

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

In Re: Adverse action against the Auto Repair Garage, Second Hand Dealer, Second Hand Dealer-Motor Vehicle, Tow Truck/Wrecker (Operator) and Tow Truck/Wrecker (Vehicle) licenses held by Budget Towing Inc. of St Paul d/b/a Budget Towing Inc. of St Paul for the premises located at 560 Randolph Avenue in Saint Paul

**CITY'S PROPOSED
EXHIBITS**

DATE: May 21, 2018

TO: Judge Jessica Palmer-Denig, Office of Administrative Hearings, 600 North Robert Street.

The following constitutes a list of the City's proposed exhibits for the June 7, 2018 administrative hearing:

Exhibit No. Description

- Ex. No. 1 License Group Comments Text from ECLIPS System dated 2/23/2018 (4 pages)
- Ex. No. 2 License Group Conditions Text from ECLIPS System dated 2/23/2018 (1 page)
- Ex. No. 3 Inspection Report with photographs dated 10/30/2017 (7 pages)
- Ex. No. 4 Letter to licensee with Site Plan #13-138950 dated 1/09/2018 (4 pages)
- Ex. No. 5 Notice of Violation with Affidavit of Service dated 2/27/2018 (4 pages)
- Ex. No. 6 Letter from licensee requesting a public hearing before City Council dated 3/16/2018 (1 page)
- Ex. No. 7 Email from Therese Skarda regarding the public hearing item being referred back for an administrative hearing dated 5/02/2018 (1 page)
- Ex. No. 8 Notice of Administrative Hearing with Affidavit of Service dated 5/16/2018 (4 pages)

Also attached please find courtesy copies of applicable City of Saint Paul city ordinances:

Saint Paul Legislative Code §310.05
Saint Paul Legislative Code §310.06

Respectfully submitted the 21st day of May, 2018



Therese Skarda, Assistant City Attorney
Office of the City Attorney
400 City Hall & Courthouse
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102
(612) 266-8710

Licensee: BUDGET TOWING INC OF ST PAUL

DBA: BUDGET TOWING INC OF ST PAUL

License #: 20120005762

10/30/17 site visit, vehicles parked out of compliance with approved site plan, parking areas covered with dirt or paved with material other than asphalt, no striping, vehicle parked in the ROW in violation of license conditions 1, 4, 6. ACK
07/19/2017 Rec'd reinstatement/renewal of bond #41328556 effective 3/29/2017 and expiring continuous. (No lapse in coverage). LAB
04/04/2017 Rec'd cancellation of bond #41328556 with Platte River Ins. Co. effective 3/29/2017. LAB
9/19/16 To CAO for adverse action KS
08/26/2016 Sent delinquent letter. Response deadline date is September 16, 2016. Max
05/16/2016 Overpayment of \$2.00 left on account. LAB
08/24/2015 Sent delinquent letter. Response deadline date is September 14, 2015. Max
05/22/2015 Rec'd cancellation of bond #RLI0498256 with Old Republic Surety effective 3/21/15. Sent e-mail requesting replacement bond. LAB
01/23/2015 \$1,000.00 fine payment received. LZ/lkk
12/30/14 To CAO for adverse action Multiple violations of Chap. 361. and Conditions. KS
12/04/2014 Missing one inspection. Issue sticker when received (it has been paid for). LAB
10/02/2014 License expiration changed on Tow licenses from 5/10 to 8/16 to expire with auto insurance. LAB
05/20/2014 Sent delinquent letter. Response deadline date is June 10, 2014. ML
12/19/2013 Rcvd \$500.00 for fine. AMW
11/22/2013 Sent Fine letter (\$500 due 12/6/13). LAB
11/06/2013 Council file #13-1684 imposes \$500 matrix penalty for a tow truck driving charging a towing fee for a vehicle thta had not been hooked up to the tow truck and refusing to give the owner of the vehicle a receipt showing the payment (violation of Sec. 361.07). JWF
10/3/13 notice of violation sent by CAO given until 10/14/13 to respond CAR.
09/27/2013 To CAO for adverse action for improperly charging a fee and not writing a receipt, violations of LCC361.07. \$500 matrix penalty. CAR
09/26/2013 Received letter written by ciomplainant's attorney describing the incident. CAR
06/21/2013 Received complaint regarding an incident that took place on 2/22/2013. Owner was charged a towing fee despite the fact that the vehicle was not hooked up to the tow truck. In addition, driver did not give the complainant a receipt for the improperly charged fees. Complainant won restitution in Conciliation Court on 05/22/2013. CAR



License Query

Address Licensee Contact License Cardholder

Licensee Name: BUDGET TOWING INC OF ST PAUL

DBA: BUDGET TOWING INC OF ST PAUL

Sales Tax Id:

Find Now

OK

Cancel

New Search

Help



SEARCH WINDOW

| New Group... | New Temp Grp... | Copy Group... | Add License... | Properties... | | | | | | | | | | | | |
|--------------|-----------------|------------------------------|------------------------------|---------------------------------------|--------|-----------------|------------|------------|------------------|------|------|----------------|--------------|-----------|------|-------------------|
| License # | Tag # | Licensee Name | DBA | License Type | Status | Reason | Effective | Expiration | License Address | City | Ward | Bus. Phone # | Home Phone # | Unmet Req | Hold | Contact Last Name |
| 120005762 | 0 | BUDGET TOWING INC OF ST PAUL | BUDGET TOWING INC OF ST PAUL | Auto Repair Garage | Active | License Printed | 05/10/2013 | 05/10/2018 | 560 RANDOLPH AVE | | | (651) 771-8817 | | 0 | N | |
| | | | | Second Hand Dealer | Active | License Printed | 05/10/2013 | 05/10/2018 | 560 RANDOLPH AVE | | | (651) 771-8817 | | 0 | N | |
| | | | | Second Hand Dealer - Motor Vehicle Pe | Active | License Printed | 05/10/2013 | 05/10/2018 | 560 RANDOLPH AVE | | | (651) 771-8817 | | 0 | N | |
| | | | | Tow Truck/Wrecker (Operator) | Active | License Printed | 05/10/2013 | 07/29/2018 | 560 RANDOLPH AVE | | | (651) 771-8817 | | 0 | N | |
| | | | | Tow Truck/Wrecker (Vehicle) | Active | License Printed | 05/10/2013 | 07/29/2018 | 560 RANDOLPH AVE | | | (651) 771-8817 | | 0 | N | |

tabbies®

1-2

EXHIBIT

Properties For License 560 RANDOLPH AVE

Licensee BUDGET TOWING INC OF ST PAUL

DBA BUDGET TOWING INC OF ST PAUL

License Licensee Lic. Types Insurance Bond Requirements

☒ Property ☐ Licensee ☐ Unofficial

Street #: 560
 Street Name: RANDOLPH
 Street Type: AVE Direction:
 Unit Ind: Unit #:
 City: ST PAUL
 State: MN Zip: 55102
 Ward: 2
 Dist Council: 09

Project Facilitator: ZANGS, LAWRENCE (LARRY)

Adverse Action Comments

9/27/2016 - Sent Notice of Intent to Suspend Licenses with a 10/7/2016 deadline to respond. JAK

1/7/2015 - Sent Notice of Violation with a 1/19/2015

License Group Comments:

10/30/17 site visit, vehicles parked out of compliance with approved site plan, parking areas covered with dirt or paved with material other than asphalt, no striping. vehicle parked in the ROW in violation of license conditions 1, 4, 6. ACK

