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

(1099et

June 12, 2019

NOTICE OF VIOLATION RECOMMENDATION FOR IMPOSITION OF \$500 MATRIX PENALTY

Mounds Liquor 1047 Old Hudson Road Saint Paul, MN 55106 Attn: Mounds Liquor Corporation

RE: Cigarette/Tobacco license held by Mounds Liquor Corporation d/b/a Mounds Liquor for the premises located at 1047 Old Hudson Road in Saint Paul License ID #: 20160003381

Dear Mounds Liquor Corporation:

The Department of Safety and Inspections ("Department") will recommend adverse action against the Cigarette/Tobacco license held by Mounds Liquor Corporation ("Licensee") for the premises known as Mounds Liquor located at 1047 Old Hudson Road in Saint Paul. ("Licensed Premises").

Saint Paul Legislative Code \$310.05(m)(2) provides for a presumptive penalty of \$500 for a first-time violation of a provision of the legislative code related to the licensed activity.

Saint Paul Legislative Code §324.07(f) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored products.

The Department asserts the following facts along with attachments herein constitute proof of a violation of Saint Paul Legislative Code §324.07(f) by a preponderance of the evidence.

On April 4, 2019 all cigarette/tobacco licensees in the City of Saint Paul were notified by letter that cigar pricing, flavored tobacco, temporary window sign and tobacco display requirement compliance checks would be conducted during the week of April 8th through May.

d/b/a Mounds Liquor June 12, 2019 Page 2

On April 12, 2019, Inspector Muhammad conducted a cigarette/tobacco and price compliance inspection at 1047 Hudson Road, Saint Paul, MN 55106. Inspector Muhammad observed and documented violations of Saint Paul Legislative Code §324.07(f). Specifically, he observed a flavored product: Double Platinum Blueberry Blunt Wraps, Double Platinum Kiwi Strawberry Blunt wraps, Double Platinum Tropical Twista Blunt Wraps, and SHOW Ba Boom Kiwi and Strawberry cigars being offered for sale.

As the Licensee you have four (4) options:

- 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 **Tuesday**, **June 25**, **2019**, I will presume that you have chosen not to contest the proposed adverse action and the matter will be placed on the **Wednesday**, **July 10**, **2019** City Council Consent Agenda for approval of the proposed remedy.
- 2. You can admit to the violation and pay the \$500.00 matrix penalty. If this is your choice, send the payment directly to DSI at 375 Jackson Street, Ste. 220, St. Paul, Minnesota 55101-1806 no later than Tuesday, June 25, 2019. A self-addressed envelope is enclosed for your convenience. Payment of the \$500.00 matrix penalty 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 \$500.00 matrix 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 **Tuesday**, **June 25**, **2019**. 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 **Tuesday**, **June 25**, **2019**. 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 Tuesday, June 25, 2019, 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 Wednesday, July 10, 2019 City Council Consent Agenda for approval of the recommended penalty.

If you have questions about these options, please contact Shawn McDonald, my Legal Assistant at (651) 266-8729.

Sincerely,

DONON

Therese Skarda Assistant City Attorney License No.: 0240989 d/b/a Mounds Liquor June 12, 2019 Page 3

cc: Mounds Liquor Corporation; 1047 Hudson Road; Saint Paul, MN 55106
 Lissa Jones-Lofgren, Interim Executive Director, Dayton's bluff Community Council, 804 Margaret Street, Saint Paul, MN 55107
 Maykub Vang, Owner, 1598 Pacific Street, Saint Paul, MN 55106
 Craftsmanship First LLC, 1920 Central Avenue NE Suite 200, Minneapolis, MN 55418-4530

Attachments:

Inspector's Report to licensee April 12, 2019 Screenshots from DSI ECLIPS Saint Paul Legislative Code § 310.05(m) Saint Paul Legislative Code § 324.07(f)

DEPARTMENT OF SAFETY AND INSPECTIONS Ricardo X Cervances Direch



CITY OF SAINT PAUL

Business Licensing Telephone: 551-266-5959 373 Jackson Street, Suite 220 Fastimile: 651-266-9124 Sains Paul, Minnessee 55101-1806 Web: www.stypeul.gowldai

Inspector's Report

Inspectors Name: Akbar R. Muhammad

Date of Inspection: April 12th, 2019

Date sent to the CAO: May 2, 2019

Business/Property Name: Mounds Liquor

Property Address: 1047 Hudson Rd.

