

June 20, 2018

VIA EFILING ONLY

Shari Moore
City Clerk
City of St. Paul
310 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102
cityclerk@ci.stpaul.mn.us


**Re: *In the Matter of the Licenses held by Budget Towing Inc. of St. Paul
for the premise located at 560 Randolph Ave in St. Paul***
OAH 71-6020-35247

Dear City Clerk Moore:

Enclosed and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** in the above-entitled matter. The official record, with the exception of the recording of the hearing, is also enclosed. If you would like a copy of the recording, please contact the Office of Administrative Hearings in writing, by telephone at (651) 361-7888, or by email at lisa.armstrong@state.mn.us. The Office of Administrative Hearings' file in this matter is now closed.

If you have any questions, please contact my legal assistant Lisa Armstrong at (651) 361-7888 or lisa.armstrong@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,


JESSICA A. PALMER-DENIG
Administrative Law Judge

JPD:la
Enclosure

cc: Therese Skarda
Roy Carlson, Sr.
Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ST. PAUL DEPARTMENT OF SAFETY AND INSPECTIONS

In the Matter of the Licenses held by
Budget Towing Inc. of St. Paul for the
premises located at 560 Randolph Avenue
in Saint Paul

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-entitled matter came before Administrative Law Judge Jessica A. Palmer-Denig for a hearing on June 7, 2018. The record closed on the same date at the conclusion of the hearing.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul Department of Safety and Inspections (Department). Budget Towing Inc. of St. Paul (Licensee) appeared by its owner, Roy Carlson, Sr., and its business manager, Angela Eichinger.

STATEMENT OF THE ISSUES

1. Has the Department demonstrated by a preponderance of the evidence that Licensee failed to comply with three licensing conditions related to its licensed business at 560 Randolph Avenue in Saint Paul, Minnesota?
2. May the City impose a \$500.00 matrix penalty?

SUMMARY OF RECOMMENDATION

Based on the evidence in the hearing record, the Administrative Law Judge concludes that the Department established Licensee has violated two conditions of its license. A matrix penalty in the amount of \$500.00 may be imposed.

FINDINGS OF FACT

1. Licensee holds several licenses to do business in the City of Saint Paul, Minnesota (City), including licenses to operate as a second hand dealer, second hand dealer-motor vehicle, and a tow truck/wrecker (operator), and tow truck/wrecker (vehicle).¹

¹ Testimony (Test.) of Kristina Schweinler.

2. Licensee operates a towing business in the City at 560 Randolph Avenue.² This address is a large property in an industrial zone with three licensed businesses, as well as other tenants.³

3. Licensee has been licensed to provide towing services in the City for many years.⁴ Licensee's history with the City includes two prior adverse licensing actions. First, Licensee was assessed a penalty of \$500.00 in 2013 for charging a towing fee for a vehicle that had not been hooked up and refusing to provide the owner with a receipt showing payment. Second, Licensee was assessed a penalty of \$1,000.00 in 2015, based upon multiple violations of applicable regulations.⁵

4. Licensee's operations at 560 Randolph Avenue are subject to licensing conditions.⁶ Licensees are made aware of licensing conditions at the outset of licensure and again each time a license is renewed.⁷

5. Relevant to this action are the following licensing conditions for Licensee:

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. Any changes or alterations from the approved site plan must have prior approval from City.

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 the Department. 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.

Condition 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.⁸

6. A site plan for 560 Randolph Avenue governs the locations in which Licensee may park vehicles at the property.⁹

² *Id.*; Test. of Roy Carlson.

³ Test. of K. Schweinler; Test. of R. Carlson; Test. of Angela Eichinger.

⁴ Test. of K. Schweinler; Test. of R. Carlson.

⁵ Exhibit (Ex.) 1-1; Test. of K. Schweinler. Licensee disputes that it committed violations in connection with the second licensing action, but admits that it paid the \$1,000.00 fine. Test. of R. Carlson.

⁶ Test. of K. Schweinler; Ex. 2.

⁷ Test. of K. Schweinler.

⁸ Ex. 2.

⁹ Exs. 4-3, 4-4.

7. Kristina Schweinler, an inspector with the Department, visited Licensee's business at 560 Randolph Avenue on August 4, 2017.¹⁰ She found the property to be in disarray; the parking area was not striped as required and tow trucks and other vehicles were parked outside the approved area.¹¹ She observed Licensee's tow truck and two cars parked on City's right-of-way outside the entrance to Licensee's location.¹² Schweinler discussed these problems with Licensee's owner, Roy Carlson, Sr., and instructed that Licensee was required to become compliant, but she did not recommend adverse action at that time.¹³

8. On October 30, 2017, an intern with the Department, Alex Kohlhaas, conducted an inspection of Licensee's site at Schweinler's direction.¹⁴ Kohlhaas prepared a report detailing his findings during the inspection and documented his observations in photographs.¹⁵

9. During the inspection on October 30, 2017, vehicles were double parked, in violation of Licensee's site plan.¹⁶ Kohlhaas identified this as a violation of Condition 1.¹⁷