Licensee: BUDGET TOWING INC OF ST PAUL

Licensee: 08/20/2014 Hours of Operation: Open 24

DBA: BUDGET TOWING INC OF ST PAUL

Comments: hours a day / 7 days a week. Business

Sales Tax Id: Bus Phone: (651) 771-8817

records are kept and maintained on site at

| License Type | Class | Effective | Expiration | Conditions | License Fee |
|---|-------|------------|------------|------------|-------------|
| Second Hand Dealer | N | 05/10/2013 | 05/10/2018 | N | \$76.00 |
| Tow Truck/Wrecker (Operator) | R | 05/10/2013 | 07/29/2018 | N | \$362.00 |
| Second Hand Dealer - Motor Vehicle Part N | | 05/10/2013 | 05/10/2018 | N | \$453.00 |

License # 120005762

Save Changes to History ☒

OK

Cancel

Help

tabbies

1-3

EXHIBIT

Properties For License 560 RANDOLPH AVE

Pay Print View Hist Summary

Licensee: BUDGET TOWING INC OF ST PAUL
DBA: BUDGET TOWING INC OF ST PAUL

License Licensee Lic. Types Insurance Bond Requirements

Licensee Name: BUDGET TOWING INC OF ST PAUL
DBA: BUDGET TOWING INC OF ST PAUL
Sales Tax Id: ***** Non-Profit: ☐ Worker's Comp: 02/04/2018
AA Contract Rec'd: 00/00/0000 AA Training Rec'd: 00/00/0000
AA Fee Collected: 00/00/0000 Discount Rec'd: ☐

Other Agency Licenses Financial Hold Reasons

| Other Licensing Agency Name / License Type | License # | Expiration | Reason | Active | Date |
|--|-----------|------------|--------|--------|------|
| | | | | | |

Contacts for this Licensee

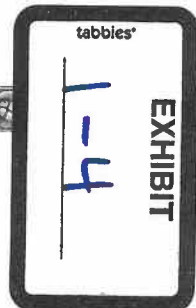
| Addr. Type | Active | Inactive | Last Name | First Name | Title | Bus. Phone | Ho |
|------------|------------|-----------|------------|------------|-----------|----------------|----|
| Business/M | 12/14/2012 | 00/00/000 | | | | (651) 771-8817 | |
| Other | 12/14/2012 | 07/09/201 | | | | (651) 771-8817 | |
| Other | 12/14/2012 | 00/00/000 | CARLSON SR | ROY | PRESIDENT | (612) 771-8817 | |

Mail License To:
☒ Mail To Contact
☐ License Address

Mail Invoice To:
☒ Mail To Contact
☐ License Address

Background Check Required: ☐ Contact Properties...

License # 120005762 Save Changes to History ☒ OK Cancel Help

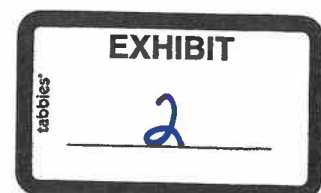


Licensee: BUDGET TOWING INC OF ST PAUL

DBA: BUDGET TOWING INC OF ST PAUL

License #: 20120005762

1. All impounded vehicle storage, parking for customer and employee vehicles and the tow truck fleet shall be parked in accordance with the approved site plan on file with the Department of Safety and Inspections (DSI). Any changes or alterations from the approved site plan must have prior approval from City.
2. A minimum (20) twenty foot width lane shall remain clear and unobstructed at all times, to provide emergency vehicle access. Dead end lanes for emergency access shall not exceed 150 feet. This required fire emergency access lane shall apply to all areas of the property, including parking areas for customer/employee vehicles, licensees commercial fleet parking and impound vehicle areas.
3. A "Knox Box" shall be maintained for fire department access, providing a key or other means of opening the locked gate at the entry to the property, from Randolph. This box must be installed at location on the outside of the gate that is both visible and readily accessible for fire personnel to gain entry to the property, in the event of an emergency occurring on the premises.
4. Customer and employee vehicle parking spaces must be located on a paved surface and shall be striped and maintained in accordance with the approved site plan on file with DSI. A van accessible parking space shall be provided as shown on the approved plan and posted with a sign, displaying the international handicapped symbol. The striping of the parking spaces, van accessible space and handicapped parking signage shall be completed by no later than July 1, 2013.
5. Used tires for re-sale, shall be stored inside the building in accordance with the Minnesota State Fire Code. There shall be no exterior storage of vehicle parts, tires, oil or any other similar materials associated with the business, with the exception of one trailer for tire disposal and on small bin for metal wheel storage. Trash and discarded vehicle parts will be stored in a covered dumpster. Licensee shall obtain and maintain an active Hazardous Waste Generator License from Ramsey County Solid Waste Division and; shall abide by the provisions of that license with respect to the safe handling and disposal of waste oil, filters, tires, batteries, etc.
6. Customer, employee, and for-sale vehicles shall not be parked or stored on the public right-of-way (e.g., street, alley, sidewalk, boulevard, etc.). This includes cars which have been repaired and are awaiting pick-up by their owners.
7. All repair work must occur within an enclosed building. No repair of vehicles may occur on the exterior of the lot or in the public right-of-way.
8. Auto body repair and/or auto body spray painting is not permitted.
9. The process of obtaining used tires for re-sale from vehicles shall be conducted off-site where the vehicle is taken to be recycled; in accordance with the licensee's explanation provided in a letter on file with this office, dated December 18, 2012. Vehicle salvage, a principal activity of obtaining and dismantling motor vehicles to salvage and sell usable parts, is expressly not permitted.
10. Customer and/or employee vehicles (not including impounded vehicles) may not be parked longer than ten (10) days on the premises. It shall be the responsibility of the licensee to ensure that any vehicle not claimed by its owner is removed from the lot as permitted by law.
11. Maintain maneuvering space on the property to allow vehicles entering and exiting the site to proceed forward.
12. The business activities on the licensee premises shall operate in compliance with all federal, state, and local laws. Failure to remain in compliance will result in adverse action against the license.



Inspection Report

Report Date: February 16, 2018
Inspection Date: October 30, 2017
Inspector: Alex Kohlhaas
License address: 560 Randolph Avenue
Licensee/Violator: Budget Towing Inc of St Paul
License Number: 20120005762
Violation(s): 1, 4, 6

Condition #1: "All impounded vehicle storage, parking for customer and employee vehicles and the tow truck fleet shall be parked in accordance with the approved site plan on file with the Department of Safety and Inspections (DSI). Any changes or alterations from the approved site plan must have prior approval from City."

On the date of inspection, vehicles were parked outside the parking spaces designated on the approved site plan.

Condition #4: "Customer and employee vehicle parking spaces must be located on a paved surface and shall be striped and maintained in accordance with the approved site plan on file with DSI. A van accessible parking space shall be provided as shown on the approved plan and posted with a sign, displaying the international handicapped symbol. The striping of the parking spaces, van accessible space and handicapped parking signage shall be completed by no later than July 1, 2013."

The approved site plan dated January 23, 2013 (File #13-138950) states that "Area where cars for employees or customers are parked or where for-sale cars are displayed must be paved with asphalt. Some of the pavement is currently covered with dirt, and these areas must be swept or otherwise cleaned to remove the dirt so that the asphalt is uncovered and visible. This must be completed by 6/1/13." On the date of inspection, these areas were covered in dirt or gravel with no visible striping. Accessible parking signage has been posted on the building in accordance with the approved site plan, but the associated loading zone has not been striped.



Condition #6:

"Customer, employee, and for-sale vehicles shall not be parked or stored in the public right-of-way (e.g., street, alley, sidewalk, boulevard, etc.). This includes cars which have been repaired and are awaiting pick-up by their owners."

