

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE CITY OF SAINT PAUL

In the Matter of the Auto Repair Garage License and Second Hand Dealer-Motor Vehicle License held by Heartland Auto Sales, Inc., d/b/a Heartland Auto Sales, for the premises located at 1236 Arcade Street in Saint Paul.

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

This matter came on for hearing on June 12, 2007, before Administrative Law Judge Kathleen D. Sheehy, in Conference Room 4B, 8 Fourth Street, Fourth Floor, St. Paul, MN 55101.

Rachel Gunderson, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, appeared for the City of St. Paul's Department of Safety and Inspections (DSI).

Michael J. Mergens, Esq., Larkin Hoffman Daly & Lindgren Ltd., 1500 Wells Fargo Plaza, 7900 Xerxes Avenue South, Minneapolis, MN 55431, appeared for Heartland Auto Sales, Inc. (Licensee).

**NOTICE**

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Section 310.05 of the St. Paul Legislative Code, the City Council's final decision shall not be made until this Report has been made available to the parties to the proceeding and the Licensee has been provided an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or the interpretation of the facts and an opportunity to present argument relating to any recommended adverse action. The Licensee and any interested parties should contact Shari Moore, Saint Paul City Clerk, 290 City Hall, 15 West Kellogg Blvd., St. Paul, MN 55102, to ascertain the procedure for presenting argument.

## STATEMENT OF THE ISSUES

1. Did the Licensee violate the conditions placed upon its license on January 3, 2007, by parking 37 vehicles on the lot without reserving six parking spaces for employees and customers?

2. Did the Licensee violate the conditions placed upon its license on January 3, 2007, by parking a Dodge Caravan intended for sale on a street near its premises?

3. Did the Licensee violate the conditions placed upon its license on March 21, 2007, by parking a Black Ford Expedition intended for sale on a street near its premises?

4. If so, is the recommended licensing sanction appropriate?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Since April 1999, Heartland Auto Sales has operated a licensed used car sales business with an auto repair garage located at 1236 Arcade Street in St. Paul. Nasseh Ghaffari is the president of Heartland Auto Sales.

2. Heartland's license is subject, in relevant part, to the following conditions:

Condition 2: Subject to normal city review and approval of an accurately scaled site plan . . . the site plan may be revised for striping of parking spaces on the lot for up to 37 total vehicles to be parked on the lot, including up to 31 parking spaces for vehicles for sale and at least 6 parking spaces reserved for employees and customers, of which at least 3 shall be designated as customer parking and 1 as handicapped parking.

Condition 3: Except for up to 3 employee parking spaces, parking spaces shall be designed to avoid use of the alley as a maneuvering lane per requirements in [the Zoning Code].

. . .

Condition 5: Retail auto repair is prohibited. The indoor repair bays may only be used for minor repairs in preparation of vehicles for sale.

Condition 6: Vehicles intended for sale shall not be parked on any street or project into a public right-of-way.<sup>1</sup>

3. The premises of Heartland Auto Sales are fenced and gated. Inside the fenced area, there are 34 permitted parking spaces. There are three additional permitted parking spaces adjacent to the alley on the north side of the building. The three spots on the north side of the building are intended to be used by customers and employees.<sup>2</sup>

4. On September 12, 2003, the City issued a Notice of Violation to the Licensee for having 67 vehicles parked on the lot during a complaint inspection on August 20, 2003. City inspectors also counted excess cars on the lot on November 22, 2003, and December 24, 2003. This matter was resolved by agreement, and on February 4, 2004, the City Council adopted a resolution suspending the auto repair license for ten days and fining the Licensee \$1,000; however, \$500 of the fine and the ten-day suspension were stayed for twelve months provided there were no further violations within the 12-month period from the date of adoption of the resolution.<sup>3</sup>

5. On April 6, 2005, the City issued a Notice of Violation to the Licensee for having too many vehicles parked on the lot. Inspectors had counted 41 vehicles on the lot on May 25, 2004; 43 cars on June 10, 2004; 43 cars on January 24, 2005; 42 cars on January 31, 2005; 42 cars on February 3, 2005; 38 cars on February 10, 2005; and 38 cars on March 8, 2005.<sup>4</sup> On August 13, 2004, the inspector counted 36 cars on the lot, but this apparently was not considered to be a violation.<sup>5</sup>

6. After a hearing on these alleged violations in July 2005, an Administrative Law Judge concluded the alleged violations occurred and recommended that adverse action be taken.<sup>6</sup>

7. On October 19, 2005, the City Council adopted a resolution providing that the auto repair garage and second-hand motor vehicle licenses were suspended for 30 days and the Licensee was fined \$1,500; however, 25 days of the suspension and \$750 of the fine were stayed for 18 months, on the condition that there were no further violations in that period of time.<sup>7</sup>

8. After an inspection on or about February 8, 2006, an inspector advised the Licensee that some vehicles registered to his business were improperly parked at 1265 Arcade Street (vacant property formerly occupied by

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<sup>1</sup> Ex. 2.

