

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

**CITY'S CLOSING ARGUMENT**

License ID#20100000243

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**I. Facts**

On May 15, 2010, Midway University & Hamline LLC owned by Khaled Aloul ("Licensee") was granted License # 20100000243 ("License") to sell gas and cigarette/tobacco products by the City of Saint Paul, Department of Safety and Inspections ("Department") at the Midway Amoco BP located at 1347 University Avenue ("Licensed Premises") (Ex. 4).

The License contains 5 conditions:

1. The licensee shall provide and maintain working video surveillance cameras and recorders on the premises (both inside and outside) in accordance with the 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 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.
- (Ex. 4)

On July 26, 2019, the Department initiated adverse action against the tobacco license held by Licensee after it became aware of a series of serious incidents, most of which occurred between April 2019 and the end of June 2019. The Department notified the Licensee that it was



taking adverse action and seeking an upward departure to revocation by sending a letter titled Notice of Violation and Recommendation for Upward Departure to Revocation ("Notice") to the Licensee at the address of the Licensed Premises and an alternate address he provided (Ex. 1-1 - 1-7).

Under Saint Paul Legislative Code, the Department can take adverse action against a license for a variety of reasons. Those reasons include:

- violations of conditions placed on a license;
- violations of provisions of the legislative code and statute relating to the licensed activity;
- 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;
- 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; and
- 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.

(St. Paul Legislative Code §§ 310.05 (m)(1) and 310.05 (m)(2) and 301.06 (b)(6)(c), 310.06 (b)(7) and 310.06 (b)(8)).

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 flavored items deemed contraband by the Department of Revenue. (Ex. 2-1 - 2-3). The allegations stemmed from a Minnesota Department of Revenue seizure on September 4, 2018 and were detailed in a March 12, 2019 Notice of Violation (Ex. 17-1 - 17-4). On March 15, 2019 the Licensee notified the Department that he wished to have a hearing before an Administrative Law Judge (Ex. 18). The Licensee failed to appear at the hearing and Findings of Fact, Conclusions of Law and Recommendation Upon Default were issued by the Administrative Law Judge on July 16, 2019 (Ex. 19-1 -19-9).

Saint Paul Legislative Code §310.05 (m) provides a matrix of presumptive penalties for violations. Under the matrix, a 1<sup>st</sup> appearance carries a \$500 penalty, a 2<sup>nd</sup> appearance carries a



\$1,000 matrix penalty, a 3<sup>rd</sup> appearance requires a \$2,000 fine and a 10-day suspension and the 4<sup>th</sup> appearance prescribes revocation of the licenses.

Under Saint Paul Legislative Code §310.05 (m), “These penalties are presumed to be appropriate for every case: however, the matrix allows the council to deviate in an individual case. To deviate, the council must find and determine that substantial and compelling reasons exist which make it more appropriate to do so”.

Per Saint Paul Legislative Code §310.05 the “occurrence of multiple violations of Saint Paul Legislative Code shall be grounds for departure from such penalties at the council’s discretion.”

Saint Paul Legislative Code §310.06 does not have a corresponding matrix penalty section.

The Department and SPPD proactively reached out to the Licensee and a meeting was set for June 19, 2019. The goal was to discuss the problems and illegal activity at the Licensed Premises. Although the Licensee accepted he failed to show up for the voluntary meeting (Ex. 26-1, 26-2).

- ii. **The gas and cigarette/tobacco license held by Licensee is subject to adverse action under Saint Paul Legislative Code §310.05(m)(1) for violation of license condition #1 for failure to produce requested video in accordance with a May 1, 2018 request of the Department.**

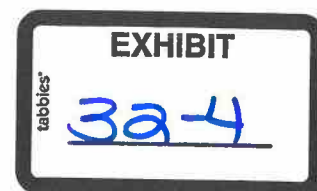
Licensee violated condition #1 of his License when he failed to provide surveillance video requested by the SPPD and the Department after a patron of the Licensed Premises had his wallet stolen on April 27, 2019. License condition #1 of the Licensee’s license states that “copies of recordings shall be available to SPPD and/or the Department of Safety and Inspections (DSI) staff within twenty-four (24) hours of such a request” (Ex. 4). Details of the theft are outlined in SPPD CN 19086028 (Ex. 7). In this report, Sergeant Candice Jones details her attempts to retrieve video, stating: “I attempted to contact the BP, 651-645-7161 and every time I identified myself as police, the person on the other end hung up.” (Ex. 7-6). Licensing Manager Eric Hudak (LM Hudak) testified that the Department gets copies of SPPD reports and that he reviews them for possible licensing violations (Direct Eric Hudak). He testified that he reviewed CN 19086028 and on May 1, 2018 the Department made a formal request for video footage for “both inside and outside



for the following date and times. April 27, 2019 from 0001 (12:01 AM) to 0100 (1:00 AM).” (Ex. 8) (Direct Eric Hudak). LM Hudak also testified that he had personal knowledge that the video was not received and that the failure is a violation of license condition #1 (Direct Eric Hudak). His recollection is supported in the license history notation for May 13, 2019 which states “video never recd.” (Ex. 20). The report of Sergeant Candice Jones and the testimony of LM Hudak with respect to this violation was credible and unrefuted. The Licensee failed to present any evidence that the video was provided either to SPPD or the Department. This violation has been proven by a preponderance of the evidence.

**III. The gas and cigarette/tobacco license held by Licensee is subject to adverse action under Saint Paul Legislative Code §310.05(m)(1) for violations of license condition #1 on June 18, 2019.**

Licensee violated condition #1 of his License a second time when he failed to provide a copy of surveillance video requested by the Department on June 18, 2019 at 12:00 p.m. As previously noted, license condition #1 of the Licensee’s license requires that “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” (Ex. 4). LM Hudak testified that the need to review the video arose after the store’s clerk sold cigarettes to an underage checker and the Inspector working with the underage checker reported possible single cigarette sales (Direct Eric Hudak). LM Hudak testified that he hand delivered a letter to a clerk at the Licensed Premises on June 18, 2019 around 1:00 p.m. (Ex. 13, Ex. 14-1 and Direct Eric Hudak). This letter formally requested video from June 12, 2019 at 2:30 p.m. until 4:30 p.m. and stated that “A Department of Safety and Inspections representative will arrive at the above address at 4:00 p.m. to pick-up the requested copy of video footage. Failure to provide the requested copy of video footage at this time may result in adverse licensing action.” (Ex. 13). LM Hudak testified that he returned to the Licensed Premises on June 19, 2019 at 4:00 p.m., after the 24-hour window prescribed by the conditions placed on the License had expired to pick up the copy of the requested video footage and it was not available (Direct Eric Hudak). He documented his return and the failure to provide the requested video in his report (Ex. 14-1). LM Hudak also testified that he recalled what occurred when he went to pick up the video. He testified that he spoke with the same clerk that he had given the letter requesting video to the day before and





he that he also spoke with an individual named Alex. LM Hudak testified that Alex first told him that he had given the video to someone named Mark from SPPD. LM Hudak testified that he then showed Alex a copy of the letter, and Alex stated he had never seen it (Ex. 14-1) (Direct Hudak). LM Hudak also testified that he recalled the conversation with Alex about making a copy of the requested video and that he was not inclined to wait for it due to previous obligations and he needed to be other places (Rebuttal Hudak). Finally, LM Hudak also testified that to his knowledge, no one delivered the requested video to the Department or called to say it was ready (Rebuttal Hudak).

The store clerk, Nagdi Ahmed's testimony was contradictory on whether or not the video was ready (Cross Nagdi Ahmed). He testified that he is aware that he is being recorded while he works. He remembered LM Hudak giving the letter and coming back to get copy of the video the next day. At first he testified that the video was not ready – but then testified that LM Hudak came in twice and “the first time the video wasn't ready and the second time it was” (Cross Nagdi Ahmed). Then he appears to change his testimony again stating that when LM Hudak came back on the next day he told him the video wasn't ready. (Cross Nagdi Ahmed). When asked if he recalls referring LM Hudak to Alex he didn't recall. Store clerk Nagdi Ahmed was shown to be an unreliable witness and had a motive not to give his store manager, Ala Asia a copy of the letter requesting video as that video would have showed the details behind the failed youth compliance check.

The store manager, Ala Asia<sup>1</sup> testified that he has worked for the Midway Amoco BP for approximately 2 ½ to 3 years. He testified that he understood the license condition that required him to produce video within 24 hours and that he knew how to access video (Direct Ala Asia). He testified that he understood that both SPPD and the Department of Safety and Inspections needed video for different reasons and that he recognized the difference between the two departments (Direct Ala Asia). He testified that one of his duties is to make sure that requests for video are fulfilled (Direct Ala Asia). Ala Asia did not deny that he failed to produce the video requested in the letter within the allotted time frame. (Direct Ala Asia). Instead it appeared that he first attempted to excuse his failure to produce the video within the

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<sup>1</sup> Known to LM Hudak as Alex.



timeframe laid out in the license conditions by stating that he believed that he gave the video to the SPPD. Ala Asia then testified that he didn't see the letter requesting the video until June 19, 2019 but when he became aware of the request, he offered to go and purchase a drive and make the copy (Direct Ala Asia and Cross of Ala Asia). LM Hudak noted in his report that Alex "responded that he never saw the letter" (Ex. 14-1).

Violations of license conditions are not excusable. License condition #1 places the burden on the Licensee to produce video within a 24-hour time frame. The Licensee cannot shift that burden to the Department. Ala Asia was the individual with the responsibility to have the requested video ready for pick-up by 1:00 p.m. on June 19, 2019. He could not meet the requirement of the License Condition because he apparently had no knowledge that the Department had hand delivered a letter requesting video or that there was a deadline to produce that video. While he did offer to go out and purchase a drive, return to the Licensed Premises and make a copy of the video, LM Hudak was under no obligation to wait and per his testimony, he could not wait due to other obligations (Rebuttal Hudak). This failure is symptomatic of the poor staffing and management which cause the issues noted in the Department's Notice.

**IV. The gas and cigarette/tobacco license held by Licensee is subject to adverse action under Saint Paul Legislative Code §310.05(m)(2) for violations of license conditions #3 and #5 observed and documented by LM Hudak on June 18 and 19, 2019.**

Licensee violated conditions #3 and #5 of his License when he failed to maintain his property, including his fence and failed to pick up trash and litter on a daily basis. License Condition # 3 states that "Licensee agrees to provide adequate fencing to comply with applicable City Ordinances, and to prevent access from the alley to the property". Condition #5 requires that the Licensee "maintain a clean site, with all trash and litter picked up daily" (Ex. 4).

LM Hudak personally observed and photographed the violations of license conditions #3 and #5 when he visited the Licensed Premises on June 18 and 19, 2019 (Direct Eric Hudak, Ex. 14-1 – 14-12). Identifying and documenting license violations are responsibilities that fall within LM Hudak's duties. On June 18, 2019 he documented his observations with photos (Ex. 14-3 - 14-6). When he returned on June 19, 2019 he took additional photos which show that violations were still present (Ex. 14-7 - 14-12). Those photos depict a fence board on the ground



with nails facing upward (Ex. 14-3 and 14-7), the perimeter fence in disrepair (Ex. 14-4, 14-8, 14-11, 14-12), overflowing trash in the trash bin, the same trash on the ground in front of it (Ex. 14-5 and 14-9), and the same trash and debris on the grass and under and near a bush for over 24 hours (Ex. 14-6 and 14-10). He testified that in his opinion, the board with the nails sticking out of it was a serious danger to the public (Cross Hudak). He believed that leaving the board on the ground for over 24 hours was irresponsible (Cross Hudak). He also noted that he believed there was more trash outside the dumpster when he returned 24 hours later (Direct Eric Hudak).

