

From: [Craig Beuning](#)
To: Greg.Welner@ci.stpaul.mn.us
Cc: [CouncilHearing \(CI-StPaul\)](#); [Therese Skarda](#)
Subject: Request for Stay Pending Appeal OAH 82-6020-39197 Res. No. 23-1381
Date: Monday, October 9, 2023 8:39:03 AM
Attachments: [Motion for Stay Pending Appeal.pdf](#)

Please find attached Licensee Mohamed Shaaban Sultan's Request for Stay Pending Appeal.
Thank you.

Craig J. Beuning

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**Fed Ct. of Claims &
US Ct. of App. D.C.*

October 9, 2023

MOTION/REQUEST FOR STAY PENDING APPEAL

Saint Paul City Council
15 Kellog Blvd. W.
Saint Paul, MN 55102

RE: Res. No. 23-1381, In the Matter of Tobacco Shop License Held by Amira Grocery d/b/a Winnipeg Grocery for the Premises Located at 864 Rice Street in Saint Paul.

Dear Councilmembers:

The Licensee in the above-referenced matter, Mohamed Shaaban Sultan, respectfully requests that the Saint Paul City Council stay enforcement of the 10-day suspension of his tobacco shop license and imposition of administrative costs in the amount of \$4,415.00 pending appeal.

This request is brought pursuant to Minn. Stat. §14.65 which grants the governing body the authority to issue a stay upon such terms as it deems just and proper. Pursuant to Minn. R. Civ. App. P. 108, “the application for a supersedeas bond or a stay on other terms must be made in the first instance to the agency or body.” When determining whether or not to grant a stay pending appeal, the trial court or governmental unit must balance the appealing party’s interest in preserving the status quo, so that effective relief will be available if the appeal succeeds, against the interest of the public or the prevailing party in enforcing the decision and ensuring that they remain “secure in victory” while the appeal is pending. *See* 3 Eric. J. Magnuson & David F. Herr, *Minnesota Practice* § 108.01, at 389-90 (2007) (describing rule 108.01 as striking balance between these competing interests).

On October 4, 2023, the Saint Paul City Council considered Resolution 23-1381 and adopted the Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge that were presented by the City of Saint Paul. The Recommendation of the Administrative Law Judge that was adopted by the City Council was the Licensee violated St. Paul Legislative Code § 324.07(j) and was subject to the presumptive penalty found in St. Paul Legislative Code § 324.10(b)(2). Licensee requests that the City Council grant this stay pending appeal for the following reasons:

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1. Licensee has been operating Winnipeg Grocery, Inc. for the past three years and has a stellar record of compliance with city ordinances and no tobacco related violations. Accordingly, a stay poses little or no danger to public safety. Winnipeg Grocery provides a necessary community service as a grocery store. Loss of revenue from tobacco sales risks depriving patrons the benefits provided through the sale of groceries. A suspension of his tobacco license, moreover, harms Licensee's positive reputation in the community that he has worked diligently to earn over the past years.
2. The financial impact on Licensee of denying a stay is both obvious and serious. A 10-day suspension and the imposition of costs poses an excessive financial hardship on Licensee who relies on the revenue derived from the sale of tobacco products to drive the sale of groceries and other store merchandise. The 10-day suspension effectively closes the entire store, causing loss of pay for not only store employees, but a sublessee who also depends on the foot traffic tobacco sales generates to sustain his sales.
3. There is little risk that any delay in enforcement will impair the City of Saint Paul's enforcement of the violation or collect administrative costs. A stay also ensures that Licensee can obtain effective relief if he prevails on appeal.

Therefore, Licensee respectfully ask that the Saint Paul City Council grant this motion to stay the enforcement of any violation of St. Paul Legislative Code § 324.07(j) and the presumptive penalty found in St. Paul Legislative Code § 324.10(b)(2).

Thank you for your attention to this matter.

Sincerely,

/s/ Craig J. Beuning

Craig J. Beuning #0316660

Attorney for Licensee