

File No. 110927

Committee Item No. 1

Board Item No. _____

**COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST**

Committee: **City Operations & Neighborhood
Services Committee**

Date 11/14/11

Board of Supervisors Meeting

Date _____

LIQUOR LICENSE HEARING

Cmte Board

- | | | |
|-------------------------------------|--------------------------|----------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Applicant's Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Police Department Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Planning Department Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Clerk's Correspondence |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Other |

- _____
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- _____
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- _____

Completed by Gail Johnson

Date 11/10/11

Completed by _____

Date _____

August 12, 2011

File 110927

Subject: Liquor License PCN Request

Dear Clerk of the Board,

My name is James K. Mead. I recently signed a lease for a retail fine wine store (and a small amount of spirits) at 3821 24th Street in Noe Valley (between Church Street and Vicksburg). The store will be laid out with about 85 percent fine wine, 7 percent high-end spirits (no half pints or pints) and 7-9 percent beer (no 16oz, 22oz or 40oz singles). This location was previously occupied by Urban Cellars. Before moving to San Francisco, I owned an award-winning fine wine store for 24 years in Atlanta, Georgia called Ansley Wine Merchants (1544 Piedmont Road, NE Atlanta, GA 30324).

Please note the vital information about the business below.

Sole Owner: James Kennedy Mead II

Phone: 404-862-8225

E-mail: jamesmead58@yahoo.com

Mailing Address:

2978 Folsom St.
San Francisco, CA 94110

Store Name:

Noe Valley Wine Merchants
3821 24th Street
San Francisco, CA 94114

Store Hours:

Sunday: 11-6
Monday: 10-9
Tuesday: 10-9
Wednesday: 9-9
Thursday: 10-9
Friday: 10-9
Saturday: 9-9

Employees: Four to Five

As part of the store concept, I want to have a wine tasting area as allowed under San Francisco Planning Code 790.22 (Subject: Wine Tasting in Liquor Store). Attached is the subsection along with the approved affidavit from city planning.

In order to put in the wine tasting area, I need to obtain a **TYPE 42 LICENSE** as specified in Section 790.22. This will not be for a bar, only to taste wine occasionally (there will not be any seats). This is pretty common around the city. To obtain the 42, I need to apply for a "**public convenience and necessity**" resolution from the San Francisco Board of Supervisors.

In accordance with the provisions of Section 23958.4 of the California Business and Professions Code, this letter is provided to support a finding that public convenience and

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necessity would be served by the issuance of a 42 Liquor License for the above referenced premises.

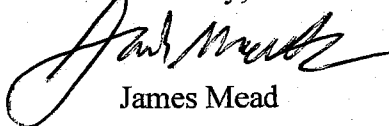
This is a fine wine store (with a little bit of high end spirits) serving the surrounding community and visiting public patrons Sunday through Saturday. While the wine tasting area will generate a small percentage of our sales, the investment in a 42 License is required as a service and convenience to the customers and as an integral part of the retail experience.

The retail store will prove to be extremely desirable to the public by providing area residents, visitors and walkers with fine wine at a reasonable price. The inclusion of this license (for wine tasting) will allow patrons the same service that they would experience at many other local wine shops. I will strive to become a valuable member of the community and will work hard to help the neighborhood meet their developmental goals and continually improve the character of the neighborhood.

I fully respect the request made by the California Department of Alcoholic Beverages Control in conjunction with the Department of Alcohol Beverage Control Board that public necessity and convenience would be served by the issue of a 42 Liquor License to the requested premise.

Thank you for your assistance.

Sincerely,



James Mead

Notes

1. I have talked to officer Nechvia at the Mission Police Station (serves 24th Street in Noe Valley) and she is fine with this request. 415-558-5400.
2. Noe Valley Merchant Association is supportive and enthused. President: Robert Roddich, 415-641-8687.
3. Noe Valley Neighborhood Association is supportive and enthused. Debra Nicman, 415-519-0091
4. Friends of Noe Valley is supportive and enthused. Todd David, 415-373-8879.

INFORMATION AND INSTRUCTIONS -

SECTION 23958.4 B&P

Instructions This form is to be used for all applications for original issuance or premises to premises transfer of licenses.

- Part 1 is to be completed by an ABC employee, given to applicant with pre-application package, with copy retained in holding file or applicant's district file.
- Part 2 is to be completed by the applicant, and returned to ABC.
- Part 3 is to be completed by the local governing body or its designated subordinate officer or body, and returned to ABC.

