



STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
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September 28, 2006

Minneapolis City Council  
Attention: City Clerk  
Council Information Division  
350 South Fifth Street, Room 304  
Minneapolis, MN 55415-1382

Re: *In the Matter of the Grocery, Food Manufacturing and Tobacco Dealer  
Licenses held by Amina, Inc. d/b/a 4-You Food Market;  
OAH Docket No. 11-6010-17272-3*

Enclosed herewith and served upon you by mail is the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation in the above-entitled matter. The official record will be sent to you under separate cover. Our file in this matter is now being closed.

Sincerely,

Handwritten signature of Barbara L. Neilson in cursive.

BARBARA L. NEILSON  
Administrative Law Judge

Telephone: (612) 341-7604

BLN:nh

Encl.

Cc

✓ Joel M. Fussy  
Daniel L. M. Kennedy

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STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNEAPOLIS CITY COUNCIL

In the Matter of the Grocery, Food  
Manufacturing and Tobacco Dealer  
Licenses held by Amina, Inc. d/b/a 4-You  
Food Market

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

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson, acting as a hearing officer for the Minneapolis City Council, on August 8, 2006, and August 21, 2006, at the Office of Administrative Hearings in Minneapolis, Minnesota. The OAH record closed on August 29, 2006.

Joel M. Fussy, Assistant City Attorney, 333 South 7<sup>th</sup> Street, Suite 300, Minneapolis, Minnesota 55402-2453, appeared on behalf of the City of Minneapolis Department of Regulatory Services – Division of Licenses (“the City”). Daniel L. M. Kennedy, Attorney at Law, Kennedy Law Group, PLLC, 4103 East Lake Street, Minneapolis, Minnesota 55406, appeared on behalf of Amina, Inc., d/b/a 4-You Food Market (“the Licensee” or “the Market”).

**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**

The issue presented in this case is whether the Licensee has violated the conditions imposed upon its licenses or Minneapolis Code of Ordinances § 259.250 and, if so, whether good cause exists to take adverse action against the grocery, food manufacturing, and tobacco dealer licenses held by Amina, Inc. d/b/a 4-You Food Market.

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

## FINDINGS OF FACT

1. 4-You Food Market is a food market and deli located at 2326 Lyndale Avenue North in Minneapolis, at the intersection of Lyndale Avenue North and 24<sup>th</sup> Street.<sup>1</sup> The store was previously known as Wafana's Food Market. There has been a lengthy history of problems with loitering and drug trafficking at this location.<sup>2</sup> Numerous police undercover operations were conducted there prior to December 2005.<sup>3</sup>

2. In approximately November of 2005, Haider Alnomani entered into a sublease with W & F., Inc., to lease 2326 Lyndale Avenue North for a term beginning on November 1, 2005, and expiring on June 30, 2014.<sup>4</sup> Although the name of the store was eventually changed from Wafana's Market to 4-You Food Market,<sup>5</sup> many residents and Police Officers still refer to the store as Wafana's.<sup>6</sup>

3. On or about November 9, 2005, Mr. Alnomani, as President of Amina, Inc., submitted applications to the City for grocery, food manufacturing, and tobacco dealer licenses on behalf of Amina, Inc. d/b/a 4-You Food Market.<sup>7</sup> As part of the application process, Mr. Alnomani completed a form certifying that he was not required to carry worker's compensation insurance because he was a sole proprietor who had no employees.<sup>8</sup> He had not hired any employees at that time.<sup>9</sup>

4. On December 1, 2005, Mr. Alnomani, on behalf of Amina, Inc., agreed to operate 4-You Food Market pursuant to certain "voluntary" conditions if the grocery, food manufacturing and tobacco dealer licenses were granted. The form Mr. Alnomani signed listing these conditions included a statement that he had read and agreed with the conditions and that he understood "that failure on my part or the part of my company or employees to adhere to these conditions may be cause for future action to suspend, revoke or deny renewal of the licenses at 2326 Lyndale Ave. North." The conditions included the following:

- 1) "No Trespassing" signs will be posted. Staff will immediately ask people loitering to leave. If they refuse, staff will call 9-1-1 and cooperate with the police once they arrive. Mpls Ord. 259.250(1)(l)
- 2) The business will ensure that a minimum of (2) staff, in addition to the security person, are working to ensure monitoring of the exterior

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<sup>1</sup> Testimony of Grant Wilson.

<sup>2</sup> Testimony of G. Wilson, Troy Schoenberger, Grant Snyder, Linda Higgins; Exs. 87-123.

<sup>3</sup> Testimony of G. Wilson.

<sup>4</sup> Exs. 15-17.

<sup>5</sup> Testimony of G. Wilson. The sign on the store continued to say "Wafana's" for some period of time; see, e.g., Ex. 72 (photograph taken January 31, 2006). In addition, an invoice from Trademark Tobacco dated February 27, 2006, indicated that the shipment was made to "Wafana Food Market." See Ex. 274.

<sup>6</sup> Testimony of T. Schoenberger, G. Snyder.

<sup>7</sup> Exs. 3-21.