A portion of the driveway to this property crosses the public right-of-way. A vehicle was parked in a gravel area in the right-of-way near the driveway. I could not determine which business was responsible for the vehicle, though it did not appear to be for sale.



Date: October 30, 2017
File #: 13-138950
Folder Name: Budget Towing lot
PIN: 122823320007



Date: October 30, 2017
File #: 13-138950
Folder Name: Budget Towing lot
PIN: 122823320007



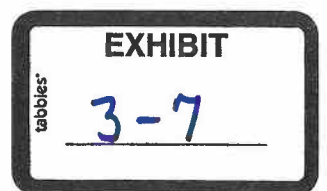
Date: October 30, 2017
File #: 13-138950
Folder Name: Budget Towing lot
PIN: 122823320007



Date: October 30, 2017
File #: 13-138950
Folder Name: Budget Towing lot
PIN: 122823320007



Date: October 30, 2017
File #: 13-138950
Folder Name: Budget Towing lot
PIN: 122823320007





CITY OF SAINT PAUL

375 Jackson Street, Suite 220
St Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

January 9, 2018

Budget Towing
Attn: Roy Carlson
1145 Homer Street
Saint Paul, MN 55116

**Re: 560 Randolph Ave
Site Plan #13-138950 for Budget Towing lot**

Dear Mr. Carlson,

On January 23, 2013, City staff approved a site plan for Budget Towing lot at 560 Randolph Avenue (file #13-138950 – see attached). A condition of this approval are that:

1. Vehicles that are stored or parked for your business must be arranged as shown on the approved site plan. Areas where impounded cars are stored can be paved with gravel. Areas where cars for employees or customers are parked or where for-sale cars are displayed must be paved with asphalt. Some of the pavement is currently covered with dirt, and these areas must be swept or otherwise cleaned to remove the dirt so that the asphalt is uncovered and visible. This must be completed by 6/1/13.

On October 30, 2017, City staff conducted a follow-up inspection of the property for compliance with the approved site plan. During this inspection, it was documented that areas for customer and employee vehicles had not been paved with asphalt or swept to uncover underlying asphalt. In addition, vehicles were parked outside the parking layout as shown on the approved site plan.

You must bring the property into compliance with the approved site plan.

Regarding the paving, you must install asphalt or uncover underlying asphalt in all areas for customer and employee vehicles.

Regarding the parking layout, you must ensure all vehicles parked on the property are arranged per the parking layout as shown on the approved site plan.

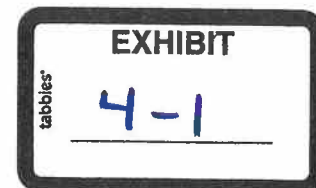
Please respond to this letter by January 23, 2018 with a description of your plans to bring the property into compliance.

For any questions, please contact me at (651)266-9083 or alex.kohlhaas@ci.stpaul.mn.us.

Sincerely,

Alex Kohlhaas
DSI – Zoning Intern

An Equal Opportunity Employer





CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220
St Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

January 23, 2013

Roy Carlson
Budget Towing
1145 Homer Street
St Paul MN 55116

RE: Approval of Site Plan 13-138950
Budget Towing lot at 560 Randolph Avenue

Dear Mr. Carlson:

The site plan referenced above is approved subject to the following conditions:

1. **Site layout for Budget Towing** Vehicles that are stored or parked for your business must be arranged as shown on the approved site plan.

Areas where impounded cars are stored can be paved with gravel.

Areas where cars for employees or customers are parked or where for-sale cars are displayed must be paved with asphalt. Some of the pavement is currently covered with dirt, and these areas must be swept or otherwise cleaned to remove the dirt so that the asphalt is uncovered and visible. This must be completed by 6/1/13.

2. **License** Your towing business requires a license from the City. You have applied for this license and it is currently under review.

3. **Property north of Randolph** The site plan shows some areas to the north of your current operation. As we discussed, the land north of the center line of old Randolph is zoned T3. A towing business is not a permitted use in areas zoned T3 and the property owner would need to rezone this property before a towing business could move into this area. This would require a public hearing at the City Council. There may also be issues with expanding outside storage into this area.

4. **Site layout for other businesses** The property owner must work with Thomas Finn Roof and Coolidge Waster Haulers to ensure that their outside storage areas are located and arranged as shown on the approved site plan. A copy of the 1/1/13 letter from James Walsh to Coolidge Trucking is attached.

If you have any questions, you can reach me at 651-266-9086 or tom.beach@ci.stpaul.mn.us.

Sincerely,

Tom Beach
Zoning Specialist

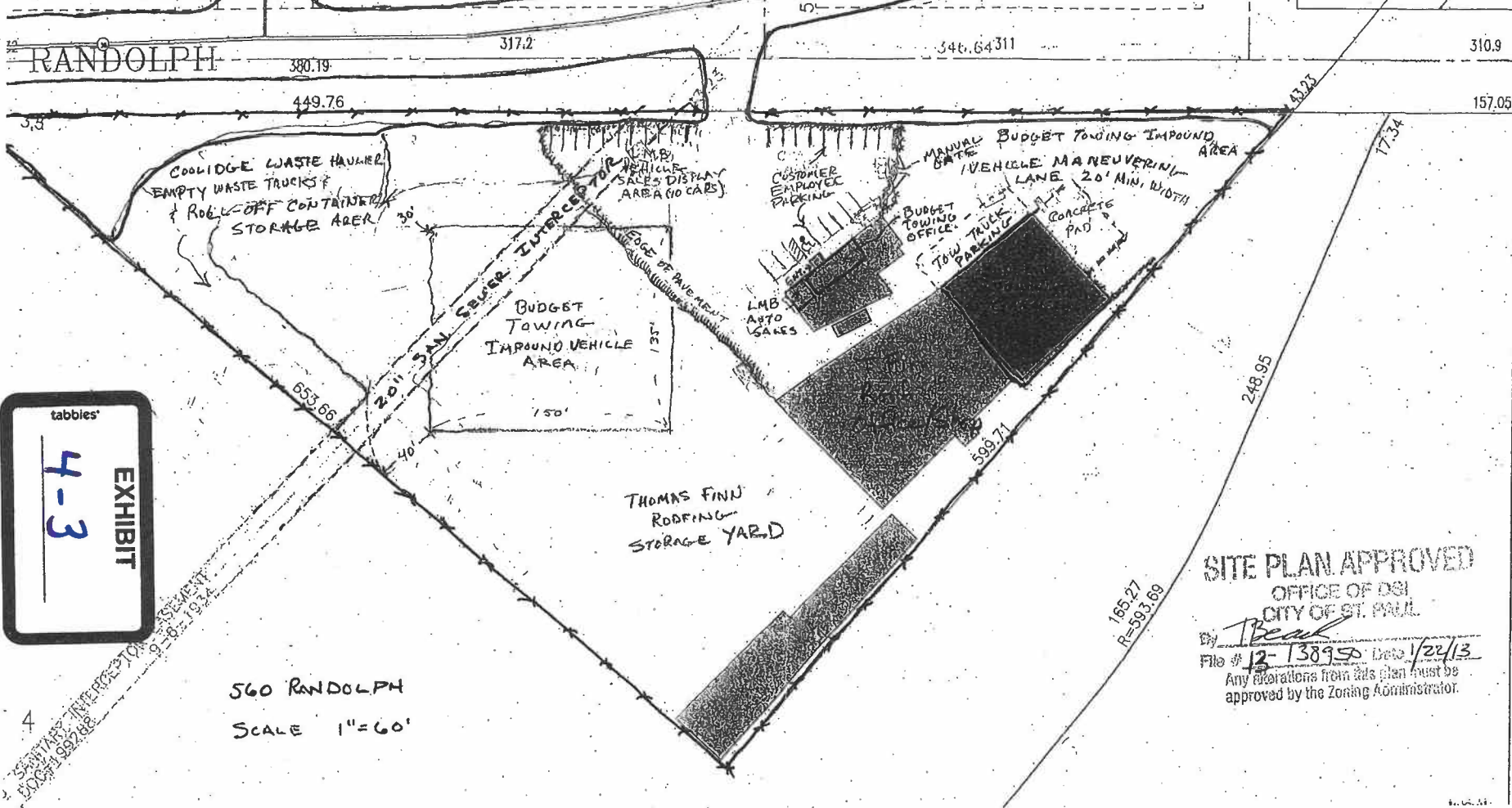
cc: Greg Walsh, Thomas Finn Co.

