

**ATTACHMENT “3”**

**CITY OF PASADENA MUNICIPAL CODE**

**CHAPTER 8.18**

**“DEEMED APPROVED ORDINANCE”**

## Chapter 8.18 DEEMED APPROVED ALCOHOLIC BEVERAGE RETAIL SALE ORDINANCE

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8.18.010 Title.

The provisions of this chapter shall be known as the "Deemed Approved Alcoholic Beverage Retail Sale Ordinance."

(Ord. 7001 § 2 (part), 2005)

8.18.020 Purposes of this ordinance.

The city recognizes that the health, safety, comfort, convenience, prosperity, and general welfare of persons visiting, residing, working or conducting business in the city may be adversely impacted by alcoholic beverage retail sale establishments which are non conforming because they do not have a conditional use permit for alcohol sales. The purpose of the ordinance codified in this chapter is to set forth regulations and enforcement procedures that:

A. Address community problems associated with the sale and/or consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior, and escalated noise levels;

B. Provide opportunities for alcoholic beverage retail sales to be conducted in a mutually beneficial relationship to each other and to other commercial and civic services;

C. Ensure that there is no degradation of the deemed approved activities;

D. Prevent such prohibited activities and activities contrary to deemed approved activities from becoming public nuisances; and

E. Ensure such adverse impacts are monitored, mitigated and/or controlled such that they do not negatively contribute to the change in character of the areas in which they are located.

(Ord. 7001 § 2 (part), 2005)

8.18.030 Definitions.

A. Alcoholic Beverage. Alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, which contains one-half of one

percent or more of alcohol by volume and which is prepared for consumption either alone or when diluted, mixed, or combined with other substances, and sales of which require a State Department of Alcoholic Beverage Control license.

B. Alcoholic Beverage Retail Sales. The retail sale of alcoholic beverages for off-premise consumption.

C. Condition of Approval. A requirement that must be met in order for a deemed approved activity to retain its deemed approved status.

D. Deemed Approved Activity. Any alcohol sales--beer and wine, alcohol sales--full alcohol sales; convenience store; drive-through business; food sales; and liquor stores that sell alcoholic beverages and are not subject to an alcohol conditional use permit per Title 17 of this code.

E. Deemed Approved Status. A deemed approved activity in full compliance with the performance standards as set forth in Section 8.18.060 and any imposed conditions of approval.

F. Illegal Activity. Activity that has finally been determined to be in noncompliance with the deemed approved performance standards set forth in Section 8.18.060. Such activity shall lose its deemed approved status and shall no longer be considered a deemed approved activity.

G. Performance Standards. Requirements prescribed herein to ensure the operation of a deemed approved activity is in accordance with the purposes of this chapter.

H. Premises. The actual space within a building or any area on site, either directly or indirectly supporting alcoholic beverage sales.

(Ord. 7001 § 2 (part), 2005)

#### 8.18.040 Applicability.

A. The provisions of this chapter shall apply to all deemed approved activities defined herein and which meet such definition as of the effective date of the ordinance in this chapter.

B. Whenever any provision of this chapter and any other provision of law, whether set forth in this code, or in any other law, ordinance, or regulation of any kind, imposes overlapping or contradictory regulations, or contains restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in this chapter.

(Ord. 7001 § 2 (part), 2005)

#### 8.18.050 Automatic deemed approved status.

All deemed approved activities as defined herein shall automatically become deemed approved activities as of the effective date of the deemed approved alcoholic beverage retail sales regulations. Each such deemed approved activity shall retain its deemed approved status, as long as it complies with each of the performance standards set forth in Section 8.18.060.

(Ord. 7001 § 2 (part), 2005)

8.18.060 Performance standards.

A. Deemed approved activities must comply with the following performance standards:

1. It shall not result in adverse effects to the health, welfare, peace, or safety of persons visiting, residing, working, or conducting business in the surrounding area;
2. It shall not jeopardize or endanger the public health, welfare, or safety of persons visiting, residing, working, or conducting business in the surrounding area;
3. It shall not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood as a result of inadequate maintenance, prohibited activities, and/or operating characteristics;
4. It shall not result in nuisance activities, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, public consumption of alcoholic beverages, harassment of passers-by, gambling, prostitution, sale of stolen goods, public urination, theft, assault, battery, vandalism, littering, loitering, graffiti, illegal parking, loud noises (especially in the late night or early morning hours,) traffic violations, curfew violations, lewd conduct, or police detentions and arrests;
5. It shall not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute.

