

STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Elliot Glaser-Leder, being first duly sworn, deposes and says that on the thirteenth day of December he served the attached **NOTICE OF VIOLATION AND REQUEST FOR 10 DAY LICENSE SUSPENSION** and a correct copy thereof in an envelope addressed as follows:

I Mart St Paul
d/b/a I Mart St Paul
296 7th Street East
Saint Paul, MN 55101

Munadel Rizek,
8950 West 103rd Street
Palos Hills, IL 60445

Realty Income Properties 3 LLC,
PO Box 182597,
Columbus, OH 43218-2597

Jon Fure, Executive Director
Capitol River Council
370 Wabasha Street North, Suite 720,
St. Paul, MN 55102

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.


Elliot Glaser-Leder

Subscribed and sworn to before me
This twentieth day of December 2023


Notary Public





SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDSEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

December 20, 2023

**NOTICE OF VIOLATION AND
REQUEST FOR 10 DAY LICENSE SUSPENSION**

I Mart St Paul
d/b/a I Mart St Paul
296 7th Street East
Saint Paul, MN 55101

RE: Gas Station and Tobacco Shop license held by I Mart St Paul d/b/a I Mart St Paul for the premises located at 296 7th Street East in Saint Paul.
License ID #: 20230000995

Dear Licensee:

The Department of Safety and Inspections ("Department") has recommended adverse action against the Gas Station and Tobacco Shop license held by I Mart St Paul ("Licensee") herein for the premises known as I Mart St Paul located at 296 7th Street East (Licensed Premises").

Legal Basis for Action:

Saint Paul Legislative Code §310.01, defines Adverse Action 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. 'Adverse action' includes any of the foregoing directed at one (1) or more licenses held by a licensee at any location in the city. 'Adverse action' also includes disapproval of licenses issued by the state under statutory provisions which permit the governing body to disapprove the issuance of the license."

Saint Paul Legislative Code §324.07(j) states, "[n]o person may sell, offer for sale, or otherwise distribute any flavored products, unless excepted under section 324.07(l) of this chapter."

Saint Paul Legislative Code §324.03(5) defines flavored products as:

"any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

The Saint Paul City Attorney's Office does not discriminate
based on race, color, national origin, religion, sex/gender, disability, sexual orientation, gender identity, age, or veteran status
in the delivery of services or employment practices.



ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product or device is a flavored product."

Finally, Saint Paul Legislative Code §324.010(b) provides a presumptive penalty of a 10-day suspension for "[d]isplay possession or multiple incidents of sales of; single cigarettes; menthol tobacco products; or *flavored tobacco products*" (emphasis added).

Adverse Action Recommendation:

The Department of Safety and Inspections will recommend a 10-day license suspension penalty for violating the Saint Paul Legislative Code §324.07(j) and selling flavored tobacco with a Tobacco Shop license.

Factual basis for imposition of 10-day license suspension penalty:

On November 15, 2023, Department of Safety and Inspections (DSI) Inspector Allan Vang went to the Licensed Premises to inspect the premises due to a flavored tobacco products complaint. Inspector Vang spoke with the clerk Cherih Sidi and security guard Carl Nelson and introduced himself as a licensing Inspector for the City of Saint Paul with the DSI. Inspector Vang explained to Cheri and Carl that he was there for an inspection from a complaint that was received by DSI from the Minnesota Department of Revenue (MDR), for flavor tobacco products being offered for sale. Inspector Vang requested Cherih to contact the license holder to inform them that Vang was here today for a complaint inspection. With permission from Cherih and Carl Inspector Voyda went behind the counter to conduct an inspection, in plain sight on the left side of the counter five packs of Winston 100% Plant-Based Menthol cigarettes, on display behind the cash register one carton of American Spirit Perique cigarettes, eleven packages of Dutch Sweet Fusion Red cigars, twenty four packages of Backwood Russian Cream (both sing and five pack) cigars, two boxes of Backwood Dark Stout cigars, one packwage of Backwood Grape Authentic cigars. As inspector Vang continued his inspection he found eight Loon Blue Lightning vape pens, ten Loon Gum Mint vape pens, ten Loon Mint Crush vape pens, one not opened box of Dutch Sweet Fusion Red cigars, these products were located in a white plastic bag under the counter. Also, Vang discovered three additional cartons of American Spirits Perique in the back storage room. Inspector Vang asked if there were any other flavored tobacco hidden, Cherih and Carl said, "not that I know of."



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDESEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

During the inspection Mohamed Gaver (manager) arrived at the store, after the introductions and the explanation of today's inspection. Inspector Vang educated Mohamed that the above mentioned tobacco products discovered were in violation of City ordinance of the issued type tobacco license that they currently possess, these products will need to be stored in the back room and not removed until the distributor is scheduled to pick the product up (return). Inspector Vang observed Mohamed storing the tobacco violations in a red plastic tote and placed on a top shelf in the back room.

1. If you do not contest the imposition of the proposed adverse action, you may do nothing. If I have not heard from you by **December 26, 2023**, I will presume that you have chosen not to contest the proposed adverse action and the matter will be placed on the City Council Consent agenda for approval of the proposed remedy.
2. You can accept the penalty. If this is your choice, you should indicate it directly to the Department of Safety and Inspections, at 375 Jackson Street, Ste. 220, St. Paul, Minnesota 55101-1806 no later than **December 26, 2023**. A self-addressed envelope is enclosed for your convenience. Acceptance of the penalty will be considered an admission to the violation and waiver of the hearing to which you are entitled. This matter will then be placed on the City Council Consent agenda for imposition of the recommended penalty of a 10 day suspension.
3. If you wish to admit the facts but you contest the 10-day license suspension penalty, you may have a hearing before the Saint Paul City Council. You will need to send me a letter with a statement admitting to the facts and requesting a Council hearing no later than **December 26, 2023**. The matter will then be scheduled before the City Council to determine whether to impose the penalty. You will have an opportunity to appear before the Council and make a statement on your own behalf.
4. If you dispute the facts outlined above, you may request a hearing before an Administrative Law Judge (ALJ). You will need to send me a letter disputing the facts and requesting an administrative hearing no later than **December 26, 2023**. At that hearing both you and the City will appear and present witnesses, evidence and cross-examine each other's witnesses. After receipt of the ALJ's report (usually within 30 days), a hearing will need to be scheduled. At that time, the City Council will decide whether to adopt, modify or reject the ALJ's report and recommendation.

Please note: If you choose an administrative hearing, the Department of Safety and Inspections reserves the right to request that City Council impose the costs of the administrative hearing per Saint Paul Legislative Code § 310.03 (k).

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

*The Saint Paul City Attorney's Office does not discriminate
based on race, color, national origin, religion, sex/gender, disability, sexual orientation, gender identity, age, or veteran status
in the delivery of services or employment practices.*



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDSEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

If you have not contacted me by December 26, 2023, I will assume that you do not contest the imposition of the 10-day license suspension penalty. In that case, the matter will be placed on the City Council Consent Agenda for approval of the recommended penalty.

