

STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Alan Tellez Berkowitz, being first duly sworn, deposes and says that on the fourth day of October he served the attached **NOTICE OF VIOLATION RECOMMENDATION \$500 MATRIX PENALTY FOR TOBACCO YOUTH COMPLIANCE CHECK FAILURE** and a correct copy thereof in an envelope addressed as follows:

Maharaja's
d/b/a Best of Times
201 7TH Street West
Saint Paul, MN 55102

Kawaljit S Bhatia,
104 Heritage Circle,
Burnsville, MN 55102

Kawaljit S Bhatia,
205 7th Street West,
St. Paul, MN 55102-2520

Julia McColley, Executive Director,
West Seventh Street / Fort Road Federation
882 West 7th Street, Suite 6,
Saint Paul, MN 55102

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



Alan Tellez Berkowitz

Subscribed and sworn to before me
This fourth day of October 2023



Notary Public





October 4, 2023

NOTICE OF VIOLATION
RECOMMENDATION FOR IMPOSITION OF \$500 MATRIX PENALTY
FOR TOBACCO YOUTH COMPLIANCE CHECK FAILURE

Maharaja's
d/b/a Best of Times
201 7TH Street West
Saint Paul, MN 55102
Attn: Kawljit S Bhatia

RE: Tobacco Products Shop license held by Maharaja's d/b/a Best of Times
for the premises located at 201 7TH Street West in Saint Paul
License ID #: 20160002078

Mr. Bhatia:

The Department of Safety and Inspections ("Department") will recommend adverse action against the Tobacco Products Shop license held by Maharaja's d/b/a Best of Times ("Licensee") for the premises located at 201 7TH Street West in Saint Paul ("Licensed Premises").

Minnesota Statute § 461.12, Subd. 5 states: "A licensing authority shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold to test compliance with sections 609.685 and 609.6855."

Saint Paul Legislative Code Section 310.04 sets forth a variety of reasons under which adverse actions can be based. Section 310.04(b)(6)(c) states that adverse action can be pursued for failure to comply with laws related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.

Saint Paul Legislative Code Section 310.04 (b) (8) states that adverse action can be pursued because "the licensed business, or the way such business is operated, maintains or permits conditions that unreasonable annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public."

Saint Paul Legislative Code §324.07(i) prohibits the sale of tobacco products to person under the age of twenty-one (21) years.

Minnesota Statute §609.685, Subd. 1.a also prohibits the sale of tobacco to persons under age 21.

Saint Paul Legislative Code §324.10 (b) (1) sets forth the penalty of \$500 for a first-time violation for the sale of tobacco products to a person under twenty-one (21) years of age.



The Department asserts the following facts along with attachments herein constitute proof of a violation of Saint Paul Legislative Code §324.07(i) and Minnesota Statute § 609.685, Subd. 1.a by a preponderance of the evidence.

Synopsis of alleged facts:

On September 20, 2023, at 11:07 a.m., a tobacco compliance check was conducted at Best of Times at 2017TH Street West. An eighteen (18) year-old male entered your store to purchase cigarettes. He was asked to show his identification which indicated he was underage. Nevertheless, the clerk sold him Marlboro Light cigarettes. Inspector Vang came into the establishment after the sale and spoke to the clerk, Balial Jalil Harris. He was informed that he failed the youth compliance check by selling Marlboro Light cigarettes to an underage person.

As the Licensee you have four (4) options:

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 **October 16, 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 approval of the proposed remedy.
2. You can admit to the violation and pay the \$500 matrix penalty. If this is your choice, send the payment directly to DSI at 375 Jackson Street, Ste. 220, St. Paul, Minnesota 55101-1806 no later than **October 16, 2023**. A self-addressed envelope is enclosed for your convenience. Payment of the \$500 matrix penalty will be considered a waiver of the hearing to which you are entitled.
3. If you wish to admit the facts but you contest the \$500 matrix penalty, you may have 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 **October 16, 2023**. The matter will then be scheduled before the City Council to determine whether to impose the \$500 matrix penalty. You will have an opportunity to appear before the Council and make a statement on your own behalf.
4. If you dispute the facts outlined above, you may request a hearing before an Administrative Law Judge (ALJ). You will need to send me a letter disputing the facts and requesting an administrative hearing no later than **October 16, 2023**. At that hearing both you and the City will appear and present witnesses, evidence and cross-examine each other's witnesses. After receipt of the ALJ's report (usually within 30 days), a public hearing will need to be scheduled. At that time, 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 of Safety and Inspections reserves the right to request that City Council impose the costs of the administrative hearing, per Saint Paul Legislative Code § 310.03 (k).

