

December 6, 2022

VIA EFILING ONLY

Shari Moore
City Clerk
City of St. Paul
310 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102
cityclerk@ci.stpaul.mn.us

Re: *In the Matter of the Cigarette/Tobacco License held by Zakariya Abukhudeer d/b/a The One Stop Market, LLC, for the premises located at 1541 Maryland Avenue in Saint Paul License ID # 20190001624 OAH 80-6020-37157*

Dear City Clerk Moore:

Enclosed and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** in the above-entitled matter. A compiled record to date, along with the hearing audio, was submitted to your office on October 8, 2021. Documents filed after that date are enclosed with the Judge's Findings of Fact, Conclusions of Law, and Recommendation, including the audio from the July 25, 26, and 27, hearing. The Office of Administrative Hearings' file in this matter is now closed.

If you have any questions, please contact me at (651) 361-7943, dara.xiong@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,


DARA XIONG
Legal Assistant

Enclosure

cc: Docket Coordinator
Therese Skarda
Mark K. Thompson

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

In the Matter of Cigarette/Tobacco License held by Zakariya Abukhudeer d/b/a The One Stop Market LLC for the premises located at 1541 Maryland Avenue in Saint Paul

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

License ID # 20190001624

This matter came before Administrative Law Judge LauraSue Schlatter for a hearing on July 25, 26, and 27, 2022.¹ The record closed on September 16, 2022, when the Licensee filed his responsive closing statement.²

Stephen Earnest, and Therese A. Skarda, Assistant St. Paul Attorneys, appeared on behalf of the City of St. Paul (City). Mark K. Thompson, MKT Law PLC, appeared on behalf of Zakariya Abukhudeer d/b/a The One Stop Market LLC (Licensee).

STATEMENT OF THE ISSUES

Did the City demonstrate by a preponderance of the evidence that Licensee:

- 1) Failed to properly maintain its surveillance equipment,
- 2) Failed to provide a copy of its video surveillance footage, and
- 3) Permitted dangerous behavior and loitering on or near its licensed premises,

all in violation of the conditions attached to the licensed premises; and, if so, whether these violations constitute substantial and compelling reasons for an upward departure from the penalties applicable at Saint Paul Legislative Code § 310.05, to revocation.

¹ See letter from Chief Judge Jenny Starr to Stephen Earnest, Assistant City Attorney and Mark K. Thompson, MKT Law, PLC (Feb. 3, 2022) notifying the parties of reassignment of case to Administrative Law Judge LauraSue Schlatter.

² Written closing arguments were originally due August 12, 2022. On that date, after Licensee had submitted his closing argument, the City requested a continuance. Following a telephone conference on August 17, 2022, the City was granted until September 6, 2022, and the Licensee provided an opportunity to file a responsive argument on September 16, 2022. See Order for Post-Hearing Briefing Continuance (Aug. 24, 2022) and City's Closing Memorandum, Affidavit of Therese Skarda and attachments (Sep. 6, 2022).

SUMMARY OF RECOMMENDATION

The Administrative Law Judge respectfully recommends that the City impose a penalty of \$1,000, double the presumptive penalty under the penalty matrix.

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

FINDINGS OF FACT

I. Procedural Background

1. Licensee Zakariya Abukhudeer (Zak)³ is the owner and operator of The One Stop Market, LLC (OSM or Licensee), a convenience store located at 1541 Maryland Avenue East in Saint Paul. He purchased the OSM in June or July 2019, after working in similar businesses owned and run by members of his family.⁴

2. The City granted Licensee a Cigarette/Tobacco license for OSM subject to the following conditions:

- a. License holder will make sure that all refuse and trash that is on the premises and surrounding sidewalks is picked up on a daily basis.
- b. The licensee shall take reasonable steps to discourage loitering in front of or on the property of the licensed business.
- c. The license holder shall maintain video surveillance cameras inside and outside the establishment in accordance with Saint Paul Police Department (SPPD) recommendations. The video recording shall be kept by the license holder for at least thirty (30) days and shall be available for viewing by the SPPD immediately upon request. In addition, if the SPPD responds to a call at the licensed premises, and due to the crime, requests that a copy of the surveillance footage be immediately provided, the license holder shall have technology available to make the copy at the time of the request and shall have it for the police without delay. In other cases, if the SPPD or the Department of Safety and Inspections (DSI) requests copies of the surveillance tapes, licensee shall have a 48-hour period in which to provide such copies.
- d. Signage placed on the inside and/or outside of the window shall not take up more than 30 percent of the window space and shall not be placed in the area between four (4) and seven (7) feet above the

³ Because several of the witnesses are related and share the last name Abudkhudeer, they will be referred to by their first names in this report.

⁴ Testimony (Test.) of Zakariya Abudkhudeer. There is a second Zakariya Abudkhudeer who works at the OSM – he will be referred to as Zakariya.

adjacent ground level. Shelving and/or displays shall not be place [sic] in front of the window.⁵

3. On September 10, 2020, the City issued a Notice of Violation to Licensee alleging violations of license conditions and city ordinances related to the operation of Licensee's business.⁶ The City cited Licensee with violating license conditions 2 and 3 by failing to take reasonable steps to discourage loitering and by failing to provide a copy of surveillance footage as requested.⁷

4. The City also cited Licensee with violating city ordinances by selling single cigarettes and flavored tobacco products, and by operating the business in a manner that creates a serious danger to public health or safety, or permits conditions that unreasonably annoy the comfort or repose of the public.⁸ The City initially requested an upward departure from the penalty matrix to a \$2,000 fine and a 10-day suspension of all licenses with imposition of additional conditions.⁹

5. On April 8, 2021, the City filed an Amended Notice of Violation and Request for Upward Departure to Revocation (Amended Notice).¹⁰ The City stated that further review of surveillance footage resulted in the identification of additional incidents of sales of single or flavored cigarettes, as well as incidents of patrons and employees smoking within the licensed premises.¹¹ Based on the newly identified licensing violations, the City revised its penalty recommendation to request revocation of Licensee's license.¹²

6. On April 26, 2021, the City filed a Motion for Summary Disposition. Licensee filed his Response on May 26, 2021, and oral argument was heard on May 28, 2021. Licensee was given additional time to supplement his response opposing the City's requested deviation from the presumptive licensing violation penalty.¹³

7. On September 7, 2021, Administrative Law Judge James LaFave issued a thoughtful, well-reasoned, Recommendation and Order in which he recommended that the St. Paul City Council grant the City's motion for summary disposition with respect to Licensee's alleged violations of Saint Paul Legislative Code § 324.07(a) and (f) relating to Licensee's sales of single cigarettes and flavored tobacco products on June 1, 2020, and July 20, 2020; and with respect to alleged violation of Saint Paul Legislative Code § 310.06(b)(6)(a) relating to Licensee allowing patrons to smoke within the licensed premises in violation of the Minnesota Clean Indoor Air Act.¹⁴ The Order denied the City's motion for summary disposition with respect to Licensee's alleged violation of licensing

⁵ Exhibit (Ex.) 1-14.

⁶ Ex. 1-1.

⁷ *Id.*

⁸ Notice of Prehearing Telephone Conference (Oct. 21, 2020).

⁹ *Id.* See St. Paul Legis. Code § 310.05(m) (penalty matrix).

¹⁰ Amended Notice (Apr. 8, 2021). The Amended Notice was filed with the Office of Administrative Hearings on April 8, 2021, but is dated March 2, 2021.

¹¹ *Id.*

¹² *Id.*

¹³ Ex. 3-10 – 3-11.

¹⁴ Recommendation and Order on Motion for Summary Disposition at 2 (Sept. 7, 2021).

condition 3 and Saint Paul Legislative Code § 310.06(b)(5) relating to the failure to provide a copy of surveillance video as requested by the City; and with respect to the alleged violations of Saint Paul Legislative Code § 310.06(b)(5)-(8) and licensing condition 2 relating to Licensee's conduct on March 30, 2020, June 1, 2020, and July 20, 2020.

8. Thereafter, the City requested that its Motion for Summary Disposition be certified, pursuant to Minn. R. 1400.7600 (2021), to the Saint Paul City Council (City Council). The Licensee did not object to the request for certification, and on October 8, 2021, Judge LaFave issued an Order certifying the City's Motion for Summary Disposition to the City Council and staying all further proceedings at the Office of Administrative Hearings pending further decision by the City Council.¹⁵

9. On December 28, 2021, the City Council and Mayor Melvin Carter issued Resolution 21-1813

Remanding the matter of the cigarette/tobacco license held by Zakariya Abukhudeer, d/b/a The One Stop Market LLC . . . back to the Administrative Law Judge so that an evidentiary hearing may be held on the allegations on which the Administrative Law Judge denied summary disposition.¹⁶

10. The Resolution further stated:

[A]t a public hearing on November 17, 2021, the Department recommended that the City Council adopt Judge LaFave's order and recommendation, impose a \$1,000.00 fine against the License, and dismiss the remaining allegations; . . .

