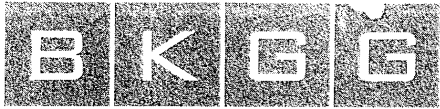


ATTACHMENT "C"



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FILE NUMBER
JHA01-700

March 14, 2011

VIA MESSENGER DELIVERY

Meroujan S. Kitsinian, Chairman
City of Pasadena
Code Enforcement Commission
175 North Garfield Avenue
Pasadena, CA 91101

Re: Review Hearing: Operating Conditions for Super Liquor
Hearing Date: April 7, 2011
Hearing Time: 4:00 p.m.

Dear Mr. Kitsinian and Members of the Code Enforcement Commission:

This firm represents Kun Chin Jhae and Kum Man Jhae, the owners and operators of Super Liquor (collectively "Super Liquor"), located at 125 East Orange Grove Boulevard, Pasadena, CA 91103. The Code Enforcement Commission ("the Commission") will conduct a Review Hearing on April 7, 2011 to consider modifying the following conditions imposed by the City Council of Pasadena ("the City") upon Super Liquor. (See Exhibit "A", Code Enforcement Commission Corrective Actions regarding Super Liquor). The requested modifications are set forth below:

- Condition 3 The sale or stocking of single containers of distilled spirits, beer, malt beverages and wine coolers in sizes 12 oz. or less is prohibited, but may be sold in manufacturer pre-packaged multi-unit quantities;

Distilled spirits should be removed from the list of prohibited single containers.

- Condition 9 Management shall employ a private security guard to patrol the business premises and the adjacent sidewalks, including the north side of Orange Grove Boulevard adjacent to the property, during all hours of business operation to ensure that no littering, loitering, or consumption of alcohol occurs, and make prompt notification to the Pasadena Police Department

of instances of loitering, the public consumption of alcohol or other illegal activity;

Super Liquor will continue to notify the Police Department of illegal activity, but should not be required to employ a private security guard.

- Condition 10: It shall be the responsibility of the business owner/operators of the business to remove identifiable litter from the premises and the public right of way (limited to the north side of East Orange Grove up to 100 feet from the premises);

This condition requires clarification as to parameters, and the extent to which Super Liquor would be responsible for the upkeep of the neighboring apartment complex or neighboring businesses. The condition should also be rewritten to limit Super Liquor's responsibility to remove identifiable litter from the public sidewalks up to only 50 feet from the premises.

- Condition 18: All alcoholic beverage containers shall be identified with a sticker that has the name of the business establishment. Translucent bags shall be identified in the same manner.

This condition should be eliminated in its entirety.

- Condition 19: Business hours of operation shall be between 7:00 a.m. and 9:00 p.m. daily with the sale of alcohol to occur only between the hours of 9:00 a.m. and 6:00 p.m. daily.

This condition should be eliminated in its entirety, and Super Liquor should be able to continue to run its business during its current hours of operation, 6:30 a.m. to 10:00 p.m., with no restriction on the sale of alcohol.

Super Liquor has been in full compliance with the remaining conditions, including those implemented by the ABC.

I. Introduction:

At this Review Hearing, the City is in the unique position to *know* the impact, or lack thereof, of the primary operating conditions at issue. The most severe conditions, Nos. 3 & 19, have not been in effect at Super Liquor for one year due to the preliminary injunction ordered by the Court on March 12, 2010. It is a fact that there has been no action by the Alcohol and Beverage Commission ("the ABC") or the City against Super Liquor since that time. Thus, the conditions are not necessary to abate any nuisance. Moreover, in the brief period (6 days) that

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the conditions were in effect, Super Liquor suffered disastrous financial repercussions – that, if left in place, would have put Super Liquor out of business.

The City added the conditions at issue in this request after the ABC already imposed six operating conditions upon Super Liquor. The ABC's stated basis for the new conditions were certain incidents at or around Super Liquor between January 2007 and April 2008. The City expressly adopted the ABC's findings to support its imposition of an additional fifteen operating conditions upon Super Liquor.

Upon Super Liquor's motion, the Superior Court of the County of Los Angeles precluded the imposition of Conditions #3 and #19 upon Super Liquor by way of a temporary stay. (See Exhibit "B", Super Liquor's Ex Parte Application for Temporary Stay and OSC re: Issuance of Stay.) As such, this request for modification is unique in that Super Liquor is *not* currently operating under two of the conditions at issue, giving this Commission unequivocal proof that those conditions are not necessary. The proof is that the activity which was the subject of the ABC report has subsided as there has been no further disciplinary action by the ABC against Super Liquor since March 13, 2009, and there has been absolutely no code enforcement or police activity at Super Liquor in the past year¹. (See Exhibit "D".) Thus, the activity surrounding Super Liquor (in 2007 and 2008) which was the basis of the imposition of operating conditions has ceased to exist.

In addition, if the conditions set forth above are reinstated without modification, Super Liquor's business will ultimately be destroyed, as its customers learn that they can no longer purchase alcohol – *at a licensed liquor store during regular business hours* – and take their business to one of the two competing liquor stores within 600 feet of the Super Liquor. Super Liquor will also face the upfront costs of the employment of a full-time security guard, extensive labeling, and the removal of litter up to 100 feet from the actual storefront. Evidence provided to the Los Angeles Superior Court also demonstrated the immediate and harsh effect of the conditions upon Super Liquor. (See Exhibit "B").

