



Legislation Details (With Text)

File #: RES PH 17- 88 **Version:** 1

Type: Resolution-Public Hearing **Status:** Passed

In control: City Council

Final action: 4/5/2017

Title: Sustaining adverse action against all licenses held by Tom Super USA, LLC, d/b/a Super USA at 976 Seventh Street East.

Sponsors: Dan Bostrom

Indexes:

Code sections:

Attachments: 1. Notice of Council Hearing with Affidavit of Service, 2. ALJ - Findings of Fact Conclusion of Law and Recommendation dated March 1st 2017, 3. DSI Exceptions to March 1st 2017 Report of Administrative Law Judge, 4. Amended Notice - Notice of Additional Violation and Amended Notice Regarding Penalty dated October 21st 2016

Date	Ver.	Action By	Action	Result
4/7/2017	1	Mayor's Office	Signed	
4/5/2017	1	City Council	Adopted	Pass

Sustaining adverse action against all licenses held by Tom Super USA, LLC, d/b/a Super USA at 976 Seventh Street East.

WHEREAS, Tom Super USA, LLC, received an Amended Notice - Notice of Additional Violation and Amended Notice Regarding Penalty on October 21, 2016 for violation of a license condition regarding the sale of glass, stone, plastic or ceramic pipes on September 14, 2016 and sale of single cigarettes on September 23, 2016; and

WHEREAS, a hearing was held before an Administrative Law Judge on January 26, 2017 and a Report was issued on March 1, 2017, in which the Administrative Law Judge found that "at approximately 1:00 p.m. on September 14, 2016, Saint Paul Police, using a confidential reliable informant (CRI), purchased a glass pipe from a clerk at the store for \$5"; and

WHEREAS, the Administrative Law Judge also found that at approximately 10:00 a.m. on September 23, 2016, Saint Paul Police using another CRI, attempted to purchase a drug pipe from a clerk in the store. This did not succeed, but the CRI was able to purchase three cigarettes; and

WHEREAS, the ALJ also found that adverse action is appropriate; now, therefore be it

RESOLVED, that the Findings of Fact of the Administrative Law Judge in this matter are hereby adopted as the Findings of the City Council in this matter with the exception of Finding of Fact Numbers Four, Five, Six and Eight; and be it

FURTHER RESOLVED, that Finding of Fact Four is deleted in its entirety; and be it

FURTHER RESOLVED, that in place of Finding of Fact Five the Council adopts the following Finding of Fact:

5. On April 27, 2015, a Notice of Violation recommending adverse action was sent to the Licensee for the sale of single cigarettes to confidential reliable informant ("CRI") on April 22, 2015. A \$500 matrix penalty was requested. On May 14, 2015, a Notice of Violation for recommending adverse action was sent to Licensee for the sale of single cigarettes to a CRI on May 5, 2015. A \$1,000 matrix penalty was requested. The Notice of Administrative Hearing sent to the Licensee on June 3, 2015 alleged an additional sale of single cigarettes to a CRI on May 28, 2015 and the Department of Safety and Inspections recommended an upward departure to a \$2,000 matrix penalty and a 10 day suspension. Council Resolution 15-1449 imposed a \$1,000 matrix penalty and 10 day suspension.

and be it;

FURTHER RESOLVED, that in place of Finding of Fact Six the Council adopts the following Finding of Fact:

6. On May 13, 2015, Licensee paid a \$500 fine for individual cigarette sales that occurred on April 22, 2015, by a store clerk or clerks.

and be it;

FURTHER RESOLVED, Conclusions of Law of the Administrative Law Judge in this matter are hereby adopted as the Conclusions of Law of the City Council in this matter, except that the Council does not adopt Conclusion of Law Eight; and be it

FURTHER RESOLVED, that in place of Conclusion of Law Eight the Council adopts the following Conclusion of Law:

8. There are two violations constituting this third appearance, these two violations in light of the Licensee's long history of non-compliance constitute a substantial and compelling reason to deviate from the presumptive penalty for a third appearance.

and be it:

FINALLY RESOLVED, that based upon the fact that this single action included multiple violations, all licenses held by Tom Super USA are hereby revoked.

A copy of this resolution, as adopted, shall be sent by first class mail to the Administrative Law Judge and to the license holder.