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ATTORNEYS

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VIA EMAIL [shari.moore@ci.stpaul.mn.us](mailto:shari.moore@ci.stpaul.mn.us)  
Shari Moore, City Clerk  
CITY OF ST. PAUL

Re: Zoning File 20-047-173

Dear Ms. Moore:

Our office represents Border Foods, Inc. There appears an item on the agenda for the consideration of the City Council, at its meeting on December 9, 2020, item number 5, captioned RES 20-1662. This item relates to an application for a conditional use permit by Border Foods, Inc. for the property at 565 N. Snelling Ave. This item is for the passage of a resolution following a motion of intent voted upon at the Council meeting on September 16, 2020. This resolution if acted upon and if valid and proper would be subject to veto by the Mayor.

The council has no authority to act upon or pass the resolution. Doing so would be an *ultra vires* act in clear violation of the law.

Minn. Stat. section 15.99 required that the City approve or deny the conditional use permit application of Border Foods within 60 days of the date it was filed. By letter dated August 18, 2020, Josh Williams on behalf of the City informed the applicant that the City had elected to extend the date for final decision to October 24, 2020. The City did not deny the application by October 24, 2020. Rather on September 16, 2020 the Council's "motion of intent to deny" was made and approved. There was no written resolution.

All actions of the City Council must be done by written ordinance or resolution (City Charter section 6.08). All final decisions of the Council in zoning matters must be by written resolution (City Code section 61.704). The written resolution, RES 20-1662, appears on the agenda for the Council meeting on December 9, 2020, which is after October 24, 2020. Minn. Stat. section 15.99 provides that failure to deny is approval.

The Council did not deny the application by a resolution passed within the time permitted by the statute. By operation of law the conditional use permit application has been approved. The Council has no authority to pass a resolution of denial after the approval. Doing so is an *ultra vires* act contrary to the law. Demand is hereby made that the matter be stricken from the Council agenda.

Very truly yours,  
McClay•Alton, PLLP



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cc: Council President Amy Brendmoen, via email