Because the conditions are unwarranted given the lack of any incidents worthy of the ABC's or the City's attention for over one year, and because of the certain economic destruction that the City's operating conditions would cause to Super Liquor, Super Liquor respectfully requests that this Commission eliminate or modify Conditions 3, 9, 10, 18, 19.

II. Procedural Background:

On August 10, 2007, the Pasadena City Attorney advised Super Liquor that the Pasadena Police Department had responded to a number of incidents at or in the area of Super Liquor, and that Super Liquor constituted a nuisance. At that time, the store was advised to take

¹ There is one police report involving public intoxication on East Orange Grove Boulevard in front of Super Liquor. There is no evidence that the suspect had any connection to Super Liquor. Indeed, the suspect was also reported in front of Andy's Liquor across the street.

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“reasonable steps” to correct the conditions or to face disciplinary action with regard to its license to sell alcohol.

In September of 2007, the Alcohol and Beverage Commission (“the ABC”) began a year-long investigation into incidents surrounding Super Liquor, which resulted in an Investigation Report. The Report relied upon a summary of Police Department arrest reports relaying eighteen incidents at or around Super Liquor between January 2007 and April 2008. Many of the arrests supporting the Report had nothing to do with Super Liquor or the sale of alcohol, including arrests for possession of drug paraphernalia, the sale of bootleg media, possession of a firearm in a vehicle, and the presentation of false identification to a police officer.

Based upon the Report, ABC issued an Accusation against Super Liquor on February 19, 2009 for operating a “disorderly house, to which people resort, to the disturbance of the neighborhood...in violation of Business and Professions Code Section 25601”. In exchange for a two-year stay on the revocation of Super Liquor’s liquor license due to the accusation, Kum Man Jhae, without the assistance of counsel, signed a stipulation and waiver for prehearing settlement and agreed to six operating conditions imposed by the ABC which were tailored by the ABC to address the 2007-2008 incidents. The ABC restrictions went into effect in March of 2009, and Super Liquor immediately complied therewith and has continued to comply since. In addition to the ABC conditions, Super Liquor voluntarily implemented enhanced security measures including the use of an electronic age verification device and a video surveillance system.

Notwithstanding Super Liquor’s conformance with the ABC conditions and its own voluntary measures, the City then imposed fourteen additional conditions upon Super Liquor after a public hearing in June of 2009. Super Liquor unsuccessfully appealed the decision of the Commission to the City Council which imposed yet another operating condition upon Super Liquor. Finally, Super Liquor was granted a reconsideration hearing of the Appeal with the City Council which was also unsuccessful.

The now *twenty-one* operating conditions became fully effective on March 4, 2010. Because the extreme measures taken by the City against Super Liquor had an immediately devastating effect its business, Super Liquor sought and was granted a court ordered preliminary injunction of Condition #3 and Condition #19 on March 12, 2010. (See Exhibit “C”, Court’s Order Staying Administrative Conditions.) These two conditions, in particular, are unwarranted and will effectively put Super Liquor out of business if they are reinstated without modification or elimination by this Commission.

III. The Criminal Activity Which Triggered The ABC Investigation Of Super Liquor Is Non-Existent:

The original Commission hearing regarding the Super Liquor conditions occurred on June 4, 2009. The basis of the hearing was the “disorderly house” condition at Super Liquor found by the ABC. The ABC investigation which supported the finding of a “disorderly house”

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considered the number of incidents reported at or around Super Liquor between January 2007 and April 2008. The findings of the ABC were expressly adopted by the Commission.

There has been no additional disciplinary action by the ABC against Super Liquor since the March 13, 2009 Commission hearing. In fact, the stay on the revocation of Super Liquor's license will become permanent on March 13, 2011 because there have been no further incidents for two years - *notwithstanding the lack of implementation of Conditions #3 and #19.*

Moreover, the documents attached hereto as Exhibit "D", demonstrate that there has only been one police report filed with the Police Department regarding the area surrounding Super Liquor between January 1, 2010 and February 15, 2011. The Police Report involves the isolated arrest of an individual for public intoxication in front of Super Liquor on May 17, 2010. The arrestee was found in front of the store yelling at someone inside. He then went across the street and went into Andy's Liquor. There is no information in the report which identifies Super Liquor as a cause or catalyst of this incident.

The fact that the ABC has not taken any further action against Super Liquor and that there has only been one incident reported to the Police Department in the past year which may have nothing to do with Super Liquor, demonstrates that the prior nuisance activity is no longer present.

IV. The Financial Effects Of The City's Operating Conditions Upon Super Liquor Were Immediate and Devastating:

As you can see from the enclosed financial documentation set forth in Exhibit "B", Declaration of Inho Cho, the relatively small profits that Super Liquor does generate were severely depleted by the imposition of the additional fifteen operating conditions by the City - *in just eight days.* The store's average daily gross sales plummeted by over 40% (from \$3211.33 to \$1897.07) during the eight days in which the City's restrictive measures were implemented, forcing Super Liquor to lay off one of their three employees.

