



Direct: (612) 696-3544  
Fax: (612) 696-4632  
Email: nancy.husnik@target.com

July 15, 2015

Ms. Marcia Moermond  
Legislative Hearing Officer  
St. Paul City Hall  
310 City Hall  
15 West Kellogg Boulevard  
St. Paul, MN 55102

**SENT VIA ELECTRONIC MAIL**

RE: Legislative Hearing: Target Corporation Application for Exclusive Liquor License  
Target Midway Store, 1300 University Avenue W., St. Paul, MN.

Dear Ms. Moermond,

This letter is written to support Target Corporation's application to the City of St. Paul for an Exclusive Liquor Store License to be located at its Midway Target Store site above, which is the topic of a Legislative Hearing on Friday, July 17, 2015 at 10 am.

**Brief History**

Target Corporation ("Target") applied for an Exclusive Liquor Store License on October 21, 2014 for its location on University Avenue within the Midway Shopping Center. As part of the application process, the City of St. Paul conducted measurements of the distance 1) from the proposed Target license location to potential residences or child care facilities within 300 feet of the area; and 2) from the proposed Target license location to any other locations of off-sale liquor establishments within one-half mile of the proposed Target license location. (St. Paul City Ordinances, Section 409.06 (i)(2) and (i)(3)). At the City's recommendation, Target hired a third-party to conduct the same measurements. (*See attached Exhibits A, B and C – photo of off-sale license survey, surveyor's report and sketch of proposed liquor store location.*)

Target met with the Union Park District Council ("District Council") on October 28, 2014. It also met with the Head Start Parent's Council and Community Action Partnership of Ramsey & Washington Counties ("Community Action") in November – December 2014 and again in April, 2015 to obtain a waiver of public hearing due to the proximity of a licensed child care facility to the proposed Target license location. A consent and waiver of public hearing was obtained from Community Action. (*See attached Exhibits D and E – Consent and Waiver.*)

Later, Target contacted the District Council to see if there were additional questions they may have. A meeting was held on June 8, 2015. At that meeting, Big Top Liquor questioned the measurement standard used by the City to determine distance between the proposed Target license location and the Big Top Liquor Store. The Midway Target Store is a free-standing building next to other shops located within the Midway Shopping Center. The site for the

proposed Target license location is a store within the front of the existing Target store. (*See Exhibit C.*) Big Top Liquors is a stand-alone building in the Midway Shopping Center. The District Council voted to request a legislative hearing on the proposed Target Exclusive Liquor Store license to address the distance measurement concern. (*See attached Exhibits F and G – Union Park District Council Request and Legislative Hearing Notice.*)

### **Distance Requirements for Off-Sale Liquor Licenses**

According to St. Paul City Ordinances, a new off-sale liquor establishment cannot be within a one-half mile radius of an existing off-sale liquor establishment. (St. Paul City Ordinances, Section 409.06 (i)(2)). The wording of the measurement standard for this requirement is being challenged by Big Top Liquor Store as to how that distance is measured, such as from lot-line-to-lot-line or building-to-building.

When requiring measurement between existing and proposed licensed facilities, the current applicable City ordinance states that measurement should originate and end from the “*location*” of the “*establishment*.” It does not refer to the “*property line*” of the “*establishment*.” (St. Paul City Ordinance, Section 409.06 (i) (2).) Another section of the same ordinance states that when residences are involved, and if the proposed licensed entity is located within a shopping mall or center, the measurement begins at the “*nearest corner of the building in which the licensed premises is located*.” (St. Paul City Ordinance, Section 409.06 (g)(2)(a).) From that point, the measurement is taken to the “*property line*” of the residential location. *Id.* The ordinances display a clear distinction between “*location of establishment*” or “*property line*” when measurement is necessary. If the City Council had wanted a “*property line-to-property line*” measurement between existing and proposed licensed facilities in City Ordinance Section 409.06(i)(2), those terms would have appeared within the ordinance.

