

ATTACHMENT "D"

**CODE ENFORCEMENT COMMISSION
STAFF REPORT**

DATE: April 7, 2011

TO: Code Enforcement Commission

FROM: Jon Pollard, Code Compliance Manager

SUBJECT: Super Liquor – Modification of Business Operating Conditions

APPLICANT: Daniel J. Kessler, Esq. – Burkhalter Kessler Goodman & George LLP on behalf of Kun Chin Jhae and Kum Man Jhae

INTRODUCTION

Super Liquor has filed an application requesting modification of the conditions which were imposed by the City pursuant to the Deemed Approved ordinance. Super Liquor is able to apply for modification of their conditions since more than a year has passed since their imposition.

STAFF RECOMMENDATION:

It is recommended that the Code Enforcement Commission:

- 1: Conduct a public hearing;
- 2: Following the public hearing, **approve** applicant's request for modification of Condition No. 3 and Condition No. 19, **disapprove** applicant's request for modification of Condition No's 9, 10, and 18, and **maintain unchanged** Condition No's 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 20, and 21.

ACTION SOUGHT:

The applicant is seeking relief from five of the 21 business operating conditions imposed by the Code Enforcement Commission and the City Council subsequent to public hearings in 2009 where the business was determined to be in violation of the City's "Deemed Approved Ordinance." (See Attachment 1 for the Council Agenda Report regarding Super Liquor's appeal of the Commission Order, see Attachment 2 for the Commission's Order, see Attachment 3 for the City Council's Corrective Actions and Conditions of Operation and see Attachment 4 for the ABC Certificate of Decision.)

Specifically, the appellant is seeking relief from Conditions No's 3, 9, 10, 18 and 19. Those conditions are referenced below.

- Condition No. 3: "The sale or stocking of single containers of distilled spirits, beer, malt beverages, and wine coolers in sizes of 12 oz. or less is prohibited,

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but may be sold in manufacturer pre-packed multi-unit quantities.” *The applicant states that “distilled spirits should be removed from the list of prohibited single containers”.*

- Condition No. 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.” *The applicant states that “Super Liquor will continue to notify the Police Department of illegal activity, but should not be required to employ a private security guard.”*
- Condition No. 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.)” *The applicant states that “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 business. The conditions 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 No. 18: “All alcoholic beverages containers shall be identified with a sticker that has the name of the business establishment. Translucent plastic bags shall be identified in the same manner,” and; *The applicant states that “this condition should be eliminated in its entirety.”*
- Condition No. 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.”¹ *The applicant states that “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.*

COMMISSION’S PURPOSE AND AUTHORITY

In the instant matter the purpose of holding a public hearing before a panel of the Code Enforcement Commission is to allow the opportunity for the presentation of testimony and receipt of evidence concerning the operating standards of the deemed approved activity of “Super Liquor” located at 125 E. Orange Grove Boulevard. It is the function of the Panel to hear the request for modification of conditions and determine based upon relevant testimony and evidence whether the conditions should be modified. The Commission has the authority to add, modify or remove Super Liquor’s present operating conditions where it is determined that such actions are appropriate to ensure conformity with the Deemed Approved Ordinance.

¹ The City has been enjoined by the Court from enforcing the “hours-of-operation condition.” As such, there has been no modification of the applicant’s business hours.

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While the Pasadena Municipal Code allows the Commission to modify Deemed Approved operating conditions, Condition No. 21 of the City Council's "Corrective Actions/Conditions of Operations" expressly allowed for a review process subsequent to the passage of a 12 month period. That condition stated:

"If requested by the appellant/business owner after 12 months, the Code Enforcement Commission shall review the Conditions of Operation imposed on Super Liquor to determine if the conditions should be revised."

BACKGROUND:

In 2005, the City Council adopted the "Deemed Approved Alcoholic Beverage Retail Sale Ordinance." The Deemed Approved Ordinance allows greater local control of those retail alcohol establishments that are not regulated by conditional use permits by requiring that they adhere to certain performance standards intended to prevent public nuisance conditions. The Deemed Approved Ordinance allows the Building and Neighborhood Services Administrator to refer issues of prohibited activities of other than a minor nature to the Code Enforcement Commission with the purpose of hearing testimony and receiving evidence concerning the operating methods of the deemed approved activity. The Commission may require the imposition of conditions as needed to ameliorate the prohibited activities.

In March 2009, the California Department of Alcoholic Beverage Control (ABC) rendered a "Certificate of Decision" regarding the operation of Super Liquor.² The decision noted that the respondents/applicants (Kum Mun Jhae and Kun Chin Jhae) had filed a stipulation and waiver in connection with the ABC action wherein they waived their rights to a hearing and in which ABC found that the Jhae's had violated or permitted violation of Business & Professions Code Sections 25601³, 24200(e)⁴ and 24200.5(a)⁵ The ABC found that that between the months of January 2007 and April 2008, the appellants kept or permitted in conjunction with a licensed premises, a disorderly house, or to which people resort to the disturbance of the neighborhood or in which people abide or resort which is injurious to the public morals, health, convenience or safety.

² The "Certificate of Decision" rendered by the ABC may be referenced herein as "Attachment 4"

³ B & P 25601 "Every licensee, or agent or employee of licensee, who keeps, permits to be used, or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to public morals, health, convenience, or safety, is guilty of a misdemeanor."

