

OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COUNCIL OF
THE CITY OF SAINT PAUL

**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**

CITY'S CLOSING ARGUMENT

OAH 80-6020-37157

INTRODUCTION

Adverse action is defined as “the revocation or suspension of a license, the imposition of conditions upon a license, the denial of an application for the grant, issuance or renewal of a license, the imposition of a fine, the assessment of the costs of a contested hearing and any other disciplinary or unfavorable action taken with respect to a license, licensee or applicant for a license.” Saint Paul Legislative Code (“SPLC”) §310.01. Under its legislative code, the City of Saint Paul (“City”) can take adverse action against a license for a variety of reasons.

On September 10, 2020 the City by and through its Department of Safety and Inspections (“Department”) initiated adverse action through a Notice of Violation (“9-1-2020 NOV”) (Exhibit 1-1 - 1-33) that sought an upward departure to a \$2,000 fine and a 10-day suspension of the cigarette/tobacco license (“License”) held by Zakariya Abukhudeer (“Respondent”) for The One Stop Market at 1541 Maryland Avenue (“Licensed Premises”) based on allegations that:

- the Respondent repeatedly sold single cigarettes and flavored tobacco products in violation of sections 324.07(a) and (f) of the Saint Paul Legislative Code;
- the Respondent allowed patrons to smoke cigarettes inside of the Licensed Premises in violation of the Minnesota Clean Indoor Air Act and section 310.06(b)(6)(a) of the Saint Paul Legislative Code;
- the Respondent violated License condition #3 and section 310.06(b)(6) of the Saint Paul Legislative Code by failing to properly maintain his surveillance equipment and by failing to provide a copy of surveillance video footage as requested by the City on April 27, 2020.
- the Respondent violated License condition #2 and sections 310.06(b)(5)-(8) of the SPLC based on the following incidents:
 - o March 30, 2020 Assault and shots fired in parking lot
 - o June 1, 2020 Crowd of individuals fighting in store
 - o July 20, 2020 Large group of males gambling outside store which occurred on and near the Licensed Premises;

The City cited the relevant license conditions in the NOV:

#2 The licensee shall take reasonable steps to discourage loitering in front of or on the property of the licensed business.

#3 The license holder shall maintain video surveillance cameras inside and outside the establishment in accordance with the 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 Saint Paul Police Department (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.

On March 21, 2021, an Amended Notice of Violation (“NOV”) was sent to the Respondent stating that based on evidence of additional incidents of sales of single cigarettes and flavored tobacco products that were identified in video already provided to the Respondent, the city intended to seek an upward departure to revocation of the

cigarette/tobacco license held by Respondent (Exhibit 2-1 - 2-12). Respondent, through his attorney, requested an administrative hearing.

Saint Paul Legislative Code § 310.05(m)(v) contains the applicable penalty matrix, the first violation of the penalty matrix is a presumptive penalty is \$500, the presumptive penalty for a second violation in twelve (12) months is a \$1,000 fine, the third violation within eighteen (18) months is a 10 day suspension and a \$2,000 fine and a fourth violation within twenty-four (24) months is revocation.

Saint Paul Legislative Code § 310.05 provides that while matrix penalties are presumed to be appropriate, Council can depart upwardly where the council finds there are substantial and compelling reasons to do so.

Upward departure to revocation is allowed under the Saint Paul Legislative Code. Saint Paul Legislative Code § 310.05 (m)(ii) states that the occurrence of multiple violations shall be grounds for departure for such penalties at the council's discretion.

The matter was assigned to the Administrative Law Judge LaFave. On April 26, 2021, the Department filed a Motion for Summary Disposition. Respondent was granted until May 26, 2021 to respond to the Motion for Summary Disposition. Oral Arguments on the Motion for Summary Disposition were heard on May 28, 2021 and Respondent was given until June 7, 2021 to supplement his response in opposition to the Motion for Summary Disposition to address the City's requested deviation from the presumptive penalty. The Summary Disposition Motion record closed on that date.

