

Agenda Report

April 2, 2012

TO: Honorable Mayor and City Council

FROM: City Attorney

SUBJECT: ADOPT FINDINGS FOR THE CITY COUNCIL'S JULY 25, 2011 DECISION RELATING TO SUPER LIQUOR'S REQUEST TO MODIFY THEIR CONDITIONS OF OPERATION

RECOMMENDATION:

It is recommended that the City Council rescind its decision of July 25, 2011 and make a new decision supported by findings based upon the evidence presented at the July 25th hearing.

BACKGROUND

Super Liquor sought modification of the conditions of operation imposed by the City Council on January 25, 2010. The request for modification was heard before the Code Enforcement Commission on April 7, 2011 and approved. The CEC decision was called up to the City Council which heard the request for modification on July 25, 2011. At issue were 5 of the 21 conditions. The City Council approved elimination of Condition 3, relating to the sale of small bottles of distilled spirits. The City Council denied the modification of request for Condition 9 (employment of a private security guard); Condition 10 (removal of litter); and Condition 18 (identification of product and the bags they are sold in). The City Council modified Condition 19 (hours of operation from 6:30 a.m. to 10 p.m. and sales of alcohol from 8 a.m. to 9 p.m.).

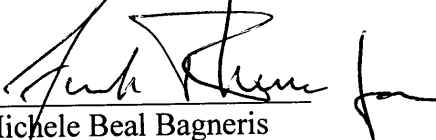
Super Liquor filed a petition for writ of mandate challenging the denial of its request for modification. This matter was heard in the Los Angeles Superior Court on February 15, 2012 and the Court ruled that the City Council did not make the necessary findings for its decision. Accordingly, the Court remanded this matter back to the City Council for a new decision with the proviso that "however the City decides, it must set forth its reasoning for maintaining each condition with reference to the evidence in the administrative record."

COUNCIL CONSIDERATION

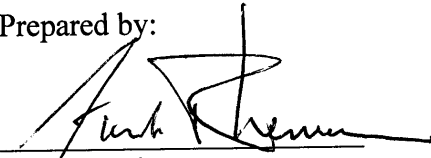
In accordance with the Court's Order, the "new" decision to be made shall be based upon the evidence that was presented at the July 25, 2011 hearing. No new evidence is to be considered. The administrative record has been provided to each member of the council for their review and is also available in the City Clerk's office. The "new" decision can be the same decision but the Council must set forth its reasoning for maintaining each condition, based on and referencing the evidence in the administrative record.

For the Council's review and consideration, staff has prepared the attached proposed "findings" supporting the Council's original decision. The Council may adopt, reject, or revise the findings.

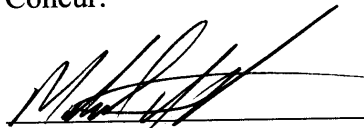
Respectfully submitted


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Concur:


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Attachment: City Council Findings

CITY COUNCIL FINDINGS

BACKGROUND

On July 25, 2011, the City Council heard Super Liquor's request to modify 5 of the 21 operational conditions imposed by the City on January 25, 2010. The Council made the decision to approve the request to remove Condition No. 3; modify Condition 19 and deny the request to modify Condition Nos. 9, 10 and 18. Super Liquor filed a petition for writ of mandate challenging the City's decision to modify and deny the request for modification. On February 15, 2012 the Superior Court remanded the matter to the City Council because the City's decision was not supported by written findings. The Court ordered the City Council to make a new decision with the proviso that "however the City decides, it must set forth its reasoning for maintaining each condition with reference to the evidence in the administrative record."

INTRODUCTION

On July 25, 2011, the City Council considered Super Liquor's request to modify five conditions of operation imposed by the City on January 25, 2010. They are :

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.

The request was to eliminate this condition in its entirety.

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 request was to modify this condition so as to remove the requirement to employ a “private security guard.”