⁴ B & P 24200(e) "The following are grounds that constitute a basis for the suspension or revocation of licenses: [e] Failure to take reasonable steps to correct objectionable conditions on the license premises, including the immediately adjacent area that is owned, leased, or rented by the licensee that constitute a nuisance, within a reasonable time after receipt of notice, to make those corrections from the department, under section 373(a) of the Penal Code. For the purpose of this subdivision only, "property or premises" as used in Section 373(a) of the Penal Code includes the area immediately adjacent to the licensed premises that is owned, leased, or rented by the licensee."

⁵ B & P 24200.5(a) "Notwithstanding the provisions of Section 24200, the department shall revoke a license upon any of the following grounds: "[a] If a retail licensee has knowingly permitted the illegal sale, or negotiations of sales, or controlled substances or dangerous drugs upon his or her licensed premises. Successive sales, or negotiations of sales, over any continuous period of time shall be deemed evidence of permission. As used in this section, "controlled substances" shall have the same meaning as given that term in Article 1 (commencing with Section 11000) of Chapter 1 of Division 10 of the Health and Safety Code, and "dangerous drugs" shall have the same meaning as given to that term in Article 2 (commencing with Section 4015) of Chapter 9 of this code.

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The ABC found that Super Liquor was a public nuisance and imposed the following conditions that:

1. Prohibited sale of wine products with an alcohol content greater than 14.9%.
2. Prohibited sale of fortified beer and/or malt beverages with an alcoholic content greater than 5.7%
3. Prohibited sale of single-sales of beer, malt beverages, and wine coolers in containers of 12 ounces or less.
4. Prohibited packing merchandise in anything other than clear plastic bags.
5. Prohibited the consumption of alcoholic beverages on any property adjacent to the state license premises under the control of the licensees as depicted on ABC-257 and ABC-253
6. Prohibited loitering on or around the premises or the area under the control of the licensee as depicted on ABC-257.

On July 4, 2009, a public hearing was held before a panel of the Code Enforcement Commission with the purpose of determining whether a public nuisance condition persisted at Super Liquor; and if so, to impose certain operating conditions as curative measures. The Code Enforcement Commission heard testimony from staff, members of the public, and the appellants regarding the operation of Super Liquor. The staff report presented at that meeting asserted that Super Liquor had violated Section 8.18.060(A) (1), (2), (3), (4), and (5) of the Pasadena Municipal Code.

The Code Enforcement Commission also determined that Super Liquor constituted a public nuisance under Pasadena Municipal Code Section 8.18.060(A)(4)(5) and that the imposition of operating conditions was necessary to ensure conformity with the performance standards set forth in Pasadena Municipal Code section 8.18.060.

The Order of the Code Enforcement Commission contained the following conditions:

1. The sale or stocking of wine products with an alcohol content greater than 14.9% are prohibited.
2. The sale or stocking of fortified beer and/or malt beverages with an alcohol content greater than 5.7% are prohibited.
3. The sale or stocking of single containers of distilled spirits, beer, malt beverages, and wine coolers in sizes of 12 oz. or less is prohibited, but may be sold in manufacturer pre-packaged multi-unit quantities.
4. The licensee is prohibited from packing merchandise in anything other than translucent plastic bags. It shall be at the City's discretion to modify this requirement as local ordinance dictates.
5. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the ABC-257 and ABC 253 dated (Pursuant to Condition a).
6. Loitering is prohibited on or around these premises or this area under the control of the licensee(s) as depicted on ABC-257 dated March 13, 2009 (Pursuant to

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to the public hearing the Council modified and added to the conditions of approval. The Council's Corrective Actions/Conditions of Operation are found herein as "Attachment 3". Condition No's 1 through 8 remained unchanged from the Commission's Order. Condition No. 9 was modified and the patrol area of the private security guard was reduced from "50 feet in each direction from the subject site" to "the adjacent sidewalks." Condition No. 10 was modified and the area in which the business proprietor was directed to remove identifiable litter was reduced from a 500 foot radius to 100 feet from the premises, and limited to the north side of East Orange Grove. Condition No's 11 through 18 were left unchanged. Condition No. 19 was modified and where the Commission's Order set the hours of operation between 7:00 a.m. and 9:00 p.m. daily, the City Council maintained those business hours but limited the hours that alcohol could be sold between 9:00 a.m. and 6:00 p.m. daily. Condition No. 20 was left unchanged, and Condition No. 21 was added which provided the appellant/business owner the ability to have the Code Enforcement Commission review the Conditions of Operation after 12 months to determine if the conditions should be revised.

On March 10, 2010, Daniel J. Kessler, attorney for the applicants, notified the City that he intended to seek relief through a Writ of Mandate, and on March 12, 2010, the Court delivered a preliminary injunction that held in abeyance imposition of Condition No 3 (prohibiting the sale or stocking of single containers of distilled spirits, beer, malt beverages, and wine coolers in sizes of 12 oz. or less) and Condition No. 19 (setting the business hours between the hours of 7:00 a.m. to 9:00 p.m. and limiting the sale of alcohol between the hours of 9:00 a.m. and 6:00 p.m. daily.)

ANALYSIS:

The Code Enforcement Commission's granting or denial of this application for modification must be supported by evidence. Staff has checked with both the Police Department and Code Compliance for any complaints against or violations by Super Liquor. No complaints or violations were recorded for the past year.