License #:20160003381

Reason for Visit: Flavor/Price Compliance Check

Observations: Flavor Violations: Double Platinum Blueberry Blunt Wraps, Double Platinum Kiwi Strawberry Blunt Wraps, Double Platinum Tropical Twista Blunt Wraps, and SHOW Ba Boom Kiwi and Strawberry cigars.

Photos Taken: X Yes, Location of Photo(s):

No

Action Taken: ____Citation

Warning

Other: Sent to the CAO for Adverse Licensing Action

Details of Conversations (Statements to and by Person Responsible for Property Upon arrival for a cigarette/tobacco flavor and price compliance inspection, I Akbar R. Muhammad, an inspector for the DSI, introduced myself as inspector from DSI to the supervisor, Ms. Roberts, I asked her if he received the letter that was mailed out dated April 4, 2019. As I conducted my inspection I observed Double Platinum Blueberry Blunt Wraps. Double Platinum Kiwi Strawberry Blunt Wraps, Double Platinum Tropical Twista Blunt Wraps, and SHOW Ba Boom Kiwi and Strawberry cigars. I advised her that these were all flavors violations and needed to be removed asap to be in compliance with ordinance 324.

AA-ADA-EEO Employer

DEPARTMENT OF SAFETY AND INSPECTIONS Ricardo X. Commune, Director



CITY OF SAINT PAUL

Business Licensing 175 Jackson Street, Sum 230 Saim Paul, Minnesola 55101-1806

Telephone: 651-366-8989 Facilitatile: 651-366-9124 Web; segres.ztpard.geneida

April 4, 2019

Dear Cigarette/Tobacco License Holder,

The Saint Paul Legislative Code establishes minimum cigar prices, prohibits the sale of flavored tobacco products at most retail locations, limits the size of temporary window signs in stores, and regulates customer access to the tobacco and tobacco-related products on display. Compliance checks for these items are typically conducted a minimum of once per calendar year where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold. These checks consist of a DSI Licensing Inspector visiting the establishment unannounced then observing product placement and labeling, speaking with clerks, taking photos, etc. to monitor for compliance with retail tobacco requirements.

Please consider this letter formal notice that the Department of Safety and Inspections (DSI) will begin to conduct the 2019 routine compliance checks for cigar pricing, flavored tobacco, temporary window sign, and tobacco display requirements the week of April 8th and expects to complete the initial checks of all vendors by late May. Of further note, compliance checks may be conducted at any time during the year in response to complaints or reported violations of these or other applicable requirements. Ordinance violations will be forwarded to the City Attorney's Office for adverse action against your license(s) that will result in fines and potential license suspension.

A link to the Cigarette/Tobacco License webpage is further below for your reference and if you have any questions about license requirements or inspection procedures, contact me at 651-266-9014 or joseph.voyda@ci.stpaul.mn.us. Other DSI Licensing Inspectors are available during my absence at 651-266-8989 to answer questions as well.

Cigarette / Tobacco License | Saint Paul, Minnesota https://www.stpaul.gov/departments/safety-inspections/licenses/business/cigarette-tobacco-license

Sincerely,

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Joseph Voyda, Inspector, DSI Licensing

AA-ADA-EEO Employer

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Business <u>Ti</u> tle:	OWNER			
Preferred Method:	MAIL			
Maiden Name:				
Date of Birth:	12/28/1977			
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Sec. 310.05. - Hearing procedures.

(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 appearance regardless of how much time has passed since the first 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. 324.07. - Sales prohibited.