On September 7, 2021 the parties received Judge LaFave's Recommendation and Order on Motion for Summary Disposition. Judge LaFave recommended that:

The City's Motion for Summary Disposition be granted with respect to the alleged violations of St. Paul Legislative Code § 324.07(a) and (f) relating to Respondent's sales of single cigarettes and flavored tobacco products on June 1, 2020, and July 20, 2020.

The City's Motion for Summary Disposition be granted with respect to the alleged violation of Saint Paul Legislative Code § 310.06(b)(6)(a) relating to Respondent allowing patrons to smoke within the licensed premises in violation of the Minnesota Clean Indoor Air Act.

Judge LaFave denied:

The City's Motion for Summary Disposition related to Respondent's alleged violation of licensing 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.

The City's Motion for Summary Disposition related to the alleged violations of Saint Paul Legislative Code § 310.06(b)(5)-(8) and licensing condition #2 relating to Respondent's conduct on March 30, 2020, June 1, 2020.

On October 8, 2021 Judge LaFave granted the request to certify the matter to the Saint Paul City Council, providing that if the Saint Paul City Council made a final decision in the matter, it must allow Respondent an opportunity to file exceptions and present argument as required by Minn. Stat. 14.61, subd. 1.

On November 17, 2021 Saint Paul City Council held a public hearing at which the Department recommended that the City Council adopt Judge LaFave's order and recommendation. After considering all evidence contained in the record and the oral arguments presented before it, the Saint Paul City Council rejected the Department's recommendation and requested that the Department try the remaining allegations at an evidentiary hearing.

The matter was reassigned to Administrative Law Judge Schlatter and an evidentiary hearing was held on July 25, 26 and 27 of 2022 on the issues of:

whether Respondent violated licensing condition #3 and the SPLC § 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

whether Respondent violated licensing condition #2 and the SPLC § 310.06(b)(5)-(8) relating to Respondent's conduct on March 30, 2020, June 1, 2020, and July 20, 2020, in allegedly permitting dangerous behavior and loitering on or near the licensed premises.

The City of Saint Paul was represented at that hearing by Stephen Earnest. Mark Thompson represented the Respondent. On July 25, 2022 a Motion in Limine was heard by Judge Schlatter to preclude the Department from referencing any of the charges that have been decided in relation to this matter. Counsel for the Department indicated that he had no intention of trying factual issues which have already been decided and asked that he be able "to reference the underlying violations in context of the Department's request for upward departure." (July 25, 2022 audio recording).

I. The City has met its burden and has proven by a preponderance of the evidence that Respondent violated licensing condition #3 and the SPLC § 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 on April 27, 2020.

Respondent violated license condition #3 when he failed to provide the Department with copies of the March 30, 2020 video footage after the Department requested such footage. SPLC section 310.06(b)(5) supports adverse action where a licensee has failed to comply with a condition set forth in their license. License condition #3 of Respondent's Cigarette/Tobacco license provides that "[t]he license holder shall maintain video surveillance cameras inside and outside the establishment in accordance with [SPPD] recommendations." License condition #3 also provides that, if the Department requests copies of the surveillance tapes, "licensee shall have a 48-hour