[At] the same hearing, after considering all the evidence contained in the record and the oral arguments presented before it, the City Council rejected the Department's recommendation and requested that the Department try the remaining allegations at an evidentiary hearing. . . ."

11. Based on the City Council's Resolution, the Administrative Law Judge identified the issues to be addressed at the evidentiary hearing as:¹⁷

- a. Whether One Stop Market violated licensing condition 3 and the Saint Paul Legislative Code § 310.06(b)(5) relating to the alleged failure to maintain video surveillance equipment and to provide a copy of surveillance video as requested by the City; and
- b. Whether One Stop Market violated licensing condition 2 and the Saint Paul Legislative Code § 310.06(b)(5)-(8) relating to One Stop Market's conduct on March 30, 2020, June 1, 2020, and July 20,

¹⁵ Order on Certification (Oct. 8, 2021).

¹⁶ City of St. Paul Resolution, RES 21-1813 at 1 (Dec. 22, 2021).

¹⁷ Order for Continuance (May 31, 2022).

2020, in allegedly permitting dangerous behavior and loitering on or near the licensed premises.

12. In a Motion in Limine filed on July 24, 2022, the Licensee moved to prohibit the City, its counsel and witnesses “from directly or indirectly introducing or presenting any evidence, testimony, questions, arguments, and from referring or alluding to the charges already decided by this Court, [including;]”

- 1) violations of Saint Paul Legislative Code § 324.07(a) and (f) relating to Licensee’s sales of single cigarettes and flavored tobacco products on June 1, 2020, and July 20, 2020; and
- 2) violation of Saint Paul Legislative Code § 310.06(b)(6)(a) relating to Licensee allowing patrons to smoke within the licensed premises in violation of the Minnesota Clean Indoor Air Act.¹⁸

13. Following a prehearing argument on Licensee’s motion, the Administrative Law Judge granted Licensee’s motion, with the limitation that the City could refer to the established cigarette and tobacco violations in argument regarding penalties.¹⁹

II. One Stop Market

14. OSM is located in a challenging area, surrounded by low-income housing. It is an area where, historically, there are problems with gangs, drugs, and gun violence, some of which became worse with the March 2020, COVID-19 lockdown.²⁰ Many area stores closed during the early days of the COVID-19 lockdown, but OSM remained open.²¹

15. Trouble around the store got really bad starting in about 2018 or 2019. At first, OSM hired off-duty police officers to help with security a few hours a day. They had trouble affording it once they were unable to sell menthol cigarettes.²² In addition, OSM primarily relied on the off-duty officers to help trespass people who were causing trouble or loitering. It was a frustrating process, because people would get trespassed, but then would come right back. They were not jailed.²³

16. Before it was known became the One Stop Market convenience store, the building housed a grocery store called Sam’s Dairy. It was run for a time by others in the Abukhudeer family. Some people still call the store Sam’s Dairy.²⁴

17. Because of its challenging location, and the dearth of options for shopping, the OSM is needed in the neighborhood. Police involved in fighting drugs and gang

¹⁸ Licensee’s Motion in Limine (July 24, 2022).

¹⁹ Hearing Digital Recording (on file with the Minn. Office Admin. Hearings).

²⁰ Test. of Sgt. Stanway, Sgt. Dunaski, Maan A., Faris A., Mohamed A., Zak A.

²¹ Test. of Faris A.

²² Test. of Zak A.

²³ Test. of Maan A.

²⁴ Test. of Zak A., Maan A.

violence in the area have found Zak and others working at the OSM to be helpful, and “part of the solution.”²⁵ OSM provides the police with the videos they need when there is a problem.²⁶

18. Police officers differed significantly in their understandings of how long a person or vehicle can remain on store property before they are “loitering” there. Loitering is not defined. Sergeant (Sgt.) Robert Stanway, the liaison officer between the St. Paul Police Department (SPPD) and the Office of Safety and Inspections (OSI) believes that a person who remains on the property of a business for about five minutes without doing business there is loitering.²⁷

19. Sgt. Mike Dunaski, an SPPD officer whose district includes the area where OSM is located, and who regularly deals with illegal drug dealing, gang and other violence, homicides, robberies, etc., defines loitering differently. Sgt. Dunaski generally does not have concerns about loitering in the context of a business premises like OSM for about 15 minutes or so, even if the person or persons are not doing business there.

20. Sgt. Dunaski stated that, whether someone is loitering depends on why they are there – a person may be waiting for someone, to give them a ride, get a ride, or to go to the store. A person might be going to the laundromat. They might be looking for someone just to talk to, or for help finding work. They might be waiting for a bus. There are public sidewalks and a transit stop right there, too. Sgt. Dunaski looks at what people are doing – are there transactions? Are people handing things in and out of the car, changing money for things? Is the behavior consistent with drug transactions, or gang activity? Sgt. Dunaski sees a corner store as a place to hang out. He was not aware of OSM failing to prevent loitering.

21. Maan Abukhudeer and Zak are cousins. Maan opened a cell phone store in the corner of Sam’s Dairy in 2014. He kept the business in the store after Zak bought the store.²⁸ Maan has had a conceal and carry permit throughout the time he has had his store at the Maryland Avenue location, but never had to pull his gun out. In 2020, with the advent of COVID-19 and the murder of George Floyd, things became much more violent everywhere in Minnesota, including the area around the OSM.²⁹

22. The Abukhudeers intend to stay in the neighborhood to stay and want to protect the store, the neighborhood, and the people in it.³⁰

²⁵ Test. of Sgt. Mike Dunaski. Ex. 101.

²⁶ Test. of Dunaski.

²⁷ Test. of Sgt. Robert Stanway.

²⁸ Test. of Maan A.

²⁹ *Id.*

³⁰ Test. of Maan A.

III. Video Equipment and Provision of Video

23. James Legierski is a data release technician for the SPPD. His duties include collecting and releasing video for the SPPD for all types of incidents, from residential package theft to homicide.³¹

24. On April 24, 2022, SPPD officer Tina Kill asked Legierski to go to the OSM to collect video for an incident that had occurred there the previous day. Legierski acknowledged he was not very good at estimating, but guessed that the DVR (digital video recorder) “was approximately 16 feet up in the ceiling.”³² Legierski had been to OSM ten or fifteen times before, but the DVR had been behind the store counter in the past.³³ A store employee provided Legierski with a ladder that was about five feet tall, which was not tall enough to enable Legierski to put his flash drive into the DVR’s USB slot without pulling the DVR down from the rafter it was sitting on.³⁴ Legierski pulled on one of the cables to get the DVR down so he could reach it. He thought the cables attached to the DVR were primarily coaxial cables.³⁵

25. Legierski retrieved the video he needed but was unable to reach high enough to replace the DVR on its shelf. He tried repeatedly to push it back onto the shelf, but each time he would try, the DVR would fall back down. He asked an employee for help replacing the DVR on the shelf. The employee told him not to worry about it, that the employee would take care of it. After checking to make sure that all twelve cameras connected to the DVR were still recording live, Legierski left the premises. Legierski did not check the hard drives after he retrieved the data he needed.³⁶ When he left OSM, the DVR remained hanging from the ceiling by a number of cables.³⁷

26. The DVR was on a high shelf in the back room of the OSM on April 24, 2020, and is still stored on that shelf. The ceiling in the OSM building does not exceed twelve feet, but the floor of the back room is raised about a foot or a foot and a half, so the DVR is not more than 10 or 10-1/2 feet from the floor. A stepladder was kept handy for SPPD or Department personnel to access the DVR on request. Since the April 2020, incident with Legierski, Licensee has run a connecting cable and access drive to counter height, to allow a person to download video without having to access the DVR itself.³⁸

27. None of Licensee’s security systems are connected using coaxial cables. They are all connected using ethernet cables.³⁹ Ethernet cables connect using a lightweight plastic connector that snaps into place, like an old-fashioned telephone line connector. Only a few of the 12 cameras in the security system are connected directly to the DVR. The remainder of the cameras are connected to the server via switch box using

³¹ Testimony (Test.) of James Legierski.

³² *Id.* Exhibit (Ex.) 1-17.

³³ Test. of J. Legierski.

³⁴ *Id.* Ex.1-17.

³⁵ Test. of J. Legierski.

³⁶ Test. of J. Legierski.

³⁷ *Id.* Ex. 104.

³⁸ Test. of Zak A.

