

MICHAEL LOGRANDE
CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

GARY BOOHER
PATRICIA BROWN
R. NICOLAS BROWN
SUE CHANG
ANIK CHARRON
LARRY FRIEDMAN
DANIEL GREEN
LOURDES GREEN
ERIC RITTER
MICHAEL S.Y. YOUNG

CITY OF LOS ANGELES
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

DEPARTMENT OF
CITY PLANNING

S. GAIL GOLDBERG, AICP
DIRECTOR

OFFICE OF
ZONING ADMINISTRATION

200 N. SPRING STREET, 7TH FLOOR
LOS ANGELES, CA 90012

(213) 978-1318
FAX: (213) 978-1334

www.lacity.org/PLN

October 5, 2007

John C. Gambina (A)(O)
Dorothy M. Gambina Trust
3020 Calle Juarez
San Clemente, CA 92673

George and Salam Wanies (Op)
Canyon Market
7421 Hillrose Avenue
Tujunga, CA 91042

Hank Krastman, Ph.D (R)
21000 Devonshire Street, #101B
Chatsworth, CA 91311

CASE NO. DIR 2004-2104(RV)(PA1)
REVIEW OF CONDITIONS
7421 Hillrose Street
Sunland Tujunga-Lake View Terrace-
Shadow Hills-East La Tuna Canyon
Planning Area
Zone : [Q]C1-1VL
D. M. : 207B197
C. D. : 2
CEQA: ENV 2004-2105-CE
Fish and Game : Exempt
Legal Description : Lots 77 and 78
of the Zachau Tract

Department of Building and Safety

Pursuant to Los Angeles Municipal Code Section 12.27.1 and Condition No. 21 of Case No. DIR 2004-2104(RV) dated September 23, 2004, I hereby DETERMINE:

that Canyon Market is in substantial compliance and conditions in DIR 2004-2104(RV) are imposed, as amended, in order to ensure adverse impacts are not caused by a potential public nuisance, and to modify Condition Nos. 7 and 18 as requested,

upon the following additional terms and conditions:

1. All other use, height and area regulations of the Municipal Code and all other applicable government/regulatory agencies shall be strictly complied with in the development and use of the property, except as such regulations are herein specifically varied or required. (*Standard Condition*)
2. The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the Zoning Administrator to impose additional corrective conditions, if, in the Administrator's opinion, such conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property. (*Standard Condition*)

3. All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence. (*Standard Condition*)
4. The permitted hours of operation are 7 a.m. to 10:30 p.m., daily. (*Condition No. 4, DIR 2004-2104(RV)*)
5. The business owner, manager, and staff, shall abide by all laws and established conditions. They shall properly manage the establishment to discourage illegal activity on the premises. (*Condition No. 5, DIR 2004-2104(RV)*)
6. ~~The business owner, managers and security guard shall be familiar with these conditions and shall sign a statement which shall be submitted to the Zoning Administrator within 30 days of the effective date of this determination indicating that they have read the list of these conditions and shall implement them as required. These conditions shall be posted in the business for all City staff to review. (*Condition No. 6, DIR 2004-2104(RV)*) (Refer to Nexus between the Conditions and the Nuisance, below)~~
7. ~~One uniformed, State licensed security guard hired by the property owner shall patrol in and outside the premises 24 hours a day. The guard shall control loitering, drug sales on the site, and protect school children waiting at the bus stop next to the market by asking people to leave or calling the police. (*Condition No. 7, DIR 2004-2104(RV)*) (Refer to Nexus between the Conditions and the Nuisance, below)~~
6. [*Added by Zoning Administrator*] The subject action shall function as a grant and shall be for a seven (7) year time period. Said time period to begin on the effective day of this action shown elsewhere in the report. If the owner of the land wishes to continue operation as granted herein, he must file a new application with the Office of Zoning Administration. Said application should be filed no later than three months prior to the expiration of this grant and said application must be made on the appropriate forms and fees paid. (*Refer to Nexus between the Conditions and the Nuisance, below*)
7. [*Added by Zoning Administrator*] Approval of Plans Review. In order to provide for reexamination of the matter one year after the operation and if the applicant/operator or owner of the land wishes to continue operation as herein authorized, an "Approval of Plans" shall be filed. The applicant may amend the authorization to include expanded space if the expansion is to provide American with Disabilities Act access or larger bathrooms. The expiration period may be extended upon request without an additional fee.