If you have questions about these options, please contact my Alan Tellez Berkowitz
alan.tellez.berkowitz@ci.stpaul.mn.us Elliot.Glaser-Leder@ci.stpaul.mn.us

Sincerely,

Therese Skarda
Assistant City Attorney
License No. 0240989

Cc: Munadel Rizek, 8950 West 103rd Street, Palos Hills, IL 60445
Realty Income Properties 3 LLC, PO Box 182597, Columbus, OH 43218-2597
Jon Fure, Executive Director, Capitol River Council
370 Wabasha Street North, Suite 720, St. Paul, MN 55102

Attachments: Inspector's Report 11/15/2023
License Group Comments Text Screenshot
DSI Complaint Screenshot
Photos taken during 11/11/2023 inspection
Saint Paul Legislative Code §310.01
Saint Paul Legislative Code §324.03
Saint Paul Legislative Code §324.07
Saint Paul Legislative Code §324.10

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

*The Saint Paul City Attorney's Office does not discriminate
based on race, color, national origin, religion, sex/gender, disability, sexual orientation, gender identity, age, or veteran status
in the delivery of services or employment practices.*



Inspector's Report

Inspectors Name: Allan Vang

Date & Time: 11/15/2023 at 11:15 AM Staff Member's Name: Cherih Sidi (Clerk) & Carl Nelson (Security)

Business/DBA Name: I Mart St Paul

Property Address: 296 7th Street East -Saint Paul, MN 55101

Reason for Visit: Complaint Inspection

Observations: Flavor vapes, flavor cigars, and flavor cigarettes

Photos Taken: ☒ Yes ☐ No – Area(s) of where the Photo(s) where taken: Behind the Counter,
Display cases, and storage room

Action Taken: ☐ Education / warning

☒ Request for Adverse Action

Other: _____

Details of Conversations (Statements to and by Person Responsible for Property):

Upon arrival, I spoke with the clerk Cherih Sidi and security guard Carl Nelson, I introduced myself as a Licensing Inspector for the City of Saint Paul Department of Safety and Inspections (DSI). I explained I was there for an inspection due to a complaint that was received by DSI that flavor tobacco product being offered for sale. I requested Cherih to contact the license holder to inform them that I was here today for a complaint inspection.

With permission from Cherih and Carl to go behind the counter to conduct an inspection. In plain sight, on the left side of the counter, I observed five (5) packs of Winston 100% Plant-Based Menthol cigarettes, on display behind the cash register one (1) carton of American Spirit Perique Cigarettes, eleven (11) packages of Dutch Sweet Fusion Red cigars, twenty four (24) packages of Backwood Russian Cream (both single and five (5) pack) cigars, two (2) boxes of Backwood Dark Stout cigars, one (1) package of Backwood Grape Authentic Cigar.

Continuing my inspection I discovered eight (8) Loon Blue Lightning vape pens, ten (10) Loon Gum Mint vape pens, ten (10) Loon Mint Crush vape pens, one (1) not opened box of Dutch Sweet Fusion Red cigars, these products were located in a white plastic bag under the counter. Also, I discovered in back storage room, three (3) additional cartons of American Spirits Perique were discovered. I asked if there were any other flavored tobacco on the premises, Cherih and Carl responded, not that I know of.

During the inspection Mohamed Gaver (manager) arrived to the store, after the introductions and the explanation of today's inspection. I educated Mohamed that the above mentioned tobacco products discovered were in violation of City ordinance of the issued type tobacco license that they currently possess, these products will need to be stored in the back room and not removed until the distributor is scheduled to pick the product up (return). I observed Mohamed storing the tobacco violations in a red plastic tote and placed on a top shelf in the back room.



License Group Comments Text

12/08/2023

Licensee: KAREEM INC

DBA: I MART ST PAUL

License #: 20230000995

12/5/2023 AA sent to JNV for review. AYV

11/15/2023 Complaint inspection completed. In violation of flavor tobaccos and vapes. Under review. AYV

08/23/2023 CR #23-1256 approves license. JWF

8/10/2023 Sent to the CAO for CC approval JNV

08/09/2023 To JNV for CAO action CC approval. Recheck 09/06/2023. JWF

08/07/2023 No objection to license notice per Nhia Vang's office, Leg. Hrg. Officer. JWF

07/17/2023 License notice sent, 4M/35EM, response date 08/01/2023. JWF

06/26/2023 2nd email sent to DC. JWF

06/23/2023 To RH/DN for app. review to send public notice. Email sent to DC to confirm their rcpt. of Class N Lic. App. DC form. JWF

Folder #:	2023 099185 LIC	PIN:	312922440035	Status:	Under Review
In Date:	11/13/2	Ward:	2	Zoning:	B5
		Dist Council:	17	Owner:	
				Worktype:	Complaint
Complaint Location:		Census Tract:	34203	Realty Income Properties 3 Llc	
296 7TH ST E		Census Block:	3021	Po Box 182597 Columbus OH 43218- 2597	
		Homesteader:			
		Tax Owner:			

Legal Desc: WHITNEY AND SMITHS ADDITION PART OF KITTSONS ADD TO ST PAUL SWLY OF ...OF SD LOTS 1 AND LOT 2 BLK 5

Complainant:	
Details:	selling menthol without a license

This complaint has been referred to the following departments:

DSI Licensing Response - Scheduled Date: 11/13/23

Comment:

Inspector Assigned: Allan Vang, Phone: 651- 266- 1915

Results	Entered By	Comment
12/5/23 Under Review	Vang, Allan	AA sent to JNV for review

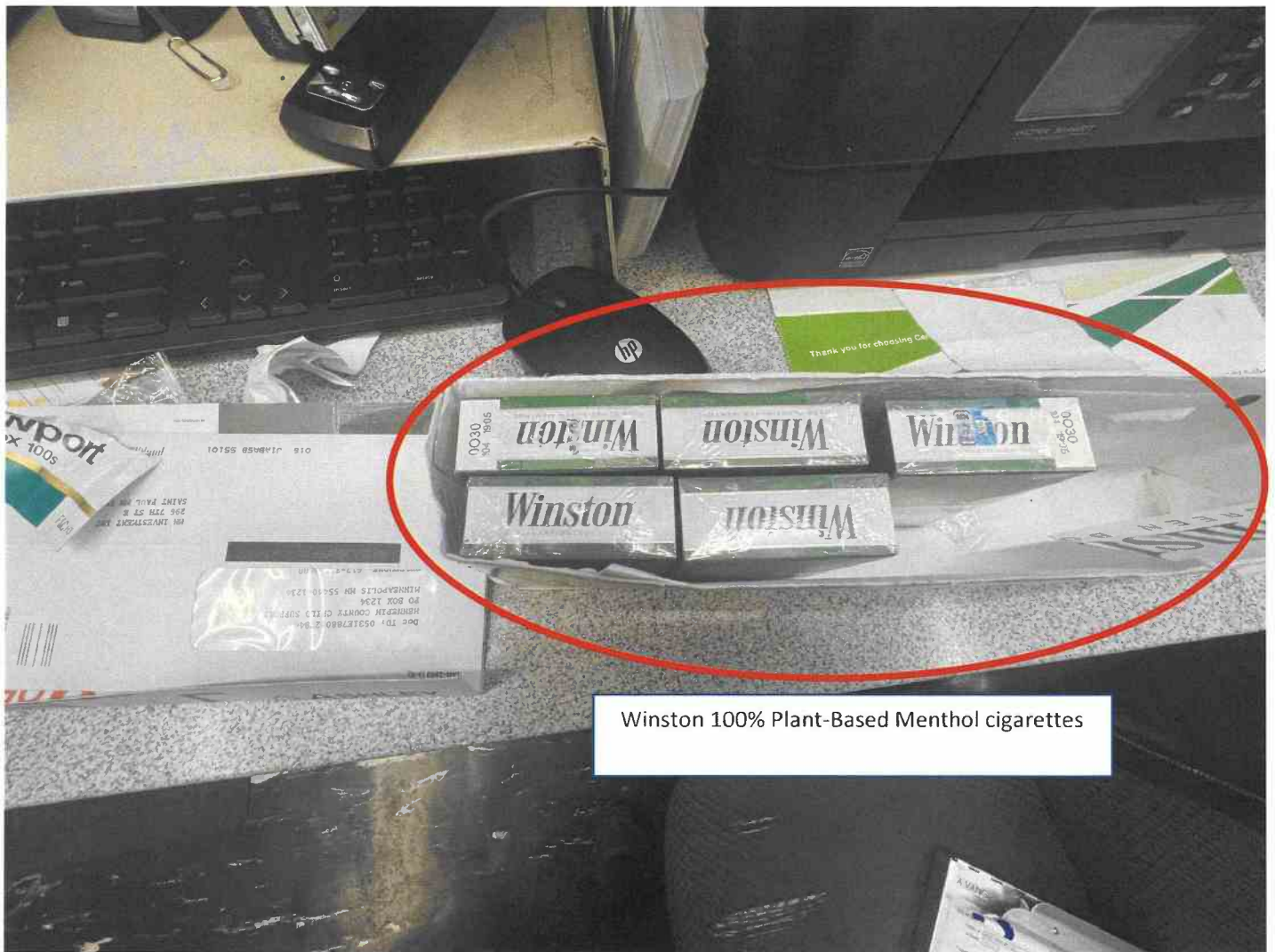
Comment:

Inspector Assigned: Allan Vang, Phone: 651- 266- 1915

Results	Entered By	Comment
11/15/23 Under Review	Vang, Allan	Complaint inspection completed. In violation of flavor tobaccos and vapes. Under review

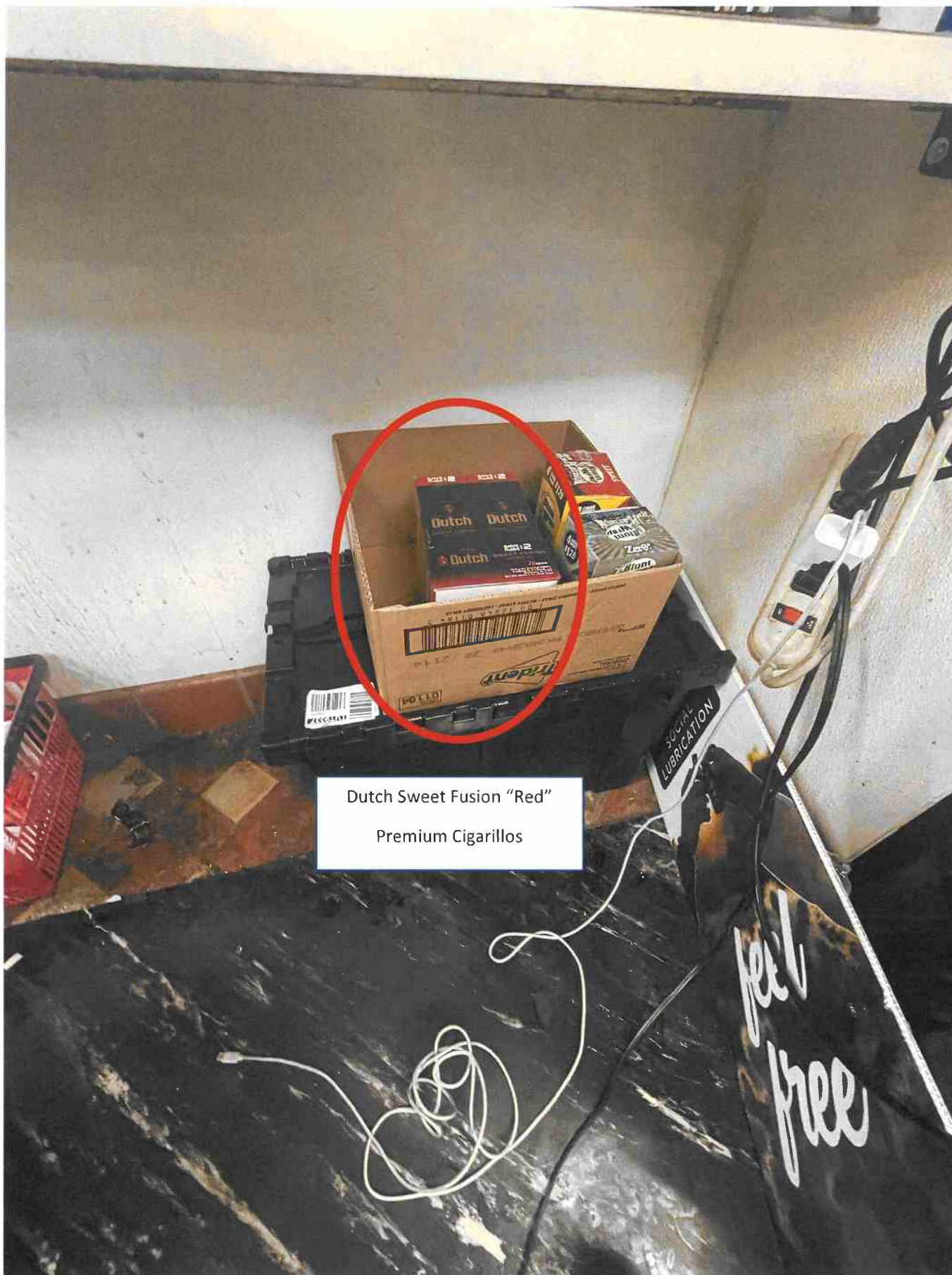


Winston 100% Plant-Based Menthol
cigarettes

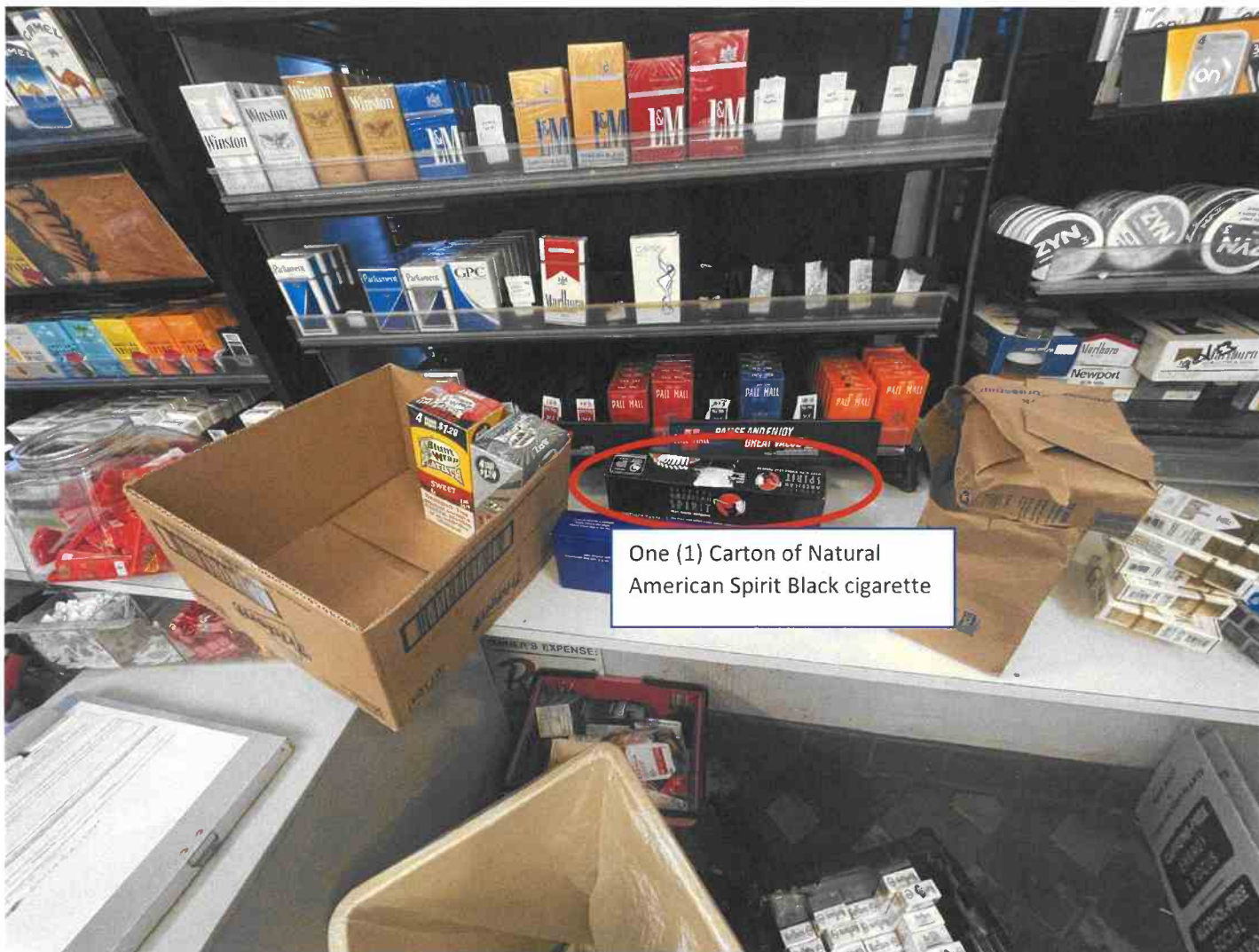