An Equal Opportunity Employer



Width contains unacceptable value.

| | | | |
|----|----|------|------|
| 0 | 9 | 8 | 7 |
| 7 | 47 | 47 | 18 |
| 30 | 30 | 27.9 | 30.5 |
| 20 | 38 | 38 | 38 |



tabbles'

4-3

EXHIBIT

SITE PLAN APPROVED

OFFICE OF DSI
CITY OF ST. PAUL

By *T. Beak*

File # *13-138950* Date *1/22/13*

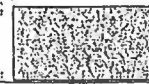
Any alterations from this plan must be approved by the Zoning Administrator.

Width contains unacceptable value.

| | | | |
|---|----|----|----|
| 0 | 9 | 8 | 7 |
| 7 | 47 | 47 | 18 |

R RANDOLPH AVE.

27.9 30.5 38



163

TAKEN FOR RANDOLPH AVE.

DOC#1479203.

RANDOLPH

380.19

317.2

449.76

3.5

COOLIDGE WASTE HAULER
EMPTY WASTE TRUCKS
ROLL-OFF CONTAINER
STORAGE AREA

30'

20"

BUDGET
TOWING
IMPOUND VEHICLE
AREA

150'

LMB
VEHICLE
SALES DISPLAY
AREA (10 CARS)

EDGE OF PAVEMENT

LMB
AUTO
SALE

THOMAS FINN
ROOFING
STORAGE YARD

560 RANDOLPH

SCALE 1"=60'

EXHIBIT

tabbles

4-4

OFFICE OF THE CITY ATTORNEY

Lyndsey M. Olson, City Attorney



CITY OF SAINT PAUL

Mayor Melvin Carter

Civil Division
400 City Hall and Court House
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102

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

February 27, 2018

NOTICE OF VIOLATION

Roy Carlson, Sr. - President
Budget Towing Inc. of St Paul
1145 Homer Street
St. Paul, MN 55116

RE: Auto Repair Garage, Second Hand Dealer, Second Hand Dealer-Motor Vehicle, Tow Truck/Wrecker (Operator) and Tow Truck/Wrecker (Vehicle) licenses held by Budget Towing Inc. of St. Paul d/b/a Budget Towing Inc. of St Paul for the premises located at 560 Randolph Avenue in Saint Paul
License ID #20120005762

Dear Licensee:

The Department of Safety and Inspections (DSI) will recommend adverse action against the Auto Repair Garage, Second Hand Dealer, Second Hand Dealer-Motor Vehicle, Tow Truck/Wrecker (Operator) and Tow Truck/Wrecker (Vehicle) licenses held by Budget Towing Inc. of St. Paul d/b/a Budget Towing Inc. of St Paul for the premises located at 560 Randolph Avenue in Saint Paul. The basis for the recommendation is as follows:

On October 30, 2017, an Inspector from the Department of Safety and Inspections conducted a follow-up inspection of the licensed premises checking for compliance with the approved site plan (#13-138950 dated January 23, 2013). During the inspection, an inspector documented the following three (3) license condition violations:

- Vehicles were parked outside the parking spaces designated on the approved site plan in violation of license condition #1: "All impounded vehicle storage, parking for customer and employee vehicles and the tow truck fleet shall be parked in accordance with the approved site plan on file with the Department of Safety and Inspections (DSI). Any changes or alterations from the approved site plan must have prior approval from the City."**



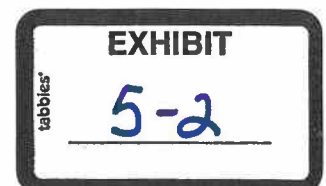
2. The areas used for customer and employee parking and display of for-sale vehicles were covered with dirt or gravel with no visible striping. Accessible parking signage was posted on the building but the associated loading zone had not be striped in violation of license condition #4: "Customer and employee vehicle parking spaces must be located on a paved surface and shall be striped and maintained in accordance with the approved site plan on file with DSI. A van accessible parking space shall be provided as shown on the approved plan and posted with a sign displaying the international handicapped symbol. The striping of the parking spaces, van accessible space and handicapped parking signage shall be completed by no later than July 1, 2013."
3. A portion of the driveway to the property crosses the public right-of-way. A vehicle was parked in the gravel area in the right-of-way near the driveway in violation of license condition #6: "Customer, employee, and for-sale vehicles shall not be parked or stored in the public right-of-way (e.g. street, alley, sidewalk, boulevard, etc.). This includes cars which have been repaired and are awaiting pick-up by their owners."

On January 9, 2018, you were sent a letter from the Department of Safety and Inspections outlining the violations documented during the October 30, 2017 inspection. The letter requested that you respond by January 23, 2018 with a description of how you will bring your property into compliance with your license conditions. As of today's date, your response has not been received.

As a result of these license condition violations, per Saint Paul Legislative Code § 310.05 (m) (1), the licensing office will recommend a \$500.00 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 **Friday, March 9, 2018**, I will presume that you have chosen not to contest the proposed adverse action, and the matter will be placed on the next available City Council Agenda for approval of the proposed remedy.
2. You can pay the \$500.00 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 **Friday, March 9, 2018**. A self-addressed envelope is enclosed for your convenience. Payment of the \$500.00 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 no later than **Friday, March 9, 2018**. The matter will then be scheduled before the City Council to determine whether to impose the \$500.00 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 **Friday, March 9, 2018**. 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 by Friday, March 9, 2018, I will assume that you do not contest the imposition of the \$500.00 matrix penalty. In that case, the matter will be placed on the next available City Council Consent Agenda for approval of the recommended penalty.

If you have questions about these four (4) options, please contact Julie Kraus, my Legal Assistant at (651) 266-8776.

Sincerely,

Therese Skarda / gk

Therese Skarda
Assistant City Attorney

cc: Roy Carlson, Sr., 1108 York Avenue, St. Paul, MN 55106



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 27th day of February, she served the attached **NOTICE OF VIOLATION** and a correct copy thereof in an envelope addressed as follows:

Roy Carlson, Sr. - President
Budget Towing Inc. of St Paul
1145 Homer Street
St. Paul, MN 55116

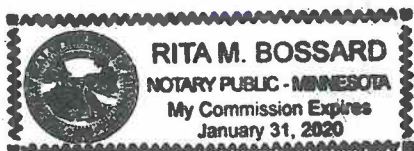
Roy Carlson, Sr.
1108 York Avenue
St. Paul, MN 55106

(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 27th day of February, 2018

Rita M. Bonard
Notary Public



tabbles®

EXHIBIT

5-4

BUDGET TOWING INC OF ST. PAUL

March 16, 2018

Sent by Facsimile and U.S. Mail

Therese Skarda

City of St. Paul/Office of City Attorney

400 City Hall and Courthouse

15 W. Kellogg Blvd


St Paul, MN 55102

Re: Notice of Violation at 560 Randolph Ave, St Paul MN 55102

Dear Ms. Skarda:

We Budget Towing, admit the facts but contest the penalty. Due to extreme weather conditions, that we have been faced with this winter and the nature of our business, our lot layout has somewhat suffered. We request reasonable time to correct the conditions, and ask that The City consider waving the penalty.

