7-6010-17292-3

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNEAPOLIS CITY COUNCIL

In the Matter of the Grocery and Tobacco Dealer License Held by Uncle Bill's Market, Inc., d/b/a Uncle Bill's Market	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis, acting as a hearing officer for the Minneapolis City Council, on July 20, 2006, at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota. The hearing was held pursuant to a Notice of and Order for Hearing dated May 19, 2006. After the hearing, the Licensee submitted additional data related to the Licensee's Site Plan and alarm responses by the Minneapolis Police Department. The record closed on August 2, 2006.

Joel M. Fussy, Assistant City Attorney, 333 South 7th Street, Suite 300, Minneapolis, MN 55402-2453, appeared on behalf of the City of Minneapolis Department of Regulatory Services – Division of Licenses (City). Leon A. Trawick, 401 2nd Avenue South, Suite 550, Minneapolis, MN 55401, appeared on behalf of Uncle Bill's Market, Inc., d/b/a Uncle Bill's Market (Licensee).

NOTICE

This Report is a recommendation, not a final decision. The Minneapolis City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Pursuant to Minn. Stat. § 14.61, the City Council will not make its final decision until after it has provided each party adversely affected an opportunity to file exceptions and present argument to the Minneapolis City Council. Parties should contact the City Clerk, Council Information Division, 350 South Fifth Street, Room 304, Minneapolis Minnesota 55415-1382; telephone number 612-673-3136 to find out the process for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Whether good cause exists to take adverse action against the grocery and tobacco dealer licenses held by Uncle Bill's Market, Inc., d/b/a Uncle Bill's Market.

Based upon all the proceedings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Uncle Bill's Market is a convenience store located on the ground floor of a building at 2428 Plymouth Avenue North in Minneapolis, at the intersection of Plymouth and Sheridan. On the second floor of the same building above Uncle Bill's Market are four apartment units. The address of the second floor of the building is 2426 Plymouth Avenue North.

2. Uncle Bill's Market was owned and operated by a William Sanigular from approximately the mid-1980s until October of 2004.

3. On September 30, 2004, Mr. Sanigular leased the store premises to Alioe Meshjell.[1] Sometime shortly thereafter, Mr. Meshjell purchased the business from Mr. Sanigular.[2] Mr. Sanigular continues to own the building in which Uncle Bill's Market is located.

4. On October 12, 2004, Mr. Meshjell submitted applications for a tobacco dealer license and a grocery license.[3]

5. After purchasing Uncle Bill's Market, Mr. Meshjell shut down the store for approximately five months in order to make improvements. During that time, Mr. Meshjell installed a new floor and ceiling in the store, reinforced the store's foundation, replaced all the windows, and updated the electrical wiring. He also purchased two large coolers for the store, and a large dumpster for outside the back of the store. Mr. Meshjell estimates that he has spent about $80,000 in improvements and $60,000 in inventory for the store.[4]

6. On January 14, 2005, Andy Carlson, the City's Lead Zoning Inspector, sent Uncle Bill's Market a Notice of Violation regarding its failure to submit a site plan review application as part of its zoning approval. (In order to maintain a valid business license, the business must be in compliance with the Zoning Code.) The Notice advised Uncle Bill's Market that if the City Planning Department did not receive a completed Land Use Application Packet for Site Plan Review by January 24, 2005, the Planning Department would recommend denial of Uncle Bill's Market's business licenses.[5]

7. By letter dated February 27, 2005, City Zoning Planner Molly McCartney informed Mr. Meshjell that his application for Minor Site Plan Review for Uncle Bill's Market was approved upon the conditions that the dumpster be enclosed by a solid wood fence, that no more than 30 percent of the windows be covered with signs, that the hours of the store be limited to 6 a.m. to 10 p.m. Monday through Thursday and 6

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[1] Exs. 100-105.
[2] Testimony of Meshjell; Exs. 111 and 112.
[3] Exs. 96-98.
[4] Testimony of Meshjell; Ex. 108.
[5] Exs. 74 and 110.

a.m. to 11 p.m. Friday and Saturday, and that the premises within 100 feet of the store be inspected regularly for litter.[6]

8. Mr. Meshjell reopened Uncle Bill's Market for business in March of 2005.

9. On March 29, 2005, Uncle Bill's Market renewed its grocery and tobacco dealer licenses, and it currently holds those licenses.[7]

