



## Legislation Text

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**File #:** RES 19-1273, **Version:** 1

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Adopting the Findings of Fact, Conclusions of Law and Recommendation Upon Default submitted by the Administrative Law Judge on July 17, 2019 for the Cigarette/Tobacco license held by Midway University & Hamline LLC d/b/a Midway Amoco BP for the premises located at 1347 University Avenue West and impose costs pursuant to Legislative Code §310.05(k).

WHEREAS, Midway University & Hamline LLC d/b/a Midway Amoco BP located 1347 University West (License ID #20100000243) (hereinafter "Licensee"), received a Notice of Violation dated March 12, 2019 (hereinafter "Notice"); and

WHEREAS, the Notice alleged that on November 13, 2018, the Department of Safety and Inspections ("DSI") was contacted by the Minnesota Department of Revenue concerning flavored tobacco products that they discovered during an inspection of the licensed premises; and

WHEREAS, the Notice further alleged that the reports and information provided by the Minnesota Department of Revenue contained photographs of flavored products recovered on the Licensed Premises in violation of Saint Paul Legislative Code § 324.07 (f); and

WHEREAS, the Notice stated that DSI was recommending a \$500.00 matrix penalty; and

WHEREAS, the Notice also stated that if the Licensee selected to have an administrative hearing, DSI reserved the right to request that the City Council impose the costs of the administrative hearing per Saint Paul Legislative Code §310.05(k); and

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

WHEREAS, a pre-hearing conference was held on June 14, 2019 with both the Licensee and the Administrative Law Judge; and

WHEREAS, during the pre-hearing conference a date of July 16, 2019 was set for the administrative hearing and a Notice of Administrative Hearing was sent to all parties on July 3, 2019; and

WHEREAS, the Notice of Administrative Hearing stated that the administrative hearing was scheduled before an Administrative Law Judge on July 16, 2019; and

WHEREAS, the City Attorney and witness appeared for the administrative hearing on July 16, 2019; and

WHEREAS, the Licensee failed to appear for the administrative hearing and did not request a continuance; and

WHEREAS, the City Attorney representing DSI requested a default judgment and that the allegations in the Notice of Violation be deemed true due to the failure of the Licensee to show up for the hearing; and

WHEREAS, the Administrative Law Judge issued Findings of Fact, Conclusions of Law and Recommendation Upon Default on July 16, 2019; and

WHEREAS, the Administrative Law Judge concluded that the Licensee was in default because of his failure to

appear or send a representative to the hearing under Minn. R. 1400.600; and

WHEREAS, the Administrative Law Judge also concluded that Under Minn. R. 1400.6000, when a party defaults by failing to appear at a hearing, the allegations and the issues set out in the Notice of Administrative Hearing may be taken as true and deemed proved and therefore deemed the allegations in the Notice of Violation to be true; and

WHEREAS, the Administrative Law Judge then found that the allegations set forth in the Notice and Order for Hearing were true and recommended that the Licensee should be required to pay a matrix penalty of \$500; and

WHEREAS, DSI 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, DSI is requesting imposition of the costs of the administrative hearing pursuant to Saint Paul Legislative Code §310.05(k); and

WHEREAS, those costs will be determined through invoices from the Office of Administrative Hearings; 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 July 16, 2019, are hereby adopted as the Findings of Fact of the City Council in this matter and be incorporated herein by reference; and be it

FURTHER RESOLVED, the Conclusions of Law issued by the Administrative Law Judge on July 17, 2019, are hereby adopted as the Conclusions of Law of the City Council in this matter and be incorporated herein by reference; and be it

FURTHER RESOLVED, the Recommendation Upon Default issued by the Administrative Law Judge on July 17, 2019, is hereby adopted as the Recommendation of the City Council in this matter and be incorporated herein by reference; and be it

FURTHER RESOLVED Midway University & Hamline LLC d/b/a Midway Amoco BP 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; and be it

FINALLY RESOLVED, due to the frivolous nature of the Licensee's defense and his nonappearance at the administrative hearing, the City Council further imposes a costs equal to the amount reflected on any invoices sent by Office of Administrative Hearings for this matter against the Licenses to defray the costs incurred by the city in preparation for the July 16, 2019 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 Licensee.