<sup>2</sup> Testimony of Jeff Fischbach.

<sup>3</sup> Ex. 1-1.

<sup>4</sup> Ex. 1-1; Ex. 7-6.

<sup>5</sup> *Id.*

<sup>6</sup> Ex. 7.

<sup>7</sup> Ex. 1-1; Ex. 8-2.

Marshall Motors) and that no customer or handicapped parking spaces were available on the lot of Heartland Auto Sales. The inspector notified the Licensee that he should be in compliance with licensing conditions by February 24, 2006.<sup>8</sup>

9. In an inspection on May 16, 2006, the Licensee was in compliance with all license conditions.<sup>9</sup>

10. In recent years, the Licensee has leased what he describes as “storage space” for additional vehicles on Jackson Street in St. Paul and on Ryan Industrial Boulevard in Little Canada. The lease on the Jackson Street property is expiring soon, and the Licensee is in the process of moving out of that space. The storage facility in Little Canada has the capacity to hold 40 vehicles.<sup>10</sup>

11. Heartland Auto Sales employs a mechanic named Randy Gunnufson, who lives at 805 Orange Street, about a block north of the licensed premises. Gunnufson lives with his 19-year-old son, Axel Gunnufson. On December 15, 2006, Axel Gunnufson purchased a 1995 red GMC Jimmy from Heartland Auto Sales.<sup>11</sup>

12. On December 19, 2006, an inspector visited the licensed premises to verify compliance with license conditions. The inspector counted 33 cars parked on the lot. Two of the 33 vehicles were parked in the maneuvering lane on the south side of the property; the inspector advised the Licensee to remove these two vehicles. In addition, the inspector found an engine block, transmissions, miscellaneous engine parts, windshields, tires, and a snow blower stored outside next to a garbage dumpster.<sup>12</sup> The Licensee indicated that a scrap metal recycler was supposed to come that day to remove some of these materials, and he agreed to remove all exterior storage within ten days.<sup>13</sup>

13. Because the inspector knew that in the past neighbors had complained that Heartland Auto parked cars intended for sale on the street, the inspector drove around the block to see if any vehicles associated with the business were parked on the street. He observed a red four-door GMC Jimmy with no license plates parked across from 808 Orange Avenue East. When the inspector checked the vehicle identification number (VIN) the next day, he found the vehicle was registered to a person living in Landfall, Minnesota.

14. Because Heartland Auto Sales had difficulty obtaining the original title to the 1995 GMC Jimmy, Axel Gunnufson returned the vehicle to the business shortly after Christmas. He purchased a different vehicle at that time.

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<sup>8</sup> Ex. 1-1.

<sup>9</sup> Ex. 1-1.

<sup>10</sup> Testimony of Nasseh Ghaffari.

<sup>11</sup> Ex. 12.

<sup>12</sup> Exs. 5-1 to 5-5.

<sup>13</sup> Ex. 3-1; Test. of J. Fischbach. Storing these materials outside the building is not a violation of a specific condition placed on the license, but it is a violation of the City's Zoning Code. See Test. of J. Fischbach.

According to Randy Gunnufson, they parked the red GMC Jimmy in one of the employee/customer spots adjacent to the alley because there was no where else to put it.<sup>14</sup>

15. The inspector returned to 1236 Arcade Street at approximately 8:00 a.m. on January 3, 2007, about two hours before the business opened for the day. The materials that had been stored improperly outside the building on the previous visit were no longer there. The inspector counted 37 vehicles parked on the lot. One of them was the red GMC Jimmy, which then had a license plate registered to Heartland Auto Sales, and a check of the VIN number came back marked as "Hold for Resale by Dealer." The GMC Jimmy and two other trucks were parked in the three permitted parking spots adjacent to the alley on the north side of the building. They were covered with snow, unlike other vehicles parked on the lot, and appeared to have been there for some time, at least since the last snowfall.<sup>15</sup>

16. On the same date the inspector also observed that a blue Dodge Caravan was parked in front of 808 Orange Street East. He noted the vehicle's license plate number, and found it was registered to someone who lived in Minneapolis. A few weeks later he checked the registration of this vehicle again, and he found that it had been registered to Heartland Auto Sales and marked "Hold for Resale by Dealer" as of January 10, 2007.<sup>16</sup>

17. On March 21, 2007, a city inspector visited the premises at 1265 Arcade Street, the vacant property formerly owned by Marshall Motors (which is immediately adjacent to the home of Randy Gunnufson, on Arcade Street between Orange and Hyacinth). The city had received a complaint that the operator of a new auto sales business, whose application for licensure was pending at that time, had started to make improvements on the property before approval of the license.<sup>17</sup>

18. On that same date the inspector observed a black Ford Expedition parked across the street from 808 Orange Street East. When he checked the registration the next day, he found the vehicle was registered to Heartland Auto Sales.<sup>18</sup> The black Ford Expedition was sold from the lot in May 2007.<sup>19</sup>

19. The 18-month probationary period from the last adverse action expired on April 19, 2007.

20. On April 23, 2007, the City issued a Notice of Violation to the Licensee for having too many cars on the lot on January 3, 2007, and for having

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<sup>14</sup> Testimony of Randy Gunnufson.

