

MICHAEL N. FEUER
CITY ATTORNEY

January 9, 2014

Linda Lucks, President
Venice Neighborhood Council
PO Box 550
Venice, CA 90294

Re: Response to November 19, 2013 Letter re CUB Conditions

Dear Ms. Lucks:

Your letter dated November 19, 2013, regarding the type of conditions that may be imposed on a conditional use permit for alcohol ("CUB"), has been referred to me for a response. Your letter requests that the Chief Zoning Administrator and City Attorney provide the Venice Neighborhood Council with a description of conditions that can be legally included in the approval of a CUB, a description of conditions that are not legally allowed, and a description of the "grey area where the law is unclear as to whether a condition can legally be included in the approval of a CUB."

Attached are copies of two documents that are responsive to part of your query. The first document is a 1996 memo from then-Chief Zoning Administrator Robert Janovici to all Zoning Administrators. The memo contains examples of prohibited alcohol-related conditions. As you will note, the conditions all relate to the sale of alcohol. The City, unlike the Department of Alcoholic Beverage Control ("ABC"), is prohibited ("preempted") by State law from imposing these types of conditions on a CUB. The second document is a copy of an order, known as a peremptory writ of mandate, issued in a case filed against the City in 1990, directing the City to set aside conditions related to the sale of alcohol that were improperly imposed on a deemed-to-be-approved market. These documents provide examples of impermissible conditions.


As to your questions regarding permissible conditions, the general rule is that conditions of approval must have some connection ("nexus") to the land use impacts of the project. This would include conditions targeted to control and abate nuisance activities occurring at or near alcoholic beverage sales establishments, so long as those conditions do not relate to the direct regulation of alcohol. These conditions understandably may vary from case to case. As a result,

Linda Lucks, President
Venice Neighborhood Council
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your question regarding permissible conditions is more appropriately directed to the Planning Department.

I have been advised that members of the Planning Department, including the Director of Planning, have already contacted Jake Kaufman and discussed these matters with him. Hopefully, the documents attached to this letter, in addition to the discussion between the Planning Department and Mr. Kaufman, will provide the Venice Neighborhood Council with some additional clarity.

Very truly yours,

By 
TERRY P. KAUFMANN MACIAS
Managing Assistant, Land Use Division

Attachments

cc: Tricia Keane, Senior Planner, Council District 11
Capri Maddox, Special Asst. City Attorney
Linn K. Wyatt, Chief Zoning Administrator

TPKM:pat

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Los Angeles City Planning Department

221 North Figueroa
16th Floor



May 16, 1996

TO: All Zoning Administrators

FROM: Robert Janovici 

SUBJECT: PROHIBITED ALCOHOLIC BEVERAGE SALES CONDITIONS

As a reminder to all Zoning Administrators, I am reissuing the list of alcoholic beverage conditions which we may not use. As you know, a Superior Court Judge previously ruled that the express regulation of the sale of alcoholic beverages for either on-site or off-site consumption was not allowed due to a conflict with State authority. The City Council subsequently agreed not to appeal the decision. Consequently, the following are examples of conditions that should not be used in any of our determinations:

1. That the hours of liquor sales shall be from ...
2. That beer shall be sold in six packs only and wine coolers sold in four packs only. No single can/bottle sales of alcoholic beverages are permitted.
3. That wine shall be sold in bottles 750 ml or larger in size.
4. That no refrigerated beer or wine shall be sold.
5. That all alcohol sales shall be by clerks 21 years of age or older.
6. That only one building sign advertising "liquor" is allowed. No neon beer/wine signs visible on the outside are permitted.
7. That the gross receipts attributable to beer/wine sales ...
8. That the shelf space devoted to beer/wine ...

Basically, do not use the words "alcoholic beverages, liquor, beer, wine", etc., in any condition and your determination will withstand the test. While we believe it is possible to incorporate self-imposed limitations on the part of the applicant into a determination, these constraints should be part of the written record before there is any contact with the Zoning Administrator and incorporated into the application at the time of filing. If you have questions concerning conditions in an individual case, please contact me.

Revocations

Further, it has on rare occasions been the practice to include a condition reading generally as follows:

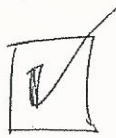
"That one documented ABC violation in the next six months for underage sales to minors or sales to someone under the influence of alcohol will subject the use to immediate revocation."