If you have not contacted me by October 16, 2023, I will assume that you do not contest the imposition of the \$500 matrix penalty. In that case, the matter will be placed on the City Council Consent Agenda for approval of the recommended penalty.



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

Please be advised the clerk who made the sale on this date and will be charged a \$50.00 administrative penalty pursuant to Minn. Stat. §461.12, subd. 3. This is a separate action from this license matter.

If you have questions about these options, please contact Alan Tellez Berkowitz my Law Clerk at (651) 266-8744.

Sincerely,

/s/

Therese Skarda
Assistant City Attorney
License No.: 0240989

cc: Kawaljit S Bhatia, 104 Heritage Circle, Burnsville, MN 55102
Kawaljit S Bhatia, 205 7th Street West, St. Paul, MN 55102-2520
Julia McColley, Executive Director, West Seventh Street / Fort Road Federation
882 West 7th Street, Suite 6, Saint Paul, MN 55102

Attachments: Inspector's Report
License Group Comments Text
License Group Conditions Text
Tobacco Youth Compliance Check Purchase Form
Clerk Identification Form
Photo of purchased cigarettes
Photo of Receipt
Saint Paul Legislative Code §310.04
Saint Paul Legislative Code §324.07
Saint Paul Legislative Code §324.10
Minnesota Statute §461.12
Minnesota Statute §609.685



Inspector's Report

Inspectors Name: Allan Vang

Date & Time: 9/20/23 at 11:07 am Staff Member's Name: Balial Jalil Harris

Business/DBA Name: Best of Times

Property Address: 201 7TH Street West - St. Paul, MN 55102

Reason for Visit: 2023 Tobacco compliance check

Observations: _____

Photos Taken: ☒ Yes ☐ No – Area(s) of where the Photo(s) where taken: _____

Action Taken: ☐ Education / warning

☒ Request for Adverse Action

Other: _____

Details of Conversations (Statements to and by Person Responsible for Property):

Upon arrival I spoke to the clerk Balial Jalil Harris, I introduced myself as a Licensing Inspector from the City of Saint Paul for the Department of Safety & Inspections (DSI). I informed Balial that he failed a tobacco compliance check required by the State, in an attempted purchase of a pack of Marlboro Light cigarettes that was successfully made from an underage buyer hired by DSI at 11:07 am.



Licensee: MAHARAJA'S

DBA: BEST OF TIMES

License #: 20160002078

9/20/2023 Tobacco compliance check-failed. AYY

7/20/2022 Passed underage buyers' tobacco compliance check JNV

4/06/2020 Sent letter dated 3-3-2020 in email from licensing manager and a follow up phone call for closure of product shop for executive order 20-20 Covid-19 JNV

6/11/2019 Youth Compliance check Pass JNV

04/12/2019 Flavor and Price Compliance Check: Passed. DC

5/2/2018 Menthol education / inspection FAILED price issues JNV

07/19/2017 Per written statement from licensee address changed from 203 to 201 7th St W. TF/jwf

06/08/2017 Per TF need Bldg. Prmts. for change of use, & met with applicant recently to review requirements. Letter to be sent to applicant. JWF

8/17/2016 Passed Tobacco Compliance Check BLB

...check done in formerly "active" cigarette/tobacco storefront; address states "pending" for tobacco product shop, but that space not approved yet so functioning as standard cig/tobacco vendor until build out complete. TPF