Sincerely,


Roy Carlson Sr.

Budget Towing Inc of St.Paul



Kraus, Julie (CI-StPaul)

From: Skarda, Therese (CI-StPaul)
Sent: Wednesday, May 02, 2018 3:59 PM
To: Kraus, Julie (CI-StPaul); Hudak, Eric (CI-StPaul); Schweinler, Kristina (CI-StPaul); Niziolek, Dan (CI-StPaul)
Subject: Budget Towing - 560 Randolph

Agenda item RES PH 18-95 was withdrawn and referred back to us. We will need to put the item on for an ALJ hearing. The licensee had originally asked for a council hearing to dispute the penalty, but showed up and wanted to argue the facts. He has been referred to Ashley Skarda to address concerns related to his site plan and he was supposed to call me related to questions on an ALJ hearing. I haven't heard back from him, but I think we should go ahead and schedule the hearing.

Thanks - Therese



Therese Skarda

Assistant City Attorney

Office of the City Attorney

400 City Hall, 15 West Kellogg Blvd.

Saint Paul, MN 55102

P: 651 266-8755

therese.skarda@ci.stpaul.mn.us

The Most Livable
City in America



Making Saint Paul the Most Livable City in America





CITY OF SAINT PAUL
Mayor Melvin Carter

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

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

May 14, 2018

NOTICE OF ADMINISTRATIVE HEARING

Roy Carlson, Sr. - President
Budget Towing Inc. of St Paul
560 Randolph Avenue
St. Paul, MN 55102-3614

RE: Auto Repair Garage, Second Hand Dealer, Second Hand Dealer-Motor Vehicle, Tow Truck/Wrecker (Operator) and Tow Truck/Wrecker (Vehicle) licenses held by Budget Towing Inc. of St. Paul d/b/a Budget Towing Inc. of St Paul for the premises located at 560 Randolph Avenue in Saint Paul
License ID #20120005762
OAH Docket No: 71-6020-35247

Dear Licensee:

Please take notice that an administrative hearing has been scheduled concerning the Auto Repair Garage, Second Hand Dealer, Second Hand Dealer-Motor Vehicle, Tow Truck/Wrecker (Operator) and Tow Truck/Wrecker (Vehicle) licenses held by Budget Towing Inc. of St. Paul d/b/a Budget Towing Inc. of St Paul for the premises located at 560 Randolph Avenue in Saint Paul:

Date: Thursday, June 7, 2018
Time: 9:30 a.m.

Location: Office of Administrative Hearings
600 Robert Street North
St. Paul, MN 55101

The hearing will be presided over by an Administrative Law Judge from the State of Minnesota Office of Administrative Hearings:

Name: Judge Jessica Palmer-Denig
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101

Telephone: (651) 361-7888



The Council of the City of Saint Paul has the authority to provide for hearings concerning adverse action against such licenses, under Chapter 310, including sections 310.05 and 310.06, of the Saint Paul Legislative Code. Adverse action may include revocation, suspension, denial, fines and other penalties or conditions.

Evidence will be presented to the administrative law judge that may lead to adverse action against the Auto Repair Garage, Second Hand Dealer, Second Hand Dealer-Motor Vehicle, Tow Truck/Wrecker (Operator) and Tow Truck/Wrecker (Vehicle) licenses held by Budget Towing Inc. of St. Paul d/b/a Budget Towing Inc. of St Paul:

On October 30, 2017, an Inspector from the Department of Safety and Inspections conducted a follow-up inspection of the licensed premises checking for compliance with the approved site plan (#13-138950 dated January 23, 2013). During the inspection, an inspector documented the following three (3) license condition violations:

1. Vehicles were parked outside the parking spaces designated on the approved site plan in violation of license condition #1: *"All impounded vehicle storage, parking for customer and employee vehicles and the tow truck fleet shall be parked in accordance with the approved site plan on file with the Department of Safety and Inspections (DSI). Any changes or alterations from the approved site plan must have prior approval from the City."*
2. The areas used for customer and employee parking and display of for-sale vehicles were covered with dirt or gravel with no visible striping. Accessible parking signage was posted on the building but the associated loading zone had not be striped in violation of license condition #4: *"Customer and employee vehicle parking spaces must be located on a paved surface and shall be striped and maintained in accordance with the approved site plan on file with DSI. A van accessible parking space shall be provided as shown on the approved plan and posted with a sign displaying the international handicapped symbol. The striping of the parking spaces, van accessible space and handicapped parking signage shall be completed by no later than July 1, 2013."*
3. A portion of the driveway to the property crosses the public right-of-way. A vehicle was parked in the gravel area in the right-of-way near the driveway in violation of license condition #6: *"Customer, employee, and for-sale vehicles shall not be parked or stored in the public right-of-way (e.g. street, alley, sidewalk, boulevard, etc.). This includes cars which have been repaired and are awaiting pick-up by their owners."*

On January 9, 2018, you were sent a letter from the Department of Safety and Inspections outlining the violations documented during the October 30, 2017 inspection. The letter requested that you respond by January 23, 2018 with a description of how you will bring your property into compliance with your license conditions. As of today's date, your response has not been received.

As a result of these license condition violations, per Saint Paul Legislative Code § 310.05 (m) (1), the licensing office will recommend a \$500.00 matrix penalty.

The licensee has the right to be represented by an attorney before and during the hearing or can represent him/herself. The licensee may also have a person of his/her choice representing his/her interests, to the extent not prohibited as unauthorized practice of law.

The hearing will be conducted in accordance with the requirements of Minnesota Statutes sections 14.57 to 14.62 and such parts of the procedures under section 310.05 of the Saint Paul Legislative Code as may be applicable.



At the hearing, the Administrative Law Judge will have all parties identify themselves for the record. The City will then present its witnesses and evidence, each of whom the licensee or attorney may cross-examine. The licensee may then offer in rebuttal any witnesses or evidence it may wish to present, each of whom the City's attorney may cross-examine. The Administrative Law Judge may in addition hear relevant and material testimony from persons not presented as witnesses by either party who have a substantial interest in the outcome of the proceeding; for example, the owners or occupants of property located in close proximity to the licensed premises may have substantial interest in the outcome of the proceeding. Concluding arguments may be made by the parties. Following the hearing, the Judge will prepare Findings of Fact, Conclusions of Law, and a specific recommendation for action to be taken by the City Council.

The licensee should bring to the hearing all documents, records and witnesses which may be needed to support its position. Subpoenas may be available to compel the attendance of witnesses or the production of documents in conformity with Minnesota Rules, part 1400.7000.

If you think that this matter can be resolved or settled without a formal hearing, please contact the undersigned. If a stipulation or agreement can be reached as to the facts, that stipulation will be presented to the Administrative Law Judge for incorporation into his or her recommendation for Council action.

If you fail to appear at the hearing, your ability to challenge the allegations will be forfeited and the allegations against you which have been stated earlier in this notice may be taken as true. If non-public data is received into evidence at the hearing, it may become public unless objection is made and relief requested under Minnesota Statutes, Section 14.60, subdivision 2.