Since imposition of the Council's "Corrective Actions/Conditions of Operations" there have been no police reports taken that indicate that Super Liquor is the cause of, or a catalyst for unlawful behavior. Similarly, there have been no Code Compliance cases created regarding violations of the Pasadena Municipal Code. The absence of any reported unlawful behavior at Super Liquor over the course of the past year is indicative that the preventative measures contained within the Conditions are effective in ensuring that Super Liquor does not adversely affect the health, welfare, peace and safety of persons visiting, residing, working or conducting business in the surrounding area. It would clearly appear that the requirements to employ a security guard, to patrol the surrounding area, to remove litter, and to identify containers and bags, have been effective. Accordingly, Conditions 9, 10, and 18 should not be modified. Super Liquor has requested that Condition 10 be clarified.

With respect to Condition 19, the Court enjoined the limitation on the hours of operation and sales of alcohol. While the City Council's "Corrective Actions/Conditions of Operations" contained limitations on the hours in which liquor could be sold, the Court stayed imposition of that condition and Super Liquors' operating hours and alcohol sales hours have remained unchanged. Judge Chalfant's "Order Staying Administrative

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Condition a).

7. Signs advertising types of alcoholic beverages for sale at the subject site shall not be visible from anywhere off the site.
8. Alcohol sales shall be for off-site consumption only.
9. Management shall employ a private security guard to patrol the business premises and the surrounding vicinity, including the north side of Orange Grove Boulevard adjacent to the property, during all hours of business operation for a distance of 50 feet in each direction from the subject site to ensure that no littering, loitering, or consumption of alcohol occurs.
10. It shall be the responsibility of the business owner / operators of the business to remove identifiable litter of the business from the public right-of-way within a 500 ft. radius of said business, and make prompt notification to the Pasadena Police Department of instances of loitering or the public consumption of alcohol.
11. The site and surrounding area shall be maintained free of graffiti. Any graffiti that occurs on the site shall be removed within 48 hours.
12. The parking area shall be sufficiently lit to discourage loitering, disturbances of the peace, illegal drug activity, public consumption of alcohol, public drunkenness, public urination, gambling and/or late night activity that is prohibited by law. Such lighting shall be at an amount of not less than two footcandle nor more than three footcandle.
13. Three signs shall be posted on the premises prohibiting loitering and the consumption of alcohol on site. Such signs shall be a minimum of 24 inches wide and 18 inches tall with letters not less than two inches high.
14. No pay telephone shall be maintained on the exterior of the premises.
15. There shall be no coin operated games or video machines maintained on the premises at any time.
16. The ownership or management shall comply with all decisions, orders, or directives of the Department of Alcoholic Beverage Control.
17. The ownership or management shall obtain all required planning approval and building permits for items, signs, lighting fixtures or other appurtenances required as a result of this recommended corrective action.
18. All alcoholic beverages containers shall be identified with a sticker that has the name of the business establishment. Translucent plastic bags shall be identified in the same manner.
19. Hours of operation shall be between 7:00 A.M. and 9:00 P.M. daily.
20. A sturdy lock and chain shall be placed across the parking lot entrance promptly at 9:00 P.M.

The business proprietor's appealed the Code Enforcement Commission's Order to the City Council and on July 27, 2009, the matter was heard before the Council. City staff provided the Council with background information on the subject and members of the public both for and against the imposition of conditions addressed the Council. Pursuant

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Conditions” expressly permitted the appellants return to the hours of operation that they kept prior to the issuance of the Conditions (6:30 a.m. to 10:00 p.m. with no temporal restrictions on the sale of alcohol,) because the Court found that the imposition of that condition would effectively put Super Liquor out of business. Significantly, even though the Court enjoined the imposition of the restricted hours, there have been no complaints or violations reported with either the Police or Code Compliance. Thus for the last year, Super Liquor has been operating from 6:30 a.m. to 10:00 p.m. without complaints or violations. It would appear that the hours of operation did not seem to have a detrimental effect on the community. Additionally, because the reason a condition is imposed is to address a nuisance and not to place someone out of business, (especially when there have been no reported complaints or violations) the applicants are likely to prevail in the removal of that condition should the case be tried before the Court. Accordingly, staff recommends modification of Condition No. 19.

Staff also recommends that the Condition No. 3 be modified to omit the prohibition on the sale of *distilled spirits* in containers of 12 ounces or less. Judge Chalfant’s Order has already enjoined the City from prohibiting the sale of distilled spirits in containers of 12 ounces or less. This was based on the Court’s opinion that the regulation of the sale of specific sizes of distilled spirit bottles is the purview of ABC.

No additional modifications are recommended.

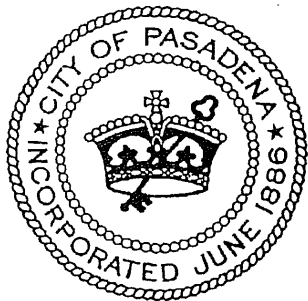
ATTACHMENTS:

Attachment 1 – Council Agenda Report – Appeal of Code Enforcement Commission Order

Attachment 2 – Order of the Code Enforcement Commission

Attachment 3 – City Council’s Corrective Actions

Attachment 4 - ABC Certificate of Decision



Agenda Report

TO: CITY COUNCIL

DATE: JULY 27, 2009

FROM: CITY MANAGER

SUBJECT: APPEAL OF CODE ENFORCEMENT COMMISSION PANEL ORDER
RE: SUPER LIQUOR – 125 E. ORANGE GROVE BLVD.