Licensee: **MAHARAJA'S**

DBA: **BEST OF TIMES**

License #: **20160002078**

1. This license is issued for a retail use only, and the licensee shall conduct this retail cigarette/tobacco business in compliance with the "Minnesota Clean Indoor Air Act" (MN Stat. 144.411 - 144.417).
2. The licensee acknowledges that sampling of tobacco products is only allowed in retail establishments meeting the definition of a "Tobacco Product Shop" as defined under Minnesota State Statute 144.4167 Subd. 4.
3. Licensee agrees to operate the business in a manner that is consistent with the "Business Plan Addendum (cigarette/tobacco sales)" signed and submitted by the licensee in August 2016 that is on file with the Department of Safety and Inspections (DSI). Licensee agrees to obtain prior written approval from DSI before making any substantive changes to their approved method of operation.
4. Licensee agrees to provide a detailed breakdown of all items sold, including total dollar amounts for individual items by category, at the time of license renewal if requested by DSI.
5. No fee may be charged to any customers or patrons for the use or occupancy of the licensed premises, or for the use of equipment used to sample tobacco products.



Tobacco Underage Buyers/Minor Compliance Check Purchase Form

20160002078
BEST OF TIMES
201 7TH ST W
ST PAUL, MN 55102-2520
9

Fail

Business Type:

☐ Convenience ☐ Convenience / Gas ☐ Gas ☐ Drug Store / Pharmacy ☒ Tobacco Product Shop
☐ Supermarket / Grocery ☐ General Merchant ☐ Liquor Store / Bar Restaurant ☐ Other (private club, bowling, etc.)

Inspector: Allan Vang
Name

Date: 9 / 20 / 23
MM DD YY

Time: 11:07 a.m. / p.m.

Was purchase attempted?

☒ Yes ☐ No

If NO, check reason:

☐ Does not sell tobacco ☐ Unsatisfactory/unsafe conditions
☐ After business hours ☐ Out of business
☐ Not applicable ☐ Other _____

Underage Buyer:

[Redacted]
Name

Age
18

Sex
M

Did adult or Inspector/Officer view transaction?

☒ Yes ☐ No

Was sale made?

☒ Yes ☐ No

Was age asked?

☐ Yes ☒ No

Was ID requested?

☒ Yes ☐ No

Was ID shown?

☒ Yes ☐ No

Type of purchase:

☐ Self Service
☐ Clerk assisted
☐ Vending machine - Unlocked
Location of machine _____
☐ Vending machine - Locked
Location of machine _____

Type of product:

☐ Cigarettes
☐ Smokeless
☐ Cigars
☐ Shisha
☐ E-juice
☐ Other (cigarette papers, lighter, etc.) _____

Amount spent: \$.

Clerk Information: ☒ Female ☐ Male Approximate Age: ☒ 18 or ☐ Under 18 Actual age if known _____



Tobacco Underage Buyers/Minor Compliance Check Purchase Form

20160002078
BEST OF TIMES
201 7TH ST W
ST PAUL, MN 55102-2520
9

Fail

Business Type:

☐ Convenience ☐ Convenience / Gas ☐ Gas ☐ Drug Store / Pharmacy ☒ Tobacco Product Shop
☐ Supermarket / Grocery ☐ General Merchant ☐ Liquor Store / Bar Restaurant ☐ Other (private club, bowling, etc.)

Inspector: Allan Vang
Name

Date: 9 / 20 / 23
MM DD Y

Time: 11:07 a.m. / p.m.

Was purchase attempted?

☒ Yes ☐ No

If NO, check reason:

☐ Does not sell tobacco
☐ After business hours
☐ Not applicable

Underage Buyer: [REDACTED]
Name

Age
18

Sex
M

Age?

Age?

☐ No

Was sale made?

