The Saint Paul Legislative Code provides that the Council may deviate from the presumptive penalty in the matrix where it determines there are "substantial and compelling reasons" to do so.¹⁶⁴ The Code also provides that the occurrence of multiple

¹⁶⁴ Saint Paul, Minn. Legis. Code § 310.05(m).



violations shall be grounds for departure from the presumptive penalties at the Council's discretion.¹⁶⁵ Beyond that, the parties did not cite, and the Administrative Law Judge could not find, any law specially discussing the legal standard for an upward departure involving a municipal code penalty matrix.¹⁶⁶

The requirement that the Council have "substantial and compelling reasons" to depart from the presumptive penalty provided in the matrix is similar to language found in the Minnesota Sentencing Guidelines that requires "substantial and compelling circumstances" to depart from the presumptive sentence for criminal convictions.¹⁶⁷ While the Administrative Law Judge recognizes the significant differences between imposing a criminal sentence and imposing an administrative penalty for a municipal code violation, the concepts underpinning the legal standard of review are analogous and, therefore, instructive.

Minnesota courts have held that the presumptive sentence should only be exceeded if the enhanced penalty is deemed to be "more appropriate, reasonable or equitable than the presumptive [penalty]."¹⁶⁸ The decision maker should impose the presumptive penalty unless "'substantial and compelling circumstances' based on aggravating factors warrant and upward departure."¹⁶⁹ To properly impose a penalty that is an upward departure from the presumptive penalty in the sentencing guidelines, then, the decision maker must have a specific factual basis.¹⁷⁰ "Substantial and compelling circumstances" are "factual circumstances that distinguish the case, making it atypical."¹⁷¹

The Minnesota Supreme Court has also held that "generally in a case in which an upward departure in sentence length is justified, the upper limit will be double the presumptive sentence length."¹⁷² The Court wrote: "Only in cases of 'severe aggravating circumstances' may the district court impose a greater-than-double departure from the presumptive sentence. Such cases, we have stated, are 'extremely rare'"¹⁷³

Here, the City seeks to revoke the Licensee's licenses. Revocation is a greater-than-double upward departure from the presumptive \$1,000 fine for second violations provided in the penalty matrix. Therefore, following the guidance of Minnesota Supreme

¹⁶⁵ *Id.*

¹⁶⁶ The City cited *Bourbon Bar & Café Corp. v City of St. Paul*, 466 N.W.2d 438, 440 (Minn. Ct. App. 1991), a case involving a liquor license, for the proposition that the council has "broad discretion to determine the manner in which liquor licenses are issued, regulated, and revoked."

¹⁶⁷ Minn. Sent. Guidelines II.D (2019).

¹⁶⁸ *Dillion v. State*, 781 N.W.2d 588, 595 (Minn. Ct. App. 2010) (citing *State v. Bingham*, 406 N.W.2d 567, 570 (Minn. Ct. App. 1987)).

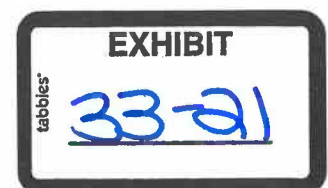
¹⁶⁹ *Id.*

¹⁷⁰ Saint Paul, Minn. Legis. Code § 310.05(m)(ii).

¹⁷¹ *Dillion*, 781 N.W. 2d. at 595.

¹⁷² *State v. Evans*, 311 N.W.2d 481, 483 (Minn. 1981).

¹⁷³ *State v. Shattuck*, 704 N.W.2d 131, 140 (Minn. 2005) (citing *State v. Spain*, 590 N.W.2d 85, 89 (Minn. 1999)).



Court, the City must show that severe aggravating and factually atypical circumstances warrant such an upward departure from the presumptive penalty.

IV. Penalty

The City has demonstrated that Licensee committed all the Code violations alleged. Licensee sold single cigarettes, sold flavored tobacco products, and sold tobacco products to an underaged individual. Licensee also engaged in a pattern of noncompliance with license regulations, operated the business in a manner that unreasonably annoys the comfort and repose of the public, and permitted unsafe conduct or conditions that present a serious danger to the public's health and safety.

The City has also demonstrated severe aggravating circumstances supporting a greater-than-double upward departure from the presumptive penalty. The police reports, videos, and testimony demonstrate an unwillingness or inability on the part of Licensee to operate the business in a safe and law-abiding manner. The events occurring on the licensed premises between April and August of 2019 are extremely troubling – gun fire, illicit drug transactions, large disruptive crowds gathering in the early morning hours, physical assaults, and ultimately a homicide. The evidence is also sufficiently compelling to support finding Licensee fostered criminal activity by selling single cigarettes and drug kits – namely, glass tubes with small pieces of steel wool. The City amply showed that Licensee operated the business in a manner that permitted conditions that endanger public safety, comfort, and repose. The increasingly violent and disruptive activity occurring at Midway Amoco has had a significant impact on the surrounding community. The testimony from HMC regarding the genuine fear residents and business owners have expressed for their safety was persuasive.

It is within the Council's discretion to impose a penalty that is an upward departure from the presumptive penalty in the matrix., The Licensee concedes as much but contends that only an upward departure to the third appearance penalty is warranted.

Licensee argues that it cannot be held accountable for the illegal acts of others and it maintains that it too has been victimized by these lawless acts. Licensee also notes that it is making a good faith effort to improve the property and decrease criminal activity. To that end, Aloul emphasizes that he has spent over \$80,000 in permit and design fees related to a proposed \$1.6 million building renovation. The proposed renovation would change the focus of the business and include a bakery and coffee shop. There is little doubt the renovation, if completed, would be a significant upgrade to the property and a potentially attractive option over the uncertain future of the site if the licenses are revoked.

The Administrative Law Judge, however, is not persuaded by Licensee's arguments. The multiple, egregious lawless acts that occurred at Midway Amoco over the summer months of 2019 were atypical and deeply disturbing. Licensee was aware of the situation but failed to take adequate steps, such as hiring more staff or security, or closing shop during the early morning hours, to control the crowds. Licensee only took productive steps, discontinuing the sale of glass vials and flavored tobacco products and closing the



store in the early morning hours, when it received notice of the City's intent to revoke its licenses. Licensee knew for months of the escalating violence and drug use occurring on its licensed premises, yet it took no action until it faced the likelihood of having its licenses revoked.

The City has demonstrated substantial and compelling reasons to upwardly depart from the presumptive penalty. The shootings, illicit drug transactions, large disruptive crowds gathering in the early morning hours, and the sale of flavored tobacco products and single cigarettes, amount to severe aggravating and factually atypical circumstances supporting a greater-than-double departure from the presumptive penalty for a second appearance. The revocation of Licensee's cigarette/tobacco and gas licenses is warranted and amply supported by the record.

J. E. L.