RECOMMENDATION:

It is recommended that the City Council:

1. Conduct a public hearing;
2. Following the public hearing, confirm the action of Panel No. 3 of the Code Enforcement Commission to impose conditions 1 through 20 found in Attachment 1.

BACKGROUND:

Appellants Kum Man Jhae and Kun Chin Jhae are doing business as "Super Liquor" located at 125 E. Orange Grove Boulevard. The Deemed Approved Ordinance (Pasadena Municipal Code Chapter 8.18) was adopted to insure that alcoholic beverage retail sales establishments which are nonconforming because they do not have a conditional use permit for alcohol sales have no adverse impact on the community. Super Liquor does not have a conditional use permit but its operation is "deemed approved" pursuant to Chapter 8.18. The ordinance requires that these "deemed approved" liquor stores comply with the performance standards set forth in section 8.18.060.

The Deemed Approved Alcoholic Beverage Retail Sale Ordinance (see Attachment "3") allows the City greater local control over those establishments that are not regulated by conditional use permits by requiring that they adhere to certain performance standards relating to operating as a public nuisance. If an establishment fails to adhere to imposed performance standards, the City is able to impose additional conditions.

On June 4, 2009, a public hearing was held by Panel No. 3 of the Code Enforcement Commission concerning violations of the Pasadena Municipal Code at Super Liquor.

Based upon findings previously made by the California Department of Alcoholic Beverage Control, the Code Enforcement Commission determined that the operation of Super Liquor constituted a nuisance under P.M.C. Section 8.18.060(A)(4)(5).

The Code Enforcement Commission, after a noticed hearing approved the conditions as set forth in "Attachment 1" and directed Kum Man Jhae and Kun Chin Jhae to take corrective actions by July 6, 2009.

ANALYSIS:

In correspondence dated March 17, 2009 and written by Hilarie B. Vasquez, District Administrator for the Monrovia District Office of the California Department of Alcoholic Beverage Control, it was reported that between the months of January 2007 and April 2008 the licensees of "Super Liquor" kept or permitted in conjunction with a "licensed premise, a disorderly house, or to which people resort, to the disturbance of the neighborhood or in which people abide or resort which is injurious to the public moral (sic), health, convenience or safety." Support for this determination was provided in the form a decision letter dated March 13, 2009, which indicated that the licensees had filed a "stipulation and waiver" with the ABC wherein the licensees waived their rights to a hearing, reconsideration and appeal, and in which the ABC had confirmed that the licensees had "violated or permitted violations of Business & Professions Code Section(s) 25601¹, 24200(e)² and 24200.5³(a).

The Department of Alcoholic Beverage Control found that Super Liquor was a public nuisance and imposed the following conditions:

1. Wine products with an alcohol content greater than 14.9% are prohibited.
2. Fortified beer and/or malt beverages with an alcohol 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.

¹ B & P 25601 "Every licensee, or agent or employee of licensee, who keeps, permits to be used, or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience, or safety, is guilty of a misdemeanor.

² B & P 24200(e) "The following are grounds that constitute a basis for the suspension or revocation of licenses: [e] Failure to take reasonable steps to correct objectionable conditions on the licensed premises, including the immediately adjacent area that is owned, leased, or rented by the licensee, that constitute a nuisance, within a reasonable time after receipt of notice to make those corrections from the department, under Section 373(a) of the Penal Code. For the purpose of this subdivision only, "property or premises" as used in Section 373(a) of the Penal Code includes the area immediately adjacent to the licensed premises that is owned, leased, or rented by the licensee.

³ B & P 24200.5(a) "Notwithstanding the provisions of Section 24200, the department shall revoke a license upon any of the following grounds: [a] If a retail licensee has knowingly permitted the illegal sale, or negotiations of sales, of controlled substances or dangerous drugs upon his or her licensed premises. Successive sales, or negotiations of sales, over any continuous period of time shall be deemed evidence of permission. As used in this section, "controlled substances" shall have the same meaning as is given that term in Article 1 (commencing with Section 11000) of Chapter 1 of Division 10 of the Health and Safety Code, and "dangerous drugs" shall have the same meaning as is given to that term in Article 2 (commencing with Section 4015) of Chapter 9 of Division of this code.

A

**Code Enforcement Commission
125 E. Orange Grove Boulevard – Super Liquor
Attachment "1"**

4. The licensee is prohibited from packaging merchandise in anything other than clear plastic bags.
5. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under control of the licensee(s) as depicted on the ABC-257 and ABC 253 dated (Pursuant to Condition a).
6. Loitering is prohibited on or around these premises or the area under the control of the licensee(s) as depicted on ABC-257 dated (Pursuant to Condition a).

After a public hearing the Code Enforcement Commission, relying on the finding by the Department of Alcoholic Beverage Control to make a determination that Super Liquor operated as a public nuisance, imposed conditions to insure that the business will comply with the performance standards as set forth in section 8.18.060 of the Pasadena Municipal Code.

After hearing presentation of the staff report, testimony from various City staff, the licensee and approximately 1 ½ hours of testimony from members of the public in which various scenarios and descriptions of public drunkenness, public defecation, public urination, prostitution and other unlawful acts were described, Panel No. 3 of the Code Enforcement Commission approved 20 separate performance conditions regarding the general operation of Super Liquor. Those conditions are set forth in "Attachment "1"" herein.