☒ Yes ☐ No

Type of purchase:

☐ Self Service
☐ Clerk assisted
☐ Vending machine - Unlocked
☐ Location of machine
☐ Vending machine - Locked
☐ Location of machine

Clerk Information: ☒ Yes

Age if known





Clerk Identification Form

☒ Drivers ☐ License State ID ☐ Passport ☐ Other: -

As it appears on Identification

Name: Balial Jalil Harris

Primary address: 1949 Wilson Avenue APT 104

Secondary address: -

City: Saint Paul

State: MN

Zip Code: 55119-4069

DOB: 2 / 1 / 65

Identification Number: R728-119-513-317

Snip of ID

mn MINNESOTA **DRIVER'S LICENSE**

USA

NOT FOR FEDERAL IDENTIFICATION

1 **HARRIS**
2 **BALIAL JALIL**
8 **1949 WILSON AVE**
APT 104
SAINT PAUL, MN 55119-4069

4d DL# **R728-119-513-317** 4a ISS **02/24/2020**
3 **DOB 02/01/1965** 4b EXP **02/01/2024**
9 **CLASS D** 9a **END NONE**
12 **RESTR 2**

15 **SEX M** 17 **WGT 236 lb**
16 **HGT 6'02"** 18 **EYES BRO**

Balial HARRIS 5 **DOB 00000002798385** **02/01/65**

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 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. 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. 324.10. - 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; • 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— 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.

461.12 MUNICIPAL LICENSE OF TOBACCO, TOBACCO-RELATED DEVICES, AND SIMILAR PRODUCTS.

Subdivision 1. **Authorization.** A town board or the governing body of a home rule charter or statutory city may license and regulate the retail sale of tobacco, tobacco-related devices, and electronic delivery devices as defined in section 609.685, subdivision 1, and nicotine and lobelia delivery products as described in section 609.6855, and establish a license fee for sales to recover the estimated cost of enforcing this chapter. The county board shall license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products in unorganized territory of the county except on the State Fairgrounds and in a town or a home rule charter or statutory city if the town or city does not license and regulate retail sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products. The State Agricultural Society shall license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products on the State Fairgrounds. Retail establishments licensed by a town or city to sell tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products are not required to obtain a second license for the same location under the licensing ordinance of the county.

Subd. 2. **Administrative penalties for sales and furnishing; licensees.** If a licensee or employee of a licensee sells, gives, or otherwise furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years, or violates any other provision of this chapter, the licensee shall be charged an administrative penalty of \$300 for the first violation. An administrative penalty of \$600 must be imposed for a second violation at the same location within 36 months after the initial violation. For a third or any subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 must be imposed, and the licensee's authority to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at that location must be suspended for not less than seven days and may be revoked. No suspension, revocation, or other penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

Subd. 3. **Administrative penalty for sales and furnishing; individuals.** An individual who sells, gives, or otherwise furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years may be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

Subd. 4. **Alternative penalties for use of false identification; persons under age 21.** The licensing authority shall consult with interested persons, as applicable, including but not limited to educators, parents, guardians, persons under the age of 21 years, and representatives of the court system to develop alternative penalties for persons under the age of 21 years who purchase, or attempt to purchase, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products using a driver's license, permit, Minnesota identification card, or any other type of false identification to misrepresent the person's age, in violation of section 609.685 or 609.6855. The licensing authority and the interested persons shall consider a variety of alternative civil penalties, including, but not limited to, tobacco-free education; tobacco cessation programs; notice to schools and parents or guardians; community service; and court diversion programs. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.

Subd. 5. **Compliance checks.** A licensing authority shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco, tobacco-related devices, electronic delivery

devices, or nicotine or lobelia delivery products are sold to test compliance with sections 609.685 and 609.6855. Compliance checks conducted under this subdivision must involve persons at least 17 years of age, but under the age of 21, who, with the prior written consent of a parent or guardian if the person is under the age of 18, attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products under the direct supervision of a law enforcement officer or an employee of the licensing authority. The age requirements for persons participating in compliance checks under this subdivision shall not affect the age requirements in federal law for persons participating in federally required compliance checks of these locations.

Subd. 6. **Defense.** It is an affirmative defense to the charge of selling tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years in violation of subdivision 2 or 3 that the licensee or individual making the sale relied in good faith upon proof of age as described in section 340A.503, subdivision 6.

Subd. 7. **Judicial review.** Any person aggrieved by a decision under subdivision 2 or 3 may have the decision reviewed in the district court in the same manner and procedure as provided in section 462.361.

