



## Legislation Text

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**File #:** RES PH 20-84, **Version:** 3

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Considering and adopting the Findings of Fact, Conclusions of Law, and Recommendation of the Administrative Law Judge, and upwardly departing to revocation of the Cigarette/Tobacco and Gas Station licenses held by Midway University & Hamline LLC, d/b/a Midway Amoco BP at 1347 University Avenue West.

WHEREAS, the Cigarette/Tobacco and Gas Station licenses held by Midway University & Hamline LLC d/b/a Midway Amoco BP for the premises located at 1347 University Avenue West ("Licensed Premises") were the subject of a Notice of Violation and Recommendation for Upward Departure to Revocation ("NOV") by the Department of Safety and Inspections for the City of Saint Paul ("City") on July 26, 2019, herein incorporated as Exhibit 1-1 through 1-7; and

WHEREAS, the NOV outlined the City's basis for the recommendation for adverse action and upward departure to revocation; and

WHEREAS, the NOV detailed that this was the second adverse action against the license in a twelve (12) month period, the previous violation stemming from the seizure of items deemed contraband by the Minnesota Department of Revenue in which the Licensee was found to be in default and the allegations deemed proven after he failed to appear at a July 16, 2019 hearing; and

WHEREAS, under the penalty matrix in Chapter 310.05 (m) of the Legislative Code the presumptive penalty for a second violation within twelve (12) months is a fine of \$1,000.00; and

WHEREAS, Saint Paul Legislative Code section 310.05 (m) provides "the council may deviate [from a presumptive penalty] 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; and

WHEREAS, the NOV alleged that the Licensee violated city ordinances by:

- selling single cigarettes outside of their original packaging;
- selling or distributing flavored tobacco products;
- furnishing or selling tobacco products to persons under the age of eighteen years;
- engaging in or permitting a pattern or practice of failing to comply with laws related to the licensed activity;
- operating a business in a manner that unreasonably annoys or endangers the comfort or repose of the public;
- permitting unsafe conduct or conditions that present a serious danger to the public health, safety or welfare;
- failing to provide the Department of Safety and Inspections with copies of video when requested;

- failing to maintain a clean site with adequate fencing; and

WHEREAS, the NOV detailed the basis for the City's request for upward departure; and

WHEREAS, the Licensee responded to the NOV with a letter requesting a hearing before an Administrative Law Judge, herein incorporated as exhibit 16; and

WHEREAS, on November 13, 14 and 19, 2019 a hearing was held before Administrative Law Judge, James E. Lafave; and

WHEREAS, in support of the allegations contained in the NOV, the City filed exhibits with the Office of Administrative Hearings, herein incorporated as Exhibits 1-1 through 30-97; and

WHEREAS, in support of the allegations contained in the NOV the City produced witnesses including;

- Licensing Manager Eric Hudak
- Saint Paul Police Sergeant Rigo Aguirre
- Saint Paul Police Sergeant Eric Vang-Sitcler
- Department of Safety and Inspections Inspector Akbar Muhammad; and

WHEREAS, the Licensee was present and represented by James C. MacGillis of Trepanier, MacGillis, Battina, P.A.; and

WHEREAS, the Licensee also presented exhibits and testimony for the consideration of the Administrative Law Judge; and

WHEREAS, the Hamline Midway Coalition ("HMC") appeared and offered testimony related to attempts to engage the Licensee and the impact that the behavior at the Licensed Premises was having on the community through Executive Director, Kate Mudge and Dan Buck; and

WHEREAS, a copy of the recording from the Administrative Hearing is attached as Exhibit 31; and

WHEREAS, the record on this matter was closed on January 10, 2020 with the filing of the parties' post-hearing briefs, herein incorporated as Exhibit 32-1 through 32-48; and

WHEREAS, on March 9, 2020 the Administrative Law Judge issued his Findings of Fact, Conclusions of Law and Recommendation, herein incorporated ("ALJ Report") as Exhibit 33-1 through 33-23; and

WHEREAS, the Administrative Law Judge found that the City had demonstrated that Licensee committed all the code violations alleged by the City in the NOV; and

WHEREAS, the Administrative Law Judge found that the Licensee sold single cigarettes in violation of Saint Paul Legislative Code §324.07(a); and

WHEREAS, the Administrative Law Judge found that the Licensee had sold flavored tobacco products in violation of Saint Paul Legislative Code §324.07(f); and

WHEREAS the Administrative Law Judge found that the Licensee sold tobacco products to an underaged individual in violation of Saint Paul Legislative Code §324.07(g) and Minn. Stat. 609.685; and

WHEREAS, the Administrative Law Judge found that the Licensee engaged in a pattern of noncompliance with license regulations in violation of Saint Paul Legislative Code §310.06(b)(6)(c); and

WHEREAS, the Administrative Law Judge found that the Licensee operated the business in a manner that

unreasonably annoyed the comfort and repose of the public in violation of Saint Paul Legislative Code §310.06 (b)(8); and