period in which to provide such copies.” (Exhibit 1-14). Exhibits in evidence show that on April 27, 2020, the Department sent a letter to Respondent requesting copies of all video footage from March 30, 2020, starting at 4:30 PM and ending at 5:30 PM (Exhibit 1-15). Seven days later, on May 4, 2020, Respondent notified the Department via email, that the requested footage was not available due to the earlier “mistreatment” of Respondent’s surveillance equipment by City personnel stating: “Due to the mistreatment of my surveillance equipment, my DV system fell to the floor causing both of the hard drives to fail.” (Exhibit 1-16). Saint Paul Police, Data Release Technician, James Legierski (“Legierski”) testified that he wrote an original report and a supplement as part of his collection of video from the DVR on April 24, 2020, at the Licensed Premises (Testimony Legierski 7/26/2022, 3:53). His supplement is in evidence (Exhibit 1-17). Legierski testified that he was assigned to collect video as part of an investigation that SPPD was conducting. He described the steps he took to recover the video, including the steps he took to move the DVR from its space near the ceiling in order to insert the flash drive he needed to recover the video. He testified that he was having difficulty putting the DVR back up in its spot near the ceiling and that he asked for assistance from an employee. He stated that the employee told him to leave the DVR where it was. He noted that part of his collection routine is to check the video time stamp for accuracy when he begins a collection and to make sure that the system is back online and that the cameras are functioning when he finishes. He explained that he checked and that the cameras were functioning before he left - which told him that the system was back online and recording (Legierski Testimony 7/26/2022, 4:33 - 28:11). The testimony of video technician Legierski was credible and reasonable as to this issue. He has no stake in the outcome of this matter. In contrast, Respondent’s testimony, paragraph 13 of his Amended Declaration,

Respondent's May 4, 2020 response to DSI and the photo he offered to show the "mistreatment" of his surveillance system tell conflicting stories (Exhibit 13, Exhibit 104, Respondent Testimony 7/26/2022, 1:30:42 - 1:38). Respondent testified that he went into the Licensed Premises after video technician Legierski collected the video and found that the system was not functioning as it had fallen to the floor - he described how its cables for the Ethernet had broken off. He also testified that he wasn't disputing that when video technician Legierski left the boxes were hanging and the cameras were working. Respondent testified that an employee took the photo "after the police offer had collected his data" (Exhibit 104, Respondent Testimony 7/26/2022, 1:36:56 - 1:37:25). He also testified that he repaired the system himself so it was back online by the next day by purchasing hard drives from The One Stop Wireless (Respondent Testimony 7/26/2022, 1:37 - 1:38:10) . Exhibit 104 titled "Photograph taken by Zakariya Abukhudeer showing the City's mistreatment of the video equipment after they collected the video" and Paragraph 13 of Respondent's Amended Declaration which was used to impeach Respondent tells a different story. In paragraph 13, Respondent states "Attached as Exhibit F is a copy of a photograph I took right after the City collected the video and its worker mistreated our video equipment." (Exhibit 13 (paragraph 13), Exhibit 104). Respondent also states, "We had both hard drives replaced the next day." (Exhibit 13 (paragraph 13)). In addition to these contradictions, Respondent waited eleven (11) days from the date that video technician Legierski collected the video to raise his allegation of mistreatment - and then he only raised it with in conjunction with his failure to produce the March 20, 2020 video. Prior to that point in time, Respondent made no report, complaint, or allegation regarding the mistreatment of his surveillance equipment. Respondent's testimony on this issue is not credible and because Respondent failed to comply with a condition imposed by

his license, a recommendation supporting adverse action and the inclusion of this license condition violation as a basis to support upward departure and revocation of the License is appropriate.

II. The City has met its burden and proven by a preponderance of the evidence that Respondent violated licensing condition #2 and SPLC § 310.06(b)(5), (b)(6)(a), (b)(6)(c), (b)(7), and (b)(8) by failing to take reasonable steps to discourage loitering on March 30, 2020, June 1, 2020, and July 20, 2020.

License condition 2 of the License held by Respondent states that “The license holder shall take reasonable steps to discourage loitering in front of or on the property of the licensed business.” (Exhibit 1-14).

July 20, 2020 Gambling Incident

On July 20, 2020, Saint Paul Police Officers Marquis and Shannon documented a violation of license condition #2 under Saint Paul Police Case Number 20145047 (Exhibits 2-104 - 2-106). Their report documented the loitering violations they observed on the west side of the building. They have no stake in the outcome of this matter and they had no reason to be untruthful in the report they wrote. They were merely reporting what they observed.