If you have any questions, you can call me at 266-8710.

Sincerely,



Therese Skarda
Assistant City Attorney

cc: Judge Jessica Palmer-Denig, Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620
Roy Carlson, Sr., 1108 York Avenue, St. Paul, MN 55106



STATE OF MINNESOTA)

) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

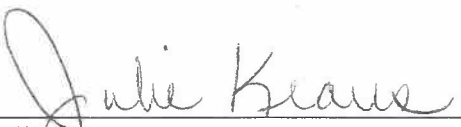
Julie Kraus, being first duly sworn, deposes and says that on the 14TH day of May, she served the attached **NOTICE OF ADMINISTRATIVE HEARING** and a correct copy thereof in an envelope addressed as follows:

Roy Carlson, Sr., President
Budget Towing Inc. of St Paul
560 Randolph Avenue
St. Paul, MN 55102-3614

Judge Jessica Palmer-Denig
Office of Administrative Hearings
P.O. Box 64620
St. Paul, MN 55164-0620

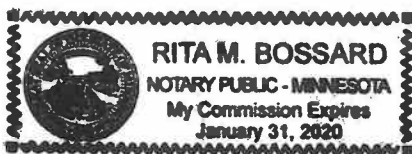
Roy Carlson, Sr.,
1108 York Avenue
St. Paul, MN 55106

(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 14TH day of May, 2018


Notary Public



Sec. 310.05. - Hearing procedures.

- (a) *Adverse action; notice and hearing requirements* . In any case where the council may or intends to consider any adverse action, including the revocation or suspension of a license, the imposition of conditions upon a license, or the denial of an application for the grant, issuance or renewal of a license, or the disapproval of a license issued by the State of Minnesota, the applicant or licensee shall be given notice and an opportunity to be heard as provided herein. The council may consider such adverse actions when recommended by the inspector, by the director, by the director of any executive department established pursuant to Chapter 9 of the Charter, by the city attorney or on its own initiative.
- (b) *Notice*. In each such case where adverse action is or will be considered by the council, the applicant or licensee shall have been notified in writing that adverse action may be taken against the license or application, and that he or she is entitled to a hearing before action is taken by the council. The notice shall be served or mailed a reasonable time before the hearing date, and shall state the place, date and time of the hearing. The notice shall state the issues involved or grounds upon which the adverse action may be sought or based. The council may request that such written notice be prepared and served or mailed by the inspector or by the city attorney.
- (c) *Hearing*. Where there is no dispute as to the facts underlying the violation or as to the facts establishing mitigating or aggravating circumstances, the hearing shall be held before the council. Otherwise the hearing shall be conducted before a hearing examiner appointed by the council or retained by contract with the city for that purpose. The applicant or the licensee shall be provided an opportunity to present evidence and argument as well as meet adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The hearing examiner may in its discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing.
- (c-1) *Procedure; hearing examiner*. The hearing examiner shall hear all evidence as may be presented on behalf of the city and the applicant or licensee, and shall present to the council written findings of fact and conclusions of law, together with a recommendation for adverse action.

The council shall consider the evidence contained in the record, the hearing examiner's recommended findings of fact and conclusions, and shall not consider any factual testimony not previously submitted to and considered by the hearing examiner. After receipt of the hearing examiner's findings, conclusions, and recommendations, the council shall provide the applicant or licensee an opportunity to present oral or written arguments alleging error on the part of the examiner in the application of the law or interpretation of the facts, and to present argument related to the recommended adverse action. Upon conclusion of that hearing, and after considering the record, the examiner's findings and recommendations, together with such additional arguments presented at the hearing, the council shall determine what, if any, adverse action shall be taken, which action shall be by resolution. The council may accept, reject or modify the findings, conclusions and recommendations of the hearing examiner.
- (c-2) *Ex-parte contacts*. If a license matter has been scheduled for an adverse hearing, council members shall not discuss the license matter with each other or with any of the parties or interested persons involved in the matter unless such discussion occurs on the record during the hearings of the matter or during the council's final deliberations of the matter. No interested person shall, with knowledge that a license matter has been scheduled for adverse hearing, convey or attempt to convey, orally or in writing, any information, argument or opinion about the matter, or any issue in the matter, to a council member or his or her staff until the council has taken final action on the matter; provided, however, that nothing herein shall prevent an inquiry or communications regarding status, scheduling or procedures concerning a license matter. An interested person, for the purpose of this paragraph, shall mean and include a person who is an officer or employee of the licensee which is the subject of the scheduled adverse hearing, or a person who has a financial interest in such licensee.
- (d) *Licensee or applicant may be represented*. The licensee or applicant may represent himself or choose to be represented by another.

- (e) *Record; evidence.* The hearing examiner shall receive and keep a record of such proceedings, including testimony and exhibits, and shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.
- (f) *Council action, resolution to contain findings.* Where the council takes adverse action with respect to a license, licensee or applicant for a license, the resolution by which such action is taken shall contain its findings and determination, including the imposition of conditions, if any. The council may adopt all or part of the findings, conclusions and recommendations of the hearing examiner, and incorporate the same in its resolution taking the adverse action.
- (g) *Additional procedures where required.* Where the provisions of any statute or ordinance require additional notice or hearing procedures, such provisions shall be complied with and shall supersede inconsistent provisions of these chapters. This shall include, without limitation by reason of this specific reference, Minnesota Statutes, Chapter 364 and Minnesota Statutes, Section 340A.415.
- (h) *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.
- (i) *Continuances.* Where a hearing for the purpose of considering revocation or suspension of a license or other disciplinary action involving a license has been scheduled before the council, a continuation of the hearing may be granted by the council president or by the council at the request of the licensee, license applicant, an interested person or an attorney representing the foregoing, upon a showing of good cause by the party making the request.
- (j) If the council imposes an adverse action as defined in section 310.01 above, a generic notice of such action shall be prepared by the license inspector and posted by the licensee so as to be visible to the public during the effective period of the adverse action. The licensee shall be responsible for taking reasonable steps to make sure the notice remains posted on the front door of the licensed premises, and failure to take such reasonable precautions may be grounds for further adverse action.
- (k) *Imposition of costs.* The council may impose upon any licensee or license applicant some or all of the costs of a contested hearing before an independent hearing examiner. The costs of a contested hearing include, but are not limited to, the cost of the administrative law judge or independent hearing examiner, stenographic and recording costs, copying costs, city staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The council may impose all or part of such costs in any given case if (i) the position, claim or defense of the licensee or applicant was frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment; (ii) the nature of the violation was serious, or involved violence or the threat of violence by the licensee or employees thereof, or involved the sale of drugs by the licensee or employees thereof, and/or the circumstances under which the violation occurred were aggravated and serious; (iii) the violation created a serious danger to the public health, safety or welfare; (iv) the violation involved unreasonable risk of harm to vulnerable persons, or to persons for whose safety the licensee or applicant is or was responsible; (v) the applicant or licensee was sufficiently in control of the situation and therefore could have reasonably avoided the violation, such as but not limited to, the nonpayment of a required fee or the failure to renew required insurance policies; (vi) the violation is covered by the matrix in section 409.26 of the Legislative Code; or (vii) the violation involved the sale of cigarettes to a minor.
- (l) *Imposition of fines.* The council may impose a fine upon any licensee or license applicant as an adverse license action. A fine may be in such amount as the council deems reasonable and appropriate, having in mind the regulatory and enforcement purposes embodied in the particular licensing ordinance. A fine may be in addition to or in lieu of other adverse action in the sole discretion of the council. To the extent any other provision of the Legislative Code provides for the imposition of a fine, both provisions shall be read together to the extent possible; provided, however, that in the case of any conflict or inconsistency, the other provision shall be controlling.

