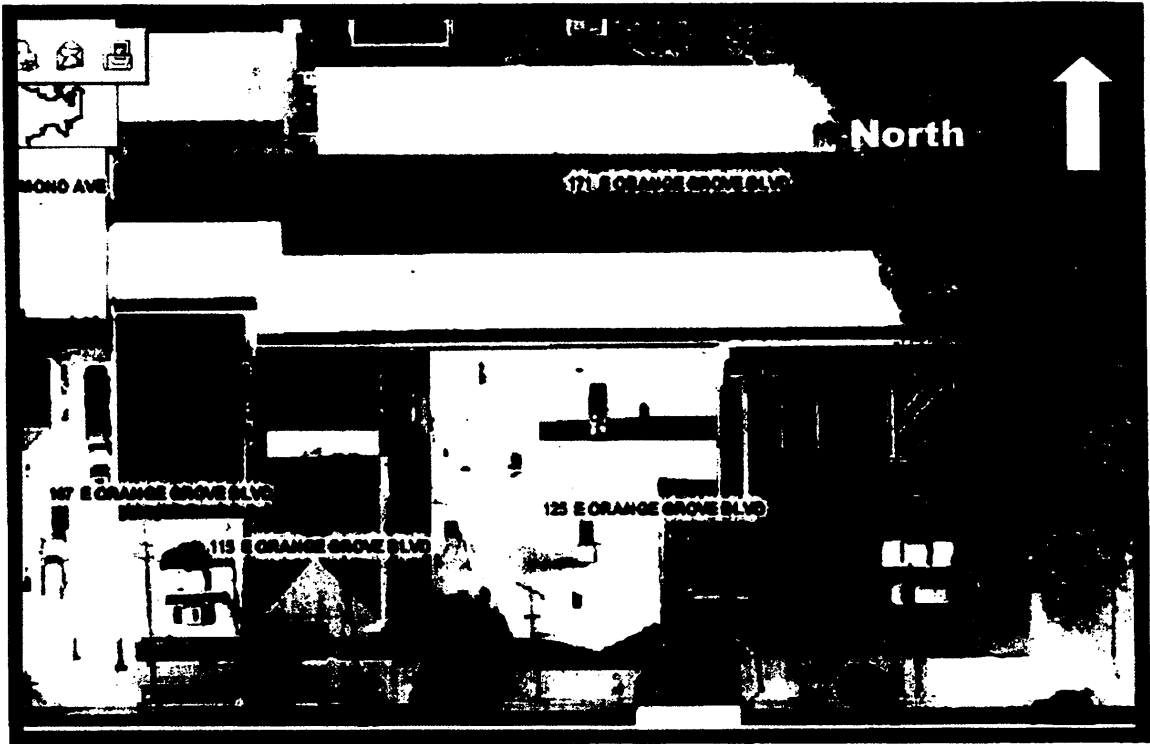


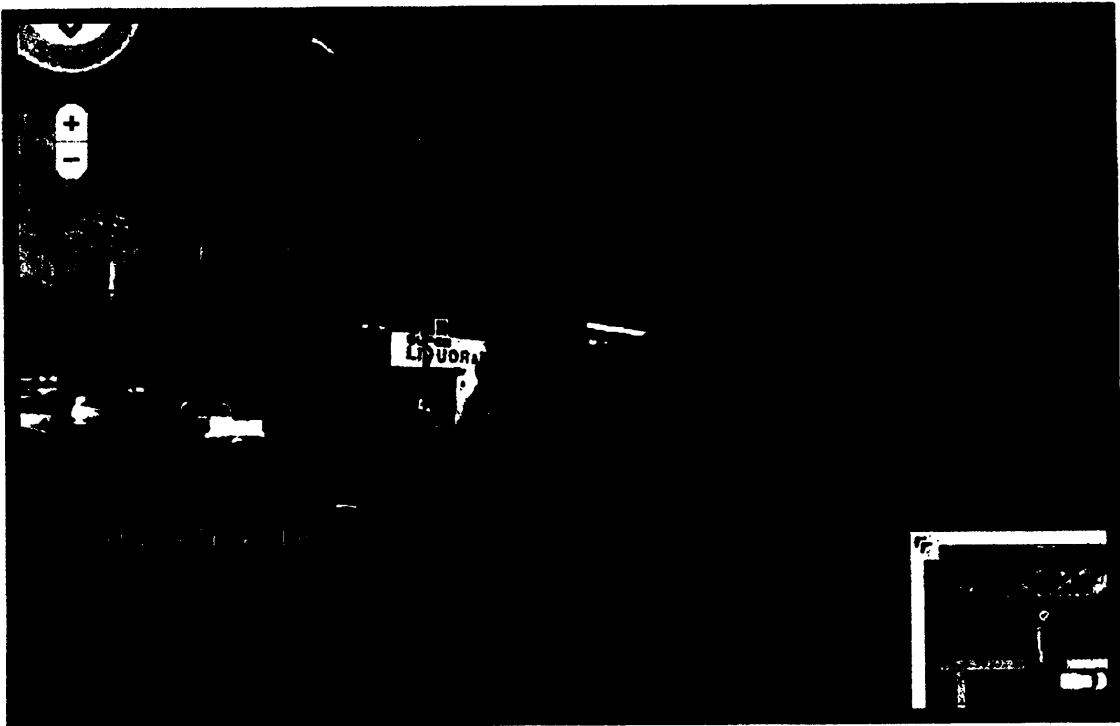
Aerial Photograph - Neighborhood  
Super Liquor  
125 E. Orange Grove Boulevard

