

**DEEMED APPROVED ALCOHOLIC BEVERAGE SALES
PROGRAM ADMINISTRATIVE HEARING**
Oakland Municipal Code (OMC) Chapter 17.156

**ORDER AFTER HEARING OF
ADMINISTRATIVE HEARING OFFICER**

**Marc P. Bouret, Esq.
2033 N. MAIN STREET
WALNUT CREEK, CA 94596-3774
TEL: (925) 210-0400
FAX: (925) 210-0401**

**Hearing Date & Time: August 30, 2006, 6:00 p.m.
Hearing Room 3 East, Room 107
City of Oakland, One Frank H. Ogawa Plaza, Oakland, CA 94612
Subject Property: 3849 Martin Luther King Jr. Way
APN: 012-0964-001-00
Operators/ABC Licensees: Abdul Alawdi, Hamdan Alawdi
dba Gallaghers Liquors
Property Owner: Ali Saleh**

The Parties to these proceedings were with where applicable appearances are noted:

1) Ali Saleh Mohamed, the owner of record of the improved lot located at 3849 Martin Luther King Jr. Way, Oakland, California, APN: 005 -0454-001 ("the Subject Property" or "the Property"), and licensee of the California Department of Alcoholic Beverage Control, who did not attend the hearings on August 30, 2006, and

2) Abdul Alawdi and Hamdan Alawdi, the store operators, doing business as Gallaghers Liquors on the Property. Operators were duly represented by Edward M. Higginbotham, Esq., 1096 Pine Street, Suite 501, San Francisco, CA 94109, and the

3) City of Oakland, a Municipal Corporation ("the City"). The City was represented by Ethan Nasr, Esq. &

1 of 18

Laura Blair, Esq., Neighborhood Law Corps Attorneys, Office of the City Attorney [John A. Russo, City Attorney], One Frank H. Ogawa Plaza, 6th Floor, Oakland, CA 94612.

The parties present offered written exhibits and documentary evidence, photographs, a DVD (City only), oral testimony, letter briefs, police reports, Oakland Municipal codes, California case authority and citations, costs for upgrades by operators, costs by Oakland Police Department and Office of City Attorney for enforcement, opinions, statements and argument by concerned members of the general public, the neighborhood and various organizations, the police and others. Opening positions and closing positions were requested by the Hearing Officer Marc P. Bouret from counsel for the operators and from the City of Oakland and it was submitted by the parties. No subsequent hearings were deemed required.

Commencing in November of 2003, the Oakland Police Department with community assistance presented evidence regarding the presence of ongoing nuisance and criminal activity at Gallaghers Liquors, located at 3849 Martin Luther King Jr. Way at Apgar Street in Oakland, California. The sale of alcoholic beverages from this liquor store is conditionally permitted under C-10, Local Retail Commercial Zone. The property alcohol sales are Deemed Approved (previously, prior legal non-conforming) under Oakland Planning Code Section 17.156. The hearing was called pursuant to that section for alleged violations

of the deemed approved performance standards and due to the alleged public nuisance activities associated with the property.

The deemed approve ordinance was enacted in 1993 by the City Council with the purpose of mitigating the adverse impacts of non-conforming alcohol outlets in Oakland neighborhoods. The Deemed Approved ordinance made all legal non-conforming alcoholic sales activities "Deemed Approved" (O.M.C. Section 17.156.190), which then subjects them to a listed set of conditions or "Deemed Approved Performance Standards" (See O.M.C. Section 17.156.190). Upon violation of the performance standards and after a public hearing, additional conditions may be imposed or revocation may be sought (O.M.C. Section 15.156.140).

In 1996 the Deemed Approved Ordinance was challenged by a coalition of alcoholic beverage retailers and eventually it was examined by the Court of Appeals. The Court held that the ordinance does not improperly regulate preexisting alcohol retailers: "No business-not even an alcoholic beverage sales establishment regulated by state law-has a vested right to conduct its business in a manner that attracts public nuisance and encourages criminal activities near its premises." (*City of Oakland v. Superior Court* (1996) 45 Cal.App. 4th 740, 741, 758)

As a result of documents submitted at hearing and testimony received, it appeared that multiple levels of the

ordinance have been impacted. Section 17.156.090 of the Oakland Municipal Code, Section A, provides that the establishment shall retain the deemed approved status only if it "does not result in adverse effects to the health, peace, or safety of persons residing or working in the surrounding area." The area adjacent to the store has been the subject of 300 plus police calls in the last two years. It received 56% more calls than the next highest store call numbers. Calls relate to a wide variety of situations, such as assault, battery, public intoxication, repeated drug dealing, both selling and buying. Community letters detail safety concerns of nearby community members, some of whom allegedly were in fear of even attending the public hearing due to retaliation concerns (See Exhibit "B" to City Exhibits, on a citizens being threatened with a knife while passing the store and car "side shows"), overuse of the parking lot, loud music & noise and loitering.