Subd. 8. **Notice to commissioner.** The licensing authority under this section shall, within 30 days of the issuance of a license, inform the commissioner of revenue of the licensee's name, address, trade name, and the effective and expiration dates of the license. The commissioner of revenue must also be informed of a license renewal, transfer, cancellation, suspension, or revocation during the license period.

History: 1941 c 242 s 3; 1941 c 405 s 3; 1951 c 382 s 1; Ex1959 c 73 s 2; 1973 c 123 art 5 s 7; 1982 c 572 s 2; 1997 c 227 s 4; 1Sp2001 c 5 art 7 s 63; 2010 c 255 s 7; 2010 c 305 s 4-9; 2014 c 291 art 6 s 28; 2020 c 88 s 4-8

609.685 SALE OF TOBACCO TO PERSONS UNDER AGE 21.

Subdivision 1. **Definitions.** For the purposes of this section, the following terms shall have the meanings respectively ascribed to them in this section.

(a) "Tobacco" means cigarettes and 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 cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

(b) "Tobacco-related devices" means cigarette papers or 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 aerosol or vapor of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

(c) "Electronic delivery device" means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. Electronic delivery device includes but is not limited to devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, tank systems, or under any other product name or descriptor. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device excludes drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

Subd. 1a. **Penalty to sell or furnish.** (a) Any person 21 years of age or older who sells, gives, or otherwise furnishes tobacco, tobacco-related devices, or electronic delivery devices to a person under the age of 21 years is guilty of a petty misdemeanor for the first violation. Whoever violates this subdivision a subsequent time within five years of a previous conviction under this subdivision is guilty of a misdemeanor.

(b) 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 section 340A.503, subdivision 6.

Subd. 2. **Use of false identification.** A person under the age of 21 years who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices and who uses a driver's license, permit, Minnesota identification card, or any type of false identification to misrepresent the person's age, shall only be subject to an alternative civil penalty, in accordance with subdivision 2a.

Subd. 2a. **Alternative penalties.** Law enforcement and court system representatives shall consult, as applicable, with interested persons, including but not limited to parents, guardians, educators, and persons under the age of 21 years, to develop alternative civil penalties for persons under the age of 21 years who violate this section. Consulting participants shall consider a variety of alternative civil penalties including but not limited to tobacco-free education programs, community service, court diversion programs, and tobacco cessation programs, and for persons under the age of 18 years, notice to schools and to parents or guardians. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.

Subd. 3. MS 2018 [Repealed by amendment, 2020 c 88 s 11]

Subd. 4. **Effect on local ordinances.** Nothing in subdivisions 1 to 2a shall supersede or preclude the continuation or adoption of any local ordinance which provides for more stringent regulation of the subject matter in subdivisions 1 to 2a.

Subd. 5. **Exceptions.** (a) Notwithstanding subdivision 1a, an Indian may furnish tobacco to an Indian under the age of 21 years if the tobacco is furnished as part of a traditional Indian spiritual or cultural ceremony. For purposes of this paragraph, an Indian is a person who is a member of an Indian tribe as defined in section 260.755, subdivision 12.

(b) The penalties in this section do not apply to a person under the age of 21 years who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.

Subd. 6. **Seizure of false identification.** A licensee may seize a form of identification listed in section 340A.503, subdivision 6, if the licensee has reasonable grounds to believe that the form of identification has been altered or falsified or is being used to violate any law. A licensee that seizes a form of identification as authorized under this subdivision shall deliver it to a law enforcement agency within 24 hours of seizing it.

History: 1963 c 753 art 1 s 609.685; 1981 c 218 s 1,2; 1986 c 352 s 4; 1989 c 290 art 3 s 33,34; 1992 c 588 s 1; 1993 c 224 art 9 s 44,45; 1994 c 636 art 2 s 44; 1999 c 139 art 4 s 2; 2000 c 472 s 5-9; 2010 c 305 s 11; 2014 c 291 art 6 s 33; 2020 c 88 s 11