



Legislation Text

File #: RES 22-1883, **Version:** 1

Authorizing the Department of Safety and Inspections ("DSI") to enter into a **Settlement Agreement** with Bilal Alsadi on behalf of Hana Co. d/b/a Premium Stop ("Licensee").

WHEREAS, Licensee holds a Tobacco License (#20030003402) issued in 2003 by DSI for the premises located at 1529 White Bear Avenue in Saint Paul ("Licensed Premises"); and

WHEREAS, on May 6, 2022, DSI Inspector Voyda conducted a compliance inspection based on a complaint that prohibited flavored products were being sold on the Licensed Premises; and

WHEREAS, Inspector Voyda's inspection documented with a report and photographs, evidence of prohibited flavored tobacco products in file cabinets in the back room of the Licensed Premises, herein incorporated as Exhibit 1; and

WHEREAS, the prohibited-flavor violations observed by Inspector Voyda represent Licensee's first violation within 24 months; and

WHEREAS, the only other violation on Hana Co.'s License is a March 14, 2013 failed youth tobacco compliance check; and

WHEREAS, due to the amount of prohibited flavored products discovered, DSI believed that substantial and compelling reasons to upwardly depart to revocation existed in this case; and,

WHEREAS, Saint Paul Legislative Code §324.10 (b)(2) contains the penalty matrix for certain violations related to the "display, possession or multiple incidents of sales of; single cigarettes, menthol tobacco products; or flavored tobacco products" at a 10-day suspension; and

WHEREAS, under Saint Paul Legislative Code §324.10 (b)(2) the first box on the penalty matrix that corresponds with the "display, possession or multiple incidents of sales of; single cigarettes, menthol tobacco products; or flavored tobacco products" calls for a 10-day suspension and the second box on the penalty matrix is revocation; and

WHEREAS, Saint Paul Legislative Code §324.10 (a) states that "These penalties are presumed to be appropriate for every case; however, the council may deviate therefrom in an individual case where the council finds and determines that there exist substantial and compelling reasons which make it appropriate to do so."; and

WHEREAS, based on the reports and photographs gathered by Inspector Voyda, DSI recommended adverse action with an upward departure one box on the penalty matrix to revocation be pursued against the Tobacco

Shop (Cigarette/Tobacco) License held by Licensee; and

WHEREAS, on June 2, 2022, a Notice of Violation (“NOV”) was drafted and sent to the Licensee; and

WHEREAS, the Licensee timely requested an Administrative Hearing before an Administrative Law Judge; and

WHEREAS, Administrative Law Judge Kimberly Middendorf is assigned to the case; and

WHEREAS, the parties have engaged in discussions with Administrative Law Judge Middendorf, discovery, and negotiations; and

WHEREAS, the Licensee has asserted that the prohibited flavored products that were the subject of this action were not purchased by Licensee, but rather by an employee of Licensee who was selling the products in a clandestine manner without Licensee’s knowledge, direction, or consent; and

WHEREAS, as part of ongoing discovery, the Licensee produced invoices for Premium Stop for the timeframe of the incident which have been examined; and

WHEREAS, the invoices produced do not show that the Licensee was ordering prohibited flavored tobacco products from its distributors; and

WHEREAS, DSI believes that a camera condition on the License held by the Licensee would allow the Licensee to monitor the Licensed Premises, provide the Licensee with a clearer understanding as to what occurs on the Licensed Premises and deter these types of activities in the future; and

WHEREAS, after discussion with counsel for Licensee, DSI is recommending that the execution of a Settlement Agreement between the Licensee and DSI that would include the standard penalty matrix of a 10-day suspension of the Tobacco Shop (Cigarette/Tobacco) License and a video surveillance plan condition be imposed on the License held by Licensee; and

WHEREAS, Licensee admits to all violations alleged and believes they constitute violations under SPLC §324.10; and

WHEREAS, DSI believes that the **Settlement Agreement** will provide certainty regarding the violation and accompanying penalties; and,

WHEREAS, the parties agree that settling this matter as described below is beneficial to both parties; and,

WHEREAS, both parties knowingly and voluntarily wish to enter into this Settlement Agreement; and,

WHEREAS, the terms of the Settlement Agreement, herein incorporated as Exhibit 2, include the following terms:

1. Licensee admits to a violation of SPLC §324.10(b); and
2. Licensee agrees to a 10-day suspension of its license to sell tobacco products, the date of which such suspension is to begin will be mutually agreed upon by DSI and Licensee, but must begin within 30 days of the execution of the Settlement Agreement; and
3. Licensee agrees to the imposition of the following license condition upon the Cigarette/Tobacco held by Licensee:
 1. License holder will create a video surveillance camera and lighting placement plan (video surveillance plan) for the interior and exterior of the licensed premises. License holder will submit the video surveillance plan to the Saint Paul Police Department (SPPD) liaison with the Department of Safety and Inspection (DSI) for review and approval. In accordance with the approved video surveillance plan, license holder will ensure that video surveillance camera system is in good working order, ensure it is recording 24 hours per day, ensure it can produce recorded surveillance video in a commonly used, up-to-date format, and ensure that accurate date and time of day are visible on all recorded video. License holder will retain surveillance video for a minimum of thirty (30) days. If an incident is deemed serious by SPPD, license holder shall make surveillance video immediately available for viewing by SPPD. If a copy of the surveillance video for a serious incident is requested by SPPD, license holder shall have the technology, materials and staff available to immediately make the copy. In all other cases, license holder shall provide a copy of the surveillance video to the requestor within 48 hours.

and;

WHEREAS, the Council finds that the terms and license conditions agreed upon by the parties will improve safety and help ensure that prohibited flavored tobacco products are not sold on the Licensed Premises; and now, therefore, be it,

RESOLVED, that the Department of Safety and Inspections is authorized to enter into the Settlement Agreement incorporated herein as Exhibit 2; and be it

FURTHER RESOLVED that the execution of the agreement will be considered the final adverse action of Council and the 10 day suspension penalty and additional license condition will be imposed.