

2017 NOV -7 P 1:07

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

SUMMONS

The Licenses Committee of the Common Council of the City of Milwaukee

TO: Any Police Officer of and for the City of Milwaukee

You are hereby commanded to summon Daniel Perry, agent for V&D LLC, licensee for the premises at 3520 W Villard Avenue, Milwaukee, Wisconsin ("Villard Ave Tobacco"), to appear before the Licenses Committee of the Common Council of the City of Milwaukee at its meeting in Room 301-B, City Hall, 200 East Wells Street, in the City and County of Milwaukee, State of Wisconsin on Monday, November 13, 2017 at 2:00 p.m. to show cause why the Cigarette & Tobacco license issued to Daniel Perry, agent for V&D LLC, for the premises at 3520 W Villard Avenue, Milwaukee, Wisconsin and known as "Villard Ave Tobacco" should not be revoked or suspended.

TO: Daniel Perry
3150 N 35th Street
Milwaukee, WI 53216

Pursuant to sec. 134.65(6) to 134.65(8) of the Wisconsin Statutes, and §§ 84-43, 85-3 to 85-5 of the Code of Ordinances of the City of Milwaukee, you are hereby commanded to appear on November 13, 2017 at 2:00 p.m. at a hearing before the City's Licenses Committee to be held in Room 301-B, City Hall, 200 East Wells Street, Milwaukee, Wisconsin to show cause why the Cigarette & Tobacco license should not be revoked. The hearing is being initiated because of the City of Milwaukee's receipt of a signed and sworn complaint filed by Captain Andra Williams, Commander of the Milwaukee Police Department, District Four. A copy of the above-referenced complaint is attached hereto as well as copies of §§ 84-43, 85-3 to 85-5 of the Milwaukee Code of Ordinances, and Chapters 134.65(6) to 134.65(8) of the Wisconsin Statutes.

On November 13, 2017 at 2:00 p.m. you will be given an opportunity to speak on your own behalf, and to respond to and challenge any charges or reasons given by witnesses at the aforementioned hearing in support of a revocation or suspension of your licenses. You may present your own supporting witnesses, under oath, at this hearing, and you may also confront and cross-examine opposing witnesses. If you wish to do so, and at your own expense, you may be accompanied by an attorney or interpreter of your own choosing to represent you at this hearing.

If you, Daniel Perry, fail to appear in person before the Committee on November 13, 2017 at 2:00 p.m. in Room 301-B, of City Hall, as required by the summons, the Committee will proceed to consider the allegations of the complaint which shall be taken

In re the Cigarette and Tobacco License of:

V & D, LLC

Daniel R. Perry, Agent

as the Licensee for the licensed premises

known as Villard Ave Tobacco, located at

3520 W Villard Ave, Milwaukee, Wisconsin

SWORN CHARGES BY CHIEF OF POLICE FOR REVOCATION OF LICENSES

Pursuant to Wisconsin Statutes Section 134.65(6),(7) and Sections, 84-43-11, 85-4 of the Milwaukee Code of Ordinances (“MCO”), Chief of Police Edward Flynn, a City of Milwaukee resident and interested party, by Captain Andra Williams, Commander of Police District 4, City of Milwaukee resident and interested party, being first duly sworn and upon his oath, respectfully charges the following based upon review of official Milwaukee Police Department (“MPD”) reports drafted in the ordinary course of business, including those attached as part of these sworn charges, review of documents received by MPD District 4 and communication with police, law enforcement, community members and municipal officials:

OWNERSHIP AND EMPLOYEES

1. V & D, LLC, by its agent Daniel Perry, (hereinafter, “Mr. Perry”) is the holder of a Cigarette and Tobacco license for the licensed premises known as Villard Ave Tobacco and is located at the property of 3520 W Villard Avenue, Milwaukee, Wisconsin, which is a general retail, brick and mortar building (hereinafter, the “Property”). Upon information and belief the Property is owned by Earl and Barbara Wheatfall, whose primary address is 2271 W Clubview Drive, Milwaukee, Wisconsin. The Property has been owned by Earl and Barbara Wheatfall since February 2000.

2. Upon information and belief, V & D, LLC renewed the Cigarette and Tobacco

license for Villard Ave Tobacco on March 7, 2017 and expires on April 15, 2018. Additionally, V & D has been operating said license at the Property since January 2011.

3. Upon information and belief, Daniel Perry has been operating Villard Ave Tobacco as the registered agent since its origination. On October 28, 2014, Daniel Perry pleaded guilty in Milwaukee County Case, *2014-CF-003164*, to the following charges: (1) Felony-Felon Possession of a Firearm; (2) Felony-Felon Possession of a Firearm; (3) Misdemeanor-Possession of $\leq 6,000$ Unstamped Cigarettes. A fourth charge of Felony-Possession of THC (2nd Offense) was dismissed but read-in on the prosecutor's motion. Mr. Perry remains incarcerated for the above-listed offenses. Mr. Perry was approved as the registered agent for the Villard Ave Tobacco Cigarette and Tobacco license on March 7, 2017.

4. Daniel Perry has previously been found guilty in the Milwaukee Municipal Court for: (1) selling cigarettes in a container without approved stamp on November 20, 2012, municipal case number 12116909; and (2) selling cigarettes to a minor on December 12, 2014, municipal case number 1406778.

UNLAWFUL SALE OF TOBACCO ACTIVITY

5. Villard Ave Tobacco has a history of repeated tobacco license violations and nuisance activities. This repetitive history has been observed by public citizens and verified through ongoing Milwaukee Police Department ("MPD") and the Wisconsin Department of Revenue ("DOR") investigations. This activity is a substantial burden to MPD and DOR resources as law enforcement officers are deployed to conduct their investigations.

6. The MPD and DOR investigations reveal a continuous pattern of direct violations of state Cigarette and Tobacco Products Retailer License violations, Wis. Stats. § 134.66(2) and municipal Cigarette and Tobacco License violations, Milwaukee Code of Ordinances (MCO) 106-30. Villard Ave Tobacco's unlawful tobacco sales have causally and substantially impacted the premises

and the immediate surrounding neighborhood; therefore, it constitutes as a public nuisance.

7. On August 1, 2016, MPD officers conducted a 30-minute surveillance at Villard Ave Tobacco for possible single selling of cigarettes. The officers observed approximately 10-15 individuals entering the tobacco store and exiting with single cigarettes in their hands.

8. On August 2, 2016, MPD officers conducted a 30-minute surveillance at Villard Ave Tobacco for possible single selling of cigarettes. The officers observed approximately 10-15 individuals entering the tobacco store and exiting with single cigarettes in their hands.

9. On August 2, 2016, the MPD officers conducted an investigation at Villard Ave Tobacco by having a confidential informant ("CI") purchase single cigarettes from the store. At approximately 5 P.M. the CI entered the tobacco store and purchased two Newport cigarettes for \$1.00 from the employee of the store. The CI indicated the cigarettes were sold for \$0.50 each. After purchasing the cigarettes, the CI also purchased marijuana from an individual standing outside the store. MPD subsequently arrested the seller and referred charges to the District Attorney's Office.

10. On August 3, 2016, MPD officers conducted an investigation at Villard Ave Tobacco by having a CI purchase single cigarettes from the tobacco store. At approximately 9:30 A.M. the CI purchased two Newport Cigarettes from an employee at the store. The CI indicated the cigarettes were sold for \$0.50 each.

11. On August 3, 2016, MPD officers conducted a 30-minute surveillance at Villard Ave Tobacco for possible single selling of cigarettes. The officers observed approximately 20 individuals enter the tobacco store and exit with single cigarettes in their hands. After observing the suspected single sale of cigarettes, MPD officers conducted several field interviews with individuals they observed exiting the store with single cigarettes. At approximately 10:39 A.M., MPD conducted a field interview with a black male with the initials O. J., who stated he purchased two Newport

cigarettes for \$1.00 from the store. The MPD next conducted a field interview with a white female with the initials T.C., who stated she purchased four Newport cigarettes from an employee working at the store. Lastly, at approximately 10:55 A.M., the MPD conducted a field interview with a 16-year-old juvenile male with the initials K.A., who stated he purchased two Newport cigarettes for \$1.00 from an employee at the tobacco store. The juvenile further admitted that he did not show any form of identification to the employee prior to purchasing the cigarettes.