Said application must be filed no later than three months prior to the expiration of this grant and said application must be made on the appropriate forms and fees paid. The application shall be accompanied by the payment of appropriate fees, as governed by Section 19.01-1 of the Los Angeles Municipal Code, and must be accepted as complete by the Planning Department public counter. The completed application shall be accompanied by owner notice labels for abutting properties include the Council District, Los Angeles Police Department vice unit in the local

district office, and individuals on the interested parties list related to the subject authorization.

The applicant/owner shall provide appropriate documentation to substantiate ongoing compliance with each of the conditions contained herein at the time of filing the Approval of Plans review application. An application without such documentation shall be accompanied by a fee payment governed by Section 19.01-C of the Los Angeles Municipal Code. Further, any requested modification to the discretionary action shall also result in the increased fee. The applicant shall submit proof that at least a summary of the compliance documentation was mailed to address labels noted above which included a statement that "In compliance with the conditions of approval, the attached documentation is mailed to interested parties. To assist the Planning Department in determining if a public hearing shall be held, interested parties should contact the Planning Department."

The Zoning Administration may elect to waive the public hearing if the applicant has fully complied with the conditions of approval, continued operation of the facility would not adversely impact the surrounding community, and the matter is not likely to evoke public controversy. (*Refer to Nexus between the Conditions and the Nuisance, below*)

8. *[Added by Zoning Administrator]* Complaint Response/Community Relations. Within 30 days of the decision date, the operator shall submit proof to the Office of Zoning Administration of implementing the following: (*Refer to Nexus between the Conditions and the Nuisance, below*)
 - a. Monitoring of complaints. The property owner/operator shall coordinate with the local division of the Los Angeles Police Department regarding appropriate monitoring of community complaints concerning activities associated with the subject facility.
 - b. Complaint monitoring. A 24-hour "hot line" phone number shall be provided for the receipt of complaints from the community regarding the subject facility and shall be:
 - 1) Posted at the entry.
 - 2) Posted at the Customer Service desk.
 - 3) Provided to the immediate neighbors, schools, and local neighborhood association, if any.
 - c. Log. The property owner/operator shall keep a log of complaints received, the date and time received and the disposition of the response. The log shall be retained for consideration by the Zoning Administrator.
9. No interior noise shall be audible beyond the exterior of the business. (*Condition No. 8, DIR 2004-2104(RV)*)

10. The rear door shall have an automatic closing arm installed to keep it closed at all times. The door shall be locked to the outside, except for deliveries, so no one may enter during business hours. A sign on the door shall direct patrons to enter from the front of the business. (*Condition No. 9, DIR 2004-2104(RV)*)
11. No flashing signs of any type are permitted. All outside lights for the parking lot and top of the bar shall be shielded so as not to be directly visible to any adjacent neighbor. The exterior lighting shall be increased to the satisfaction of the Foothill Division Senior Lead Officer (Officer Carpenter). (*Condition No. 10, DIR 2004-2104(RV)*)
12. No exterior uses except for parking are permitted. (*Condition No. 11, DIR 2004-2104(RV)*)
13. ~~All outstanding Building and Safety violations shall be resolved within 90 days of the effective date of this determination and proof provided to the Zoning Administrator. (*Condition No. 12, DIR 2004-2104(RV)*) (Refer to Nexus between the Conditions and the Nuisance, below)~~
14. ~~All staff shall attend the LAPD, "STAR" alcohol service training program, and proof of attendance shall be submitted to the Zoning Administrator within 90 days of the effective date of this determination. Staff, request of the owner was to bring verification to the Public Hearing. (*Condition No. 13, DIR 2004-2104(RV)*) (Refer to Nexus between the Conditions and the Nuisance, below)~~
13. The site shall be cleaned on a daily basis. Trash pick up is allowed only between 9 a.m. and 6 p.m. daily. All delivery vehicles shall use the rear parking lot to deliver goods. (*Condition No. 14, DIR 2004-2104(RV)*)
15. ~~The applicant shall post a 2-foot by 2-foot sign in both parking areas reading: "No loitering or consumption of alcohol in public allowed". A picture of the sign shall be sent to the Zoning Administrator within 30 days of the effective date of this letter. (*Condition No. 15, DIR 2004-2104(RV)*) (Refer to Nexus between the Conditions and the Nuisance, below)~~
16. ~~All non-operator vehicles, trailers and junk, shall be removed from the site within 30 days of the effective date of this determination. A picture shall be submitted to the Zoning Administrator as proof. (*Condition No. 16, DIR 2004-2104(RV)*) (Refer to Nexus between the Conditions and the Nuisance, below)~~
17. The operator shall use an electronic age verification machine to ensure only legal age people buy alcohol. (*Condition No. 17, DIR 2004-2104(RV)*)
18. ~~The property owner shall secure the entire site with a 6-foot fence/wall where none currently exists including rolling gates and the gates must be locked between 10:45 p.m. and 6:45 a.m., daily. (*Condition No. 18, DIR 2004-2104(RV)*) (Refer to Nexus between the Conditions and the Nuisance, below)~~

