



## Legislation Text

**File #:** RES PH 23-10, **Version:** 1

Considering and adopting the Findings of Fact, Conclusions of Law and Recommendation submitted by the Administrative Law Judge concerning the cigarette/tobacco license held by Zakariya Abukhudeer, d/b/a The One Stop Market, LLC at 1541 Maryland Avenue East.

WHEREAS, Zakariya Abukhudeer, d/b/a The One Stop Market, LLC ("Licensee"), holds a cigarette/tobacco license under License ID #20190001624 ("License") for the premises located at 1541 Maryland Avenue East in Saint Paul ("Licensed Premises"); and

WHEREAS, on September 10, 2020, the City, by and through its Department of Safety and Inspections, sent a Notice of Violation ("Notice") to the Licensee; and

WHEREAS, the Notice alleged that the Licensee sold single cigarettes and flavored tobacco products in violation of sections 324.07(a) and (f) of the Saint Paul Legislative Code; and

WHEREAS, the Notice further alleged that the Licensee allowed patrons to smoke cigarettes inside of the Licensed Premises in violation of the Minnesota Clean Indoor Air Act and section 310.06(b)(6)(a) of the Saint Paul Legislative Code; and

WHEREAS, the Notice further alleged that the Licensee violated License condition #3 and section 310.06(b)(6) of the Saint Paul Legislative Code by failing to properly maintain his surveillance equipment and by failing to provide a copy of surveillance video footage as requested by the City; and

WHEREAS, the Notice further alleged that the Licensee violated License condition #2 and sections 310.06(b)(5)-(8) of the Saint Paul Legislative Code based on the following incidents which occurred on and near the Licensed Premises:

March 30, 2020	Assault and shots fired in parking lot
June 1, 2020	Crowd of individuals fighting in store
July 20, 2020	Large group of males gambling outside store; and

WHEREAS, the Notice stated that the City was taking adverse action against the License based on the aforementioned allegations and indicated that it would seek a double upward departure from the presumptive penalty to a \$2,000.00 fine and a 10-day suspension of the License; and

WHEREAS, on March 2, 2021, an amended Notice was sent to the Licensee stating that the City intended to seek a greater-than-double upward departure from the presumptive penalty to revocation of the License based on evidence of additional incidents of sales of single cigarettes and flavored tobacco products identified in the videos already provided to the Licensee; and

WHEREAS, the Licensee responded to the amended Notice with a request for a hearing before an Administrative Law Judge; and

WHEREAS, the matter was assigned to Administrative Law Judge James E. LaFave (“Judge LaFave”); and

WHEREAS, on April 26, 2021, the City filed a Motion for Summary Disposition (“Motion”), seeking summary disposition on all the violations alleged in the amended Notice; and

WHEREAS, a hearing was held on the Motion before Judge LaFave on May 28, 2021; and

WHEREAS, on September 7, 2021, Judge LaFave issued a Recommendation and Order on Motion for Summary Disposition (“Recommendation”); and

WHEREAS, within his Recommendation and Order on Motion for Summary Disposition, Judge LaFave found that there was sufficient proof that the Licensee had violated sections 310.06(b)(6)(a), 324.07(a), and 324.07(f) of the Saint Paul Legislative Code and the Minnesota Clean Indoor Air Act, but denied summary disposition on the remaining allegations and recommended that violations of Saint Paul Legislative Code sections 310.06(b) (5)-(8) and licensing condition #2 relating to the Licensee’s conduct on March 30, 2020, June 1, 2020, and July 20, 2020 be continued to an evidentiary hearing; and

WHEREAS, Judge LaFave found that these violations were the Licensee’s first violations of the Saint Paul Legislative Code; and

WHEREAS, the relevant sections of Saint Paul Legislative Code that were in effect at the time of the September 10, 2020 Notice are included as attachments to this resolution; and

WHEREAS, under the penalty matrix contained in section 310.05(m) of the Saint Paul Legislative Code, the presumptive penalty for a first violation of the Legislative Code is a fine of \$500.00; and

WHEREAS, section 310.05(m) of the Saint Paul Legislative Code provides that the City Council “may deviate [from a presumptive penalty] in an individual case where [it] finds and determines that there exist substantial and compelling reasons making it more appropriate to do so”; and

WHEREAS, within his Recommendation, Judge LaFave observed that “[t]he requirement that the City Council have ‘substantial and compelling reasons’ to depart from the presumptive penalty provided in the matrix is similar to language found in the Minnesota Sentencing Guidelines that requires ‘substantial and compelling circumstances’ to depart from the presumptive sentence for criminal convictions”; and