Winston 100% Plant-Based Menthol
cigarettes



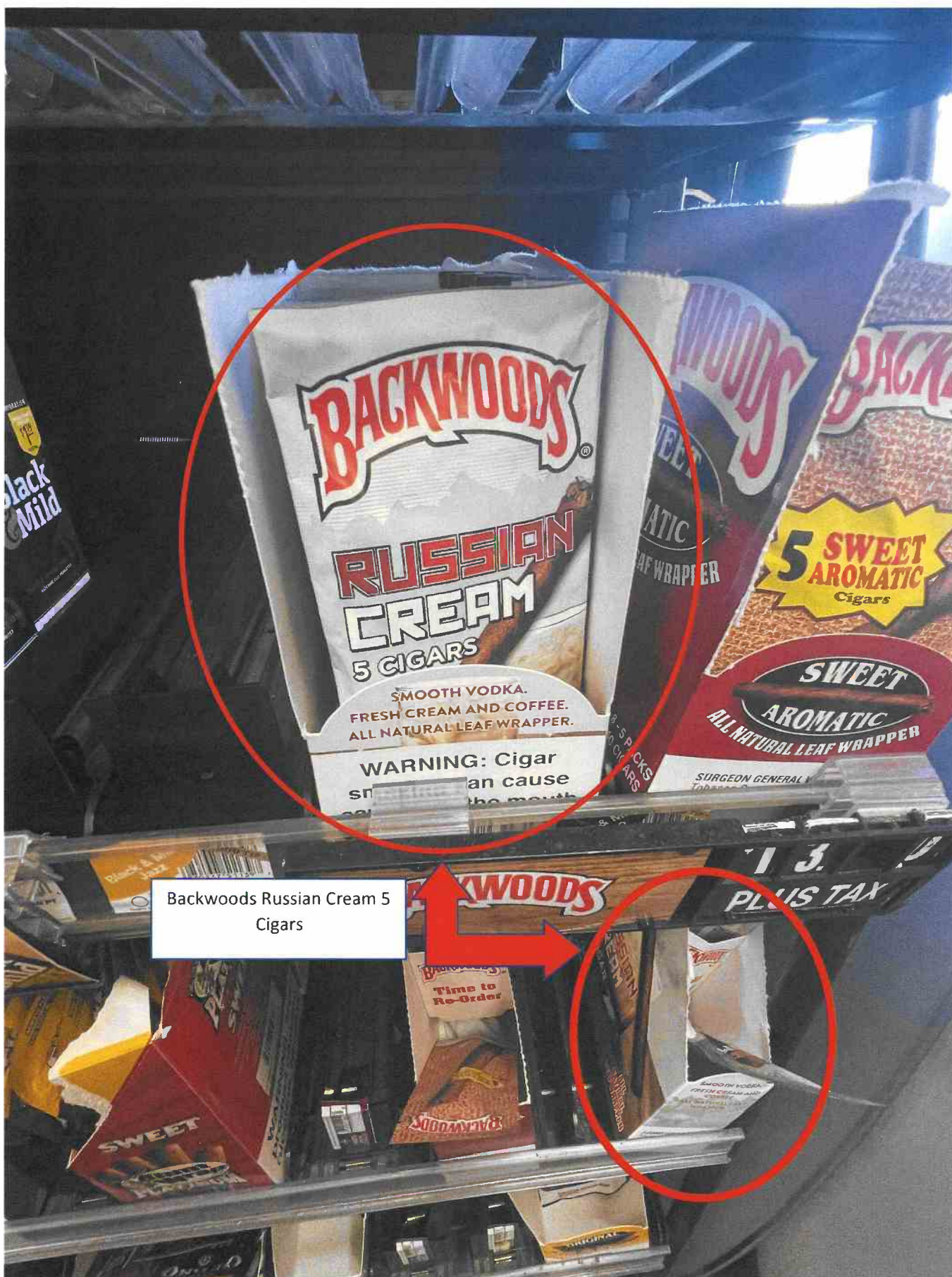


Dutch Sweet Fusion "Red"
Premium Cigarillos





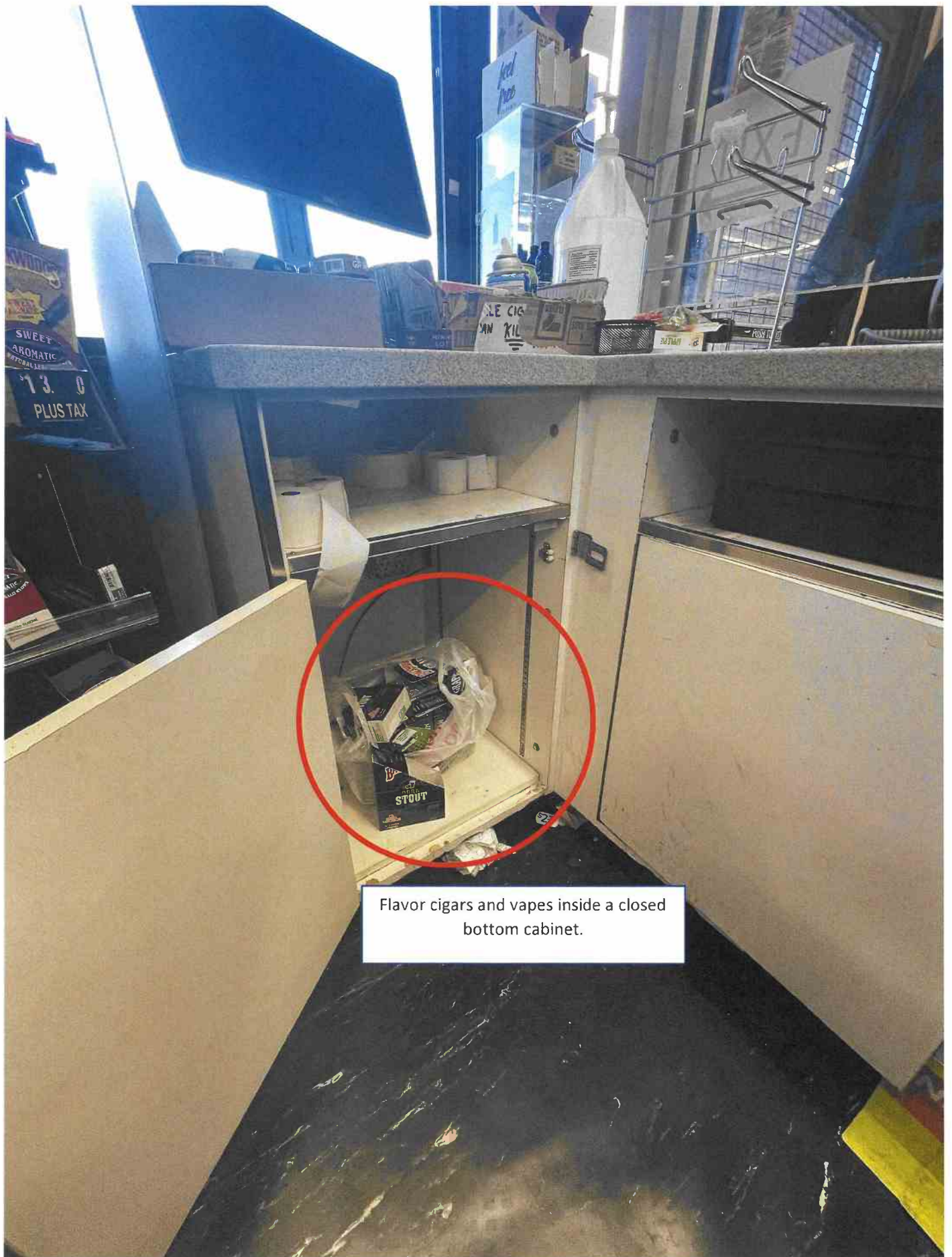
Dutch Sweet Fusion Red



Backwoods Russian Cream 5
Cigars



Flavor cigars and vapes inside a closed bottom cabinet.