(Ord. 7001 § 2 (part), 2005)

8.18.070 Notification to owners.

A. Within thirty (30) days after the effective date of the ordinance codified in this chapter, the building and neighborhood services manager (administrator) shall send each deemed approved activity business owner and the property owner if not the same, notice of the activity's deemed approved status and the requirements of this chapter. The notice shall be sent by first-class mail, return receipt requested, and shall include the requirements set forth in this chapter specifically:

1. A copy of the performance standards of Section 8.18.060;
2. A statement requiring compliance with the performance standards;
3. A statement informing the business owner that cost recovery fees associated with enforcement may be levied and;
4. A statement informing the business owner that the performance standards must be posted for public review in a conspicuous and unobstructed place visible from the entrance of the establishment.

(Ord. 7001 § 2 (part), 2005)

8.18.080 Performance standards compliance.

This section is not intended to restrict the powers and duties otherwise pertaining to other city officers or bodies, in the field of monitoring and ensuring the harmony of alcoholic beverage retail sales in the city.

A. Owners or operators of deemed approved activities are encouraged to contact the police to handle violations of the law. In order to encourage such calls,

noncompliance with the performance standards may not be based solely upon the number of service calls to the city made by the owner or operator of a deemed approved activity.

B. The administrator has the authority to work with the owner or operator of the deemed approved activity (respondent) to resolve minor violations.

C. If the administrator determines that prohibited activities of other than a minor nature exist or were allowed to occur, then the administrator shall refer the deemed approved activity to a panel of the code enforcement appeals commission in accordance with Section 14.50.060.

(Ord. 7001 § 2 (part), 2005)

8.18.090 Procedures for referral to the code enforcement commission.

A. Referral. The administrator's referral shall be scheduled for a public hearing before a panel of the code enforcement commission within thirty (30) days of the referral, unless both the administrator and the respondent consent to a later date.

B. Purpose. The purpose of the public hearing is to hear testimony and receive evidence concerning the operating methods of the deemed approved activity.

C. Notification. Notification of the public hearing shall be pursuant to Section 14.50.060(C). The operator, if different from the property owner of the deemed approved activity shall be notified of the public hearing via first class mail, return receipt requested.

8.18.100 Hearing procedures.

A. Hearing Procedures. The public hearing shall be conducted pursuant Section 14.50.060(D).

B. The panel shall hear all relevant testimony and consider all relevant evidence, and shall find whether the deemed approved activity is in compliance with the deemed approved performance standards set forth in Section 8.18.060 and any other applicable criteria.

1. Subsequent to the presentation of relevant testimony and evidence, the panel may:

(a) Uphold the deemed approved status;

(b) Impose, add or modify such reasonable conditions of approval as are in the judgment of the panel necessary to ensure conformity to said criteria;

(c) Determine that the deemed approved activity is an illegal activity as defined herein. Such finding shall result in the deemed approved activity losing its deemed approved status. Revocation of the deemed approved status shall cause the code enforcement appeals commission to order immediate and permanent discontinuance of alcoholic beverage sales as of the effective date of the decision. Such continuation shall remain in effect absent future issuance of an alcohol sales conditional use permit per Title 17.

2. Any new or modified conditions of approval required by the panel shall be made a part of the deemed approved status, and the deemed approved activity shall be required to comply with these conditions.

3. Conditions of approval and performance standards must be conspicuously displayed in the premises in an area viewed by the public.

C. The owner or operator may appeal the decision of the panel of the code enforcement commission to the city council by filing an appeal within 10 days of the date of the decision. The city council may call up for review the decision of the panel of the code enforcement commission by filing a written request within 10 days of the date of the decision with the clerk who shall place the request on the agenda for the next available meeting.

D. Effective Date. The decision of the panel of the code enforcement appeals commission shall become final ten (10) calendar days after the date of decision unless appealed to the city council or the decision is called up for review by the city council.

(Ord. 7001 § 2 (part), 2005)

8.18.110 Fee schedule.

A. Fees for review, notification, appeal, and re-inspection of deemed approved activities shall be in accordance with the city general fee schedule.

(Ord. 7001 § 2 (part), 2005)

8.18.120 Recovery of cost.

A. In addition to the abatement proceedings set forth in Section 14.50.060, violation of this chapter may be subject to administrative cost pursuant to Section 1.30.030 of this code.

(Ord. 7001 § 2 (part), 2005)

8.18.130 Authority to enter and inspect deemed approved activity.

A. Any city official or authorized representative charged with enforcement responsibilities under this municipal code, state laws or other authority, may enter and inspect any deemed approved activity in the city whenever necessary to secure compliance with, or prevent violation of any provisions of this chapter.

B. A person authorized by this chapter to enter any deemed approved activity may enter the activity to inspect the same or perform any duty imposed by the municipal code or by state law, provided the owner or the lawful occupant has consented to the inspection.

C. An owner, occupant or agent thereof who refuses to permit such entry and investigations shall be guilty of infringing upon the violations and penalties as outlined in Section 8.18.110 and subject to related penalties thereof.