10. The parking area for employee or customer parking and accessible van parking were not striped and marked as required, and the pavement was covered in dirt and gravel.¹⁸ Kohlhaas identified the condition of the lot and the lack of required striping and signage as a violation of Condition 4.¹⁹

11. Kohlhaas observed a car parked outside the lot on City property,²⁰ the same location where Schweinler had observed parked vehicles on August 4, 2017.²¹ Kohlhaas was unable to determine which business at the location was responsible for the vehicle, but noted that the vehicle did not have a "for sale" sign.²² Kohl identified this as a violation of Condition 6.²³

12. The Department sent Licensee a letter on January 9, 2018, identifying the violations and requesting a response by January 23, 2018.²⁴ Generally, if the Department receives a response from a licensee and the licensee is willing to work with the Department, a negative action will not result.²⁵ The Department sent the letter to

¹⁰ *Id.*

¹¹ *Id.*; Ex. 10.

¹² Test. of K. Schweinler; Ex. 9.

¹³ Test. of K. Schweinler.

¹⁴ *Id.*

¹⁵ Exs. 3-1, 3-2.

¹⁶ Test. of K. Schweinler; Exs. 3-1, 3-5, 11.

¹⁷ Ex. 3-1.

¹⁸ Test. of K. Schweinler; Exs. 3-1, 3-3, 3-4, 3-5, 3-6, 11.

¹⁹ Ex. 3-1.

²⁰ Exs. 3-2, 3-4, 3-7.

²¹ Test. of K. Schweinler.

²² Ex. 3-2.

²³ *Id.*

²⁴ Ex. 4-1.

²⁵ Test. of K. Schweinler.

Licensee at a previous address on Homer Street, a property it has not occupied for several years, rather than its current licensed address at 560 Randolph Avenue.²⁶ Licensee did not receive the letter in time to make a timely response to the Department's letter.²⁷

13. On February 27, 2018, the Department sent Licensee a Notice of Violation.²⁸ The Department recommended Licensee be assessed a matrix penalty of \$500.00 for the three violations identified at the inspection on October 30, 2017.²⁹ The Notice of Violation instructed Licensee to respond by March 9, 2018, in order to contest the Department's recommendation.³⁰

14. In mailing the Notice of Violation, the Department again used Licensee's former business address on Homer Street, rather than its currently licensed address on Randolph Avenue.³¹ The Department also mailed the Notice of Violation to Carlson at an address on York Avenue.³² That address is occupied by Carlson's former spouse and he does not live there.³³

15. Licensee received the Notice of Violation after March 9, 2018, and submitted a response on March 16, 2018.³⁴ Licensee's response indicated that Licensee admitted the facts in this case, but wished to contest the penalty.³⁵ Licensee indicated that its parking lot had suffered due to extreme weather and the nature of its business.³⁶ Licensee requested that it be given reasonable time to address the issues and that the Department waive the penalty.³⁷

16. The matter was scheduled for hearing before the City Council, but at that time, Licensee contested the facts underlying the Notice of Violation.³⁸ The matter was withdrawn and referred for an evidentiary hearing.³⁹

17. Licensee wishes to work with the Department and become compliant with its licensing conditions.⁴⁰

18. Licensee has cleared the van accessible parking space so that the disabled parking sign on the building is not obscured, but the lot surface has not been

²⁶ Ex. 4-1; Test. of R. Carlson.

²⁷ Test. of R. Carlson.

²⁸ Ex. 5-1.

²⁹ Exs. 5-1, 5-2.

³⁰ Ex. 5-2.

³¹ Exs. 5-1, 5-4.

³² Ex. 5-4.

³³ *Id.*; Test. of R. Carlson.

³⁴ Ex. 6.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Test. of K. Schweinler; Ex. 7-1.

³⁹ Test. of K. Schweinler; Ex. 7-1.

⁴⁰ Test. of R. Carlson; Test. of A. Eichinger.

striped and the disability parking symbol has not been painted on the asphalt.⁴¹ These items were to have been completed in 2013, and maintained since then.⁴²

19. Licensee rents the facility at 560 Randolph Avenue.⁴³ Licensee has relied on the landlord to make changes to the parking facilities, and the landlord has not kept the property to a standard consistent with Licensee's license conditions.⁴⁴ Licensee is responsible for compliance with the conditions of its license, including by negotiating with its landlord to have the required changes made.⁴⁵

20. The parking lot is granulated asphalt, which deteriorates during severe weather events.⁴⁶ Licensee was unable to stripe the lot during the winter and has been waiting to do the striping until the lot undergoes power sweeping to clean up dirt and gravel.⁴⁷

21. Licensee has double parked vehicles on the lot.⁴⁸ Another licensed business at Licensee's location double parked vehicles, so Licensee believed it also would be permitted to use double parking.⁴⁹

22. A change to the site plan would be necessary to allow vehicles to be double parked in connection with Licensee's business.⁵⁰ No change to Licensee's site plan has been requested.⁵¹

23. After receiving the warning from Schweinler on August 4, 2017, Licensee stopped parking vehicles outside the lot on City property.⁵² The vehicle Kohlhaas observed outside the lot on the City's right-of-way on October 30, 2017, is not associated with Licensee.⁵³

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the St. Paul City Council have authority to hear this matter pursuant to St. Paul Legislative Code § 310.05(c), Minn. Stat. § 14.55 (2016).

