



Legislation Details (With Text)

File #: RES PH 23-45 **Version:** 1
Type: Resolution-Public Hearing **Status:** Passed
In control: City Council
Final action: 3/15/2023
Title: Considering and adopting the Order on Cross Motions for Summary Disposition of the Administrative Law Judge and imposing the presumptive matrix penalty for a first violation, suspending the licenses held by Majid Nitaishoon d/b/a MJ Market, located at 922 Thomas Avenue, for 10 days in accordance with Legislative Code §324.10.
Sponsors: Russel Balenger

Indexes:

Code sections:

Attachments: 1. Exhibit 1 - NOV, MJ Market Inc., 2. Exhibit 2 - OAH 65-6020-38532 ITM CigaretteTobacco License MJ Market Official Record, 3. Exhibit 3 - OAH_6020-38532 - Oral argument recording

Date	Ver.	Action By	Action	Result
3/16/2023	1	Mayor's Office	Signed	
3/15/2023	1	City Council	Adopted	Pass

Considering and adopting the Order on Cross Motions for Summary Disposition of the Administrative Law Judge and imposing the presumptive matrix penalty for a first violation, suspending the licenses held by Majid Nitaishoon d/b/a MJ Market, located at 922 Thomas Avenue, for 10 days in accordance with Legislative Code §324.10.

WHEREAS, on June 10, 2022, the tobacco shop license ("License") held by Majid Nitaishoon d/b/a MJ Market ("Licensee") for the premises located at 922 Thomas Avenue in the City of Saint Paul ("Licensed Premises") was the subject of a Notice of Violation ("Notice") (herein incorporated as Exhibit 1) and request for revocation based on a second tobacco related violation related to the sale of prohibited flavors under the penalty matrix laid out in Saint Paul Legislative Code §324.10; and

WHEREAS, the Notice outlined the Department's basis for the recommendation for adverse action and request for imposition of the presumptive penalty of revocation; and

WHEREAS, the Department's basis for the recommendation of a second matrix penalty included a prior adverse action from August 3, 2021 in which the Department conducted a youth tobacco compliance check at the Licensed Premises which resulted in a failure as the clerk at the Licensed Premises sold a pack of cigarettes to an individual who was under the age of 21; and

WHEREAS, the Notice detailed a May 6, 2022, complaint inspection in which Inspector Joseph Voyda conducted an inspection in response to a complaint that flavored tobacco products were being sold at the Property. When he arrived at the store, Inspector Voyda observed the following tobacco products for sale in the store behind the counter:

2 boxes of Dutch - Sweet Fusion cigarettos
2 Cartons of American Spirits - Black cigarettes
1 box of individual singles of Black & Mild Casino wood tip cigars
31 varieties of vape pens; and

WHEREAS, the Notice further detailed that this was the second adverse action against the license in a 24 - month period; and

WHEREAS, under the tobacco penalty matrix in Chapter 324.10 of the Legislative Code the presumptive penalty for a second violation within 24 months is revocation; and

WHEREAS, the Department recommended the presumptive penalty based on its review of the documentation on file; and

WHEREAS, the Licensee responded to the Notice on June 22, 2022, and requested a hearing before an Administrative Law Judge; and

WHEREAS, the matter was assigned to Administrative Law Judge O'Reilly; and

WHEREAS, both parties agreed that summary disposition was warranted in this matter and submitted motions and supporting memoranda; and

WHEREAS, on February 13, 2023, the ALJ issued her Order on the Cross Motions for Summary Disposition, which is herein incorporated with the Official Record as Exhibits 2 and 3; and

WHEREAS, the ALJ's memorandum outlined the following undisputed facts put into evidence by the Department:

Licensee is the owner of MJ Market, Inc. (MJ Market), which is operated out of a building located at 922 Thomas Avenue, St. Paul, Minnesota (the Property).

The Property is owned by Abdul Tel.

MJ Market, Inc., is a corporation first registered with the Minnesota Secretary of State on June 11, 2021. Its registered address for service of process is the Property located at 922 Thomas Avenue.

MJ Market is also the name holder for the assumed name Thomas Deli according to a Certificate of Assumed Name filed with the Minnesota Secretary of State's Office by Licensee.

On June 14, 2021, Licensee, acting as the owner of MJ Market, applied for a tobacco shop license in the name of MJ Market for a business he intended to operate on the Property.

The City issued Licensee a License for MJ Market a tobacco shop license on June 28, 2021.

Two days later, on June 30, 2021, Licensee entered into a commercial lease for the Property.

Previously, the Property was leased to Mobarek Hamaz, who operated a business on the premises under a cigarette/tobacco license issued to MHH Global, Inc., d/b/a Thomas Grocery.

Hamaz's lease for the Property was rescinded on June 11, 2021, with rescission being effective on June 30, 2021.

The Notice of Violation for the August 3, 2021, underage tobacco compliance check failure was sent to MHH Global, Inc., d/b/a Thomas Grocery.

The Notice of Violation advised MHH Global, Inc., that, as licensee, it could contest the violation and receive a hearing or admit the violation and pay a \$300 penalty.

On or about October 6, 2021, a \$300 penalty was paid, and the City deemed the violation admitted; and

WHEREAS, the ALJ believed that there was no evidence presented that MHH Global or Mobarak Hamaz had any connection to MJ Market or its owner Licensee; and

WHEREAS, The ALJ stated that while Licensee could well have been operating the store at the time of the August 3, 2021 violation, the fact remains that a different licensee was cited for that violation; and

WHEREAS, the ALJ pointed out that it was unknown who paid the \$300 fine for that violation; and

WHEREAS, based on this information the ALJ recommended the imposition of the first-time matrix penalty of a 10-day suspension; and

WHEREAS, at a public hearing on March 8, 2023, the City Council considered all the evidence contained in the record including the ALJ Report and the oral arguments presented before City Council; now therefore be it

RESOLVED, that the Council has considered the Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge and hereby adopts it as the Memorandum and Conclusions of the City Council in this matter; and be it

FINALLY RESOLVED, that the tobacco shop license held by Licensee for the Licensed Premises is hereby suspended for 10 days, such suspension to begin upon posting of the Suspension Notice at the Licensed Premises by the Department of Safety and Inspections.

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