Bear in mind that revocation may not, under constitutional guarantees, be immediate but rather, resulting after due process (notice and opportunity to be heard) if the facts warrant same. There is no summary revocation procedure!

Please remember that potential case conditions which are in effect, veiled regulations of alcohol sales are also not allowed. We have to be able to show a land use "nexus" (trash, aesthetics) in order to justify a condition.

The following examples of conditions are not allowed under this clarification:

- o The quarterly gross sales of beverages shall not exceed the gross sales of food during the same period. The applicant shall, at all times, maintain records which reflect separately the gross sales of food and the gross sales of beverages of the licensed premises. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand. The owner will submit proof of compliance for the required three month review.
- o There shall be no exterior advertising of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of beverages. (Note: a condition generally limiting signage if to ensure visibility from the outside as a crime prevention measure could be valid if the record indicates a clear need for this.)
- o The applicant shall not allow "Happy Hours", or certain time periods during which beverages are sold on the premises at discounted prices.
- o There shall be no minimum drink requirement for patrons.
- o The applicant shall not allow "promotional nights". Promotional nights include, but are not limited to, time periods during which female patrons may purchase beverages at a discounted price, encouraging patrons to come to the premises for beverages after an entertainment event at another location, and selling certain brands and/or type of beverages at a discounted price to bring attention to these brands and/or beverages.
- o No employees shall be engaged for the specific purpose of sitting with or otherwise spending time with customers while in said premises.



RJ:lmc

MAY 29 1990

ORIGINAL FILED
MAY 24, 1990
COUNTY CLERK

1 LAWRENCE M. ADELMAN, ESQ.
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3 Woodland Hills, CA 91367
4 (818) 992-8005

5 State Bar No. 059058

6 Attorney for Petitioners, FARAH AMMARI and JAMILEH AMMARI

7
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
9 LOS ANGELES CENTRAL DISTRICT

10
11 FARAH AMMARI and JAMILEH AMMARI,) CASE NO.: C753794
12 individually and doing business as)
13 PACOIMA FOOD MARKET,) PEREMPTORY WRIT
14) OF MANDATE
15)
16)
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18 TO: ALL RESPONDENTS IN THE ABOVE ENTITLED MATTER:
19 GOOD CAUSE APPEARING, you are commanded, ~~within five (5)~~
20 ~~days after the date of service of this Writ:~~

21 1. To set aside and delete the operating conditions more
22 specifically mentioned and described in paragraph 2, below, from
23 the deemed-to-be-approved conditional use permit for Petitioners'
24 retail community market, Pacoima Food Market, 13132 Van Nuys
25 Boulevard, Pacoima, California 91331, as finally issued and
26 imposed against Petitioners under Los Angeles Municipal Code
27 Sections 12.24-F and 12.24-J by the Los Angeles City Council in
28 its resolution and determination on appeal dated December 8,

1 1989, in File No. 89-1955, a true and accurate copy of which is
2 attached hereto as Exhibit "A" and incorporated herein by
3 reference.

4 2. The conditions which shall be set aside and deleted
5 from Petitioners' foregoing deemed-to-be-approved conditional use
6 permit are as follows:

7 2.1 Condition number 1, restricting the hours of the
8 day and of the week during which Petitioners may sell alcoholic
9 beverages.

10 2.2 Condition number 2, prohibiting Petitioners from
11 selling single cans and bottles of beer and wine, and restricting
12 Petitioners to the sale of beer in six packs and wine coolers in
13 four packs.

14 2.3 Condition number 3, restricting Petitioners to the
15 sale of wine in bottles of 750 ml or larger in size.

16 2.4 Condition number 5, prohibiting Petitioners from
17 selling refrigerated beer and wine.

18 2.5 Condition number 8, restricting to no more than
19 30% the gross sales and market shelf space available at
20 Petitioners' above mentioned premises for alcoholic beverages.

21 2.6 Condition number 9, restricting the age of clerks
22 selling alcoholic beverages to that of 21 years or older.

23 2.7 Condition number 11, providing that one (1)
24 documented Alcoholic Beverage Control violation in the next six
25 (6) months for underage sales to minors or sales to someone under
26 the influence of alcohol will subject the use to immediate
27 revocation.

28 3. Pursuant to the mutual stipulation between Petitioners