The Licensee attempted to excuse the violations. He testified that he believed that the pieces of fence and condition of the fence that LM Hudak observed were the result of a car running into the fence on or about June 15, 2019. The Licensee stated that it took 2 or 3 days to get a contractor in and take care of it (Direct Khaled Aloul). If this were true, it would mean that the fence and the board with nails sticking up were ignored by the Licensee for at least 5 days. However, this was most likely not the case. LM Hudak testified on rebuttal that issues related to the maintenance of the fence have been ongoing. LM Hudak discussed photographs he reviewed which were taken by DSI Inspector named Richard Kedrowski on June 5, 2019. These photos showed that the fence was damaged and falling over long before June 15, 2019 (Rebuttal Hudak).

The testimony and photographs taken by LM Hudak clearly establish that violations existed on June 18 and 19 of 2019. They are the best evidence to show that the Licensee does not maintain the Licensed Premises in accordance with the conditions placed on his License and the Department has met its burden with respect to proving violations of license conditions #3 and #5.

- V. The gas and cigarette/tobacco license held by Licensee is subject to adverse action under Saint Paul Legislative Code §310.05(m) (2) for sale of single cigarettes outside of their original packaging in violation of Saint Paul Legislative Code §324.07(a).**

Saint Paul Legislative Code §324.07(a) states that “No person shall sell a single cigarette outside its original packaging...”. The Department presented evidence of numerous violations of this section of the legislative code.



Sergeant Vang-Sitcler from the SPPD's Gun and Gang Unit reported that he worked on two details that focused on the area around University and Hamline and specifically the Licensed Premises due to address ongoing calls of fights, open air drug dealing, weapons violations and aggravated assaults (Direct Sergeant Vang-Sitcler). He created CN 19-128-009 to summarize what occurred during these two details (Ex. 10). CN 19-115-335<sup>2</sup> details one of the incidents that occurred during a detail. It reports that on June 1, 2019 two people were arrested leaving the Licensed Premises with a firearm (Ex. 10-2). It further notes that when being interviewed, one of the arrested persons said that "she chose to go to the gas station because she knew she could buy a single cigarette there" (Ex. 10-3).

Inspector Akbar Muhammad reported that he observed behavior indicative of single cigarette sales when he was at the Licensed Premises on June 12, 2019. He reported this to his supervisor, LM Hudak in an email on June 24, 2019 stating "I observed a patron, who budged in front of the line, asked Mr. Nagdi for 1 pack of cigar wraps and two single cigarettes. Mr. Nagdi handed both the pack of cigar wraps and two single Marlboro cigarettes to the patron and he quickly left the premise. I didn't observe any cash exchanged during this transaction." (Ex. 9-3). LM Hudak testified that based on what Inspector Muhammad reported, he would need further information to determine if money had been exchanged which is why he asked for the video that the Licensee failed to produce (Cross Hudak).

Sergeant Aguirre's report (Ex. 11-1 – 11-4), body worn camera video ("BWC") (Ex. 12), still photographs (Ex. 11-7 and 11-8) and testimony provide clear and direct evidence of the sale of single cigarettes within the Licensed Premises. His report details his interaction with the store clerk, Carlos Mauricio. He reports that the "clerk had two open packs of cigarettes on the counter, Newports and Marlboro menthol" (Ex. 11-13). He also reported that the clerk told him that "each pack sells for \$10 but he sells the individual cigarettes for \$1. He doubles his money." (Ex. 11-3). His BWC video captured the entire conversation and confirms this (Ex. 12). The BWC shows there was no misunderstanding between the two. The demeanor of the clerk during the interaction was calm and their interaction was conversational. They clearly

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<sup>2</sup> Sgt. Vang-Sitcler testified on direct that when he saw his report he realized that he had incorrectly typed the report number and the CN should read CN 19-115-355 (Direct Vang-Sitcler).





understood each other. In fact, the portion of the conversation which details Carlos Mauricio's understanding of the negative financial impact that the ban on flavored products had on sales at the Licensed Premises, the detailed information on how glass pipes are purchased, brillo pads are rolled and sold as kits for a large profit shows that he fully understood both the operation and Sergeant Aguirre (Ex. 12).

Store clerks Carlos Mauricio and Nagdi Ahmed both denied selling single cigarettes at the Licensed Premises (Direct Carlos Mauricio, Nagdi Ahmed). Their testimony on this issue is not credible and directly conflicts with Sergeant Aguirre's BWC video, Sergeant Aguirre's testimony, Sergeant Aguirre's report, Inspector Muhammad's observations and the statement of the arrestee under CN 19-115-335 (Ex 12, Ex. 11-3, Direct Sergeant Aguirre, Ex. 9, Ex. 10-2). At the hearing, Carlos Mauricio testified that the cigarettes on the counter were his and that he smoked. This was interesting given that he did not have a pack with him during the hearing and Sergeant Aguirre's report indicates that there were open packs of Marlboro menthol and Newport regular cigarettes on the counter (Ex. 11-3). The testimony of the clerks on this issue was not credible. It is understandable that they would want to please their boss and ensure that the Licensed Premises remain open and continue to employ them. Both clerks testified that they work long hours at the store and rely on the Licensee or the "big boss" as Carlos Mauricio called him for their employment and paychecks (Direct and Cross Carlos Mauricio and Nagdi Ahmed). The evidence presented by the Department regarding the sale of single cigarettes meets its burden of proof on this issue and the Department has proven the that Licensee sold single cigarettes on more than one occasion.

**VI. The gas and cigarette/tobacco license held by Licensee is subject to adverse action under Saint Paul Legislative Code §310.05(m)(2) for offering for sale and selling flavored products.**

The Licensee has admitted to the sale of flavored products. While his admission deems the violation proven, the continued sale of prohibited flavored products highlights the ongoing and blatant disregard for regulations by the Licensee. The stocking and offering of flavored products was not a mistake nor was it a minor oversight. The license history shows that the Department conducted menthol education and inspection on April 23, 2018 and the Licensee passed (Ex. 20). It is unclear when the Licensee began selling banned flavors again or if he ever



stopped. Nagdi Ahmed denies selling after they were told not to (Cross Nagdi Ahmed). The evidence shows they were present in the store on September 4, 2018 when the Minnesota Department of Revenue seized products (Ex. 17-1 - 17-4), on April 25, 2019 when the Licensee failed a flavors compliance check, on June 12, 2019 when DSI Inspector Akbar Muhammad conducted an underage compliance check (Cross Akbar Muhammad) and on June 22, 2019 as detailed in SPPD CN 19-134-455 and the BWC footage of Sergeant Aguirre which show a large volume of banned Newport Menthol Cigarettes, Marlboro Menthol Cigarettes, Backwoods Berry Flavor cigars, Backwoods Russian Cream Flavor cigars, Dutch Master Rum Fusion cigars, Dutch Master Berry Fusion cigars available for purchase at the Licensed Premises (Ex. 11-5 - 11-9, Ex. 12). This timeline lays out prohibited sales for almost a year. The number of prohibited products available for sale show and prolonged timeline highlight the extent of the Licensee's disregard for regulations. The Department has met its burden of proof on this issue and the Licensee should be held responsible for numerous violations of this section of Saint Paul Legislative Code.

**VII. The gas and cigarette/tobacco license held by Licensee is subject to adverse action under Saint Paul Legislative Code §310.05(m)(2) for selling tobacco to an underage individual.**

On June 12, 2019, Licensee's clerk, Nagdi Ahmed sold Marlboro cigarettes to an underage checker in violation of Saint Paul Legislative Code §301.05(m)(2). The facts surrounding this underage compliance check are not routine. Testimony and reports indicate that the underage checker was initially able to purchase cigarettes but then had them taken back by the Clerk when the underage checker went back and asked for a receipt (Direct Akbar Muhammad, Ex. 9-1 – 9-3). His attempt to correct his mistake does not erase the violation.

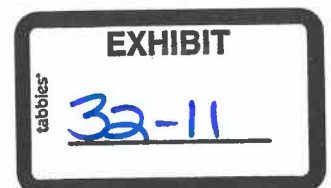
DSI Inspector Akbar Muhammad presented the evidence of this violation through testimony of his recollection, his written report and an email to LM Hudak (Direct and Cross Akbar Muhammad, Ex. 9-1 - 9-3). He testified that conducting tobacco compliance checks are part of his assigned duties. He has no stake in the outcome of this matter. He testified as to his recollection and was honest when he didn't recall a detail (Direct and Cross Akbar Muhammad). He detailed that on June 12, 2019 he used an underage checker to conduct a compliance check at the Licensed Premises. He gave the underage checker a \$20.00 bill and the underage checker



came back out of the Licensed Premises with a pack of cigarettes the first time (Direct Akbar Muhammad). His report and email to LM Hudak lay out the details behind the failure: "Mr. Nagdi Ahmed sold a pack of Marlboro cigarettes to an underage decoy. I went in to present myself as an inspector and to inform him that he sold to an underage decoy. The decoy left the store and forgot to retrieve a receipt. When the decoy asked for a receipt Mr. Nagdi ID'd him again and took back the pack of cigarettes. I explained that this was still a sale to an underage minor." (Ex. 9-1 - 9-3). He documented the price that the underage checker paid for the cigarettes in his report - \$9.45 (Ex. 9-1). He provided additional details about the failure including that fact that the underage checker purchased Marlboros and when he asked the Clerk where the Marlboros were that he sold the underage checker were the Clerk had them under the counter – not on the shelf. These cigarettes were photographed and made a part of DSI Inspector Muhammad's report (Cross Akbar Muhammad, Ex. 9-1 - 9-3).

The Licensee only offered the verbal denial of the Nagdi Ahmed. He failed to retain or produce the video of the sale (Direct Nagdi Ahmed). Nagdi Ahmed's testimony on this issue conflicted itself. He denied failing a tobacco check (Direct Nagdi Ahmed). He claimed that he took the money from the underage checker and then put it in front of the register. He states that he never gave the purchaser the cigarettes but then states that he "gave him money back and I took my cigarettes" (Direct Nagdi Ahmed). Nagdi Ahmed was shown to unreliable and bias. He relies on the Licensee for his employment and works long hours at the Licensed Premises (Direct Nagdi Ahmed). He was shown to be untruthful when he testified that they stopped selling flavored products after they were told not to (Cross Nagdi Ahmed). His denial of the sale of tobacco to an underage checker directly conflicts with DSI Inspector Akbar Muhammad's testimony and report. It is more likely that Nagdi Ahmed did not want his employer to know that he had failed to check for ID and sold to an underage individual. The Department has proven this violation of legislative code and the licenses held by Licensee are subject to adverse action on this violation.

- VIII. The gas and cigarette/ tobacco license held by Licensee is subject to adverse action under Saint Paul Legislative Code §§'s 310.06(b)(6)(c), 310.06(b)(7) 310.06 (b)(8) because the Department has proven by a preponderance of the evidence that the licensee (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; the activities of the licensee in the licensed activity created a serious danger to the public health, safety or welfare; the licensee performed his work or activity in an unsafe manner; and 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.**

The Evidence presented at the hearing showed that the Licensee has violated these sections. The Licensed Premises is far from a neighborhood asset. The Licensee's negligent management practices, lack of capacity to operate the Licensed Premises in a lawful manner and disregard for laws and regulations support adverse action against the License under Saint Paul Legislative Code §§'s 310.06(b)(6)(c), 310.06(b)(7) 310.06 (b)(8).

The Licensee is responsible for the conduct of his staff and the incidents at the Licensed Premises. Under Saint Paul Legislative Code §310.17 "Any act or conduct by any clerk, employee, manager or agent of a licensee...which act or conduct takes place either on the licensed premises or in any parking lot or other area adjacent to (or under the lease or control of) the licensed premises, and which act or conduct violates any state or federal statutes or regulations, or any city ordinance, shall be considered to be and treated as the act or conduct of the licensee for the purpose of adverse action against all or any of the licenses held by such licensee...".