Attachment "G"



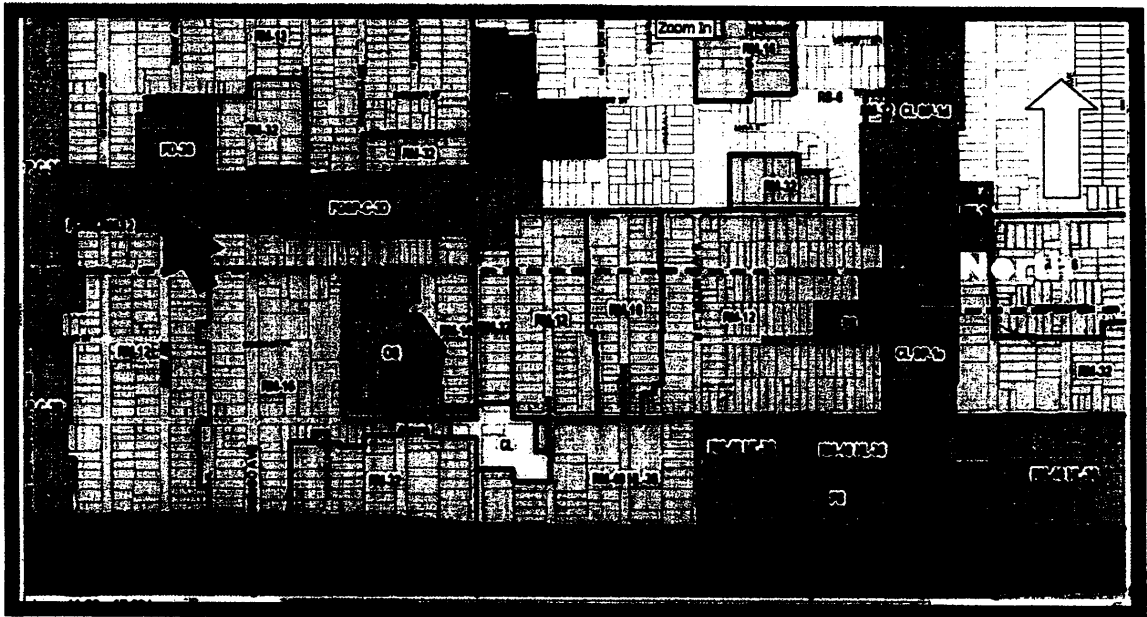
Aerial Photograph  
Super Liquor  
125 E. Orange Grove Boulevard

Attachment "H"



Street View Photograph  
Super Liquor  
125 E. Orange Grove Boulevard

Attachment "I"



Zoning Map - Neighborhood  
Super Liquor  
125 E. Orange Grove Boulevard

Attachment "J"