WHEREAS, Judge LaFave further observed that the Minnesota Supreme Court has required “severe, aggravating, and factually atypical circumstances” to warrant a greater-than-double upward departure from the presumptive sentence contained in the Minnesota Sentencing Guidelines; and

WHEREAS, based on the foregoing analysis and the record before him, Judge LaFave recommended that “an upward departure to the second penalty box, a \$1,000.00 fine, be imposed”; and

WHEREAS, Judge LaFave explained his recommendation for an upward departure, concluding that the Licensee’s “multiple sales of single cigarettes and flavored tobacco products” and “allowing patrons to smoke cigarettes while inside the store” provided the “substantial and compelling reasons” for an upward departure beyond the presumptive penalty of \$500.00; and

WHEREAS, Judge LaFave further explained that a greater-than-double upward departure to a penalty of revocation was inappropriate based on these violations because they did not constitute the “severe, aggravating, and atypical circumstances” that were required to support revocation; and

WHEREAS, Judge LaFave also indicated that the remaining allegations, even if proven at an evidentiary hearing, would not support revocation of the License; and

WHEREAS, at a public hearing to consider the Recommendation and Order on Motion for Summary Disposition, on November 17, 2021, the City Council, under RES PH 21-300, considered all the evidence contained in the record, including Judge LaFave’s Recommendation and Order on Motion for Summary Disposition, and the oral arguments presented before the City Council; and

WHEREAS, at the same hearing, after considering all the evidence contained in the record and the oral arguments presented before it, the City Council rejected the Department’s recommendation and requested that the Department try the remaining allegations at an evidentiary hearing to be scheduled before Judge LaFave; and

WHEREAS, a prehearing conference was held by telephone on December 7, 2021 to review the status of the case and Judge LaFave requested that the City Council issue a formal order remanding the case back to him; and

WHEREAS, under RES 21-1813, the City Council formally requested that Judge LaFave schedule an evidentiary hearing on the allegations on which he denied summary disposition and give the parties adequate opportunity to develop the record with respect to those allegations; and

WHEREAS, a copy of RES 21-1813 was sent by first class mail to Judge LaFave and the Licensee; and

WHEREAS, the matter was reassigned to Judge LauraSue Schlatter (“Judge Schlatter”) and on July 25, 26 and 27, 2022 an administrative hearing was held on the remaining questions:

- Whether One Stop Market violated licensing condition 3 and Saint Paul Legislative Code §310.06 (b)(5) relating to the alleged failure to maintain video surveillance equipment and to provide a copy of surveillance as requested by the City; and
- Whether One Stop Market violated licensing condition 2 and Saint Paul Legislative Code §310.06 (b)(5)- (8) relating to One Stop Market’s conduct on March 30, 2020, June 1, 2020 and July 20, 2020 in allegedly permitting dangerous behavior and loitering on or near the licensed premises; and

WHEREAS, on December 6, 2022, Judge Schlatter issued her Findings of Fact, Conclusions of Law and Recommendation, finding that the City failed to demonstrate by a preponderance of the evidence that Licensee:

- Failed to properly maintain his surveillance equipment;

- Failed to provide a copy of his surveillance footage;
- Permitted dangerous behavior and loitering on or near its licensed premises; and

WHEREAS, Judge Schlatter's Findings of Fact, Conclusions of Law and Recommendation support the original recommendations of Judge LaFave for an upward departure and imposition of a \$1,000 matrix penalty; and

WHEREAS, the City Council agrees that the Licensee's repeated sales of single cigarettes and flavored tobacco products, as well as his allowance of patrons to smoke cigarettes while inside the Licensed Premises, are substantial and compelling reasons to depart upward from the presumptive penalty of a \$500.00 fine and to impose a \$1,000.00 fine; now, therefore, be it

RESOLVED, that the City Council issues this decision based upon consideration of the record of the entire proceedings herein, including the oral argument from the Licensee and his attorney from the November 17, 2021 public hearing and the January 18, 2023 public hearing; and be it

FURTHER RESOLVED, that the Findings of Fact, Conclusions of Law and Recommendation of Judge LaFave issued on September 7, 2021 under OAH 60-6020-37157 and the Findings of Fact, Conclusions of Law and Recommendation of Judge Schlatter on December 6, 2022 under OAH 80-6020-37157 in the Matter of the Cigarette/Tobacco License held by Zakariya Abukhudeer d/b/a The One Stop Market, LLC for the premises located at 1541 Maryland Avenue in Saint Paul, are hereby adopted as the Findings of the City Council in this matter; and be it

FURTHER RESOLVED, that a fine of \$1,000.00 is hereby imposed against the cigarette/tobacco license held by the Licensee for the premises located at 1541 Maryland Avenue East in Saint Paul.

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