<sup>8</sup> Ex. 6.

<sup>9</sup> Testimony of Haider Alnomani.

and to reduce negative behaviors. Mpls Ord. 259.250(1)(l)(3) and (4)

- 3) The business agrees to actively address security concerns to include loitering, drug activity, trespassing and management of the trespassing program. The business agrees to cooperate fully in the prosecution of criminal activity.
- 4) The business agrees not to sell single cigars sometimes referred to as blunts.
- 5) The business agrees not to sell items which are commonly used by drug users and drug dealers. These items include glass pipes (sometimes with roses inside), Brillo Pads or Chore Boy, small zip lock bags also known as jewelry bags, dice, single use tobacco products to include rolling papers. The business will also agree not to supply matches to non-tobacco customers.

\* \* \*

- 8) All windows will be free of signs and other items that block the view in and out. Mpls Ord. 543.350.
- 9) Owner shall comply with the Surveillance Camera Ordinance. Mpls Ord. 259.250

\* \* \*

- 11) The business agrees to clean property of litter and trash daily including the area within 100 feet of the property line. Mpls Ord. 536.20<sup>10</sup>

5. The City requested these conditions due to the history of problems with loitering and drug trafficking at this location. The purpose of having three employees at the store was to ensure that a security person was present and two employees would be available to run the store and assist with monitoring, in order to curtail illegal activity. The conditions imposed an affirmative responsibility on the Licensee to be diligent in moving people on if they had no business in the store. The posting of "no trespassing" signs on the store was required in order to make it easier for the police to charge trespassers with violations.<sup>11</sup>

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<sup>10</sup> Ex. 22-23. "Blunts" are cigars that the purchaser hollows out and fills with marijuana. Sales of single cigars contribute to loitering and drug sales. People tend to go in and out of the store to buy them, and linger outside buying and using drugs. Testimony of G. Wilson.

<sup>11</sup> Testimony of G. Wilson, Daniel Jacobs.

6. Mr. Alnomani opened the Market for business on approximately December 5, 2005, while the license was being processed.<sup>12</sup>

7. On December 15, 2005, the Minneapolis City Council granted the Licensee a grocery, food manufacture, and tobacco dealer license subject to the conditions set forth in Finding 4 above. The license became effective on December 23, 2005.<sup>13</sup>

8. On December 20, 2005, Minneapolis Police Officers patrolling the area of 24<sup>th</sup> Street and Lyndale Avenue North observed two men loitering in front of the door to the Market, along with a large group of other people. As their squad car pulled up, both men turned and pushed their way through the group to enter the store. One of the men was observed making hand movements as if he were hiding something in the aisle. Upon investigation, the officers found five rocks of suspected crack cocaine. After the men were taken into custody, a search also revealed a small baggie of suspected marijuana.<sup>14</sup>

9. On December 21, 2005, Minneapolis Police Officers received information from another squad that a male standing in front of the Market was selling crack cocaine. Upon investigation, police found that the male was in possession of two "chunks" of suspected crack cocaine.<sup>15</sup>

10. On December 25, 2005, Minneapolis Police Officers responded to a complaint that several individuals outside the Market were selling drugs. When the officers arrived at the store in a marked squad car, two males matching the description of the suspects quickly went into the Market. Upon investigating, the officers discovered five small clear plastic baggies that contained suspected marijuana inside a garbage can located just inside the Market.<sup>16</sup>

11. On December 27, 2005, Minneapolis Police Officers responded to another complaint that two males outside the Market were selling drugs. As the officers arrived at the store, two males matching the description of the suspects were coming out of the Market. When they saw the squad car, the two males turned around and went back into the store. The officers observed one of the males reach into the store shelves and later discovered fifteen plastic baggies which contained suspected marijuana at the back of that shelf. One additional baggie of suspected marijuana was in the possession of one of the men.<sup>17</sup>

12. During the early months of 2006, 4-You Food Market received far more police calls than any other address in its vicinity.<sup>18</sup> Between December 23, 2005, and

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<sup>12</sup> Testimony of H. Alnomani. Mr. Alnomani testified that he obtained workers' compensation insurance at a later date, after he hired employees.

<sup>13</sup> Testimony of T. Schoenberger.

<sup>14</sup> Exs. 189-202.

<sup>15</sup> Exs. 178-188.

<sup>16</sup> Exs. 82, 173-177.

<sup>17</sup> Exs. 82, 168-172.

<sup>18</sup> Ex. 123; Testimony of T. Schoenberger.

