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APPROVED AS TO FORM AND LEGALITY

DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. 82577 C.M.S.

A RESOLUTION DENYING THE APPEAL OF LUE R. BELLS (CASE # A09-273) AND UPHOLDING THE PLANNING COMMISSION'S DECISION TO REVOKE THE DEEMED APPROVED STATUS FOR ALCOHOLIC BEVERAGE SALES FROM THE PROPERTY LOCATED AT 5007 BANCROFT AVENUE

WHEREAS, the Appellant, Ms. Lue R. Bells, owns the property located at 5007 Bancroft Avenue (APN: 035 -2362-001-00); and

WHEREAS, the property located at 5007 Bancroft Avenue contains a commercial space on the ground floor, operated as a liquor store/convenience market which predates the adoption of a Conditional Use Permit for Alcoholic Beverage Sales Commercial Activities and, thus, is considered to be a Deemed Approved (legal nonconforming) use; and

WHEREAS, nuisances were noted in and around the property and the store located there (La Raza Liquors & Market) by the Police Department and neighbors; and

WHEREAS, on February 5, 2009 the City and the Appellant/Owner and the business operator ("Operator") (collectively called "Parties") entered into a stipulation imposing Conditions of Approval on the property designed to mitigate nuisances resulting from the business; and

WHEREAS, breaches of the stipulated Conditions of Approval were noted by the Police Department and neighbors; and

WHEREAS, on July 2, 2009 a duly noticed Special Public Hearing (case no. DAA 08-002) was held to consider amendment to the stipulated Conditions of Approval or revocation of the property's Deemed Approved Status for alcoholic beverage sales; and

WHEREAS, the Administrative Hearing Officer continued the item to a second, duly noticed Special Public Hearing on August 6, 2009 to allow the Parties to submit evidence in furtherance of their claims and defenses; and

WHEREAS, on August 6, 2009 the continued Special Public Hearing was held; and

WHEREAS, on August 14, 2009, the Administrative Hearing Officer issued a Revised Order stating that the Deemed Approved Status was revoked as to the business operators but not as to the landlord, based on a finding that two (2) of seven (7) conditions in the Stipulated Conditions of Approval had been violated.; and

WHEREAS, the Revised Order was appealed to the Planning Commission by the Oakland Police Department on August 19, 2009 (case # A 09-188) and by the business operator's attorney Mr. Clinton Killian on August 27, 2009 (case # A 09-190); and

WHEREAS, on December 2, 2009, a duly noticed public hearing was held, and at the close of the public hearing, the Planning Commission approved the Police Department's Appeal (case # A09188) and denied the Operator's Appeal (case # A09190), thereby revoking the Deemed Approved Status as to both the Owner and the Operator; and

WHEREAS, on December 14, 2009, the Owner appealed the Planning Commission's decision to extend the revocation of the Deemed Approved Status to the property (case # A092373); and

WHEREAS, the Owner's appeal requests that the City Council revoke the Deemed Approved Status only as to the business tenants, but not as to the landlord, based on the arguments that (1) that land use entitlements should apply to an individual and not land, and (2) that she was not responsible for nuisance at her property and therefore should not lose Deemed Approved Status; and

WHEREAS, the Operator did not appeal the Planning Commission's decision and the decision is final as to them. Thus, the events that lead to violation of the stipulation are not disputed and are not on appeal; nor is whether the stipulation was violated on appeal; nor is whether revocation was appropriate remedy as to the Operator on appeal. Even if the Owner had been successful in her appeal, she sought only to preserve her Deemed Approved Status for future tenants and did not seek reinstatement of the current operators' right to sell alcoholic beverages¹; and

WHEREAS, after giving due notice to the Appellant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on March 2, 2010; and

WHEREAS, the Appellant and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on March 2, 2010; now, therefore, be it

¹ On January 20, 2010, the City issued a letter to the operator demanding they cease and desist sale of alcohol because the Planning Commission's December 2, 2009 decision as applied to them was final.

RESOLVED: That the City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Planning Commission's decision, and the Appeal, finds that the Appellant has not shown, by reliance on evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission, and/or that the Commission's decision was not supported by sufficient, substantial evidence in the record. This decision is based, in part, on the March 2, 2010, City Council Agenda Report and the December 2, 2009, Approved Planning Commission Report, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's decision to revoke Deemed Approved Status for alcoholic beverages from the property is upheld; and be it

FURTHER RESOLVED: That, in support of the City Council's decision to deny the Appeal, the City Council affirms and adopts as its findings and determinations (i) the March 2, 2010, City Council Agenda Report including without limitation the discussion and conclusions (each of which is hereby separately and independently adopted by this Council in full), and (ii) the December 2, 2009, Approved City Planning Commission Report, including without limitation the discussion and conclusions (each of which is hereby separately and independently adopted by this Council in full), except where otherwise expressly stated in this Resolution; and be it

FURTHER RESOLVED: That the record before this Council relating to this Project application and appeal includes, without limitation, the following:

1. the Appeal, including all accompanying papers;
2. all documents submitted by the Applicant and his representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, (c) Oakland Fire Code; (d) Oakland Planning Code; (e) other applicable City policies and regulations; and, (f) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, MAR 2 2010, 20

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID,
AND PRESIDENT BRUNNER – 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



LaTonda Simmons

City Clerk and Clerk of the Council of
the City of Oakland, California

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.