

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE ST. PAUL CITY COUNCIL**

In the Matter of the Malt Off-Sale application
submitted by Chanh Yang d/b/a/ Super
Convenience Store for the premises located
At 922 Thomas Avenue in St. Paul

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson conducted a hearing in this matter beginning at 9:30 a.m. on Tuesday, August 12, 2003, in Room 42, St. Paul City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota.

Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, represented the City of St. Paul (the City) at the hearing. The Applicant, Chanh Yang, d/b/a Super Convenience Store, represented himself at the hearing. The record closed on August 15, 2003, when the information that the ALJ requested to supplement the record was received.

This Report is a recommendation, not a final decision. The City Council of the City of St. Paul will make the final decision after reviewing the hearing record. The Council may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under the City's Legislative Code,^[1] the Council will not make its final decision until after it has provided the licensee 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 interpretation of the facts and to present argument related to the recommended adverse action. Parties should contact the City Clerk's Office, City of St. Paul, 170 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, to find out how to file objections or present argument.

STATEMENT OF THE ISSUE

Whether or not the City Council should grant Mr. Yang's application for an off-sale license to sell nonintoxicating malt liquor at the Super Convenience Store?

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The City of St. Paul (the City) is a municipal corporation located in Ramsey County, Minnesota, and is a political subdivision of the State. The City's governing body is the St. Paul City Council. The State has delegated to the City authority to issue licenses for the sale of alcoholic beverages.^[2]

2. On or about March 12, 2003, Chanh K. Yang, doing business as Super Convenience Store, submitted an application to the City for a license to sell nonintoxicating malt liquors at the grocery store that he owns and operates at 922 Thomas Avenue in St. Paul.^[3]

3. Pursuant to Section 310.05(d)(1) of the St. Paul Legislative Code, on March 27, 2003, the City gave notice of the pending license application to the affected neighborhood organization and to the residents of the neighborhood in which Mr. Yang's business is located. That organization and those residents were given until May 2, 2003 to voice any objections to Mr. Yang's license application.^[4] The City also advised Mr. Yang of the deadline for raising objections to his application and that a hearing would be scheduled before a legislative hearing officer if any objections were received.^[5]

4. The District 7 Planning Council was the affected neighborhood organization to which notice of Mr. Yang's license application was sent. On April 29, 2003, District 7 Planning Council responded to the notice by raising several objections to Mr. Yang's application. Those objections included the fact that there already were several stores selling alcohol in the immediate neighborhood, that a drug and alcohol recovery program was located across the street from Mr. Yang's store, that a daycare center was located a block away, and that Mr. Yang's store was surrounded by residential housing in which a number of young children lived.^[6]

5. On or about April 8, 2003, Model Cities Community Development Corporation submitted a written objection to Mr. Yang's license application. The basis for Model Cities' objection was that it was in the process of establishing a housing program across the street from Mr. Yang's grocery store. That program is designed to serve households with single-heads of families who are recovering from drug and alcohol abuse. It was Model Cities' belief that allowing malt liquors to be sold at Mr. Yang's grocery store would hinder the program's objective of establishing a chemical-

free environment for those families and hinder them from achieving long-term abstinence.^[7]

6. Four individual neighborhood residents also submitted written objections to Mr. Yang's license application, citing such potential problems as underage purchase of alcohol, the number of other establishments with off-sale licenses to sell malt liquors, loitering, and increased littering and automobile traffic in the neighborhood.^[8]

7. Since objections to Mr. Yang's license application were received, the City Council referred the matter for hearing before a legislative hearing officer pursuant to Section 310.05(d)(1) of the St. Paul Legislative Code.^[9]

8. The legislative hearing officer conducted a hearing on Mr. Yang's application at the St. Paul City Hall on Tuesday, May 20, 2003.^[10] The hearing officer received six letters objecting to issuing a license to Mr. Yang for various reasons, including those described in finding No. 6. Mr. Yang appeared and indicated that thirty-six of forty customers that he had surveyed supported selling malt liquors at his store.^[11] The City's Office of License, Inspections and Environmental Protection (LIEP Office) recommended that the City grant the license subject to conditions.^[12] During the legislative hearing the question arose whether denial of the license might be based on an over-concentration of off-sale licensees in that area.

