

August 15, 2023

VIA EFILING ONLY

Shari Moore
City Clerk
City of St. Paul
310 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102
cityclerk@ci.stpaul.mn.us

**Re: *In the Matter of Tobacco Shop License Held by Amira Grocery d/b/a
Winnipeg Grocery for the Premises Located at 864 Rice Street in
Saint Paul***
OAH 82-6020-39197

Dear City Clerk Moore:

Enclosed and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** in the above-entitled matter. The official record, along with a copy of the recording of the hearing, is also enclosed. The Office of Administrative Hearings' file in this matter is now closed.

If you have any questions, please contact me at (651) 361-7874, michelle.severson@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



MICHELLE SEVERSON
Legal Assistant

Enclosure

cc: Docket Coordinator
Therese Skarda
Douglas E. Nepp

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MN 55164-0620

CERTIFICATE OF SERVICE

In the Matter of Tobacco Shop License Held by Amira Grocery d/b/a Winnipeg Grocery for the Premises Located at 864 Rice Street in Saint Paul	OAH Docket No.: 82-6020-39197
--	----------------------------------

On August 15, 2023, a true and correct copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by United States mail, unless otherwise indicated below, addressed to the following:

VIA EFILING ONLY

Shari Moore
City Clerk
City of St. Paul
310 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102
cityclerk@ci.stpaul.mn.us

VIA EMAIL ONLY

Therese Skarda
Assistant City Attorney
400 City Hall & Courthouse
15 W Kellogg Blvd
Saint Paul, MN 55102
Therese.Skarda@ci.stpaul.mn.us;
julie.kraus@ci.stpaul.mn.us

VIA EMAIL ONLY

Douglas E. Nepp
Nepp & Hackert, LLC
In Town on the Lake Bldg
One W Lake St Ste 185
Minneapolis, MN 55408
doug@nepphackert.com;
fatima@nepphackert.com

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of Tobacco Shop License
Held by Amira Grocery d/b/a Winnipeg
Grocery for the Premises Located at
864 Rice Street in Saint Paul

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge Barbara J. Case for a hearing on July 20, 2023, at the Office of Administrative Hearings in St. Paul, Minnesota. The record closed on July 28, 2023.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). Douglas E. Nepp, Nepp & Hackert, LLC, appeared on behalf of Amira Grocery, Inc. d/b/a Winnipeg Grocery, Inc. (Licensee).

STATEMENT OF THE ISSUES

1. Has the City established that Licensee violated St. Paul Legislative Code § 324.07(j) by selling, offering for sale, or otherwise distributing flavored tobacco products?¹
2. If so, may Licensee's Tobacco Shop License be suspended for 10 days pursuant to St. Paul Legislative Code § 324.10(b)(2)?

SUMMARY OF RECOMMENDATION

The City has established by a preponderance of the evidence that Licensee offered flavored tobacco products for sale in violation of the St. Paul Legislative Code. The Administrative Law Judge respectfully recommends that the City Council impose the presumptive penalty against Licensee's Tobacco Shop License.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

¹ Notice of Violation And Request For Imposition of a 10-Day Suspension Of Your License (Notice) (Mar. 16, 2023).

FINDINGS OF FACT

I. Background and Inspection

1. Amira Grocery, Inc. d/b/a Winnipeg Grocery, Inc., located at 864 Rice Street in Saint Paul, Minnesota (Licensed Premises) holds a Tobacco Shop License (License) permitting it to sell tobacco products.²

2. Mohamed Shaaban Sultan is the Licensee's owner and responsible party for the License held at the Licensed Premises.³ He has been the owner of the Licensed Premises for approximately three years and prior to that operated a delicatessen (deli) located at the rear of the Licensed Premises. In the past three years Licensee has had no tobacco related violations.⁴

3. The Licensed Premises has 3600 square feet of interior space and has one public entrance.⁵ The front area of the store contains shelves of groceries and a cashier stand area. The cashier stand has displays of merchandise to the sides and behind the cash register, including tobacco products.⁶ The area is open at one end.⁷ At the rear of the store is the deli) which Licensee sub-leased for \$1,500 per month to Melvin Galloway.⁸ By December of 2023, Mr. Galloway owed Licensee \$7,500 in back rent.⁹ On approximately May 13, 2023, Mr. Galloway gave Licensee a check for \$7,500. The check bounced and by the end of May Licensee had terminated the lease agreement.¹⁰

4. On December 31, 2023, the City's Department of Safety and Inspections (Department) received a complaint about the Licensed Premises.¹¹ The complaint details are "Tobacco: selling flavored tobacco products and Newport Menthol without Tax Stamps from a bag behind the counter."¹²

5. On February 2, 2023, Department Inspector Allan Vang went to the Licensed Premises to perform an inspection in response to the complaint about the sale of prohibited flavored tobacco products.¹³

6. Upon arrival, Inspector Vang introduced himself to the Licensee's owner and responsible party, Mohamed Sultan. Also present was Inspector Tom Piskor from

² Stipulated Fact (Stip.) 1, *citing* Exhibits (Exs.) 12-1 and 6-1.

³ Stip. 2, *citing* Ex. 12-1.

⁴ Test. of Mohamed Shaaban Sultan; Ex. 10.

⁵ Test. of M. Sultan.

⁶ Ex. 12; Ex. 5.

⁷ Stip 1.

⁸ Test. of M. Sultan; Ex. 101; Ex. 10-3.

⁹ Ex. 101; Test. of M. Sultan.

¹⁰ Test. of M. Sultan.

¹¹ Ex. 2.

¹² Ex. 2.

¹³ Ex. 1.

the State of Minnesota Department of Revenue (MDR) who had arrived earlier and was also inspecting the premises. Inspector Piskor had found prohibited flavored products in two plastic bags on the floor of the cashier stand area as alleged in the complaint. Inspector Piskor had laid out all the prohibited flavored products that he had found in the two bags along the cash register area counter.¹⁴

The following items comprise what Inspector Piskor found behind the counter in the two black bags:

- a. 8 pack/20 Newport Box 100 Newport Box King
- b. 7 pack/20 Newport Box King Size
- c. 1 Single Pen Loon Max 2000 Puff Ice Pineapple
- d. 1 Single Cigar Backwoods Honey Cigarillo Single
- e. 3 Single Cigar Backwoods Russian Cream Cigar Single
- f. 4 Single Cigar Backwoods Stout Single
- g. 1 5-Pack Backwoods Black Russian - 5 cigars
- h. 1 5-Pack Backwoods Honey Bourbon - 5 cigars
- i. 1 5-Pack Backwoods Banana - 5 cigars
- j. 4 Package Franta Leaf Master Cream Natural Cigar Wrappers
- k. 3 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - Java Fusion Deluxe
- l. 3 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - Honey Fusion Golden
- m. 3 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - Sweet Fusion Red
- n. 4 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - 0G Fusion
- o. 1 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - Blue Fusion Cream
- p. 4 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - Blue Fusion Burst
- q. 3 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - Gold Fusion¹⁵

7. The prohibited products did not have Minnesota tax stamps affixed to them and some had tax stamps of unknown origin that had been partially scratched off.¹⁶

8. Mr. Sultan told the inspectors that the prohibited products belonged to Mr. Galloway.¹⁷ Inspector Vang told Mr. Sultan that the prohibited products needed to be removed from behind the counter and stored out of sight. Inspector Piskor intervened and explained that, because the products were not on Licensee's tobacco product invoice, he was seizing the products.¹⁸

9. Mr. Galloway claims that he was the owner of the prohibited products and that Licensee had nothing to do with them. Mr. Galloway claims that he walked into the Licensed Premises on February 3, 2023, with the two bags of prohibited products, stopped to talk to Licensee about the past due rent and left the two plastic bags behind the counter of the store's cashier area. He walked to the deli area to have his employee

¹⁴ Exs. 1 and 3.

¹⁵ Exs. 1, 3, 4; Stip. 23.

¹⁶ Ex. 4.

¹⁷ Ex. 3-1; Test of M. Sultan.

¹⁸ Ex. 3-1.

make him a sandwich. At that same moment the Inspectors came into the Licensed Premises and searched the two black bags, finding the prohibited products.¹⁹ Mr. Galloway has asked the Minnesota Department of Revenue to return the products to him.²⁰

II. Procedural Facts

10. On March 16, 2023, the City issued a Notice of Violation and For Imposition of a 10-Day License Suspension (Notice) to Licensee notifying Licensee that it had violated St. Paul Legislative Code § 324.07(j) prohibiting a licensee from selling, offering for sale, or otherwise distributing any flavored tobacco products.²¹ The Notice of Revocation advised Licensee that it could contest the proposed adverse action and request a hearing.²²

11. By letter dated March 24, 2023, Licensee notified the City that it disputed the facts, contested the proposed adverse action, and requested a hearing.²³

12. The parties stipulated to some facts pertaining to this matter.²⁴ The parties stipulated that “[t]he issues in dispute relate to whether the Licensee is responsible for the prohibited flavored tobacco products found by agents from the MDR and the Department’s Inspector.”²⁵

13. Any Conclusion of Law more properly considered to be a Finding of Fact is incorporated herein.

14. Any portion of the Memorandum or fact contained therein that should be considered as a Finding of Fact is adopted as such.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the City Council have authority to hear this matter pursuant to St. Paul Legislative Code § 310.05(c), Minn. Stat. § 14.55 (2022).

2. The hearing in this matter was conducted in accordance with St. Paul Legislative Code § 310.05 and the contested case procedures of Minn. Stat. §§ 14.57-.62 (2022).

¹⁹ Ex. 102.

²⁰ Ex. 102.

²¹ Ex. 1-1.

²² Exs. 1-2, 1-3.

²³ Ex. 10.

²⁴ Ex. 15.

²⁵ Stip. 42.

3. In each case where adverse action is or will be considered by the City Council, the licensee shall have been notified in writing that adverse action may be taken against the license, and that the licensee is entitled to a hearing before action is taken by the Council. The notice shall state the issues involved or grounds upon which the adverse action may be sought or based.²⁶

4. The City provided proper notice of the hearing and fulfilled all procedural requirements of rule and law.

5. The City must show by a preponderance of the evidence that Licensee committed the alleged violation.²⁷

6. Under St. Paul Legislative Code § 324.07(j), “no person may sell, offer for sale, or otherwise distribute any flavored tobacco products,” unless a specific exception identified in section 324.07(l) applies. No exception found in St. Paul Legislative Code § 324.07(l) applies here. Therefore, Licensee was prohibited from selling, offering for sale, or distributing flavored tobacco products.

7. Under St. Paul Legislative Code § 324.03(10), “sale” means and includes, “any transfer, conditional or otherwise, of title or possession.”

8. Under St. Paul Legislative Code § 324.10(b)(2), the presumptive penalty for a first violation for the “[d]isplay, possession or multiple incidents of sales of; single cigarettes, menthol tobacco products or flavored tobacco products” is a 10-day suspension of the license.

9. The City has established that Licensee violated St. Paul Legislative Code § 324.07(j) by offering prohibited flavored tobacco products for sale.

10. Licensee has not established any basis to depart from the presumptive penalty for its violation.

11. Any Finding of Fact more properly deemed a Conclusion of Law is incorporated herein.

12. Any portion of the accompanying Memorandum that is more properly considered to be a conclusion of law is adopted herein.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

²⁶ St. Paul Legislative Code § 310.05(b).

²⁷ Minn. R. 1400.7300, subp. 5 (2023).

RECOMMENDATION

The City Council should find Licensee violated St. Paul Legislative Code § 324.07(j) and impose a 10-day suspension of Licensee's Tobacco Shop License.

Dated: August 15, 2023


BARBARA J. CASE
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Saint Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions of Law, and Recommendation. Pursuant to Saint Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact the St. Paul City Clerk, 310 City Hall, 15 W. Kellogg Blvd., Saint Paul, MN 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

The record establishes that Licensee offered flavored tobacco products for sale in violation of St. Paul Legislative Code § 324.07(j). The prohibited items were flavored products, with packaging identifying flavors such as Honey, Dark Stout, Max Pineapple, Cream, and Dutch Sweet Fusion Red, as well as mentholated Newport cigarettes. There was no dispute at hearing that the quantity of flavored products found behind the Licensed Premise's cash register area was too much for personal use.

Licensee argues that the products were not his, but instead belonged to his sublessee, Mr. Galloway. At the time of the inspection, Mr. Galloway rented a deli inside the Licensed Premises and was significantly in arrears on the rent.

Licensee argues that a sub-lessee's actions cannot be imputed to the Licensee. The City argues that such an exception would mean that all sorts of illegal activities could be carried out inside licensed premises with impunity simply by subleasing an area in which illegal activity could take place. The City makes a valid point. However, it is unnecessary to reach a conclusion on the sub-lessee issue because Licensee's story is not credible.

Mr. Galloway's leased deli was at the rear of the Licensed Premises.²⁸ His story is that he entered the store shortly before the inspectors arrived, dropped the bags of

²⁸ Ex. 12; Test. of M. Sultan.

prohibited products behind the store's cash register area and walked back to have his deli employee make him a sandwich.²⁹ According to Mr. Galloway, he intended to come back and have a conversation with Licensee about the significant amount he owed on rent for the deli.³⁰ According to Mr. Galloway, "at this moment the Minnesota Revenue's inspectors came in, searched the bags against my will and objection, to find the products which I confirmed to the inspectors my ownership."³¹

Even assuming it to be true that Mr. Galloway dropped the bags behind the cash register area of the Licensed Premises on the same day, and just shortly before, the inspectors arrived, the undisputed fact is the bags of prohibited tobacco products were behind the cash register area. This is the same area of the store from which Licensee sold tobacco products. It defies logic and credulity that Mr. Galloway dropped the bags of prohibited products behind the register before proceeding to his deli. If the bags were his and intended for his possession only, he would have carried them back to his part of the Licensed Premises. No explanation was given for why he dropped them behind the cashier's counter. Given the amount of prohibited products found, their proximity to other legitimate tobacco products being sold and their proximity to the cash register, it is reasonable to conclude that they were behind the cashier's counter to be sold. Furthermore, Mr. Galloway owing a significant amount of money to Licensee undermines his credibility because he is indebted to him and may be inclined to make his payment in the form of a fabricated story. Mr. Galloway's story does not outweigh the physical findings of the inspectors. Those physical findings were consistent with the complaint received – that flavored tobacco products were being sold out of a bag kept behind the cash register.

The City Council should find that Licensee violated St. Paul Legislative Code § 324.07(j) by offering flavored tobacco products for sale. The City Council should impose the presumptive penalty for a first-time violation and suspend Licensee's Tobacco Shop License for 10 days.

B. J. C.

²⁹ Ex. 102; Test. of M. Sultan.

³⁰ Ex. 12; Test. of M. Sultan.

³¹ Ex. 102.



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDSY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

July 27, 2023

Barbara J. Case
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
Saint Paul, MN 55164-0620

RECEIVED

JUL 31 2023

Office of Administrative Hearings

RE: Cigarette/Tobacco license held by Amira Grocery d/b/a Winnipeg Grocery for the premises
Located at 864 Rice Street in Saint Paul
License ID #: 20210000879
OAH Docket No. 82-6020-39197

Judge Case:

On behalf of the City of Saint Paul I offer two cases that support the argument that a Licensee is responsible for the entire space within the Licensed Premises.

While I was unable to find a case that directly addressed a Licensee avoiding responsibility for the entire space within a Licensed Premise, both of these cases involved the illegal sales of prohibited products from within the Licensed Premises by an individual other than the Licensee.

Thank you for your consideration of this matter.

Sincerely,

Therese Skarda
Assistant City Attorney
License No: 0240989
(651) 266-8710

Cc: Douglas Nepp, Nepp & Hackert, LLC, In Town on the Lake Building, One West Lake Street
Suite 185, Minneapolis, MN 55408

Attachments: Findings of Fact, Conclusion of Law and Recommendation
(OAH Docket No. 60-6020-36320) – Judge LaFave (March 9, 2020)

Findings of Fact, Conclusion of Law and Recommendation
(OAH Docket No. 71-6020-38502) – Judge Palmer-Denig (January 11, 2023)

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Julie Kraus, being first duly sworn, deposes and says that on the 27th day of July she served the attached **LETTER TO JUDGE BARBARA CASE WITH TWO (2) ATTACHED CASES** as follows:

Barbara J. Case
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
Saint Paul, MN 55164-0620

Douglas Nepp
Nepp & Hackert, LLC
In Town on the Lake Building
One West Lake Street
Suite 185, Minneapolis, MN 55408

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.



Julie Kraus

Subscribed and sworn to before me
This 27TH day of July 2023



Notary Public



STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of 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 in St. Paul
License ID #: 20100000243

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came on for hearing on November 13, 14, and 19, 2019, before Administrative Law Judge James E. LaFave at the Office of Administrative Hearings in St. Paul, Minnesota. The record closed on January 10, 2020, with the filing of the parties' post-hearing briefs.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). James C. MacGillis, Trepanier, MacGillis, Battina, P.A., appeared on behalf of Midway University & Hamline, LLC d/b/a Midway Amoco BP (Midway Amoco or Licensee).

STATEMENT OF THE ISSUES

1. Did Licensee violate statutes, ordinances, or conditions related to its licensed activity?
2. If so, has the City demonstrated that substantial and compelling reasons exist to depart upward from its penalty matrix and to revoke Midway Amoco's licenses?

SUMMARY OF RECOMMENDATIONS

The City demonstrated by a preponderance of the evidence that Licensee violated Saint Paul ordinances related to its licensed activity. The City has also demonstrated that substantial compelling reasons exist to upwardly depart from the presumptive penalty and severe aggravating circumstances exist to revoke the licenses held by Midway Amoco.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. Background

1. Midway Amoco is a gas station and convenience store located at 1347 University Avenue in St. Paul.¹ Midway Amoco sits at the corner of University and Hamline Avenues across from the Green Line light rail Hamline Avenue Station.²

2. Khaled Aloul (Aloul) is the owner of Midway Amoco.³ Aloul purchased Midway Amoco in May of 2010.⁴

3. The City granted Midway Amoco Cigarette/Tobacco and Gas Station licenses on May 15, 2010, subject to the following conditions:

- (1) The licensee shall maintain working video surveillance cameras and recorders on the premises (both inside and outside) in accordance with Saint Paul Police Department (SPPD) recommendations. The number of cameras, their placement and their quality must be approved by SPPD. This equipment must be in operation during all business hours. Tapes/recordings must be maintained for a minimum of thirty (30) days, and copies of recordings shall be available to SPPD and /or the Department of Safety and Inspections (DSI) staff within twenty-four (24) hours of such a request.
- (2) The licensee agrees to provide adequate lighting to support the camera placement, and to provide sufficient visibility of the premises in accordance with SPPD recommendations.
- (3) Licensee agrees to provide and maintain adequate fencing to comply with applicable City Ordinances, and to prevent access from the alley to the property.
- (4) Licensee agrees to limit the car wash hours of operation between 6:00 a.m. and 10:00 p.m.
- (5) The licensee shall maintain a clean site, with all trash and litter picked up daily.⁵
- (6) Midway Amoco's franchise agreement with British Petroleum (BP) requires that business be open 24 hours a day, seven days a week.⁶

¹ Exhibit (Ex.) 5; Testimony (Test.) of Khaled Aloul.

² Test. of K. Aloul; Ex. 24-2.

³ Ex. 6; Test. of K. Aloul.

⁴ Test. of K. Aloul; Exs. 3, 4, 5, 6.

⁵ Ex. 4; Test. Of Eric Hudak.

⁶ Test. of K. Aloul.

4. Typically, Midway Amoco has only one employee on staff after 10:00 p.m.⁷

5. Eric Hudak is a Licensing Manager with the City's Department of Safety and Inspections (DSI).⁸

6. DSI conducts tobacco compliance checks of businesses licensed to sell tobacco products to ensure they are not selling such products to individuals under the legal purchasing age.⁹ In conducting compliance checks, DSI staff work with underage "decoys" who, at the direction of DSI investigators, attempt to purchase tobacco products from licensed businesses.¹⁰

7. Over the years, DSI has conducted tobacco compliance checks at Midway Amoco.¹¹ Since 2010, Licensee has passed most of its tobacco compliance checks.¹² However, it failed a tobacco compliance check in 2014 and again in 2017.¹³

II. Alleged Violations

8. Beginning in 2019, criminal activity, including aggravated assaults, shots fired, and narcotics trafficking, increased on or within a half-block of the Licensee's premises.¹⁴ The increase in noise disturbances, drug dealing, fighting, and gun-related activity at the Licensee's premises was particularly notable in the early morning hours of the weekend - Saturday and Sunday between 1:00 a.m. and 4:00 a.m.¹⁵

9. In early 2019, Licensee hired a private security company to provide security services at Midway Amoco on the weekends from 10:00 p.m. until 4:00 a.m.¹⁶ The company, Wrangler Protection Agency (Wrangler), provided two armed security guards to patrol and guard the interior and exterior premises of Midway Amoco. Among other services, the security guards watched for shoplifters and directed people to leave Licensee's lot if they were loitering or causing disturbances.¹⁷

10. On March 23, 2019, the owner of Wrangler informed Midway Amoco's manager, that it would no longer provide security services to Midway Amoco.¹⁸

⁷ *Id.*

⁸ Test. of E. Hudak.

⁹ Minn., St. Paul Legis. Code § 324.07(g). (In October of 2019, the St. Paul City Council voted to raise the legal tobacco purchasing age from 18 to 21 years.)

¹⁰ Test. of E. Hudak; Test. of Akbar Muhammad.

¹¹ Test. of E. Hudak; Ex. 20.

¹² Ex. 20.

¹³ *Id.*

¹⁴ Test. of Eric Vang-Sitcler; Ex. 23-6.

¹⁵ Test. of E. Vang-Sitcler; Test. of Carlos Mauricio.

¹⁶ Test. of Ala Asia; Ex. 106. (Typically, one security guard arrived at 10:00 p.m. and the other arrived at 1:30 a.m.)

¹⁷ Test. of A. Asia; Ex. 106.

¹⁸ Test. of A. Asia; Ex. 106.

11. Licensee did not hire another security company to provide security services after Wrangler terminated its services in March of 2019.¹⁹

12. From late April to July of 2019, the SPPD received more than 100 calls for service to Licensee's address.²⁰ Many of the calls concerned reports of disorderly conduct, fighting, and noise.²¹

13. Ala "Alex" Asia (Asia) is employed to manage the Midway Amoco and another gas station Aloul owns, located in New Brighton, Minnesota.²² Asia visits the Midway Amoco location approximately every other day.²³ Among his other managerial duties, Asia is the primary contact for surveillance video requests.²⁴ Midway Amoco receives requests for surveillance video from both the SPPD and DSI. Pursuant to the conditions of Midway Amoco's license, it must provide a copy of surveillance video within 24 hours of a request.²⁵

14. Asia can access and download video footage from the security cameras at Midway Amoco by inputting a specific username and code.²⁶ Aloul knows the code and has full access to surveillance video footage.²⁷

15. The SPPD requested copies of video footage from Midway Amoco approximately three times per week during 2019.²⁸ DSI requested video from Midway Amoco approximately once every two months in 2019.²⁹ Upon receiving a request for a copy of surveillance video, Asia copied video from the requested time frame onto a flash drive and left it at the gas station for retrieval by the SPPD or DSI.³⁰ Sometimes a police officer asked to review video footage at Midway Amoco. On those occasions, Asia entered the code to access the video and played it for the police officer in the store.³¹ Asia has also given the username and code to an employee of the SPPD's IT department named "Mark" so that he may view the video.³²

16. On or about April 27, 2019, a person reported to the SPPD that his wallet was stolen while he was at Midway Amoco.³³ By letter dated May 1, 2019, a DSI License Inspector requested that Licensee provide her with a copy of video footage from

¹⁹ Test. of A. Asia.

²⁰ Ex. 23. (The SPPD calls for service report lists 168 calls, but some are "proactive" police visits and some concern the intersection of Hamline and University and not necessarily Midway Amoco.)

²¹ *Id.*

²² Test. of A. Asia.

²³ *Id.*

²⁴ *Id.*

²⁵ Ex. 6.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*; Test. of K. Aloul; Exs. 104, 105.

²⁹ Test. of K. Aloul; Test. of A. Asia.

³⁰ Test. of A. Asia.

³¹ *Id.*

³² *Id.*

³³ Ex. 23-5.

12:01 a.m. to 1:00 a.m. on April 27, 2019.³⁴ The letter directed Licensee to provide the video no later than May 10, 2019.³⁵ However, the letter contained an incorrect mailing address for Midway Amoco.³⁶ As a result, Licensee never saw the letter and was unaware of the request.³⁷

17. On June 1, 2019, two people were arrested leaving Midway Amoco with a firearm.³⁸ When questioned by a police officer following the arrest, one of the individuals stated that she went to the Midway Amoco because the clerks there sell single cigarettes.³⁹

18. On June 12, 2019, DSI Inspector Akbar Muhammad conducted a tobacco age compliance check at Midway Amoco.⁴⁰ The minor decoy, working with Inspector Muhammad, entered Midway Amoco alone and purchased a pack of cigarettes for \$9.45 from the Licensee's clerk, Nagdy Ahmed (Ahmed), despite that the clerk requested to see and reviewed the minor's identification.⁴¹

19. After the minor exited Midway Amoco and gave the pack of cigarettes and change to Inspector Muhammad, he realized he failed to get a receipt.⁴² The minor re-entered the store with the pack of cigarettes and asked Ahmed for a receipt. At this point, Ahmed asked to see the minor's identification again. When Ahmed determined the minor was under the age of 18, he took back the pack of cigarettes.⁴³

20. Inspector Muhammad informed Ahmed that he had failed the tobacco compliance check.⁴⁴ Muhammad also took a photograph of Ahmed's identification next to the pack of Marlboro cigarettes Ahmed sold to the minor.⁴⁵

21. While inside the gas station, Inspector Muhammad observed Ahmed hand two single unpackaged cigarettes to an adult male.⁴⁶ Inspector Muhammad did not see any exchange of money for the cigarettes.⁴⁷

22. In the early morning hours of June 15, 2019, between 2:00 a.m. and 3:30 a.m., Saint Paul Police Sergeant Vang-Sitcler with the SPPD's Gun and Gang Unit

³⁴ Ex. 8.

³⁵ *Id.*

³⁶ *Id.* (The letter was addressed to Midway Amoco at 1337 University Ave. W. Midway Amoco is located at 1347 University Avenue West.)

³⁷ Test. of K. Aloul; Test. of A. Asia.

³⁸ Ex. 10.

³⁹ *Id.*

⁴⁰ Ex. 9-3.

⁴¹ Test. of A. Muhammad; Exs. 9-1, 9-3.

⁴² Test. of A. Muhammad; Ex. 9-3.

⁴³ Test. of A. Muhammad.

⁴⁴ *Id.*

⁴⁵ Ex. 9; Test. of A. Muhammad.

⁴⁶ Ex. 9-3; Test. of A. Muhamad.

⁴⁷ Ex. 9-3.

observed approximately 100 people present on Midway Amoco's lot.⁴⁸ Sergeant Vang-Sitcler saw people drinking alcohol, dancing, fighting, smoking what appeared to be marijuana, and engaging in hand-to-hand drug transactions.⁴⁹ Sergeant Vang-Sitcler recognized some people in the crowd as members of particular street gangs.⁵⁰ Sergeant Vang-Sitcler also observed approximately 20 to 30 cars parked in Midway Amoco's lot, making it difficult for any car to drive through the lot or up to the gas pumps.⁵¹

23. Sergeant Vang-Sitcler did not see Licensee's clerk make any effort to direct the crowd to leave the premises.⁵² There is no evidence that the clerk called 911 or the SPPD to report the disorderly crowd gathered at Midway Amoco.⁵³

24. On June 18, 2019 at approximately 1:00 p.m., DSI Licensing Manager Hudak hand-delivered a letter to Ahmed at Midway Amoco.⁵⁴ The letter requested a copy of surveillance video footage from June 12, 2019, from 2:30 p.m. to 4:30 p.m.⁵⁵ The letter stated that a DSI representative would return to the gas station on June 19, 2019, at 4:00 p.m. to pick up the video footage.⁵⁶ Aloul was copied on Hudak's letter, along with the SPPD and Saint Paul Assistant City Attorney Therese Skarda.⁵⁷

25. Hudak requested video from June 12, 2019, to determine whether Ahmed sold single cigarettes to a patron, as observed by DSI Inspector Muhammad.⁵⁸

26. Ahmed left Hudak's letter along with the rest of Licensee's mail at Midway Amoco for Asia to pick up.⁵⁹

27. Before leaving Midway Amoco on June 18, 2019, Hudak inspected the Licensee's exterior premises.⁶⁰ Hudak observed pieces of litter alongside a metal fence on one side of Licensee's property; full trash bags stacked next to a dumpster that was overflowing with cardboard boxes and garbage; and a wooden fence that was in disrepair with missing boards, including one board that was lying on the ground with nails protruding from it.⁶¹ Hudak took a series of photographs to document the conditions he observed.⁶²

⁴⁸ Test. of E. Vang-Sitcler; Exs. 10-3, 21.

⁴⁹ Exs. 10, 21.

⁵⁰ Test. of E. Vang-Sitcler.

⁵¹ Ex. 10-3.

⁵² Test. Of E. Vang-Sitcler.

⁵³ *Id.*

⁵⁴ Test. of E. Hudak; Exs. 13, 14.

⁵⁵ Ex. 13.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Test. of E. Hudak.

⁵⁹ Test. of A. Asia.

⁶⁰ Ex. 14.

⁶¹ Exs. 14-2 to 14-6.

⁶² Ex. 14-1 to 14-6.

28. Carlos Mauricio (Mauricio) works as a clerk/cashier at Midway Amoco.⁶³ He typically works 12-hour shifts from 8:00 p.m. to 8:00 a.m. every day.⁶⁴ In addition to his cashier duties, Mauricio is responsible for putting trash in the dumpster and picking up litter around Midway Amoco's exterior premises.⁶⁵ On occasion, his brother, Manuel, performs cleaning and maintenance services for Licensee.⁶⁶

29. Sometime in early or mid-June of 2019, a car ran into Licensee's wooden fence, damaging several boards and a post.⁶⁷

30. At approximately 3:00 a.m. on June 19, 2019, Asia received a call on his cell phone from the SPPD requesting that he come to Midway Amoco immediately.⁶⁸ The police informed Asia that someone was shot and killed in the Midway Amoco parking lot.⁶⁹ The police wanted Asia to come to the gas station to allow them access to video footage of the parking lot.⁷⁰

31. Asia arrived at Midway Amoco approximately 30 minutes later.⁷¹ Several police officers were waiting at the gas station when Asia arrived.⁷² Asia accessed the surveillance video and allowed the police officers to view the footage. At about 7:30 a.m. the same morning, Mark, the SPPD's IT employee, arrived.⁷³ Asia allowed Mark to log into the system and assisted Mark in downloading copies of video footage onto flash drives. At approximately 8:30 a.m., the police officers told Asia they did not need any more assistance from him and that he could leave.⁷⁴

32. Asia did not check the mail at the Midway Amoco before leaving at 8:30 a.m. on June 19, 2019. As a result, he did not see the letter that Hudak left at the station the day before.⁷⁵

33. Sometime later in the afternoon of June 19, 2019, Aloul called Asia and asked if Asia made a copy of the requested video.⁷⁶ Aloul was referring to the video Hudak requested in his letter of June 18, 2019. Asia replied "yes," assuming Aloul was referring to the video he provided to the SPPD a few hours earlier.⁷⁷

⁶³ Test. of C. Mauricio.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*; Test. of Manuel Mauricio.

⁶⁷ Test. of K. Aloul.

⁶⁸ Test. of A. Asia.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

34. Licensing Manager Hudak returned to Midway Amoco at approximately 4:00 p.m. on June 19, 2019, to collect the requested video.⁷⁸ Ahmed was the clerk on duty. Hudak asked Ahmed for the video. Ahmed called for Asia who came up to the counter and asked Hudak how he could help.⁷⁹ Hudak asked for the video he had requested, and Asia responded that he had given the video on flash drives to the SPPD.⁸⁰ Hudak showed Asia a copy of his letter and explained that he was with the DSI and not the SPPD. Hudak stated that he had dropped off the letter the day before.⁸¹

35. Asia then realized that Licensing Manager Hudak was referring to a different video request, and he told Hudak he was out of flash drives but would run up across the street to get one.⁸² Asia stated that it would take him five minutes to get a flash drive and he would download the video for Hudak then.⁸³ Asia explained to Hudak that he not seen the letter and had been busy helping the police with their video request in the early morning hours.⁸⁴

36. Hudak told Asia that Asia should already have the video copied and that his failure to do so was a violation of Midway Amoco's licensing conditions.⁸⁵ Hudak told Asia that he would not wait for him to get a flash drive and Hudak left the store.⁸⁶

37. Before departing Midway Amoco on June 19, 2019, Hudak again photographed the gas station's exterior premises.⁸⁷ The photographs depict the wooden fence board still lying on the ground by the fence and approximately seven trash bags of garbage stacked next to the dumpster.⁸⁸ The dumpster appears to have been emptied and was no longer overflowing with cardboard boxes and garbage.⁸⁹

38. After Hudak left Midway Amoco, Asia obtained a flash drive and downloaded the video from June 12, 2019, as Hudak Requested.⁹⁰ Asia left the flash drive with the video at Midway Amoco on June 19, 2019. No one from DSI ever came back to Midway Amoco to collect the requested video.⁹¹

39. Licensee's wooden fence was ultimately repaired sometime after June 19, 2019, and approximately ten days after it was damaged by the car.⁹²

⁷⁸ Ex. 14-1; Test. of E. Hudak.

⁷⁹ Test. of A. Asia.

⁸⁰ *Id.*; Test. of E. Hudak; Ex. 14-1.

⁸¹ Test. of E. Hudak; Test. of A. Asia; Ex. 14-1.

⁸² Test. of A. Asia.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*; Test. of E. Hudak.

⁸⁶ Test. of E. Hudak; Test. of A. Asia.

⁸⁷ Ex. 14-1, 14-7 to 14-12.

⁸⁸ Exs. 14-7 to 14-12.

⁸⁹ *Id.*

⁹⁰ Test of A. Asia.

⁹¹ *Id.*

⁹² Test. of K. Aloul; Test. of M. Mauricio.

40. On or about June 20, 2019, Aloul called Midway Amoco to confirm that the video Hudak requested had been copied.⁹³ Mauricio told Aloul that the copy had been made and was available to be picked up at the store.⁹⁴

41. In the early morning hours of June 22, 2019, several large groups of people gathered in Midway Amoco's lot talking loudly, yelling, playing music, and socializing.⁹⁵ Eventually several fights broke out between different groups of people.⁹⁶ A woman in the crowd recorded the fights on her cell phone and later posted the video stream on Facebook.⁹⁷ The recording shows separate groups of two and three individuals, both men and women, fighting and screaming. In one instance, assailants knocked a woman down on the ground, punched her repeatedly in the face, and pulled her hair.⁹⁸ The woman later appears, with her face bloodied, struggling to rise from the ground, and then again sitting on the sidewalk near the street.

42. On June 22, 2019, at approximately 2:00 a.m., the SPPD received a call reporting fighting at Midway Amoco.⁹⁹

43. On June 22, 2019, at approximately 2:15 a.m., Saint Paul Police Sergeant Rigo Aguirre was on routine patrol near Midway Amoco when he observed the large number of people and cars in the Licensee's lot. Some cars were parked by the gas pumps, while others were parked randomly in the lot. Groups of people were loudly talking and yelling. Sergeant Aguirre parked his squad car near the Hamline Avenue entrance. He activated the lights on his squad car and announced to the crowd that if they were not purchasing gas, they needed to leave the area immediately.¹⁰⁰

44. After Sergeant Aguirre activated the lights on his squad car, he noticed Licensee's clerk, Mauricio, lock the door to the gas station store.¹⁰¹ Mauricio was the only employee working at the Midway Amoco in the early morning hours of June 22, 2019.¹⁰²

45. It took approximately 15 minutes for the crowd to disperse from Midway Amoco's lot once Sergeant Aguirre arrived.¹⁰³ After the crowd left, Sergeant Aguirre observed two pairs of shoes and a woman's wig on the ground by the gas pumps, which he presumed was evidence of a physical brawl.¹⁰⁴

⁹³ Test. of K. Aloul.

⁹⁴ *Id.*

⁹⁵ Ex. 22.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Ex. 11-3.

¹⁰⁰ *Id.*; Test. of Rigo Aguirre.

¹⁰¹ Ex. 11-3.

¹⁰² Test. of R. Aguirre.

¹⁰³ *Id.*

¹⁰⁴ Ex. 11-3.

46. Sergeant Aguirre left Midway Amoco but returned approximately 30 minutes later to request video of the disturbance.¹⁰⁵ Prior to exiting his squad car to talk to Mauricio, Sergeant Aguirre activated his body-worn camera.¹⁰⁶

47. Sergeant Aguirre knocked on the door of Licensee's store and Mauricio unlocked it and let him in. Sergeant Aguirre informed Mauricio that he was officially requesting a copy of video for June 22, 2019 video from 2:00 a.m. to 3:30 a.m.¹⁰⁷ After requesting the video, Sergeant Aguirre spoke with Mauricio about the pattern of fighting and other disturbances at Midway Amoco and asked whether closing the store counter would limit incidents. Sergeant Aguirre requested to enter the clerk's counter area behind the glass. Sergeant Aguirre observed two open packages of menthol flavored cigarettes.¹⁰⁸ Sergeant Aguirre asked Mauricio about the open cigarette packages, and Mauricio stated that he sells single cigarettes for \$1 and single "Swisher Sweet" cigars for \$2.80.¹⁰⁹ Sergeant Aguirre also observed flavored tobacco products on the shelves behind the counter.¹¹⁰ The flavored tobacco products on Licensee's shelves included Newport menthol cigarettes, Marlboro menthol cigarettes, Backwoods Berry Flavor Cigars, Backwoods Russian Cream Flavor Cigars, Dutch Master Rum Fusion Cigars, and Dutch Master Berry Fusion Cigars.¹¹¹

48. Mauricio showed Sergeant Aguirre boxes of glass vials and a container of molded, cylinder steel wool fragments. Mauricio told Sergeant Aguirre that the glass vials cost about \$0.35 each and that he sells the vials with the steel wool pieces to customers for \$5 or \$6.¹¹²

49. Glass vials, like the ones sold at Midway Amoco, are known as "drug kits" because they are used commonly to smoke crack cocaine or methamphetamine (meth).¹¹³ When inserted into the glass vial, the steel wool acts as a filter.¹¹⁴

50. Mauricio told Sergeant Aguirre that on a typical Saturday night, he sells a full box of glass vials - about 36 units.¹¹⁵

51. On June 25, 26, 28 and 29, 2019, the SPPD received calls reporting fighting and disorderly conduct at Midway Amoco.¹¹⁶

¹⁰⁵ Ex. 11-3; Test. of R. Aguirre.

¹⁰⁶ Test. of R. Aguirre; Ex. 12.

¹⁰⁷ Ex. 11-3; Test. of R. Aguirre.

¹⁰⁸ Ex. 11-7 to 11-9.

¹⁰⁹ Ex. 11-3.

¹¹⁰ Test. of R. Aguirre; Exs. 11-5, 11-6.

¹¹¹ Test. of R. Aguirre; Exs. 11-5, 11-6.

¹¹² Test. of R. Aguirre; Ex. 11-3.

¹¹³ Test. of R. Aguirre; Ex. 11-3.

¹¹⁴ Test. of R. Aguirre.

¹¹⁵ Test. of R. Aguirre; Ex. 12.

¹¹⁶ Ex. 23-3.

52. On July 31, 2019, Asia contacted the SPPD to inquire about hiring a police officer to work off-duty at Midway Amoco on the weekends providing security services.¹¹⁷ Asia was informed a few days later that Licensee's request to hire off-duty police officers was denied.¹¹⁸

53. SPPD Senior Commander John Bandemer denied Licensee's request to hire an off-duty police officer to provide security at Midway Amoco. Commander Bandemer believed that Licensee's employees had been documented violating tobacco sales regulations and had not fully cooperated with the police by providing video footage.¹¹⁹ In addition, Commander Bandemer was concerned that, given the problems with unruly crowds gathering on the weekends at Midway Amoco, a sole police officer working security would be placed at risk.¹²⁰

III. Disciplinary Actions Related to Licensee

54. This matter is the second adverse action taken against Licensee's licenses within the past 12 months. On March 12, 2019, the City served Licensee with a Notice of Violation related to its possession of flavored tobacco products.¹²¹ The Minnesota Department of Revenue seized such products from Midway Amoco as contraband in September 2018.¹²² Licensee contested the violation, but failed to appear for the administrative hearing scheduled for July 16, 2019.¹²³ As a result, an administrative law judge found Licensee in default and deemed the allegations against it proven.¹²⁴

55. The City's penalty matrix provides that the presumptive penalty for a first-time violation of the legislative code relating to licensed activity is \$500.¹²⁵ On July 24, 2019, the Saint Paul City Council imposed a first appearance matrix penalty of \$500 against Licensee for possession of prohibited flavored tobacco products.¹²⁶

56. On July 26, 2019, the City served Licensee with a Notice of Violation and Recommendation for Upward Departure to Revocation (Notice of Revocation).¹²⁷ This is the notice at issue here. The City alleges Licensee violated city ordinances by:

- selling single cigarettes outside of their original packaging;

¹¹⁷ Test. of A. Asia; Ex. 107.

¹¹⁸ Test. of A. Asia; Ex. 108.

¹¹⁹ Test. of John Bandemer.

¹²⁰ *Id.*

¹²¹ Ex. 2-1.

¹²² Ex. 2-1, 19, 20. (Contraband products are those for which a licensee is unable to produce an invoice from a licensed seller.)

¹²³ Ex. 2-1.

¹²⁴ *Id.*; See *In re the Cigarette/Tobacco and Gas Station Licenses held by Midway University & Hamline, LLC d/b/a Midway Amoco*, No. 5-6020-36135, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION UPON DEFAULT (Minn. Office Admin. Hearings July 16, 2019).

¹²⁵ Saint Paul, Minn. Legis. Code § 310.05(m)(2).

¹²⁶ Ex. 2-1, 19, 20.

¹²⁷ Ex. 1.

- 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; and,
- permitting unsafe conduct or conditions that present a serious danger to the public health, safety or welfare.¹²⁸

57. The City also alleges that Midway Amoco violated its license conditions by failing to provide DSI with copies of surveillance video as requested, and by failing to maintain a clean site with adequate fencing.¹²⁹

58. All the alleged violations identified in the Notice of Revocation occurred between April and July of 2019.¹³⁰

59. Licensee admits to selling flavored tobacco products and operating a business in a manner that unreasonably annoys the comfort and repose of the public.¹³¹ Licensee contests the other alleged violations.

60. After receiving the Notice of Revocation, the Licensee stopped selling glass vials and began closing Midway Amoco on the weekend between approximately 1:00 a.m. and 4:00 a.m.¹³²

61. During the month of August 2019, the SPPD received additional reports of assaults and disorderly conduct at or near Midway Amoco.¹³³

IV. Licensee's Proposed Remodel

62. Aloul plans to extensively remodel Midway Amoco.¹³⁴ Aloul has spent over \$80,000 on architectural design and permit fees.¹³⁵ The architectural plans for the remodel were completed on July 9, 2019.¹³⁶ Aloul has had several meetings with City officials about the proposed remodel.¹³⁷ Aloul's plan involves tearing down the existing

¹²⁸ *Id.*

¹²⁹ Ex. 1-3, 1-4.

¹³⁰ Ex. 1.

¹³¹ Saint Paul, Minn. Legis. Code. §§ 324.07(f) and 310.06(b)(8).

¹³² Test. of K. Aloul; Test. of C. Mauricio; Test. Of A. Asia.

¹³³ Exs. 30-1 to 30-96.

¹³⁴ Test. of K. Aloul; Exs. 101, 102, 103.

¹³⁵ Test. of K. Aloul; Exs. 101, 102.

¹³⁶ Ex. 101.

¹³⁷ *Id.*

store and constructing a new 3,000 square foot building with a car wash, coffee shop, and bakery.¹³⁸ The estimated cost of construction is \$1.6 million.¹³⁹

63. On August 15, 2019, Aloul received an invoice from the City in the amount of \$35,650 for the building permit fee related to his proposed tear down and new construction at Midway Amoco.¹⁴⁰ Aloul is waiting for the outcome of this license disciplinary matter before he decides whether to move forward with his construction plans.¹⁴¹

V. Community Impacts

64. The Hamline Midway Coalition (HMC) is a neighborhood organization that advocates for residents and businesses located in the Hamline Midway neighborhood.¹⁴² HMC has a district council that meets monthly with the SPPD, residents, and city council members to discuss and address neighborhood concerns.¹⁴³ HMC has held numerous meeting with local residents and business owners regarding Midway Amoco.¹⁴⁴

65. Many residents have expressed concern about increasing crime and escalating violent disturbances occurring at Midway Amoco. Residents have informed members of HMC that they avoid walking or driving past Midway Amoco out of fear for their safety. Some residents are considering moving out of the neighborhood because of the negative impact Midway Amoco is having on their community. A long-time resident in her eighties indicated that she is moving to be near family in Arizona because her daughter fears for her safety living near Midway Amoco.¹⁴⁵

66. Although other business owners in the Hamline Midway area engage regularly with HMC's district council and attend HMC's meetings, Licensee has not communicated with HMC or attended its monthly meetings.¹⁴⁶ Kate Mudge, Executive Director of HMC, made several attempts to contact Aloul by telephone in 2019 to discuss the escalating problems at Midway Amoco, without success.¹⁴⁷

67. Within the last 12 months, HMC has received increased complaints from residents and other businesses in the neighborhood about fighting, aggressive panhandling, noise, drug use, public urination, trash, and shots fired at Midway Amoco.¹⁴⁸

¹³⁸ Test. of K. Aloul; Ex. 101.

¹³⁹ Ex. 102.

¹⁴⁰ Ex. 103.

¹⁴¹ Test. of K. Aloul.

¹⁴² Test. of Kate Mudge.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*; Test. of Dan Buck.

¹⁴⁶ Test. of K. Mudge.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

68. The nonprofit organization Project for Pride in Living (PPL) has a residential building located across the street from Midway Amoco.¹⁴⁹ Tenants who reside in the PPL building have voiced concerns about fighting at Midway Amoco spilling over to their building.¹⁵⁰ The PPL building has been hit by gun fire exchanged at or near Midway Amoco on at least three occasions.¹⁵¹ PPL has spent over \$20,000 to increase security by adding lighting and bullet-proof glass.¹⁵²

69. Sergeant Vang-Sitcler has had five or six conversations with residents of the Midway Hamline neighborhood who expressed fear for their safety and welfare due to the increase in fights and gun violence occurring on Licensee's premises.¹⁵³

70. Any finding of fact contained in the following Memorandum is hereby adopted as such.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction to consider this matter pursuant to Minn. Stat. § 14.55 (2018) and St. Paul Legislative Code §§ 310.05, .06 (2019).

2. The hearing in this matter was conducted in accordance with the St. Paul Legislative Code § 310.05 and the contested case procedures of Minn. Stat. §§ 14.57, .62 (2018).

3. The City provided proper notice of the hearing and complied with all relevant procedural requirements of ordinance, rule or law.

4. Because the City is proposing that disciplinary action be taken, it has the burden of proving by a preponderance of the evidence that adverse action is warranted against the licenses held by Midway Amoco.¹⁵⁴

5. Under the Saint Paul Legislative Code, the City Council may take adverse action against a City-issued license if the licensee violates a statute or ordinance related to the licensed activity, or if the licensee violates conditions placed on its license.¹⁵⁵

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Test. of E. Vang-Sitcler.

¹⁵⁴ Minn. R. 1400.7300, subp. 5 (2019).

¹⁵⁵ Saint Paul, Minn. Legis. Code §§ 310.05(m); 310.06(a), (b)(6)(a).

6. Saint Paul Legislative Code § 324.07(a) prohibits the sale of a cigarette outside of its original packaging containing health warnings satisfying the requirements of federal law. No cigarette shall be sold in packages of fewer than 20 cigarettes.

7. Saint Paul Legislative Code § 324.07(f) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored tobacco products.

8. For all times relevant to this matter, the Saint Paul Legislative Code § 324.07(g) and Minn. Stat. § 609.685 (2018) prohibit the furnishing or sale of tobacco to persons under the age of eighteen years.¹⁵⁶

9. Saint Paul Legislative Code § 310.06(b)(6)(c) supports adverse action when the licensee has engaged in or permitted a pattern or practice of conduct or failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.

10. Saint Paul Legislative Code § 310.06(b)(7) supports adverse action when the activities of the licensee in the licensed activity create a serious danger to the public health, safety, or welfare.

11. Saint Paul Legislative Code § 310.06(b)(8) supports adverse action when the way in which a licensed business is operated maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.

12. The penalty matrix of the Saint Paul Legislative Code includes presumptive penalties for particular code violations.¹⁵⁷

13. Saint Paul Legislative Code § 310.05(m) provides a matrix of penalties for first, second, third, and fourth appearances before the city council. For a first violation, the matrix penalty is a \$500 fine. For a second violation, the penalty is a \$1,000 fine. For a third violation, the penalty is a \$2,000 fine and a 10-day suspension. For a fourth violation, the penalty is revocation of the license.¹⁵⁸

14. Saint Paul Legislative Code § 310.05 (m) provides that the matrix penalties are presumed to be appropriate for every case, but also notes that the City Council may deviate in an individual case where the council finds substantial and compelling reasons making it more appropriate to do so. Multiple violations shall be grounds for departure from the presumptive penalties in the council's discretion.¹⁵⁹ If the City Council deviates,

¹⁵⁶ In October of 2019, the City of Saint Paul raised the legal age for purchasing tobacco products from 18 years to 21 years.

¹⁵⁷ Saint Paul, Minn. Legis. Code § 310.05(m).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at § 310.05(m)(ii).

it must provide written reasons why the penalty selected was more appropriate than the presumptive penalty.¹⁶⁰

15. The City demonstrated by a preponderance of the evidence that Midway Amoco violated Saint Paul Legislative Code §§ 324.07(a), 324.07(f), 324.07(g), 310.06(b)(6)(c), 310.06(b)(7), and 310.06(b)(8) as alleged.

16. The City failed to demonstrate by a preponderance of the evidence that Midway Amoco violated the conditions of its license by failing to provide requested surveillance video to DSI.

17. The City failed to demonstrate by a preponderance of the evidence that Midway Amoco violated the conditions of its license by failing to maintain a clean site with adequate fencing.

18. The City has shown substantial and compelling reasons to upwardly depart from the presumptive penalty and revoke Licensee's cigarette/tobacco and gas station licenses.

19. The attached Memorandum explains the reasons for these conclusions and is incorporated by reference.

Based on the Conclusions of Law, and for the reasons explained in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The St. Paul City Council should upwardly depart from the presumptive penalty and **REVOKE** Midway Amoco's licenses for the violations of law cited above.

Dated: March 9, 2020


JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared

¹⁶⁰ *Id.* at § 310.05(m); Ex. 10.

NOTICE

This report is a recommendation, not a final decision. The Saint Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions of Law, and Recommendation issued by the Administrative Law Judge. Pursuant to Saint Paul Legislative Code § 310.05, the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. The parties should contact Shari Moore, City Clerk, City of Saint Paul, 290 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, to find out the procedure for filing exceptions and presenting argument.

MEMORANDUM

I. Overview

Licensee has operated Midway Amoco for over nine years. Based on the record, the City did not have any significant concerns with the management of the business prior to late 2018. Beginning in early 2019, however, there was a substantial increase in criminal activity and calls for police service at and near the Licensee's premises, along with documented concerns about Licensee's ability and willingness to manage the business in a safe and law-abiding manner.

In July of 2019, the City cited Licensee with multiple violations of city ordinances and licensing conditions related to the operation of its business. Licensee admits to two violations – selling flavored tobacco products and operating the business in a manner that permits conditions to exist that unreasonably annoy the comfort or repose of the public. Licensee contests the remaining citations.

This is the second adverse action against Licensee within the past 12 months.¹⁶¹ Under the City's penalty matrix, the presumptive penalty for a second appearance is a \$1,000 fine.¹⁶² The City, however, seeks revocation of Midway Amoco's licenses, which is an upward departure of more than two steps on the penalty matrix. Licensee concedes an upward departure is warranted but maintains that the appropriate penalty is an upward departure to the third level of the penalty matrix, a \$2,000 penalty and a ten-day suspension.

II. Violations

Licensee's first licensing action, for selling flavored cigarettes, was finalized in July of 2019. That violation related to a November 2018 seizure of flavored tobacco products carried out by the Department of Revenue. This case is Licensee's second disciplinary action and concerns six alleged violations of city ordinances and two alleged violations of licensing conditions. Under the matrix used by the City, the presumptive penalty for a "second appearance" is a \$1,000 fine. However, the City seeks to upwardly depart from

¹⁶¹ See Ex 2.

¹⁶² Minn. St. Paul Legis. Code § 310.05(m).

the presumptive penalty and revoke Licensee's licenses based on substantial and compelling reasons.

The City maintains that it has provided sufficient compelling evidence to support revocation of Licensee's tobacco and gas station licenses. The City notes the close proximity between the violations at issue here and in the July 2019, violation related to the seizure of flavored tobacco products. And the City emphasizes that, under its Legislative Code, the occurrence of multiple violations shall be grounds for an upward departure at the Council's discretion.¹⁶³

The City established by a preponderance of the evidence that Licensee violated city ordinances by selling cigarettes to an underage individual, and by selling single cigarettes and flavored tobacco products. The body camera video taken by Sergeant Aguirre on June 22, 2019, shows numerous flavored tobacco products on Licensee's shelves despite that the City cited Licensee for selling flavored tobacco products just months before. Further, Licensee's clerk's conversation with Sergeant Aguirre leaves no doubt that Midway Amoco was selling single cigarettes and single "Swisher Sweet" cigars to patrons for \$1.00 and \$2.80, respectively. Additionally, the June 1, 2019, police report notes that an arrested individual stated she went to Midway Amoco to purchase single cigarettes, and DSI Investigator Muhammad's observed Licensee's clerk handing individual single cigarettes to a patron. This evidence is sufficient to support finding that the Licensee engaged in, or permitted a pattern of non-compliance with licensing regulations, from which an inference of lack of fitness may be drawn.

Sergeant Aguirre's body camera video also establishes that Licensee fostered or promoted illegal drug use by selling glass vials and steel wool, which are routinely used for smoking crack cocaine and meth. The sale of drug paraphernalia contributed to creating an environment that attracted gatherings of large groups that became unruly, disruptive, and dangerous. The City demonstrated that on several occasions in June and July of 2019, large groups of people gathered in Midway Amoco's parking lot and engaged in fighting, aggravated assaults, drug transactions, the exchange of firearms, and the discharge of weapons.

The City has shown that Licensee failed to manage the business appropriately. The business was routinely understaffed. Licensee failed to secure alternative security services after its private security firm terminated services to Midway Amoco in March of 2019. Licensee also did not close the store between 1:00 a.m. and 4:00 a.m. on the weekends. The record supports finding the Licensee failed to appropriately manage its business and permitted conditions on its premises, including loud, disruptive, and dangerous gatherings in the early morning hours, that unreasonably annoyed and endangered the safety, health, comfort or repose of the public.

The City failed to establish, however, that Licensee violated the conditions of its license related to the condition of the property. The photographs of litter and trash taken

¹⁶³ Saint Paul, Minn. Legis. Code § 310.05(m).

over one 27-hour period are insufficient to establish that Licensee failed to maintain a clean site in violation of condition #5. Moreover, given that a homicide had occurred on the premises hours earlier and Licensee's staff was busy assisting the police, it is possible the litter and trash removal was temporarily overlooked during that short window of time. Similarly, photographs of a fence in disrepair taken over one 27-hour period does not establish Licensee violated license condition #3. Instead, Licensee's employees persuasively testified that the wooden fence was repaired reasonably quickly after it was damaged by a car.

The City also did not establish that Licensee failed to provide DSI copies of requested surveillance video pursuant to its license conditions. DSI initially sent its April 2019 letter requesting video footage to an incorrect address. There is no evidence that the letter was ever delivered to Midway Amoco. Licensee's manager's confusion regarding Inspector Hudak's June 18, 2019 video request was understandable and excusable given that a shooting took place on the premises in the early morning hours of June 19, 2019. The SPPD called Licensee's manager, Alex Asia, to the gas station at 3:00 a.m. to provide access to video, and he remained there until 8:30 a.m. assisting the police officers. Given these circumstances, it is reasonable that Asia had not seen Licensing Manager Hudak's hand-delivered letter from the prior afternoon. Moreover, once Asia realized that Licensing Manager Hudak's request was separate from the SPPD's request hours earlier, he offered to immediately obtain a flash drive and make a copy of the requested video. Licensing Manager Hudak's unwillingness to wait 15 minutes for the video to be provided, and his decision to cite Licensee with a license condition violation, was unreasonably inflexible given the circumstances. The fact that the video was not ready at 4:00 p.m. on June 19, 2019, as requested, is at most a technical violation. Asia prepared a drive with the footage, which remained at Midway Amoco awaiting pickup, but Licensing Manager Hudak never returned for it or requested it again.

During the hearing, Licensee acknowledged that it violated the prohibition against selling flavored tobacco products. Licensee also admits it operated its business in a manner that unreasonably annoyed the comfort or repose of a considerable number of members of the public, particularly the surrounding neighbors and community. Licensee contests the other violations and argues that, by combining seven violations into one Notice of Revocation, it had no opportunity to take appropriate action and institute managerial changes to correct the problems. Nevertheless, Licensee asserts that it has instituted several changes at Midway Amoco to address the City's concerns. For example, beginning in late July of 2019, it stopped selling the glass vials identified as drug kits and it began closing the store in the early morning hours on the weekends.

III. Legal Standard for Upward Departure

The Saint Paul Legislative Code provides that the Council may deviate from the presumptive penalty in the matrix where it determines there are "substantial and compelling reasons" to do so.¹⁶⁴ The Code also provides that the occurrence of multiple

¹⁶⁴ Saint Paul, Minn. Legis. Code § 310.05(m).

violations shall be grounds for departure from the presumptive penalties at the Council's discretion.¹⁶⁵ Beyond that, the parties did not cite, and the Administrative Law Judge could not find, any law specially discussing the legal standard for an upward departure involving a municipal code penalty matrix.¹⁶⁶

The requirement that the 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.¹⁶⁷ While the Administrative Law Judge recognizes the significant differences between imposing a criminal sentence and imposing an administrative penalty for a municipal code violation, the concepts underpinning the legal standard of review are analogous and, therefore, instructive.

Minnesota courts have held that the presumptive sentence should only be exceeded if the enhanced penalty is deemed to be "more appropriate, reasonable or equitable than the presumptive [penalty]."¹⁶⁸ The decision maker should impose the presumptive penalty unless "'substantial and compelling circumstances' based on aggravating factors warrant and upward departure."¹⁶⁹ To properly impose a penalty that is an upward departure from the presumptive penalty in the sentencing guidelines, then, the decision maker must have a specific factual basis.¹⁷⁰ "Substantial and compelling circumstances" are "factual circumstances that distinguish the case, making it atypical."¹⁷¹

The Minnesota Supreme Court has also held that "generally in a case in which an upward departure in sentence length is justified, the upper limit will be double the presumptive sentence length."¹⁷² The Court wrote: "Only in cases of 'severe aggravating circumstances' may the district court impose a greater-than-double departure from the presumptive sentence. Such cases, we have stated, are 'extremely rare'"¹⁷³

Here, the City seeks to revoke the Licensee's licenses. Revocation is a greater-than-double upward departure from the presumptive \$1,000 fine for second violations provided in the penalty matrix. Therefore, following the guidance of Minnesota Supreme

¹⁶⁵ *Id.*

¹⁶⁶ The City cited *Bourbon Bar & Café Corp. v City of St. Paul*, 466 N.W.2d 438, 440 (Minn. Ct. App. 1991), a case involving a liquor license, for the proposition that the council has "broad discretion to determine the manner in which liquor licenses are issued, regulated, and revoked."

¹⁶⁷ Minn. Sent. Guidelines II.D (2019).

¹⁶⁸ *Dillion v. State*, 781 N.W.2d 588, 595 (Minn. Ct. App. 2010) (citing *State v. Bingham*, 406 N.W.2d 567, 570 (Minn. Ct. App. 1987).

¹⁶⁹ *Id.*

¹⁷⁰ Saint Paul, Minn. Legis. Code § 310.05(m)(ii).

¹⁷¹ *Dillion*, 781 N.W. 2d. at 595.

¹⁷² *State v. Evans*, 311 N.W.2d 481, 483 (Minn. 1981).

¹⁷³ *State v. Shattuck*, 704 N.W.2d 131, 140 (Minn. 2005) (citing *State v. Spain*, 590 N.W.2d 85, 89 (Minn. 1999).

Court, the City must show that severe aggravating and factually atypical circumstances warrant such an upward departure from the presumptive penalty.

IV. Penalty

The City has demonstrated that Licensee committed all the Code violations alleged. Licensee sold single cigarettes, sold flavored tobacco products, and sold tobacco products to an underaged individual. Licensee also engaged in a pattern of noncompliance with license regulations, operated the business in a manner that unreasonably annoys the comfort and repose of the public, and permitted unsafe conduct or conditions that present a serious danger to the public's health and safety.

The City has also demonstrated severe aggravating circumstances supporting a greater-than-double upward departure from the presumptive penalty. The police reports, videos, and testimony demonstrate an unwillingness or inability on the part of Licensee to operate the business in a safe and law-abiding manner. The events occurring on the licensed premises between April and August of 2019 are extremely troubling – gun fire, illicit drug transactions, large disruptive crowds gathering in the early morning hours, physical assaults, and ultimately a homicide. The evidence is also 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. The City amply showed that Licensee operated the business in a manner that permitted conditions that endanger public safety, comfort, and repose. The increasingly violent and disruptive activity occurring at Midway Amoco has had a significant impact on the surrounding community. The testimony from HMC regarding the genuine fear residents and business owners have expressed for their safety was persuasive.

It is within the Council's discretion to impose a penalty that is an upward departure from the presumptive penalty in the matrix. The Licensee concedes as much but contends that only an upward departure to the third appearance penalty is warranted.

Licensee argues that it cannot be held accountable for the illegal acts of others and it maintains that it too has been victimized by these lawless acts. Licensee also notes that it is making a good faith effort to improve the property and decrease criminal activity. To that end, Aloul emphasizes that he has spent over \$80,000 in permit and design fees related to a proposed \$1.6 million building renovation. The proposed renovation would change the focus of the business and include a bakery and coffee shop. There is little doubt the renovation, if completed, would be a significant upgrade to the property and a potentially attractive option over the uncertain future of the site if the licenses are revoked.

The Administrative Law Judge, however, is not persuaded by Licensee's arguments. 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. Licensee knew for months of the escalating violence and drug use occurring on its licensed premises, yet it took no action until it faced the likelihood of having its licenses revoked.

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. The revocation of Licensee's cigarette/tobacco and gas licenses is warranted and amply supported by the record.

J. E. L.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of the Cigarette/Tobacco License Held by Moundsview Retail Inc. d/b/a Mounds Park Market for the Premises Located at 241 Earl Street in Saint Paul

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge Jessica A. Palmer-Denig for a hearing on November 3, 2022, at the Office of Administrative Hearings in St. Paul, Minnesota. The record closed on November 18, 2022, upon receipt of the parties' written closing arguments.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City) Department of Safety and Inspections (DSI). Derek Thooff, Thooff Law LLC, appeared on behalf of Moundsview Retail Inc. d/b/a Mounds Park Market (Licensee).

STATEMENT OF THE ISSUES

1. Has DSI established that Licensee violated St. Paul Legislative Code § 324.07(j) by selling, offering for sale, or otherwise distributing flavored tobacco products?
2. If so, may Licensee's Tobacco Shop License be revoked?

SUMMARY OF RECOMMENDATION

DSI has established that Licensee offered flavored tobacco products for sale in violation of the St. Paul Legislative Code. DSI also established that Licensee's license to sell tobacco products may be revoked pursuant to St. Paul Legislative Code § 324.10(b), as this is Licensee's second flavored tobacco violation within 24 months.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. The Parties

1. DSI is the agency within the City that licenses and regulates the sale of tobacco products in Saint Paul.¹ DSI provides educational materials to licensees, conducts inspections of businesses where tobacco products are sold, and investigates complaints against licensees.²

2. Licensee operates Mounds Park Market, which is a convenience store located at 241 Earl Street in Saint Paul.³ Akil Jahed is the owner of Licensee.⁴

3. Licensee holds a Tobacco Shop License issued by the City permitting it to sell tobacco products.⁵ The license was originally issued in 2017.⁶

4. Tobacco sales represent approximately 30 to 40 percent of Licensee's sales, with 60 to 70 percent of sales attributable to non-tobacco products, such as snacks and household supplies.⁷

II. 2019 Licensing Action

5. On June 27, 2019, DSI issued a Notice of Violation and Recommendation for Imposition of \$500 Matrix Penalty, notifying Licensee that it would seek adverse action against Licensee's license arising from a failed compliance check for flavored tobacco products on April 12, 2019.⁸ Specifically, DSI stated that tobacco licensees had been given prior notice that DSI would be conducting compliance checks, and that when an inspector visited Mounds Park Market, the inspector observed several different flavored tobacco products were being offered for sale.⁹

6. At a public hearing on October 2, 2019, Mr. Jahed appeared and explained that his distributor advised him that the products at issue were not flavored tobacco products, and he provided evidence that he returned the prohibited products to the distributor and obtained a refund.¹⁰

7. Based on the information before it, the City Council determined that the violation resulted from genuine confusion.¹¹ Therefore, the City Council stayed

¹ Testimony (Test.) of Eric Hudak.

² *Id.*; Test. of Joseph Voyda.

³ Exhibit (Ex.) 3 at 3-1; Test. of Akil Jahed.

⁴ Ex. 3 at 3-1; Test. of A. Jahed.

⁵ Test. of E. Hudak.

⁶ *Id.*; Ex. 5 at 5-1.

⁷ Test. of A. Jahed.

⁸ Ex. 15 at 15-2-15-4.

⁹ *Id.* at 15-2-15-3.

¹⁰ Ex. 15 at 15-14; Test. of A. Jahed.

¹¹ Ex. 15 at 15-14.

imposition of the \$500 penalty for one year provided that Licensee did not engage in violations that were the same or similar to the violation at issue.¹²

III. 2021 Licensing Action

8. On August 24, 2021, DSI issued to Licensee a Notice of Violation and Recommendation for Imposition of \$300 Administrative Penalty for Tobacco Youth Compliance Check Failure and \$500 Matrix Penalty for Selling Flavored Tobacco Products.¹³

9. DSI advised Licensee that the violation notice stemmed from a failed youth compliance check on July 13, 2021, in which Licensee sold cigarettes to an underage person and the clerk did not ask to see her identification.¹⁴ When the inspector went into Mounds Park Market to talk to the clerk, the inspector observed flavored tobacco products in plain sight.¹⁵ The inspector ultimately located over 30 different flavored tobacco products in Licensee's store, some of which were stocked in numerous flavors.¹⁶

10. Licensee paid the penalty amounts in full in September of 2021.¹⁷

IV. Amendment of the City's Tobacco Ordinance

11. In December 2021, the City Council amended St. Paul Legislative Code Chapter 324, which governs tobacco licensing.¹⁸

12. DSI provided written notice of the revisions to the tobacco ordinance to tobacco license holders.¹⁹

13. Among the changes DSI identified for license holders, the amendments increased the presumptive penalties for violations involving the sale of flavored tobacco products.²⁰

14. Under the amended ordinance, for a second appearance involving the display, possession, or multiple instances of the sale of flavored tobacco products, the presumptive penalty is revocation.²¹ A second violation within 24 months is considered to be a second appearance.²²

¹² *Id.* at 15-13–15-15.