The Department provided ample evidence including police reports, video, emails and testimony that showed the Licensee's unwillingness to address the issues at the Licensed Premises, negligent management practices, a disregard for laws and regulations and business practices that encouraged activities that regularly broke laws and regulations, endangered the public and maintained conditions that annoyed, injured and endangered the safety, health, morals, comfort or repose of a considerable number of members of the community. This included:

- Proof that the Licensee failed to appear before an ALJ to resolve his first violation.
- Proof that the Department and SPPD reached out to the Licensee and set up a meeting to discuss the problems at the Licensed Premises and that the Licensee accepted but failed to show up for the meeting (Ex. 26-1, 26-2) (Direct Eric Hudak).





- Proof that the employees of the Licensee believed that Licensee's practice of keeping the business open all night contributed to the number of individuals gathering at the Licensed Premises and the problems occurring during those gatherings (Direct Sergeant Aguirre, Ex. 12 – BWC video of Sergeant Aguirre of conversation with Carlos Mauricio).
- Proof that the licensee repeatedly failed to produce video requested by SPPD and the Department as required by his licensing conditions (Ex. 7-4, 7-6, Ex. 8, Ex. 20 (notation for 5/13/19, Direct Eric Hudak, Ex. 14-1).
- Proof of firearms on the Licensed Premises and shots fired at the Licensed Premises on numerous occasions including an incident where a patron later died from his injuries (Ex. 10-3, Direct Sergeant Vang-Sitcler, Exhibit 15-1 – 15-5, Rebuttal Eric Hudak).
- Proof that the Licensee sold single cigarettes on multiple occasions which drew individuals that contributed to the crimes occurring at the Licensed Premises (Direct of Sergeant Aguirre, BWC of Sergeant Aguirre, Ex. 10-2, 10-3, 11-7, 11-8, Direct Sergeant Vang-Sitcler, Direct Inspector Muhammad).
- Proof that large parties after bar hours and fights occurred at the Licensed Premises and that the employees of the Licensee did not intervene or call SPPD as shown in the Facebook video (Ex. 21), the still photographs from Sergeant Vang-Sitcler detail (Ex. 21-2 – 21-7), the statement of employee Carlos Mauricio Ex. 15-4, and the rebuttal testimony of Eric Hudak that there were only of couple of 911 calls from the Licensed Premises (Rebuttal Eric Hudak).
- Proof that the Licensee failed to monitor and control behavior on the Licensed Premises and allowed non-patrons to gather drink and sell drugs at the licensed premises (Direct Sergeant Vang-Sitcler, Ex. 10-1 – 10-3, Ex. 21-1 – 21-7, Direct Sergeant Aguirre, Ex. 11-2 - 11-3, Ex. 21, Ex. 24-1 – 24-5, 25-1 – 25-3).
- Proof that the Licensee continued selling prohibited flavored products long after knowing they were banned by City Ordinance (Ex. 11-5 - 11-9, Ex. 12, Ex. 17-1 - 17-4, Direct Akbar Muhammad, Direct Sergeant Aguirre).
- Proof that the employees of the Licensee were making and selling glass vials and drug kits (Direct Sergeant Aguirre, Ex 12).
- Proof that the Licensee failed to accept that he had a responsibility or take measures to address the problems Licensed Premises (Ex. 16, 24-1-24-5, Ex. 25-1 – 25-3, Ex. 26-1-26-2).



- Proof that the Licensee failed to maintain the licensed premises in accordance with his License Conditions (Direct Hudak, Hudak, Ex. 14-1 – 14-12, Rebuttal Eric Hudak).
- Proof that the Licensee ignored laws and regulations which caused his Security to quit (rebuttal Eric Hudak).
- Proof that the negligent management caused SPPD had to take an active role in managing the activities at the licensed premises to protect the public (Direct Sergeant Aguirre).
- Proof that the atmosphere created by the negligent business practices at the Licensed Premises endangered the public and even cost one individual his life (Direct Sergeant Aguirre, Rebuttal Eric Hudak, Direct Sergeant Vang-Sitcler, Ex 15-1 – 15-5).

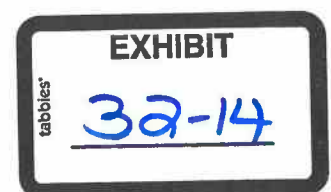
**IX. Substantial and compelling reasons exist for upward departure to revocation.**

Municipal authorities have broad discretion in determining the manner in which liquor licenses are issued, regulated, and revoked. *Bourbon Bar & Café Corp. v. City of St. Paul* 446 N.W.2d 438, 440 (Minn.App.1991)(Citing *Sabes v. City of Minneapolis*, 265 Minn. 166, 171, 120 N.W.2d 871, 875 (1963)). This same premise applies to any license issued by a Municipality and the Department's request for upward departure to revocation of the gas and cigarette/tobacco licenses held by the Licensee is supported by its legislative code.

Under Saint Paul Legislative Code §310.05 one single violation can be grounds for upward departure. While a penalty matrix exists, and is presumed to be appropriate, that same section of the code specifically states that "the occurrence of multiple violations of Saint Paul Legislative Code shall be grounds for departure from such penalties at the council's discretion".

The Code does require that Council make specific findings as to the substantial and compelling reasons when upward departure is warranted. Substantial and compelling reasons for upward departure to revocation in this case include the number of individual violations and basis for adverse action articulated in the NOV along with supporting evidence offered during the hearing, their severity, the Licensee's ongoing disregard for regulations and management practices that support criminal activity and lawlessness.

It is the Department's role to issue licenses; however, it is not required to endorse or be a partner to the illegal and unsafe activities occurring at the Licensed Premises. It is also not the role of SPPD to protect the Licensee or make it possible for him to continue his illegal activities



(Testimony Senior Commander Bandemer). The Department ought not be compelled to license a business for any purpose when the license is used to facilitate illegal activity and the existence of that license creates a danger to the public. LM Eric Hudak testified that he believes that a basis for upward departure two boxes on the matrix penalty to revocation exists and that basis is detailed in the NOV. He testified that the number of violations, there repetitive nature and condensed time frame also support the basis for upward departure (Direct Eric Hudak).

The Licensee appears to believe that since he was formally put on notice on July 26, 2019 of the problems at the Licensed Premises he should get “three strikes” and that he should have been given notice on each violation and an opportunity to correct it (Licensee Opening Argument). Licensee argues that the appropriate penalty is upward departure to third box on the matrix penalty instead of revocation. He denies that he and his employees are the cause of the problems at the Licensed Premises and argues that he should be given a lessor penalty because he has taken steps to remedy the problems at the Licensed Premises. The Licensee argues that his plan to rebuild the Licensed Premises would somehow address the criminal activity and community problems documented at the Licensed Premises. It is unclear how a new facility would assist the Licensee when has shown he is unwilling, unable or incapable to manage the business that he has (Opening, Direct Khaled Aloul). If the Licensee was unaware of the activities at the Licensed Premises it shows a failure on his part to meet his obligations as a Licensee. The Licensee should have known about each violation that the Department has alleged and immediately taken steps to correct them.

Evidence in the record shows that Licensee has minimized and denied his role in the ongoing violations and issues at the Licensed Premises. A compelling example includes on October 6, 2019 his interview on camera with a Kare11 news reporter where claimed the glass pipes he was selling to the local community were used for incense and personally demonstrated their use.

The Licensee was unapologetic, blamed others, has failed to engage with the Department and SPPD to discuss problems and failed to correct the problems at the Licensed Premises himself (Direct Khaled Aloul, Ex. 16, 18, 19, 24-5, 26-1, 27).



The Licensee also appears to believe that the changes he has made since the NOV should excuse the past violations (Opening and Direct Khaled Aloul). Licensee claims that he has reduced hours on weekends, he has quit selling glass pipe drug kits and stopped selling prohibited flavored products (Direct Khaled Aloul). At hearing the Licensee presented many CN's to show he was working with police and cooperating with their requests for video. A close look at these reports reveal the reasons why video was requested and shows that the Licensee still is not managing the Licensed Premises in a manner that complies with Saint Paul Legislative Code.

Specifically, those CN's detail that:

- On July 30, 2019, SPPD responded to a call related to shots fired and documented the call under CN 19168362 (Ex.30-96).
- On July 31, 2019, SPPD responded to a call regarding a 22-year-old male booked for violation of a firearm carry permit and documented it under CN 19168652. (Ex. 30-97).
- On August 24, 2019, SPPD responded to a shots fired call and the CCTV showed a male shooting a firearm. They documented this under CN 19189375 (Ex. 30-9).
- On August 24, 2019, SPPD were dispatched to 1345 Sherburne on an assault that had taken place in the alley behind the Licensed Premises. They documented this under CN 19190223. (Ex. 30-71 – 30-94).
- On August 28, 2019, SPPD were called regarding a group of juveniles outside of the Licensed Premises asking people to buy them cigarettes. They were 12 to 14 years old and people were also outside yelling. They documented this under CN 19193366 (Ex. 30-10).
- On August 29, 2019, SPPD was sent to the Licensed Premised on a report of a group fighting inside the store. Officers speak with Derrick Leon Hood. Who said he was sitting in his vehicle in the parking lot when a group of people including Regina Johnson walked to his vehicle. He said he grabbed a hammer to keep them from attacking. Hood walked into the store and asked staff to call 911. The group attacks Hood takes away hammer – one individual has a knife – Hood sustains small cuts. This is documented under CN 19193877 (Ex. 30-47 – 30-54).





- On August 31, 2019, SPPD conduct a proactive police visit. They see 5 to 7 females fighting in the parking lot and had to spray mace to disperse the crowd. They documented this under CN 19195720. (Ex. 30-1 – 30-8)
- On August 31, 2019 at around 4:52 a.m. SPPD Officers conduct an investigative stop on a vehicle in the lot. The driver attempts to flee. Officers find a stolen firearm. Controlled substances are also found. They documented this under CN 19195764(Ex. 30-60, 30-61).
- On September 1, 2019 at 9:17 p.m. officers are called to the Licensed Premises on a 911 hang up. Store clerk Carlos Mauricio is the suspect. They arrive and find out that Carlos Mauricio confronted a shoplifter with a crowbar. Shoplifter attempted to push clerk and grabs crowbar and the clerk struck the shoplifter in the face with the crowbar. Officers demand video and clerk tells officers that only his manager can review and burn surveillance footage. This was documented under CN 19197266 (Ex. 30-62 – 30-70).
- On September 2, 2019 officers are sent to the Licensed Premises because a large crowd of 20-30 individuals were squatting in the SW corner of the lot. They were reported to be verbally belligerent and swearing at officers. Officer noted trash on the ground as well as cans, bottles etc. Officers dispersed the crowd. Officers requested video and the clerk couldn't provide it. This was documented under CN 19197883. (Ex. 30-27 – 30-31).
- On September 2, 2019 at 7:21 p.m. SPPD officers were called to the Licensed Premises. The complainant located her stolen vehicle in the parking lot. Officers request video – clerk Nagdi Ahmed says they are unable to provide it at this time. This is recorded under CN 19197934. (Ex. 30-55 – 30-59).
- On September 2, 2019 at about 10:09 p.m. SPPD officers are called again to the licensed premises on a 13-year-old juvenile driving a jeep wrangler. Officers find the vehicle with the key in the ignition. Officers report this under CN 19197575. (Ex. 30-32 – 30-39).
- On September 4, 2019 SPPD are called to the Licensed Premises. It is a drunk person call Complainant is Mohamad Farah Yasin – he calls in and says he is being robbed at the address. Comp is in the store when officers arrive. Officers arrive, Comp is drunk and says he was robbed of tobacco. Officers ask night clerk, Carlos Mauricio for video – he



says that only the manager during the day could provide video and he was not in right now. This is reported under CN 19199779. (Ex. 30-12 – 30-14).