10. Mr. Meshjell is not responsible for the apartment units located above Uncle Bill's Market.

11. Grant Wilson is the Manager of the Minneapolis Department of Licenses and Consumer Services. This Department licenses approximately 200 different occupations, businesses and activities, including taxi cabs, trade occupations, and liquor sales. In addition to license inspections, Mr. Wilson also interacts with community and neighborhood groups and receives complaints from residents and business owners regarding problem properties.[8]

12. The Minneapolis Police Department has received many complaints about Uncle Bill's Market from nearby residents and business owners about suspected drug dealing and people loitering in front of Uncle Bill's Market.[9]

13. George Roberts is a retired Minneapolis Public School teacher who lives with his wife near Uncle Bill's Market.[10] He and his wife also own Homewood Studios, a neighborhood art gallery, studio rental space and community meeting center, which is located on the same block as Uncle Bill's Market. Mr. Roberts rents studio space to five tenants. Mr. Roberts' tenants have told him that they are afraid to walk by Uncle Bill's Market or go into the store because they feel threatened by the people loitering in front of the store. Other people have told Mr. Roberts that they will not send their children to Homewood Studios for art classes because they feel Uncle Bill's Market makes the area unsafe. Mr. Roberts has seen young people loitering in front of Uncle Bill's on a consistent basis and observed them engaging in hand-to-hand transactions with other people or persons driving by in cars. He has also noticed a consistent problem with trash and debris around the store and graffiti on the building that is not removed for several months.[11]

14. Beverly Roberts, the wife of George Roberts, is a block club leader for Sheridan Avenue North and a member of the "AIM block club" for businesses located on Plymouth Avenue North between Russell and Sheridan. The AIM block club was formed in 2004 primarily out of concern about problems with Uncle Bill's Market. The members of the AIM block club are especially concerned about the trash and debris

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[6] Letter submitted by Licensee on July 25, 2006.
[7] Exs. 91-94.
[8] Testimony of Wilson.
[9] Testimony of Wilson, Snyder and Schoenberger; Ex. 6.
[10] Mr. Roberts taught for 32 years at North High School.
[11] Testimony of G. Roberts.

around Uncle Bill's Market and the threatening behavior of persons who loiter in front of the store. Mrs. Roberts avoids walking past the store because the young men who congregate in front of Uncle Bill's are loud and threatening.[12]

15. The Minneapolis Police Department has a Strategic Operations Program (STOP) that focuses on gangs and drugs in an attempt to reduce and prevent violent crime in the City. Grant Snyder is a Minneapolis Police intelligence officer assigned to the STOP division. Officer Snyder's primary duties are surveillance and undercover operations relating to narcotics investigations. In April of 2005, he began an investigation of Uncle Bill's Market that continued until approximately February of 2006.[13]

16. As part of his investigation of Uncle Bill's Market, Officer Snyder contacted people who lived or owned businesses near Uncle Bill's Market to find out their concerns about the store. In addition, Officer Snyder recruited informants to go into the store and report back to him on what they observed, particularly regarding any suspicious activity occurring on the store's premises.[14] Officer Snyder monitored the store with video cameras for approximately 60 days.[15]

17. During his surveillance of Uncle Bill's Market, Officer Snyder observed a fairly steady group of people hanging out in front of the store engaging in hand-to-hand transactions consistent with narcotics activity. The majority of the transactions occurred right in front of or immediately inside the doorway of Uncle Bill's Market. Typically, a person would approach someone standing outside the store's doorway. The person who was approached would then go into the store and return with someone else. That "someone else" would then engage in a hand-to-hand transaction with the person who originally approached the store.[16]

18. In August 2005, an informant working for Officer Snyder purchased marijuana from someone on the sidewalk outside of Uncle Bill's Market.[17]

19. In November 2005, an informant working for Officer Snyder went to Uncle Bill's Market to purchase crack cocaine. When the informant was about to make the purchase in front of the store, a Minneapolis Police squad car drove past. The sight of the squad car scared the seller, and he went into the store without making the sale.[18]

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[12] Testimony of B. Roberts.
[13] Testimony of Snyder.
[14] Officer Snyder has worked for the Minneapolis Police Department for 10 years and has used a number of informants to assist him with narcotics investigations.
[15] Testimony of Snyder.
[16] Testimony of Snyder.
[17] Testimony of Snyder. This controlled buy was not mentioned in Officer Snyder's surveillance report on Uncle Bill's Market (Exs. 4-6) or in the subsequent Notice of Nuisance and Notice of Hearing. In addition, Officer Snyder discontinued using the informant involved in this controlled buy approximately one month later for reasons unexplained.
[18] Testimony of Snyder.