January 29, 2006, the Minneapolis Police received 153 calls for service to 2326 Lyndale Avenue North.<sup>19</sup> Around that time, 4-You Food Market was receiving the highest number of police calls of any store in Minneapolis.<sup>20</sup>

13. The Minneapolis Police Department has conducted anti-drug operations in the area in which the Market is located on several occasions both before and after the Licensee began to operate the Market.<sup>21</sup> Minneapolis Police Officer Troy Schoenberger, who is assigned to "problem properties," was assigned to give the corner on which the Market is located extra attention beginning in approximately October of 2005. Based upon the activities he observed near the Market, including hand-to-hand transactions and individuals flagging down passers-by, it was evident to Officer Schoenberger that drug transactions were occurring there.<sup>22</sup>

14. On approximately January 1, 2006, the Police Department began a focused effort to try to reduce the drug activity and police calls in the vicinity of 4-You Food Market.<sup>23</sup> Between January 2006 and March 2006, Minneapolis Police Intelligence Officer Grant Snyder was involved in surveillance of 4-You Food Market approximately 15 to 20 hours per week. Although Market employees would occasionally come out and stand in front of the store, drug activity continued undeterred during that time. It was rare for Officer Snyder to observe three or more employees working at the same time. During the period of December 2005 through March 2006, Officer Snyder observed drug transactions being conducted in the doorway of 4-You Food Market and inside the store in front of the counter. He also observed suspects fleeing into the Market.<sup>24</sup>

15. On January 10, 2006, Minneapolis Police Officers patrolling in the area of 24<sup>th</sup> Street and Lyndale Avenue North observed an individual attempting to sell drugs to several people in the parking lot of the Market. This individual was found in possession of four baggies of suspected marijuana.<sup>25</sup>

16. On January 19, 2006, a Minneapolis Police Officer patrolling in the area of 24<sup>th</sup> Street and Lyndale Avenue North again observed an individual selling drugs in the Market's parking lot. Upon investigation, the man was found to possess thirteen baggies of suspected marijuana.<sup>26</sup>

17. On January 23, 2006, Minneapolis license inspector Daniel Jacobs conducted an inspection of 4-You Market. Mr. Jacobs observed that the store's display included an open box of individually-wrapped cigarillos, which suggested that the store

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<sup>19</sup> Testimony of G. Wilson; Exs. 116-121.

<sup>20</sup> Testimony of G. Wilson.

<sup>21</sup> Testimony of G. Snyder.

<sup>22</sup> Testimony of T. Schoenberger.

<sup>23</sup> Testimony of T. Schoenberger, G. Snyder, G. Wilson.

<sup>24</sup> Testimony of G. Snyder.

<sup>25</sup> Exs. 82, 164-167.

<sup>26</sup> Exs. 159-163.

was offering to sell single cigars.<sup>27</sup> There is no evidence that a citation was issued by the City with respect to this inspection.

18. On January 31, 2006, Mr. Jacobs conducted an additional inspection of 4-You Food Market. He did not see any security person at the Market that day.<sup>28</sup> Mr. Jacobs observed that the Market was offering to sell tobacco rolling papers in the tobacco sales cabinet behind the cashier, took a photograph of the papers, and issued a Violation Notice asserting that this violated the Market's business operation conditions. This is the only time Mr. Jacobs observed rolling papers being offered for sale at 4-You Food Market.<sup>29</sup> Mr. Jacobs also observed that more than 30 percent of the windows of the Market were blocked and issued an administrative citation in the amount of \$200 for violation of Minneapolis Code of Ordinances 543.350. Mr. Alnomani did not file an appeal and proceeded to pay this citation.<sup>30</sup> Mr. Jacobs also observed three individuals standing outside the store for more than 15 minutes. No attempt was made by any employee of the Market to ask these individuals to leave. This violated the operating conditions as well as Minneapolis Ordinance § 259.250. Mr. Jacobs issued Mr. Alnomani another administrative citation (Citation #06-0478254) in the amount of \$200 for permitting loitering in violation of Minneapolis Code of Ordinances § 259.250(i).<sup>31</sup> Mr. Alnomani did not appeal this citation, and did not provide payment until the first day of the hearing in this matter (August 8, 2006).<sup>32</sup>

19. The photographs taken by Mr. Jacobs on January 31, 2006, show that there were no signs posted on the outside of the Market at that time prohibiting trespassing or loitering.<sup>33</sup>

20. Between February 1, 2006, and February 28, 2006, the Minneapolis Police received 115 calls for service to 2326 Lyndale Avenue North.<sup>34</sup>

21. On February 4, 2006, Minneapolis Police Officers responded to a complaint that an individual was selling drugs to people in vehicles in the Market's parking lot. Upon investigation, police observed an individual matching the description speaking to a driver of a vehicle in the parking lot. The man was in possession of two rocks of suspected crack cocaine and two baggies of suspected marijuana.<sup>35</sup>

22. On February 10, 2006, Minneapolis Police Officers patrolling in the area of 24<sup>th</sup> Street and Lyndale Avenue North observed an individual conducting a narcotics transaction with others who were in a vehicle in front of the Market. When this individual noticed the marked squad, he began walking away and was observed

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<sup>27</sup> Ex. 58.

<sup>28</sup> Testimony of D. Jacobs.

<sup>29</sup> Exs. 68-70; Testimony of Daniel Jacobs.

<sup>30</sup> Exs. 71-72, 252; Testimony of D. Jacobs, H. Alnomani.

<sup>31</sup> Exs. 73-74; Testimony of D. Jacobs.

<sup>32</sup> Testimony of D. Jacobs, H. Alnomani; Ex. 281. Due to the imposition of a late fee, the citation was paid in the amount of \$220.00.