9. During a recess of the hearing, the legislative hearing officer made inquiries and concluded that "the City Council cannot deny the license for over-concentration of this type of license."^[13] That conclusion was based on an understanding that there were only two establishments within a half-mile of Mr. Yang's grocery store that held off-sale licenses for the sale of nonintoxicating malt liquors.^[14]

10. Following the legislative hearing, the legislative hearing officer recommended approval of the license with the following conditions:

- “1. License holder will maintain in good working order video surveillance cameras in the interior and exterior of the building to constantly monitor premises. Tapes must be maintained for seven (7) days. Tapes must be available to police and LIEP inspectors upon request.
2. Signage shall be posted on the exterior of the building to notify patrons that loitering is not allowed.
3. Licensee agrees to pick up litter on a daily or as needed basis (usually this means at least once a day) on their property and within a one (1) block perimeter of the licensed establishment.
4. Obtain age verification equipment by July 1, 2003.”^[15]

11. Mr. Yang subsequently agreed to those conditions for licensure.^[16]

12. However, on June 4, 2003, the City Council declined to adopt a resolution approving Mr. Yang's license application, with the conditions recommended by the legislative hearing officer. Rather the City Council referred the matter of that application for a hearing before an administrative law judge pursuant to Section 310.05(d)(1) of the St. Paul Legislative Code.^[17]

13. On July 1, 2003, the City issued a Notice of Hearing that scheduled a hearing before the undersigned Administrative Law Judge on July 22, 2003, in the matter of Mr. Yang's application for an off-sale license to sell nonintoxicating malt liquors.^[18]

14. On July 15, 2003, District 7 Planning Council sought leave to intervene as a party in this proceeding and also requested a continuance of the hearing in order to enable it to gather evidence.

15. On July 21, 2003, the City issued an amended Notice of Hearing rescheduling the hearing in this matter for August 12, 2003, and this administrative proceeding ensued.

16. The grocery store that Mr. Yang now operates as Super Convenience Store was operated by a previous owner as Craig's Country Boy. When operated under that name, the store held an off-sale license to sell non-intoxicating malt liquors. The owner of Craig's Country Boy sold the business to Owny Alkatout, who did not wish to sell malt liquor and therefore did not seek transfer of the license. Mr. Alkatout, in turn, sold the business to Mr. Yang.^[19]

17. Mr. Yang is seeking an off-sale license to sell nonintoxicating malt liquors in order to improve the profitability of his business. Unlike other existing licensed establishments in that part of St. Paul's Frogtown neighborhood, Mr. Yang has strong ties to the Hmong community, which he believes will patronize his grocery store as a preferred vendor of malt liquors.^[20]

18. The City's records of police calls to Mr. Yang's grocery store during the last year do not indicate that Super Convenience Store has in the past had an adverse impact on the neighborhood in terms of litter, disorderly conduct, or traffic.^[21]

19. In the past, Mr. Yang has not operated the Super Convenience Store in a way that unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public.

20. Issuing an off-sale malt liquor license to Mr. Yang will not result in increases of automobile traffic.^[22]

21. There is a daycare facility located approximately one block away from the Super Convenience Store.^[23]

22. Directly across Milton Street from the Super Convenience Store, Model Cities Community Development Corporation is in the process of creating a residential

program that will serve households with single-heads of families who are recovering from drug and alcohol abuse.

23. There are four establishments within a half-mile radius of Mr. Yang's Super Convenience Store that currently possess on-sale licenses to sell nonintoxicating malt liquors. Those establishments include one full-service liquor store, another convenience store, and two bars that also hold off-sale malt liquor licenses.^[24]

24. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

25. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

26. To the extent that the Memorandum that follows contains findings of fact, the Administrative Law Judge hereby adopts them as such.

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

CONCLUSIONS

1. Minnesota law and the St. Paul Legislative Code^[25] give the Administrative Law Judge and the St. Paul City Council authority to conduct this proceeding, to consider whether the City Council should grant Mr. Yang's application for an off-sale license to sell nonintoxicating malt liquors.

2. The City gave Mr. Yang proper and timely notice of the hearing in this matter, and the City has complied with all of the law's substantive and procedural requirements for initiating and proceeding with this matter.

3. Minnesota law^[26] provides that:

The governing body of a city or county may issue off-sale or on-sale licenses for the sale of 3.2 percent malt liquor within their respective jurisdictions.

4. The St. Paul Legislative Code contains the following provisions pertaining to the issuance of off-sale licenses to sell nonintoxicating malt liquors:

No person shall sell nonintoxicating malt liquors at retail in St. Paul without a license.

* * *

Off-sale licenses shall permit the licensee of such nonintoxicating malt liquors to sell the same in original packages for consumption off the premises only.^[27]

5. Minnesota law further provides that:

A local authority may impose further restrictions and regulations on the sale and possession of alcoholic beverages within its limits.

6. The St. Paul Legislative Code imposes the following restrictions and regulations on the issuance of licenses to sell nonintoxicating malt liquors:

* * * In addition to any other grounds under Saint Paul Legislative Code Section 310.06(b), it shall be a basis for denial of the license if the city council, in its discretion, determines (1) that the proximity of other licenses for the sale of 3.2 malt liquor at off-sale would result in an over-concentration of such licenses in (1) neighborhood, which would adversely impact the neighborhood or its residents, programs and/or would have an adverse impact on the welfare of the city in terms of litter, disorderly conduct or traffic.^[28]

7. Generally, in an administrative proceeding like this, “[t]he party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence.”^[29] In this proceeding, Mr. Yang is proposing that the City issue a license to him to sell nonintoxicating malt liquors, so he has the burden of establishing by a preponderance of the evidence that he meets the legal criteria for issuing that license, except as provided in Conclusion 8, below.