12. On September 8, 2016, MPD officers conducted an investigation at Villard Ave Tobacco by having a CI purchase single cigarettes from the store. At approximately 1:30 P.M. the CI entered the store and later returned with two Newport cigarettes. It was determined the CI purchased two single cigarettes from an employee working at the store for \$0.50 each. The MPD officers then conducted a field interview with the employee at the tobacco store. The employee stated he had been working at the store for approximately 6-months and had been selling single cigarettes to customers since his employment began. The employee was later taken into custody for outstanding warrants for possession of marijuana.

13. Later on September 8, 2016, the MPD performed a license premise check of Villard Ave Tobacco after placing the employee into custody. During the search, the MPD discovered an open pack of single Newport brand cigarettes behind the cashier's counter. The MPD additionally found an expired cigarette/tobacco license displayed on the wall, in violation of the MCO. The MPD also observed there to be a large amount of loose currency and change in the cash register and in a bucket near the floor of the cash register. It should be known that the large amount of loose change is evidence of customers purchasing single cigarettes because single cigarettes are often purchased with coin currency.

14. On September 10, 2016, MPD conducted an investigation at Villard Ave Tobacco by coordinating with an underage individual, date of birth of 09/22/99, to purchase a tobacco product

at the store. The underage individual purchased one Black & Mild cigar from an employee working at the tobacco store and was not asked for identification.

15. On December 30, 2016, MPD conducted an investigation at Villard Ave Tobacco by having a CI purchase single cigarettes from the store. At approximately 3:16 P.M. the CI entered the store and shortly returned with six Newport cigarettes. It was determined the CI purchased six individual cigarettes from an employee for \$0.50 each.

16. On January 4, 2017, MPD conducted an investigation at Villard Ave Tobacco by having a CI purchase single cigarettes from the store. At approximately 6:08 P.M. the CI entered the store and shortly returned with four Newport cigarettes. It was determined the CI purchased four individual cigarettes from an employee for \$0.50 each.

17. On January 30, 2017, MPD conducted an investigation at Villard Ave Tobacco by having a CI purchase single cigarettes from the store. At approximately 2:20 P.M. the CI entered the store and shortly returned with two Newport cigarettes. It was determined the CI purchased two individual cigarettes from an employee for \$0.50 each. An undercover MPD officer followed the CI into the store and video recorded the purchase.

18. On February 24, 2017, MPD conducted an investigation at Villard Ave Tobacco by having a CI purchase single cigarettes from the store. At approximately 11:08 A.M. the CI entered the store and shortly returned with four Newport cigarettes. It was determined the CI purchased four individual cigarettes from an employee for \$0.50 each.

19. On February 27, 2017, MPD conducted an investigation at Villard Ave Tobacco by having a CI attempt to purchase single cigarettes from the store. At approximately 2:21 P.M. the CI entered the store and shortly returned with four Newport cigarettes. It was determined the CI purchased four individual cigarettes from an employee for \$0.50 each.

20. The continuous unlawful sale of single cigarettes is a direct violation of MCO 106-

30-3-c and Wis. Stat. § 134.66(2)(e) and constitutes as nuisance activity.

21. On March 24, 2017, agents for the DOR conducted an inspection at Villard Ave Tobacco. After the inspection of the tobacco store, the DOR confiscated approximately 7 packs of cigarettes and 54 boxes of cigars. It was determined that all of the confiscated cigarettes and cigars were untaxed and stamped in Illinois and were being sold illegally in Wisconsin. Additionally, the tobacco store could not provide invoices for the purchases of the confiscated product. Moreover, the tobacco product was purchased in Illinois to avoid being taxed in Wisconsin. Selling untaxed and out-of-state stamped tobacco product and failing to provide invoices for the purchases is a violation of Wis. Stats. §§ 134.66(2) and 139.321(1), and MCO 106-30-3-c.

22. On March 24, 2017, in response to the ongoing license violation activity at Villard Ave Tobacco, MPD mailed “Notice of Nuisance Premises” to Daniel Perry, the licensed agent for the tobacco store. A copy of the Notice was additionally sent to Earl Wheatfall. The letter informed Mr. Perry that the MPD has designated Villard Ave Tobacco as a Nuisance Premises, in violation of MCO 80-10. The letter additionally described the ongoing nuisance activity at Villard Ave Tobacco and directed Mr. Perry to submit a nuisance abatement plan. The MPD never received a response from Daniel Perry, the Wheatfalls, or a designee on their behalf regarding the nuisance designation letter. The Notice of Nuisance Premises letter is attached to this Complaint.

23. On April 22, 2017, pursuant to MCO 80-10-3-d, the MPD sent a “Failure to Respond” letter to Daniel Perry and the Wheatfalls indicating Villard Ave Tobacco is now subject to billing for future police services for failing to provide a written course of action to abate the nuisance activity. The MPD did not receive a response from either the tobacco store licensee or the Wheatfalls or their designee. The Failure to Respond letter is attached to this Complaint.

24. Subsequently, DOR determined Villard Ave Tobacco failed to renew the 2017 retail seller permit issued by the State. On June 2, 2017, a DOR agent spoke with a tobacco store

representative who stated the store was not in operation and not selling tobacco products.

25. On June 8, 2017, MPD conducted an investigation at Villard Ave Tobacco by having a CI purchase single cigarettes from the store. At approximately 1:24 P.M. the CI entered the store and shortly returned with four individual Newport cigarettes. It was determined the CI purchased four individual cigarettes from the employee at the tobacco store for \$0.50 cents each.

26. On July 28, 2017, a plain-clothed MPD officer entered Villard Ave Tobacco and purchased a single pack of cigarettes. After verifying the tobacco store was in operation and continuing to sell tobacco products without a retail seller's permit from the state of Wisconsin, the DOR agent entered the tobacco store and observed the store employee immediately attempt to remove cigarette and tobacco products from the store. The DOR agent later verified the tobacco product was untaxed with an out-of-state tobacco stamp. During the investigation, the DOR agent additionally found there to be no record of sale for any tobacco product. MPD and DOR subsequently closed the store for selling untaxed tobacco product and having an invalid retail seller's permit. Soon after the closure, the tobacco store renewed its seller's permit and lawfully reopened.

27. A retail seller's permit is required for every individual, partnership, corporation, or other organization making retail sales, leases, or rentals of tangible personal property or taxable services in Wisconsin. Selling merchandise with an expired seller's permit is a violation of Wis. Stat. § 77.53. Upon information and belief, the tobacco store was unlawfully operating throughout the 2017 year until renewing the seller's permit after law enforcement official closed the store.

28. Upon information and belief, Villard Ave Tobacco frequently hosts and allows individuals to unlawfully congregate, loiter and litter on the premises in violation of MCO 106-31. The continuous loitering and littering from individuals associated with Villard Ave Tobacco has caused a detriment to the safety and promotion of the neighborhood and surrounding businesses.

29. Villard Ave Tobacco is a building or structure that frequents in the unlawful sale of

cigarettes in violation of MCO 106-30 and Wis. Stat. § 134.66 and is a constant drain on police resources in responding to calls-for-service.

BASED UPON the continuous sale of single and underage cigarettes and reoccurring selling of untaxed tobacco product, which has cumulatively had a substantial adverse effect upon the health, safety or convenience and prosperity of the immediate neighborhood;

THE CHIEF OF POLICE, by his designee, respectfully requests the immediate revocation of the Cigarette and Tobacco license relative to the above-referenced Licensee and licensed premises, Villard Ave Tobacco, because:

1. Pursuant to Wis. Stat. Sec. 134.66(2)(e) and MCO 106-30-3-c, the Licensee has continued to sell single cigarettes and therefore has violated Ch. 134, Wis. Stats. and municipal regulations;

2. Pursuant to Wis. Stat. Sec. 134.66(2)(a) and MCO 106-30-2-a, the Licensee has continued to sell cigarettes to underage persons and therefore has violated Ch. 134, Wis. Stats. and municipal regulations;

3. Pursuant to Wis. Stat. Secs. 134.66(2)(e), 139.321(1) and MCO 106-30-3-c, the Licensee has sold untaxed cigarettes and other tobacco product with out-of-state stamps and therefore has violated Ch. 134, 139, Wis. Stats. and municipal regulations;

4. Pursuant to Wis. Stat. 134.65(4) and MCO 84-43-10, the Licensee failed to maintain a record of sales for cigarettes and other tobacco product and therefore has violated Ch. 134, Wis. Stats. and municipal regulations;

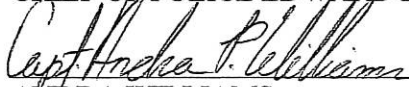
5. Pursuant to MCO 85-4-4-c-15 & 22 there are other reasonable causes which are in the best interests, public safety, welfare and good order of the City of Milwaukee, including:

a. **Disregard for Public Safety:** Villard Ave Tobacco fails to reduce individuals from loitering and littering on the premises. This action has had a substantial adverse

effect upon the health, safety or convenience and prosperity of the immediate neighborhood and surrounding business.