FISCAL IMPACT:


Approval of the conditions in "Attachment 1" are intended to result in fewer police calls to the site, therefore reducing the fiscal burden on the City.

Respectfully submitted,



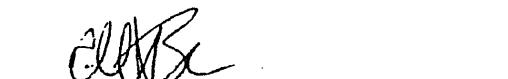
MICHAEL J. BECK
City Manager

Prepared by:



Jon A. Pollard
Code Compliance Manager

Approved by:



Richard J. Bruckner
Director of Planning and Development

Attachments:

1. Commission's Directed Corrective Action – Items 1 through 20 inclusive.
2. Staff Report to the Code Enforcement Commission – Super Liquor Hearing
3. Pasadena Municipal Code – Deemed Approved Ordinance

ATTACHMENT "1"

CODE ENFORCEMENT COMMISSION HEARING

**SUPER LIQUOR
125 E. ORANGE GROVE BOULEVARD**

COMMISSION'S DIRECTED CORRECTIVE ACTION

ITEMS 1 THROUGH 20 INCLUSIVE

**CODE ENFORCEMENT COMMISSION HEARING
SUPER LIQUOR – 125 E. ORANGE GROVE BOULEVARD
COMMISSION'S DIRECTED CORRECTIVE ACTION
ITEMS 1 THROUGH 20 INCLUSIVE**

1. The sale or stocking of wine products with an alcohol content greater than 14.9% are prohibited.
2. The sale or stocking of fortified beer and/or malt beverages with an alcohol content greater than 5.7% are prohibited.
3. The sale or stocking of single containers of distilled spirits, beer, malt beverages, and wine coolers in sizes of 12 oz. or less is prohibited, but may be sold in manufacturer pre-packaged multi-unit quantities.
4. The licensee is prohibited from packing merchandise in anything other than translucent plastic bags. It shall be at the City's discretion to modify this requirement as local ordinance dictates.
5. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the ABC-257 and ABC 253 dated (Pursuant to Condition a).
6. Loitering is prohibited on or around these premises or this area under the control of the licensee(s) as depicted on ABC-257 dated March 13, 2009 (Pursuant to Condition a).
7. Signs advertising types of alcoholic beverages for sale at the subject site shall not be visible from anywhere off the site.
8. Alcohol sales shall be for off-site consumption only.
9. Management shall employ a private security guard to patrol the business premises and the surrounding vicinity, including the north side of Orange Grove Boulevard adjacent to the property, during all hours of business operation for a distance of 50 feet in each direction from the subject site to ensure that no littering, loitering, or consumption of alcohol occurs.
10. It shall be the responsibility of the business owner / operators of the business to remove identifiable litter of the business from the public right-of-way within a 500 ft. radius of said business, and make prompt notification to the Pasadena Police Department of instances of loitering or the public consumption of alcohol.
11. The site and surrounding area shall be maintained free of graffiti. Any graffiti that occurs on the site shall be removed within 48 hours.
12. The parking area shall be sufficiently lit to discourage loitering, disturbances of the peace, illegal drug activity, public consumption of alcohol, public drunkenness, public urination, gambling and/or late night activity that is prohibited by law. Such lighting shall be at an amount of not less than two footcandle nor more than three footcandle.
13. Three signs shall be posted on the premises prohibiting loitering and the consumption of alcohol on site. Such signs shall be a minimum of 24 inches wide and 18 inches tall with letters not less than two inches high.

14. No pay telephone shall be maintained on the exterior of the premises.
15. There shall be no coin operated games or video machines maintained on the premises at any time.
16. The ownership or management shall comply with all decisions, orders, or directives of the Department of Alcoholic Beverage Control.
17. The ownership or management shall obtain all required planning approval and building permits for items, signs, lighting fixtures or other appurtenances required as a result of this recommended corrective action.
18. All alcoholic beverages containers shall be identified with a sticker that has the name of the business establishment. Translucent plastic bags shall be identified in the same manner.
19. Hours of operation shall be between 7:00 A.M. and 9:00 P.M. daily.
20. A sturdy lock and chain shall be placed across the parking lot entrance promptly at 9:00 P.M.

ATTACHMENT "2"

**STAFF REPORT
TO
THE CODE ENFORCEMENT COMMISSION**

**SUPER LIQUOR
125 E. ORANGE GROVE BOULEVARD**

**STAFF REPORT
CODE ENFORCEMENT COMMISSION**

Date of Hearing: June 4, 2009

Deemed Approved Administrator: Rod Olguin

Property in Violation: Super Liquor
125 E. Orange Grove Boulevard
Pasadena, CA 91103

Violative Condition: Operation of a public nuisance per Section 8.18.060(A)(1)(2)(3)(4)(5) of the Pasadena Municipal Code as evidenced by keeping a disorderly house, or to which people resort, to the disturbance of the neighborhood or in which people abide or resort which is injurious to the public morals, health, convenience or safety in violation of California Business and Professions Codes Sections 25601, 24200(e) and 24200.5(a).