Flavor cigars and vapes inside a closed bottom cabinet.



Gum Mint and Blue Lightning
Boosted Flavor Vapes

Mint Crush Boosted Flavor
Vapes

Backwoods Grape
Authentic Cigars and
Backwoods Dark Stout
Cigars



Mint Crush Boosted Flavor
Vapes

Backwoods Grape Authentic Cigars
and Backwoods Dark Stout Cigars



Three (3) cartons of Natural America Spirit Black





SMOOTH VODKA.
FRESH CREAM AND
COFFEE.
ALL NATURAL LEAF
WRAPPER.

SURGEON GENERAL WARNING:
Tobacco Use Increases The Risk
Of Infertility, Stillbirth, And
Low Birth Weight.

WARNING:
This product
contains nicotine.
Nicotine is an
addictive chemical.

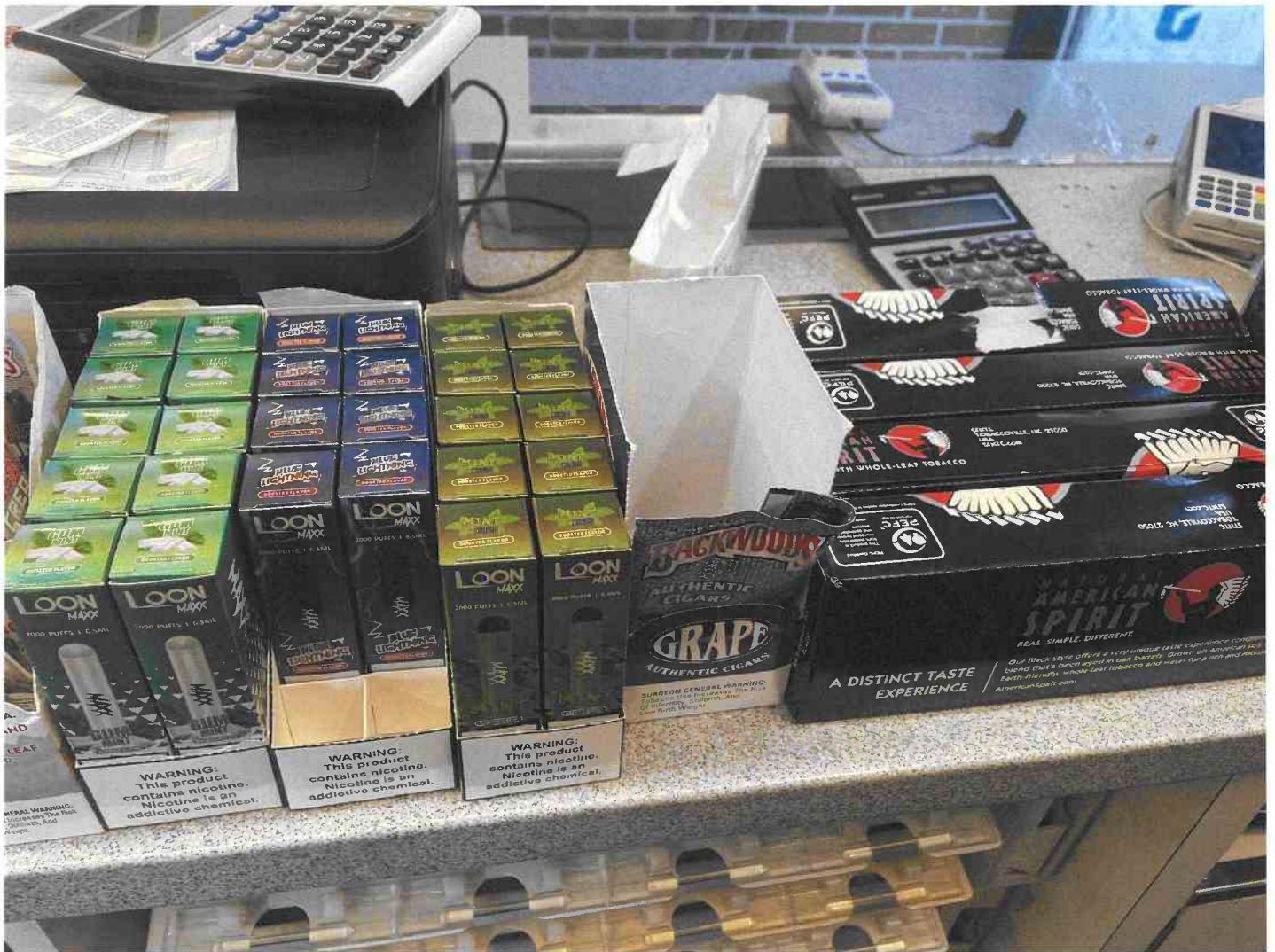
WARNING:
This product
contains nicotine.
Nicotine is an
addictive chemical.

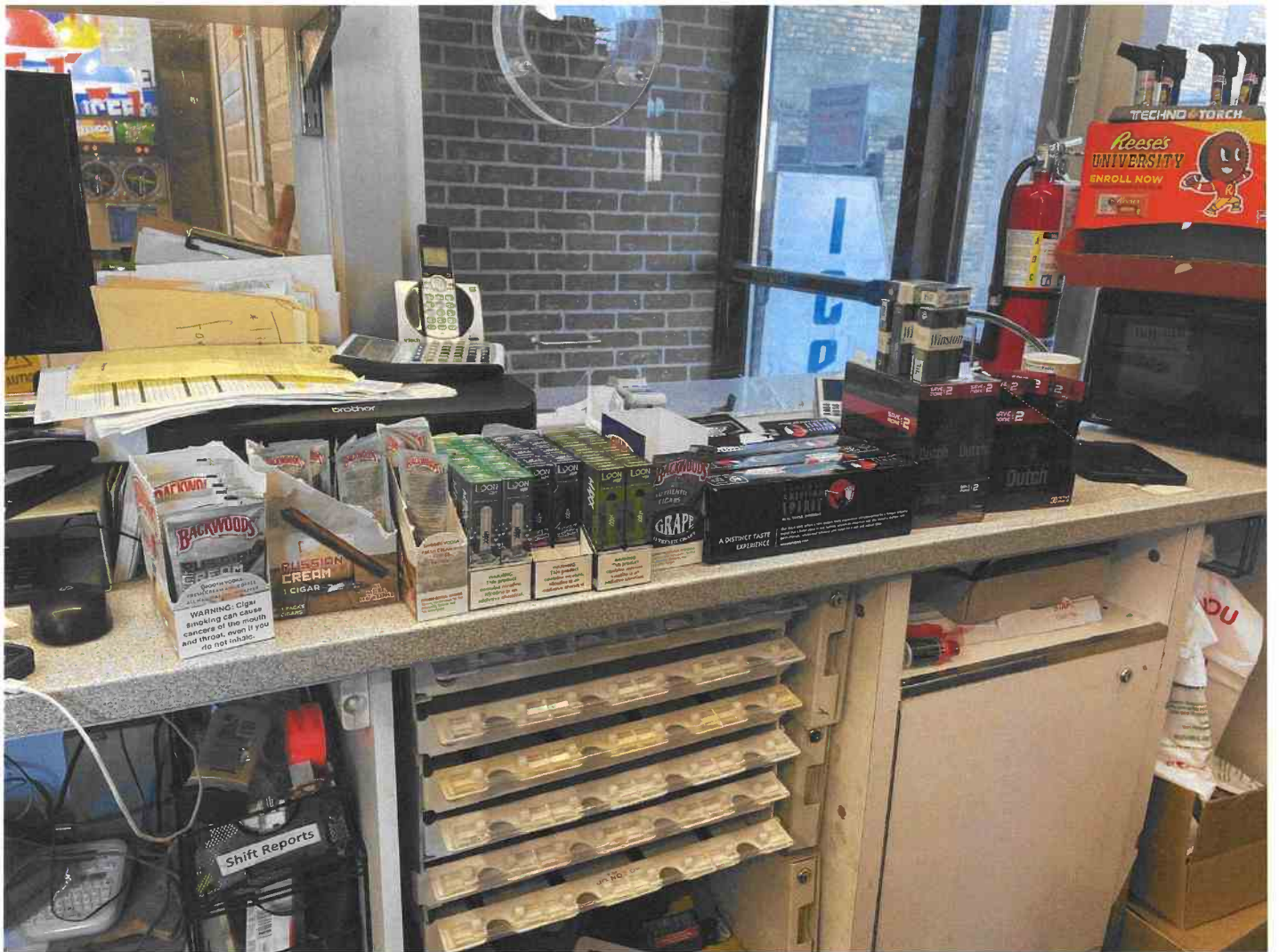
WARNING:
This product
contains nicotine.
Nicotine is an
addictive chemical.

