

PH-1

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CITY CLERK

**From:** FRANCIS, RICK  
**Sent:** Wednesday, April 04, 2012 9:42 AM  
**To:** CORDON, CHRISTINE  
**Subject:** FW: city council april 17 meeting  
**Attachments:** city council april 17.doc

2012 APR -6 PM 3:10

CITY OF COSTA MESA  
BY \_\_\_\_\_

**From:** Al Morelli  
**Sent:** Wednesday, April 04, 2012 9:39 AM  
**To:** LEE, MEL; LEE, MEL  
**Cc:** NGUYEN, KHANH; FOLCIK, JULIE  
**Subject:** city council april 17 meeting

Mel: please see the attached as my input regarding the upcoming city council meeting for April 17, 2012 for Target Store request.

Please add to the agenda document for distribution to the city council and to the public at large. In addition, I like for you to answer my concerns in this document as you prepare your report. Thank you.

Al

--  
Al Morelli

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April 4, 2012

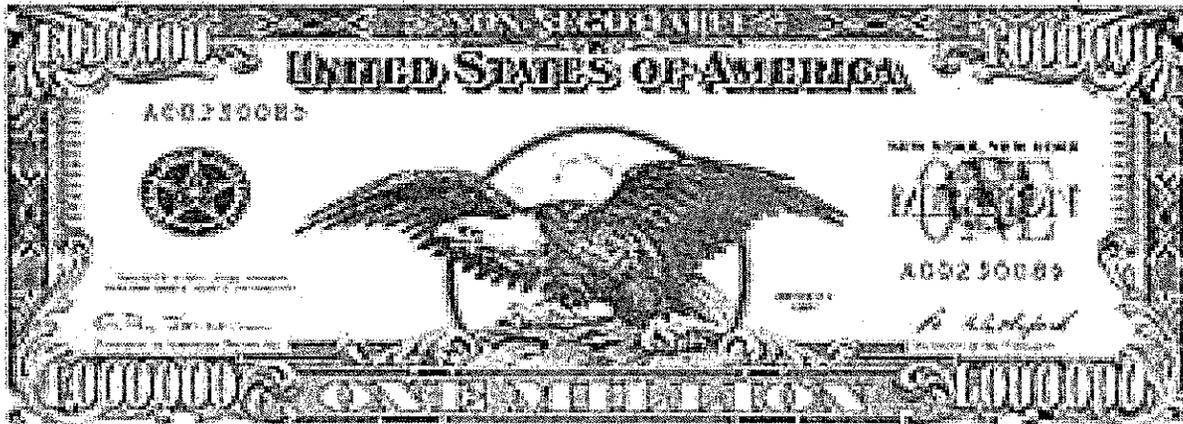
## Repeat, REPEAT, Repeat, REPEAT, Repeat

The request by the Target Company is a **REPEAT** request of the same, which is to change the original land use restriction and to dilute the "AGREEMENT" as approved and adopted on April 18, 2000.

For that, I am re-sending (repeating) our revised input as has been submitted over the years, which is to explain the burden of having a Target store adjacent to our properties.

For the record, the environmental impacts conditions as originally implied have increased over the years. Now, we have more noise, more traffic and also we have a proven demonstrated lack of compliance by Target Company at 3030 Harbor property.

*Revised -Supplemental Document: Re-submit; City Council Appeal to DR 99-22 A3",*



### Fellow City Council:

I am asking you to **deny the request for extended hours regarding the Target Store**, grateful for the trust that you will make the right decision.

There is an old saying that a lie can go half way around the city while the truth is putting its shoes on----and as for Target store, a steady drumbeat of misinformation and mischaracterization are given as often to hide the truth.

