

**CITY OF MINNEAPOLIS**  
**CITY COUNCIL**  
**PUBLIC SAFETY & REGULATORY SERVICES COMMITTEE**

In the Matter of the Confectionery  
& Tobacco Dealer's Licenses held by  
Musaab Wazwaz & Musaab, Inc. d/b/a  
Hiawatha Tobacco

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
RECOMMENDATION FOR  
ADVERSE LICENSE ACTION AND  
DENIAL OF REQUEST FOR STAY**

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This matter came on for purposes of a license hearing on Wednesday May 7, 2008 at the regularly-scheduled meeting of the Public Safety & Regulatory Services Committee of the Minneapolis City Council. The license hearing was called pursuant to a Notice of Hearing properly served upon the license holder, Musaab Wazwaz & Musaab, Inc. d/b/a Hiawatha Tobacco (hereinafter "the Licensee"), at 2740 Minnehaha Avenue, Minneapolis, MN 55406, relating to the establishment known as Hiawatha Tobacco located at that same address. The License Holder, Musaab Wazwaz, was present at the hearing and was represented by his attorney Douglas Altman. License Inspector Julie Casey represented the Division of Licenses and Consumer Services.

Based upon the evidentiary record as admitted at the hearing as well as the arguments and testimony of the parties and counsel, the Committee hereby makes the following:

**FINDINGS OF FACT**

1. The Licensee holds two business licenses for the establishment doing business as Hiawatha Tobacco at 2740 Minnehaha Avenue in the City of Minneapolis. These business licenses include a confectionery license issued pursuant to the Minneapolis Food Code and a

tobacco dealer's license issued pursuant to Chapter 281 of the Minneapolis Code of Ordinances (hereinafter "M.C.O."). The Licensee has operated Hiawatha Tobacco since May of 2007. Hiawatha Tobacco is the first licensed establishment operated within the City Minneapolis by the Licensee. The Division of Licenses and Consumer Services reports no documented violations occurring on the premises of Hiawatha Tobacco in the one year it has operated. This hearing was called to consider the imposition of adverse action against these business licenses.

2. On March 6, 2008 the Licensee, Musaab Wazwaz, was found guilty in United States District Court Case No. 07-50(14) of one felony count of making a material false statement to a federal agent after a trial to United States District Judge Ann Montgomery.

3. Judge Montgomery imposed a sentence upon Mr. Wazwaz consisting of two years of probation subject to standard conditions as well as a \$500 fine and \$100 in court costs. Mr. Wazwaz is scheduled to be on probation for his felony conviction until March of 2010.

4. The felony conviction for making a material false statement to a federal agent relates to a knowingly false statement that Mr. Wazwaz provided to a federal agent during a January 20, 2006 interview. At that time federal agents were investigating an alleged conspiracy involving numerous individuals' under-reporting of sales tax revenue at various local convenience and tobacco stores. Relevant to this criminal investigation was the beneficial ownership status of a tobacco store doing business as Maplewood Tobacco located in St. Paul, Minnesota. During an interview with a special agent of the FBI on January 20, 2006 the Licensee told the agent that he personally owned and controlled Maplewood Tobacco and that his uncle, Tawfiq Wazwaz, "had nothing to do with" the store, although he knew otherwise at the time. The Licensee was not charged with or convicted of any other crimes related to the larger criminal investigation other

than the felony offense of making a material false statement regarding the ownership and operation of Maplewood Tobacco.

5. Minneapolis City Charter, Chapter 4, Section 16 provides that “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.”

6. M.C.O. § 188.185 provides that “No food or grocery license shall be issued to any applicant who does not meet the following qualifications: ... Within five (5) years of the date of the application, the applicant cannot have been convicted of any crime related to the occupation for which the license is sought, which conviction has not been, pursuant to law, annulled or expunged, including but not limited to the willful violation of any law dealing with food subsidy programs or the sale, possession, manufacture or transportation of controlled substances. The provisions of Minnesota Statutes, Chapter 364 shall govern the enforcement and application of this subsection including the right of an applicant to show competent evidence of sufficient rehabilitation and present fitness.” The confectionery license issued to the Licensee qualifies as a food license under this section.

7. M.C.O. § 281.60, which regulates the issuance of all tobacco dealer’s licenses, provides that “Every license holder under this chapter will either be subject to a monetary penalty or in extenuating circumstances have their license revoked, suspended, or not renewed by the city council ... for any of the following reasons: ... good cause related to the business of selling or furnishing tobacco products.”

8. Minn. Stat. § 364.03, as part of the Minnesota Criminal Rehabilitation Act, provides as follows:

### **364.03 RELATION OF CONVICTION TO EMPLOYMENT OR OCCUPATION.**

Subdivision 1. **No disqualification from licensed occupations.** Notwithstanding any other provision of law to the contrary, no person shall be disqualified from ... pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to ... the occupation for which the license is sought.

Subd. 2. **Conviction relating to public employment sought.** In determining if a conviction directly relates to ... the occupation for which the license is sought, the ... licensing authority shall consider:

- (1) the nature and seriousness of the crime or crimes for which the individual was convicted;
- (2) the relationship of the crime or crimes to the purposes of regulating the ... occupation for which the license is sought;
- (3) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the ... occupation.

Subd. 3. **Evidence of rehabilitation.** (a) A person who has been convicted of a crime or crimes which directly relate to the ... occupation for which a license is sought shall not be disqualified from the ... occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the ... occupation for which the license is sought. Sufficient evidence of rehabilitation may be established by the production of:

- (1) a copy of the local, state, or federal release order; and
- (2) evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or
- (3) a copy of the relevant Department of Corrections discharge order or other documents showing completion of probation or parole supervision.