PART 1 - TO BE COMPLETED BY ABC

1. APPLICANT'S NAME

NOE VALLEY WINE MERCHANTS INC

2. PREMISES ADDRESS (Street number and name, city, zip code)

3821 24th St San Francisco CA 94114-3810

3. LICENSE TYPE

42

4. TYPE OF BUSINESS

- | | | | |
|---|--|--|--|
| <input type="checkbox"/> Full Service Restaurant | <input type="checkbox"/> Hofbrau/Cafeteria | <input type="checkbox"/> Cocktail Lounge | <input type="checkbox"/> Private Club |
| <input type="checkbox"/> Deli or Specialty Restaurant | <input type="checkbox"/> Comedy Club | <input type="checkbox"/> Night Club | <input type="checkbox"/> Veterans Club |
| <input type="checkbox"/> Cafe/Coffee Shop | <input type="checkbox"/> Brew Pub | <input type="checkbox"/> Tavern: Beer | <input type="checkbox"/> Fraternal Club |
| <input type="checkbox"/> Bed & Breakfast: | <input type="checkbox"/> Theater | <input type="checkbox"/> Tavern: Beer & Wine | <input type="checkbox"/> Wine Tasting Room |
| <input type="checkbox"/> Wine only | <input type="checkbox"/> All | | |

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Supermarket | <input type="checkbox"/> Membership Store | <input type="checkbox"/> Service Station | <input type="checkbox"/> Swap Meet/Flea Market |
| <input checked="" type="checkbox"/> Liquor Store | <input type="checkbox"/> Department Store | <input type="checkbox"/> Convenience Market | <input type="checkbox"/> Drive-in Dairy |
| <input type="checkbox"/> Drug/Variety Store | <input type="checkbox"/> Florist/Gift Shop | <input type="checkbox"/> Convenience Market w/Gasoline | |
| <input type="checkbox"/> Other - describe: | | | |

5. COUNTY POPULATION

3285/812820

6. TOTAL NUMBER OF LICENSES IN COUNTY

317

- On-Sale Off-Sale

7. RATIO OF LICENSES TO POPULATION IN COUNTY

1.430555556

- On-Sale Off-Sale

8. CENSUS TRACT NUMBER

214

9. NO. OF LICENSES ALLOWED IN CENSUS TRACT

12

- On-Sale Off-Sale

10. NO. OF LICENSES EXISTING IN CENSUS TRACT

12

- On-Sale Off-Sale

11. IS THE ABOVE CENSUS TRACT OVERCONCENTRATED WITH LICENSES? (i.e., does the ratio of licenses to population in the census tract exceed the ratio of licenses to population for the entire county?)

- Yes, the number of existing licenses exceeds the number allowed
- No, the number of existing licenses is lower than the number allowed

3 X PUB

12. DOES LAW ENFORCEMENT AGENCY MAINTAIN CRIME STATISTICS?

- Yes (Go to Item #13) No (Go to Item #20)

13. CRIME REPORTING DISTRICT NUMBER

452

14. TOTAL NUMBER OF REPORTING DISTRICTS

654

15. TOTAL NUMBER OF OFFENSES IN ALL REPORTING DISTRICTS

120,367

16. AVERAGE NO. OF OFFENSES PER DISTRICT

184

17. 120% OF AVERAGE NUMBER OF OFFENSES

221

18. TOTAL NUMBER OF OFFENSES IN REPORTING DISTRICT

126

19. IS THE PREMISES LOCATED IN A HIGH CRIME REPORTING DISTRICT? (i.e., has a 20% greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency)

- Yes, the total number of offenses in the reporting district equals or exceeds the total number in item #17
- No, the total number of offenses in the reporting district is lower than the total number in item #17

PC & N

20. CHECK THE BOX THAT APPLIES (check only one box)

- a. If "No" is checked in both item #11 and item #19, Section 23958.4 B&P does not apply to this application, and no additional information will be needed on this issue. Advise the applicant to bring this completed form to ABC when filing the application.
- b. If "Yes" is checked in either item #11 or item #19, and the applicant is applying for a non-retail license, a retail bona fide public eating place license, a retail license issued for a hotel, motel or other lodging establishment as defined in Section 25503.16(b) B&P, or a retail license issued in conjunction with a beer manufacturer's license, or winegrower's license, advise the applicant to complete Section 2 and bring the completed form to ABC when filing the application or as soon as possible thereafter.
- c. If "Yes" is checked in either item #11 or item #19, and the applicant is applying for an off-sale beer and wine license, an off-sale general license, an on-sale beer license, an on-sale beer and wine (public premises) license, or an on-sale general (public premises) license, advise the applicant to take this form to the local governing body, or its designated subordinate officer or body to have them complete Section 3. The completed form will need to be provided to ABC in order to process the application.