<sup>33</sup> Ex. 72 (*compare* Ex. 254).

<sup>34</sup> Exs. 122-126; Testimony of T. Schoenberger.

<sup>35</sup> Exs. 82, 150-158.

disposing of an item behind a trash can. Officers conducted a search and found a baggie containing suspected marijuana behind the trash can.<sup>36</sup>

23. On February 16, 2006, Minneapolis Police Officers responded to a complaint that an individual was selling drugs in front of the Market. The individual, who had been seen by officers loitering in front of the store on previous occasions, was found to be in possession of seven baggies of suspected marijuana.<sup>37</sup>

24. On February 19, 2006, Minneapolis Police Officers patrolling in the area of 24<sup>th</sup> Street and Lyndale Avenue North observed an individual conducting a narcotics transaction in the Market's parking lot. The individual had three baggies of suspected marijuana in his possession.<sup>38</sup>

25. 4-You Market has a security system with several interior cameras and several exterior perimeter cameras. The cameras feed into a VCR.<sup>39</sup> On February 23, 2006, at 7:44 p.m., the Minneapolis police responded to a shooting which occurred at the corner of 24<sup>th</sup> Street and Lyndale Avenue North, just south of the Market. Shell casings were found in the street just south of the front door of the Market. When officers checked to determine if the Market's security cameras had captured the incident, the Market was unable to produce any playback or taped recordings. A cassette tape was in the VCR, but the VCR was not recording because the tape ran out. Two employees were on duty in 4-You Market that night.<sup>40</sup>

26. On March 2, 2006, Minneapolis Police Officers conducted an undercover operation on the sidewalk in front of 2326 Lyndale Avenue North. As part of a "reverse sting," the police used an informant to sell narcotics in front of the Market for two to three hours as officers conducted surveillance. Members of the local news media were also present. The informant was wired for sound. At one point, an employee of the Market approached the informant and told him, "The police are watching you. You shouldn't sell it right here." No security person approached the informant. Approximately five individuals were arrested for loitering with intent to purchase narcotics during this undercover operation. One of these individuals was a male who informed police he was 17 years old. This individual was observed leaving 4-You Food Market holding two single cigars that he had just purchased in the store and then buying marijuana directly in front of the Market. He did not have identification and there is no evidence that police verified his age.<sup>41</sup> The Minneapolis Police Department informed City Licensing of this situation, but there is no evidence that the City issued a citation to 4-You Food Market for selling tobacco to a minor.<sup>42</sup>

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<sup>36</sup> Exs. 82, 145-149.

<sup>37</sup> Exs. 82, 142-144.

<sup>38</sup> Exs. 138-141.

<sup>39</sup> Exs. 238-241, 247, 250-251, 260, 273, 280; Testimony of H. Alnomani.

<sup>40</sup> Exs. 37-48, 203-212; Testimony of H. Alnomani.

<sup>41</sup> Testimony of T. Schoenberger, G. Snyder; Exs. 49-57, 59-67, 133-37.

<sup>42</sup> Testimony of T. Schoenberger, H. Alnomani.

27. On March 9, 2006, Minneapolis Police were dispatched to 2326 Lyndale Avenue North due to a report of narcotics dealing in front of the building. A male walking away as they approached admitted that he had marijuana in his pocket that he had just bought from a man in front of the store. Police seized a small baggie of suspected marijuana from the man.<sup>43</sup>

28. On March 28, 2006, Minneapolis license manager Grant Wilson and license inspector Daniel Jacobs conducted another inspection of 4-You Food Market. Only one employee was working at the time, and no security person was on duty. They observed a large amount of trash within 100 feet of the building. Some of the trash had sunk into the ground, indicating that it had been there a period of time. Although it is possible that some of the trash had been obscured by recent snowfall, the snow was for the most part melted by March 28 and, given the temperatures, it is likely that not all of the trash was hidden by snow until that day. Thus, it was evident that the trash in the area had not been picked up for several days. Mr. Wilson and Mr. Jacobs also found the gates of the Market's dumpster enclosure open, with debris around it, and determined that the dumpster enclosure was in need of repair because some of the wooden slats were broken. They took photographs during their inspection.<sup>44</sup> There is no evidence that a citation was issued by the City based on this inspection.<sup>45</sup>

29. On or about March 28, 2006, the Public Safety and Regulatory Services Committee of the Minneapolis City Council issued a notice to the Licensee to appear before the Committee for a hearing on April 5, 2006, regarding whether the licenses held by the Licensee should be revoked based on allegations that it failed to operate the business according to the special conditions established and agreed upon by the Licensee (specifically, failing to remove litter and debris from the property and within 100 feet of the premises; permitting lurking and loitering near the business, generating excess calls for police services; permitting the sale of rolling papers and single cigars; failing to provide at least two employees on duty at all times; and failing to provide security personnel). The Notice also alleged that the Licensee failed to provide a functioning surveillance camera system; failed to pay an administrative citation in the amount of \$220.00; failed to provide or maintain a refuse container enclosure; sold tobacco products to a minor; and failed to comply with zoning plan site requirements relating to parking lot marking and refuse enclosure requirements. The notice informed the Licensee of its right to either admit the above violations and pursue withdrawal of its license privileges, or deny the allegations and request a contested administrative hearing.<sup>46</sup>

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<sup>43</sup> Exs. 130-132.