So instead of asking you to apply the moral, ethical and legal to **deny Target** store request for modification to the original DR99-22 (land use restrictions); here are real and truthful facts for

why you should **DENY** Target with their request. **We have an official agreement and the agreement should be honored as the land use conditions are still the same.**

**FACT:** DR99-22 was recorded in the official records with the County of Orange, on April 18, 2000. Owner (Target) as signed agreed to **execute and uphold all the land restrictions**. Per item 57 of conditions: "Hours of operations for the Target Store shall be limited to between the hours of **8:00 a.m. to 10:00 p.m., seven days a week**".

**FACT:** As discovered during the Planning Commission meeting, **Target did violate the store operating hours during year 2010 -2011** (for a full year and half). The store hours are limited to 10:00 PM, where the Target violated the land use restriction by operating till 11 PM. **(Refer to citation#9511)**. A citation fine of \$150 was given for the violation that was occurring for a period longer than a year, which by the way such dollar fine is less than a CM parking dog fine violation.

**FACT:** Mel lee – CM City Sr. Planner, met with Target staff for his 2010 bi-annual review, and he denied any knowledge about such violations. During year 2000, and thereafter, Mel Lee has been responsible for conducting Target Store review since year 2000. Mel lee/city review giving Target good faith finding by his report is now questionable. **Also, it appears that the Police department was aware of the violations for the un-authorized extended hours and thus encouraged Target Company to break the law.**

**FACT:** Holiday hours during year 2010. Target was operating till **mid night 12:00AM without authorization-** The city staffs were absent and thus they failed to report. (Refer to photo taken during this period).

**FACT:** During the planning meeting of Nov 14, 2011, where Target claimed they were abiding by all the land restriction and rules, then a week later another violation did occur on Sunday 11/20/2011(Refer to citation#9533)

**FACT:** Friday morning Nov 25, 2011, **Target opened the store at midnight 12:00AM** and thus **violating the land use restriction regarding store hours**. During the Nov 25 Friday early morning, the police (Officer N. Brown) was present at 3030 Harbor and she can testify to the record. She was informed (**2:00AM**) of the violation by showing her the land use restriction/hours document item 57 under DR99-22 (police case #11-12740).**The city of Costa Mesa encouraged Target Company to allow them to break the law.**

**FACT:** Target management publicly acknowledged during year 2000 Planning and City Council meeting/s that they have no intention to open the store beyond 10:00 PM. For witness and facts–refer to the recorded minutes of the city council meeting during year 2000.

**FACT:** The Targets store at 3030 Harbor is now selling grocery and alcohol, a change from the original use permit as claimed in year 2000. **Groceries are not subject to sales tax.** The

**California Supreme Court** ruled on July 13, 2007 that cities and counties can restrict development of big-box superstores in order to **protect local businesses**. The decision upholds the lower court ruling that allowed city to enact an ordinance prohibiting development of retail stores larger than 100,000 square feet that use more than 5 percent of their space for grocery sales. The 3030 Harbor Target store have a total of 143,500 square feet.

**FACT: Per Planning Commission meeting on July 15, 2005**, Target was **DENIED** their request to open the store at **6:00AM**. Former planning commissioner Egan clearly expressed her concerns: "As to the 6 a.m. opening, she felt it was unreasonable to impose that on the residents to the north. There is no reason they should bear that burden". Commissioner Garlich:"he felt this application was overreaching." Vice Chair Hall: "said he agrees with this denial because the residents next to this property have gone through an awful lot over the years and he saw no reason to subject them to further inconvenience".

**FACT:** the Target's management folks cannot be trusted. The record shows that **Target provided false and broken promises**. Here are samples of **Violation and Citation**:

- 7/26/07- 5:45 AM Gardner blowing leafs, violation under item 30 -DR99-22
- 7/26/06 : 5:00 AM Noise complain, item 43 per DR99-22
- 11/22/2004, (Sunday) citation # 5751 issued for large semi truck-idling/loading by near the north neighbor area, violation under item 10, ZA-99-47.
- 1/27/03 (1:00AM-3:00AM ) parking lot sweeper, violation, item 30 under DR99-22
- 9/14/02 Deliveries in front of the store-citation # 3427
- **Also, the fact, as given by the residents that several incidents and violations as occurred were not reported to the code enforcements.**

**FACT:** Target store manager (Tim Kindig) has been the same manager since year 2000 and thus he is fully aware of the conditions and land use restriction. However, he and or his staff do not abide by the law and have so many times violated the land use restrictions.

