

OFFICE OF THE CITY ATTORNEY

Sara Grewing, 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

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June 27, 2017

NOTICE OF VIOLATION

Tulshi Kharel, Owner
Asian Market
1423 Rice Street
St. Paul, MN 55117

RE: Cigarette/Tobacco and Malt Off-Sale licenses held by Asian Market, Inc. d/b/a Asian Market for the premises located at 1423 Rice Street in Saint Paul.
License ID #: 20160002560

Dear Licensees:

The Department of Safety and Inspections (DSI) has recommended adverse action against the Cigarette/Tobacco and Malt Off-Sale licenses held by Asian Market, Inc. d/b/a Asian Market for the premises located at 1423 Rice Street in Saint Paul. The basis for the recommendation is as follows:

On June 15, 2017, Saint Paul Police conducted a liquor compliance check at Asian Market located at 1423 Rice Street (CN #17-136-941). The sergeant used an underage checker who carried a valid Minnesota picture identification with "UNDER 21" in bold above his picture.

The underage checker entered the store and approximately five (5) minutes later came out carrying a white plastic bag which contained a 6-pack of Bud Lite Beer and a tube of toothpaste. He told the sergeant that he entered the store and approached the cooler to select the beer and then a tube of toothpaste. He went to the register to make the purchase. He took his ID out of his wallet and gave it to the cashier who looked at it and gave it back. He paid for the items with a \$20.00 bill, the cashier gave him the change, bagged the items and he left to the store. The sergeant asked the checker if the cashier asked him any questions and he stated no.

The sergeant went into the store and identified himself to the cashier as Saint Paul Police by his department picture identification card. The sergeant explained to the cashier that he was conducting underage compliance checks for the Department of Safety and Inspections and he failed the check by selling alcohol to an underage person.

The sergeant asked the cashier for his ID but was told he did not have one so he gave the sergeant his name. He asked the cashier if he looked at the underage checker's ID to verify if he was old enough to purchase alcohol, he stated yes. The sergeant asked if he noticed the "UNDER 21" in bold above the checker's picture. The cashier stated that he saw 1998 but got confused because there were people waiting and he felt hurried. Later, the sergeant asked the checker if there were people in line when he checked out and he stated no one was behind him.

The sergeant asked the cashier if the manager or owner were there and the cashier stated no but gave him the name Sira Humagai. The sergeant told the cashier the owner/manager would be receiving a letter in the mail regarding the failed compliance check.

Selling alcohol to a minor is a violation of Minn. Stat. § 340A.503, Subd. 2 (1) states: "It is unlawful for any person to sell, barter, furnish, or give alcohol beverages to a person under 21 years of age." and Saint Paul Legislative Code § 410.04 (a) (1) states: "No licensee, or agent or employee thereof, shall serve or dispense upon the licensed premises any intoxicating liquor or non-intoxicating malt liquors to any minor...."

As a result of this violation, per Saint Paul Legislative Code § 409.26 (b) (3), the licensing department will recommend a \$500.00 matrix penalty and require that you and your employees attend Alcohol Awareness Training.

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, July 7, 2017**, 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 of a \$500.00 matrix penalty and the requirement that you and your employees attend Alcohol Awareness Training.
2. You can pay the recommended \$500.00 matrix penalty and you and your employees attend Alcohol Awareness Training. 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, July 7, 2017**. A self-addressed envelope is enclosed for your convenience.

If you select this option, you and your employees are required to attend an Alcohol Awareness Training session. Please contact Kristina Schweinler at (651) 266-9110 by **Friday, July 7, 2017** to get information regarding training sessions. You need submit proof of completion of the Alcohol Awareness Training to DSI by **Thursday, September 7, 2017**. Payment of the \$500.00 matrix penalty and completion of the Alcohol Awareness Training will be considered a waiver of the hearing to which you are entitled.

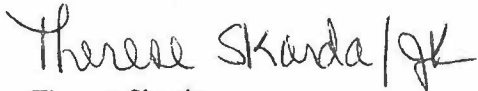
3. If you wish to admit the facts but you contest the penalty, you may have a public hearing before the Saint Paul City Council. You need to send me a letter with a statement admitting to the facts and requesting a public hearing. I will need to receive your letter by **Friday, July 7, 2017**. The matter will then be scheduled before the City Council for a public hearing to determine whether to impose the \$500.00 matrix penalty and impose the requirement that you and your employees attend Alcohol Awareness Training. 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, July 7, 2017**. 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, July 7, 2017, I will assume you do **not** contest the imposition of the \$500.00 matrix penalty and the requirement that you and your employees attend Alcohol Awareness Training. 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 options, please feel free to contact me at 266-8710.

Sincerely,

Handwritten signature of Therese Skarda, followed by a vertical line and the initials 'JK'.

Therese Skarda
Assistant City Attorney

Cc: Tulshi Kharel, 1812 Clarence Street, Maplewood, MN 55109
Kerry Antrim, Executive Director, District 6 Planning Council, 171 Front Avenue, St. Paul, MN 55117

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 June she served the attached **NOTICE OF VIOLATION** and a correct copy thereof in an envelope addressed as follows:

Tulshi Kharel, Owner
Asian Market
1423 Rice Street
St. Paul, MN 55117


Tulshi Kharel
1812 Clarence Street
Maplewood, MN 55109

Kerry Antrim, Executive Director
District 6 Planning Council
171 Front Avenue
St. Paul, MN 55117

(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 June, 2017


Notary Public