The St. Paul City Attorney’s office issued an opinion in 2005 addressing this issue. (*See attached Exhibit H – Office of the City Attorney, St. Paul, Minnesota, Memorandum, “Measurement Under Legislative Code 409.06(i)(2),” July 28, 2005.*) A liquor establishment applying for an Exclusive Liquor License was challenged by an existing Exclusive Liquor Licensee who objected to the City’s method of measuring the one-half mile distance between the two. As stated in the City Attorney’s memo, the ordinance applying to two off-sale licensees required measurement from “*location to location*” of the “*establishment*”, not “*location of establishment*” to “*property line*” as stated in other parts of the ordinance. The wording of the applicable ordinance applying to measurement has not changed since the above memo was written in 2005.

The St. Paul City Attorney also researched and convincingly cited Minnesota statutory construction laws to support his conclusion. He stated that the purpose of the ordinance was to protect the public morals through avoidance of overconcentration. Based upon that concern, he used the conditions of necessity, mischief to be remedied, and objective to be attained, as the statutory elements to employ when determining the legislative intent. (MN Stat. Section 645.16(1), (3) and (4).) He also stated that undue concentration, not protection of an existing license holder from competition, was the purpose of the City ordinance. (*See Exhibit H, Page 3, Paragraph 2.*)

The City Attorney’s opinion has been in place and relied upon by the City Licensing Department for ten years. It was recently supported and re-iterated in an email response from the Department of Safety and Inspections to a question posed by the Executive Director of the District Council relating to Target’s license application. (*See attached Exhibit I- email message.*)

Target Corporation respectfully requests the Legislative Hearing Officer to consider the merits of the information submitted herein and to accept the measurement between the establishment locations as submitted with the Target Exclusive Liquor Store license application.

Respectfully Submitted,



Nancy E. Husnik  
Senior Counsel  
Target Corporation

Enclosure(s)



EXHIBIT A



7699 Anagram Drive  
Eden Prairie, MN 55344

PHONE 952-937-5150  
FAX 952-937-5822  
TOLL FREE 888-937-5150

[www.westwoodps.com](http://www.westwoodps.com)

November 19, 2014

Ms. Mackenzie Alberts  
Ryan Companies US, Inc.  
50 South Tenth Street, Suite 300  
Minneapolis, MN 55403-2012

**Re: Target Midway St. Paul, Minnesota**  
File R0005130.00

Dear Mac:

On Monday November 17, 2014 Westwood Professional Services located the east side of the west doorway to the Target Store located at 1300 University Avenue St. Paul, Minnesota and the southeast corner of the building that houses Big Top Wine & Spirits located at 1574 University Avenue St. Paul, Minnesota. The distance between the two points is 2,651.98 feet. Our measurements were collected utilizing GPS equipment on the Ramsey County coordinate system, NAD 83, 2011 adjustment in U.S. Survey feet.

Please contact me if you have any questions.