**FACT:** the dollar value per each citation as given by code enforcement has been irrelevant considering the punishment for breaking the law. Thus fines ranged from \$75 to \$500 per incident.

**FACT:** Based on the evidence in the record (**code enforcement and police records** ) and find that "Target "store management has demonstrated **lack of faith compliance** with the terms and conditions of development agreement DR99-22 by order.

**FACT;** During Commission Planning Nov.14, 20011, Mr. Al Morelli (party of interest /owner of adjacent property) was given only 3 minutes to present his input. Mr. William Morelli asked the Planning Commission to yield his three minute time to A.Morelli and he was denied. However, then thereafter Target were called back to answer question, while Mr. A. Morelli was not given any opportunity for rebuttal or express clarification.

**FACT:** for a Costa Mesa citizen at large—to **appeal** the planning commission decision, where the **citizen** (not the applicant) have to pay \$1,220. **Such \$1,220 fee is prohibitive and restrictive** as most citizens cannot afford or are willing to pay. As with such, the voices of Cost Mesa citizens are mostly do not come forward. Per Mr. Morelli request a refund of the payment was returned and approved.

**FACT:** City of Costa Code of Enforcement is **lacking oversight** in relation to monitoring Target store. Most citations were issued after neighbors calling the city to report violation. The Code Enforcements staff does not work during night hours. Also, Police as they were often called upon, do not normally report a given violation to the code enforcement. **For the record, Specific calls were to made the police over the years, however no records are shown.**

**FACT:** Regarding Target claim of being responsible corporation - March 11, 2011, **Target Corporation paid California \$22.5 million Settlement for Environmental Violations: Stores Illegally Dumped Pesticides and Hazardous Chemicals.** The lawsuit included all 240 Target stores in the State of California.

**FACT:** Per original **noise study (March 2, 2000)**, “Parking lot noise”, as claimed in the study, the homes to north to a have interior home noise level with 52 dBA. The study was based exclusively with store hours limited by 10:00PM. However, Per CM City **noise ordinance**, the **noise cannot exceed 50dBA after 11:00.**

**FACT:** As indicated per CM review March 8, 2000 traffic generation study were not conducted claiming the proposed project is within the and below .30 maximum FAR and trip per hour guidelines. However, several years later, the CM city while applying to **Measure M funding** provided **different data** by presenting adverse impact on Harbor Blvd to support their request for funding.

**FACT:** Per evidence in the record (code enforcement and police records) “Target “store management has demonstrated **lack of faith compliance** with the terms and conditions of development agreement DR99-22 by order.

**FACT: Per city code sec 13-15 – “All departments, officials and public employees of the city invested with the duty or authority to issue permits or licenses shall conform to the provisions of this Zoning Code and shall issue no permit or license for uses, buildings or purposes in conflict with the provisions of this code; and any such permit or licenses issued in conflict with the provisions of this Zoning Code shall be null and void. It shall be the duty of the development services director to enforce the provisions of this Zoning Code “. Also, “any such permit or licenses issued in conflict with the provisions of this Zoning Code shall be null and void.**

**FACT:** For record, **written request were made to City CEO and City Council** concerning the ongoing and severity of violation as associated with Target, and thus the City has not been willing to address the null and void legal requirements, nor willing to file misdemeanor charges

as required under *Criminal citation*. Pursuant to State Government Code Sections 36900 and 36901

**FACT:** Significant changes had occurred since year 2000, at 3030 Harbor location, regarding the original land development. **Thus the city had failed to re-compare year 2000 former analysis to today current data.** All new reviews should match and re-address the negative declaration data, **CEQA, EIR** and compare to the originally specified by staff reports during year 2000.

