

City Clerk
202 C Street, MS 9A
San Diego, CA 92101



May 18, 2011

RE: Appeal Request (#1914141113)

To Whom It May Concern,

We are writing in response to the decision of the hearing officer, Ms. Katherine Morris, which upheld the San Diego Police Department's denial of our Type 20 Off-Sale Beer & Wine License. We respectfully disagree with this decision and would appreciate the opportunity to appeal the hearing officer's decision.

As a small business operating in the downtown area, the odds have been stacked against us in our attempts to obtain this license. It is unreasonable for the police department to categorize our business intentions into the same general group as large, national convenience markets in the nearby vicinity. We are a family-run business that hopes to offer unique products in an area that is in dire need of revitalization. We have had numerous requests from residents, professionals, and tourists staying at nearby hotels to offer fine wines and gourmet international products that most convenience markets do not offer. As reiterated during the hearing, sales of beer and wine will only comprise a small portion of our total overall sales. Our hours of operation did not appear to be taken into consideration, as we are only open limited hours during the week and on weekends, catering specifically to those residents and professionals mentioned above. This fact appears to have been ignored and/or dismissed by the police department and the hearing officer.

In addition, the report the police department's crime analyst presented included outdated crime statistics from 2009, which is well before Sixth Avenue Market opened, and applies to the general downtown area. We did not have the resources available to discuss or justify the statistics related to crime in our specific area, and because we were unable to comment on that aspect of the denial, we feel that this unfairly influenced the hearing officer's decision.

Once again, we respectfully request the opportunity to further present our case, and implore you to consider our business in the unique capacity that it exists. Thank you for your time and consideration. Please let us know if you have questions or need additional information.

Sincerely,

Lea Mor, Owner

Sixth Avenue Market, Inc.
1350 6th Avenue, Suite 130
San Diego, CA 92101
(858-254-3479)
(cell) 980 8418

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L/M W Gary Vetter

Contact Hearings Section



THE CITY OF SAN DIEGO

May 10, 2011

Sixth Avenue Market
Sharon Mor & Lea Mor
c/o Jason Markowitz
1350 Sixth Avenue, Suite 130
San Diego, CA 92101

**Reference: Decision in the Appeal/Denial of Type 20 Off-Sale Beer & Wine License
Based on Public Convenience or Necessity for Sixth Avenue Market**

Dear Mr. Markowitz:

Enclosed is a copy of the Hearing Officer's decision in the above matter.

Pursuant to San Diego Municipal Code Section 33.0505, the applicant, permittee, and the Chief of Police have the right to appeal the Hearing Officer's decision to the Public Safety and Neighborhood Services Committee of the City Council (or its successor committee). Such request for appeal must be filed in writing with the City Clerk, 202 C Street, MS 2A, San Diego, CA 92101 within ten (10) days of receipt of this letter.

If you have questions, please contact my assistant, Denise Sandoval at (619) 236-6296.

Sincerely,


Debra Fischle-Faulk
Director

Enclosure

cc: City Clerk, MS 2A
Linda Griffin, Police Sergeant, Vice Administration, SDPD, MS 735



Katherine Jane Morris
Administrative Hearing Officer
City of San Diego

IN THE MATTER OF)
)
SHARON MOR & LEA MOR)
SIXTH AVENUE MARKET)
1350 SIXTH AVENUE)
SAN DIEGO, CALIFORNIA)
_____)

APPEAL---DENIAL OF TYPE 20 OFF-SALE
BEER & WINE LICENSE BASED ON PUBLIC
CONVENIENCE OR NECESSITY
ADMINISTRATIVE ENFORCEMENT ORDER

I
STATEMENT OF THE CASE

This matter came on regularly for hearing before Katherine Jane Morris, Administrative Hearing Officer for the City of San Diego on 27 April 2011 at 2:00 p.m. in a conference room of the City Administration Building and was heard on that date, notice duly and regularly given. The purpose of the hearing was to determine whether the decision of the San Diego Police Department to deny a Type 20 Off-Sale Beer & Wine License based on the provisions of Public Convenience or Necessity as stated in the San Diego Business and Professions Code section 23958.4 shall be upheld.