Sincerely,

WESTWOOD PROFESSIONAL SERVICES

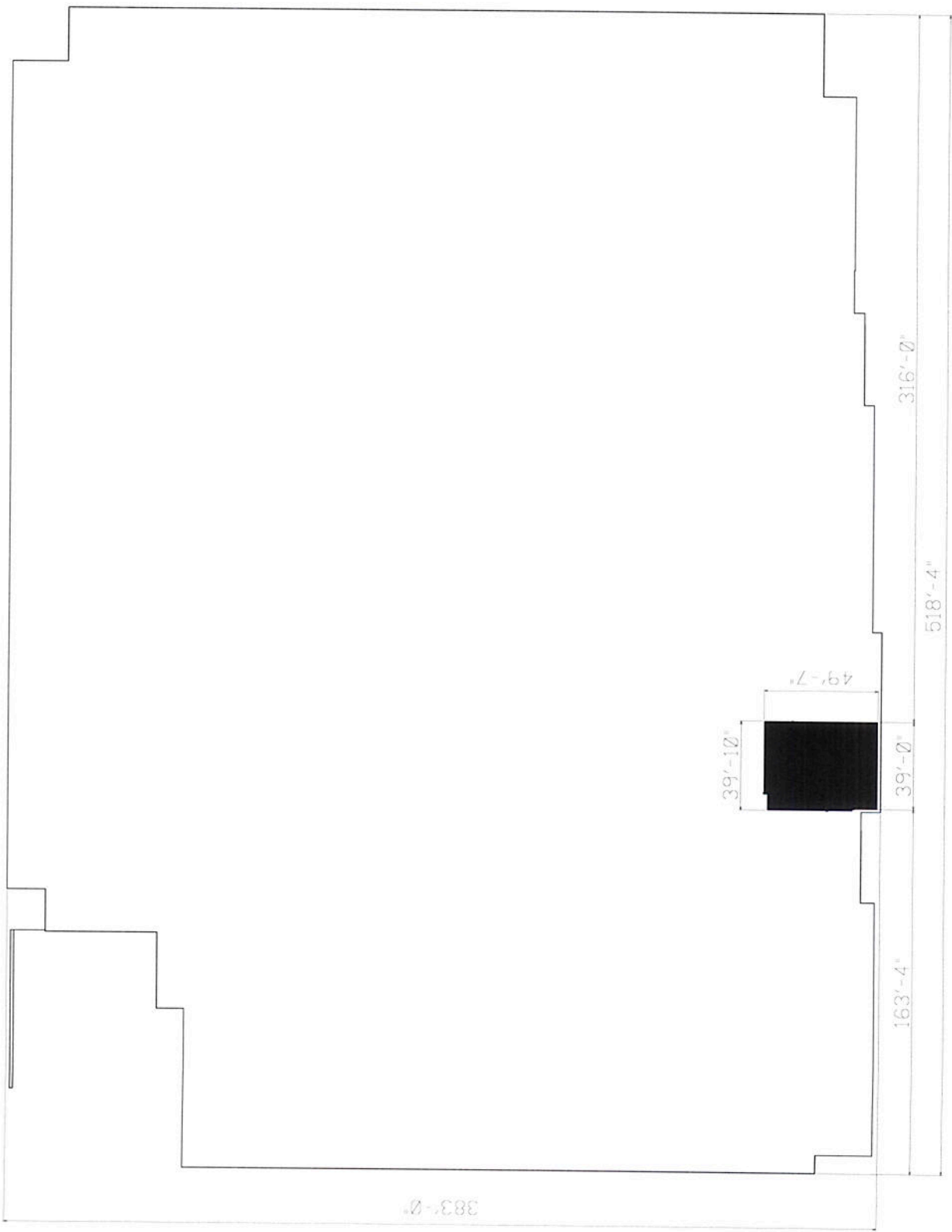
A handwritten signature in cursive script that reads 'Mark R. Salo'.

Mark R. Salo, PLS  
Project Manager



**TARGET CORPORATION**  
 TARGET CORPORATION, PROPERTY DEVELOPMENT  
 10000 BROADWAY, SAINT PAUL, MN 55119  
 NOTICE: THIS PLAN AND SPECIFICATIONS  
 ARE SUBJECT TO CHANGE WITHOUT NOTICE  
 AND WITHOUT LIABILITY TO TARGET CORPORATION.  
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**TARGET**  
 PLAN NO. 19-00000000000000000000  
 SCALE: 1/8" = 1'-0"  
 DATE: 10/15/19  
 555 St. Paul Midway  
 Saint Paul, MN 55119  
 PLAN TYPE: \_\_\_\_\_  
 SHEET NO.: \_\_\_\_\_



**EXHIBIT C**



CITY OF SAINT PAUL  
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 200  
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-9090  
Facsimile: 651-266-9124  
Web: [www.stpaul.gov/dsi](http://www.stpaul.gov/dsi)

**PETITION**  
**Consent for an Off-Sale Liquor Establishment**

- (i) *License location restrictions.* These restrictions shall not apply to off-sale/brew pub license or off-sale brewery licenses.
- (3) No license shall be issued for an off-sale location which is within three hundred (300) feet of residentially zoned property, a park or a licensed child-care center, said three hundred (300) feet being calculated and computed as the distance measured from the property line of the premises or building proposed as the location for the off-sale liquor license to the property line of any residentially zoned property, park or child care center in the area for which the license is sought.
  - a. The council may waive the restrictions set forth in paragraph (3) above relating to distance if it makes findings that such a license is not inconsistent with the health, safety, morals and general welfare of the adjoining neighbors or community. Factors which may be considered include, but are not limited to the following: the likelihood of increased noise, traffic, litter, loitering or unlawful behavior by patrons of the establishment, excessive artificial lighting, substantial decrease in adjoining property values, and the extent to which any of the potential problems can be addressed by conditions on the license.
  - b. In order to waive the restrictions relating to distance the council must first receive a petition from seventy-five (75) percent of the owners and tenants of all private residences, dwellings and apartment houses located within three hundred (300) feet of the proposed off-sale location stating that they have no objection if the waiver relates to residentially zoned property or a written statement consenting to the waiver by the director and/or owner of the child care center if the waiver relates to a licensed child care center.
  - c. An establishment holding a valid license on the effective date of this amendment shall not be affected by this limitation, but shall be entitled to have such license renewed so long as they are in compliance with all other requirements of law and there exist no grounds for adverse action against such license.