**FACT:** Target management and city staff are compensated and paid to present their organization. However, Mr. Morelli is not paid to defend to protect his property rights. Thus Mr. Morelli efforts to deal with CM city had cost him time, money and undue **hardship**.

I am asking you to **deny the request for extended hours regarding the Target Store. Deny the adoption of any modifications to the original DR99-22. Also, constrain any and all future reviews to DR99-22 as it should be legally binding per agreed and recorded with the land deed use agreement for the 3030 Harbor Blvd. property.**

**Based on the evidence and facts, Target has shown their lack of compliance. In addition, I am asking the city officials to apply the governing laws per city code Sec 13-16 (Enforcement) and file criminal charges against Target management for present and any future code violations.**

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## Holiday Store Hours

Daily (11/23 - 12/10) 8am-11pm	Daily (12/13 - 12/23) 8am-12am	Thanksgiving Day Thanksgiving Friday	CLOSED 4am-11pm
Sunday (11/28 & 12/5) 8am-10pm	Sunday (12/12) 8am-11pm	Christmas Eve Christmas Day Day After Christmas	7am-8pm CLOSED 7am-11pm
Sunday (12/19) 8am-12am			

## Holiday Pharmacy Hours

Mon-Fri 9am-9pm	Sat & Sun 9am-6pm	Christmas Eve 9am-5pm	Christmas Day CLOSED
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**Store Hours**

**Mon-Sat: 8 AM - 11 PM**

**Sunday: 8 AM - 10 PM**

Shop online 24/7 at Target.com

**Mon-Fri: 9 AM - 9 PM**

**Sat-Sun: 9 AM - 6 PM**

CIVIL CITATION  
Costa Mesa Municipal Code Violation

009511

11-09-2011 0840 WEDNESDAY  
Date Time  am  pm Day of the Week Prior Citation

TARGET  
Name (First) Middle Last

1000 NICOLLET  
Residence Address

MINNETONKA MN 55410  
City State Zip Code

Driver License Number State Age Birth Date

Sex Hair Eyes Height Weight Race

3030 TARGET LINDBER BLVD  
Address Of Violation

COSTA MESA CA 92626  
City State Zip Code

20-4(b)  
Violation CMMC Sec. Violation CMMC Sec.

Fine: \$ 150.00 Fine: \$

OFFICER'S OBSERVATIONS: On the date specified herein, the undersigned officer observed at the specified address, the following conditions:

VIOLATION OF THEIR C.J.P.  
HOURS OF OPERATION.

\$150.00

VIOLATION NOTICE BY:

- Personal Service
- Mail
- Property Posted
- Person Cited Refused To Sign Receipt For Citation
- Violation(s) not committed in my presence, certified on information and belief

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON DATE SHOWN ABOVE.

X  
VIOLATOR: Without admitting guilt, I acknowledge having received the citation.

Co. NICOLIS 11 COST ENFORCEMENT  
Issuing Officer ID Number Department

THE LAW REQUIRES THAT YOU COMPLY WITH THIS CITATION OR CONTEST THE VIOLATION. (1) TO COMPLY with this citation, correct the violation immediately, and pay the fine within 30 days (see reverse side). (2) TO CONTEST this citation, you must pay the fine, and request a hearing within 30 days (follow procedure on reverse side).

If you have followed the procedure to contest this citation, your Administrative Hearing will be held at the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, First Floor, on the 3 day of January 20 12 at 1:30 pm.

Check in at the City Clerk's office.

CIVIL CITATION  
Costa Mesa Municipal Code Violation

009515

11-14-2011 1030 Monday @  
Date Time  am  pm Day of the Week Prior Citation

ROYAL OAK PROPERTY SERVICE  
Name (First) Middle Last

7150 BURNET AVE.  
Residence Address

VAN NUYS CA 91405  
City State Zip Code

Driver License Number State Age Birth Date

Sex Hair Eyes Height Weight Race

3030 WARDEN BLVD.  
Address Of Violation

COSTA MESA CA 92626  
City State Zip Code

20-4(b)  
Violation CMMC Sec. Violation CMMC Sec.