Governing Body/Designated Subordinate Name:

SF BOARD OF SUPERVISORS

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PREPARED BY (Name of Department Employee)

JM

in terms of its size, function and general merchandise offering as determined by the Zoning Administrator, and

the change in the formula retail use operator is the result of multiple existing operations being purchased by another formula retail operator.

The new operator shall comply with all conditions of approval previously imposed on the existing operator, including but not limited to signage programs and hours of operation; and shall conduct the operation generally in the same manner and offer essentially the same services and/or type of merchandise; or seek and be granted a new Conditional Use authorization.

Code Section: 712.61
Subject: Auto broker's office on second floor
Effective Date: 8/90
Interpretation:

This Section allows auto sales or rental only on the ground floor as a conditional use in the NC-3 District. The question was whether an auto broker could have an office on the second floor and be considered an office (NC use category .53). The applicant said that the Department of Motor Vehicles would issue a permit only if at least two vehicles for sale would be located on the site. The presence of display cars would make the use an auto sales or rental use rather than an office use and therefore, would not be allowed on the second floor of the NC-3 District.

Code Section: 790.4
Subject: Amusement game arcade (mechanical amusement devices).
Effective Date: 3/2002
Interpretation:

Section 790.4 of the Planning Code defines an Amusement Game Arcade (Mechanical Amusement Devices) as a retail use, which provides eleven or more amusement game devices such as video games, pinball machines, or other such similar mechanical and electronic amusement devices. This definition was created when the majority of game arcades used large bulky game machines. With advances in technology, the personal computer replaced most of these old arcade

machines and allows users a variety of functions, including game playing. With relative ease computers have been connected or networked in retail or commercial spaces for the sole purpose of game playing. This Interpretation adds personal computers to Section 790.4 as an electronic amusement device when the majority purpose of the computers are for game playing. Additionally, money does not need to be deposited directly into the amusement devices for the use to be considered as an Amusement Game Arcade.

Furthermore, Section 790.4 discusses the threshold of eleven or more amusement game devices. This threshold is a combination of all amusement game devices, including personal computers and commercially produced game consoles, among other devices.

In terms of the zoning districts where this use is allowed, Section 790.4 is not listed as one of the permitted or conditional uses in the Neighborhood Commercial District chart, nor is it listed as a permitted or conditional use in Section 703.2. Therefore, when there are eleven or more amusement game devices the use will be defined by Amusement Game Arcade and is NOT permitted in the Neighborhood Commercial Districts. If the use has ten or less amusement game devices, the entertainment use is categorized by Section 790.38 Other Entertainment and in most Neighborhood Commercial Districts will require a Conditional Use.

Code Section: 790.22
Subject: NC definitions—Bar
Effective Date: 11/86
Interpretation:

A wine tasting room as part of retail sales of wine is treated as a bar in the Neighborhood Commercial Districts.

Code Section: 790.22
Subject: Wine Tasting, Liquor Stores, Bars
Effective Date: 8/05
Interpretation:

This Section states that within NC Districts, establishments that serve liquor with ABC License Types 42, 47, 49, 61, or 78 are considered "bar" uses. An interpretation rendered in November 1986 had asserted that "a wine tasting room

as part of the retail sales of wine is treated as a bar in the Neighborhood Commercial Districts." It was noted that an exception to this interpretation involves cases in which intermittent and/or occasional wine tasting is offered. This minor and related activity is analogous to the dispensation of sample-sized portions of food items by many grocers. Much as those grocers are not considered to be restaurant uses, liquor stores which provide incidental wine tastings are not considered to be bar uses. Any such tasting would (1) occur entirely during regular operating hours only, (2) take place no more than twice each week for no more than four hours each occurrence and on a further occasional appointment-only basis, (3) not occur on a premises on which any type of permit from the Entertainment Commission is held, (4) not occur in an area physically separated from the main liquor store retail area by full-height partitions or partitions that otherwise prevent clear visual access to and from the main retail area and (5) be limited to one ounce servings and three servings per individual customer per day. Should the liquor store not adhere to each of these five conditions it would be considered a "bar." It was also noted that, pursuant to Ordinance 260-00 which became effective in May of 2000, "retail sales of wine" is now considered to be a liquor store. It was also noted that conditions 4 and 5, above, reflect ABC and Police Department policies at the time of this interpretation, and may be modified should those regulations change.

