

Townhouse Cocktails  
52 Windward Avenue  
Venice, CA 90291

DIR 2008-2468 (BSA)

**QUESTION TO BE DECIDED AT FEBRUARY 4<sup>TH</sup> HEARING:** Whether Townhouse Cocktails, or more specifically 52 E. Windward Ave, requires a Conditional Use Permit for the sale and consumption of alcoholic beverages to lawfully operate where the business has been open and operating in the same or similar capacity since before March 1977.

**OUR POSITION:** No. A Conditional Use Permit (CUP) for alcohol is not required for any portion of the establishment, which includes the basement, because the premises, both at street level and in the basement, has been used from before Prohibition to the present day for the service and consumption of alcoholic beverages.

California law does not permit and Los Angeles City Municipal Code does not require the City to close a bar in lawful operation for almost a hundred years by ordering that such long-standing use of that bar must immediately cease.

“Once a licensee has acquired a conditional use permit, or has ‘deemed approved’ [(i.e., grandfathered)] status, a municipality’s power to revoke the conditional use is limited. If the permittee has incurred substantial expense and acted in reliance on the permit, the permittee has acquired a vested property right in the permit and is entitled to the protections of due process before the permit may be revoked.” Bauer v. City of San Diego, 75 Cal.App.4th 1281, 1294 (1999). “[I]n Suzuki v. City of Los Angeles, 44 Cal.App.4th 263 (1996), the appellate court observed the statute permits ‘existing nonconforming uses to continue in operation despite subsequently enacted zoning ordinances, provided the use and character of the business remain the same as before passage of a zoning ordinance.’”

The use of 52 East Winward Avenue in Venice, California has been and continues to enjoy a “deemed approved” status with respect to the sale and consumption of alcoholic beverages on both floors of Townhouse Cocktails with the provision of live music and entertainment.

The sale of alcohol in the basement of Townhouse Cocktails constitutes a legal nonconforming use since well before March 1, 1977, when the pertinent ordinance went into effect. Similarly, the sale of alcohol in this basement is a right belonging to the owner that has vested and cannot arbitrarily be snuffed out at will by the City. The City’s decision effectively closes down a business that has been in continuous operation since before Prohibition.

Therefore, the City erred in upholding the decision of the Department of Building and Safety.