SURGEON GENERAL WARNING:
Tobacco Use Increases The Risk
Of Infertility, Stillbirth, And
Low Birth Weight.

**A DISTINCT TASTE
EXPERIENCE**

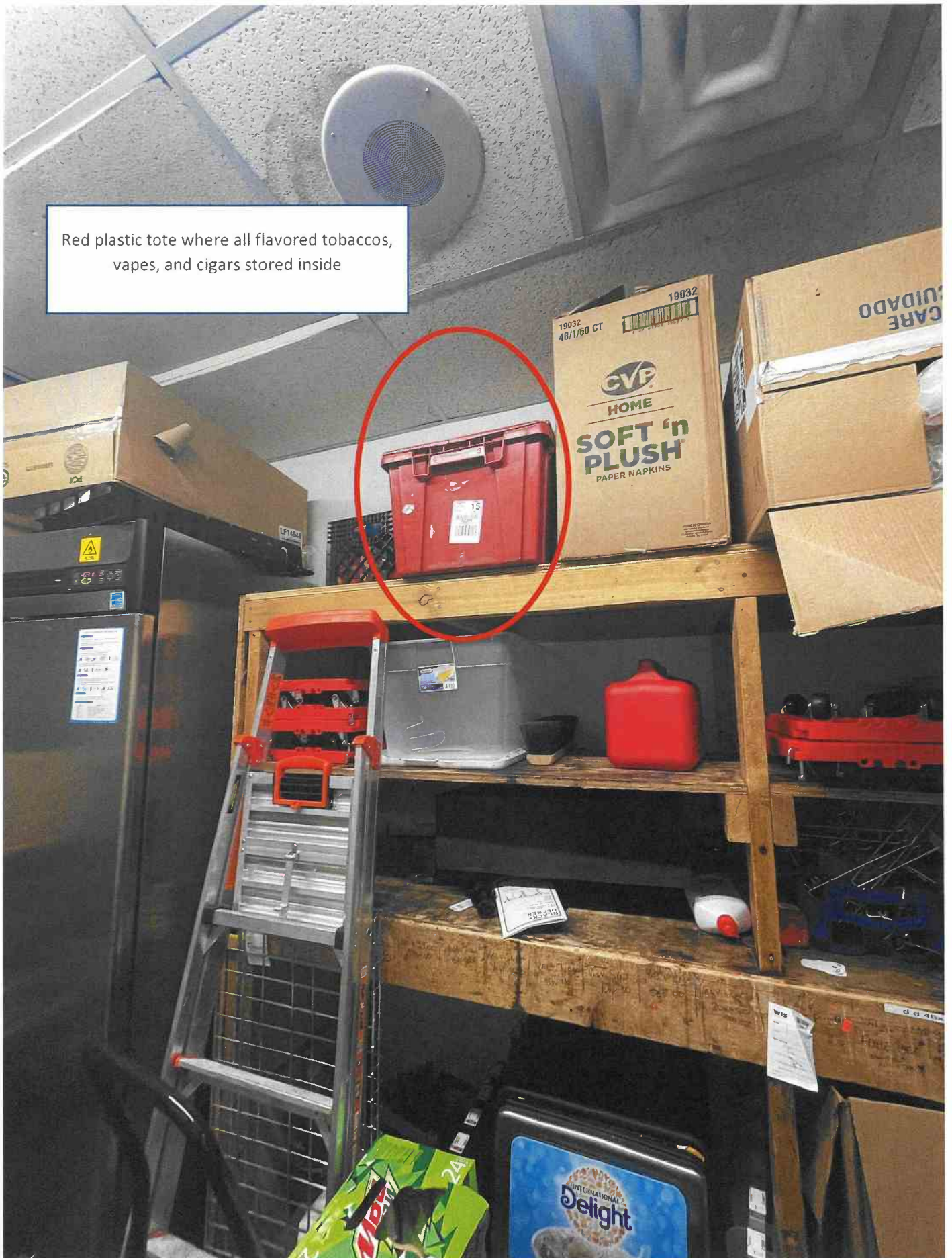








Red plastic tote where all flavored tobaccos,
vapes, and cigars stored inside



Red plastic tote where all
flavored tobaccos, vapes, and
cigars stored inside





Door to the back storage room where the red plastic tote is stored.

Sec. 310.01. - Definitions.

For the purposes of this chapter, any chapter of the Legislative Code pertaining to licenses as hereinafter mentioned, and subsequently enacted ordinances establishing or relating to the requirements for Class R, for routinely issued licenses, Class T for temporary licenses and Class N for licenses in which neighbors are required to be notified, under authority of the City of Saint Paul, the terms defined in this section shall have the meanings ascribed to them:

Adverse action means 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. "Adverse action" includes any of the foregoing directed at one (1) or more licenses held by a licensee at any location in the city. "Adverse action" also includes disapproval of licenses issued by the state under statutory provisions which permit the governing body to disapprove the issuance of the license.

Bond means a bond meeting the requirements of [section 310.07](#) and indemnifying the city against all claims, judgments or suits caused by, resulting from or in connection with any licensed business, activity, premises, thing, facility, occurrence or otherwise under these chapters.

Building official means the official in the department of safety and inspections charged with the responsibility of enforcement of the building code.

Chapters and these chapters shall mean this uniform license ordinance, any chapter of the Legislative Code pertaining to licenses as hereinafter mentioned, and subsequently enacted ordinances establishing or relating to the requirements for class R, class T and class N licenses under authority of the city.

Class R licenses means those licenses which can be approved and issued or denied by the director of the department of safety and inspections, subject to the procedures required by these chapters. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Class R Licenses	Legislative Code Chapter
Animal Foods Manufacturing and Distributing	316
Amusement Rides	317
Mechanical Amusement Devices	318
Bed and Breakfast	378
Bituminous Contractors	320
Rooming and Boardinghouses; Dormitories	321
Christmas Tree Sales	323
Cigarettes/Tobacco	324