- (a) No person shall sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes shall be sold in packages of fewer than twenty (20) cigarettes.
- (b) No person shall sell or dispense tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices from a motor vehicle or other movable place of business.
- (c) No person shall sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products from vending machines unless the vending machines are in a facility that cannot be entered at any time by persons younger than eighteen (18) years of age.
- (d) No person shall offer for sale tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in any open displays which are accessible to the public without the intervention of a store employee. This restriction shall not apply to retail stores which derive at least ninety (90) percent of their revenue from tobacco and tobacco-related devices, and where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.
- (e) No person shall sell, offer for sale, or otherwise distribute cigars in original packages containing three (3) or fewer cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than two dollars and sixty cents (\$2.60) per cigar contained within. In addition, no person shall sell, offer for sale, or otherwise distribute cigars in original packages of four (4) or more cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than ten dollars and forty cents (\$10.40) per package.
- (f) No person shall sell, offer for sale, or otherwise distribute any flavored products.
- (g) Sale to minors prohibited.
 - Whoever sells or furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of eighteen (18) years is guilty of a misdemeanor for the first violation. Whoever violates this section a subsequent time within five (5) years of a previous conviction is guilty of a gross misdemeanor.
 - (2) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in Minn. Stat. § 340A.503, subd. 6.
- (h) Exceptions.
 - (1) Notwithstanding section (g), individuals exempted under Minn. Stat. § 609.685 are also exempt from this section.
 - (2) The penalties in this section do not apply to a person under the age of eighteen (18) years who purchases or attempts to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.
 - (3) Retail stores that derive at least ninety (90) percent of their revenue from the sale of tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products and where the retailer ensures that no person under eighteen (18) years of age is permitted to enter, at any time are permitted to sell and offer for sale flavored tobacco products.
 - (4) Establishments holding an off-sale intoxicating liquor license issued by the City of Saint Paul under chapter 409 of the Saint Paul Legislative Code who also hold a license for tobacco sales under this chapter shall be permitted to sell and offer for sale flavored tobacco products only in the following flavors: menthol, mint, and wintergreen.

 Any violation of this chapter shall subject the licensee to provisions of chapter 310 and section 324.11 of the Saint Paul Legislative Code.

(Code 1956, § 336.07; Ord. No. 17714, § 1, 2-20-90; C.F. No. 94-341, § 7, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 06-872, § 1, 10-11-06; C.F. No. 10-1014, § 2, 10-13-10; Ord 13-8, § 2, 4-24-13; Ord 14-34, § 2, 8-27-14; Ord 15-57, § 1, 1-6-16; Ord 17-28, § 2, 11-1-17)

Editor's note— Ord 17-28, § 2, adopted November 1, 2017, shall take effect and be in force beginning November 1, 2018.

STAMP - Ownership / Zoning Information

New Search

Help using this report

Run Date:	06/05/19 08:51 AM	
House#:	1047	Last updated from Ramsey County data on: 07/07/2018
Street Name:	hudson	

Click on "Other Application" links below to access GISmo, MapIT, and Ramsey County Info

1047 Hudson Road - Mound Liquor - 55106-6106 - Other Applications

PIN: 332922310234	Census Track: 34500	Census Block: 2003 Council Ward: 7		District Council: 4	
Year Built:	Foundation Sq Feet:	Loan Company:	Dan Company: Land Value: 77000		
Unverified Usage: 13- C	COMMERCIAL/APARTMEN	T- B- Commercial	ISP: Daytons Bluff	Units: 2	

Zoning: T2

Heritage Preservation: HP Inventory #: RA-SPC-1859 / HP Property Name: Tibbs, Hutchins, & Co. / HP Architect/Builder: Blume, J. M. / Klempfer, C. & Son / HP Date Built: 1909 / HP Address: 1047-1049 Hudson Rd. E

Legal Desc: SCOTTEN'S SUB OF B71 LYMAN DAY THAT PT OF LOT 27 LYING ELY OF L DESC AS BEG AT PT 1.83 FT WLY OF NE COR THENCE SLY TO A PT ON THE SL OF SD LOT 2.83 FT WLY OF SE COR AND SD L THERE TERM AND ALSO ALL OF LOT 28 ALL IN BLK 71

Owner:

Craftsmanship First Llc 1920 Central Ave Ne Ste 200 Minneapolis MN 55418-4530 612-810-9624

Certificate of Occupancy Responsible Party:

Southida Fodor 2355 Fairview Ave #237 Roseville MN 55113 612-810-9624

STATE OF MINNESOTA)

) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Shawn McDonald, being first duly sworn, deposes and says that on June 12, 2019, he served the attached **NOTICE OF VIOLATION**, **RECOMMENDATION FOR IMPOSITION OF \$500.00 MATRIX PENALTY** and a correct copy thereof in an envelope addressed as follows:

Mounds Liquor 1047 Old Hudson Road Saint Paul, MN 55106

Lissa Jones-Lofgren, Interim Executive Director Dayton's bluff Community Council 804 Margaret Street Saint Paul, MN 55107

Maykub Vang, Owner 1598 Pacific Street Saint Paul, MN 55106

Craftsmanship First LLC 1920 Central Avenue NE Suite 200 Minneapolis, MN 55418-4530

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

Shawn McDonald

Subscribed and sworn to before me This 12th day of June 2019

M. Bonaud

Notary Public