<sup>44</sup> Exs. 24-36; Testimony of G. Wilson, D. Jacobs. Ex. 282 shows that 9.9 inches of snow fell in the Twin Cities on March 13, 2.8 inches fell on March 15, and 5.8 inches fell on March 16, 2006. Between March 17 and March 23, the high temperatures ranged from 35 to 45 degrees and the low temperatures from 12 to 32 degrees. By March 28 (the date of the inspection), the high temperature rose to 50 degrees and the low temperature was 27 degrees.

<sup>45</sup> Testimony of G. Wilson.

<sup>46</sup> Ex. 1. The citation amount was \$200 plus a \$20 late fee. See Exs. 73-74.

30. 4-You Food Market has changed its practices in significant ways since early 2006. After approximately 30 minutes, Market employees tell persons standing in front of the store to move or they will call the police. "No trespassing" and "no loitering" signs are posted on the outside of 4-You Food Market the store. Signs are posted announcing that the Market does not sell single cigars or cigarette rolling papers, and there is no evidence that the Market continues to offer these items for sale. Since the February 2006 shooting incident, the owner has tried to make sure that there is sufficient tape in the VCR for the security system. They have repainted the lines in the parking lot and picked up trash around the store and parking lot. Approximately six trash containers are located outside the store. In addition, the Market has developed a written policy and training is provided to Market employees concerning the importance of checking identification before selling tobacco products.<sup>47</sup>

31. City licensing employees have made additional observations of the Market since March 28, 2006. They have noted that the gates of the dumpster enclosure have been kept closed. The dumpster enclosure has been painted yellow and white on one side. Some of the wooden slats of the dumpster enclosure are broken. In the opinion of the Manager of the Department of Licenses and Consumer Services, the color scheme is not compatible with the exterior of the principal building and thus is not consistent with Minneapolis Code of Ordinances § 535.80. The Market remained in compliance with City ordinance window requirements. No other violations have been noted in terms of trash or other problems.<sup>48</sup>

32. The number of police calls to 2326 Lyndale Avenue North has dropped dramatically since March 2006. During the month of March, the Minneapolis Police received 22 calls for service to 2326 Lyndale Avenue North; during the month of April, there were 23 calls for service; during the month of May, there were 7 calls for service; during the month of June, there were 3 calls for service; and, during the month of July, only one police call was made.<sup>49</sup>

33. More than half of the police calls to 4-You Food Market that are reflected on Exhibit 122 were generated by a "chronic 911 caller" who is disabled and lives in the area. That caller has informed police that there is no longer activity in front of 4-You Food Market.<sup>50</sup>

34. Three employees besides Mr. Alnomani work for 4-You Market. The Market does not always have more than one employee present in the store.<sup>51</sup> Two employees frequently work at the same time and, on occasion, three are present.<sup>52</sup> The

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<sup>47</sup> Testimony of H. Alnomani; Exs. 245-246, 248-249, 253-256, 261, 266, 268, 270.

<sup>48</sup> Testimony of G. Wilson, D. Jacobs; see Ex. 270. Minneapolis Code of Ordinances § 535.80 states that "[r]efuse storage containers shall be enclosed on all four (4) sides by screening compatible with the principal structure . . . ." The Notice of Hearing did not contain any allegation that this provision was violated by 4-You Food Market or that it supports the imposition of disciplinary action.

<sup>49</sup> Exs. 122-123, 127-128; Testimony of D. Jacobs, T. Schoenberger.

<sup>50</sup> Testimony of T. Schoenberger.

<sup>51</sup> Testimony of D. Jacobs, G. Snyder.

<sup>52</sup> Testimony of H. Alnomani, G. Snyder.

Market has never employed a security person. Mr. Alnomani does not intend to hire a full-time security person in the future because he would lose money if he did that.<sup>53</sup>

35. Numerous individuals submitted statements complaining about drug dealing occurring inside and outside of Wafana's Market and/or 4-You Food Market and in the Market's parking lot. Several of them stated that they did not feel safe driving in the area or patronizing the Market because of the people loitering and offering to sell drugs, and urged closure of the business.<sup>54</sup> State Senator Linda Higgins also testified that she has heard regularly from constituents who are angry, upset and annoyed about the activities outside the Market. In her opinion, the Market has had a negative impact on the community and very few people are comfortable shopping there. She supports closure of the Market because any benefit is far outweighed by the bad conduct related to the store. She indicated that the area around the Market had been noticeably quieter in the months preceding the hearing.<sup>55</sup> Joan Thom, who chairs the Crime and Safety Committee for the Hawthorne Area Community Council, also testified that the drug trafficking at 4-You Food Market was not as prevalent at the time of the hearing but had shifted to other locations on Lyndale Avenue North in recent months. She credited undercover officers, officers in squads, private citizens, and the police mobile command center for the decrease in criminal activity.<sup>56</sup>