- On September 4, 2019 a juvenile male is cited for trespass and obstructing legal process. This is documented under CN 1919933. (Ex. 30-95).
- On September 6, 2019 at 2:06 a.m. SPPD officers are called to the Licensed Premises on a disturbance call. They arrive and lot is full of vehicles playing music and people talking loudly. Officers clear the lot and request video from the attendant Carlos by providing him with a business card with the CN # and time. This is recorded under CN 19200721 (ex. 30-40 – 30-43).
- On September 6, 2019 SPPD officers were called to the Licensed Premises on a disturbance call. They arrive and the lot is full of vehicles playing music and people talking loudly. Officers clear the lot and request video from the attendant Carlos by providing him with a business card with the CN # and time. This is recorded under CN 19200721 (Ex. 30-40 – 30-43).
- On September 23, 2019 there was a towed vehicle report – a vehicle was reported stolen under CN 19214843 on 9/21– driver and passenger arrested. (Ex. 30-44, 30-45).
- On October 12, 2019, SPPD officers are sent on a robbery call. They find the victim in the passenger seat of a purple Honda Accord – barely coherent. Minor injuries. Officers request video and are told that they were unable to provide video at this time. Victim tells officers that he was in the parking lot smoking marijuana and drinking and that he was robbed by two people who took his keys (Ex. 30-16 – 30-26). They document this under CN 19230672.

The substantial and compelling reasons for upward departure are the proof of the numerous violations of the License Conditions, the evidence which shows licensee (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; the activities of the licensee in the licensed activity created a serious danger to the public health, safety or welfare; the licensee performed his work or activity in an unsafe



manner; and 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 as laid out in sections II, III, IV, VI, VII and VIII above. Those violations and conduct proven by the Department show that the Licensee is either unwilling or unable to manage the Licensed Premises in a manner that complies with regulations and the Department respectfully requests findings of fact consistent with the violations of Saint Paul Legislative Code articulated in its NOV and a recommendation for upward departure to revocation.

Dated: December 20, 2019



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Assistant Saint Paul City Attorney  
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Saint Paul, MN 55102  
(651) 266-8755



TREPANIER

MACGILLIS

BATTINA

ATTORNEYS AT LAW

December 20, 2019

**Via U.S. Mail**

Office of Administrative Hearings  
Attn: The Honorable James LaFave  
600 North Robert Street  
St. Paul, MN 55101  
*OAH.eFiling.Support@state.mn.us*

Re: 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, Minnesota  
License ID No. 20100000243  
OAH Docket No. 60-6020-36320  
Our File No. 693-001

Dear Judge LaFave:

Enclosed is Licensee's Post Hearing Brief for the above-referenced matter. A copy of has been uploaded to the OAH e-file system.

Very truly yours,

**TREPANIER MACGILLIS BATTINA P.A.**



**James C. MacGillis**

Direct: 612.455.0503

*jmacgillis@trepanierlaw.com*

cc: Therese Skarda, Esq. (via e-mail)

**EXHIBIT**

tabbles®

32-20



STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

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

**LICENSEE'S POST HEARING BRIEF**

License ID #: 20100000243

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Midway University & Hamline, LLC d/b/a Midway Amoco BP ("**Licensee**"), by and through his attorney, James C. MacGillis, hereby submits its Post Hearing Brief in this matter, and states:

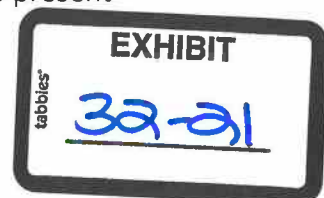
**Introduction**

The City of St. Paul ("**City**"), by its Department of Safety and Inspection's ("**DSI**") July 26, 2019 Notice of Violation ("**Notice**"), notified Licensee that it had violated multiple provisions of the City's legislative code, as well as conditions placed on Licensee's licenses (collectively, the "**Violations**"). Based on the Violations, DSI recommended that the City upwardly depart from its matrix penalty set out in the City's legislative code ("**Code**") to the ultimate penalty – revocation of Licensee's tobacco and gas station licenses. Prior to receiving the Notice, Licensee had not been notified of the Violations.

During the hearing for this matter before Judge James LaFave, Licensee acknowledged its violations of (i) Code §324.07(f) (sale of flavored tobacco products), and (ii) Code §310.06(b)(8) (business operated in a way that unreasonably annoyed the comfort or repose of any considerable number of members of the public, and in particular, surrounding neighbors and community) during the summer of 2019 (together, the "**Admitted Violations**"). Licensee contests that it violated the balance of the Violations (together, the "**Contested Violations**").

The City has failed to carry its burden to prove that Licensee violated the Contested Violations. However, notwithstanding the two Admitted Violations, and even if the City did carry its burden of proving the Contested Violations, there are not substantial and compelling reasons as required by Code §310.05(m) for the City Council to deviate from both the second and third matrix penalty options in order to accomplish its regulatory goals.

By combining what ought to have been seven or eight violation notices to Licensee into the (single) Notice, Licensee was not put on notice of the Violations as they occurred, and had no opportunity to either timely contest or make appropriate operational and management changes to address the Violations. Testimony by the City's witnesses of a willingness to work with Licensee ring hollow when the Notice bunched together the Violations so as to present



them in a single, massive tome painting a picture of an out-of-control Licensee unable or unwilling to comply with Code and license conditions.

Even assuming there were substantial and compelling reasons to deviate from the Code's matrix penalty, the appropriate penalty for Licensee is a deviation from the second matrix level, which would result in a \$1,000 fine, to the third matrix level, which provides for a \$2,000 fine and 10-day suspension of Licensee's licenses.<sup>1</sup>

### **Burden of Proof**

Under the Code, where there is a dispute as to the facts underlying the violations, or as to the facts establishing, mitigating or aggravating the circumstances, as in this case, a hearing is conducted before a hearing examiner appointed by the City Council. Code §310.05(c). A licensee is provided an opportunity to present evidence and argument, and meet adverse testimony or evidence by cross-examination and rebuttal evidence. *Id.* The hearing examiner hears all evidence and presents to the City Council written findings of fact and conclusions of law, together with a recommendation regarding adverse action. *Id.*

While not set out in the Code, Licensee presumes that the City must provide sufficient evidence such that the hearing examiner can make a determination as to the Contested Violations and whether there are substantial and compelling reasons to support departing from the Code's matrix penalty. Consistent with this presumption, the City asserted in the Notice that its assertion of facts and exhibits constitutes proof of violations by a preponderance of the evidence. Exhibit 1-3.

### **Argument**

#### **1. The City failed to carry its burden that Licensee violated the Contested Violations.**

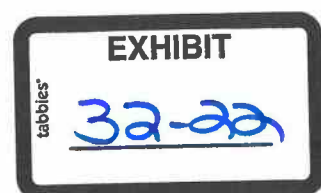
##### **A. The City failed to prove that Licensee sold cigarettes outside of their original packaging.**

Code §324.07(a) prohibits the sale of cigarettes outside of original packaging that contains a health warning satisfying the requirements of federal law. Further, no cigarettes may be sold in packages of fewer than 20 cigarettes. This section of the Code addresses cigarettes and not cigars.

None of Licensee's witnesses testified with sufficient details or certainty that Licensee (i) authorized, permitted or engaged in the sale of any cigarettes outside of their original packaging, or (ii) authorized, directed or engaged in the sale of cigarettes in packages of fewer than 20 cigarettes. While Licensee's owner, Khaled Aloul, no longer works as a clerk at

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<sup>1</sup> Because the Violations constitute the second adverse action against the Licensee within the past 12 months, the second matrix penalty presumptively applies. Code §310.05(m).



Licensee's business location, he testified that he never authorized or directed any of Licensee's employee to offer or sell single or "loose" cigarettes.

Apart from Mr. Aloul, no other witness of Licensee testified that he had sold loose cigarettes. These witnesses included Carlos Mauricio, who was working at the business and featured in the body camera video taken by St. Paul police officer Sgt. Rigo Aguirre in the early morning of June 22, 2019. During that video, Sgt. Aguirre asks Mr. Mauricio about the open packages of cigars and cigarettes on the counter in the enclosed cashier's box. Exhibit 12, Body Worn Camera footage of Sgt. Aguirre, at 7:30. Mr. Mauricio clearly tells Sgt. Aguirre, "My cigarettes." *Id.*

Sgt. Aguirre then focuses on the open package of cigars, and presses Mr. Mauricio on whether he sells single cigars. *Id.* at 7:50 to 8:30 Mr. Mauricio confirms for Sgt. Aguirre that single cigars are sold for \$2.80 per cigar. *Id.*

Sgt. Aguirre then presents Mr. Mauricio with a hypothetical about how much he would make if he were to sell single loose cigarettes. *Id.* at 13:35.

At approximately 17:10 of the video, Sgt. Aguirre again references the sale of single cigarettes, and Mr. Mauricio states he sells cigarettes by the pack. Sgt. Aguirre does not provide any circumstantial evidence, much less direct evidence, that single cigarettes outside of their original packaging are sold by Mr. Mauricio or Licensee.

Licensee's witnesses also included its daytime clerk, Nagdi Ahmed, who denied during his testimony selling any loose cigarettes at the business.

Apart from Sgt. Aguirre, the city offered the testimony and notes of Inspector Akbar Muhammed. Mr. Muhammed, while conducting a youth tobacco compliance check on June 12, 2019, wrote the following in his report:

Observed Mr. Ahmed giving a patron two single cigarettes along with cigar wraps, but didn't see any cash exchanged during transaction.

Exhibit 9-1.

Under cross-examination, Mr. Muhammed testified that besides not seeing cash exchanged between Mr. Ahmed and the patron, he observed no other consideration exchanged while he was in the store. Further, responding to a question from Judge LaFave, Mr. Muhammed testified that he did not hear any conversation exchanged between Mr. Ahmed and the person who received the cigarettes and cigar wraps. Nothing in Mr. Muhammed's notes or testimony supports the assertion that Licensee violated Code §324.07(a), which by its plain terms, prohibits the sale of cigarettes outside of their original packaging.

Besides Sgt. Aguirre and Mr. Muhammed, the City provided a police report, Exhibits 10-2 and 10-3, to support its allegation of this violation. The report recites a hearsay statement of an



arrested woman who told an officer she went to the station because she knew she could purchase single cigarettes there, and had bought them that night.

This report, standing alone, is not persuasive, as it fails to establish that single cigarette sales were made by the station's clerk and not some other person hanging around the station entrance or its pumps, as occurred on occasion. The report was bereft of further details, and Sgt. Vang-Sitcler's testimony failed to provide any additional information on who conducted the sale, or pricing for the cigarettes, so as to provide reliable support for the allegation.

The City's allegation of this violation is based entirely on hearsay and an observation by Mr. Muhammed of a conveyance that did not constitute a sale. The City has not established that any sale of cigarettes outside of their original packaging took place. Further, the Code does not restrict the sale of single cigars.

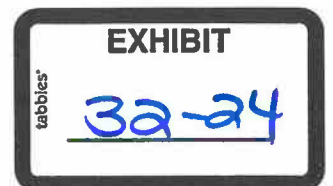
**B. The City failed to prove that Licensee engaged in the furnishing or sale of tobacco to persons under the age of 18.**

Code §324.07(g) and Minnesota Statutes §609.685 prohibit the furnishing or sale of tobacco to persons under the age of 18 years of age. The City alleges that on June 12, 2019, Licensee's clerk, Nagdi Ahmed, engaged in an unlawful sale during a youth tobacco compliance check administered by DSI.

For the City, Inspector Akbar Muhammed testified that he coordinated a youth tobacco compliance check on June 12, 2019, whereby an underage youth entered the station, requested a package of cigarettes, was asked for identification, and after presenting identification, was sold a package of Marlboros by Mr. Ahmed. Mr. Muhammed's email to DSI's Licensing Manager Eric Hudak, Exhibit 9-3, states that the youth working with him left the store following a sale in which Mr. Ahmed asked him for identification to check his age, but then proceeded to sell him cigarettes and failed to provide him with a receipt. Directed back into the store, Mr. Ahmed again requested identification and allegedly "took back the pack of cigarettes." Exhibit 9-3.