Commercial Vehicles	<u>167</u>
Building Contractors	<u>326</u>
Courtesy Bench	<u>127</u>
Dry Cleaning Establishments and Pickup Stations; Laundries	<u>327</u>
Alarm Devices	<u>329</u>
Food Protection Standards	<u>331A</u>
Fuel Dealers—Liquid Fuel	<u>332</u>
Fuel Dealers—Solid Fuel	<u>333</u>
Pest Control	<u>334</u>
House Sewer Contractors	<u>338</u>
Keeping of Animals	<u>198</u>
Lawn Fertilizer and Pesticide Application	<u>377</u>
Mercantile Broker	<u>340</u>
Oil—Bulk Storage	<u>342</u>
Peddlers	<u>345</u>
Solicitors	<u>345</u>
Pet Grooming Facility	<u>382</u>
Pet Shops	<u>347</u>
Solid Waste Hauler	<u>357</u>
Rental of Hospital Equipment	<u>350</u>
Rental of Kitchenware	<u>351</u>
Rental of Trailers	<u>352</u>
Roller Rinks	<u>353</u>
Sanitary Disposal Vehicle	<u>354</u>
Secondhand Dealers (Single Location, Multiple Dealers)	<u>355</u>
Sidewalk Cafe	<u>106</u>
Sidewalk Contractors	<u>356</u>
Solid Waste Transfer Station	<u>357</u>
Sign and Billboard Construction	<u>66 and 33</u>
Sound Trucks and Broadcasting Vehicles	<u>359</u>
Public Swimming Pools	<u>360</u>
Tanning Facility	<u>380</u>
Wreckers and Tow Trucks	<u>361</u>
Taxicab Driver	<u>376</u>
Taxicab Vehicle	<u>376</u>
Tree Trimming	<u>362</u>
Food Vending Machines	<u>363</u>
Veterinary Hospital	<u>364</u>
Window Cleaning	<u>365</u>
Block Parties	<u>366</u>
Wrecking of Buildings	<u>368</u>
Building Trades Business Licenses	<u>369</u>

Building Trades Certificates of Competency	<u>370</u>
Finishing Shop	<u>371</u>
Tire Recapping Plants	<u>372</u>
Massage Center	<u>412</u>
Therapeutic Massage Practitioner	<u>414</u>
Vehicle Immobilization	<u>383</u>
Short-term Rental Platform	<u>379</u>
Short-term Rental Host	<u>379</u>

Class T licenses means those licenses which must be approved or denied by the director, subject to the procedures required by these chapters. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Class T Licenses	Legislative Code Chapter
Amusement Rides—Temporary	<u>317</u>
Close-Out Sales	<u>325</u>
Transient Merchants	<u>345</u>
Gambling—Temporary	<u>402.06</u>
Entertainment—Temporary	<u>411</u>
Extension of Service Area-Liquor	<u>409</u>
Soliciting Funds—Tag Days	<u>391</u>
Temporary On-Sale Malt (3.2)	<u>410</u>
Temporary Wine, Wine Licenses for Festivals and Liquor	<u>409</u>
Secondhand Dealer—Exhibition	<u>355</u>
Temporary World Cup Soccer License	<u>409, 410</u>

Class N licenses means those licenses which can be approved or denied only by the council, subject to the procedures required by these chapters. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Class N Licenses	Legislative Code Chapter
Automobile Repair Garage and Body Shop	<u>423</u>
Pool Hall, Bowling Center	<u>322</u>
New Motor Vehicle Dealer	<u>401</u>
Bingo	<u>402</u>
Bingo Halls	<u>403</u>
Cabaret	<u>426</u>
Private Clubs - Liquor	<u>409</u>

Dance or Rental Halls	<u>405</u>
Firearms Dealer	<u>225</u>
Gambling Hall	<u>278</u>
Game Rooms	<u>406</u>
Gas Station	<u>424</u>
Gambling Location	<u>409</u>
Hotel/Motel	<u>407</u>
Health/Sports Club	<u>427</u>
Infectious Waste Processing	<u>429</u>
Recycling Collection Center/Recycling Processing Center	408
Second Hand Dealer—Motor Vehicle Parts	401
Motor Vehicle Salvage Dealer	<u>422</u>
Intoxicating Liquor—On and Off Sale	<u>409</u>
Brewpub/Off-Sale	<u>409</u>
Off-Sale Brewery	<u>409</u>
Motorcycle Dealer	401
Pawn Shop	<u>344</u>
Nonintoxicating Liquor-On and Off Sale	410
Entertainment	<u>411</u>
Conversation/Rap Parlors	<u>413</u>
Steam Room/Bathhouse	<u>428</u>
Theatres and Movie Theaters	<u>415</u>
Motion Picture Drive-In Theatres	<u>416</u>
Second Hand Dealer—Motor Vehicle	401
Parking Lots and Parking Garages	<u>417</u>
Scrap and Metal Processor	<u>420</u>
Liquor Extension of Service Hours	<u>409</u>
Liquor Outdoor Service Area (Patio)	<u>409</u>
Currency Exchange	<u>381</u>
Small Brewer Off-Sale—128 Ounces License	<u>409</u>

Department means the department of safety and inspections.

Director means the director of the department of safety and inspections, unless otherwise defined in the specific chapter, section or subdivision referred to.

Fee means and includes both the license fee and application fee unless otherwise provided.

Inspector as used in these chapters means the director of the department of safety and inspections or his or her designee.

License means and includes all licenses and permits provided for or covered by these chapters. License also includes licenses issued by the state under statutory provisions which permit the governing body to disapprove the issuance of such licenses, for the purposes of making procedures in chapter 310 of the Legislative Code applicable to the approval or disapproval of such licenses.

Person means and includes any person, firm, corporation, partnership, company, organization, agency, club or any group or association thereof. It shall also include any executor, administrator, trustee, receiver or other representative appointed by law.

Zoning administrator means the official in the department of safety and inspections charged with responsibility for enforcement of the zoning code.

(Code 1956, § 510.01; Ord. No. 17085, § 1, 12-6-83; Ord. No. 17303, § 3, 10-29-85; Ord. No. 17569, § 1, 6-7-88; Ord. No. 17919, § 1, 3-31-92; C.F. No. 93-1645, § 8, 12-30-93; C.F. No. 94-46, § 6, 2-2-94; C.F. No. 94-500, § 2, 7-6-94; C.F. No. 94-898, § 1, 7-13-94; C.F. No. 95-473, § 1, 5-31-95; C.F. No. 99-500, § 1, 7-7-99; C.F. No. 01-400, § 1, 11-7-01; C.F. No. 02-1031, § 1, 11-27-02; C.F. No. 03-102, § 1, 3-12-03; C.F. No. 03-694, § 1, 9-3-03; C.F. No. 06-574, § 1, 7-26-06; C.F. No. 06-821, § 1, 9-27-06; C.F. No. 07-149, § 71, 3-28-07; Ord 12-50, § 1, 9-12-12; Ord 17-48, § 1, 10-25-17; Ord 16-68, § 1, 1-9-19; Ord 22-35, § 2, 8-3-22)

Sec. 324.03. - Definitions.

The following words and phrases, as used in this chapter, will, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those cases where the context clearly indicates a different meaning:

- (1) *Cigar* means any roll of tobacco that is wrapped in tobacco leaf, or in any other substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minn. Stats. § 297F.01, subd. 3, as may be amended from time to time.
- (2) *Cigarette* means and includes any roll for smoking, made wholly or in part of tobacco, irrespective of size and shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except whole tobacco leaf, and includes any cigarette as defined in Minn. Stats. § 297F.01, subd. 3.
- (3) *Drug paraphernalia* means drug paraphernalia as defined in Saint Paul Legislative Code Section 255.01.
- (4) *Electronic delivery device* means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (5) *Flavored product* means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product or device is a flavored product.
- (6)

Licensed products means collectively any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

- (7) *Nicotine or lobelia delivery product* means any product containing or delivering nicotine or lobelia, whether natural or synthetic, intended for human consumption, or any part of such a product, that is not a tobacco product or an electronic delivery device, as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (8) *Non-discounted price* means the higher of the price listed for licensed products on a package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the sale price.
- (9) *Price reduction instrument* means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, not included in the non-discounted price, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.
- (10) *Sale* means and includes any transfer, conditional or otherwise, of title or possession.
- (11) *Sale at retail* means and includes all sales except those where the merchandise is sold for the purpose of resale by a person principally engaged in selling merchandise for resale.
- (12) *Snuff* means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.
- (13) *Snus* means any smokeless tobacco product marketed and sold as snus, and sold in ready-to-use pouches or loose as a moist powder.
- (14) *Tobacco or tobacco product* means any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including, but not limited to, cigarettes, cigars, little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snus, snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
- (15) *Tobacco license* means either a tobacco shop or a tobacco products shop license.