¹³ Ex. 16 at 16-2.

¹⁴ *Id.* at 16-3, 16-7, 16-11; 16-13–16-14.

¹⁵ *Id.* at 16-14.

¹⁶ *Id.* at 16-14–16-15; 16-19–16-43.

¹⁷ *Id.* at 16-44; Test. of E. Hudak.

¹⁸ Ex. 12; Ex. 13 at 13-1.

¹⁹ Ex. 13, Ex. 14.

²⁰ Ex. 13 at 13-2; Ex. 14 at 14-2.

²¹ Ex. 14 at 14-2; St. Paul Legislative Code § 324.10(b).

²² Ex. 12-10; St. Paul Legislative Code § 324.10(d)(1).

V. The Current Violation Notice

15. On May 12, 2022, DSI Inspector Joseph Voyda conducted a complaint inspection at Mounds Park Market based on a complaint made to DSI that Licensee was selling flavored tobacco products.²³

16. Inspector Voyda spoke with the clerk on duty and conducted an inspection of the store.²⁴

17. Inspector Voyda found numerous flavored tobacco products, including products identified with fruit, honey, and liquor flavorings.²⁵ He discovered over 300 individual items qualifying as prohibited flavored tobacco products.²⁶ Approximately 60 percent of the tobacco products he found in the store were prohibited items.²⁷

18. Inspector Voyda found that some of the flavored tobacco items were being stored in boxes for other products like candy and apple sauce, under the clerk's counter, and in a tub or tote bin behind the counter.²⁸ Inspector Voyda believed that products were stored in this manner as an attempt at concealment.²⁹

19. When Inspector Voyda began the inspection, he was told that Mr. Jahed was in Iraq, but Mr. Jahed arrived while the inspection was underway.³⁰

20. Mr. Jahed traveled to Iraq in December 2021 to resolve issues related to a visa for his wife to travel to the United States.³¹ At the time he left, he believed that he would be in Iraq for a month or six weeks.³² Instead, he was in Iraq for six months due to issues he encountered in obtaining the visa and safety concerns arising from incidents of civil unrest in Iraq.³³

21. During Mr. Jahed's absence, he left the store in the keeping of his brother and several friends of their family.³⁴ In addition to Mr. Jahed's brother, two to three other

²³ Ex. 2 at 2-1, Ex. 17; Test. of Joseph Voyda.

²⁴ Ex. 2 at 2-1; Test. of J. Voyda.

²⁵ Ex. 2 at 2-2-2-6; Test. of J. Voyda.

²⁶ Ex. 2 at 2-2-2-6; Test. of J. Voyda.

²⁷ Test. of J. Voyda.

²⁸ Ex. 2 at 2-2-2-6; Test. of J. Voyda.

²⁹ Ex. 2-1; Test. of J. Voyda.

³⁰ Ex. 2 at 2-1; Test. of J. Voyda; Test. of A. Jahed.

³¹ Test. of A. Jahed.

³² *Id.*

³³ *Id.*

³⁴ *Id.* The family friends are not identified in the record. The employment status of these individuals related to Licensee's operations is somewhat unclear. The record suggests that these family friends may not have been employees of Licensee, but were present at Mounds Park Market as volunteers to assist Mr. Jahed, though they did exercise the ability to make product stocking decisions. *Id.*

individuals minded the store for him.³⁵ These individuals had experience running similar stores of their own.³⁶

22. Mr. Jahed did not give instructions to any employees or helpers about ordering tobacco products in his absence.³⁷ Instead, Mr. Jahed asked them to operate Mounds Park Market as they ran their own stores.³⁸ He assumed they would not order prohibited tobacco products.³⁹

23. During the time he was in Iraq, Mr. Jahed was unable to direct daily operations at Mounds Park Market or to make regular contact with those operating the store in his stead.⁴⁰

24. Mr. Jahed returned to Minnesota approximately 24 hours before Inspector Voyda's visit to Mounds Park Market.⁴¹ Between the time he returned to Minnesota and the inspection, Mr. Jahed had been at the Mounds Park Market only briefly to address issues related to a break in at the store.⁴²

25. When Inspector Voyda asked Mr. Jahed about prohibited items he found in the store, Mr. Jahed told Inspector Voyda that the products were for personal use.⁴³

26. On June 7, 2022, DSI issued a Notice of Violation and Request for Revocation of License (Notice of Revocation) notifying Licensee that it had determined a violation occurred and that it would pursue revocation of Licensee's license to sell tobacco products.⁴⁴ The Notice of Revocation advised Licensee that it could contest the proposed adverse action and request a hearing.⁴⁵

27. By letter dated June 15, 2022, Licensee notified DSI that it disputed the facts, contested the proposed adverse action, and requested a hearing.⁴⁶

28. Any Conclusion of Law more properly considered to be a Finding of Fact is incorporated herein.

29. Any portion of the Memorandum or fact contained therein that should be considered as a Finding of Fact is adopted as such.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Ex. 2 at 2-1; Test. of J. Voyda.

⁴⁴ Ex. 1.

⁴⁵ *Id.* at 1-3-1-4.

⁴⁶ Ex. 8.

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the City Council have authority to hear this matter pursuant to St. Paul Legislative Code § 310.05(c), Minn. Stat. § 14.55 (2022).
2. The hearing in this matter was conducted in accordance with St. Paul Legislative Code § 310.05 and the contested case procedures of Minn. Stat. §§ 14.57-.62 (2022).
3. DSI provided proper notice of the hearing and fulfilled all procedural requirements of rule and law.
4. DSI must show by a preponderance of the evidence that Licensee committed the alleged violation.⁴⁷
5. Under St. Paul Legislative Code § 324.07(j), no person may sell, offer for sale, or otherwise distribute any flavored tobacco products unless a specific exception identified in section 324.07(l) applies. No exception found in St. Paul Legislative Code § 324.07(l) applies here. Therefore, Licensee was prohibited from selling, offering for sale, or distributing flavored products.
6. DSI has established that Licensee violated St. Paul Legislative Code § 324.07(j) by offering prohibited flavored tobacco products for sale.
7. Because Licensee engaged in another flavored tobacco product violation within the preceding 24 months, the current violation constitutes Licensee's second appearance.⁴⁸
8. Under St. Paul Legislative Code § 324.10(b), the presumptive penalty for a second appearance related to the display, possession, or multiple incidents of sales of flavored tobacco products is revocation of Licensee's Tobacco Shop License.
9. DSI has shown that grounds exist for imposition of the matrix penalty of license revocation.
10. Any Finding of Fact more properly deemed a Conclusion of Law is incorporated herein.
11. Any portion of the accompanying Memorandum that is more properly considered to be a conclusion of law is adopted herein.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

⁴⁷ Minn. R. 1400.7300, subp. 5 (2021).

⁴⁸ St. Paul Legislative Code § 324.10(d)(1).

RECOMMENDATION

The City should find Licensee violated St. Paul Legislative Code § 324.07(j) and **REVOKE** Licensee's Tobacco Shop License.

Dated: January 11, 2023


JESSICA A. PALMER-DENIG
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Saint Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions of Law, and Recommendation. Pursuant to Saint Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact the St. Paul City Clerk, 310 City Hall, 15 W. Kellogg Blvd., Saint Paul, MN 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

The record establishes that Licensee offered flavored tobacco products for sale in violation of St. Paul Legislative Code § 324.07(j). The prohibited items were obviously flavored products, with packaging identifying flavors such as berries and cream, white peach sangria, and honey bourbon.⁴⁹ No valid argument can be made that the violation in this case resulted from confusion. Though Mr. Jahed informed Inspector Voyda that the prohibited products were for personal use, the sheer volume of flavored tobacco products on hand belies that assertion. Inspector Voyda found over 300 individual prohibited items and estimated that about 60 percent of all tobacco products in the store were prohibited products.⁵⁰

In response, Licensee offers explanations and seeks mitigation of the penalty to be imposed. Licensee asserts Mr. Jahed's ability to manage Licensee's compliance with tobacco regulations was compromised because he could not promptly return to

⁴⁹ Ex. 2-2-2-6.

⁵⁰ *Id.*; Test. of J. Voyda.

Minnesota from Iraq, and because he experienced difficulty communicating about the store while outside the country. Licensee contends that DSI employees who testified at the hearing have an incorrect understanding of the relevant ordinance. Finally, Licensee argues that revocation will result in irreparable harm to Mr. Jahed and his family. For these reasons, Licensee argues that suspension is the appropriate remedy, not revocation.

The record supports finding that Mr. Jahed was in Iraq until shortly before the inspection in May 2022. There is no evidence that Mr. Jahed personally ordered or authorized the sale of prohibited items found during the inspection. Yet, Mr. Jahed did not adequately provide for the direction and supervision of the store to ensure that Licensee operated lawfully in his absence. While he was in Iraq, his brother and several family friends operated the store.⁵¹ Mr. Jahed did not provide them with specific instructions about tobacco purchasing decisions or advise them not to offer flavored tobacco products while he was gone.⁵² Further, Licensee is a corporation and was required to operate within its license at all times, whether Mr. Jahed was present or not.

Licensee contends that Inspector Voyda misunderstands the flavored tobacco provision of the ordinance. This argument relates to testimony at the hearing regarding whether a violation could be found based on the presence of a prohibited item in the store, such as a flavored tobacco product accidentally left in a bathroom, even if the item was not offered for sale. Arguments about these hypothetical circumstances does not sway the outcome in this case because that is not the situation presented here. Instead, there were over 300 individual prohibited items stashed throughout the store, including on shelves, in snack food boxes, behind and under the clerk's counter, and in a tub on the floor. This was not a solitary incident or an accident.

Mr. Jahed testified that his family depends on Licensee's operations for financial support, and that tobacco products represent a substantial percentage of Licensee's sales.⁵³ Mr. Jahed believes that if Licensee's Tobacco Shop License is revoked the Mounds Park Market will be required to close.⁵⁴ The Administrative Law Judge does not doubt that loss of the license, and resulting financial consequences, will cause hardship for Mr. Jahed and his family. At the same time, the importance of Licensee's revenue to his family created a strong incentive for Mr. Jahed to actively manage Licensee in a manner that would have ensured lawful operation of the market, particularly after Licensee engaged in two prior flavored tobacco violations. As noted previously, Mr. Jahed did not take sufficient steps to ensure Licensee operated within the scope of its license.

Licensee engaged in a flavored tobacco violation in July 2021, making this case its second violation within 24 months. Under St. Paul Legislative Code § 324.10(d)(1), this case constitutes a second appearance. The presumptive matrix penalty for a

⁵¹ Test. of A. Jahed.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

second violation related to flavored tobacco products is revocation of the license.⁵⁵ In connection with recent amendments to the regulations related to tobacco licenses, the City Council expressed strong concerns about the use of tobacco products by young people, and the harmful impacts of smoking on Minnesota's youth.⁵⁶ The City Council provided that licensees holding a Tobacco Shop License are those accessible to patrons under the age of 21, and that these licensees are authorized to sell more limited products as a result of that broader access.⁵⁷ The imposition of enhanced penalties, including revocation resulting from a second appearance, is consistent with the gravity of these concerns.

The City Council may deviate from the presumptive penalty if it finds "substantial and compelling reasons" support a deviation.⁵⁸ The Administrative Law Judge respectfully recommends that no such circumstances are present here. Licensee engaged in three violations related to flavored tobacco products between 2019 and 2022. While the City Council found that the first violation resulted from Mr. Jahed's confusion, that is not a valid excuse for the subsequent violations. Further, Licensee's current violation and the 2021 violation are separated by only ten months, showing that Licensee engaged in another violation despite the recent imposition of a penalty. Finally, the violation here is substantial, given that Inspector Voyda found over 300 prohibited items and the majority of tobacco products in the store were in violation of the ordinance.

The Administrative Law Judge notes that the record also contains evidence showing that Inspector Voyda found tobacco materials during the inspection that did not contain a tax stamp, and DSI made arguments related to this issue during the hearing. DSI did not identify the tax stamp issue, or any facts related to this concern, as a basis for adverse action in the Notice of Revocation. DSI also did not plead any facts regarding the absence of a tax stamp or identify this as an issue for the Administrative Law Judge's decision in its hearing notice commencing this case.⁵⁹ Therefore, the Administrative Law Judge determines that issues related to the absence of a tax stamp are not properly before her. The Administrative Law Judge has not made findings on this point and has not relied on any evidence related to the absence of a tax stamp in making this recommendation.

The City Council should find that Licensee violated St. Paul Legislative Code § 324.07(j) by offering flavored tobacco products for sale. The City Council should impose the presumptive penalty and revoke Licensee's Tobacco Shop License.

J. P. D.

⁵⁵ St. Paul Legislative Code § 324.10(b).

⁵⁶ Ex. 12 at 12-1-12-2.

⁵⁷ *Id.* at 12-1. In contrast, a Tobacco Products Shop License is for specialized stores selling tobacco products that can only be entered by individuals who are over age 21. *Id.*; St. Paul Legislative Code § 324.03(17).

⁵⁸ St. Paul Legislative Code § 324.10(a).

⁵⁹ See Notice of Prehearing Telephone Conference (July 14, 2022).

RECEIVED

By: OAH on 7/27/2023 2:48 PM

DOUGLAS E. NEPP
ATTORNEY AT LAW

THOMAS A. HACKERT
ATTORNEY AT LAW

IN TOWN ON LAKE BUILDING
ONE WEST LAKE ST, SUITE 185
MINNEAPOLIS MN 55408

TEL : 612.871.3333
FAX: 612.874.0672



July 27, 2023

Judge Case
Office of Administrative Hearings
PO Box 64620
Saint Paul, MN 55164

Re: Amira Grocery d/b/a Winnipeg Grocery for the premises located at 864 Rice Street in Saint Paul - OAH Docket No. 71-6020-39197

Dear Judge Case:

I have been unable to find any reported cases dealing with the issue of whether a Licensee's responsibilities extend to a Sublessee. The two cases presented by Ms. Skarda discuss the actions of the Licensee himself in one case and the agents of the licensee in the other case. Neither case discusses the sublessee situation presented in the current case. Without specific case law, I believe the Court must turn to the canons of statutory construction. I have attached the cannons of statutory construction presented in Minnesota Statute 645.08. Cannon Number 1 directs:

"words and phrases are construed according to rules of grammar and according to their common and approved usage..."

The words enumerated in the St. Paul Legislative Code are, "clerk, employee, manager or agent of a licensee". Section 310.17. None of these terms are synonyms for Sublessee and none of the definitions of these terms refer to sublessee. The common and approved usage of the terms simply do not include sublessee. Therefore, the cannon of construction would direct that sublessee is not a person for whom the Licensee is responsible under Section 310.17.

I respectfully request the Court to consider the cannons of construction in this matter. I do not intend to file any further submissions.

Respectfully submitted,

A handwritten signature in cursive script that reads "Douglas E. Nepp".

Douglas E. Nepp

Cc: Therese Skarda

Enclosures

645.08 CANONS OF CONSTRUCTION.

In construing the statutes of this state, the following canons of interpretation are to govern, unless their observance would involve a construction inconsistent with the manifest intent of the legislature, or repugnant to the context of the statute:

(1) words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition;

(2) the singular includes the plural; and the plural, the singular; words of one gender include the other genders; words used in the past or present tense include the future;

(3) general words are construed to be restricted in their meaning by preceding particular words;

(4) words in a law conferring a joint authority upon three or more public officers or other persons are construed to confer authority upon a majority of such officers or persons; and

(5) a majority of the qualified members of any board or commission constitutes a quorum.

History: 1941 c 492 s 8; 1986 c 444

Sec. 310.17. Licensee's responsibility.

Any act or conduct by any clerk, employee, manager or agent of a licensee, or by any person providing entertainment or working for or on behalf of a licensee, whether compensated or not, which act or conduct takes place either on the licensed premises or in any parking lot or other area adjacent to (or under the lease or control of) the licensed premises, and which act or conduct violates any state or federal statutes or regulations, or any city ordinance, shall be considered to be and treated as the act or conduct of the licensee for the purpose of adverse action against all or any of the licenses held by such licensee. To the extent this section is in conflict with sections 409.14 and 410.09 of the Legislative Code, this section shall be controlling and prevail; but shall not otherwise amend, alter or affect such sections.

(Ord. No. 17629, § 1, 1-31-89)

RECEIVED

By: OAH on 7/27/2023 10:11 AM

OFFICE OF THE CITY ATTORNEY
LYNDESEY M. OLSON, CITY ATTORNEY



SAINT PAUL
CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

July 27, 2023

Barbara J. Case
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
Saint Paul, MN 55164-0620

RE: Cigarette/Tobacco license held by Amira Grocery d/b/a Winnipeg Grocery for the premises
Located at 864 Rice Street in Saint Paul
License ID #: 20210000879
OAH Docket No. 82-6020-39197

Judge Case:

On behalf of the City of Saint Paul I offer two cases that support the argument that a Licensee is responsible for the entire space within the Licensed Premises.

While I was unable to find a case that directly addressed a Licensee avoiding responsibility for the entire space within a Licensed Premise, both of these cases involved the illegal sales of prohibited products from within the Licensed Premises by an individual other than the Licensee.

Thank you for your consideration of this matter.

Sincerely,

Therese Skarda
Assistant City Attorney
License No: 0240989
(651) 266-8710

Cc: Douglas Nepp, Nepp & Hackert, LLC, In Town on the Lake Building, One West Lake Street
Suite 185, Minneapolis, MN 55408

Attachments: Findings of Fact, Conclusion of Law and Recommendation
(OAH Docket No. 60-6020-36320) – Judge LaFave (March 9, 2020)

Findings of Fact, Conclusion of Law and Recommendation
(OAH Docket No. 71-6020-38502) – Judge Palmer-Denig (January 11, 2023)

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

*The Saint Paul City Attorney's Office does not discriminate
based on race, color, national origin, religion, sex/gender, disability, sexual orientation, gender identity, age, or veteran status
in the delivery of services or employment practices.*

STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Julie Kraus, being first duly sworn, deposes and says that on the 27th day of July she served the attached **LETTER TO JUDGE BARBARA CASE WITH TWO (2) ATTACHED CASES** as follows:

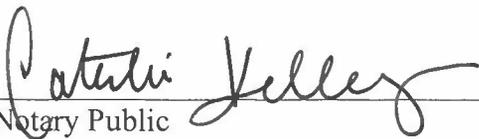
Barbara J. Case
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
Saint Paul, MN 55164-0620

Douglas Nepp
Nepp & Hackert, LLC
In Town on the Lake Building
One West Lake Street
Suite 185, Minneapolis, MN 55408

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.


Julie Kraus

Subscribed and sworn to before me
This 27TH day of July 2023


Notary Public



STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of 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 in St. Paul
License ID #: 20100000243

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came on for hearing on November 13, 14, and 19, 2019, before Administrative Law Judge James E. LaFave at the Office of Administrative Hearings in St. Paul, Minnesota. The record closed on January 10, 2020, with the filing of the parties' post-hearing briefs.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). James C. MacGillis, Trepanier, MacGillis, Battina, P.A., appeared on behalf of Midway University & Hamline, LLC d/b/a Midway Amoco BP (Midway Amoco or Licensee).

STATEMENT OF THE ISSUES

1. Did Licensee violate statutes, ordinances, or conditions related to its licensed activity?
2. If so, has the City demonstrated that substantial and compelling reasons exist to depart upward from its penalty matrix and to revoke Midway Amoco's licenses?

SUMMARY OF RECOMMENDATIONS

The City demonstrated by a preponderance of the evidence that Licensee violated Saint Paul ordinances related to its licensed activity. The City has also demonstrated that substantial compelling reasons exist to upwardly depart from the presumptive penalty and severe aggravating circumstances exist to revoke the licenses held by Midway Amoco.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. Background

1. Midway Amoco is a gas station and convenience store located at 1347 University Avenue in St. Paul.¹ Midway Amoco sits at the corner of University and Hamline Avenues across from the Green Line light rail Hamline Avenue Station.²

2. Khaled Aloul (Aloul) is the owner of Midway Amoco.³ Aloul purchased Midway Amoco in May of 2010.⁴

3. The City granted Midway Amoco Cigarette/Tobacco and Gas Station licenses on May 15, 2010, subject to the following conditions:

- (1) The licensee shall maintain working video surveillance cameras and recorders on the premises (both inside and outside) in accordance with Saint Paul Police Department (SPPD) recommendations. The number of cameras, their placement and their quality must be approved by SPPD. This equipment must be in operation during all business hours. Tapes/recordings must be maintained for a minimum of thirty (30) days, and copies of recordings shall be available to SPPD and /or the Department of Safety and Inspections (DSI) staff within twenty-four (24) hours of such a request.
- (2) The licensee agrees to provide adequate lighting to support the camera placement, and to provide sufficient visibility of the premises in accordance with SPPD recommendations.
- (3) Licensee agrees to provide and maintain adequate fencing to comply with applicable City Ordinances, and to prevent access from the alley to the property.
- (4) Licensee agrees to limit the car wash hours of operation between 6:00 a.m. and 10:00 p.m.
- (5) The licensee shall maintain a clean site, with all trash and litter picked up daily.⁵
- (6) Midway Amoco's franchise agreement with British Petroleum (BP) requires that business be open 24 hours a day, seven days a week.⁶

¹ Exhibit (Ex.) 5; Testimony (Test.) of Khaled Aloul.

² Test. of K. Aloul; Ex. 24-2.

³ Ex. 6; Test. of K. Aloul.

⁴ Test. of K. Aloul; Exs. 3, 4, 5, 6.

⁵ Ex. 4; Test. Of Eric Hudak.

⁶ Test. of K. Aloul.

4. Typically, Midway Amoco has only one employee on staff after 10:00 p.m.⁷
5. Eric Hudak is a Licensing Manager with the City's Department of Safety and Inspections (DSI).⁸
6. DSI conducts tobacco compliance checks of businesses licensed to sell tobacco products to ensure they are not selling such products to individuals under the legal purchasing age.⁹ In conducting compliance checks, DSI staff work with underage "decoys" who, at the direction of DSI investigators, attempt to purchase tobacco products from licensed businesses.¹⁰
7. Over the years, DSI has conducted tobacco compliance checks at Midway Amoco.¹¹ Since 2010, Licensee has passed most of its tobacco compliance checks.¹² However, it failed a tobacco compliance check in 2014 and again in 2017.¹³

II. Alleged Violations

8. Beginning in 2019, criminal activity, including aggravated assaults, shots fired, and narcotics trafficking, increased on or within a half-block of the Licensee's premises.¹⁴ The increase in noise disturbances, drug dealing, fighting, and gun-related activity at the Licensee's premises was particularly notable in the early morning hours of the weekend - Saturday and Sunday between 1:00 a.m. and 4:00 a.m.¹⁵
9. In early 2019, Licensee hired a private security company to provide security services at Midway Amoco on the weekends from 10:00 p.m. until 4:00 a.m.¹⁶ The company, Wrangler Protection Agency (Wrangler), provided two armed security guards to patrol and guard the interior and exterior premises of Midway Amoco. Among other services, the security guards watched for shoplifters and directed people to leave Licensee's lot if they were loitering or causing disturbances.¹⁷
10. On March 23, 2019, the owner of Wrangler informed Midway Amoco's manager, that it would no longer provide security services to Midway Amoco.¹⁸

⁷ *Id.*

⁸ Test. of E. Hudak.

⁹ Minn., St. Paul Legis. Code § 324.07(g). (In October of 2019, the St. Paul City Council voted to raise the legal tobacco purchasing age from 18 to 21 years.)

¹⁰ Test. of E. Hudak; Test. of Akbar Muhammad.

¹¹ Test. of E. Hudak; Ex. 20.

¹² Ex. 20.

¹³ *Id.*

¹⁴ Test. of Eric Vang-Sitcler; Ex. 23-6.

¹⁵ Test. of E. Vang-Sitcler; Test. of Carlos Mauricio.

¹⁶ Test. of Ala Asia; Ex. 106. (Typically, one security guard arrived at 10:00 p.m. and the other arrived at 1:30 a.m.)

¹⁷ Test. of A. Asia; Ex. 106.

¹⁸ Test. of A. Asia; Ex. 106.

11. Licensee did not hire another security company to provide security services after Wrangler terminated its services in March of 2019.¹⁹

12. From late April to July of 2019, the SPPD received more than 100 calls for service to Licensee's address.²⁰ Many of the calls concerned reports of disorderly conduct, fighting, and noise.²¹

13. Ala "Alex" Asia (Asia) is employed to manage the Midway Amoco and another gas station Aloul owns, located in New Brighton, Minnesota.²² Asia visits the Midway Amoco location approximately every other day.²³ Among his other managerial duties, Asia is the primary contact for surveillance video requests.²⁴ Midway Amoco receives requests for surveillance video from both the SPPD and DSI. Pursuant to the conditions of Midway Amoco's license, it must provide a copy of surveillance video within 24 hours of a request.²⁵

14. Asia can access and download video footage from the security cameras at Midway Amoco by inputting a specific username and code.²⁶ Aloul knows the code and has full access to surveillance video footage.²⁷

15. The SPPD requested copies of video footage from Midway Amoco approximately three times per week during 2019.²⁸ DSI requested video from Midway Amoco approximately once every two months in 2019.²⁹ Upon receiving a request for a copy of surveillance video, Asia copied video from the requested time frame onto a flash drive and left it at the gas station for retrieval by the SPPD or DSI.³⁰ Sometimes a police officer asked to review video footage at Midway Amoco. On those occasions, Asia entered the code to access the video and played it for the police officer in the store.³¹ Asia has also given the username and code to an employee of the SPPD's IT department named "Mark" so that he may view the video.³²

16. On or about April 27, 2019, a person reported to the SPPD that his wallet was stolen while he was at Midway Amoco.³³ By letter dated May 1, 2019, a DSI License Inspector requested that Licensee provide her with a copy of video footage from

¹⁹ Test. of A. Asia.

²⁰ Ex. 23. (The SPPD calls for service report lists 168 calls, but some are "proactive" police visits and some concern the intersection of Hamline and University and not necessarily Midway Amoco.)

²¹ *Id.*

²² Test. of A. Asia.

²³ *Id.*

²⁴ *Id.*

²⁵ Ex. 6.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*; Test. of K. Aloul; Exs. 104, 105.

²⁹ Test. of K. Aloul; Test. of A. Asia.

³⁰ Test. of A. Asia.

³¹ *Id.*

³² *Id.*

³³ Ex. 23-5.

12:01 a.m. to 1:00 a.m. on April 27, 2019.³⁴ The letter directed Licensee to provide the video no later than May 10, 2019.³⁵ However, the letter contained an incorrect mailing address for Midway Amoco.³⁶ As a result, Licensee never saw the letter and was unaware of the request.³⁷

17. On June 1, 2019, two people were arrested leaving Midway Amoco with a firearm.³⁸ When questioned by a police officer following the arrest, one of the individuals stated that she went to the Midway Amoco because the clerks there sell single cigarettes.³⁹

18. On June 12, 2019, DSI Inspector Akbar Muhammad conducted a tobacco age compliance check at Midway Amoco.⁴⁰ The minor decoy, working with Inspector Muhammad, entered Midway Amoco alone and purchased a pack of cigarettes for \$9.45 from the Licensee's clerk, Nagdy Ahmed (Ahmed), despite that the clerk requested to see and reviewed the minor's identification.⁴¹

19. After the minor exited Midway Amoco and gave the pack of cigarettes and change to Inspector Muhammad, he realized he failed to get a receipt.⁴² The minor re-entered the store with the pack of cigarettes and asked Ahmed for a receipt. At this point, Ahmed asked to see the minor's identification again. When Ahmed determined the minor was under the age of 18, he took back the pack of cigarettes.⁴³

20. Inspector Muhammad informed Ahmed that he had failed the tobacco compliance check.⁴⁴ Muhammad also took a photograph of Ahmed's identification next to the pack of Marlboro cigarettes Ahmed sold to the minor.⁴⁵

21. While inside the gas station, Inspector Muhammad observed Ahmed hand two single unpackaged cigarettes to an adult male.⁴⁶ Inspector Muhammad did not see any exchange of money for the cigarettes.⁴⁷

22. In the early morning hours of June 15, 2019, between 2:00 a.m. and 3:30 a.m., Saint Paul Police Sergeant Vang-Sitcler with the SPPD's Gun and Gang Unit

³⁴ Ex. 8.

³⁵ *Id.*

³⁶ *Id.* (The letter was addressed to Midway Amoco at 1337 University Ave. W. Midway Amoco is located at 1347 University Avenue West.)

³⁷ Test. of K. Aloul; Test. of A. Asia.

³⁸ Ex. 10.

³⁹ *Id.*

⁴⁰ Ex. 9-3.

⁴¹ Test. of A. Muhammad; Exs. 9-1, 9-3.

⁴² Test. of A. Muhammad; Ex. 9-3.

⁴³ Test. of A. Muhammad.

⁴⁴ *Id.*

⁴⁵ Ex. 9; Test. of A. Muhammad.

⁴⁶ Ex. 9-3; Test. of A. Muhamad.

⁴⁷ Ex. 9-3.

observed approximately 100 people present on Midway Amoco's lot.⁴⁸ Sergeant Vang-Sitcler saw people drinking alcohol, dancing, fighting, smoking what appeared to be marijuana, and engaging in hand-to-hand drug transactions.⁴⁹ Sergeant Vang-Sitcler recognized some people in the crowd as members of particular street gangs.⁵⁰ Sergeant Vang-Sitcler also observed approximately 20 to 30 cars parked in Midway Amoco's lot, making it difficult for any car to drive through the lot or up to the gas pumps.⁵¹

23. Sergeant Vang-Sitcler did not see Licensee's clerk make any effort to direct the crowd to leave the premises.⁵² There is no evidence that the clerk called 911 or the SPPD to report the disorderly crowd gathered at Midway Amoco.⁵³

24. On June 18, 2019 at approximately 1:00 p.m., DSI Licensing Manager Hudak hand-delivered a letter to Ahmed at Midway Amoco.⁵⁴ The letter requested a copy of surveillance video footage from June 12, 2019, from 2:30 p.m. to 4:30 p.m.⁵⁵ The letter stated that a DSI representative would return to the gas station on June 19, 2019, at 4:00 p.m. to pick up the video footage.⁵⁶ Aloul was copied on Hudak's letter, along with the SPPD and Saint Paul Assistant City Attorney Therese Skarda.⁵⁷

25. Hudak requested video from June 12, 2019, to determine whether Ahmed sold single cigarettes to a patron, as observed by DSI Inspector Muhammad.⁵⁸

26. Ahmed left Hudak's letter along with the rest of Licensee's mail at Midway Amoco for Asia to pick up.⁵⁹

27. Before leaving Midway Amoco on June 18, 2019, Hudak inspected the Licensee's exterior premises.⁶⁰ Hudak observed pieces of litter alongside a metal fence on one side of Licensee's property; full trash bags stacked next to a dumpster that was overflowing with cardboard boxes and garbage; and a wooden fence that was in disrepair with missing boards, including one board that was lying on the ground with nails protruding from it.⁶¹ Hudak took a series of photographs to document the conditions he observed.⁶²

⁴⁸ Test. of E. Vang-Sitcler; Exs. 10-3, 21.

⁴⁹ Exs. 10, 21.

⁵⁰ Test. of E. Vang-Sitcler.

⁵¹ Ex. 10-3.

⁵² Test. Of E. Vang-Sitcler.

⁵³ *Id.*

⁵⁴ Test. of E. Hudak; Exs. 13, 14.

⁵⁵ Ex. 13.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Test. of E. Hudak.

⁵⁹ Test. of A. Asia.

⁶⁰ Ex. 14.

⁶¹ Exs. 14-2 to 14-6.

⁶² Ex. 14-1 to 14-6.

28. Carlos Mauricio (Mauricio) works as a clerk/cashier at Midway Amoco.⁶³ He typically works 12-hour shifts from 8:00 p.m. to 8:00 a.m. every day.⁶⁴ In addition to his cashier duties, Mauricio is responsible for putting trash in the dumpster and picking up litter around Midway Amoco's exterior premises.⁶⁵ On occasion, his brother, Manuel, performs cleaning and maintenance services for Licensee.⁶⁶

29. Sometime in early or mid-June of 2019, a car ran into Licensee's wooden fence, damaging several boards and a post.⁶⁷

30. At approximately 3:00 a.m. on June 19, 2019, Asia received a call on his cell phone from the SPPD requesting that he come to Midway Amoco immediately.⁶⁸ The police informed Asia that someone was shot and killed in the Midway Amoco parking lot.⁶⁹ The police wanted Asia to come to the gas station to allow them access to video footage of the parking lot.⁷⁰

31. Asia arrived at Midway Amoco approximately 30 minutes later.⁷¹ Several police officers were waiting at the gas station when Asia arrived.⁷² Asia accessed the surveillance video and allowed the police officers to view the footage. At about 7:30 a.m. the same morning, Mark, the SPPD's IT employee, arrived.⁷³ Asia allowed Mark to log into the system and assisted Mark in downloading copies of video footage onto flash drives. At approximately 8:30 a.m., the police officers told Asia they did not need any more assistance from him and that he could leave.⁷⁴

32. Asia did not check the mail at the Midway Amoco before leaving at 8:30 a.m. on June 19, 2019. As a result, he did not see the letter that Hudak left at the station the day before.⁷⁵

33. Sometime later in the afternoon of June 19, 2019, Aloul called Asia and asked if Asia made a copy of the requested video.⁷⁶ Aloul was referring to the video Hudak requested in his letter of June 18, 2019. Asia replied "yes," assuming Aloul was referring to the video he provided to the SPPD a few hours earlier.⁷⁷

⁶³ Test. of C. Mauricio.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*; Test. of Manuel Mauricio.

⁶⁷ Test. of K. Aloul.

⁶⁸ Test. of A. Asia.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

34. Licensing Manager Hudak returned to Midway Amoco at approximately 4:00 p.m. on June 19, 2019, to collect the requested video.⁷⁸ Ahmed was the clerk on duty. Hudak asked Ahmed for the video. Ahmed called for Asia who came up to the counter and asked Hudak how he could help.⁷⁹ Hudak asked for the video he had requested, and Asia responded that he had given the video on flash drives to the SPPD.⁸⁰ Hudak showed Asia a copy of his letter and explained that he was with the DSI and not the SPPD. Hudak stated that he had dropped off the letter the day before.⁸¹

35. Asia then realized that Licensing Manager Hudak was referring to a different video request, and he told Hudak he was out of flash drives but would run up across the street to get one.⁸² Asia stated that it would take him five minutes to get a flash drive and he would download the video for Hudak then.⁸³ Asia explained to Hudak that he not seen the letter and had been busy helping the police with their video request in the early morning hours.⁸⁴

36. Hudak told Asia that Asia should already have the video copied and that his failure to do so was a violation of Midway Amoco's licensing conditions.⁸⁵ Hudak told Asia that he would not wait for him to get a flash drive and Hudak left the store.⁸⁶

37. Before departing Midway Amoco on June 19, 2019, Hudak again photographed the gas station's exterior premises.⁸⁷ The photographs depict the wooden fence board still lying on the ground by the fence and approximately seven trash bags of garbage stacked next to the dumpster.⁸⁸ The dumpster appears to have been emptied and was no longer overflowing with cardboard boxes and garbage.⁸⁹

38. After Hudak left Midway Amoco, Asia obtained a flash drive and downloaded the video from June 12, 2019, as Hudak Requested.⁹⁰ Asia left the flash drive with the video at Midway Amoco on June 19, 2019. No one from DSI ever came back to Midway Amoco to collect the requested video.⁹¹

39. Licensee's wooden fence was ultimately repaired sometime after June 19, 2019, and approximately ten days after it was damaged by the car.⁹²

⁷⁸ Ex. 14-1; Test. of E. Hudak.

⁷⁹ Test. of A. Asia.

⁸⁰ *Id.*; Test. of E. Hudak; Ex. 14-1.

⁸¹ Test. of E. Hudak; Test. of A. Asia; Ex. 14-1.

⁸² Test. of A. Asia.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*; Test. of E. Hudak.

⁸⁶ Test. of E. Hudak; Test. of A. Asia.

⁸⁷ Ex. 14-1, 14-7 to 14-12.

⁸⁸ Exs. 14-7 to 14-12.

⁸⁹ *Id.*

⁹⁰ Test of A. Asia.

⁹¹ *Id.*

⁹² Test. of K. Aloul; Test. of M. Mauricio.

40. On or about June 20, 2019, Aloul called Midway Amoco to confirm that the video Hudak requested had been copied.⁹³ Mauricio told Aloul that the copy had been made and was available to be picked up at the store.⁹⁴

41. In the early morning hours of June 22, 2019, several large groups of people gathered in Midway Amoco's lot talking loudly, yelling, playing music, and socializing.⁹⁵ Eventually several fights broke out between different groups of people.⁹⁶ A woman in the crowd recorded the fights on her cell phone and later posted the video stream on Facebook.⁹⁷ The recording shows separate groups of two and three individuals, both men and women, fighting and screaming. In one instance, assailants knocked a woman down on the ground, punched her repeatedly in the face, and pulled her hair.⁹⁸ The woman later appears, with her face bloodied, struggling to rise from the ground, and then again sitting on the sidewalk near the street.

42. On June 22, 2019, at approximately 2:00 a.m., the SPPD received a call reporting fighting at Midway Amoco.⁹⁹

43. On June 22, 2019, at approximately 2:15 a.m., Saint Paul Police Sergeant Rigo Aguirre was on routine patrol near Midway Amoco when he observed the large number of people and cars in the Licensee's lot. Some cars were parked by the gas pumps, while others were parked randomly in the lot. Groups of people were loudly talking and yelling. Sergeant Aguirre parked his squad car near the Hamline Avenue entrance. He activated the lights on his squad car and announced to the crowd that if they were not purchasing gas, they needed to leave the area immediately.¹⁰⁰

44. After Sergeant Aguirre activated the lights on his squad car, he noticed Licensee's clerk, Mauricio, lock the door to the gas station store.¹⁰¹ Mauricio was the only employee working at the Midway Amoco in the early morning hours of June 22, 2019.¹⁰²

45. It took approximately 15 minutes for the crowd to disperse from Midway Amoco's lot once Sergeant Aguirre arrived.¹⁰³ After the crowd left, Sergeant Aguirre observed two pairs of shoes and a woman's wig on the ground by the gas pumps, which he presumed was evidence of a physical brawl.¹⁰⁴

⁹³ Test. of K. Aloul.

⁹⁴ *Id.*

⁹⁵ Ex. 22.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Ex. 11-3.

¹⁰⁰ *Id.*; Test. of Rigo Aguirre.

¹⁰¹ Ex. 11-3.

¹⁰² Test. of R. Aguirre.

¹⁰³ *Id.*

¹⁰⁴ Ex. 11-3.

46. Sergeant Aguirre left Midway Amoco but returned approximately 30 minutes later to request video of the disturbance.¹⁰⁵ Prior to exiting his squad car to talk to Mauricio, Sergeant Aguirre activated his body-worn camera.¹⁰⁶

47. Sergeant Aguirre knocked on the door of Licensee's store and Mauricio unlocked it and let him in. Sergeant Aguirre informed Mauricio that he was officially requesting a copy of video for June 22, 2019 video from 2:00 a.m. to 3:30 a.m.¹⁰⁷ After requesting the video, Sergeant Aguirre spoke with Mauricio about the pattern of fighting and other disturbances at Midway Amoco and asked whether closing the store counter would limit incidents. Sergeant Aguirre requested to enter the clerk's counter area behind the glass. Sergeant Aguirre observed two open packages of menthol flavored cigarettes.¹⁰⁸ Sergeant Aguirre asked Mauricio about the open cigarette packages, and Mauricio stated that he sells single cigarettes for \$1 and single "Swisher Sweet" cigars for \$2.80.¹⁰⁹ Sergeant Aguirre also observed flavored tobacco products on the shelves behind the counter.¹¹⁰ The flavored tobacco products on Licensee's shelves included Newport menthol cigarettes, Marlboro menthol cigarettes, Backwoods Berry Flavor Cigars, Backwoods Russian Cream Flavor Cigars, Dutch Master Rum Fusion Cigars, and Dutch Master Berry Fusion Cigars.¹¹¹

48. Mauricio showed Sergeant Aguirre boxes of glass vials and a container of molded, cylinder steel wool fragments. Mauricio told Sergeant Aguirre that the glass vials cost about \$0.35 each and that he sells the vials with the steel wool pieces to customers for \$5 or \$6.¹¹²

49. Glass vials, like the ones sold at Midway Amoco, are known as "drug kits" because they are used commonly to smoke crack cocaine or methamphetamine (meth).¹¹³ When inserted into the glass vial, the steel wool acts as a filter.¹¹⁴

50. Mauricio told Sergeant Aguirre that on a typical Saturday night, he sells a full box of glass vials - about 36 units.¹¹⁵

51. On June 25, 26, 28 and 29, 2019, the SPPD received calls reporting fighting and disorderly conduct at Midway Amoco.¹¹⁶

¹⁰⁵ Ex. 11-3; Test. of R. Aguirre.

¹⁰⁶ Test. of R. Aguirre; Ex. 12.

¹⁰⁷ Ex. 11-3; Test. of R. Aguirre.

¹⁰⁸ Ex. 11-7 to 11-9.

¹⁰⁹ Ex. 11-3.

¹¹⁰ Test. of R. Aguirre; Exs. 11-5, 11-6.

¹¹¹ Test. of R. Aguirre; Exs. 11-5, 11-6.

¹¹² Test. of R. Aguirre; Ex. 11-3.

¹¹³ Test. of R. Aguirre; Ex. 11-3.

¹¹⁴ Test. of R. Aguirre.

¹¹⁵ Test. of R. Aguirre; Ex. 12.

¹¹⁶ Ex. 23-3.

52. On July 31, 2019, Asia contacted the SPPD to inquire about hiring a police officer to work off-duty at Midway Amoco on the weekends providing security services.¹¹⁷ Asia was informed a few days later that Licensee's request to hire off-duty police officers was denied.¹¹⁸

53. SPPD Senior Commander John Bandemer denied Licensee's request to hire an off-duty police officer to provide security at Midway Amoco. Commander Bandemer believed that Licensee's employees had been documented violating tobacco sales regulations and had not fully cooperated with the police by providing video footage.¹¹⁹ In addition, Commander Bandemer was concerned that, given the problems with unruly crowds gathering on the weekends at Midway Amoco, a sole police officer working security would be placed at risk.¹²⁰

III. Disciplinary Actions Related to Licensee

54. This matter is the second adverse action taken against Licensee's licenses within the past 12 months. On March 12, 2019, the City served Licensee with a Notice of Violation related to its possession of flavored tobacco products.¹²¹ The Minnesota Department of Revenue seized such products from Midway Amoco as contraband in September 2018.¹²² Licensee contested the violation, but failed to appear for the administrative hearing scheduled for July 16, 2019.¹²³ As a result, an administrative law judge found Licensee in default and deemed the allegations against it proven.¹²⁴

55. The City's penalty matrix provides that the presumptive penalty for a first-time violation of the legislative code relating to licensed activity is \$500.¹²⁵ On July 24, 2019, the Saint Paul City Council imposed a first appearance matrix penalty of \$500 against Licensee for possession of prohibited flavored tobacco products.¹²⁶

56. On July 26, 2019, the City served Licensee with a Notice of Violation and Recommendation for Upward Departure to Revocation (Notice of Revocation).¹²⁷ This is the notice at issue here. The City alleges Licensee violated city ordinances by:

- selling single cigarettes outside of their original packaging;

¹¹⁷ Test. of A. Asia; Ex. 107.

¹¹⁸ Test. of A. Asia; Ex. 108.

¹¹⁹ Test. of John Bandemer.

¹²⁰ *Id.*

¹²¹ Ex. 2-1.

¹²² Ex. 2-1, 19, 20. (Contraband products are those for which a licensee is unable to produce an invoice from a licensed seller.)

¹²³ Ex. 2-1.

¹²⁴ *Id.*; See *In re the Cigarette/Tobacco and Gas Station Licenses held by Midway University & Hamline, LLC d/b/a Midway Amoco*, No. 5-6020-36135, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION UPON DEFAULT (Minn. Office Admin. Hearings July 16, 2019).

¹²⁵ Saint Paul, Minn. Legis. Code § 310.05(m)(2).

¹²⁶ Ex. 2-1, 19, 20.

¹²⁷ Ex. 1.

- 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; and,
- permitting unsafe conduct or conditions that present a serious danger to the public health, safety or welfare.¹²⁸

57. The City also alleges that Midway Amoco violated its license conditions by failing to provide DSI with copies of surveillance video as requested, and by failing to maintain a clean site with adequate fencing.¹²⁹

58. All the alleged violations identified in the Notice of Revocation occurred between April and July of 2019.¹³⁰

59. Licensee admits to selling flavored tobacco products and operating a business in a manner that unreasonably annoys the comfort and repose of the public.¹³¹ Licensee contests the other alleged violations.

60. After receiving the Notice of Revocation, the Licensee stopped selling glass vials and began closing Midway Amoco on the weekend between approximately 1:00 a.m. and 4:00 a.m.¹³²

61. During the month of August 2019, the SPPD received additional reports of assaults and disorderly conduct at or near Midway Amoco.¹³³

IV. Licensee's Proposed Remodel

62. Aloul plans to extensively remodel Midway Amoco.¹³⁴ Aloul has spent over \$80,000 on architectural design and permit fees.¹³⁵ The architectural plans for the remodel were completed on July 9, 2019.¹³⁶ Aloul has had several meetings with City officials about the proposed remodel.¹³⁷ Aloul's plan involves tearing down the existing

¹²⁸ *Id.*

¹²⁹ Ex. 1-3, 1-4.

¹³⁰ Ex. 1.

¹³¹ Saint Paul, Minn. Legis. Code. §§ 324.07(f) and 310.06(b)(8).

¹³² Test. of K. Aloul; Test. of C. Mauricio; Test. Of A. Asia.

¹³³ Exs. 30-1 to 30-96.

¹³⁴ Test. of K. Aloul; Exs. 101, 102, 103.

¹³⁵ Test. of K. Aloul; Exs. 101, 102.

¹³⁶ Ex. 101.

¹³⁷ *Id.*

store and constructing a new 3,000 square foot building with a car wash, coffee shop, and bakery.¹³⁸ The estimated cost of construction is \$1.6 million.¹³⁹

63. On August 15, 2019, Aloul received an invoice from the City in the amount of \$35,650 for the building permit fee related to his proposed tear down and new construction at Midway Amoco.¹⁴⁰ Aloul is waiting for the outcome of this license disciplinary matter before he decides whether to move forward with his construction plans.¹⁴¹

V. Community Impacts

64. The Hamline Midway Coalition (HMC) is a neighborhood organization that advocates for residents and businesses located in the Hamline Midway neighborhood.¹⁴² HMC has a district council that meets monthly with the SPPD, residents, and city council members to discuss and address neighborhood concerns.¹⁴³ HMC has held numerous meeting with local residents and business owners regarding Midway Amoco.¹⁴⁴

65. Many residents have expressed concern about increasing crime and escalating violent disturbances occurring at Midway Amoco. Residents have informed members of HMC that they avoid walking or driving past Midway Amoco out of fear for their safety. Some residents are considering moving out of the neighborhood because of the negative impact Midway Amoco is having on their community. A long-time resident in her eighties indicated that she is moving to be near family in Arizona because her daughter fears for her safety living near Midway Amoco.¹⁴⁵

66. Although other business owners in the Hamline Midway area engage regularly with HMC's district council and attend HMC's meetings, Licensee has not communicated with HMC or attended its monthly meetings.¹⁴⁶ Kate Mudge, Executive Director of HMC, made several attempts to contact Aloul by telephone in 2019 to discuss the escalating problems at Midway Amoco, without success.¹⁴⁷

67. Within the last 12 months, HMC has received increased complaints from residents and other businesses in the neighborhood about fighting, aggressive panhandling, noise, drug use, public urination, trash, and shots fired at Midway Amoco.¹⁴⁸

¹³⁸ Test. of K. Aloul; Ex. 101.

¹³⁹ Ex. 102.

¹⁴⁰ Ex. 103.

¹⁴¹ Test. of K. Aloul.

¹⁴² Test. of Kate Mudge.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*; Test. of Dan Buck.

¹⁴⁶ Test. of K. Mudge.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

68. The nonprofit organization Project for Pride in Living (PPL) has a residential building located across the street from Midway Amoco.¹⁴⁹ Tenants who reside in the PPL building have voiced concerns about fighting at Midway Amoco spilling over to their building.¹⁵⁰ The PPL building has been hit by gun fire exchanged at or near Midway Amoco on at least three occasions.¹⁵¹ PPL has spent over \$20,000 to increase security by adding lighting and bullet-proof glass.¹⁵²

69. Sergeant Vang-Sitcler has had five or six conversations with residents of the Midway Hamline neighborhood who expressed fear for their safety and welfare due to the increase in fights and gun violence occurring on Licensee's premises.¹⁵³

70. Any finding of fact contained in the following Memorandum is hereby adopted as such.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction to consider this matter pursuant to Minn. Stat. § 14.55 (2018) and St. Paul Legislative Code §§ 310.05, .06 (2019).

2. The hearing in this matter was conducted in accordance with the St. Paul Legislative Code § 310.05 and the contested case procedures of Minn. Stat. §§ 14.57, .62 (2018).

3. The City provided proper notice of the hearing and complied with all relevant procedural requirements of ordinance, rule or law.

4. Because the City is proposing that disciplinary action be taken, it has the burden of proving by a preponderance of the evidence that adverse action is warranted against the licenses held by Midway Amoco.¹⁵⁴

5. Under the Saint Paul Legislative Code, the City Council may take adverse action against a City-issued license if the licensee violates a statute or ordinance related to the licensed activity, or if the licensee violates conditions placed on its license.¹⁵⁵

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Test. of E. Vang-Sitcler.

¹⁵⁴ Minn. R. 1400.7300, subp. 5 (2019).

¹⁵⁵ Saint Paul, Minn. Legis. Code §§ 310.05(m); 310.06(a), (b)(6)(a).

6. Saint Paul Legislative Code § 324.07(a) prohibits the sale of a cigarette outside of its original packaging containing health warnings satisfying the requirements of federal law. No cigarette shall be sold in packages of fewer than 20 cigarettes.

7. Saint Paul Legislative Code § 324.07(f) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored tobacco products.

8. For all times relevant to this matter, the Saint Paul Legislative Code § 324.07(g) and Minn. Stat. § 609.685 (2018) prohibit the furnishing or sale of tobacco to persons under the age of eighteen years.¹⁵⁶

9. Saint Paul Legislative Code § 310.06(b)(6)(c) supports adverse action when the licensee has engaged in or permitted a pattern or practice of conduct or failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.

10. Saint Paul Legislative Code § 310.06(b)(7) supports adverse action when the activities of the licensee in the licensed activity create a serious danger to the public health, safety, or welfare.

11. Saint Paul Legislative Code § 310.06(b)(8) supports adverse action when the way in which a licensed business is operated maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.

12. The penalty matrix of the Saint Paul Legislative Code includes presumptive penalties for particular code violations.¹⁵⁷

13. Saint Paul Legislative Code § 310.05(m) provides a matrix of penalties for first, second, third, and fourth appearances before the city council. For a first violation, the matrix penalty is a \$500 fine. For a second violation, the penalty is a \$1,000 fine. For a third violation, the penalty is a \$2,000 fine and a 10-day suspension. For a fourth violation, the penalty is revocation of the license.¹⁵⁸

14. Saint Paul Legislative Code § 310.05 (m) provides that the matrix penalties are presumed to be appropriate for every case, but also notes that the City Council may deviate in an individual case where the council finds substantial and compelling reasons making it more appropriate to do so. Multiple violations shall be grounds for departure from the presumptive penalties in the council's discretion.¹⁵⁹ If the City Council deviates,

¹⁵⁶ In October of 2019, the City of Saint Paul raised the legal age for purchasing tobacco products from 18 years to 21 years.

¹⁵⁷ Saint Paul, Minn. Legis. Code § 310.05(m).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at § 310.05(m)(ii).

it must provide written reasons why the penalty selected was more appropriate than the presumptive penalty.¹⁶⁰

15. The City demonstrated by a preponderance of the evidence that Midway Amoco violated Saint Paul Legislative Code §§ 324.07(a), 324.07(f), 324.07(g), 310.06(b)(6)(c), 310.06(b)(7), and 310.06(b)(8) as alleged.

16. The City failed to demonstrate by a preponderance of the evidence that Midway Amoco violated the conditions of its license by failing to provide requested surveillance video to DSI.

17. The City failed to demonstrate by a preponderance of the evidence that Midway Amoco violated the conditions of its license by failing to maintain a clean site with adequate fencing.

18. The City has shown substantial and compelling reasons to upwardly depart from the presumptive penalty and revoke Licensee's cigarette/tobacco and gas station licenses.

19. The attached Memorandum explains the reasons for these conclusions and is incorporated by reference.

Based on the Conclusions of Law, and for the reasons explained in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The St. Paul City Council should upwardly depart from the presumptive penalty and **REVOKE** Midway Amoco's licenses for the violations of law cited above.

Dated: March 9, 2020


JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared

¹⁶⁰ *Id.* at § 310.05(m); Ex. 10.

NOTICE

This report is a recommendation, not a final decision. The Saint Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions of Law, and Recommendation issued by the Administrative Law Judge. Pursuant to Saint Paul Legislative Code § 310.05, the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. The parties should contact Shari Moore, City Clerk, City of Saint Paul, 290 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, to find out the procedure for filing exceptions and presenting argument.

MEMORANDUM

I. Overview

Licensee has operated Midway Amoco for over nine years. Based on the record, the City did not have any significant concerns with the management of the business prior to late 2018. Beginning in early 2019, however, there was a substantial increase in criminal activity and calls for police service at and near the Licensee's premises, along with documented concerns about Licensee's ability and willingness to manage the business in a safe and law-abiding manner.

In July of 2019, the City cited Licensee with multiple violations of city ordinances and licensing conditions related to the operation of its business. Licensee admits to two violations – selling flavored tobacco products and operating the business in a manner that permits conditions to exist that unreasonably annoy the comfort or repose of the public. Licensee contests the remaining citations.

This is the second adverse action against Licensee within the past 12 months.¹⁶¹ Under the City's penalty matrix, the presumptive penalty for a second appearance is a \$1,000 fine.¹⁶² The City, however, seeks revocation of Midway Amoco's licenses, which is an upward departure of more than two steps on the penalty matrix. Licensee concedes an upward departure is warranted but maintains that the appropriate penalty is an upward departure to the third level of the penalty matrix, a \$2,000 penalty and a ten-day suspension.

II. Violations

Licensee's first licensing action, for selling flavored cigarettes, was finalized in July of 2019. That violation related to a November 2018 seizure of flavored tobacco products carried out by the Department of Revenue. This case is Licensee's second disciplinary action and concerns six alleged violations of city ordinances and two alleged violations of licensing conditions. Under the matrix used by the City, the presumptive penalty for a "second appearance" is a \$1,000 fine. However, the City seeks to upwardly depart from

¹⁶¹ See Ex 2.

¹⁶² Minn. St. Paul Legis. Code § 310.05(m).

the presumptive penalty and revoke Licensee's licenses based on substantial and compelling reasons.

The City maintains that it has provided sufficient compelling evidence to support revocation of Licensee's tobacco and gas station licenses. The City notes the close proximity between the violations at issue here and in the July 2019, violation related to the seizure of flavored tobacco products. And the City emphasizes that, under its Legislative Code, the occurrence of multiple violations shall be grounds for an upward departure at the Council's discretion.¹⁶³

The City established by a preponderance of the evidence that Licensee violated city ordinances by selling cigarettes to an underage individual, and by selling single cigarettes and flavored tobacco products. The body camera video taken by Sergeant Aguirre on June 22, 2019, shows numerous flavored tobacco products on Licensee's shelves despite that the City cited Licensee for selling flavored tobacco products just months before. Further, Licensee's clerk's conversation with Sergeant Aguirre leaves no doubt that Midway Amoco was selling single cigarettes and single "Swisher Sweet" cigars to patrons for \$1.00 and \$2.80, respectively. Additionally, the June 1, 2019, police report notes that an arrested individual stated she went to Midway Amoco to purchase single cigarettes, and DSI Investigator Muhammad's observed Licensee's clerk handing individual single cigarettes to a patron. This evidence is sufficient to support finding that the Licensee engaged in, or permitted a pattern of non-compliance with licensing regulations, from which an inference of lack of fitness may be drawn.

Sergeant Aguirre's body camera video also establishes that Licensee fostered or promoted illegal drug use by selling glass vials and steel wool, which are routinely used for smoking crack cocaine and meth. The sale of drug paraphernalia contributed to creating an environment that attracted gatherings of large groups that became unruly, disruptive, and dangerous. The City demonstrated that on several occasions in June and July of 2019, large groups of people gathered in Midway Amoco's parking lot and engaged in fighting, aggravated assaults, drug transactions, the exchange of firearms, and the discharge of weapons.

The City has shown that Licensee failed to manage the business appropriately. The business was routinely understaffed. Licensee failed to secure alternative security services after its private security firm terminated services to Midway Amoco in March of 2019. Licensee also did not close the store between 1:00 a.m. and 4:00 a.m. on the weekends. The record supports finding the Licensee failed to appropriately manage its business and permitted conditions on its premises, including loud, disruptive, and dangerous gatherings in the early morning hours, that unreasonably annoyed and endangered the safety, health, comfort or repose of the public.

The City failed to establish, however, that Licensee violated the conditions of its license related to the condition of the property. The photographs of litter and trash taken

¹⁶³ Saint Paul, Minn. Legis. Code § 310.05(m).

over one 27-hour period are insufficient to establish that Licensee failed to maintain a clean site in violation of condition #5. Moreover, given that a homicide had occurred on the premises hours earlier and Licensee's staff was busy assisting the police, it is possible the litter and trash removal was temporarily overlooked during that short window of time. Similarly, photographs of a fence in disrepair taken over one 27- hour period does not establish Licensee violated license condition #3. Instead, Licensee's employees persuasively testified that the wooden fence was repaired reasonably quickly after it was damaged by a car.

The City also did not establish that Licensee failed to provide DSI copies of requested surveillance video pursuant to its license conditions. DSI initially sent its April 2019 letter requesting video footage to an incorrect address. There is no evidence that the letter was ever delivered to Midway Amoco. Licensee's manager's confusion regarding Inspector Hudak's June 18, 2019 video request was understandable and excusable given that a shooting took place on the premises in the early morning hours of June 19, 2019. The SPPD called Licensee's manager, Alex Asia, to the gas station at 3:00 a.m. to provide access to video, and he remained there until 8:30 a.m. assisting the police officers. Given these circumstances, it is reasonable that Asia had not seen Licensing Manager Hudak's hand-delivered letter from the prior afternoon. Moreover, once Asia realized that Licensing Manager Hudak's request was separate from the SPPD's request hours earlier, he offered to immediately obtain a flash drive and make a copy of the requested video. Licensing Manager Hudak's unwillingness to wait 15 minutes for the video to be provided, and his decision to cite Licensee with a license condition violation, was unreasonably inflexible given the circumstances. The fact that the video was not ready at 4:00 p.m. on June 19, 2019, as requested, is at most a technical violation. Asia prepared a drive with the footage, which remained at Midway Amoco awaiting pickup, but Licensing Manager Hudak never returned for it or requested it again.

During the hearing, Licensee acknowledged that it violated the prohibition against selling flavored tobacco products. Licensee also admits it operated its business in a manner that unreasonably annoyed the comfort or repose of a considerable number of members of the public, particularly the surrounding neighbors and community. Licensee contests the other violations and argues that, by combining seven violations into one Notice of Revocation, it had no opportunity to take appropriate action and institute managerial changes to correct the problems. Nevertheless, Licensee asserts that it has instituted several changes at Midway Amoco to address the City's concerns. For example, beginning in late July of 2019, it stopped selling the glass vials identified as drug kits and it began closing the store in the early morning hours on the weekends.

III. Legal Standard for Upward Departure

The Saint Paul Legislative Code provides that the Council may deviate from the presumptive penalty in the matrix where it determines there are "substantial and compelling reasons" to do so.¹⁶⁴ The Code also provides that the occurrence of multiple

¹⁶⁴ Saint Paul, Minn. Legis. Code § 310.05(m).

violations shall be grounds for departure from the presumptive penalties at the Council's discretion.¹⁶⁵ Beyond that, the parties did not cite, and the Administrative Law Judge could not find, any law specially discussing the legal standard for an upward departure involving a municipal code penalty matrix.¹⁶⁶

The requirement that the 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.¹⁶⁷ While the Administrative Law Judge recognizes the significant differences between imposing a criminal sentence and imposing an administrative penalty for a municipal code violation, the concepts underpinning the legal standard of review are analogous and, therefore, instructive.

Minnesota courts have held that the presumptive sentence should only be exceeded if the enhanced penalty is deemed to be "more appropriate, reasonable or equitable than the presumptive [penalty]."¹⁶⁸ The decision maker should impose the presumptive penalty unless "'substantial and compelling circumstances' based on aggravating factors warrant and upward departure."¹⁶⁹ To properly impose a penalty that is an upward departure from the presumptive penalty in the sentencing guidelines, then, the decision maker must have a specific factual basis.¹⁷⁰ "Substantial and compelling circumstances" are "factual circumstances that distinguish the case, making it atypical."¹⁷¹

The Minnesota Supreme Court has also held that "generally in a case in which an upward departure in sentence length is justified, the upper limit will be double the presumptive sentence length."¹⁷² The Court wrote: "Only in cases of 'severe aggravating circumstances' may the district court impose a greater-than-double departure from the presumptive sentence. Such cases, we have stated, are 'extremely rare'"¹⁷³

Here, the City seeks to revoke the Licensee's licenses. Revocation is a greater-than-double upward departure from the presumptive \$1,000 fine for second violations provided in the penalty matrix. Therefore, following the guidance of Minnesota Supreme

¹⁶⁵ *Id.*

¹⁶⁶ The City cited *Bourbon Bar & Café Corp. v City of St. Paul*, 466 N.W.2d 438, 440 (Minn. Ct. App. 1991), a case involving a liquor license, for the proposition that the council has "broad discretion to determine the manner in which liquor licenses are issued, regulated, and revoked."

¹⁶⁷ Minn. Sent. Guidelines II.D (2019).

¹⁶⁸ *Dillion v. State*, 781 N.W.2d 588, 595 (Minn. Ct. App. 2010) (citing *State v. Bingham*, 406 N.W.2d 567, 570 (Minn. Ct. App. 1987).

¹⁶⁹ *Id.*

¹⁷⁰ Saint Paul, Minn. Legis. Code § 310.05(m)(ii).

¹⁷¹ *Dillion*, 781 N.W. 2d. at 595.

¹⁷² *State v. Evans*, 311 N.W.2d 481, 483 (Minn. 1981).

¹⁷³ *State v. Shattuck*, 704 N.W.2d 131, 140 (Minn. 2005) (citing *State v. Spain*, 590 N.W.2d 85, 89 (Minn. 1999).

Court, the City must show that severe aggravating and factually atypical circumstances warrant such an upward departure from the presumptive penalty.

IV. Penalty

The City has demonstrated that Licensee committed all the Code violations alleged. Licensee sold single cigarettes, sold flavored tobacco products, and sold tobacco products to an underaged individual. Licensee also engaged in a pattern of noncompliance with license regulations, operated the business in a manner that unreasonably annoys the comfort and repose of the public, and permitted unsafe conduct or conditions that present a serious danger to the public's health and safety.

The City has also demonstrated severe aggravating circumstances supporting a greater-than-double upward departure from the presumptive penalty. The police reports, videos, and testimony demonstrate an unwillingness or inability on the part of Licensee to operate the business in a safe and law-abiding manner. The events occurring on the licensed premises between April and August of 2019 are extremely troubling – gun fire, illicit drug transactions, large disruptive crowds gathering in the early morning hours, physical assaults, and ultimately a homicide. The evidence is also 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. The City amply showed that Licensee operated the business in a manner that permitted conditions that endanger public safety, comfort, and repose. The increasingly violent and disruptive activity occurring at Midway Amoco has had a significant impact on the surrounding community. The testimony from HMC regarding the genuine fear residents and business owners have expressed for their safety was persuasive.

It is within the Council's discretion to impose a penalty that is an upward departure from the presumptive penalty in the matrix., The Licensee concedes as much but contends that only an upward departure to the third appearance penalty is warranted.

Licensee argues that it cannot be held accountable for the illegal acts of others and it maintains that it too has been victimized by these lawless acts. Licensee also notes that it is making a good faith effort to improve the property and decrease criminal activity. To that end, Aloul emphasizes that he has spent over \$80,000 in permit and design fees related to a proposed \$1.6 million building renovation. The proposed renovation would change the focus of the business and include a bakery and coffee shop. There is little doubt the renovation, if completed, would be a significant upgrade to the property and a potentially attractive option over the uncertain future of the site if the licenses are revoked.

The Administrative Law Judge, however, is not persuaded by Licensee's arguments. 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. Licensee knew for months of the escalating violence and drug use occurring on its licensed premises, yet it took no action until it faced the likelihood of having its licenses revoked.

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. The revocation of Licensee's cigarette/tobacco and gas licenses is warranted and amply supported by the record.

J. E. L.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of the Cigarette/Tobacco License Held by Moundsvew Retail Inc. d/b/a Mounds Park Market for the Premises Located at 241 Earl Street in Saint Paul

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge Jessica A. Palmer-Denig for a hearing on November 3, 2022, at the Office of Administrative Hearings in St. Paul, Minnesota. The record closed on November 18, 2022, upon receipt of the parties' written closing arguments.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City) Department of Safety and Inspections (DSI). Derek Thooft, Thooft Law LLC, appeared on behalf of Moundsvew Retail Inc. d/b/a Mounds Park Market (Licensee).

STATEMENT OF THE ISSUES

1. Has DSI established that Licensee violated St. Paul Legislative Code § 324.07(j) by selling, offering for sale, or otherwise distributing flavored tobacco products?
2. If so, may Licensee's Tobacco Shop License be revoked?