- (m) *Presumptive penalties for certain violations* . The purpose of this section is to establish a standard by which the city council determines the amount of fines, the length of license suspensions and the propriety of revocations, and shall apply to all license types, except that in the case of a violation involving a liquor license § 409.26 shall apply where a specific violation is listed. In the case of an adverse action filed for a violation of chapter 331A, the licensee shall be given a fine for each individual violation of chapter 331A. The total fine amount for violations of chapter 331A may exceed the maximum fine outlined below due to multiple violations in one (1) appearance. All penalty recommendations for chapter 331A violations shall be based on the food penalty guideline referred to in chapter 331A. 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 making it more appropriate to do so. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.

| Type of Violation | Appearance | | | |
|---|-------------------|-------------------|---------------------------------------|------------|
| | 1st | 2nd | 3rd | 4th |
| (1) Violations of conditions placed on the license | \$500.00 fine | \$1,000.00 fine | \$2,000.00 fine and 10-day suspension | Revocation |
| (2) Violation of provisions of the legislative code relating to the licensed activity | \$500.00 fine | \$1,000.00 fine | \$2,000.00 fine and 10-day suspension | Revocation |
| (3) Violation of provisions of the legislative code relating to the licensed activity, other than violations of the food code | \$500.00 fine | \$1,000.00 fine | \$2,000.00 fine and 10-day suspension | Revocation |
| (4) Failure to permit entrance or inspection by DSI inspector or police | 5-day suspension | 10-day suspension | 15-day suspension | Revocation |
| (5) Commission of a crime other than a felony on the premises by a licensee or employee | \$700.00 | \$1,500.00 | 5-day suspension | Revocation |
| (6) Commission of a felony on the premises by a licensee or employee | \$2,000.00 | Revocation | n/a | n/a |
| (7) Death or great bodily harm in establishment related to violation of law or license conditions | 30-day suspension | 60-day suspension | Revocation | n/a |

| | | | | |
|---|------------|------------|------------------------------|------------|
| (8) Failure to pay license fees | Suspension | Revocation | | |
| (9) Critical violations under 331A | \$250.00 | \$500.00 | \$1,000.00, 5-day suspension | Revocation |
| (10) Non-critical violation under 331A | \$150.00 | \$250.00 | \$500.00 | \$1,000.00 |
| (11) Taxi fail to display driver's license as required by 376.16(f) | \$100.00 | \$250.00 | \$500.00 | Revocation |
| (12) Taxi fail to display number of information and complaint office as required by 376.11(v) | \$100.00 | \$250.00 | \$500.00 | Revocation |
| (13) Violation of restrictions upon sidewalk café license under 106.01(b) | \$200.00 | \$400.00 | \$800.00 | Revocation |

(i) *Fines payable without hearing.*

- A. Notwithstanding the provisions of section 310.05(c), 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.
- B. For adverse action initiated under chapter 331A of this Code, a fine may be paid without a hearing regardless of how many prior appearances that licensee has made before the council. The above council hearing requirement applies to violations under chapter 331A unless the fine recommended by the department of safety and inspections is equal to or less than the fine amount outlined in the above matrix. 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. A non-critical violation under chapter 331A shall not be considered an "appearance" for purposes of determining presumptive penalties for non-331A violations. A council hearing is required if the department of safety and inspections recommends a fine that is an upward departure for the amount outlined above.

- (ii) *Multiple violations.* At a licensee's first appearance before the city council, the council shall consider and act upon all the violations that have been alleged and/or incorporated in the notices sent to the licensee under the administrative procedures act up to and including the formal notice of hearing. The council in that case shall consider the presumptive penalty for each such violation under the "1st Appearance" column in paragraph (b) above. The occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion.

- (iii) *Violations occurring after the date of the notice of hearing.* Violations occurring after the date of the notice of hearing that are brought to the attention of the city attorney prior to the hearing date before an administrative law judge (or before the council in an uncontested facts hearing) may be added to the notice(s) by stipulation if the licensee admits to the facts, and shall in that case be treated as though part of the "1st Appearance." In all other cases, violations occurring after the date of the formal notice of hearing shall be the subject of a separate proceeding and dealt with as a "2nd Appearance" before the council. The same procedures shall apply to a second, third or fourth appearance before the council.
- (iv) *Subsequent appearances.* Upon a second, third or fourth appearance before the council by a particular licensee, the council shall impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance. However, non-critical violations of chapter 331A shall not be counted as an "appearance" before the council in relation to any violation other than another violation of chapter 331A.
- (v) *Computation of time.*
 - (1) *Second appearance.* A second violation within twelve (12) months shall be treated as a second appearance for the purpose of determining the presumptive penalty.
 - (2) *Third appearance.* A third violation within eighteen (18) months shall be treated as a third appearance for the purpose of determining the presumptive penalty.
 - (3) *Fourth appearance.* A fourth violation within twenty-four (24) months shall be treated as a fourth appearance for the purpose of determining the presumptive penalty.
 - (4) Any appearance not covered by subsections (1), (2) or (3) above shall be treated as a first appearance. Measurement of the twelve-, eighteen-, or twenty-four-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.
 - (5) Notwithstanding subsections (iv)(1), (2), (3) or (4) above, a second appearance before the council regarding a death or great bodily harm in a licensed establishment that is related to a violation of the law or license conditions shall be counted as a second appearance, regardless of how much time has passed since the first appearance if the first appearance was also regarding a death or great bodily harm in a licensed establishment. A third appearance for the same shall be counted as a third appearance regardless of how much time has passed since the first or second appearance.
 - (6) For the purpose of a second, third or fourth appearance under this section, "violation" shall mean either one of those violations listed in paragraph (m) or a violation of section 409.26(b).

(Code 1956, § 510.05; Ord. No. 17551, § 2, 4-19-88; Ord. No. 17559, §§ 1, 2, 5-17-88; Ord. No. 17659, § 1, 6-13-89; Ord. No. 17911, § 1, 3-10-92; C.F. No. 94-46, § 7, 2-2-94; C.F. No. 94-898, §§ 2, 3, 7-13-94; C.F. No. 94-1340, § 2, 10-19-94; C.F. No. 95-473, § 4, 5-31-95; C.F. No. 05-180, § 1, 4-6-05; C.F. No. 06-954, § 1, 11-8-06; C.F. No. 06-1072, § 1, 12-27-06; C.F. No. 07-149, § 73, 3-28-07; C.F. No. 07-1053, § 1, 11-28-07; C.F. No. 08-1208, § 1, 12-17-08; C.F. No. 10-665, § 1, 7-28-10; Ord. No. 11-93, § 1, 9-28-11; Ord. No. 11-94, § 1, 10-12-11; Ord 12-42, § 1, 8-22-12; Ord 12-85, § 1, 1-23-13)

Sec. 310.06. - Revocation; suspension; adverse actions; imposition of conditions.