(Ord. 7001 § 2 (part), 2005)



**KAGRO FOUNDATION**  
KOREAN AMERICAN GROCERS ASSOCIATION OF CALIFORNIA

Mr. Rod Olguin, Revitalization Manager  
Office of Code Enforcement Commission  
City of Pasadena  
175 N. Garfield Avenue  
Pasadena, CA 91101

Jul-20-2009

Attention: Mr. Jon Pollard

Re: APN – 5725-010-041  
Super Liquor & Market (125 E. Orange Grove Boulevard)

Dear Mr. Olguin:

The Korean American Grocers Association of Los Angeles (KAGRO), established in 2001, represents more than 1,000 large and small grocery store retailers in the Southern California area. Kum Man Jhae and Kun Chin Jhae are one of our most active members and have proven to be responsible and caring operators of Super Liquor & Market. This letter is put forth in support of their appeal to the Pasadena City Council with respect to unreasonable Conditions imposed by the Code Enforcement Commission.

The Jhae's are hands on owners/operators of this long established neighborhood market that provides convenient one stop shopping for food (can, dry and perishables), household items (pots, pans, cleaning items, etc.), paper goods (diapers, tissue, towels, etc.) and restaurant, in a transit dependent neighborhood. It is important that the Jhae's be allowed to continue operating their store within the guidelines/restrictions imposed by the Alcoholic Beverage Control (ABC) Board. As you well know, the Jhae's operate in a very challenging environment, yet have a very loyal customer base. Many in the neighborhood consider the Jhae's friends and treat them like a member of the family. .

Hence, in addition to the over all support of the appeal, let it be known that KAGRO also supports the removal of all of the Conditions imposed by your department, in particular, Conditions 3, 7, 9, 10, 18 & 19.

Best regards,

Dalsub Yoon, President  
KAGRO of LA

Jinwon Park, Chairman  
KAGRO of LA

CC: Members of the Pasadena City Council

APPEAL APPLICATION

RECEIVED

GENERAL INFORMATION: (Please print) Date: 06-15-09

JUN 15 12:19

Appellant: Nathan Freeman

Mailing Address: 3807 Wilshire Blvd. CITY CLERK CITY OF PASADENA

City: Los Angeles State: CA Zip: 90010

Phone #: (day) 213-220-0170 (evening) SAME Fax #: 213-985-0973

Contact Person: Nathan Freeman Phone #: 213-220-0170

E-mail Address of Contract Person: neffmg@aol.com

Applicant (if different from appellant): Kum Man Jhae & Kun Chin Jhae

APPEAL APPLICATION

Application # None Filed Date of Decision 06-04-09 Appeal Deadline 06-15-09

Property Address: 125 E. Orange Grove Blvd., Pasadena, CA 91103 (Super Liquor & Market)

I hereby appeal the decision of the: Code Enforcement Commission

The decision maker failed to comply with the provisions of the zoning ordinance in the following manner:

The decision of the Code Enforcement Commission on 06-04-09 based on the following (see attached):

If necessary, please attach additional sheets

Nathan Freeman Applicant's Signature

06-15-09 Date of Application

Activity # Application Fee: \$ Appeal Hearing Date Date Received: Received by:



# **Super Liquor & Market**

**125 E. Orange Grove Boulevard**

**Pasadena, CA 91103**

**Council District 3**

**Zone: FGSP-C-3D**

**Fair Oaks – Orange Grove – Specific Plan - Commercial**

## **Reasons for Appealing the Decision of The Code Enforcement Commission of the City of Pasadena to the Pasadena City Council**

**Decision Date: 06-04-09**

**Effective Decision Date: 06-05-09**

**Hearing Date: 06-04-09**

**Last Date to Appeal: 06-15-09**

**City of Pasadena Code Enforcement Commission Staff Report: 05-07-09**

**Applicant & Owner/Operator/Aggrieved Party: Kum Man Jhae & Kun Chin Jhae**

**Appeal Applicant/Appellant: Nathan Freeman**

**FMG**

**3807 Wilshire Boulevard, Ste. 555**

**Los Angeles, CA 90010**

### **Aggrieved Party:**

Kum Man Jhae and Kun Chin Jhae are the owners/operators of Super Liquor & Market located at 125. E. Orange Grove Boulevard, City of Pasadena California, and are the aggrieved parties in question. The Jhae's have owned the market and the property since 2003. The Fair Oaks - Orange Grove Specific Plan Area is an ethnically diverse community with an eclectic mix of restaurants, stores, shops and entertainment venues. The subject market serves a community that is transit dependent, offering a convenient location to purchase household consumer goods and products. As noted in the City of Pasadena Code Enforcement Commission Staff Report, the market is located next to the Community Arms Housing Project (as noted above). Said residents benefit from the close proximity of the market for needed household staples and consumer goods. Clearly, under the circumstances, the market serves a public convenience and necessity.