<sup>15</sup> Ex. 3-2; Exs. 6-5, 6-6.

<sup>16</sup> Test. of J. Fischbach.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Test. of N. Ghaffari.

cars intended for sale parked on public streets on February 1, 2007, and March 21, 2007.<sup>20</sup>

21. The City's position is that the April 23, 2007, Notice of Violation was issued too late to automatically invoke the stayed adverse actions from October 2005. It seeks imposition of the stayed sanctions as a deviation from the presumptive penalty.<sup>21</sup>

22. The City also recommends that the City Council impose a fine of \$2,000 and a ten-day closure of the establishment for these violations.

23. The City's further position is that the violations alleged here are technically a "first appearance" pursuant to the City's penalty matrix, because more than 18 calendar months elapsed since the violation giving rise to the first appearance (December 2003) and the current violations alleged (January 2007).<sup>22</sup>

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

### **CONCLUSIONS**

1. The Administrative Law Judge and the St. Paul City Council have authority to hear this matter pursuant to St. Paul Legislative Code § 310.05(c).

2. The hearing in this matter was conducted in accordance with the applicable portions of the procedures set forth in section 310.05 of the St. Paul Legislative Code.

3. The City gave proper notice of the hearing in this matter and has fulfilled all procedural requirements of rule or law.

4. The City has the burden of proving by a preponderance of the evidence that adverse action is warranted with respect to the licenses held by Heartland Auto Sales.

5. The St. Paul City Council may take adverse action against any or all licenses or permits, licensee or applicant for a license, on the basis that the licensee or applicant has failed to comply with any condition set forth in the license or in a resolution granting or renewing the license.<sup>23</sup>

6. The City demonstrated by a preponderance of the evidence that on January 3, 2007, the Licensee failed to comply with the license condition that

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<sup>20</sup> Ex. 9.

<sup>21</sup> Testimony of Kristina Schweinler.

<sup>22</sup> Testimony of Kristina Schweinler.

<sup>23</sup> St. Paul Legislative Code § 310.06 (b)(5).

prohibits the parking of more than 31 cars intended for sale on the premises. On that date the licensee had 37 cars intended for sale on the premises.

7. The City demonstrated by a preponderance of the evidence that on January 3, 2007, the Licensee violated a condition of the license by parking a Dodge Caravan intended for sale on a street near its premises.

8. The City demonstrated by a preponderance of the evidence that on March 21, 2007, the Licensee violated a condition of the license by parking a Ford Expedition intended for sale on a street near its premises.

9. Adverse action includes suspension of licenses and imposition of fines.<sup>24</sup>

10. The penalty matrix contained in the St. Paul Legislative Code sets out presumptive penalties for violations of conditions placed on a license. These penalties are presumed to be appropriate for every case; however, the council may deviate from the presumptive penalty in an individual case where the council finds and determines that there exist substantial and compelling reasons making it more appropriate to do so. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.<sup>25</sup>

11. The presumptive penalty for a first appearance before the City Council for violation of license conditions is a \$500 fine. The presumptive penalty for a third appearance is a \$2,000 fine and a ten-day suspension.<sup>26</sup>

12. The occurrence of multiple violations in connection with a licensee's appearance before the City Council shall be grounds for departure from such penalties.<sup>27</sup>

13. The City's recommended closure for ten days and imposition of a \$2,000 fine is not arbitrary or capricious, considering that multiple violations have been found in this matter.

14. Where the council takes adverse action with respect to a license, licensee or applicant for a license, the resolution by which such action is taken shall contain its findings and determination, including the imposition of conditions, if any.<sup>28</sup>

15. The City may only impose a stayed sanction if the conditions specified in the original resolution are met. There is no basis under the

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<sup>24</sup> St. Paul Legislative Code § 310.01.

<sup>25</sup> *Id.*, § 310.05(m).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*, § 310.05(m)(ii).

<sup>28</sup> *Id.*, § 310.05(f).

Legislative Code to impose a stayed sanction when the City's own interpretation of the resolution is that the 18-month probationary term expired before the City issued the Notice of Violation in this matter.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

It is respectfully recommended that the St. Paul City Council take adverse action against the second hand dealer-motor vehicle and auto repair licenses of Heartland Auto Sales, Inc., d/b/a Heartland Auto Sales.