For his part, Mr. Ahmed testified on behalf of Licensee that he recalled the attempted youth tobacco purchase from June 12, 2019. Specifically, Mr. Ahmed recalled asking the youth for his identification, checking it, determining he was underage, and then not selling the cigarettes to the youth. Further, Mr. Ahmed testified that he returned the money the youth had handed him, and did not make change for a sale.

Mr. Ahmed testified that the youth did not leave the cashier's area with the package of Marlboros, and that on Mr. Muhammed entering the store and identifying himself to Mr. Ahmed, Mr. Ahmed showed him the cigarettes he had been unwilling to sell to the underage youth, as he had not yet put them back. Finally, Mr. Ahmed testified that he never rang up the sale, there was no receipt for the sale because he did not make the sale, and he never received a citation or other ticket indicating he had made an unlawful tobacco sale.





Mr. Ahmed was credible, and unflappable in his testimony under cross-examination.

The City has not provided sufficient evidence to support the conclusion that an unlawful youth tobacco sale was made by Mr. Ahmed. No receipt for the alleged sale was produced by the underage purchaser or Mr. Muhammed, or proposed as an exhibit. Further, there is no dispute that Mr. Ahmed did, in fact, request to see the identification card of the purchaser seeking to make the tobacco purchase on behalf of Mr. Muhammed. Exhibit 9-1. Based on Mr. Ahmed's testimony, the lack of a receipt to document the alleged tobacco sale, and the lack of additional evidence, the City has not met its burden.

**C. The evidence presented by the City does not demonstrate there is 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.**

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."

The evidence presented by the City does not demonstrate there is 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.

It is difficult to identify the particular pattern or practice of Licensee's conduct (i) that constitutes a failure to comply with laws reasonably related to operating a gas station and selling tobacco products, or (ii) from which a fact-finder can make an inference of lack of fitness or good character of Licensee or its owner, Mr. Aloul.

Without a doubt, the City has alleged a number of *individual violations* related to Licensee's operation of its business. Most of these violations occurred a single time, and it is difficult to discern a pattern or practice that Licensee is engaging in, or failing to comply with.

For example, Licensee acknowledges it mistakenly offered flavored tobacco products after the change in the Code, but ended all such sales upon receiving notice of the violation. There is no pattern and practice of selling flavored tobacco products.

Further, the City alleges that on June 12, 2019, Licensee failed a youth tobacco compliance check. Yet, the City's Exhibit 20 shows that Licensee passed tobacco compliance checks at least nine times since March 2010. There is no pattern or practice of selling tobacco products to underage purchases.



The City alleges, based on Licensing Manager Eric Hudak's visit to the store premises on June 18 and 19, 2019, that the Licensee violated its license conditions of (i) maintaining a clean site, with trash and litter picked up daily, and (ii) maintaining adequate fencing to comply with city ordinances. Exhibit 4; Exhibits 14-3 to 14-12. This allegation, related to an approximate 27-hour period, even if true, does not constitute a pattern or practice. Moreover, given that a homicide had occurred on the premises of Licensee in the early morning hours of June 18, 2019, and that access to the premises was strictly limited during the investigation, it is no surprise that there may have been a temporary delay in clean-up of the premises.

The City further alleges the Licensee failed to provide surveillance video to DSI (Exhibit 14-1) on a single occasion, and that Licensee's clerk hung up on a St. Paul Police caller requesting video on behalf of the police on another occasion (Exhibit 7-6). As Licensee's manager Alaa Asia testified, he regularly responded to a multitude of DSI and St. Paul Police Department requests for video footage, day and night, without hesitation. Licensee's Exhibit 104 provides a snapshot of the multiple times video surveillance footage was requested by the police department over what appears to be just a few days' time. Again, there is no *pattern or practice* of failing to comply with the license condition of having operating surveillance cameras, and responding with diligence to requests for such video.

Admittedly, in the summer of 2019, there were multiple instances of groups of people hanging out in the station parking lot (and surrounding areas), typically in the early morning hours of weekends. As reflected in video, still photographs and testimony from both the City and Licensee's witnesses, the groups engaged in unlawful activities that included drug dealing, the discharge of firearms, fighting and the consumption of alcohol.

These events began early in the summer of 2019, and continued until the Licensee took initial steps to control the activity and type of customers attracted to the station. Specifically, as testified to by Mr. Aloul and Carlos Mauricio, Licensee began to close the store from 1 AM to 4 AM on weekend early mornings. Additionally, as testified to by the same witnesses, Licensee eliminated the sale of glass vases that the St. Paul Police Department considered drug paraphernalia and useful for the consumption of unlawful substances. Both of these steps involved some level of economic sacrifice of Licensee, but were taken for the express purpose of eliminating a troubling pattern that had begun to develop over the summer months of 2019.

As an alternative to the "pattern or practice" standard set out in Code §310.06(b)(6)(c), the City asks for a finding that Licensee's failure to actively enforce standards of behavior among its customer constitutes and permits an inference of the lack of fitness or good character of Licensee and Mr. Aloul.

It is a large jump between the existence of untoward and illegal behavior on a business premises, and the conclusion that its owner must lack fitness or good character. In this regard, the City has not met its burden. No witness for the City testified that Licensee, its owner or its staff participated in any of the alleged activities occurring in the station parking lot.



No evidence of Mr. Aloul's lack of good character was presented, save for his failure to appear at a meeting with City officials to discuss activities at his station. As testified to by Mr. Aloul, however, this proposed meeting fell during a particularly difficult period of time in the summer of 2019 when his mother-in-law, living in Jerusalem, and his sister in Chicago were dealing with serious health issues. Mr. Aloul testified that he regretted missing the scheduled meeting, but that he was forced to leave on short notice for these matters, including spending two weeks in Jerusalem.

Relevant to his fitness and character, Mr. Aloul testified that he owns a number of business throughout the metro area, including additional gas stations in St. Paul. Mr. Aloul testified that he has never had a license revoked from another business. Further, Mr. Aloul expressed empathy and understanding in acknowledging that he understands why neighbors and the community are upset with activities at the station during this past summer.

In sum, the City has not demonstrated the Mr. Aloul either permitted a *pattern or practice* of conduct of failing to comply with laws, or acted in ways as to infer his lack of fitness and good character to engage in the license activities of operating a gas station that sells tobacco products. Neither the individual instances of Code violations to which Mr. Aloul admits, nor the Contested Violations, even if assumed as true, provide a basis to conclude Licensee violated Code §310.06(b)(6).

**D. Licensee's business has not created a serious danger to the general public's health, safety or welfare, and Licensee has not operated its business in an unsafe manner.**

Code §310.06(b)(7) contains two justifications that permit the City Council to take adverse action against a licensee.

First, adverse action can be taken when the activities of the licensee and the license activity created or have created a serious danger to the public health, safety or welfare. Licensee's business activities, however, have not created a serious danger to the general public's health, safety or welfare.

Mr. Aloul admitted in his testimony that in the summer 2019, activities in the parking lot of the station resulted in annoyance to the comfort or repose of the neighborhood and community surrounding the station. The activities acknowledged by Mr. Aloul, also testified to by Carlos Mauricio and the City's witnesses, include gatherings in the station lot, open consumption of alcohol, apparent drug dealing, noise and a fight. None of these activities were created by Licensee. None of these activities financially benefited Licensee, and Licensee's employees and contractors did not encourage or participate in these activities.

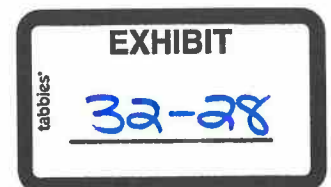
To the contrary, testimony of Licensee's witnesses included the following:



1. Carlos Mauricio testified that he often called the police for various reasons, including gatherings in the parking lot, fighting, noise and shoplifting.
2. Carlos Mauricio testified that he never participated in the sale of illegal drugs or was discouraged from contacting the police by Licensee's owner.
3. Mr. Aloul testified that he made efforts to improve the atmosphere at the station by, at various times, authorizing security guards be hired, curtailing the hours of the station on weekends, and directing that glass vases that could be considered drug paraphernalia no longer be sold at the station.
4. Mr. Asia testified that he worked diligently to produce requested video surveillance upon request, which requests came most frequently from the St. Paul Police Department. In order to facilitate the police department's ability to review video, Mr. Asia shared login and password information with a representative of the police department such that he would have the ability to independently access video as needed by the police and without having to work through Mr. Asia.
5. Mr. Asia testified that he worked with a St. Paul police officer to investigate Licensee being able to hire off-duty police officers to help provide security at the station. That request was denied by the police department.
6. Mr. Ahmed testified to his understanding of the tobacco laws, including restrictions on sales to underage purchasers, and that he that he asked everyone for identification prior to a tobacco purchase.
7. The City's own logs, while inconclusive as to the origin of the calls, reflect a multitude of calls to the police department related to, and proactive visits to, Licensee's business. Exhibits 23-1 to 23-5.

It would be disingenuous to argue that there were not a spate of late evenings and early mornings during the summer of 2019 when the station parking area hosted noisy and disruptive unlawful activity. However, Licensee did not "create" the problems that occurred at its station any more than so many areas of St. Paul touched by violent crime during the summer of 2019 created those problems.

Again, without disputing the disruption of peace and quiet to the neighborhood and community over the summer of 2019, no witness testified to his or her own health, safety or welfare being affected by something the Licensee created. The health, safety and welfare of participants in unlawful activities, including drug dealing, alcohol consumption, and fights, has the obvious potential to result in negative health, safety and welfare externalities for those participants, but the allegation that the Licensee itself created these conditions is unsupported by the evidence.





The second justification to support adverse action against a licensee set out in Code §310.06(b)(7) is that a licensee has “performed his or her work activity in an unsafe manner.”

Mr. Aloul’s work, on behalf of Licensee, is to facilitate the operation and management of a gasoline station and convenience store. To that end, Mr. Aloul retained staff to operate a convenience store and coordinate the sale of gasoline. Existing as a facility open to the public, and operating within the geographical area in which it is located, that staff performed its work under difficult conditions at times, especially during early mornings on the weekends following closure of bars.

The hearing produced no testimony or other evidence that Mr. Aloul or his staff performed the work of operating a convenience store and gasoline station in an unsafe manner. By way of example, there was no evidence that the station’s gasoline pumps were derelict and constituted a fire hazard to the neighborhood. As further example of what would be an unsafe practice, there was no testimony that the food products sold at the station were unsanitary. While there were, at times during the summer of 2019, events that took place on and surrounding the premises of the station that were unsafe, these conditions were not performed, created, sanctioned or encouraged by Licensee.

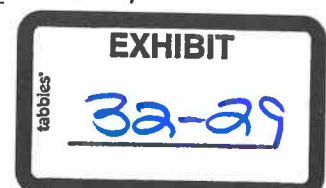
**E. Licensee has complied with license condition no. 1 by maintaining a video surveillance system and making copies of recordings available to the St. Paul Police Department and DSI staff.**

As a condition of receiving its business licenses in 2010, Licensee agreed to a number of operating conditions for its business. Exhibit 4. The City alleges that Licensee violated condition number one by failing to make available to the St. Paul Police Department and DSI requested video surveillance footage within 24 hours of every request.

Notwithstanding the multitude of responsive video surveillance footage that was regularly provided to the police at all times of the day and night, the City alleges two failures by Licensee constitute a violation of this condition. Licensee denies that it materially violated this condition, and in the *single* instance where it technically failed to provide requested surveillance to DSI within 24 hours of the request, its confusion over multiple requests made by two different agencies at the same time constitutes an excusable mistake, and not an intentional, actionable violation.

The first violation of this condition alleged by the City is based on events beginning on April 27, 2019, when a man filed a police report with the St. Paul Police Department alleging that he left his wallet at the station, and upon returning it could not be found. The man alleged financial loss as well as the loss of Minnesota Twins tickets.

On May 1, DSI Senior License Inspector Kristina Schweinler prepared a video request letter intended for Licensee, but did not correctly identify Licensee by its correct address. As reflected in Exhibit 8, the inspector’s correspondence was apparently sent to 1337 University



Avenue West in St. Paul. However, the address of Licensee's station is 1347 University Avenue West. Ms. Schweinler did not appear at the hearing to testify regarding whether this letter was delivered to the station or returned to DSI, or to provide any other explanation.