Dated at Milwaukee, Wisconsin this 16 day of October, 2017.

CHIEF OF POLICE EDWARD FLYNN, by



ANDRA WILLIAMS

Commander, Milwaukee Police District 4

The foregoing complaint seeking revocation of the Cigarette and Tobacco License was subscribed and sworn to and before me this 16 day of October, 2017.



Notary Public, State of Wisconsin
My commission is permanent



Drafted by:
PATRICK J. LEIGL
Assistant City Attorney
State Bar No: 1095144

March 24th, 2017

Mr. Daniel R Perry
Cigarette and Tobacco
3520 W Villard Ave
Milwaukee, WI. 53209

Re: Notice of Nuisance Premises

Dear Mr. Daniel R Perry:

This letter is notice to you that the Milwaukee Chief of Police, by the chief's designee, the district commander, has determined that the premises located at 3520 W. Villard Ave ("Villard Avenue Tobacco") is a nuisance pursuant to Milwaukee Code of Ordinances ("MCO") § 80-10, Chronic Nuisance Premises. As an individual or entity that is licensed or subject to a license in the operation of a business upon the premises, you are a responsible party for abating the nuisance activities occurring at the premises.

The Milwaukee Police Department has responded to the following described nuisance activities at the premises on the corresponding dates, which qualify the premises as a nuisance:

1. On January 30th, 2017 at 2:20 pm, Squads responded to 3520 W Villard Ave, along with a confidential informant, who purchased single cigarettes. This is a violation of 80-10-2-c-1-ii.
2. On February, 24th, 2017 at 11:08 am, Squads responded to 3520 W Villard Ave along with a confidential informant, who purchased single cigarettes. This is a violation of 80-10-2-c-1-ii.
3. On February, 27th, 2017 at 2:21 pm, Squads responded to 3520 W Villard Ave, along with a confidential informant, who purchased single cigarettes. This is a violation of 80-10-2-c-1-ii.

As a consequence, you may be subject to a collections action for the cost of future enforcement for any of the nuisance activities listed in MCO § 80-10-2-c that occur at the premises.

You are directed to respond to my office within 10 days of receipt of this notice with an acceptable, written course of action that you will undertake to abate the nuisance activities occurring at the premises, or file an appeal. You may appeal this nuisance determination to the Administrative Review Appeals Board. Any appeal must be in writing and a processing fee will be charged. Please contact the Office of the City Clerk at (414) 286-2231 for additional information.

If you elect to provide a written course of action, I shall evaluate it to determine if it is a reasonable attempt at abating the nuisance activity.

Prior to responding with a written course of action, it is highly recommended that you obtain records relating to police responses regarding the premises. You may obtain these records from the Computer Aided Dispatch System (CADS) at the Open Records Section of the Milwaukee Police Department (District Three Station, 2333 North 49th Street, Second Floor) between 8:00 AM and 3:45 PM. There is a cost of 25 cents per page for these records.

Once you are able to determine the type of nuisance activity occurring at the premises, please review the following examples of nuisance abatement measures that you may include in your written course of action to abate the nuisance activity. These suggestions are not exclusive, may not apply to the particular premises, and you may propose other nuisance abatement measures that would be appropriate under your particular circumstances.

- Exchange names and telephone numbers with the owners and operators of neighboring premises.
- Participate in a local block watch, neighborhood association, and business association.
- Attend the monthly crime prevention meetings conducted by the local Milwaukee Police District Community Liaison Officer who can be contacted at CLO Phone Number.
- Monitor the property for evidence of drug activity. This may include observation of clear corner cuts of baggies strewn about, excessive quantities of plastic sandwich baggies found in odd places, presence of numerous weight scales or communication devices and drug paraphernalia such as unusual pipes, empty cigar wrappers, burned hollow tubes, etc.
- Install “No Loitering” signs in the front and rear of the exterior of the premises. This signage permits police to cite loitering individuals in the yard and sidewalk area.
- Install “No Trespassing” signs in the front and rear of the exterior of the premises. This signage permits police to cite trespassers in commercial properties.
- Participate in the E-Notify system for email updates regarding the premises.
- Regularly file open records requests for Milwaukee Police Department Computer Aided Dispatch System (CADS) reports regarding the property.
- Institute a standing complaint with the local Milwaukee Police district station that will allow the police department to remove any individuals loitering on the property.
- Draft and serve a no trespassing order against identified nuisance persons and provide the local police district station a copy of the served order.
- Install and maintain a digital security surveillance system.
- Employ security personnel.
- Enroll in Respect 21 or MARTS program (contact CLO for more information)

If you propose a course of action which is rejected by me or fail to timely respond to this request, and a subsequent nuisance activity occurs on or after 13 days after receipt of this notice, you will be subject a collections action for the cost of any police services and enforcement.

Once you have been billed for the costs of police services and enforcement for three or more separate nuisance activities within one year of the date of this notice of nuisance premises, the premises may be designated a chronic nuisance, pursuant to MCO § 80-10-6, and each and every subsequent incident of nuisance activity at the premises may be deemed a separate violation and



BE A FORCE

Milwaukee Police Department
Police Administration Building
749 West State Street
Milwaukee, Wisconsin 53233
<http://www.milwaukee.gov/police>

Edward A. Flynn
Chief of Police

(414) 933-4444

April 22, 2017

Mr. Daniel Perry, Agent
V & D, LLC
3150 N. 35th St
Milwaukee, WI. 53216

Re: Notice of Failure to Respond or Appeal

Dear Mr. Daniel Perry:

This letter is notice to you that the Milwaukee Chief of Police, by the chief's designee, the district commander, has not timely received a proposed course of action for abatement of nuisance activities occurring at the premises located at 3520 W Villard Ave ("Villard Avenue Tobacco"), nor have you timely filed an appeal, in response to our March 24th, 2017 Notice of Nuisance Premises, which directed you to provide a proposed course of action, or appeal, within 10 days of receipt of the notice, pursuant to Milwaukee Code of Ordinances ("MCO") § 80-10, Chronic Nuisance Premises.

Accordingly, as provided at MCO § 80-10-3-d-1, you are subject to a collections action for the cost of any police services and enforcement rendered in relation to nuisance activities that occur at the premises for a period of one year from the date of the Notice of Nuisance Premises, beginning 13 days after you received the notice.

Once you have been billed for the costs of police services and enforcement for three or more separate nuisance activities within one year, the premises may be designated a chronic nuisance, pursuant to MCO § 80-10-6, and each and every subsequent incident of nuisance activity at the premises may be deemed a separate violation and result in a citation being issued to you for failure to abate the nuisance activity. Each citation would subject you to a forfeiture of not less than \$1,000.00 or more than \$5,000.00. Upon default of payment of a chronic nuisance citation you would be subject to imprisonment in the county jail or house of correction for a period of not less than 40 days or more than 90 days for each violation.

Please contact P.O. Tracey Geniesse at 414-935-7373 with any questions.

Best regards,

EDWARD A. FLYNN
CHIEF OF POLICE

A handwritten signature in cursive script that reads "Capt. Andra P. Williams".

Captain Andra Williams
DISTRICT COMMANDER

Attachment: Notice of Nuisance Premises
CC: City Clerk – License Division
City Hall Common Council
Building Owner- Earl WheatFall

v. 9/15

result in a citation being issued to you for failure to abate the nuisance activity. Each citation would subject you to a forfeiture of not less than \$1,000.00 or more than \$5,000.00. Upon default of payment of a chronic nuisance citation you would be subject to imprisonment in the county jail or house of correction for a period of not less than 40 days or more than 90 days for each violation.

Please contact P.O. Tracey Geniesse at 414-935-7373 with any questions, and I look forward to hearing from you.

Best regards,

EDWARD A. FLYNN
CHIEF OF POLICE

District Commander's Name
ANDRA WILLIAMS

PA-33E Narrative

This report was submitted by Detective Michael R. Caballero, assigned to the Intelligence Fusion Center (IFC) as well as being assigned to The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as a Task Force Officer (TFO).