WHEREAS, the Administrative Law Judge found that the Licensee permitted unsafe conduct or conditions that present a serious danger to the public's health and safety in violation of Saint Paul Legislative Code §310.06 (b)(8); and

WHEREAS, the ALJ Report stated that the City had demonstrated severe aggravating circumstances which supported the City's request for upward departure from the presumptive penalty; and

WHEREAS, the ALJ Report stated that the police reports, videos and testimony had demonstrated "an unwillingness or inability on the part of the Licensee to operate the business in a safe and law-abiding manner"; and

WHEREAS, the ALJ Report stated the events occurring on the licensed premises between April and August of 2019 were "extremely troubling - gun fire, illicit drug transactions, large disruptive crowds gathering in the early morning hours, physical assaults and ultimately a homicide"; and

WHEREAS the ALJ Report stated that the evidence "is sufficiently compelling to support finding Licensee fostered criminal activity by selling single cigarettes and drug kits - namely, glass tubes with small pieces of steel wool"; and

WHEREAS, the ALJ Report stated that the "City amply showed the Licensee operated the business in a manner that permitted conditions that endangered public safety, comfort, and repose"; and

WHEREAS the ALJ Report stated that the "increasingly violent and disruptive activity occurring at Midway Amoco has had a significant impact on the surrounding community" and the "testimony from HMC regarding the genuine fear residents and business owners have expressed for their fear was persuasive"; and

WHEREAS, the ALJ Report stated that "the multiple, egregious lawless acts that occurred at Midway Amoco over the summer months of 2019 were atypical and deeply disturbing. Licensee was aware of the situation but failed to take adequate steps, such as hiring more staff or security or closing shop during the early morning hours, to control the crowds. Licensee only took productive steps, discontinuing the sale of glass vials and flavored tobacco products and closing the store in the early morning hours, when it received notice of the City's intent to revoke its licenses"; and

WHEREAS, the ALJ Report stated that the "City has demonstrated substantial and compelling reasons to upwardly depart from the presumptive penalty. The shootings, illicit drug transactions, large disruptive crowds gathering in the early morning hours, and the sale of flavored tobacco products and single cigarettes, amount to severe aggravating and factually atypical circumstances supporting a greater-than-double departure from the presumptive penalty for a second appearance"; and

WHEREAS, the ALJ Report stated that "the revocation of Licensee's cigarette/tobacco and gas station license is warranted and amply supported by the record"; and

WHEREAS, on March 17, 2020 the Licensee submitted an Alternative Resolution which requested a stay of the revocation of all licenses pending a final decision by the Minnesota Court of Appeals if Licensee shall file a timely appeal with such court, and

WHEREAS, under Minnesota Rule of Civil Appellate Procedure 108.01, the City Council has the power to grant a stay and impose reasonable terms and conditions that are proper for the security of the rights of the City of Saint Paul; and

WHEREAS, at a public hearing on March 28, 2020, 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~~

FURTHER RESOLVED, that the Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge which the Council adopts as its Memorandum and Conclusions of the City Council show that the City proved six (6) separate basis for adverse licensing action, some of which occurred multiple times, those being:

- selling single cigarettes outside of their original packaging;
- selling or distributing flavored tobacco products;
- furnishing or selling tobacco products to persons under the age of eighteen years;
- engaging in or permitting a pattern or practice of failing to comply with laws related to the licensed activity;
- operating a business in a manner that unreasonably annoys or endangers the comfort or repose of the public;
- permitting unsafe conduct or conditions that present a serious danger to the public health, safety or welfare; and

FURTHER RESOLVED, that the Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge which the Council adopts as its Memorandum and Conclusions of the City Council show that the "Licensee was aware of the situation but failed to take adequate steps, such as hiring more staff or security or closing shop during the early morning hours, to control the crowds." and that "Licensee only took productive steps, discontinuing the sale of glass vials and flavored tobacco products and closing the store in the early morning hours, when it received notice of the City's intent to revoke its licenses."; and

FURTHER RESOLVED, that the Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge which the Council adopts as its Memorandum and Conclusions of the City Council show that Midway University & Hamline LLC d/b/a Midway Amoco BP, poses a threat to public safety and is unlikely to comply with additional license conditions; and

FURTHER RESOLVED, that the above stated reasons as well as of the information contained in this resolution and supporting documents which are incorporated by reference demonstrate that no terms and conditions could be added to the licenses of Midway University & Hamline LLC d/b/a Midway Amoco BP that would adequately protect the health and safety of the City and its citizens; and

~~FINALLY~~ FURTHER RESOLVED, that the Cigarette/Tobacco and Gas Station licenses held by Midway University & Hamline LLC d/b/a Midway Amoco BP for the premises located at 1347 University Avenue West are hereby revoked upon passage and signature of this resolution pursuant to Chapter 6 of the Saint Paul City Charter for the reasons set forth above and contained in the record; and be it

FINALLY RESOLVED, that the Saint Paul City Council will not stay the enforcement of the resolution to revoke all licenses held by Midway University & Hamline LLC d/b/a Midway Amoco BP.

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

Licensee.