Fine: \$ 150.00 Fine: \$

OFFICER'S OBSERVATIONS: On the date specified herein, the undersigned officer observed at the specified address, the following conditions:

TO THE REAR PARKING AREA THE  
MISSING 2 DRAINAGE GRIDS  
AND THE TRUCK HEIGHT LIMIT  
RAIL

\$150.00

VIOLATION NOTICE BY:

- Personal Service
- Mail
- Property Posted
- Person Cited Refused To Sign Receipt For Citation
- Violation(s) not committed in my presence, certified on information and belief

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON DATE SHOWN ABOVE.

X VIOLATOR: Without admitting guilt, I acknowledge having received the citation.

G. Nichols 11 <sup>CME</sup> ENFORCEMENT  
Issuing Officer ID Number Department

THE LAW REQUIRES THAT YOU COMPLY WITH THIS CITATION OR CONTEST THE VIOLATION. (1) TO COMPLY with this citation, correct the violation immediately, and pay the fine within 30 days (see reverse side). (2) TO CONTEST this citation, you must pay the fine, and request a hearing within 30 days (follow procedure on reverse side).

If you have followed the procedure to contest this citation, your Administrative Hearing will be held at the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, First Floor, on the 5 day of January 20 12 at 1:30 pm.

Check in at the City Clerk's office.

**CIVIL CITATION**  
**Costa Mesa Municipal Code Violation**

009533

11-22-2011 0800 TUESDAY 1  
Date Time  am  pm Day of the Week Prior Citation

TIM KINAIL  
Name (First) Middle Last

3030 HARBOR BLVD.  
Residence Address

COSTA MESA CA 92626  
City State Zip Code

Driver License Number State Age Birth Date

Sex Hair Eyes Height Weight Race

3030 HARBOR BLVD.  
Address Of Violation

COSTA MESA CA 92626  
City State Zip Code

20-4 (b)  
Violation CMMC Sec. Violation CMMC Sec.

Fine: \$ 300.00 Fine: \$

OFFICER'S OBSERVATIONS: On the date specified herein, the undersigned officer observed at the specified address, the following conditions:

VIOLATION OF THEIR C.U.P.  
APPROVAL NUMBER 30.

**VIOLATION NOTICE BY:**

- Personal Service
- Mail
- Property Posted
- Person Cited Refused To Sign Receipt For Citation
- Violation(s) not committed in my presence, certified on information and belief

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON DATE SHOWN ABOVE.

X  
VIOLATOR: Without admitting guilt, I acknowledge having received the citation.

G. NICOLAS 11 2011  
Issuing Officer ID Number Department

THE LAW REQUIRES THAT YOU COMPLY WITH THIS CITATION OR CONTEST THE VIOLATION. (1) TO COMPLY with this citation, correct the violation immediately, and pay the fine within 30 days (see reverse side). (2) TO CONTEST this citation, you must pay the fine, and request a hearing within 30 days (follow procedure on reverse side).

If you have followed the procedure to contest this citation, your Administrative Hearing will be held at the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, First Floor, on the 7 day of FEB, 2012 at 1:30 pm.

Check in at the City Clerk's office.