Code Section: 790.38
Subject: Acoustic music and poetry reading as other entertainment
Effective Date: 8/96
Interpretation:

This states that "other entertainment" shall include, "... live entertainment, including dramatic and musical performances, and/or operates as a dance hall which provides amplified taped music for dancing on the premises, ..." It is clear that the reference to amplified music is in regard to the aforementioned dance hall and is not intended to exclude acoustic music or other nonamplified performance from the definition. Therefore, in the case where **acoustic music and poetry reading** was proposed for a bar, this use would be classified as "other entertainment."

Code Section: 790.38
Subject: Entertainment, other.
Effective Date: 3/2002
Interpretation:

Section 790.38 of the Planning Code defines Other Entertainment as a retail use, which provides live entertainment and/or operates as a dance hall with amplified music. Additionally, it includes a bowling alley, billiard parlor, shooting gallery, skating rink and other commercial recreational activity, but excludes amusement game arcades. Amusement game arcades is defined by Section 790.4 of the Planning Code by having eleven or more amusement game devices such as video games, pinball machines, or other such similar mechanical and electronic amusement devices, including personal computers when the majority purpose of the computers are for game

Department of Alcoholic Beverage Control
ZONING AFFIDAVIT

State of California
 Edmund G. Brown Jr., Governor

Instructions to the Applicant: Complete Items 1 - 14. Sign and date the form and submit it to ABC.

1. APPLICANT(S) NAME (Last, first, middle)
MEAD II JAMES KENNEDY

2. PREMISES ADDRESS (Street number and name, city, zip code)
3821 24TH ST., SAN FRANCISCO CA 94114

3. PARCEL NUMBER OF PROPERTY (Obtain from County Assessor's Office)
6509 038

4. TYPE OF LICENSE APPLIED FOR
42 - on sale Beer/wine/public

5. UPGRADE OF LICENSED PRIVILEGES
 Yes No

6. CURRENT LICENSE TYPE AT THIS LOCATION, IF ANY
21

7. TYPE OF BUSINESS (i.e., restaurant, mini-mart, gas station, etc.)
wine, liquor, beer RETAIL

8. ARE THE PREMISES INSIDE THE CITY LIMITS?
 Yes No

9. HOW ARE APPLICANT PREMISES ZONED? STATE TYPE (i.e., "C" commercial, "R" residential, etc.)
24th - Noe NCD

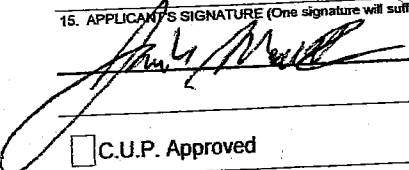
10. DOES ZONING PERMIT INTENDED USE?
 Yes No *Yes as per interpretation limited today*

11. IS A CONDITIONAL USE PERMIT (C.U.P.) NEEDED? (If yes, please attach copy of receipt or C.U.P.)
 Yes No

12. IF YES, DATE YOU FILED APPLICATION FOR C.U.P.

13. NAME OF PLANNER CONTACTED AT PLANNING DEPARTMENT
Kevin Burton

14. PLANNER'S PHONE NUMBER
415-558-6290

15. APPLICANT'S SIGNATURE (One signature will suffice)


16. DATE SIGNED
7-27-11

Under the penalty of perjury, I declare the information in this affidavit is true to the best of my knowledge.

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<input type="checkbox"/> C.U.P. Approved	IF APPROVED, EFFECTIVE DATE	FILE NUMBER
<input type="checkbox"/> C.U.P. Denied	DATE DENIED	

GENERAL INFORMATION

•Section 23790 of the Business and Professions Code says that ABC may not issue a retail license contrary to a valid zoning ordinance. This form will help us determine whether your proposed business is properly zoned for alcoholic beverage sales.

•A conditional use permit (CUP) (Item 11) is a special zoning permit granted after an individual review of proposed land-use has been made. CUP's are used in situations where the proposed use may create hardships or hazards to neighbors and other community members who are likely to be affected by the proposed use. The ABC district office will not make a final recommendation on your license application until after the local CUP review process has been completed. If the local government denies the CUP, ABC must deny your license application.