On Tuesday, 08/02/2016, at approximately 5 PM a confidential informant entered the Villard Avenue Tobacco Store and purchased two Newport cigarettes for \$1.00 from a black male in his 60's wearing African or Jamaican colored clothing. The cigarettes were placed on inventory

The same informant, after leaving Villard Avenue Tobacco, purchased marijuana from a black male outside the barber shop located next to the tobacco store. The suspect was stopped and identified as Terrell GRIFFIN, B/M, 01/19/1987, PIN #354063. The marijuana was placed on inventory

This report was submitted by Detective Michael R. CABALLERO, assigned to the Intelligence Fusion Center (IFC) as well as being assigned to The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as a Task Force Officer (TFO).

On Monday, 08/01/2016 and Tuesday, 08/02/2016, in the mid afternoon, surveillance was conducted for about 30 minutes each day on the Villard Avenue Tobacco Store, 3520 West Villard Avenue. During surveillance each day numerous individuals (between 10 and 15) were observed entering the store and shortly thereafter exiting with single cigarettes in their hand. On Wednesday, 08/03/2016, at approximately 10:15 AM, ATF Special Agent John ADAMSON and MPD TFO Rudy AYALA conducted surveillance on the store. The outer steel door of the store was propped open with a stereo.

At approximately 10:19 AM, ADAMSON observed a black male with a balding hair style, wearing a white shirt and black pants exit the store and remove the stereo on the ground holding the door open. The black male went back inside the store.

Myself, along with Squad 4239, Police Officer's Scott KAISER and Joseph STOEBICH conducted several field interviews of customers who the surveillance team identified as individuals who appeared to purchase single cigarettes from the store. These 3 field interviews were a part of approximately 20 individuals who entered the store and appeared to purchase single cigarettes between 10:15 AM and 11:00 AM.

At approximately 10:38 AM a black male entered the store and seconds later exited with single cigarettes. The black male entered a white GMC truck WI/LZ5987 and traveled westbound on West Villard Avenue. A field interview at the Shell Gas Station (3709 West Villard Avenue) identified the two occupants from the truck. The driver was identified as Oscar JOHNSON, B/M, 05/09/1963, 414-236-8450, of 5956 North 40th Street. JOHNSON admitted buying two Newport cigarettes for \$1.00 from the Villard Avenue Tobacco Store. The passenger of the truck, identified as Kenneth DAWSON, B/M, 01/23/1962, 414-460-8827, of 3854 North 14th Street confirmed JOHNSON went into the store and came out with two cigarettes, giving him one.

At approximately 10:44 AM the surveillance team observed a white female walk from the west and enter the store. A short time later the female exited with single cigarettes in her hand and walked westbound. The white female was described as wearing a white shirt and baseball cap. The female was stopped and identified from her Wisconsin ID as Toni Lynn CALMESE, W/F, 09/24/1970, 414-551-3264, of 5344 North 36th Street. CALMESE stated she worked at Luther Manor Nursing Home, 4545 North 92nd Street. CALMESE stated she bought 4 Newport cigarettes for \$2.00 from the black male employee at Villard Avenue Tobacco.

At approximately 10:55 AM the surveillance team observed a black male wearing a blue t-shirt and black shorts walk into the store and a short time later walk out with loose cigarettes in his hand. The black male walked across Villard Avenue to an aqua colored vehicle and entered the driver's seat. A field interview identified the subject as Khalil ALLEN, B/M, 16 years old, 12/07/1999, 414-461-6227, of 5853 North 38th Street. ALLEN stated he bought two Newport cigarettes for \$1.00 from the black male employee (26-27 years old) at Villard Avenue Tobacco. ALLEN, a juvenile, stated he did not have to show identification when he bought the cigarettes. ALLEN stated the vehicle he was in belonged to his sister, Thea ALLEN, believed to be Dortehea ALLEN, B/F, 2/19/1992, also of 5853 North 38th Street, PIN #397930.

The store employee was not immediately interviewed due to the on going nature of this investigation.

PA-33E Narrative

This report was submitted by Detective Michael R. Caballero, assigned to the Intelligence Fusion Center (IFC) as well as being assigned to The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as a Task Force Officer (TFO).

On Wednesday, 08/03/2016, at approximately 9:30 AM a confidential informant entered the Villard Avenue Tobacco Store and purchased two Newport cigarettes for \$1.00 from a black male 30's in age, a bald head, tear drop tattoo on face, and wearing a white tank top. The cigarettes were placed on inventory

PC-40 10/95

**MILWAUKEE POLICE DEPARTMENT
CITATION SUPPLEMENTARY REPORT**

VIOLATOR'S NAME: Jones, Jason D.

CITATION NUMBER: _____ DATE: 09/08/16

This report was submitted by Detective Michael R. CABALLERO, assigned to the Intelligence Fusion Center (IFC), as well as being assigned to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as a Task Force Officer (TFO).

On Tuesday, 8/2/16 and Wednesday, 8/3/16 a confidential informant and several field interviews revealed the store employee, described as a black male, at Villard Avenue Tobacco sold single cigarettes to several adults and a juvenile. A licensed premise report was filed on each incident.

On Thursday, 09/08/2016, at approximately 1:30 PM a confidential informant was again sent in to Villard Avenue Tobacco, 3520 West Villard Avenue, in the city and county of Milwaukee. The informant purchased two Newport brand cigarettes for \$0.50 each which were later turned over to Police Officer Chris Conway and placed on inventory #16032520. The informant described the employee who sold the cigarettes as a black male with a bald head and a tattoo below his eye.

Squad 5880, Police Officer Rudy AYALA and I then conducted follow up inside Villard Avenue Tobacco. The sole individual inside the store was store employee Jason D. JONES, B/M, 03/15/1980, of 2862 North 5th Street, with a cell phone number of 414-551-1270.

JONES was interviewed and stated he had been working at Villard Avenue Tobacco for the last 6 months and the store was owned by Daniel RAY and the building was owned by Earl WESTFALL. JONES stated he had been selling single cigarettes since he first started working there. A wanted check revealed JONES had several outstanding warrants including a State warrant for Possession of Marijuana 2nd offense and two municipal warrants for

PC-40 10/95

**MILWAUKEE POLICE DEPARTMENT
CITATION SUPPLEMENTARY REPORT**

VIOLATOR'S NAME: Jones, Jason

CITATION NUMBER: _____ DATE: 09/08/16

(PAGE 2 Continued)

driving and no food peddler's license. JONES was eventually arrested for his warrants and conveyed to the Prisoner Processing Section (PPS).

A check behind the store counter revealed an open pack of Newport cigarettes. On the wall behind the counter was an expired cigarette and tobacco license (expired 4/15/16) along with a Wisconsin Business Tax Registration Certificate, Wisconsin Department of Revenue Seller's Permit, and a letter from the Responsible Retailing Forum.

A photograph of JONES was viewed by the informant and positively identified as the individual who sold the two Newport cigarettes.

Witnesses:

Police Officer Christopher Conway
Police Officer Christopher Schlachter
Police Officer Rudolfo Ayala
Detective Michael R. Caballero

PA-33E Narrative

This report is written by PO Penny BROWN assigned to the License Investigation Unit. On Saturday, September 10, 2016, I was assigned to work the Wisconsin WINS Youth Tobacco Initiative, which checks area vendors for age compliance tobacco purchases. Assisting in this assignment was Sherrie FOSTER B/F 09/24/99 5223 N. Beth Maur Ln. Glendale, WI 53209. FOSTER is 16 years old and not of legal age to purchase tobacco.

At approximately 11:50A, FOSTER entered Villard Tobacco, located at 3520 W. Villard Ave., and purchased a Black & Mild Cigar. FOSTER described the cashier as B/F 40's, wearing a brown shirt with a design on the front.. I entered the store and immediately identified the cashier based on the description given. The cashier was identified as Divell L. WOODS B/F 07/17/57. WOODS admitted to the sale and stated she thought she looked older and was of legal age. WOODS was advised I would be mailing a notice to enroll in the M.A.R.T.S. program.

This report is written by P.O. Christopher NAVARRETTE assigned to District #4, Early Shift.

On Friday, 12-30-16, at approximately 3:16PM, P.O. CONWAY and P.O. KRENZIEN met with a registered confidential informant (CI) about purchasing single cigarettes from the Villard Street Tabacco store located at 3520 W. Villard Avenue. P.O. CONWAY conducted a search of the CI and found no money, weapons, or cigarettes on the CI'S person. P.O. CONWAY provided the CI with three dollars of U.S. currency (Draw #16-118). The CI exited our vehicle and walked into the front door of the Villard Street Tabacco store. After a short period of time the CI exited the front door of the store, and returned to our vehicle. Once in the vehicle, the CI turned over to P.O. CONWAY six, single Newport cigarettes. P.O. CONWAY conducted a search of the CI and found no money, weapons, or cigarettes on the CI'S person.