³⁹ *Id.*

a “splitter system,” which are in turn connected to the DVR. This configuration permits the cameras to be connected to the internet so they can be viewed online.⁴⁰

28. Zak was ill with COVID-19 on April 24, 2020, so he was not present when Legierski came to collect the video. Zak waited until after store hours when no one would be there so he could check the DVR system without fear of infecting others. When he arrived at the store, he found the DVR system had fallen to the floor. The ethernet cables had broken off.⁴¹

29. Zak tested the system immediately and got a message that the hard drive had failed. He was able to purchase a replacement hard drive from the One Stop Wireless store located within OSM and complete the repair that night. The repaired system was up and running the next day.⁴²

30. In a letter dated April 27, 2020, the City requested “a copy of all interior video cameras surveillance for . . . March 30, 2020 from 1630 (4:30 PM) to 1730 (5:30 PM) [.]”⁴³ The letter requested that the recording be provided to the Department of Safety and Inspections “no later than 4:30 PM on May 4, 2020.”⁴⁴ According to the carbon copy indication on the face of the letter, it was sent to Zak at his home address.⁴⁵

31. Zak received the letter on May 1, 2020.⁴⁶

32. At 12:48 p.m. on May 4, 2020, Zak sent an email to the DSI, stating, in relevant part:

[U]nfortunately, these tapes are not available on my system hard drive. I do not have any surveillance prior to April 24th when a SPPD officer was at the business retrieving surveillance for a different incident. Due to the mistreatment of my surveillance equipment, my DVR system fell to the floor causing both of my hard drives to fail. From my knowledge, SPPD already has a copy of the incident on March 30th which may be of help to you.⁴⁷

33. Licensee has been requested to provide video to the SPPD or DSI over 50 times since opening OSM. The only time Licensee was unable to produce footage was in response to the Department’s April 27, 2020, request for footage from March 30, 2020.

34. Sgt. Robert Stanway was assigned to the Department as a police liaison between the SPPD and DSI. As a police liaison, he would assist or supplement the work of the city inspectors. He often accompanied inspectors to help them ensure that facilities were compliant with licensing requirements, but he never personally accompanied the

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Ex. 1-15.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Test. of Zak A.

⁴⁷ *Id.* Ex. 1-16.

Department to OSM. Early in his career, when the store was known as Sam's Dairy, he visited the premises.⁴⁸

35. Sgt. Stanway became involved with the March 30, 2020, incident at OSM after being told that there was an aggravated assault there. He reviewed the file and later the video regarding the assault to determine whether there were any violations of the license conditions in connection with the aggravated assault. The video copies he reviewed were ones he received from the SPPD that were collected at the time of the incident. Following his review of the videos, Sgt. Stanway wrote a Supplemental Report dated April 15, 2020, regarding the March 30, 2020, incident.⁴⁹

36. Sgt. Stanway's Supplemental Report, based on the video he received from the SPPD, was dated more than ten days before the DSI requested the video from Licensee.⁵⁰

37. The April 27, 2020 DSI request was for "all interior tapes" from the OSM for March 30, 2020, from 4:30 p.m. to 5:30 p.m. Because the tapes provided to the SPPD only provided one camera angle (camera 7) which included the interior of the store, OSM's inability to provide the requested tapes meant that DSI was unable to access all the video footage it had requested.⁵¹

38. According to DSI, damage to equipment could only be excused by an "act of God, or natural disaster."⁵² Therefore, the City deemed OSM's failure to provide the requested video to be a violation of license condition 3.⁵³

IV. Permitting Dangerous Behavior and Loitering In Front Of or On the Property of the Licensed Business.

A. March 30, 2020, Incident

39. Mohamed A. was working at the OSM on March 30, 2020.⁵⁴ At 4:46 p.m. on that date, Mohamed was standing outside the store, near the door.⁵⁵ A person called "Fresh" was working security for the store that day. Fresh was sitting outside, just west of the front door.⁵⁶ A cousin, Faris A., was working inside the store.⁵⁷ Maan was also working inside.⁵⁸

⁴⁸ Test. of Robert A. Stanway.

⁴⁹ *Id.* Ex. 114. The report was supplemental to a report Sgt. Stanway likely wrote on the day of the incident or possibly the day after, before he viewed the videos. Test. of R. Stanway.

⁵⁰ Ex. 114. See Ex. 1-15.

⁵¹ Test. of E. Hudak. Ex. 1-13.

⁵² Test. of E. Hudak.

⁵³ *Id.*

⁵⁴ Test. of Mohamed A.

⁵⁵ *Id.* Ex. 1-13, 16:46:13.

⁵⁶ Test. of Mohamed A.

⁵⁷ Test. of Faris A.

⁵⁸ Test. of Maan A.

40. DSI determined that Fresh, Maan, and the couple of people they were interacting with in front of the store, were loitering during the first four or so minutes of the video.⁵⁹

41. There are a couple of milk crates just to the west of the door where security or OSM staff may sit. No one else is permitted to sit in front of the store.⁶⁰ Store policy is, if you are not buying anything, you may not “hang out” in front of the store. “Hanging out” is if a person walks back and forth, or just stands in front of the door.⁶¹

42. The business in the eastern part of the building adjoining OSM is a laundromat. Sometimes people who appear to be loitering say that they are just waiting for their laundry to be done.⁶²

43. On March 30, 2022, a black Dodge Durango was parked to the west side of the front door. Two people exited the Durango, and walked into the store, returning to the vehicle a moment later with two others.⁶³ DSI determined that conduct was abnormal, and that OSM employees should have told the Durango occupants to leave the premises.⁶⁴

44. People from the Durango then made purchases in the store.⁶⁵ Other people came and went, to and from the store. Several were regulars to the store. Mohamed greeted people as they came and went, “mingling with the customers.”⁶⁶

45. Mohamed's younger brother, also named Zakariya, stepped outside the store briefly, to get something from Mohamed's truck.⁶⁷

46. At approximately 4:51 p.m., a black SUV pulled into the parking lot from the west side, drove across the lot, and left to the east.⁶⁸ At about 4:53 p.m., a couple of additional cars entered the parking lot from the west. The same black SUV that had driven through two minutes before came through again, this time from east to west, stopping at the west driveway to the parking lot to sit parallel to a dark colored SUV/van that was just pulling in.⁶⁹

47. Fresh rose from the spot where he had been sitting in front of the store, gesturing at, and apparently speaking to, the occupants of the side-by-side vehicles.⁷⁰

⁵⁹ Test. of Eric Hudak. Ex. 1-13, 16:46:13 -16:50.

⁶⁰ Test. of Faris A.

⁶¹ Test. of Faris A.

⁶² *Id.*

⁶³ Ex. 1-13, 16:50:50.

⁶⁴ *Id.* Test. of E. Hudak.

⁶⁵ Test. of Faris A. Ex. 1-13, 16:50:50.

⁶⁶ *Id.* Ex. 1-13, 16:46-16:51.

⁶⁷ Test. of Faris A.

⁶⁸ Ex.1-13, 16:50.

⁶⁹ Ex. 1-13, 16:53.

⁷⁰ Ex.113, 16:54.

Mohamed, meanwhile, had gone back into the store as additional customers went inside.⁷¹

48. In a matter of 60 seconds, the parking lot transformed from quiet to what appeared to be a confrontation among at least six people standing among the four SUVs and vans.⁷² During that time, Fresh, Mohamed, and Zakariya,⁷³ along with four or five other individuals assembled on the sidewalk in front of the OSM.⁷⁴ Mohamed and other OSM employees moved toward the western perimeter of the parking lot, and Mohamed approached each of the vehicles, including the Durango, telling the parties involved to leave. Within a minute and a half, everyone was back in their vehicles and all, but the Durango were moving.⁷⁵ Just as the other vehicles were moving, a person from the Durango in the bright orange jacket got into the back seat of the white car parked next to the Durango. In the pause before the SUV returned, that person got out of the white car next to the Durango, from rear driver's side door. The person in the orange jacket then went into the store.⁷⁶

49. A minute and a half after leaving, the dark colored SUV/van returned, along with a different white car. A man wearing pants, but no shirt came around the northwest corner of the building, walked into the store, then out again towards the east, and was followed out by the person in the bright orange jacket.⁷⁷ A number of people got out of the Durango. All of the people from the vehicles and several who came from around the northwest corner of the building and inside the store streamed toward the eastern part of the parking lot, or beyond, out of camera range.⁷⁸ The person in the bright orange coat and the shirtless-man appeared intent on fighting one another.⁷⁹

50. Fresh, Mohamed, Zakariya, and two other individuals stood in front of the store, watching. Mohamed initially thought that the group was leaving the store's property.⁸⁰ When the fighting escalated on the property, Mohamed handed his gun to Zakariya, so that Mohamed could approach the melee without concern that someone would take the gun from him.⁸¹

51. As Mohamed moved toward the conflict, a woman in a yellow shirt went to the dark SUV parked facing east in the middle of the lot and grabbed a crutch from the driver's side. She ran with it to the passenger side of the Durango and began hitting the rear passenger side of the Durango with the crutch. Mohamed moved to the woman who was swinging the crutch at people by then. His goal was to take the crutch so she could

⁷¹ Test. of Mohamed A.

⁷² Ex. 1-13, 16:54:09-16:55:09.

⁷³ Zakariya is referred to as Zakariya to distinguish him from Zak, the owner of OSM.

⁷⁴ *Id.*

⁷⁵ *Id.* at 16:56:39.

⁷⁶ *Id.* at 16:56:28-16:57:39.

⁷⁷ *Id.* at 16:58:01-16:58:24.

⁷⁸ *Id.* at 16:58:03.