23790. Zoning ordinances. No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city.

Premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under the following conditions:

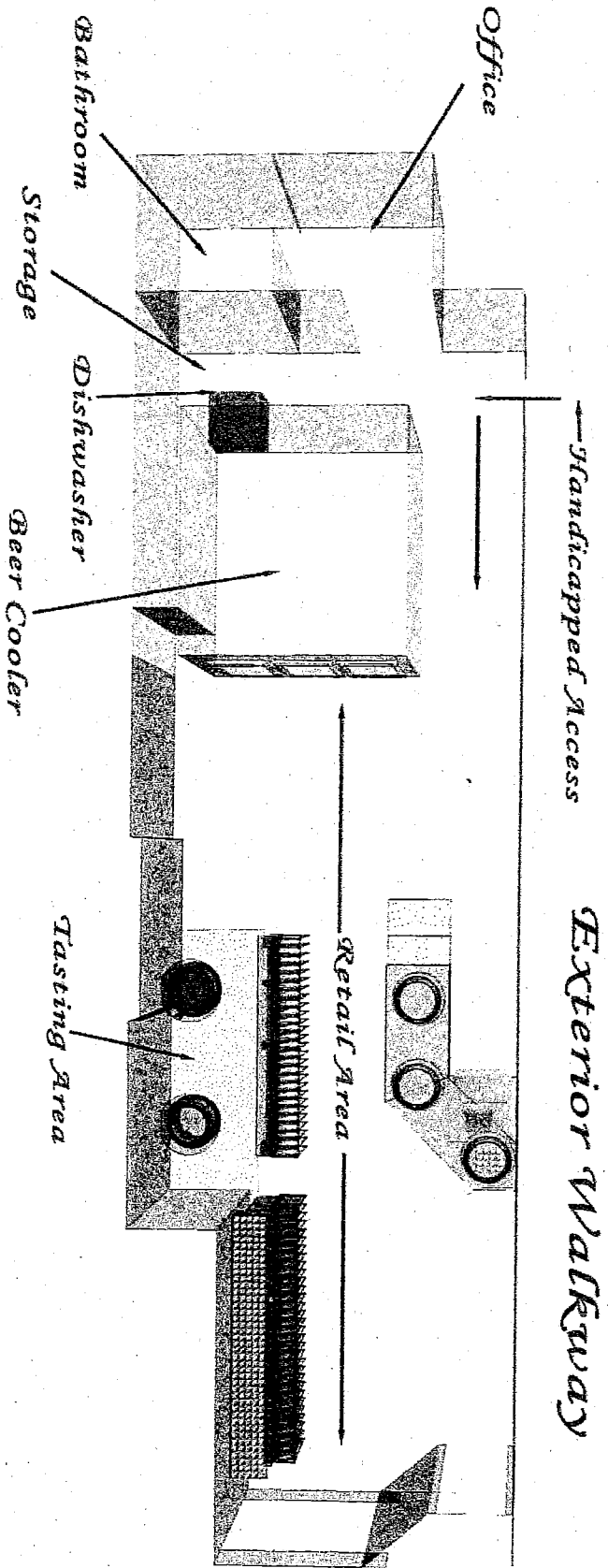
(a) The premises retain the same type of retail liquor license within a license classification.

(b) The licensed premises are operated continuously without substantial change in mode or character of operation.

For purposes of this subdivision, a break in continuous operation does not include:

(1) A closure for not more than 30 days for purposes of repair, if that repair does not change the nature of the licensed premises and does not increase the square footage of the business used for the sale of alcoholic beverages.

(2) The closure for restoration of premises rendered totally or partially inaccessible by an act of God or a toxic accident, if the restoration does not increase the square footage of the business used for the sale of alcoholic beverages.



24th Street

LIQUOR LICENSE REVIEW

TO: Planning Department
AnMarie Rodgers/CTYPLN/SFGOV
Georgia Powell/CTYPLN/SFGOV@SFGOV
Fax No.: 558-6409

File: 110927

Block/Lot: 6509/038

Zoning: 24th - Noe

Quad: SW

MB # 1101579

TO: Inspector Dave Falzon
Police Department
Fax No.: 553-1463

DATE: August 30, 2011

This item is scheduled to be heard at a meeting on September 26, 2011.

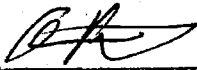
PLEASE EMAIL YOUR RESPONSE BY: September 22, 2011, to Gail Johnson,
Clerk, City Operations and Neighborhood Services Committee.

Gail.Johnson@sfgov.org - Fax No: 554-7714

Applicant Name: James Mead
and Business Name: Noe Valley Wine Merchants (3821 24th Street) - 6509/038
Applicant Address: 2978 Folsom Street
San Francisco, CA 94110
and Phone No. (404) 862-8225

PLANNING COMMENTS: Approval Denial

*Continuation of an existing
Liquor Store use. Change
of ownership only.*

 9/12/11
Approved Planning Dept. Adrian C. Putra

POLICE COMMENTS: Approval Denial