We, the undersigned, have read and understand City of Saint Paul Legislative Code 409.06(i) stating that any (circle one) residentially zoned property, park or licensed child-care center located within 300 feet of 1300 University Avenue W., St. Paul, MN 55104 may consent to the waiver of the 300 feet distance requirement and granting of a Liquor Off-Sale License at the aforementioned location.

We, the undersigned, understand that the business, Target Store T2229, owned by Target Corporation, has filed a business license application for an off-sale liquor license located at 1300 University Avenue W., St. Paul, MN 55104 with the City of Saint Paul's Department of Safety and Inspections

We, the undersigned, do hereby consent to the application of Target Corporation requesting a Liquor Off-Sale license at 1300 University Avenue W.

The undersigned acknowledges that Lee Mehrkens has authority to consent to the application requesting an Intoxicating Liquor license on behalf of Community Action Partnership of Ramsey & Washington Counties - Head Start Program.

Lee Mehrkens  
 Printed Name

450 Syndicate St. N. #325  
St. Paul, MN 55104  
651-645-6445  
 Address and Phone Number

Lee Mehrkens  
 Signature

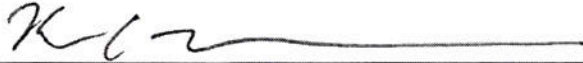
**EXHIBIT D**

## Waiver relating to Target Midway Liquor License

Community Action's University Head Start, located at 450 Syndicate Street N., St. Paul Minnesota, 55104 has no objection to Target Corporation applying for a beer, wine and spirits license expansion at its store located at 1300 University Avenue W., St. Paul, MN 55104, with the following conditions:

- Request that City Council hold Target Corporation to the original presentation by adding a condition requiring Target to keep their supply at the high-end product mix and to not include single servings in the local community to drive revenues.
- Community Action requests an additional commitment for Target Corporation to work with Goodwill, Hired or other workforce connection providers in the community.
- Target Corporation will also continue to communicate with the Community Action Board on the status.

Community Action Partnership of Ramsey & Washington Counties  
Head Start & Early Head Start Program



By (Signature)

Board Chair

Title

1/28/2015

Dated

EXHIBIT E





UNION PARK DISTRICT COUNCIL  
1602 Selby Avenue, Suite 10, Saint Paul, MN 55104  
651.645.6887 | info@unionparkdc.org | www.unionparkdc.org  
*An Affirmative Action, Equal Opportunity Employer*

June 8, 2015

Jeff Fischbach  
Department of Safety and Inspection  
25 West 4th Street  
City of Saint Paul  
Saint Paul, MN 55101

Dear Jeff,

At its regular meeting on June 8, 2015, the Union Park District Council Land Use Committee reviewed the Liquor Off Sale application submitted by Target Corporation for Target Store T2229 at 1300 University Avenue West.

After a discussion with the Committee members, Target representatives, business owners, and residents, the Committee **voted to request a legislative hearing.**

Because there were questions about the interpretation of the ordinance requiring a half-mile distance between a current off-sale establishment (Big Top Liquors) and the proposed off-sale location, we request that the following issues be addressed as part of the hearing: 1) the means of measurement that were used, including the specific points used for the measurement, and 2) the means of measurement that should be used under the ordinance, including the definition of "establishment" and "location" in the ordinance.

Please let me know if you need any additional information.