# COMPLAINT INVESTIGATION

City of Costa Mesa, Development Services Department

Assigned to GN

## COMPLAINT LOCATION

CDBG

Complaint Address: 3030 Harbor Blvd - Target Case No. C11-1643  
Property Owner: Target Corp Phone: \_\_\_\_\_  
Address: PO Box 9456, Minneapolis, MN 55440

## COMPLAINANT

Name: AL Morelli Phone: \_\_\_\_\_  
Address: \_\_\_\_\_

Complaint Received By: \_\_\_\_\_  Hotline Date: 11/4/11 Time: 11:55am

## Describe Complaint:

DR-99-22  
Target @ Harbor Blvd  
violation/s per DR 99-22  
Hours of operation, staff parking, Exit Bar on  
as late as 11:00pm / parking adjacent to Corp. office / College Blvd  
Action: #57 Item 42 Exit bar has been  
Item 55 removed

metal grates missing - blk parking lot  
employee parking along rd pl. 11/4  
I do request an code enforcement  
to visit the site today for  
check. 11/4/11 @ 12:00P-M

11-9-11 citation issued for hours of operation. Removal  
of truck bed bar and grates not on Target  
property so requires separate case / enforcement.  
need to run license plate numbers for cars  
parked along north pl.

CIVIL CITATION

B 9198

Costa Mesa Municipal Code Violation

Date 11-28-2011 Time  am  pm Day of the Week MONDAY Prior Citation 2

Name (First) TIM Middle HINDLE Last

Residence Address 3030 HARBOR BLVD.

City COSTA MESA CA State CA Zip Code 92626

Driver License Number State Age Birth Date

Sex Hair Eyes Height Weight Race

Address Of Violation 3030 HARBOR BLVD.

City COSTA MESA CA State CA Zip Code 92626

Violation CMMC Sec. 20-4(b) Violation CMMC Sec.

Fine: \$ 500.00 Fine: \$

OFFICER'S OBSERVATIONS: On the date specified herein, the undersigned officer observed at the specified address, the following conditions:

VIOLATION OF THE C.V.P.  
(HOURS)

\$ 500.00

VIOLATION NOTICE BY:

- Personal Service
- Mail
- Property Posted
- Person Cited Refused To Sign Receipt For Citation
- Violation(s) not committed in my presence, certified on information and belief

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON DATE SHOWN ABOVE.

X VIOLATOR: Without admitting guilt, I acknowledge having received the citation.

Issuing Officer G. Nicolls ID Number 11 Department ENFORCEMENT

THE LAW REQUIRES THAT YOU COMPLY WITH THIS CITATION OR CONTEST THE VIOLATION. (1) TO COMPLY with this citation, correct the violation immediately, and pay the fine within 30 days (see reverse side). (2) TO CONTEST this citation, you must pay the fine, and request a hearing within 30 days (follow procedure on reverse side).

If you have followed the procedure to contest this citation, your Administrative Hearing will be held at the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, First Floor, on the 1 day of FEB 20 12 at 1:30 pm.

Check in at the City Clerk's office.





**This picture shows lack of compliance by Target Company as the picture was taken on 02/12/2012 at 1:15 PM ( truck parked on the red curb as such it is prohibited in the area)**

## **Additional Input in response to city staff analysis (Mel Lee) and report -dated March 01, 2012**

**FACT;** NO actual physical study was conducted to observe the **2012 noise area conditions:** The noise study as written in defense for Target Company by RK Engineering-“Mike Dickerson”, in its conclusion was based on past 1999 old data. **Note; for year 2012 - NO Actual OR Current Noise study were Conducted.** If so, where is the calibration certificate for the noise instruments?

**FACT:** Adverse impact---complaints by adjacent neighbors were reported to the police department during 2010-2011 year and thus the City failed to document and not to report them. In addition, by the virtue of lack of enforcement, most adjacent residents have given up in coming forward as they the City or Target have been ignoring the correction of the violations.

**FACT:** Code Enforcement staffs were usually absent-Most violations as reported, were submitted by the residents rather than by city staff oversight. In addition, Target Company refuses to show the security tapes to the code enforcement staff which to reveal the truth about the incidents as reported by the residents.

**FACT:** the extended hours till 11:00PM are not compatible with the adjacent residential uses. Mel Lee subjective finding and thus is contrary to the facts. Mel lee report failed to present scientific data, but rather opinions. In addition, safe guards or mitigations efforts were not presented and thus there is no assurance by Target Company to abide for the quiet and enjoyment of the surrounding neighborhood.

