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MEMO

TO: Mayor Jensen, City Council and Manager
FROM: David S. Bruner, City Attorney
DATE: November 20, 2017

RE: Acceptance of Tobacco Settlement Agreement

BACKGROUND

On March 29, 2017, tobacco retailer compliance checks by the Carroll Police Department resulted in a citation being issued to an employee of Hy-Vee for providing tobacco to a minor. In accordance with State law, the City must pursue a civil penalty against the tobacco permit holder. HyVee is allowed to utilize an affirmative defense in this instance, since its employee had completed the tobacco compliance training program pursuant to the Iowa Code. In cases like these, HyVee is allowed to use this defense once in a four-year period. HyVee has acknowledged this in it's Settlement Agreement attached hereto.

RECOMMENDATION

Motion authorizing the Mayor to execute the Order accepting the Settlement Agreement from the above retailer for violation of the State's tobacco law.

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CARROLL CITY COUNCIL

IN RE:

HY-VEE 905 W US Hwy 30 Carroll, IA 51401	: : :	ORDER ACCEPTING SETTLEMENT AGREEMENT

On this 11th day of December, 2017, in lieu of a public hearing on the matter, the Carroll City Council approves the affirmation defense of the above-captioned permittee's cigarette permit pursuant to Iowa Code section 453A.22 resulting from a violation of Iowa Code section 453A.2(1) dated March 29, 2017.

The Carroll City Council Therefore FINDS that the above-captioned permittee is granted the affirmative defense and no further action by the above-captioned permittee regarding this violation is required.

IT IS THEREFOR ORDERED that the judgment in this matter is hereby satisfied.

CITY OF CARROLL, IOWA

_____
Eric P. Jensen, Mayor

ATTEST:

_____
Laura A. Schaefer, City Clerk

cc: Paxton Williams
Assistant Attorney General
Revenue Division
1305 E Walnut Street
Des Moines, IA 50319

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CARROLL CITY COUNCIL

IN RE:

HY-VEE 905 W US Hwy 30 Carroll, IA 51401	: : :	SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

Hy-Vee hereby knowingly and voluntarily acknowledges that it has received the Complaint in the above case. Hy-Vee hereby knowingly and voluntarily acknowledges the facts and allegations contained in the complaint, incorporated herein by reference, and knowingly and voluntarily admits that the same are true and correct. Hy-Vee hereby knowingly and voluntarily admits that Nicholas McDaniel sold tobacco to a minor on March 29, 2017. Hy-Vee has submitted the required documents to show that the employee charged with the violations stated in the complaint completed the tobacco compliance employee training program pursuant to Iowa Code section 453A.5 at the time of the violation. Hy-Vee hereby asserts an affirmative defense under Iowa Code section 453A.22(3). Hy-Vee understands that the affirmative defense asserted for the violation dated March 29, 2017 may only be used once in a four-year period to bar prosecution of the legal owner. Hy-Vee understands that in order to conclude this matter the Carroll City Council must approve this settlement agreement. The undersigned has the legal authority to sign this Agreement and bind Hy-Vee.

Dated: November 1, 2017

HY-VEE

By _____
Mic Jurgens
SVP, General Counsel

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