19. The site shall be cleaned daily. *(Condition No.19, DIR 2004-2104(RV)) (Condition No. 19, DIR 2004-2104(RV))*
20. ~~The property owner shall post a 2-foot by 2-foot sign at the main driveway on Hillrose Street, with a phone number for community contact. The phone number shall be for 24-hour calling each day. *(Condition No. 20, DIR 2004-2104(RV)) (Refer to Nexus between the Conditions and the Nuisance, below)*~~
21. ~~The business owner shall file a Plan Approval application (\$576) within 60 days of the effective date of this determination to allow for a review of the effectiveness in implementing all conditions of this action and whether the public nuisance problems have been eliminated. Failure to file the plan approval may result in revocation of the subject use. *(Condition No. 22, DIR 2004-2104(RV)) (Refer to Nexus between the Conditions and the Nuisance, below)*~~
22. Within 30 days of the effective date of the subject revocation action, or any subsequent revocation action associated with the subject proceedings, an agreement to comply with all the terms conditions established herein shall be recorded in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Zoning Administrator for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Zoning Administrator for attachment to the subject case file. *(Condition No. 22, DIR 2004-2104(RV))*
23. *[Added by Zoning Administrator]* Advice to Property Owner and Operator: Pursuant to Section 12.29 of the Los Angeles Municipal Code, every violation of the determination is punishable as a misdemeanor and shall be punishable by a fine of not more than \$1,000 or by imprisonment in the county jail for a period of not more than six months, or both such fine and imprisonment. *(Refer to Nexus between the Conditions and the Nuisance, below)*

TRANSFERABILITY

This authorization runs with the land. In the event the property is to be sold, leased, rented or occupied by any person or corporation other than yourself, it is incumbent upon you to advise them regarding the conditions of this grant.

VIOLATIONS OF THESE CONDITIONS, A MISDEMEANOR

It shall be unlawful to violate or fail to comply with any requirement or condition imposed by final action of the Director of Planning, Board or Council. Such violation or failure to comply shall constitute a violation of Chapter 1 of the Municipal Code and shall be subject to the same penalties as any other violation of such Chapter. (Section 12.27.1 of the Municipal Code)

Every violation of this determination is punishable as a misdemeanor and shall be punishable by a fine of not more than \$1,000 or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment. (Section 11.00-M of the Municipal Code)

APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after OCTOBER 22, 2007, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at www.lacity.org/pln.** Public offices are located at:

Figueroa Plaza
201 North Figueroa Street,
4th Floor
Los Angeles, CA 90012
(213) 482-7077

Marvin Braude San Fernando
Valley Constituent Service Center
6262 Van Nuys Boulevard, Room 251
Van Nuys, CA 91401
(818) 374-5050

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

NOTICE

The applicant is further advised that all subsequent contact with this office regarding this determination must be with the Zoning Administrator who acted on the case. This would include clarification, verification of condition compliance and plans or building permit applications, etc., and shall be accomplished **BY APPOINTMENT ONLY**, in order to assure that you receive service with a minimum amount of waiting. You should advise any consultant representing you of this requirement as well.