Sincerely,

Julie Reiter  
Executive Director  
Union Park District Council

EXHIBIT F



**CITY OF SAINT PAUL**  
OFFICE OF THE CITY COUNCIL  
310 CITY HALL  
15 WEST KELLOGG BOULEVARD  
SAINT PAUL, MN 55102-1615  
EMAIL: [LH-Licensing@ci.stpaul.mn.us](mailto:LH-Licensing@ci.stpaul.mn.us)  
PHONE: (651) 266-8560 FAX: (651) 266-8574

## NOTICE OF LEGISLATIVE HEARING

Jonathon Redberg  
Target Store T2229  
33 6<sup>th</sup> Street S – CC1028  
Minneapolis MN 55402-3601

[jonathon.redbert@target.com](mailto:jonathon.redbert@target.com)

Dear Jonathon Redberg:

Correspondence of objection/concern has been received regarding your application for a Liquor Off Sale license. You are invited to attend and participate in a hearing before the Legislative Hearing Officer regarding these concerns.

The Legislative Hearing will be held on:

DATE: **Friday, July 17, 2015**  
TIME: **10:00 a.m.**  
PLACE: Saint Paul City Hall/Ramsey County Courthouse  
Third Floor, Room 330, Committee Hearing Room  
15 Kellogg Boulevard West  
Saint Paul, Minnesota 55102

At this hearing, the Legislative Hearing Officer will take testimony from all interested people. At the end of this hearing, she will make a recommendation as to whether the license should be approved, approved with conditions, or referred to an Administrative Law Judge. The City Council will have the final authority to grant or deny this license.

c: Councilmember Thao  
Union Park District Council  
Complainants  
Geoffrey Karls, City Attorney's Office

Notice Mailed: 7/7/15 by Vicki Sheffer, 651-266-1941



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# EXHIBIT G



CITY OF SAINT PAUL  
Randy C. Kelly, Mayor

Civil Division  
400 City Hall  
15 West Kellogg Blvd.  
Saint Paul, Minnesota 55102

Telephone: 651 266-8710  
Facsimile: 651 298-5619

RECEIVED IN LIEP

JUL 29 2005

MEMORANDUM

TO: MARCIA MOERMOND  
LEGISLATIVE HEARING OFFICER

FROM: GERALD HENDRICKSON  
DEPUTY CITY ATTORNEY *GH*

RE: MEASUREMENT UNDER LEGISLATIVE CODE 409.06 (i)(2)

DATE: JULY 28, 2005

FACTS

On July 15, 2005, you sent me a memo asking for my advice concerning a matter pending before you for a legislative hearing. Paul and Katrina Wentzel, doing business as the Wine Thief, applied for an off-sale liquor license for 1785 Saint Clair Avenue. James Thomas objected on the grounds that this location was within ½ mile of his off-sale liquor store, Thomas Liquors, in violation of Legislative Code § 409.06(i)(2). The Office of License, Inspections, and Environmental Protection (LIEP) provided evidence that measuring building-to-building, the new location was more than ½ mile from Mr. Thomas' location. LIEP therefore recommended that the license be issued. Mr. Thomas contended that the measurement should be made from the lot line at 1785 Saint Clair Avenue to the lot line of his store, in which case the Wentzel's store would be within ½ mile of Thomas Liquors. You asked the following:

QUESTION

Should the ½ mile measurement required in Legislative Code § 409.06(i)(2) be made from lot line to lot line?

DISCUSSION

In my opinion, the measurement should not be made from the lot lines for the following reasons.

Marcia Moermond  
July 28, 2005  
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Legislative Code § 409.06 (i) deals with license location restrictions. The ordinance in question, Legislative Code § 409.06(i)(2) states:

No off-sale license shall be issued to any location within a half-mile radius of any existing off-sale establishment, except in the downtown business district, where the distance requirement shall be a radius of three hundred (300) feet. Notwithstanding the foregoing, no off-sale liquor establishment shall be located within a half-mile radius of the Xcel Energy Center.

According to this ordinance, then, the measurement of the ½ mile radius should be from a "location" being licensed to an "establishment" with an existing license. Neither of these terms are defined by Legislative Code chapter 409. The word "establishment" is used frequently in this chapter, usually in the context that suggests the word means the place of business, which, as Director Janeen Rosas points out in her July 14, letter to you, is the Webster's Dictionary definition of the word. However, the phrase "place of business" is no clearer than "establishment" since that phrase arguably could also include all of the property to the lot line. There is no case law applying Legislative Code § 409.06(i)(2) or defining these terms. When, as here, the words are ambiguous, the meaning is determined by ascertaining the legislative intent. Minn. Stat. § 645.16.