- (a) *Council may take adverse action.* The council is authorized to take adverse action, as defined in section 310.01 above, against any or all licenses or permits, licensee or applicant for a license, as provided in and by these chapters. Adverse actions against entertainment licenses issued under chapter 411 of the Legislative Code may be initiated for the reasons set forth in subsection (b) below, or upon any lawful grounds which are communicated to the license holder in writing prior to the hearing before the council. Such actions shall be initiated and carried out in accordance with the procedures outlined in section 310.05; provided, however, that the formal notice of hearing shall be used to initiate the adverse action without the use of prior procedural steps.
- (b) *Basis for action.* Such adverse action may be based on one (1) or more of the following reasons, which are in addition to any other reason specifically provided by law or in these chapters:
- (1) The license or permit was procured by misrepresentation of material facts, fraud, deceit or bad faith.
 - (2) The applicant or one acting in his or her behalf made oral or written misstatements or misrepresentations of material facts in or accompanying the application.
 - (3) The license was issued in violation of any of the provisions of the zoning code, or the premises which are licensed or which are to be licensed do not comply with applicable health, housing, fire, zoning and building codes and regulations.
 - (4) The license or permit was issued in violation of law, without authority, or under a material mistake of fact.
 - (5) The licensee or applicant has failed to comply with any condition set forth in the license, or set forth in the resolution granting or renewing the license.
 - (6)
 - a. 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;
 - b. The licensee or applicant has been convicted of a crime that may disqualify said applicant from holding the license in question under the standards and procedures in Minnesota Statutes chapter 364; or
 - 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 lack of fitness or good character may be drawn.
 - (7) 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.
 - (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.
 - (9) Failure to keep sidewalks or pedestrian ways reasonably free of snow and ice as required under chapter 114 of the Saint Paul Legislative Code.
 - (10) The licensee or applicant has shown by past misconduct or unfair acts or dealings: physical abuse, assaults or violent actions done to others, including, but not limited to, actions meeting the definition of criminal sexual conduct pursuant to Minnesota Statutes sections 609.342 through 609.3451; sexual abuse, physical abuse or maltreatment of a child as defined in Minnesota Statutes section 626.556, subdivisions 2 and 10e, including, but not limited to, acts which constitute a violation of Minnesota Statutes sections 609.02, subdivision 10; 609.321

through 609.3451; or 617.246; neglect or endangerment of a child as defined in Minnesota Statutes section 626.557, subdivision 2; the manufacture, distribution, sale, gift, delivery, transportation, exchange or barter of a controlled substance as defined in Minnesota Statutes chapter 152; the possession of a controlled substance as defined in Minnesota Statutes chapter 152 in such quantities or under circumstances giving rise to a reasonable inference that the possession was for the purpose of sale or distribution to others; or by the abuse of alcohol or other drugs, that such licensee or applicant is not a person of the good moral character or fitness required to engage in a licensed activity, business or profession.

- (11) The licensee or applicant has materially changed or permitted a material change in the design, construction or configuration of the licensed premises without the prior approval of the city council in the case of Class N licenses, the director in the case of Class T licenses, and the inspector in the case of Class R licenses, or without first having obtained the proper building permits from the city.
- (12) The licensee or applicant has violated section 294.01 of the Legislative Code, or has made or attempted to make a prohibited ex parte contact with a council member as provided in section 310.05(c-2) of the Legislative Code.
- (13) The licensee violated the law or any license condition and that violation is related to a death or great bodily harm, as defined in Minnesota Statute section 609.02, subd. 8, in or near the establishment.
- (14) The licensee has failed to pay license fees within sixty (60) days of the date the fees are due. Licensee must pay any outstanding fees and delinquent fees in total. Failure to do so within sixty (60) days of the due date may result in revocation of the license. A revocation for this reason, however, is not considered a revocation resulting from misconduct or unfitness of the licensee, evidence of violations of law involving licensed premises, evidence that the applicant had been involved in the operation of a nuisance, or fraud or deception in the license application. Therefore, the requirement of § 310.02(d) prohibiting re-application within one year of revocation shall not apply to revocations under this paragraph.

The terms "licensee" or "applicant" for the purpose of this section shall mean and include any person who has any interest, whether as a holder of more than five (5) percent of the stock of a corporation, as a partner, or otherwise, in the premises or in the business or activity which are licensed or proposed to be licensed.

With respect to any license for activities entitled to the protection of the First Amendment, notwithstanding the foregoing provisions, neither the lack of good moral character or fitness of the licensee or applicant nor the content of the protected speech or matter shall be the basis for adverse action against the license or application.

- (c) *Imposition of reasonable conditions and/or restrictions.* When a reasonable basis is found to impose reasonable conditions and/or restrictions upon a license issued or held under these chapters, any one (1) or more such reasonable conditions and/or restrictions may be imposed upon such license for the purpose of promoting public health, safety and welfare, of advancing the public peace and the elimination of conditions or actions that constitute a nuisance or a detriment to the peaceful enjoyment of urban life, or promoting security and safety in nearby neighborhoods. Such reasonable conditions and/or restrictions may include or pertain to, but are not limited to:

- (1) A limitation on the hours of operation of the licensed business or establishment, or on particular types of activities conducted in or on said business or establishment;
- (2) A limitation or restriction as to the location within the licensed business or establishment where particular type of activities may be conducted;
- (3) A limitation as to the means of ingress or egress from the licensed establishment or its parking lot or immediately adjacent area;
- (4) A requirement to provide off-street parking in excess of other requirements of law;

- (5) A limitation on the manner and means of advertising the operation or merchandise of the licensed establishment;
- (6) Any other reasonable condition or restriction limiting the operation of the licensed business or establishment to ensure that the business or establishment will harmonize with the character of the area in which it is located, or to prevent the development or continuation of a nuisance.

The inspector may impose such conditions on Class R licenses with the consent of the license holder, or may recommend the imposition of such conditions as an adverse action against the license or licenses; the inspector has the same power with respect to Class T licenses. The council may impose such conditions on Class N licenses with the consent of the license holder, or upon any class of license as an adverse action against the license or licenses following notice and hearing as may be required. Such conditions may be imposed on a license or licenses upon issuance or renewal thereof, or upon and as part of any adverse action against a license or licenses, including suspension. Conditions imposed on a license or licenses shall remain on such licenses when renewed and shall continue thereafter until removed by the council in the case of conditions on Class N licenses or conditions imposed by adverse action, and by the inspector in the case of Class R and T licenses.

- (d) *Standards for multiple license determination.* In any case in which the council is authorized to take adverse action against less than all of the licenses held by a licensee, or applied for by an applicant, the following standards may be used:
 - (1) The nature and gravity of the grounds found by the council to exist upon which the adverse action would be based;
 - (2) The policy and/or regulatory goals for the particular licenses involved, either as embodied in the Legislative Code or as found and determined by the council;
 - (3) The interrelationship of the licenses and their relative importance to the overall business enterprise of the licensee or applicant;
 - (4) The management practices of the licensee or applicant with respect to each of such licenses;
 - (5) The extent to which adverse action against less than all of the licenses or applications would result in difficulty in enforcing and monitoring the adverse action taken;
 - (6) The hardship to the licensee or applicant that would be caused by applying adverse action to all licenses or applications; and
 - (7) The hardship and/or danger to the public, or to the public health and welfare, that would result from adverse action against less than all of the licenses or applications.

(Code 1956, § 510.06; Ord. No. 17584, § 1, 8-25-88; Ord. No. 17657, § 15, 6-8-89; Ord. No. 17659, § 2, 6-13-89; Ord. No. 17901, §§ 2, 3, 1-14-92; Ord. No. 17917, §§ 2, 3, 3-31-92; Ord. No. 17922, § 1, 4-28-92; C.F. No. 94-500, § 3, 7-6-94; C.F. No. 94-1340, § 3, 10-19-94; C.F. No. 95-473, § 5, 5-31-95; C.F. No. 99-500, § 3, 7-7-99; C.F. No. 06-954, § 2, 11-8-06; C.F. No. 06-1072, § 2, 12-27-06)