In a debrief of the CI, the CI stated that the CI entered the front door of the Villard Street Tabacco and approached the subject behind the counter. The CI stated that the CI provided the subject behind the counter three dollars, and the subject gave the CI six, single Newport cigarettes. The CI stated the CI then returned to our vehicle.

At District #4 P.O. CONWAY placed the single Newport cigarettes on MPD inventory #16046930.

This report is written by P.O. Christopher NAVARRETTE assigned to District #4, Early Shift.

On Wednesday, 01-04-17, at approximately 6:08PM, P.O. CONWAY and I met with a registered confidential informant (CI) about purchasing single cigarettes from the Villard Street Tabacco store located at 3520 W. Villard Avenue. P.O. CONWAY conducted a search of the CI and found no money, weapons, or cigarettes on the CI'S person. I provided the CI with two dollars of U.S. currency (Draw #16-118). The CI exited our vehicle and walked into the front door of the Villard Street Tabacco store. After a short period of time the CI exited the front door of the store, and returned to our vehicle. Once in the vehicle, the CI turned over to me four, single Newport cigarettes. P.O. CONWAY conducted a search of the CI and found no money, weapons, or cigarettes on the CI'S person.

In a debrief of the CI, the CI stated that the CI entered the front door of the Villard Street Tabacco and approached the subject behind the counter. The CI stated that the CI provided the subject behind the counter two dollars, and the subject gave the CI four, single Newport cigarettes. The CI stated the CI then returned to our vehicle.

At District #4 I placed the single Newport cigarettes on MPD inventory #17000482.

This report is written by P.O. Christopher NAVARRETTE assigned to District #4, Early Shift.

On Monday, 01-30-17, at approximately 2:20PM, P.O. CONWAY and I met with a registered confidential informant (CI) about purchasing single cigarettes from the Villard Street Tabacco store located at 3520 W. Villard Avenue. P.O. CONWAY conducted a search of the CI and found no money, weapons, or cigarettes on the CI'S person. I provided the CI with one dollar of U.S. currency (Draw #17-012). The CI exited our vehicle and walked into the front door of the Villard Street Tabacco store. After a short period of time the CI exited the front door of the store, and returned to our vehicle. Once in the vehicle, the CI turned over to me two, single Newport cigarettes. P.O. CONWAY conducted a search of the CI and found no money, weapons, or cigarettes on the CI'S person.

In a debrief of the CI, the CI stated that the CI entered the front door of the Villard Street Tabacco and approached the subject behind the counter. The CI stated that the CI provided the subject behind the counter one dollar, and the subject gave the CI two, single Newport cigarettes. The CI stated the CI then returned to our vehicle.

At District #4 P.O. CONWAY placed the single Newport cigarettes on MPD inventory #17003722.

This report is written by P.O. Christopher NAVARRETTE assigned to District #4, Early Shift.

On Friday, 02-24-17, at approximately 11:08AM, P.O. CONWAY and I met with a registered confidential informant (CI) about purchasing single cigarettes from the Villard Street Tabacco store located at 3520 W. Villard Avenue. P.O. CONWAY conducted a search of the CI and found no money, weapons, or cigarettes on the CI's person. I provided the CI with two dollars of U.S. currency (Draw #17-029). The CI exited our vehicle and walked into the front door of the Villard Street Tabacco store. After a short period of time the CI exited the front door of the store, and returned to our vehicle. Once in the vehicle, the CI turned over to me four, single Newport cigarettes. P.O. CONWAY conducted a search of the CI and found no money, weapons, or cigarettes on the CI's person.

In a debrief of the CI, the CI stated that the CI entered the front door of the Villard Street Tabacco and approached the subject behind the counter. The CI stated that the CI provided the subject behind the counter two dollars, and the subject gave the CI four, single Newport cigarettes. The CI stated the CI then returned to our vehicle.

At District #4 I placed the single Newport cigarettes on MPD inventory #17007256.

This report is written by P.O. Christopher NAVARRETTE assigned to District #4, Early Shift.

On Monday, 02-27-17, at approximately 2:21PM, P.O. CONWAY and I met with a registered confidential informant (CI) about purchasing single cigarettes from the Villard Street Tabacco store located at 3520 W. Villard Avenue. P.O. CONWAY conducted a search of the CI and found no money, weapons, or cigarettes on the CTS person. P.O. CONWAY provided the CI with two dollars of U.S. currency (Draw #17-029). The CI exited our vehicle and walked into the front door of the Villard Street Tabacco store. After a short period of time the CI exited the front door of the store, and returned to our vehicle. Once in the vehicle, the CI turned over to me four, single Newport cigarettes inside a Newport box. P.O. CONWAY conducted a search of the CI and found no money, weapons, or cigarettes on the CTS person.

In a debrief of the CI, the CI stated that the CI entered the front door of the Villard Street Tabacco and approached the subject behind the counter. The CI stated that the CI provided the subject behind the counter two dollars, and the subject gave the CI four, single Newport cigarettes inside of a Newport box. The CI stated the CI then returned to our vehicle.


At District #4 I placed the single Newport cigarettes on MPD inventory # 17007614.

This report is written by P.O. Tracey Geniesse assigned to District Four, Day Shift on Squad 4164, along with P.O. Carrie Resnick.

On Friday, March 24th, 2017 at 12:30pm, Squad 4164, Squad 4213 (Sgt. Kapusta), 4238 (P.O. Conway, P.O. Navarrette), Squad 4239 (P.O. Washechek, Zaworski and Kiaser) and Georgeanne King (D.O.R.) Conducted a business check at Villard Ave Tobacco located at 3520 W Villard Ave.

During cigarette inspection Department of Revenue found seven packs of Illinois stamped cigarettes and were subsequently confiscated due to no legitimate invoice. The product is also considered untaxed.

Respectfully Submitted By:

A handwritten signature in black ink that reads "P.O. Tracey Geniesse". The signature is written in a cursive, flowing style.

P.O. Tracey Geniesse 014168

This report is written by P.O. Christopher S. NAVARRETTE assigned to District #4, Early Shift.

On Thursday, 06-08-17, at approximately 1:05PM, squad 4238 (P.O. NAVARRETTE, P.O. CONWAY, & P.O. SCHILCHER) met with a Confidential Informant (CI) about purchasing individual cigarette's from the Villard Avenue Tobacco store located at 3520 W. Villard Avenue, which is in the City and County of Milwaukee.

P.O. CONWAY searched the CI and found no money, or cigarette's on the CTS person. I provided the CI with ten dollars of U.S. Currency to make the buy. At 1:24PM, the CI went into the Villard Avenue Tobacco store and purchased 4, individual Newport cigarette's for two dollars. Upon completion of the buy, the CI returned to our vehicle and handed over 4, individual, Newport cigarette's to P.O. CONWAY, and gave him back 8 dollars in U.S. currency. P.O. CONWAY conducted a search of the CI and found no money or cigarettes on the CTS person.

During a debrief of the CI, the CI stated that the subject who sold the CI the individual cigarettes was a B/F, having a long weave just passed her shoulders, and a large mole on the right side of her face, wearing red pants, and a flower style shirt.

At District #4 the individual cigarette's were placed on MPD inventory #17021327.

This report is written by PO Penny BROWN, assigned to the License Investigation Unit.

On Friday, July 28, 2017, PO Denise RUEDA and I assisted Agent Georgeanne KING (Department of Revenue Alcohol & Tobacco) with a license premise check at Villard Avenue Tobacco, located at 3520 W. Villard Ave. Agent KING received information the Revenue account for the business had been deactivated on 6/2/17 and back dated to December, 2016. Therefore, the seller's permit for this business is not valid.

Prior to conducting the license premise check, Agent KING conducted an undercover purchase of a pack of cigarettes to verify they were in fact were open for business and selling tobacco without a valid seller's permit. The undercover buy was successful and it the pack of cigarettes that were purchased were untaxed Illinois stamped cigarettes.