⁷⁹ Ex. 1-13 16:58:34-16:58:44 (Camera 14).

⁸⁰ Ex. 1-13, 16:58.

⁸¹ Test. of Mohamed A. Ex. 1-13,16:58:53.

not hurt anyone with it.⁸² The man who apparently needed the crutches took the second crutch from the van. The woman who had taken the first crutch was fighting on the ground with another woman, and someone else grabbed the crutch she had. Mohamed took it, set it against the dark SUV, and moved toward the fighting women. He called to the OSM employees in front of the store, telling them again to call the police. The man holding the crutch swung it, hitting Mohamed with his crutch. About two seconds later, the crowd ducked simultaneously, then everyone scattered. Mohamed headed into the store.⁸³

52. While the fight involving the crutches was reaching its climax, three men who had been standing apart, to the east of Mohamed's Chevy Silverado, moved to the front of the Silverado. One of the men, wearing white shoes, a grey hoodie, and a cap, handed a gun to the man wearing athletic pants, but no shirt. A third watched what was happening and stood back, then moved with the shirtless man toward the back of the truck.⁸⁴ The shirtless man fired the gun into the air as the two moved back. There was no apparent response from the crowd.⁸⁵ While no second shot is visible from the videotape, the crowd ducked and scattered as though they heard a shot, seconds after Mohamed was hit with the crutch.⁸⁶

53. As the crowd dispersed, the shirtless man dashed behind the Silverado toward the Durango, aimed his gun at the passenger side front window, and shot into the Durango. His fire was returned multiple times by someone wearing an orange jacket, holding a gun from the rear passenger window of the Durango, as the shirtless man disappeared out of view to the west of the building.⁸⁷ Fresh hurried into the store as the shots were fired.⁸⁸

54. Following the shooting, Mohamed and Fresh came back outside. Mohamed had his gun in hand initially, as he searched to see where the bullets were coming from. When he saw that everybody was running, he put his gun into his back pocket and he and Fresh focused on clearing the cars from the parking lot.⁸⁹

55. Fresh picked up a purse from the lot near where the Durango had been parked.⁹⁰

56. The Durango had just pulled out of the lot, when two people jumped out of it and came running back to the OSM, yelling that someone had been shot, saying "Somebody call an ambulance!"⁹¹

⁸² *Id.* Ex. 1-13, 16:59.

⁸³ Ex. 1-13, 16:59:08-16:59:57. Test. of Mohamed A.

⁸⁴ Ex. 1-13, 16:59:38-16:59:43.

⁸⁵ *Id.*, 16:59:43.

⁸⁶ *Id.*, 16:69:50.

⁸⁷ *Id.*, 16:57-17:00.

⁸⁸ *Id.*, 16:59:59.

⁸⁹ Test. of Mohamed A., Ex. 1-13, 17:00:07-53.

⁹⁰ *Id.* Ex. 1-13, 17:00:44.

⁹¹ Test. of Mohamed A. Ex. 1-13, 17:01.

57. Several people from OSM went to the Durango and suggested that they drive to the emergency room. The Durango passengers piled back in, and it pulled away. Mohamed saw shells on the property and called the police again.⁹²

58. The police arrived approximately four and a half minutes after the shooting took place.⁹³ At least three of the OSM employees, Mohamed, Zakariya and Maan, had called police.⁹⁴

59. Mohamed had never encountered violence of this sort at OSM before, although he had seen a similar situation when he worked as a security guard at a store in downtown Minneapolis.⁹⁵ In addition to the March 30, 2020, shooting in their own parking lot, Maan was aware of a recent shooting at a nearby gas station.⁹⁶

60. After reviewing the video of the incident in the parking lot on March 30, 2020, DSI determined that OSM had violated the license condition requiring it to “mitigate or not allow loitering,” and that that violation had created a serious danger to public health, safety or welfare. The OSI also concluded that the OSM permitted conditions to exist which unreasonably endangered public safety.⁹⁷

61. Sgt. Dunaski is very familiar with east St. Paul.⁹⁸ His grandparents lived there when he was growing up and he is committed to it.⁹⁹ He has known the Abukhudeer family for a number of years, going back to John who ran Sam’s Dairy.¹⁰⁰ As part of his community policing model, he gets to know store owners, to understand whether they are part of the problem or part of the solution.¹⁰¹ He sees Zak and Maan as part of the solution.¹⁰² They have been burglarized and had things stolen from them.¹⁰³ They have put themselves at risk.¹⁰⁴ But they share information, and help him get a jump on criminal activity.¹⁰⁵ They can text ahead if they hear something or see something, let police know who or how many people they should be looking for.¹⁰⁶ They know the community very well, know people by nicknames the police don’t always know.¹⁰⁷ With increasing drug and gang crimes, businesses like OSM who are police-friendly can be very helpful.¹⁰⁸ The difficulty with OSM’s location includes its proximity to the bus stop and the laundromat.¹⁰⁹

⁹² Test. of Mohamed A.

⁹³ Ex. 1-13, 14:04:31.

⁹⁴ Test. of Faris A.

⁹⁵ Test. of Mohamed A.

⁹⁶ Test. of Maan A.

⁹⁷ Test. of A. Hudak. Ex. 1-22-26; S.P. Leg. Code § 310.06(b)(7), (8) (Ex. 3-13).

⁹⁸ Test. of Sgt. Dunaski.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

Between keeping their own business safe and how people may occasionally take advantage of a situation, he does not blame them if occasionally there are problems. Problems can flare up in a matter of seconds, they cannot have people outside every second.¹¹⁰ In 21 years in that location, he knows that the community needs the store.¹¹¹ It provides an important service to the community, and OSM and the Abukhudeer family have helped him as an officer.¹¹² No one is perfect, but they do a lot in a challenging area.¹¹³ Consistent ownership and employees are helpful to the police.¹¹⁴

B. June 1, 2020, Incident

62. Faris and Maan were working on June 1, 2020, along with a family friend, Osama, who was helping them out for the day. This was shortly after the May 20, 2020, murder of George Floyd in Minneapolis. There was significant unrest in both Minneapolis and St. Paul. Tensions and violence were heightened in the neighborhood where OSM is located.¹¹⁵

63. On June 1, 2020, at the apartments behind OSM, the residents were having a block party. Other neighborhood stores were closed, because many store owners were afraid of the rioting going on.¹¹⁶ Because they know and are comfortable with the area and the customers around their store, the OSM remained open to serve the neighborhood.¹¹⁷

64. At 9:14 p.m., a woman named Dior entered the OSM, followed immediately by a woman in a black Minnie Mouse t-shirt (MM). Dior went to the front register, where Osama was sitting. Dior said “Call the cops, I’m not paying them, call the cops, I’m not paying them.”¹¹⁸ MM claimed that Dior had hit MM’s car, and possibly others, while driving past them. MM was telling Dior to go to the ATM so Dior could pay the people whose cars she had hit.¹¹⁹

65. Dior and MM were followed into the store by about ten other people. Faris smelled alcohol on everyone’s breath, “young and old.”¹²⁰ In less than one minute of their initial entrance, Dior and MM’s argument was escalating.¹²¹ Maan A. immediately moved from his place behind the counter and, within 15 seconds of the time Dior and MM were facing off, Maan stood between them, separating them, and sending everyone out of the

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Test. of Sgt. Stanway, Sgt. Dunaski, Maan A., Faris A., Mohamed A., Zak A.

¹¹⁶ Test. of Faris A. and Maan A.

¹¹⁷ Test. of Maan A.

¹¹⁸ Test. of Faris A. Ex. 1-13, 21:14:48 (pt. 5/56).

¹¹⁹ Test. of Faris A.

¹²⁰ *Id.*

¹²¹ Ex. 1-13, 21:15:33 (pt. 5/56).

store.¹²² Within just over 60 seconds, Maan, Faris and Osama cleared everyone involved in the dispute out of the store, except Dior.¹²³

66. Maan wanted Dior to remain in the store, because “all those people were there for her.”¹²⁴ About 15 to 20 people had followed Dior from the party at the building behind the store and were waiting for her outside. To try to keep her safe, Maan tried to get Dior to leave through the back door, so she could get to her car without the others seeing her, but she would not leave.¹²⁵ Maan personally escorted her to the back door multiple times, but she kept coming back into the store.¹²⁶

67. Maan allowed a couple of people back in to try to talk to Dior. He referred to a woman wearing a cap with a stripe on the front as “the peacemaker” because she seemed to know everyone involved and to be trying to calm everyone and resolve things.¹²⁷ He also allowed MM’s boyfriend, a man in a white t-shirt, who promised Maan he would not lay hands on Dior, but just wanted to try to speak with her.¹²⁸

68. That conversation was not productive, and Maan ushered people out, and looked to see who was still in the store.¹²⁹ It was a constant process for Maan, Osama, and Faris as they kept clearing the store to keep fights from breaking out while waiting for police to show up.¹³⁰ Soon, people began to stream back in, again.¹³¹ The three met with more resistance from a few individuals. Maan and Faris continued to watch the registers and serve customers while Osama stood at the door, monitoring who was coming and going. A helper began to vacuum the store. About three and a half minutes after the crowd had re-entered the store, it appeared calm once more.¹³² Dior yelled at the crowd outside that she was not going to pay anyone any money and everybody could go home. She mostly stayed close to one of the employees.¹³³

69. Just after 9:25 p.m., a group of people entered the store and several confronted Dior. They left again, but she appeared upset after they left. MM returned alone and confronted Dior.¹³⁴ Osama tried to intervene between MM and Dior, but the argument continued, and more people streamed in, several confronting Dior. During this time, OSM’s security person was at the door, but apparently unable to stop the flow of people.¹³⁵

¹²² Ex. 1-13, 21:15:48 (pt. 5/56).