20. On November 10, 2005, Grant Wilson and Business License Inspector Daniel Jacobs conducted an unannounced site inspection of Uncle Bill's Market. Mr. Meshjell was not at the store at the time. One employee was on duty working behind the counter. During Mr. Wilson's and Inspector Jacobs' inspection, they found several items that are commonly used as drug paraphernalia. These items included small glass tubes containing a single rose for sale by the cash register counter and "Chore Boy" steel wool behind the counter. Glass tubes with a piece of "Chore Boy" acting as a screen are commonly used accessories for smoking crack cocaine. Mr. Wilson and Inspector Jacobs also found open boxes of single cigars and small zip lock bags for sale, as well as an open packet of rolling paper by the counter. Single cigars are commonly hollowed out and filled with marijuana to make what are called "blunts" in the street level drug trade, and small zip lock bags are commonly used in the sale of street level or single use amounts of marijuana or crack cocaine.[19]

21. During the City's November 10th site inspection of the store, Inspector Jacobs also noticed a significant amount of trash lying on the ground around the front entrance of the store and in the back of the store by the dumpster. Inspector Jacobs considered the trash problem to be "severe" in comparison to other convenience stores he had inspected.[20]

22. On or about November 14, 2005, Mr. Meshjell called Mr. Wilson regarding the November 10th inspection. Mr. Wilson explained that the items identified are commonly used accessories to help ingest illegal narcotics. Mr. Meshjell agreed to cooperate fully with the City and stated that he would immediately remove the items identified as drug paraphernalia from his store. After he finished talking with Mr. Wilson, Mr. Meshjell gathered up the items identified, including the glass tubes and single cigars, and threw them in the trash.[21]

23. On November 15, 2005, the Minneapolis Department of Licenses and Consumer Services sent Mr. Meshjell a Warning Notice regarding the trash located within 100 feet of the store's premises. The Notice informed Mr. Meshjell that the building is in violation of Minneapolis Code of Ordinances Chapter 259.125, which requires all licensed buildings in the City of Minneapolis to regularly remove all litter and debris from within 100 feet of the business premises. The notice warned Mr. Meshjell that the property must be maintained free of trash and that all future violations will result in a fine.[22]

24. Mr. Wilson conducted another inspection of Uncle Bill's Market sometime in March of 2006. During this visit, Mr. Wilson did not find in the store any of the items identified as drug paraphernalia at the November 10, 2005, inspection.[23]

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[19] Testimony of Wilson; Exs. 7-14.
[20] Testimony of Jacobs.
[21] Testimony of Wilson and Meshjell; Exs. 4, 7, 18 and 126.
[22] Testimony of Jacobs; Ex. 89.
[23] Testimony of Wilson.

25. Since the November 10th inspection, Inspector Jacobs has driven by Uncle Bill's Market approximately every other week. He has also stopped and gone into the store on several occasions since the November 10th inspection. During these visits, Mr. Meshjell was the only person working in the store, and it was common to see at least three to four young men loitering in front of the store. The loitering was especially common prior to approximately May of 2006.[24]

26. Since the November 10th inspection, Inspector Jacobs has not observed any of the items identified as drug paraphernalia at Uncle Bill's Market.[25]

27. Sometime after the November 10th inspection, Mr. Meshjell placed signs in the windows of the store to discourage loitering. Two of the signs state: "NO LOITERING INSIDE OR OUTSIDE OF STORE EVEN IF YOU BOUGHT SOMETHING." The other sign states: "NO LOITERING INSIDE OR OUTSIDE OF STORE YOU ARE UNDER CAMERA SURVEILLANCE."[26] Mr. Meshjell also added three outdoor lights to the building to increase security.[27]

28. In January 2006, an informant working for Officer Snyder purchased a rock of crack cocaine from someone inside Uncle Bill's Market. The informant went into the store to purchase a can of pop and a bag of chips. She asked the store's manager, a Mr. Hassan, if he had any "work." The word "work" is common street parlance for crack cocaine. Mr. Hassan was working at the cash register behind the counter. He motioned to a patron standing nearby and called him over. The patron, known as "Shorty," produced several rocks of crack cocaine from his pocket and showed them to the informant while Mr. Hassan looked on. The informant purchased one rock for $20 in cash. "Shorty" then told the informant to call him if she needed more. Mr. Hassan handed a piece of paper to "Shorty" and "Shorty" wrote his phone number down for the informant.[28]

29. Mr. Meshjell was not at Uncle Bill's Market during the sale of crack cocaine mentioned above.[29]

30. The same informant returned to Uncle Bill's Market the day after the controlled buy of crack cocaine and asked a different employee at the store for "work." "Shorty" was not present in the store. The employee told the informant that he had some crack for his own use that he would share with her if she would go into the back room with him. The informant arranged with this employee to come back the next morning. However, when the informant showed up at the store the next day, that employee was not there.[30]

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[24] Testimony of Jacobs.
[25] Testimony of Jacobs.
[26] Exs. 118 and 119.
[27] Testimony of Meshjell; Exs. 124 and 125.
[28] Testimony of Snyder; Ex. 6.
[29] Testimony of Snyder.
[30] Testimony of Snyder.