SUMMARY OF RECOMMENDATION

DSI has established that Licensee offered flavored tobacco products for sale in violation of the St. Paul Legislative Code. DSI also established that Licensee's license to sell tobacco products may be revoked pursuant to St. Paul Legislative Code § 324.10(b), as this is Licensee's second flavored tobacco violation within 24 months.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. The Parties

1. DSI is the agency within the City that licenses and regulates the sale of tobacco products in Saint Paul.¹ DSI provides educational materials to licensees, conducts inspections of businesses where tobacco products are sold, and investigates complaints against licensees.²

2. Licensee operates Mounds Park Market, which is a convenience store located at 241 Earl Street in Saint Paul.³ Akil Jahed is the owner of Licensee.⁴

3. Licensee holds a Tobacco Shop License issued by the City permitting it to sell tobacco products.⁵ The license was originally issued in 2017.⁶

4. Tobacco sales represent approximately 30 to 40 percent of Licensee's sales, with 60 to 70 percent of sales attributable to non-tobacco products, such as snacks and household supplies.⁷

II. 2019 Licensing Action

5. On June 27, 2019, DSI issued a Notice of Violation and Recommendation for Imposition of \$500 Matrix Penalty, notifying Licensee that it would seek adverse action against Licensee's license arising from a failed compliance check for flavored tobacco products on April 12, 2019.⁸ Specifically, DSI stated that tobacco licensees had been given prior notice that DSI would be conducting compliance checks, and that when an inspector visited Mounds Park Market, the inspector observed several different flavored tobacco products were being offered for sale.⁹

6. At a public hearing on October 2, 2019, Mr. Jahed appeared and explained that his distributor advised him that the products at issue were not flavored tobacco products, and he provided evidence that he returned the prohibited products to the distributor and obtained a refund.¹⁰

7. Based on the information before it, the City Council determined that the violation resulted from genuine confusion.¹¹ Therefore, the City Council stayed

¹ Testimony (Test.) of Eric Hudak.

² *Id.*; Test. of Joseph Voyda.

³ Exhibit (Ex.) 3 at 3-1; Test. of Akil Jahed.

⁴ Ex. 3 at 3-1; Test. of A. Jahed.

⁵ Test. of E. Hudak.

⁶ *Id.*; Ex. 5 at 5-1.

⁷ Test. of A. Jahed.

⁸ Ex. 15 at 15-2-15-4.

⁹ *Id.* at 15-2-15-3.

¹⁰ Ex. 15 at 15-14; Test. of A. Jahed.

¹¹ Ex. 15 at 15-14.

imposition of the \$500 penalty for one year provided that Licensee did not engage in violations that were the same or similar to the violation at issue.¹²

III. 2021 Licensing Action

8. On August 24, 2021, DSI issued to Licensee a Notice of Violation and Recommendation for Imposition of \$300 Administrative Penalty for Tobacco Youth Compliance Check Failure and \$500 Matrix Penalty for Selling Flavored Tobacco Products.¹³

9. DSI advised Licensee that the violation notice stemmed from a failed youth compliance check on July 13, 2021, in which Licensee sold cigarettes to an underage person and the clerk did not ask to see her identification.¹⁴ When the inspector went into Mounds Park Market to talk to the clerk, the inspector observed flavored tobacco products in plain sight.¹⁵ The inspector ultimately located over 30 different flavored tobacco products in Licensee's store, some of which were stocked in numerous flavors.¹⁶

10. Licensee paid the penalty amounts in full in September of 2021.¹⁷

IV. Amendment of the City's Tobacco Ordinance

11. In December 2021, the City Council amended St. Paul Legislative Code Chapter 324, which governs tobacco licensing.¹⁸

12. DSI provided written notice of the revisions to the tobacco ordinance to tobacco license holders.¹⁹

13. Among the changes DSI identified for license holders, the amendments increased the presumptive penalties for violations involving the sale of flavored tobacco products.²⁰

14. Under the amended ordinance, for a second appearance involving the display, possession, or multiple instances of the sale of flavored tobacco products, the presumptive penalty is revocation.²¹ A second violation within 24 months is considered to be a second appearance.²²

¹² *Id.* at 15-13–15-15.

¹³ Ex. 16 at 16-2.

¹⁴ *Id.* at 16-3, 16-7, 16-11; 16-13–16-14.

¹⁵ *Id.* at 16-14.

¹⁶ *Id.* at 16-14–16-15; 16-19–16-43.

¹⁷ *Id.* at 16-44; Test. of E. Hudak.

¹⁸ Ex. 12; Ex. 13 at 13-1.

¹⁹ Ex. 13, Ex. 14.

²⁰ Ex. 13 at 13-2; Ex. 14 at 14-2.

²¹ Ex. 14 at 14-2; St. Paul Legislative Code § 324.10(b).

²² Ex. 12-10; St. Paul Legislative Code § 324.10(d)(1).

V. The Current Violation Notice

15. On May 12, 2022, DSI Inspector Joseph Voyda conducted a complaint inspection at Mounds Park Market based on a complaint made to DSI that Licensee was selling flavored tobacco products.²³

16. Inspector Voyda spoke with the clerk on duty and conducted an inspection of the store.²⁴

17. Inspector Voyda found numerous flavored tobacco products, including products identified with fruit, honey, and liquor flavorings.²⁵ He discovered over 300 individual items qualifying as prohibited flavored tobacco products.²⁶ Approximately 60 percent of the tobacco products he found in the store were prohibited items.²⁷

18. Inspector Voyda found that some of the flavored tobacco items were being stored in boxes for other products like candy and apple sauce, under the clerk's counter, and in a tub or tote bin behind the counter.²⁸ Inspector Voyda believed that products were stored in this manner as an attempt at concealment.²⁹

19. When Inspector Voyda began the inspection, he was told that Mr. Jahed was in Iraq, but Mr. Jahed arrived while the inspection was underway.³⁰

20. Mr. Jahed traveled to Iraq in December 2021 to resolve issues related to a visa for his wife to travel to the United States.³¹ At the time he left, he believed that he would be in Iraq for a month or six weeks.³² Instead, he was in Iraq for six months due to issues he encountered in obtaining the visa and safety concerns arising from incidents of civil unrest in Iraq.³³

21. During Mr. Jahed's absence, he left the store in the keeping of his brother and several friends of their family.³⁴ In addition to Mr. Jahed's brother, two to three other

²³ Ex. 2 at 2-1, Ex. 17; Test. of Joseph Voyda.

²⁴ Ex. 2 at 2-1; Test. of J. Voyda.

²⁵ Ex. 2 at 2-2-2-6; Test. of J. Voyda.

²⁶ Ex. 2 at 2-2-2-6; Test. of J. Voyda.

²⁷ Test. of J. Voyda.

²⁸ Ex. 2 at 2-2-2-6; Test. of J. Voyda.

²⁹ Ex. 2-1; Test. of J. Voyda.

³⁰ Ex. 2 at 2-1; Test. of J. Voyda; Test. of A. Jahed.

³¹ Test. of A. Jahed.

³² *Id.*

³³ *Id.*

³⁴ *Id.* The family friends are not identified in the record. The employment status of these individuals related to Licensee's operations is somewhat unclear. The record suggests that these family friends may not have been employees of Licensee, but were present at Mounds Park Market as volunteers to assist Mr. Jahed, though they did exercise the ability to make product stocking decisions. *Id.*

individuals minded the store for him.³⁵ These individuals had experience running similar stores of their own.³⁶

22. Mr. Jahed did not give instructions to any employees or helpers about ordering tobacco products in his absence.³⁷ Instead, Mr. Jahed asked them to operate Mounds Park Market as they ran their own stores.³⁸ He assumed they would not order prohibited tobacco products.³⁹

23. During the time he was in Iraq, Mr. Jahed was unable to direct daily operations at Mounds Park Market or to make regular contact with those operating the store in his stead.⁴⁰

24. Mr. Jahed returned to Minnesota approximately 24 hours before Inspector Voyda's visit to Mounds Park Market.⁴¹ Between the time he returned to Minnesota and the inspection, Mr. Jahed had been at the Mounds Park Market only briefly to address issues related to a break in at the store.⁴²

25. When Inspector Voyda asked Mr. Jahed about prohibited items he found in the store, Mr. Jahed told Inspector Voyda that the products were for personal use.⁴³

26. On June 7, 2022, DSI issued a Notice of Violation and Request for Revocation of License (Notice of Revocation) notifying Licensee that it had determined a violation occurred and that it would pursue revocation of Licensee's license to sell tobacco products.⁴⁴ The Notice of Revocation advised Licensee that it could contest the proposed adverse action and request a hearing.⁴⁵

27. By letter dated June 15, 2022, Licensee notified DSI that it disputed the facts, contested the proposed adverse action, and requested a hearing.⁴⁶

28. Any Conclusion of Law more properly considered to be a Finding of Fact is incorporated herein.

29. Any portion of the Memorandum or fact contained therein that should be considered as a Finding of Fact is adopted as such.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Ex. 2 at 2-1; Test. of J. Voyda.

⁴⁴ Ex. 1.

⁴⁵ *Id.* at 1-3-1-4.

⁴⁶ Ex. 8.

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the City Council have authority to hear this matter pursuant to St. Paul Legislative Code § 310.05(c), Minn. Stat. § 14.55 (2022).

2. The hearing in this matter was conducted in accordance with St. Paul Legislative Code § 310.05 and the contested case procedures of Minn. Stat. §§ 14.57-.62 (2022).

3. DSI provided proper notice of the hearing and fulfilled all procedural requirements of rule and law.

4. DSI must show by a preponderance of the evidence that Licensee committed the alleged violation.⁴⁷

5. Under St. Paul Legislative Code § 324.07(j), no person may sell, offer for sale, or otherwise distribute any flavored tobacco products unless a specific exception identified in section 324.07(l) applies. No exception found in St. Paul Legislative Code § 324.07(l) applies here. Therefore, Licensee was prohibited from selling, offering for sale, or distributing flavored products.

6. DSI has established that Licensee violated St. Paul Legislative Code § 324.07(j) by offering prohibited flavored tobacco products for sale.

7. Because Licensee engaged in another flavored tobacco product violation within the preceding 24 months, the current violation constitutes Licensee's second appearance.⁴⁸

8. Under St. Paul Legislative Code § 324.10(b), the presumptive penalty for a second appearance related to the display, possession, or multiple incidents of sales of flavored tobacco products is revocation of Licensee's Tobacco Shop License.

9. DSI has shown that grounds exist for imposition of the matrix penalty of license revocation.

10. Any Finding of Fact more properly deemed a Conclusion of Law is incorporated herein.

11. Any portion of the accompanying Memorandum that is more properly considered to be a conclusion of law is adopted herein.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

⁴⁷ Minn. R. 1400.7300, subp. 5 (2021).

⁴⁸ St. Paul Legislative Code § 324.10(d)(1).

RECOMMENDATION

The City should find Licensee violated St. Paul Legislative Code § 324.07(j) and **REVOKE** Licensee's Tobacco Shop License.

Dated: January 11, 2023


JESSICA A. PALMER-DENIG
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Saint Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions of Law, and Recommendation. Pursuant to Saint Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact the St. Paul City Clerk, 310 City Hall, 15 W. Kellogg Blvd., Saint Paul, MN 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

The record establishes that Licensee offered flavored tobacco products for sale in violation of St. Paul Legislative Code § 324.07(j). The prohibited items were obviously flavored products, with packaging identifying flavors such as berries and cream, white peach sangria, and honey bourbon.⁴⁹ No valid argument can be made that the violation in this case resulted from confusion. Though Mr. Jahed informed Inspector Voyda that the prohibited products were for personal use, the sheer volume of flavored tobacco products on hand belies that assertion. Inspector Voyda found over 300 individual prohibited items and estimated that about 60 percent of all tobacco products in the store were prohibited products.⁵⁰

In response, Licensee offers explanations and seeks mitigation of the penalty to be imposed. Licensee asserts Mr. Jahed's ability to manage Licensee's compliance with tobacco regulations was compromised because he could not promptly return to

⁴⁹ Ex. 2-2-2-6.

⁵⁰ *Id.*; Test. of J. Voyda.

Minnesota from Iraq, and because he experienced difficulty communicating about the store while outside the country. Licensee contends that DSI employees who testified at the hearing have an incorrect understanding of the relevant ordinance. Finally, Licensee argues that revocation will result in irreparable harm to Mr. Jahed and his family. For these reasons, Licensee argues that suspension is the appropriate remedy, not revocation.

The record supports finding that Mr. Jahed was in Iraq until shortly before the inspection in May 2022. There is no evidence that Mr. Jahed personally ordered or authorized the sale of prohibited items found during the inspection. Yet, Mr. Jahed did not adequately provide for the direction and supervision of the store to ensure that Licensee operated lawfully in his absence. While he was in Iraq, his brother and several family friends operated the store.⁵¹ Mr. Jahed did not provide them with specific instructions about tobacco purchasing decisions or advise them not to offer flavored tobacco products while he was gone.⁵² Further, Licensee is a corporation and was required to operate within its license at all times, whether Mr. Jahed was present or not.

Licensee contends that Inspector Voyda misunderstands the flavored tobacco provision of the ordinance. This argument relates to testimony at the hearing regarding whether a violation could be found based on the presence of a prohibited item in the store, such as a flavored tobacco product accidentally left in a bathroom, even if the item was not offered for sale. Arguments about these hypothetical circumstances does not sway the outcome in this case because that is not the situation presented here. Instead, there were over 300 individual prohibited items stashed throughout the store, including on shelves, in snack food boxes, behind and under the clerk's counter, and in a tub on the floor. This was not a solitary incident or an accident.

Mr. Jahed testified that his family depends on Licensee's operations for financial support, and that tobacco products represent a substantial percentage of Licensee's sales.⁵³ Mr. Jahed believes that if Licensee's Tobacco Shop License is revoked the Mounds Park Market will be required to close.⁵⁴ The Administrative Law Judge does not doubt that loss of the license, and resulting financial consequences, will cause hardship for Mr. Jahed and his family. At the same time, the importance of Licensee's revenue to his family created a strong incentive for Mr. Jahed to actively manage Licensee in a manner that would have ensured lawful operation of the market, particularly after Licensee engaged in two prior flavored tobacco violations. As noted previously, Mr. Jahed did not take sufficient steps to ensure Licensee operated within the scope of its license.

Licensee engaged in a flavored tobacco violation in July 2021, making this case its second violation within 24 months. Under St. Paul Legislative Code § 324.10(d)(1), this case constitutes a second appearance. The presumptive matrix penalty for a

⁵¹ Test. of A. Jahed.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

second violation related to flavored tobacco products is revocation of the license.⁵⁵ In connection with recent amendments to the regulations related to tobacco licenses, the City Council expressed strong concerns about the use of tobacco products by young people, and the harmful impacts of smoking on Minnesota's youth.⁵⁶ The City Council provided that licensees holding a Tobacco Shop License are those accessible to patrons under the age of 21, and that these licensees are authorized to sell more limited products as a result of that broader access.⁵⁷ The imposition of enhanced penalties, including revocation resulting from a second appearance, is consistent with the gravity of these concerns.

The City Council may deviate from the presumptive penalty if it finds "substantial and compelling reasons" support a deviation.⁵⁸ The Administrative Law Judge respectfully recommends that no such circumstances are present here. Licensee engaged in three violations related to flavored tobacco products between 2019 and 2022. While the City Council found that the first violation resulted from Mr. Jahed's confusion, that is not a valid excuse for the subsequent violations. Further, Licensee's current violation and the 2021 violation are separated by only ten months, showing that Licensee engaged in another violation despite the recent imposition of a penalty. Finally, the violation here is substantial, given that Inspector Voyda found over 300 prohibited items and the majority of tobacco products in the store were in violation of the ordinance.

The Administrative Law Judge notes that the record also contains evidence showing that Inspector Voyda found tobacco materials during the inspection that did not contain a tax stamp, and DSI made arguments related to this issue during the hearing. DSI did not identify the tax stamp issue, or any facts related to this concern, as a basis for adverse action in the Notice of Revocation. DSI also did not plead any facts regarding the absence of a tax stamp or identify this as an issue for the Administrative Law Judge's decision in its hearing notice commencing this case.⁵⁹ Therefore, the Administrative Law Judge determines that issues related to the absence of a tax stamp are not properly before her. The Administrative Law Judge has not made findings on this point and has not relied on any evidence related to the absence of a tax stamp in making this recommendation.

The City Council should find that Licensee violated St. Paul Legislative Code § 324.07(j) by offering flavored tobacco products for sale. The City Council should impose the presumptive penalty and revoke Licensee's Tobacco Shop License.

J. P. D.

⁵⁵ St. Paul Legislative Code § 324.10(b).

⁵⁶ Ex. 12 at 12-1-12-2.

⁵⁷ *Id.* at 12-1. In contrast, a Tobacco Products Shop License is for specialized stores selling tobacco products that can only be entered by individuals who are over age 21. *Id.*; St. Paul Legislative Code § 324.03(17).

⁵⁸ St. Paul Legislative Code § 324.10(a).

⁵⁹ See Notice of Prehearing Telephone Conference (July 14, 2022).

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of 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 in St. Paul
License ID #: 20100000243

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came on for hearing on November 13, 14, and 19, 2019, before Administrative Law Judge James E. LaFave at the Office of Administrative Hearings in St. Paul, Minnesota. The record closed on January 10, 2020, with the filing of the parties' post-hearing briefs.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). James C. MacGillis, Trepanier, MacGillis, Battina, P.A., appeared on behalf of Midway University & Hamline, LLC d/b/a Midway Amoco BP (Midway Amoco or Licensee).

STATEMENT OF THE ISSUES

1. Did Licensee violate statutes, ordinances, or conditions related to its licensed activity?
2. If so, has the City demonstrated that substantial and compelling reasons exist to depart upward from its penalty matrix and to revoke Midway Amoco's licenses?

SUMMARY OF RECOMMENDATIONS

The City demonstrated by a preponderance of the evidence that Licensee violated Saint Paul ordinances related to its licensed activity. The City has also demonstrated that substantial compelling reasons exist to upwardly depart from the presumptive penalty and severe aggravating circumstances exist to revoke the licenses held by Midway Amoco.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. Background

1. Midway Amoco is a gas station and convenience store located at 1347 University Avenue in St. Paul.¹ Midway Amoco sits at the corner of University and Hamline Avenues across from the Green Line light rail Hamline Avenue Station.²

2. Khaled Aloul (Aloul) is the owner of Midway Amoco.³ Aloul purchased Midway Amoco in May of 2010.⁴

3. The City granted Midway Amoco Cigarette/Tobacco and Gas Station licenses on May 15, 2010, subject to the following conditions:

- (1) The licensee shall maintain working video surveillance cameras and recorders on the premises (both inside and outside) in accordance with Saint Paul Police Department (SPPD) recommendations. The number of cameras, their placement and their quality must be approved by SPPD. This equipment must be in operation during all business hours. Tapes/recordings must be maintained for a minimum of thirty (30) days, and copies of recordings shall be available to SPPD and /or the Department of Safety and Inspections (DSI) staff within twenty-four (24) hours of such a request.
- (2) The licensee agrees to provide adequate lighting to support the camera placement, and to provide sufficient visibility of the premises in accordance with SPPD recommendations.
- (3) Licensee agrees to provide and maintain adequate fencing to comply with applicable City Ordinances, and to prevent access from the alley to the property.
- (4) Licensee agrees to limit the car wash hours of operation between 6:00 a.m. and 10:00 p.m.
- (5) The licensee shall maintain a clean site, with all trash and litter picked up daily.⁵
- (6) Midway Amoco's franchise agreement with British Petroleum (BP) requires that business be open 24 hours a day, seven days a week.⁶

¹ Exhibit (Ex.) 5; Testimony (Test.) of Khaled Aloul.

² Test. of K. Aloul; Ex. 24-2.

³ Ex. 6; Test. of K. Aloul.

⁴ Test. of K. Aloul; Exs. 3, 4, 5, 6.

⁵ Ex. 4: Test. Of Eric Hudak.

⁶ Test. of K. Aloul.

4. Typically, Midway Amoco has only one employee on staff after 10:00 p.m.⁷

5. Eric Hudak is a Licensing Manager with the City's Department of Safety and Inspections (DSI).⁸

6. DSI conducts tobacco compliance checks of businesses licensed to sell tobacco products to ensure they are not selling such products to individuals under the legal purchasing age.⁹ In conducting compliance checks, DSI staff work with underage "decoys" who, at the direction of DSI investigators, attempt to purchase tobacco products from licensed businesses.¹⁰

7. Over the years, DSI has conducted tobacco compliance checks at Midway Amoco.¹¹ Since 2010, Licensee has passed most of its tobacco compliance checks.¹² However, it failed a tobacco compliance check in 2014 and again in 2017.¹³

II. Alleged Violations

8. Beginning in 2019, criminal activity, including aggravated assaults, shots fired, and narcotics trafficking, increased on or within a half-block of the Licensee's premises.¹⁴ The increase in noise disturbances, drug dealing, fighting, and gun-related activity at the Licensee's premises was particularly notable in the early morning hours of the weekend - Saturday and Sunday between 1:00 a.m. and 4:00 a.m.¹⁵

9. In early 2019, Licensee hired a private security company to provide security services at Midway Amoco on the weekends from 10:00 p.m. until 4:00 a.m.¹⁶ The company, Wrangler Protection Agency (Wrangler), provided two armed security guards to patrol and guard the interior and exterior premises of Midway Amoco. Among other services, the security guards watched for shoplifters and directed people to leave Licensee's lot if they were loitering or causing disturbances.¹⁷

10. On March 23, 2019, the owner of Wrangler informed Midway Amoco's manager, that it would no longer provide security services to Midway Amoco.¹⁸

⁷ *Id.*

⁸ Test. of E. Hudak.

⁹ Minn., St. Paul Legis. Code § 324.07(g). (In October of 2019, the St. Paul City Council voted to raise the legal tobacco purchasing age from 18 to 21 years.)

¹⁰ Test. of E. Hudak; Test. of Akbar Muhammad.

¹¹ Test. of E. Hudak; Ex. 20.

¹² Ex. 20.

¹³ *Id.*

¹⁴ Test. of Eric Vang-Sitcler; Ex. 23-6.

¹⁵ Test. of E. Vang-Sitcler; Test. of Carlos Mauricio.

¹⁶ Test. of Ala Asia; Ex. 106. (Typically, one security guard arrived at 10:00 p.m. and the other arrived at 1:30 a.m.)

¹⁷ Test. of A. Asia; Ex. 106.

¹⁸ Test. of A. Asia; Ex. 106.

11. Licensee did not hire another security company to provide security services after Wrangler terminated its services in March of 2019.¹⁹

12. From late April to July of 2019, the SPPD received more than 100 calls for service to Licensee's address.²⁰ Many of the calls concerned reports of disorderly conduct, fighting, and noise.²¹

13. Ala "Alex" Asia (Asia) is employed to manage the Midway Amoco and another gas station Aloul owns, located in New Brighton, Minnesota.²² Asia visits the Midway Amoco location approximately every other day.²³ Among his other managerial duties, Asia is the primary contact for surveillance video requests.²⁴ Midway Amoco receives requests for surveillance video from both the SPPD and DSI. Pursuant to the conditions of Midway Amoco's license, it must provide a copy of surveillance video within 24 hours of a request.²⁵

14. Asia can access and download video footage from the security cameras at Midway Amoco by inputting a specific username and code.²⁶ Aloul knows the code and has full access to surveillance video footage.²⁷

15. The SPPD requested copies of video footage from Midway Amoco approximately three times per week during 2019.²⁸ DSI requested video from Midway Amoco approximately once every two months in 2019.²⁹ Upon receiving a request for a copy of surveillance video, Asia copied video from the requested time frame onto a flash drive and left it at the gas station for retrieval by the SPPD or DSI.³⁰ Sometimes a police officer asked to review video footage at Midway Amoco. On those occasions, Asia entered the code to access the video and played it for the police officer in the store.³¹ Asia has also given the username and code to an employee of the SPPD's IT department named "Mark" so that he may view the video.³²

16. On or about April 27, 2019, a person reported to the SPPD that his wallet was stolen while he was at Midway Amoco.³³ By letter dated May 1, 2019, a DSI License Inspector requested that Licensee provide her with a copy of video footage from

¹⁹ Test. of A. Asia.

²⁰ Ex. 23. (The SPPD calls for service report lists 168 calls, but some are "proactive" police visits and some concern the intersection of Hamline and University and not necessarily Midway Amoco.)

²¹ *Id.*

²² Test. of A. Asia.

²³ *Id.*

²⁴ *Id.*

²⁵ Ex. 6.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*; Test. of K. Aloul; Exs. 104, 105.

²⁹ Test. of K. Aloul; Test. of A. Asia.

³⁰ Test. of A. Asia.

³¹ *Id.*

³² *Id.*

³³ Ex. 23-5.

12:01 a.m. to 1:00 a.m. on April 27, 2019.³⁴ The letter directed Licensee to provide the video no later than May 10, 2019.³⁵ However, the letter contained an incorrect mailing address for Midway Amoco.³⁶ As a result, Licensee never saw the letter and was unaware of the request.³⁷

17. On June 1, 2019, two people were arrested leaving Midway Amoco with a firearm.³⁸ When questioned by a police officer following the arrest, one of the individuals stated that she went to the Midway Amoco because the clerks there sell single cigarettes.³⁹

18. On June 12, 2019, DSI Inspector Akbar Muhammad conducted a tobacco age compliance check at Midway Amoco.⁴⁰ The minor decoy, working with Inspector Muhammad, entered Midway Amoco alone and purchased a pack of cigarettes for \$9.45 from the Licensee's clerk, Nagdy Ahmed (Ahmed), despite that the clerk requested to see and reviewed the minor's identification.⁴¹

19. After the minor exited Midway Amoco and gave the pack of cigarettes and change to Inspector Muhammad, he realized he failed to get a receipt.⁴² The minor re-entered the store with the pack of cigarettes and asked Ahmed for a receipt. At this point, Ahmed asked to see the minor's identification again. When Ahmed determined the minor was under the age of 18, he took back the pack of cigarettes.⁴³

20. Inspector Muhammad informed Ahmed that he had failed the tobacco compliance check.⁴⁴ Muhammad also took a photograph of Ahmed's identification next to the pack of Marlboro cigarettes Ahmed sold to the minor.⁴⁵

21. While inside the gas station, Inspector Muhammad observed Ahmed hand two single unpackaged cigarettes to an adult male.⁴⁶ Inspector Muhammad did not see any exchange of money for the cigarettes.⁴⁷

22. In the early morning hours of June 15, 2019, between 2:00 a.m. and 3:30 a.m., Saint Paul Police Sergeant Vang-Sitcler with the SPPD's Gun and Gang Unit

³⁴ Ex. 8.

³⁵ *Id.*

³⁶ *Id.* (The letter was addressed to Midway Amoco at 1337 University Ave. W. Midway Amoco is located at 1347 University Avenue West.)

³⁷ Test. of K. Aloul; Test. of A. Asia.

³⁸ Ex. 10.

³⁹ *Id.*

⁴⁰ Ex. 9-3.

⁴¹ Test. of A. Muhammad; Exs. 9-1, 9-3.

⁴² Test. of A. Muhammad; Ex. 9-3.

⁴³ Test. of A. Muhammad.

⁴⁴ *Id.*

⁴⁵ Ex. 9; Test. of A. Muhammad.

⁴⁶ Ex. 9-3; Test. of A. Muhamad.

⁴⁷ Ex. 9-3.

observed approximately 100 people present on Midway Amoco's lot.⁴⁸ Sergeant Vang-Sitcler saw people drinking alcohol, dancing, fighting, smoking what appeared to be marijuana, and engaging in hand-to-hand drug transactions.⁴⁹ Sergeant Vang-Sitcler recognized some people in the crowd as members of particular street gangs.⁵⁰ Sergeant Vang-Sitcler also observed approximately 20 to 30 cars parked in Midway Amoco's lot, making it difficult for any car to drive through the lot or up to the gas pumps.⁵¹

23. Sergeant Vang-Sitcler did not see Licensee's clerk make any effort to direct the crowd to leave the premises.⁵² There is no evidence that the clerk called 911 or the SPPD to report the disorderly crowd gathered at Midway Amoco.⁵³

24. On June 18, 2019 at approximately 1:00 p.m., DSI Licensing Manager Hudak hand-delivered a letter to Ahmed at Midway Amoco.⁵⁴ The letter requested a copy of surveillance video footage from June 12, 2019, from 2:30 p.m. to 4:30 p.m.⁵⁵ The letter stated that a DSI representative would return to the gas station on June 19, 2019, at 4:00 p.m. to pick up the video footage.⁵⁶ Aloul was copied on Hudak's letter, along with the SPPD and Saint Paul Assistant City Attorney Therese Skarda.⁵⁷

25. Hudak requested video from June 12, 2019, to determine whether Ahmed sold single cigarettes to a patron, as observed by DSI Inspector Muhammad.⁵⁸

26. Ahmed left Hudak's letter along with the rest of Licensee's mail at Midway Amoco for Asia to pick up.⁵⁹

27. Before leaving Midway Amoco on June 18, 2019, Hudak inspected the Licensee's exterior premises.⁶⁰ Hudak observed pieces of litter alongside a metal fence on one side of Licensee's property; full trash bags stacked next to a dumpster that was overflowing with cardboard boxes and garbage; and a wooden fence that was in disrepair with missing boards, including one board that was lying on the ground with nails protruding from it.⁶¹ Hudak took a series of photographs to document the conditions he observed.⁶²

⁴⁸ Test. of E. Vang-Sitcler; Exs. 10-3, 21.

⁴⁹ Exs. 10, 21.

⁵⁰ Test. of E. Vang-Sitcler.

⁵¹ Ex. 10-3.

⁵² Test. Of E. Vang-Sitcler.

⁵³ *Id.*

⁵⁴ Test. of E. Hudak; Exs. 13, 14.

⁵⁵ Ex. 13.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Test. of E. Hudak.

⁵⁹ Test. of A. Asia.

⁶⁰ Ex. 14.

⁶¹ Exs. 14-2 to 14-6.

⁶² Ex. 14-1 to 14-6.

28. Carlos Mauricio (Mauricio) works as a clerk/cashier at Midway Amoco.⁶³ He typically works 12-hour shifts from 8:00 p.m. to 8:00 a.m. every day.⁶⁴ In addition to his cashier duties, Mauricio is responsible for putting trash in the dumpster and picking up litter around Midway Amoco's exterior premises.⁶⁵ On occasion, his brother, Manuel, performs cleaning and maintenance services for Licensee.⁶⁶

29. Sometime in early or mid-June of 2019, a car ran into Licensee's wooden fence, damaging several boards and a post.⁶⁷

30. At approximately 3:00 a.m. on June 19, 2019, Asia received a call on his cell phone from the SPPD requesting that he come to Midway Amoco immediately.⁶⁸ The police informed Asia that someone was shot and killed in the Midway Amoco parking lot.⁶⁹ The police wanted Asia to come to the gas station to allow them access to video footage of the parking lot.⁷⁰

31. Asia arrived at Midway Amoco approximately 30 minutes later.⁷¹ Several police officers were waiting at the gas station when Asia arrived.⁷² Asia accessed the surveillance video and allowed the police officers to view the footage. At about 7:30 a.m. the same morning, Mark, the SPPD's IT employee, arrived.⁷³ Asia allowed Mark to log into the system and assisted Mark in downloading copies of video footage onto flash drives. At approximately 8:30 a.m., the police officers told Asia they did not need any more assistance from him and that he could leave.⁷⁴

32. Asia did not check the mail at the Midway Amoco before leaving at 8:30 a.m. on June 19, 2019. As a result, he did not see the letter that Hudak left at the station the day before.⁷⁵

33. Sometime later in the afternoon of June 19, 2019, Aloul called Asia and asked if Asia made a copy of the requested video.⁷⁶ Aloul was referring to the video Hudak requested in his letter of June 18, 2019. Asia replied "yes," assuming Aloul was referring to the video he provided to the SPPD a few hours earlier.⁷⁷

⁶³ Test. of C. Mauricio.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*; Test. of Manuel Mauricio.

⁶⁷ Test. of K. Aloul.

⁶⁸ Test. of A. Asia.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

34. Licensing Manager Hudak returned to Midway Amoco at approximately 4:00 p.m. on June 19, 2019, to collect the requested video.⁷⁸ Ahmed was the clerk on duty. Hudak asked Ahmed for the video. Ahmed called for Asia who came up to the counter and asked Hudak how he could help.⁷⁹ Hudak asked for the video he had requested, and Asia responded that he had given the video on flash drives to the SPPD.⁸⁰ Hudak showed Asia a copy of his letter and explained that he was with the DSI and not the SPPD. Hudak stated that he had dropped off the letter the day before.⁸¹

35. Asia then realized that Licensing Manager Hudak was referring to a different video request, and he told Hudak he was out of flash drives but would run up across the street to get one.⁸² Asia stated that it would take him five minutes to get a flash drive and he would download the video for Hudak then.⁸³ Asia explained to Hudak that he not seen the letter and had been busy helping the police with their video request in the early morning hours.⁸⁴

36. Hudak told Asia that Asia should already have the video copied and that his failure to do so was a violation of Midway Amoco's licensing conditions.⁸⁵ Hudak told Asia that he would not wait for him to get a flash drive and Hudak left the store.⁸⁶

37. Before departing Midway Amoco on June 19, 2019, Hudak again photographed the gas station's exterior premises.⁸⁷ The photographs depict the wooden fence board still lying on the ground by the fence and approximately seven trash bags of garbage stacked next to the dumpster.⁸⁸ The dumpster appears to have been emptied and was no longer overflowing with cardboard boxes and garbage.⁸⁹

38. After Hudak left Midway Amoco, Asia obtained a flash drive and downloaded the video from June 12, 2019, as Hudak Requested.⁹⁰ Asia left the flash drive with the video at Midway Amoco on June 19, 2019. No one from DSI ever came back to Midway Amoco to collect the requested video.⁹¹

39. Licensee's wooden fence was ultimately repaired sometime after June 19, 2019, and approximately ten days after it was damaged by the car.⁹²

⁷⁸ Ex. 14-1; Test. of E. Hudak.

⁷⁹ Test. of A. Asia.

⁸⁰ *Id.*; Test. of E. Hudak; Ex. 14-1.

⁸¹ Test. of E. Hudak; Test. of A. Asia; Ex. 14-1.

⁸² Test. of A. Asia.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*; Test. of E. Hudak.

⁸⁶ Test. of E. Hudak; Test. of A. Asia.

⁸⁷ Ex. 14-1, 14-7 to 14-12.

⁸⁸ Exs. 14-7 to 14-12.

⁸⁹ *Id.*

⁹⁰ Test of A. Asia.

⁹¹ *Id.*

⁹² Test. of K. Aloul; Test. of M. Mauricio.

40. On or about June 20, 2019, Aloul called Midway Amoco to confirm that the video Hudak requested had been copied.⁹³ Mauricio told Aloul that the copy had been made and was available to be picked up at the store.⁹⁴

41. In the early morning hours of June 22, 2019, several large groups of people gathered in Midway Amoco's lot talking loudly, yelling, playing music, and socializing.⁹⁵ Eventually several fights broke out between different groups of people.⁹⁶ A woman in the crowd recorded the fights on her cell phone and later posted the video stream on Facebook.⁹⁷ The recording shows separate groups of two and three individuals, both men and women, fighting and screaming. In one instance, assailants knocked a woman down on the ground, punched her repeatedly in the face, and pulled her hair.⁹⁸ The woman later appears, with her face bloodied, struggling to rise from the ground, and then again sitting on the sidewalk near the street.

42. On June 22, 2019, at approximately 2:00 a.m., the SPPD received a call reporting fighting at Midway Amoco.⁹⁹

43. On June 22, 2019, at approximately 2:15 a.m., Saint Paul Police Sergeant Rigo Aguirre was on routine patrol near Midway Amoco when he observed the large number of people and cars in the Licensee's lot. Some cars were parked by the gas pumps, while others were parked randomly in the lot. Groups of people were loudly talking and yelling. Sergeant Aguirre parked his squad car near the Hamline Avenue entrance. He activated the lights on his squad car and announced to the crowd that if they were not purchasing gas, they needed to leave the area immediately.¹⁰⁰

44. After Sergeant Aguirre activated the lights on his squad car, he noticed Licensee's clerk, Mauricio, lock the door to the gas station store.¹⁰¹ Mauricio was the only employee working at the Midway Amoco in the early morning hours of June 22, 2019.¹⁰²

45. It took approximately 15 minutes for the crowd to disperse from Midway Amoco's lot once Sergeant Aguirre arrived.¹⁰³ After the crowd left, Sergeant Aguirre observed two pairs of shoes and a woman's wig on the ground by the gas pumps, which he presumed was evidence of a physical brawl.¹⁰⁴

⁹³ Test. of K. Aloul.

⁹⁴ *Id.*

⁹⁵ Ex. 22.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Ex. 11-3.

¹⁰⁰ *Id.*; Test. of Rigo Aguirre.

¹⁰¹ Ex. 11-3.

¹⁰² Test. of R. Aguirre.

¹⁰³ *Id.*

¹⁰⁴ Ex. 11-3.

46. Sergeant Aguirre left Midway Amoco but returned approximately 30 minutes later to request video of the disturbance.¹⁰⁵ Prior to exiting his squad car to talk to Mauricio, Sergeant Aguirre activated his body-worn camera.¹⁰⁶

47. Sergeant Aguirre knocked on the door of Licensee's store and Mauricio unlocked it and let him in. Sergeant Aguirre informed Mauricio that he was officially requesting a copy of video for June 22, 2019 video from 2:00 a.m. to 3:30 a.m.¹⁰⁷ After requesting the video, Sergeant Aguirre spoke with Mauricio about the pattern of fighting and other disturbances at Midway Amoco and asked whether closing the store counter would limit incidents. Sergeant Aguirre requested to enter the clerk's counter area behind the glass. Sergeant Aguirre observed two open packages of menthol flavored cigarettes.¹⁰⁸ Sergeant Aguirre asked Mauricio about the open cigarette packages, and Mauricio stated that he sells single cigarettes for \$1 and single "Swisher Sweet" cigars for \$2.80.¹⁰⁹ Sergeant Aguirre also observed flavored tobacco products on the shelves behind the counter.¹¹⁰ The flavored tobacco products on Licensee's shelves included Newport menthol cigarettes, Marlboro menthol cigarettes, Backwoods Berry Flavor Cigars, Backwoods Russian Cream Flavor Cigars, Dutch Master Rum Fusion Cigars, and Dutch Master Berry Fusion Cigars.¹¹¹

48. Mauricio showed Sergeant Aguirre boxes of glass vials and a container of molded, cylinder steel wool fragments. Mauricio told Sergeant Aguirre that the glass vials cost about \$0.35 each and that he sells the vials with the steel wool pieces to customers for \$5 or \$6.¹¹²

49. Glass vials, like the ones sold at Midway Amoco, are known as "drug kits" because they are used commonly to smoke crack cocaine or methamphetamine (meth).¹¹³ When inserted into the glass vial, the steel wool acts as a filter.¹¹⁴

50. Mauricio told Sergeant Aguirre that on a typical Saturday night, he sells a full box of glass vials - about 36 units.¹¹⁵

51. On June 25, 26, 28 and 29, 2019, the SPPD received calls reporting fighting and disorderly conduct at Midway Amoco.¹¹⁶

¹⁰⁵ Ex. 11-3; Test. of R. Aguirre.

¹⁰⁶ Test. of R. Aguirre; Ex. 12.

¹⁰⁷ Ex. 11-3; Test. of R. Aguirre.

¹⁰⁸ Ex. 11-7 to 11-9.

¹⁰⁹ Ex. 11-3.

¹¹⁰ Test. of R. Aguirre; Exs. 11-5, 11-6.

¹¹¹ Test. of R. Aguirre; Exs. 11-5, 11-6.

¹¹² Test. of R. Aguirre; Ex. 11-3.

¹¹³ Test. of R. Aguirre; Ex. 11-3.

¹¹⁴ Test. of R. Aguirre.

¹¹⁵ Test. of R. Aguirre; Ex. 12.

¹¹⁶ Ex. 23-3.

52. On July 31, 2019, Asia contacted the SPPD to inquire about hiring a police officer to work off-duty at Midway Amoco on the weekends providing security services.¹¹⁷ Asia was informed a few days later that Licensee's request to hire off-duty police officers was denied.¹¹⁸

53. SPPD Senior Commander John Bandemer denied Licensee's request to hire an off-duty police officer to provide security at Midway Amoco. Commander Bandemer believed that Licensee's employees had been documented violating tobacco sales regulations and had not fully cooperated with the police by providing video footage.¹¹⁹ In addition, Commander Bandemer was concerned that, given the problems with unruly crowds gathering on the weekends at Midway Amoco, a sole police officer working security would be placed at risk.¹²⁰

III. Disciplinary Actions Related to Licensee

54. This matter is the second adverse action taken against Licensee's licenses within the past 12 months. On March 12, 2019, the City served Licensee with a Notice of Violation related to its possession of flavored tobacco products.¹²¹ The Minnesota Department of Revenue seized such products from Midway Amoco as contraband in September 2018.¹²² Licensee contested the violation, but failed to appear for the administrative hearing scheduled for July 16, 2019.¹²³ As a result, an administrative law judge found Licensee in default and deemed the allegations against it proven.¹²⁴

55. The City's penalty matrix provides that the presumptive penalty for a first-time violation of the legislative code relating to licensed activity is \$500.¹²⁵ On July 24, 2019, the Saint Paul City Council imposed a first appearance matrix penalty of \$500 against Licensee for possession of prohibited flavored tobacco products.¹²⁶

56. On July 26, 2019, the City served Licensee with a Notice of Violation and Recommendation for Upward Departure to Revocation (Notice of Revocation).¹²⁷ This is the notice at issue here. The City alleges Licensee violated city ordinances by:

- selling single cigarettes outside of their original packaging;

¹¹⁷ Test. of A. Asia; Ex. 107.

¹¹⁸ Test. of A. Asia; Ex. 108.

¹¹⁹ Test. of John Bandemer.

¹²⁰ *Id.*

¹²¹ Ex. 2-1.

¹²² Ex. 2-1, 19, 20. (Contraband products are those for which a licensee is unable to produce an invoice from a licensed seller.)

¹²³ Ex. 2-1.

¹²⁴ *Id.*; See *In re the Cigarette/Tobacco and Gas Station Licenses held by Midway University & Hamline, LLC d/b/a Midway Amoco*, No. 5-6020-36135, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION UPON DEFAULT (Minn. Office Admin. Hearings July 16, 2019).

¹²⁵ Saint Paul, Minn. Legis. Code § 310.05(m)(2).

¹²⁶ Ex. 2-1, 19, 20.

¹²⁷ Ex. 1.

- 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; and,
- permitting unsafe conduct or conditions that present a serious danger to the public health, safety or welfare.¹²⁸

57. The City also alleges that Midway Amoco violated its license conditions by failing to provide DSI with copies of surveillance video as requested, and by failing to maintain a clean site with adequate fencing.¹²⁹

58. All the alleged violations identified in the Notice of Revocation occurred between April and July of 2019.¹³⁰

59. Licensee admits to selling flavored tobacco products and operating a business in a manner that unreasonably annoys the comfort and repose of the public.¹³¹ Licensee contests the other alleged violations.

60. After receiving the Notice of Revocation, the Licensee stopped selling glass vials and began closing Midway Amoco on the weekend between approximately 1:00 a.m. and 4:00 a.m.¹³²

61. During the month of August 2019, the SPPD received additional reports of assaults and disorderly conduct at or near Midway Amoco.¹³³

IV. Licensee's Proposed Remodel

62. Aloul plans to extensively remodel Midway Amoco.¹³⁴ Aloul has spent over \$80,000 on architectural design and permit fees.¹³⁵ The architectural plans for the remodel were completed on July 9, 2019.¹³⁶ Aloul has had several meetings with City officials about the proposed remodel.¹³⁷ Aloul's plan involves tearing down the existing

¹²⁸ *Id.*

¹²⁹ Ex. 1-3, 1-4.

¹³⁰ Ex. 1.

¹³¹ Saint Paul, Minn. Legis. Code. §§ 324.07(f) and 310.06(b)(8).

¹³² Test. of K. Aloul; Test. of C. Mauricio; Test. Of A. Asia.

¹³³ Exs. 30-1 to 30-96.

¹³⁴ Test. of K. Aloul; Exs. 101, 102, 103.

¹³⁵ Test. of K. Aloul; Exs. 101, 102.

¹³⁶ Ex. 101.

¹³⁷ *Id.*

store and constructing a new 3,000 square foot building with a car wash, coffee shop, and bakery.¹³⁸ The estimated cost of construction is \$1.6 million.¹³⁹

63. On August 15, 2019, Aloul received an invoice from the City in the amount of \$35,650 for the building permit fee related to his proposed tear down and new construction at Midway Amoco.¹⁴⁰ Aloul is waiting for the outcome of this license disciplinary matter before he decides whether to move forward with his construction plans.¹⁴¹

V. Community Impacts

64. The Hamline Midway Coalition (HMC) is a neighborhood organization that advocates for residents and businesses located in the Hamline Midway neighborhood.¹⁴² HMC has a district council that meets monthly with the SPPD, residents, and city council members to discuss and address neighborhood concerns.¹⁴³ HMC has held numerous meeting with local residents and business owners regarding Midway Amoco.¹⁴⁴

65. Many residents have expressed concern about increasing crime and escalating violent disturbances occurring at Midway Amoco. Residents have informed members of HMC that they avoid walking or driving past Midway Amoco out of fear for their safety. Some residents are considering moving out of the neighborhood because of the negative impact Midway Amoco is having on their community. A long-time resident in her eighties indicated that she is moving to be near family in Arizona because her daughter fears for her safety living near Midway Amoco.¹⁴⁵

66. Although other business owners in the Hamline Midway area engage regularly with HMC's district council and attend HMC's meetings, Licensee has not communicated with HMC or attended its monthly meetings.¹⁴⁶ Kate Mudge, Executive Director of HMC, made several attempts to contact Aloul by telephone in 2019 to discuss the escalating problems at Midway Amoco, without success.¹⁴⁷

67. Within the last 12 months, HMC has received increased complaints from residents and other businesses in the neighborhood about fighting, aggressive panhandling, noise, drug use, public urination, trash, and shots fired at Midway Amoco.¹⁴⁸

¹³⁸ Test. of K. Aloul; Ex. 101.

¹³⁹ Ex. 102.

¹⁴⁰ Ex. 103.

¹⁴¹ Test. of K. Aloul.

¹⁴² Test. of Kate Mudge.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*; Test. of Dan Buck.

¹⁴⁶ Test. of K. Mudge.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

68. The nonprofit organization Project for Pride in Living (PPL) has a residential building located across the street from Midway Amoco.¹⁴⁹ Tenants who reside in the PPL building have voiced concerns about fighting at Midway Amoco spilling over to their building.¹⁵⁰ The PPL building has been hit by gun fire exchanged at or near Midway Amoco on at least three occasions.¹⁵¹ PPL has spent over \$20,000 to increase security by adding lighting and bullet-proof glass.¹⁵²

69. Sergeant Vang-Sitcler has had five or six conversations with residents of the Midway Hamline neighborhood who expressed fear for their safety and welfare due to the increase in fights and gun violence occurring on Licensee's premises.¹⁵³

70. Any finding of fact contained in the following Memorandum is hereby adopted as such.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction to consider this matter pursuant to Minn. Stat. § 14.55 (2018) and St. Paul Legislative Code §§ 310.05, .06 (2019).

2. The hearing in this matter was conducted in accordance with the St. Paul Legislative Code § 310.05 and the contested case procedures of Minn. Stat. §§ 14.57, .62 (2018).

3. The City provided proper notice of the hearing and complied with all relevant procedural requirements of ordinance, rule or law.

4. Because the City is proposing that disciplinary action be taken, it has the burden of proving by a preponderance of the evidence that adverse action is warranted against the licenses held by Midway Amoco.¹⁵⁴

5. Under the Saint Paul Legislative Code, the City Council may take adverse action against a City-issued license if the licensee violates a statute or ordinance related to the licensed activity, or if the licensee violates conditions placed on its license.¹⁵⁵

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Test. of E. Vang-Sitcler.

¹⁵⁴ Minn. R. 1400.7300, subp. 5 (2019).

¹⁵⁵ Saint Paul, Minn. Legis. Code §§ 310.05(m); 310.06(a), (b)(6)(a).

6. Saint Paul Legislative Code § 324.07(a) prohibits the sale of a cigarette outside of its original packaging containing health warnings satisfying the requirements of federal law. No cigarette shall be sold in packages of fewer than 20 cigarettes.

7. Saint Paul Legislative Code § 324.07(f) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored tobacco products.

8. For all times relevant to this matter, the Saint Paul Legislative Code § 324.07(g) and Minn. Stat. § 609.685 (2018) prohibit the furnishing or sale of tobacco to persons under the age of eighteen years.¹⁵⁶

9. Saint Paul Legislative Code § 310.06(b)(6)(c) supports adverse action when the licensee has engaged in or permitted a pattern or practice of conduct or failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.

10. Saint Paul Legislative Code § 310.06(b)(7) supports adverse action when the activities of the licensee in the licensed activity create a serious danger to the public health, safety, or welfare.

11. Saint Paul Legislative Code § 310.06(b)(8) supports adverse action when the way in which a licensed business is operated maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.

12. The penalty matrix of the Saint Paul Legislative Code includes presumptive penalties for particular code violations.¹⁵⁷

13. Saint Paul Legislative Code § 310.05(m) provides a matrix of penalties for first, second, third, and fourth appearances before the city council. For a first violation, the matrix penalty is a \$500 fine. For a second violation, the penalty is a \$1,000 fine. For a third violation, the penalty is a \$2,000 fine and a 10-day suspension. For a fourth violation, the penalty is revocation of the license.¹⁵⁸

14. Saint Paul Legislative Code § 310.05 (m) provides that the matrix penalties are presumed to be appropriate for every case, but also notes that the City Council may deviate in an individual case where the council finds substantial and compelling reasons making it more appropriate to do so. Multiple violations shall be grounds for departure from the presumptive penalties in the council's discretion.¹⁵⁹ If the City Council deviates,

¹⁵⁶ In October of 2019, the City of Saint Paul raised the legal age for purchasing tobacco products from 18 years to 21 years.

¹⁵⁷ Saint Paul, Minn. Legis. Code § 310.05(m).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at § 310.05(m)(ii).

it must provide written reasons why the penalty selected was more appropriate than the presumptive penalty.¹⁶⁰

15. The City demonstrated by a preponderance of the evidence that Midway Amoco violated Saint Paul Legislative Code §§ 324.07(a), 324.07(f), 324.07(g), 310.06(b)(6)(c), 310.06(b)(7), and 310.06(b)(8) as alleged.

16. The City failed to demonstrate by a preponderance of the evidence that Midway Amoco violated the conditions of its license by failing to provide requested surveillance video to DSI.

17. The City failed to demonstrate by a preponderance of the evidence that Midway Amoco violated the conditions of its license by failing to maintain a clean site with adequate fencing.

18. The City has shown substantial and compelling reasons to upwardly depart from the presumptive penalty and revoke Licensee's cigarette/tobacco and gas station licenses.

19. The attached Memorandum explains the reasons for these conclusions and is incorporated by reference.

Based on the Conclusions of Law, and for the reasons explained in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The St. Paul City Council should upwardly depart from the presumptive penalty and **REVOKE** Midway Amoco's licenses for the violations of law cited above.

Dated: March 9, 2020


JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared

¹⁶⁰ *Id.* at § 310.05(m); Ex. 10.

NOTICE

This report is a recommendation, not a final decision. The Saint Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions of Law, and Recommendation issued by the Administrative Law Judge. Pursuant to Saint Paul Legislative Code § 310.05, the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. The parties should contact Shari Moore, City Clerk, City of Saint Paul, 290 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, to find out the procedure for filing exceptions and presenting argument.

MEMORANDUM

I. Overview

Licensee has operated Midway Amoco for over nine years. Based on the record, the City did not have any significant concerns with the management of the business prior to late 2018. Beginning in early 2019, however, there was a substantial increase in criminal activity and calls for police service at and near the Licensee's premises, along with documented concerns about Licensee's ability and willingness to manage the business in a safe and law-abiding manner.

In July of 2019, the City cited Licensee with multiple violations of city ordinances and licensing conditions related to the operation of its business. Licensee admits to two violations – selling flavored tobacco products and operating the business in a manner that permits conditions to exist that unreasonably annoy the comfort or repose of the public. Licensee contests the remaining citations.

This is the second adverse action against Licensee within the past 12 months.¹⁶¹ Under the City's penalty matrix, the presumptive penalty for a second appearance is a \$1,000 fine.¹⁶² The City, however, seeks revocation of Midway Amoco's licenses, which is an upward departure of more than two steps on the penalty matrix. Licensee concedes an upward departure is warranted but maintains that the appropriate penalty is an upward departure to the third level of the penalty matrix, a \$2,000 penalty and a ten-day suspension.

II. Violations

Licensee's first licensing action, for selling flavored cigarettes, was finalized in July of 2019. That violation related to a November 2018 seizure of flavored tobacco products carried out by the Department of Revenue. This case is Licensee's second disciplinary action and concerns six alleged violations of city ordinances and two alleged violations of licensing conditions. Under the matrix used by the City, the presumptive penalty for a "second appearance" is a \$1,000 fine. However, the City seeks to upwardly depart from

¹⁶¹ See Ex 2.

¹⁶² Minn. St. Paul Legis. Code § 310.05(m).

the presumptive penalty and revoke Licensee's licenses based on substantial and compelling reasons.

The City maintains that it has provided sufficient compelling evidence to support revocation of Licensee's tobacco and gas station licenses. The City notes the close proximity between the violations at issue here and in the July 2019, violation related to the seizure of flavored tobacco products. And the City emphasizes that, under its Legislative Code, the occurrence of multiple violations shall be grounds for an upward departure at the Council's discretion.¹⁶³

The City established by a preponderance of the evidence that Licensee violated city ordinances by selling cigarettes to an underage individual, and by selling single cigarettes and flavored tobacco products. The body camera video taken by Sergeant Aguirre on June 22, 2019, shows numerous flavored tobacco products on Licensee's shelves despite that the City cited Licensee for selling flavored tobacco products just months before. Further, Licensee's clerk's conversation with Sergeant Aguirre leaves no doubt that Midway Amoco was selling single cigarettes and single "Swisher Sweet" cigars to patrons for \$1.00 and \$2.80, respectively. Additionally, the June 1, 2019, police report notes that an arrested individual stated she went to Midway Amoco to purchase single cigarettes, and DSI Investigator Muhammad's observed Licensee's clerk handing individual single cigarettes to a patron. This evidence is sufficient to support finding that the Licensee engaged in, or permitted a pattern of non-compliance with licensing regulations, from which an inference of lack of fitness may be drawn.

Sergeant Aguirre's body camera video also establishes that Licensee fostered or promoted illegal drug use by selling glass vials and steel wool, which are routinely used for smoking crack cocaine and meth. The sale of drug paraphernalia contributed to creating an environment that attracted gatherings of large groups that became unruly, disruptive, and dangerous. The City demonstrated that on several occasions in June and July of 2019, large groups of people gathered in Midway Amoco's parking lot and engaged in fighting, aggravated assaults, drug transactions, the exchange of firearms, and the discharge of weapons.

The City has shown that Licensee failed to manage the business appropriately. The business was routinely understaffed. Licensee failed to secure alternative security services after its private security firm terminated services to Midway Amoco in March of 2019. Licensee also did not close the store between 1:00 a.m. and 4:00 a.m. on the weekends. The record supports finding the Licensee failed to appropriately manage its business and permitted conditions on its premises, including loud, disruptive, and dangerous gatherings in the early morning hours, that unreasonably annoyed and endangered the safety, health, comfort or repose of the public.

The City failed to establish, however, that Licensee violated the conditions of its license related to the condition of the property. The photographs of litter and trash taken

¹⁶³ Saint Paul, Minn. Legis. Code § 310.05(m).

over one 27-hour period are insufficient to establish that Licensee failed to maintain a clean site in violation of condition #5. Moreover, given that a homicide had occurred on the premises hours earlier and Licensee's staff was busy assisting the police, it is possible the litter and trash removal was temporarily overlooked during that short window of time. Similarly, photographs of a fence in disrepair taken over one 27- hour period does not establish Licensee violated license condition #3. Instead, Licensee's employees persuasively testified that the wooden fence was repaired reasonably quickly after it was damaged by a car.

The City also did not establish that Licensee failed to provide DSI copies of requested surveillance video pursuant to its license conditions. DSI initially sent its April 2019 letter requesting video footage to an incorrect address. There is no evidence that the letter was ever delivered to Midway Amoco. Licensee's manager's confusion regarding Inspector Hudak's June 18, 2019 video request was understandable and excusable given that a shooting took place on the premises in the early morning hours of June 19, 2019. The SPPD called Licensee's manager, Alex Asia, to the gas station at 3:00 a.m. to provide access to video, and he remained there until 8:30 a.m. assisting the police officers. Given these circumstances, it is reasonable that Asia had not seen Licensing Manager Hudak's hand-delivered letter from the prior afternoon. Moreover, once Asia realized that Licensing Manager Hudak's request was separate from the SPPD's request hours earlier, he offered to immediately obtain a flash drive and make a copy of the requested video. Licensing Manager Hudak's unwillingness to wait 15 minutes for the video to be provided, and his decision to cite Licensee with a license condition violation, was unreasonably inflexible given the circumstances. The fact that the video was not ready at 4:00 p.m. on June 19, 2019, as requested, is at most a technical violation. Asia prepared a drive with the footage, which remained at Midway Amoco awaiting pickup, but Licensing Manager Hudak never returned for it or requested it again.

During the hearing, Licensee acknowledged that it violated the prohibition against selling flavored tobacco products. Licensee also admits it operated its business in a manner that unreasonably annoyed the comfort or repose of a considerable number of members of the public, particularly the surrounding neighbors and community. Licensee contests the other violations and argues that, by combining seven violations into one Notice of Revocation, it had no opportunity to take appropriate action and institute managerial changes to correct the problems. Nevertheless, Licensee asserts that it has instituted several changes at Midway Amoco to address the City's concerns. For example, beginning in late July of 2019, it stopped selling the glass vials identified as drug kits and it began closing the store in the early morning hours on the weekends.

III. Legal Standard for Upward Departure

The Saint Paul Legislative Code provides that the Council may deviate from the presumptive penalty in the matrix where it determines there are "substantial and compelling reasons" to do so.¹⁶⁴ The Code also provides that the occurrence of multiple

¹⁶⁴ Saint Paul, Minn. Legis. Code § 310.05(m).

violations shall be grounds for departure from the presumptive penalties at the Council's discretion.¹⁶⁵ Beyond that, the parties did not cite, and the Administrative Law Judge could not find, any law specially discussing the legal standard for an upward departure involving a municipal code penalty matrix.¹⁶⁶

The requirement that the 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.¹⁶⁷ While the Administrative Law Judge recognizes the significant differences between imposing a criminal sentence and imposing an administrative penalty for a municipal code violation, the concepts underpinning the legal standard of review are analogous and, therefore, instructive.

Minnesota courts have held that the presumptive sentence should only be exceeded if the enhanced penalty is deemed to be "more appropriate, reasonable or equitable than the presumptive [penalty]."¹⁶⁸ The decision maker should impose the presumptive penalty unless "substantial and compelling circumstances' based on aggravating factors warrant and upward departure."¹⁶⁹ To properly impose a penalty that is an upward departure from the presumptive penalty in the sentencing guidelines, then, the decision maker must have a specific factual basis.¹⁷⁰ "Substantial and compelling circumstances" are "factual circumstances that distinguish the case, making it atypical."¹⁷¹

The Minnesota Supreme Court has also held that "generally in a case in which an upward departure in sentence length is justified, the upper limit will be double the presumptive sentence length."¹⁷² The Court wrote: "Only in cases of 'severe aggravating circumstances' may the district court impose a greater-than-double departure from the presumptive sentence. Such cases, we have stated, are 'extremely rare'"¹⁷³

Here, the City seeks to revoke the Licensee's licenses. Revocation is a greater-than-double upward departure from the presumptive \$1,000 fine for second violations provided in the penalty matrix. Therefore, following the guidance of Minnesota Supreme

¹⁶⁵ *Id.*

¹⁶⁶ The City cited *Bourbon Bar & Café Corp. v City of St. Paul*, 466 N.W.2d 438, 440 (Minn. Ct. App. 1991), a case involving a liquor license, for the proposition that the council has "broad discretion to determine the manner in which liquor licenses are issued, regulated, and revoked."

¹⁶⁷ Minn. Sent. Guidelines II.D (2019).

¹⁶⁸ *Dillion v. State*, 781 N.W.2d 588, 595 (Minn. Ct. App. 2010) (citing *State v. Bingham*, 406 N.W.2d 567, 570 (Minn. Ct. App. 1987).

¹⁶⁹ *Id.*

¹⁷⁰ Saint Paul, Minn. Legis. Code § 310.05(m)(ii).

¹⁷¹ *Dillion*, 781 N.W. 2d. at 595.

¹⁷² *State v. Evans*, 311 N.W.2d 481, 483 (Minn. 1981).

¹⁷³ *State v. Shattuck*, 704 N.W.2d 131, 140 (Minn. 2005) (citing *State v. Spain*, 590 N.W.2d 85, 89 (Minn. 1999).

Court, the City must show that severe aggravating and factually atypical circumstances warrant such an upward departure from the presumptive penalty.

IV. Penalty

The City has demonstrated that Licensee committed all the Code violations alleged. Licensee sold single cigarettes, sold flavored tobacco products, and sold tobacco products to an underaged individual. Licensee also engaged in a pattern of noncompliance with license regulations, operated the business in a manner that unreasonably annoys the comfort and repose of the public, and permitted unsafe conduct or conditions that present a serious danger to the public's health and safety.

The City has also demonstrated severe aggravating circumstances supporting a greater-than-double upward departure from the presumptive penalty. The police reports, videos, and testimony demonstrate an unwillingness or inability on the part of Licensee to operate the business in a safe and law-abiding manner. The events occurring on the licensed premises between April and August of 2019 are extremely troubling – gun fire, illicit drug transactions, large disruptive crowds gathering in the early morning hours, physical assaults, and ultimately a homicide. The evidence is also 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. The City amply showed that Licensee operated the business in a manner that permitted conditions that endanger public safety, comfort, and repose. The increasingly violent and disruptive activity occurring at Midway Amoco has had a significant impact on the surrounding community. The testimony from HMC regarding the genuine fear residents and business owners have expressed for their safety was persuasive.

It is within the Council's discretion to impose a penalty that is an upward departure from the presumptive penalty in the matrix., The Licensee concedes as much but contends that only an upward departure to the third appearance penalty is warranted.

Licensee argues that it cannot be held accountable for the illegal acts of others and it maintains that it too has been victimized by these lawless acts. Licensee also notes that it is making a good faith effort to improve the property and decrease criminal activity. To that end, Aloul emphasizes that he has spent over \$80,000 in permit and design fees related to a proposed \$1.6 million building renovation. The proposed renovation would change the focus of the business and include a bakery and coffee shop. There is little doubt the renovation, if completed, would be a significant upgrade to the property and a potentially attractive option over the uncertain future of the site if the licenses are revoked.

The Administrative Law Judge, however, is not persuaded by Licensee's arguments. 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. Licensee knew for months of the escalating violence and drug use occurring on its licensed premises, yet it took no action until it faced the likelihood of having its licenses revoked.

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. The revocation of Licensee's cigarette/tobacco and gas licenses is warranted and amply supported by the record.

J. E. L.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of the Cigarette/Tobacco License Held by Moundsvew Retail Inc. d/b/a Mounds Park Market for the Premises Located at 241 Earl Street in Saint Paul

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge Jessica A. Palmer-Denig for a hearing on November 3, 2022, at the Office of Administrative Hearings in St. Paul, Minnesota. The record closed on November 18, 2022, upon receipt of the parties' written closing arguments.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City) Department of Safety and Inspections (DSI). Derek Thooft, Thooft Law LLC, appeared on behalf of Moundsvew Retail Inc. d/b/a Mounds Park Market (Licensee).

STATEMENT OF THE ISSUES

1. Has DSI established that Licensee violated St. Paul Legislative Code § 324.07(j) by selling, offering for sale, or otherwise distributing flavored tobacco products?
2. If so, may Licensee's Tobacco Shop License be revoked?

SUMMARY OF RECOMMENDATION

DSI has established that Licensee offered flavored tobacco products for sale in violation of the St. Paul Legislative Code. DSI also established that Licensee's license to sell tobacco products may be revoked pursuant to St. Paul Legislative Code § 324.10(b), as this is Licensee's second flavored tobacco violation within 24 months.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. The Parties

1. DSI is the agency within the City that licenses and regulates the sale of tobacco products in Saint Paul.¹ DSI provides educational materials to licensees, conducts inspections of businesses where tobacco products are sold, and investigates complaints against licensees.²

2. Licensee operates Mounds Park Market, which is a convenience store located at 241 Earl Street in Saint Paul.³ Akil Jahed is the owner of Licensee.⁴

3. Licensee holds a Tobacco Shop License issued by the City permitting it to sell tobacco products.⁵ The license was originally issued in 2017.⁶

4. Tobacco sales represent approximately 30 to 40 percent of Licensee's sales, with 60 to 70 percent of sales attributable to non-tobacco products, such as snacks and household supplies.⁷

II. 2019 Licensing Action

5. On June 27, 2019, DSI issued a Notice of Violation and Recommendation for Imposition of \$500 Matrix Penalty, notifying Licensee that it would seek adverse action against Licensee's license arising from a failed compliance check for flavored tobacco products on April 12, 2019.⁸ Specifically, DSI stated that tobacco licensees had been given prior notice that DSI would be conducting compliance checks, and that when an inspector visited Mounds Park Market, the inspector observed several different flavored tobacco products were being offered for sale.⁹

6. At a public hearing on October 2, 2019, Mr. Jahed appeared and explained that his distributor advised him that the products at issue were not flavored tobacco products, and he provided evidence that he returned the prohibited products to the distributor and obtained a refund.¹⁰

7. Based on the information before it, the City Council determined that the violation resulted from genuine confusion.¹¹ Therefore, the City Council stayed

¹ Testimony (Test.) of Eric Hudak.

² *Id.*; Test. of Joseph Voyda.

³ Exhibit (Ex.). 3 at 3-1; Test. of Akil Jahed.

⁴ Ex. 3 at 3-1; Test. of A. Jahed.

⁵ Test. of E. Hudak.

⁶ *Id.*; Ex. 5 at 5-1.

⁷ Test. of A. Jahed.

⁸ Ex. 15 at 15-2–15-4.

⁹ *Id.* at 15-2–15-3.

¹⁰ Ex. 15 at 15-14; Test. of A. Jahed.

¹¹ Ex. 15 at 15-14.

imposition of the \$500 penalty for one year provided that Licensee did not engage in violations that were the same or similar to the violation at issue.¹²

III. 2021 Licensing Action

8. On August 24, 2021, DSI issued to Licensee a Notice of Violation and Recommendation for Imposition of \$300 Administrative Penalty for Tobacco Youth Compliance Check Failure and \$500 Matrix Penalty for Selling Flavored Tobacco Products.¹³

9. DSI advised Licensee that the violation notice stemmed from a failed youth compliance check on July 13, 2021, in which Licensee sold cigarettes to an underage person and the clerk did not ask to see her identification.¹⁴ When the inspector went into Mounds Park Market to talk to the clerk, the inspector observed flavored tobacco products in plain sight.¹⁵ The inspector ultimately located over 30 different flavored tobacco products in Licensee's store, some of which were stocked in numerous flavors.¹⁶

10. Licensee paid the penalty amounts in full in September of 2021.¹⁷

IV. Amendment of the City's Tobacco Ordinance

11. In December 2021, the City Council amended St. Paul Legislative Code Chapter 324, which governs tobacco licensing.¹⁸

12. DSI provided written notice of the revisions to the tobacco ordinance to tobacco license holders.¹⁹

13. Among the changes DSI identified for license holders, the amendments increased the presumptive penalties for violations involving the sale of flavored tobacco products.²⁰

14. Under the amended ordinance, for a second appearance involving the display, possession, or multiple instances of the sale of flavored tobacco products, the presumptive penalty is revocation.²¹ A second violation within 24 months is considered to be a second appearance.²²

¹² *Id.* at 15-13–15-15.