**California Department of Alcoholic  
Beverage Control  
License Query System Summary  
as of 4/14/2009**

<b>License Information</b>	
<b>License Number:</b> 393118	<b>Status:</b> ACTIVE
<b>Primary Owner:</b> JHAE KUM MAN	
<b>ABC Office of Application:</b> MONROVIA	
<b>Business Name</b>	
<b>Doing Business As:</b> SUPER LIQUOR	
<b>Business Address</b>	
<b>Address:</b> 125 E ORANGE GROVE BLVD <b>Census Tract:</b> 4620.	
<b>City:</b> PASADENA <b>County:</b> LOS ANGELES	
<b>State:</b> CA <b>Zip Code:</b> 91103	
<b>Licensee Information</b>	
<b>Licensee:</b> JHAE KUM MAN	
<b>Licensee:</b> JHAE KUN CHIN	
<b>License Types</b>	
<b>1) License Type:</b> 21 - OFF-SALE GENERAL	
<b>License Type Status:</b> ACTIVE	
<b>Status Date:</b> 12-DEC-2002	<b>Term:</b> Month(s)
<b>Original Issue Date:</b> 12-DEC-2002	<b>Expiration Date:</b> 30-NOV-2009
<b>Master:</b> Y	<b>Duplicate:</b> 0 <b>Fee Code:</b> NA
<b>Condition:</b> OPERATING RESTRICTIONS	
<b>License Type was Transferred On:</b> <b>From:</b> 278655	
<b>Current Disciplinary Action</b>	
... No Active Disciplinary Action found ...	
<b>Disciplinary History</b>	
<b>Reg. Number:</b> 09070704	
<b>1) Section Violated:</b> 24200(a&b)	
<b>2) Section Violated:</b> 25601	
<b>3) Section Violated:</b> 24200(e)	
<b>4) Section Violated:</b> 24200.5(a)	
<b>Proceeding Status:</b> COMPLETE <b>Decision:</b> REV. STAYED	
<b>Suspension Days:</b> 15 <b>Stayed Days:</b> 730 <b>POIC/Fine:</b>	
<b>Suspension Start Date:</b> 17-MAR-2009 <b>Suspension End Date:</b> 01-APR-2009	
<b>Hold Information</b>	
... No Active Holds found ...	
<b>Escrow</b>	
... No Escrow found ...	

**Attachment "K"**

RECORDED AT THE REQUEST OF  
CHICAGO TITLE COMPANY

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

KUN CHIN JHAE and KUM MAN JHAE  
125 E. ORANGE GROVE  
PASADENA, CA 91103

03 0014630

2

THIS SPACE FOR RECORDER'S USE ONLY:

ESCROW NO. 30214-EK

TITLE ORDER NO. 26062868

**INDIVIDUAL GRANT DEED**

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX is \$ 528.00 L.A. County

computed on full value of property conveyed, or

computed on full value less value of liens or encumbrances remaining at time of sale.

Unincorporated area  City of PASADENA, AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

HEE CHEOL EUN and SONG YE EUN, Husband and Wife

hereby GRANT(s) to:

KUN CHIN JHAE and KUM MAN JHAE, Husband and Wife as Joint Tenants

the real property in the city of PASADENA, County of Los Angeles, State of California, described as:  
Exhibit "A" attached hereto and made a part hereof.

ALSO KNOWN AS: 125 E. ORANGE GROVE, PASADENA, CA 91103

A.P. # 5725-010-041

DATED December 27, 2002

STATE OF CALIFORNIA

COUNTY OF Los Angeles

On January 7, 2002

before me, Eunice H. Ko

a Notary Public in and for said State, personally appeared

Hee Cheol Eun and

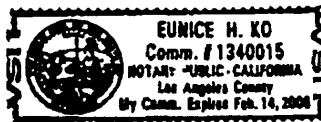
Song Ye Eun

HEE CHEOL EUN

SONG YE EUN

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.  
WITNESS my hand and official seal.

Signature



(This area for official notarial seal)

Mail tax statements to: KUN CHIN JHAE and KUM MAN JHAE, 125 E. ORANGE GROVE, PASADENA, CA 91103

Attachment "L"

**ATTACHMENT "3"**  
**CITY OF PASADENA MUNICIPAL CODE**  
**CHAPTER 8.18**  
**"DEEMED APPROVED ORDINANCE"**

Chapter 8.18 DEEMED APPROVED ALCOHOLIC BEVERAGE RETAIL SALE  
ORDINANCE

Sections:

8.18.010 Title.

8.18.020 Purposes of this ordinance.

8.18.030 Definitions.

8.18.040 Applicability.

8.18.050 Automatic deemed approved status.

8.18.060 Performance standards.

8.18.070 Notification to owners.

8.18.080 Performance standards compliance.

8.18.090 Procedures for referral to the code enforcement commission.

8.18.100 Hearing procedures.

8.18.110 Fee schedule.

8.18.120 Recovery of cost.

8.18.130 Authority to enter and inspect deemed approved activity.

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 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.