31. On January 31, 2006, Officer Snyder and Officer Troy Schoenberger inspected Uncle Bill's Market to see if Mr. Meshjell had discontinued selling the items identified as drug paraphernalia. Officer Shoenberger is the Property Officer for the 4th Precinct. His primary duties include identifying problem properties on the North side of Minneapolis and creating an action plan for property owners to resolve the issues.[31] Officer Schoenberger was made aware of complaints about Uncle Bill's Market from residents, business owners, and the Minneapolis City Council. In addition, other police officers notified him of the on-going loitering and increased violence, including several shootings, occurring on or near the premises of Uncle Bill's Market.[32]

32. During Officer Snyder's and Officer Schoenberger's January 31st inspection of Uncle Bill's Market, they found a couple small jewelry bags inside an open box of Milky Way candy bars and behind the counter, pulled apart Chore Boy steel wool, a pellet gun, and a partially used box of 40 caliber handgun ammunition and shell casings. In the basement, the officers found a case of 44 caliber ammunition. Mr. Meshjell was present during the inspection and explained to the officers that he keeps the pellet gun behind the counter to wave at customers who threaten him. He also told the officers that he was storing the ammunition for a friend. The officers recovered the items identified as evidence. Apart from the small jewelry bags found inside the box of candy bars and the piece of Chore Boy the officers did not find any of the other items identified as drug paraphernalia for sale inside the store.[33]

33. Officer Shoenberger has driven by Uncle Bill's Market about 100 times in the past year and has gone into the store about five times, including his inspection of the store on January 31, 2006. Generally, there has been only one employee in the store when Officer Shoenberger has visited. On most of the occasions when Officer Schoenberger has driven by Uncle Bill's Market, there have been a handful of people loitering outside in front of the store and Officer Schoenberger has personally observed loiterers engage in hand-to-hand transactions with other persons or occupants of cars that approach the store. These transactions are consistent with narcotics activity.[34]

34. Officer Shoenberger compiled a report on police calls for service to Uncle Bill's between June 1, 2004 and February 22, 2006. He found that during that time period there were 141 calls for police service to Uncle Bill's, 21 police reports filed at Uncle Bill's, and 5 arrests made at Uncle Bill's.[35] Officer Schoenberger also compared the police activity at the store during the 10 months prior to the sale of the business to Mr. Meshjell and the 10 months after Mr. Meshjell assumed ownership. Officer Shoenberger found that there were 5.7 calls per month, 6 police reports filed and no arrests during the 10 months prior to the sale, compared to 8.4 calls per month, 15 police reports filed and 5 arrests at the property during the first 10 months under Mr. Meshjell's ownership. Office Schoenberger also noted in his report that there have been three shootings and two assaults with deadly weapons at Uncle Bill's since the

[31] Testimony of Schoenberger.
[32] Testimony of Schoenberger.
[33] Testimony of Schoenberger; Exs. 15-18.
[34] Testimony of Schoenberger.
[35] Testimony of Schoenberger; Ex.23.

sale of the business to Mr. Meshjell.[36] Finally, Officer Schoenberger noted that the calls for police service to Uncle Bill's Market (to remove loiterers for example) went down in 2006, with only two calls for service in January, one call in February, four calls in March, three calls in April, and one call in May 2006.[37]

35. Officer Schoenberger's report incorrectly stated that the controlled buy of crack cocaine occurred at Uncle Bill's Market on January 1, 2006. The sale occurred sometime in January of 2006, but not on January 1, 2006.[38]

36. Officer Schoenberger has received approximately 30 "impact statements" from members of the community who reside and/or own businesses near Uncle Bill's Market complaining about the threatening behavior of persons loitering in and around the store.[39]

37. On February 7, 2006, Assistant Hennepin County Attorney Monte Miller sent a Notice of Nuisance to William Sanigular regarding illegal activity taking place in or around 2426/2428 Plymouth Avenue North. The Notice cited the Public Nuisance Statute (Minn. Stat. § 617.80, subd. 2), which defines acts constituting a "nuisance," and then listed the following incidents that occurred on the property:

1. On January 1, 2006, Minneapolis Police conducted a controlled buy of narcotics inside the business, Billies, located at 2428 Plymouth Avenue North. Crack cocaine was recovered from this incident.