¹³ Ex. 16 at 16-2.

¹⁴ *Id.* at 16-3, 16-7, 16-11; 16-13–16-14.

¹⁵ *Id.* at 16-14.

¹⁶ *Id.* at 16-14–16-15; 16-19–16-43.

¹⁷ *Id.* at 16-44; Test. of E. Hudak.

¹⁸ Ex. 12; Ex. 13 at 13-1.

¹⁹ Ex. 13, Ex. 14.

²⁰ Ex. 13 at 13-2; Ex. 14 at 14-2.

²¹ Ex. 14 at 14-2; St. Paul Legislative Code § 324.10(b).

²² Ex. 12-10; St. Paul Legislative Code § 324.10(d)(1).

V. The Current Violation Notice

15. On May 12, 2022, DSI Inspector Joseph Voyda conducted a complaint inspection at Mounds Park Market based on a complaint made to DSI that Licensee was selling flavored tobacco products.²³

16. Inspector Voyda spoke with the clerk on duty and conducted an inspection of the store.²⁴

17. Inspector Voyda found numerous flavored tobacco products, including products identified with fruit, honey, and liquor flavorings.²⁵ He discovered over 300 individual items qualifying as prohibited flavored tobacco products.²⁶ Approximately 60 percent of the tobacco products he found in the store were prohibited items.²⁷

18. Inspector Voyda found that some of the flavored tobacco items were being stored in boxes for other products like candy and apple sauce, under the clerk's counter, and in a tub or tote bin behind the counter.²⁸ Inspector Voyda believed that products were stored in this manner as an attempt at concealment.²⁹

19. When Inspector Voyda began the inspection, he was told that Mr. Jahed was in Iraq, but Mr. Jahed arrived while the inspection was underway.³⁰

20. Mr. Jahed traveled to Iraq in December 2021 to resolve issues related to a visa for his wife to travel to the United States.³¹ At the time he left, he believed that he would be in Iraq for a month or six weeks.³² Instead, he was in Iraq for six months due to issues he encountered in obtaining the visa and safety concerns arising from incidents of civil unrest in Iraq.³³

21. During Mr. Jahed's absence, he left the store in the keeping of his brother and several friends of their family.³⁴ In addition to Mr. Jahed's brother, two to three other

²³ Ex. 2 at 2-1, Ex. 17; Test. of Joseph Voyda.

²⁴ Ex. 2 at 2-1; Test. of J. Voyda.

²⁵ Ex. 2 at 2-2-2-6; Test. of J. Voyda.

²⁶ Ex. 2 at 2-2-2-6; Test. of J. Voyda.

²⁷ Test. of J. Voyda.

²⁸ Ex. 2 at 2-2-2-6; Test. of J. Voyda.

²⁹ Ex. 2-1; Test. of J. Voyda.

³⁰ Ex. 2 at 2-1; Test. of J. Voyda; Test. of A. Jahed.

³¹ Test. of A. Jahed.

³² *Id.*

³³ *Id.*

³⁴ *Id.* The family friends are not identified in the record. The employment status of these individuals related to Licensee's operations is somewhat unclear. The record suggests that these family friends may not have been employees of Licensee, but were present at Mounds Park Market as volunteers to assist Mr. Jahed, though they did exercise the ability to make product stocking decisions. *Id.*

individuals minded the store for him.³⁵ These individuals had experience running similar stores of their own.³⁶

22. Mr. Jahed did not give instructions to any employees or helpers about ordering tobacco products in his absence.³⁷ Instead, Mr. Jahed asked them to operate Mounds Park Market as they ran their own stores.³⁸ He assumed they would not order prohibited tobacco products.³⁹

23. During the time he was in Iraq, Mr. Jahed was unable to direct daily operations at Mounds Park Market or to make regular contact with those operating the store in his stead.⁴⁰

24. Mr. Jahed returned to Minnesota approximately 24 hours before Inspector Voyda's visit to Mounds Park Market.⁴¹ Between the time he returned to Minnesota and the inspection, Mr. Jahed had been at the Mounds Park Market only briefly to address issues related to a break in at the store.⁴²

25. When Inspector Voyda asked Mr. Jahed about prohibited items he found in the store, Mr. Jahed told Inspector Voyda that the products were for personal use.⁴³

26. On June 7, 2022, DSI issued a Notice of Violation and Request for Revocation of License (Notice of Revocation) notifying Licensee that it had determined a violation occurred and that it would pursue revocation of Licensee's license to sell tobacco products.⁴⁴ The Notice of Revocation advised Licensee that it could contest the proposed adverse action and request a hearing.⁴⁵

27. By letter dated June 15, 2022, Licensee notified DSI that it disputed the facts, contested the proposed adverse action, and requested a hearing.⁴⁶

28. Any Conclusion of Law more properly considered to be a Finding of Fact is incorporated herein.

29. Any portion of the Memorandum or fact contained therein that should be considered as a Finding of Fact is adopted as such.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Ex. 2 at 2-1; Test. of J. Voyda.

⁴⁴ Ex. 1.

⁴⁵ *Id.* at 1-3-1-4.

⁴⁶ Ex. 8.

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the City Council have authority to hear this matter pursuant to St. Paul Legislative Code § 310.05(c), Minn. Stat. § 14.55 (2022).

2. The hearing in this matter was conducted in accordance with St. Paul Legislative Code § 310.05 and the contested case procedures of Minn. Stat. §§ 14.57-.62 (2022).

3. DSI provided proper notice of the hearing and fulfilled all procedural requirements of rule and law.

4. DSI must show by a preponderance of the evidence that Licensee committed the alleged violation.⁴⁷

5. Under St. Paul Legislative Code § 324.07(j), no person may sell, offer for sale, or otherwise distribute any flavored tobacco products unless a specific exception identified in section 324.07(l) applies. No exception found in St. Paul Legislative Code § 324.07(l) applies here. Therefore, Licensee was prohibited from selling, offering for sale, or distributing flavored products.

6. DSI has established that Licensee violated St. Paul Legislative Code § 324.07(j) by offering prohibited flavored tobacco products for sale.

7. Because Licensee engaged in another flavored tobacco product violation within the preceding 24 months, the current violation constitutes Licensee's second appearance.⁴⁸

8. Under St. Paul Legislative Code § 324.10(b), the presumptive penalty for a second appearance related to the display, possession, or multiple incidents of sales of flavored tobacco products is revocation of Licensee's Tobacco Shop License.

9. DSI has shown that grounds exist for imposition of the matrix penalty of license revocation.

10. Any Finding of Fact more properly deemed a Conclusion of Law is incorporated herein.

11. Any portion of the accompanying Memorandum that is more properly considered to be a conclusion of law is adopted herein.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

⁴⁷ Minn. R. 1400.7300, subp. 5 (2021).

⁴⁸ St. Paul Legislative Code § 324.10(d)(1).

RECOMMENDATION

The City should find Licensee violated St. Paul Legislative Code § 324.07(j) and **REVOKE** Licensee's Tobacco Shop License.

Dated: January 11, 2023


JESSICA A. PALMER-DENIG
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Saint Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions of Law, and Recommendation. Pursuant to Saint Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact the St. Paul City Clerk, 310 City Hall, 15 W. Kellogg Blvd., Saint Paul, MN 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

The record establishes that Licensee offered flavored tobacco products for sale in violation of St. Paul Legislative Code § 324.07(j). The prohibited items were obviously flavored products, with packaging identifying flavors such as berries and cream, white peach sangria, and honey bourbon.⁴⁹ No valid argument can be made that the violation in this case resulted from confusion. Though Mr. Jahed informed Inspector Voyda that the prohibited products were for personal use, the sheer volume of flavored tobacco products on hand belies that assertion. Inspector Voyda found over 300 individual prohibited items and estimated that about 60 percent of all tobacco products in the store were prohibited products.⁵⁰

In response, Licensee offers explanations and seeks mitigation of the penalty to be imposed. Licensee asserts Mr. Jahed's ability to manage Licensee's compliance with tobacco regulations was compromised because he could not promptly return to

⁴⁹ Ex. 2-2-2-6.

⁵⁰ *Id.*; Test. of J. Voyda.

Minnesota from Iraq, and because he experienced difficulty communicating about the store while outside the country. Licensee contends that DSI employees who testified at the hearing have an incorrect understanding of the relevant ordinance. Finally, Licensee argues that revocation will result in irreparable harm to Mr. Jahed and his family. For these reasons, Licensee argues that suspension is the appropriate remedy, not revocation.

The record supports finding that Mr. Jahed was in Iraq until shortly before the inspection in May 2022. There is no evidence that Mr. Jahed personally ordered or authorized the sale of prohibited items found during the inspection. Yet, Mr. Jahed did not adequately provide for the direction and supervision of the store to ensure that Licensee operated lawfully in his absence. While he was in Iraq, his brother and several family friends operated the store.⁵¹ Mr. Jahed did not provide them with specific instructions about tobacco purchasing decisions or advise them not to offer flavored tobacco products while he was gone.⁵² Further, Licensee is a corporation and was required to operate within its license at all times, whether Mr. Jahed was present or not.

Licensee contends that Inspector Voyda misunderstands the flavored tobacco provision of the ordinance. This argument relates to testimony at the hearing regarding whether a violation could be found based on the presence of a prohibited item in the store, such as a flavored tobacco product accidentally left in a bathroom, even if the item was not offered for sale. Arguments about these hypothetical circumstances does not sway the outcome in this case because that is not the situation presented here. Instead, there were over 300 individual prohibited items stashed throughout the store, including on shelves, in snack food boxes, behind and under the clerk's counter, and in a tub on the floor. This was not a solitary incident or an accident.

Mr. Jahed testified that his family depends on Licensee's operations for financial support, and that tobacco products represent a substantial percentage of Licensee's sales.⁵³ Mr. Jahed believes that if Licensee's Tobacco Shop License is revoked the Mounds Park Market will be required to close.⁵⁴ The Administrative Law Judge does not doubt that loss of the license, and resulting financial consequences, will cause hardship for Mr. Jahed and his family. At the same time, the importance of Licensee's revenue to his family created a strong incentive for Mr. Jahed to actively manage Licensee in a manner that would have ensured lawful operation of the market, particularly after Licensee engaged in two prior flavored tobacco violations. As noted previously, Mr. Jahed did not take sufficient steps to ensure Licensee operated within the scope of its license.

Licensee engaged in a flavored tobacco violation in July 2021, making this case its second violation within 24 months. Under St. Paul Legislative Code § 324.10(d)(1), this case constitutes a second appearance. The presumptive matrix penalty for a

⁵¹ Test. of A. Jahed.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

second violation related to flavored tobacco products is revocation of the license.⁵⁵ In connection with recent amendments to the regulations related to tobacco licenses, the City Council expressed strong concerns about the use of tobacco products by young people, and the harmful impacts of smoking on Minnesota’s youth.⁵⁶ The City Council provided that licensees holding a Tobacco Shop License are those accessible to patrons under the age of 21, and that these licensees are authorized to sell more limited products as a result of that broader access.⁵⁷ The imposition of enhanced penalties, including revocation resulting from a second appearance, is consistent with the gravity of these concerns.

The City Council may deviate from the presumptive penalty if it finds “substantial and compelling reasons” support a deviation.⁵⁸ The Administrative Law Judge respectfully recommends that no such circumstances are present here. Licensee engaged in three violations related to flavored tobacco products between 2019 and 2022. While the City Council found that the first violation resulted from Mr. Jahed’s confusion, that is not a valid excuse for the subsequent violations. Further, Licensee’s current violation and the 2021 violation are separated by only ten months, showing that Licensee engaged in another violation despite the recent imposition of a penalty. Finally, the violation here is substantial, given that Inspector Voyda found over 300 prohibited items and the majority of tobacco products in the store were in violation of the ordinance.

The Administrative Law Judge notes that the record also contains evidence showing that Inspector Voyda found tobacco materials during the inspection that did not contain a tax stamp, and DSI made arguments related to this issue during the hearing. DSI did not identify the tax stamp issue, or any facts related to this concern, as a basis for adverse action in the Notice of Revocation. DSI also did not plead any facts regarding the absence of a tax stamp or identify this as an issue for the Administrative Law Judge’s decision in its hearing notice commencing this case.⁵⁹ Therefore, the Administrative Law Judge determines that issues related to the absence of a tax stamp are not properly before her. The Administrative Law Judge has not made findings on this point and has not relied on any evidence related to the absence of a tax stamp in making this recommendation.

The City Council should find that Licensee violated St. Paul Legislative Code § 324.07(j) by offering flavored tobacco products for sale. The City Council should impose the presumptive penalty and revoke Licensee’s Tobacco Shop License.

J. P. D.

⁵⁵ St. Paul Legislative Code § 324.10(b).

⁵⁶ Ex. 12 at 12-1–12-2.

⁵⁷ *Id.* at 12-1. In contrast, a Tobacco Products Shop License is for specialized stores selling tobacco products that can only be entered by individuals who are over age 21. *Id.*; St. Paul Legislative Code § 324.03(17).

⁵⁸ St. Paul Legislative Code § 324.10(a).

⁵⁹ See Notice of Prehearing Telephone Conference (July 14, 2022).

Severson, Michelle (She/Her/Hers) (OAH)

From: Julie Kraus
Sent: Thursday, July 27, 2023 10:09 AM
To: Severson, Michelle (She/Her/Hers) (OAH); doug@nepphackert.com
Cc: Therese Skarda; Julie Kraus
Subject: RE: Amira Grocery d/b/a Winnipeg Grocery for the premises located at 864 Rice Street in Saint Paul - OAH Docket No. 71-6020-39197
Attachments: 6020-36320-st-paul-midway-bp-amoco-gas-station-license-report_tcm19-422475.pdf; 6020-38502-moundsview-retail-mounds-park-market-city-of-st-paul-cigarette-tobacco-license-report_tcm19-559991.pdf

Judge Case and Mr. Nepp:

On behalf of the City of Saint Paul I offer two cases that support the argument that a Licensee is responsible for the entire space within the Licensed Premises.

While I was unable to find a case that directly addressed a Licensee avoiding responsibility for the entire space within a Licensed Premise, both of these cases involved the illegal sales of prohibited products from within the Licensed Premises by an individual other than the Licensee.

Thank you for your consideration of this matter.

Sincerely,

/s/

Therese Skarda
Assistant City Attorney
15 West Kellogg Blvd.
Saint Paul, MN 55102
651-266-8755

##

#

#

..

#

#



SAINT PAUL
CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

July 21, 2023

Barbara J. Case
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
Saint Paul, MN 55164-0620

RE: Cigarette/Tobacco license held by Amira Grocery d/b/a Winnipeg Grocery for the premises
Located at 864 Rice Street in Saint Paul
License ID #: 20210000879
OAH Docket No. 82-6020-39197

Judge Case:

Please find attached and served upon you Exhibit #15 for the above-named case:

Exhibit No.	Description
Ex. No. 15-1 to 15-5	Stipulated Facts

Sincerely,

Therese Skarda
Assistant City Attorney
License No: 0240989
Office of the City Attorney
400 City Hall & Courthouse
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102
(651) 266-8710

Cc: Douglas Nepp, Nepp & Hackert, LLC, In Town on the Lake Building, One West Lake Street
Suite 185, Minneapolis, MN 55408

STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

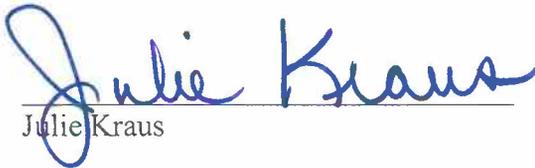
Julie Kraus, being first duly sworn, deposes and says that on the 21st day of July she served the attached **LETTER TO ADMINISTRATIVE LAW JUDGE AND OPPOSING COUNSEL WITH EXHIBIT #15** and a correct copy thereof in an envelope addressed as follows:

Barbara J. Case
Administrative Law Judge
Office of Administrative Hearings
600 Robert Street North
Saint Paul, MN 55101

Douglas Nepp
Nepp & Hackert, LLC
In Town on the Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

Via Electronic Mail

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.


Julie Kraus

Subscribed and sworn to before me
This 21st day of July 2023


Notary Public



Stipulated Facts

1. Amira Grocery d/b/a Winnipeg Grocery located at 864 Rice Street in Saint Paul, MN (“Licensed Premises”) holds a Tobacco Shop License (“License”). Exhibit 12-1, 6-1.
2. Mohamed Shaaban Sultan is the owner and responsible party (“Licensee”) for the License held at the Licensed premises. Exhibit 12-1.
3. Exhibits 1-14 are true and correct copies of the documents and video relevant to this adverse action.
4. Exhibits 1-1 – 1-5 are true and correct copies of the Notice of Violation and Request for Imposition of a 10-Day Suspension (“Notice”) that was served on the Licensee on March 16, 2023. Exhibits 2, 3, 4, 7 and 8 were also included with the Notice.
5. The Notice lays out the violations alleged by the Department as well as the citations to relevant sections of Saint Paul Legislative Code (“SPLC”).
6. The violation alleged by the Department related to the possession and sale of prohibited tobacco products within the Licensed Premises.
7. The prohibited tobacco products were found during a complaint inspection conducted by agents from the Minnesota Department of Revenue and an Inspector from the Department on February 2, 2023.
8. Through its the City of Saint Paul, Department of Safety and Inspections (“Department”) has recommended the presumptive matrix penalty of a 10-Day Suspension of the License held by Licensee.
9. Exhibit 2 is a true and correct copy of a City of Saint Paul Department of Safety and Inspections Complaint (“Complaint”).
10. The Complaint was logged into the Department on January 31, 2023 as noted by the “In Date” of “1/31/2023”.
11. The Complaint details are “Tobacco: selling flavored tobacco product and Newport Menthol without Tax Stamps from a bag behind the counter.”
12. Exhibits 3-1 – 3-2 are true and correct copies of an Inspector’s Report (“DSI Report”) written by DSI Inspector Allan Vang (“Vang”) after his complaint inspection at the Licensed Premises on February 2, 2023.
13. Exhibits 3-1 – 3-2 contains a narrative of Vang’s findings related to the prohibited tobacco products found within the Licensed Premises.



14. Exhibits 4-1 – 4-13 are true and correct copies of photographs of prohibited products identified by Vang on February 2, 2023, during his complaint inspection of the Licensed Premises.
15. Exhibit 5 is a true and correct copy of a video produced by the Licensee through attorney Ismail Hussein.
16. Exhibits 6-1 – 6-2 are true and correct copies of the letter that was sent to Douglass Nepp, Attorney for Licensee, along with the videos of the licensed premises (Exhibit 5) and the letter from the Law Office of Ismail Hussein (Exhibit 10-1, 10-2), Letter from Melvin Galloway to Tom Piskor at the MDR (Exhibit 10-3) and Notice.
17. Exhibit 7 is a true and correct copy of documents pulled from the City’s Licensing system. They contain information about the Licensed Premises including Licensee Name, DBA Name, Contact information for the Licensee including name and phone number etc.
18. Exhibit 8 is a true and correct copy of a document pulled from the Department’s STAMP system. It contains information regarding the actual bricks and mortar property and includes owner, tax owner, property identification number etc.
19. Exhibits 9-1 – 9-3 are true and correct copies of correspondence sent to Assistant City Attorney, Therese Skarda by Attorney for the Licensee, Douglas Nepp, providing the Licensee’s defense to the violations alleged by the Department that give rise to this adverse action and requesting a hearing before an Administrative Law Judge.
20. Exhibits 10-1 – 10-2 are true and correct copies of correspondence sent to Assistant City Attorney, Therese Skarda by an attorney named Ismail Hussein. This correspondence also provided the video (Exhibit 5) and additional information as to the Licensee’s defense to the violations alleged by the Department that give rise to this adverse action.
21. Exhibit 10-3 is a true and correct copy of a notarized letter from Melvin Galloway to Tom Piskor at the Minnesota Department of Revenue and relates to the Licensee’s defense to the violations alleged by the Department that give rise to this adverse action.
22. Exhibits 11-1 - 11-4 are true and correct copy of the Seizure Notice from the Minnesota Department of Revenue (“MDR”), which was sent to Licensee, Amira Grocery Inc. at 864 Rice St in Saint Paul.
23. The Seizure Notice states, “The Minnesota Department of Revenue seized the following property as contraband under the authority granted to the commissioner of revenue (Minnesota Statutes Chapter 297F)” and lists the following flavored items and products without their tax stamps that were seized by the MDR:
 - a. 8 pack/20 Newport Box 100 Newport Box King
 - b. 7 pack/20 Newport Box King Size



- c. 1 Single Pen Loon Max 2000 Puff Ice Pineapple
- d. 1 Single Cigar Backwoods Honey Cigarillo Single
- e. 3 Single Cigar Backwoods Russian Cream Cigar Single
- f. 4 Single Cigar Backwoods Stout Single
- g. 1 5-Pack Backwoods Black Russian – 5 cigars
- h. 1 5-Pack Backwoods Honey Bourbon – 5 cigars
- i. 1 5-Pack Backwoods Banana – 5 cigars
- j. 4 Package Fronto Leaf Master Cream Natural Cigar Wrappers
- k. 3 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99c – Java Fusion Deluxe
- l. 3 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99c – Honey Fusion Golden
- m. 3 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99c – Sweet Fusion Red
- n. 4 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99c – OG Fusion
- o. 1 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99c – Blue Fusion Cream
- p. 4 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99c – Blue Fusion Burst
- q. 3 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99c – Gold Fusion

24. The seizure notice issued by the Minnesota Department of Revenue (“MDR”) states that the following are declared to be contraband under Minnesota Statute 297F.21, Cigarette/Tobacco:

“(a) Cigarette packages which do not have stamps affixed to them as provided in this chapter, including but not limited to (i) packages with illegible stamps and packages with stamps that are not complete or whole even if the stamps are legible, and (ii) all devices for the vending of cigarettes in which packages as defined in the item (i) are found, including all contents contained within the devices.

(g) Cigarette packages or tobacco products obtained from an unlicensed seller.

(h) Cigarette packages offered for sale or held as inventory in violation of section 297F.20, subdivision 7.

(i) Tobacco products on which the tax has not been paid by a licensed distributor.

(j) Any cigarette packages or tobacco products offered for sale or otherwise held as inventory for which there is not an invoice from a licensed seller as required under section 297F.13, subdivision 4.

25. The parties do not dispute that all items listed in Exhibit 11 and seized by the MDR were prohibited flavored products under SPLC §324.

26. Exhibits 12-1 – 12-6 is a true and correct copy of the of the Class R application submitted by the Licensee for the Licensed Premises.

27. Exhibits 12-4 – 12-6 are drawings of the licensed premises submitted by the Licensee.

28. Exhibit 12-5 titled 864 Rice Floor Plan depicts the interior layout of the Licensed Premises and shows the cashier’s area with the tobacco shelf behind it, shelves, storage, and the deli.

29. Exhibit 12-6 is a diagram that depicts the cashier’s area with the cigarette area directly behind it.



30. Exhibit 13-1 – 13-43 is a true and correct copy of SPLC §310.

31. Under SPLC §310.04 (6)(a), adverse action against a license is appropriate if:

The Licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith.”

32. Tobacco Shop Licenses are regulated under Saint Paul Legislative Code (“SPLC”) §324 Titled Tobacco. Exhibit 14.

33. Exhibit 14-1 – 14-7 is a true and correct copy of SPLC §324.

34. Under SPLC §324.03 (5) the types of products which are considered flavored products include:

Flavored product means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product or device is a flavored product.

35. Under SPLC §324.03 (6) the types of products which are licensed products include:

Licensed products means collectively any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

36. Under SPLC §324.03 (16) Tobacco Shop License means:

Tobacco shop license means a license issued to a person, firm, or corporation for an establishment that:

- a. May offer for sale licensed products which are accessible to the public only with the intervention of a store employee; and,
- b. May allow persons who are under the age of twenty-one (21) to enter the establishment;

37. Under SPLC §324.03 (16)(j) Sales Prohibited:

No person may sell, offer for sale, or otherwise distribute any flavored products, unless excepted under 324(l) of this chapter.



38. The License held by Licensee is not subject to any exemption under SPLC §324(l) and the Licensee is prohibited from selling flavored tobacco products under the Tobacco Shop Licensee he holds.
39. SPLC §324.10 lays out the presumptive penalties for violations under SPLC §324.
40. Under SPLC §324.10, the presumptive penalty for a first violation for the “Display, possession or multiple incidents of sales of; single cigarettes, menthol tobacco products or flavored tobacco products” is a 10-day suspension of the License.
41. The presumptive penalty in this matter would be a 10-day suspension of the License held by Licensee as this is the first violation of the Licenses held by Licensee.
42. The issues in dispute relate to whether the Licensee is responsible for the prohibited flavored tobacco products found by agents from the MDR and the Department’s Inspector.



RECEIVED

By: OAH on 07/18/2023 2:41 p.m.



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDESEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

July 18, 2023

Douglas Nepp
Nepp & Hackert, LLC
In Town on the Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

RE: Cigarette/Tobacco license held by Amira Grocery d/b/a Winnipeg Grocery for the premises located at 864 Rice Street in Saint Paul
License ID #: 20210000879
OAH Docket No. 82-6020-39197

Mr. Nepp:

Please find attached and served upon you the following exhibit for the administrative hearing scheduled on July 20, 2023. A courtesy copy will be sent out by US Mail today:

Exhibit No.	Description
Ex. No. 12	Application and floor plan (clearer copy of floor plans)

Sincerely,

Therese Skarda, Assistant City Attorney
License No: 0240989
Office of the City Attorney
400 City Hall & Courthouse
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102
(651) 266-8710

Cc: Barbara J. Case, Administrative Law Judge, Office of Administrative Hearings, P.O. Box 64620,
Saint Paul, MN 55164-0620

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

The Saint Paul City Attorney's Office does not discriminate based on race, color, national origin, religion, sex/gender, disability, sexual orientation, gender identity, age, or veteran status in the delivery of services or employment practices.

COUNTY OF RAMSEY)

Julie Kraus, being first duly sworn, deposes and says that on the 18TH day of July she served the attached **LETTER TO OPPOSING COUNSEL WITH ATTACHED EXHIBIT 12** and a correct copy thereof in an envelope addressed as follows:

Douglas Nepp
Nepp & Hackert, LLC
In Town on the Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

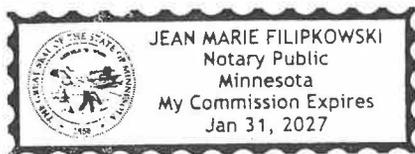
Barbara J. Case
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
Saint Paul, MN 55164-0620

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.


Julie Kraus

Subscribed and sworn to before me
This 18TH day of July 2023


Notary Public





CITY OF SAINT PAUL
 Department of Safety and Inspections
 Ricardo X. Cervantes, Director
 375 Jackson Street, Suite 220
 Saint Paul, Minnesota 55101
 Phone: 651-266-8989
 Web: www.stpaul.gov/dsi

Class "R" License Application

LICENSES ARE NOT TRANSFERRABLE

Payment must be received with Each Application
 This application is subject to review by the public.

Types of License(s) being applied for:

Fee(s):

- a. ~~Tobacco~~ Cigarette/Tobacco License \$488.00
- b. ~~Food~~ Alarm Permit \$39.00
- c. _____
- d. _____
- e. _____

Total: \$ -

Business/Applicant Information

Business Address: 864 Rice St ST Paul MN 55117
Street City State Zip

Company Name: Amira GROCERY Doing Business As: Amira Grocery
Winnipeg

Company Type: Corporation Partnership _____ Sole Proprietorship _____

Licensee/Owner Name: mohamed Shaban SULTAN
(Responsible Party) First Middle Last

Title: owner Driver's License: MN J640-194-371-410
State License #

Date of Birth: 10/23/1990

Applicant Home Address: 14200 43rd Aven F Minneapolis MN 55448
Street City State Zip

Home Phone #: 612-245-3802 Business Phone #: 651-487-3110

Fax #: _____ Email: mohamedshaban935@yahoo.com

Supplemental Required Information *Same as above*

Business Manager, if different from Applicant

Manager's Name: mohamed Shaban SULTAN
First Middle Last

Home Address: 14200 43rd Aven F mn MN 55448
Street City State Zip

Date of Birth: 10/23/1990 Phone #: 612-245-3802

Email Address: mohamedshaban935@yahoo.com

(Continued on back)

Please list all other Person(s) to Appear on the Business License (Attach another sheet if applicable.)

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: _____ / _____ / _____ Phone #: _____

Email Address: _____

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: _____ / _____ / _____ Phone #: _____

Email Address: _____

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: _____ / _____ / _____ Phone #: _____

Email Address: _____

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

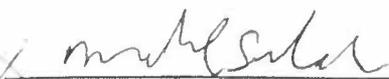
Home Address: _____
Street City State Zip

Date of Birth: _____ / _____ / _____ Phone #: _____

Email Address: _____

FALSIFICATION OF ANSWERS GIVEN OR MATERIAL SUBMITTED WILL RESULT IN DENIAL OF APPLICATION

I hereby state that I have answered all of the preceding questions and that the information contained herein is true and correct to the best of my knowledge and belief. I hereby state further that I have received no money or other consideration by way of loan, gift, contribution, or otherwise, other than already disclosed in the application which I herewith submitted. I also understand this premise may be inspected by police, fire, health and other city officials at any time when the business is in operation.


Applicant Signature

Owner
Title

5-11-2021
Date



Business Plan Addendum (Cigarette/Tobacco Sales)

BUSINESS ADDRESS: 864 Rice St St Paul 55117 **BUSINESS NAME:** WINNEPEG GROCERY

All applicants must provide details related to the business plan at the establishment for which a license is being requested. Please complete the following document and attach supporting documents as needed.

a. List hours of operation (Sunday – Saturday):

b. List/check-off the typical products to be sold in the establishment (use additional pages if necessary) and note any additional licenses you will be obtaining:

- Cigarettes Electronic cigarettes Pop or candy Clothing
- Cigarette wrapping paper Electronic cigarette parts Bottled water Household items
- Cigars Chewing tobacco Groceries
- Other Products and Licenses: _____

c. Will any food consumption be allowed on the premises? YES NO (circle one)

If yes, describe in detail what type of food service will be provided and/or consumption allowed. If applicable, provide a copy of your menu: ~~Frozen Food~~ small deli inside store that is leased out

d. Will there be any seating in the establishment for customers/patrons? YES NO (circle one)

If yes, explain what the seating will be used for, and the anticipated length of time people will spend in the establishment.
30 minutes or so to eat.

e. Will any of the following occur on the premises:

- i. Sale of flavored tobacco products or e-cigarette "juice" other than mint, wintergreen and menthol? YES NO (circle one)
- ii. Sampling of tobacco products including e-cigarette "juice"? YES NO (circle one)

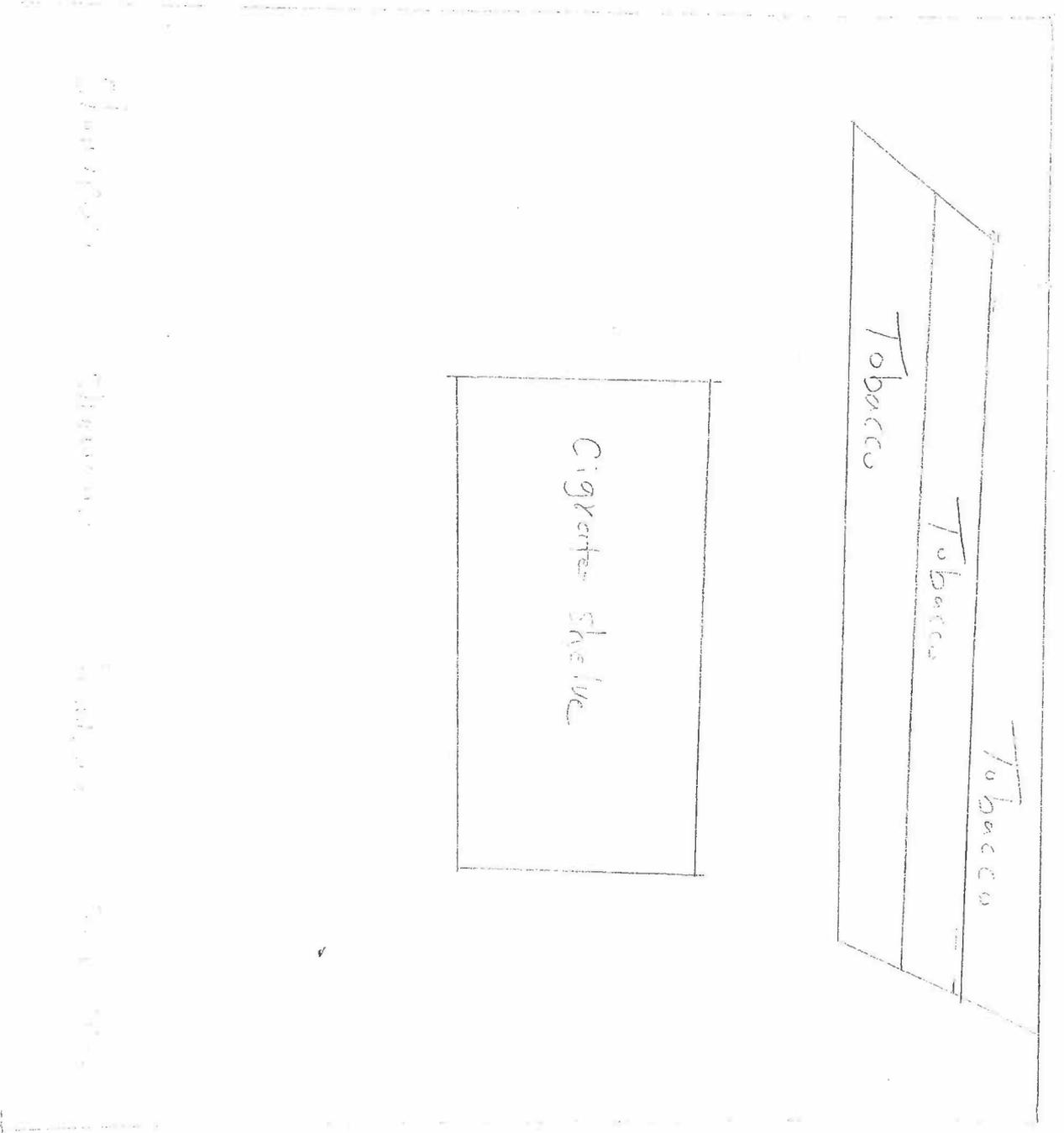
If yes to either of the questions under "e." please provide the following additional information:

- 1. What is the estimated percentage of your total sales that will come from tobacco related products? _____
- 2. What will the minimum age be to enter the establishment? _____
Describe what actions will be taken to enforce the minimum age requirement:

3. Describe how the sampling will occur (e.g., at the counter, sitting in chairs, etc.) and how you will regulate the sampling, including the estimated length of time customers will be on the premises sampling product.

Print Name: Mohamed Sultan Signature: Muhammad Sultan Date: 5-3-21

Q64 RILE



deli

Storage

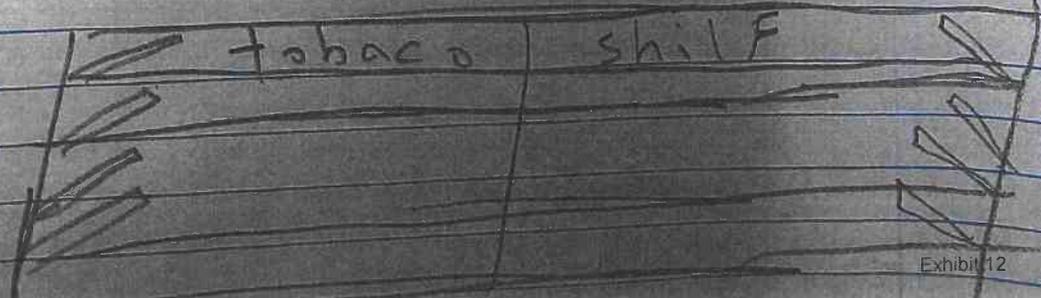
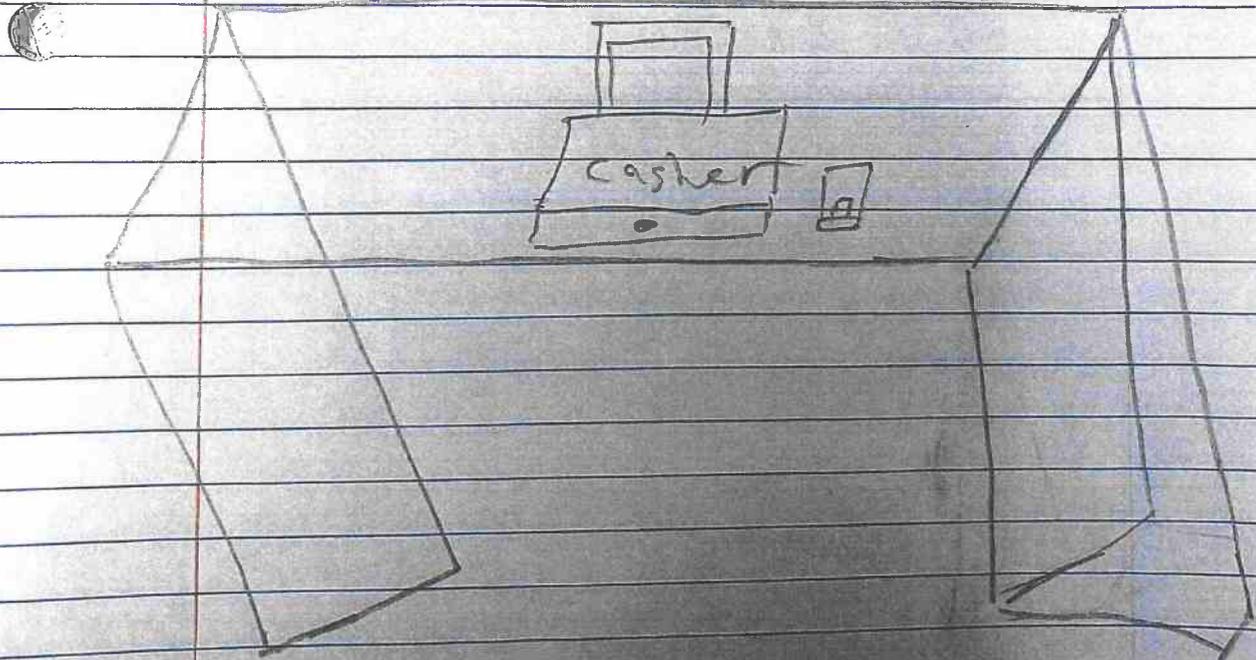
Shelve grocery

864 RICE Floor Plan

Cashier

tobacco shelf

864 RICE





CITY OF SAINT PAUL
 Department of Safety and Inspections
 Ricardo X. Cervantes, Director
 375 Jackson Street, Suite 220
 Saint Paul, Minnesota 55101
 Phone: 651-266-8989
 Web: www.stpaul.gov/dsi

Class "R" License Application

LICENSES ARE NOT TRANSFERRABLE

Payment must be received with Each Application
 This application is subject to review by the public.

Types of License(s) being applied for:

Fee(s):

- a. ~~Tobacco~~ Cigarette/Tobacco License \$488.00
- b. ~~Food~~ Alarm Permit \$39.00
- c. _____
- d. _____
- e. _____

Total: \$ -

Business/Applicant Information

Business Address: 864 Rice ST ST Paul MN 55117
Street City State Zip

Company Name: ~~AMIRA GROCERY~~ ^{Amira} AMIRA GROCERY Doing Business As: AMIRA GROCERY ^{Winnipeg}
Winnipeg

Company Type: Corporation Partnership _____ Sole Proprietorship _____

Licensee/Owner Name: mohamed shaban SULTAN
(Responsible Party) First Middle Last

Title: owner Driver's License: MN JG40-194-371-410
State License #

Date of Birth: 10 123 1990

Applicant Home Address: 14200 43RD AVE N F minneapolis MN 55448
Street City State Zip

Home Phone #: 612 245 3802 Business Phone #: 651-487-3110

Fax #: _____ Email: mohamedshaban935@yahoo.com

Supplemental Required Information *same as above*

Business Manager, if different from Applicant

Manager's Name: mohamed shaban SULTAN
First Middle Last

Home Address: 14200 43RD AVE N F mn 55448
Street City State Zip

Date of Birth: 10 123 1990 Phone #: 612 245 3802

Email Address: mohamedshaban935@yahoo.com

(Continued on back)

Please list all other Person(s) to Appear on the Business License (Attach another sheet if applicable.)

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: ____ / ____ / ____ Phone #: _____

Email Address: _____

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: ____ / ____ / ____ Phone #: _____

Email Address: _____

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: ____ / ____ / ____ Phone #: _____

Email Address: _____

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: ____ / ____ / ____ Phone #: _____

Email Address: _____

FALSIFICATION OF ANSWERS GIVEN OR MATERIAL SUBMITTED WILL RESULT IN DENIAL OF APPLICATION

I hereby state that I have answered all of the preceding questions and that the information contained herein is true and correct to the best of my knowledge and belief. I hereby state further that I have received no money or other consideration by way of loan, gift, contribution, or otherwise, other than already disclosed in the application which I herewith submitted. I also understand this premise may be inspected by police, fire, health and other city officials at any time when the business is in operation.

X Mubel Sular
Applicant Signature

Owner
Title

5-11-2021
Date



Business Plan Addendum (Cigarette/Tobacco Sales)

BUSINESS ADDRESS: 864 RICE ST ST PAUL MN 55117 **BUSINESS NAME:** WINNEPEG GROCERY

All applicants must provide details related to the business plan at the establishment for which a license is being requested. Please complete the following document and attach supporting documents as needed.

a. List hours of operation (Sunday – Saturday):

b. List/check-off the typical products to be sold in the establishment (use additional pages if necessary) and note any additional licenses you will be obtaining:

- Cigarettes Electronic cigarettes Pop or candy Clothing
- Cigarette wrapping paper Electronic cigarette parts Bottled water Household items
- Cigars Chewing tobacco Groceries
- Other Products and Licenses: _____

c. Will any food consumption be allowed on the premises? YES NO (circle one)

If yes, describe in detail what type of food service will be provided and/or consumption allowed. If applicable, provide a copy of your menu: ~~Frozen food~~ small deli inside store that is leased out

d. Will there be any seating in the establishment for customers/patrons? YES NO (circle one)

If yes, explain what the seating will be used for, and the anticipated length of time people will spend in the establishment.
30 minutes or so to eat.

e. Will any of the following occur on the premises:

- i. Sale of flavored tobacco products or e-cigarette "juice" other than mint, wintergreen and menthol? YES NO (circle one)
- ii. Sampling of tobacco products including e-cigarette "juice"? YES NO (circle one)

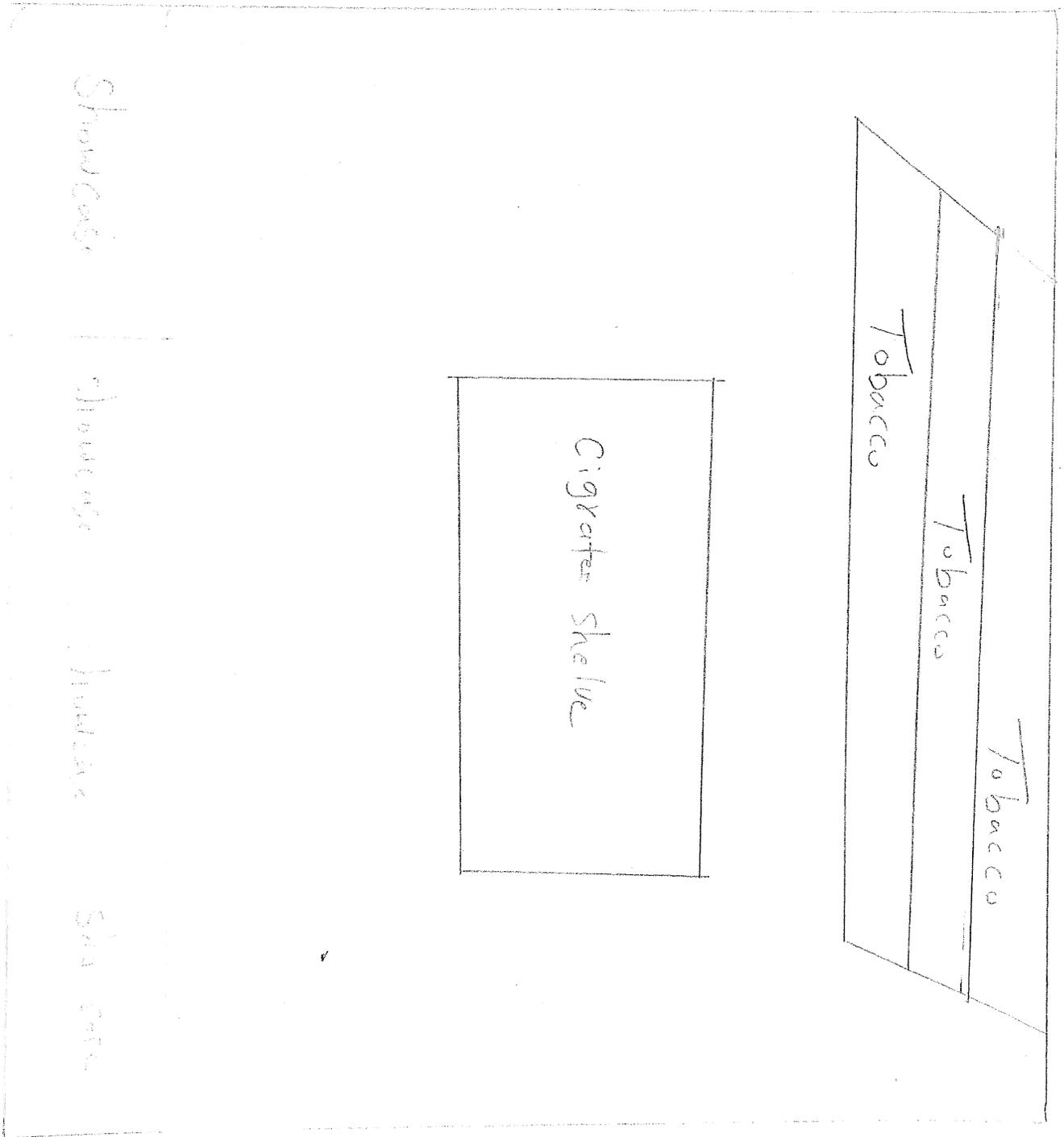
If yes to either of the questions under "e." please provide the following additional information:

- 1. What is the estimated percentage of your total sales that will come from tobacco related products? _____
- 2. What will the minimum age be to enter the establishment? _____
Describe what actions will be taken to enforce the minimum age requirement:

3. Describe how the sampling will occur (e.g., at the counter, sitting in chairs, etc.) and how you will regulate the sampling, including the estimated length of time customers will be on the premises sampling product.

Print Name: Mohamed Sultan Signature: Mohamed Sultan Date: 5-3-21

96A RILE



deli

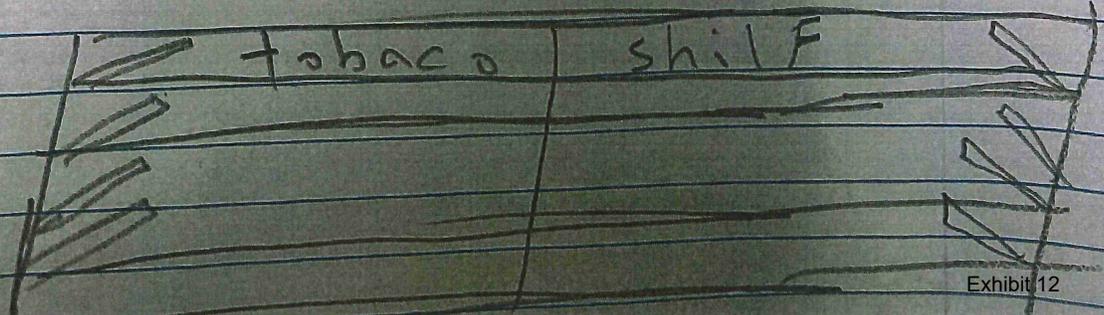
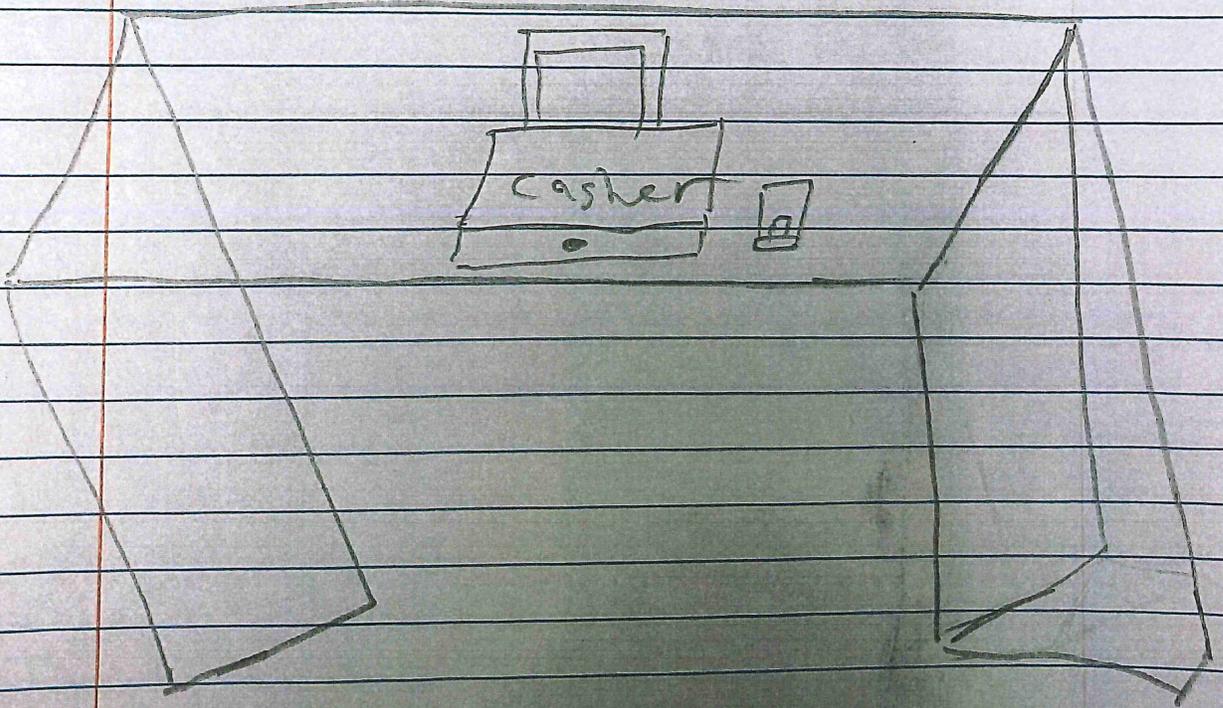
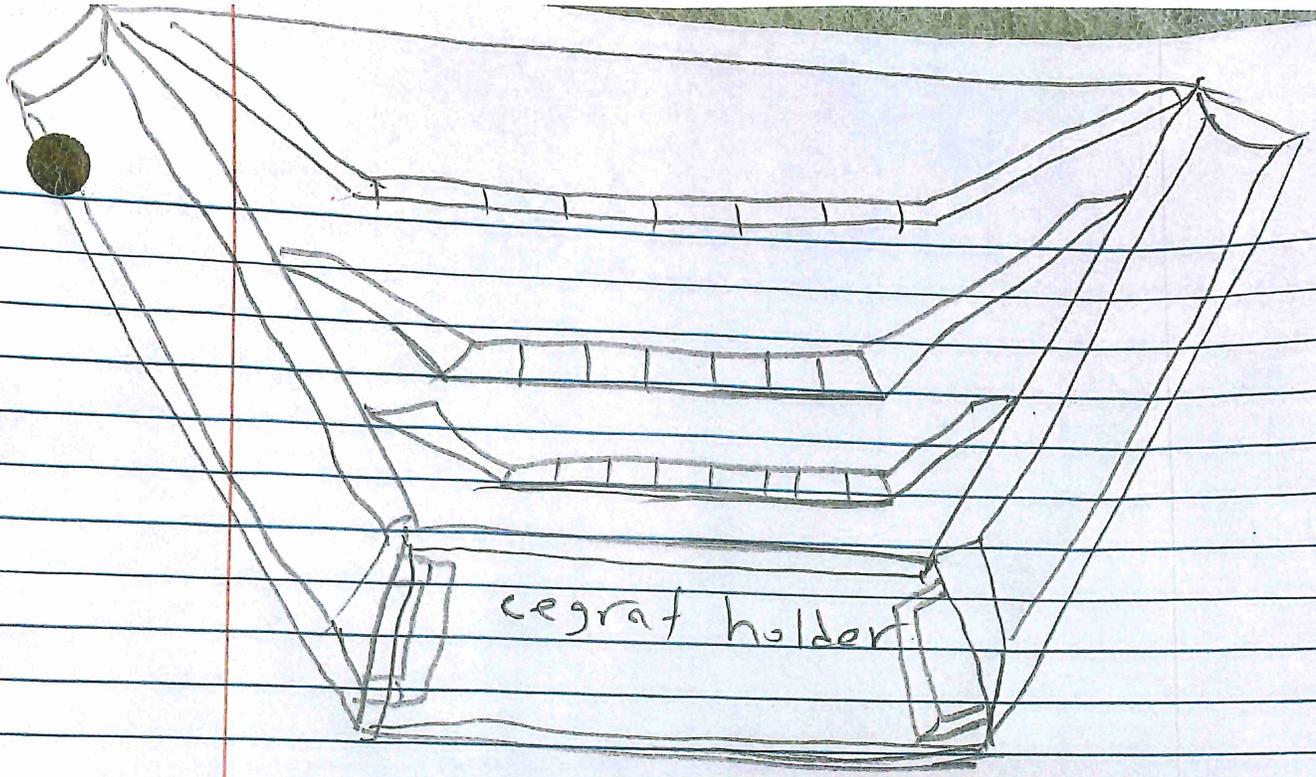
Storage

Shelve grocery

Cashier

tobacco shelf

364 RICE FLOOR PLAN





July 13, 2023

Douglas Nepp
Nepp & Hackert, LLC
In Town on the Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

RE: Cigarette/Tobacco license held by Amira Grocery d/b/a Winnipeg Grocery for the premises located at 864 Rice Street in Saint Paul
License ID #: 20210000879
OAH Docket No. 82-6020-39197

Mr. Nepp:

Please find attached and served upon you the following exhibits for the administrative hearing scheduled on July 20, 2023. A courtesy copy will be sent out by US Mail today:

Exhibit No.	Description
Ex. No. 1-1 to 1-5	March 16, 2023, Notice of Violation And Request For Imposition of 10-day Suspension of Your License with Affidavit of Service
Ex. No. 2	January 31, 2023, Department of Safety and Inspections Complaint form
Ex. No. 3-1 to 3-2	February 2, 2023, Inspector's Report
Ex. No. 4-1 to 4-13	Photographs taken during February 2, 2023, inspection.
Ex. No. 5	Surveillance video dated February 2, 2023
Ex. No. 6-1 to 6-2	April 4, 2023, letter sent to Douglas E. Nepp confirming representation
Ex. No. 7	License Property Information
Ex. No. 8	STAMP – Ownership/Zoning Information
Ex. No. 9-1 to 9-3	March 27, 2023, faxed letter from Douglas Nepp requesting an administrative hearing
Ex. No. 10-1 to 10-3	March 24, 2023, letter from Ismail Hussein with notarized letter from Melvin Galloway



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDSEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

Ex. No. 11-1 to 11-4 April 28, 2023, Seizure Notice from Minnesota Department of Revenue with attached February 6, 2023, Notice of Seized Contraband

Ex. No. 12-1 to 12-6 Application and floor plan

Ex. No. 13-1 to 13-43 Saint Paul Legislative Code 310

Ex. No. 14-1 to 14-7 Saint Paul Legislative Code 324

Sincerely,

Therese Skarda, Assistant City Attorney
License No: 0240989
Office of the City Attorney
400 City Hall & Courthouse
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102
(651) 266-8710

Cc: Barbara J. Case, Administrative Law Judge, Office of Administrative Hearings, P.O. Box 64620,
Saint Paul, MN 55164-0620

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

*The Saint Paul City Attorney's Office does not discriminate
based on race, color, national origin, religion, sex/gender, disability, sexual orientation, gender identity, age, or veteran status
in the delivery of services or employment practices.*

STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Julie Kraus, being first duly sworn, deposes and says that on the 13TH day of July she served the attached **LETTER TO OPPOSING COUNSEL WITH ATTACHED EXHIBITS 1-14** and a correct copy thereof in an envelope addressed as follows:

Douglas Nepp
Nepp & Hackert, LLC
In Town on the Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

Barbara J. Case
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
Saint Paul, MN 55164-0620

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.

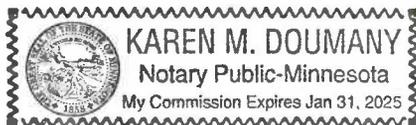


Julie Kraus

Subscribed and sworn to before me
This 13TH day of July 2023

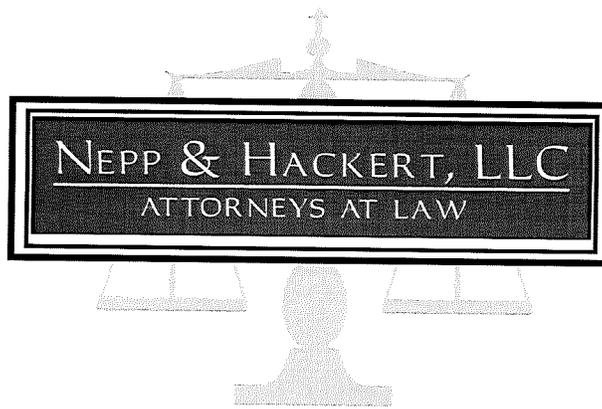


Notary Public



RECEIVED

By: OAH on 7/13/2023 3:47 PM



DOUGLAS E. NEPP
ATTORNEY AT LAW
THOMAS A. HACKERT
ATTORNEY AT LAW

IN TOWN ON LAKE BUILDING
ONE WEST LAKE ST, SUITE 185
MINNEAPOLIS MN 55408

TEL : 612.871.3333
FAX: 612.874.0672

July 13, 2023

Theresa Skarda
Office of the St. Paul City Attorney
Civil Division
15 Kellogg Blvd West
Suite 400
Saint Paul, MN 55102

RE: Cigarette/Tobacco license held by Amira Grocery d/b/a Winnipeg Grocery for
the premises located at 864 Rice Street in Saint Paul
License ID: 20210000879
OAH Docket No.: 71-6020-39197

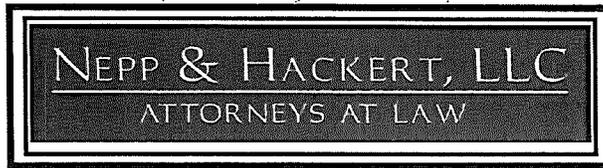
Ms. Skarda:

Below is a witness list Respondent may call to testify at the July 20, 2023,
administrative hearing.

1. Mohamed Shaaban Ramada Sultan
Sole Owner of Amira Grocery d/b/a Winnipeg Grocery.
2. Melvin Galloway
The MN Revenue agent who seized the product.

Dated: July 13, 2023

/S/ Douglas E. Nepp
Douglas e. Nepp (#0194864)
NEPP & HACKERT, LLC
One West Lake Street, Suite 185
Minneapolis, MN 55408
Tel: (612) 871-3333
Fax: (612) 874-0672



DOUGLAS E. NEPP
ATTORNEY AT LAW
THOMAS A. HACKERT
ATTORNEY AT LAW

IN TOWN ON LAKE BUILDING
ONE WEST LAKE ST, SUITE 185
MINNEAPOLIS MN 55408

TEL : 612.871.3333
FAX: 612.874.0672

March 27, 2023

Ms. Therese Skarda
Office of the St. Paul City Attorney
Civil Division
15 Kellogg Boulevard West
Suite 400
Saint Paul, MN 55102

VIA FAX and U.S. MAIL

Re: Letter of March 16, 2023
Amira Grocery, Inc. d/b/a Winnipeg Grocery
License ID #: 20210000879

Dear Ms. Skarda:

I represent Amira Grocery, Inc. d/b/a Winnipeg Grocery (hereinafter "Amira Grocery") and its sole shareholder Mohamed Shaaban Ramada Sultan. A Notice of Violation letter authored by you and dated March 16, 2023 has been forwarded to me for response. This letter will serve as Amira Grocery's formal request for hearing before an Administrative Law Judge.

Amira Grocery disputes the facts outlined in your notice of violation letter. Department Inspector Vang has erroneously attributed ownership of prohibited flavored tobacco products to Amira Grocery. Ownership of the prohibited flavored tobacco products has been established through a notarized statement of admission by Melvin Galloway. The owner of the prohibited flavored tobacco products is not an employee of Amira Grocery. The owner of the prohibited flavored tobacco products only connection to Amira Grocery is as a sub-leasee. The Minnesota Revenue agent who seized the product addressed the seizure notice to Melvin Galloway.

Please direct future correspondence to my office. Thank you for your time and attention to this matter.

Sincerely,

Douglas E. Nepp

✓ Cc: Mohamed Sultan

Tom Piskor
Revenue Tax Special Intermediate
Cigarette, Alcohol, and Tobacco Unit
Minnesota Department of Revenue
Special Tax Division
600 N. Robert St., Mail Station 3331
St. Paul, MN 55146

Re: Seized Property

My name is Melvin Galloway, I am a sub-lessee, operating the Deli section inside Amira Grocery Store at 864 Rice St., St. Paul, MN 55117.

In reference to your Notice of Seized Contraband; **Letter ID: L1829469344**, dated February 6, 2023; addressed to Amira Grocery Inc., and later amended by adding handwritten Attn to: **Melvin Galloway**.

I declare and admit that I am the owner of the property, tobacco products, seized by Minnesota Department of Revenue on February 03, 2023, and that neither Amira Grocery nor the owner of the store Mr. Mohamed Shaban has anything to do with the seized products.

What happened on that day was as follows: I walked into the store with two plastic bags containing the products in my hands. I saw Mr. Shaban, the owner of the store and my landlord, from whom I rent the Deli section. I stopped to talk to him about the rent payment which was due at the time. I left the two plastic bags on the floor and walked to the Deli area to grab a sandwich. At this moment the Minnesota Revenue's inspectors came in, searched the bags against my will and objection, to find the products to which I confirmed to the inspectors my ownership. The inspectors later seized the products as contraband.

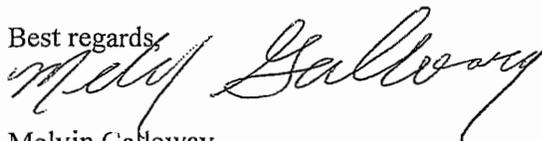
I called the Minnesota Department of Revenue to claim and return my property and I have been told a letter will come in the mail. However, as I mentioned above the Notice of Seize is incorrectly addressed to Amira Grocery, Inc. and later amended to my attention.

Again I declare that neither the store nor its owner has anything to do with the seized products. The only relationship I have with Amira Grocery Store is the sublease to operate the Deli section.

Accordingly, please remove AMIRA GROCERY INC from the Notice and direct any future notices to me personally, addressed to my home address at 264 POPLAR DR, SOREVIEW, MN 55125, and return my products back to me.

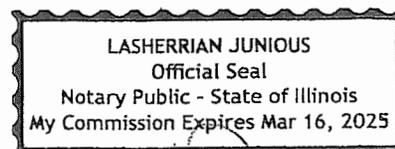
Thank you in advance for your attention to this matter, in the meantime, if you have any questions, please contact the undersigned directly.

Best regards,



Melvin Galloway
264 Poplar Dr.
Shoreview, MN 55125

Phone Number: 651-434-3203



cc: Mohamed Shaban owner of Amira Grocery Store

June 28, 2023

VIA EMAIL ONLY

Therese Skarda
Assistant City Attorney
400 City Hall & Courthouse
15 W Kellogg Blvd
Saint Paul, MN 55102
Therese.Skarda@ci.stpaul.mn.us
julie.kraus@ci.stpaul.mn.us

VIA EMAIL ONLY

Douglas E. Nepp
Nepp & Hackert, LLC
In Town on the Lake Bldg
One W Lake St Ste 185
Minneapolis, MN 55408
doug@nepphackert.com
fatima@nepphackert.com

**Re: *In the Matter of Tobacco Shop License Held by Amira Grocery d/b/a
Winnipeg Grocery for the Premises Located at 864 Rice Street in
Saint Paul***
OAH 82-6020-39197

Dear Parties:

Please be advised that the above-entitled matter has been reassigned to Judge Barbara J. Case. As a result, the docket number has changed slightly.

The hearing in this matter continues to be scheduled for **Thursday, July 20, 2023**, at **9:30 a.m.** at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

Very truly yours,



JENNY L. STARR
Chief Administrative Law Judge

JLS:NH

cc: Docket Coordinator



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDSEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

June 16, 2023

Douglas Nepp
Nepp & Hackert, LLC
In Town on the Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

RE: Cigarette/Tobacco license held by Amira Grocery d/b/a Winnipeg Grocery for the premises located at 864 Rice Street in Saint Paul
License ID #: 20210000879
OAH Docket No. 71-6020-39197

Mr. Nepp:

Below is a list of witnesses the City may call to testify at the July 20, 2023, Administrative Hearing. If I add any witnesses to this list, I will provide you with that information as well.

1. Eric Hudak, DSI Licensing Manager, 375 Jackson Street, Ste. 220, St. Paul, MN 55101. (651) 266-9132.
2. Allan Vang, DSI Inspector, 375 Jackson Street, Ste. 220, St. Paul, MN 55101. (651) 266-1915
3. Joseph Voyda, DSI Inspector III, 375 Jackson Street, Ste. 220, St. Paul, MN 55101. (651-266-9014
4. Thomas Piskor, Revenue Tax Specialist Senior, Special Taxes, Minnesota Department of Revenue 600 Robert Street North, St. Paul, MN 55101. (651) 556-3035.

Sincerely,

Therese Skarda
Assistant City Attorney
License No: 0240989

Cc: Jessica A. Palmer-Denig Administrative Law Judge, Office of Administrative Hearings
P.O. Box 64620, St. Paul, MN 55164-0620

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

STATE OF MINNESOTA)

) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Julie Kraus, being first duly sworn, deposes and says that on the 16th day of June she served the attached **LETTER TO DOUGLAS NEPP WITH ADMINISTRATIVE HEARING WITNESS LIST** and a correct copy thereof in an envelope addressed as follows:

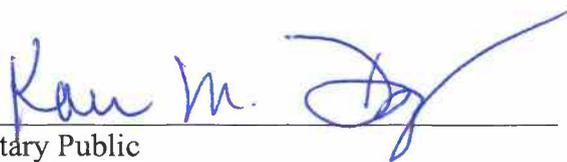
Douglas Nepp
Nepp & Hackert, LLC
In Town on the Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

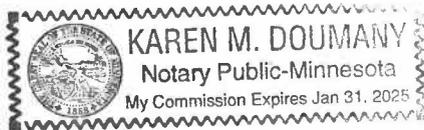
Jessica A. Palmer-Denig
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
St. Paul, MN 55164-0620

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.