- (16) *Tobacco shop license* means a license issued to a person, firm, or corporation for an establishment that:
- a. May offer for sale licensed products which are accessible to the public only with the intervention of a store employee; and,
 - b. May allow persons who are under the age of twenty-one (21) to enter the establishment; and
- (17) *Tobacco products shop license* means a license issued to a person, firm, or corporation for an establishment that:
- a. Must derive at least ninety (90) percent of its revenue from the sale of licensed products;
 - b. Must prohibit persons who are under the age of twenty-one (21) from entering the establishment;
 - c. Must be accessible only through a door opening directly to the outside; and
 - d. Must be staffed by at least one individual solely dedicated to the tobacco products shop during all operating hours.
- (18) *Tobacco-related devices* means cigarette papers, pipes for smoking, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.
- (19) *Tobacco vending machine* means a machine for vending licensed products by the insertion of money, tokens, or other form of payment.

(Code 1956, § 336.01; C.F. No. 94-341, § 3, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 10-1014, § 1, 10-13-10; Ord 13-8, § 1, 4-24-13; Ord 14-34, § 1, 8-27-14; Ord 15-57, § 1, 1-6-16; Ord 17-28, § 1, 11-1-17; Ord 21-29, § 4, 11-3-21)

Sec. 324.07. - Sales prohibited.

- (a) No person may sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes may be sold individually or in packages of fewer than twenty (20) cigarettes.
- (b) No person may sell or dispense licensed products from a motor vehicle or other movable place of business.
- (c) No person may sell licensed products from vending machines unless the vending machines are in a facility that cannot be entered at any time by persons younger than twenty-one (21) years of age.
- (d) No person may offer for sale licensed products in any open displays which are accessible to the public without the intervention of a store employee. This restriction does not apply to establishments holding a tobacco products shop license.
- (e) No person may sell, offer for sale, or otherwise distribute cigars in original packages containing three (3) or fewer cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than two dollars and sixty cents (\$2.60) per cigar contained within. In addition, no person may sell, offer for sale, or otherwise distribute cigars in original packages of four (4) or more cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than ten dollars and forty cents (\$10.40) per package.
- (f) No person may sell or offer for retail sale cigarette packages or cartons for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per pack.
- (g) No person may sell or offer for retail sale moist snuff retail packages or multipacks for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per 1.2 ounce package. No person may sell or offer for retail sale any smokeless tobacco/moist snuff unless it is sold in a package of at least 1.2 ounces minimum package size. The price floor for packages larger than 1.2 ounces shall be computed by adding two dollars and fifty cents (\$2.50) for each 0.3 ounces or any fraction thereof in excess of 1.2 ounces, excluding all applicable taxes.
- (h) No person may sell or offer for sale or otherwise distribute snus for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per 0.32 ounce package. No person may sell or offer for retail sale any snus unless it is sold in a package of at least 0.32 ounces minimum pack size. The price floor for packages larger than 0.32 ounces shall be computed by adding two dollars and fifty cents (\$2.50) for each 0.08 ounces or any fraction thereof in excess of 0.32 ounces, excluding all applicable taxes.
- (i)

No holder of a license issued under this chapter, nor any employee or agent of same may sell tobacco products to a person under the age of twenty-one (21) years. Sale to persons under the age of twenty-one (21) years prohibited.

- (1) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in Minn. Stats. § 340A.503, subd. 6.
- (j) No person may sell, offer for sale, or otherwise distribute any flavored products, unless excepted under section 324.07(l) of this chapter.
- (k) *Coupons and price promotions.* No holder of a license issued under this chapter, nor any employee or agent of same, may:
 - (1) Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any price reduction instrument or other offer that provides any licensed product without charge or for less than the listed or non-discounted price; or
 - (2) Sell or offer to sell licensed products, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any licensed products, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other licensed products.

Nothing in this chapter is intended to prohibit communication of pricing information or other truthful, non-misleading information to consumers.
- (l) *Exceptions.*
 - (1) Notwithstanding section (i), individuals exempted under Minn. Stats. § 609.685 are also exempt from this section.
 - (2) The penalties in this section do not apply to a person under the age of twenty-one (21) years who purchases or attempts to purchase licensed products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.
 - (3) Retail stores holding a tobacco products shop license are permitted to sell and offer for sale flavored tobacco products.
- (m) Any violation of this chapter will subject the licensee to provisions of chapter 310 and section 324.10 of the Saint Paul Legislative Code.

(Code 1956, § 336.07; Ord. No. 17714, § 1, 2-20-90; C.F. No. 94-341, § 7, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 06-872, § 1, 10-11-06; C.F. No. 10-1014, § 2, 10-13-10; Ord 13-8, § 2, 4-24-13; Ord 14-34, § 2, 8-27-14; Ord 15-57, § 1, 1-6-16; Ord 17-28, § 2, 11-1-17; Ord 19-57, § 2, 10-16-19; Ord 21-29, § 7, 11-3-21)

Sec. 324.10. - Presumptive penalties.

- (a) *Purpose.* The purpose of this section is to establish a standard by which the city council determines the amount of fines, length of license suspensions and the propriety of revocations for licensees. These penalties are presumed to be appropriate for every case; however, the council may deviate therefrom in an individual case where the council finds and determines that there exist substantial and compelling reasons which make it appropriate to do so, except, the council may not deviate below statewide minimum penalties for licensees. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate. Where no penalty is listed below, the presumptive penalty under Saint Paul Legislative Code Section 310.
- (b) *Presumptive penalties for licensees for violations.* Adverse penalties for licensees for violations or convictions shall be presumed as follows:

Type of Violation	Appearance			
	1st	2nd	3rd	4th
(1) Sale to a person under twenty-one (21) years of age	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 7-day suspension	Revocation
(2) Display, possession or multiple incidents of sales of; <ul style="list-style-type: none"> • single cigarettes; • menthol tobacco products; or • flavored tobacco products 	10-day suspension	Revocation		

- (c) *Fines payable without hearing.* Notwithstanding the provisions of section 310.05(l), a licensee who would be making a first or second appearance before the council may elect to pay the fine to the department of safety and inspections without a council hearing, unless the notice of violation has

indicated that a hearing is required because of circumstances which may warrant deviation from the presumptive fine amount. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled, and will be considered an "appearance" for the purpose of determining presumptive penalties for subsequent violations.

(d) *Computation of time.* Except as otherwise provided by Minn. Stats. § 461.12, subd. 2, subsequent violations are subject to the following:

- (1) *Second, third and fourth appearances.* A second violation within twenty four (24) months shall be treated as a second appearance, a third within twenty four (24) months treated as a third appearance, and a fourth within twenty four (24) months treated as a fourth appearance for the purpose of determining the presumptive penalty.
- (2) *Any appearance not covered by subsections (1) above shall be treated as a first appearance.* Measurement of the twenty four (24) month period shall be as follows: The beginning date shall be the earliest violation's date of appearance before the council, and the ending date shall be the date of the new violation. In case of multiple new violations, the ending date to be used shall be the date of the violation last in time.

(Ord. No. 17733, § 3, 5-8-90; C.F. No. 94-341, § 11, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 02-898, § 1, 11-6-02; C.F. No. 07-149, § 82, 3-28-07; Ord. No. 11-114, § 1, 12-28-11; Ord 15-57, § 1, 1-6-16; Ord 19-57, § 5, 10-16-19; Ord 21-29, § 10, 11-3-21)

Editor's note— Ord 19-57, §§ 4, 5, repealed § 324.10 and renumbered § 324.11 as § 324.10. Former § 324.10 pertained to the use of tobacco prohibited and derived from Ord. No. 17733, § 2, adopted May 8, 1990; C.F. No. 94-341, § 10, adopted April 13, 1994; C.F. No. 97-314, § 1, adopted April 20, 1997; Ord 13-8, § 4, adopted April 24, 2013; and Ord 15-57, § 1, adopted January 6, 2016.