Sgt. Linda Griffin, Vice Administration Unit, represented the San Diego Police Department. Lea Mor and Sharon Mor, the owners of the Sixth Avenue Market, were not present but were represented by their relative, Jason Markowitz, who manages another business in the same location.

The following individuals testified on behalf of the San Diego Police Department:

1. Sgt. Linda Griffin, Vice Unit.
2. Joe Dalton, Crime Analyst.

The following individuals testified on behalf of the appellants, Lea Mor and Sharon Mor:

1. Jason Markowitz, relative of the appellants.

The following documents or other physical evidence were introduced by Sgt. Griffin and received into evidence:

1. Exhibit #C1: Letter from Sgt. Griffin to the applicant Lea Mor dated 3/2/11 denying a Type 20 Alcohol License for the premises located at 1350 6th Avenue.
2. Exhibit #C2: Completed Public Convenience or Necessity ABC Form 245 for the City of San Diego for Off-Sale, On-Sale Beer and Public Premises

Licenses for 1350 6th Avenue, Suite 130 showing denial of application by Sgt. Griffin on 3/2/11.

3. Exhibit #C3: Email from Lorena Cordova, Centre City Redevelopment Corporation outlining the requirement for a Conditional Use Permit (CUP) for an Off-Sale Beer & Wine licensed establishment.
4. Exhibit #C4: Photographic Exhibit, 4 photos, taken on 1/4/11 in the 1300 block of 6th Avenue by Sgt. Griffin including the premises at 1350 6th Avenue.
5. Exhibit #C5: Crime Analysis Report prepared on 12/10/10 by Crime Analyst Joe Dalton regarding the Sixth Avenue Market, 20 pages in length.
6. Exhibit #C6: California Department of Alcoholic Beverage Control for the County of San Diego (Off-Sale Licenses) and Census Tract #53, report as of 4/19/11.
7. Exhibit #C7: Letter dated 3/28/11 from Lea Mor, Owner, Sixth Avenue Market, appealing the PCN denial of a Type 20 Alcohol License and requesting a hearing.

The following documents or other physical evidence were introduced by Jason Markowitz and received into evidence:

1. Exhibit #A1: Photographic Exhibit (1 photo), undated.

II FINDINGS OF FACT

1. On 12/2/10, Lea Mor, Owner of the Sixth Avenue Market, located at 1350 Sixth Avenue, Suite 130, San Diego, California 92101 requested a Public Convenience or Necessity evaluation of the premises by the San Diego Police Department in consideration of obtaining a Type 20 Alcohol Off-Sale Beer and Wine License; a case was subsequently opened and assigned to Sgt. Linda Griffin, Vice Administration Unit.
2. In the course of her investigation, Sgt. Griffin contacted the Centre City Redevelopment Corporation to see if there was currently a Conditional Use Permit (CUP) for the business, and was told there was not nor was there an application.
3. Sgt. Griffin also requested and reviewed a Crime Analysis Report prepared on 12/10/10 for the area by SDPD Crime Analyst Joe Dalton
4. Sgt. Griffin also sought input from Capt. Mark Jones, Commander of SDPD's Central Division; his position was against approval of the Type 20 license because it would exacerbate existing police problems with transients in the area and with alcohol crime issues. This also related directly to the proposed relocation of a homeless facility within one block of 1350 Sixth Avenue which has received initial approval pending further review.

