

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.

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).

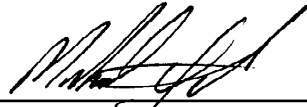
After a public hearing the Code Enforcement Commission, relying on the finding by the Department of Alcoholic Beverage Control to make a determination that Super Liquor operated as a public nuisance, imposed conditions to insure that the business will comply with the performance standards as set forth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