(b) In addition to the documentary evidence presented, the licensing ... authority shall consider any evidence presented by the applicant regarding:

- (1) the nature and seriousness of the crime or crimes for which convicted;
- (2) all circumstances relative to the crime or crimes, including mitigating circumstances or social conditions surrounding the commission of the crime or crimes;
- (3) the age of the person at the time the crime or crimes were committed;
- (4) the length of time elapsed since the crime or crimes were committed; and
- (5) all other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

### **CONCLUSIONS**

1. The evidentiary packet introduced by the Division of Licenses and Consumer Services was provided to the Licensee and his attorney prior to the hearing. The Licensee and

his attorney submitted a five-page position statement on May 6, 2008 to be included on the official record of the license hearing. The position statement was received and provided to the committee members and made a part of the record. The Licensee was provided proper notice of the license hearing and was afforded a full and unrestricted opportunity to present evidence and argument at the license hearing. The Licensee did not contest the essential fact that he has been convicted of the felony criminal offense of making a material false statement to a federal agent, nor did he contest the dates of the offense and conviction or the essential facts regarding the licensure of the establishment doing business as Hiawatha Tobacco.

2. The act which led to the recent felony criminal conviction of the Licensee involved intentional dishonesty in direct relation to the occupation of operating a licensed tobacco and food establishment. The material false statement was made to hinder a legitimate investigation into the legal and regulatory compliance of the operators of a tobacco store that the Licensee claimed to own. Although the store in question was not located in or licensed by the City of Minneapolis and the criminal act did not therefore directly relate to the Licensee's Minneapolis establishment, the felonious act did directly relate to the occupation for which his Minneapolis license is held and for which renewal is sought. Based on this direct relationship between the crime and the regulated occupation as well as the crime's serious nature, good and just cause exists for the City of Minneapolis to take adverse license action against the business licenses held by the Licensee for Hiawatha Tobacco based upon Charter Ch. 4, § 16; M.C.O. §§ 188.185 & 281.60; and Minn. Stat. § 364.03, Subd. 1-2.

3. Pursuant to applicable ordinance and statutory law, having determined that the Licensee's felony conviction "directly relate[s] to the occupation for which the license is sought" the Licensee was afforded an opportunity to "show competent evidence of sufficient

rehabilitation and present fitness...” See Minn. Stat. § 364.03, Sub. 3. The Licensee is unable to meet the statutory burden of demonstrating rehabilitation because he has not completed his probationary term. See Minn. Stat. 364.03, Subd. 3(a)(1)-(3). According to the terms of his sentence, the Licensee will be on probation for his felony conviction until March 2010.

4. The committee also considered additional statutory factors in evaluating the Licensee’s present fitness. The committee concludes that the serious nature of the crime committed—a felony involving explicit and intentional dishonesty with regard to a legal and regulatory investigation of a business involving the exact same occupation as the Licensee’s Minneapolis business—outweighs any mitigating circumstances. Specifically, the Licensee’s young age at the time of the crime, 19, is not sufficiently compelling in that the Licensee was an adult engaged in a highly-regulated business who made an intentional and knowing false statement to a federal agent regarding such business. The Licensee is young enough, however, that he will be able to pursue other means of employment and will be able to re-apply for such a business license in Minneapolis upon completion of his probationary sentence. At such time, the City can be assured that he has successfully completed his probationary responsibilities and that he presumably will be more inclined to operate future business operations in compliance with the law and in cooperation with law enforcement and regulatory authorities. Furthermore, although two years have passed since the crime was committed, the conviction only occurred very recently and the Licensee will remain on probation for two years. The Licensee also cited the lack of violations or offenses stemming from Hiawatha Tobacco as a potential mitigating factor, however he has only operated that establishment since May 2007. The balance of factors regarding the

Licensee's rehabilitation and present fitness weighs in favor of denying renewal of the licensed establishment's business licenses based on the very serious nature of the crime committed by the Licensee, its direct relation to his licensed occupation and the duties and responsibilities associated with such an occupation as well as the remaining time left for the Licensee to serve on his probationary sentence.

### **RECOMMENDATION**

1. That the Minneapolis City Council **DENY RENEWAL** the confectionery license and tobacco dealer's license held by Musaab Wazwaz & Musaab, Inc. d/b/a Hiawatha Tobacco, and deem the Licensee ineligible to re-apply for such licenses for a period of two years.

2. That the request of the Licensee for a stay of license denial be **DENIED**. As duly and properly considered at the license hearing in this matter, the Licensee made a request for a stay of the revocation pending a potential appeal via application for a writ of certiorari to the Minnesota Court of Appeals. The committee has considered and balanced the Licensee's interest in preserving the status quo, so that effective relief will be available if the appeal were to succeed against the interest of the City of Minneapolis, its staff and its residents in enforcing the decision and ensuring that they remain secure in victory while a potential appeal is pending. The committee determines that the recent felony conviction of the Licensee is especially serious in nature and directly related to the operation of the type of business regulated under the terms of the licenses he holds. Minneapolis ordinances regulating the basic qualifications of such a license applicant clearly establish such a criminal conviction as a disqualifying event. Based on the above-referenced and incorporated balancing of statutory considerations related to the Licensee's present fitness it has been determined that the Licensee clearly lacks present fitness

for continued licensure. Granting a stay which would likely be effective for many months pending an appellate ruling would serve to disregard the present fitness analysis undertaken by the committee and would harm the City by allowing the Licensee to continue operating his licensed establishment during a significant portion of his uncompleted felony probationary term. The request for a stay of license denial is therefore denied.

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