Upon entering the establishment and observing officers, the sole employee on scene (Jason D. JONES B/M 03/15/80) attempted to run into the bathroom. Fearing JONES may have a weapon or attempting to hide evidence or contraband, officers ordered JONES out of the bathroom. Agent KING checked the bathroom area which had an entrance door from the tobacco shop and also a door that leads to the barber shop next door. Agent KING located a carton of Newport 100's, containing 4 packs of cigarettes, with Illinois Tax Stamp, just outside the door from the adjoining bathroom. Occupants of the barber shop denied any knowledge of how they got there, and stated they did no belong to them. JONES was questioned regarding the cigarettes, however, also denied placing them there and stated the barber shop sells Illinois cigarettes as well.

JONES was advised the seller's permit was not valid and therefore, the store could not be open for business. JONES stated he understood and would close the store immediately. Agent KING confiscated all tobacco products since there were no invoices and therefore, deemed to be puchased illegally and untaxed.

84-43 miscellaneous Licenses

b. Posting of Ordinance. The owner or operator of every parking lot shall post or cause to be posted a copy of this section, or a summary thereof, in a conspicuous place within said parking lot.

c. Penalty. Any person violating par. a shall be punished by a fine of not less than \$50 nor more than \$500 and in default of payment thereof shall be imprisoned in the county jail or house of correction for a period not to exceed 60 days.

d. Exception. The provisions of pars. a and c shall not apply if the operators of the parking lot have not met the provisions of sub. 13-b.

84-43. Cigarette and Tobacco License.

1. DEFINITIONS. In this section:

a. "Cigarette" means any roll of tobacco wrapped in paper or any substance other than tobacco.

b. "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but "tobacco products" does not include cigarettes.

2. LICENSE REQUIRED. It shall be unlawful for any person, firm or corporation in any manner, or upon any pretense, or by any device, directly or indirectly, to sell, exchange, barter, dispose of or give away, any cigarettes or tobacco products without first obtaining a license therefor.

3. APPLICATION. License application forms shall be obtained from the city clerk and require the information specified in s. 85-12.

4. PLAN OF OPERATION. An application for a cigarette and tobacco license shall be accompanied by a completed plan of operation on a form provided therefor by the city clerk. The plan of operation shall include:

a. The planned hours of operation for the premises.

b. The number of customers expected on a daily basis at the premises.

c. The legal occupancy limit of the premises.

d. The number of off-street parking spaces available at the premises.

e. Plans the applicant has to provide security for the premises.

f. Plans the applicant has to ensure the orderly appearance and operation of the premises with respect to litter and noise.

g. Any other licenses held by the applicant or attached to the premises.

h. A description of any provisions made for clean-up of the premises.

i. A site plan showing:

i-1. The locations of all entrances and exits. This shall include a description of how customers will enter and leave the premises.

i-2. The locations and dimensions of any off-street parking and loading areas for customers.

j. Such other reasonable and pertinent information the common council or the licensing committee may from time to time require.

5. CHANGES TO BE REPORTED. See ss. 85-35 to 85-39 for provisions relating to changes to applications and plans of operation.

6. LICENSE FEE. See ch. 81 for the required license fee.

7. AGE QUALIFICATION. No license shall be issued to any person or any agent of a corporation or limited liability corporation who is not 18 years of age or older.

8. ISSUANCE. See s. 85-12.5 for provisions relating to the issuance of a license.

9. TRANSFER OF LICENSE OR CHANGE OF NAME. No cigarette and tobacco license may be transferred from one licensee to another or from one premises to another. The city clerk may, however, change the name of a licensee as provided in s. 85-19 upon receiving information that the name of the licensee has been lawfully changed by marriage, order of a court or administrative determination by the Wisconsin department of financial institutions.

10. RECORDS TO BE KEPT. Every retailer licensed under this section shall keep complete and accurate records of all purchases and receipts of cigarettes and tobacco products. The records shall be preserved on the licensed premises for 2 years in a manner to ensure permanency and accessibility for inspection and shall be subject to inspection at all reasonable hours by authorized state and local law enforcement officials.

Miscellaneous Licenses 84-45

11. SUSPENSION, NONRENEWAL AND REVOCATION. The city adopts s.134.65 (6), (7) and (8), Wis. Stats.

12. PENALTIES. a. Any person violating this section shall be fined not less than \$25 nor more than \$100 for the first offense or, in lieu of nonpayment or default of such fine, costs and disbursements, may be imprisoned as provided by law; and for a second or subsequent offense not less than \$25 nor more than \$200 or, in lieu of nonpayment or default of such fine, costs and disbursements, may be imprisoned as provided by law.

b. If upon conviction of a 2nd or subsequent violation, the person violating this section is found personally guilty of a failure to exercise due care to prevent the violation, the person shall be fined not less than \$25 nor more than \$300 or, in lieu of nonpayment or default of such fine, costs and disbursements, may be imprisoned as provided by law. Conviction under this paragraph shall result in immediate termination of the license of the person convicted of being personally guilty of failure to exercise due care and the person shall not be entitled to another license under this section for a period of 5 years after conviction, nor shall the person in that period act as the servant or agent of a person licensed under this section in the performance of acts authorized by the license.

84-45. Filling Stations. 1. PURPOSE. In order to protect the health, safety and general welfare of the community and environment and prevent potential harm and nuisance that could result from the location and operation of filling stations, the common council enacts the following regulations.

2. DEFINITION. In this section, "filling station" (gas station) means a place, building, pump or device maintained and used on private premises for the purpose of dispensing to the public gasoline or other fuels for use in motor vehicles of any kind.

3. LICENSE REQUIRED. a. No person, firm or corporation shall operate a filling station unless the person, firm or corporation possesses a valid license issued pursuant to this section. See s. 81-51.6 for the required fee.

b. An additional weighing and measuring license fee specified in ch. 81 shall be paid for each pump or device used to establish charges for gasoline or other fuels.

3.5. SECURITY CAMERA REQUIRED. All filling stations open to customers on a 24-hour basis shall:

a. Install, maintain in proper working order and operate during all hours the store is open to customers a security camera which can produce reproducible digital color images.

b. The camera shall be placed to provide a clear and identifiable full frame of the filmed individual's face, either entering, exiting or at the cash register. Hanging displays shall not obstruct views of the individual's face.

c. If a time-lapse digital video camera is operated, recorded images shall not be recorded at a slower speed than 24 hours.

d. Recorded digital image files shall be kept for a minimum of 72 hours.

4. APPLICATION. License application forms shall be obtained from the city clerk and require the information specified in s. 85-12.

5. PLAN OF OPERATION. An application for a filling station license shall be accompanied by a completed plan of operation on a form provided therefor by the city clerk. The plan of operation shall include:

a. The planned hours of operation for the premises.

b. The number of customers expected on a daily basis at the premises.

c. The legal occupancy limit of the premises.

d. The number of off-street parking spaces available at the premises.

e. Plans the applicant has to provide security for the premises.

f. Plans the applicant has to ensure the orderly appearance and operation of the premises with respect to litter and noise.

g. Any other licenses held by the applicant or attached to the premises.

h. A description of any provisions made for clean-up of the premises.

i. A site plan showing:

i-1. The locations of all entrances and exits. This shall include a description of how customers will enter and leave the premises.

i-2. The locations and dimensions of any off-street parking and loading areas for customers.

j. Such other reasonable and pertinent information the common council or the licensing committee may from time to time require.

6. CHANGES TO BE REPORTED. See ss. 85-35 to 85-39 for provisions relating to changes to applications and plans of operation.

permitted to present the applicant's own witnesses, subject to cross-examination.

e. Committee members may ask questions of witnesses.

f. The applicant shall be permitted a brief summary statement.

4. RECOMMENDATION. The recommendation of the committee regarding the applicant shall be based on evidence presented at the hearing. Probative evidence concerning whether or not the license should be granted may be presented on the following subjects:

a. Whether or not the applicant meets the municipal requirements.

b. The appropriateness of the location and premises where the licensed premises is to be located and whether use of the premises for the purposes or activities permitted by the license would tend to facilitate a public or private nuisance or create undesirable neighborhood problems such as disorderly patrons, unreasonably loud noise, litter, and excessive traffic and parking congestion. Probative evidence relating to these matters may be taken from the plan of operation submitted with the license application.

c. The fitness of the location of the premises to be maintained as the principal place of business, including but not limited to whether there is an overconcentration of businesses of the type for which the license is sought, whether the proposal is consistent with any pertinent neighborhood business or development plans, or proximity to areas where children are typically present.

d. The applicant's record in operating similarly licensed premises.

e. Whether or not the applicant has been charged with or convicted of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the activity to be permitted by the license being applied for.

f. Any other factors which reasonably relate to the public health, safety and welfare.