Respondent’s testimony indicated that he was aware of other loitering/gambling type incidents on and near the Licensed Premises. Respondent also testified regarding his understanding of the type of neighborhood he was operating in. Respondent testified that they couldn’t see this side of the building from the store, and that an employee would have to exit the building and walk over to that side of the building in order to see what was going on. Respondent testified that he didn’t believe that his license conditions require him to do this (Testimony Respondent 7/26/2022, 1:44:46- 1:50:13). License Condition #2 clearly makes Respondent responsible for “taking reasonable steps to discourage loitering in front of or on the property of

the licensed business”. Given Respondent’s knowledge of the previous problems, reasonable steps would include some effort to check outside the building on a regular basis, to not only prevent loitering, but to also ensure that the Licensed Premises is free from criminal activity and his patrons are safe. The City has met its burden of proof in this allegation.

March 30, 2020 Aggravated Assault Incident and June 1, 2020 Aggravated Assault Incident

With respect to the March 30, 2020 incident, Sergeant Rob Stanway (“Stanway”), the SPPD officer assigned to the Department in 2020, testified that his duties while with the Department related to all licensees and testified that he reviewed the footage that SPPD had recovered for licensing violations after an aggravated assault with shots fired occurred on the Licensed Premises (Exhibit 1-22 - 1-26, Exhibit 114, Stanway Testimony 7/26/2022, 34:19 - 36:28, 57:19 - 57:55). Stanway testified that he is familiar with the neighborhood and that this is a “rougher part of town” with increased gang, narcotic activity, shootings, violence, fights and that there are low income housing and single family homes (Stanway Testimony 7/26/2022, 32:43 - 33:57). He testified that he reviewed the video, watching, stopping, rewinding, slowing down and then writing his report (Stanway Testimony 7/26/2022, 37:08 - 38:26). His report contains a detailed list of the incident he watched unfold on video and also contain his conclusions as to which actions of the Respondent were violations of license condition #2. Stanway also reviewed the video from the March 30, 2020 while testifying (Exhibit 113). Stanway’s report and testimony focused on two incidents that he concluded were violations of license condition #2: a black SUV that was in the lot for an extended period of time and involved in the altercation that led up to the shots fired and employees; and people hanging out and loitering in front of the Licensed Premises.

Stanway's conclusions were based on his experience and training. His report and testimony detailed his findings and his conclusions that Respondent violated license condition #2 when he allowed the black SUV to remain on the Licensed Premises and again violated it when he allowed individuals to hang out and loiter in the front of the store (Exhibits 1-22 - 1-26, Exhibit 113, Stanway Testimony 7/26/2022, 44:49 - 1:13):

“It was apparent to me that the employee with the dark blue sleeveless shirt and the black leather gloves did nothing to discourage loitering. When the store video started the dark colored SUB involved in this shooting was parked and occupied the entire time. As the employee was outside, the occupants of that vehicle continued to get in and out. That behavior did not appear normal and should have brought attention to the employee to take action. If the vehicle and the occupants would have been asked to leave, this incident would not have happened in the parking lot of the licensed property.”

“Also other people were seen in front of the store hanging out and the employee was seen smoking with them. At no time did the employee take any action to keep those people moving.”

Licensing Manager Eric Hudak (“Hudak”) also testified. He stated that he has been the licensing manager for 7 years and his primary duties include employee supervision and training, licensee education, compliance checks. He testified that he is trained to detect violations of the licensing code (Hudak Testimony 7/25/2022, 1:05). He stated that he had watched the video and determined that there was a violation of license condition #2 and violations of SPLC §§310.06 (b)(7) and (b)(8). Hudak believed “the lack of action contributed to the possibly of injury to the general public and others who were nearby”. Hudak testified that in his opinion, if the Respondent would have taken action, the shooting would not have occurred in this location (Hudak Testimony 7/25/2022, 1:40-1:42). Hudak also watched the video during his testimony and was asked questions (Hudak Testimony 7/25/2022). He stated he had reviewed the report authored by Stanway and he agreed with Stanway's narrative and conclusions (Hudak Testimony 7/25/2022,