2. On January 31, 2006, Minneapolis Police conducted a business check at the address, 2428 Plymouth Avenue North. Officers recovered narcotic paraphernalia, ammunition, spent shell casings and a BB pistol.

3. On February 1, 2006, Minneapolis Police officers were advised that a Tech 9 pistol was observed at the address, 2426 Plymouth Avenue North, Apartment 2. Officers were given consent to search the premises and located two weapons and ammunition and narcotics. Two people were arrested.

4. Between January 2005 and February 1, 2006, Minneapolis Police have been called to 2426 Plymouth Avenue North 31 times. These calls involved fights, unknown trouble, disturbances, checking the welfare, narcotics, and person with a gun.

5. Between January 2005 and January 2006, Minneapolis Police have been called to 2428 Plymouth Avenue North 99 times. These calls

[36] Exs. 22-49.
[37] Testimony of Schoenberger; Exs. 120-123.
[38] Exs. 27 and 31; Testimony of Snyder.
[39] Testimony of Schoenberger.

have involved narcotics, fights, disturbances, suspicious persons, and robberies.

The Notice gave Mr. Sanigular 30 days from the date of the Notice to correct the problems identified and abate the nuisance at 2426/2428 Plymouth Avenue North. The Notice advised Mr. Sanigular that if he failed to abate the nuisance, the County may file a complaint in district court that could enjoin the use of the building for any purpose for one year.[40]

38. When Mr. Meshjell became aware of the Nuisance Notice he called the Hennepin County Attorney's Office. An Assistant Hennepin County Attorney informed Mr. Meshjell of the controlled buy of crack cocaine at his store. Mr. Meshjell had no knowledge of the transaction. Once Mr. Meshjell learned that it was Mr. Hassan who was involved in the sale, he fired that employee the next day.[41]

39. On or about April 11, 2006, the City assessed Uncle Bill's Market a $200 penalty for a third false alarm of the security system at the licensed premises.[42]

40. Since May of 2006, the loitering in front of Uncle Bill's Market and the amount of debris have decreased.[43]

41. Between January 1, 2006 and May 31, 2006, Uncle Bill's Market averaged only 2.5 calls per month for police service.[44]

42. On May 19, 2006, the City issued a Notice and Order for Hearing to Mr. Meshjell alleging that Uncle Bill's Market has failed to comply with Minneapolis Ordinance section 259.250 (Business Management License Responsibilities), failed to take appropriate action to prevent criminal violations, and has operated as a public nuisance.

43. On or about May 31, 2006, the City assessed Uncle Bill's Market's a $300 penalty for a fourth false alarm occurring at the licensed business premises.[45]

44. On July 12, 2006, the City sent Uncle Bill's Market a Notice of Suspension of Police Response. The Notice informed Mr. Meshjell of the Police Department's intention to suspend police response to his burglar alarm system due to his failure to pay $500 in fines for false alarms at Uncle Bill's Market. The $500 amount represented the $200 fine of the third false alarm in April 2006 and the $300 fine for the fourth false alarm in May 2006.[46]

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[40] Exs. 19-21.
[41] Testimony of Meshjell.
[42] Ex. 113.
[43] Testimony of Jacobs.
[44] Exs. 120-123; Testimony of Schoenberger.
[45] Ex. 113.
[46] Exs. 113-117.

45. On July 14, 2006, the City issued an Amended Notice in this matter adding an allegation that Uncle Bill's Market failed to remit payment for false burglar alarms in violation of Minneapolis Code of Ordinance section 176.40.

46. On July 21, 2006, Uncle Bill's Market paid in full the $500 assessment for the false alarms.[47]

47. Currently, Uncle Bill's Market is open for business from 8:00 a.m. until 10:00 p.m. every day of the week. Mr. Meshjell has two employees who work at the store from 1 p.m. until 10:00 p.m. One employee works as a cashier and the other stocks inventory and cleans. Mr. Meshjelll typically works at the store from 8:00 a.m. until about 1:00 p.m. and again from 5:00 p.m. until 10:00 p.m. Mr. Meshjell has never employed security at the store.[48]

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

CONCLUSIONS

1. The Administrative Law Judge and the Minneapolis City Council have jurisdiction to consider the charges against the Licensee and the adverse action, if any, that should be imposed by the City, pursuant to Chapter 4, Section 16 of the Minneapolis City Charter.[49]

2. The City has complied with all relevant procedural legal requirements.

3. The City gave the Licensee proper and timely notice of the hearing in this matter.

4. Minneapolis City Charter Chapter 4, Section 16 states:

> **Section 16. Licenses May Be Revoked**. Any license issued by authority of the City Council may be revoked by the City Council at any time upon proper notice and hearing for good cause: and upon conviction before any court of any person holding such a license for a violation of the provisions of any law, ordinance or regulation relating to the exercise of any right granted by such license, the city council may revoke such license in addition to the penalties provided by law or by ordinance for any such violation.