INDEMNIFICATION

The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this approval which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

FINDINGS OF FACT

After thorough consideration of the statements contained in the application, the plans submitted therewith, the report of the Zoning Analyst thereon, the statements made at the public hearing on August 24, 2007, all of which are by reference made a part hereof, as well as knowledge of the property and surrounding district, I find as follows:

BACKGROUND

The subject property is a sloping, irregular-shaped, corner, record lot, consisting of approximately 0.43 acres, having a frontage of approximately 78 feet on the north side of Hillrose Street and an approximate depth of 175 feet. The subject site is developed with a one-story commercial structure occupied by the subject Canyon Market and associated parking.

Properties to the north of the site are zoned R1-1 and OS-1XL and is open space and the Los Angeles County Flood Control District. Properties to the south of Hillrose Street are zoned R1-1 and are developed with a two-story single-family dwellings. Properties to the west of Tujunga Canyon Boulevard are zoned R1-1 and R3-1 and are developed with one- and two-story single-family dwellings and apartments. Properties to east of the site are zoned R1-1 and are developed with single-family dwellings.

Tujunga Canyon Boulevard, adjoining the property to the west, is a Collector Street and is fully improved.

Hillrose Street, adjoining the property to the south is a Collector Street and is fully improved.

Previous zoning related actions on the site include:

Certificate of Occupancy - Issued on July 25, 2007, for removal of 8 feet by 12 feet storage addition (from permit 52VN35121), close up exterior wall, and replace exterior post per civil engineer's detail. To abide by Order to Comply issued May 2003.

Case No. DIR 2004-2104(RV) - On September 23, 2004, the Zoning Administrator imposed conditions and required the modification of the operation of Canyon Market, in order to mitigate continuing adverse impacts on residential uses adjacent to its operation. The decision of the Zoning Administrator was appealed to the City Council (CF 04-2233) and at the meeting held on January 12, 2005, denied the applicant's appeal.

Department of Building and Safety Order to Comply - Issued on May 14, 2003. On May 9, 2003, the Los Angeles Department of Building and Safety (LADBS) conducted an inspection of the premises noted and observed the following LAMC violations:

- Non-permitted 8 feet by 4 feet patio.
- 8 feet by 8 feet non-periled addition to the left side of the structure.
- Non-permitted patio cover in the rear of the structure.
- Use of the rear lot for the storage of vehicles, inoperative vehicles, appliances, trash and debris without department approvals.
- Trailer in the rear of the lot occupied without approvals.

The LADBS file was officially closed on June 23, 2006.

City Planning Commission Case No. 95-0358 CPU - On April 7, 1997, the City Planning Commission adopted the community plan revision for Sunland-Lake View Terrace-East La Tuna Canyon District Plan and was approved by the City Council on March 23, 1999. The parcel was designated [Q]C1-1VL. The "Q" condition states that residential uses shall be limited to those first permitted in the RD5 Zone.

PUBLIC HEARING

On September 23, 2004, in DIR 2004-2104(RV), it was determined that the operation of the Canyon Market constituted a public nuisance and the Office of Zoning Administration imposed corrective conditions pursuant to LAMC Section 12.27.1 in order to mitigate adverse impacts caused by the operation of the market.

Condition No. 21 of the determination of September 23, 2004, stated:

"The business operator shall file a Plan Approval application (\$576) within 60 days of the effective date of this determination to allow for a review of the effectiveness in implementing all conditions of this action and whether the public nuisance problems have been eliminated."

The due date was August 8, 2005. The applicant filed the instant application in compliance with the above. However, he was nearly two years late in filing. Further, the applicant requested deletion of Condition No. 7 requiring a security guard and Condition No. 18 requiring the entire site to be secured by a 6-foot fence/wall.