1:42). As the Licensing Manager, Hudak believed that the Respondent had an obligation to ask the individuals on the sidewalk in front of the store and in the black SUV, who had no business purpose, to move along. He testified that the Respondent and his employees made no effort to discourage the loitering that he observed taking place in the SUV or on the sidewalk (Hudak Testimony 7/25/2022, 1:22-1:26, 1:32-1:33, 1:35). Hudak testified that under the loitering license condition Respondent and his employees had an obligation to investigate and move these individuals along (Hudak Testimony 7/25/2022, 1:33). Hudak also believed that in his experience as licensing manager, this was not the type of conduct he sees on an everyday basis and that he considered the behavior abnormal. Hudak explained that under SPLC §310, each of the violations could serve as a separate basis for adverse action (Hudak Testimony 7/25/2022, 1:33, 1:43). Hudak also testified that the video collected by SPPD and reviewed during the hearing did not sufficiently respond to the DSI request as DSI had requested interior views and different times (Exhibit 1-15, Hudak Testimony 7/25/2022, 1:44-1:45:50).

On June 5, 2020 Hudak again requested video from Respondent after DSI learned of another incident from SPPD which occurred on the Licensed Premises (Exhibit 1-10, Hudak Testimony 7/25/2022, 1:47). Respondent produced the video for DSI in a timely manner (Exhibit 1-13). Hudak testified that he reviewed the video from June 1, 2020 and observed violations which showed a “brawl” that occurred inside the Licensed Premises on June 1, 2020 (Hudak Testimony 7/25/2022, 1:47-1:49). He testified that he documented the violations he observed in his report (Exhibit 1-9, Hudak Testimony 7/25/2022, 1:49). Hudak testified the situation was an uncontrolled, dangerous environment, with fighting and described the violations he observed on the video recording. He stated that his report did not summarize all the violations he observed

and that non-smoking and tobacco violations were listed on the bottom half of Exhibit 2-8 and top half of 2-9 and also in the still photographs (Exhibit 1-9, Hudak Testimony 7/25/2022, 1:49-1:53, Exhibit 2-8. 2-9, Exhibit 2-13 - 2-35). Hudak viewed the video while testifying and pointed out the violations as he observed them. These included his belief that employees should have intervened based on the amount of time that transpired, his opinion that it is not appropriate for an employee to be carrying around weapons like a shotgun, he didn't believe it was appropriate for the store employee to place the unsecured gun against the wall - especially during a fight and it was not appropriate to have the handgun unsecured within the Licensed Premises. (Hudak Testimony 7/25/2022, 1:54 - 2:05:09, Exhibit 1-13).

Hudak stated that the conduct he observed is not something he has seen on a regular basis as the licensing manager, in his opinion it was exceptional because it was an uncontrolled environment that was allowed to take place and the response to that uncontrolled environment, which included brandishing firearms, not controlling the firearms, and leaving them unsecured during the incident was dangerous (Hudak Testimony 7/25/2022, 2:05 - 2:06).

Respondent, his brother Maan Abukhudeer ("Maan"), Cousin, Faris Abdukhudair ("Faris"), Cousin, Mohamad Abdukhudair ("Mohamad") and Sergeant Dunaski testified on behalf of Respondent. While Respondent and his witnesses attempted to refute the evidence and testimony offered by the Department, their testimony actually supported the allegations made by the Department and provided context to the Department's revocation recommendation.

Respondent testified that he had worked at the Licensed Premises prior to purchasing it and was aware of "what the situation was", that this was a low income area, generally problematic, with heavy gangs (Testimony Respondent 7/26/2022, 1:19 - 1:21). He believed that people in the

community frequent the Licensed Premises because it is convenient and that most don't have vehicles (Testimony Respondent 7/26/2022, 1:26).