Standard "C", of Section O.M.C. 17.156.090, allows the deemed approved status to be retained only if there are not repeated nuisances within the premises or in close proximity to the premises. The crime reports for in front of or inside the store since February 2003 included multiple instances of the sale or possession of narcotics, loitering, verified by footage from a OPD surveillance film on June 20, 2006, with continued loitering and narcotic activity in and around the property.

Standard D, OMC 17.156.090, allows retention of the Deemed Approved Standards, only if it "does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute." A June 20, 2006 arrest report noted the corner of Apgar and Martin Luther King Jr. Way, the Gallaghers corner location, is known "to be a high narcotic trafficking location." There are daily citizen complaints about the dealing (See City Exhibit A, RD# 06-051899).

Operators/ABC Licensees Abdul Alawdi and Hamdan Alawdi dba Gallaghers Liquors, presented statements that they have made most if not all of the improvements recommended by the City, including the video equipment, lighting, open visibility into the store, report logs, cleaning up outside refuse or garbage, among other actions and steps. They express they have "an open door" policy with reference to the City and its agencies, welcoming suggestions at any time, and argue that the store remains in compliance.

Operators state that the real problem here are the criminals and drug dealers to which the operators have no control. Photographs were presented blown up of signage, outside equipment as installed, and other improvements. A remote website remains available to the City to view the outside of the building (i.e. <http://75.10.247.17>). The operators express that they are on the "City team," but do not pretend to have "all the answers" to these difficult

urban problems, including a lack of sufficient educational and/or employment youth programs and/or opportunities (as also expressed by some public-member witnesses from the community).

After duly considering information provided at hearing orally and/or in writing, the following set forth below shall be imposed as conditions of approval on the Subject Property pursuant to Oakland Municipal Code Chapter 17.156.140. These conditions of approval are hereby imposed on the use of 3849 Martin Luther King Jr. Way, Oakland, County of Alameda, California, Assessor's Parcel Number 012-0964-001-00 (the Property) pursuant to Oakland Municipal Code sections 17.156.140 and 1.08. These conditions touch and concern the use of the Property and shall run with the land and be binding on the current owners and interest holders and all successors in interest. These are imposed pursuant to the decision of the City of Oakland's Administrative Hearing Officer. The continued use of the subject property is authorized only pursuant to compliance with the paragraphs set forth below.

Further, pursuant to OMC section 17.156.220 (Violations and Penalties), subpart F, and 1.08.070 and 1.08.080 (c) a violator is liable for such costs, expenses and disbursements paid or incurred by the city in correction, abatement, and prosecution of the violation. A copy of said costs, expenses and disbursements are attached

hereto as Exhibit "A", grand total \$ 7,172.20. Said payment shall be made to the "City of Oakland" no later than January 5, 2007. Operator expressly stipulates that if Operator has not paid said amount by the due date, judgment may be entered by any court of competent jurisdiction against Operator in favor of the City. Said amounts represents part of the cost associated with abating the nuisances underlying this administrative hearing.

CONDITIONS OF APPROVAL

1. Visibility into the Deemed Approved Activity

Within 90 days of this decision, unless an extension is granted by the City of Oakland, Owners shall remove all obstructions to visibility through windows and the door (when closed). This includes but is not limited to advertising, signage, and store fixtures and furniture. Any existing external security bars or mesh shall be removed and no such re-installed. To ensure that the glass in the windows are secure without the bars, clear protective film may be applied to the glass so long as the view in and out of the premises is not obstructed. External gates may be installed to secure the windows and door when not open for business, provided that they do not obstruct visibility when open. There shall be 90% clear visibility in the windows at all times when open for business. There shall be 100% visibility into the premises through the door open or closed. Neither Operators nor Owners shall apply

for any permit from the building or zoning departments to board up any windows.

2. Façade Improvement

Within 90 days of this decision, unless an extension is granted by the City of Oakland, the Owner shall submit to an ABAT case planner a revised façade improvement plan to increase visibility into the establishment and reduce the blight associated with the property. The façade improvement plan shall be subject to design review by the City's Façade Improvement Grant Program and according to the terms of this Decision. The Owner shall complete performance of the improvement plan within six months of this decision. Owner will forward any applications in process at the time of this Decision to an ABAT case planner within 20 days of this decision.

