



## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street  
Saint Paul, Minnesota 55101

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

Voice: (651) 361-7900  
TTY: (651) 361-7878  
Fax: (651) 361-7936

February 24, 2011

Shari Moore  
St. Paul City Clerk  
290 City Hall  
15 W Kellogg Blvd  
St. Paul, MN 55102

Re: *In the Matter of the Auto Repair Garage License Held By Mary Fasching, d/b/a M F Automotive for the Premises Located at 1728 Selby Avenue, St. Paul*  
OAH No. 2-6020-21816-3

Dear Ms. Moore:

Enclosed herewith and served upon you by mail is the Administrative Law Judge's **Findings of Fact, Conclusions and Recommendation** in the above-entitled matter. Also enclosed is the official record, with the exception of the recording of the hearing. If you would like a copy of that recording, please contact our office in writing or by telephone at 651-361-7906. Our file in this matter is now closed.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Krause", written over a horizontal line.

RAYMOND R. KRAUSE  
Chief Administrative Law Judge

Telephone: (651) 361-7900

RRK:dsc  
Enclosure  
cc: Rachel G. Tierney  
Mary Fasching

RECEIVED  
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CITY ATTORNEY

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ST. PAUL

In the Matter of the Auto Repair  
Garage License Held By Mary  
Fasching, d/b/a M F Automotive for the  
Premises Located at 1728 Selby  
Avenue, St. Paul

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came before Chief Administrative Law Judge Raymond R. Krause pursuant to a Notice and Order for Hearing dated January 28, 2011, and amended February 7, 2011, and signed by Rachel Tierney, Assistant St. Paul City Attorney. A hearing was held on February 16, 2011 at the County Commissioner's Office, City Hall, St. Paul.

Rachel Tierney, Assistant City Attorney, appeared on behalf of the St. Paul Department of Safety and Inspections (the Department). Ms. Fasching, Licensee, appeared on her own behalf without counsel.

Kristina Schweinler, Senior Licensing Inspector for the Department and Christine Rozek, Deputy Director of the Department, appeared as witnesses. The hearing record closed at the conclusion of the hearing.

**STATEMENT OF THE ISSUES**

1. Did Licensee violate the conditions of the license issued to her? The ALJ finds that Licensee did violate some conditions of her license.

2. Was the \$1,000 fine appropriate under the St. Paul code? The ALJ finds that the recommendation of a \$1,000 fine is not unreasonable under the facts presented.

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

## FINDINGS OF FACT

1. Licensee operates an auto repair business at 1728 Selby, Avenue St. Paul. The License ID # is 0014762.<sup>1</sup>

2. The Department has taken previous adverse actions against this license.<sup>2</sup> As a result, the Department has imposed conditions on the license.<sup>3</sup> Licensee has agreed to these conditions.<sup>4</sup>

3. The conditions imposed are, in relevant part, 1) There will be no more than sixteen (16) vehicles parked on the lots (total front, sides, back) at any given time; 2) Cars or other vehicles attached to tow truck(s) shall not be parked on the streets or alleys; ... 4) No vehicle on the lot shall be used for the storage of parts, tires, garbage or other items. No vehicles shall remain continuously on the property with the exception of the tow truck; ... 8) No vehicle for repair shall be on the lot for more than ten (10) days; 9) All garbage and refuse must be in the dumpster on the property, and the dumpster shall be kept out of sight to the extent possible and kept in orderly condition; ... and 11) There is to be no outside storage of vehicle parts, tires, oil, vehicle hoists or other similar items.<sup>5</sup>

4. On June 30, 2010, Ms. Kristina Schweinler, Senior Inspector for the Department, inspected Licensee's property and took several photographs.<sup>6</sup> She found two violations on that date. The first violation was that there were 17 cars on the lot (16 permitted). The second violation was a car parked in the right of way.<sup>7</sup>

5. On November 29, 2010, Ms. Schweinler made another inspection of the Licensee's business premises. The inspection was in response to a citizen complaint. Ms. Schweinler cited violations of five of the license conditions. The violations were: a vehicle parked on the driveway which blocked egress; truck beds filled with parts and junk parked on the street and in the lot; gates left open when the business was not operating; a white truck was being used for storage; 21 vehicles parked on the lot<sup>8</sup>; and vehicles left on the lot for more than ten days.<sup>9</sup> She also noticed a white and blue Buick collector car on the lot that had been on the lot during her previous inspection in June.<sup>10</sup>

6. On November 30, 2010, Ms. Schweinler sent a Notice of Violation letter to Licensee detailing her findings and ordering Licensee to correct all violations by

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<sup>1</sup> Ex. 2-1.