Assessors Parcel Number: 5725-010-041

Land Use: Commercial

Zoning: FGSP-C-3D (Fair Oaks – Orange Grove Specific Plan – Commercial)

Legal Description: Refer to Attachment "D"

Current Business Owner of Record: Kum Man Jhae.
125 E. Orange Grove Avenue
Pasadena, CA 91103

Affected ABC Respondents: Kum Man Jhae
Kun Chin Jhae

Tenant Name/Address (if applicable): N/A

Representative Name/Address: N/A

Initial Inspection Date: N/A

Dates of Notices and Citations: N/A

Date of ABC Certificate of Decision: March 13, 2009.

Notice of Substandard Building: N/A

Notice of Public Hearing Mailed: May 20, 2009

Notice of Public Hearing Posted: May 20, 2009

**Code Enforcement Commission
125 E. Orange Grove Boulevard – Super Liquor
Attachment "1"**

City's Photographs Dated: N/A

Total Number of City's Photographs: N/A

Violations:

Pasadena Municipal Code Chapter 8.18 Deemed Approved Alcoholic Beverage
Retail Sale Ordinance

Introduction:

At its meeting on September 13, 2004, the City Council adopted the recommendations of the Pasadena Nuisance Off-Premise Working Group and directed the City Attorney to prepare an ordinance to implement those recommendations regarding non-conforming alcoholic beverage establishments. By amending the City's Municipal Code, the ordinance established a "deemed approved" status for nonconforming alcoholic beverage sales establishments (those who are not subject to the City's conditional permit requirements.)

The ordinance allows greater local control over those establishments that are not regulated by conditional use permits by requiring that they adhere to certain performance standards relating to operating as a public nuisance. If an establishment fails to adhere to imposed performance standards the City will be able to impose additional conditions. If the establishment, thereafter, continues to operate as a public nuisance, their deemed approved status could be revoked which could result in the closing of the establishment.

Violation of the Pasadena Municipal Code Section 8.18.060

Section 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.

Property and Neighborhood Description:

The subject property is located on the north side of Orange Grove Boulevard, at the northern terminus of Summit Avenue, between Raymond Avenue and Marengo Avenue. The subject parcel is level, generally rectangular in shape, with approximately 125 feet of frontage on Orange Grove Boulevard. The subject parcel is immediately adjacent to southern perimeter of the "Community Arms" housing project. The Community Arms housing project is a fenced, high-density multi-family residential project consisting of 133 units on a level 5.88 acre parcel. The fully fenced housing project has limited means of ingress and egress with one of the main pedestrian access points into and out of the development being directly adjacent to the east side of the Super Liquor parking lot. The general neighborhood is comprised of a wide-ranging mix of single and multiple family residences as well as various commercial uses along the major thoroughfares.

The Los Angeles County Assessor's Records indicate that the Super Liquor parcel is 10,337 square feet, with a 2,634 commercial building that was constructed in 1954.

Background:

Super Liquor is subject to the Deemed Approved Ordinance which was adopted by the City in 2005. The Deemed Approved Ordinance was adopted to insure that alcoholic beverage retail sales establishments which are nonconforming because they do not have a conditional use permit for alcohol sales have no adverse impact on the community¹.

Super Liquor does not have a conditional use permit but its operation is "deemed approved" pursuant to Chapter 8.18. The ordinance requires that these "deemed approved" liquor stores comply with the performance standards set forth in section 8.18.060.

In a correspondence issued by Hilarie B. Vasquez, District Administrator for the Monrovia District Office of the California Department of Alcoholic Beverage Control (ABC), Ms. Vasquez reported that between the months of January 2007 and April 2008, the licensees of "Super Liquor" identified as Kum Man Jhae and Kun Chin Jhae kept or permitted in conjunction with "a licensed premise, a disorderly house, or to which people resort, to the disturbance of the neighborhood or in which people abide or resort which is injurious to the public moral (sic), health, convenience or safety."

The ABC forwarded their decision letter identified as "File : 21 – 393118" and "Reg. : 09070704" wherein respondents Jhae were accused of, and stipulated to the accusation that violations of California Business and Professions Code Sections 25601², 24200(e)³ and

¹ Definition: "Nonconforming Use" A use of a structure (either conforming or nonconforming) or land that was legally established and maintained before adoption of this Zoning Code and which does not conform to current Code provisions governing allowable land uses for the zoning district in which the use is located. This includes uses that do not conform to the land use regulations for the district in which they are located and were established prior to July 1, 1985, under a use of property variance.

² B & P 25801 "Every licensee, or agent or employee of licensee, who keeps, permits to be used, or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience, or safety, is guilty of a misdemeanor.

³ B & P 24200(e) "The following are grounds that constitute a basis for the suspension or revocation of licenses: [e] Failure to take reasonable steps to correct objectionable conditions on the licensed premises, including the immediately adjacent area that is owned, leased, or rented by the licensee, that constitute a nuisance, within a reasonable time after receipt of notice to make those corrections from the department,

24200.5(a)⁴ had occurred. A photocopy of the decision letter is attached herein.

The Department of Alcoholic Beverage Control found that Super Liquor was a public nuisance and imposed the following conditions:

1. Wine products with an alcohol content greater than 14.9% are prohibited.
2. Fortified beer and/or malt beverages with an alcohol 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 manufacturer pre-packaged multi-unit quantities.
4. The licensee 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 licensed premises under the control of the licensee(s) as depicted on the ABC-257 and ABC 253 dated (Pursuant to Condition a).
6. Loitering is prohibited on or around these premises or this area under the control of the licensee(s) as depicted on ABC-257 dated (Pursuant to Condition a).