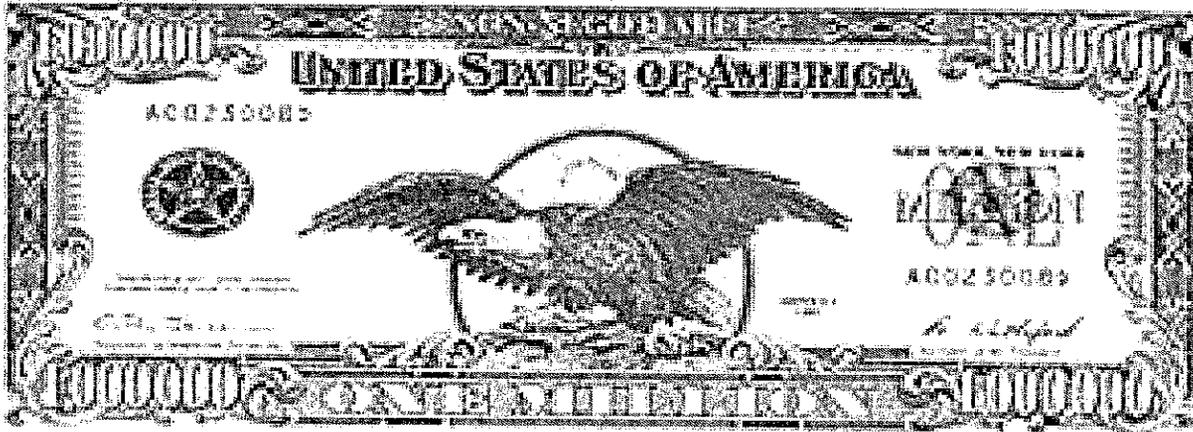
**FACT:** the police department review which reveals no objection did not address police matters or crime data. For the record-where is the police report review and the analysis.

**FACT:** why the city staff keep ignoring the need for comparative review against the original analysis as given by year 2009-2010. Why CEQA analysis was not conducted. **The environmental impacts for the 3030 Harbor has increased –not decreased over the years.**

**FACT:** Target management, acknowledged a \$5000 is usually generated in sales revenue per for that extra hour--per math it is a \$1.8 million is sales revenues per year --so the city can get (one) 1 percent which is \$18,000 possible increase in tax revenue per given year.

Using the math again—the current store hours are from 8:00 to 10PM, which is about 14 operating hours per day, a \$2.5 million dollars in anticipated sales revenue for the city. It is all about money and thus it is a classical comparison to eminent domain takes over, without just compensation. The fact, it is about enriching special interest by damaging the property value of the eight resident northerly adjacent neighbors. The on-going trend of fabrication of the facts, fueled in part by spurious city of Costa Mesa staff analysis in which where the city self financial interest are governed- which is sales revenue- which is MONEY.

**FACT:** the extension of hours is about MONEY and for enriching the City and Target Company-which is a conflict of interest for the city to be a judge on the merits of protecting the residence. The extensions of store hour's case as presented by the folks at the Target Store are fabricated facts or are it truly objectives. The Target management folks are biased in with their arguments towards their own direction. Target and the city staff keep finding arguments in order to favor their claim for enriching themselves – it is all about MONEY.



In conclusion, for our family, we have been going through a lot of **emotional, physical and mental stress**. We have put our lives on hold during all these hearing, for which it consume time, energy and efforts. This has been on-going efforts in order to protect our property rights against the unlawful abuse of the City of Costa Mesa and the Target Corporation.

**In addition, we have been deprived the full benefits of having peace and enjoyment of our property.** These on- going efforts to chip away by diluting the original DR99-22 land use conditions *need to be stopped*. **The city and Target needs to conclude and abide by the original DR99-22 land use agreement. PERIOD.**