<sup>2</sup> Ex. 1-1.

<sup>3</sup> Ex. 2.

<sup>4</sup> Testimony of Christine Rozek and Mary Fasching.

<sup>5</sup> Ex. 2.

<sup>6</sup> Ex. 7-1.

<sup>7</sup> Ex. 6.

<sup>8</sup> Ex. 6.

<sup>9</sup> Ex. 3.

<sup>10</sup> Exs. 7-1 and 7-2.

December 17, 2010.<sup>11</sup> Licensee called Ms. Schweinler and requested additional time to bring the property into compliance. Ms. Schweinler did not allow additional time.<sup>12</sup>

7. On December 20 or 21, 2010, Ms. Schweinler made a follow up inspection of the premises.<sup>13</sup> During this inspection she took several pictures to make a record of violations she found. The photographs showed a car on a flat bed tow truck belonging to Licensee parked in the right of way;<sup>14</sup> a full dumpster;<sup>15</sup> several lawnmowers partially covered in snow;<sup>16</sup> and miscellaneous unidentified items stored outside the building.<sup>17</sup>

8. Ms. Schweinler could not confirm that the white and blue Buick collector car had been on the lot continuously between June 2010 and November 2010, or that it had been on the lot for ten or more consecutive days.<sup>18</sup>

9. The dumpster in the photograph in Exhibit 5-2 was overfull but was in that state because the waste collection company could not pick up trash on the previous day due to the severe snow emergency that occurred the night before. The lawn mowers featured in Exhibits 5-3 and 5-4 are in working order.<sup>19</sup>

10. On December 22, 2010, Ms. Schweinler notified her supervisor, Ms. Rozek, of the violations and the timeframe allowed for correction.<sup>20</sup>

11. On January 6, 2011, Licensee was served with a Notice of Violation. The notice set forth four violations as the basis for a recommendation of a \$1000 fine. The four violations were 1) the twenty one (21) vehicles on the lot on November 29, 2010; 2) the blue and white Buick seen on the lot in June and on November 29, 2010; 3) the loaded tow truck parked on the public right of way on December 20 or 21, 2010; and 4) the junk in the photo in Exhibit 5-5 stored behind the building. The notice also apprised Licensee of her appeal rights.<sup>21</sup>

12. Licensee disputes the allegation that the items stored behind the building are "junk." Although she could not readily identify them through the snow, she claimed that they may have been useful materials.<sup>22</sup>

13. The recommended fine of \$1,000 was arrived at by use of a penalty matrix found in St. Paul City Code Chapter 310, section 310.05(m). The matrix formula

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<sup>11</sup> *Id.*

<sup>12</sup> Test. of Kristina Schweinler and M. Fasching.

<sup>13</sup> The witness was unsure of the date. She documented and testified that she inspected on the 20<sup>th</sup> but the photos are dated the 21<sup>st</sup>.

<sup>14</sup> Ex. 5-1.

<sup>15</sup> Ex. 5-2.

<sup>16</sup> Exs. 5-3 and 5-4.

<sup>17</sup> Ex. 5-5.

<sup>18</sup> Test. of K. Schweinler.

<sup>19</sup> Test. of M. Fasching.

<sup>20</sup> Ex. 4.

<sup>21</sup> Ex. 8.