A public hearing was held on August 24, 2007 and attended by the operator (i.e., applicant), representative of the Second Councilmanic Office, and several interested parties. The purpose of the hearing was to obtain testimony of the property owner and/or business operator, plus affected and/or interested persons regarding the operation of the Canyon Market located at 7421 Hillrose Street. The public is also invited to submit written comments prior to the hearing. No oral or written testimony was presented in opposition to the request. In fact, all parties who spoke praised the current operator for his success in rectifying prior issues

Staff of the Office of Zoning Administration met with the operator between 11 a.m. and 12 noon on August 2, 2007, at the subject Canyon Market. Staff observed the following conditions of operation with respect to City Council Action CF-04-2233:

1. All other use, height and area regulations of the Municipal Code and all other applicable government/regulatory agencies shall be strictly complied with in the development and use of the property, except as such regulations are herein specifically varied or required.

Comment: Zoning Administrator's discretion.

2. The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the Zoning Administrator to impose additional corrective conditions, if, in the Administrator's opinion, such conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.

Comment: Zoning Administrator's discretion.

3. All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.

Comment: There was no graffiti observed on the site. What graffiti was there has been painted over.

4. The permitted hours of operation are 7 a.m. to 10:30 p.m., daily.

Comment: The posted hours on the front door were 7 a.m. to 10:30 p.m., Monday through Sunday.

5. The business owner, manager, and staff, shall abide by all laws and established conditions. They shall properly manage the establishment to discourage illegal activity on the premises.

Comment: The operator was familiar with the established conditions, had them on file, and appeared to be operating a responsible business.

6. The business owner, managers and security guard shall be familiar with these conditions and shall sign a statement which shall be submitted to the Zoning Administrator within 30 days of the effective date of this determination indicating that they have read the list of these conditions and shall implement them as required. These conditions shall be posted in the business for all City staff to review.

Comment: The business operator and employees were familiar with the conditions of operation. However, there was no security guard on the premises, and the operator is requesting relief from this condition.

7. One uniformed, State licensed security guard hired by the property owner shall patrol in and outside the premises 24 hours a day. The guard shall control loitering, drug sales on the site, and protect school children waiting at the bus stop next to the market by asking people to leave or calling the police.

Comment: There was no security guard on the premises and the operator is requesting relief from this condition. Also, information from the file states that a security guard would be cost prohibitive to the business and would probably force them to close.

8. No interior noise shall be audible beyond the exterior of the business.

Comment: There is no audible noise emanating from the store.

9. The rear door shall have an automatic closing arm installed to keep it closed at all times. The door shall be locked to the outside, except for deliveries, so no one may enter during business hours. A sign on the door shall direct patrons to enter from the front of the business.

Comment: Staff confirmed that the rear door (actually a side door) is locked from the outside and, also, observed that all deliveries are made through the front door. A sign is painted on the structure directing patrons to the front.

10. No flashing signs of any type are permitted. All outside lights for the parking lot and top of the bar shall be shielded so as not to be directly visible to any adjacent neighbor. The exterior lighting shall be increased to the satisfaction of the Foothill Division Senior Lead Officer (Officer Carpenter).

Comment: Staff observed no flashing signs. From staff's vantage point, it appeared that all outside lights for the parking lot and top of the store is shielded so as not to be directly visible to any adjacent neighbor. Staff contacted Senior Lead Officer Frank Avila and he informed staff that the site is secure and what was once a public nuisance has been abated.

11. No exterior uses except for parking are permitted.

Comment: In compliance.

12. All outstanding Building and Safety violations shall be resolved within 90 days of the effective date of this determination and proof provided to the Zoning Administrator.

Comment: Staff, research indicated that all LADBS violations are closed. The LADBS file was officially closed on June 23, 2006.

13. All staff shall attend the LAPD, "STAR" alcohol service training program, and proof of attendance shall be submitted to the Zoning Administrator within 90

days of the effective date of this determination. Staff, request of the owner was to bring verification to the Public Hearing.

Comment: The operator stated that he attended STAR training in June of 2006, but could not give staff written verification of such at the time of the site inspection.

14. The site shall be cleaned on a daily basis. Trash pick up is allowed only between 9 a.m. and 6 p.m. daily. All delivery vehicles shall use the rear parking lot to deliver goods.

Comment: The site was generally neat and trash free.

15. The applicant shall post a 2-foot by 2-foot sign in both parking areas reading: "No loitering or consumption of alcohol in public allowed". A picture of the sign shall be sent to the Zoning Administrator within 30 days of the effective date of this letter.

Comment: Signs are in both parking areas. In compliance (see photos).