36. The Licensee submitted a nine-page petition urging that the City keep 4-You Market open for business because it is a "vital part of the neighborhood, for those of us that cannot afford to travel further to purchase needful items for our families." The petition also stated that the Market's "friendly staff" had done "an admirable job to clean up the corner of 24<sup>th</sup> and Lyndale . . . ."<sup>57</sup> Some of the names on the petition appear more than one time, and some of the individuals signing the petition have previously been arrested by Minneapolis Police for narcotics or for loitering with intent to buy or sell narcotics.<sup>58</sup> The Licensee also submitted a statement from Rev. Jerry McAfee, Pastor of a church in the North Minneapolis neighborhood, asserting that closure of the store would expose many people to the unnecessary hardship connected with having to travel further to pick up grocery items and complimenting the Market's efforts to clean up the area.<sup>59</sup>

37. There is no evidence that anyone associated with 4-You Food Market has actively engaged in drug dealing.<sup>60</sup>

38. On May 8, 2006, the City issued a Notice and Order for Hearing to the Licensee alleging that 4-You Food Market had failed to comply with the operating

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<sup>53</sup> Testimony of H. Alnomani, D. Jacobs, T. Schoenberger, G. Snyder. The record is somewhat unclear concerning whether or not the Licensee contemplates part-time security help in the future, given Mr. Alnomani's vague testimony that he "will in the future" hire someone for security four hours per day.

<sup>54</sup> Exs. 214-236.

<sup>55</sup> Testimony of Linda Higgins; Ex. 226.

<sup>56</sup> Testimony of Joan Thom; Ex. 233.

<sup>57</sup> Ex. 237.

<sup>58</sup> Testimony of T. Schoenberger, G. Snyder; Exs. 275-279.

<sup>59</sup> Ex. 267.

<sup>60</sup> Testimony of G. Snyder.

conditions imposed on its licenses and had violated Minneapolis Code of Ordinances § 259.250, and that good cause exists to revoke the licenses held by the Licensee. The Notice and Order for Hearing alleged that the Licensee's failure to pay an administrative citation and its operation of the Market as a public nuisance provided additional support for a finding that there is good cause for revocation of the Licensee's licenses. The hearing was continued to August 8, 2006, and was completed on August 21, 2006.

Based on the foregoing 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.<sup>61</sup>

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. 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.<sup>62</sup>

5. As set forth in Exhibits 22-23 and Findings 5 and 7 above, the City Council granted the applications of the Licensee for grocery, food manufacturing, and tobacco dealer licenses subject to a number of specific conditions. The Licensee agreed to the imposition of these conditions and was informed that failure to adhere to these conditions "may be cause for future action to suspend, revoke or deny renewal of the licenses."

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

**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.

<sup>61</sup> Minn. Stat. §§ 14.50, 14.55; Minneapolis Charter Chapter 4, Section 16, and Minneapolis Code of Ordinance § 259.250.

<sup>62</sup> *In re Kaldahl*, 418 N.W.2d 532, 535 (Minn. App. 1988).

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

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 624.712 through 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.

8. Minneapolis Code of Ordinances § 543.350 specifies that “[w]indow signs shall be allowed, provided that such signage shall not exceed thirty (30) percent of the window area, whether attached to the window or not, and shall not block views into and out of the building at eye level.”

9. Minneapolis Code of Ordinances § 259.230(b) specifies that “[e]very . . . convenience food store, grocery store, tobacco dealers, food confectionary stores and off sale liquor . . . shall install a security camera of a type, number and placement approved by the director of licenses and consumer services and/or Minneapolis Police Department.” Section 259.230(d)(1) requires that the camera(s) “must be capable of producing a retrievable image on film, tape or digital video that can be made a permanent record” and “shall be maintained in proper working order at all times during all hours of operation of the business.” Section 259.230(d)(4) states that the establishment “shall maintain and make available, video tapes, film or digital material, to

license and consumer services and Minneapolis Police Department for periods of one month before reusing materials or destruction . . . .”

10. Minneapolis Code of Ordinances § 536.20 specifies that grocery stores are required to conduct regularly inspect the premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within 100 feet for purposes of removing any litter found thereon.<sup>63</sup>

11. During the period of December 5, 2005, to March 3, 2006, the Licensee failed to adhere to a number of the conditions imposed on his licenses and a number of City ordinances. Specifically:

- a. On January 23, 2006, the Licensee offered to sell single cigars in violation of the operating conditions to which the Licensee agreed and which were imposed by the City Council when the licenses were granted. On March 2, 2006, the Licensee sold two single cigars to an individual who was thereafter arrested for purchasing marijuana outside the store, in violation of the operating conditions and Minneapolis Code of Ordinances § 259.250(2).
- b. Tobacco rolling papers offered for sale in the tobacco sales cabinet behind the cashier on January 31, 2006, in violation of the operating conditions placed on the Licensee’s licenses.
- c. On January 31, 2006, the windows of the Market were blocked more than 30 percent, in violation of the operating conditions and Minneapolis Code of Ordinances § 543.350. In addition, there were no “no trespassing” signs posted outside the door on that date, in violation of the operating conditions.
- d. On January 31, 2006, the Licensee’s employees made no attempt to ask three individuals loitering outside the store to leave in violation of the operating conditions placed on the Licensee’s licenses and Minneapolis Code of Ordinances § 259.250(1)(i). In addition, during the period of January 2006 to March 9, 2006, significant drug-related activity occurred in front of the Market and in its parking lot and Minneapolis Police Officers made numerous drug arrests at the location.
- e. On February 23, 2006, the Licensee failed to maintain its security camera equipment in proper working condition and failed to maintain video tapes