Condition No 10: It shall be the responsibility of the business owner / operator 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 request was to modify this condition so as to reduce the litter removal from 100 feet from the premises to 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.

The request was to eliminate this condition 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.

The request was to eliminate this condition in its entirety.

EVIDENCE

The Council has reviewed the administrative record. Documentary evidence provided at the July 25, 2011 hearing before the City Council, provided the following:

Neighbor Laura Liptak provided a letter along with studies of the effect of liquor stores on the local neighborhood. She makes the argument that “if we allow these regulations to be removed, the likelihood of crime increasing is significant.” (Vol 3 pg. 374) and she relies on “studies that draw a direct correlation between liquor store density and crime and violence.” (Vol 3 pg. 375)

Said studies show the negative impacts and effects that liquor stores have on neighborhoods (Vol 3, pg. 292-355 and 374-467). Indeed the negative impact that liquor stores have on neighborhoods cannot be refuted (Vol 3, pg. 375) This is especially true in low socioeconomic status neighborhoods (Vol 3, pg. 441).

A “Calls for Service Details Report” was submitted (Vol 3, pg. 358 - 372) for a radius of 500 feet from Super Liquor indicates 190 calls for service from September 3, 2010 to July 22, 2011. The Reports show 86 noise violations, 58 disorderly conduct, 35 drunkenness, 5 assaults and 6 other types of offenses.

A letter from John Hutt president of Engelmann Real Estate Services (Vol 3, pg. 356-357) states they have properties “kitty corner” from Super Liquor. He indicates that “the applicant’s business attracts loiterers and drunks and contributes to littering, pan handling, public drunkenness, public urination, and other nuisance activities.” He notes that “the previously imposed conditions have helped.” He makes the argument “rather than backtracking previous progress by weakening the conditions on Super Liquor, the City should move forward and reduce the nuisance caused by Andy’s and Joe’s (other liquor stores in the area). He states that his tenants “continue to find bottles and other litter with Super Liquor labels or with labels partially removed” and that “public drunkenness, vandalism, public urination and other nuisance activities continue.” Further that “picking up trash and washing human defecation from our parking lot and lawn is a regular occurrence.”

The July 25, 2011 transcript of the hearing before the City Council (Vol 4 pg. 673-773) provides the following testimony:

Mrs. Liptak testified that she witnesses “prostitutes at night . . . people walking . .

through her property, throwing trash” (pg. 714). She testified that “currently I have witnessed drug deals, gang fights, prostitution, and extreme violence” (pg 724) and she provided “five reports within the last ten years that basically prove that the density of liquor store outlets and violent crime is a direct correlation” (pg 725) (the reports are at Vol 3, pg 292-355 and 374-467)

Terrie McQuarrie brought a “nice big bag of trash from our local liquor stores” (pg 715-716). She further testified that he had a “big problem with it (liquor sales) at 6:30 in the morning. The reason they want to sell liquor in the morning is because the homeless shelters let out at 7:00 . . . and the homeless people come to their liquor store to get their drunk on there for the day” (pg 718). She also recognized that placing stickers on the bottles “is not intended to reduce litter” but to “identify the litter” (pg 718). As to picking up trash in front of the store McQuarrie recognized that “loitering is prohibited in front of their store” so “they’re not going to have trash there” instead “they’re going to go outside that area and litter” (pg 719). As to the security guard she recognized that “you can’t be an effective security guard if you’re behind the register ringing people up” (pg 719).

Michael Chill testified that he lives right around the corner from Super Liquor and that the labeling of the containers and bags helps. He identified “60 per cent Super Liquor, 40 per cent either peeled off labels or unmarked” of the trash in front of his home. He was adamant that the trash he was talking about he got “this in front of our house exclusively” (pg 719-720). As to the security guard, he noted that he found it “curious that the same people who are afraid to leave the front door of their business because of security issues want to provide their own security” (pg 720). He concluded that he brought “only the trash” and that he did not “bring the urine and the defecation and the vomit,” he didn’t bring the “broken beer bottles that we have to sweep into the street and - - - hose off the beer on our own.” He confirmed that he collected the

bottles “in front of 735 N. Raymond” (pg 721).