3. Lighting

Exterior lighting of the exterior façade of the Property shall be maintained to provide enough illumination to make easily discernable the appearance and conduct of all persons on or about the premises. Such illumination shall remain lit during all hours of darkness when the business is open. The position of such lighting shall not disturb the normal privacy and use of any neighboring residences. The interior lighting will provide sufficient lighting such that an enforcement officer may clearly see

time to a website accessible by the Oakland Police Department and other individuals who receive approval for access from the Oakland Police Department. The camera will allow for remote control of the camera's movement by the Oakland Police Department and will be encased in protective material to avoid tampering or destruction of said camera. The camera shall store a minimum of seven days of video on tape or hard drive and such data shall be accessible to the Oakland Police Department.

6. Natural Surveillance

As part of the proposed façade improvement and interior remodel, the cash register shall be located relative to the entrance and window so that the clerk standing at the register will have a clear unobstructed view of the entire premises and the sidewalk in front of the entire length of the premises. Shelving shall be no higher than five feet. A wall to wall mirror at ceiling height will be installed along the entire back wall of the premises to allow visibility down the aisles between the shelving by the clerk standing at the cash register and by officers looking through the front window. Owner has 60 days from date of this decision to install said mirror.

7. Discouraging Loitering

The owners, operators, managers, security guards,

and employees (collectively, "the operators") of this deemed approved activity shall make appropriate efforts to discourage loitering from the property including calling the police to ask that they remove loiterers who refuse to leave. Persons hanging around the exterior of the establishment with no apparent business for more than twenty minutes shall be asked to leave. Techniques discussed in the manual entitled "Loitering: Business and Community Based Solutions" may be used and are recommended by the Alcoholic Beverage Action Team. The Operators shall keep a loitering log and record all their efforts to reduce loitering. The log shall include descriptions of loiterers, dates, and times of incidents and describe what action was taken by the Operators and the response by the loiterer(s). A copy of this log shall be mailed to ABAT by the last day of each month commencing on the last day of the month following the signing of this agreement. A copy of this log shall be made available to ABAT upon request. Oakland Police Department shall assist Operator in identifying problem individuals, and Operator shall not sell to these individuals.

8. **Signage**

At least one sign, one square foot minimum, shall be posted and maintained in a legible condition at eye level at each public entrance to the building prohibiting littering and loitering. Required signage regarding open containers and drinking in public shall also be maintained in legible condition with at least one sign on each side of

11 of 18

the public entrance.

9. **Trash Container**

The Operators shall install and maintain one, non-flammable, metal trash container on the property exterior to be emptied daily and brought inside over night.

10. **Litter Cleanup**

The Operators shall clear the sidewalks adjoining the Property, plus one hundred (100) feet beyond the property lines along the street on an hourly basis or more as needed to control litter. In addition to the requirements of Business & Professions Code section 25612.5 (sweep or mechanically clean weekly), the Operator shall steam clean or high-pressure wash the sidewalk within the bounds of the Property once per month.

11. **Graffiti**

The Operators shall remove all graffiti within 48 hours of its application at the Property or of receiving notice of its presence.

12. **Hours of Operation**

The hours of operation shall commence no earlier than 7:00 a.m. and end no later than 9:00 p.m.

13. **Employees on Duty**

A minimum of two clerks shall be on duty after
12 of 18

5:00pm.

14. Sale of Alcoholic Beverages:

Within 60 days of this decision, and continuing following the completion of the proposed façade improvement and interior remodel, the footprint of the display of alcohol products (excluding the alcohol displayed behind the counter) shall be less than 15% of the total floor space excluding the refrigeration units. The other 85% of the floor space shall be for the sale of groceries and convenience items. All overstock of alcoholic beverages and other products will be kept in a storage facility or back storage room out of public view. (If necessary the operator shall construct a storage area in the back of the premises for this purpose.)

15. Restricting the Sale of Certain Items

Operator agrees not to sell, give away or otherwise provide single cigarettes, single disposable cups, unpackaged ice or any drug paraphernalia.

16. Packaging Single Cans of Beer in Clear Plastic Bags

Operators agree that they and/or any employee shall only provide clear or transparent plastic bags for packaging of single cans of beer.

17. "Street Merchandise"

13 of 18

Operators agree that they and/or any employee shall not purchase goods, articles, merchandise or any other items of value from a person or persons who is not a bona-fide wholesaler, either on the property or during the course and scope of the business located on this property.

18. **Firearms**

Operators agree that any firearm or other deadly weapon kept on this property shall be surrendered to any peace officer for inspection upon request. Firearms kept on the premises must be registered to the business owner with the State of California automated firearms system.

19. **Regulations**

This use shall conform to all provisions and conditions of the State of California Department of Alcoholic Beverage Control license. The state license and state conditions shall be posted along with these Deemed Approved Conditions of Approval in a place visible to the public. This use shall also conform to all State Retail Operating Standard, Section 25612.5 of the Business and Professions Code and local Performance Standards, Section 15210, where applicable including any future changes in the above regulations. These Conditions shall be forwarded to the Department of Alcoholic Beverage Control.