5. Minneapolis Code of Ordinances § 259.250 provides in part:

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[47] Document submitted by Licensee on July 25, 2006.
[48] Testimony of Meshjell.
[49] Minn. Stat. §§ 14.50, 14.55; Minneapolis Charter Chapter 4, Section 16, and Minneapolis Code of Ordinance § 259.250.

The following minimum standards and conditions shall be met in order to hold a license, provisional license or permit under Titles 13 and 14 of this Code. Failure to comply with any of these standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation or suspension of said license or permit.

(1) It shall be the responsibility of the licensee to take appropriate action to prevent further violations following conduct by any persons on the business premises, including parking areas, in violation of any of the following statutes or ordinances:

a. Minnesota Statutes, Sections 609.75 through 609.76, which prohibit gambling.

b. Minnesota Statutes, Sections 609.321 through 609.324, which prohibit prostitution and acts relating thereto.

c. Minnesota Statutes, Sections 152.01 through 152.025 or Section 152.027, subdivisions 1 and 2, which prohibit the unlawful sale or possession of controlled substances.

d. Minnesota Statutes, Sections 617.23 through 617.241, which prohibit indecent exposure and the exhibition and distribution of obscene materials or performances.

e. Minnesota Statutes, Section 609.33 or Section 385.170(b)(1) of this Code, which prohibit owning, operating, managing, maintaining, or conducting a disorderly house, and inviting or attempting to invite others to visit or remain in a disorderly house.

f. Section 389.65 of this Code, which prohibits noisy assemblies.

g. Minnesota Statutes, Sections 97B.021, 97B.045, 609.66 through 609.67 and 624.716 and Section 393.40, 393.50, 393.70, 393.80, 393.90 and 393.150 of this Code, which prohibits the unlawful possession, transportation, sale or use of a weapon.

h. Minnesota Statutes, Section 609.72 and Section 385.90 of this Code, which prohibit disorderly conduct.

i. Section 385.80 and 385.50 of this Code, which prohibit lurking and loitering.

j. Minnesota Statutes, Sections 609.74 and 609.745, which prohibit public nuisance and permitting a public nuisance.

k. Minnesota Statutes, Sections 609.50, which prohibits obstructing legal process, arrest, or firefighting.

l. Any other criminal activity arising out of the conduct of the business.

(2) It shall be the responsibility of the licensee to maintain and operate the business in compliance with all applicable laws and ordinances, including the zoning, fire, environmental health, environmental management, license, food, liquor, housing and building codes.

(3) The licensee is directly and vicariously responsible for any violations on the premises, including parking areas, by any employees, independent contractors, other persons hired by the licensee, or otherwise under the supervision or management of the licensee.

(4) It shall be the responsibility of the licensee to provide adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, including parking areas.

...

(9) The provisions of this section are not exclusive. Adverse license action may be based upon good cause as authorized by Chapter 4, Section 16 of the Charter. This section shall not preclude the enforcement of any other provisions of this Code or state and federal laws and regulations.

6. The City did not prove by a preponderance of the evidence that the Licensee failed to take appropriate action to prevent further violations by persons on the store's premises of Minnesota Statutes prohibiting the unlawful sale or possession of controlled substances in violation of Minneapolis Code of Ordinances § 259.250(1)c.

7. The City did prove by a preponderance of the evidence that the Licensee failed to take appropriate action to prevent further violations by persons on the store's premises of Minnesota Statutes prohibiting loitering in violation of Minneapolis Code of Ordinances § 259.250(1)i.

8. The City did prove by a preponderance of the evidence that the Licensee is vicariously liable for the sale of crack cocaine that occurred on the premises of Uncle Bill's Market in January of 2006, pursuant to Minneapolis Code of Ordinances § 259.250(3).

9. The City did prove by a preponderance of the evidence that the Licensee failed to provide adequate security to prevent criminal activity, loitering, lurking and

disorderly conduct on the business premises, in violation of Minneapolis Code of Ordinances § 259.250(4).