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<sup>63</sup> Similarly, Minneapolis Code of Ordinances § 259.125 requires all licensed businesses to inspect their property “from lot line to lot line, all adjacent streets, sidewalks and alleys adjoining their premises, and sidewalks and alley within one hundred (100) feet of such premise lot lines and shall remove any litter and debris found thereon daily.”

and make them available to the Minneapolis Police Department in violation of the operating conditions imposed on its licenses and Minneapolis Code of Ordinances § 259.230.

- f. As noted by City inspectors on March 28, 2006, the Licensee failed to ensure that litter within 100 feet of the Market was picked up on a regular and/or daily basis in violation of the operating conditions imposed on its licenses and Minneapolis Code of Ordinances § 536.20.
- g. By failing to have at least two employees on duty on March 28, 2006, and by failing to have any security personnel on duty throughout the entire period of licensure, the Licensee violated the operating conditions imposed on its licenses and Minneapolis Code of Ordinances § 259.250(4).

12. The City did not establish by a preponderance of the evidence that the Licensee violated Minn. Stat. § 609.685 (which prohibits the sale of tobacco to individuals under the age of 18) or Minneapolis Code of Ordinances § 259.250(2) on March 2, 2006, due to its failure to provide evidence that police confirmed that the individual was under the age of 18.

13. The City proved by a preponderance of the evidence that the Licensee failed to provide adequate security between December 5, 2005, and March 9, 2006, to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, in violation of Minneapolis Code of Ordinances § 259.250(4) and the Licensee's operating conditions.

14. Under 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. Under Minn. Stat. § 609.745, anyone having control of real property who permits it to be used to maintain a public nuisance is guilty of a misdemeanor. ~~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. However, the City did prove by a preponderance of the evidence that Mr. Alnomani failed to take appropriate action to prevent 4-You Food 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).~~

15. 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.

16. The Licensee did not pay the City's January 31, 2006, citation for permitting loitering until more than five months after payment was due.

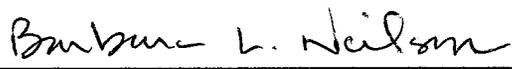
17. The City has demonstrated that good cause exists for taking adverse action against the business licenses held by the Licensee.

Based on the foregoing 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 4-You Food Market.

Dated: September 28, 2006

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Tape-recorded (5 tapes); no transcript prepared.

### MEMORANDUM

The City of Minneapolis is seeking to revoke the business licenses of 4-You Food Market based upon allegations that the Licensee agreed to operate its business subject to certain conditions, the licenses were granted subject to those conditions, but the Licensee has failed to comply with the conditions. The City asserts that the Licensee not only violated numerous operating conditions, but also various City ordinances, and that activities at and surrounding the Market constitute a public nuisance as defined by Minn. Stat. §§ 609.74 and 609.745. The City contends that the violations of the operating conditions and ordinances, along with the Licensee's failure to timely pay one of the administrative citations issued by the City, warrant revocation of the Licensee's licenses.

Under Section 259.250 of the Minneapolis Code of Ordinances, business licensees have an affirmative responsibility to run their business in a lawful manner. There were a number of instances where the Licensee completely failed to comply with City ordinances and the conditions placed on its licenses. Most notably, the Licensee has never employed a security person and has no intention of hiring a full-time security person in the future, despite agreeing to this as a condition of licensure. In addition, at least prior to March 2006, the Licensee rarely had a total of three employees working in the store at the same time, as anticipated by the conditions, and at least at times operated with only one employee in the store. The Licensee also continued to offer products that could be used for drug paraphernalia for sale, including rolling papers and single cigars, even though it had agreed that such sales would be prohibited. The Licensee also failed to pay one of the administrative citations it had received until the

first day of the hearing, more than six months after the inspection that led to the issuance of the citation.

