

# Agenda Report

July 25, 2011

**TO:** Honorable Mayor and City Council

**FROM:** Planning Department

**SUBJECT: CALL FOR REVIEW OF A CODE ENFORCEMENT COMMISSION DECISION TO THE CITY COUNCIL REGARDING MODIFICATION OF THE BUSINESS OPERATING CONDITIONS FOR SUPER LIQUOR LOCATED AT 125 E. ORANGE GROVE BOULEVARD**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Conduct a public hearing, and
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 Nos. 9, 10, and 18, maintain unchanged Condition No's 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, and 17, and modify Condition No. 20.

## **BACKGROUND:**

At the City Council meeting of January 25, 2010, Kum Man Jhae and Kun Chin Jhae doing business as Super Liquor located at 125 E. Orange Grove Boulevard sought the City Council's reconsideration of the conditions of operation that had been imposed upon their liquor store pursuant to an earlier public hearing held by the Code Enforcement Commission and under the auspices of the City's "Deemed Approved Ordinance." As a result of the City Council's January 25<sup>th</sup> hearing, several operating conditions were modified/added, one of which allowed Super Liquor to seek review of the conditions of operation after 12 months. The staff report prepared for that City Council meeting may be referenced herein as "Attachment A," and the Council's modified conditions may be found herein as "Attachment B."

Pursuant to passage of the 12-month review period, on April 7, 2011, a public hearing was held before Panel No. 1 of the Code Enforcement Commission to hear the Jhaes' request for modification of operating conditions. The full body of the Jhaes' request may be found in Attachment "C". The Jhaes sought modification of the following operating conditions:

- 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, but may be sold in manufacturer pre-packaged multi-unit quantities.

*Applicant's Proposal: 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.

*Applicant's Proposal: 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.)

*Applicant's Proposal: 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 sidewalk up to only 50 feet from the premises.*

- Condition No. 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.

*Applicant's Proposal: 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.

*Applicant's Proposal: 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 restrictions on the sale of alcohol*

The Staff report prepared for the Code Enforcement Commission recommended approval of the applicant's request for modification of Condition No. 3 and Condition No. 19, disapproval of applicant's request for modification of Condition No's 9, 10, and 18 and no changes to Condition No.'s 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 20, and 21 (that Staff report is found herein as Attachment "D".)

Staff concurred with the applicant that Condition No. 3 warranted modification since regulatory authority regarding the sale of distilled spirits rests with the California Department of Alcoholic Beverage Control, not local jurisdictions. Staff also concurred that Condition No. 19 warranted modification because the Superior Court had already delivered a preliminary injunction that enjoined the City of Pasadena from enforcing the temporal restrictions placed on Super Liquor vis-à-vis both their overall operating hours, and the hours during which alcohol may be sold.

As part of the *de novo* hearing presently before the City Council, staff recommends modification of Condition No. 20 which requires "[a] sturdy lock and chain...be placed across the parking lot promptly at 9:00 p.m." Modification of the temporal requirement from 9:00 p.m. to 10:00 p.m. will provide consistency with the stores court-approved closing time of 10:00 p.m.

### **Code Enforcement Commission Action**

On April 7, 2011, Panel No. 1 of the Code Enforcement Commission heard this matter. The Commission's actions and decisions regarding Condition No. 3 (sale of distilled spirits) and Condition No. 19 (hours of operation) paralleled Staff's recommendation. (The Commission's Order may be found herein as "Attachment E.")

The Commission's decisions and Order relative to Condition No's 9, 10, and 18 varied considerably from Staff's recommendation. Condition No. 9 was modified and where the operating conditions in effect at the time of the hearing required Super Liquor management to "*employ a private security guard to patrol the business premises...*" this operating condition was changed by the Commission to "[m]anagement shall *provide security* to patrol the business premises." (emphasis added.)

Condition No. 10 was modified and where Staff had recommended that it be the responsibility of the business owner to remove litter identified as emanating from Super

Liquor, such removal being required from the subject premises and on the north side of the Orange Grove Boulevard public right-of-way up to 100 feet distant from the premises; the Commission modified the Order eliminating the 100 linear-foot area of responsibility and required that the business owner remove *all* litter from the premises, and the public right-of-way on the north side of Orange Grove Boulevard in front of the premises.

Lastly, the Commission removed Condition No. 18 in its entirety, thereby eliminating the requirement that adhesive labels be affixed to both the stores translucent plastic bags and to each of the alcoholic beverage containers sold by the store.

Since imposition of the City Council's earlier "Corrective Actions/Conditions of Operations" there have been no police reports that indicate that Super Liquor has been 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.

During the Code Enforcement Commission hearing of April 7, 2011, public speakers raised questions regarding calls for police service at several nearby retail alcohol outlets including "Andy's Liquor" located directly across the street at 124 E. Orange Grove Boulevard, and "Joe's Deli" located at 230 E. Orange Grove Boulevard (approximately 550 feet east of the subject site.) Police department staff queried "Calls For Service" reports for both locations and found no requests for police service attributable to the retail alcohol outlets operations at either location.

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 operating 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.

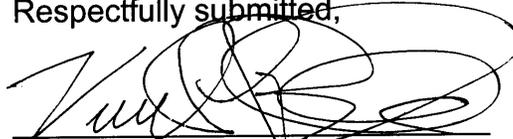
Modification of Condition No. 3 removing the prohibition on the sale of distilled spirits in containers of 12 ounces or less is warranted given that regulation of such matters is the purview of the Alcoholic Beverage Control; and modification of Condition No. 19 is warranted as the Superior Court has already enjoined the City from the imposition of operating hours on Super Liquor.

The Council's disapproval of the applicant's request to modify Condition No. 9 (applicant seeking relief from the requirement of employing a security guard,) Condition No. 10 (applicant seeking relief from the requirement of removing identifiable litter up to 100' distant from the premises on the public right-of-way on the north side of Orange Grove) and Condition No. 18 (applicant seeking relief from the requirement to affix adhesive labels to all alcoholic beverage containers sold, and translucent plastic bags used by Super Liquor) will help ensure that Super Liquor does not contribute to blighting conditions in the neighborhood.

**FISCAL IMPACT:**

There is no substantial fiscal impact as a result of this action. The business will maintain its existing operating hours and continue retail sales. Periodic inspections will be conducted by staff to ensure compliance with the imposed conditions. There are no anticipated impacts to other operational programs or capital projects as a result of this action.

Respectfully submitted,



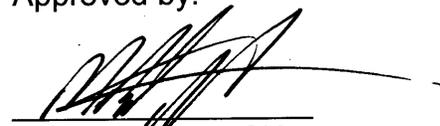
VINCENT P. BERTONI, AICP  
Director of Planning

Prepared by:



JON POLLARD  
Code Compliance Manager

Approved by:



MICHAEL J. BECK  
City Manager

Attachments:

- Attachment A – Council Agenda Report dated January 25, 2010.
- Attachment B – “Corrective Actions (Conditions of Operation) modified by the City Council on July 27, 2009 and January 25, 2010.
- Attachment C – Correspondence from Burkhalter, Kessler, Goodman & George, LLP regarding modification of Super Liquor operating conditions.
- Attachment D – Code Enforcement Commission Staff Report dated April 7, 2011.
- Attachment E – Commission Order – Decision Date of April 14, 2011.