Julie Kraus

Subscribed and sworn to before me
This 16th day of June 2023


Notary Public



June 16, 2023

VIA EMAIL ONLY

Therese Skarda
St. Paul City Attorney's Office
400 City Hall & Courthouse
15 W Kellogg Blvd
Saint Paul, MN 55102
Therese.Skarda@ci.stpaul.mn.us
julie.kraus@ci.stpaul.mn.us

**Re: *In the Matter of Tobacco Shop License Held by Amira Grocery d/b/a
Winnipeg Grocery for the Premises Located at 864 Rice Street in
Saint Paul
OAH 71-6020-39197***

Dear Ms. Skarda:

Pursuant to your request received June 15, 2023, please find enclosed the subpoena you requested.

If you have any questions, please contact me at (651) 361-7857, nichole.helmuelle@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



NICHOLE HELMUELLER
Legal Assistant

Enclosure

Make checks payable to:
State of Minnesota
Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

SUBPOENA CHARGES

DATE: August 15, 2023

OAH FILE NUMBER: 71-6020-39197

OAH CASE TITLE: In the Matter of Tobacco Shop License Held by Amira Grocery
d/b/a Winnipeg Grocery for the Premises Located at 864 Rice
Street in Saint Paul

REQUESTED BY: Therese Skarda
St. Paul City Attorney's Office
400 City Hall & Courthouse
15 W Kellogg Blvd
Saint Paul, MN 55102

Sale of Subpoenas: 1 subpoena x \$5.00 per subpoena= \$5.00

**HEARING SUBPOENA
DUCES TECUM**

TO: Thomas Piskor, Revenue Tax Specialist Senior, Special Taxes, Cigarette Tobacco and Alcohol Unit, Minnesota Department of Revenue, 600 Robert Street North, Saint Paul, Minnesota 55164

This subpoena is issued pursuant to Minn. Stat. § 14.51 (2022).

You are commanded to appear before Administrative Law Judge Jessica A. Palmer-Denig of the Office of Administrative Hearings of the State of Minnesota, at the Office of Administrative Hearings, 600 North Robert Street, in the city of Saint Paul, Minnesota, on **Thursday, July 20, 2023, at 9:30 a.m.**, to appear as a witness *In the Matter of Tobacco Shop License Held by Amira Grocery d/b/a Winnipeg Grocery for the Premises Located at 864 Rice Street in Saint Paul*, docket number 71-6020-39197.

Dated: June 16, 2023


JESSICA A. PALMER-DENIG
Administrative Law Judge

Subpoena requested by: Therese Skarda
(651) 266-8755
Therese.Skarda@ci.stpaul.mn.us;
julie.kraus@ci.stpaul.mn.us



SAINT PAUL
CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

June 16, 2023

Douglas Nepp
Nepp & Hackert, LLC
In Town on the Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

RE: Cigarette/Tobacco license held by Amira Grocery d/b/a Winnipeg Grocery for the premises located at 864 Rice Street in Saint Paul
License ID #: 20210000879
OAH Docket No. 71-6020-39197

Mr. Nepp:

Below is a list of witnesses the City may call to testify at the July 20, 2023, Administrative Hearing. If I add any witnesses to this list, I will provide you with that information as well.

1. Eric Hudak, DSI Licensing Manager, 375 Jackson Street, Ste. 220, St. Paul, MN 55101. (651) 266-9132.
2. Allan Vang, DSI Inspector, 375 Jackson Street, Ste. 220, St. Paul, MN 55101. (651) 266-1915
3. Joseph Voyda, DSI Inspector III, 375 Jackson Street, Ste. 220, St. Paul, MN 55101. (651-266-9014
4. Thomas Piskor, Revenue Tax Specialist Senior, Special Taxes, Minnesota Department of Revenue 600 Robert Street North, St. Paul, MN 55101. (651) 556-3035.

Sincerely,

Therese Skarda
Assistant City Attorney
License No: 0240989

Cc: Jessica A. Palmer-Denig Administrative Law Judge, Office of Administrative Hearings
P.O. Box 64620, St. Paul, MN 55164-0620

RECEIVED

By: OAH on 6/15/2023 2:22 PM

OFFICE OF ADMINISTRATIVE HEARINGS PO Box 64620 St. Paul, Minnesota 55164-0620 (651) 361-7900 FAX (651) 539-0310		SUBPOENA REQUEST FORM Minn. R. 1400.7000 OAH File No. 71-6020-39197 Request Date: June 16, 2019	
Name of Judge: Jessica A. Palmer-Denig		Type of Subpoena (Check one) Hearing Presence <input checked="" type="checkbox"/> Document Production <input type="checkbox"/> Deposition <input type="checkbox"/>	

In the Matter of adverse action against the Tobacco Shop license held by Amira Grocery, Inc. d/b/a Winnipeg Grocery for the premises located at 864 Rice Street in Saint Paul

Requesting Party or Attorney	Person Being Served
Therese Skarda St. Paul City Attorney's Office 400 City Hall & Courthouse 15 West Kellogg Boulevard St. Paul, MN 55102 (651) 266-8755 Therese.Skarda@ci.stpaul.mn.us	Thomas Piskor – Revenue Tax Specialist Senior Special Taxes Cigarette Tobacco & Alcohol Unit Minnesota Department of Revenue 600 Robert Street North St. Paul, MN 55101 (651) 556-3035 Email: Thomas.Piskor@state.mn.us

Date and Location of Hearing (or Deposition or Return of Documents):

Thursday, July 20, 2023 @ 9:30 a.m.
 Office of Administrative Hearings
 600 Robert Street North
 St. Paul, MN 55164-0620

Relevancy of Testimony or Document to be Subpoenaed

Mr. Piskor will testify about an inspection he conducted on February 2, 2023, at Amira Grocery Inc. d/b/a Winnipeg Grocery at 864 Rice Street. The investigation he conducted, including communication with the licensee and any staff present at the time of the inspection, contraband he seized and the results of the seizure (i.e., the time for challenging the seizure expired).

Please Note: There is a \$5.00 fee for each subpoena issued. OAH will bill the party/attorney for the subpoenas. *Documents to be produced must be described with specificity on the reverse side of this form.*

A copy of this request must be sent to all other parties.

If you have any questions concerning this subpoena request, please consult Minn. R. 1400.7000, or contact a Staff Attorney at 651-361-7900.

The requesting person is responsible for personal service of the subpoena. Anyone, except the requesting person, may personally serve the subpoena. The requesting person is also responsible for payment to the witness of any statutory fees or costs before the witness' appearance. Minn. Stat. § 357.22 provides for a witness fee of \$20.00 per day and travel expenses of 28 cents per mile.

**SAINT PAUL**
CITY ATTORNEYOFFICE OF THE CITY ATTORNEY
LYNDESEY M. OLSON, CITY ATTORNEYCivil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

May 30, 2023

Jessica A. Palmer-Denig,
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
Saint Paul, MN 55164-0620RE: Cigarette/Tobacco license held by Amira Grocery d/b/a Winnipeg Grocery for the premises
located at 864 Rice Street in Saint Paul
License ID #: 20210000879
OAH Docket No.: 71-6020-39197

Dear Judge Palmer-Denig:

Please find enclosed an Amended Index of City's Proposed Exhibits adding a flash drive as
Exhibit 5 (February 2, 2023, video surveillance with player). This video was submitted to us
by the licensee so we were unable to change it to another format.

Sincerely,

Therese Skarda
Assistant Saint Paul City Attorney
License No.: 0240989

Enclosure: Flash drive of video surveillance of 864 Rice Street dated February 2, 2023.



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDESEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COUNCIL OF
THE CITY OF SAINT PAUL

In Re: Tobacco Shop license held by Amira Grocery d/b/a Winnipeg Grocery for the premises located at 864 Rice Street in Saint Paul

INDEX OF CITY'S
PROPOSED EXHIBITS

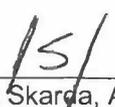
DATE: May 24, 2023

TO: Judge Jessica Palmer-Denig - Office of Administrative Hearings, 600 North Robert Street.

The following constitutes a list of the City's proposed exhibits for the July 20, 2023, administrative hearing:

Exhibit No.	Description
Ex. No. 1-1 to 1-5	March 16, 2023, Notice of Violation And Request For Imposition of 10-day Suspension of Your License with Affidavit of Service
Ex. No. 2	January 31, 2023, Department of Safety and Inspections Complaint form
Ex. No. 3-1 to 3-2	February 2, 2023, Inspector's Report
Ex. No. 4-1 to 4-13	Photographs taken during February 2, 2023, inspection.
Ex. No. 5	Surveillance video (sent to Douglas Nepp with April 4, 2023, letter confirming representation)
Ex. No. 6-1 to 6-2	April 4, 2023, letter sent to Douglas E. Nepp confirming representation
Ex. No. 7	License Property Information
Ex. No. 8	STAMP – Ownership/Zoning Information
Ex. No. 9-1 to 9-3	March 27, 2023, faxed letter from Douglas Nepp requesting an administrative hearing
Ex. No. 10-1 to 10-3	March 24, 2023, letter from Ismail Hussein with notarized letter from Melvin Galloway
Ex. No. 11-1 to 11-4	April 28, 2023, Seizure Notice from Minnesota Department of Revenue with attached February 6, 2023, Notice of Seized Contraband
Ex. No. 12-1 to 12-6	Application and floor plan
Ex. No. 13-1 to 13-43	Saint Paul Legislative Code 310
Ex. No. 14-1 to 14-7	Saint Paul Legislative Code 324

Respectfully submitted the 24th day of May, 2023



Therese Skarda, Assistant City Attorney
License No: 0240989
Office of the City Attorney
400 City Hall & Courthouse
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102
(612) 266-8710

..Title

Amending Chapter 310 of the Saint Paul Legislative Code to eliminate petition requirements, reference and establish Uniform License Procedures for Class N, R, and T Licenses, shorten the notification process, eliminate the license renewal public hearing provision, and update gender specific language and other outdated terms.

SECTION 1

..Body

WHEREAS, current individual city licensing Ordinances contain notification, hearing, and petition requirements for specific business license types; and

WHEREAS, different license processes in different city licensing ordinances have created confusion among city staff and prospective license applicants as to the proper process to follow; and

WHEREAS, some of these requirements unnecessarily increase the time it takes individuals to open a business; and

WHEREAS, the city seeks to improve the process by which community members learn about and provide input to support Council decision making related to business licenses; and

WHEREAS, time costs entrepreneurs' money and impacts their interest and ability to open a business in Saint Paul; and

WHEREAS, throughout the life cycle of a license, the city council has the same rights, requirements, and abilities to take adverse license action (e.g., imposing conditions on a license); and

WHEREAS, after community listening sessions a stakeholder workgroup discussed business and administrative needs and brainstormed/researched solutions; and

WHEREAS, the workgroup recommended uniform license procedures, the removal of petition requirements, a shortened notification process, elimination of the license renewal public hearing provision, and retaining the requirement that all Class N License Applications be put before City Council; and

WHEREAS, the City Attorney has determined that laws that include references to gender do not promote gender equality, and advises that gender-specific words should be replaced with gender-neutral words that have the same meaning when possible; and

WHEREAS, because the City Attorney has determined that the use of the word "shall" in legal instruments is ambiguous depending upon context, and advises that the best practice of substituting the word "shall" with a more precise term, such as *must*, *will*, *may*, *should*, or *is* should be followed when possible, now, therefore be it



RESOLVED, that the Council of the City of Saint Paul does ordain:

SECTION 2

Chapter 310.01 of the Saint Paul Legislative Code is hereby amended as follows:

Chapter 310. Uniform License Procedures

The procedures in this chapter are meant to govern the issuance of all licenses and certain permits in the City of Saint Paul unless a different process is required by statute. The requirements laid out in this chapter are meant to supersede all requirements laid out in ordinance related to Applications for the Grant or Issuance of a License, New Application Investigation and Review, Application Denial, Notice, Levels of Approval, Objections, and Renewal Procedures.

Sec. 310.01. Definitions.

For the purposes of this chapter, any chapter of the Legislative Code pertaining to licenses as hereinafter mentioned, and subsequently enacted ordinances establishing or relating to the requirements for Class R, for routinely issued licenses, Class T for temporary licenses and Class N for licenses in which neighbors are required to be notified, under authority of the City of Saint Paul, the terms defined in this section will have the following meanings:

Adverse action means the revocation or suspension of a license, the imposition of conditions upon a license, the denial of an application for the grant, issuance or renewal of a license, the imposition of a fine, the assessment of the costs of a contested hearing, and any other disciplinary or unfavorable action taken with respect to a license, licensee, or applicant for a license. "Adverse action" includes any of the foregoing directed at one (1) or more licenses held by a licensee at any location in the city. "Adverse action" also includes disapproval of licenses issued by the state under statutory provisions which permit the governing body to disapprove the issuance of the license.

Bond means a bond meeting the requirements of section 310.05 and indemnifying the city against all claims, judgments or suits caused by, resulting from or in connection with any licensed business, activity, premises, thing, facility, occurrence or otherwise under these chapters.

Building official means the official in the department of safety and inspections charged with the responsibility of enforcement of the building code.

Chapters and these chapters mean this uniform license ordinance, any chapter of the Legislative Code pertaining to licenses as hereinafter mentioned, and subsequently enacted ordinances establishing or relating to the requirements for class R, class T, and class N licenses under authority of the city.

Class R licenses means those licenses and certain permits which can be issued by the Director without council approval if no conditions are imposed upon the license and which do not require a hearing if there is an objection. Class R Licenses follow the Procedures for Application for the Grant or Issuance of a License, New Application Investigation and Review, Application Denial, Notice, Levels of Approval, Objections, and Renewal Procedures laid out in Section 310.02(1). The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:



License Type Description	License Fees	Class Type	Ordinance/ Legislative Code
Agricultural Vehicle Permit	\$21.00	R	165
Amusement Rides – Annual	\$79.00	R	317
Animal Boarding (Commercial)	\$76.00	R	348.02
Animal Boarding (Home Occupation)	\$76.00	R	348.05
Animal Day Care (Commercial)	\$76.00	R	348
Animal Day Care (Home Occupation)	\$76.00	R	348
Animal Permit (4 or more dogs)	\$76.00	R	200.15
Animal Permits Tier 1 Chickens (1 - 6)	\$26.00	R	198.02
Animal Permits Tier 2 Chickens (7- 15)	\$76.00		198
Animal Foods Manufacturing and Distribution	\$76.00	R	316
Animal Permit (4 or more cats)	\$75.00	R	198.02(f)
Animal Permits (Exotic)	\$76.00	R	198
Bituminous Contractor	\$194.00	R	320
Bulk Oil Storage	\$194.00	R	342
Christmas Tree Sales	\$79.00	R	323
City Contractor-Carpentry	\$194.00	R	326
City Contractor-Excavation	\$194.00	R	326
City Contractor-Exterior Finishing	\$194.00	R	326
City Contractor-Fence	\$194.00	R	326
City Contractor-General Installation	\$194.00	R	326
City Contractor-Interior Finishing	\$194.00	R	326
City Contractor-Pool Installer	\$194.00	R	326
City Contractor-Specialty under \$15,000	\$194.00	R	326
Commercial Vehicle	\$72.00	R	Permit allows: 157.09. 160.08 (a)
Commercial Vehicle - Exempt	\$0.00	R	Permit allows: 157.09. 160.08 (a)
Courtesy Bench	\$24.00	R	127
Dog - Declared Animal (MC/Altered)	\$140.00	R	200.121
Dog - Declared Animal (MC/Unaltered)	\$280.00	R	200.122
Dog Annual - (Altered)	\$20.00	R	200
Dog Annual - (Intact)	\$80.00	R	200
Dog Annual Reduced - (Altered)	\$10.00	R	200
Dog Lifetime - (Microchip/Altered)	\$140.00	R	200
Dog Lifetime* - Altered	\$0.00	R	200
Dog Lifetime* - Unaltered	\$0.00	R	200



License Type Description	License Fees	Class Type	Ordinance/ Legislative Code
Dog Reduced Lifetime - (MC/Altered)	\$70.00	R	200
Dog Regular (Lifetime) Renewal	\$35.00	R	200
Dog Regular * (Altered)	\$0.00	R	200
Dog Regular * (Unaltered)	\$0.00	R	200
Dog Regular Lifetime Dangerous (Unaltered)	\$67.00	R	200
Dog Regular Lifetime Dangerous (Altered)	\$34.00	R	200
Dog Regular Renewal	\$12.00	R	200
Dog Regular Service Lifetime (Altered)	\$35.00	R	200
Dog Regular Service Lifetime (Unaltered)	\$68.00	R	200
Dog Regular* Renewal	\$0.00	R	200
Dog Senior - (Unaltered)	\$80.00	R	200
Dog Senior (Lifetime) Renewal	\$18.00	R	200
Dog Senior * (Altered)	\$0.00	R	200
Dog Senior * (Unaltered)	\$0.00	R	200
Dog Senior Lifetime Dangerous (Unaltered)	\$34.00	R	200
Dog Senior Lifetime Dangerous (Altered)	\$18.00	R	200
Dog Senior Renewal	\$10.00	R	200
Dog Senior Service Lifetime (Altered)	\$18.00	R	200
Dog Senior Service Lifetime (Unaltered)	\$35.00	R	200
Dog Senior* Renewal	\$10.00	R	200
Dog Service Lifetime	\$0.00	R	200
Dog-Dangerous Annual Registration	\$300.00	R	200.121
Finishing Shop	\$79.00	R	371
House Sewer Contractor	\$194.00	R	338
Laundry/Dry-cleaning Pick Up Station	\$79.00	R	327
Laundry/Dry-cleaning Plant	\$194.00	R	327
Lawn Fertilizer and Pesticide Applicator	\$79.00	R	377
Liquid Fuel Dealer	\$194.00	R	332
Liquid Fuel Dealer Vehicle	\$79.00	R	332
Liquor Catering (State Cater Only)	\$55.00	R	409
Liquor Catering (State Cater/City Liq)	\$175.00	R	409.01
MAD - Game Machines	\$19.00	R	318
MAD - Music Machine	\$19.00	R	318
MAD - Rides	\$19.00	R	318



License Type Description	License Fees	Class Type	Ordinance/ Legislative Code
MAD - TV Units	\$19.00	R	318
Massage Practitioner	\$98.00	R	414
Massage Practitioner-Additional Location	\$29.00	R	CF04-670 412
Mercantile Broker	\$79.00	R	340
Mobile Retail Vehicle	\$79.00	R	346
Pedal Car	\$109.00	R	374
Pedal Car Business	\$326.00	R	374
Pedal Car Driver	\$47.00	R	374
Peddler	\$79.00	R	345
Peddler - Fee Waived	\$0.00	R	345
Pedicab Driver	\$47.00	R	374
Pedicab Vehicle	\$105.00	R	374
Pest Control	\$194.00	R	334
Pet Grooming Facility	\$79.00	R	382
Pet Shop	\$194.00	R	347
Rental of Hospital Equipment	\$79.00	R	350
Rental of Hospital Equip-Vehicle	\$79.00	R	350
Rental of Kitchenware	\$79.00	R	351
Roller Rink	\$79.00	R	353
Sanitary Disposal Vehicle	\$375.00	R	354
Second-Hand Dealer	\$79.00	R	CF02-612 355
Second-Hand Dealer - Multiple Dealers	\$375.00	R	355
Second-Hand Dealer (Antiques)	\$72.00	R	CF02-612 355
Second-Hand Dealer (Antiques/Comp/Elec)	\$72.00	R	CF02-612 356
Second-Hand Dealer (Comp/Elec)	\$72.00	R	CF02-612 357
Short-Term Rental (Non-Owner Occupied)	\$42.00	R	379
Short-Term Rental (Owner Occupied)	\$42.00	R	379
Short-Term Rental Platform	\$10,353.00	R	379
Sidewalk Cafe	\$37.00	R	106
Sidewalk Contractor	\$194.00	R	356
Solicitor	\$76.00	R	345
Solid Fuel Dealer	\$194.00	R	333
Solid Fuel Dealer Vehicle	\$79.00	R	333



License Type Description	License Fees	Class Type	Ordinance/ Legislative Code
Solid Waste Hauler & Vehicle	\$375.00	R	357
Solid Waste Hauler (Ea Add'l Veh)	\$79.00	R	357
Solid Waste Transfer Station	\$1,771.00	R	357
Sound Trucks & Broadcast Vehicle	\$79.00	R	359
Swimming Pool - Public	\$375.00	R	360
Tanning Facility	\$98.00	R	380
Taxicab Driver	\$47.00	R	376.17(4)
Taxicab Vehicle	\$434.00	R	376
Taxicab Vehicle - Winter	\$100.00	R	376
Tire Recapping Plant	\$79.00	R	372
Tobacco Products Shop	\$495.00	R	324
Tobacco Shop	\$495.00	R	324
Tow Truck/Wrecker (Operator)	\$375.00	R	361
Tow Truck/Wrecker (Vehicle)	\$79.00	R	361
Trade-Billboard & Sign	\$174.00	R	66.403
Trade - CM/FC Tier 1	\$34.00	R	
Trade - CM/FC Tier 2	\$65.00	R	
Trade - CM/FC Tier 3	\$55.00	R	
Trade-Cement Finishing	\$174.00	R	369
Trade-Concrete Masonry	\$174.00	R	369
Trade-Concrete Masonry & Finish Cement	\$174.00	R	369
Trade-Elevator Operator	\$174.00	R	38.03
Trade-Gasburner A	\$174.00	R	369
Trade-Gasburner B	\$174.00	R	369
Trade - Gasburner Tier 1	\$34.00	R	
Trade - Gasburner Tier 2	\$65.00	R	
Trade - Gasburner Tier 3	\$55.00	R	
Trade-Interm	\$174.00	R	
Trade - Lathering/Plastering Tier 3	\$55.00	R	
Trade - Lathing/Plastering Tier 1	\$34.00	R	
Trade - Lathing/Plastering Tier 2	\$65.00	R	
Trade-Oilburner A	\$174.00	R	369
Trade-Oilburner B	\$174.00	R	369
Trade - Oilburner Tier 1	\$34.00	R	
Trade - Oilburner Tier 2	\$65.00	R	
Trade - Oilburner Tier 3	\$55.00	R	
Trade-Plastering	\$174.00	R	369
Trade-Plumbing/Gasfitting	\$174.00	R	369
Trade - Plumbing Tier 1	\$34.00	R	



License Type Description	License Fees	Class Type	Ordinance/ Legislative Code
Trade - Plumbing Tier 2	\$65.00	R	
Trade - Plumbing Tier 3	\$55.00	R	
Trade-Refrigeration A	\$174.00	R	369
Trade-Refrigeration B	\$174.00	R	369
Trade - Refrigeration Tier 1	\$34.00	R	
Trade - Refrigeration Tier 2	\$65.00	R	
Trade - Refrigeration Tier 3	\$55.00	R	
Trade-RVentilation	\$174.00	R	369
Trade-RWarm Air	\$174.00	R	369
Trade-Sign Contractor/Operator	\$174.00	R	
Trade-Steamfitting A	\$174.00	R	369
Trade-Steamfitting B	\$174.00	R	369
Trade - Steam/Hot Water Tier 1	\$34.00	R	
Trade - Steam/Hot Water Tier 2	\$65.00	R	
Trade - Steam/Hot Water Tier 3	\$55.00	R	
Trade-Ventilation	\$174.00	R	369
Trade-Warm Air	\$174.00	R	369
Trade - Warm Air/Ventilation Tier 1	\$34.00	R	
Trade - Warm Air/Ventilation Tier 2	\$65.00	R	
Trade - Warm Air/Ventilation Tier 3	\$55.00	R	
Trade-Wrecking	\$59.00	R	368
Trailer Rental	\$194.00	R	352
Tree Trimmer & 1 Vehicle	\$194.00	R	362
Tree Trimmer- Each Add'l Vehicle	\$79.00	R	362
Vehicle Immobilization Service	\$375.00	R	
Veterinary Hospital	\$194.00	R	364
Window Cleaning	\$194.00	R	365

Class T licenses means those licenses which can be approved or denied by the Director if no conditions are imposed upon the license, and which do not require a hearing if there is an objection. Class T Licenses follow the Procedures for Application for the Grant or Issuance of the License, New Application Investigation and Review, Application Denial, Notice, Levels of Approval, Objections, and Renewal Procedures laid out in Section 310.02(3). The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

License Type Description	License Fees	Class Type	Ordinance/ Legislative Code
Amusement Rides - Temporary	\$30.00	T	317
Bingo/Rfls/P-Tabs/Tpbrds/Pdlwhls	\$55.00	T	402
Close Out Sale	\$79.00	T	325
Entertainment - Temporary	\$32.00	T	411.05



License Type Description	License Fees	Class Type	Ordinance/ Legislative Code
Liquor - Under Age Access (Temporary)	\$33.00	T	409 SS340A
Liquor On Sale - Temporary	\$55.00	T	409.25
Malt On Sale (3.2) - Temporary	\$55.00	T	410
Massage Practitioner - Temporary	\$46.00	T	414 & 412
Private Event-Restaurant/Liquor Caterer	\$32.00	T	
Second Hand Dealer - Exhibition	\$194.00	T	355
Short-Term Rental Temp (Non-Owner Occ.)	\$42.00	T	
Short-Term Rental Temp (Owner Occupied)	\$42.00	T	
Tag Days	\$24.00	T	391
Temp C-19 Outdoor Service Area	\$0.00	T	Temp license for patio service with covid
Temp On Sale Malt Brewery/Distillery	\$55.00	T	
Transient Merchant	\$76.00	T	345
Wine On Sale-Temporary	\$55.00	T	409
Winery Annual Festival - Temporary	\$55.00	T	409.25.

Class N licenses means those licenses which must be approved or denied by the Council. Class N Licenses follow the Procedures for Application for the Grant or Issuance of the License, New Application Investigation and Review, Application Denial, Notice, Levels of Approval, Objections, and Renewal Procedures laid out in Section 310.02(2). The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

License Type Description	License Fees	Class Type	Ordinance/ Legislative Code
Auto Body Repair Shop	\$469.00	N	CF99-1227 423.01(b)
Auto Body Repair/Painting Shop	\$469.00	N	CF99-1227 423.01(c)
Auto Repair Garage	\$469.00	N	423.01(a)
Bingo Hall	\$212.00	N	403
Bowling Centers	\$191.00	N	322
Cabaret - Class A	\$191.00	N	426
Cabaret - Class B	\$191.00	N	426
Conversation/Rap Parlor (B)	\$362.00	N	413
Conversation/Rap Parlor(A)	\$375.00	N	413



License Type Description	License Fees	Class Type	Ordinance/ Legislative Code
Culinary On Sale - Wine/Malt	\$236.00	N	409.15
Dance Halls - Exempt	\$0.00	N	405
Dance or Rental Halls	\$293.00	N	405
Entertainment - Extension	\$0.00	N	411
Entertainment (A)	\$253.00	N	411
Entertainment (B)	\$613.00	N	411
Entertainment (C)	\$2,911.00	N	411
Firearms	\$375.00	N	225.08
Gambling Hall	\$418.00	N	278
Gambling Location	\$78.00	N	409
Game Room	\$194.00	N	406
Gas Station	\$104.00	N	424
Health/Sport Club	\$375.00	N	427
Health/Sport Club - Adult	\$375.00	N	427
Health/Sport Club-Exercise Only Facility	\$369.00	N	409
Infectious Waste Processing Facility	\$1,771.00	N	429
Liquor - Microdistillery Cocktail Room	\$649.00	N	409.31
Liquor - Off Sale Micro Distillery	\$190.00	N	409
Liquor Off Sale	\$1,398.00	N	409
Liquor On Sale - 100 seats or less	\$4,891.00	N	409
Liquor On Sale - 101-180 Seats	\$5,416.00	N	409
Liquor On Sale - 181-290 Seats	\$5,802.00	N	409
Liquor On Sale - 2 AM Closing	\$55.00	N	CF03-554 409
Liquor On Sale - 291 or more Seats	\$5,882.00	N	409
Liquor On Sale - Exempt	\$0.00	N	409.05
Liquor On Sale - Over 100 seats (B)	\$4,650.00	N	409
Liquor On Sale - Over 200 seats (A)	\$5,050.00	N	409
Liquor On Sale - Sunday	\$200.00	N	409
Liquor On Sale - Sunday - Exempt	\$0.00	N	409.05
Liquor On Sale - Theater	\$1,746.00	N	409 SS340A.404
Liquor On Sale (Government Agencies)	\$0.00	N	409.05(i)
Liquor On Sale (Small Brewery - 128 oz)	\$30.00	N	409.02 SS340A.3016 (c)(i)(j)
Liquor On Sale-Club under 200 Mbrs - A	\$300.00	N	409
Liquor On Sale-Club 201-500 Mbrs - B	\$500.00	N	409
Liquor On Sale-Club 501-1000 Mbrs - C	\$650.00	N	409
Liquor On Sale-Club 1001-2000 Mbrs - D	\$800.00	N	409
Liquor On Sale-Club 2001-4000 Mbrs - E	\$1,000.00	N	409



License Type Description	License Fees	Class Type	Ordinance/ Legislative Code
Liquor On Sale-Club 4001-6000 Mbrs - F	\$2,000.00	N	409
Liquor On Sale-Club over 6000 Mbrs - G	\$3,000.00	N	409
Liquor-Extension of Service Area	\$63.00	N	409.11
Liquor-Extension of Service Hours	\$375.00	N	409.70.1
Liquor-Outdoor Service Area (Patio)	\$79.00	N	409.06(g)
Liquor-Outdoor Service Area (Sidewalk)	\$36.00	N	409.06(g)
Malt Off Sale	\$205.00	N	410
Malt Off Sale (Brewery)	\$187.00	N	409.02
Malt Off Sale (Growler)	\$187.00	N	CF03-693 409
Malt On Sale (3.2)	\$649.00	N	410
Malt On Sale (3.2) - 2 AM Closing	\$0.00	N	CF03-687 409
Malt On Sale (3.2) - Fee Waived	\$0.00	N	CF03-687 410
Malt On Sale (Brewery Taproom)	\$649.00	N	409
Malt On Sale (Strong)	\$649.00	N	410
Massage Center - A (1 Practitioner)	\$93.00	N	412 & 414
Massage Center - A (Commercial)	\$243.00	N	412
Massage Center - B (Home Location)	\$98.00	N	412
Massage Center - C (Adult)	\$375.00	N	60.201 412
Mini Motion Picture Theater-Adult (C)	\$375.00	N	415
Minnesota Currency Exchange	\$375.00	N	381.01
Motor Vehicle Dealer - New Vehicles	\$375.00	N	401
Motor Vehicle Salvage Dealer	\$375.00	N	422
Motorcycle Dealer	\$194.00	N	401
Parking Lot	\$375.00	N	417
Parking Lot/Parking Ramp	\$369.00	N	417
Parking Ramp	\$375.00	N	417
Parking Ramp (Government)	\$0.00	N	417
Parking Ramp/Garage (Private)	\$367.00	N	417
Pawn Shop	\$2,955.00	N	344
Pool & Billiard Hall	\$194.00	N	322
Recycling Collection Center	\$194.00	N	408
Recycling Processing Center	\$887.00	N	408
Second Hand Dealer - Motor Vehicle	\$469.00	N	401
Second Hand Dealer - Motor Vehicle Parts	\$462.00	N	401
Steam Room/Bath House (A)	\$375.00	N	428



License Type Description	License Fees	Class Type	Ordinance/ Legislative Code
Steam Room/Bath House (B) - Adult	\$375.00	N	428
Taxicab Driver (Provisional)	\$47.00	N	376
Taxicab Driver *	\$47.00	N	376
Taxicab Service Company	\$422.00	N	376
Taxicab Vehicle RNC (Reciprocity)	\$32.00	N	376
Theaters and Movie Theaters	\$194.00	N	415
Theaters and Movie Theaters-Drive In	\$194.00	N	416
Transportation Network Company	\$38,069.00	N	
Wine On Sale	\$2,000.00	N	409
Wine On Sale (Government Agencies)	\$0.00	N	CF 99-526 SS340A

Department means the Department of Safety and Inspections.

Director means the Director of the Department of Safety and Inspections and/or the Director's designee or designees.

Fee means and includes both the license fee and application fee unless otherwise provided.

License means and includes all licenses and permits provided for or covered by these chapters. License also includes licenses issued by the state under statutory provisions which permit the governing body to disapprove the issuance of such licenses, for the purposes of making procedures in chapter 310 of the Legislative Code applicable to the approval or disapproval of such licenses.

Class N License District Council Notification Form means the form, provided by the Department to the license applicant as part of the Class N License application packet, which must be mailed or personally delivered to the District Council by the license/applicant prior to the submission of the application for a license.

Person means and includes any person, firm, corporation, partnership, company, organization, agency, club or any group or association thereof. It shall also include any executor, administrator, trustee, receiver or other representative appointed by law.

Zoning Administrator means the official in the Department of Safety and Inspections charged with responsibility for enforcement of the zoning code.

SECTION 3

Section 310.04 is hereby renumbered 310.02 and amended as follows to enumerate Uniform Procedures for Application for the Grant or Issuance of the License, New Application Investigation and Review, Application Denial, Notice, Levels of Approval, Objections and Renewal Procedures by License Type:

Sec. 310.02. - Uniform Procedures for Application for the Grant or Issuance of the License, New Application Investigation and Review, Application Denial, Notice, Levels of Approval, Objections and Renewal Procedures by License Type.



1) Class R Licenses.

(a) Application.

1. *Form.* All applicants for a Class R License issued pursuant to these chapters must make both original and renewal applications to the Director on such forms as are provided by the Department. Such applications will not be received by the Director until the Director deems the application meets the substantially complete criteria. Subsequently, issuance of a license cannot occur until insurance policies, 01s, deposits, sureties, and indemnifications or certificates required by these chapters, together with the certification required in paragraph 2 below, are received and approved.
2. *Taxes.* No applicant will be granted a License or a renewal of a License required by the Saint Paul Legislative Code unless, in addition to any other requirements, rules or ordinances heretofore or hereafter required, the Director determines that said Applicant has paid all taxes, real or personal, before said taxes become delinquent, on any property, real or personal, situated within the City of Saint Paul and used in connection with the business operated under said License.
3. Notwithstanding the previous paragraph, the Council or the Director may issue or renew a License if it is found that:
 - (a) The applicant has made an agreement satisfactory to the Ramsey County Attorney to pay delinquent taxes in periodic installments;
 - (b) The applicant has properly commenced a proceeding to contest the amount of tax due or the valuation of their property, and has made all partial payments required by law in connection with such proceeding; or
 - (c) The business property with respect to which taxes are delinquent is not owned by the applicant, but by a lessor, and it would be inequitable to require the lessee to pay such taxes.

If a License is issued or renewed because of the existence of an agreement as described in subsection (a) above, the license may be revoked if the licensee defaults upon such agreement.

4. *Additional information.* The Director will prescribe the information required to be submitted by each applicant in their application, in addition to that required by specific sections in these chapters, as may be necessary to carry out and enforce any provision hereunder. The Director will require in every case the applicant to submit their name; business or corporate name; names of partners, officers, directors, shareholders, or trustees involved in the business; age; address; description or blueprint of the premises, if any, and the owner thereof, and locations and addresses of other business locations in Minnesota.
5. *No reapplication within one (1) year after denial or revocation.* Unless an applicant is claiming evidence of rehabilitation as outlined in Minnesota Statute 364.03, subd. 3, no applicant may apply for any license within one (1) year of the denial or revocation of the same or similar license by the city council, if such denial or revocation was based solely or partially upon misconduct or unfitness of the applicant, evidence of violations of law involving licensed premises, evidence



that the applicant had been involved in the operation of a nuisance, or fraud or deception in the license application. A license is "similar," within the meaning of this paragraph, if the basis upon which the revocation or denial of the original license was made would have been a relevant basis on which to deny or revoke a license of the type subsequently applied for.

6. *Reapplication after denial; "interest" of applicant in revoked license.* An application by a person having an interest in, or whose shareholders or officers have an interest in, any premises or enterprise whose license has been revoked or to which a license has been denied will be treated as an application by the person whose license was denied or revoked. The term "interest," as used in this paragraph, includes any pecuniary interest in the ownership, operation, management or profits of an establishment, but does not include: bona fide loans; bona fide rental agreements; bona fide open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to such establishment; an interest in a corporation owning or operating a hotel but having at least one hundred fifty (150) or more rental units holding a license in conjunction therewith; or ten (10) percent or less interest in any other corporation holding a license.
7. *Prohibition on reapplication; exception.* The prohibition on reapplication herein provided will not apply in cases where it is otherwise expressly provided by statute or ordinance.

(b) **New Application Investigation and Review.** The Director will determine the sufficiency and accuracy of each new application and obtain such criminal history information as may be used under Minnesota Statutes, chapter 364, and is otherwise available by law. The Director will make reasonable and appropriate investigation of the premises or personal property, vehicles, or facilities, involved in or related to the licensed activity, and will request, where appropriate, the assistance of DSI divisions and other city divisions or departments in making additional investigations for the purpose of determining whether the applicant is or will be in compliance with all applicable ordinances and statutes. The approval of such other divisions or departments is not required for issuance of a license unless otherwise required by specific sections in these chapters. All new applications will be reviewed by the Zoning Administrator or their designee for compliance with all requirements of the Saint Paul Zoning Code, and no new License will be granted without full compliance with said requirements. All new applications involving a premise, location, building or structure will be reviewed by the Building Official or their designee for investigation and recommendation.

(c) **Application Denial**

1. Denial of a Class R License application is adverse action and the procedures for notice and hearing outlined in Saint Paul Legislative Code Section 310.03 must be followed.



(d) Notice.

1. Upon verification that an application for a Class R License is substantially complete, the notification requirements outlined in ENS Chapter A-11(11)(c) must be followed and the required ENS notice must be provided within two (2) public business days.

(e) Levels of Approval:

1. Approval recommended without conditions. Where an application for the grant, issuance or renewal of a Class R License meets all the requirements of law, and there exists no grounds for denial, revocation or suspension of, or the imposition of conditions upon, such license, the Director must grant, issue, or renew said license in accordance with the application.
2. Approval recommended with conditions. If upon review of an application for the grant, issuance, or renewal of a Class R License the Director determines that there exist grounds for imposition of conditions, the Director must provide the applicant or licensee notice and an opportunity to be heard in accordance with Section 310.03.
3. If the prospective licensee does not object to the proposed conditions, the Director will request that the matter be placed on the council consent agenda. The Director shall notify the prospective licensee.
4. If the prospective licensee objects to the conditions proposed by the Director, the Director must follow the hearing procedures outlined in Saint Paul Legislative Code Section 310.03 and refer the matter to a hearing examiner.
5. Revocation or suspension. If the Director determines that the renewal application for the renewal of a license does not meet all of the requirements of law or that there exist grounds for revocation or suspension of a Class R License the Director will follow the hearing procedures as outlined in Saint Paul Legislative Code Section 310.03.

(f) Objections. An appeal to the city council may be taken by any person aggrieved by the grant, issuance, or renewal of a Class R License provided that:

1. The appeal must be filed with the city clerk within thirty (30) days after the action by the Director.
2. The only grounds for appeal will be that there has been an error of law in the grant, issuance, or renewal of the license.
3. The appeal will be in writing and will set forth in particular the alleged errors of law.
4. The council will conduct a public hearing on the appeal within thirty (30) days of the date of filing and will notify the licensee and the appellant at least ten (10) days prior to the hearing date.
5. The procedures set forth in section 310.03, insofar as is practicable, will apply to this hearing. Following the hearing, the council may affirm or remand the matter to the Director, may reverse the Director's decision, or place conditions upon the license based on the council's determination that the Director's decision was based on an error of law.



6. The filing of an appeal will not stay the issuance of the license.

(g) Renewal Procedures.

1. Class R Licenses may be automatically renewed by the Director.
2. No waiver by renewal. The renewal of a Class R License will not be deemed to be a waiver of any past violations or of any grounds for imposition of adverse action against such license.

2) Class N Licenses

(a) Application.

1. *Form.* All applicants for a Class N License issued pursuant to these chapters will make both original and renewal applications to the Director on such forms as are provided by the Department. Such applications will not be received by the Director until the Director deems the application meets the substantially complete criteria. Subsequently, issuance of a license cannot occur until insurance policies, bonds, deposits, sureties, and indemnifications or certificates required by these chapters, together with the certification required in paragraph 2 below are received and approved.
2. *Taxes.* No applicant will be granted a License or a renewal of a License required by the Saint Paul Legislative Code unless, in addition to any other requirements, rules or ordinances heretofore or hereafter required, the Director determines that said Applicant has paid all taxes, real or personal, before said taxes become delinquent, on any property, real or personal, situated within the City of Saint Paul and used in connection with the business operated under said License.
3. Notwithstanding the previous paragraph, the Council or the Director may issue or renew a License if it is found that:
 - (a) The applicant has made an agreement satisfactory to the Ramsey County Attorney to pay delinquent taxes in periodic installments;
 - (b) The applicant has properly commenced a proceeding to contest the amount of tax due or the valuation of their property, and has made all partial payments required by law in connection with such proceeding; or
 - (c) The business property with respect to which taxes are delinquent is not owned by the applicant, but by a lessor, and it would be inequitable to require the lessee to pay such taxes.

If a License is issued or renewed because of the existence of an agreement as described in subsection (a) above, the license may be revoked if the licensee defaults upon such agreement.

4. *Additional information.* The Director will prescribe the information required to be submitted by each applicant in their application, in addition to that required by specific sections in these chapters, as may be necessary to carry out and enforce any provision hereunder. The Director will require in every case the applicant to submit their name; business or corporate name; names of partners, officers, directors, shareholders, or trustees involved in the business; age;



address; description or blueprint of the premises, if any, and the owner thereof, and locations and addresses of other business locations in Minnesota.

5. *No reapplication within one (1) year after denial or revocation.* Unless an applicant is claiming that they have evidence of rehabilitation as outlined in Minnesota Statute 364.03, subd. 3, no applicant may apply for any license within one (1) year of the denial or revocation of the same or similar license by the city council, if such denial or revocation was based solely or partially upon misconduct or unfitness of the applicant, evidence of violations of law involving licensed premises, evidence that the applicant had been involved in the operation of a nuisance, or fraud or deception in the license application. A license is "similar," within the meaning of this paragraph, if the basis upon which the revocation or denial of the original license was made would have been a relevant basis on which to deny or revoke a license of the type subsequently applied for.
6. *Reapplication after denial; "interest" of applicant in revoked license.* An application by a person having an interest in, or whose shareholders or officers have an interest in, any premises or enterprise whose license has been revoked or to which a license has been denied will be treated as an application by the person whose license was denied or revoked. The term "interest," as used in this paragraph, includes any pecuniary interest in the ownership, operation, management or profits of an establishment, but does not include: bona fide loans; bona fide rental agreements; bona fide open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to such establishment; an interest in a corporation owning or operating a hotel but having at least one hundred fifty (150) or more rental units holding a license in conjunction therewith; or ten (10) percent or less interest in any other corporation holding a license.
7. *Prohibition on reapplication; exception.* The prohibition on reapplication herein provided will not apply in cases where it is otherwise expressly provided by statute or ordinance.

(b) **New Application Investigation and Review.** The Director will determine the sufficiency and accuracy of each new application and obtain such criminal history information as may be used under Minnesota Statutes, chapter 364, and is otherwise available by law. The Director will make reasonable and appropriate investigation of the premises or personal property, vehicles, or facilities, as may be involved in or related to the licensed activity, and will request, where appropriate, the assistance of DSI divisions and other city divisions or departments in making additional investigations for the purpose of determining whether the applicant is or will be in compliance with all applicable ordinances and statutes. The approval of such other divisions or departments is not required for issuance of a license unless otherwise required by specific sections in these chapters. All new applications will be reviewed by the Zoning Administrator or their designee for compliance with all requirements of the Saint Paul Zoning Code, and no new License will be granted without full compliance with said requirements. All new



applications involving a premise, location, building or structure will be reviewed by the Building Official or their designee and Inspections for investigation and recommendation.

1. Verification of Class N License District Council Notification Form. The Director must ensure that the District Council has notified the Department by email that the Class N License District Council Notification Form has been received.

(c) Application Denial

1. Denial of a Class N License application is adverse action and the procedures for notice and hearing outlined in Saint Paul Legislative Code Section 310.03 must be followed.

(d) Notice.

1. Upon receipt of an application for a Class N License, the notification requirements outlined in ENS Chapter A-11(11)(c) must be followed.

The application must then be reviewed and once the Director deems the application fully reviewed as required by these chapters and makes a recommendation, both the notice requirements outlined in ENS Chapter A-11 (14) and the required mailing must be provided. Notices must describe the license application received, staff recommendations (e.g., any conditions) and the process for public comment and objections.

- (a) Required mailing. The Director must notify by mail all owners and occupants who own property or reside within three hundred fifty (350) feet of the establishment to which the license is to be issued, of any such application, said three hundred fifty (350) feet being calculated and computed as the distance measured in a straight line from the property line of the building where the prospective license will be located to the property line owned, leased or under the control of the resident and owners of the existence of an application and set the deadline for public comment at least 15 days after the date of mailing. The Director must submit to the council a list of the names and addresses of each person or organization to whom notice was sent, and certification of such list by the Director will be conclusive evidence of such notice and such notice will be attached to the resolution before council.
- (b) The failure to give mailed notice to owners or occupants residing within three hundred fifty (350) feet, or to community organizations, or defects in the notice, does not invalidate the Council approval provided a bona fide attempt to comply with this section has been made. A bona fide attempt is evidenced by a notice addressed to "owner" and to "occupant" of the listed address. Only one (1) notice need be mailed to each house or each rental unit within a multiple-family dwelling regardless of the number of occupants.



(c) *Notice requirement not applicable in downtown business district.* The notification requirements of this section are not applicable where the license is to be transferred to a place located within the downtown business district. For purposes of this section, downtown business district includes all that portion of the City of Saint Paul lying within and bounded by the following streets: Beginning at the intersection of Shepard Road with Chestnut Street, Chestnut Street to Interstate Freeway 35E, Interstate Freeway 35E to Tenth Street, Tenth Street to Interstate Freeway 94, Interstate Freeway 94 to Lafayette Bridge, Lafayette Bridge to where the bridge crosses over Warner Road, Warner Road to the Wabasha Bridge, the Wabasha Bridge across the Mississippi River to the water line on the south bank of the river, thence in a westerly direction along the shore line to the point at which it intersects with "Line A," and then in a straight line across the Mississippi River to the intersection of Chestnut Street with Shepard Road. The location and legal description of "Line A" is indicated on the map attached hereto and incorporated and adopted herein by reference.

(e) Levels of Approval.

1. Approval with or without conditions. All Class N Licenses require council approval. If there are no conditions or the prospective licensee does not object to the proposed conditions, the Director will request that the matter be placed on the council consent agenda. The Director will notify the prospective licensee.
2. If the prospective licensee objects to the conditions proposed by the Director and/or the conditions added by the Legislative Hearing Officer after a hearing, the Director must follow the hearing procedures as outlined in Saint Paul Legislative Code Section 310.03 and refer the matter to a Hearing Examiner.
3. Revocation or suspension. If the Director determines that the application for renewal does not meet all of the requirements of law or that there exist grounds for revocation or suspension of a Class N License, the Director must follow the hearing procedures as outlined in Saint Paul Legislative Code Section 310.03.

(f) Objections. If the Director is recommending issuance of the Class N License, but the affected neighborhood organization(s) or other interested persons give notice within the fifteen (15) day period for public comment of objection to issuance of the license, the Director must refer the matter for a hearing before the Legislative Hearing Officer.

- a. The Legislative Hearing Officer will set a hearing date and give notice of the time, place, and date of the hearing to the affected neighborhood organizations(s) and the applicant.
- b. At the hearing, the Legislative Hearing Officer will take testimony from all interested persons.
- c. If the applicant cannot agree with license conditions suggested by the Legislative Hearing Officer, the Legislative Hearing Officer will make a recommendation to the Council as to whether the matter should be referred for a hearing before an independent hearing examiner in accordance with the procedures set forth in section 310.03.



- d. After the legislative hearing, the Legislative Hearing Officer must prepare a report and recommendations for Council and set the matter on the council consent agenda.

If no objections are received, the Legislative Hearing Officer will notify the Director and have the matter placed on the council consent agenda. The Director will notify the applicant and the affected neighborhood organizations established for citizen participation purposes of the placement of the application on the Council agenda.

(g) Renewal Procedures.

1. Renewal Procedures. Class N Licenses may be automatically renewed by the Director.
2. No waiver by renewal. The renewal of a Class N License will not be deemed to be a waiver of any past violations or of any grounds for imposition of adverse action against such license.

3) Class T Licenses (Temporary).

(a) Application.

1. *Form.* All applicants for a Class T License issued pursuant to these chapters will make original applications to the Director on such forms as are provided by the Department. Such applications will not be received by the Director until the Director deems the application meets the substantially complete criteria. Subsequently, issuance of a license cannot occur until insurance policies, bonds, deposits, sureties, and indemnifications or certificates required by these chapters, together with the certification required in paragraph 2 below are received and approved.
2. *Taxes.* No applicant will be granted a License or a renewal of a License required by the Saint Paul Legislative Code unless, in addition to any other requirements, rules or ordinances hereafter required, the Director determines that said Applicant has paid all taxes, real or personal, before said taxes become delinquent, on any property, real or personal, situated within the City of Saint Paul and used in connection with the business operated under said License.
3. Notwithstanding the previous paragraph, the Council or the Director may issue a License if it is found that:
 - a. The applicant has made an agreement satisfactory to the Ramsey County Attorney to pay delinquent taxes in periodic installments;
 - b. The applicant has properly commenced a proceeding to contest the amount of tax due or the valuation of their property, and has made all partial payments required by law in connection with such proceeding; or
 - c. The business property with respect to which taxes are delinquent is not owned by the applicant, but by a lessor, and it would be inequitable to require the lessee to pay such taxes.

If a License is issued because of the existence of an agreement as described in subsection (a) above, the license may be revoked if the licensee defaults upon such agreement.



4. Additional information. The Director will prescribe the information required to be submitted by each applicant in their application, in addition to that required by specific sections in these chapters, as may be necessary to carry out and enforce any provision hereunder. The Director will require in every case the applicant to submit their name; business or corporate name; names of partners, officers, directors, shareholders, or trustees involved in the business; age; address; description or blueprint of the premises, if any, and the owner thereof, and locations and addresses of other business locations in Minnesota.
5. *No reapplication within one (1) year after denial or revocation.* Unless an applicant is claiming that they have evidence of rehabilitation as outlined in Minnesota Statute 364.03, subd. 3, no applicant may apply for any license within one (1) year of the denial or revocation of the same or similar license by the city council, if such denial or revocation was based solely or partially upon misconduct or unfitness of the applicant, evidence of violations of law involving licensed premises, evidence that the applicant had been involved in the operation of a nuisance, or fraud or deception in the license application. A license is "similar," within the meaning of this paragraph, if the basis upon which the revocation or denial of the original license was made would have been a relevant basis on which to deny or revoke a license of the type subsequently applied for.
6. *Reapplication after denial; "interest" of applicant in revoked license.* An application by a person having an interest in, or whose shareholders or officers have an interest in, any premises or enterprise whose license has been revoked or to which a license has been denied will be treated as an application by the person whose license was denied or revoked. The term "interest," as used in this paragraph, includes any pecuniary interest in the ownership, operation, management or profits of an establishment, but does not include: bona fide loans; bona fide rental agreements; bona fide open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to such establishment; an interest in a corporation owning or operating a hotel but having at least one hundred fifty (150) or more rental units holding a license in conjunction therewith; or ten (10) percent or less interest in any other corporation holding a license.
7. *Prohibition on reapplication; exception.* The prohibition on reapplication herein provided will not apply in cases where it is otherwise expressly provided by statute or ordinance.
 - (b) *New Application Investigation and Review.* The Director will determine the sufficiency and accuracy of each new application and obtain any pertinent criminal history information as may be used under Minnesota Statutes, chapter 364, and is otherwise available by law. The Director will make reasonable and appropriate investigation of the premises or personal property, vehicles, or facilities, as may be involved in or related to the licensed activity, and will request, where appropriate, the assistance of DSI divisions and other city divisions or departments in making additional investigations for the purpose of determining whether the applicant is or will be in compliance with all applicable ordinances and statutes. The approval of such other divisions or departments is not required for issuance of a license unless otherwise required by specific sections in these chapters. All new applications will be reviewed by the Zoning Administrator or their designee for compliance with all requirements of the Saint Paul Zoning Code, and no new License will be granted without full compliance with said requirements. All new applications involving a premise, location, building or structure will be reviewed by the Building Official or their designee for investigation and recommendation.



(c) Application Denial

- a. Denial of a Class T License application is adverse action and the procedures for notice and hearing outlined in Saint Paul Legislative Code Section 310.03 must be followed.

(d) Notice. There is no notice requirement for Class T licenses.

(1) Temporary Liquor License applications do not require notification action by the Director upon receipt of an application under Chapter A-11. Notification requirements, if any, are handled by the applicant as part of the application process as outlined in the relevant section of the Saint Paul Legislative Code.

(e) Levels of Approval

(1) Approval Recommended without conditions. Where an application for the grant or issuance of a Class T License meets all the requirements of law, and there exists no grounds for denial, revocation suspension of, or the imposition of conditions upon such license, the Director must grant or issue said license in accordance with the application.

(2) Approval Recommended with conditions. If upon review of an application for the grant, or issuance of a Class T License the Director determines that there exist grounds for imposition of conditions the Director must provide the applicant or licensee notice and an opportunity to be heard in accordance with the hearing procedures outlined in Saint Paul Legislative Code Section 310.03.

(f) Objections. An appeal to the city council may be taken by any person aggrieved by the grant, issuance or renewal of a Class T License provided that:

1. The appeal must be filed with the city clerk within thirty (30) days after the action by the Director.
2. The only grounds for appeal will be that there has been an error of law in the grant, issuance, or renewal of the license.
3. The appeal will be in writing and will set forth in particular the alleged errors of law.
4. The council will conduct a hearing on the appeal within thirty (30) days of the date of filing and will notify the licensee and the appellant at least ten (10) days prior to the hearing date.
5. The procedures set forth in section 310.05, insofar as is practicable, will apply to this hearing. Following the hearing, the council may affirm or remand the matter to the Director, may reverse the Director's decision or place conditions upon the license based on the council's determination that the Director's decision was based on an error of law.
6. The filing of an appeal will not stay the issuance of the license.

(e) Renewal Procedures. Class T Licenses are not automatically renewed. If a Licensee wishes to Renew a Class T License, they must file a new application for a new Class T License.



SECTION 4

Section 310.05 is renumbered 310.03 and amended as follows:

Sec. 310.03. Hearing procedures.

(a) *Adverse action; notice and hearing requirements.* In any case where the council may or intends to consider any adverse action, including the revocation or suspension of a license, the imposition of conditions upon a license, or the denial of an application for the grant, issuance or renewal of a license, or the disapproval of a license issued by the State of Minnesota, the applicant or licensee must be given notice and an opportunity to be heard as provided herein. The council may consider such adverse actions when recommended by the Director, by the director of any executive department established pursuant to Chapter 9 of the Charter, by the city attorney or on its own initiative.

(b) *Notice.* In each such case where, adverse action is or will be considered by the council, the applicant or licensee must be notified in writing that adverse action may be taken against the license or application, and that they are entitled to a hearing before action is taken by the council. The notice must be served or mailed a reasonable time before the hearing date, and must state the place, date and time of the hearing. The notice must state the issues involved or grounds upon which the adverse action may be sought or based. The council may request that such written notice be prepared and served or mailed by the Director or by the city attorney.

(c) *Hearing.* Where there is no dispute as to the facts underlying the violation or as to the facts establishing mitigating or aggravating circumstances, the hearing must be held before the council. Otherwise, the hearing must be conducted before a hearing examiner appointed by the council or retained by contract with the city for that purpose. The applicant or the licensee shall must be provided an opportunity to present evidence and argument as well as meet adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The hearing examiner may in its discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing.

(c-1) *Procedure; hearing examiner.* The hearing examiner will hear all evidence as may be presented on behalf of the city and the applicant or licensee and must present to the council written findings of fact and conclusions of law, together with a recommendation for adverse action.

The council will consider the evidence contained in the record, the hearing examiner's recommended findings of fact and conclusions, and may not consider any factual testimony not previously submitted to and considered by the hearing examiner. After receipt of the hearing examiner's findings, conclusions, and recommendations, the council must provide the applicant or licensee an opportunity to present oral or written arguments alleging error on the part of the examiner in the application of the law or interpretation of the facts, and to present argument related to the recommended adverse action. Upon conclusion of that hearing, and after considering the record, the examiner's findings and recommendations, together with such additional arguments presented at the hearing, the council must determine what, if any, adverse action should be taken, which action must be by resolution. The council may accept, reject or modify the findings, conclusions and recommendations of the hearing examiner.



(c-2) *Ex-parte contacts.* If a license matter has been scheduled for an adverse hearing, council members shall not discuss the license matter with each other or with any of the parties or interested persons involved in the matter unless such discussion occurs on the record during the hearings of the matter or during the council's final deliberations of the matter. No interested person shall, with knowledge that a license matter has been scheduled for adverse hearing, convey or attempt to convey, orally or in writing, any information, argument or opinion about the matter, or any issue in the matter, to a council member or his or her staff until the council has taken final action on the matter; provided, however, that nothing herein will prevent an inquiry or communications regarding status, scheduling or procedures concerning a license matter. An interested person, for the purpose of this paragraph, means and includes a person who is an officer or employee of the licensee which is the subject of the scheduled adverse hearing, or a person who has a financial interest in such licensee.

(d) *Licensee or applicant may be represented.* The licensee or applicant may represent himself or choose to be represented by another.

(e) *Record; evidence.* The hearing examiner shall receive and keep a record of such proceedings, including testimony and exhibits, and shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

(f) *Council action, resolution to contain findings.* Where the council takes adverse action with respect to a license, licensee or applicant for a license, the resolution by which such action is taken must contain its findings and determination, including the imposition of conditions, if any. The council may adopt all or part of the findings, conclusions and recommendations of the hearing examiner, and incorporate the same in its resolution taking the adverse action.

(g) *Additional procedures where required.* Where the provisions of any statute or ordinance require additional notice or hearing procedures, such provisions must be complied with and supersede inconsistent provisions of these chapters. This includes, without limitation by reason of this specific reference, Minnesota Statutes, Chapter 364 and Minnesota Statutes, Section 340A.415.

(h) *Discretion to hear notwithstanding withdrawal or surrender of application or license.* The council may, at its discretion, conduct a hearing or direct that a hearing be held regarding revocation or denial of a license, notwithstanding that the applicant or licensee has attempted or purported to withdraw or surrender said license or application, if the attempted withdrawal or surrender took place after the applicant or licensee had been notified of the hearing and potential adverse action.

(i) *Continuances.* Where a hearing for the purpose of considering revocation or suspension of a license or other disciplinary action involving a license has been scheduled before the council, a continuation of the hearing may be granted by the council president or by the council at the request of the licensee, license applicant, an interested person or an attorney representing the foregoing, upon a showing of good cause by the party making the request.



(j) If the council imposes an adverse action as defined in section 310.01 above, a generic notice of such action must be prepared by the Director and posted by the licensee so as to be visible to the public during the effective period of the adverse action. The licensee shall be responsible for taking reasonable steps to make sure the notice remains posted on the front door of the licensed premises, and failure to take such reasonable precautions may be grounds for further adverse action.

(k) *Imposition of costs.* The council may impose upon any licensee or license applicant some or all of the costs of a contested hearing before an independent hearing examiner. The costs of a contested hearing include, but are not limited to, the cost of the administrative law judge or independent hearing examiner, stenographic and recording costs, copying costs, city staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The council may impose all or part of such costs in any given case if (i) the position, claim or defense of the licensee or applicant was frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment; (ii) the nature of the violation was serious, or involved violence or the threat of violence by the licensee or employees thereof, or involved the sale of drugs by the licensee or employees thereof, and/or the circumstances under which the violation occurred were aggravated and serious; (iii) the violation created a serious danger to the public health, safety or welfare; (iv) the violation involved unreasonable risk of harm to vulnerable persons, or to persons for whose safety the licensee or applicant is or was responsible; (v) the applicant or licensee was sufficiently in control of the situation and therefore could have reasonably avoided the violation, such as but not limited to, the nonpayment of a required fee or the failure to renew required insurance policies; (vi) the violation is covered by the Intoxicating Liquor; Nonintoxicating Malt Liquor; Presumptive Penalty Matrix in subsection (m) below; or (vii) the violation involved the sale of cigarettes to a minor.

(l) *Imposition of fines.* The council may impose a fine upon any licensee or license applicant as an adverse license action. A fine may be in such amount as the council deems reasonable and appropriate, having in mind the regulatory and enforcement purposes embodied in the particular licensing ordinance. A fine may be in addition to or in lieu of other adverse action in the sole discretion of the council. To the extent any other provision of the Legislative Code provides for the imposition of a fine, both provisions must be read together to the extent possible; provided, however, that in the case of any conflict or inconsistency, the other provision must be controlling.

(m) *Presumptive penalties for certain violations.* The purpose of this section is to establish a standard by which the city council determines the amount of fines, the length of license suspensions and the propriety of revocations, the General Presumptive Penalty Matrix applies to all license types, except that in the case of a violation involving a liquor license the Penalty Matrix for Intoxicating Liquor; Nonintoxicating Malt Liquor applies and for a violation involving tobacco, the Penalty Matrix for Tobacco applies. 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 making it more appropriate to do so. When deviating from these standards, the council must provide written reasons that specify why the penalty selected was more appropriate.



1. General presumptive penalties matrix - The general penalty matrix is to be used if there is not a specific penalty matrix for the license type or a category within the specific penalty matrix does not address the violation.

Type of Violation	Appearance			
	1st	2nd	3rd	4th
(1) Violations of conditions placed on the license	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 10-day suspension	Revocation
(2) Violation of provisions of the legislative code relating to the licensed activity	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 10-day suspension	Revocation
(3) Violation of provisions of the legislative code relating to the licensed activity, other than violations of the food code	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 10-day suspension	Revocation
(4) Failure to permit entrance or inspection by DSI inspector or police	5-day suspension	10-day suspension	15-day suspension	Revocation
(5) Commission of a crime other than a felony on the premises by a licensee or employee	\$700.00 fine	\$1,500.00 fine	5-day suspension	Revocation
(6) Commission of a felony on the premises by a licensee or employee	\$2,000.00 fine	Revocation	n/a	n/a
(7) Death or great bodily harm in establishment related to violation of law or license conditions	30-day suspension	60-day suspension	Revocation	n/a
(8) Failure to pay license fees	Suspension	Revocation		
(9) Taxi fail to display driver's license as required by 376.16(f)	\$100.00 fine	\$250.00 fine	\$500.00 fine	Revocation



(10) Taxi fail to display number of information and complaint office as required by 376.11(v)	\$100.00 fine	\$250.00 fine	\$500.00 fine	Revocation
(11) Violation of restrictions upon sidewalk café license under 106.01(b)	\$200.00 fine	\$400.00 fine	\$800.00 fine	Revocation

2. Intoxicating liquor; malt liquor; presumptive penalty matrix.

Presumptive penalties for intoxicating liquor and nonintoxicating malt liquor violations. If a violation is not covered under this penalty matrix, the General presumptive penalty matrix should be used. Penalties for convictions or violations 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 making it more appropriate to do so. When deviating from these standards, the council must provide written reasons that specify why the penalty selected was more appropriate (unless specified, numbers below indicate consecutive days' suspension):

Type of Violation	Appearance			
	1st	2nd	3rd	4th
(1) Commission of a felony related to the licensed activity.	Revocation	NA	NA	NA
(2) Sale of alcohol beverages while license is under suspension.	Revocation	NA	NA	NA
(3) Sale of alcoholic beverages to underage person.	\$500.00 fine	1,000.00 fine	Up to 18-day suspension	Revocation
(4) Sale of alcoholic beverage to intoxicated person.	\$500.00 fine	1,000.00 fine	Up to 18-day suspension	Revocation
(5) After hours sale of alcoholic beverages.	\$500.00 fine	6-day suspension	18-day suspension	Revocation
(6) After hours display or consumption of alcoholic beverage.	\$500.00 fine	4-day suspension	12-day suspension	Revocation
(7) Refusal to allow city inspectors or police admission to inspect premises.	5-day suspension	15-day suspension	Revocation	NA



(8) Illegal gambling on premises.	\$500.00 fine	6-day suspension	18-day suspension	Revocation
(9) Failure to take reasonable steps to stop person from leaving premises with alcoholic beverage.	\$500.00 fine	4-day suspension	12-day suspension	Revocation
(10) Failure to make application for license renewal prior to license expiration date.	\$500.00 fine	6-day suspension	18-day suspension	Revocation
(11) Sale of intoxicating liquor where only license is for nonintoxicating liquor.	\$500.00 fine	6-day suspension	18-day suspension	Revocation
(12) Failure to comply with statutory, and ordinance requirements for liability insurance.	10-day suspension	Revocation	NA	NA

- (b) For on-sale intoxicating liquor establishments with a seating capacity of one hundred fifty (150) or more, the monetary penalty for any violation (including violations found in chapter 310) must be doubled.
- (c) For off-sale intoxicating liquor establishments with five thousand one (5,001) or more square feet of retail space, the monetary penalty for any violation (including violations found in chapter 310) must be doubled.
- (d) *Other penalties.* Nothing in this section restricts or limits the authority of the council to suspend licenses for up to sixty (60) days, revoke the license, or impose a civil fine not to exceed two thousand dollars (\$2,000.00), to impose conditions or take any other adverse action in accordance with law, provided, that the license holder has been afforded an opportunity for a hearing in the manner provided for in section 310.02 of this Code.
- (e) *Effect of responsible business practices in determining penalty.* In determining the appropriate penalty, the council may, in its discretion, consider evidence submitted to it in the case of uncontested adverse actions or submitted to a hearing examiner in a contested hearing upon which findings of fact have been made that a licensee has followed or is likely to follow in the future responsible business practices in regard to sales to intoxicated persons and sales to minors.

(1) For the purposes of service to intoxicated persons, evidence of responsible business practices may include, but is not limited to, those policies, procedures and actions that are implemented at time of service and that:

- a) Encourage persons not to become intoxicated if they consume alcoholic beverages on the defendant's premises;
- b) Promote availability of nonalcoholic beverages and food;



- c) Promote safe transportation alternatives other than driving while intoxicated;
 - d) Prohibit employees and agents of defendant from consuming alcoholic beverages while acting in their capacity as employees or agents;
 - e) Establish promotions and marketing efforts that publicize responsible business practices to the defendant's customers and community;
 - f) Implement comprehensive training procedures;
 - g) Maintain an adequate, trained number of employees and agents for the type and size of defendant's business;
 - h) Establish a standardized method for hiring qualified employees;
 - i) Reprimand employees who violate employer policies and procedures; and
 - j) Show that the licensee has enrolled in recognized courses providing training to self and one (1) or more employees of the licensed establishment in regard to standards for responsible liquor service.
- 2) For the purposes of service to minors, evidence of responsible business practices may include, but is not limited to, those listed in subsection (1) and the following:
- a) Management policies that are implemented at the time of service and that ensure that proof of identification (as established by state law) is examined for all persons seeking service of alcoholic beverages who may reasonably be suspected to be minors;
 - b) Comprehensive training of employees who are responsible for such examination regarding the detection of false or altered identification; and
 - c) Enrollment by the licensee in recognized courses providing training to self and one (1) or more employees of the licensed establishment in regard to standards for responsible liquor service.

