City of Saint Paul

City Hall and Court House
15 West Kellogg Boulevard
Phone: 651-266-8560

Signature Copy

Resolution: RES 24-623

File Number: RES 24-623

Directing the Department of Safety and Inspections to proceed with the scheduled Pre-hearing Conference and Adverse Action against the Tobacco Shop License held by Maryland One Stop Food & Fuel Market, Inc. d/b/a Maryland Amoco/BP Market Place (License ID #20050003472) for the premises located at 1200 White Bear Avenue North.

WHEREAS, the Tobacco Shop license ("License") held by Maryland One Stop Food & Fuel Market, Inc. d/b/a Maryland Amoco/BP Market Place ("Maryland Amoco BP Market Place") under License ID #20050003472 for the premises located at 200 White Bear Avenue North in Saint Paul ("Licensed Premises"), which is owned by Khaled Aloul, was the subject of adverse action pursuant to a July 31, 2023, Notice of Adverse Action and Request for Upward Departure to Revocation of Tobacco Shop License ("Notice") in which the Department of Safety and Inspections ("Department") provided notice to the Licensee of its intent to move forward with adverse action and a recommendation for an upward departure one box on the penalty matrix to Revocation; and

WHEREAS, the Notice laid out the basis for adverse action and the Legislative Code upon which the Department was relying as follows:

> 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.
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> Saint Paul Legislative Code §310.04 (b) sets forth a variety of reasons under which adverse actions can be based:
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> > •Section 310.04 (b)(6)(a) supports adverse action when "the licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith."
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> > • Section 310.04(b)(6)(c) supports adverse action when "the licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn."

• Section 310.04 (b)(7) supports adverse action when "the activities of the licensee in the licensed activity created or have created a serious danger to the public health, safety or welfare, or the licensee performs or has performed his or her work or activity in an unsafe manner."

Saint Paul Legislative Code §324.07 (j) states that:

"No person may sell, offer for sale, or otherwise distribute any flavored products, unless excepted under section 324.07 (l)."

Saint Paul Legislative Code §324.07 (l) (3) lists the exceptions and allows only those who hold a tobacco product shop license to sell prohibited flavored tobacco products:

"Retail stores holding a tobacco products shop license are permitted to sell and offer for sale flavored tobacco products."; and

WHEREAS, the Notice also stated that the Department was recommending an upward departure one box on the penalty matrix to revocation and laid out the relevant sections of Saint Paul Legislative Code:

"Saint Paul Legislative Code §324.10 prescribes a presumptive matrix penalty of a 10-day license suspension for a first appearance related to the "display, possession or multiple incidents of sales of: single cigarettes, menthol tobacco products; or flavored tobacco products".

Although matrix penalties are presumed to be appropriate, Saint Paul Legislative Code Section 324.10 allows council to "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 licenses. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate."; and

WHEREAS, the Notice also laid out the facts that supported the Department's request for upward departure from the standard matrix penalty and upward departure one box on the penalty matrix to Revocation of the License held by the Licensee as follows:

"The Department believes that substantial and compelling reasons to upwardly depart to revocation in this case include:

• the sheer volume of prohibited flavored products found on the Licensed Premises that show lack of mistake,

• the blatant nature of the violations and the total disregard for ordinances and license requirements,

• a history of same/similar violations related to this Licensee, this licensed location and the Licensee's former business at Midway Amoco BP (1347 University Avenue West).; and

WHEREAS, the Notice also detailed the large volume of prohibited flavored tobacco products that were found and documented in a report and with photos by Inspector Vang on June 1, 2023, during a complaint inspection:

Torch Pink Strawberry, Torch Rainbow Zkittlez, Torch Dream Queen, Puff Creamy Frost Bite, Torch Rainbow Sherbey, Torch Gunpowder, Torch Platinum Rosm, Torch Sativa, Torch Zookies, Medusa Watermelon Zkittlez, DOSocho Zkittlez Sour Diesel, Medusa GPII, Medusa Alaskan Thunder Fuch, Torch Hawaiian Snow, Torch Guava Gelato+Blue Dream, Torch Glow Cannoli+White Runtz, Candy Cane Runtz, Tyson Rainbow Sprinkles, Torch Blue Berry Slushie, Live Resin Blend indicate Biscott pancake, Cake Blackberry Kush, Cake Honey Glue, Cake Rainbow Glue, Deltiva Sour OG, Torch Sativa Green Crack, Torch Skywalker OG, Torch Sativa Lary Blend, Torch Orange Zkittlez, Torch Super Lemon Haze, Cure Vann Bluevane OG, Delta 10 Bubba Kush, Delta 10 Super Lemon Haze, Delta 10 Junglato, Delta 10 Mind Blown, Delta 10 Pink Razay, Torch Green Crack, Delta 10 Snoops Dream, HHC Gelonade, Torch Burnout Blend, Torch Guava Gelato+Blue Dream, Elfbar Apple Peach, Natural American Spirit Black, Dutch Royol Haze, Elfbar Sunrise, Vapengin Raspberry Lychee, Vapengin Aloe Mango, Swisher Sweet Leaf Honey, Puff Peach mango, Dutch Java Fusion, Dutch Berry Fusion, Sweet Cognac Dipped Cigarillos, White Owl Swirl Strawberry & Kiwi, White Owl White Russian, Dutch OG Fusion, Dutch Berry Fusion, Game Hard Lemonade, White Owl Swirl Rocky Road, Dutch Sweet Fusion Red, Frontoleafmaster Cream, Frontoleafmaster Blue Ice, Loon Maxx Mint, Loon Maxx Guave, Loon Maxx Purple Blitz, Loon Maxx Bouze Berry, Loon Maxx Strawberry Lemonade, Loon Maxx Cherry Lime Soda, Loon Maxx Blue Lightning, Loon Maxx Blue Razz Slushy, Loon Maxx Strawberry, Loon Maxx Green Lightning, Loon Maxx Frost Bite, Puff Creamy Frost Bite, Puff Mix Fruity, Puff Berry Lemon Bubblegum, Dutch Honey Fusion, Dutch Irish Fusion, Dutch Blue Dream Fusion, Dutch Gold Fusion, Alcapone Leaf Wrap Cognac, Alcapone Rum, Backwood Dark Stout, Backwood Honey Bourbon, Backwood Russian Cream, Backwood Honey Berry, Backwood Honey, Backwood Vanilla, Backwood Iced Vodka and Backwood Cognac.; and

WHEREAS, the Notice also described an incident witnessed by Inspector Vang during his complaint inspection on June 1, 2023, in which Inspector Vang believed that he witnessed the store clerk selling tobacco to an underage customer:

> “During the inspection Vang observed and documented that the clerk sold tobacco to a black male customer who appeared to be under twenty-one (21) years of age. The clerk stated to the customer "I can't sell to you, come back later. I need your ID." The customer then replied, "Come on man, I buy from you all the time and I don't have any ID you know that." The clerk then responded, "Come back later, I can't sell to you right now." The customer said again "Come on man" then the clerk stated "I don't give a f--- since I'm fired, give me the money. I'm already fired so take it; I don't care." They exchanged the money and tobacco product. The clerk turned to the inspector and stated, "I don't give a f--- I'm already fired I know that." and

WHEREAS, the Notice also detailed a conversations that Inspector Voyda had with the store manager after the June 1, 2023, inspection:

> “Shortly after the June 1, 2023, inspection the store manager, Hamzeh Hatabeh ("Hatabeh") contacted OSI Inspector Joseph Voyda ("Voyda") by telephone in an attempt to explain why the flavor violations happened. His explanation was that he was a new manager, he did not know that flavored tobacco is a violation of City Ordinance. Voyda explained to him that "regardless of what you think, you knew was a flavor product and what wasn't a flavor product, it is clear that these tobacco products (e.g., blackberry, orange, rocky road, etc..) are obvious flavors and are strictly prohibited to sell or offer for sale within the City of Saint Paul with this type of tobacco license. Voyda told Hatabeh that this is an obvious, blatant disregard of the City's ordinance for flavor tobacco restrictions." Hatabeh asked Voyda why the Department was there in the first place; Voyda explained that the Department received a

phone call complaint from the Minnesota Department of Revenue ("MDR"). Voyda asked, "they were at your location today, correct?". Hatabeh responded yes, but nothing happened with them so why is flavor products a big deal to you? Voyda explained further that with the amount of flavor tobacco products found are all violations of ordinance and the amount of flavor product found is an amount equivalent to some of our licensed tobacco product shops within the City, and he was managing an unlicensed Tobacco Products Shop. Voyda also explained to Hatabeh that MOR did not seize any of the tobacco products since all the tobacco products were listed on a current invoice. He added that the license holder is ultimately responsible for the licensed premises and the Licensee is fully aware of what type of tobacco products he may sell or offer for sale under his current tobacco license."; and

WHEREAS, the Notice laid out options for the Licensee:

"At this time, you have three (3) options to proceed:

1. You may do nothing. If I have not heard from you by August 10, 2023, I will presume that you have chosen not to contest the revocation of your Tobacco Shop license and the matter will be placed on the City Council Consent agenda for imposition of the proposed adverse action.

2. If you wish to admit the facts but you contest the revocation of your Tobacco Shop license, 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 August 10, 2023. The matter will then be scheduled before the City Council to determine whether to revoke your Tobacco Shop license. You will have an opportunity to appear before the Council and make a statement on your own behalf.