Gretchen Palmer testified that she picked up three bottles which were discarded by her car when she got in her car to go to the hearing. She testified that she has “people in front of my house, sitting, drinking, smoking crack” and a drunk who “couldn’t get up” even after they “tried to wake him up so many times” (pg 722). She concluded by stating that “they (super liquor) are connection to the nuisance in our neighborhood every single day. Every single day I have to push people off my lawn drunk. Every single day. Think about that” (pg 723).

Lieutenant Kelly confirmed that the “Calls for Service Detail Report” was prepared for a 500 foot radius surrounding Super Liquor for the time frame September 3, 2010 to July 22, 2011 and that there were 35 public drunkenness calls and 58 disorderly conduct calls and other type of offenses, assaults and other offenses for a total of 190 calls (pg 727-728).

Mr Bertoni, the Planning Director advises that there are conditions that are consistently applied for retail alcohol outlets which are customized to the individual situation. Litter removal and the requirement for a security guard are such conditions (pg 730).

Counsel for Super Liquor confirmed that Super Liquor is not abiding by the condition to employ a private security guard and instead is just hiring another employee to do the job (pg 742). Counsel for Super Liquor also claims that as to the time necessary for identifying product and the bags they are sold in “I think it’s four hours a day seven days a week that are attributable to just putting stickers on. Hard to believe but – ” (pg 745). Counsel for Super Liquor also confirmed that Super Liquor is not abiding by the condition that requires litter removal 100 feet from the premises (pg 746).

Councilmember Gordo recalled the history of Super Liquor and the decision of the ABC, specifically the finding that “the licensee knowingly permitted the illegal sale or negotiations of

controlled substances or dangerous drugs upon his licensed premise (pg 712). Councilmember Gordo made the point that Super Liquor was brought to the attention of the City not by the neighbors or businesses in the area but by the police and ABC and that the underlying acts that led to the initial conditions being placed were not reported by the neighbors either, rather it was through surveillance and undercover investigations, including drug sales in front of one of the owners (pg 684-685). He also noted that “ it was difficult for the neighbors to witness and then report and - - that activity, and then the police department to get out there in time to catch the people. All of those things didn’t work . . . so what ended up happening is we, the City of Pasadena, subsidized the patrolling of this business. We put undercover police officers together with the ABC and conducted an investigation and discovered that what the neighbors had been telling us for years was true, there was illegal activity occurring” (pg 686-687).

Councilmember Holden stated that “there is a connection, a nexus if you will, where the types of products that are being sold are these distilled spirits in the small quantity and they’re being sold at the 6:30 a.m. hour, that to me seems to be a bit out of line. And - - there’s a potential impact, adverse impact that can be created, I would think, from an individual having the opportunity to purchase that quantity of alcohol and going into the neighborhood, and then maybe particularly creating some problems at – at that particular hour (pg 751).

Councilmember McAustin stated that security guards, when that is their job, “like police officers, their presence alone can serve as a deterrent (pg 762).

Councilmember Holden recognized the prior history and that even though “they’re starting to move in the right direction, there is history here. And it is in the context of that history that we are now moving to this particular point in making the decision that we are and the modifications that we are” (pg 772-773).

ANALYSIS

Super Liquor claims that because there were no formal complaints to Code Enforcement and no criminal activity reported by the Police directly attributable to them, the City should delete condition No. 19 for hours of operation and hours of alcohol sales and condition No. 18 requiring identifying stickers on alcohol products and the bags they are sold in. For the same reason they also claim the City should modify condition No. 10 requiring litter removal from 100 feet by reducing to 50 feet and condition No. 9 requiring the employment of a private security guard and to allow for a store employee to provide security. What the lack of formal complaints to Code Enforcement and the lack of criminal activity reported to police at the premises establishes is that the conditions work and not that the conditions can, or should, be eliminated.