3. Tobacco presumptive penalties matrix.

Tobacco Presumptive penalties. Penalties for convictions or violations 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 making it more appropriate to do so. When deviating from these standards, the council must provide written reasons that specify why the penalty selected was more appropriate (unless specified, numbers below indicate consecutive days' suspension):

Type of Violation	Appearance			
	1st	2nd	3rd	4th
(1) Sale to a person under twenty-one (21) years of age	\$500.00 fine	\$1000.00 fine	\$2,000.00 fine and 7-day suspension	Revocation



(2) Display, possession or multiple incidents of sales of: <ul style="list-style-type: none"> • single cigarettes, • menthol tobacco products, or • flavored tobacco products. 	10- day suspension	Revocation		
---	--------------------	------------	--	--

(c) *Computation of time for violations under the Tobacco Presumptive Penalties Matrix.* If a violation is not covered under this penalty matrix, the General presumptive penalty matrix should be used. Except as otherwise provided by Minn. Stats. § 461.12, subd. 2, subsequent tobacco violations are subject to the following:

(1) *Second appearance for violations under the Tobacco Presumptive Penalties Matrix.* A second violation within twenty-four (24) months must be treated as a second appearance, a third within twenty-four (24) months treated as a third appearance, and a fourth within twenty-four (24) months treated as a fourth appearance-for the purpose of determining the presumptive penalty.

(2) *Any appearance not covered by subsections (1) above must be treated as a first appearance for violations under the Tobacco Presumptive Penalties Matrix.* Measurement of the twenty-four (24) month period must be as follows: The beginning date shall be the earliest violation's date of appearance before the council, and the ending date shall be the date of the new violation. In case of multiple new violations, the ending date to be used shall be the date of the violation last in time.

(i) Fines payable without hearing.

A. Notwithstanding the provisions of section 310.03(c), a licensee who would be making a first or second appearance on a violation that calls for a monetary fine before the council may elect to pay the fine to the department of safety and inspections without a council hearing, unless the notice of violation has indicated that a hearing is required because of circumstances which may warrant deviation from the presumptive fine amount. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled and will be considered an "appearance" for the purpose of determining presumptive penalties for subsequent violations.

(ii) *Multiple violations.* At a licensee's first appearance before the city council, the council shall consider and act upon all the violations that have been alleged and/or incorporated in the notices sent to the licensee under the administrative procedures act up to and including the formal notice of hearing. The council in that case shall consider the presumptive penalty for each such violation under the "1st Appearance" column in the Penalty Matrixes above. The occurrence of multiple violations is grounds for departure from such penalties in the council's discretion.



- (iii) *Violations occurring after the date of the notice of hearing.* Violations occurring after the date of the notice of hearing that are brought to the attention of the city attorney prior to the hearing date before an administrative law judge (or before the council in an uncontested facts hearing) may be added to the notice(s) up to 20 days before the hearing, and may in that case be treated as though part of the "1st Appearance" unless grounds for upward deviation from the presumptive penalties outlined in the presumptive penalty matrix outlined in 310.03(m) are included in the amended notice of the violation. In all other cases, violations occurring after the date of the formal notice of hearing must be the subject of a separate proceeding and dealt with as a "2nd Appearance" before the council. The same procedures must apply to a second, third or fourth appearance before the council.
- (iv) *Subsequent appearances.* Upon a second, third or fourth appearance before the council by a particular licensee, the council shall impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance.
- (v) *Computation of time.*
- (1) *Second appearance.* A second violation within twelve (12) months must be treated as a second appearance for the purpose of determining the presumptive penalty.
- (2) *Third appearance.* A third violation within eighteen (18) months must be treated as a third appearance for the purpose of determining the presumptive penalty.
- (3) *Fourth appearance.* A fourth violation within twenty-four (24) months must be treated as a fourth appearance for the purpose of determining the presumptive penalty.
- (4) Any appearance not covered by subsections (1), (2) or (3) above must be treated as a first appearance. Measurement of the twelve, eighteen, or twenty-four-month period is as follows: The beginning date shall be the earliest violation's date of appearance before the council or payment of the fine related to the violation, and the ending date shall be the date of the new violation. In case of multiple new violations, the ending date to be used shall be the date of the violation last in time.
- (5) Notwithstanding subsections (iv)(1), (2), (3) or (4) above, a second appearance before the council regarding a death or great bodily harm in a licensed establishment that is related to a violation of the law or license conditions must be counted as a second appearance, regardless of how much time has passed since the first appearance if the first appearance was also regarding a death or great bodily harm in a licensed establishment. A third appearance for the same must be counted as a third appearance regardless of how much time has passed since the first or second appearance.
- (6) Violations of the General presumptive penalty matrix, the Intoxicating liquor, malt liquor presumptive penalty matrix and the Tobacco presumptive penalty matrix are meant to be cumulative. For the purpose of a second, third or fourth appearance under this section, "violation" must mean either one of those violations listed in paragraph (m) 1, 2, or 3.



SECTION 5

Section 310.06 is renumbered as 310.04 and amended as follows:

Sec. 310.04. Revocation; suspension; adverse actions; imposition of conditions.

(a) *Council may take adverse action.* The council is authorized to take adverse action, as defined in section 310.01 above, against any or all licenses or permits, licensee or applicant for a license, as provided in and by these chapters. Adverse actions against entertainment licenses issued under chapter 411 of the Legislative Code may be initiated for the reasons set forth in subsection (b) below, or upon any lawful grounds which are communicated to the license holder in writing prior to the hearing before the council. Such actions must be initiated and carried out in accordance with the procedures outlined in section 310.03; provided, however, that the formal notice of hearing must be used to initiate the adverse action.

(b) *Basis for action.* Such adverse action may be based on one (1) or more of the following reasons, which are in addition to any other reason specifically provided by law or in these chapters:

(1) The license or permit was procured by misrepresentation of material facts, fraud, deceit or bad faith.

(2) The applicant or one acting in his or her behalf made oral or written misstatements or misrepresentations of material facts in or accompanying the application.

(3) The license was issued in violation of any of the provisions of the zoning code, or the premises which are licensed, or which are to be licensed do not comply with applicable health, housing, fire, zoning and building codes and regulations.

(4) The license or permit was issued in violation of law, without authority, or under a material mistake of fact.

(5) The licensee or applicant has failed to comply with any condition set forth in the license or set forth in the resolution granting or renewing the license.

(6) a. The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith;

b. The licensee or applicant has been convicted of a crime that may disqualify said applicant from holding the license in question under the standards and procedures in Minnesota Statutes chapter 364; or



c. The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.

(7) The activities of the licensee in the licensed activity created or have created a serious danger to the public health, safety or welfare, or the licensee performs or has performed his or her work or activity in an unsafe manner.

(8) The licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.

(9) Failure to keep sidewalks or pedestrian ways reasonably free of snow and ice as required under chapter 114 of the Saint Paul Legislative Code.

(10) The licensee or applicant has shown by past misconduct or unfair acts or dealings: physical abuse, assaults or violent actions done to others, including, but not limited to, actions meeting the definition of criminal sexual conduct pursuant to Minnesota Statutes sections 609.342 through 609.3451; sexual abuse, physical abuse or maltreatment of a child as defined in Minnesota Statutes section 626.556, subdivisions 2 and 10e, including, but not limited to, acts which constitute a violation of Minnesota Statutes sections 609.02, subdivision 10; 609.321 through 609.3451; or 617.246; neglect or endangerment of a child as defined in Minnesota Statutes section 626.557, subdivision 2; the manufacture, distribution, sale, gift, delivery, transportation, exchange or barter of a controlled substance as defined in Minnesota Statutes chapter 152; the possession of a controlled substance as defined in Minnesota Statutes chapter 152 in such quantities or under circumstances giving rise to a reasonable inference that the possession was for the purpose of sale or distribution to others; or by the abuse of alcohol or other drugs, that such licensee or applicant is not a person of the good moral character or fitness required to engage in a licensed activity, business or profession.

(11) The licensee or applicant has materially changed or permitted a material change in the design, construction or configuration of the licensed premises without the prior approval of the city council in the case of Class N licenses, the Director in the case of Class T licenses, and the Director in the case of Class R licenses, or without first having obtained the proper building permits from the city.

(12) The licensee or applicant has violated section 294.01 of the Legislative Code or has made or attempted to make a prohibited ex-parte contact with a council member as provided in section 310.03 (c-2) of the Legislative Code.

(13) The licensee violated the law, or any license condition and that violation is related to a death or great bodily harm, as defined in Minnesota Statute section 609.02, subd. 8, in or near the establishment.



(14) The licensee has failed to pay license fees within sixty (60) days of the date the fees are due. Licensee must pay any outstanding fees and delinquent fees in total. Failure to do so within sixty (60) days of the due date may result in revocation of the license. A revocation for this reason, however, is not considered a revocation resulting from misconduct or unfitness of the licensee, evidence of violations of law involving licensed premises, evidence that the applicant had been involved in the operation of a nuisance, or fraud or deception in the license application. Therefore, the requirement of § 310.02 prohibiting re-application within one year of revocation shall not apply to revocations under this paragraph.

The terms "licensee" or "applicant" for the purpose of this section means and includes any person who has any interest, whether as a holder of more than five (5) percent of the stock of a corporation, as a partner, or otherwise, in the premises or in the business or activity which are licensed or proposed to be licensed.

With respect to any license for activities entitled to the protection of the First Amendment, notwithstanding the foregoing provisions, neither the lack of good moral character or fitness of the licensee or applicant nor the content of the protected speech or matter must be the basis for adverse action against the license or application.

(c) *Imposition of reasonable conditions and/or restrictions.* When a reasonable basis is found to impose reasonable conditions and/or restrictions upon a license issued or held under these chapters, any one (1) or more such reasonable conditions and/or restrictions may be imposed upon such license for the purpose of promoting public health, safety and welfare, of advancing the public peace and the elimination of conditions or actions that constitute a nuisance or a detriment to the peaceful enjoyment of urban life, or promoting security and safety in nearby neighborhoods. Such reasonable conditions and/or restrictions may include or pertain to, but are not limited to:

(1) A limitation on the hours of operation of the licensed business or establishment, or on particular types of activities conducted in or on said business or establishment;

(2) A limitation or restriction as to the location within the licensed business or establishment where particular type of activities may be conducted;

(3) A limitation as to the means of ingress or egress from the licensed establishment or its parking lot or immediately adjacent area;

(4) A requirement to provide off-street parking in excess of other requirements of law;

(5) A limitation on the manner and means of advertising the operation or merchandise of the licensed establishment;

(6) Any other reasonable condition or restriction limiting the operation of the licensed business or establishment to ensure that the business or establishment will harmonize with the character of the area in which it is located, or to prevent the development or continuation of a nuisance.



The Director may recommend the imposition of such reasonable conditions and/or restrictions as an adverse action against the license or licenses. The council may impose such conditions with the consent of the license holder, as an adverse action against the license or licenses following notice and hearing as may be required. Such conditions may be imposed on a license or licenses upon issuance or renewal thereof, or upon and as part of any adverse action against a license or licenses, including suspension. Conditions imposed on a license or licenses will remain on such licenses when renewed and must continue thereafter until removed by the council.

(d) Restrictions on intoxicating liquor, non-intoxicating and malt liquor licenses.

When a reasonable basis is found by the council to impose restrictions or conditions upon an intoxicating liquor license held under this chapter, the council, upon issuing a new license or renewing a license or approving a transfer of a license, may impose reasonable conditions and restrictions pertaining to the manner and circumstances in which the business to preserve the public peace and protect and promote good order and security. These reasonable conditions or restrictions may pertain to:

- (1) the hours when intoxicating liquor may be sold and/or consumed on the licensed premises;
- (2) the exact location within a building where intoxicating liquor will be served and/or sold and/or consumed;
- (3) the means of ingress to or egress from the licensed establishment;
- (4) a requirement that certain off-street parking facilities be provided;
- (5) a condition that the license will be in effect only so long as the establishment remains a drugstore, restaurant or hotel as defined by the state liquor act or regulations adopted pursuant thereto;
- (6) the means and methods of advertising the sale of intoxicating liquor on the building and/or on the premises adjacent thereto;
- (7) Reasonable conditions limiting the operation of the licensed premises so as to ensure that the licensed business will comport with the character of the district in which it is located and/or to the end that nuisances will be prevented; and
- (8) Additional conditions upon hotels and restaurants which may in the discretion of the council tend to ensure that the sale of liquor will take place only in conjunction with the sale and service of food.

(e) *Standards for multiple license determination.* In any case in which the council is authorized to take adverse action against less than all of the licenses held by a licensee, or applied for by an applicant, the following standards may be used:

- (1) The nature and gravity of the grounds found by the council to exist upon which the adverse action would be based;
- (2) The policy and/or regulatory goals for the particular licenses involved, either as embodied in the Legislative Code or as found and determined by the council;



(3) The interrelationship of the licenses and their relative importance to the overall business enterprise of the licensee or applicant;

(4) The management practices of the licensee or applicant with respect to each of such licenses;

(5) The extent to which adverse action against less than all of the licenses or applications would result in difficulty in enforcing and monitoring the adverse action taken;

(6) The hardship to the licensee or applicant that would be caused by applying adverse action to all licenses or applications; and

(7) The hardship and/or danger to the public, or to the public health and welfare, that would result from adverse action against less than all of the licenses or applications.

SECTION 6

Section 310.07 is renumbered as 310.05 and amended as follows:

Sec. 310.05. Termination of licenses; surety bonds; insurance contracts.

(a) Automatic termination, reinstatement; responsibility of licensee. All licenses or permits which must, by the provisions of these chapters or other ordinances or laws, be accompanied by the filing and maintenance of insurance policies, deposits, guarantees, bonds or certifications will automatically terminate on cancellation or withdrawal of said policies, deposits, bonds or certifications. No licensee may continue to operate or perform the licensed activity after such termination. The licensee is liable and responsible for the filing and maintenance of such policies, deposits, guarantees, bonds or certifications as are required in these chapters, and is not entitled to assert the acts or omissions of agents, brokers, employees, attorneys or any other persons as a defense or justification for failure to comply with such filing and maintenance requirements. In the event the licensee reinstates and files such policies, bonds or certifications without a lapse within thirty (30) days, the license is automatically reinstated on the same terms and conditions, and for the same period as originally issued. After thirty (30) days, the applicant must apply for a new license as though it were an original application.

If there is a lapse in insurance, the licensee is subject to adverse action in accordance with Saint Paul Legislative Code § 310.03. License is null and void during the lapse.

(b) *Bonds and insurance requirements:*

(1) Surety Companies: All surety bonds running to the City of Saint Paul must be written by surety companies authorized to do business in the State of Minnesota. All insurance policies required by these chapters must be written by insurance companies authorized to do business in the State of Minnesota.

(2) Approved as to Form: All bonds filed with the City of Saint Paul in connection with the issuance of licenses for whatever purpose, and all policies of insurance required to be filed with or by the City of Saint Paul in connection with the issuance of licenses for any purpose whatsoever, must first be approved as to form by the city attorney.



SECTION 7

Section 310.08 is renumbered as 310.06 and amended as follows:

Sec. 310.06. Terms of licenses; uniform dates.

(a) All licenses or permits are valid for a period of one (1) year from the date of issuance by the Director, except as otherwise provided herein or in these chapters or in cases of revocation, suspension or termination under section 310.04.

(b) Licensees may continue to operate their business after the expiration date of their license; provided, that the licensee has filed with the Director on or before the expiration date the appropriate license application, license fees, insurance and bonds. The Director will process the renewal application in the manner provided for in this Code.

(c) Whenever any licensee is the holder of the two (2) or more licenses of the City of Saint Paul which expire on different dates, the Director is authorized, at the request of the licensee, to determine a uniform date for the expiration of all or any number of such licenses, notwithstanding the term and expiration dates of such licenses as originally issued, and notwithstanding any provision as to term of license of any ordinance of the city heretofore or hereafter enacted. The provisions hereof must govern the issuance of any new license to one already holding a license.

(d) In order to conform to the foregoing provisions, new licenses may be issued for a term of less than one (1) year, and the license fee therefor must be prorated for the period of issuance.

SECTION 8

Section 310.09 is renumbered as 310.07 and amended as follows:

Sec. 310.07. Fees.

(a) *Exempt organizations.* The Legislative Code exempts certain organizations from paying the customary license or permit fees or establishes a nominal fee of less than seven dollars (\$7.00). The terms and conditions of such exemptions are stated within the applicable chapters. Such organizations must pay a five dollars (\$5.00) minimum processing fee for each and every application for a license or permit to be issued by the division manager, director or council of the city.

(b) *Fee schedule.* The council may by ordinance determine and establish one (1) fee schedule for any or all licenses and permits issued pursuant to these chapters, and a separate fee schedule for applications for such licenses and permits, which may include fees to cover costs incurred by reason of the late filing. Such fees, in either schedule, must be reasonably related to the costs of administration incurred in connection with each such application, license or permit. Costs of administration means both direct and indirect costs and expenses, such as salaries, wages, benefits and all personnel costs including training, seminars and schooling, expenses of investigations and inspections, handling of inquiries and requests for assistance, telephone and communications, stationery, postage, paper, reproduction, office capital equipment and all office



supplies. Such fee schedules as adopted by ordinance and posted online by the Department of Safety and Inspections supersede inconsistent fee provisions in these chapters or in other ordinances or laws.

(c) *Fee for one year; may be prorated.* Unless otherwise specifically provided, the license fee stated is for a period of one (1) year. Such fee may be prorated where a license is issued for a period of less than a year.

(d) ————*Late fee.* Unless otherwise specifically provided by the particular licensing provisions involved, an applicant for the renewal of a license who makes application for such renewal after the expiration date of such license will be charged a late fee for each such license. The late fee must be in addition to any other fee or payment required and must be ten (10) percent of the annual license fee for such license for each thirty-day period or portion thereof which has elapsed after the expiration date of such license. The late fee must not exceed fifty (50) percent of the annual license fee. If any provision of these chapters imposes more stringent or additional requirements for the issuance of an original license than would be the case for mere renewal, those requirements must be met when the license has lapsed by reason of expiration.

(e) *Environmental change of ownership fee.* Unless otherwise stated, the environmental change of ownership fee will be 25% of the environmental plan review fee for each license type.

SECTION 9

Section 310.10 is renumbered as 310.08 and amended as follows:

Sec. 310.08. Refunds of fees.

(a) *Refund where application withdrawn; service charge.* Unless otherwise specifically provided by the particular licensing provisions involved, where an application for any license is withdrawn, the Director must refund to the applicant the license fee submitted less a service charge to recover in part the costs incurred in processing the application in the amount of twenty-five (25) percent of the annual license fee.

(b) *Limitation on refund; other cases.* In all other cases as provided in paragraph (c), the Director may upon receipt of a written request refund the license fee, less a service charge to recover in part the costs incurred in processing the application up to twenty-five (25) percent of the annual license fee.

(c) *Bases for refunds.* Refunds under paragraph (b) may be made to the licensee or his estate:

(1) Where the place of business of the licensee or his principal equipment is destroyed or so damaged by fire or any other cause that the licensee ceases for the remainder of the licensed period to engage in the licensed activity or business;

(2) Where the business or licensed activity ceases by reason of the death or illness of the licensee or the sole employee or manager; or



(3) Where it has become unlawful for the licensee to continue in the business or licensed activity other than by cancellation, termination, revocation, suspension, denial or any criminal activity on the part of the licensee.

SECTION 10

Section 310.11 is renumbered as 310.09 and amended as follows:

Sec. 310.09. Transfers; general.

(a) *License a privilege, not property.* All licenses or permits issued by the City of Saint Paul pursuant to these chapters or other ordinances or laws confer a privilege on the licensee to engage in the activity or occupation so licensed, and do not constitute property or property rights or create any such rights in any licensee. No such license or permit may be seized, levied upon, attached, executed upon, assessed or in any manner taken for the purpose of satisfaction of any debt or obligation whatever.

(b) *Licenses not transferable; conditions.* Notwithstanding any other provision of the Saint Paul Legislative Code to the contrary, no licenses issued by the City of Saint Paul are transferable.

(c) *Transfer; definition.* "Transferable" means the ability to transfer a license or licenses from one (1) person to another, or from one (1) location to another. "Transfer," as used in these chapters, includes a transfer from person to person, or from place to place, or a transfer of stock in a corporate licensee, or of shares or interests in a partnership or other legal entity. "Transfer," as used in these chapters, does not include the instance where a license is held by an individual or partnership and the transfer is by said individual or partnership to a corporation in which the majority of the stock is held by said individual or by the members of said partnership.

(d) *Deceased licensee.* Notwithstanding any other provision of these chapters, in any case where a liquor license is held by a person not incorporated and where the license would, by reason of the death of said licensee, lapse to the city in the absence of this paragraph, the authorized representative of the estate of the deceased licensee may consent to and seek to reissue said license to the beneficiary to the licensed establishment. The reissuance must be subject to all applicable requirements of these chapters and existing law.

SECTION 11

Section 310.12 is renumbered as 310.10 and amended as follows:

Sec. 310.10. Inspection of premises.

The premises, facilities, place, device or anything named in any license issued pursuant to any provision of the Saint Paul Legislative Code or other law must at all times while open to the public or while being used or occupied for any purpose be open also to inspection and examination by any police, fire, or health officer or any building inspector of the city, as well as the inspector.



SECTION 12

Section 310.13 is renumbered as 310.11.

Sec. 310.11. Renewal.

Every license renewal under these chapters may be denied for any licensee who is delinquent in any payment or contribution to a health and welfare trust or pension trust, or similar program, established for the benefit of his employees.

SECTION 13

Section 310.14 is renumbered as 310.12 and amended as follows:

Sec. 310.12. Savings clause.

(a) If any provision in these chapters is held unconstitutional or invalid by a court of competent jurisdiction, the invalidity will extend only to the provision involved and the remainder of these chapters will remain in force and effect to be construed as a whole.

(b) The repeal of any ordinance by this ordinance (which enacts the Uniform License Ordinance) does not affect or impair any act done, any rights vested or accrued, or any suit, proceeding or prosecution had or commenced in any matter, prior to the date this ordinance became effective. Every such act done or right vested or accrued remains in full force and effect to all intents and purposes as if the repealed ordinances had themselves remained in force and effect. Every such suit, proceeding or prosecution may be continued after repeal as though the repealed ordinances were fully in effect. A suit, proceeding or prosecution which is based upon an act done, a right vested or accrued, or a violation committed prior to repeal of the repealed ordinances, but which is commenced or instituted subsequent to repeal of the repealed ordinances, must be brought pursuant to and under the provisions of such repealed ordinances as though they continued to be in full force and effect.

SECTION 14

Section 310.15 is renumbered as 310.13 and amended as follows:

Sec. 310.13. Penalty.

Any person who violates any provision of these chapters, or other ordinances or laws relating to licensing, or who aids, advises, hires, counsels or conspires with or otherwise procures another to violate any provision of these chapters or other ordinances or laws relating to licensing is guilty of a misdemeanor and may be sentenced in accordance with section 1.05 of the Saint Paul Legislative Code. For the purpose of this section, the term "person" includes the individual partners or members of any partnership or corporation, and as to corporations, the officers, agents or members thereof, who are responsible for the violation.



SECTION 15

Section 310.16 is deleted

SECTION 16

Section 310.17 is renumbered as 310.14 and amended as follows:

Sec. 310.14. Licensee's responsibility.

Any act or conduct by any clerk, employee, manager or agent of a licensee, or by any person providing entertainment or working for or on behalf of a licensee, whether compensated or not, which act or conduct takes place either on the licensed premises or in any parking lot or other area adjacent to (or under the lease or control of) the licensed premises, and which act or conduct violates any state or federal statutes or regulations, or any city ordinance, must be considered to be and treated as the act or conduct of the licensee for the purpose of adverse action against all or any of the licenses held by such licensee. To the extent this section is in conflict with sections 409.14 and 410.09 of the Legislative Code, this section must be controlling and prevail; but must not otherwise amend, alter or affect such sections.

SECTION 17

Section 310.18 is renumbered as 310.15 and amended as follows:

Sec. 310.15. License fee schedule.

Notwithstanding the provision of any other ordinance or law to the contrary, the following fees are hereby provided for all the licenses listed herein. These fees supersede all inconsistent provisions, including, but not limited to, graduated fee provisions, in these chapters and in other ordinances and laws, and include the fee for the license application as part of the license fee; provided, however, that this section does not amend or modify sections 310.07(a) or 310.07(d) of the Legislative Code with respect to exempt organizations or late fees. Pursuant to section 310.07 (b) of the Legislative Code, these schedules will be posted online. These fees are effective for license renewals and new license applications on the effective date of this section, provided, however, that with respect to all licenses whose renewal dates occur after the effective date of this new schedule, there must be no increases in, nor offsets or refunds of, the existing fees paid, or due and owing.

SECTION 18

Section 310.19 is renumbered as 310.16 and amended as follows:

Sec. 310.16. Discount from certain license fees.

(a) A discount will be provided for on-sale and off-sale liquor licenses, on-sale and off-sale 3.2 malt liquor licenses and on-sale strong beer and wine licenses. Such fees mentioned will be reduced seven (7) percent, contingent upon each of the following conditions:



(1) *Driver's license guide; compilation of laws.* The licensee maintains on the premises, in a location accessible at all times to all employees of the licensed establishment:

a. A current driver's license guide, which must include license specifications for both adults and minors for each state (and including Canadian provinces), and must list such information from at least five (5) years prior to the present date; and

b. A current compilation of the laws relating to the sale and possession of alcoholic beverages in the state as outlined in Chapter 7515 of the State of Minnesota Rules and Minn. Stat. Ch. 340A. This compilation must also include chapters 240 through 246, 409 and 410 of the Saint Paul Legislative Code.

(2) *Signage.* The licensee must maintain on the premises, in all customer areas, current signage relating to underage consumption of alcoholic beverages, and relating to driving under the influence of alcohol. One (1) sign must be located behind the bar, and one (1) sign must be present in each additional room or section within the lounge area in which the writing on the sign behind the bar is not clearly legible. The sign(s) must have dimensions of at least one (1) foot by one (1) foot with letters at least one-half ($\frac{1}{2}$) inch in height. All signs must be comfortably readable from a distance of fifteen (15) feet.

(3) *Contract with security agency.*

a. *Generally.* The licensee will participate in a training program with an approved private security agency, firm or association (hereafter "security agency") which is selected by and contracts with the city for the purpose of providing investigations and training to the licensee pursuant to this subsection. The city contract must provide (i) that the security agency is not reimbursed by the city, but that it will recover its costs and profit by fees collected from the licensees which choose to receive the training program and investigative services, and (ii) that the security agency will charge the same amount to all licensees who choose to receive such services, so that all such licensees are treated equally and without discrimination.

b. *Investigation.* The contract with the city must provide for and require one (1) or more investigations by the security agency each calendar year into the practices of the licensee with respect to (i) age identification of customers in order to prevent sales of alcoholic beverages to minors, and (ii) preventing the sale of alcoholic beverages to persons who are obviously intoxicated. The contract must require that the security agency disclose the results of all such investigations to both the licensee and, at no cost to the city, to the department, within ten (10) days after such investigations are concluded. Failure to do so will be grounds for adverse action against the licensee's licenses. The contract must require that all such investigations must include unannounced and random attempts by minors to purchase alcoholic beverages in the licensed premises, and surveillance within the licensed premises. The security agency must employ reasonable measures to eliminate conflicts of interest in providing and reporting on investigations of licensees.

c. *Training.* The contract must also provide for alcohol awareness training by the security agency of all officers, employees or agents of the licensee who work in the licensed premises at least once during the calendar year. All newly hired employees or new officers or agents hired during the calendar year must receive such training within four (4) weeks following their hiring, and if they have not completed the training in that period, they may not work in the premises until they have received such training.



d. *Standards for approval.* In addition to the requirements specified elsewhere in this subsection, the security agency and its investigations and training must meet or exceed the following:

1. The alcohol awareness course must cover all of the topics listed herein. The content of each training course must include, but need not be limited to:

- (a) Pertinent laws and ordinances regarding the sale of alcohol.
- (b) Verification of age, forms of identification, and forms of false or misleading age identification.
- (c) The effect of alcohol on humans and the physiology of alcohol intoxication.
- (d) Recognition of the signs of intoxication.
- (e) Strategies for intervention to prevent intoxicated persons from consuming further alcohol.
- (f) The licensee's policies and guidelines, and the employee's role in observing these policies.
- (g) Liability of the person serving alcohol.
- (h) Effect of alcohol on pregnant women and their fetuses, and in other vulnerable situations
- (i) Training available in languages other than English that are spoken by the license holders and/or the license holder's employees.

2. The security agency must have a minimum of two (2) years actual experience in alcohol awareness training. The courses may be given by one (1) or more instructors, but each instructor must have a formal education and/or training in each area they teach. The courses may be supplemented by audio-visual instruction.

3. The security agency must have sufficient personnel and physical resources to provide an alcohol awareness training course to newly hired employees within four (4) weeks after their hiring by the licensee with whom there is a contract. The cost covering the training and investigation service provided to license holders must be identified and charged equally to each participant.

The (7) seven percent will be applied to the following licenses:

Brew pub

Off-sale brewery

Liquor catering permit

On-sale—Over 200 seats

On-sale—Over 100 seats



On-sale—100 seats or less
On-sale club—Under 200 members
On-sale club—201—500 members
On-sale club—501—1,000 members
On-sale club—1,001—2,000 members
On-sale club—2,001—4,000 members
On-sale club—4,001—6,000 members
On-sale club—6,000+ members
On-sale extended service hours
On-sale theatre
Off-sale
Sunday on-sale
Liquor—Outdoor service area
Wine on-sale
On-sale malt (strong)
On-sale malt (3.2)
Off-sale malt

SECTION 19

This ordinance will take effect and be in force thirty (30) days following passage, approval and publication.



In Re: Tobacco Shop license held by Amira Grocery d/b/a Winnipeg Grocery for the premises located at 864 Rice Street in Saint Paul

**INDEX OF CITY'S
PROPOSED EXHIBITS**

DATE: May 24, 2023

TO: Judge Jessica Palmer-Denig - Office of Administrative Hearings, 600 North Robert Street.

The following constitutes a list of the City's proposed exhibits for the July 20, 2023, administrative hearing:

Exhibit No.	Description
Ex. No. 1-1 to 1-5	March 16, 2023, Notice of Violation And Request For Imposition of 10-day Suspension of Your License with Affidavit of Service
Ex. No. 2	January 31, 2023, Department of Safety and Inspections Complaint form
Ex. No. 3-1 to 3-2	February 2, 2023, Inspector's Report
Ex. No. 4-1 to 4-13	Photographs taken during February 2, 2023, inspection.
Ex. No. 5	Surveillance video (sent to Douglas Nepp with April 4, 2023, letter confirming representation)
Ex. No. 6-1 to 6-2	April 4, 2023, letter sent to Douglas E. Nepp confirming representation
Ex. No. 7	License Property Information
Ex. No. 8	STAMP – Ownership/Zoning Information
Ex. No. 9-1 to 9-3	March 27, 2023, faxed letter from Douglas Nepp requesting an administrative hearing
Ex. No. 10-1 to 10-3	March 24, 2023, letter from Ismail Hussein with notarized letter from Melvin Galloway
Ex. No. 11-1 to 11-4	April 28, 2023, Seizure Notice from Minnesota Department of Revenue with attached February 6, 2023, Notice of Seized Contraband
Ex. No. 12-1 to 12-6	Application and floor plan
Ex. No. 13-1 to 13-31	Saint Paul Legislative Code 310
Ex. No. 14-1 to 14-7	Saint Paul Legislative Code 324

Respectfully submitted the 24th day of May, 2023

Therese Skarda, Assistant City Attorney
License No: 0240989
Office of the City Attorney
400 City Hall & Courthouse
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102
(612) 266-8710



March 16, 2023

**NOTICE OF VIOLATION AND REQUEST FOR IMPOSITION
OF A 10-DAY SUSPENSION OF YOUR LICENSE**

Amira Grocery
d/b/a Winnipeg Grocery
864 Rice Street
Saint Paul, MN 55117

RE: Tobacco Shop license held by Amira Grocery d/b/a Winnipeg Grocery, for the premises located at 864 Rice Street in Saint Paul.
License ID #: 20210000879

Dear Licensee:

The Department of Safety and Inspections (the "Department") is recommending adverse action against the Cigarette/Tobacco license held by Amira Grocery, d/b/a Winnipeg Grocery (the "Licensee"), for the premises located at 864 Rice Street in Saint Paul (the "Licensed Premises") for a first-time flavored product violation.

Saint Paul Legislative Code section 324.07(j) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored tobacco products. Under Saint Paul Legislative Code section 310.17, the conduct of any clerk, employee, manager, or agent working for or on behalf of a licensee is treated as the conduct of the licensee for the purpose of adverse action.

Saint Paul Legislative Code section 310.03 (m)(3) contains the presumptive penalty matrix for violations of provisions of the Legislative Code relating to the display, possession, or multiple incidents of sales of menthol or flavored tobacco products. Under section 310.03 (m)(3), the presumptive penalty for a first-time violation is a 10-day license suspension.

The Department asserts that the following facts, along with photos of the violations attached herein, constitute proof of a violation of section 324.07(j) of the Saint Paul Legislative Code by a preponderance of the evidence.





Synopsis of Alleged Facts:

On February 2, 2023, Department Inspector Vang went to the Licensed Premises to perform an inspection in response to a complaint that prohibited flavored tobacco products were being sold from a black bag behind the counter. Upon arrival, Inspector Vang introduced himself to the Licensee, Mohamed Sultan. Vang met with Inspector Tom Piskor from the State of Minnesota Department of Revenue who was also inspecting premises. Inspector Vang noted that Inspector Piskor had already laid out a number of prohibited flavored products that he had found in two (2) black bags behind the display counter. The prohibited products included: Newport Menthol Cigarettes twenty (20) single cigars in an open box, Four (4) Dutch Java Fusion, five (5) Dutch Gold Fusion, four (4) Dutch OG fusion, four (4) Backwood Russian Cream, one (1) Backwood Banana, fifteen (15) packs of Newport Menthol cigarettes (in addition to being prohibited flavored products, these were missing tax stamps) one (1) Backwood Honey Bourbon, one (1) Backwood Black Russian, one (1) Backwood Honey, four (4) Backwood Dark Stout, one (1) Loon Max Pineapple, three (3) Frontomaster Cream, three (3) Dutch, Honey Fusion, three (3) Dutch Sweet Fusion Red, four (4) Dutch Berry Fusion, and one (1) Dutch Blue Dream Fusion.

The Licensee attempted to claim that the products belonged to a store employee. Vang explained that all the products found are violations of Saint Paul Legislative Code chapter 324 and that Inspector Vang and Inspector Voyda had just educated him on prohibited products 13 days earlier when they performed an opening inspection for another location under which he is a Licensee located at 516 Rice Street. Inspector Vang documented his findings in his report and with photographs. Because the prohibited products were not on the Licensee’s tobacco invoice, Inspector Piskor seized them as being in violation of state statutes.

You have three (3) options to proceed:

1. If you do not contest the imposition of the proposed adverse action, you may do nothing. If I have not heard from you by **March 30, 2023**, I will presume that you have chosen not to contest the proposed adverse action and the matter will be placed on the City Council Consent Agenda for imposition of the presumptive penalty of a 10-day suspension of your license.
2. If you wish to admit the facts but you contest the presumptive 10-day suspension penalty, you may request a hearing before the Saint Paul City Council. You will need to send me a letter with a statement admitting to the facts and requesting a hearing no later than **March 30, 2023**. The





matter will then be scheduled before the City Council to determine whether to impose the presumptive 10 day suspension of your license. You will have an opportunity to appear before the Council and make a statement.

3. If you dispute the facts outlined above, you may request a hearing before an Administrative Law Judge (the "ALJ"). You will need to send me a letter disputing the facts and requesting an administrative hearing no later than **March 30, 2023**. At that hearing both you and the City will appear and present witnesses and evidence and cross-examine each other's witnesses. After receipt of the ALJ's report (usually within 30 days), a hearing will need to be scheduled. At that hearing, the City Council will decide whether to adopt, modify or reject the ALJ's report and recommendation.

Please note: If you choose an administrative hearing, the Department reserves the right to request that City Council impose the costs of the administrative hearing, per Saint Paul Legislative Code section 310.03(k).

If you have not contacted me by March 30, 2023, I will assume that you do not contest the imposition of a 10-day suspension of your license. In that case, the matter will be placed on the City Council Consent Agenda for approval of the recommended penalty.

Sincerely,

Therese Skarda
Assistant City Attorney

cc: Mohamed Sultan, 14200 43rd Avenue Unit F, Minneapolis, MN 55446
Winnipeg Apartments LP, 755 Selby Avenue Unit A, Saint Paul, MN 55104-7643
Kerry Antrim, Executive Director, North End Neighborhood Organization, 171 Front Street, Saint Paul, MN 55117

Attachments: Inspector's Report
Licensee information on Eclips System
Adverse Action Comments Text
License Group Comments Text
License Group Conditions Text
STAMP - Ownership/Zoning Information





SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDESEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

Photos of tobacco products

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

The Saint Paul City Attorney's Office does not discriminate
on the basis of race, color, national origin, religion, sex/gender, disability, sexual orientation, gender identity, age, or veteran status
in the delivery of services or employment practices.



STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Shawn McDonald, being first duly sworn, deposes and says that on the 16th day of March, he served the attached **NOTICE OF VIOLATION AND REQUEST FOR IMPOSITION OF A 10-DAY SUSPENSION OF YOUR LICENSE** and a correct copy thereof in an envelope addressed as follows:

Amira Grocery
d/b/a Winnipeg Grocery
864 Rice Street
Saint Paul, MN 55117

Mohamed Sultan
14200 43rd Avenue Unit F
Minneapolis, MN 55446

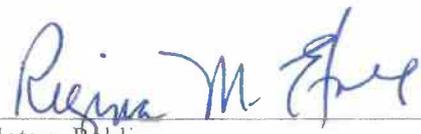
Winnipeg Apartments LP
755 Selby Avenue Unit A
Saint Paul, MN 55104-7643

Kerry Antrim, Executive Director
North End Neighborhood Organization
171 Front Street
Saint Paul, MN 55117

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.


Shawn McDonald

Subscribed and sworn to before me
This 16th day of March 2023


Notary Public



Folder #:	2023 010391 LIC	PIN:	302922320230	Status:	Under Review
In Date:	1/31/23	Ward:	1	Zoning:	T2
		Subtype:	License		
		Dist Council:	6	Owner:	
		Worktype:	Complaint		
Complaint Location:	864 RICE ST				
	Census Tract:	31400	Winnipeg Apartments Lp		
	Census Block:	2023	755 Selby Ave Unit A St Paul MN 55104- 7643		
	Homesteader:				
	Tax Owner:				

Legal Desc: LEWIS' ADDITION TO,ST. PAUL LOTS 10 THRU 14 BLK 6

Complainant:

Details: Tobacco: selling flavored tobacco products and Newport Menthol without Tax Stamps from a bag behind the counter

This complaint has been referred to the following departments:
DSI Licensing Response - Scheduled Date: 1/31/23

Comment:

Inspector Assigned: Joseph Voyda, Phone: 651- 266- 9014

Results	Entered By	Comment
2/10/23 Under Review	Vang, Allan	AA sent to JNV for review.

Comment:

Inspector Assigned: Joseph Voyda, Phone: 651- 266- 9014

Results	Entered By	Comment
2/2/23 Under Review	Vang, Allan	Inspection completed. in- violation of flavor tobaccos.





Inspector's Report

Inspectors Name: Allan Vang

Date & Time: 2/2/2023 at 1:37pm Staff Member's Name: Mohamed

Business/DBA Name: Winnipeg Grocery

Property Address: 864 Rice Street

Reason for Visit: Flavor Tobacco Products Complaint Inspection

Observations: Multiple flavor cigars and cigarette violations

Photos Taken: Yes No – Area(s) of where the Photo(s) where taken: _____
of the counter

Action Taken: Education / warning

Request for Adverse Action

Other: _____

Details of Conversations (Statements to and by Person Responsible for Property):

Upon arrival I introduced myself as a Licensing inspector from the City of Saint Paul for the Department of Safety and Inspection to Mohamed the owner/license holder. Mohamed acknowledged who I was then he continued to talk on his cell phone. I met up with Tom Piskor from State of Minnesota Department of Revenue who was already present, Tom laid all tobacco products that were in violation on top of the display case/counter that were discovered in bags behind the counter. Violations that were discovered fit the description exactly from the complaint submitted to DSI on 1/31/2023 that stated, "selling flavored tobacco products and Newport Menthol without Tax Stamps from a bag behind the counter".

Note: all the tobacco products found within the bags were all flavor tobacco products.

Mohamed claimed that the products were a store employee's, I corrected him by stating that these products were all violations of the City of Saint Paul's Legislative Code 324. Mohamed Stated, "I know, but this guy (later discovered it was the deli employee), left the bags behind the register". I then explained to Mohamed that I and Joseph Voyda (another DSI Inspector) explained to him on 1/20/2023 during an opening inspection for his other location thirteen (13) days prior for a Tobacco Products Shop license located at 516 Rice Street, reviewed 324 ordinance including flavor violations and THC product State Statutes violations.

I instructed Mohamed that all flavor violations needed to be removed from behind the counter and placed in the back room. Tom Piskor intervened and explained to Mohamed that these products were not on his tobacco product invoice and is being seized as a State Statutes violation.



Page 2 of Inspection Report:

Product violations found:

(1) box of Black & Mild Sweet and approximately twenty (20) single cigar in an open box, four (4) Dutch Java Fusion, five (5) Dutch Gold Fusion, four (4) Dutch OG Fusion, four (4) Backwood Russian Cream, one (1) Backwood Banana, fifteen (15) pack of Newport Mental cigarettes (missing tax stamp), one (1) Backwood Honey Bourbon, one (1) Backwood Black Russian, one (1) Backwood Honey, four (4) Backwood Dark Stout, one (1) Loon Max Pineapple, three (3) Frontomaster Cream, three (3) Dutch Honey Fusion, three (3) Dutch Sweet Fusion Red, four (4) Dutch Berry Fusion, and one (1) Dutch Blue Dream Fusion.





EXHIBIT
4-1



EXHIBIT
4-2

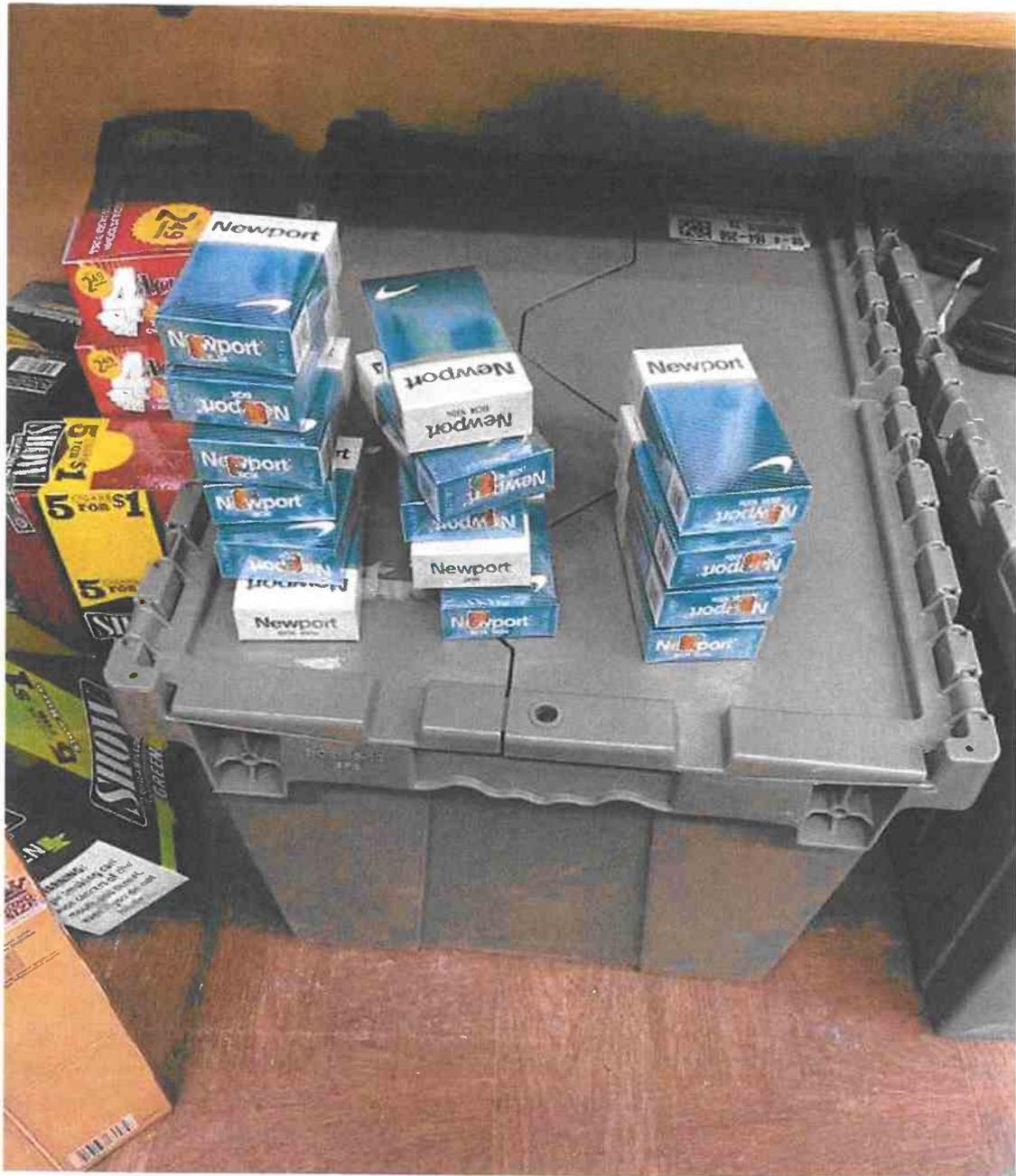


EXHIBIT
4-3

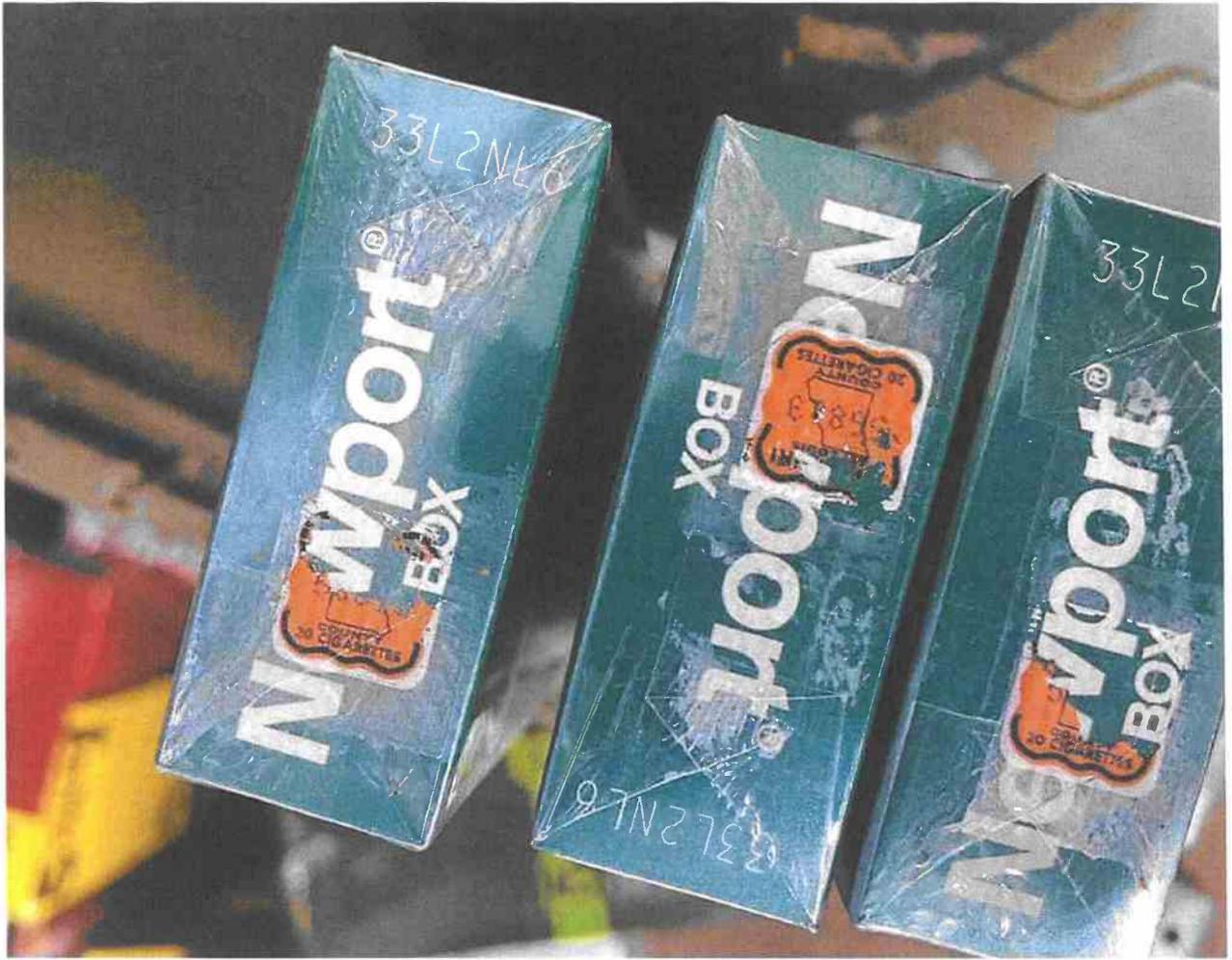


EXHIBIT
4-4



EXHIBIT
4-5



EXHIBIT
4-7



WARNING:
Tobacco
Smoke increases the
risk of lung cancer and
heart disease, even
in nonsmokers.

WARNING:
Tobacco
Smoke increases the
risk of lung cancer and
heart disease, even
in nonsmokers.

WARNING:
Tobacco
Smoke increases the
risk of lung cancer and
heart disease, even
in nonsmokers.

WARNING: Tobacco smoke
increases the risk of lung
heart

SURGEON GENERAL WARNING:
Cigar Smoking Can Cause Cancers
Of The Mouth And Throat, Even If
You Do Not Inhale.

EXHIBIT
4-8



EXHIBIT
4-9



EXHIBIT
4-10



EXHIBIT
4-11



EXHIBIT
4-12



WARNING:
Tobacco
Smoke increases the
risk of lung cancer and
heart disease, even
in nonsmokers.

WARNING:
Tobacco
Smoke increases the
risk of lung cancer and
heart disease, even
in nonsmokers.

WARNING:
Tobacco
Smoke increases the
risk of lung cancer and
heart disease, even
in nonsmokers.

SURGEON GENERAL WARNING:
Cigar Smoking Can Cause Cancer
Of The Mouth And Throat, Even
If You Do Not Inhale.

EXHIBIT
4-13

SURVEILLANCE VIDEO (sent to you with April 4, 2023, letter confirming your representation)





SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDSEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

April 4, 2023

Douglas E. Nepp
Attorney At Law
Nepp & Hackert, LLC
In Town On Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

RE: Tobacco Shop license held by Amira Grocery Inc. d/b/a Winnipeg Grocery for the premises located at 864 Rice Street in Saint Paul
License ID: 20210000879

Mr. Nepp:

Now that we have confirmed you will be representing the above-named licensee in this matter please find enclosed a flash drive containing the following information: 1) two videos of the licensed premises, 2) a letter from the Law Office of Ismail Hussein, 3) a letter from Melvin Galloway and 4) the Notice of Violation and Request for Imposition of a 10-day Suspension of your License.

My Legal Assistant, Julie Kraus, will be contacting the Office of Administrative Hearings to schedule a Pre-Hearing Telephone Conference. Please let her know of possible dates you are available. You can email her at julie.kraus@ci.stpaul.mn.us or by telephone (651) 266-8776.

Sincerely,

Therese Skarda
Assistant City Attorney
License No.: 0240989

Enclosure: Flash Drive

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

The Saint Paul City Attorney's Office does not discriminate on the basis of race, color, national origin, religion, sex/gender, disability, sexual orientation, gender identity, age or in the delivery of services or employment practices.



STATE OF MINNESOTA)
) ss.

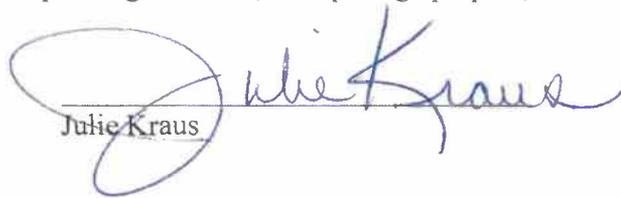
AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

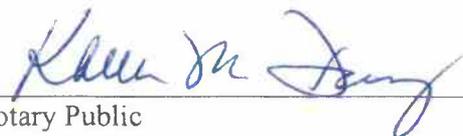
Julie Kraus, being first duly sworn, deposes and says that on the 4th day of April she served the attached **LETTER AND FLASH DRIVE** and a correct copy thereof in an envelope addressed as follows:

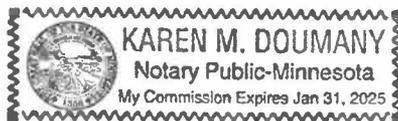
Douglas E. Nepp
Attorney At Law
Nepp & Hackert, LLC
In Town On Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.


Julie Kraus

Subscribed and sworn to before me
This 4th day of April 2023


Notary Public



Properties For License 864 RICE ST

Pay Print Warn Hist Summ

Licensee: AMIRA GROCERY
DBA: WINNIPEG GROCERY

License Licensee Lic. Types Insurance Bond Requirements

Licensee Name: AMIRA GROCERY
DBA: WINNIPEG GROCERY
Sales Tax Id: ***** Non-Profit: Worker's Comp: 00/00/0000
AA Contract Rec'd: 00/00/0000 AA Training Rec'd: 00/00/0000
AA Fee Collected: 00/00/0000 Discount Rec'd:

Other Agency Licenses

Other Licensing Agency Name / License Type	License #	Expiration	Reason	Active	Date

Financial Hold Reasons

Contacts for this Licensee

Addr. Type	Active	Inactive	Last Name	First Name	Title	Bus. Phone	Ho
Business/M	05/12/2021	00/00/0000				(651) 487-3110	
Other	05/12/2021	00/00/0000	SULTAN	MOHAMED	OWNER	(651) 487-3110 (312	

Background Check Required Contact Properties...

License # 210000879 Save Changes to History OK Cancel Help

Properties For License 864 RICE ST

Pay Print Warn Hist Summ

Licensee: AMIRA GROCERY
DBA: WINNIPEG GROCERY

License Licensee Lic. Types Insurance Bond Requirements

Licensee Name: AMIRA GROCERY
DBA: WINNIPEG GROCERY
Sales Tax Id: ***** Non-Profit: Worker's Comp: 00/00/0000
AA Contract Rec'd: 00/00/0000 AA Training Rec'd: 00/00/0000
AA Fee Collected: 00/00/0000 Discount Rec'd:

Other Agency Licenses

Other Licensing Agency Name / License Type	License #	Expiration	Reason	Active	Date

Financial Hold Reasons

Contacts for this Licensee

Home Phone	Contact Address	City	Zip	DOB	Las
	864 RICE ST	ST PAUL	55117	00/00/0000	00/00/0000
(312) 245-3802	14200 43RD AVE UNIT F	MINNEAPOLIS	55448	10/23/1990	00/00/0000

Background Check Required Contact Properties...

License # 210000879 Save Changes to History OK Cancel Help



STAMP - Ownership / Zoning Information

[New Search](#)

[Help using this report](#)

Run Date: 02/09/23 02:37 PM

House#:

Last updated from Ramsey County data on:

Street Name:

Click on "Other Application" links below to access GISmo, MapIT, and Ramsey County Info

850 Rice St - Winnipeg Apts / 860 Rice St / 864 Rice St - Winnipeg Grocery / 136 Winnipeg Ave - 55117-5435 - [Other Applications](#)

PIN: 302922320230

Census Tract: 31400 **Census Block:** 2023

Council Ward: 1 **District Council:** 6

Year Built:

Foundation Sq Feet: **Loan Company:** 00

Land

Building

Value: 271800

Value: 2570600

Unverified Usage: 10- GENERAL RETAIL & SVC- B- Commercial

ISP:

Units:

Zoning: ' / T2

Legal Desc: LEWIS' ADDITION TO,ST. PAUL LOTS 10 THRU 14 BLK 6

Owner:

Winnipeg Apartments Lp
755 Selby Ave Unit A
St Paul MN 55104-7643

Tax Owner:

Winnipeg Apartments Lp
755 Selby Ave Unit A
St Paul MN 55104-7643



Fax Transmission

To: Therese Skarda

From: nepphackertfax

Fax: 16512985619

Date: 3/27/2023 1:51:56 PM CDT

RE: Amira Grocery, Inc Lic #20210000879

Pages: 2

Comments:

Ms. Skarda:

Attached please find correspondence from Attorney Douglas E. Nepp o/b/o Amira Grocery, Inc.

Please call our office with any questions.

Douglas E. Nep
Tel: 612-871-3333
Email: doug@nepphackert.com





DOUGLAS E. NEPP
ATTORNEY AT LAW
THOMAS A. HACKERT
ATTORNEY AT LAW

IN TOWN ON LAKE BUILDING
ONE WEST LAKE ST, SUITE 185
MINNEAPOLIS MN 55408

TEL : 612.871.3333
FAX: 612.874.0672

March 27, 2023

Ms. Therese Skarda
Office of the St. Paul City Attorney
Civil Division
15 Kellogg Boulevard West
Suite 400
Saint Paul, MN 55102

VIA FAX and U.S. MAIL

Re: Letter of March 16, 2023
Amira Grocery, Inc. d/b/a Winnipeg Grocery
License ID #: 20210000879

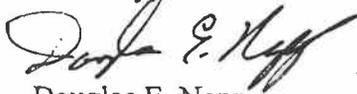
Dear Ms. Skarda:

I represent Amira Grocery, Inc. d/b/a Winnipeg Grocery (hereinafter "Amira Grocery") and its sole shareholder Mohamed Shaaban Ramada Sultan. A Notice of Violation letter authored by you and dated March 16, 2023 has been forwarded to me for response. This letter will serve as Amira Grocery's formal request for hearing before an Administrative Law Judge.

Amira Grocery disputes the facts outlined in your notice of violation letter. Department Inspector Vang has erroneously attributed ownership of prohibited flavored tobacco products to Amira Grocery. Ownership of the prohibited flavored tobacco products has been established through a notarized statement of admission by Melvin Galloway. The owner of the prohibited flavored tobacco products is not an employee of Amira Grocery. The owner of the prohibited flavored tobacco products only connection to Amira Grocery is as a sub-leasee. The Minnesota Revenue agent who seized the product addressed the seizure notice to Melvin Galloway.

Please direct future correspondence to my office. Thank you for your time and attention to this matter.

Sincerely


Douglas E. Nepp

Cc: Mohamed Sultan



*** RX REPORT ***

RECEPTION OK

TX/RX NO	6766
RECIPIENT ADDRESS	
DESTINATION ID	
ST. TIME	03/27 14:03
TIME USE	02'02
PGS.	2
RESULT	OK



RECEIVED

MAR 30 2023

CITY ATTORNEY



LAW OFFICE OF
ISMAIL HUSSEIN

Attorney & Counselor at Law
4111 Central Ave NE, Suite 200B
Columbia Heights, MN 55421
Telephone: (651) 431-8703
Fax: (612) 437-4510

March 24, 2023

VIA FAX AND U.S. MAIL

Therese Skarda
Assistance City Attorney
Office of the City Attorney
Civil Division
15 Kellogg Blvd W, 400 City Hall
St. Paul, MN 55102

Re: Tobacco Shop license held by Amira Grocery d/b/a Winnipeg Grocery, for the premises located at 864 Rice Street in Saint Paul.

License ID # 20210000879

Dear Ms. Skarda:

In reference to your Notice of Violation and Request for Imposition of A 10- Day Suspension of License, dated March 16, 2023, I am pleased to inform you that my office represents Amira Grocery d/b/a Winnipeg Grocery, in this matter.

My client is disputing the facts outlined in the Notice and requesting a hearing before an Administrative Law Judge, because the Notice of Violation and the Request for Suspension are based on inaccurate information and disputed facts.

On February 2, 2023, Mr. Vang, the city inspector visited the store and found the State of Minnesota Dept. of Rev. inspector Mr. Piskor holding 2 black bags containing tobacco products and belong to Mr. Malvin Galloway, who is a sublessee operating the Deli Section of the store and has no other relationship with the licensee. See Mr. Gallaway's letter to Minnesota Dept. of Revenue, in which Mr. Gallaway explains his relationship to Amira Grocery and asserted his ownership to the property, the tobacco products. Mr. Vang took the bags from Mr. Piskor, emptied them and laid all the tobacco products on the top of the display case/counter. The bags were not found behind the counter and not laid on the top of the display case/counter by Mr. Piskor, but Mr. Vang who laid the product on the display case/counter. See the attached video.

In addition to that Mr. Vang removed almost all tobacco products which are not in any violation from the shelves and display cases and ordered the store owner Mr. Mohamed Sultan to store them in the back of the store and not to sell them, although all are not in violation. The store was not allowed to sell and did not sell any of these products for two days, only after Mr. Sultan called Mr. Joseph Voyda, an other DSI

EXHIBIT

10-1

inspector, who advised Mr. Sultan to put the products back to display for sale. The store lost two day revenue for not selling tobacco products not in violation due to Mr. Vang wrongful and unlawful order. (See the video).

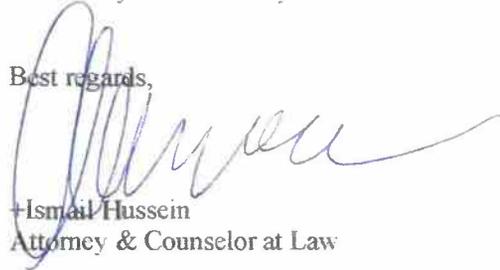
It is worth mentioning that Mr. Sultan, has been the owner and the operator of the licensed store, Amira Grocery, for the last 3 years and before that he was operating the Deli Section for 5 years, without no single violation.

In the instant case the licensee was not selling, offering for sale, or otherwise distributing any flavored tobacco products in violation of Saint Paul Legislative Code section 310.17.

For all the above reasons, the submitted evidence, improper actions of Mr. Vang and inaccurate information he provided, my client is kindly asking the city to dismiss this case against them, or in the alternative they are requesting a hearing before an Administrative Law Judge.

Thank you in advance for your attention to this matter, in the meantime, if you have any questions, please contact my office directly.

Best regards,



Ismail Hussein
Attorney & Counselor at Law

cc: Mohamed Sultan, owner of Amira Grocery d/b/a Winnipeg Grocery



Tom Piskor
Revenue Tax Special Intermediate
Cigarette, Alcohol, and Tobacco Unit
Minnesota Department of Revenue
Special Tax Division
600 N. Robert St., Mail Station 3331
St. Paul, MN 55146

Re: Seized Property

My name is Melvin Galloway, I am a sub-lessee, operating the Deli section inside Amira Grocery Store at 864 Rice St., St. Paul, MN 55117.

In reference to your Notice of Seized Contraband; **Letter ID: L1829469344**, dated February 6, 2023; addressed to Amira Grocery Inc., and later amended by adding handwritten Attn to: **Melvin Galloway**.

I declare and admit that I am the owner of the property, tobacco products, seized by Minnesota Department of Revenue on February 03, 2023, and that neither Amira Grocery nor the owner of the store Mr. Mohamed Shaban has anything to do with the seized products.

What happened on that day was as follows: I walked into the store with two plastic bags containing the products in my hands. I saw Mr. Shaban, the owner of the store and my landlord, from whom I rent the Deli section. I stopped to talk to him about the rent payment which was due at the time. I left the two plastic bags on the floor and walked to the Deli area to grab a sandwich. At this moment the Minnesota Revenue's inspectors came in, searched the bags against my will and objection, to find the products to which I confirmed to the inspectors my ownership. The inspectors later seized the products as contraband.

I called the Minnesota Department of Revenue to claim and return my property and I have been told a letter will come in the mail. However, as I mentioned above the Notice of Seize is incorrectly addressed to Amira Grocery, Inc. and later amended to my attention.

Again I declare that neither the store nor its owner has anything to do with the seized products. The only relationship I have with Amira Grocery Store is the sublease to operate the Deli section.

Accordingly, please remove AMIRA GROCERY INC from the Notice and direct any future notices to me personally, addressed to my home address at 264 POPLAR DR, SOREVIEW, MN 55125, and return my products back to me.

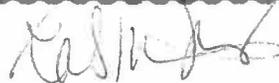
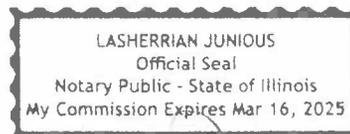
Thank you in advance for your attention to this matter, in the meantime, if you have any questions, please contact the undersigned directly.

Best regards,



Melvin Galloway
264 Poplar Dr.
Shoreview, MN 55125

Phone Number: 651-434-3203



April 28, 2023

City of Saint Paul - DSI

Tobacco Licensing Division
375 Jackson Street #220
St Paul, MN 55101

Seized Cigarette/Tobacco Product

The Minnesota Department of Revenue recently seized cigarette and/or tobacco products as contraband under Minnesota Statute 297F.21 from a business located in your jurisdiction. Because all time periods for judicially challenging the seizure have expired, the property has been forfeited to the State.

Attached you will find a copy of our Notice of Seized Contraband. The notice lists the products we seized.

Why are you contacting me?

We are providing you information about our seizure of tobacco contraband so you may take any action against the city/county license as appropriate.

Contact me if you have any questions.

Sincerely,

Steve Johnson
Compliance Coordinator
Phone: 651-556-4708
Email: steve.johnson@state.mn.us

Supervisor Contact Information:
Dan Hughes
651-556-4750
dan.hughes@state.mn.us



February 6, 2023

ID: XX-XXX9888
Letter ID: L1829469344
Notice Date: February 6, 2023AMIRA GROCERY INC
864 RICE ST
SAINT PAUL MN 55117-5422

Notice of Seized Contraband

Seized Date and Time: 03-Feb-2023 230PM**Seized by: TOM & JIM****Seizure Location: 864 RICE ST****SAINT PAUL MN 55117-5422****Seized From: AMIRA GROCERY**

The Minnesota Department of Revenue seized the following property as contraband under the authority granted to the commissioner of revenue (Minnesota Statutes Chapter 297F)

Quantity	Unit	Product Description
8	pack/20	Newport Box 100
7	pack/20	Newport Box King Size
1	Single-P en	Loon Max 2000 Puff Ice Pineapple
1	Single Cigar	Backwoods Honey Cigarillo Single
3	Single Cigar	Backwoods Russian Cream Cigar Single
4	Single Cigar	Backwoods Dark Stout Single
1	5-Pack	Backwoods Black Russian - 5 cigars
1	5-Pack	Backwoods Honey Bourbon - 5 cigars
1	5-Pack	Backwoods Banana - 5 cigars
4	Package	Fronto Leaf Master Cream Natural Cigar Wrappers
3	2-Pack	Dutch Natural Leaf Cigarillos 2 for \$0.99c - Java Fusion Deluxe
3	2-pack	Dutch Natural Leaf Cigarillos 2 for \$0.99c - Honey Fusion Golden
3	2- pack	Dutch Natural Leaf Cigarillos 2 for \$0.99c - Sweet Fusion Red
4	2-pack	Dutch Natural Leaf Cigarillos 2 for \$0.99c - OG Fusion
1	2-pack	Dutch Natural Leaf Cigarillos 2 for \$0.99c - Blue Fusion Cream
4	2- Pack	Dutch Natural Leaf Cigarillos 2 for \$0.99c - Blue Fusion Burst



3 2- Pack Dutch Natural Leaf Cigarillos 2 for \$0.99c - Gold Fusion

The property listed was seized as contraband under the authority granted in M.S. 297F. The specific section of the law under which this property is declared to be contraband is M.S. 297F.21, which state(s).

