



CITY OF SAINT PAUL

Christopher B. Coleman, Mayor

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

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

January 13, 2011

Robert J. Foster
Foster & Brevier, PLLC
Attorneys at Law
2812 Anthony Lane, Suite 200
St. Anthony, MN 55418

RE: All licenses held by MW #1, Inc. d/b/a Corner Meats & Grocery for the premises located at 516 Rice Street in Saint Paul
License ID #: 20090000931
OAH Docket #: 3-6020-21693-3

Dear Mr. Foster:

Enclosed is a copy of Exceptions to December 23, 2010 Report of Administrative Law Judge I submitted to the Saint Paul City Clerk this morning in preparation for the public hearing scheduled on February 2, 2011.

Sincerely,

Rachel Tierney
Assistant City Attorney

cc: Diane Nordstrom, Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620
Christine Rozek, Deputy Director of DSI
Mohammad Wazwaz, 9362 Knighton Road, Woodbury, MN 55125
Tait Danielson Castillo, Exec. Director, Frogtown Neighborhood Association, 685 Minnehaha Avenue West
St. Paul, MN 55104

STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Julie Kraus, being first duly sworn, deposes and says that on the 13th day of January, she served the attached **EXCEPTIONS TO CITY COUNCIL** placing a true and correct copy thereof in an envelope addressed as follows:

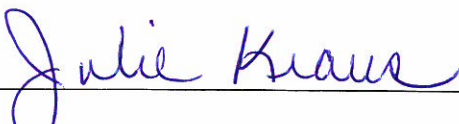
Robert J. Foster
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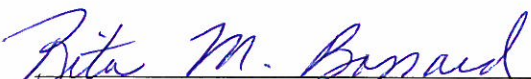
Tait Danielson Castillo, Exec. Director
Frogtown Neighborhood Association
685 Minnehaha Avenue West
St. Paul, MN 55104

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.

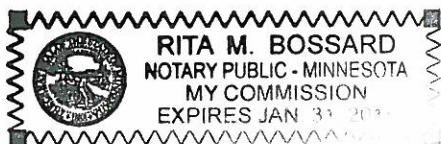


Julie Kraus

Subscribed and sworn to before me
this 13th day of January 2011



Notary Public



SAINT PAUL CITY COUNCIL

In Re adverse action against all licenses held by
MW #1 d/b/a Corner Meats & Grocery.

DEPARTMENT OF SAFETY AND
INSPECTION'S EXCEPTIONS TO
DECEMBER 23, 2010 REPORT OF
ADMINISTRATIVE LAW JUDGE

EXCEPTIONS TO DECEMBER 23, 2010 REPORT OF ADMINISTRATIVE LAW JUDGE :

In her Conclusions of Law, the Administrative Law Judge found that the City proved, by a preponderance of the evidence, that the Licensee permitted smoking in a public place or a place of employment in violation of the Clean Indoor Air Act. In her Conclusions of Law, the Administrative Law Judge also found that the City could only take adverse action against Corner Meats & Grocery based on the Clean Indoor Air Act as applied through Minnesota State Food Code. However, Chapter 13.02 of the Saint Paul Administrative Code gives the Department of Safety and Inspections the ability to enforce the Clean Indoor Air Act. Violation of the Clean Indoor Air Act, Minn. Stat. § 144.414, is a petty misdemeanor. Minn. Stat. § 144.417, subd. 2. Further, Chapter 310.06(b)(6)(a) provides that adverse action is appropriate when “[T]he licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith”. This language echoes that in the Chapter 310.05(m)(2), which is cited as the basis for the fine in the Notice of Violation.

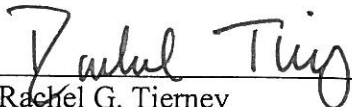
For these reasons, the Department of Safety and Inspections requests that the Council not adopt the ALJ’s Conclusions of Law numbers 13, 14, 15, 16, 17, 18, 19, and 20 and instead make the following Conclusions of Law:

13. The City may take adverse licensing action for a violation of the Minnesota Clean Indoor Air Act, as provided in Chapter 310.06(b)(6)(a) of the Saint Paul Legislative Code because the Clean Indoor Air Act is a statute that is “reasonably related to the licensed activity.”
14. The penalty matrix contained in Chapter 310.05(m) calls for a fine of \$1,000.00 because licensee has a prior violation of the Saint Paul Legislative Code within twelve (12) months of the current violation.

The Department of Safety and Inspections further requests that the Council decline to adopt the accompanying recommendation and memorandum of the Administrative Law Judge.

Respectfully Submitted,

Dated: 1-13-11



Rachel G. Tierney
Assistant City Attorney
Representing the Dept. of Safety and Inspections