<sup>22</sup> Test. of M. Fasching.

suggests a fine of \$500 but the Department recommended an upward departure from the presumptive penalty due to multiple and chronic violations.<sup>23</sup>

14. On January 14, 2011, Licensee timely notified the Department of her request for a hearing before an Administrative Law Judge.<sup>24</sup>

15. On January 28, 2011, the Department issued a Notice of Administrative Hearing to Licensee.<sup>25</sup> On February 7, 2011, the Department issued an Amended Notice of Hearing that adjusted the time of the hearing.<sup>26</sup>

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

### CONCLUSIONS

1. This matter is properly before the City of St. Paul and the Administrative Law Judge pursuant to St. Paul Legislative Code §§ 310.05, and 310.06.

2. The City has complied with all requirements of regulation and given proper notice to the Licensee.

3. St. Paul Legislative Code § 310.06 permits the imposition of a fine on a licensee for violations of the conditions on its license.

4. The Department proved by a preponderance of the evidence that the Licensee violated the conditions of her license by parking a tow truck with a vehicle attached on a city right-of-way in violation of License Condition #2, and by storing junk behind the building in violation of License Condition #11.

5. The Department proved by a preponderance of the evidence that Licensee violated License Condition #1 by having twenty-one cars parked on the lot on November 29, 2010.

6. The Department did not prove by a preponderance of the evidence that a blue and white Buick was parked on the lot for ten or more days in violation of License Condition #8.

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

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<sup>23</sup> Test. of C. Rozek.

<sup>24</sup> Ex. 9.

<sup>25</sup> Ex. 10.

<sup>26</sup> Ex. 11.

## RECOMMENDATION

The Administrative Law Judge respectfully recommends that adverse action be taken against Licensee in the form of a fine of \$1,000.

Dated: February 24, 2011



RAYMOND R. KRAUSE  
Chief Administrative Law Judge

Reported: Digitally recorded

## NOTICE

This report is a recommendation, not a final decision. The City Council will make the final decision after a review of the record. The Council may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The party adversely affected by the recommendation shall have an opportunity to present oral or written arguments to the council alleging error on the part of the examiner in the application of the law or interpretation of the facts.

## MEMORANDUM

Licensee operates a small auto repair business on Selby Avenue in St. Paul. The business has been operating for roughly 20 years. During that time, the business has been cited for violations of its license. As a result, special conditions have been placed on the license and agreed to by the Licensee.

In the last year, at least three inspections have been made by the St. Paul Department of Safety and Inspections. Each of the inspections uncovered several violations of the conditions placed upon the license. Four of those violations were the basis for the adverse action recommendation by the Department.

The first violation cited is that the Licensee had 21 cars parked on the lot and a vehicle blocking the driveway on November 29, 2010. License Condition # 1 limits the lot to 16 cars and no cars may be parked so as to block access. The Licensee did not contest this charge.

The second violation cited is that a blue and white Buick was seen on the lot during the inspections of June 30, 2010 and November 29, 2010. License Condition #8 prohibits a car from remaining on the lot for more than 10 days. The blue and white Buick can be seen in the photos taken on June, 30 and November 29, 2010. There was, however, no evidence that the blue and white Buick was there for the entire five months or for any ten day period in between those two dates.

The third violation cited was for having Licensee's flat bed tow truck with a car on board parked on a city right of way. This was clearly shown in the photograph and is a violation of License Condition # 2.

The final citation used to support the adverse action is for having "junk" stored behind the building in violation of License Condition # 11. While junk is a relative term and the materials in the photograph may indeed have some value to the Licensee, they are what an average person would assume is junk considering the way they are stored (piled up in a heap against a wall and under snow) and their general appearance. The Department was not unreasonable in defining this pile as "junk."

The penalty matrix presumes a \$500 fine for these kinds of violations and the matrix suggested penalty is presumed to be appropriate for every case.<sup>27</sup> Nevertheless, the Department decided to depart from the matrix and recommend a \$1,000 fine. St. Paul Legislative Code § 310.05 (m) does, however, allow a departure from the matrix for multiple violations in the context of one appearance. In the circumstances, the upward departure from the presumptive matrix penalty is not unreasonable.

**R. R. K.**

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<sup>27</sup> St. P. Leg. Code § 310.(m).