While the City may believe that a 40% decline in daily sales is a small price to pay for an otherwise lucrative venture, the financial documentation illustrates that such a decline would effectively destroy this already struggling small business. If it is truly not the City's intent to drive one of Pasadena's small family-owned businesses out of operation, then the City must modify or eliminate the conditions at issue in this request.

V. Super Liquor Provides A Worthwhile Service To The Surrounding Community:

Despite the natural inclination for some residents and City officials to characterize the operation of a liquor store within a residential community as *per se* harmful, there are many

City residents who depend upon Super Liquor for the purchase of a variety of household goods, including alcohol, between the hours of 6:30 a.m. and 10:00 p.m. These loyal customers have also experienced the positive changes that have taken place in the area surrounding Super Liquor in the past few years.

Thus, if Super Liquor is unable to continue its business because of the financial effects of the conditions at issue, City residents will also suffer and lose an establishment upon which they have come to depend. (See Exhibit "E", Resident Letters in support of Super Liquor's Modification Request.)

VI. The City Is Treating Super Liquor Unfairly And Unequally As Compared To Similarly Situated Businesses:

On April 2, 2009, the Commission acting pursuant to Pasadena Municipal Code § 8.18.060 et seq. ("the Deemed Approved Ordinance"), adopted the findings and conditions of Commission Panel #3 for Milt's Liquor, located at 400 East Orange Grove Boulevard. (See Exhibit "F", Order of the Code Enforcement Commission regarding Milt's Liquor.) Despite the fact that Milt's Liquor is only three blocks away from Super Liquor, and that Commission hearings on these two cases occurred within two months of each other, the Commission imposed far more restrictive conditions on Super Liquor, without any reasonable explanation, in the following areas:

- (1) Hours of Operation:** Milt's is permitted to operate from 7:00 a.m. until 11:30 p.m. with no additional limitation on alcohol sales, to Super Liquor's knowledge. In contrast, the City limited Super Liquor's alcohol selling hours to 9:00 a.m. to 6:00 p.m., with overall hours from 7:00 a.m. to 9:00 p.m. This puts Super Liquor at a distinct disadvantage in relation to its direct competitors.
- (2) Single Containers:** Milt's is permitted to sell single containers of distilled spirits in containers sized 12 oz. or less, while the Commission imposed a condition on Super Liquor expressly prohibiting such sales.
- (3) Litter Removal:** Milt's is required to remove litter from the public right-of-way adjacent to its premises for a distance of fifty feet in each direction. Super Liquor, however, is required to remove litter from the public right-of-way within one-hundred feet in each direction. This requirement places an undue burden on an individual business owner, without any reasonable basis for the disproportionate duty as compared to comparable, nearby businesses.
- (4) Labeling:** Milt's is not subject to any labeling requirements. The Commission, however, required Super Liquor to label every container of alcohol sold with the Super Liquor business name.

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- (5) **Patrolling Security Guard:** Milt's is only required to patrol the business premises and surrounding area three times a day. Super Liquor, on the other hand, was required to employ a full-time security guard by the Commission.

The disparate treatment described above is evidence of the City's arbitrary and unreasonable application of the Deemed Approved Ordinance, and constitutes a denial of Super Liquor's Constitutional right to equal protection under the law. Courts have held that local regulations shall not be arbitrary and unreasonable. *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 389.

VII. The Court Will Likely Rule In Super Liquor's Favor On The Petition For Writ Of Mandate If The Parties Are Forced To Go To Trial:

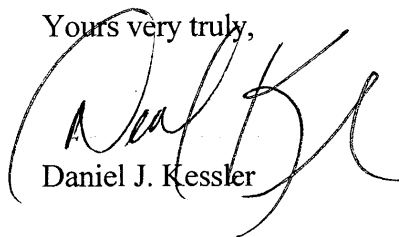
In order to save their struggling business, our clients will rigorously pursue the Petition for Writ of Mandate with the Court should this issue not resolve by way of the instant modification hearing. We are confident that we can prevail on our Petition due to a number of factors. In addition to Super Liquor's legal bases for the Petition, the Court has already expressed its view that Super Liquor's Petition has merit by granting Super Liquor's motion for a preliminary injunction as to Condition #3 and Condition #19. It is our client's hope that these issues need not be further litigated with the court in order for all parties to save the time and expense of trial.

VIII. Conclusion:

As a result of Super Liquor's compliance with the ABC conditions, and a majority of the City's additional conditions, there has been a drastic improvement in the area surrounding Super Liquor.

The City prides itself as "an ideal environment for business success". The unwarranted conditions at issue and their effect on Super Liquor's business are not in line with the City's stated values and standards. It is our hope that Super Liquor can continue to partner with the City to improve the conditions present in the City's Northwest corridor, while still running a sustainable business subject only to the conditions *necessary* to protect the community and its citizens.

Yours very truly,



Daniel J. Kessler

DJK/mac
Enclosures

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cc: Client (w/ encls.)
Frank Rhemrev, Esq. (w/ encls.)