There Is A Nuisance Problem In The Surrounding Neighborhood - Studies were provided to the City Council by a member of the public, Laura Liptak which set forth the correlation between crime and liquor stores. The Police Department provided evidence that supported the study, specifically, a calls for service report which showed 190 calls for service between September of 2010 and July 21, 2011, including 86 noise violations, 58 disorderly conduct, 35 drunkenness, 5 assaults and 6 other types of offenses. Lieutenant Kelly indicated the report was prepared for a 500 foot radius surrounding Super Liquor. John Hutt, representing properties across the street from Super Liquor, sent a letter wherein he states “the applicant’s business attracts loiterers and drunks and contributes to littering, pan handling, public drunkenness, public urination, and other nuisance activities.” He further writes that his tenants “continue to find bottles and other litter with Super Liquor labels or with labels partially

removed,” that “public drunkenness, vandalism, public urination and other nuisance activities continue” and that “picking up trash and washing human defecation from our parking lot and lawn is a regular occurrence.” Thus, Super Liquor contributes to the nuisance problem in the neighborhood.

There Is A Nuisance Problem With Super Liquor – Neighbors testified as to crimes they observed. Laura Liptak observed “prostitutes at night” and trespassers on her property throwing trash, drug deals, gang fights and “extreme violence.” Terrie McQuarry stated that “zero incidents is a lie” as he personally observed a fight in a “throng of people in loitering in their (Super Liquor) parking lot.” Gretchen Palmer testified that she has “people in front of my house, sitting, drinking, smoking crack.” She showed her frustration when she stated “they (Super Liquor) are (a) connection to the nuisance in our neighborhood every single day. Every single day I have to push people off my lawn drunk. Every single day. Think about that.”

All testified about the litter problem. McQuarry brought a large bag of trash. Michael Chill brought only the trash and not the urine or defecation or broken beer bottles. Palmer picked up three bottles which were sitting by her car when she left to attend the city council meeting.

As to hours of sale of alcohol, McQuarry testified that selling alcohol at 6:30 a.m. is a big problem because of the homeless who go there to get their “drunk on for the day.”

Councilmember Holden stated that “there is a connection, a nexus if you will, where the types of products that are being sold are these distilled spirits in the small quantity and they’re being sold at 6:30 a.m. hour, that to me seems to be a bit out of line. And - - there’s a potential impact, adverse impact that can be created, I would think, from an individual having the opportunity to purchase that quantity of alcohol and going into the neighborhood, and then maybe particularly

creating some problem at - - at that particular hour.

As to identifying the alcohol containers and bags, McQuarry also testified that placing stickers on bottles is not intended to reduce litter but to identify the litter. Chill testified that the labeling of the bottles and bags helps. He testified that the trash he brought to the hearing was identified to be “60 per cent Super Liquor, 40 per cent either peeled off labels or unmarked.”

As to the need for a private security guard, McQuarry recognized that “you can’t be an effective security guard if you’re behind the register ringing people up.” Councilmember McAustin recognized that the presence of a security guard serves as a deterrent.

The Conditions Are Necessary To Abate Nuisance And Potential Nuisance

Problems – As to the conditions, the Planning Director testified that litter removal and the requirement for a security guard are conditions that are consistently applied to off-site alcoholic beverage sales businesses. Perhaps Super Liquor cannot control who buys liquor from them, but clearly the City has the right to impose a condition that Super Liquor does not sell alcohol to customers at 6:30 in the morning. Perhaps Super Liquor cannot control those who buy their product and litter the neighborhood with it, but clearly the City has the right to impose a condition that requires them to pick up litter within 100 feet of their premises. This litter problem is pervasive and to have the ability to identify where such litter comes from clearly helps the City to focus its limited resources in battling this problem. To require a sticker identifying the store to be placed on their alcohol product and the bags they are sold in (no matter how onerous Super Liquor claims it to be) provides a valuable tool for the City. The need for a security guard to deter nuisance and illegal activity is clear. Accordingly, the City can impose a condition that the business provide a private security guard who is not a family member, owner or employee. The logic is simple, you cannot be an effective security guard if

you are ringing up customers or tending to other responsibilities of conducting a business.