¹²³ Ex. 1-13, 21:16:50(pt. 5/56).

¹²⁴ Test. of Faris A.

¹²⁵ *Id.* Test. of Maan A.

¹²⁶ Test. of Maan A.

¹²⁷ *Id.* Ex. 1-13, 21:17:29 (pt. 5/6).

¹²⁸ *Id.* Ex. 1-13, 21:17:31 (pt. 5/6).

¹²⁹ Test. of Maan A.

¹³⁰ *Id.*

¹³¹ Ex. 1-13, 21:17:11 (pt. 5/56).

¹³² Ex. 1-13, 21:20:44(pt. 5/56).

¹³³ Test. of Faris A.

¹³⁴ Ex. 1-13, 21:25:44-26:40(pt. 5/56).

¹³⁵ Ex. 1-13, 21:27:03-27:54.

70. Dior had been standing at the break in the counter near the front register. Faris moved onto the floor of the store, among the people arguing with her, apparently trying to protect her or calm the group. While she argued with a man in a white t-shirt, MM, who had stepped away, stepped in close again, and punched Dior.¹³⁶ Maan moved in next to Dior as she stepped back, behind the front counter. Dior spit at the man in the white t-shirt. He spit back.¹³⁷ Dior then picked up a wastebasket and threw it in the direction of the man in the t-shirt.¹³⁸

71. The crowd on the floor disrupted in chaos, Dior ran toward the back of the store, still behind the counter. One of the women from the crowd got behind the counter immediately and began to attack Dior. They ran out of sight of the camera, with Maan, Faris, and much of the crowd in pursuit.¹³⁹

72. A jumble of people, struggling with one another, returned immediately, still behind the counter, but moving toward the front of the store. Maan tried to hold the counter and the register so they did not crash to the floor. The crowd dispersed as they reached the opening of the counter, taking the fight and Dior outside. Faris and Osama shepherded them out the door.¹⁴⁰ A few regular customers returned to help clean up the mess.¹⁴¹

73. Dior returned, went behind the front counter, brandishing a water bottle, and taunting the crowd, yelling "Nobody can touch me!" toward the door, as Faris and Maan tried to calm her. They allowed her behind the counter because they were concerned for her safety.¹⁴² The crowd returned, with a couple of people getting behind the counter and pursuing Dior as she ran toward the back of the store again. Osama followed this time, and Maan blocked others.¹⁴³ Osama closed and locked the back-office gate.¹⁴⁴

74. There was a shotgun kept out of sight in the back office. It was just for show, to scare people in case of an emergency. There were no shells for it in the store. It has never been used.¹⁴⁵ Osama grabbed it from the back office, where it was placed out of sight. Osama re-entered the main part of the store with the shotgun his hands.¹⁴⁶ He brought it to Maan, who was standing at the front door.¹⁴⁷ Almost immediately, Maan returned the shotgun to the back of the store and put it behind the printer, where he felt it was secure. Then he put Fresh, their security person, in charge of it while Maan again

¹³⁶ Ex. 1-13, 21:27:57.

¹³⁷ Ex. 1-13, 21:27:57-21:28.

¹³⁸ Ex. 1-13, 21:28:06.

¹³⁹ Ex. 1-13, 21:28:10.

¹⁴⁰ Ex. 1-13, 21:28:10-29:00. Test. of Maan A.

¹⁴¹ *Id.*

¹⁴² Test. of Maan A.

¹⁴³ Ex. 1-13, 21:29:00-29:53.

¹⁴⁴ Test. of Maan A.

¹⁴⁵ Test. of Faris A. and Maan A.

¹⁴⁶ Ex. 1-13, 21: 30:26.

¹⁴⁷ Ex. 1-13, 21: 31:10.

tried to secure the store.¹⁴⁸ Fresh passed the shotgun to Faris who was behind the counter.¹⁴⁹

75. Osama returned from the back of the store as people milled around, some again starting to help clean. Again, Faris and Osama ushered people out.¹⁵⁰

76. There was also a handgun in a hidden, secured location near the front cash register on the evening of June 1, 2020. Only Faris and the other employees knew the handgun was there.¹⁵¹ The gun was not loaded.¹⁵²

77. A few agitated people remained. Maan and Fresh together removed them from the store. A woman in a white tank top who had been fighting earlier came out from the back and had a few words with Faris. When Faris walked away from his spot at the counter, the young woman looked at the front counter where he had been sitting and found the gun. She pocketed it. Another person in the store saw her take the gun and alerted Faris, who retrieved the gun from her.¹⁵³ She then left the store, followed by Dior.¹⁵⁴

78. OSM staff called police within four minutes of the time Dior first entered the store. Dior herself called them, too.¹⁵⁵ At that time in 2020, it would usually take from five to 15 minutes for the police to arrive. The police had told OSM employees not to call unless it was an emergency.¹⁵⁶ That night the police arrived 20 minutes after Dior first entered the OSM.¹⁵⁷

79. Officer Adam Hollander was the first officer to arrive. He told the remaining customers to leave and instructed Maan to finish his business with his cell customers and to close the store.¹⁵⁸

80. Following the events of June 1, 2020, OSM was called to a meeting with Eric Hudak from OSI and Chief Axtel of the SPPD. Maan and Zak attended. Maan felt that Mr. Hudak did not respect the services provided by OSM and Maan, and was very critical of how they operated. Hudak left the meeting after about 15 minutes.¹⁵⁹ The conversation with the SPPD was cordial and primarily about how Zak and Maan were familiar with the neighborhood and several of the police assigned to the area and that

¹⁴⁸ Test of Maan.

¹⁴⁹ *Id.*

¹⁵⁰ Ex. 1-13, 21:29:53-30:25.

¹⁵¹ Test. of Faris A.

¹⁵² Test. of Zak A.

¹⁵³ Ex. 1-13, 21: 33:21-:33:42.

¹⁵⁴ Ex. 1-13, 21: 34:10.

¹⁵⁵ Test of Faris A. and Maan A.

¹⁵⁶ Test. of Faris A.

¹⁵⁷ Ex. 1-13, 21:14:44, 21:34:32. Maan testified that it took the police an hour to arrive. While it may have felt like an hour to him, the videotape shows that it was 20 minutes.

¹⁵⁸ Test. of Maan A.

¹⁵⁹ *Id.*

they were working to help clean up the area. They brought information about the SPPD officers they had worked with to the meeting with them.¹⁶⁰

C. July 20, 2020, Report

81. Two officers from the SPPD filed a report stating that, on July 20, 2020, they passed OSM on their way to another call for service:

As we drove by we saw a large group of black males loitering on the west side of the building. The males were gambling and shooting dice with a large pile of us [sic] currency in the middle of them on the ground as the prize for the dice game.

. . . .

As we were already on another call for service we were unable to get out and identify the individuals but did create a call for service and active BWC footage as we drove by.¹⁶¹

82. The west side of OSM has no windows. All the windows face the front of the store. A person would have to leave the store and walk over to the west side of the building in order to see what is happening on that side of the building.¹⁶²

83. In the past, people gathered in groups to gamble in the vicinity of OSM. They stayed on the sidewalk, which is city property, so that OSM employees could not force them to move. OSM employees called police on several such occasions.¹⁶³

84. No one from SPPD ever spoke to Zak or any of his employees about concerns regarding people gathering to gamble on the west side of the building before the July 20, 2022, report.¹⁶⁴

85. Any Conclusion of Law more properly considered a Finding of Fact is adopted herein.

86. Any portion of the Memorandum more properly considered as a Finding of Fact is incorporated herein.

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction to consider this matter pursuant to Minn. Stat. § 14.55 (2022) and Saint Paul Legislative Code §§ 310.05, .06 (2021).

¹⁶⁰ Test. of Maan A. Ex. 100.

¹⁶¹ Ex. 2-105.

¹⁶² Test. of Zak A.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

2. The hearing in this matter was conducted in accordance with the Saint Paul Legislative Code § 310.05 and the contested case procedures of Minn. Stat. §§ 14.57, .62 (2022).