8. St. Paul Legislative Code, Section 410.03(f) provides that “[w]hen the application is for the sale of 3.2 malt liquor at off-sale the Office of License, Inspections and Environmental Protection shall determine whether there are other premises licensed for the sale of 3.2 malt liquor within a half-mile radius of the proposed location.” The City therefore bears the burden of establishing how many premises licensed for the sale of 3.2 malt liquor are located within a half-mile radius of the proposed location.

9. Granting a license to Mr. Yang for off-sale of nonintoxicating malt liquors will not unreasonably annoy, injure, or endanger the safety, health, morals, comfort, or repose of any considerable number of members of the public within the meaning of Section 310.06 (b)(7) of the St. Paul Legislative Code.

10. Section 310.06 (b) of the St. Paul Legislative Code does not provide any other basis for taking adverse action against Mr. Yang’s pending license application.

11. If Mr. Yang’s application for a license to sell malt liquor is granted, the proximity of other licenses to sell malt liquor within a half-mile of Mr. Yang’s grocery store will create an over-concentration of malt liquor licenses within the meaning of Section 403(f) of the St. Paul Legislative Code.

12. The over-concentration of licenses described in Conclusion No. 11 will not adversely impact the neighborhood or its residents, programs, and/or institutions within the meaning of Section 403(f) of the St. Paul Legislative Code.

13. A new malt liquor license at Mr. Yang's Super Convenience Store will not have an adverse impact on the welfare of the city in terms of litter, disorderly conduct, or traffic within the meaning of Section 403(f) of the St. Paul Legislative Code.

14. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

15. The Memorandum that follows explains the reasons for these Conclusions, and to that extent, the Administrative Law Judge incorporates that Memorandum into these Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the St. Paul City Council GRANT the application of Chanh K. Yang, doing business as Super Convenience Store, for an off-sale license to sell nonintoxicating malt liquors.

Dated this 5th day of September 2003.

s/Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

MEMORANDUM

There are facts that favor granting Mr. Yang an off-sale license to sell malt liquors. First, it appears that the same establishment held such a license under a prior owner but that Mr. Yang's immediate predecessor made a decision not to continue selling those kinds of products. Second, there is no evidence that the Super Convenience Store, while under Mr. Yang's ownership, has created any public safety or neighborhood nuisance problems. Third, it appears that the licensure conditions that Mr. Yang has agreed to will address many of the neighborhood objections that have been raised—such as potential problems with litter, underage drinking, and loitering.^[30] Evidence offered at the legislative hearing did not support concerns that licensing Mr. Yang's grocery store to sell malt liquors might create additional vehicle traffic problems in the neighborhood. Although concerns were expressed that an off-sale license at the Super Convenience Store could possibly have some adverse impact on the Wilder daycare center a block away, there was no showing of how allowing adults to purchase malt liquor off-sale there would pose a risk to the children at the daycare center. Billy's Victorian Bar, which holds an off-sale malt license as well as on-sale licenses, is located about the same distance from that daycare center. And there was no evidence, or even assertion, that off-sale customers of that establishment have created any problems for daycare children.

The difficulty here arises with respect to concentration of establishments licensed for off-sale of malt liquor. It appeared to be LIEP's belief, both at the legislative hearing and at the administrative hearing before the ALJ, that there were only two establishments licensed for off-sale of malt liquors within a half-mile radius of the Super Convenience Store—namely, another convenience store and a full-service liquor store.^[31] No inquiry appeared to have been made whether any of the on-sale licensed bars within that radius also possessed off-sale malt liquor licenses. In response to the ALJ's request to the City to supplement the record with that information, the City submitted Exhibit 22 on the day after the hearing. That exhibit indicated that two bars within that radius did, in fact, hold off-sale malt liquor licenses. If such a license were issued to Super Convenience Store, it would raise the total to five establishments within a half-mile radius of the intersection of Thomas and Milton.