20. **Obedience to Existing Laws**

Operator(s) agree to obey all laws, federal, state, and local. It is acknowledged that this agreement is violated upon the conviction of any operator or any employee arrested for violation of any federal, state or

local law or ordinance committed on the property or during the course and scope of the business located on this property.

21. Deemed Approved Fees

Operator agrees to maintain records and proof on the premises that the Deemed Approved Fees for the current year are paid in accordance with City Ordinance No. 11624 C.M.S. A paid receipt, stamp or decal issued by the City of Oakland or cancelled check shall be considered as proof of payment.

22. Beat 6X NCPC Meetings

Operator and Owner shall attend and participate in all meetings of the Beat 6X NCPC for which they receive notice including notice of regularly scheduled meetings. (Contact Annie Sloan, Neighborhood Services Coordinator at (510) 777-8719 for a schedule.)

23. Security

Within 45 days of the date of this order, the Operators shall contract with a Private Patrol Operator, bonded and licensed by the California Department of Consumer Affairs, Bureau of Security and Investigative Services, to provide a licensed security guard to be on duty in and about the property whenever Gallaghers Liquors is open for business. The security guard shall maintain order at the Subject Property to the best of his or her ability, including the goals of preventing harassment of pedestrians, preventing loitering and smoking within twenty feet of the store, preventing blockage of the sidewalks within twenty feet of the outside walls, and preventing

activities which would interfere with the quiet enjoyment of the property by customers, nearby residents, and owner and occupants of adjoining properties. The security guard shall request that all persons hanging around the exterior of the establishment with no apparent business for more than 10 minutes to leave. Said guard shall perform hourly patrols of the Subject Property clearing these areas of loiterers and maintain a log documenting their patrols and efforts taken to reduce loitering.

The efficacy and effectiveness of the presence of a full time security guard shall be reviewed by occupant/tenant and a representative of the City at 120 days and again at 240 days from the date of this Order, either occupier and/or City may request modification of section 23, after notice and hearing, if necessary.

24. Employee Training and Instruction

Within 30 days of the date of order the operators shall create a set of house rules and present a copy to ABAT for review and approval. Within this time period, all employees shall be given a copy of the rules and shall sign a declaration that they have read the rules and agree to abide by them. Employees hired after the effective date of the house rules shall also be required to read and sign a declaration and forward these to ABAT. These rules shall be posted in a place visible to the public, and shall contain at a minimum, and shall contain at a minimum:

- The Performance Standards of Section 17.156.090 and the Retail Operating Standards of Business and Professions Code section 25612.5.

- Any special conditions on the existing ABC alcohol license.

- A house rule that requires all sales people to check the identification of all customers purchasing alcohol who appear to be under the age of thirty years of age.
- A house rule that does not allow smoking or loitering within twenty-feet of the store.
- Other house rules shall be established as needed to reduce: Loitering, drinking in public, drug dealing, litter, and other problems warranted by activities at the property.
- Operator and all employees shall attend ABC LEAD training classes.

25. Time for Compliance

Unless another later date is specified herein or unless an extension is granted by the City of Oakland, all conditions referred to herein shall be fully complied with within 10 calendar days of this decision.

26. Incorporation Into The Lease

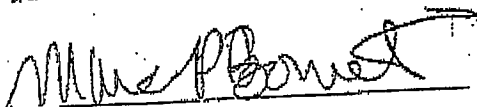
Owner and Operator agree that the conditions stated herein shall be incorporated as terms of the lease between them for the property. Owner agrees that its successors in interest, assigns, heirs and transferees shall be bound by obligations on the Owner herein, and they shall attach and incorporate all conditions stated herein into any lease entered into with any future operator of a retail alcoholic beverage store at the Property, and said lease shall contain a prohibition on illegal and nuisance activities at the Property.

27. Inclusion of Conditions in State Department of
Alcohol Beverage Control License

Prior to signing of State Department of Alcoholic
Beverage Control zoning affidavit, the applicant shall
submit a letter to staff signed by the applicant addressed
to the State Department of Alcoholic Beverage Control
stipulating that they wish to include conditions number 1 -
22 in the conditions of their ABC license.

NOTICE OF APPEAL RIGHTS: OMC 17.156.150: "The
determination of the Administrative Hearing Officer shall
become final ten calendar days after the date of the
decision unless appealed to the City Planning Commission in
accordance with Section 17.156.160" (in part).

IT IS SO ORDERED:



Marc P. Bouret Esq.,
DEEMED APPROVED ADMINISTRATIVE HEARING OFFICER

DATED: October 2, 2006.