⁴¹ Test. of R. Carlson; Test. of K. Schweinler; Exs. B, C.

⁴² Exs. 2, 4-2.

⁴³ Test. of R. Carlson.

⁴⁴ *Id.*

⁴⁵ Test. of K. Schweinler.

⁴⁶ Test. of R. Carlson; Test. of A. Eichinger.

⁴⁷ Test. of R. Carlson.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Test. of K. Schweinler.

⁵¹ *Id.*

⁵² Test. of R. Carlson.

⁵³ *Id.*

2. The hearing in this matter was conducted in accordance with St. Paul Legislative Code § 310.05 and the contested case procedures of Minn. Stat. §§ 14.57-.62 (2016).

3. The Department provided proper notice of the hearing and fulfilled procedural requirements of rule and law.

4. As the Department proposes regulatory discipline, it must show by a preponderance of the evidence that Licensee committed the violations alleged.⁵⁴

5. The Department has shown by a preponderance of the evidence that Licensee violated Condition 1 and Condition 4 of its license.

6. The Department has not established by a preponderance of the evidence that Licensee violated Condition 6 of its license.

7. The St. Paul City Council may impose adverse action upon a licensee that fails to comply with a condition of its license.⁵⁵

8. In accordance with the penalty matrix in Section 310.05(m) of the St. Paul Legislative Code, a penalty of \$500.00 may be imposed for a first-time violation. Subsequent violations are subject to a higher penalty.

9. The Department has established that a penalty of \$500.00 may be imposed for Licensee's violations of the conditions of its license.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The St. Paul City Council should take appropriate action against the licenses held by Licensee for the premises at 560 Randolph Avenue in St. Paul.

Dated: June 20, 2018



JESSICA A. PALMER-DENIG
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

⁵⁴ Minn. R. 1400.7300, subp. 5 (2017).

⁵⁵ St. Paul Legislative Code § 310.06(a), (b)(5).

NOTICE

This Report is a recommendation, not a final decision. The Saint Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions of Law, and Recommendation. Pursuant to Saint Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact Shari Moore, City Clerk, City of Saint Paul, 310 City Hall, 15 W. Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

The Department must establish that Licensee violated required licensing conditions by a preponderance of the evidence.⁵⁶ This standard requires that to establish a fact, it must be more probable that the fact exists than that the contrary exists; where evidence of a fact is equally balanced, the fact has not been established by a preponderance of the evidence.⁵⁷

The Department established that Licensee violated Condition 1 of its license by failing to park vehicles in accordance with its site plan. The Department has also shown a violation of Condition 4 because Licensee failed to properly maintain and stripe the parking lot for employee and customer parking, as well as van accessible disability parking.

The Department has not shown that Licensee violated Condition 6. When Kohlhaas inspected Licensee's facility on October 30, 2017, he did not determine the owner of the vehicle parked in the City's right-of-way. Schweinler observed Licensee's vehicles parked in that location when she visited the property on August 4, 2017, but that is insufficient to show that the vehicle parked in that spot on October 30, 2017, belonged to or was parked there by Licensee. Carlson testified that he stopped parking vehicles in the right-of-way after being warned about this issue by Schweinler. He further testified that the vehicle parked in that area on October 30, 2017, was not associated with Licensee. The Department offered no evidence to the contrary. Therefore, the Department did not meet its burden as to this allegation.

Section 310.05(m) of the St. Paul Legislative Code provides that a matrix penalty of \$500.00 may be imposed for a first-time violation. The Department recommended a penalty of \$500.00, even though a more serious penalty could be imposed due to Licensee's prior violations.⁵⁸ On the record here, the City Council may impose a penalty of \$500.00 upon Licensee.

Notwithstanding the foregoing, the City Council may wish to take the procedural history of this case into account in making a final decision. The Department sent mail

⁵⁶ Minn. R. 1400.7300, subp. 5.

⁵⁷ *City of Lake Elmo v. Metropolitan Council*, 685 N.W.2d 1, 4 (Minn. 2004).

⁵⁸ Exs. 5-1, 5-2.

twice to Licensee at an address that was incorrect, though the Department clearly knew the address at which Licensee was operating. Schweinler testified that if a licensee contacts the Department and is willing to work through the issues identified and correct violations, the Department is likely not to proceed with negative action. Carlson and Eichinger testified credibly that they did not receive the Department's mailings until after critical dates had passed, and that they wish to bring Licensee into compliance with its license conditions. The City's mailing errors deprived Licensee of the opportunity to resolve these issues informally, and this fact may warrant consideration in determining an appropriate sanction.

J. P. D.