Subdivision 1. Contraband defined. The following are declared to be contraband and therefore subject to civil and criminal penalties under this chapter

Cigarette/Tobacco 297F.21

(a) Cigarette packages which do not have stamps affixed to them as provided in this chapter, including but not limited to (i) packages with illegible stamps and packages with stamps that are not complete or whole even if the stamps are legible, and (ii) all devices for the vending of cigarettes in which packages as defined in the item (i) are found, including all contents contained within the devices.

(g) Cigarette packages or tobacco products obtained from an unlicensed seller.

(h) Cigarette packages offered for sale or held as inventory in violation of section 297F.20, subdivision 7.

(i) Tobacco products on which the tax has not been paid by a licensed distributor.

(j) Any cigarette packages or tobacco products offered for sale or held as inventory for which there is not an invoice from a licensed seller as required under section 297F.13, subdivision 4.

What must I do?

You must request a judicial review of this seized property within 60 days of the Notice Date. If you do not, the property that we seized will become property of the state of Minnesota.

How do I demand a judicial review?

1. File a civil complaint with the court administrator in the county where the seizure occurred.
2. Include proof that you served a copy of the complaint on the Department of Revenue.
3. List your name as "plaintiff" and the seized property as "defendant" in the title of the complaint.
4. State the grounds on which you allege the property was improperly seized and what your ownership interest is in the property.

You do not have to pay the court filing fee if it is determined you cannot afford the fee. If the value of the seized property is \$15,000 or less, you can file an action in conciliation court to recover the property. If the value of the seized property is less than \$500, you do not have to pay the conciliation court filing fee.

Steven Johnson



February 6, 2023
Page 3

ID: XX-XXX9888
Letter ID: L1829469344

Revenue Tax Specialist
Phone: 651-556-4708
Email: steve.johnson@state.mn.us
Fax: 651-282-3933





CITY OF SAINT PAUL
 Department of Safety and Inspections
 Ricardo X. Cervantes, Director
 375 Jackson Street, Suite 220
 Saint Paul, Minnesota 55101
 Phone: 651-266-8989
 Web: www.stpaul.gov/dsi

Class "R" License Application

LICENSES ARE NOT TRANSFERRABLE

Payment must be received with Each Application
 This application is subject to review by the public.

Types of License(s) being applied for:

Fee(s):

- a. Tobacco Cigarette/Tobacco License \$488.00
- b. food Alarm Permit \$39.00
- c. _____
- d. _____
- e. _____

Total: \$

Business/Applicant Information

Business Address: 864 Rice St ST Paul MN 55117
Street City State Zip

Company Name: Amira GROCERY Doing Business As: Amira Grocery
Winnipeg

Company Type: Corporation Partnership _____ Sole Proprietorship _____

Licensee/Owner Name: mohamed shaban SULTAN
(Responsible Party) First Middle Last

Title: owner Driver's License: MN J640-194-371-410
State License #

Date of Birth: 10/23/1990

Applicant Home Address: 14200 43rd Aven F minneapolis MN 55448
Street City State Zip

Home Phone #: 612 245 3802 Business Phone #: 651-487-3110

Fax #: _____ Email: mohamedshaban935@yahoo.com

Supplemental Required Information *same as above*

Business Manager, if different from Applicant

Manager's Name: mohamed shaban SULTAN
First Middle Last

Home Address: 14200 43rd Aven F mn MN 55448
Street City State Zip

Date of Birth: 10/23/1990 Phone #: 612 245 3802

Email Address: mohamedshaban935@yahoo.com



(Continued on back)

Please list all other Person(s) to Appear on the Business License (Attach another sheet if applicable.)

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: ____ / ____ / ____ Phone #: _____

Email Address: _____

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: ____ / ____ / ____ Phone #: _____

Email Address: _____

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

Home Address: _____
Street City State Zip

Date of Birth: ____ / ____ / ____ Phone #: _____

Email Address: _____

Select Type: Officer _____ Partner _____ Shareholder _____

Officer Name: _____
First Middle Last

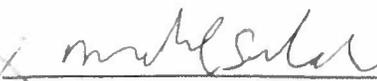
Home Address: _____
Street City State Zip

Date of Birth: ____ / ____ / ____ Phone #: _____

Email Address: _____

FALSIFICATION OF ANSWERS GIVEN OR MATERIAL SUBMITTED WILL RESULT IN DENIAL OF APPLICATION

I hereby state that I have answered all of the preceding questions and that the information contained herein is true and correct to the best of my knowledge and belief. I hereby state further that I have received no money or other consideration by way of loan, gift, contribution, or otherwise, other than already disclosed in the application which I herewith submitted. I also understand this premise may be inspected by police, fire, health and other city officials at any time when the business is in operation.


Applicant Signature

Owner
Title

5-11-2021
Date





Business Plan Addendum (Cigarette/Tobacco Sales)

BUSINESS ADDRESS: 864 RICE ST ST PAUL MN 55117 **BUSINESS NAME:** WINNEPEG GROCERY

All applicants must provide details related to the business plan at the establishment for which a license is being requested. Please complete the following document and attach supporting documents as needed.

a. List hours of operation (Sunday – Saturday):

b. List/check-off the typical products to be sold in the establishment (use additional pages if necessary) and note any additional licenses you will be obtaining:

- Cigarettes Electronic cigarettes Pop or candy Clothing
- Cigarette wrapping paper Electronic cigarette parts Bottled water Household items
- Cigars Chewing tobacco Groceries
- Other Products and Licenses: _____

c. Will any food consumption be allowed on the premises? YES NO (circle one)

If yes, describe in detail what type of food service will be provided and/or consumption allowed. If applicable, provide a copy of your menu: Frozen food small deli inside store that is leased out

d. Will there be any seating in the establishment for customers/patrons? YES NO (circle one)

If yes, explain what the seating will be used for, and the anticipated length of time people will spend in the establishment. 30 minutes or so to eat.

e. Will any of the following occur on the premises:

- i. Sale of flavored tobacco products or e-cigarette "juice" other than mint, wintergreen and menthol? YES NO (circle one)
- ii. Sampling of tobacco products including e-cigarette "juice"? YES NO (circle one)

If yes to either of the questions under "e." please provide the following additional information:

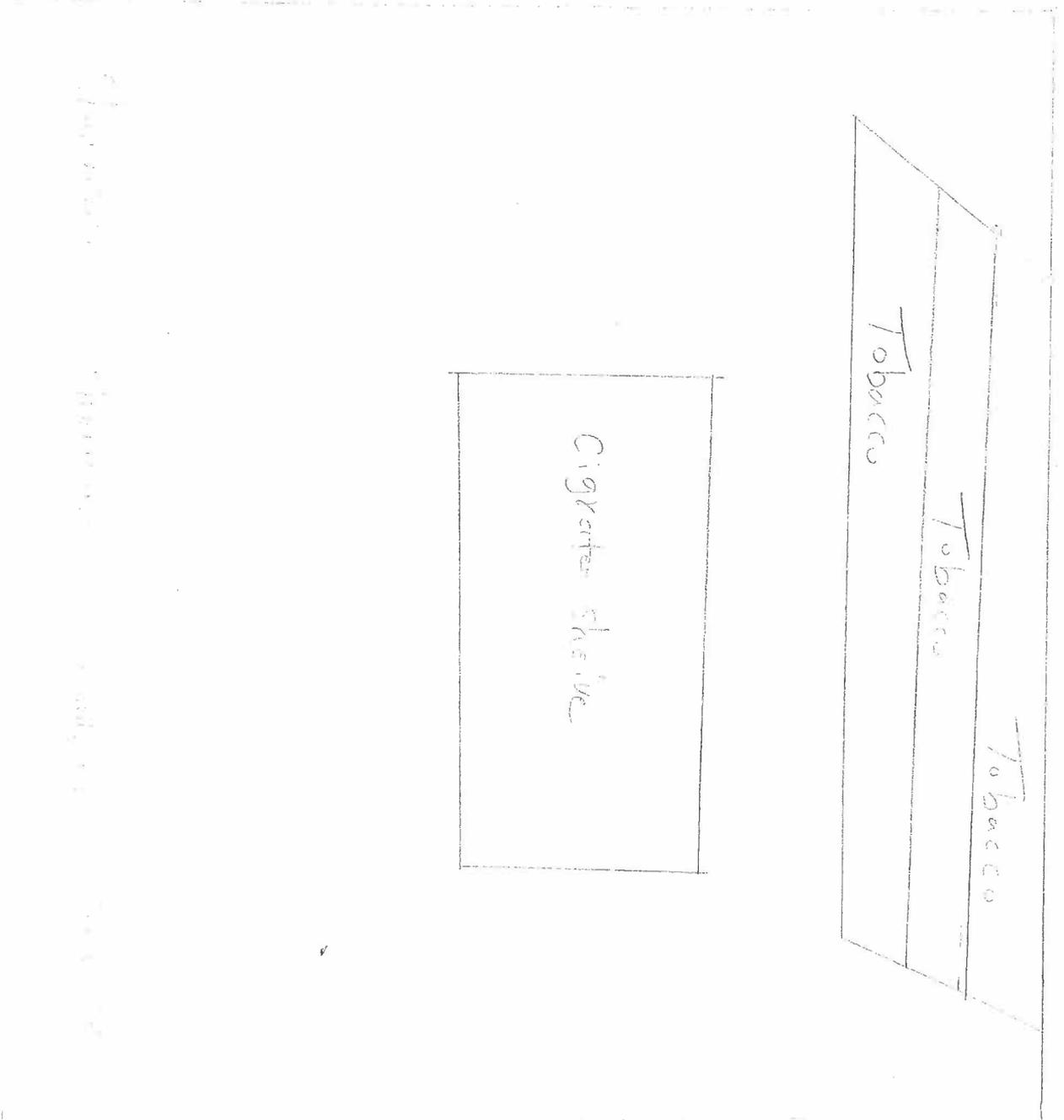
- 1. What is the estimated percentage of your total sales that will come from tobacco related products? _____
- 2. What will the minimum age be to enter the establishment? _____
Describe what actions will be taken to enforce the minimum age requirement:

3. Describe how the sampling will occur (e.g., at the counter, sitting in chairs, etc.) and how you will regulate the sampling, including the estimated length of time customers will be on the premises sampling product.

Print Name: Mohamed Sultan Signature: Mohamed Sultan Date: 5-3-21



964 RILE



deli

Storage

Shelve grocery

864 RICE Floor Plan

tabaco ship

Cashier



864 RICE

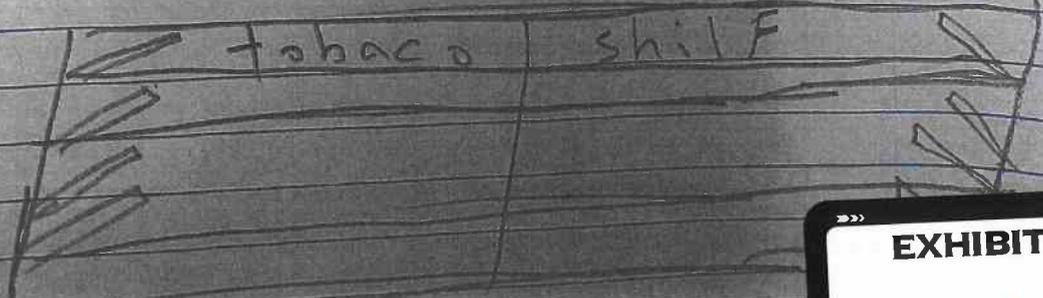
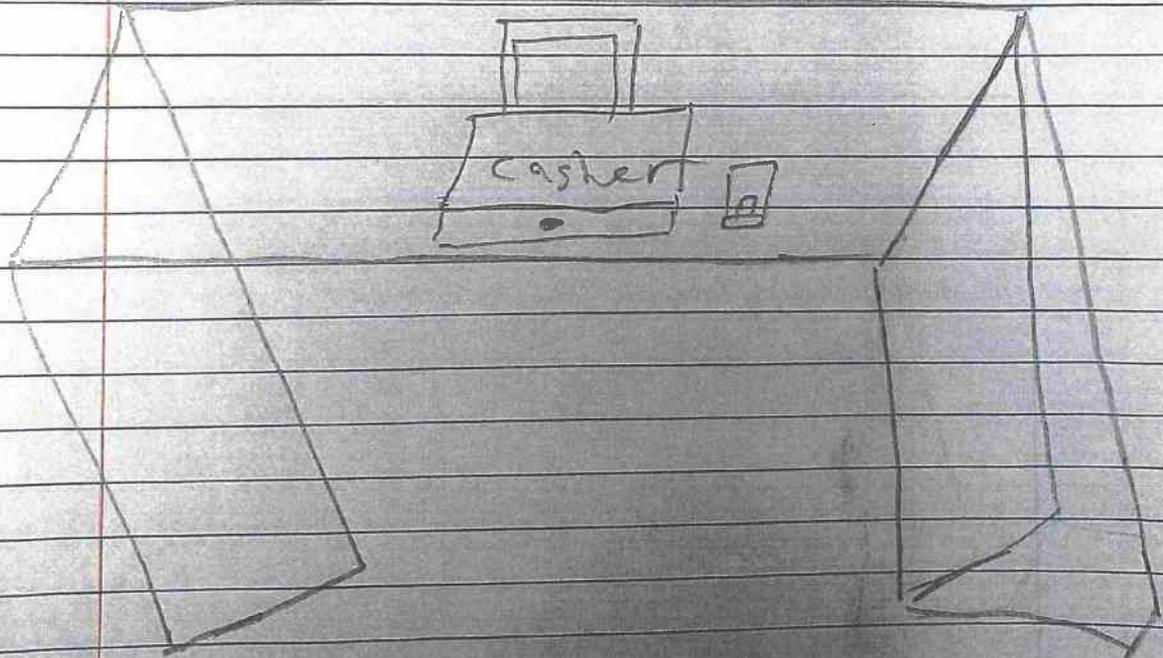
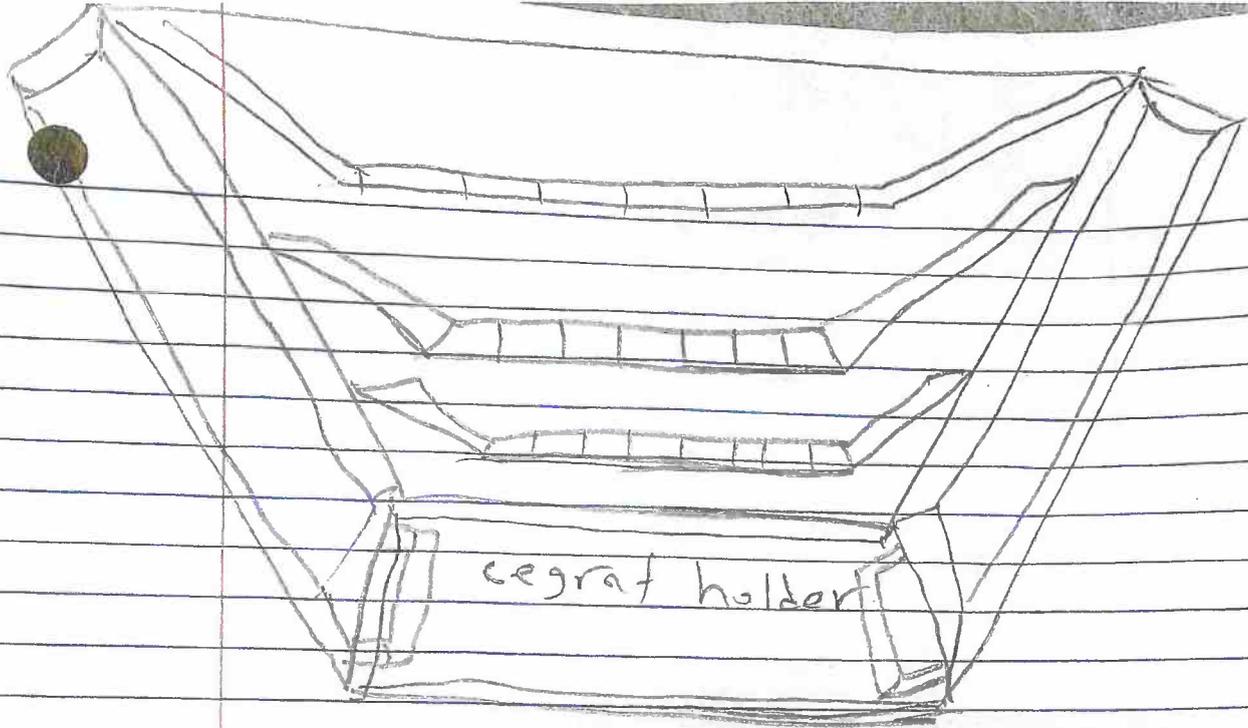


EXHIBIT
12-6

Chapter 310. Uniform License Procedures

Sec. 310.01. Definitions.

For the purposes of this chapter, any chapter of the Legislative Code pertaining to licenses as hereinafter mentioned, and subsequently enacted ordinances establishing or relating to the requirements for Class R, for routinely issued licenses, Class T for temporary licenses and Class N for licenses in which neighbors are required to be notified, under authority of the City of Saint Paul, the terms defined in this section shall have the meanings ascribed to them:

Adverse action means the revocation or suspension of a license, the imposition of conditions upon a license, the denial of an application for the grant, issuance or renewal of a license, the imposition of a fine, the assessment of the costs of a contested hearing, and any other disciplinary or unfavorable action taken with respect to a license, licensee or applicant for a license. "Adverse action" includes any of the foregoing directed at one (1) or more licenses held by a licensee at any location in the city. "Adverse action" also includes disapproval of licenses issued by the state under statutory provisions which permit the governing body to disapprove the issuance of the license.

Bond means a bond meeting the requirements of section 310.07 and indemnifying the city against all claims, judgments or suits caused by, resulting from or in connection with any licensed business, activity, premises, thing, facility, occurrence or otherwise under these chapters.

Building official means the official in the department of safety and inspections charged with the responsibility of enforcement of the building code.

Chapters and these chapters shall mean this uniform license ordinance, any chapter of the Legislative Code pertaining to licenses as hereinafter mentioned, and subsequently enacted ordinances establishing or relating to the requirements for class R, class T and class N licenses under authority of the city.

Class R licenses means those licenses which can be approved and issued or denied by the director of the department of safety and inspections, subject to the procedures required by these chapters. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Class R Licenses	Legislative Code Chapter
Animal Foods Manufacturing and Distributing	316
Amusement Rides	317
Mechanical Amusement Devices	318
Bed and Breakfast	378
Bituminous Contractors	320
Rooming and Boardinghouses; Dormitories	321
Christmas Tree Sales	323
Cigarettes/Tobacco	324
Commercial Vehicles	167
Building Contractors	326
Courtesy Bench	127

Dry Cleaning Establishments and Pickup Stations; Laundries	327
Alarm Devices	329
Food Protection Standards	331A
Fuel Dealers—Liquid Fuel	332
Fuel Dealers—Solid Fuel	333
Pest Control	334
House Sewer Contractors	338
Keeping of Animals	198
Lawn Fertilizer and Pesticide Application	377
Mercantile Broker	340
Oil—Bulk Storage	342
Peddlers	345
Solicitors	345
Pet Grooming Facility	382
Pet Shops	347
Solid Waste Hauler	357
Rental of Hospital Equipment	350
Rental of Kitchenware	351
Rental of Trailers	352
Roller Rinks	353
Sanitary Disposal Vehicle	354
Secondhand Dealers (Single Location, Multiple Dealers)	355
Sidewalk Cafe	106
Sidewalk Contractors	356
Solid Waste Transfer Station	357
Sign and Billboard Construction	66 and 33
Sound Trucks and Broadcasting Vehicles	359
Public Swimming Pools	360
Tanning Facility	380
Wreckers and Tow Trucks	361
Taxicab Driver	376
Taxicab Vehicle	376
Tree Trimming	362
Food Vending Machines	363
Veterinary Hospital	364
Window Cleaning	365
Block Parties	366
Wrecking of Buildings	368
Building Trades Business Licenses	369
Building Trades Certificates of Competency	370
Finishing Shop	371
Tire Recapping Plants	372
Massage Center	412
Therapeutic Massage Practitioner	414
Vehicle Immobilization	383
Short-term Rental Platform	379
Short-term Rental Host	379

(Supp. No. 123)

Class T licenses means those licenses which must be approved or denied by the director, subject to the procedures required by these chapters. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Class T Licenses	Legislative Code Chapter
Amusement Rides—Temporary	317
Close-Out Sales	325
Transient Merchants	345
Gambling—Temporary	402.06
Entertainment—Temporary	411
Extension of Service Area-Liquor	409
Soliciting Funds—Tag Days	391
Temporary On-Sale Malt (3.2)	410
Temporary Wine, Wine Licenses for Festivals and Liquor	409
Secondhand Dealer—Exhibition	355
Temporary World Cup Soccer License	409, 410

Class N licenses means those licenses which can be approved or denied only by the council, subject to the procedures required by these chapters. The following licenses are so classified, and the numbers shown opposite them correspond to the chapters in the Legislative Code pertaining to each license:

Class N Licenses	Legislative Code Chapter
Automobile Repair Garage and Body Shop	423
Pool Hall, Bowling Center	322
New Motor Vehicle Dealer	401
Bingo	402
Bingo Halls	403
Cabaret	426
Private Clubs - Liquor	409
Dance or Rental Halls	405
Firearms Dealer	225
Gambling Hall	278
Game Rooms	406
Gas Station	424
Gambling Location	409
Hotel/Motel	407
Health/Sports Club	427
Infectious Waste Processing	429
Recycling Collection Center/Recycling Processing Center	408
Second Hand Dealer—Motor Vehicle Parts	401
Motor Vehicle Salvage Dealer	422
Intoxicating Liquor—On and Off Sale	409

Brewpub/Off-Sale	409
Off-Sale Brewery	409
Motorcycle Dealer	401
Pawn Shop	344
Nonintoxicating Liquor-On and Off Sale	410
Entertainment	411
Conversation/Rap Parlors	413
Steam Room/Bathhouse	428
Theatres and Movie Theaters	415
Motion Picture Drive-In Theatres	416
Second Hand Dealer—Motor Vehicle	401
Parking Lots and Parking Garages	417
Scrap and Metal Processor	420
Liquor Extension of Service Hours	409
Liquor Outdoor Service Area (Patio)	409
Currency Exchange	381
Small Brewer Off-Sale—128 Ounces License	409

Department means the department of safety and inspections.

Director means the director of the department of safety and inspections, unless otherwise defined in the specific chapter, section or subdivision referred to.

Fee means and includes both the license fee and application fee unless otherwise provided.

Inspector as used in these chapters means the director of the department of safety and inspections or his or her designee.

License means and includes all licenses and permits provided for or covered by these chapters. License also includes licenses issued by the state under statutory provisions which permit the governing body to disapprove the issuance of such licenses, for the purposes of making procedures in chapter 310 of the Legislative Code applicable to the approval or disapproval of such licenses.

Person means and includes any person, firm, corporation, partnership, company, organization, agency, club or any group or association thereof. It shall also include any executor, administrator, trustee, receiver or other representative appointed by law.

Zoning administrator means the official in the department of safety and inspections charged with responsibility for enforcement of the zoning code.

(Code 1956, § 510.01; Ord. No. 17085, § 1, 12-6-83; Ord. No. 17303, § 3, 10-29-85; Ord. No. 17569, § 1, 6-7-88; Ord. No. 17919, § 1, 3-31-92; C.F. No. 93-1645, § 8, 12-30-93; C.F. No. 94-46, § 6, 2-2-94; C.F. No. 94-500, § 2, 7-6-94; C.F. No. 94-898, § 1, 7-13-94; C.F. No. 95-473, § 1, 5-31-95; C.F. No. 99-500, § 1, 7-7-99; C.F. No. 01-400, § 1, 11-7-01; C.F. No. 02-1031, § 1, 11-27-02; C.F. No. 03-102, § 1, 3-12-03; C.F. No. 03-694, § 1, 9-3-03; C.F. No. 06-574, § 1, 7-26-06; C.F. No. 06-821, § 1, 9-27-06; C.F. No. 07-149, § 71, 3-28-07; Ord 12-50, § 1, 9-12-12; Ord 17-48, § 1, 10-25-17; Ord 16-68, § 1, 1-9-19; Ord 22-35, § 2, 8-3-22)

Sec. 310.02. Application.

- (a) *Form.* All applicants for licenses or permits issued pursuant to these chapters shall make both original and renewal applications to the inspector on such forms as are provided by the division. Such applications shall

not be received by the inspector until completely filled out, accompanied by all fees, insurance policies, bonds, deposits, sureties, and indemnifications or certificates required by these chapters, together with the certification required in paragraph (b) below.

- (b) *Taxes.* No person shall be granted a license or a renewal of a license required by the Saint Paul Legislative Code unless, prior to and in addition to any other requirements, rules or ordinances heretofore or hereafter required, the Ramsey County Department of Property Taxation certifies that said applicant has paid any and all taxes, real or personal, before said taxes become delinquent, on any property, real or personal, situated within the City of Saint Paul and used in connection with the business operated under said license.

Notwithstanding the previous paragraph, the council, the director or the inspector may issue or renew a license if it is found that:

- (1) The applicant has made an agreement satisfactory to the Ramsey County attorney to pay delinquent taxes in periodic installments;
- (2) The applicant has properly commenced a proceeding to contest the amount of tax due or the valuation of his property, and has made all partial payments required by law in connection with such proceeding; or
- (3) The business property with respect to which taxes are delinquent is not owned by the applicant, but by a lessor, and it would be inequitable to require the lessee to pay such taxes.

If a license is issued or renewed because of the existence of an agreement as described in subsection (1) above, the license may be revoked if the licensee defaults upon such agreement.

- (c) *Additional information.* The inspector shall prescribe the information required to be submitted by each applicant in their application, in addition to that required by specific sections in these chapters, as may be necessary to carry out and enforce any provision hereunder. The inspector shall require in every case the applicant to submit their name; business or corporate name; names of partners, officers, directors, shareholders or trustees involved in the business; age; address; description or blueprint of the premises, if any, and the owner thereof, and locations and addresses of other business locations in Minnesota.
- (d) *No reapplication within one (1) year after denial or revocation.* Unless an applicant is claiming that they have evidence of rehabilitation as outlined in Minnesota Statute 364.03, subd. 3, no person may apply for any license within one (1) year of the denial or revocation of the same or similar license by the city council, if such denial or revocation was based solely or partially upon misconduct or unfitness of the applicant, evidence of violations of law involving licensed premises, evidence that the applicant had been involved in the operation of a nuisance, or fraud or deception in the license application. A license is "similar," within the meaning of this paragraph, if the basis upon which the revocation or denial of the original license was made would have been a relevant basis on which to deny or revoke a license of the type subsequently applied for.
- (e) *Reapplication after denial; "interest" of applicant in revoked license.* An application by a person having an interest in, or whose shareholders or officers have an interest in, any premises or enterprise whose license has been revoked or to which a license has been denied shall be treated as an application by the person whose license was denied or revoked. The term "interest," as used in this paragraph, includes any pecuniary interest in the ownership, operation, management or profits of an establishment, but does not include: bona fide loans; bona fide rental agreements; bona fide open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to such establishment; an interest in a corporation owning or operating a hotel but having at least one hundred fifty (150) or more rental units holding a license in conjunction therewith; or ten (10) percent or less interest in any other corporation holding a license.
- (f) *Prohibition on reapplication; exception.* The prohibition on reapplication herein provided shall not apply in cases where it is otherwise expressly provided by statute or ordinance.

-
- (g) *Waiting period after filing of petition.* Any petition required to be filed with the application for any license shall not be considered as officially filed and irrevocable until seven (7) working days after a petition is received in the inspector's office. During the seven-day waiting period, any signator of any petition may withdraw their name therefrom by written request, and such request shall be appended to the subject petition and made a part thereof. After the seven-day waiting period, signatures may not be withdrawn unless it is shown they were obtained by fraud or duress. Signatures withdrawn or obtained by fraud or duress shall not be counted in determining the sufficiency of the petition. This subdivision shall apply in any case where the applicant for a license must present a statement in writing signed by a specified number or percentage of persons that they have given their consent to the grant of the license.

(Code 1956, § 510.02; C.F. No. 95-473, § 2, 5-31-95; Ord. 21-26, § 2, 7-28-21)

Sec. 310.03. Investigation and review of new applications, etc.

The inspector shall determine the sufficiency and accuracy of each new application and obtain such criminal history information as may be used under Minnesota Statutes, chapter 364, and is otherwise available by law. The inspector shall make reasonable and appropriate investigation of the premises or personal property, vehicles or facilities, as may be involved in or related to the licensed activity, and shall request, where appropriate, the assistance of other city divisions or departments in making additional investigations for the purpose of determining whether the applicant is or will be in compliance with all applicable ordinances and statutes. The approval of such other divisions or departments is not required for issuance of a license unless otherwise required by specific sections in these chapters. All new applications shall be reviewed by the zoning administrator or his designee for compliance with all requirements of the Saint Paul Zoning Code, and no new license shall be granted without full compliance with said requirements. All new applications involving a premises, location, building or structure shall be referred to the department of safety and inspections for investigation and recommendation.

(Code 1956, § 510.03; Ord. No. 17361, § 1, 6-5-86; C.F. No. 07-149, § 72, 3-28-07)

Sec. 310.04. Levels of approval; recommendations.

- (a) *Class R licenses.* Where an application for the grant, issuance or renewal of a Class R license meets all the requirements of law, and there exists no ground for denial, revocation or suspension of, or the imposition of conditions upon, such license, the director shall grant, issue or renew said license in accordance with the application.
- (b) *Class T licenses.* Where an application for the grant, issuance or renewal of a Class T license meets all the requirements of law, and there exists no ground for denial, revocation or suspension of, or the imposition of conditions upon, such license, the director shall grant, issue or renew said license in accordance with the application.
- (c) *Class R and Class T licenses, if denied by director.* In the event the director, in the case of both Class R and Class T licenses, determines that the application for grant, issuance or renewal of the license does not meet all the requirements of law or that there exist grounds for denial, revocation, suspension or other adverse action against the license or the licensee, the director shall recommend denial of the application and follow the procedures for notice and hearing as set forth in section 310.05.
- (d) *Class N licenses.*
- (1) *Grant, issuance or transfer.* Upon receipt of a fully completed application and required fees for a Class N license, the director shall conduct such investigation as is required to determine whether the application meets all the requirements of law or whether there exist grounds for denial or imposition of conditions on the license. The director shall, in writing, notify the council, and the affected

(Supp. No. 123)

neighborhood organization(s) established for citizen participation purposes, of the existence of the application for all Class N licenses. In any case where the director recommends denial of the grant, issuance or renewal of a Class N license, the director on his or her own initiative, or at the direction of the council, shall follow the procedures for notice and hearing as set forth in section 310.05. If the director is recommending issuance of the license, but the affected neighborhood organization(s) or other interested persons give notice within thirty (30) days of receipt of notice of the existence of the application (or within forty-five (45) days if the application involves a liquor license) of objection to issuance of the license, the matter shall be referred for a hearing before the legislative hearing officer, who shall give notice of the time, place and date of the hearing to the affected neighborhood organization(s) and the applicant. The legislative hearing officer shall take testimony from all interested persons and shall make a recommendation to the council as to whether the matter should be referred for a hearing before an independent hearing examiner in accordance with the procedures set forth in section 310.05. Where the application for the grant, issuance or renewal of a Class N license meets all the requirements of law, and where there exists no ground for adverse action, the director shall issue such license in accordance with law.

- (2) *Renewal.* The director shall in writing notify the council, and the affected neighborhood organization(s) established for citizen participation purposes, at least sixty (60) days before the expiration date of all Class N licenses. A public hearing on the renewal of any such license shall not be held except on the request of a councilmember, which request shall be incorporated in the form of a council resolution. Upon the passage of such resolution, the director shall give written notice of such hearing to the affected neighborhood organizations. Such public hearing does not replace or amend any of the procedures set forth in section 310.05 of the Legislative Code. If no request for a public hearing is made before the expiration of any such license, and where there exists no ground for adverse action, the director shall issue the license in accordance with law.
- (e) *Appeal; Class R or Class T licenses.* An appeal to the city council may be taken by any person aggrieved by the grant, issuance or renewal of a Class R or Class T license; provided, however, that the appeal shall have been filed with the city clerk within thirty (30) days after the action by the director. The only grounds for appeal shall be that there has been an error of law in the grant, issuance or renewal of the license. The appeal shall be in writing and shall set forth in particular the alleged errors of law. The council shall conduct a hearing on the appeal within thirty (30) days of the date of filing and shall notify the licensee and the appellant at least ten (10) days prior to the hearing date. The procedures set forth in section 310.05, insofar as is practicable, shall apply to this hearing. Following the hearing, the council may affirm or remand the matter to the inspector or director, or may reverse or place conditions upon the license based on the council's determination that the decision was based on an error of law. The filing of an appeal shall not stay the issuance of the license.
- (f) *No waiver by renewal.* The renewal of any license, whether Class R, T or N, shall not be deemed to be a waiver of any past violations or of any grounds for imposition of adverse action against such license.

(Code 1956, § 510.04; Ord. No. 17455, § 1, 5-21-87; Ord. No. 17551, § 1, 4-19-88; C.F. No. 94-500, § 1, 7-6-94; C.F. No. 95-473, § 3, 5-31-95; C.F. No. 95-1517, 1-31-96; C.F. No. 97-1446, § 1, 12-30-97; C.F. No. 99-500, § 2, 7-7-99)

Sec. 310.05. Hearing procedures.

- (a) *Adverse action; notice and hearing requirements.* In any case where the council may or intends to consider any adverse action, including the revocation or suspension of a license, the imposition of conditions upon a license, or the denial of an application for the grant, issuance or renewal of a license, or the disapproval of a license issued by the State of Minnesota, the applicant or licensee shall be given notice and an opportunity to be heard as provided herein. The council may consider such adverse actions when recommended by the

inspector, by the director, by the director of any executive department established pursuant to Chapter 9 of the Charter, by the city attorney or on its own initiative.

- (b) *Notice.* In each such case where adverse action is or will be considered by the council, the applicant or licensee shall have been notified in writing that adverse action may be taken against the license or application, and that he or she is entitled to a hearing before action is taken by the council. The notice shall be served or mailed a reasonable time before the hearing date, and shall state the place, date and time of the hearing. The notice shall state the issues involved or grounds upon which the adverse action may be sought or based. The council may request that such written notice be prepared and served or mailed by the inspector or by the city attorney.
- (c) *Hearing.* Where there is no dispute as to the facts underlying the violation or as to the facts establishing mitigating or aggravating circumstances, the hearing shall be held before the council. Otherwise the hearing shall be conducted before a hearing examiner appointed by the council or retained by contract with the city for that purpose. The applicant or the licensee shall be provided an opportunity to present evidence and argument as well as meet adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The hearing examiner may in its discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing.
- (c-1) *Procedure; hearing examiner.* The hearing examiner shall hear all evidence as may be presented on behalf of the city and the applicant or licensee, and shall present to the council written findings of fact and conclusions of law, together with a recommendation for adverse action.

The council shall consider the evidence contained in the record, the hearing examiner's recommended findings of fact and conclusions, and shall not consider any factual testimony not previously submitted to and considered by the hearing examiner. After receipt of the hearing examiner's findings, conclusions, and recommendations, the council shall provide the applicant or licensee an opportunity to present oral or written arguments alleging error on the part of the examiner in the application of the law or interpretation of the facts, and to present argument related to the recommended adverse action. Upon conclusion of that hearing, and after considering the record, the examiner's findings and recommendations, together with such additional arguments presented at the hearing, the council shall determine what, if any, adverse action shall be taken, which action shall be by resolution. The council may accept, reject or modify the findings, conclusions and recommendations of the hearing examiner.

- (c-2) *Ex-parte contacts.* If a license matter has been scheduled for an adverse hearing, council members shall not discuss the license matter with each other or with any of the parties or interested persons involved in the matter unless such discussion occurs on the record during the hearings of the matter or during the council's final deliberations of the matter. No interested person shall, with knowledge that a license matter has been scheduled for adverse hearing, convey or attempt to convey, orally or in writing, any information, argument or opinion about the matter, or any issue in the matter, to a council member or his or her staff until the council has taken final action on the matter; provided, however, that nothing herein shall prevent an inquiry or communications regarding status, scheduling or procedures concerning a license matter. An interested person, for the purpose of this paragraph, shall mean and include a person who is an officer or employee of the licensee which is the subject of the scheduled adverse hearing, or a person who has a financial interest in such licensee.
- (d) *Licensee or applicant may be represented.* The licensee or applicant may represent himself or choose to be represented by another.
- (e) *Record; evidence.* The hearing examiner shall receive and keep a record of such proceedings, including testimony and exhibits, and shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

-
- (f) *Council action, resolution to contain findings.* Where the council takes adverse action with respect to a license, licensee or applicant for a license, the resolution by which such action is taken shall contain its findings and determination, including the imposition of conditions, if any. The council may adopt all or part of the findings, conclusions and recommendations of the hearing examiner, and incorporate the same in its resolution taking the adverse action.
- (g) *Additional procedures where required.* Where the provisions of any statute or ordinance require additional notice or hearing procedures, such provisions shall be complied with and shall supersede inconsistent provisions of these chapters. This shall include, without limitation by reason of this specific reference, Minnesota Statutes, Chapter 364 and Minnesota Statutes, Section 340A.415.
- (h) *Discretion to hear notwithstanding withdrawal or surrender of application or license.* The council may, at its discretion, conduct a hearing or direct that a hearing be held regarding revocation or denial of a license, notwithstanding that the applicant or licensee has attempted or purported to withdraw or surrender said license or application, if the attempted withdrawal or surrender took place after the applicant or licensee had been notified of the hearing and potential adverse action.
- (i) *Continuances.* Where a hearing for the purpose of considering revocation or suspension of a license or other disciplinary action involving a license has been scheduled before the council, a continuation of the hearing may be granted by the council president or by the council at the request of the licensee, license applicant, an interested person or an attorney representing the foregoing, upon a showing of good cause by the party making the request.
- (j) If the council imposes an adverse action as defined in section 310.01 above, a generic notice of such action shall be prepared by the license inspector and posted by the licensee so as to be visible to the public during the effective period of the adverse action. The licensee shall be responsible for taking reasonable steps to make sure the notice remains posted on the front door of the licensed premises, and failure to take such reasonable precautions may be grounds for further adverse action.
- (k) *Imposition of costs.* The council may impose upon any licensee or license applicant some or all of the costs of a contested hearing before an independent hearing examiner. The costs of a contested hearing include, but are not limited to, the cost of the administrative law judge or independent hearing examiner, stenographic and recording costs, copying costs, city staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The council may impose all or part of such costs in any given case if (i) the position, claim or defense of the licensee or applicant was frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment; (ii) the nature of the violation was serious, or involved violence or the threat of violence by the licensee or employees thereof, or involved the sale of drugs by the licensee or employees thereof, and/or the circumstances under which the violation occurred were aggravated and serious; (iii) the violation created a serious danger to the public health, safety or welfare; (iv) the violation involved unreasonable risk of harm to vulnerable persons, or to persons for whose safety the licensee or applicant is or was responsible; (v) the applicant or licensee was sufficiently in control of the situation and therefore could have reasonably avoided the violation, such as but not limited to, the nonpayment of a required fee or the failure to renew required insurance policies; (vi) the violation is covered by the matrix in section 409.26 of the Legislative Code; or (vii) the violation involved the sale of cigarettes to a minor.
- (l) *Imposition of fines.* The council may impose a fine upon any licensee or license applicant as an adverse license action. A fine may be in such amount as the council deems reasonable and appropriate, having in mind the regulatory and enforcement purposes embodied in the particular licensing ordinance. A fine may be in addition to or in lieu of other adverse action in the sole discretion of the council. To the extent any other provision of the Legislative Code provides for the imposition of a fine, both provisions shall be read together to the extent possible; provided, however, that in the case of any conflict or inconsistency, the other provision shall be controlling.
-

(m) *Presumptive penalties for certain violations.* The purpose of this section is to establish a standard by which the city council determines the amount of fines, the length of license suspensions and the propriety of revocations, and shall apply to all license types, except that in the case of a violation involving a liquor license § 409.26 shall apply where a specific violation is listed. In the case of an adverse action filed for a violation of chapter 331A, the licensee shall be given a fine for each individual violation of chapter 331A. The total fine amount for violations of chapter 331A may exceed the maximum fine outlined below due to multiple violations in one (1) appearance. All penalty recommendations for chapter 331A violations shall be based on the food penalty guideline referred to in chapter 331A. 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 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.

Type of Violation	Appearance			
	1st	2nd	3rd	4th
(1) Violations of conditions placed on the license	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 10-day suspension	Revocation
(2) Violation of provisions of the legislative code relating to the licensed activity	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 10-day suspension	Revocation
(3) Violation of provisions of the legislative code relating to the licensed activity, other than violations of the food code	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 10-day suspension	Revocation
(4) Failure to permit entrance or inspection by DSI inspector or police	5-day suspension	10-day suspension	15-day suspension	Revocation
(5) Commission of a crime other than a felony on the premises by a licensee or employee	\$700.00	\$1,500.00	5-day suspension	Revocation
(6) Commission of a felony on the premises by a licensee or employee	\$2,000.00	Revocation	n/a	n/a

(Supp. No. 123)

(7) Death or great bodily harm in establishment related to violation of law or license conditions	30-day suspension	60-day suspension	Revocation	n/a
(8) Failure to pay license fees	Suspension	Revocation		
(9) Critical violations under 331A	\$250.00	\$500.00	\$1,000.00, 5-day suspension	Revocation
(10) Non-critical violation under 331A	\$150.00	\$250.00	\$500.00	\$1,000.00
(11) Taxi fail to display driver's license as required by 376.16(f)	\$100.00	\$250.00	\$500.00	Revocation
(12) Taxi fail to display number of information and complaint office as required by 376.11(v)	\$100.00	\$250.00	\$500.00	Revocation
(13) Violation of restrictions upon sidewalk café license under 106.01(b)	\$200.00	\$400.00	\$800.00	Revocation

(i) *Fines payable without hearing.*

- A. Notwithstanding the provisions of section 310.05(c), a licensee who would be making a first or second appearance before the council may elect to pay the fine to the department of safety and inspections without a council hearing, unless the notice of violation has indicated that a hearing is required because of circumstances which may warrant deviation from the presumptive fine amount. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled, and will be considered an "appearance" for the purpose of determining presumptive penalties for subsequent violations.
- B. For adverse action initiated under chapter 331A of this Code, a fine may be paid without a hearing regardless of how many prior appearances that licensee has made before the council. The above council hearing requirement applies to violations under chapter 331A unless the fine recommended by the department of safety and inspections is equal to or less than the fine amount outlined in the above matrix. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled, and will be considered an "appearance"

for the purpose of determining presumptive penalties for subsequent violations. A non-critical violation under chapter 331A shall not be considered an "appearance" for purposes of determining presumptive penalties for non-331A violations. A council hearing is required if the department of safety and inspections recommends a fine that is an upward departure for the amount outlined above.

- (ii) *Multiple violations.* At a licensee's first appearance before the city council, the council shall consider and act upon all the violations that have been alleged and/or incorporated in the notices sent to the licensee under the administrative procedures act up to and including the formal notice of hearing. The council in that case shall consider the presumptive penalty for each such violation under the "1st Appearance" column in paragraph (b) above. The occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion.
- (iii) *Violations occurring after the date of the notice of hearing.* Violations occurring after the date of the notice of hearing that are brought to the attention of the city attorney prior to the hearing date before an administrative law judge (or before the council in an uncontested facts hearing) may be added to the notice(s) by stipulation if the licensee admits to the facts, and shall in that case be treated as though part of the "1st Appearance." In all other cases, violations occurring after the date of the formal notice of hearing shall be the subject of a separate proceeding and dealt with as a "2nd Appearance" before the council. The same procedures shall apply to a second, third or fourth appearance before the council.
- (iv) *Subsequent appearances.* Upon a second, third or fourth appearance before the council by a particular licensee, the council shall impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance. However, non-critical violations of chapter 331A shall not be counted as an "appearance" before the council in relation to any violation other than another violation of chapter 331A.
- (v) *Computation of time.*
 - (1) *Second appearance.* A second violation within twelve (12) months shall be treated as a second appearance for the purpose of determining the presumptive penalty.
 - (2) *Third appearance.* A third violation within eighteen (18) months shall be treated as a third appearance for the purpose of determining the presumptive penalty.
 - (3) *Fourth appearance.* A fourth violation within twenty-four (24) months shall be treated as a fourth appearance for the purpose of determining the presumptive penalty.
 - (4) Any appearance not covered by subsections (1), (2) or (3) above shall be treated as a first appearance. Measurement of the twelve-, eighteen-, or twenty-four-month period shall be as follows: The beginning date shall be the earliest violation's date of appearance before the council, and the ending date shall be the date of the new violation. In case of multiple new violations, the ending date to be used shall be the date of the violation last in time.
 - (5) Notwithstanding subsections (iv)(1), (2), (3) or (4) above, a second appearance before the council regarding a death or great bodily harm in a licensed establishment that is related to a violation of the law or license conditions shall be counted as a second appearance, regardless of how much time has passed since the first appearance if the first appearance was also regarding a death or great bodily harm in a licensed establishment. A third appearance for the same shall be counted as a third appearance regardless of how much time has passed since the first or second appearance.
 - (6) For the purpose of a second, third or fourth appearance under this section, "violation" shall mean either one of those violations listed in paragraph (m) or a violation of section 409.26(b).

(Code 1956, § 510.05; Ord. No. 17551, § 2, 4-19-88; Ord. No. 17559, §§ 1, 2, 5-17-88; Ord. No. 17659, § 1, 6-13-89; Ord. No. 17911, § 1, 3-10-92; C.F. No. 94-46, § 7, 2-2-94; C.F. No. 94-898, §§ 2, 3, 7-13-94; C.F. No. 94-1340, § 2, 10-19-94; C.F. No. 95-473, § 4, 5-31-95; C.F. No. 05-180, § 1, 4-6-05; C.F. No. 06-954, § 1, 11-8-06; C.F. No. 06-1072, § 1, 12-27-06; C.F. No. 07-149, § 73, 3-28-07; C.F. No. 07-1053, § 1, 11-28-07; C.F. No. 08-1208, § 1, 12-17-08; C.F. No. 10-665, § 1, 7-28-10; Ord. No. 11-93, § 1, 9-28-11; Ord. No. 11-94, § 1, 10-12-11; Ord 12-42, § 1, 8-22-12; Ord 12-85, § 1, 1-23-13)

Sec. 310.06. Revocation; suspension; adverse actions; imposition of conditions.

- (a) *Council may take adverse action.* The council is authorized to take adverse action, as defined in section 310.01 above, against any or all licenses or permits, licensee or applicant for a license, as provided in and by these chapters. Adverse actions against entertainment licenses issued under chapter 411 of the Legislative Code may be initiated for the reasons set forth in subsection (b) below, or upon any lawful grounds which are communicated to the license holder in writing prior to the hearing before the council. Such actions shall be initiated and carried out in accordance with the procedures outlined in section 310.05; provided, however, that the formal notice of hearing shall be used to initiate the adverse action without the use of prior procedural steps.
- (b) *Basis for action.* Such adverse action may be based on one (1) or more of the following reasons, which are in addition to any other reason specifically provided by law or in these chapters:
- (1) The license or permit was procured by misrepresentation of material facts, fraud, deceit or bad faith.
 - (2) The applicant or one acting in his or her behalf made oral or written misstatements or misrepresentations of material facts in or accompanying the application.
 - (3) The license was issued in violation of any of the provisions of the zoning code, or the premises which are licensed or which are to be licensed do not comply with applicable health, housing, fire, zoning and building codes and regulations.
 - (4) The license or permit was issued in violation of law, without authority, or under a material mistake of fact.
 - (5) The licensee or applicant has failed to comply with any condition set forth in the license, or set forth in the resolution granting or renewing the license.
 - (6) a. The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith;
b. The licensee or applicant has been convicted of a crime that may disqualify said applicant from holding the license in question under the standards and procedures in Minnesota Statutes chapter 364; or
c. The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.
 - (7) The activities of the licensee in the licensed activity created or have created a serious danger to the public health, safety or welfare, or the licensee performs or has performed his or her work or activity in an unsafe manner.

(Supp. No. 123)

-
- (8) The licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.
 - (9) Failure to keep sidewalks or pedestrian ways reasonably free of snow and ice as required under chapter 114 of the Saint Paul Legislative Code.
 - (10) The licensee or applicant has shown by past misconduct or unfair acts or dealings: physical abuse, assaults or violent actions done to others, including, but not limited to, actions meeting the definition of criminal sexual conduct pursuant to Minnesota Statutes sections 609.342 through 609.3451; sexual abuse, physical abuse or maltreatment of a child as defined in Minnesota Statutes section 626.556, subdivisions 2 and 10e, including, but not limited to, acts which constitute a violation of Minnesota Statutes sections 609.02, subdivision 10; 609.321 through 609.3451; or 617.246; neglect or endangerment of a child as defined in Minnesota Statutes section 626.557, subdivision 2; the manufacture, distribution, sale, gift, delivery, transportation, exchange or barter of a controlled substance as defined in Minnesota Statutes chapter 152; the possession of a controlled substance as defined in Minnesota Statutes chapter 152 in such quantities or under circumstances giving rise to a reasonable inference that the possession was for the purpose of sale or distribution to others; or by the abuse of alcohol or other drugs, that such licensee or applicant is not a person of the good moral character or fitness required to engage in a licensed activity, business or profession.
 - (11) The licensee or applicant has materially changed or permitted a material change in the design, construction or configuration of the licensed premises without the prior approval of the city council in the case of Class N licenses, the director in the case of Class T licenses, and the inspector in the case of Class R licenses, or without first having obtained the proper building permits from the city.
 - (12) The licensee or applicant has violated section 294.01 of the Legislative Code, or has made or attempted to make a prohibited ex parte contact with a council member as provided in section 310.05(c-2) of the Legislative Code.
 - (13) The licensee violated the law or any license condition and that violation is related to a death or great bodily harm, as defined in Minnesota Statute section 609.02, subd. 8, in or near the establishment.
 - (14) The licensee has failed to pay license fees within sixty (60) days of the date the fees are due. Licensee must pay any outstanding fees and delinquent fees in total. Failure to do so within sixty (60) days of the due date may result in revocation of the license. A revocation for this reason, however, is not considered a revocation resulting from misconduct or unfitness of the licensee, evidence of violations of law involving licensed premises, evidence that the applicant had been involved in the operation of a nuisance, or fraud or deception in the license application. Therefore, the requirement of § 310.02(d) prohibiting re-application within one year of revocation shall not apply to revocations under this paragraph.

The terms "licensee" or "applicant" for the purpose of this section shall mean and include any person who has any interest, whether as a holder of more than five (5) percent of the stock of a corporation, as a partner, or otherwise, in the premises or in the business or activity which are licensed or proposed to be licensed.

With respect to any license for activities entitled to the protection of the First Amendment, notwithstanding the foregoing provisions, neither the lack of good moral character or fitness of the licensee or applicant nor the content of the protected speech or matter shall be the basis for adverse action against the license or application.

- (c) *Imposition of reasonable conditions and/or restrictions.* When a reasonable basis is found to impose reasonable conditions and/or restrictions upon a license issued or held under these chapters, any one (1) or more such reasonable conditions and/or restrictions may be imposed upon such license for the purpose of promoting public health, safety and welfare, of advancing the public peace and the elimination of conditions or actions that constitute a nuisance or a detriment to the peaceful enjoyment of urban life, or promoting

security and safety in nearby neighborhoods. Such reasonable conditions and/or restrictions may include or pertain to, but are not limited to:

- (1) A limitation on the hours of operation of the licensed business or establishment, or on particular types of activities conducted in or on said business or establishment;
- (2) A limitation or restriction as to the location within the licensed business or establishment where particular type of activities may be conducted;
- (3) A limitation as to the means of ingress or egress from the licensed establishment or its parking lot or immediately adjacent area;
- (4) A requirement to provide off-street parking in excess of other requirements of law;
- (5) A limitation on the manner and means of advertising the operation or merchandise of the licensed establishment;
- (6) Any other reasonable condition or restriction limiting the operation of the licensed business or establishment to ensure that the business or establishment will harmonize with the character of the area in which it is located, or to prevent the development or continuation of a nuisance.

The inspector may impose such conditions on Class R licenses with the consent of the license holder, or may recommend the imposition of such conditions as an adverse action against the license or licenses; the inspector has the same power with respect to Class T licenses. The council may impose such conditions on Class N licenses with the consent of the license holder, or upon any class of license as an adverse action against the license or licenses following notice and hearing as may be required. Such conditions may be imposed on a license or licenses upon issuance or renewal thereof, or upon and as part of any adverse action against a license or licenses, including suspension. Conditions imposed on a license or licenses shall remain on such licenses when renewed and shall continue thereafter until removed by the council in the case of conditions on Class N licenses or conditions imposed by adverse action, and by the inspector in the case of Class R and T licenses.

- (d) *Standards for multiple license determination.* In any case in which the council is authorized to take adverse action against less than all of the licenses held by a licensee, or applied for by an applicant, the following standards may be used:
- (1) The nature and gravity of the grounds found by the council to exist upon which the adverse action would be based;
 - (2) The policy and/or regulatory goals for the particular licenses involved, either as embodied in the Legislative Code or as found and determined by the council;
 - (3) The interrelationship of the licenses and their relative importance to the overall business enterprise of the licensee or applicant;
 - (4) The management practices of the licensee or applicant with respect to each of such licenses;
 - (5) The extent to which adverse action against less than all of the licenses or applications would result in difficulty in enforcing and monitoring the adverse action taken;
 - (6) The hardship to the licensee or applicant that would be caused by applying adverse action to all licenses or applications; and
 - (7) The hardship and/or danger to the public, or to the public health and welfare, that would result from adverse action against less than all of the licenses or applications.

(Code 1956, § 510.06; Ord. No. 17584, § 1, 8-25-88; Ord. No. 17657, § 15, 6-8-89; Ord. No. 17659, § 2, 6-13-89; Ord. No. 17901, §§ 2, 3, 1-14-92; Ord. No. 17917, §§ 2, 3, 3-31-92; Ord. No. 17922, § 1, 4-28-92; C.F. No. 94-500, § 3, 7-6-94; C.F. No. 94-1340, § 3, 10-19-94; C.F. No. 95-473, § 5, 5-31-95; C.F. No. 99-500, § 3, 7-7-99; C.F. No. 06-954, § 2, 11-8-06; C.F. No. 06-1072, § 2, 12-27-06)

(Supp. No. 123)

Sec. 310.07. Termination of licenses; surety bonds; insurance contracts.

- (a) Automatic termination, reinstatement; responsibility of licensee. All licenses or permits which must, by the provisions of these chapters or other ordinances or laws, be accompanied by the filing and maintenance of insurance policies, deposits, guarantees, bonds or certifications shall automatically terminate on cancellation or withdrawal of said policies, deposits, bonds or certifications. No licensee may continue to operate or perform the licensed activity after such termination. The licensee is liable and responsible for the filing and maintenance of such policies, deposits, guarantees, bonds or certifications as are required in these chapters, and shall not be entitled to assert the acts or omissions of agents, brokers, employees, attorneys or any other persons as a defense or justification for failure to comply with such filing and maintenance requirements. In the event the licensee reinstates and files such policies, bonds or certifications without a lapse within thirty (30) days, the license is automatically reinstated on the same terms and conditions, and for the same period as originally issued. After thirty (30) days, the applicant must apply for a new license as though it were an original application.

If there is a lapse in insurance, the licensee is subject to adverse action in accordance with Saint Paul Legislative Code § 310.05. License is null and void during the lapse.

(b) *Bonds and insurance requirements:*

- (1) Surety Companies: All surety bonds running to the City of Saint Paul shall be written by surety companies authorized to do business in the State of Minnesota. All insurance policies required by these chapters shall be written by insurance companies authorized to do business in the State of Minnesota.
 - (2) Approved as to Form: All bonds filed with the City of Saint Paul in connection with the issuance of licenses for whatever purpose, and all policies of insurance required to be filed with or by the City of Saint Paul in connection with the issuance of licenses for any purpose whatsoever, shall first be approved as to form by the city attorney.
 - (3) Uniform Endorsement: Each insurance policy required to be filed pursuant to these chapters shall contain the endorsement set forth in Chapter 7 of the Saint Paul Legislative Code.
 - (4) Conditions: All bonds required by these chapters shall be conditioned that the licensee shall observe all ordinances and laws in relation to the licensed activity, business, premises or facilities and that he shall conduct all such activities or business in conformity therewith. Such bonds shall also indemnify the City of Saint Paul against all claims, judgments or suits caused by, resulting from or in connection with the licensed business, premises, activity, thing, facility, occurrence or otherwise licensed under these chapters.
- (c) *Termination of bonds and insurance required by city.* Termination of bonds and insurance required to be filed with the city pursuant to these chapters shall be in accordance with the requirements of Chapter 8 of the Saint Paul Legislative Code.
- (d) *Expiration date to be concurrent with term of license or permit.* The expiration date of all such policies, bonds, guarantees or certifications shall be concurrent with the expiration date of the license or permit.

(Code 1956, § 510.07; Ord 12-74, § 1, 11-28-12)

Sec. 310.08. Terms of licenses; uniform dates.

- (a) All licenses or permits shall be valid for a period of one (1) year from the date of issuance by the inspector, except as otherwise provided herein or in these chapters or in cases of revocation, suspension or termination under section 310.06.

-
- (b) Licensees may continue to operate their business after the expiration date of their license; provided, that the licensee has filed with the inspector on or before the expiration date the appropriate license application, license fees, insurance and bonds. The inspector shall process the renewal application in the manner provided for in this Code.
 - (c) Whenever any licensee is the holder of the two (2) or more licenses of the City of Saint Paul which expire on different dates, the inspector is authorized, at the request of the licensee, to determine a uniform date for the expiration of all or any number of such licenses, notwithstanding the term and expiration dates of such licenses as originally issued, and notwithstanding any provision as to term of license of any ordinance of the city heretofore or hereafter enacted. The provisions hereof shall govern the issuance of any new license to one already holding a license.
 - (d) In order to conform to the foregoing provisions, new licenses may be issued for a term of less than one (1) year, and the license fee therefor shall be prorated for the period of issuance.

(Code 1956, § 510.08; Ord. No. 17360, § 1, 6-5-86)

Sec. 310.09. Fees.

- (a) *Exempt organizations.* The Legislative Code exempts certain organizations from paying the customary license or permit fees or establishes a nominal fee of less than seven dollars (\$7.00). The terms and conditions of such exemptions are stated within the applicable chapters. Such organizations shall pay a five dollars (\$5.00) minimum processing fee for each and every application for a license or permit to be issued by the division manager, director or council of the city.
- (b) *Fee schedule.* The council may by ordinance determine and establish one (1) fee schedule for any or all licenses and permits issued pursuant to these chapters, and a separate fee schedule for applications for such licenses and permits, which may include fees to cover costs incurred by reason of the late filing. Such fees, in either schedule, shall be reasonably related to the costs of administration incurred in connection with each such application, license or permit. Costs of administration shall mean and include, but without limitation by this specification, both direct and indirect costs and expenses, such as salaries, wages, benefits and all personnel costs including training, seminars and schooling, expenses of investigations and inspections, handling of inquiries and requests for assistance, telephone and communications, stationery, postage, paper, reproduction, office capital equipment and all office supplies. Such fee schedules as adopted by ordinance and posted in the office of the inspector shall supersede inconsistent fee provisions in these chapters or in other ordinances or laws.
- (c) *Fee for one year; may be prorated.* Unless otherwise specifically provided, the license fee stated is for a period of one (1) year. Such fee may be prorated where a license is issued for a period of less than a year.
- (d) *Late fee.* Unless otherwise specifically provided by the particular licensing provisions involved, an applicant for the renewal of a license who makes application for such renewal after the expiration date of such license shall be charged a late fee for each such license. The late fee shall be in addition to any other fee or payment required, and shall be ten (10) percent of the annual license fee for such license for each thirty-day period or portion thereof which has elapsed after the expiration date of such license. The late fee shall not exceed fifty (50) percent of the annual license fee. If any provision of these chapters imposes more stringent or additional requirements for the issuance of an original license than would be the case for mere renewal, those requirements must be met when the license has lapsed by reason of expiration.
- (e) *Environmental change of ownership fee.* Unless otherwise stated, the environmental change of ownership fee shall be 25% of the environmental plan review fee for each license type.

(Code 1956, § 510.09; Ord. No. 16884, 2-11-82; Ord. No. 17802, § 1, 1-10-91; C.F. No. 03-893, § 1, 11-5-03)

(Supp. No. 123)

Sec. 310.10. Refunds of fees.

- (a) *Refund where application withdrawn; service charge.* Unless otherwise specifically provided by the particular licensing provisions involved, where an application for any license is withdrawn, the inspector shall refund to the applicant the license fee submitted less a service charge to recover in part the costs incurred in processing the application in the amount of twenty-five (25) percent of the annual license fee.
- (b) *Limitation on refund; other cases.* In all other cases as provided in paragraph (c), the director of the department of safety and inspections, or his designee, may upon receipt of a written request refund the license fee, less a service charge to recover in part the costs incurred in processing the application up to twenty-five (25) percent of the annual licensee fee.
- (c) *Bases for refunds.* Refunds under paragraph (b) may be made to the licensee or his estate:
 - (1) Where the place of business of the licensee or his principal equipment is destroyed or so damaged by fire or any other cause that the licensee ceases for the remainder of the licensed period to engage in the licensed activity or business;
 - (2) Where the business or licensed activity ceases by reason of the death or illness of the licensee or the sole employee or manager; or
 - (3) Where it has become unlawful for the licensee to continue in the business or licensed activity other than by cancellation, termination, revocation, suspension, denial or any criminal activity on the part of the licensee.

(Code 1956, § 510.10; C.F. No. 09-516, § 1, 6-10-09; Ord. No. 11-69, § 1, 8-24-11; Ord 12-33, § 1, 6-27-12)

Sec. 310.11. Transfers; general.

- (a) *License a privilege, not property.* All licenses or permits issued by the City of Saint Paul pursuant to these chapters or other ordinances or laws confer a privilege on the licensee to engage in the activity or occupation so licensed, and do not constitute property or property rights or create any such rights in any licensee. No such license or permit may be seized, levied upon, attached, executed upon, assessed or in any manner taken for the purpose of satisfaction of any debt or obligation whatever.
- (b) *Licenses not transferable; conditions.* Notwithstanding any other provision of the Saint Paul Legislative Code to the contrary, no licenses issued by the City of Saint Paul shall be transferable.
- (c) *Transfer; definition.* "Transferable" means the ability to transfer a license or licenses from one (1) person to another, or from one (1) location to another. "Transfer," as used in these chapters, shall include a transfer from person to person, or from place to place, or a transfer of stock in a corporate licensee, or of shares or interests in a partnership or other legal entity. "Transfer," as used in these chapters, shall not include the instance where a license is held by an individual or partnership and the transfer is by said individual or partnership to a corporation in which the majority of the stock is held by said individual or by the members of said partnership.
- (d) *Deceased licensee.* Notwithstanding any other provision of these chapters, in any case where a liquor license is held by a person not incorporated and where the license would, by reason of the death of said licensee, lapse to the city in the absence of this paragraph, the authorized representative of the estate of the deceased licensee may consent to and seek to reissue said license to the beneficiary to the licensed establishment. The reissuance shall be subject to all applicable requirements of these chapters and existing law.

(Code 1956, § 510.11; Ord. No. 16822, 9-3-81; Ord. No. 17551, § 3, 4-19-88; C.F. No. 95-473, § 6, 5-31-95)

(Supp. No. 123)

Sec. 310.12. Inspection of premises.

The premises, facilities, place, device or anything named in any license issued pursuant to any provision of the Saint Paul Legislative Code or other law shall at all times while open to the public or while being used or occupied for any purpose be open also to inspection and examination by any police, fire, or health officer or any building inspector of the city, as well as the inspector.

(Code 1956, § 510.12)

Sec. 310.13. Renewal.

Every license renewal under these chapters may be denied for any licensee who is delinquent in any payment or contribution to a health and welfare trust or pension trust, or similar program, established for the benefit of his employees.

(Code 1956, § 510.13)

Sec. 310.14. Savings clause.

- (a) If any provision in these chapters is held unconstitutional or invalid by a court of competent jurisdiction, the invalidity shall extend only to the provision involved and the remainder of these chapters shall remain in force and effect to be construed as a whole.
- (b) The repeal of any ordinance by this ordinance (which enacts the Uniform License Ordinance) shall not affect or impair any act done, any rights vested or accrued, or any suit, proceeding or prosecution had or commenced in any matter, prior to the date this ordinance became effective. Every such act done or right vested or accrued shall remain in full force and effect to all intents and purposes as if the repealed ordinances had themselves remained in force and effect. Every such suit, proceeding or prosecution may be continued after repeal as though the repealed ordinances were fully in effect. A suit, proceeding or prosecution which is based upon an act done, a right vested or accrued, or a violation committed prior to repeal of the repealed ordinances, but which is commenced or instituted subsequent to repeal of the repealed ordinances, shall be brought pursuant to and under the provisions of such repealed ordinances as though they continued to be in full force and effect.

(Code 1956, § 510.14)

Sec. 310.15. Penalty.

Any person who violates any provision of these chapters, or other ordinances or laws relating to licensing, or who aids, advises, hires, counsels or conspires with or otherwise procures another to violate any provision of these chapters or other ordinances or laws relating to licensing is guilty of a misdemeanor and may be sentenced in accordance with section 1.05 of the Saint Paul Legislative Code. The term "person," in addition to the definition in section 310.01, shall for the purpose of this section include the individual partners or members of any partnership or corporation, and as to corporations, the officers, agents or members thereof, who shall be responsible for the violation.

(Code 1956, § 510.15)

(Supp. No. 123)

Sec. 310.16. Reserved.

Editor's note(s)—Section 310.16, pertaining to license fees and annual increases, and derived from Ord. No. 16885, adopted Feb. 11, 1982; Ord. No. 17059, adopted Oct. 20, 1983; and Ord. No. 17303, adopted Oct. 29, 1985, was repealed by Ord. No. 17884, § 1, adopted Nov. 19, 1991.

Sec. 310.17. Licensee's responsibility.

Any act or conduct by any clerk, employee, manager or agent of a licensee, or by any person providing entertainment or working for or on behalf of a licensee, whether compensated or not, which act or conduct takes place either on the licensed premises or in any parking lot or other area adjacent to (or under the lease or control of) the licensed premises, and which act or conduct violates any state or federal statutes or regulations, or any city ordinance, shall be considered to be and treated as the act or conduct of the licensee for the purpose of adverse action against all or any of the licenses held by such licensee. To the extent this section is in conflict with sections 409.14 and 410.09 of the Legislative Code, this section shall be controlling and prevail; but shall not otherwise amend, alter or affect such sections.

