



Legislation Text

File #: Res. 2016-082, **Version:** 1

City Council Meeting Date: August 2, 2016

To: Mayor and City Council
City Administrator

From: Monte Nelson, Chief of Police
Deb Little, City Clerk

Tobacco License Penalty Hearing & Proposed Penalties - H & S Inc. dba Downtown Tobacco

Action Requested:

The Northfield City Council is asked to conduct a hearing related to the imposition of a suspension of the tobacco license issued to H&S, Inc. If the Council finds cause for the imposition of the suspension per City Code Sec. 30-28, the Council is asked to consider approving the attached resolution.

Summary Report:

During the course of a compliance investigation, the Northfield Police Department requested store video from H and S Inc., dba Downtown Tobacco and issued a citation for failure by H and S Inc., dba Downtown Tobacco to provide such video to police on April 15, 2015. The failure to record, maintain and provide such video to police upon request from the police is a violation of City Code, Sec. 30-76, clause (2). On March 2, 2016, Mr. Haider Alnomoni pled guilty, was convicted and sentenced for the criminal violation of City Code, Sec. 30-76, clause (2).

This Notice of Violation and Civil Penalty followed said criminal conviction and pertained to the City issued tobacco license. Specifically, City Code, Sec. 30-28 provides for imposition of civil penalties for tobacco license violations as follows:

(a) Licensees. Any licensee found to have violated this article, or whose employee shall have violated this article, shall be charged an administrative fine of \$200.00 for a first violation of this article, \$400.00 for a second offense at the same licensed premises within a 24-month period, \$800.00 for a third offense at the same location within a 24-month period, and \$1,600.00 for a fourth offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven days; and after the fourth offense, the license shall be suspended for not less than 30 days. For the purposes of this section, "within a 24-month period" means a period, two years in duration, which begins to toll on the date of the occurrence of the first violation, and ends two years from the date of the first violation. If no further violations occur within two years following the first violation, any violations occurring after the expiration of the two-year period will not be cumulative with regards to the first violation.

H and S Inc., dba Downtown Tobacco had prior tobacco license violations on December 30, 2013 and December 19, 2014. The current license violation occurred on April 15, 2015. As a result, this current violation represents a third license offense within 24 months.

City staff had previously intended to handle this matter administratively and information regarding requesting a hearing before the City Council was included in the Notice of Violation and Civil Penalty letter dated March 31, 2016 sent to Mr. Alnomani as noted below:

“Licensees are afforded the opportunity for a hearing if a suspension or revocation is imposed. If you would like to request a hearing regarding this violation, please submit the request for a hearing on this matter in writing addressed to me as soon as possible, but no later than Friday, April 22, 2016. If you fail to timely request a hearing, you waive your opportunity for such hearing. If you are not requesting a hearing, please sign the attached agreement and return the same with the fine of \$800.00 no later than April 22, 2016. City staff will contact you regarding the imposition of the seven consecutive day required license suspension, which shall be served no later than 30 days following April 22, 2016.”

Staff had phone conversations with Mr. Alnomani and his attorney, Mr. Donald Nemer, on Friday, April 15, 2016, where both wanted to negotiate the amount of the penalty and license suspension. Staff informed them that the penalties are included in the City Code and are not something that staff could negotiate; however, we noted we would be happy to meet with them. Staff also informed them that they could request a hearing in front of the City Council as explained in the March 31, 2016 letter and asked them to review the information.

Along with the previous March 31, 2016 penalty letter was a waiver agreement for Mr. Alnomani to sign in the event that he accepted the fine and penalty and also contained a provision to expressly waive an appeal hearing before the City Council. Presumably with the advice of legal counsel, Mr. Alnomani signed the waiver agreement accepting the fine and suspension and waiving the right to appeal the same. The City received the signed waiver agreement on April 18, 2016. The waiver agreement signed by Mr. Alnomani stated in part the following:

Whereas, Licensee hereby expressly acknowledges and understands that Licensee has the right to a hearing before the Northfield City Council regarding imposition of a civil penalty for the above-referenced license violation at which evidence and testimony may be presented by both Licensee and the City before the City could impose any civil penalty against Licensee on account of the above-referenced license violation.