The Code Enforcement Commission can rely on the finding by the Department of Alcoholic Beverage Control to make a determination that Super Liquor operated as a public nuisance. Based upon that finding, the Code Enforcement Commission can impose conditions to insure that the business will comply with the performance standards as set forth in section 8.18.060 of the Pasadena Municipal Code.

Attachments:

- Attachment A: Correspondence from Hilarie B. Vasquez (ABC District Administrator) to Chief of Police Melekian.
- Attachment B: Decision Letter from ABC regarding Super Liquor
- Attachment C: Los Angeles County Assessor's Ownership Information
- Attachment D: Full Legal Description for 125 E. Orange Grove Boulevard
- Attachment E: Assessors Plat Map for 125 E. Orange Grove Boulevard
- Attachment F: Area Map for 125 E. Orange Grove Boulevard
- Attachment G: Aerial Photograph of Area Surrounding 125 E. Orange Grove Boulevard

under Section 373(a) of the Penal Code. For the purpose of this subdivision only, "property or premises" as used in Section 373(a) of the Penal Code includes the area immediately adjacent to the licensed premises that is owned, leased, or rented by the licensee.
⁴ B & P 24200.5(a) "Notwithstanding the provisions of Section 24200, the department shall revoke a license upon any of the following grounds: [a] If a retail licensee has knowingly permitted the illegal sale, or negotiations of sales, of controlled substances or dangerous drugs upon his or her licensed premises. Successive sales, or negotiations of sales, over any continuous period of time shall be deemed evidence of permission. As used in this section, "controlled substances" shall have the same meaning as is given that term in Article 1 (commencing with Section 11000) of Chapter 1 of Division 10 of the Health and Safety Code, and "dangerous drugs" shall have the same meaning as is given to that term in Article 2 (commencing with Section 4015) of Chapter 8 of Division of this code.

- Attachment H: Aerial Photograph of 125 E. Orange Grove Boulevard
- Attachment I: Street Level Photograph of 125 E. Orange Grove Boulevard
- Attachment J: Zoning Map – Area of 125 E. Orange Grove Boulevard
- Attachment K: ABC Licensure Data for Super Liquor
- Attachment L: Photocopy of Grant Deed for 125 E. Orange Grove Boulevard

Recommended Commission Findings:

(I move that) The Commission makes the following factual findings:

1. That Kun Chin Jhae and Kum Man Jhae are the current owners of the business known as "Super Liquor" and were the owners of "Super Liquor" at the time of the ABC enforcement action described herein.
2. That Kun Chin Jhae and Kum Man Jhae were duly notified of the alleged violations of the Pasadena Municipal Code and properly informed of the hearing date.
3. That on March 13, 2009, the Department of Alcoholic Beverage Control issued a decision that Kum Man Jhae and Kun Chin Jhae were operating Super Liquor in violation of Business and Profession Code Section 25601, 24200(e) and 24200.5(a).
4. That on March 17, 2009, the Department of Alcoholic Beverage Control addressed correspondence by official business letter to Pasadena Chief of Police Bernard Melekian advising that Super Liquor has been determined to be "a disorderly house, or to which people resort, to the disturbance of the neighborhood or in which people abide or resort which is injurious to the public moral, health, convenience or safety."
5. That Kim Man Jhae and Kun Chin Jhae were made aware of the fact that the Department of Alcoholic Beverage Control had accused respondents Jhae of operating "a disorderly house, or to which people resort, to the disturbance of the neighborhood or in which people abide or resort which is injurious to the public moral, health, convenience or safety" in violation of Business and Professions Code Sections 25601, 24200(e) and 24200.5(a).
6. That the Commission accepted into the administrative record the following documents at the hearing of June 4, 2009:
 - a) Exhibit 1 – Staff Report
5. That Kun Chin Jhae [and/or] Kum Man Jhae appeared and testified on his/her/their own behalf at the hearing of June 4, 2009, regarding the findings of the March 13, 2009, Alcoholic Beverage Commission decision;

or

That (representative) appeared and testified on behalf of Kun Chin Jhae [and/or] Kum Man Jhae at the hearing of June 4, 2009;

or

That neither Kun Chin Jhae or Kum Man Jhae appeared at the hearing of June 4, 2009.

6. That based upon the finding by the California Department of Alcoholic Beverage Control, the operation of Super Liquor constituted a nuisance.
7. That the imposition of the conditions set forth below are necessary to ensure conformity with the performance standards and will allow Super Liquor to maintain its Deemed Approved status, with the proviso that any future violations can result in the revocation of the deemed approved status.
8. That these conditions shall apply to all future owners / operators of the business, currently known as Super Liquor located at 125 E. Orange Grove Boulevard, Pasadena, CA 91103.

Recommended Commission Corrective Action:

The Commission orders the addition and imposition of the following conditions to ensure conformity with the performance standards and hereby directs Kum Man Jhae and Kun Chin Jhae to take the following corrective actions within thirty (30) calendar days from the mailing date of the Order of the Code Enforcement Commission:

1. The sale or stocking of wine products with an alcohol content greater than 14.9% are prohibited.
2. The sale or stocking of fortified beer and/or malt beverages with an alcohol content greater than 5.7% are prohibited.
3. The sale or stocking of single containers of beer, malt beverages, and wine coolers in sizes of 12 oz. or less is prohibited, but may be sold in manufacturer pre-packaged multi-unit quantities.
4. The licensee is prohibited from packing merchandise in anything other than clear plastic bags. It shall be at the City's discretion to modify this requirement as local ordinance dictates.
5. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the ABC-257 and ABC 253 dated (Pursuant to Condition a).
6. Loitering is prohibited on or around these premises or this area under the control of the licensee(s) as depicted on ABC-257 dated March 13, 2009 (Pursuant to Condition a).
7. Signs advertising types of alcoholic beverages for sale at the subject site shall not be visible from anywhere off the site.
8. Alcohol sales shall be for off-site consumption only.