5. FACTORS NOT CONSIDERED FOR RECOMMENDATION. The recommendations of the committee regarding the applicant shall not be based on evidence presented at the hearing related to the type or content of any music, or the actual or likely financial or non-financial effects on actual or potential competitors.

6. Committee Decision. The committee may make a recommendation immediately following the hearing or at a later

date. Written notice of the committee's decision will be provided if the decision is made at a later date or if the applicant was not present or represented. The committee shall forward its recommendation in writing to the common council for vote at the next meeting at which such matter will be considered.

7. DOCUMENT. If the common council grants the application for a license, the city clerk, or other city official or department authorized by the code to issue licenses, shall issue an appropriate document to the applicant confirming that fact. The document shall also contain any restrictions or conditions which the common council may place on approval.

85-3. Notice and Service. 1. NOTICE OF POSSIBLE NON-RENEWAL, SUSPENSION OR REVOCATION.

a. Unless otherwise provided, the city clerk, or other city official or department authorized by the code to receive applications for licenses or permits, shall provide written notice of the possibility of non-renewal, or of suspension or revocation of a license or permit to the applicant addressed to the person or agent at the address most recently provided by the applicant.

b. Written notice of possible non-renewal, suspension or revocation shall include:

b-1. The date, time and place of a hearing to be held by the committee.

b-2. A statement of the common council's intent to revoke, suspend or not renew the license or permit if objections, charges or allegations are found to be true.

b-3. A statement of the specific reasons for revocation, suspension or non-renewal.

b-4. A statement that an opportunity will be provided to respond to and challenge the reasons for revocation, suspension or non-renewal, and to present witnesses under oath and to confront and cross-examine witnesses under oath.

b-5. A statement that the applicant may be represented by an attorney of the applicant's choice at the expense of the applicant.

b-6. A statement that, if the applicant requires the assistance of an interpreter, the applicant may employ an interpreter at the expense of the applicant.

b-7. A statement that, upon conclusion of a hearing before the committee, the committee will prepare a written report and recommendation to the common council, and shall provide a copy of the report and recommendation to the applicant.

85-5 License and Permit Procedures

85-5. Council Action. 1. REPORT TO BE PROVIDED. Within 10 working days after it reaches a decision, the committee shall prepare and serve a report and recommendation upon the applicant and upon the complainant or objector, if any. The report and recommendations shall include specific findings of fact and conclusions of law made by the committee. A copy of the report shall be distributed to each member of the common council.

2. FILING WRITTEN STATEMENTS OR RESPONSES. Following a recommendation by the committee that the license or permit not be renewed, or that the license or permit be revoked or suspended, the applicant may submit a written statement including objections, exceptions and arguments of law and fact. When the proceedings have been commenced upon the complaint or objection of an interested party who has appeared and offered evidence, the complainant or objector may also submit a written statement in response. Written statements shall be filed with the city clerk before the close of business on a day that is at least 3 working days prior to the date set for hearing by the common council.

3. COPIES TO BE PROVIDED TO COMMON COUNCIL MEMBERS. A copy of any statement in response to the report and recommendations of the committee that is timely filed shall be provided to each member of the common council at least 24 hours before any vote on the question is scheduled before the common council.

4. PROCEDURE AT MEETING OF THE COMMON COUNCIL. a. At a meeting of the common council following the receipt of the report and recommendations of the committee, the common council shall consider the report and recommendations. The city clerk shall notify the applicant, and the complainant or objector, if any, by United States first class mail, postage prepaid, 5 working days prior to the hearing before the common council, and shall also notify the city attorney, that the council will convene to act upon the report and recommendations.

b. Each member of the common council shall be asked to affirm that he or she has read the report and recommendations of the committee. When a written statement has been timely filed by the applicant, or by a complainant or objector, each member of the common council shall be asked to affirm that he or she has read the statement. If members of the

council have not read the recommendation and report of the committee and any statement in response that has been timely filed, the chair shall allocate time for the members to do so.

c. Oral argument on behalf of the applicant, and oral argument by the complainant or objector, if any, shall be permitted only to those parties having timely filed a written statement. Oral argument shall be limited to 5 minutes. The city attorney shall also be permitted to make an oral presentation of not more than 5 minutes.

d. Applicants shall appear only in person or by counsel. Corporate applicants shall appear only by designated agents or counsel. Partnerships shall be represented only by a partner or counsel. Limited liability companies shall be represented only by designated agents or counsel. Complainants and objectors shall appear only in person or counsel. Any person making an appearance before the council who requires the services of an interpreter shall obtain one at his or her own expense.

e. The common council shall determine by a majority roll call vote of those in attendance and voting whether to adopt the recommendation of the committee. The city clerk shall provide written notice of the decision to the applicant, and to the complainant or objector, if any, including a written statement or summary of the reasons for the decision.

f. Unless otherwise expressly provided, the revocation of a license or permit shall be effective upon service of the notice of decision upon the applicant or upon any person having charge or control of a licensed premises. Suspension of a license or permit in proceedings for revocation shall be effective upon service of the notice of decision upon the applicant or upon any person having charge or control of a licensed premises. Suspension of a license or permit in proceedings for renewal shall be effective on the date the common council takes action to suspend the license or permit, or on the date of the expiration of the license or permit, whichever is later. A license or permit may be suspended for not less than 10 days and no longer than 90 days.

g. If a retail alcohol beverage license for a premises is suspended and the licensee also holds a public entertainment premises license for the premises, the public entertainment premises license shall be suspended for the same time period as the alcohol beverage license.

tridges may not be sold to persons under the age of 21. Do not inhale the contents of this cartridge. Misuse of nitrous oxide can be dangerous to your health.”

(b) Except as provided in sub. (5), no person may deliver a cartridge of nitrous oxide to another unless the packaging in which the cartridge is enclosed is marked with a label or other device that indicates the name and business address of the person delivering the cartridge of nitrous oxide.

(5) Subsections (3) and (4) do not apply to a retail food establishment, as defined in s. 97.30 (1) (c).

History: 1997 a. 336; 2007 a. 164.

134.65 Cigarette and tobacco products retailer license. (1) No person shall in any manner, or upon any pretense, or by any device, directly or indirectly sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes or tobacco products to any person not holding a license as herein provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a license from the clerk of the city, village or town wherein such privilege is sought to be exercised.

(1m) A city, village, or town clerk may not issue a license under sub. (1) unless the applicant specifies in the license application whether the applicant will sell, exchange, barter, dispose of, or give away the cigarette or tobacco products over the counter or in a vending machine, or both.

(2) (a) Except as provided in par. (b), upon filing of a proper written application a license shall be issued on July 1 of each year or when applied for and continue in force until the following June 30 unless sooner revoked. The city, village or town may charge a fee for the license of not less than \$5 nor more than \$100 per year which shall be paid to the city, village or town treasurer before the license is issued.

(b) In any municipality electing to come under this paragraph, upon filing of a proper written application a license shall be issued and continue in force for one year from the date of issuance unless sooner revoked. The city, village or town may charge a fee for the license of not less than \$5 nor more than \$100 per year which shall be paid to the city, village or town treasurer before the license is issued.

(3) Each such license shall name the licensee and specifically describe the premises where such business is to be conducted. Such licenses shall not be transferable from one person to another nor from one premises to another.

(4) Every licensed retailer shall keep complete and accurate records of all purchases and receipts of cigarettes and tobacco products. Such records shall be preserved on the licensed premises for 2 years in such a manner as to insure permanency and accessibility for inspection and shall be subject to inspection at all reasonable hours by authorized state and local law enforcement officials.

(5) Any person violating this section shall be fined not more than \$100 nor less than \$25 for the first offense and not more than \$200 nor less than \$25 for the 2nd or subsequent offense. If upon such 2nd or subsequent violation, the person so violating this section was personally guilty of a failure to exercise due care to prevent violation thereof, the person shall be fined not more than \$300 nor less than \$25 or imprisoned not exceeding 60 days or both. Conviction shall immediately terminate the license of the person convicted of being personally guilty of such failure to exercise due care and the person shall not be entitled to another license hereunder for a period of 5 years thereafter, nor shall the person in that period act as the servant or agent of a person licensed hereunder for the performance of the acts authorized by such license.

(6) Any 1st class city may revoke, suspend, or refuse to renew any license issued under this section, as provided in sub. (7).