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

4. Because the City is proposing that disciplinary action be taken, it has the burden of proving by a preponderance of the evidence that adverse action is warranted against the licenses held by OSM.¹⁶⁵

5. Under the Saint Paul Legislative Code, the City Council may take adverse action against a City-issued license if the licensee violates a statute or ordinance related to the licensed activity, or if the licensee violates conditions placed on its license.¹⁶⁶

6. Saint Paul Legislative Code § 310.06(b)(5) supports adverse action when the licensee has failed to comply with any condition set forth in the license or set for the resolution granting or renewing the license.

7. Saint Paul Legislative Code § 310.06(b)(6)(c) supports adverse action when the licensee has engaged in or permitted a pattern or practice of conduct or failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.

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

9. Saint Paul Legislative Code § 310.06(b)(8) supports adverse action when the way in which a licensed business is operated maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.

10. The penalty matrix of the Saint Paul Legislative Code includes presumptive penalties for particular code violations.¹⁶⁷

11. Saint Paul Legislative Code § 310.05(m) provides a matrix of penalties for first, second, third, and fourth appearances before the city council. For a first violation, the matrix penalty is a \$500 fine. For a second violation, the penalty is a \$1,000 fine. For a third violation, the penalty is a \$2,000 fine and a 10-day suspension. For a fourth violation, the penalty is revocation of the license.¹⁶⁸

12. Saint Paul Legislative Code § 310.05 (m) provides that the matrix penalties are presumed to be appropriate for every case, but also notes that the City Council may

¹⁶⁵ Minn. R. 1400.7300, subp. 5 (2021).

¹⁶⁶ St. Paul Legis. Code §§ 310.05(m); 310.06(a), (b)(6)(a).

¹⁶⁷ St. Paul Legis. Code § 310.05(m).

¹⁶⁸ *Id.*

deviate in an individual case where the council finds substantial and compelling reasons making it more appropriate to do so. Multiple violations shall be grounds for departure from the presumptive penalties in the council's discretion.¹⁶⁹ If the City Council deviates, it must provide written reasons why the penalty selected was more appropriate than the presumptive penalty.¹⁷⁰

13. The City failed to demonstrate by a preponderance of the evidence that OSM violated condition 3 of its license by failing to provide requested surveillance video to DSI.

14. The City failed to demonstrate by a preponderance of the evidence that OSM violated the condition 2 of its license by failing to take reasonable steps to discourage loitering on March 30, 2020, June 1, 2020, and July 2020, 2020.

15. The City failed to demonstrate by a preponderance of the evidence that OSM violated the condition 2 of its license by failing to take reasonable steps to discourage loitering on March 30, 2020, June 1, 2020, and July 2020, 2020.

16. The City failed to demonstrate by a preponderance of the evidence any OSM violations that would support adverse action under Saint Paul Legislative Code § 310.06(b)(5)-(8).

17. The City may take appropriate disciplinary licensing action against Respondent's license based on the following violations established by Administrative Law Judge James LaFave's September 7, 2021, undisputed Recommended Order on Summary Disposition:

- a. By engaging in sales of single cigarettes and flavored tobacco products on June 1, 2020, and July 20, 2020, Respondent violated St. Paul Legislative Code § 324.07(a) and (f); and
- b. By allowing patrons to smoke within the licensed premises in violation of the Minnesota Clean Indoor Air Act, Respondent violated St. Paul Legislative Code § 310(b)(6)(a).

18. The City has not shown substantial and compelling reasons to triply upwardly depart from the presumptive penalty and revoke Licensee's cigarette/tobacco and second-hand licenses.

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

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

¹⁶⁹ *Id.* at § 310.05(m)(ii).

¹⁷⁰ *Id.* at § 310.05(m); Ex. 3-10.

RECOMMENDATION

The St. Paul City Council should upwardly depart from the presumptive penalty and impose a penalty of \$1,000 on OSM's licenses for the violations of law cited above.

Dated: December 6, 2022



LAURASUE SCHLATTER
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared

NOTICE

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

MEMORANDUM

I. Background

The Licensee had only owned the OSM for eight or nine months when the March 30, 2020, incident occurred in the parking lot of the OSM. But Zak and his staff were familiar with, and committed to serving, the east St. Paul neighborhood where the store was located. Before it was the One Stop Market, the store was Sam's Dairy, and was owned for a period of years by John, another relative of the Abukhudeers. Zak and Faris had both worked in the store when they were younger, and Maan had owned his cell phone business within the store since 2014. None had seen the kind of violence on the property that they witnessed in the spring of 2020 – the spring of the COVID-19 pandemic lockdown and the widespread civil unrest, including violent uprisings, following the police killing of George Floyd in Minneapolis. Zak and Maan were committed to remaining open to serve the community, even when nearby businesses closed.

OSM employed off-duty St. Paul police for a time, to act as security and to help trespass loiterers. When it became clear that people arrested for trespass were immediately released and showing up back at the store, and the St. Paul police were too expensive for OSM, the store switched to neighborhood people to assist with security.

One of those people, who is known as Fresh, was at the store on March 30, and June 1, 2020. All of the Abukhudeer cousins working at the store on the relevant days - Mohamed, Zak, Maan, and Faris - have conceal/carry gun licenses.

II. March 30, 2020, Alleged Violations

The City relied on Sgt. Stanway and Mr. Hudak's conclusions following their review of the videotapes of the March 30, 2020, events at the OSM when it determined that the Licensee violated Saint Paul Legislative Code §§310.06(b)(5)-(8) and license condition 2, requiring it to take reasonable steps to discourage loitering in front of or on the property of the licensed business on that date. All of the March 30, 2020, violations related to Licensee's alleged failure to take reasonable steps to discourage loitering.

Hudak, Licensing Manager of the DSI, determined that the OSM had violated the cited ordinances and license condition concerning loitering. Hudak's findings were influenced by Sgt. Stanway's report, which was in turn based on his April 15, 2020, viewing of the video of the March 30 incident. But Hudak did not completely agree with Stanway's report. Hudak originally believed the first shots were fired from the Durango. Even at the hearing, after reviewing the relevant section of Stanway's report and the video, Hudak would only say that he would have to review the video more closely himself to decide whether he agreed with Sgt. Stanway.¹⁷¹ The City specifically alleged it was OSM's failure to take reasonable steps to discourage the Dodge Durango from loitering on the afternoon of March 30, 2020, that caused the melee, and ultimately the shooting, in the parking lot.

Sgt. Stanway had not been to the OSM for a number of years – and not at all under its current ownership. Mr. Hudak had limited familiarity with the neighborhood and was unaware of problems in the area with gang activity.¹⁷²

When Sgt. Stanway saw the beginning of the March 30, 2020, camera 12 video, and noted three people sitting outside the store, he assumed all three were loiterers. He was unaware that Fresh was employed as a security person by OSM.¹⁷³ Sgt. Stanway was not certain that Mohamed was an employee when Mohamed exited the store to stand outside with Fresh and two other people.

Sgt. Stanway testified that he considered “hanging around” with no apparent purpose for five minutes to be loitering. As the minutes passed, and conflict developed among people from various vehicles coming and going in the parking lot, Sgt. Stanway identified Mohamed as a likely staff person, and determined that neither Mohamed nor others he presumed to be staff did anything to prevent the Durango from loitering. Sgt. Stanway concluded that it was the presence of the Durango that caused the fighting

¹⁷¹ Test. of E. Hudak.

¹⁷² Test. of R. Stanway and E. Hudak.

¹⁷³ Ex. 1-13, 16:46:22 (Camera 12).

and that, had the Durango not been in the parking lot, there would have been no shots fired.¹⁷⁴

Sgt. Stanway was not aware when he wrote his report where the shirtless man who fired the first shots got his weapon.¹⁷⁵ Nor did he comment on whether the shooter appeared to be connected to any of the other parties to the conflict.

The City failed to support its conclusion that OSM failed to take reasonable steps to discourage loitering at the store for several reasons. First, neither the Legislative Code nor the license conditions define “loitering.” The basic meaning of the term is not hard to find. The Minnesota Supreme Court considers loitering “a term of common usage with a meaning reasonably understood by persons of common intelligence.”¹⁷⁶ Black’s Law dictionary defines “loitering” as “remaining in a certain place (such as a public street) for no apparent reason.”¹⁷⁷ But neither the case law nor the dictionary specifies how long a person must remain in a certain place for “loitering” to apply. Nor did the City provide any guidance to OSM about how long a person, or a vehicle could remain on licensed premises “for no apparent reason” before it was considered loitering. The occupants of the Durango were not causing any trouble, they did not appear to be dealing drugs or otherwise breaking the law before their antagonists arrived. It is not clear how long they had been at OSM before the video recording begins, but at the very beginning of the video one of the occupants appears to have just made a purchase at the store.

Sgt. Stanway acknowledged that he had never been to the OSM, and that it had been some time since he had been to the east side of St. Paul. Sgt. Stanway drew a rigid five-minute line to define loitering.

