



## Legislation Text

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**File #:** RES PH 18-101, **Version:** 1

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Considering and adopting the Findings of Fact, Conclusions of Law, and Recommendation Upon Default submitted by the Administrative Law Judge concerning the Cigarette/Tobacco license held by Dahir Wako, d/b/a 7th Grocery at 43 - 7th Street West.

WHEREAS, Dahir Wako d/b/a 7<sup>th</sup> Grocery for the premises located at 43 -7<sup>th</sup> Street West (License ID #20140002629) (hereinafter "licensee"), received a Notice of Violation dated December 28, 2017 (hereinafter "Notice"); and

WHEREAS, the Notice alleged that on December 21, 2017, an inspector from the Department of Safety and Inspections (DSI) was contacted by the Minnesota Department of Revenue concerning flavored tobacco products they discovered during an inspection of the licensed premises; and

WHEREAS, the inspector came to the licensed premises that same day and documented with a photograph four (4) boxes of flavored tobacco products on display for sale in violation of Saint Paul Legislative Code § 324.07 (f); and

WHEREAS, the Notice stated that the licensing office recommended a \$500.00 matrix penalty; and

WHEREAS, licensee disputed the allegations and requested a hearing before an Administrative Law Judge; and

WHEREAS, a Notice of Administrative Hearing was sent to all parties on January 12, 2018, scheduling the hearing before an Administrative Law Judge on February 8, 2018; and

WHEREAS, the licensee did not appear for the administrative hearing on February 8, 2018 or request a continuance; and

WHEREAS, the Administrative Law Judge stated that she would wait two (2) weeks before issuing her final report to allow the licensee time to contact either her or the city attorney with an explanation of why he failed to appear; and

WHEREAS, the licensee failed to contact either the Administrative Law Judge or the city attorney within the two week extension; and

WHEREAS, the Administrative Law Judge issued her Findings of Fact, Conclusions of Law and Recommendation Upon Default on March 2, 2018, stating that the licensee was in default because he failed to appear or send a representative to appear at the hearing duly scheduled and noticed for on January 12, 2018; and

WHEREAS, the Administrative Law Judge also found that as a result of the default, the allegations of, or the issues set out in the Notice of Administrative Hearing are deemed to be true or deemed proved without further evidence and the violation of displaying flavored tobacco products for sale is "directly related to the licensed activity"; and

WHEREAS, the Administrative Law Judge then recommended the City of Saint Paul impose a \$500.00 matrix penalty; and

WHEREAS, the Department of Safety and Inspections agrees with the Findings of Fact, Conclusions of Law and Recommendation submitted by the Administrative Judge and the imposition of a \$500.00 matrix penalty; and

WHEREAS, the licensee was sent a Notice of Council Hearing on April 17, 2018 stating a public hearing would be held before the City Council on May 2, 2018, at which time licensee would have an opportunity to present oral or written arguments to the Council; and

WHEREAS, City Council reviewed the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommendation Upon Default and found the report to be without error and the penalty appropriate, now therefore be it

RESOLVED, the Findings of Fact issued by the Administrative Law Judge on March 2, 2018, are hereby adopted as the Findings of Fact of the City Council in this matter and be incorporated herein by reference.

FURTHER RESOLVED, the Conclusions of Law issued by the Administrative Law Judge on March 2, 2018, are hereby adopted as the Conclusions of Law of the City Council in this matter and be incorporated herein by reference.

FURTHER RESOLVED, the Recommendation Upon Default issued by the Administrative Law Judge on March 2, 2018, is hereby adopted as the Recommendation of the City Council in this matter and be incorporated herein by reference.

FURTHER RESOLVED, Dahir Wako d/b/a 7<sup>th</sup> Grocery is hereby ordered to pay a matrix penalty of \$500.00 for the display of flavored tobacco products for sale which is a violation of the legislative code that is directly related to the licensed activity.

FINALLY RESOLVED, due to the frivolous nature of the licensee's defense and the fact that he failed to appear for the administrative hearing, the City Council further imposes a \$560.00 penalty against the Cigarette/Tobacco license to defray the costs incurred by the city in preparation for the February 8, 2018 administrative hearing.

Payment of all penalties shall be made within thirty (30) days of the date of the adoption of this resolution.

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