Respondent's testimony showed that at one point he was aware that he needed to pay more attention to the Licensed Premises including the parking lot than he was in March and June of 2020. In fact, Respondent testified that he had initially hired off duty officers in 2019, but "once the city implemented the menthol ban, revenue was severely cut" and "they had to stop because it was too expensive". He testified that he stopped hiring off duty in the beginning of 2020 (Testimony, Respondent 7/26/2022, 1:21:30 - 1:23:24). Apparently after the menthol ban curtailed his profits, Respondent "looked for trusted locals" to try and "move people around". Respondent identified the man in the white shirt as one of his security members who goes by "Fresh" (Testimony Respondent 7/26/2022, 1:22-1:24, 1:52).

Respondent also testified as to his current policy regarding loitering: "employees are generally told that if they are not making any purchases within, like, 15 minutes, then they tell them to move around". Respondent tells them not to be too immediate because people get aggravated (Testimony Respondent 7/26/2022, 1:24).

As to the guns in the store, Respondent appeared to believe that because employees were licensed, they could bring guns to work and use them as scare tactics on the Licensed Premises.

Faris testified that the store policy on loitering was "if you are not buying anything there is no hanging out in front of the store" and acknowledged that loiters can be "slick" and make excuses as to their reason for loitering on the Licensed Premises, like watching their dryer at the laundromat. He identified the man in the skull face mask who was loitering in front of the store as Milt (sp?) and while he knew he did not work there; Faris lacked the insight to identify this

behavior as loitering and allowed him to loiter. The testimony of Hudak and Stanway, as well as the video clip of this incident shows loitering behavior that should have been addressed. As to the firearms, Faris stated that “they typically keep a shotgun in the store - but pointed out that the shotgun was not loaded. He stated there was also a handgun on the Licensed Premises, but it was hidden in a safe location and that it was loaded, it just didn’t have a bullet in the chamber. He believed that there “was nothing he could have done to stop that fight from occurring - especially in their neighborhood...if you just jump in the middle anyone can start shooting” and “if you try and break up a fight, everyone takes it personal and tries to fight you” and “they think that we are the police department - they come to us to have us try and solve their problems”. (Testimony Faris 7/25/2022, 2:39:01 - 3:27:43).

Respondent’s brother Maan testified that he was working when the June 1, 2020 incident occurred. His testimony highlighted the lack of control over the Licensed Premises as well as the lack of properly implemented management procedures. The video shows that when confronted with what he described as a very drunk crowd, he and staff continue to make sales rather than immediately working to remove individuals from the building. They make no attempt to even lock the doors. Mann testified that he thought the regular customers would stabilize the crowd and appeared to believe that the crowd had such respect for them that they would make sure things didn’t get out of hand. Mann identified a “peacemaker” who he allowed to try and intervene and a regular customer who was allowed behind the counter. While Mann initially relied on the crowd to manage the incident, once it had severely escalated, Mann and employees improperly responded by brandishing firearms and leaving them unsecured. Mann appeared to believe that this was a proper response. Mann’s testimony showed that it was unapparent to him

how the lax management of the Licensed Premises provided the red carpet for the community to carry out the unlawful behavior observed on the June 1, 2020 video and the danger that his response created for the community (Testimony Mann, 7-27,2020 36:00 - 1:10).

Saint Paul Police Sergeant Dunaski testified. He outlined the good working relationship he had with respondent and how Respondent assisted him with serious incidents and information on dangerous individuals. He also gave an opinion as to what he would consider loitering to be. He did not watch the video; he was unaware of the specific license conditions Respondent's license had nor did he seem to be aware of what was going on inside the Licensed Premises. Therefore, his opinion on loitering was not offered in relation to the facts in evidence and should not carry weight on the issues of whether the Respondent violated license condition #2 and the provisions of the SPLC cited by the Department in its request for adverse action.