And;

...

Now, therefore, it is hereby agreed as follows by the parties hereto:

2. Licensee hereby expressly waives any hearing with regard to the above-referenced license violation and the imposition of any civil penalty by the City against Licensee on account thereof.

On April 20, 2016, staff received a letter from Attorney Nemer requesting that Mr. Alnomani be allowed to go before the City Council so as to plead his case for some mitigation for the punishment. As noted above, on April 18, 2016, staff received the signed agreement and check for the violation. Based on the information contained in the letter and the signed agreement noting that the “Licensee hereby waives any hearing with regard to the above-referenced license violation and the imposition of any civil penalty by the City against Licensee on account thereof,” staff responded via letter dated May 2, 2016 that this matter would not be scheduled before the City Council as it was concluded.

On May 12, 2016, Attorney Nemer called inquiring about the status of his April 20, 2016 request. He noted that he had moved some time ago from the address listed on his April 20, 2016 letter and had not received the City's response. He verbally asked to have the suspension spread out over a period of time, rather than the seven consecutive days as required in City Code. Staff forwarded the City's May 2, 2016 response letter again via e-mail to Mr. Nemer per his request.

On May 25, 2016, City staff was contacted by another attorney, Caitlin Elliott, Grundhoefer & Ludescher, stating she was now representing Mr. Alnomoni and wanting to talk with the City about the license suspension. City Attorney Chris Hood spoke with Ms. Elliott on May 26, 2016 regarding the City Code, fine and suspension. Attorney Elliot identified a conflict in the language of City Code regarding the violation for which Mr. Alnomani was previously cited and convicted stating that it was a code rather statutory violation and because of this distinction, Mr. Alnomani could not receive a fine for this violation based on the language of the code. Attorney Hood stated that he would look into the matter and respond accordingly.

The Code provision cited by Attorney Elliot was section 30-27 (f), as follows:

Misdemeanor prosecution. Violation of this article shall be a misdemeanor offense. In addition to any civil penalties imposed under this article, nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this article. If the city elects to seek misdemeanor prosecution, no administrative penalty shall be imposed, except that the city council may suspend, revoke, or not renew a license in appropriate circumstances.

In subsequently reviewing the City Code, City Attorney Hood found that an internal conflict exists within the City Code related to the imposition of monetary administrative fines strictly for ordinance violations versus violations of State law. As a result of this determination, the City informed Mr. Alnomani that it was withdrawing the monetary fine contained in the March 31, 2016 letter and would be refunding the fine amount paid of \$800.00. This provision of the Code is inconsistent with other provisions contained in Code allowing for fines in addition to criminal prosecution for statutory tobacco license violations but not strictly Code, non-statutory, based violations, and will be the subject of further review by City staff and possible recommendation to amend the same to the City Council in the future.

Despite the previous signed agreement accepting the imposed suspension and expressly waiving any hearing with regard to the license violation and penalties and pursuant to Attorney Elliott's request on Mr. Alnomoni's behalf, City staff agreed to stay imposing the suspension pending City Council review of the same and have therefore scheduled this hearing before the Council on August 2, 2016 in order for the City Council to consider the above City Code violation and imposition of a seven consecutive day suspension of the tobacco license pursuant to City Code, sections 30-27(f) and 30-28.

Mr. Alnomoni was notified by letter dated July 20, 2016, that City Staff intended to recommend imposition of a seven consecutive day license suspension to the City Council at a hearing regarding this matter on August 2, 2016 for the violation of City Code Sec. 30-76, clause (2), for failure to provide store video on April 15, 2015. The details regarding the hearing were personally delivered to Downtown Tobacco on July 20, 2016 at 12:01 pm.

Alternative Options:

Pursuant to Northfield City Code, Section 30-28, the City Council may take the following action(s):

1. The tobacco license issued to H&S, Inc., be suspended for a period of 7 consecutive days, namely August 14-

21, 2016;

2. The tobacco license issued to H&S, Inc., be suspended for a period of 7 consecutive days, with the Council establishing the dates.