10. Pursuant to Minn. Stat. § 609.74, a person who intentionally maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable members of the public, is guilty of maintaining a public nuisance.

11. The City did not prove by a preponderance of the evidence that the Licensee intentionally maintained or permitted a public nuisance in violation of Minn. Stat. § 609.74.

12. Pursuant to Minn. Stat. § 609.745, whoever having control of real property permits it to be used to maintain a public nuisance, is guilty of a misdemeanor.

13. The City did prove by a preponderance of the evidence that Mr. Meshjell failed to take appropriate action to prevent Uncle Bill's Market from being used to maintain a public nuisance in violation of Minn. Stat. § 609.745 and Minneapolis Code of Ordinances § 259.250(1)j.

14. Minneapolis Code of Ordinances § 259.125 requires all licensed businesses to regularly remove all litter and debris from the areas of the business premise and all other property within 100 feet of the business premise property lines.

15. The Licensee has failed to regularly remove all litter and debris from the premises and property within 100 feet of Uncle Bill's Market in violation of Minneapolis Code of Ordinances § 259.125.

16. Pursuant to Minneapolis Code of Ordinances § 176.40, burglar alarm users are required to pay a penalty to the City for each false alarm in excess of two per calendar year. The third alarm fee is $200; the fourth alarm fee is $300; and the fifth alarm fee is $400. The fee increases by $100 for each succeeding false alarm.

17. Pursuant to Minneapolis Code of Ordinances § 176.50, upon the occurrence of the fifth false alarm within a calendar year, or when the alarm user is more that 90 days overdue in their payment of alarm penalties, the Minneapolis Police Department will suspend responses to alarm dispatch requests from that site until past due balances are paid in full.

18. Minneapolis Code of Ordinances § 259.15 provides that no business license shall be granted or renewed to any licensee that has unpaid financial claims to the City of Minneapolis.

19. The Licensee was more than 90 days overdue in its payment of alarm penalties incurred for a third and fourth false alarm at its premises.

20. The City has the burden of proof to establish by a preponderance of the evidence that good cause exists for taking adverse action against the business licenses held by the Licensee.[50]

21. The City has demonstrated that good cause exists for taking adverse action against the business licenses held by the Licensee.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Minneapolis City Council take adverse action against the licenses held by Uncle Bill's Market, and that appropriate conditions be placed on licensure for future operations.

Dated this 1st day of September 2006.

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped (3 tapes). No transcript prepared.

MEMORANDUM

The City of Minneapolis is seeking to revoke the business licenses of Uncle Bill's Market. The City established that loitering and hand-to-hand transactions consistent with drug dealing occurred on the store's premises on a fairly frequent basis from approximately March 2005 until June 2006. The City also established that a controlled buy of crack cocaine occurred on the store's premises sometime in January of 2006. The City argues, based on this evidence, that the Licensee has violated the Minneapolis Code of Ordinances § 259.250 by failing to take appropriate action to prevent loitering and drug dealing on the business premises, and permitting the store to be used to maintain a public nuisance. In addition, the City contends that the Licensee failed to provide adequate security to prevent criminal activity and loitering on the premises, and the City points out that the Licensee was past due in paying a $500 false alarm fine to the City. The City maintains that the evidence is sufficient to support finding good cause to revoke the licenses of Uncle Bill's Market.

[50] *In re Kaldahl*, 418 N.W.2d 532, 535 (Minn. App. 1988).

The Licensee argues that he has responsibly managed Uncle Bill's Market and that the City has failed to show that Uncle Bill's Market maintained or permitted the loitering and drug dealing conditions at issue. The Licensee points out that it fully cooperated with the Minneapolis Police Department and did whatever they instructed him to do. After the November 10, 2005, inspection, Uncle Bill's Market stopped selling the items the police identified as drug paraphernalia – namely, the glass tubes with roses, Chore Boy, small zip lock baggies, and single cigars. Once these items were identified as drug paraphernalia, Mr. Meshjell immediately removed them from his store and threw them into the trash. In addition, Grant Wilson, License Inspector Daniel Jacobs and Officer Shoenberger each testified that they did not see the identified items for sale in the store after November 10, 2005.[51] Mr. Meshjell also put up "No Loitering" signs after the November 10th inspection and installed extra lighting around the store. Finally, when Mr. Meshjell was notified by the Hennepin County Attorney's Office that one of his employees was involved in a controlled sale of crack cocaine on the store's premises, Mr. Meshjell fired that employee the next day. According to the Licensee, the evidence established that Mr. Meshjell did take appropriate action to prevent further criminal violations by persons on the store's premises.