The distinction between creating a situation in which it is necessary to step in and quell a dangerous situation and failing to implement management practices that prevent such situations from occurring is important in this matter. Respondent is ultimately responsible for managing the licensed premises, despite Respondent's apparent belief that the Licensed Premises was located in an area wrought with the potential for violence, Respondent failed to take responsible steps towards properly managing the licensed premises in a way that would prevent occurrences like the ones seen on March 30, June 5 and reported on July 20 of 2020. From the testimony and the evidence in record, it became clear that Respondent's management style is akin to something out of an old western. The Licensed Premises is the turf of Respondent and staff. They rule within that space. Testimony showed that Respondent failed to create and implement rational, clear policies, consistent rules, and procedures to control loitering on the Licensed Premises and ensure the safety

of customers and the community. Respondent put profits above safety. The video footage exemplified how poorly staff was trained as to how to properly control and handle situations like the ones observed on the March and June video.

Both Stanway and Hudak testified as to the violations of license condition #2 they observed. It is their job to identify license violations. They both have the training and experience through their daily work to determine when recommending adverse action is appropriate and what level penalty is appropriate. It is reasonable that Respondent be expected to understand his customers, his business and license conditions. It is reasonable to expect Respondent to implement policies and procedures that keep the public safe and ensure compliance with his license conditions. It is reasonable to expect that Respondent set guidelines that set the tone that the licensed premises are well managed and there are rules to be followed. It is reasonable to expect Respondent to comply with license condition #2 and check outside of the Licensed Premises for loitering. It is reasonable that Respondent be expected to manage the License Premises in a manner that does not create a serious danger to the public health, safety, or welfare. It is reasonable to expect that Respondent operate the licensed business in a manner that does not unreasonably annoy, injure, or endanger the safety, health, morals, comfort, or repose of any considerable number of members of the public. It was clear that Respondent's lack of control created risk for employees, customers, and community members. Respondent's poor choices created an environment that required force, shotguns, and handguns to control. Respondent didn't even believe that his loitering license condition required him to patrol outside around the licensed premises. The very fact that the Respondent and staff believed guns were necessary to control the Licensed Premises and the ease at which they pulled them out adds weight to the poor management choices of the Respondent and

the danger his choices created for the community. The fact that a review of the June 1, 2020 video and accompanying still photos shows customers going about their business and sales continuing to occur as if events like this are commonplace shows just how out of control the Licensed Premises has become under Respondent's ownership and findings in favor of the City on this issue should be entered.

III. Substantial Evidence and Testimony Support Adverse Action Against the Tobacco License Held by The One Stop Market Under §§ 310.05(b)(5), 310.06(b)(6)(a), (b)(6)(c), (b)(7) and (b)(8) of The Saint Paul Legislative Code and Substantial and Compelling Reasons Exist to Support Upward Departure to Revocation of the Tobacco License Held by Licensee.

The City established that Respondent violated license condition #2 at least 4 times and condition #3 once. The City established that the Licensee engaged in and permitted sale after sale of prohibited tobacco products in the course of a short video shows he lacks the fitness or good character to hold a tobacco license. This was not Respondent making a mistake - this is a willful violation and a criminal enterprise. The City showed that the Licensee operated Licensed Premises in such a way that it maintained conditions that have unreasonably annoyed, endangered the safety, morals, and comfort of members of the community. The City provided ample evidence including written documents, photographs, audio, video, and testimony in support of its request for revocation of the Licenses held by Respondent. The testimony offered as part of Respondent's defense was troubling. Respondent openly admitted to cutting security that would have controlled the environment and ensured the safety of staff and patrons. He blamed this decision on the fact that his revenue was cut when the City prohibited menthol tobacco products. However, the photos and videos in evidence show that Respondent continued to sell prohibited menthol products as well as prohibited flavored products. The sheer volume of

customers who knew where to go and how to purchase illegal products on the video is a testament to the size of his illegal operation. The video in evidence clearly shows what type of business Respondent is running. The types of sales being recorded are not the staples of milk and bread necessary to survive that Respondent and his employees imply in his testimony.