But Sgt. Dunaski was very familiar with the area, and with the store. He deals with gangs, drugs, and violent crime in that area daily. He pointed out that, in a location such as the OSM, where there are a bus stop and a laundromat adjacent, and where the store is a kind of neighborhood hub, people linger in parking lots.¹⁷⁸ Sgt. Dunaski stated whether the lingering constitutes loitering depends on why the person is there – they may be waiting for someone, to give them a ride, to get a ride, to go somewhere. They may be looking at Google Maps. A corner store is a place to hang out. To determine whether someone is loitering, Sgt. Dunaski looks at the conduct of the people involved - whether there are transactions, lots of people handing things in and out of the car, whether there is money changing hands. He asks himself whether the behavior he sees is consistent with drug transactions or gang activity. Sgt. Dunaski gets concerned about loitering at about fifteen minutes or more.¹⁷⁹ While it is true that Sgt. Dunaski is concerned about crime while loitering as a license condition does not explicitly address criminal activity,

¹⁷⁴ Test. of R. Stanway.

¹⁷⁵ *Id.* Ex. 2-6.

¹⁷⁶ *State v. Armstrong*, 162 N.W.2d 357, 360 (Minn. 1968).

¹⁷⁷ *Black’s Law Dictionary* 1084 (10th ed. 2014).

¹⁷⁸ Test. of R. Dunaski.

¹⁷⁹ *Id.*

the purpose of the license condition is to protect public safety. Therefore, Sgt. Dunaski's opinion concerning timing and loitering is both highly credible and relevant to this case.

DSI may correctly believe that a license holder lacks the expertise to determine whether certain conduct is suspicious. But with no timeline attached to the loitering condition, and the licensee's apparent comfort with the Durango, the City failed to demonstrate by a preponderance of the evidence that OSM failed to take reasonable steps to discourage loitering. Both Mohamed and Maan testified about their habits of making personal contact with customers. Maan emphasized the importance of knowing who their regular customers were, and who was law-abiding to their knowledge. If the Durango customers were familiar to Mohamed, he would have had no real reason to discourage them from remaining where they were.

Second, Sgt. Stanway did not recognize that both Fresh and Mohamed were aware of, and moved to clear, vehicles from the parking lot to avoid problems. Fresh began to address the two window-to-window vehicles while he was still sitting. Then he rose and walked closer to them, motioning to them to leave.¹⁸⁰ He continued to watch them, and was joined by Faris, Mohamed, and Maan.¹⁸¹ Mohamed first waved the vehicles on, then he, Faris and Maan all walked toward them. Mohamed walked up to each of the vehicles, spoke to the drivers, including speaking to the people in the Durango as he walked past.¹⁸² Mohamed even closed the passenger-side door of the west-facing SUV in the parking lot as he ushered the vehicle out.¹⁸³ These were reasonable steps to discourage loitering, taken as soon as it became apparent that something out of the ordinary might be going on.

It is not clear why the Durango did not leave with the other vehicles, but just one and a half minutes after the dark-colored SUV left, it returned. The woman in the yellow shirt exited the SUV, and the conflict began in earnest. Mohamed and Fresh watched for just about a minute, thinking the crowd, which was streaming eastward, was going to continue its fight off the property. When Mohamed realized the group was staying on the premises, he handed his gun to his brother, Zakariya, so that it would not be taken from him, and he moved toward the fighting parties to try to calm them down. In his attempt to intervene in the fight and to keep anyone from getting hurt, Mohamed wound up getting hit in the head with a crutch, and close to the line of gunfire. This attempt to keep the premises safe was, if anything, putting himself too much at risk. The City's claim that OSM failed to take reasonable steps to discourage loitering is not supported by a preponderance of the evidence.

The City asserted that, but for the presence of the Durango, there would not have been a shooting in the parking lot of the OSM on March 30, 2020. There is no evidence to support the City's assertion. The shirtless young man shot once or twice into the air to the east of where the crowd was fighting, then ran through the crowd, pointing his gun

¹⁸⁰ Ex. 1-13, 16:53.

¹⁸¹ *Id.* 16:55-16:56:30.

¹⁸² *Id.* 16:56:28

¹⁸³ *Id.* 16:55:52.

toward them. He ran toward the Durango, finally shooting into the front passenger window of the Durango, then ran off, along the northwest side of the building.

He first arrived on the scene just before the fight started, and, after a momentary detour into the store, ran to the eastern portion of the parking lot, where he fought with the person in the orange coat from the Durango. He did not arrive with the gun, or with the person who gave him the gun. He also did not arrive in any of the other vehicles. It is unclear whether he was connected to the original antagonists in the fight, or he just showed up and got caught up in, or took advantage of, the height of the moment when he shot into the van. He did not shoot into the back seat, where the person in the orange jacket was sitting. His actions did not appear planned or well-executed.

There is no basis to conclude that, had the Durango not been there, the shooting would not have occurred, because it is not at all clear why the shooting occurred, or what the relationship was between the shooter and the occupants of the Durango. Therefore, the City failed to show by a preponderance of the evidence that, even if OSM failed to take reasonable steps to discourage the Durango from loitering, that that led to the shooting in the parking lot that day.

Finally, both Hudak and Stanway concluded that the individuals standing outside the store, including Fresh and Mohamed, were loitering, when they were engaged in conversation. Remaining in a particular place and engaging in conversation is different than remaining in a place for no particular reason. There are good reasons for store employees to engage people outside the store in conversation – to get to know who the neighborhood customers are, for example, especially unfamiliar people. At a neighborhood convenience store in a rough neighborhood, on the first nice spring day, with COVID-19 posing a danger to people in close quarters, it was not unreasonable for Fresh, Mohamed or other employees to chat with people in front of the store, and that conduct should not be considered loitering.

III. April 27, 2020, Video Request

The City alleges that OSM violated license condition 3. That condition requires in relevant part that the license holder make surveillance videos available for at least 30 days to the SPPD immediately upon request, when it is responding to a crime and, in other circumstances, if the SPPD or the DSI requests copies of surveillance video, the licensee has 48 hours to provide such copies. The City determined that OSM's failure to provide all of the indoor video recordings from March 30, 2020, from 4:30 p.m. to 5:30 p.m. as DSI requested on April 27, 2020, violated license condition 3.

OSM's response to DSI's request was that the recordings were destroyed when the hard drive was damaged on April 24, 2020, after a representative of the SPPD, James Legierski, retrieved video from the store's video recorder and the recorder subsequently fell. Zak's May 4, 2020, email explaining the reason that the video was unavailable characterized Legierski's handling of the recording equipment as "mistreatment." The wording was unfortunate and inaccurate.

Legierski's testimony that, when he left the OSM, the equipment was still hanging from the shelf and all twelve cameras were working was both believable and consistent with Zak's testimony that, when he arrived later that night, the equipment had fallen to the floor and the hard drives were damaged. Legierski explained that the unnamed employee who was present told him not to worry about reinstalling the equipment up on its shelf near the ceiling. The employee was never identified and did not testify. Legierski could not deny the equipment pictured in exhibit 104 was the equipment he handled on April 24, 2020. He would not have seen it again, because the system was rewired so video footage could be retrieved from counter height instead of having to go up to the DVR itself.

Zak stated that all of his security systems are connected using ethernet cables.¹⁸⁴ He does not use coaxial cable. Ethernet cables connect using a lightweight plastic connector that snaps into place, like an old-fashioned telephone line connector. Furthermore, only a few of the 12 cameras in the security system are connected directly to the DVR. The remainder of the cameras are connected to the server via switch box using a "splitter system," which are in turn connected to the DVR. This configuration permits the cameras to be connected to the internet so they can be viewed online.¹⁸⁵ The configuration Zak described is consistent with the photograph at Exhibit 104. It is also consistent with the possibility that sometime between the time when the photograph at Exhibit 104 was taken and Zak arrived at the store later that night, the DVR might have fallen to the floor.

Assuming that is what happened, it did not occur due to Legierski's "mistreatment" of the recorder. It is not clear why the employee who said he would take care of it did not place the DVR back on its shelf. Nonetheless, the preponderance of the evidence supports Zak's statement that the DVR fell, albeit accidentally. The OSM had a perfect record of providing recordings at the request of the SPPD and the DSI. There would have been no reason for the OSM to lie in this instance and withhold a recording, or to destroy one early intentionally.

Hudak testified that only an "act of God or nature" would suffice as an excuse for not producing a video. The City does not include those limitations in condition 3. An accident that damaged a hard drive is a reasonable excuse, especially with a licensee who otherwise has a perfect response record and whose recording system, including the hard drive, was fixed by the next day. Here, while OSM was not able to provide the specific video requested, the most important video of the events of that day was provided to the SPPD which made a copy for the DSI. The DSI has not shown by a preponderance of the evidence that OSM's inability to provide the requested video by May 4 constituted a violation in substance of condition 3. For the City to refuse to excuse a single failure to comply with a request due to an accident, especially when there are no written exceptions for compliance, and the City's representative's testimony would have allowed one only for an "act of God or nature" appears to be an act of the City's whim rather than its

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

judgment. This is especially so where the equipment in question involves electronics that can malfunction, sometimes in mysterious circumstances.¹⁸⁶

IV. June 1, 2020

The DSI also relied on video of the June 1, 2020, events at the OSM to determine the Licensee violated Saint Paul Legislative Code § 310.06(b)(5)-(8) and license condition 2, requiring it to take reasonable steps to discourage loitering in front of or on the property of the licensed business on that date. The allegations relevant to this proceeding include loitering, allowing an uncontrolled and dangerous environment, which included fighting, and unsecured firearms.