---

# **CORRESPONDENCE**

Benjamin M. Reznik  
Direct: (310) 201-3572  
Fax: (310) 712-8572  
BMR@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

Ref: 70541-0001

January 20, 2010

**VIA MESSENGER**

Mayor Bill Bogaard and Members of the City Council  
c/o City Clerk  
City of Pasadena, Room S228  
100 N. Garfield Avenue  
Pasadena, CA 91109

Re: Reconsideration Hearing: Appeal of Code Enforcement Commission  
Panel No. 3 Order Regarding Super Liquor - 125 East Orange Grove Blvd.  
Hearing Date: January 25, 2010

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Dear Mayor Bogaard and Members of the City Council:

This firm represents Mr. Kun Chin Jhae and Mrs. Kum Man Jhae, the owners and operators of Super Liquor, located at 125 E. Orange Grove Boulevard, Pasadena, California 91103 (the "**Appellants**"). At its July 27, 2009 meeting, the Pasadena City Council (the "**City Council**") held an appeal hearing (the "**Appeal**") regarding an order by the Code Enforcement Commission Panel No. 3 (the "**Commission**") imposing conditions on the Appellants pursuant to Pasadena Municipal Code ("**PMC**") § 8.18.100 (B)(1)(b). (See Exhibit "A") After receiving input from the community and the Appellants, the City Council upheld the Commission's conditions, with one key modification. As adopted, the cumulative effect of these twenty conditions seriously jeopardizes the financial viability of the Appellants' business.

Following the July 27, 2009 City Council hearing, our clients requested that the City Council reconsider the Appeal, in light of a number of issues that we raised in a letter dated August 3, 2009. On October 19, 2009, the City Council granted the Appellants' request for reconsideration, and a hearing is scheduled for January 25, 2010.

**I. Background**

Mr. and Mrs. Jhae have owned and operated Super Liquor since 2002. In addition to selling beer, wine and distilled spirits, Super Liquor also sells a variety of household and convenience items and assorted merchandise. Super Liquor is currently open from 6:30 a.m until 10:00 p.m. daily, in order to meet the varied schedules of its customer base. The Jhaes' small business is located in an economically and socially challenging environment in close proximity to the Community Arms housing complex. Super Liquor has been allowed to operate for many

years without being specifically regulated by the City of Pasadena pursuant to a conditional use permit. Under PMC § 8.18 *et seq.*, (the "**Deemed Approved Ordinance**"), an establishment selling alcoholic beverages that is not subject to a conditional use permit must still comply with a set of performance standards.<sup>1</sup>

As licensees under the California Alcoholic Beverage Control Act, the Jhaes are subject to regulation by the California Department of Alcoholic Beverage Control ("**ABC**"). In March 2009, ABC issued a decision that the Jhaes had violated, or permitted violation, of California Business & Professions Code §§ 25601, 24200(3) and 24200.5(a). Without full knowledge of their rights and the implications of this decision, the Jhaes waived their right to a hearing and stipulated to the underlying violations, in exchange for acceptance of a conditional license. As a conditional licensee, Super Liquor is now subject to the following six operating restrictions by ABC:

- (1) Wine products with an alcoholic content greater than 14.9% are prohibited;
- (2) Fortified beer and/or malt beverages with an alcoholic content greater than 5.7% are prohibited;
- (3) Beer, malt beverages, and wine coolers in containers of 12 oz. or less cannot be sold by single containers, but must be sold in manufacturers' pre-packaged multi-unit quantities;
- (4) Super Liquor is prohibited from packing merchandise in anything other than clear plastic bags;
- (5) No alcoholic beverages shall be consumed on any property adjacent to the Super Liquor premises under the control of the Jhaes; and
- (6) Loitering is prohibited on or around the Super Liquor premises under the control of the Jhaes.

Thus, as part of an agreement whereby Mr. and Mrs. Jhae waived their right to an appeal, ABC imposed six express conditions tailored to the specific violations of which the Jhaes were accused. Since the ABC issued its decision, the Jhaes have complied with these six conditions.