(7) (a) Any duly authorized employee of a 1st class city issuing licenses under this section may file a sworn written complaint, supported by reports from a law enforcement agency, with the

clerk of the city alleging at least 2 separate instances of one or more of the following about a person holding a license issued under this section by the city:

1. The person has violated s. 134.66 (2) (a), (am), (cm), or (e), or a municipal ordinance adopted under s. 134.66 (5).

2. The person's premises are disorderly, riotous, indecent, or improper.

3. The person has knowingly permitted criminal behavior, including prostitution and loitering, to occur on the licensed premises.

4. The person has been convicted of any of the following:

a. Manufacturing, distributing, or delivering a controlled substance or controlled substance analog under s. 961.41 (1).

b. Possessing with intent to manufacture, distribute, or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m).

c. Possessing with intent to manufacture, distribute, or deliver, or manufacturing, distributing, or delivering a controlled substance or controlled substance analog under a substantially similar federal law or a substantially similar law of another state.

d. Possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that section or under a federal law or a law of another state that is substantially similar to s. 961.65.

5. The person knowingly allows another person who is on the licensed premises to do any of the actions described in subd. 4.

(b) Upon the filing of the complaint, the city governing body shall issue a summons, signed by the clerk and directed to any peace officer in the city. The summons shall command the person complained of to appear before the city governing body on a day and place named in the summons, not less than 3 days and not more than 10 days from the date of issuance, and show cause why his or her license should not be revoked, suspended, or not renewed. The summons and a copy of the complaint shall be served on the person complained of at least 3 days before the date on which the person is commanded to appear. Service shall be in the manner provided in ch. 801 for service in civil actions in circuit court.

(c) 1. If the person does not appear as required by the summons, the allegations of the complaint shall be taken as true, and if the city governing body finds the allegations to be sufficient grounds for revocation or nonrenewal, the license shall be revoked or not renewed. The city clerk shall give notice of the revocation or nonrenewal to the person whose license is revoked or not renewed.

2. If the person appears as required by the summons and answers the complaint, both the complainant and the person complained of may produce witnesses, cross-examine witnesses, and be represented by counsel. The person complained of shall be provided a written transcript of the hearing at his or her expense. If upon the hearing the city governing body finds the allegations of the complaint to be true, and if the city governing body finds the allegations to be sufficient grounds for suspension, revocation, or nonrenewal, the license shall be suspended for not less than 10 days nor more than 90 days, revoked, or not renewed.

3. The city clerk shall give notice of each suspension, revocation, or nonrenewal to the person whose license is suspended, revoked, or not renewed.

4. If the city governing body finds the allegations of the complaint to be untrue, the complaint shall be dismissed without cost to the person complained of.

(d) When a license is revoked under this subsection, the revocation shall be recorded by the city clerk and no other license may be issued under this section to the person whose license was revoked within the 12 months after the date of revocation. No part of the fee paid for any license that is revoked under this subsection may be refunded.

(e) The action of any city governing body in suspending, revoking, or not renewing any license under this subsection, or the failure of any city governing body to suspend, revoke, or not renew any license under this subsection for good cause, may be reviewed by the circuit court for the county in which the license was issued, upon the request of any applicant or licensee. The procedure on review shall be the same as in civil actions instituted in the circuit court. The person desiring review shall file pleadings, which shall be served on the city governing body in the manner provided in ch. 801 for service in civil actions and a copy of the pleadings shall be served on the applicant or licensee. The city governing body, applicant, or licensee shall have 20 days to file an answer to the complaint. Following filing of the answer, the matter shall be deemed at issue and hearing may be had within 5 days, upon due notice served upon the opposing party. The hearing shall be before the court without a jury. Subpoenas for witnesses may be issued and their attendance compelled. The findings and order of the court shall be filed within 10 days after the hearing and a copy of the findings and order shall be transmitted to each of the parties. The order shall be final unless appeal is taken to the court of appeals.

(8) The uniform licensing of cigarette and tobacco products retailers is a matter of statewide concern. A city, village, or town may adopt an ordinance regulating the issuance, suspension, revocation, or renewal of a license under this section only if the ordinance strictly conforms to this section. If a city, village, or town has in effect on May 1, 2016, an ordinance that does not strictly conform to this section, the ordinance does not apply and may not be enforced.

History: 1983 a. 27; 1987 a. 67; 1993 a. 482; 1997 a. 214; 2001 a. 75; 2015 a. 275.

134.66 Restrictions on sale or gift of cigarettes or nicotine or tobacco products. (1) DEFINITIONS. In this section:

- (a) "Cigarette" has the meaning given in s. 139.30 (1m).
- (am) "Direct marketer" has the meaning given in s. 139.30 (2n).
- (b) "Distributor" means any of the following:
 1. A person specified under s. 139.30 (3).
 2. A person specified under s. 139.75 (4).
- (c) "Identification card" means any of the following:
 1. A license containing a photograph issued under ch. 343.
 2. An identification card issued under s. 343.50.
 3. An identification card issued under s. 125.08, 1987 stats.
- (d) "Jobber" has the meaning given in s. 139.30 (6).
- (e) "Manufacturer" means any of the following:
 1. A person specified under s. 139.30 (7).
 2. A person specified under s. 139.75 (5).
- (f) "Nicotine product" means a product that contains nicotine and is not any of the following:
 1. A tobacco product.
 2. A cigarette.
 3. A product that has been approved by the U.S. food and drug administration for sale as a smoking cessation product or for another medical purpose and is being marketed and sold solely for such an approved purpose.
- (g) "Retailer" means any person licensed under s. 134.65 (1).
- (h) "School" has the meaning given in s. 118.257 (1) (d).
- (hm) "Stamp" has the meaning given in s. 139.30 (13).
- (i) "Subjobber" has the meaning given in s. 139.75 (11).
- (j) "Tobacco products" has the meaning given in s. 139.75 (12).
- (k) "Vending machine" has the meaning given in s. 139.30 (14).
- (L) "Vending machine operator" has the meaning given in s. 139.30 (15).

(2) RESTRICTIONS. (a) No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or inde-

pendent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may sell or provide for nominal or no consideration cigarettes, nicotine products, or tobacco products to any person under the age of 18, except as provided in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph for the purchase of cigarettes, nicotine products, or tobacco products from his or her vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.

(am) No retailer, direct marketer, manufacturer, distributor, jobber, subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may provide for nominal or no consideration cigarettes, nicotine products, or tobacco products to any person except in a place where no person younger than 18 years of age is present or permitted to enter unless the person who is younger than 18 years of age is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.

(b) 1. A retailer shall post a sign in areas within his or her premises where cigarettes or tobacco products are sold to consumers stating that the sale of any cigarette or tobacco product to a person under the age of 18 is unlawful under this section and s. 254.92.

2. A vending machine operator shall attach a notice in a conspicuous place on the front of his or her vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under s. 254.92 and that the purchaser is subject to a forfeiture of not to exceed \$50.

(cm) 1m. A retailer or vending machine operator may not sell cigarettes or tobacco products from a vending machine unless the vending machine is located in a place where the retailer or vending machine operator ensures that no person younger than 18 years of age is present or permitted to enter unless he or she is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.

2. Notwithstanding subd. 1m., no retailer may place a vending machine within 500 feet of a school.

(e) No retailer or direct marketer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under s. 139.32 (1).

(2m) TRAINING. (a) Except as provided in par. (b), at the time that a retailer hires or contracts with an agent, employee, or independent contractor whose duties will include the sale of cigarettes or tobacco products, the retailer shall provide the agent, employee, or independent contractor with training on compliance with sub. (2) (a) and (am), including training on the penalties under sub. (4) (a) 2. for a violation of sub. (2) (a) or (am). The department of health services shall make available to any retailer on request a training program developed or approved by that department that provides the training required under this paragraph. A retailer may comply with this paragraph by providing the training program developed or approved by the department of health services or by providing a comparable training program approved by that department. At the completion of the training, the retailer and the agent, employee, or independent contractor shall sign a form provided by the department of health services verifying that the agent, employee, or independent contractor has received the training, which the retailer shall retain in the personnel file of the agent, employee, or independent contractor.

(b) Paragraph (a) does not apply to an agent, employee, or independent contractor who has received the training described in par. (a) as part of a responsible beverage server training course or a comparable training course, as described in s. 125.04 (5) (a) 5., that was successfully completed by the agent, employee, or independent contractor. The department of health services shall make the training program developed or approved by that department under par. (a) available to the technical college system board, and that board shall include that training program or a comparable