For Licensee, Mr. Aloul testified that he did not receive a copy of the May 1, 2019 request for surveillance footage. In any case, if he had, he testified that his regular practice was to contact Mr. Asia or his other manager to respond to the request for video footage. Because Exhibit 8 evidences an incorrect address for Licensee, and there is no evidence Licensee was put on notice of this request for video footage, Licensee's failure to respond to DSI does not constitute a violation of license condition number one.

The City, however, alleges a second violation of operating condition one based on Licensing Manager Eric Hudak requesting the station's surveillance video on June 18, 2019, at 12:45 PM. As Mr. Hudak testified, he returned the following day, on June 19 at 4 PM, and was not immediately provided with a copy of the requested video. Exhibit 14-1.

Licensee admits that on Mr. Hudak's return visit on June 19, DSI did not receive a copy of the video requested 27 hours earlier. However, the circumstances between June 18 and 19, 2019, were trying, and explained by Licensee's manager Mr. Asia in his testimony, as well as the testimony of the City's witnesses and its exhibits. The timeline and events of these days need be understood to grasp just how punitive and unreasonable the City's allegation is as to this license condition. The events of those days include the following:

1. Sometime in the early morning of June 18, 2019, a homicide occurs on the station property.
2. Manager Alaa Asia is called at approximately 3:00 AM on June 18 and told to come immediately to the station. Once at the station, he stays for approximately five hours, until 8:30 AM, working with personnel from the St. Paul Police Department to download video from surveillance cameras at the station. At some point late in the morning he is told he can leave. At this time, the station is closed as the police are investigating the homicide.
3. Later that day, at approximately 12:45 PM, Mr. Hudak delivers a letter to the station requesting a copy of surveillance video from June 12, 2019. The letter is left with Mr. Ahmed, Licensee's clerk.
4. Mr. Aloul calls Mr. Asia on June 18, that same day, as Mr. Aloul has received a copy of Mr. Hudak's letter. Mr. Aloul asks Mr. Asia whether he has provided the requested video. Mr. Asia, believing that Mr. Aloul is asking about the video requested by the police department earlier that morning, tells him, "Yes, yes I did." Mr. Asia is confused, and erroneously advises Mr. Aloul that the video requested by DSI via Mr. Hudak has been provided.



5. The following day, Mr. Asia visits the station in order to review what has occurred since the homicide, and conduct other daily activities such as ordering and responding to request for video. While Mr. Asia is at the station, Mr. Hudak returns and asked for a copy of the requested video. Mr. Asia identifies himself as "Alex" to Mr. Hudak, which is the Anglicized version of his name he often goes by.
6. Mr. Hudak explains that he is with DSI and needs the requested copy of video. Mr. Asia is confused as he had been at the station the previous morning and provided video to a representative of the St. Paul Police Department.
7. Mr. Hudak explains that he had left a letter the previous day. Once Mr. Asia reviews the letter, he realizes his mistake, and tell Mr. Hudak that he can produce the video for him, except that because he does not have a memory card at the station, he would need two minutes to run across the street to purchase one. Mr. Hudak refuses to wait and leaves the station without the requested video.
8. Mr. Asia proceeds to purchase a memory card and does, in fact, download the requested video to a memory card. The memory card is left at the station either that same day, June 19, 2019, or the following day, but it is never picked up by DSI.
9. Mr. Hudak admitted in his testimony that he did not return to the station again to pick-up the video DSI had requested.

A homicide on the premises of the station was an extraordinary situation, and impacted the nearly daily visits of Mr. Asia to the station. That Mr. Asia assumed the request for video by DSI was the same video that he had already provided to the St. Paul Police Department in response to the homicide is excusable and an understandable mistake. Licensee and Mr. Asia's good faith and intentions were reflected in Mr. Asia's expressed willingness to immediately produce the requested surveillance video. For whatever reason, however, Mr. Hudak declined to spend a few additional minutes waiting for the video, or following up after his departure.

Simply put, the City's allegation that this incident constitutes a violation of its licensing condition is untenable. Licensee, as testified to by Mr. Aloul and Mr. Asia, has a protocol in place that was regularly followed so as to respond to the frequent requests of the St. Paul Police Department and DSI. Even if the City Council were to conclude that a "technical" violation of this licensing condition did occur, minimal weight should be given to the violation in light of the circumstances. Further, this "gotcha" violation is not a substantial and compelling reason to deviate from the proposed matrix penalty.



**F. The City failed to prove that Licensee violated license condition nos. 3 and 4 by failing to maintain fencing and a clean site.**

As a basis for the revocation of Licensee's licenses, which would result in the closure of the business, the City alleges Licensee violated two additional conditions of its licenses. Those conditions are:

Licensee agrees to provide and maintain adequate fencing to comply with applicable City Ordinances, and to prevent access from the alley to the property; and

Licensee shall maintain a clean site, with all trash and other litter picked up daily.

Exhibit 4.

**1. Maintain fencing condition.**

In support of its allegation that Licensee failed to maintain adequate fencing, the City, through Licensing Manager Eric Hudak, offered Exhibits 14-3, 14-4, 14-7, 14-8, 14-11 and 14-12. These photographs were taken approximately 27 hours apart on June 18 and June 19, 2019.

The photographs depict two areas. First, there is an area missing a single fence slat, with some of the photographs showing that single slat lying on the parking lot pavement. The second depicted area shows a longer section of missing fence between the station and the alley that borders the station property. While the photographs do not capture the entire perimeter of the property or the fence, they do show that most of the fence is in place. Exhibit 14-8.

Mr. Aloul, on behalf of Licensee, testified that a customer drove into a portion of the fence with a car in mid-June 2019. He further testified that it took a few days to get his contractor to work on repairing the fence following the damage being brought to his attention. Mr. Aloul stated that the fence was repaired in 7-10 days, and that as of the day of his testimony the fence was in a fair condition.

Licensee's contractor, Manuel Mauricio, testified that he worked on repairing the fence sometime in June 2019.

None of the City's witnesses, besides Mr. Hudak, testified as to the condition of the fence.

There is insufficient evidence to find that Licensee failed to maintain adequate fencing, or failed to maintain fencing so as to prevent access between the station and the alley bordering the property. Mr. Hudak's observations and photographs collected in two visits, only 27 hours apart, do not provide a reasonable basis to conclude that Licensee failed in its duties to maintain fencing at its gas station.





Even assuming that Licensee's attention to fence maintenance was delayed during June 2019, and a violation is found to have occurred, this violation does not constitute a substantial and compelling reason to depart from matrix penalties related to licensing conditions.

Licensee's testimony was that the fence was eventually repaired. Licensee did not receive timely notice of this violation. These facts support a conclusion that this operating condition violation, even if proven, should not be treated as an aggravating factor to support the City's goal of applying the "death penalty" of revocation to Licensee's business licenses.

## **2. Maintain clean site condition.**

The City also alleges, based on two visits of Mr. Hudak separated by 27 hours, that Licensee violated its license condition to maintain a clean site. Mr. Hudak offered and spoke about Exhibits 14-5, 14-6, 14-9 and 14-10 during his testimony.

Mr. Hudak's photograph at Exhibit 14-5 shows an overfilled dumpster with additional bagged trash on the ground next to it from June 18, 2019. Also near the dumpster on the ground are a few cardboard boxes. Mr. Hudak's second photo of the dumpster, taken the following day, shows what appears to be an emptied dumpster with bagged garbage located at the base of the dumpster, but not yet placed into it.

Of note, the morning of June 18, 2019, there had been a homicide at the station and access to the property had been limited during the police investigation. While no witness could testify as to exactly when Licensee's garbage hauler was able to access the dumpster, it must have occurred between the time the first and second photographs were taken by Mr. Hudak. That bagged garbage and a few boxes remained on the ground pending a station employee or contractor having an opportunity to place the materials in the dumpster is a weak argument that Licensee has violated its operating condition to maintain a clean premises.

This allegation of a violation involves a single instance of bagged garbage, along with a few miscellaneous items, remaining outside the dumpster for more than 24 hours (following a homicide at the station). There were no additional photographs or other testimony or exhibits of garbage remaining outside the dumpster. While unsightly to the sensitive eye and potentially unsanitary, a reasonable person would not conclude that a single instance of bagged garbage and a few boxes remaining outside a commercial dumpster for a day or two constitutes a failure to maintain a clean premises. Further, in light of the disruption to the station's operations following the homicide of June 18, a temporary delay is understandable and excusable.

Besides the bagged garbage, Mr. Hudak also displayed photographs of litter observed on the premises between his same visits on June 18 and June 19. Exhibits 14-6 & 14-10. There are a few scattered items in each photograph. What appears to be a red cup is in both photographs. Other litter, appearing to be paper, is in one or the other photograph.



Licensee's witnesses testified regarding the protocol for collecting litter from the outside of the premises. Carlos Mauricio, the nighttime clerk, testified that he would clean outside the station when his brother, Manuel Mauricio, was not available to clean. He stated that litter came from both the station's customers, as well as when it blew over from areas off the premises.

Manuel Mauricio, a contractor that provided cleaning, painting and some basic security services to the station, testified that every other day, in the morning, he goes to the premises and picks up garbage. As to the garbage, he noted that sometimes the dumpster is full and in that case bags of garbage would be placed next to it, and he would add them to the dumpster once it has been emptied. Further, he stated that garbage that is not generated by the station – such as wood, cans of paint and cardboard – is sometimes left near the dumpster for the station to handle.

The station is located in an urban environment. By virtue of being located at an intersection, and given the nature of convenience store product and gas sales, it necessarily results in many people passing through and around the station on a daily basis. The station's employee and contractor testified regarding their daily efforts to maintain the premises in a clean condition. Their efforts are akin to Sisyphus being compelled to push a massive bolder up a hill, only to have it roll back down, where he is forced to proceed again with his never-to-be fully realized task.

In sum, there is insufficient evidence to conclude that Licensee failed to maintain a clean premises based only on a few photographs taken 27 hours apart and the testimony of Mr. Hudak. Even if the City Council reaches that conclusion, this violation does not constitute an aggravating circumstance of such dire implications that it should be used to support a significant deviation from a level 2 to a level 4 matrix penalty.

**2. The City's failure to provide timely notice of the Contested Violations prejudiced Licensee.**

Besides its primary argument based on a substantive denial of the Contested Violations, Licensee also objects to the City combining multiple violations over a nearly 11 month period into a single notice. It is hard to fathom how doing so serves the purpose of working with regulated businesses, and not against them.

The City sent the Notice to Licensee on or about July 26, 2019. The Notice and Violations are based on events that occurred as early as 11 months prior to the Notice being issued (August 31, 2018, shots fired incident at station). Exhibit 1-5. The majority of the Contested Violations, however, occurred in June of 2019. These include (i) underage youth tobacco sale; (ii) DSI/Mr. Hudak video request; (iii) Mr. Hudak photographs of fence and litter; (iv) various CCTV observations of Sgt. Van-Sitcler as to happenings in station lot; and (v) Sgt. Aguirre visit and discussion with Carlos Mauricio. Exhibits 1-3 to 1-6.



Two important consequences emanate from the City's delay in notifying Licensee of the Contested Violations in a reasonably prompt fashion to when each violation occurred.

First, if Licensee had received timely notice of each violation, it would have had the opportunity to (i) contest the particular violation with a better opportunity to discover facts relevant to it, (ii) demonstrate it was in compliance, or (iii) provide a timely explanation for the alleged violation. Admittedly, it is pure speculation to wonder what steps Licensee may have taken as to individual violations, and whether the steps may have been sufficiently remedial or otherwise, but Licensee has simply not been provided that opportunity.