(Ord. No. 17629, § 1, 1-31-89)

Sec. 310.18. License fee schedule.

Notwithstanding the provision of any other ordinance or law to the contrary, the following fees are hereby provided for all the licenses listed herein. These fees supersede all inconsistent provisions, including, but not limited to, graduated fee provisions, in these chapters and in other ordinances and laws, and include the fee for the license application as part of the license fee; provided, however, that this section does not amend or modify sections 310.09(a) or 310.09(d) of the Legislative Code with respect to exempt organizations or late fees. Pursuant to section 310.09(b) of the Legislative Code, these schedules shall be posted in the office of the director. These fees shall be effective for license renewals and new license applications occurring on and after January 1, 1995, or on the effective date of this section, whichever is later; provided, however, that with respect to all licenses whose renewal dates occur after the effective date of this new schedule, there shall be no increases in, nor offsets or refunds of, the existing fees paid, or due and owing.

(a) ENFORCEMENT LEVEL 1

Chapter/Section		
No.	License Description	Fee
165	Agricultural Vehicle Parking Permit	\$21.00
316.02	Animal Foods Manufacturing and Distribution	79.00
317.01	Amusement Rides	79.00
323.02	Christmas Tree Sales	79.00
325.02	Close Out Sale	79.00
327.03	Laundry Dry Cleaning Pickup Station	79.00
332.03	Liquid Fuel Vehicle	79.00
333.03	Solid Fuel Vehicle	79.00
340.04	Mercantile Broker	79.00
345.04	Peddler (Solicitor/Transient)	79.00
346.03	Mobile Retail Vehicle	79.00
348.01	Animal Day Care	77.00

(Supp. No. 123)

348.01	Animal Boarding	77.00
350.02	Rental of Hospital Equipment	79.00
350.02	Rental of Hospital Equipment Vehicle	79.00
351.03	Rental of Kitchenware	79.00
353.02	Roller Rinks	79.00
355.02	Secondhand Dealer-Single Location	79.00
357.03	Solid Waste Hauler—Each Vehicle Over One	79.00
359.03	Sound Trucks and Broadcast Vehicles	79.00
371.02	Finishing Shop	79.00
361.01	Tow Truck/Wrecker Vehicle	79.00
362.02	Tree Trimmer—Additional Vehicle	79.00
372.02	Tire Recapping Plant	79.00
377.03	Lawn Fertilizer and Pesticide Application	79.00
382.03	Pet Grooming Facility	79.00
409.05(b), 410.07(c)	Liquor-Outdoor Service Area (Patio)	79.00
424.02	Gas Stations	104.00

(b) ENFORCEMENT LEVEL 2

Chapter/Section		
No.	License Description	Fee
320.03	Bituminous Contractor	\$194.00
322.02(a)	Pool Halls	194.00
322.02(b)	Bowling Centers	194.00
326.06	Building Contractors	194.00
327.03	Laundry/Dry Cleaning Plants	194.00
332.03	Fuel Dealers—Liquid	194.00
333.03	Fuel Dealers—Solid	194.00
334.03	Pest Control	194.00
338.02	House Sewer Contractors	194.00
342.02	Bulk Oil Storage	194.00
347.03	Pet Shop	194.00
352.03	Rental of Trailers	194.00
355.02	Secondhand Dealer—Exhibitions	194.00
356.02	Sidewalk Contractors	194.00
362.02	Tree Trimming (with One Vehicle)	194.00
364.02	Veterinary Hospital	194.00
365.02	Window Cleaning	194.00
401.02	Motorcycle Dealer	194.00
405.02	Dance or Rental Hall	297.00
406.04	Game Room	194.00
408.03	Recycling Collection Center	194.00

(Supp. No. 123)

415.04	Theaters and Movie Theaters	194.00
416.03	Motion Picture Drive-in Theater	194.00
426.04	Cabaret (Class A and B)	194.00

(c) ENFORCEMENT LEVEL 3

Chapter/Section		
No.	License Description	Fee
225.04(a)	Firearms	\$375.00
324.04	Cigarettes	495.00
354.02	Sanitary Disposal Vehicle	375.00
355.02	Secondhand Dealer-Multiple Dealers	375.00
357.03	Solid Waste Hauler and Vehicle	375.00
360.03	Public Swimming Pools	375.00
360.03	Whirlpools	375.00
361.13	Tow Truck/Wrecker Operator	375.00
383.03	Vehicle Immobilization Service	375.00
376.04	Taxicabs	434.00
376.05	Taxicabs (Reciprocity Event)	34.00
379.02	Short-term Rental Platform License	10,353.00
379.02	Short-term Rental Host License	42.00
381.02(d)	Currency Exchanges	375.00
401.02	New Motor Vehicle Dealer	375.00
401.02	Secondhand Dealer Motor Vehicle Parts	469.00
401.02	Secondhand Motor Vehicle Dealer	469.00
407.03	Hotel/Motel—To 50 rooms	375.00
407.03	Hotel—Each additional room over 50	13.00
409.07.1(a), 410.04(c)	Liquor—Extension of Service Hours	375.00
412A.03	Massage Center—Adult	375.00
412A.03	Environmental Plan Review Massage Center Adult	413.00
413.04	Conversation/Rap Parlor (A and B)	375.00
415.04	Mini-Motion Picture Theater—Adult	375.00
417.04	Parking Lots and Parking Garages	375.00
417.04	Parking Garages (Government)	0.00
417.04	Parking Garages (Private)	367.00
422.02	Motor Vehicle Salvage Dealer	375.00
423.02(b)	Auto Body Repair Garage	469.00
423.02(a)	Auto Repair Garage	469.00
427.04	Health/Sports Clubs	375.00
427A.04	Health/Sports Club (Adult)	375.00
428.04	Steam Room/Bath House (Class A and B)	375.00
423.02(b)	Auto Body Repair/Painting Shop	469.00

(d) ENFORCEMENT LEVEL 4

Chapter/Section		
No.	License Description	Fee
331A.04	Catering-Limited	\$ 326.00
331A.04	Environmental Plan Review—Catering—Limited	380.00
331A.04	Catering	570.00
331A.04	Environmental Plan Review—Catering	625.00
331A.04	Catering—Add on	250.00
331A.04	Environmental Plan Review—Catering—Add on	380.00
331A.04	Customer Appreciation—Food Sales	55.00
331A.04	Day Care Food	109.00
331A.04	Food Give-Away	55.00
331A.04	Food Processing/Packaging/Distributing	217.00
331A.04	Environmental Plan Review—Food Processing/Packaging/Distributing	380.00
331A.04	Food Vehicle	92.00
331A.04; 363.02(a)	Food Vending Machine	16.00
331A.04; 363.02(a)	Food Vending Machine Operator	136.00
331A.04	Food/Boarding Facility	353.00
331A.04	Environmental Plan Review—Food/Boarding Facility	380.00
331A.04	K—12 School Food Service	217.00
331A.04	Environmental Plan Review — K—12 School Food Service	272.00
331A.04	K—12 School Food Service—Limited	109.00
331A.04	Environmental Plan Review—K—12 School Food Service—Limited	136.00
331A.04	Mobile Food Vehicle	244.00
331A.04	Mobile Food Cart—Limited	110.00
331A.04	Mobile Food Cart—Full	217.00
331A.04	Environmental Plan Review—Restaurant (1)	381.00
331A.04	Environmental Plan Review—Restaurant (2)	381.00
331A.04	Environmental Plan Review—Restaurant (3)	625.00
331A.04	Environmental Plan Review—Restaurant (4)	625.00
331A.04	Environmental Plan Review—Restaurant (5)	625.00
331A.04	Restaurant (D)—Add-On	272.00
331A.04	Environmental Plan Review Restaurant (D) Add-On	381.00
331A.04	Restaurant (D)—Add-on (Bar Only)	109.00
331A.04	Environmental Plan Review Restaurant (D) Add-On (Bar Only)	190.00
331A.04	Restaurant (E)—Extension	164.00
331A.04	Environmental Plan Review—Restaurant (E)—Extension	136.00
331A.04	Environmental Plan Review—Restaurant (L)—Limited	381.00

(Supp. No. 123)

331A.04	Restaurant (L)—Limited	272.00
331A.04	Restaurant (1)—no seats	435.00
331A.04	Restaurant (2)—1—12	478.00
331A.04	Restaurant (3)—13—50	580.00
331A.04	Restaurant (4)—51—150	631.00
331A.04	Restaurant (5)— 151 and over	673.00
331A.04	Retail Food Establishment (A)—1 to 100 Sq. Ft.	82.00
331A.04	Environmental Plan Review—Retail Food Establishment (A)	136.00
331A.04	Retail Food Establishment (B)—101 to 1000 Sq. Ft.	109.00
331A.04	Environmental Plan Review Retail Food Establishment (B)	272.00
331A.04	Retail Food Establishment (C)—1001 to 3000 Sq. Ft.	408.00
331A.04	Environmental Plan Review Retail Food Establishment (C)	408.00
331A.04	Retail Food Establishment (D)—3001 to 6000 Sq. Ft.	652.00
331A.04	Environmental Plan Review Retail Food Establishment (D)	516.00
331A.04	Retail Food Establishment (E)—6001 to 10,000 Sq. Ft.	978.00
331A.04	Environmental Plan Review Retail Food Establishment (E)	652.00
331A.04	Retail Food Establishment (F)—over 10,000 Sq. Ft.	1,413.00
331A.04	Environmental Plan Review Retail Food Establishment (F)	816.00
331A.04	Retail Food Establishment—Farmers' Market	164.00
331A.04	Retail Food Establishment—Temporary	65.00
331A.04	Retail Food Establishment—Nonprofit	27.00
331A.04	Environmental Plan Review—Retail Food Establishment—Nonprofit	55.00
331A.04	Retail Food Establishment—Secondary Facility	82.00
331A.04	Environmental Plan Review Retail Food Establishment—Secondary Facility	381.00
331A.04	Retail Food Establishment—Restricted Food Service	79.00
331A.04	Special Event Food Sales—1 to 3 days (up to 150 sq. feet)	190.00
331A.04	Special Event Food Sales—4 to 10 days (up to 150 sq. feet)	217.00
331A.04	Special Event Food Sales—Up to 3 events (up to 150 sq. feet)	217.00
331A.04	Special Event Food Sales—late fee	50% of special event food sales fee
331A.04	Special Event Food Sales (Nonprofit) (up to 150 sq. feet)	55.00
331A.04	Special Event Food Sales—Extension (up to 150 sq. feet)	109.00
331A.04	Special Event Food Sales—Each additional 150 square feet portion thereof	25% of special event foods sales fee
331A.04	Special Event Food Sales—Each additional location fee	85.00
331A.04	Nonprofit 1 Day Special Event—1—10 Stands	275.00

(Supp. No. 123)

331A.04	Nonprofit 1 Day Special Event—Each Additional 10 Stands or Portion of 10 Stands	275.00
331A.04	Seasonal Temporary Food Stand	244.00

(e) ENFORCEMENT LEVEL 5

Chapter/Section		
No.	License Description	Fee
409.27	2:00 a.m. closing	\$55.00
409.05(i)	Intoxicating Liquor—Fee waived for government agencies	0.00
409.01(c)	Liquor Catering Permit—Annual	178.00
409.02	Off-Sale Microdistillery	190.00
409.05(b)	Liquor Catering Permit—Temporary	55.00
409.05(b)	On-Sale—100 seats or less	4,964.00
409.05(b)	On-Sale—101—180 seats	5,497.00
409.05(b)	On-Sale—181—290 seats	5,889.00
409.05(b)	On-Sale—291 or more seats	5,970.00

Chapter/Section		
No.	License Description	Fee
409.05(b)	On-Sale—Theater	1,772.00
409.25(b)	Temporary Liquor	55.00
409.05(f)	On-sale Club—Under 200 members	300.00
409.05(f)	On-sale Club—201—500 members	500.00
409.05(f)	On-sale Club—501—1,000 members	650.00
409.05(f)	On-sale Club—1,001—2,000 members	800.00
409.05(f)	On-sale Club—2,001—4,000 members	1,000.00
409.05(f)	On-sale Club—4,001—6,000 members	2,000.00
409.05(f)	On-sale Club—6,000+ members	3,000.00
409.05(h)	Additional family members	57.00
409.02	Brewpub/Off-sale (Growler)	190.00
409.02	Off-Sale Brewery	190.00
409.05	Off-Sale	1,398.00
409.07(b)(2)	Sunday On-Sale	200.00
409.11(b)	Extension of Service Area—Temporary	63.00
410.07(a)(8), 409.15(b)	Wine On-Sale	2,000.00
409.25	Temporary Wine	55.00
409.25	Wine Licenses for Festivals	55.00
409.15(d)	On-Sale Malt (Strong)	659.00
409.28	Brewery Taproom	659.00
409.31	Microdistillery Cocktail Room	659.00
410.02	On-Sale Malt (3.2)	659.00

(Supp. No. 123)

410.02, 410.11	On-Sale Malt—Fee waived for municipal golf courses	0.00
410.02	Off-Sale Malt	208.00
410.10(a)	Temporary Malt	55.00
411.03	Entertainment—Class A	257.00
411.03	Entertainment—Class B	622.00
411.03	Entertainment—Class C	2,955.00
411.05	Entertainment Temporary	32.00
409.08	Live Music Event—18 and Up	32.00
409.15(e)	Culinary On-sale	236.00
409.01	Private Event—Restaurant/Liquor Caterer	32.00
409	Small Brewer Off-Sale—128 Ounces License	30.00
409, 410	Temporary World Cup Soccer	250.00 Per event

(f) ENFORCEMENT LEVEL 6

Chapter/Section		
No.	License Description	Fee
329.02	Alarm Permits	\$40.00
317.01	Amusement Rides—Temporary	30.00
106.01(b)	Sidewalk Café—Food Only	37.00
106.01(b)(4)	Sidewalk Café—Liquor	37.00
127.04	Courtesy Benches	24.00
127	Courtesy Benches Transfer	16.00
293.09	Noise Variance	178.00
368.02	Wrecking of Buildings	60.00
369.03	Building Trades Business License	174.00
370.09	Building Trades Certificates of Competency	22.00
370.17	Trade Worker—Tier 1	34.00
370.17	Trade Worker—Tier 2	65.00
278.03	Gambling Hall	412.00
318.02	Mechanical Amusement Device	19.00
318.02	Music Machine	19.00
318.02	Amusement Rides	19.00
318.02	T.V. Units	19.00
344.02(a)	Pawn Shops	2,955.00
344.02(b)	Pawn Shop Billable Transaction Fee	3.00
373	Transportation Network Companies	38,069.00
374.3	Commercial Pedal Car Driver	47.00
374.3	Commercial Pedal Car Vehicle	109.00
374.3	Commercial Pedal Car Business	326.00
375.2(a)	Pedicab Vehicle	105.00
375.2(b)	Pedicab Driver	47.00
376	Taxicab Vehicle—Duplicate Sticker	19.00

(Supp. No. 123)

376	Taxicab Replacement Vehicle Sticker	52.00
376.05	Taxicab Driver (Reciprocity Event)	33.00
376.16(d)	Taxicab Driver (new)	47.00
376.16(i)	Taxicab Driver Renewal	47.00
376	Taxicab Driver Duplicate Identification Card	6.00
376.17(d)	Taxicab Driver (provisional)	47.00
391.02	Soliciting Funds—Tag Days	24.00
402.08	Temporary Gambling (3 types)	55.00
403.03	Bingo Halls	212.00
409.05(g)	Gambling Location	78.00
409.08(11)	Modification of Parking	445.00
359.03	Sound Trucks and Broadcast Vehicles Nonprofit Organizations)	29.00
380.04	Tanning Facility	98.00
380.04	Environmental Plan Review Tanning Facility	178.00
414.02	Massage or Bodywork Practitioner—One Location	98.00
414.02	Massage or Bodywork Practitioner—Each Additional Location	29.00
414.02	Massage Center (Class A)—One practitioner	93.00
412.04	Massage Center (Class A)—Two or more practitioners	243.00
412.04	Therapeutic Massage Practitioner—Temporary	46.00
412.04	Environmental Plan Review Massage Center (Class A)	437.00
412.04	Massage Center (Class B)	98.00
412.04	Environmental Plan Review Massage Center (Class B)	178.00
357.03	Solid Waste Transfer Station	1,771.00
408.03	Recycling Processing Center	887.00
429.03	Infectious Waste Processing Facility	1,771.00
198.04(c)	Keeping of Animal (includes more than three (3) chickens	77.00
198.04(c)	Keeping of Animal—Renewal	28.00
198.04(c)	Tier 1 Chicken Permit	26.00
198.04(c)	Tier 1 Chicken Permit Renewal	16.00
198.04(c)	Tier 2 Chicken Permit	77.00
198.04(c)	Tier 2 Chicken Permit Renewal	28.00
198.04(c)	Keeping of More than Three (3) Cats	77.00
198.04(c)	Keeping of More than Three (3) Cats (Renewal)	28.00
200.03	Dog License—Annual Altered	20.00
200.03	Dog License—Annual Unaltered	81.00
200.03	Dog License—Annual Altered Reduced	10.00
200.03	Dog License—Lifetime (with Microchip, altered)	142.00
200.03	Dog License—Reduced, Lifetime (with Microchip and altered)	71.00
	Dog License—Reduced Rate, Lifetime (with Microchip, unaltered)	34.00

(Supp. No. 123)

	Declared, Animal (microchip and altered	142.00
	Declared, Animal (microchip and altered	284.00
200.04	Dog License—Replacement	10.00
200.07	Impounding Fee	36.00
200.02(a)	Unlicensed Dog	59.00
200.121(e)	Dangerous Dog Registration	305.00
200.07	Boarding Fee—Per Day	19.00
	Animal Adoption—St. Paul Resident	51.00
	Rabies Vaccination for impounded dogs, cats, ferrets	30.00
	Microchipping for impounded animals	30.00
	Delinquent License Renewal fee (per month)	5.00
376.17	Taxicab Service Company	422.00

(C.F. No. 92-1742, § 1, 12-8-92; C.F. No. 93-1650, § 1, 12-9-93; C.F. No. 94-201, § 1, 3-16-94; C.F. No. 94-1447, § 1, 12-14-94; C.F. No. 95-519, § 2, 6-7-95; C.F. No. 95-1457, § 1, 1-3-96; C.F. No. 96-391, § 3, 5-8-96; C.F. No. 96-1095, § 1, 10-2-96; C.F. No. 97-912, § 1, 8-20-97; C.F. No. 99-500, § 4, 7-7-99; C.F. No. 99-812, § 1, 9-8-99; C.F. No. 00-457, § 1, 6-7-00; C.F. No. 00-1064, § 1, 12-12-00; C.F. No. 00-1065, § 1, 12-20-00; C.F. No. 01-613, §§ 1, 2, 7-5-01; C.F. No. 01-1244, § 1, 12-26-01; C.F. No. 02-770, § 1, 10-2-02; C.F. No. 1031, § 2, 11-27-02; C.F. No. 03-102, § 2, 3-12-03; C.F. No. 03-694, § 2, 9-3-03; C.F. No. 03-695, § 1, 9-3-03; C.F. No. 03-893, § 2, 11-5-03; C.F. No. 04-670, § 1, 8-4-04; C.F. No. 04-960, § 1, 11-3-04; 04-961, § 1, 11-10-04; C.F. No. 05-631, § 1, 8-10-05; C.F. No. 05-697, § 1, 8-24-05; C.F. No. 06-409, § 1, 5-24-06; C.F. No. 06-574, § 2, 7-26-06; C.F. No. 06-752, § 1, 9-13-06; C.F. No. 06-821, § 2, 9-27-06; C.F. No. 07-149, § 74, 3-28-07; C.F. No. 07-966, § 1, 12-12-07; C.F. No. 07-967, § 1, 12-12-07; C.F. No. 08-382, § 1, 5-14-08; C.F. No. 08-568, § 1, 6-25-08; C.F. No. 08-1009, § 1, 10-8-08; C.F. No. 08-1208, § 2, 12-17-08; C.F. No. 09-478, § 1, 5-27-09; C.F. No. 09-684, § 1, 7-22-09; C.F. No. 09-893, § 1, 10-14-09; C.F. No. 09-987, § 1, 10-14-09; Ord No. 11-56, § 1, 7-13-11; Ord No. 11-63, § 1, 4-25-12; Ord No. 12-24, § 1, 6-13-12; Ord 12-49, § 1, 9-12-12; Ord 12-45, § 1, 10-10-12; Ord 12-83, § 1, 1-9-13; Ord 13-1, § 1, 1-23-13; Ord 13-31, § 1, 5-22-13; Ord 13-34, § 1, 6-26-13; Ord 14-33, § 1, 8-27-14; Ord 14-40, § 1, 12-3-14; Ord 15-29, § 7, 5-27-15; Ord 15-65, § 1, 12-2-15; Ord 16-9, 4-20-16; Ord 16-16, § 2, 7-27-16; Ord 16-66, § 1, 1-4-16; Ord 17-47, § 1, 10-25-17; Ord 17-53, § 1, 11-8-2017; Ord 17-25, § 1, 8-2-17; Ord 18-65, § 1, 1-9-19; Ord 18-68, § 2, 1-9-19; Ord 19-78, § 1, 1-8-20; Ord 20-5, § 1, 2-20-20; Ord 21-65, § 2, 12-22-21; Ord 22-35, § 2, 8-3-22)

Sec. 310.19. Discount from certain license fees.

- (a) A discount will be provided for on-sale and off-sale liquor licenses, on-sale and off-sale 3.2 malt liquor licenses and on-sale strong beer and wine licenses. Such fees mentioned shall be reduced seven (7) percent, contingent upon each of the following conditions:
 - (1) *Driver's license guide; compilation of laws.* The licensee shall maintain on the premises, in a location accessible at all times to all employees of the licensed establishment:
 - a. A current driver's license guide, which shall include license specifications for both adults and minors for each state (including Canadian provinces), and shall list such information from at least five (5) years prior to the present date; and
 - b. A current compilation of the laws relating to the sale and possession of alcoholic beverages in the state as outlined in Chapter 7515 of the State of Minnesota Rules and Minn. Stat. Ch. 340A. This compilation must also include chapters 240 through 246, 409 and 410 of the Saint Paul Legislative Code.

-
- (2) *Signage.* The licensee shall maintain on the premises, in all customer areas, current signage relating to underage consumption of alcoholic beverages, and relating to driving under the influence of alcohol. One (1) sign must be located behind the bar, and one (1) sign must be present in each additional room or section within the lounge area in which the writing on the sign behind the bar is not clearly legible. The sign(s) must have dimensions of at least one (1) foot by one (1) foot with letters at least one-half (½) inch in height. All signs must be comfortably readable from a distance of fifteen (15) feet.
- (3) *Contract with security agency.*
- a. *Generally.* The licensee shall participate in a training program with an approved private security agency, firm or association (hereafter "security agency") which is selected and contracts with the city for the purpose of providing investigations and training to the licensee pursuant to this subsection. The city contract shall provide (i) that the security agency shall not be reimbursed by the city, but that it shall recover its costs and profit by fees collected from the licensees which choose to receive the training program and investigative services, and (ii) that the security agency shall charge the same amount to all licensees who choose to receive such services, so that all such licensees are treated equally and without discrimination.
- b. *Investigation.* The contract with the city shall provide for and require one (1) or more investigations by the security agency each calendar year into the practices of the licensee with respect to (i) age identification of customers in order to prevent sales of alcoholic beverages to minors, and (ii) preventing the sale of alcoholic beverages to persons who are obviously intoxicated. The contract shall require that the security agency disclose the results of all such investigations to both the licensee and, at no cost to the city, to the department, within ten (10) days after such investigations are concluded. Failure to do so will be grounds for adverse action against the licensee's licenses. The contract shall require that all such investigations shall include unannounced and random attempts by minors to purchase alcoholic beverages in the licensed premises, and surveillance within the licensed premises. The security agency shall employ reasonable measures to minimize or eliminate conflicts of interest in providing and reporting on investigations of licensees.
- c. *Training.* The contract shall also provide for alcohol awareness training by the security agency of all officers, employees or agents of the licensee who work in the licensed premises at least once during the calendar year. All newly hired employees or new officers or agents hired during the calendar year shall receive such training within four (4) weeks following their hiring, and shall not work in the premises after that four-week period until they have received such training.
- d. *Standards for approval.* In addition to the requirements specified elsewhere in this subsection, the security agency and its investigations and training must meet or exceed the following:
1. The alcohol awareness course shall cover all of the topics listed herein. The content of each training course shall include, but need not be limited to:
- (a) Pertinent laws and ordinances regarding the sale of alcohol.
 - (b) Verification of age, forms of identification, and forms of false or misleading age identification.
 - (c) The effect of alcohol on humans and the physiology of alcohol intoxication.
 - (d) Recognition of the signs of intoxication.
 - (e) Strategies for intervention to prevent intoxicated persons from consuming further alcohol.
 - (f) The licensee's policies and guidelines, and the employee's role in observing these policies.

-
- (g) Liability of the person serving alcohol.
 - (h) Effect of alcohol on pregnant women and their fetuses, and in other vulnerable situations.
 - (i) Training available in languages other than English that are spoken by the license holders and/or the license holders employees.
2. The security agency shall have a minimum of two (2) years actual experience in alcohol awareness training. The courses may be given by one (1) or more instructors, but each instructor must have a formal education and/or training in each area they teach. The courses may be supplemented by audio-visual instruction.
 3. The security agency shall have sufficient personnel and physical resources to provide an alcohol awareness training course to newly hired employees within four (4) weeks after their hiring by the licensee with whom there is a contract. The cost covering the training and investigation service provided to license holders shall be identified and charged equally to each participant.

The (7) seven percent shall be applied to the following licenses:

- Brew pub
- Off-sale brewery
- Liquor catering permit
- On-sale—Over 200 seats
- On-sale—Over 100 seats
- On-sale—100 seats or less
- On-sale club—Under 200 members
- On-sale club—201—500 members
- On-sale club—501—1,000 members
- On-sale club—1,001—2,000 members
- On-sale club—2,001—4,000 members
- On-sale club—4,001—6,000 members
- On-sale club—6,000+ members
- On-sale extended service hours
- On-sale theatre
- Off-sale
- Sunday on-sale
- Liquor—Outdoor service area
- Wine on-sale
- On-sale malt (strong)
- On-sale malt (3.2)
- Off-sale malt

-
- (b) A discount will be provided for restaurant and catering licenses issued under Chapter 331A. Such fees shall be reduced seven (7) percent, contingent upon each of the following conditions:
- (1) The licensee shall employ a person in charge, who, in the absence of the certified food manager, shall be on duty at all times and who can demonstrate that he/she have viewed a video concerning food allergies. The video presentation shall be provided by and will be viewed at the department of safety and inspections. If the person in charge leaves the licensee's employment, the establishment will have two months to either:
 - a. Have the new person in charge view the video on food allergy at a presentation by the department of safety and inspection; or
 - b. If there is no presentation within two months of that person being hired, ensure that the new person in charge is registered for the next available video presentation.
 - (2) Allergic customer alert process. The licensee shall produce a written procedure to alert all employees of an allergic customer. That policy shall, at a minimum, require that once a customer has notified any employee of an allergy to particular food item(s) or group(s), the establishment shall notify the above-referenced person in charge or certified food manager, and all employees who may handle any food item served to that customer of the food allergy.

(C.F. No. 94-1447, § 2, 12-14-94; C.F. No. 00-237, § 1, 4-5-00; C.F. No. 01-1260, § 1, 12-26-01; C.F. No. 02-107, 3-6-02; C.F. No. 04-1093, § 1, 12-15-04; C.F. No. 06-821, § 3, 9-27-06; C.F. No. 07-149, § 75, 3-28-07; C.F. No. 09-1290, § 1, 12-9-09)

Chapter 324. Tobacco

Sec. 324.01. License required.

- (a) No person shall sell or offer for sale at retail within the city any licensed product or in any manner represent or hold himself or herself out as one who sells or offers for sale at retail any licensed product or maintain a tobacco vending machine for the sale of licensed products without a license from the city.
- (b) A tobacco vending machine may be located in a public accommodation, provided that:
 - (1) All tobacco vending machines shall be operable only by the activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of a token provided to the purchaser by an employee of the licensee;
 - (2) Any machine shall be located in the immediate vicinity, plain view and control of a responsible employee so that all purchases will be readily observable by that employee. The tobacco vending machine shall not be located in a coatroom, restroom, unmonitored hallway, outer waiting area or similar unmonitored areas. The tobacco vending machine shall be inaccessible to the public when the establishment is closed;
 - (3) Any tobacco vending machine shall have posted on or near it a sign with the statement, in letters at least one-half ($\frac{1}{2}$) inch high, "The sale of tobacco products or electronic delivery devices to persons under twenty-one is prohibited."
- (c) Any license issued pursuant to this chapter shall be issued to the person, firm or corporation that operates the principal business at that address. Each vending machine shall be required to have a separate license.
- (d) No license may be issued pursuant to this chapter for a location or place of sale if a tobacco license previously issued for that location or place of sale has been revoked for any reason other than nonpayment of license fees within the past five (5) years.

(Code 1956, § 366.02; Ord. No. 17714, § 1, 2-20-90; C.F. No. 94-341, § 1, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-12, § 1, 4-22-15; Ord 15-57, § 1, 1-6-16; Ord 19-57, § 1, 10-16-19; Ord 21-29, § 2, 11-3-21)

Sec. 324.02. License for each location or vending machine.

A license shall permit the licensee to sell licensed products at retail at the one (1) location specified in said license, and a separate license shall be required for each location or tobacco vending machine.

(Code 1956, § 366.05; C.F. No. 94-341, § 2, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-57, § 1, 1-6-16; Ord 21-29, § 3, 11-3-21)

Sec. 324.03. Definitions.

The following words and phrases, as used in this chapter, will, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those cases where the context clearly indicates a different meaning:

- (1) *Cigar* means any roll of tobacco that is wrapped in tobacco leaf, or in any other substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minn. Stats. § 297F.01, subd. 3, as may be amended from time to time.

-
- (2) *Cigarette* means and includes any roll for smoking, made wholly or in part of tobacco, irrespective of size and shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except whole tobacco leaf, and includes any cigarette as defined in Minn. Stats. § 297F.01, subd. 3.
 - (3) *Drug paraphernalia* means drug paraphernalia as defined in Saint Paul Legislative Code Section 255.01.
 - (4) *Electronic delivery device* means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
 - (5) *Flavored product* means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product or device is a flavored product.
 - (6) *Licensed products* means collectively any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.
 - (7) *Nicotine or lobelia delivery product* means any product containing or delivering nicotine or lobelia, whether natural or synthetic, intended for human consumption, or any part of such a product, that is not a tobacco product or an electronic delivery device, as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
 - (8) *Non-discounted price* means the higher of the price listed for licensed products on a package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the sale price.
 - (9) *Price reduction instrument* means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, not included in the non-discounted price, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.
 - (10) *Sale* means and includes any transfer, conditional or otherwise, of title or possession.
 - (11) *Sale at retail* means and includes all sales except those where the merchandise is sold for the purpose of resale by a person principally engaged in selling merchandise for resale.
 - (12) *Snuff* means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

-
- (13) *Snus* means any smokeless tobacco product marketed and sold as snus, and sold in ready-to-use pouches or loose as a moist powder.
- (14) *Tobacco* or *tobacco product* means any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including, but not limited to, cigarettes, cigars, little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snus, snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
- (15) *Tobacco license* means either a tobacco shop or a tobacco products shop license.
- (16) *Tobacco shop license* means a license issued to a person, firm, or corporation for an establishment that:
- a. May offer for sale licensed products which are accessible to the public only with the intervention of a store employee; and,
 - b. May allow persons who are under the age of twenty-one (21) to enter the establishment; and
- (17) *Tobacco products shop license* means a license issued to a person, firm, or corporation for an establishment that:
- a. Must derive at least ninety (90) percent of its revenue from the sale of licensed products;
 - b. Must prohibit persons who are under the age of twenty-one (21) from entering the establishment;
 - c. Must be accessible only through a door opening directly to the outside; and
 - d. Must be staffed by at least one individual solely dedicated to the tobacco products shop during all operating hours.
- (18) *Tobacco-related devices* means cigarette papers, pipes for smoking, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.
- (19) *Tobacco vending machine* means a machine for vending licensed products by the insertion of money, tokens, or other form of payment.

(Code 1956, § 336.01; C.F. No. 94-341, § 3, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 10-1014, § 1, 10-13-10; Ord 13-8, § 1, 4-24-13; Ord 14-34, § 1, 8-27-14; Ord 15-57, § 1, 1-6-16; Ord 17-28, § 1, 11-1-17; Ord 21-29, § 4, 11-3-21)

Sec. 324.04. Fee, duration, limitation on number of licenses.

- (a) *License fee, duration.* The annual license fee for each license issued under this chapter will be established by ordinance as specified in section 310.09(b) of the Legislative Code. Each license will expire one (1) year from the date of issuance during each calendar year. The annual license fee will be prorated for licenses in force less than a full year.
- (b) *Limitation on number of licenses and location.*

-
- (1) The total number of tobacco shop licenses issued under this chapter will not exceed one hundred fifty (150). The total number of tobacco products shop licenses issued under this chapter will not exceed twenty-five (25). Establishments or locations holding either tobacco shop or tobacco product shop licenses on July 31, 2021, or with an application of a license pending on July 31, 2021, that is ultimately granted will not be affected by this limitation but will be entitled to have such licenses renewed or new license granted, subject to the following conditions:
 - a. The establishment or location is in compliance with all other requirements of law and there exist no grounds for adverse actions against such licenses;
 - b. The previous license has not terminated or expired more than one (1) year before the new license had been first applied for;
 - c. A previous license has not been revoked by the council.
 - (2) No tobacco license may be issued to a person, firm, or corporation for any establishment located within one-half mile (2,640 feet) of another establishment possessing a tobacco license. Said one-half mile being calculated and computed as the distance measured from the property line of the premises or building proposed as the location for the tobacco license to the property line of any other tobacco license.

(Code 1956, § 336.03; Ord. No. 17386, § 1, 8-19-86; C.F. No. 92-1930, § 1, 1-14-93; C.F. No. 94-341, § 4, 4-13-94; C.F. No. 95-1271, § 1, 11-8-95; C.F. No. 97-314, § 1, 4-20-97; Ord 18-19, § 1, 6-27-18; Ord 21-29, § 5, 11-3-21)

Sec. 324.05. Application.

In addition to any other information required by the director, the applicant must state the true name of the applicant, the name under which he or she will conduct his or her business, whether such business is that of an individual, sole trader, firm, partnership, or corporation, and the address where such business is to be conducted. Any person applying for more than one (1) license must file with the department of safety and inspections a list of all locations for which license applications are being filed. Any change in the location of the place of sale will require a new license application.

(Code 1956, § 336.04; C.F. No. 94-341, § 5, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 07-149, § 81, 3-28-07; Ord 21-29, § 6, 11-3-21)

Sec. 324.06. License to be displayed.

The license shall be displayed by the licensee in a prominent and conspicuous place at the licensed location. In the case of a tobacco vending machine, the operator shall also affix his or her name, address and telephone number in a conspicuous place on each machine.

(Code 1956, § 336.06; C.F. No. 94-341, § 6, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-57, § 1, 1-6-16)

Sec. 324.07. Sales prohibited.

- (a) No person may sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes may be sold individually or in packages of fewer than twenty (20) cigarettes.
- (b) No person may sell or dispense licensed products from a motor vehicle or other movable place of business.

-
- (c) No person may sell licensed products from vending machines unless the vending machines are in a facility that cannot be entered at any time by persons younger than twenty-one (21) years of age.
- (d) No person may offer for sale licensed products in any open displays which are accessible to the public without the intervention of a store employee. This restriction does not apply to establishments holding a tobacco products shop license.
- (e) No person may sell, offer for sale, or otherwise distribute cigars in original packages containing three (3) or fewer cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than two dollars and sixty cents (\$2.60) per cigar contained within. In addition, no person may sell, offer for sale, or otherwise distribute cigars in original packages of four (4) or more cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than ten dollars and forty cents (\$10.40) per package.
- (f) No person may sell or offer for retail sale cigarette packages or cartons for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per pack.
- (g) No person may sell or offer for retail sale moist snuff retail packages or multipacks for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per 1.2 ounce package. No person may sell or offer for retail sale any smokeless tobacco/moist snuff unless it is sold in a package of at least 1.2 ounces minimum package size. The price floor for packages larger than 1.2 ounces shall be computed by adding two dollars and fifty cents (\$2.50) for each 0.3 ounces or any fraction thereof in excess of 1.2 ounces, excluding all applicable taxes.
- (h) No person may sell or offer for sale or otherwise distribute snus for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per 0.32 ounce package. No person may sell or offer for retail sale any snus unless it is sold in a package of at least 0.32 ounces minimum pack size. The price floor for packages larger than 0.32 ounces shall be computed by adding two dollars and fifty cents (\$2.50) for each 0.08 ounces or any fraction thereof in excess of 0.32 ounces, excluding all applicable taxes.
- (i) No holder of a license issued under this chapter, nor any employee or agent of same may sell tobacco products to a person under the age of twenty-one (21) years. Sale to persons under the age of twenty-one (21) years prohibited.
- (1) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in Minn. Stats. § 340A.503, subd. 6.
- (j) No person may sell, offer for sale, or otherwise distribute any flavored products, unless excepted under section 324.07(l) of this chapter.
- (k) *Coupons and price promotions.* No holder of a license issued under this chapter, nor any employee or agent of same, may:
- (1) Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any price reduction instrument or other offer that provides any licensed product without charge or for less than the listed or non-discounted price; or
- (2) Sell or offer to sell licensed products, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any licensed products, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other licensed products.
- Nothing in this chapter is intended to prohibit communication of pricing information or other truthful, non-misleading information to consumers.

(l) *Exceptions.*

- (1) Notwithstanding section (i), individuals exempted under Minn. Stats. § 609.685 are also exempt from this section.
- (2) The penalties in this section do not apply to a person under the age of twenty-one (21) years who purchases or attempts to purchase licensed products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.
- (3) Retail stores holding a tobacco products shop license are permitted to sell and offer for sale flavored tobacco products.

(m) Any violation of this chapter will subject the licensee to provisions of chapter 310 and section 324.10 of the Saint Paul Legislative Code.

(Code 1956, § 336.07; Ord. No. 17714, § 1, 2-20-90; C.F. No. 94-341, § 7, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 06-872, § 1, 10-11-06; C.F. No. 10-1014, § 2, 10-13-10; Ord 13-8, § 2, 4-24-13; Ord 14-34, § 2, 8-27-14; Ord 15-57, § 1, 1-6-16; Ord 17-28, § 2, 11-1-17; Ord 19-57, § 2, 10-16-19; Ord 21-29, § 7, 11-3-21)

Sec. 324.08. Distribution of free products prohibited.

No person shall distribute any tobacco products free to any person on the sidewalks, pedestrian concourses, pedestrian malls or pedestrian skyway systems within the city.

(Code 1956, § 336.08; Ord. No. 17714, § 1 2-20-90; C.F. No. 92-1930, § 2, 1-14-93; C.F. No. 94-341, § 8, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-57, § 1, 1-6-16; Ord 21-29, § 8, 11-3-21)

Sec. 324.09. Reserved.

Editor's note(s)—Ord 21-29, § 9, adopted November 3, 2021, repealed § 324.09. Former § 236.09 pertained to the use of false identification by minors is prohibited and derived from Ord. No. 17733, § 1, adopted May 8, 1990; C.F. No. 94-341, § 9, adopted April 13, 1994; C.F. No. 97-314, § 1, adopted April 20, 1997; Ord 13-8, § 3, adopted April 24, 2013; Ord 15-57, § 1, adopted January 6, 2016; and Ord 19-57, § 3, adopted October 16, 2019.

Sec. 324.10. Presumptive penalties.

- (a) *Purpose.* The purpose of this section is to establish a standard by which the city council determines the amount of fines, length of license suspensions and the propriety of revocations for licensees. 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, except, the council may not deviate below statewide minimum penalties for licensees. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate. Where no penalty is listed below, the presumptive penalty under Saint Paul Legislative Code Section 310.
- (b) *Presumptive penalties for licensees for violations.* Adverse penalties for licensees for violations or convictions shall be presumed as follows:

Type of Violation	Appearance			
	1st	2nd	3rd	4th

(1) Sale to a person under twenty-one (21) years of age	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 7-day suspension	Revocation
(2) Display, possession or multiple incidents of sales of; <ul style="list-style-type: none"> • single cigarettes; • menthol tobacco products; or • flavored tobacco products 	10-day suspension	Revocation		

- (c) *Fines payable without hearing.* Notwithstanding the provisions of section 310.05(l), a licensee who would be making a first or second appearance before the council may elect to pay the fine to the department of safety and inspections without a council hearing, unless the notice of violation has indicated that a hearing is required because of circumstances which may warrant deviation from the presumptive fine amount. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled, and will be considered an "appearance" for the purpose of determining presumptive penalties for subsequent violations.
- (d) *Computation of time.* Except as otherwise provided by Minn. Stats. § 461.12, subd. 2, subsequent violations are subject to the following:
- (1) *Second, third and fourth appearances.* A second violation within twenty four (24) months shall be treated as a second appearance, a third within twenty four (24) months treated as a third appearance, and a fourth within twenty four (24) months treated as a fourth appearance for the purpose of determining the presumptive penalty.
 - (2) *Any appearance not covered by subsections (1) above shall be treated as a first appearance.* Measurement of the twenty four (24) month period shall be as follows: The beginning date shall be the earliest violation's date of appearance before the council, and the ending date shall be the date of the new violation. In case of multiple new violations, the ending date to be used shall be the date of the violation last in time.

(Ord. No. 17733, § 3, 5-8-90; C.F. No. 94-341, § 11, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 02-898, § 1, 11-6-02; C.F. No. 07-149, § 82, 3-28-07; Ord. No. 11-114, § 1, 12-28-11; Ord 15-57, § 1, 1-6-16; Ord 19-57, § 5, 10-16-19; Ord 21-29, § 10, 11-3-21)

Editor's note(s)—Ord 19-57, §§ 4, 5, repealed § 324.10 and renumbered § 324.11 as § 324.10. Former § 324.10 pertained to the use of tobacco prohibited and derived from Ord. No. 17733, § 2, adopted May 8, 1990; C.F. No. 94-341, § 10, adopted April 13, 1994; C.F. No. 97-314, § 1, adopted April 20, 1997; Ord 13-8, § 4, adopted April 24, 2013; and Ord 15-57, § 1, adopted January 6, 2016.



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDSEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

May 24, 2023

NOTICE OF ADMINISTRATIVE HEARING

Douglas E. Nepp
Nepp & Hackert, LLC
In Town on the Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

RE: Cigarette/Tobacco license held by Amira Grocery d/b/a Winnipeg Grocery for the premises located at 864 Rice Street in Saint Paul
License ID #: 20210000879
OAH Docket No.: 71-6020-39197

Dear Mr. Nepp:

Please take notice that an administrative hearing has been scheduled concerning the Cigarette/Tobacco license held by Amira Grocery d/b/a Winnipeg Grocery for the premises located at 864 Rice Street in Saint Paul:

Date: Thursday, July 20, 2023
Time: 9:30 a.m.
Location: Office of Administrative Hearings
600 Robert Street North
Saint Paul, MN 55101

The hearing will be presided over by an Administrative Law Judge from the State of Minnesota Office of Administrative Hearings:

Name: Judge Jessica A. Palmer - Denig
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101
Telephone: (651) 361-7900

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV



The Council of the City of Saint Paul has the authority to provide for hearings concerning adverse action against such licenses, under Chapter 310, including sections 310.05 and 310.06, of the Saint Paul Legislative Code. Adverse action may include revocation, suspension, denial, fines and other penalties or conditions.

Evidence will be presented to the administrative law judge that may lead to adverse action against the Cigarette/Tobacco license held by Amira Grocery d/b/a Winnipeg Grocery for the premises located at located at 864 Rice Street in Saint Paul:

The Department of Safety and Inspections (the "Department") is recommending adverse action against the Cigarette/Tobacco license held by Amira Grocery, d/b/a Winnipeg Grocery (the "Licensee"), for the premises located at 864 Rice Street in Saint Paul (the "Licensed Premises") for a first-time flavored product violation.

Saint Paul Legislative Code section 324.07(j) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored tobacco products. Under Saint Paul Legislative Code section 310.17, the conduct of any clerk, employee, manager, or agent working for or on behalf of a licensee is treated as the conduct of the licensee for the purpose of adverse action.

Saint Paul Legislative Code section 310.03 (m)(3) contains the presumptive penalty matrix for violations of provisions of the Legislative Code relating to the display, possession, or multiple incidents of sales of menthol or flavored tobacco products. Under section 310.03 (m)(3), the presumptive penalty for a first-time violation is a 10-day license suspension.

The Department asserts that the following facts, along with photos of the violations attached herein, constitute proof of a violation of section 324.07(j) of the Saint Paul Legislative Code by a preponderance of the evidence.



Synopsis of Alleged Facts:

On February 2, 2023, Department Inspector Vang went to the Licensed Premises to perform an inspection in response to a complaint that prohibited flavored tobacco products were being sold from a black bag behind the counter. Upon arrival, Inspector Vang introduced himself to the Licensee, Mohamed Sultan. Vang met with Inspector Tom Piskor from the State of Minnesota Department of Revenue who was also inspecting premises. Inspector Vang noted that Inspector Piskor had already laid out a number of prohibited flavored products that he had found in two (2) black bags behind the display counter. The prohibited products included: Newport Menthol Cigarettes twenty (20) single cigars in an open box, Four (4) Dutch Java Fusion, five (5) Dutch Gold Fusion, four (4) Dutch OG fusion, four (4) Backwood Russian Cream, one (1) Backwood Banana, fifteen (15) packs of Newport Menthol cigarettes (in addition to being prohibited flavored products, these were missing tax stamps) one (1) Backwood Honey Bourbon, one (1) Backwood Black Russian, one (1) Backwood Honey, four (4) Backwood Dark Stout, one (1) Loon Max Pineapple, three (3) Frontomaster Cream, three (3) Dutch, Honey Fusion, three (3) Dutch Sweet Fusion Red, four (4) Dutch Berry Fusion, and one (1) Dutch Blue Dream Fusion.

The Licensee attempted to claim that the products belonged to a store employee. Vang explained that all the products found are violations of Saint Paul Legislative Code chapter 324 and that Inspector Vang and Inspector Voyda had just educated him on prohibited products 13 days earlier when they performed an opening inspection for another location under which he is a Licensee located at 516 Rice Street. Inspector Vang documented his findings in his report and with photographs. Because the prohibited products were not on the Licensee's tobacco invoice, Inspector Piskor seized them as being in violation of state statutes.

The licensee has the right to be represented by an attorney before and during the hearing or can represent him/herself. The licensee may also have a person of his/her choice representing his/her interests, to the extent not prohibited as unauthorized practice of law.



The hearing will be conducted in accordance with the requirements of Minnesota Statutes sections 14.57 to 14.62 and such parts of the procedures under section 310.05 of the Saint Paul Legislative Code as may be applicable.

At the hearing, the Administrative Law Judge will have all parties identify themselves for the record. The City will then present its witnesses and evidence, each of whom the licensee or attorney may cross-examine. The licensee may then offer in rebuttal any witnesses or evidence it may wish to present, each of whom the City's attorney may cross-examine. The Administrative Law Judge may in addition hear relevant and material testimony from persons not presented as witnesses by either party who have a substantial interest in the outcome of the proceeding; for example, the owners or occupants of property located near the licensed premises may have substantial interest in the outcome of the proceeding. Concluding arguments may be made by the parties. Following the hearing, the Judge will prepare Findings of Fact, Conclusions of Law, and a specific recommendation for action to be taken by the City Council.

The licensee should bring to the hearing all documents, records and witnesses which may be needed to support its position. Subpoenas may be available to compel the attendance of witnesses or the production of documents in conformity with Minnesota Rules, part 1400.7000.

If you think that this matter can be resolved or settled without a formal hearing, please contact the undersigned. If a stipulation or agreement can be reached as to the facts, that stipulation will be presented to the Administrative Law Judge for incorporation into his or her recommendation for Council action.

If you fail to appear at the hearing, your ability to challenge the allegations will be forfeited and the allegations against you which have been stated earlier in this notice may be taken as true. If non-public data is received into evidence at the hearing, it may become public unless objection is made and relief requested under Minnesota Statutes, Section 14.60, subdivision 2.

If you have any questions, you can call me at (651) 266-8710.

Sincerely,

Therese Skarda
Assistant Saint Paul City Attorney
License No.: 0240989



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDSEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

cc: Jessica A. Palmer-Denig, Administrative Law Judge, Office of Administrative Hearings,
P.O. Box 64620, Saint Paul, MN 55164-0620
Winnipeg Apartments LP, 755 Selby Avenue, Unit A, Saint Paul, MN 55104-7643
Kerry Antrim, Executive Director, North End Neighborhood Organization, 171 Front Street
Saint Paul, MN 55117

CITY OF SAINT PAUL
MELVIN CARTER, MAYOR

STPAUL.GOV

*The Saint Paul City Attorney's Office does not discriminate
based on race, color, national origin, religion, sex/gender, disability, sexual orientation, gender identity, age, or veteran status
in the delivery of services or employment practices.*

STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Julie Kraus, being first duly sworn, deposes and says that on the 24th day of May she served the attached **NOTICE OF ADMINISTRATIVE HEARING, EXHIBIT LIST AND EXHIBITS** and a correct copy thereof in an envelope addressed as follows:

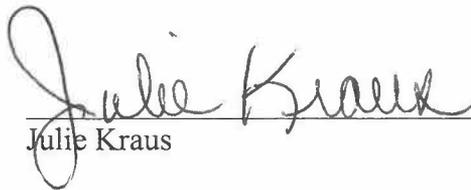
Douglas E. Nepp
Nepp & Hackert, LLC
In Town on the Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

Jessica A. Palmer-Denig
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
Saint Paul, MN 55164-0620

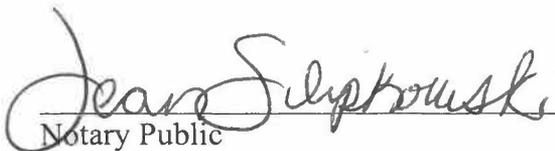
Winnipeg Apartments LP
755 Selby Avenue, Unit A
Saint Paul, MN 55104-7643

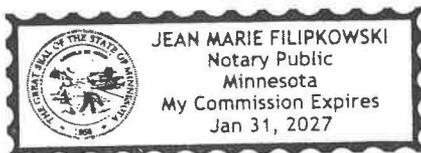
Kerry Antrim, Executive Director
North End Neighborhood Organization
171 Front Street
Saint Paul, MN 55117

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.


Julie Kraus

Subscribed and sworn to before me
This 24th day of May 2023


Notary Public



STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of Tobacco Shop License
Held by Amira Grocery d/b/a Winnipeg
Grocery for the Premises located at
864 Rice Street in Saint Paul

FIRST PREHEARING ORDER

This matter came before Administrative Law Judge Jessica A. Palmer-Denig for a prehearing conference on May 11, 2023.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City), along with Licensing Manager Eric Hudak. Douglas E. Nepp, Nepp & Hackert, LLC, appeared on behalf of Amira Grocery, Inc. d/b/a Winnipeg Grocery, Inc. (Licensee), along with Licensee's owner Mohamed Sultan.

Based upon the submissions of counsel and the hearing record,

IT IS HEREBY ORDERED:

1. The period for discovery shall close on **June 30, 2023**. All discovery shall be completed by that date. To obtain copies of the agency's file, a party should make a written demand pursuant to Minn. R. 1400.6700 (2021). The parties are encouraged to resolve any discovery disputes between themselves but may request a telephone conference if their efforts are unsuccessful. The parties should not copy the Administrative Law Judge on discovery requests or responses unless such documents are the subject of a filed motion.

2. The parties do not anticipate filing dispositive motions. If either party determines that it will file a dispositive motion, that party shall request that the Administrative Law Judge hold a prehearing conference to set a schedule for motion practice.

3. The deadline to request subpoenas for the attendance of witnesses or the production of documents shall be **July 6, 2023**. Requests for subpoenas for the attendance of witnesses or for the production of documents shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000 (2021). A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at <http://mn.gov/oah/forms-and-filing/forms/>.

4. By **4:30 p.m.** on **July 13, 2023**, the parties shall exchange and file with this Office their proposed pre-labeled exhibits, an index of the proposed exhibits, and their witness lists. See Minn. R. 1400.6950 (2021). The City shall label its exhibits sequentially using numbers 1 through 99. Licensee shall label its exhibits sequentially beginning with the number 100. For hearings held at the Office of Administrative Hearings, a laptop can be utilized to display electronic exhibits on a monitor in the courtroom. To use this technology, parties must bring their own laptops with a storage device containing their electronic exhibits.

5. To the extent possible, the parties shall enter into prehearing stipulations regarding the facts involved in the hearing and the foundation for anticipated exhibits. Any party objecting to the foundation for any written exhibit shall notify the offering party and the judge in writing at least two (2) working days prior to the hearing or the foundation objection is considered waived.

6. A hearing in this matter will be held at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101, on **July 20, 2023**, beginning at **9:30 a.m.** The hearing shall be scheduled for one (1) day.

7. The parties have not requested accommodation for a disability or the appointment of an interpreter. Please advise the Office of Administrative Hearings in writing as soon as possible if either an accommodation or an interpreter is needed.

8. Hearings are ordinarily digitally recorded. A copy of the digital recording of the hearing can be obtained by a party who makes a written request. The Office of Administrative Hearings does not provide transcripts of proceedings. Any party may arrange to have a court reporter at the hearing. A party shall notify the Office of Administrative Hearings prior to the hearing if the party has arranged for a court reporter to be at the hearing. All logistical and payment arrangements related to court reporters are the responsibility of the requesting party, not the Office of Administrative Hearings. If a transcript is requested by any party, the requesting party is required to provide a copy of the transcript to the Administrative Law Judge. If the Chief Administrative Law Judge requests the presence of a court reporter and the preparation of a transcript, the costs of such will be borne by the City pursuant to Minn. R. 1400.7400, subp. 2 (2021).

9. Pursuant to Minn. R. 1400.7500 (2021), requests for continuances of a hearing shall be granted only upon a showing of good cause. A request for a continuance filed within five (5) business days of the hearing shall be denied unless the reason for the request could not have been earlier ascertained or unless good cause is shown.

10. Under Minn. R. 1400.6000 (2021), the failure of a party to appear at a prehearing conference or hearing without the prior consent of the Administrative Law Judge shall be considered a default by that party. Upon default, the allegations contained in the Notice and Order for Prehearing Conference or Hearing may be accepted as true, and the appearing party's proposed action may be upheld.

11. The parties are encouraged to consider settlement and/or mediation. Requests for a settlement conference or mediation shall be made to the Chief Administrative Law Judge so that she can promptly assign a mediator to conduct the mediation or settlement conference. See Minn. R. 1400.5950 and 1400.6550 (2021). Note that both parties must join in a request for mediation.

12. If the matter is resolved prior to hearing, please provide written notice to the Office of Administrative Hearings immediately, and provide notice to the Administrative Law Judge by contacting Judge Palmer-Denig's legal assistant, Nichole Helmueller, at nichole.helmuelle@state.mn.us or (651) 361-7857.

13. Any document filed with the Office of Administrative Hearings, or which a party wishes to make part of the record in this matter, may be filed with the Office of Administrative Hearings in any one of the following ways: (1) **by eFiling** through the Office of Administrative Hearings' eFiling system at <http://mn.gov/oah/forms-and-filing/efiling/>; (2) **by mail**; (3) **by fax**; or (4) **by personal delivery**. See Minn. Stat. § 14.58 (2022); Minn. R. 1400.5550, subp. 5 (2021). Attorneys representing government agencies are encouraged to eFile. Filings are effective on the date the Office of Administrative Hearings receives the filing. See Minn. R. 1400.5550, subp. 5, .5500 J, Q (2021).

Dated: May 15, 2023



JESSICA A. PALMER-DENIG
Administrative Law Judge

May 15, 2023

VIA EMAIL ONLY

Therese Skarda
St. Paul City Attorney's Office
400 City Hall & Courthouse
15 W Kellogg Blvd
Saint Paul, MN 55102
Therese.Skarda@ci.stpaul.mn.us
julie.kraus@ci.stpaul.mn.us

VIA EMAIL ONLY

Douglas E. Nepp
Nepp & Hackert, LLC
In Town on the Lake Bldg
One W Lake St Ste 185
Minneapolis, MN 55408
doug@nepphackert.com
fatima@nepphackert.com

**Re: *In the Matter of Tobacco Shop License Held by Amira Grocery d/b/a
Winnipeg Grocery for the Premises Located at 864 Rice Street in
Saint Paul
OAH 71-6020-39197***

Dear Parties:

Enclosed and served upon you please find the **FIRST PREHEARING ORDER** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7857, nichole.helmuelle@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



NICHOLE HELMUELLER
Legal Assistant

Enclosure

cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of Tobacco Shop License Held by Amira Grocery d/b/a Winnipeg Grocery for the Premises Located at 864 Rice Street in Saint Paul	OAH Docket No.: 71-6020-39197
--	----------------------------------

On May 15, 2023, a true and correct copy of the **FIRST PREHEARING ORDER** was served by United States mail, unless otherwise indicated below, addressed to the following:

VIA EMAIL ONLY

Therese Skarda
St. Paul City Attorney's Office
400 City Hall & Courthouse
15 W Kellogg Blvd
Saint Paul, MN 55102
Therese.Skarda@ci.stpaul.mn.us
julie.kraus@ci.stpaul.mn.us

VIA EMAIL ONLY

Douglas E. Nepp
Nepp & Hackert, LLC
In Town on the Lake Bldg
One W Lake St Ste 185
Minneapolis, MN 55408
doug@nepphackert.com
fatima@nepphackert.com



SAINT PAUL
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
LYNDESEY M. OLSON, CITY ATTORNEY

Civil Division, 15 Kellogg Blvd. West, 400 City Hall
Saint Paul, MN 55102
Tel: 651-266-8710 | Fax: 651-298-5619

May 2, 2023

NOTICE OF PREHEARING TELEPHONE CONFERENCE

Douglas E. Nepp
Attorney At Law
Nepp & Hackert, LLC
In Town On Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

RE: Tobacco Shop license held by Amira Grocery d/b/a Winnipeg Grocery, for the premises located at 864 Rice Street in Saint Paul.
License ID #: 20210000879

Dear Mr. Nepp:

Please take notice a **PREHEARING TELPHONE CONFERENCE** has been scheduled concerning the Tobacco Shop license held by Amira Grocery d/b/a Winnipeg Grocery, for the premises located at 864 Rice Street in Saint Paul.

Date: Thursday, May 11, 2023
Time: 9:30 a.m.

Call in information: 1 – (651) -395-7448
Phone Conference ID: 818 806 991#

The hearing will be presided over by an Administrative Law Judge form the State of Minnesota Office of Administrative Hearings:

Name: Judge Jessica Palmer-Denig
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101
Telephone: (651) 361-7900



Evidence will be presented to the administrative law judge that my lead to adverse action against the Tobacco Shop license held by Amira Grocery d/b/a Winnipeg Grocery, for the premises located at 864 Rice Street in Saint Paul.

The Department of Safety and Inspections (the "Department") is recommending adverse action against the Cigarette/Tobacco license held by Amira Grocery, d/b/a Winnipeg Grocery (the "Licensee"), for the premises located at 864 Rice Street in Saint Paul (the "Licensed Premises") for a first-time flavored product violation.

Saint Paul Legislative Code section 324.07(j) prohibits a licensee from selling, offering for sale, or otherwise distributing any flavored tobacco products. Under Saint Paul Legislative Code section 310.17, the conduct of any clerk, employee, manager, or agent working for or on behalf of a licensee is treated as the conduct of the licensee for the purpose of adverse action.

Saint Paul Legislative Code section 310.03 (m)(3) contains the presumptive penalty matrix for violations of provisions of the Legislative Code relating to the display, possession, or multiple incidents of sales of menthol or flavored tobacco products. Under section 310.03 (m)(3), the presumptive penalty for a first-time violation is a 10-day license suspension.

The Department asserts that the following facts, along with photos of the violations attached herein, constitute proof of a violation of section 324.07(j) of the Saint Paul Legislative Code by a preponderance of the evidence.

Synopsis of Alleged Facts:

On February 2, 2023, Department Inspector Vang went to the Licensed Premises to perform an inspection in response to a complaint that prohibited flavored tobacco products were being sold from a black bag behind the counter. Upon arrival, Inspector Vang introduced himself to the Licensee, Mohamed Sultan. Vang met with Inspector Tom Piskor from the State of Minnesota Department of Revenue who was also inspecting premises. Inspector Vang noted that Inspector Piskor had already laid out a number of prohibited flavored products that he had found in two (2) black bags behind the display counter. The prohibited products included: Newport Menthol Cigarettes twenty (20) single cigars in an open box, Four (4) Dutch Java Fusion, five (5) Dutch Gold Fusion, four (4) Dutch OG fusion, four (4) Backwood Russian Cream, one (1) Backwood Banana, fifteen (15) packs of Newport Menthol cigarettes (in addition to being prohibited flavored products, these were missing tax stamps)



one (1) Backwood Honey Bourbon, one (1) Backwood Black Russian, one (1) Backwood Honey, four (4) Backwood Dark Stout, one (1) Loon Max Pineapple, three (3) Frontomaster Cream, three (3) Dutch, Honey Fusion, three (3) Dutch Sweet Fusion Red, four (4) Dutch Berry Fusion, and one (1) Dutch Blue Dream Fusion.

The Licensee attempted to claim that the products belonged to a store employee. Vang explained that all of the products found are violations of Saint Paul Legislative Code chapter 324 and that Inspector Vang and Inspector Voyda had just educated him on prohibited products 13 days earlier when they performed an opening inspection for another location under which he is a Licensee located at 516 Rice Street. Inspector Vang documented his findings in his report and with photographs. Because the prohibited products were not on the Licensee's tobacco invoice, Inspector Piskor seized them as being in violation of state statutes.

If you think this matter can be resolved or settled without a formal hearing, please contact the undersigned. If a stipulation or agreement can be reached as to the facts, that stipulations will be presented to the Administrative Law Judge for incorporation into his or her recommendation for Council action.

If you fail to appear at the hearing, your ability to challenge the allegations will be forfeited and the allegations against your client which have been stated earlier in this notice may be taken as true. If non-public data is received into evidence at the hearing, it may become public unless objection is made and relief requested under Minnesota Statutes, Section 14.60, subdivision 2.

Sincerely,

Therese Skarda
Assistant City Attorney
License No.: 0240989

STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

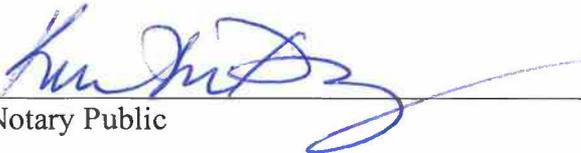
Julie Kraus, being first duly sworn, deposes and says that on the 2nd day of May she served the attached **NOTICE OF PREHEARING TELEPHONE CONFERENCE** and a correct copy thereof in an envelope addressed as follows:

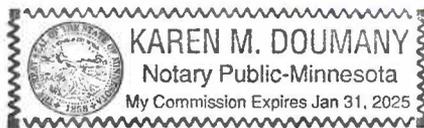
Douglas E. Nepp
Attorney At Law
Nepp & Hackert, LLC
In Town On Lake Building
One West Lake Street, Suite 185
Minneapolis, MN 55408

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.


Julie Kraus

Subscribed and sworn to before me
This 2nd day of May 2023


Notary Public



OAH Docket Number: 71-6020-39197

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Amira Grocery, Inc.d/b/a

Winnipeg Grocery

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that:

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the Party/Agency chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. **Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.**¹

3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

Party's/Agency's Name: Amira Grocery, Inc. b/d/a Winnipeg Grocery, Inc.

Email: **mohamedshaban935@yahoo.com** Telephone: **612-245-3802**

Mailing Address: **864 Rice Street, Saint Paul, MN 55117**

Party's/Agency's Attorney: Douglas e. Nepp

Firm Name: **Nepp & Hackert, LLC**

Email: **doug@nepphackert.com** Telephone: **612-871-3333**

Mailing Address: **1 W. Lake Street, Suite 185, Minneapolis, MN 55408**

Party's/Agency's Legal Assistant: Fatima Climaco

Firm Name: **Nepp & Hackert, LLC**

Email: **fatima@nepphackert.com** Telephone: **612-871-3333**

Mailing Address: **1 W. Lake Street, Suite 185, Minneapolis, MN 55408**

¹ In order to opt in to electronic notice, this form must be emailed to OAH.efiling.support@state.mn.us. If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. See 2015 Minn. Laws Ch. 63, Minn. R. 1400.5550, subps. 2-5 (2017).

Note: This form must be served upon the opposing party/agency. Counsel may not withdraw from representation without written notice.

Respondent's/Opposing Party's Name:

Firm Name: **Office of the Saint Paul City Attorney**

Email: Telephone: **651-266-8755**

Mailing Address: **15 Kellogg Blvd West, Suite 400, Saint Paul, MN 55102**

Dated: April 25, 2023

/s/ Douglas E. Nepp

Signature of Party/Agency or Attorney

OAH Docket Number: _____

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Tobacco Shop license held by Amira
Grocery, Inc. d/b/a Winnipeg Grocery for the
premises located at 864 Rice Street in Saint
Paul

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that:

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.
2. By providing its email address below, the Party/Agency chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. **Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.**¹
3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

Party's/Agency's Name: Department of Safety and Inspections

Email: eric.hudak@ci.stpaul.mn.us Telephone: (651) 266-9132

Mailing Address: 375 Jackson Street, Ste. 220, Saint Paul, MN 55101-1806

Party's/Agency's Attorney: Therese Skarda

Firm Name: City of Saint Paul – Office of City Attorney

Email: Therese.Skarda@ci.stpaul.mn.us Telephone: (651) 266-8755

Mailing Address: 400 City Hall & Courthouse, 15 W. Kellogg Blvd., Saint Paul, MN 55102

Party's/Agency's Legal Assistant: Julie Kraus

Firm Name: City of Saint Paul – Office of City Attorney

Email: Julie.Kraus@ci.stpaul.mn.us Telephone: (651) 266-8776

Mailing Address: 400 City Hall & Courthouse, 15 W. Kellogg Blvd., Saint Paul, MN 55102

¹ In order to opt in to electronic notice, this form must be emailed to OAH.efiling.support@state.mn.us. If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. See 2015 Minn. Laws Ch. 63, Minn. R. 1400.5550, subps. 2-5 (2017).

Note: This form must be served upon the opposing party/agency. Counsel may not withdraw from representation without written notice.

Respondent's/Opposing Party's Name: Douglas E. Nepp

Firm Name: Nepp & Hackert, LLC Attorneys At Law

Email: Doug@nepphackert.com Telephone: (612) 871-3333

Mailing Address: In Town On Lake Building, One West Lake Street, Ste. 185, Minneapolis, MN 55408

Dated: 4/21/2023

Therese Skanda /jk
Signature of Party/Agency or Attorney