Respondent's tendency to blame the community versus their lack of steps to manage behavior are troubling. References to the rough neighborhood, the fact that the surrounding community contains "project" and section 8 housing imply that community members in this space can expect lower standards because a well-managed, controlled, safe environment was impossible. The blatant disregard for regulations related to this license and license conditions, outrageous, ongoing behavior and facts surrounding the Respondent's management style in tandem with the ongoing criminal activity are substantial and compelling reasons to deviate from the presumptive penalty and to revoke the license. Respondents' role in criminal activity was active, not passive.

IV. Conclusion

While it is not typical that a business with no prior licensing violations is subject to revocation, SPLC is set up to allow for this possibility. For all of the foregoing reasons, the City submits that it has shown by a preponderance of the evidence that 1) the Respondent has violated provisions of an ordinance reasonably related to the licensed activity, 2) the Respondent failed to comply with condition #2 of his license, 3) the Respondent failed on to comply with condition #3 of his license on multiple occasions, 4) the Respondent performed acts which violated the provisions of law, statutes, ordinances and regulations reasonably related to the licensed activity, 5) Respondent 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, 6) Respondent acted in a manner that created a serious danger to the public health, safety or welfare and performed his work in an unsafe manner, and 7) Respondent operated the licensed business and permitted conditions in a manner that unreasonably annoyed, injured or endangered the safety, health, morals, comfort or repose of any considerable number of members of the public.

Saint Paul Legislative Code § 310.05 (m)(ii) states that the occurrence of multiple violations shall be grounds for departure for such penalties at the council's discretion. While this was the Respondent's first adverse action, the Department recommended an upward departure to revocation based on the following substantial and compelling reasons:

- the number of times that condition #2 of the license was violated,
- the violation of license condition #3,
- the number of times that the provisions of the code related to the licensed activity were violated through sales of prohibited products,
- the blatant nature of the violations and the total disregard for ordinances and license requirements,
- the serious danger that failure to follow the conditions of the license caused,
- the frequency of the violations,
- the failure to manage the Licensed Premises to ensure that fights and disputes do not escalate into situations that endanger the safety of the public,
- the failure to attempt to check identification of individuals who appear to be underage before selling them tobacco products,
- the additional serious violations of Saint Paul Legislative Code after the June 18, 2020 meeting with the Department and representatives of the Saint Paul Police Department to discuss the problems at the Licensed Premised,
- the failure of the Respondent to acknowledge the June 18, 2020 and June 24, 2020 emails from Licensing Manager, Eric Hudak (Exhibits 1-10 - 1-11), and
- the calls for service to the Licensed Premises laid out in the Saint Paul Police Department Address Search for 1541 Maryland from 4/17/2019 - 4/17/2020 (Exhibits 1-27 - 1-32).

The City ought not be compelled to license a business for any purpose, when the license is used, in part, to facilitate illegal activity. The evidence, including the repeated sales of

prohibited tobacco products show the intentional nature of Respondent's actions as well as the danger his inability to manage the Licensed Premises causes. The City should not be made an unwilling partner to the continuation of criminal conduct occurring at the Licensed Premises. The Department believes it has shown that revocation of the cigarette/tobacco license would assist in addressing the neighborhood complaints and protect neighbors from exposure to both illegal activities, protect the public and ensure that the ordinances laid out in the SPLC are followed. For all of the foregoing reasons, the City submits that it has shown by a preponderance of the evidence that upward departure to revocation of the cigarette/tobacco license is appropriate and that the evidence presented is sufficient to justify the upward departure to revocation. The City respectfully requests that this Court recommend revocation of the cigarette/tobacco license held by The One Stop Market at 1541 Maryland.

Dated: September 6, 2022

Respectfully submitted,

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