Dated: June 26, 2007

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Digitally recorded,  
No transcript prepared

### **MEMORANDUM**

With regard to the first alleged violation, that the Licensee parked more than 31 cars intended for sale on the licensed premises, the Licensee's president, Nasseh Ghaffari, testified that he did not have more than 31 cars intended for sale parked on the premises at any time during the 18-month probationary period. He maintains that on January 3, 2007, he had employees attend planning meetings on the premises between 7:30 a.m. and 10:00 a.m. and that their cars must have been parked in the employee and customer parking spots at about 8:00 a.m., when the inspector was on the premises. Ghaffari did not indicate how many employees attended the meeting, or how many total employees he has.

Randy Gunnufson was evasive when questioned about this issue, maintaining that two to three employees generally worked in the garage during the business day but that he had no idea how many employees worked in the office at any given time. Gunnufson admitted that the red GMC Jimmy was parked in one of the customer/employee parking spaces because there was no where else to put it. He also said employees parked trucks in those spaces "to keep them off the lot" and out of the way.

The inspector testified that the gates controlling entrance to the premises were locked and there did not appear to be any activity going on in the building. One of the locked entrances was further blocked by a car, which apparently had been dropped off there to be repaired. The photographs the inspector took that morning verify that the gates were closed and padlocked, and no lights appeared to be on inside the building. Furthermore, the three cars parked near the alley had apparently been there for some time, as they were covered with snow, unlike the other cars on the premises.<sup>29</sup>

Ghaffari did not identify any of the cars parked in the employee/customer spaces as belonging to particular employees or customers. He said the green Ford Ranger truck parked with the GMC Jimmy had been sold, and the customer must have returned it for some reason, because some work had to be done to it.

Under all of these circumstances, the ALJ concludes the City has demonstrated that all of the cars parked on the licensed premises on January 3, 2007, were associated with the Licensee's business and were vehicles the Licensee ultimately planned to sell or dispose of in some other way. The City has established a violation of the license condition on January 3, 2007.

The two remaining violations concern vehicles registered to Heartland Auto Sales that were parked on or near 808 Orange Street East. Ghaffari and Gunnufson testified that the company has a policy of allowing employees to use vehicles, either for personal use as a "company car" or for the work-related purpose of test driving the vehicle for an extended period of time to determine whether the car needs work. This arrangement is available to most if not all employees. Gunnufson said he has probably driven and kept for short periods of time approximately 50 different cars over the term of his five-year employment with the Licensee, and when he uses cars in this manner he parks them in front of his house at 805 East Orange Street or on Heartland's lot. He specifically recalls that he used the blue Dodge Caravan to move furniture. He has no specific memory of using the black Ford Expedition. In addition, Gunnufson testified that he personally has purchased approximately ten cars from the Licensee over the past five years, which he either takes apart for parts or scrap, or which he may fix, keep, or re-sell to others. He has sold five such vehicles for profit in the past five years.

The City has shown that both the blue Dodge Caravan and the black Ford Expedition were registered to the Licensee, and both cars were parked on a public street near the licensed premises. This is sufficient to demonstrate a violation of the license condition that precludes the Licensee from parking vehicles intended for sale on a public street. The Licensee's evidence to the contrary is that Randy Gunnufson recalls using the blue Dodge Caravan to move furniture; there is no evidence as to when Gunnafson used the vehicle, or when he moved the furniture. Furthermore, Gunnufson had no specific memory of

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<sup>29</sup> See generally Ex. 6.

using the black Ford Expedition at any time, although he said he was “probably” using it on March 21, 2007, if it was parked on his street. It would require unquestioning acceptance of this very convenient testimony to conclude that Gunnufson was using these vehicles on the dates in question in a manner that did not violate the license condition. The Licensee presented no documentation to corroborate that Gunnufson had permission to use either vehicle on those dates. The Licensee’s evidence is simply not persuasive enough to conclude that the City has failed to meet its burden of demonstrating violations of the license condition on January 3, 2007, and March 21, 2007.

In his testimony, Ghaffari also indicated that he does perform what would otherwise be considered retail auto repair services, but he insists he does it only for customers who purchase their vehicle from Heartland Auto Sales. He is aware that the City views this as a violation of the license condition precluding retail auto repairs, and there is evidence the City has brought this issue to his attention in the past. The City has urged that this testimony be considered in determining the propriety of the proposed penalty. The St. Paul Legislative Code specifically requires that the Licensee receive written notice of the basis for any adverse action to be considered by the City Council.<sup>30</sup> The Notice of Violation did not include an alleged violation of this license condition, and this testimony should not be considered in determining what adverse action should be taken in this matter.

K.D.S.

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<sup>30</sup> St. Paul Legislative Code § 310.05(b).