F12

City Clerk's Office
Hiawatha City Hall
101 Emmons Street
Hiawatha, Iowa 52233

Memo

To: Mayor and City Council
From: Kelly Kornegor, City Clerk
Date: June 6, 2018
Re: 2018 Cigarette Violation – Fareway Store

On April 12, 2018, the Hiawatha Police Department conducted their annual tobacco compliance checks as part of a 28E Agreement with Iowa Alcoholic Beverages Division. During the compliance checks, a clerk working at Fareway sold tobacco or vapor products to the underage CI working with the police. All paperwork is attached to this memo.

This was the 2nd violation within a two year period for Fareway Store located at 885 Edgewood Road. Fareway settled their violation prior to the scheduled hearing date by paying their fine of $1,500.00, and signing the Acknowledgement/Settlement Agreement.

The information below provides a little reminder on the process for handling tobacco violations since we do not do these very often:

Once the store clerk receives adjudication from the Iowa Court System, I send the retailer a letter scheduling a hearing before City Council to allow the retailer to appear and be heard regarding the enforcement of a mandatory civil penalty and suspension of the tobacco license for a specified period based on the number of violations issued within a certain number of years. These penalties are set in Iowa Code Section 453A.22(2)(A). The city has no choice when it comes to setting the penalty or suspension of license.

The retailer has the option to sign an Acknowledgment / Settlement Agreement before the scheduled hearing date. By doing this, the retailer voluntarily admits to the violation, waives the hearing before City Council, and agrees to pay the penalty to the city.

Since we received payment of the penalty and a signed Acknowledgement/Settlement Agreement from Fareway, City Council can simply approve a motion accepting the Acknowledgement/Settlement Agreement and payment of penalty, and the violation becomes satisfied.

Thanks for your consideration of this matter. Let me know if you have any questions or concerns.

HIAWATHA POLICE DEPARTMENT

Memo

To: Kelly Kornegor- City Clerk

From: Dennis Marks- Police Chief

Date: April 13, 2018

Re: Tobacco Compliance Checks

On April 12, 2018 we conducted a compliance check of all tobacco license holders in Hiawatha. This was accomplished with the assistance of a 16 yr. old youth. I am pleased to report that six of the seven retailers refused to sell tobacco products to our youth.

An employee at Fareway sold a tobacco product to our underage youth. The employee was issued a citation and given a court date of May 11th, 2018.

I have attached a copy of our incident report.

Hiawatha Police

101 Emmons St., Hiawatha, IA 52233

Offense / Incident Report

Report Date	Type of Incident	Complaint No.	Case Status
04/12/2018 1828	**TOBACCO COMPLIANCE CHECK**	**18-1762**	**CLOSED**

On **04-12-2018** a tobacco compliance check was conducted at seven locations in Hiawatha.

Investigation:

On **04-12-2018** a tobacco compliance check was conducted using a 16 year old CI from 1650hrs to 1729hrs. River Rat Vapes, Kwik Shop, Quick Mart, Hawkeye Convenience Store, Caseys and Big Ten Mart were in compliance and did not sell cigarettes or vapor products to the CI. The clerk at Fareway sold a pack of Marlboro cigarettes to the CI at approx 1729hrs. I ID the clerk by her Iowa Drivers License as . was issued a citation for Providing Tobacco to Minor by Officer Bartles #841.

Nothing further.

Reporting Officer	845	Investigator Rod Fiser	Approving Officer (Cover Pages Only)

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ORDER ACCEPTING ACKNOWLEDGEMENT / SETTLEMENT AGREEMENT 2nd VIOLATION

IN RE:
Fareway Stores, Inc. #055
885 Edgewood Road
Hiawatha, Iowa 52233

: Fareway Stores, Inc. #055
: PO Box 70
: Boone, Iowa 50036

ORDER ACCEPTING ACKNOWLEDGEMENT / SETTLEMENT AGREEMENT 2nd VIOLATION

On this 6th day of June, 2018, in lieu of a public hearing on the matter, the Hiawatha City Council approves the attached Acknowledgement / Settlement Agreement between the above captioned permittee and the City of Hiawatha.

THEREFORE, the Hiawatha City Council finds that the above captioned permittee has remitted to the City of Hiawatha a civil penalty in the amount of one thousand, five hundred dollars ($1,500.00). Be advised that this violation dated April 12, 2018 will count as a second violation of Iowa Code section 453A.2(1), pursuant to Iowa Code Section 453A.22(2)(b). It is therefore ordered that the judgment in this matter is hereby satisfied.

_____
Mayor Bill Bennett

_____
Date

ACKNOWLEDGE/SETTLEMENT AGREEMENT
2nd VIOLATION

IN RE:

Fareway Stores, Inc. #055	:	**Fareway Stores, Inc.**
885 Edgewood Road	:	**P.O. Box 70**
Hiawatha, Iowa 52233	:	**Boone, Iowa 50036**

ACKNOWLEDGEMENT/ SETTLEMENT AGREEMENT

ACKNOWLEDGEMENT/SETTLEMENT AGREEMENT

I hereby knowingly and voluntarily acknowledge that I have received the Notice of Hearing and the Complaint in the above case. I hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I understand that this violation dated April 12, 2018, will count as an official "Second Violation" of Iowa Code Section 453A.2 pursuant to Iowa Code Section 453A.22. I understand that the penalty for this second violation is a $1,500.00 fine or a suspension of my cigarette permit for 30 days, beginning on the date that will be specified in the official city/county order that I will receive.

Frederick R. Greenwood

Owner Signature

4-27-18

DATE

In accordance with Iowa Code Section 453A.22(2)(b), the above-captioned permittee chooses the following penalty:

- ● $1,500.00 fine
- ○ 30 day suspension

NOTE: This must be signed by an individual cigarette permittee, or in the case of another business entity, by individual(s) who have authority to bind the entity.