The Licensee's attempts to argue that the violations did not occur were not credible. For example, the Licensee's contention that it did not sell single cigars and that Exhibit 58 was not a photograph taken at 4-You Food Market is not convincing for several reasons. First, it appears that several of the items pictured in Ex. 58 as being on display in the store ("Phillies Cigarillos Berry," "Garcia Vega," "Swisher Sweets," and "Black & Milds") are, in fact, items that are purchased on occasion by the Market and that boxes containing five cigars may be sold individually if the box is simply opened.<sup>64</sup> In addition, the fact that the police report<sup>65</sup> notes that a customer emerged from the Market with two single "Swisher Sweet" cigars during the sting on March 2 reasonably supports the conclusion that single cigars were, in fact, offered for sale by the Market. The Licensee's contention that it did not sell rolling papers but was merely holding on to old inventory from Wafana's in order to return it for credit was similarly unconvincing, in light of the fact that the rolling papers were in the display case three months after the Licensee began to operate the store. Moreover, a photograph offered into evidence by the Licensee shows that its display case included a product called "New E-Z Roll Papers."<sup>66</sup>

It is true that there has been a dramatic reduction in the number of police calls made to 2326 Lyndale Avenue North since March of 2006. It is difficult to know what is responsible for this reduction, since differing explanations were offered by witnesses at the hearing. It is likely that the Licensee's renewed efforts to adhere to its operating conditions and City ordinances have played a significant role, along with the City's extensive police and regulatory activity.

Business licensees are responsible for the manner in which business is conducted on their premises. When illegal activity is conducted by others on the business premises, it becomes the responsibility of the licensee, provided that there has been adequate notice of the illegal conduct and insufficient action was taken to prevent subsequent illegal conduct.<sup>67</sup> The Minnesota Supreme Court explained in an analogous case that landlords who do not cooperate with the police department in helping deter criminal activity 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 taking the step of license revocation.<sup>68</sup> Similarly, in *CUP Foods, Inc. v. City of Minneapolis*,<sup>69</sup> the Minnesota Court of Appeals upheld the City's finding that there was good cause to discipline a convenience store's licenses where there was ample evidence that drug

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<sup>64</sup> Ex. 274 (2/27/06 pink invoice). The Licensee contended that Ex. 274 included a complete set of invoices for tobacco products from the time it took over the store. However, the exhibit only included twelve invoices from Core-Mark International, Inc., bearing dates of Dec. 30, 2005, through April 7, 2006, and one invoice dated February 27, 2006, relating to a purchase from Trademark Tobacco. The latter invoice shows several purchases of "S. sweet" Cigarettes including Berry flavor, Garcia Vega Cigarettes, and "Black & Milds."

<sup>65</sup> Exs. 51-52.

<sup>66</sup> Ex. 243 (second row of display case, at far right).

<sup>67</sup> *Zeman v. City of Minneapolis*, 552 N.W.2d 548 (Minn. 1996);

<sup>68</sup> *Zeman*, 552 N.W.2d at 554.

<sup>69</sup> 633 N.W.2d 557, 564 (Minn. App. 2001).

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 the present case, the Administrative Law Judge is not persuaded by the Mr. Alnomani's testimony that he did not know when he took over the store that there were problems with crime in the area. Loitering and drug dealing occurred frequently at and around 4-You Food Market both before and after December 2005, when the Licensee began operations. Officer Snyder testified that he spoke in an undercover capacity with approximately three different employees of 4-You Market at various times after December 2005, and they were generally aware of the drug activity that was going on. Moreover, the document setting forth the conditions which the Licensee signed on December 1, 2005, also provided notice of problems in the area by explicitly stating that the Licensee would "actively address security concerns to include loitering, drug activity, trespassing and management of the trespassing program" and would "cooperate fully in the prosecution of criminal activity."<sup>70</sup>

The Licensee contends that it is unfair that the City is attempting to make it adhere to different or more stringent conditions than required of other stores operating under only City ordinances. However, the Licensee agreed to these conditions being imposed as an inducement for the City to grant its license applications. The Licensee received explicit warning from the City that failure to adhere to the operating conditions could constitute grounds for license revocation. There was a long history of drug-related criminal activity at this location, and the City and community understandably wanted to be able to expect the new owner to take steps to curtail that activity. Under these circumstances, the Licensee cannot properly choose to simply ignore these conditions because it doesn't like them or finds the cost of compliance to be too steep.

Although some mitigating factors are present in this case that might counsel against revocation<sup>71</sup> (primarily the dramatic reduction in criminal activity and police calls since March 2006 due at least in part to the efforts of the Licensee), the City has shown that it has ample grounds to revoke the Licensee's licenses and the Administrative Law Judge recommends that it do so. The City established that loitering and drug dealing occurred in front of the Market and in its parking lot on a frequent basis (as well as inside the store on occasion) from approximately December 2005 until March 9, 2006. Among other, less serious violations,<sup>72</sup> the City established that the Licensee encouraged drug-related activity by offering single cigars and rolling papers for sale and failing to provide adequate security to prevent criminal activity and loitering. The Licensee was given clear notice of the conditions that would govern its business and knew what was expected, but has chosen not to comply. The Licensee did not take

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<sup>70</sup> Ex. 22.

<sup>71</sup> The City has broad discretion in selecting an appropriate penalty, 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. *In re Walker's License*, 210 Minn. 337, 300 N.W. 800, 802 (1941).

<sup>72</sup> As noted above, the City also established that the Licensee failed to comply with window covering requirements, failed to ensure its video equipment was working properly, failed to remove litter and debris from the business premises on a daily or frequent basis, and was several months overdue in its payment of an administrative citation.

effective action until there was media attention and license revocation was proposed. Under all of the circumstances, it is concluded that good cause for revocation has been shown.

**B. L. N.**