Any business licensee is responsible for the manner in which business is conducted on its premises. Illegal activity by others conducted on the business premises becomes the responsibility of the licensee when there is adequate notice of the illegal conduct and insufficient action taken to prevent subsequent illegal conduct.[52] When considering the City's landlord licensing ordinance, the Minnesota Supreme Court explained that when landlords do not cooperate with the police department in helping deter criminal activity, they contribute to the continuation of illegal activity in their buildings. The Court held that in the face of such action (or inaction) the city is well justified in revoking their licenses.[53] Likewise, in *CUP Foods, Inc. v. City of Minneapolis*,[54] the Minnesota Court of Appeals upheld the city's finding of "good cause" to discipline a convenience store's licenses where there was ample evidence that drug transactions took place in and around the store, including evidence of multiple controlled buys on the store's premises, and the licensee knew that crime was an ongoing problem.

In this case, the City has not put forward sufficient evidence to show that the Licensee failed to take appropriate action to prevent subsequent drug dealing on the store's premises in violation of Minneapolis Code of Ordinances § 259.250(1)c. Instead, the record established that Mr. Meshjell cooperated with the police, discontinued selling the items identified as drug paraphernalia, and fired the employee involved in the controlled sale of crack cocaine as soon as he was notified of such activity.[55] Unlike *CUP Foods*, this is not a situation where there have been multiple controlled buys or other criminal activity on the business premises of such a blatant or

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[51] Officer Schoenberger testified that he did see a couple small jewelry bags inside an open box of Milky Way bars. However, the store was no longer selling the small bags.
[52] *Zeman v. City of Minneapolis*, 552 N.W.2d 548 (Minn. 1996);
[53] *Zeman*, 552 N.W.2d at 554.
[54] 633 N.W.2d 557, 564 (Minn. App. 2001).
[55] The other controlled buy, of marijuana in August of 2005, was never brought to Meshjell's attention.

obvious nature as to impute awareness to the Licensee. But for the one controlled sale in January of 2006, the only criminal or unlawful activity occurring on the premises of Uncle Bill's Market is the loitering. And while Officer Snyder and Officer Schoenberger testified to witnessing hand-to-hand transactions "consistent with narcotics activity" between the loiterers outside the store, there is no evidence that Mr. Meshjell was aware of any further drug activity occurring on the premises.

However, the Administrative Law Judge concludes that the record does contain sufficient evidence that the Licensee failed to take appropriate action to prevent further violations of the statutes prohibiting loitering and permitting a public nuisance. The evidence established that chronic loitering has occurred on the premises of Uncle Bill's Market since Mr. Meshjell opened the store for business in March of 2005. Although the loitering has decreased since April of 2006, it persisted long enough to give Mr. Meshjell sufficient notice that appropriate action to address the on-going problem was necessary. The fact that the loitering continued for over a year suggests that there were additional measures Uncle Bill's Market could have implemented, such as hiring security, in order to reduce the loitering.[56]

The Administrative Law Judge also concludes that the City established that the Licensee failed to regularly remove litter and debris from the business premises and that the Licensee was more than 90 days overdue in its payment of false alarm penalties.

While the City has demonstrated good cause to discipline the licenses of Uncle Bill's Market, the Administrative Law Judge concludes that revocation of the store's grocery and tobacco dealer licenses is not an appropriate sanction. The City has broad discretion in selecting an appropriate penalty,[57] and the power vested in a municipal body to revoke a license includes the power to impose lesser sanctions such as suspension, conditional licensure, or fines.[58] Based on this record, the Administrative Law Judge recommends that the City impose a fine and appropriate conditions on the licenses, such as requiring Uncle Bill's Market to provide adequate security inside and outside of the store to prevent further criminal activity on the premises.

R.C.L.

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[56] The City argued that the Licensee could have reduced the loitering by calling 911 more frequently for police assistance. The City's position on calling for police assistance puts the Licensee in a "Catch 22" situation. The City argues the relatively high number of police calls for service was evidence of Uncle Bill's being a problem property, but argues also that the recent decrease in calls for police assistance is evidence of Uncle Bill's failure to be "proactive" in removing loiterers. The City's interpretation of the decrease in police calls for assistance is speculative. It is just as likely that the decrease in calls for service indicates an improved situation.

[57] *Bergmann v. City of Melrose*, 420 N.W.2d 663, 665 (Minn. App. 1988) (citing, *Cleveland v. Rice County*, 238 Minn. 180, 183, 56 N.W.2d 641, 643 (1952).)

[58] *In re Walker's License*, 210 Minn. 337, 300 N.W. 800, 802 (1941).