16. All non-operator vehicles, trailers and junk, shall be removed from the site within 30 days of the effective date of this determination. A picture shall be submitted to the Zoning Administrator as proof.

Comment: No vehicles, trailers or junk were observed on the site (See photos).

17. The operator shall use an electronic age verification machine to ensure only legal age people buy alcohol.

Comment: In compliance, the operator has an operable age verification machine.

18. The property owner shall secure the entire site with a 6-foot fence/wall where none currently exists including rolling gates and the gates must be locked between 10:45 p.m. and 6:45 a.m., daily.

Comment: Non-compliance; however, it is staff's opinion and observing the surrounding neighborhood, that a 6-foot fence/wall would detract from the semi-rural character of the neighborhood.

19. The site shall be cleaned daily.

Comment: Again, the site was generally neat and trash free.

20. The property owner shall post a 2-foot by 2-foot sign at the main driveway on Hillrose Street, with a phone number for community contact. The phone number shall be for 24-hour calling each day.

Comment: No phone number for a community contact was posted.

21. The business owner shall file a Plan Approval application (\$576) within 60 days of the effective date of this determination to allow for a review of the effectiveness in implementing all conditions of this action and whether the public nuisance problems have been eliminated. Failure to file the plan approval may result in revocation of the subject use.

Comment: The Plan Approval application was filed on May 18, 2006. The application was due on August 8, 2005.

22. Within 30 days of the effective date of the subject revocation action, or any subsequent revocation action associated with the subject proceedings, an agreement to comply with all the terms conditions established herein shall be recorded in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Zoning Administrator for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Zoning Administrator for attachment to the subject case file.

Comment: Non-compliance.

FINDINGS

As indicated in the administrative record, the operation of the Canyon Market located at 7421 Hillrose Street has changed substantially and is no longer a public nuisance. At this juncture, continued imposition of the conditions and commitment of the operator will reduce the potential for future impacts and ensure the use does not again constitute a public nuisance.

The Zoning Investigator reported the operator did not comply with several conditions of Case No. DIR 2004-2104(RV). However, no substantial harm occurred due to the operator's success in mitigating impacts noted in prior public hearings. Therefore, the conclusion is that use of the property is in substantial conformance with previously imposed conditions which should continue to be imposed to protect the community from adverse impacts.

Since conditions imposed in Case No. DIR 2004-2104(RV) were successful in mitigating the impacts, many of the conditions should remain and continue to provide protective measures for residents, businesses, and visitors to the area as well as to clearly define the operation parameters for use of the site. Thus, the purpose of the instant action is to clarify, modify, and augment the conditions in order to institute clear perimeters for the operation and to establish a benchmark for future review.

Findings were made in the prior discretionary action that affirmed the use as a public nuisance. Those Findings are reaffirmed by this action. The following discussion addresses

several conditions that were added or modified where additional rationale ensures “due process” is served.

THE NEXUS BETWEEN THE CONDITIONS AND THE NUISANCE

Findings made in Case No. 2004-2104(RV), affirmed the need to impose conditions. The instant grant only modifies the prior entitlement by amending, deleting, and adding conditions. Several conditions were deleted since compliance had occurred and no additional action is required. Other conditions were deleted by request of the project proponent (i.e., security and fencing) and deemed no longer needed to mitigate an impact. Further, several conditions were added.

The imposed conditions have a direct relationship between the condition imposed and the purpose of the condition to harmonize the proposed project with its surroundings and to mitigate potential environmental impacts. There are limitations in imposing conditions and four general rules of thumb in applying conditions include: (1) the jurisdiction must be acting within its police powers; (2) the condition must substantially further a legitimate public purpose; (3) the condition must further the same public purpose for which it was imposed; and (4) the property owner may not be required to carry a disproportionate load in furthering the public purpose (*California Land-Use and Planning Law, 9th edition*).^{1/}

The added or amended conditions are intended for the following reasons:^{2/}

The condition regarding the recording of an acknowledgment and agreement, is intended to put any subsequent owner on notice of the conditions herein.