COUNCIL ACTION AND FINDINGS

The City Council vacates its July 25, 2011 decision and makes the following findings and new decision:

Preliminarily, the City Council finds that Super Liquor did not challenge the conditions imposed by the City on January 25, 2010 and the City's finding that Super Liquor constituted a nuisance. The City Council also finds that based upon the studies submitted as well as Super Liquor's own "prior history" that liquor stores can have detrimental effects upon a neighborhood.

Based upon the evidence set forth above and the analysis of said evidence, the City Council makes the following findings:

1. As to **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.

The request was to eliminate this condition in its entirety. This request is granted.

As set forth in the staff report, the Council is advised that this condition may be preempted by State Law and therefore the request to eliminate this condition is granted.

2. As to **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 request was to modify this condition to remove the requirement to employ a “private security guard.” This request is denied.

The Council finds, based upon the evidence set forth above, that a nuisance existed on the property and the employment of a private security guard is necessary to prevent continued nuisance activities. Further, the use of a store employee or family member would not be effective in abating the nuisance because employees would be distracted by responsibilities to work cash register, stock items, etc. Family members or employees who have “non-security guard” responsibilities would diminish the deterrent effect of the security guard and therefore the request to modify this condition is denied.

3. As to **Condition No 10**: It shall be the responsibility of the business owner / operator 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 request was to modify this condition to reduce the required litter removal from 100 feet from the premises to 50 feet from the premises. This request is denied.

The Council finds, based upon the evidence set forth above, that litter in the area around the store and the adjoining neighborhoods is a pervasive problem as indicated by the testimony of numerous neighbors; that the litter is identified as having come from Super Liquor; and that in light of the pervasiveness of the litter problem, litter removal within 100 feet of the premises on the same side of Orange Grove as the business is necessary to assure that the nuisance created by identifiable litter generated by the business customers is reduced or eliminated. Therefore this request is denied.

4. As to **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.

The request was to eliminate this condition in its entirety. This request is denied.

The Council finds, based upon the evidence set forth above, that litter in the area around the store and the adjoining neighborhoods is a pervasive problem as indicated by the testimony of numerous neighbors; that the litter is identified as having come from Super Liquor; that Super Liquor in Condition No. 10 is required to remove “identifiable” litter; that the ability to identify where litter comes from helps the City to focus its limited resources in battling this problem; and that in light of the pervasiveness of the litter problem requiring the identification of alcoholic beverage containers and bags is needed to assure that such bags, bottles and cans are appropriately identified for removal.

5. As to **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.

The request was to eliminate this condition in its entirety. This request is denied, but the City Council modifies the condition so that business hours operation shall be between 6:30 a.m. and 10:00 p.m. daily with the sale of alcohol to occur only between the hours of 8:00 a.m. and 9:00 p.m. daily.

The City Council finds, based upon the evidence set forth above, that in light of the testimony of neighbors who observed prostitutes at night, trespassers, trash, drug deals, gang fights, loitering, people drinking and smoking crack, public drunkenness, vandalism, and public urination, that there is a public nuisance; that the early morning sales of liquor and the late night sale of liquor contributes to that nuisance; and that eliminating the very early morning hours sale of alcohol and the late night sale of alcohol for a total of 2 ½ hour reduction of alcohol sales is

reasonable Accordingly, the City Council denies the request to eliminate this conditions in its entirety and instead modifies the condition so that the business hours of operation are from 6:30 a.m. to 10:00 p.m. daily and the sale of alcohol only to occur between the hours of 8:00 a.m. and 9:00 p.m. daily.