However, in reliance on this March 2009 ABC decision, in a City code enforcement hearing, the Commission found on June 4, 2009 that Super Liquor was not in compliance with the Deemed Approved Ordinance's standards and imposed twenty conditions on Super Liquor, including the six ABC conditions above (the "**Commission Hearing**"). (See Exhibit "B")

Importantly, the Commission modified Condition No. 3 by adding "distilled spirits" to the list of alcoholic beverages subject to the prohibition against single containers in

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<sup>1</sup> See PMC § 8.18.060

less than 12 oz. containers, without any evidentiary support that this ABC condition should be supplemented.

On appeal, the City Council upheld the Commission's decision with one key modification. Whereas the Commission's conditions merely restricted Super Liquor's overall hours of operation from 7:00 a.m. until 9:00 p.m., the City Council further limited the hours of operation by prohibiting alcohol sales before 9:00 a.m. and after 6:00 p.m. Thus, the City Council *eliminated six and one-half hours of alcohol sales and one and one-half hours of overall business* from Super Liquor's daily operations.

In modifying the hours of operation, the City Council relied on information provided by the Pasadena Police Department regarding the frequency and timing of police responses to alleged incidents at Super Liquor. However, this information is misleading and does not accurately reflect Super Liquor's operations. For example, police frequently respond to pedestrian activity in the general vicinity of Super Liquor, even when the individuals questioned by police are not Super Liquor customers and their conduct is wholly unrelated to Super Liquor's operations. However, based on a summary of incident reports provided by the Pasadena Police Departments, and our clients' review of their security footage, these incidents are attributed to the Appellants' address. Further, the Deemed Approved Ordinance creates a "Catch-22" - store owners, such as the Appellants, are encouraged to contact the Police Department regarding loitering and other problems at or near their business, but are penalized when such calls are treated as the basis to impose additional conditions.

The Appellants have complied with the remainder of City and ABC conditions, which has resulted in dramatic improvements in their operating environment. Therefore, the imposition and enforcement of the additional conditions is unnecessary. In addition, as discussed in detail below, some of the conditions adopted by the City Council, including those regulating container size, hours of operation, labeling, security, and litter removal, place a cumulatively excessive burden on the Appellants and are preempted by state law. Meanwhile, similarly-situated businesses throughout the City of Pasadena, including a comparable establishment immediately across E. Orange Grove Boulevard from Super Liquor, are not subject to the same operating standards. This creates an unlevel playing field.

## **II. The City's Conditions Are Cumulatively Excessive**

As discussed above, pursuant to the City Council's July 27, 2009 hearing, the Appellants will be subject to fourteen additional conditions, beyond the six initially imposed by ABC. A number of these conditions place an excessively onerous burden on the Appellants, and fail to meet the proportionality standard established by the U.S. Supreme Court in *Dolan v. Tigard*, 512 U.S. 374, particularly:

- (i) Condition No. 19: Limiting the sale of alcoholic beverages to the hours of 9:00 a.m. to 6:00 p.m., and the overall hours of operation from 7:00 a.m. to 9:00 p.m.

Over 40% of the Appellants' alcohol sales occur between the hours of 6 p.m. and 10 p.m. In addition, a significant share of non-alcohol sales will be lost due to these restricted hours. According to information provided by the City's Police Department, a disproportionate share of Police responses have not occurred after 6:00 p.m. In addition, if the underlying purpose of the City Council's action is the regulation of alcohol sales, there is no basis to also curtail Super Liquor's overall business hours. Therefore, there is no reason to impose these arbitrary cut-off times.

- (ii) Condition No. 9: Requiring the Appellants to employ a security guard, with responsibility for patrolling and monitoring activity up to fifty (50) feet from their premises.

Compliance with this condition will cost the Jhaes approximately **\$90,000 per year<sup>2</sup>**, which is an excessive and disproportionate burden. In addition, this condition places responsibility on the Appellants' security personnel for monitoring and enforcing off-site conduct occurring on private property or in the public right-of-way beyond the Appellants' control, which exposes the Appellants to significant liability. Lastly, the City has not provided a basis to require a security guard during those hours of operation when alcohol is not being sold at Super Liquor.

- (iii) Condition No. 18: Requiring the Appellants to label all containers of alcoholic beverages sold with their business name.

Compliance with this condition will cost the Appellants between **\$12,000 and \$24,000 per year**, based on the costs for labeling and labor. This excessive burden is disproportionate to any community benefit gained by the condition. Further, other comparable businesses in Pasadena are not subject to this requirement, which places the Appellants at a competitive disadvantage.

A generally applicable, city-wide ordinance is a more equitable and appropriate means of imposing labeling requirements.