The video and testimony demonstrated, by a preponderance of the evidence, that OSM employees tried repeatedly to clear the store of an angry, drunk crowd that descended on them at about 9:15 p.m. Because they feared for Dior's safety, they tried to protect her by guiding her to a safe exit out the back door. When she would not go, they allowed her to remain in the store, trying to keep the crowd outside while waiting for the police to arrive. During the 20-minute wait, the crowd returned several times. Maan, who primarily took charge, tried to intervene as tempers flared. He tried to selectively allow a couple of people in to talk to Dior, hoping to calm everyone. He was not successful, and finally, he tried to keep everyone except Dior and his telephone customers outside.

When the crowd streamed back in and the fight erupted into chaos, Osama retrieved the rifle that was kept hidden in the back room. The rifle was not loaded, had never been loaded, and there were no shells in the store for it. It was purely for show. Osama, who was not an employee, but a friend helping out on a busy day, apparently thought it would be helpful to bring the rifle out. He brought it to Maan, who quickly brought it back behind the counter, trying to put it out of sight. Initially Maan put it near the cell phone counter, but no one was there to watch it, so he handed it to Fresh, who brought it to where Faris was standing at the front counter. He handed it to Faris, who put it between himself and the front counter. Ideally, the rifle should have been returned to its spot in the back room, but Dior was in the back room at that point. It was reasonable to leave the unloaded rifle with Faris under the circumstances. It did not pose a danger to anyone at that time.

Faris, who is a licensed gun owner, testified that the handgun was secured next to the front register, inaccessible to the public. He can be seen handling the gun in view of non-employees who are helping to clean the store after the second outbreak of fighting. He puts the gun back under the counter but does not appear to secure it.¹⁸⁷ About two minutes later, a woman in a white tank top picks up the gun and puts it in her waistband or pocket. Another customer watches her do this, and alerts Faris, who goes after her and retrieves the gun from her without incident. The woman was not identified. Zak's testimony that the gun was not loaded was not refuted. While the unsecured gun is

¹⁸⁶ The City, in its post hearing brief, also claims that the OSM's response to the request was late. It was not – the letter requesting the video specifically allowed until the end of business on May 4. Ex. 1-15.

¹⁸⁷ Ex. 1-13, 21:31:27 (June 2, 2020, Camera 1).

a concern, it did not place the public in danger because it was not loaded. Therefore, there was no violation of Saint Paul Legislative Code § 310.06(b) (6)(a), (7), and (8).

DSI also accurately stated that a customer who purchased cigarettes revealed a handgun for about two seconds as he adjusted it in his waistband after he is handed the cigarettes. Osama handed him the cigarettes and may have seen the gun, although that is not certain. Maan was getting the customer's change and appears to have been looking down in that moment. Again, it is not clear whether he noticed the gun. The customer left after getting his change. Even if Osama and Maan noticed the gun, it is unclear what they could or should have done since the cigarettes had already changed hands. Nor was there any reason to believe the public was ever in danger.

Based on all the evidence in the record, alleged firearms violations, and the alleged loitering violations, including allowing an uncontrolled and dangerous environment, are not supported by a preponderance of the evidence. The evidence shows that the employees of the OSM did all they reasonably could to control an unruly, drunk crowd that invaded the store.

V. July 20, 2020, Violation

The City alleged that OSM violated license condition 2 requiring it to take reasonable steps to discourage loitering in front of or on the property. Two SPPD officers filed a report stating that, at approximately 7:40 p.m. on July 20, 2020, they passed the One Stop Market on their way to another call for service. Although they did not have time to stop and get out to observe what they saw, they were able to identify "a large group of black males loitering on the west side of the building." According to the report, the group was "gambling and shooting dice with a large pile of us (sic) currency . . . on the ground as the prize . . ." The police report stated that the group engaged in this conduct "in broad daylight on the store property where the employees could view them by looking out a window with ease." The report does not state how long the group on the west side of the building had been there, or what evidence the officers had to support their assumption that the group was there to gamble. The officers involved were not called to testify at the hearing.

The violation was based on this report alone, with no follow-up. OSM demonstrated that its store has no windows facing west and that, in order to see what was happening on the west side of the building, a person would have to leave the store, walk to the west corner of the building, and look around it. Zak testified that, to the extent OSM had witnessed gambling in the area around the store, people were careful to gamble on public sidewalks so store owners could not force them to leave. OSM had called police on several such occasions. The police had never expressed concerns about activities on the west side of the building.

The City failed to prove a violation of license condition 2 by a preponderance of the evidence. It is not reasonable to expect OSM to have an employee permanently stationed outside on a side of the building they cannot observe in any other way. An OSM employee could have checked the west side of the building five minutes before the police

drove by and found nothing. There was no evidence presented at the hearing regarding this alleged violation at all. Thus, there was no basis to determine that whatever activity may have been occurring on the west side of the building on July 20, 2020, was due to OSM's failure to take reasonable steps to discourage loitering.

VI. Penalty

Judge LaFave discussed the legal standard for upward departure from the presumptive penalty in a licensing case in his recommendation on motion for summary disposition in this matter. Because no additional violations have been found as a result of this evidentiary hearing, the Administrative Law Judge recommends that the City impose a penalty consistent with Judge LaFave's original recommendation: a \$1,000 fine for Licensee's multiple sales of single cigarettes and flavored tobacco products, and for allowing patrons to smoke cigarettes while inside the store.

Judge LaFave reasoned that Minnesota courts have held that the presumptive sentence should only be exceeded if the enhanced penalty is deemed to be "more appropriate, reasonable or equitable than the presumptive [penalty]."¹⁸⁸ In this case, where these are licensee's first violations, the presumptive penalty is \$500 under the City's penalty matrix.¹⁸⁹

The decision maker should impose the presumptive penalty unless "substantial and compelling circumstances' based on aggravating factors warrant an upward departure."¹⁹⁰ To properly impose a penalty that is an upward departure from the presumptive penalty in the sentencing guidelines, then, the decision maker must have a specific factual basis.¹⁹¹ "Substantial and compelling circumstances" are "factual circumstances that distinguish the case, making it atypical."¹⁹² The occurrence of multiple violations shall be grounds for departure from presumptive penalties at the city council's discretion.¹⁹³

The Minnesota Supreme Court has also held that "generally in a case in which an upward departure in sentence length is justified, the upper limit will be double the presumptive sentence length."¹⁹⁴ The Court wrote: "Only in cases of 'severe aggravating circumstances' may the district court impose a greater-than-double departure from the presumptive sentence. Such cases, we have stated, are 'extremely rare.'"¹⁹⁵

Here, the City seeks to revoke the Respondent's licenses. Revocation is a quadruple upward departure from the presumptive \$500 fine for a first violation provided

¹⁸⁸ *Dillion v. State*, 781 N.W.2d 588, 595 (Minn. Ct. App. 2010) (citing *State v. Bingham*, 406 N.W.2d 567, 570 (Minn. Ct. App. 1987)).

¹⁸⁹ St. Paul Legis. Code § 310.05(m)(2).

¹⁹⁰ *Id.*

¹⁹¹ St. Paul Legis. Code § 310.05(m)(ii).

¹⁹² *Dillion*, 781 N.W. 2d. at 595.

¹⁹³ St. Paul Legis. Code § 310.05(m).

¹⁹⁴ *State v. Evans*, 311 N.W.2d 481, 483 (Minn. 1981).

¹⁹⁵ *State v. Shattuck*, 704 N.W.2d 131, 140 (Minn. 2005) (citing *State v. Spain*, 590 N.W.2d 85, 89 (Minn. 1999)).

in the penalty matrix. This case has multiple tobacco-related violations – an upward departure is justified. But unlike the City’s case regarding Midway Amoco BP, a gas station in St. Paul, Minnesota, this is not a case involving gunfire from the premises of the gas station into neighboring buildings on multiple occasions, neighbors who feared for their safety, large disruptive crowds repeatedly gathering in the early morning hours dancing and smoking marijuana, drug deals in the parking lot, physical assaults, and ultimately, a homicide.¹⁹⁶

Even if the evidentiary hearing had resulted in findings of fact supporting some of the allegations regarding license condition 2 and permitting dangerous behavior on the licensed premises, that still would not come close to the conditions in the Midway Amoco BP case. But the evidentiary hearing revealed that the City failed to demonstrate by a preponderance of the evidence that the Licensee violated either of the license conditions, or the related provisions of the Saint Paul Legislative Code. Therefore, the recommended penalty is based on the violations as found in the Recommendation on the Motion for Summary Disposition.

L. S.

¹⁹⁶ *Midway University & Hamline LLC d/b/a Midway Amoco BP*, 562416 WL 2021, at *4.