5. On 3/2/11 Sgt. Griffin notified the appellant of the denial of the Type 20 Alcohol License based on the Guidelines for Determining Public Convenience or Necessity set by City Council Resolution R-294124 and highlighted those for the business which were not in conformance with the guidelines as follows: * "The premises falls within a crime data area which has a twenty percent greater number of reported crimes than the average number of crimes for all crime data areas in the City (High Crime area). For calendar year 2009, the crime rate was 1036% and alcohol-related crime was 2001.1%. Both of these figures are over the acceptable rate of 120%. The business will not serve businesses or residents not currently being served by a same or similar business. There are 12 other Off-Sale licensees within Contract 53.00 which allows 4. Issuance of this license would add to the 'over-concentration' of this Census Tract. *The premises falls within a 600-foot radius of incompatible facilities. *This license will aggravate existing Police problems."
6. At the hearing of 4/27/11 Analyst Dalton testified that Census Tract 53.00 has the highest crime rate in the city. Many arrests are alcohol-related quality of life crimes such as urinating in public, noise and assaults. There are twelve existing off-sale ABC licenses in the tract, 10 of which are active and 2 of which are suspended; twelve is three times the permitted number under ABC standards. He stated that in 2009 there were eighteen service calls to the address but only one was linked to the Sixth Avenue Market. Sgt. Griffin also noted that her investigation showed that the market was clean and had a good reputation; however, she had to take into consideration what could happen if the market was sold because its sale would mean the transfer of the liquor license to another owner and there would be no ability of the SDPD to modify a CUP or store operations. The pending relocation of the homeless shelter to an address less than a block away is a major concern of the SDPD. Based on all the above considerations, Sgt. Griffin asked that the SDPD's decision to deny the application for a Type 20 License for the Sixth Avenue Market be upheld.
7. At the hearing of 4/27/11, the appellant's representative, Mr. Markowitz testified that he owns a shoe repair store next to the Sixth Avenue Market. From his perspective, the market had established itself and started to build a clientele and was responding to requests from customers to sell beer and wine. He stated that the majority of the customers worked and lived in the area rather than being transients. The store kept limited hours and since opening in August 2009 had not experienced issues with criminal behavior; the ownership reserved the right to refuse service to anyone. As stated in the appellant's letter of 3/28/11 the market's ownership took responsibility to monitor the area and provide a safe and friendly environment for customers and neighbors. Although there was a "large and well-known convenience store three blocks away, its location is at a highly concentrated area known for loitering and trespassing" whereas their area was much quieter. Further, "offering beer and wine will make up a small percentage of our total sales".

At the hearing Mr. Markowitz acknowledged that the business owners were aware of the proposed homeless shelter, but did not believe that it would necessarily in the end move there. In conclusion, he asked that the Sixth Avenue Market located at 1350 Sixth Avenue be granted a Type 20 Off-Sale Beer and Wine License based on Public Convenience or Necessity.

8. A written notice of the time and place of this hearing was served upon the appellant at least ten (10) calendar days prior to the hearing.
9. The written notice was served upon the appellant in accordance with San Diego Municipal Code section 11.0301 by certified mail, postage prepaid, return receipt requested. Simultaneously the same notice was sent by regular mail.

III DETERMINATION OF ISSUES

1. By reason of the facts found in Findings of Fact paragraph number 1, Lea Mor is the Responsible Party.
2. By reason of the facts found in Findings of Fact paragraph numbers 8 and 9, the appellants were notified of this Administrative Hearing.
3. By reason of the facts found in Findings of Fact paragraph number 1, appellant Lea Mor applied for a Type 20 Off-Sale Beer and Wine License for the Sixth Avenue Market located at 1350 Sixth Avenue, San Diego, California.
4. By reason of the facts found in Findings of Fact paragraph numbers 2, 3, 4, 5 and 6, the appellants failed to meet the criteria for Public Convenience or Necessity as defined in the San Diego Business and Professions Code section 23958.4.
5. By reason of the facts found in Findings of Fact paragraph numbers 2, 3, 4, 5 and 6, the SDPD properly reviewed the application for a Type 20 Off-Sale Beer and Wine License for the Sixth Avenue Market and compared it to the standards set forth in Business and Professions Code section 23958.4 in making its determination.
6. By reason of the facts found in Findings of Fact paragraph numbers 2, 3, 4, 5 and 6 the San Diego Police Department's denial of a Type 20 Off-Sale Beer and Wine License for the Sixth Avenue Market located at 1350 Sixth Avenue, San Diego, California shall be upheld.

IV
ORDER

THEREFORE, the following order is made:

The decision to deny a Type 20 Off-Sale Beer and Wine License for the Sixth Avenue Market located at 1350 Sixth Avenue, Suite 130, San Diego, California 92101 is upheld.

Dated: 5/6/11


Katherine Jane Morris
Administrative Hearing Officer