A number of factors point to the conclusion that the City in enacting Legislative Code § 409.06(i)(2) intended the measurement in this case to be made from the building, and not the lot line. The most persuasive consideration is that in several other situations, Legislative Code chapter 409 expressly requires measurements to be made from the lot lines. It would follow that if the Council wanted the measurement in this case to be from the lot lines, it would have said so, as it did in these other situations.

In particular, in the very next sub-section, Legislative Code § 409.06 (i)(3) states:

No license shall be issued for an off-sale location which is within three hundred (300) feet of residentially zoned property, a park or a licensed child-care center, said three hundred (300) feet being calculated and computed as the distance **measured from the property line** of the premises or building proposed as the location for the off-sale liquor license **to the property line** of any residentially zoned property, park or child care center in the area for which the license is sought.

Thus the City Council knew how to require measurements from the lot line rather than from the building when that was its intent. The lack of any mention of the lot line when measuring between two off-sale liquor establishments, when the Council has expressly required lot line

Marcia Moermond

July 28, 2005

Page 3

measurements in the same section when measuring from a liquor establishment to a residential property, a park or a child-care center, strongly suggests that it did not intend the off-sale to off-sale measurement to be from the lot lines.

Note that the Legislative Code also expressly requires measurements to be from lot line to lot line in the case of certain measurements relating to outside service areas (Legislative Code § 409.06 (g)), and measurements between licensed premises and a church or school (Legislative Code § 409.06 (n)) and certain measurements relating to transfers or changes in service areas (Legislative Code § 409.11 (b) and (d)).

I would also point out that when ascertaining the legislative intent, the purpose of the legislation is a factor. See Minn. Stat. § 645.16 (1), (3), and (4). The purpose of liquor regulation is to protect the public morals. Dunnell Minn. Digest INTOXICATING LIQUORS §§ 2.01 (4th ed.). The purpose here is to protect the public from an undue concentration of liquor establishments, not to protect the existing license holder from competition.

The fact situation here is typical. The difference between measuring from the buildings or from the lot line is a matter of a few feet. As to the concentration, this difference of a few feet on a ½ mile measurement is negligible, so, in the absence of express language requiring lot line to lot line measurement, there is no reason to suppose the Council intended that method of measurement as more protective of public morals.

Finally, the interpretation of LIEP is further indication of legislative intent, unless it is clearly contrary to the explicit provisions of the law. Minn. Stat. § 645.16 (8). Here it appears that LIEP's interpretation of this provision is that the measurement is not made from the lot lines when applying Legislative Code 409.06 (i)(2). That ordinance, at a minimum, does not expressly require measurements from the lot lines, so LIEP's method is entitled to be followed.

### CONCLUSION

Nothing in the ordinances or any other law states that the measurements between Thomas Liquors and the Wine Thief be from lot line to lot line. LIEP's building-to-building measurement for the purposes of the ½ mile requirement found in Legislative Code § 409.06 (i)(2) is the legally correct method of measurement for that requirement.

cc: Members of the City Council  
Mayor Randy Kelly  
Manuel Cervantes  
Trudy Moloney  
Janeen Rosas  
Christine Rozek

**From:** Fischbach, Jeffrey (CI-StPaul)  
**Sent:** Monday, May 18, 2015 1:08 PM  
**To:** 'Julie Reiter'  
**Subject:** 1300 University Ave W - Liquor Off Sale Separation Measurement

Julie,

See attached.

DSI's interpretation is that the ½ mile separation measurement is to be taken from the nearest point of the existing establishment to the nearest point of the proposed establishment.

Let me know if you have any questions.



**Jeff Fischbach**  
*DSI Inspector III - Licensing*  
Department of Safety and Inspections (DSI)  
375 Jackson St, Suite 220  
Saint Paul, MN 55101  
P: 651-266-9106  
F: 651-266-9124  
jeffrey.fischbach@ci.stpaul.mn.us

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EXHIBIT I