The condition regarding the expiration of the authorization in seven (7) years is additional security and has become a standard condition on uses with a high propensity for failure or management turnover and those that historically have required revocation or other costly and time-consuming corrective measures. Basically, this condition is in case of an operator’s possible lack of sensitivity to the needs of the community and consideration of changed conditions in the surrounding area. The intent is that through this process, the Office of Zoning Administration is

^{1/} If a condition applied to a conditional use permit is not linked to some legitimate public need or overly burdens the projects, the condition imposed could be deemed a taking of property in violation of the U.S. Constitution's Fifth and Fourteenth Amendments (*Nollan v. California Coastal Commission* (1987) 97 L.Ed2nd 677). Where a regulatory taking has been found to occur, the courts will overturn the agency's action and may require the agency to pay the applicant compensation for the taking (*Dolan, supra*).

There are two specific tests applied when imposing conditions. One, the Nollan (1987) test is that there is a link (i.e., nexus) between the proposed project and imposed condition. In the Dolan (1994) test, conditions on development and use of property must be justified by a benefit that is “roughly proportionate” to the burden imposed. (*Dollan v. City of Tigard*).

^{2/} The discussion is meant to highlight several key conditions and is not an all-inclusive presentation of the purpose and intent of all the conditions.

able to further the City's goal to ensure that the establishment does not become a nuisance or require additional resources of LAPD and the State Department of Alcoholic Beverage Control.

The condition regarding "Approval of Plans" review in one year is in order to ensure that the set of conditions continue to protect the area from potential adverse impacts. A public hearing may be held to solicit information from the community. If there are problems during the year of operation, the Zoning Administrator will evaluate them and mitigate the impacts by modifying existing conditions or by adding additional conditions.

The condition regarding Community Out-Reach/Monitoring of Complaints/Report Activities, is in order to provide the information and means for the community to seek immediate response from the owner/operator in resolving problems that adversely impact the community. The condition will serve as a factor in determining compliance with the conditions of approval and identify the owner's/operator's success in mitigating adverse impacts. The condition raises the level of communication between the owner/operator and community, whereby encouraging the owner/operator to be responsible for resolving issues rather than depending on government. Telephone calls initiated by the owner/operator or employees of the establishment to law enforcement shall not be considered as grounds for non-issuance of the conditions. However, a high incidence of such calls may indicate the need for stricter conditions.

SECTION 12.27.1 OF THE LOS ANGELES MUNICIPAL CODE ESTABLISHED BY ORDINANCE NO.171.740

On October 27, 1998, Ordinance No. 171,740 became effective replacing Section 12.21-A,15 of the Municipal Code and establishing procedures for the modification, discontinuance or removal of a use, building or structure that constitutes a nuisance or endangers the public health or safety or violates any provisions of City, State or Federal statutes or ordinance. That Ordinance became Section 12.27.1 of the Los Angeles Municipal Code. This section consolidates existing Code provisions relating to the administrative abatement of public nuisances and sets forth the procedures for the modification or removal of conditions imposed as part of any discretionary zoning approval and establishes the requirement for cost reimbursement to the City to be paid by those responsible for the maintenance of the subject site.

The owner/operator was provided due process through proper notice and representation at the public hearing. Notice of these proceedings were also sent to the abutting property owners in compliance with the requirements of the Los Angeles Municipal Code. All parties have been afforded the opportunity to provide testimony and to respond to all allegations concerning the impacts of the operation.

It is further determined that the instant action by the Zoning Administrator on behalf of the Director of Planning is in compliance with Section 12.27.1 of the Municipal Code and has been conducted so as not to impair the constitutional right of any person. The owner/operator of the business has been afforded the opportunity to review the file both in

advance of and after the hearing which was duly noticed and testify and respond to the allegations concerning the impacts of the operation of the Canyon Market. Further, the conditions imposed are not so onerous as to prevent the viable operation of the business.

S. GAIL GOLDBERG
Director of Planning

A handwritten signature in black ink that reads "R. Nicolas Brown". The signature is written in a cursive, flowing style with a large initial "R" and a long, sweeping underline.

R. NICOLAS BROWN, AICP
Associate Zoning Administrator
Direct Telephone No. (818) 374-5069

RNB:lmc

cc: Councilmember Wendy Greuel
Second District
Adjoining Property Owners
County Assessor