- (iv) Condition No. 10: Requiring the Appellants to remove litter within **five hundred (500) feet** of the Appellants' business.

It is wholly infeasible and unreasonable for the Appellants to remove all litter within five hundred feet of their business. An area with a 500 ft. radius equals 787,398 square feet (equal to more than 18 acres) while the Appellants' property is only 10,340 square feet (approx.), or 1.3% of the total area they would be responsible for monitoring.

This condition clearly places an excessive and disproportionate burden on the Appellants beyond the particular impacts of their business. Further,

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<sup>2</sup> Based on an estimate of \$18/hour provided to the Appellants for a private security guard.

the City has provided little evidentiary support that the Appellants are responsible for a disproportionate share of litter up to 500 feet from the Super Liquor site.

Based on the above, it is clear that the cumulative burden placed on the Appellants by the City's conditions is excessive and jeopardizes the financial viability of their family-owned and operated small business. If the City imposes these conditions, the Appellants will likely have to make further cuts to their labor force and could be forced out of business. Given the ongoing economic crisis, the City Council should strongly consider whether it wants to regulate this local businesses in a manner that exacerbates unstable conditions.

### **III. The City's Conditions Are Preempted by State Law**

Under the general principle of state preemption, when local legislation conflicts with state law, the latter preempts the former. *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885) A conflict exists when local legislation "duplicates, contradicts, or enters an area fully occupied" by the laws of the state.

Article XX, Section 22 of the California Constitution expressly states that "[t]he State of California, subject to the internal revenue laws of the United States, shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State...". Further, the Alcoholic Beverage Control Act (Business & Professions Code § § 23000 *et seq.*) establishes a comprehensive regulatory framework and licensing bureaucracy to oversee establishments that sell alcoholic beverages.

Within this context, California courts have long grappled with how much latitude to grant local governments in regulating establishments where alcohol is sold. Local conditions which duplicate State efforts at regulating the sale of alcohol are preempted. As stated in *California Restaurant Association v. City of Los Angeles* (1987) 192 Cal.App.3d 405, 411, and repeated in *City of Oakland v. Superior Court of Alameda County* (1996) 45 Cal.App.4th 740, 764, Article XX, section 22 of the California Constitution will expressly preempt local regulations that "***directly affects the licensee's ability to sell alcoholic beverages to a willing purchaser***".

In this case, the Appellants are already being regulated by ABC, through six conditions specifically tailored to the Appellants' violations. For example, the Appellants are currently prohibited from selling individual containers of beer and/or malt beverage and wine coolers in sizes of 12 oz. or less. This condition was included as a recommendation in the staff report prepared by Deemed Approved Administrator Rod Olguin for the Commission Hearing. However, at the Commission Hearing, this condition was modified to include "distilled spirits" among the list of beverages for which the sale of 12 oz. or smaller containers was prohibited.

The City is prohibited from adding distilled spirits to this condition, because the State is already regulating this field. The issue of container sizes and packaging requirements for alcoholic beverages was expressly addressed by ABC, which chose to refrain from regulating the container sizes of distilled spirits. In addition, the 12 oz. threshold imposed by ABC is a relevant standard for containers of beer and/or malt beverage and wine coolers, but is not an applicable standard for distilled spirits.

The Appellants recognize the City's legitimate interest in adopting and enforcing reasonable land use regulations. However, the City does not have carte blanche authority to regulate all areas of the Appellants' business. The City's hours-of-operation and container-size conditions, imposed in this case, directly affect the Appellants' ability to sell alcoholic beverages to Super Liquor's willing customers. Therefore, these conditions exceed the permissible scope of the City's regulation of the Appellants' business.

#### **IV. Super Liquor Is Already Complying with Most of the Conditions**

For the past nine months the Appellants have been in full compliance with the six conditions imposed by ABC. In addition, Super Liquor is currently complying with the following City of Pasadena conditions:

- Condition No. 7: There are *no signs visible* from off-site showing that alcoholic beverages are being offered for sale at Super Liquor (see Exhibit "C");
- Condition No. 10: The Super Liquor premises and adjacent E. Orange Grove Boulevard right-of-way are *litter-free* (see Exhibit "C");
- Condition No. 11: The Super Liquor site is *graffiti-free* (see Exhibit "C");
- Condition No. 12: There is *sufficient lighting* in the Super Liquor parking area to discourage loitering, public consumption of alcohol and/or other illegal activity (see Exhibit "C");
- Conditions No. 13: *Three signs have been posted* on the exterior of the Super Liquor premises indicating that loitering and consumption of alcohol on site are both prohibited (see Exhibit "C");
- Conditions No. 14: *No pay telephone* is maintained on the exterior of the Super Liquor premises (see Exhibit "C");
- Condition No. 15: There are *no coin operated games or video machines* on the Super Liquor premises (see Exhibit "C");
- Condition No. 16: Super Liquor's owners have complied with all decisions, orders, and directives of the Department of Alcoholic Beverage Control;



- Condition No. 17: Super Liquor's owners are not aware of any additional planning approvals or building permits necessary for compliance with the City's conditions; and
- Condition No. 20: A *lock and chain* has been installed, thereby restricting access to the parking area when the store is closed (see Exhibit "C").

There has been a significant improvement in Super Liquor's operating environment as a result of the Appellants' current compliance with the six ABC conditions and the ten City of Pasadena conditions listed above. According to information provided by the Pasadena Police Department, there have only been two Police Department responses to the Super Liquor location within the last six months, one of which was a "Pedestrian Traffic" intercept that may have been unrelated to Super Liquor operations.

This shows a dramatic reduction in Police Department responses to the Super Liquor premises and vicinity as compared to the 2007-2008 time period that led to the ABC corrective action. This is also evidence that Super Liquor's compliance with the excessively burdensome Condition Nos. 9, 10, 18 and 19, and the preempted Condition No. 3, is not necessary to meet the City's objective of nuisance abatement.

#### V. Conclusion

The Appellants have owned their small, family-run business in Pasadena since 2002. While operating in a very challenging environment, they have done their best to minimize the risk of nuisance conditions associated with their business. The Jhaes have a modern surveillance and security system consisting of numerous monitoring cameras and mirrors. (See Exhibit "D"). This system also includes electronic video recording and storage.

The ABC has already acted to specifically address the violations it identified, and this current case is the first time that the Jhaes have been specifically regulated by the City. As a result of compliance with ABC conditions and most of the City's conditions, there has already been significant improvement in Super Liquor's operating environment.

However, the cumulative impact of all twenty regulations goes too far, and will likely put the Jhaes out of business. In addition, there is no clearly prescribed administrative review procedure for the Jhaes to seek a re-evaluation of whether conditions are working, or if they should be revised to reflect changed circumstances.

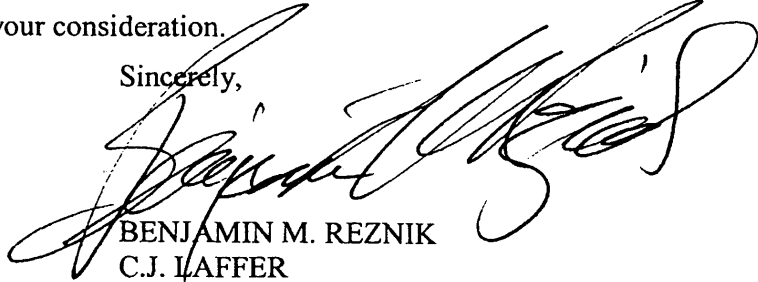
Therefore, on behalf of the Appellants, we respectfully request that the City Council take the following actions:

- (1) Remove "distilled spirits" from Condition No. 3;
- (2) In lieu of Condition No. 9's requirement for a security guard, adopt the additional security conditions volunteered by Appellants in Exhibit "E";

- (3) Modify Condition No. 10. such that the Appellants' responsibility for litter removal is limited to the north side of E. Orange Grove Boulevard, up to 100 feet from the premises;
- (4) Eliminate the labeling requirement imposed by Condition No. 18, or modify the condition in a commercially-reasonable manner; and
- (5) Modify Condition No. 19 to permit the sale of alcoholic beverages from 9 a.m. to 9 p.m., and overall hours of operation from 6:30 a.m. to 10:00 p.m.

Thank you for your consideration.

Sincerely,



BENJAMIN M. REZNIK  
C.J. LAFFER

Jeffer, Mangels, Butler & Marmaro LLP

BMR:CJL:dg  
Exhibits

cc (w/exhibits, via e-mail): Mr. Mark Jomsky, City Clerk  
Ms. Michele Beal Bagneris, City Attorney  
Mr. Frank Rhemrev, Assistant City Attorney