Second, the combining of the Contested Violations is an aid to the City in its effort to paint Licensee as rogue, uncooperative and running a business while ignoring community concerns. The idea of applying the "death penalty" of license revocation by upwardly departing from the Code's matrix penalty for a litter violation, or failure to timely fix the fence, or even for the sale of flavored tobacco or disturbing neighborhood peace, would likely be perceived as excessive – and not substantial and compelling – if any of the Violations were examined alone. However, in producing a Notice of seven pages spanning an 11 month period, the City is able to support its narrative of an unconcerned and disinterested Licensee while it limited Licensee's ability to respond and make timely changes to its operations.

**3. Deviation from the Code's presumptive matrix penalty, as proposed by the City, violates norms of penalty administration.**

While applying criminal law theories of punishment to a regulatory matter is imperfect, doing so provides a lens through which to evaluate the City's effort to jump from a level 2 matrix penalty to a level 4 matrix penalty of license revocation. Exhibit 1-2.

Common theories of punishment include incapacitation, deterrence, retribution, rehabilitation and restoration. Incapacitation of an individual is not relevant to this discussion.

In reviewing the matrix penalty at Code §310.05(m), the increasing nature of the penalties evidences that the City Council values deterrence and retribution, with an opportunity for rehabilitation and restoration to good status. For violations of conditions placed on a license, or violations of the Code relating to license activity, the penalty levels consist of first appearance, a \$500 fine, second appearance, a \$1,000 fine, third appearance, a \$2,000 fine and 10-day suspension, and fourth appearance, license revocation. As the Notice is the second appearance within a period of 12 months, the presumptive penalty for Licensee is a \$1,000 fine.

The Code provides that the City Council may deviate from the presumptive matrix penalties where it finds and determines there exist substantial and compelling reasons making it more appropriate to do so. Code §310.05(m). In this case, jumping from the second matrix penalty to the fourth would serve the purpose of punishment and retribution against Licensee, but totally eliminate an opportunity for rehabilitation or restoration.



Licensee, largely through the testimony of its owner Mr. Aloul, testified at length regarding some of the steps it has already taken in response to the Notice and disruptions at the station during the summer of 2019. The steps included closing the station on early mornings of weekends during times when people were most likely to congregate at the station, and ending the sale of products considered to be drug paraphernalia.

Further, Licensee presented uncontroverted evidence about the scope of its credible remodeling plans for the station. These plans include an investment of approximately \$1.6 million in tearing down the existing structure on the property, including the car wash, and rebuilding with business and security concerns in mind. Plans include significant landscaping and altering ingress and egress options to better control the flow of customers into and out of the station. Exhibits 101–103. Additionally, the plans include an expansion of the store and an anticipated focus on bakery and coffee items that would appeal to a wider cross-section of customers.

Mr. Aloul testified, and no witness provided evidence otherwise, that to date he has already invested approximately \$80,000 in the process of retaining an architect and contractor to develop plans and work with the City on this project. Licensee’s plans to rehabilitate and rebuild its property are extraordinary, and reflect significant personal financial risk. Licensee’s plans are well-developed, realistic, and have been reviewed by the City’s planning department.

An appropriate penalty for Licensee, given the totality of the evidence presented by both the City and Licensee, is an upward departure to the third matrix penalty level consisting of a \$2,000 fine and 10-day suspension of the Licensee’s license. The financial implications of closing the business for 10 days are significant and drive home the seriousness of the disruption caused to the neighborhood and greater community during the summer of 2019.

#### **4. Additional mitigating factors.**

Licensee presented testimony as to additional factors that ought be considered in evaluating whether there are substantial and compelling reasons to leap from the second matrix penalty level to the fourth matrix penalty level and license revocation. This testimony included the following:

1. Licensee has owned the subject business since 2009. It is only recently that significant problems with this location emerged. Those problems have coincided to some degree with the installation of the Green Line light rail transit station located in close proximity to the station. One impact of the transit station has been to provide an easy way for people to reach the station, and leave the station and surrounding area after engaging in unlawful or disruptive behavior. As noted by Carlos Mauricio in his video discussion with Sgt. Aguirre, “Problems, problems all the time, people from the train.” Exhibit 12 at 14:30.





2. Violence in St. Paul has been at crisis levels during 2019, as well-publicized in local media. Sgt. Vang-Sitcler, testifying for the city, acknowledged that he had been working on plans to address the area around Licensee's station when he was pulled off the work due to violence and more serious problems in other areas of St. Paul.
3. Licensee desired and attempted to hire off-duty St. Paul police officers to work at the station to help alleviate and address some of the very concerns identified in the Violations. However, its request for off-duty officers was denied by the City. The City's rebuttal witness, Senior Commander John Bandemer, testified that the basis for this decision was (i) that Licensee's employees had been documented violating the law, (ii) the business had trouble complying with the restrictions on its licensing, and (iii) "investigators were having a hard time getting video from the business." These reasons are not particularly persuasive, as no other testimony from any witness supported the statement that Licensee's employees had violated the law, or that police investigators regularly did not receive cooperation from Licensee responding to frequent video requests.
4. Licensee and its business is also a victim, albeit not in the personal sense testified to by community members. It is a "victim" because Licensee's efforts to operate a lawful business have been thwarted, in part, by antisocial, violent and unlawful behavior of select people.
5. Licensee employs a number of people who depend on the business operations to make a living. Further, it provides a business option for purchases of fuel and other products to neighborhood residents and other patrons.
6. The City has already approved Licensee's plans to tear down and rebuild the station property. However, those plans are in a holding pattern given the existing action and the potential for Licensee's loss of its business licenses. Licensee, its owner and its lender are willing to make a significant investment in the Hamline Midway community and neighborhood that would change not only the physical layout of the station, but its atmosphere and reputation.

### Conclusion

Licensee, by its owner Khaled Aloul, has been forthright in acknowledging Licensee's missteps in operating the station during summer 2019. Licensee admits to the Admitted Violations, and has instituted remedial action to avoid these violations being repeated.

Licensee does not admit to the Contested Violations. As set out above, the City failed to provide reliable, non-speculative evidence as to certain of the Contested Violations. In other cases, technical violations of licensing conditions are alleged based on a single 27-hour period from June 18 to June 19, 2019, immediately following a homicide that occurred on the station



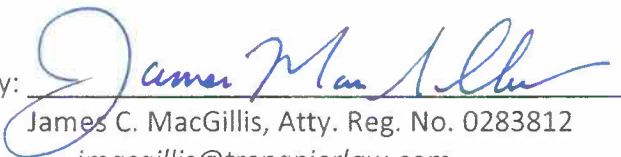
premises. These “gotcha” violations do not provide a substantial and compelling support for leapfrogging from a second matrix penalty level to the fourth. Moreover, Licensee’s history of (i) regularly complying with requests for video surveillance footage, (ii) regularly passing youth tobacco compliance checks, and (iii) operating its business in the community since 2009, further demonstrate Licensee has not engaged in a pattern or practice of operating outside of the Code or its license conditions.

Certain witnesses for the City, as well as the community members that testified on behalf of the Hamline Midway Coalition-District Council 11, presented testimony regarding unlawful and disruptive activities occurring on Licensee’s premises, though no witness alleged the involvement of Licensee or its employees. Mr. Aloul publicly acknowledged that disruption on the stand, and vowed to take significant steps in an effort to modify the behavior of certain patrons at the station.

A recommendation for an upward departure from the second matrix penalty level to the third matrix penalty level would result in a \$2,000 fine and 10-day license suspension for Licensee. This penalty would adequately punish and deter Licensee, while providing it with an opportunity to completely rebuild the business premises and the business “brand,” and thus serve the regulatory goals of the City of having a business that operates in compliance with the Code, Minnesota statute and its license conditions.

Dated: December 20, 2019.

**TREPANIER MACGILLIS BATTINA P.A.**

By:   
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**ATTORNEYS FOR MIDWAY UNIVERSITY &  
HAMLINE, LLC D/B/A MIDWAY AMOCO BP**





CITY OF SAINT PAUL  
Mayor Melvin Carter

Civil Division  
400 City Hall  
15 West Kellogg Blvd.  
Saint Paul, Minnesota 55102

Telephone: 651 266-8710  
Facsimile: 651 298-5619

January 10, 2019

James E. LaFave  
Administrative Law Judge  
Office of Administrative Hearings  
P.O. Box 64620  
St. Paul, MN 55164-0620

RE: Cigarette/Tobacco 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  
OAH Docket No.: 60-6020-36320

Dear Judge LaFave:

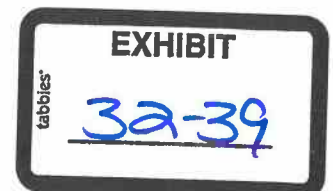
Enclosed and served upon you is the City's response to the Licensee's Post Hearing Brief which has also been sent to you by email and uploaded to the OAH file online.

Sincerely,

Therese Skarda  
Assistant City Attorney  
License No. 0240989

Cc: James C. Macgillis, Attorney, Trepanier MacGillis Battina P.A., 8000 Flour Exchange Building  
310 Fourth Avenue South, Minneapolis, MN 55415

Enclosure: City's response to Post Hearing Brief



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

CITY'S RESPONSE TO  
LICENSEE'S POST  
HEARING BRIEF

License ID#20100000243

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Introduction

The City of Saint Paul ("City"), by its Department of Safety and Inspections ("Department") respectfully submits this Response to Licensee's Post Hearing Brief. As previously outlined in its Closing Argument, the matter before this Court is a licensing action with multiple violations of license conditions and city codes. The Department is recommending upward departure to revocation.

**1. The City complied with all relevant notice requirements.**

Department is not responsible for managing the Licensee's business. The suggestion that Licensee was somehow prejudiced by the combining of multiple violations in the Notice of Violation ("Notice") is absurd and suggests that Licensee could have ignored regulations, ordinance provisions and license conditions until he was provided with a formal notice of a violation. Licensee should have been aware of the activities at the Licensed Premises and immediately worked to rectify issues and implement corrective measures.

It is worth noting that if the violations hadn't been included in one Notice and had been noticed separately, the License would now be well past revocation on the matrix penalty scale. The testimony presented by the Department and the Saint Paul Legislative Code showed, just one violation is grounds for both adverse action and upward departure on the penalty matrix (Direct Hudak, SPLC §310.05).

The violations were properly noticed. Saint Paul Legislative Code §§'s 310.05(m) (ii and iii) address noticing multiple violations and the handling of violations occurring after the date of the notice of hearing:





*(ii) Multiple violations.* At a licensee's first appearance before the city council, the council shall consider and act upon all the violations that have been alleged and/or incorporated in the notices sent to the licensee under the administrative procedures act up to and including the formal notice of hearing. The council in that case shall consider the presumptive penalty for each such violation under the "1st Appearance" column in paragraph (b) above. The occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion.

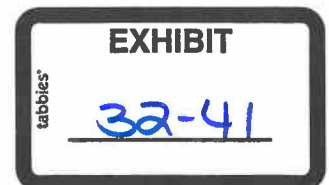
*(iii) Violations occurring after the date of the notice of hearing.* Violations occurring after the date of the notice of hearing that are brought to the attention of the city attorney prior to the hearing date before an administrative law judge (or before the council in an uncontested facts hearing) may be added to the notice(s) by stipulation if the licensee admits to the facts, and shall in that case be treated as though part of the "1st Appearance." In all other cases, violations occurring after the date of the formal notice of hearing shall be the subject of a separate proceeding and dealt with as a "2nd Appearance" before the council. The same procedures shall apply to a second, third or fourth appearance before the council

The Department receives information on potential violations from the compliance checks it conducts, citizen complaints and reports from Saint Paul Police. Some reports are under investigation and the department may not learn of an incident until after an investigation is complete. The Department tracks information it receives in the license history (Direct and Rebuttal Hudak).

The record shows that the Department initiated the second adverse action as soon as the first action was complete. The license history and exhibits introduced by the Department show that two Notices of Violations for different violations were sent to the Licensee within a 12-month period.