3. 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 August 10, 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 before the City Council. 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 recommend that City Council impose the costs of the administrative hearing per Saint Paul Legislative Code §310.03 (k).

If you have not contacted me by August 10, 2023, I will assume that you do not contest the revocation of your Tobacco Shop license. In that case, the matter will be placed on the City Council Consent Agenda for approval of the recommended Adverse Action."

WHEREAS, the Licensee requested a hearing before an Administrative Law Judge; and

WHEREAS, the matter has been assigned to Administrative Law Judge Christa L. Moseng and a Status Update is due no later than May 1, 2024;

WHEREAS, counsel for the Licensee has requested that the matter in front of the Administrative Law Judge be further continued to accommodate this action in front of the St. Paul City Council; and

WHEREAS, under Saint Paul Legislative code §310.03(h) the City Council has retained the authority

to allow a Licensee to surrender their License to the Department which would allow for the sale of a business despite a current Adverse Action for Revocation:

> "*Discretion to hear notwithstanding withdrawal or surrender of application or license.* The council may, at its discretion, conduct a hearing or direct that a hearing be held regarding revocation or denial of a license, notwithstanding that the applicant or licensee has attempted or purported to withdraw or surrender said license or application, if the attempted withdrawal or surrender took place after the applicant or licensee had been notified of the hearing and potential adverse action." And

WHEREAS, on March 20, 2024, the Licensee failed an underage tobacco compliance check and sold tobacco products to an underage checker during a complaint inspection conducted by the Department; and

WHEREAS, on March 20, 2024, the Department Inspectors conducting the complaint inspection also observed and photographed prohibited flavored tobacco products including thirty-three (33) individual packets of Dutch Master Sweet Fusion Red in plain sight; and

WHEREAS, the complaint that the Department was responding to alleged that the Licensee was selling tobacco to underage persons; and

WHEREAS, these new violations, now form the basis for a new Adverse Licensing Action; and

WHEREAS, the Licensee disputes the finding that the additional tobacco products violate the flavored tobacco prohibitions; and

WHEREAS, the Licensee has formally asked that he be allowed to surrender the License before its revocation so that it might be transferred to a new prospective buyer; and
WHEREAS, the Licensee has identified the new prospective buyer as Scott Huber, 1250 E Moore Lake Dr., Suite 205A, Fridley, MN 55432 ("Prospective Licensee"); and
WHEREAS, the Licensee has submitted both a contingent Business Purchase Agreement and a contingent Commercial Lease in support of its request; and

WHEREAS, based on the date of filing with the Minnesota Secretary of State it appears Mr Huber's LLC was formed only for this business; and
WHEREAS, DSI is not aware of any prior tobacco retail business experience by Mr. Huber; and

WHEREAS, on March 20, 2024, the Licensee failed an underage tobacco compliance check and sold tobacco products to an underage checker during a complaint inspection conducted by the Department; and

WHEREAS, on March 20, 2024, the Department Inspectors conducting the complaint inspection also observed and photographed prohibited flavored tobacco products including thirty-three (33) individual packets of Dutch Master Sweet Fusion Red in plain sight; and

WHEREAS, the complaint that the Department was responding to alleged that the Licensee was selling tobacco to underage persons; and

WHEREAS, these new violations, now form the basis for a new Adverse Licensing Action; and

WHEREAS, the City Council does not support the transfer of the License at this time and directs that the administrative hearing take place on the July 31, 2023 Notice so that it may review the findings and recommendations of Administrative Law Judge Moseng; and

WHEREAS, the City Council also directs that the violations alleged in the March 20, 2024 proceed forward in a timely manner;

now, therefore, be it

RESOLVED, that the City Council directs that the Department of Safety and Inspections proceed with the scheduled Pre-hearing Conference in the Adverse Action against the Tobacco Shop License held by Licensee and; be it further

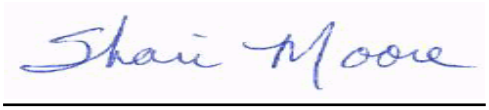
RESOLVED, that the City Council directs that the Department of Safety and Inspections proceed with the Adverse Action and request for Revocation outlined in the April 16, 2024 Notice.

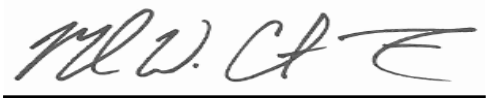
At a meeting of the City Council on 5/15/2024, this Resolution was Passed.

Yea: 6 Councilmember Noecker, Councilmember Jalali, Councilmember Kim, Councilmember Bowie, Councilmember Jost, and Councilmember Johnson

Nay: 0

Absent: 1 Councilmember Yang

Vote Attested by Council Secretary  Shari Moore **Date** 5/15/2024

Approved by the Mayor  Melvin Carter III **Date** 5/16/2024