Super Liquor & Market employs between 2 to 3 persons when open for business under the current hours/days of operation. Without the continued operation as is currently structured, these jobs may be lost. Given the state of the economy, any job loss could have tragic consequence for the families of the employees. Moreover, with respect to the City's budgetary constraints, it makes no sense to potentially close a business that provides tax revenue to the City of Pasadena.

The Jhae's have invested a substantial amount of money to ensure that their store will not have a negative impact on the surrounding commercial/residential uses, but in fact, contribute to the quality of life of same:

- Hired Security Consultant (Former SDPD)
- Upgraded all exterior security lights
- State of the Art Video Surveillance Cameras (Interior/Exterior)
- Instituted Graffiti Paint Out Program
- Re-stripe parking lot (Currently out to bid)
- Posted appropriate security and no drinking/loitering signs
- Hourly Clean up of the subject property

With respect to the Commission's decision, the owners/operators have never received or were issued an ORDER(s) TO COMPLY (OTC) from the Building and Neighborhood Revitalization (BNR) Department of the Code Enforcement Commission for the City of Pasadena, relative to any violation(s) of city codes or ordinances. Moreover, recent issues relative to Pasadena Police Department with respect to said location were initiated by the owners/operators. One (1) issue was dropped by the Pasadena City Attorney and the other is in litigation outside the jurisdiction of the City of Pasadena. This is significant because the allegations from said BRN & Commission are based on a process instituted by ABC and not the City of Pasadena.

As property owners, business operators and constituents of the 3<sup>rd</sup> Council District of the City of Pasadena, the BRN and the Code Enforcement Division has an obligation to do a personal investigation to determine if the allegations from ABC were in fact true and accurate. Regarding same, if said allegations were found to be true and accurate, then appropriate citations, tickets and/or ORDER(s) TO COMPLY (OTC) should have been issued. Again, as noted herein, none were issued for the subject location. Had the City of Pasadena given the owners/operators an opportunity to correct any noted violations, perhaps preventing the public hearing process, it might have saved tax payer dollars.

Given the lack of evidence from other city departments/agencies, it's apparent that said location has not been a problem site in the City of Pasadena. Regarding same, nothing was presented to the owners/operators, prior to the Commission hearing to substantiate that the subject property and the existing market is a problem or community nuisance.

Moreover, the stated process did not allow the owners/operators to address the alleged allegations before or during the public hearing of the Code Enforcement Commission. Regarding same, phone calls to appropriate City Officials by the owners/operators misdirected them with respect to how to properly respond to the allegations (More details at the City Council Hearing/Also see below).

Lastly, it's important to note that the owners/applicants are current with respect to all city fees and taxes.

It is for these reasons that Kum Man Jhae and Kun Chin Jhae are the Aggrieved Party relative to the decision of 06-04-09 by the City of Pasadena Code Enforcement Commission.

**The Commission Erred and Abused Their Discretion:**

As stated above, the owners/operators were never issued any ORDER(S) TO COMPLY from the City of Pasadena which is required with respect to the due process clause of the United States Constitution. The City of Pasadena cannot rely on the non-democratic procedures of the State of California Alcoholic Beverage Control (ABC) Board allegations with respect to Super Liquor & Market. Said procedures are designed to extract fees and fines from Licensees and not to determine computability. In other words, they are designed to discourage Licensees from contesting (including receiving "Discovery") allegations in return for receiving penalty fees. This is what happened with the subject location. There is nothing in the Commission's report to indicate that the BNR did an independent investigation of the subject location to determine if the ABC allegations were true and substantiated. Moreover, with respect to same, there is no evidence that ABC conducted an investigation of the subject location or presented the Licensee with evidence of any violations of their Type 21 License relative to the 03-13-09 decision and 03-17-09 determine letter.

Additionally, as stated above, phone calls by the owners/operators to Mr. Jon Pollard and Rod Olguin seem to minimize the severity of the Commission's pending action, leading the Appellant to believe that the issue was just a procedural process, a direct extension from the ABC action. In fact, the owners/operators were advised by the aforementioned that additional Conditions (to the ABC Conditions) would be recommended by Staff and debated by the Commission with an opportunity to contest said recommended Conditions and offer alternative measures to address stated concerns real or imagined, prior to imposition by the Commission. However, the hearing bore a different outcome with the owners/operators not afforded an opportunity to address the allegations, address the recommended conditions, or respond to testimony presented by staff and/or impacted community stakeholders.

Hence, the Commission and Staff failed to comply with provisions of the Zoning Ordinance in the above noted manner.