Where an "over-concentration" of malt liquor licensees exists within a half-mile of a proposed location, Section 410.03(f) of the Saint Paul Legislative Code requires the City Council to determine whether the over-concentration would either adversely impact the neighborhood or its residents, programs and/or institutions or would have an adverse impact on the welfare of the city in terms of litter, disorderly conduct or traffic. The St. Paul Legislative Code does not define the term "over-concentration," but rather specifically gives the City Council discretion to determine how many licensed premises represent an over-concentration. No evidence was presented by any party at the hearing that tended to assist the ALJ in making a recommendation to the City Council about whether or not five malt liquor licenses within a half-mile radius represents an over-concentration. However, that appears to be a relatively large number, and the ALJ has therefore concluded that issuing a malt liquor license to Mr. Yang's grocery store will result in an over-concentration of off-sale licenses within a half-mile radius of

Thomas and Milton. But the inquiry cannot end there. A mere finding of over-concentration is not of itself a basis for denying a license application under Section 410.03(f) of the Saint Paul Legislative Code. The Code requires a further finding that the over-concentration (i) either would adversely impact the neighborhood or its residents, programs and/or institutions or (ii) would have an adverse impact on the welfare of the city in terms of litter, disorderly conduct or traffic.

The ALJ concludes that the latter criterion has not been met in this case. The legislative hearing officer found that “studies done formally and informally ... indicate there is not an increase in automobile traffic associated with the issuance of an off-sale beer license.”^[32] From that, the ALJ concludes that granting Mr. Yang the license would not have any impact on traffic.^[33] Additionally, the ALJ concludes that the licensure conditions to which Mr. Yang has agreed are sufficient to address any potential problems with litter or disorderly conduct. So the inquiry must turn to whether granting Mr. Yang the license will “adversely impact the neighborhood or its residents, programs and/or institutions.” Apart from litter, disorderly conduct, and traffic, neighborhood objections centered on the fact there were a number of children in the neighborhood, the existence of a daycare program a block away, and the fact that Model Cities was establishing a housing program across the street for families with single-heads of household who are recovering from drug and alcohol abuse.

As previously noted, there is no evidentiary basis for concerns that off-sale of malt liquor at the Super Convenience Store would adversely impact the nearby daycare program. Nor is there any evidentiary basis for concerns that off-sale of malt liquor at Mr. Yang’s grocery store will adversely impact neighborhood children, so long as he complies with conditions designed to prevent sale of malt liquor to minors. And the essence of Model Cities’ objection is that the availability of malt liquor at the Super Convenience Store will increase the risk that the residents of its proposed program will not be able to maintain sobriety. But the ALJ notes that off-sale malt liquor will still be available to those residents at Billy’s Victorian Bar, which is located a block away from the proposed Model Cities program in the opposite direction. The ALJ concludes that any incremental increase in that existing risk that issuing this license might create does not rise to the level of a quantifiable adverse impact. The ALJ therefore recommends that the City Council grant Mr. Yang’s application for an off-sale license to sell nonintoxicating malt liquors subject to the conditions to which Mr. Yang has agreed.

B. H. J.

^[1] St. Paul Legislative Code, section 310.05 (c) (2003). (Unless otherwise specified, all references to that code are to the 2003 edition.)

^[2] Minnesota Statutes, sections 340A.401 through 340A.415.

^[3] Exhibits 1 and 2.

^[4] Exhibit 4.

^[5] Exhibit 5.

- [\[6\]](#) Exhibit 6.
- [\[7\]](#) Exhibit 7.
- [\[8\]](#) Exhibit 8.
- [\[9\]](#) Exhibit 9.
- [\[10\]](#) Exhibit 13
- [\[11\]](#) See Exhibit 20.
- [\[12\]](#) Exhibit 10.
- [\[13\]](#) Exhibit 13 at p. 3.
- [\[14\]](#) Exhibit 11 and Exhibit A.
- [\[15\]](#) Exhibit 13 at p. 5.
- [\[16\]](#) Exhibit 15.
- [\[17\]](#) Exhibit 16.
- [\[18\]](#) Exhibit 17.
- [\[19\]](#) Exhibit 20; testimony of Chanh Yang.
- [\[20\]](#) Testimony of Chanh Yang; Exhibit 20.
- [\[21\]](#) Exhibit 14; testimony of Kristina Schweinler.
- [\[22\]](#) Exhibit 13 at p. 3.
- [\[23\]](#) Exhibit A; testimony of Tait Danielson.
- [\[24\]](#) Exhibit 22.
- [\[25\]](#) Minnesota Statutes, section 14.50, and section 340A.503; St. Paul Legislative Code Section 310.05.
- [\[26\]](#) Minnesota Statutes, section 340A.412, subdivision 1(b).
- [\[27\]](#) St. Paul Legislative Code, Section 410.01(a) and (c).
- [\[28\]](#) St. Paul Legislative Code, Section 410.03(f).
- [\[29\]](#) Minnesota Rules, part 1400.7300, subpart 5.
- [\[30\]](#) See Finding No. 10.
- [\[31\]](#) See Exhibits 11 and A; testimony of Kristina Schweinler.
- [\[32\]](#) Exhibit 13 at p. 3.
- [\[33\]](#) Finding No. 20.