The first Notice of Violation was created in response to a notice of seizure by the Department of Revenue:

- It was sent to the Licensee on March 12, 2019 (Ex. 17).
- Licensee requested an Administrative Hearing on March 15, 2019 (Ex. 18).
- A telephone pre-hearing conference (attended by the Licensee) was held on June 14, 2019 (Ex. 19-3).
- The Administrative Hearing for that matter was set for July 16, 2019 and the Licensee was sent notice of the date by the Office of Administrative Hearings (Ex. 19-3).



- The Licensee failed to appear for the Administrative Hearing on July 16, 2019 (Ex. 19-3).
- The first adverse action was final after the Council's action on July 23, 2019 (Ex. 2).

The second Notice of Violation, sent July 26, 2019 (Ex. 1-1 – 1-7) and was sent out as soon as the first Adverse Action concluded:

- It generally covered incidents which occurred during the short time frame of April 2019 through June 2019 (Ex. 1).
- Records show that the Department and City Attorney began work on the second request for adverse action in mid-June (Ex. 20).
- Records show that a request for Adverse Action for failure to provide video and failure to pay fines was initially sent to the CAO (City Attorney's Office) on June 12, 2019 (Ex. 20).
- Records show that the June 12, 2019 request was revised and was sent to the City Attorney's Office on June 25, 2019 after "multiple cigarette/tobacco youth and flavor violations. Condition violation of conditions 1, 3 &5." (Ex. 20).

Additionally, the Department did attempt to meet with the Licensee:

- A meeting between Licensee, the Department and SPPD was set for June 19, 2019 (Ex. 26).
- The Licensee failed to show up at that meeting (Ex. 26).

The City complied with its procedures for notice. The procedural timeline demonstrates that Licensee's non-responsiveness and acquiescence to the issues occurring at the Licensed Premises are the cause of the multiple violations included in the second Notice. There was no prejudice to Licensee.

**2. Substantial and compelling reasons exist to support the Department's request for upward departure to revocation.**

The City's code allows for upward deviation to an appropriate penalty to address the criminal activity and livability issues arising from the Licensed Premises. Revocation is the appropriate penalty.



There was no evidence presented during the Administrative Hearing which showed that Licensee's business is in any way a neighborhood asset. In fact, community testimony and evidence highlighted the negative impact that the Licensed Premises had on the community.

When looked at in its entirety the evidence showed:

- That the Licensed Premises was poorly maintained and managed.
- That there were multiple violations of License Conditions and City Ordinances at the Licensed Premises.
- That Licensee was not at the Licensed Premises often (direct Kahl Aloul, Carlos Mauricco, Ala Asia).
- That the Licensed Premises was a safety hazard that endangered and annoyed the community.
- That Licensee purposefully disregarded laws and city ordinances and blamed others when confronted about problems at the Licensed Premises.
- That Licensee's negligent management practices and inability to control behavior on his property harmed patrons and the community.
- That because Licensee failed to properly manage the Licensed Premises Saint Paul Police were routinely at the Licensed Premises conducting proactive police visits and using resources to address criminal activity at the location.

Licensee failed to take responsibility for his role in addressing the issues at the Licensed Premises. Licensee failed to recognize that his business practices created the large, late evening dance parties, fights, drug dealing, alcohol consumption and firearms on the premises. He failed to investigate why he lost his private security company and why he was denied Saint Paul Police Off Duty Officers. Even the mitigating factors identified by Licensee provide additional support for City's request for upward departure to revocation. Licensee introduced a number of cards showing requests for video. During his testimony he appeared to believe that providing video to Saint Paul Police was a good thing but failed to recognize that video was being requested because of incidents that had happened on the Licensed Premises. When questioned about the actual reason behind the request for video his employee did not appear to have looked into what might have happened to cause the request (Cross Ala Asia).



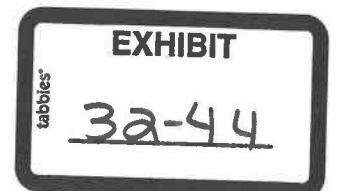
The Licensee is the sole entity responsible for ensuring compliance with his license conditions, city ordinances and other laws. The activity that Licensee tolerated, his failure to take responsibility, his failure to implement corrective measures for all issues and the management and business practices he employed are a direct cause of the incidents that support both this adverse action and the request for upward departure. The sanction sought by the City is reasonable given the length of time the activity has been going on, the impact on the community and the inability of the Licensee to manage his property. Based on the above facts and law, the Department respectfully renews its request for findings consistent with the violations of Saint Paul Legislative Code articulated in its NOV and a recommendation for upward departure to revocation.

Dated: 1/10/20

Respectfully submitted,



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STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

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

**LICENSEE'S REPLY TO CITY'S  
CLOSING ARGUMENT**

License ID #: 20100000243

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Licensee,<sup>1</sup> by and through its attorney, James C. MacGillis, hereby submits this reply to the City's closing argument.

**1. Licensing Manager Hudak's testimony was not "credible and unrefuted" as to the alleged violation of licensing condition #1.**

In support of its argument that Licensee violated license condition #1 (*see* Ex. 4), the City cites Mr. Hudak's testimony that on May 1, 2018, the Department made a formal request for video footage of the station from April 27, 2019. City's Closing Argument ("**CCA**"), § II, pp. 3-4. The City states Mr. Hudak's testimony with respect to this violation was "credible and unrefuted." *Id.* at 4.

Mr. Hudak's testimony was refuted by the City's own exhibit showing that its May 1, 2019, request letter sent to Licensee was misaddressed to 1337 University Ave. W. instead of the correct address, 1347 University Ave. W. *See* ex. 8.

No other City witness testified as to the delivery of this request letter to the Licensee, and the City has not proven the erroneously-addressed letter was ever delivered to or received by Licensee. Licensee denied receipt of the notice letter.

**2. Nagdi Ahmed's testimony, after initial confusion on cross-examination, was that the video requested by the City on June 18, 2019 was unavailable when Mr. Hudak returned the following day.**

The City alleges Licensee's clerk, Nagdi Ahmed, was "shown to be an unreliable witness" and changed his testimony within his cross examination. CCA, § III, p. 5. It was the City's own cross-examination that confused Mr. Ahmed, however, and when given an opportunity to clarify what had occurred on June 18 and 19, Mr. Ahmed did so in a clear fashion. Audio Transcript of Hearing Testimony, 2<sup>nd</sup> audio file, at 4:27:30 to 4:28:07.

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<sup>1</sup> All capitalized terms not otherwise defined have the same meaning as in Licensee's Post Hearing Brief.



Mr. Ahmed, an Arabic speaker whose testimony was presented through an interpreter, ultimately provided testimony that was consistent with the testimony of Licensee's store manager, Alaa Asia, on the issue of the availability of the video requested by the City on June 18, 2019. The challenges of testimony presented through an interpreter should not be the basis for labeling Mr. Ahmed as "unreliable" given that his original testimony and clarifying testimony was set forth during the City's cross-examination, and was not a product of witness rehabilitation by Licensee's counsel.

**3. Sgt. Aguirre's testimony is not credible and does not support a conclusion that single cigarettes were sold from Licensee's premises.**

Sgt. Aguirre's testimony in regards to his video interview with Carlos Mauricio does not "provide clear and direct evidence of the sale of single cigarettes within the Licensed Premises" as alleged by the City. CCA, § V, p. 8. To the contrary, notwithstanding Sgt. Aguirre's efforts to have Mr. Mauricio affirm the officer's leading questions, Mr. Mauricio clearly stated that the packages of cigarettes on the counter in the clerk's area of the station belonged to him. See Ex. 12, Body Worn Camera footage of Sgt. Aguirre, at 7:30 (Sgt. Aguirre asks Mr. Mauricio about the open packages of cigars and cigarettes on the counter in the enclosed cashier's box and Mr. Mauricio tells Sgt. Aguirre, "My cigarettes.>").

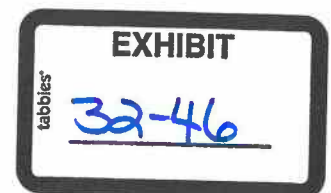
At approximately 17:10 of the video, Sgt. Aguirre again references the sale of single cigarettes, and Mr. Mauricio states he sells cigarettes by the pack. Ex. 12 at 17:10. Sgt. Aguirre had neither direct nor circumstantial evidence as to the sale of single cigarettes and the City's statement that his testimony provided "clear and direct evidence" is not supported by the video footage or Sgt. Aguirre's related testimony.

Further, Sgt. Aguirre's credibility and recollections are suspect in that he testified he had no communications with Mr. Mauricio other than the early morning of June 22, 2019, when he visited the station and recorded the visit by video. Mr. Mauricio, on the other hand, testified that subsequent to that first meeting with Sgt. Aguirre he was asked to go to the local St. Paul Police station near the gas station. There, he again met with Sgt. Aguirre who sought information from him on Mr. Aloul and his operation of the store. Mr. Mauricio testified that he also received text messages from Sgt. Aguirre, which further contradicts Sgt. Aguirre's testimony that he had had no other communication with Mr. Mauricio.

Simply put, the City's characterization of Sgt. Aguirre's testimony as "clear and direct" is false.

**4. Mr. Hudak's testimony that there were "only of couple of 911 calls from the Licensed Premises" (CCA, § VIII, p. 13) was unsupported.**

The City's witness involved in monitoring the station during the summer of 2019, Sgt. Vang-Sitcler, testified that there was no way to determine the origin of 911 calls from reviewing the police department's address/intersection report introduced into evidence (Ex. 23). Mr. Hudak



had no extraordinary information that provided a basis for his testimony on the number of 911 calls from the station.

**5. The City's argument that Licensee's business practices, "cost one individual his life" (CCA, § VIII, p. 14) is inflammatory and not supported by the evidence.**

The City makes an inflammatory and outrageous claim that the business practices at Licensee's station "cost one individual his life," citing generically to testimony of a number of City witnesses. CCA, § VIII, p. 14. This inflammatory statement is unsupported, and evidences the City's scorched earth effort to revoke Licensee's licenses despite Licensee's efforts to work with the City by, among other things, trying to hire off-duty St Paul police officers to provide security at the station.

**6. The City mischaracterizes Mr. Aloul's position on problems at the station (CCA, § IX, p. 15).**

The City argues that Licensee's owner, Mr. Aloul, has "minimized and denied his role in the ongoing violations and issues" at the station premises. CCA, § IX, p. 15. Yet, not a single witness testified that Licensee's owner or employees were involved in unlawful activity, much less the homicide for which the City alleges Licensee bears responsibility.

Licensee, through its owner Mr. Aloul, appropriately pointed out during the KARE11 interview that the problems caused by drug dealers will not simply disappear if the City closes his business. Ex. 27. As Mr. Aloul noted:

Closing the business is not the solution. Drug dealers going to come here, you close the business, then they are going to move to a different [place]. They're not going disappear from town. Then you're going to go and close the other business?

*Id.*

Further, Mr. Aloul forthrightly acknowledged in his testimony that he understood how the atmosphere of the station had negatively impacted both the station's neighbors and the wider community at times during the summer of 2019.

**7. The City's lengthy list of complaints generated at and near the station after July 26, 2019, ought to be disregarded.**

The City cites to a number of St. Paul Police Department complaint reports to argue that Licensee is still not managing its premises in a manner that complies with City code. CCA, § IX, pp. 16-18. None of these events form the basis for any of the violations contained within the Notice, and they should be disregarded entirely in considering the merits of the Noticed violations and the appropriate penalty to be applied to Licensee.



**Conclusion**

The City has failed to carry its burden as to a number of the Contested Violations. An upward departure from the 2<sup>nd</sup> level penalty to the 3<sup>rd</sup> level penalty (\$2,000 fine and 10-day license suspension) appropriately balances the City's regulatory goals while providing Licensee with an opportunity to rebuild the business premises and institute material changes to its operations, infrastructure and brand.

Dated: January 10, 2020.

**TREPANIER MACGILLIS BATTINA P.A.**

*/s/ James C. MacGillis*

By: \_\_\_\_\_

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