9. Management shall patrol the business premises and the surrounding vicinity, including the north side of Orange Grove Boulevard adjacent to the property, during all hours of business operation for a distance of 50 feet in each direction from the subject site to ensure that no littering, loitering, or consumption of alcohol occurs. It shall be the responsibility of the business owner / operators of the business to remove such litter from the public right-of-way, and make prompt notification to the Pasadena Police Department of instance of loitering or the public consumption of alcohol. Such patrol of the premises and surrounding vicinity shall occur a minimum of three times daily including one-time each before the hours of 11:00 a.m., 4:00 p.m., and 9:00 p.m. of each business day.
10. The site and surrounding area shall be maintained free of graffiti. Any graffiti that occurs on the site shall be removed within 48 hours.
11. The parking area shall be sufficiently lit to discourage loitering, disturbances of the peace, illegal drug activity, public consumption of alcohol, public drunkenness, public urination, gambling and/or late night activity that is prohibited by law. Such lighting shall be at an amount of not less than two footcandle nor more than three footcandle.
12. Three signs shall be posted on the premises prohibiting loitering and the consumption of alcohol on site. Such signs shall be a minimum of 24 inches wide and 18 inches tall with letters not less than two inches high.
13. No pay telephone shall be maintained on the exterior of the premises.
15. There shall be no coin operated games or video machines maintained on the premises at any time.
16. The ownership or management shall comply with all decisions, orders, or directives of the Department of Alcoholic Beverage Control.
17. The ownership or management shall obtain all required planning approval and building permits for items, signs, lighting fixtures or other appurtenances required as a result of this recommended corrective action.

Submitted by:



Jon Pollard, Code Compliance Manager

Date: May 7, 2009

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Monrovia District Office
222 E. Huntington Dr., Ste. 114
Monrovia, CA 91016
(626) 256-3241



March 17, 2009

Chief Bernard Melekian
Pasadena Police Department
207 N Garfield Ave
Pasadena, CA 91101

Kum Man JHAE
Kun Chin JHAE
Super Liquor
125 E Orange Grove Blvd
Pasadena, CA 91103-3422
File No. 21-393118
Reg.: 09070704

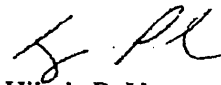
Dear Chief Melekian:

Between the months of January 2007 and April 2008, the respondent-licensee kept or permitted in conjunction with a licensed premises, a disorderly house, or to which people resort to the disturbance of the neighborhood or in which people abide or resort which is injurious to the public moral, health, convenience or safety.

The license has been ordered revoked, with revocation stayed for 2 years, until March 13, 2011, with a 15 day suspension. The 15 day suspension was placed into effect on March 17, 2009.

Licensed privileges may not be exercised during the suspension period mentioned above, but may be exercised after that period for the remainder of the stayed revocation.

Sincerely,


Hilarie B. Vazquez
District Administrator

HBV:da

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE ACCUSATION AGAINST:

Kun Man Jhae
Kun Chin Jhae
Super Liquor
125 E Orange Grove Blvd.
Pasadena, CA 91103

OFF-SALE GENERAL LICENSE

FILE : 21 - 393118

REG. : 09070704

DECISION

Respondent(s)/Licensee(s)
under the Alcoholic Beverage Control Act.

The above-entitled matter having regularly come before the Department for decision; and it appearing to the Department that the respondent(s) has filed a stipulation and waiver in connection with the accusation herein in which respondent(s) waives right to hearing, reconsideration and appeal; and good cause appearing therefor, the Department now finds as follows:

That cause for disciplinary action has been established.

Determination of issues presented: That respondent(s) violated or permitted violation of Business & Professions Code Section(s) 25601, 24200(e) and 24200.5(a).

Grounds for suspension or revocation have been established under Article XX, Section 22 of the State Constitution and Business and Professions Code Section 24200(a&b).

Wherefore, it is hereby ordered that the license(s) issued to respondent(s) at the above-mentioned premises be revoked, with said revocation stayed for a period of two years from the effective date of the Department's decision until March 13, 2011, upon the following conditions:

1. That the license be suspended for a period of 15 days, beginning upon service of notice.
2. That no cause for disciplinary action occur within the stayed period.
 - (a) The Licensee(s) shall submit a revised diagram of the licenses premises, ABC-257 and revised supplemental diagram ABC-253.
 - (b) The Licensee(s) shall petition for a conditional license containing the following restrictions:
 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.

If cause for disciplinary action occurred during the stayed period, the Director of the Department of Alcoholic Beverage Control may, in his discretion and without further hearing, revoke the license. Should no cause for disciplinary action occur during the stayed period, the license shall become permanent.

Attachment "B"

**Code Enforcement Commission
125 E. Orange Grove Boulevard – Super Liquor
Attachment "1"**

Page 1 of 2