OFFICE OF THE CITY ATTORNEY
Samuel J. Clark, City Attorney

CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

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

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

October 9, 2015

NOTICE OF VIOLATION

Dahir Wako, Owner
7th Grocery
43 – 7th Street West
St. Paul, MN 55102

RE: Cigarette/Tobacco license held by Dahir Wako d/b/a 7th Grocery for the premises located at 43 – 7th Street West in Saint Paul
License ID #: 20140002629

Dear Licensee:

The Department of Safety and Inspections (DSI) has recommended adverse action against the Cigarette/Tobacco license held by Dahir Wako d/b/a 7th Grocery for the premises located at 43-7th Street West in Saint Paul. The basis for the recommendation is as follows:

On September 29, 2015, the Department of Safety and Inspections received a Notice of Seizure of Contraband from the Minnesota Department of Revenue concerning an inspection of the licensed premises performed on July 21, 2015. During that inspection the following items were seized as contraband:

- **32 boxes of Swisher Sweet 2 pack foil pouch**
- **2 packs of electronic cigarette kits**
- **11 E-liquid containing nicotine 30 ml**
- **4 grape purple Amaren 50 gr boxes**
- **5 grape green Amaren 50 gr boxes**
- **7 A1 Smoke Juice 10 ml Marl USA**
- **7 A1 Smoke Juice 10 ml Nport**
- **101 packs of 20 Newport Reds Cigarettes**
- **18 packs of 20 Camel Blue Cigarettes**
- **304 packs of 20 Newport Menthol Cigarettes**
- **45 packs of 20 Marlboro Green 100 Cigarettes**
- **13 packs of 20 Marlboro Green Cigarettes**
- **4 packs of 20 Marlboro Red Cigarettes**

The items were declared to be contraband under the following sections of Minn. Stat. Chapter 297F.21:

(a) "Cigarette packages which do not have stamps affixed to them as provided in this chapter, including but not limited to (i) packages with illegible stamps and packages with stamps that are not complete or whole even if the stamps are legible."

(h) "Cigarette packages offered for sale or held as inventory in violation of section 297F.20, subdivision 7."

(j) "Any cigarette packages or tobacco products offered for sale or held as inventory for which there is not an invoice from a licensed seller as required under section 297F.13, subdivision 4."

Saint Paul Legislative Code Section 310 provides that adverse action may be taken against your license based on any one or more of the following grounds:

Section 310.06 (b) (6) (a): *"the license or applicant (or any person whose conduct may by law be imputed to the licensee of applicant) has violated, or performed any act which is a violation of, any of the provision 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..."*

Section 310.06 (b) (6) (c): *"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 lace of fitness or good character may be drawn."*

Section 310.06 (b) (6) (8): *"the licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public."*

Due to the fact the violations were directly related to the licensed activity, per Saint Paul Legislative Code § 310.05 (m) (5) the licensing department will recommend a $700.00 matrix penalty.

At this time, you have four (4) options to proceed:

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 **Monday, October 19, 2015**, I will presume that you have chosen not to contest the proposed adverse action, and the matter will be placed on the City Council Agenda for approval of the proposed remedy.

2. You can pay the recommended $700.00 matrix penalty. If this is your choice, you should make payment directly to the Department of Safety and Inspections, at 375 Jackson Street, Ste. 220, St. Paul, Minnesota 55101-1806 no later than **Monday, October 19, 2015.** A self-addressed envelope is enclosed for your convenience. Payment of the $700.00 matrix penalty will be considered to be a waiver of the hearing to which you are entitled.

3. If you wish to admit the facts but you contest the penalty, you may have a public 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 public hearing. I will need to receive your letter by **Monday, October 19, 2015.** The matter will then be scheduled before the City Council for a public hearing to determine whether to impose the $700.00 matrix 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 **Monday, October 19, 2015.** 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 public 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 § 310.05 (k).

If you have not contacted me or DSI by Monday, October 19, 2015, I will assume that you do not contest the imposition of the $700.00 matrix 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 feel free to contact me at 266-8710.

Sincerely,

Geoffrey Karls/jk

Geoffrey Karls
Assistant City Attorney

Cc: Dan Niziolek, DSI Deputy Director
Dahir Wako, 383 Virginia Street, St. Paul, MN 55104
Archie L. Gingold, Scm Family Limited Partnership, 2172 Stanford Avenue, St. Paul, MN 55105-1221
Paul Bengston, Director, CapitolRiver Council District 17, US Bank Center, 101 East 5th Street, Ste. 240 St. Paul, MN 55101

STATE OF MINNESOTA)
) ss. **AFFIDAVIT OF SERVICE BY U.S. MAIL**
COUNTY OF RAMSEY)

Julie Kraus, being first duly sworn, deposes and says that on the 9th day of October she served the attached **NOTICE OF VIOLATION** and correct copy thereof in an envelope addressed as follows:

Dahir Wako, Owner
7th Grocery
43 – 7th Street West
St. Paul, MN 55102

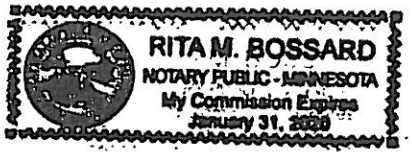
Dahir Wako
383 Virginia Street
St. Paul, MN 55104

Archie L. Gingold
Scm Family Limited Partnership
2172 Stanford Avenue
St. Paul, MN 55105-1221

Paul Bengston, Director
CapitolRiver District 17
US Bank Center
101 E. 5th Street, Ste. 240
St. Paul, MN 55101

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

Julie Kraus

Subscribed and sworn to before me
this 9th day of October, 2015

Rita M. Bossard
Notary Public