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June 2, 2014

County of San Mateo  
Department of Building and Planning  
Attn: Tiare Pena  
455 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA. 94063

Re: Review for finding of Public Convenience or Necessity  
Man Crates  
2694 Middlefield Rd.  
Redwood City, CA. 94063

Dear Ms. Pena,

Based on your email message, I am providing the following information to assist with the County's review process for determining the Public Convenience and Necessity (PC&N) finding for Man Crates.

The primary focus of Man Crates is the sale of a variety of gift boxes with a variety of items which are of interest to men, through the internet. The option of adding alcoholic beverages to these gift boxes is to compliment the items already available in the gift boxes. The goal of Man Crates is to sell gift boxes, not to sell alcoholic beverages individually or as their primary sales product. The primary focus is to sell gift boxes through internet orders with a variety of items that appeal to men which would be welcomed by men who receive them as gifts.

The sales of the gift boxes, with the variety of items in the various gift boxes, are far more profitable than specifically selling alcoholic beverages as individual or primary items. Man Crates is a gift box retailer, not a liquor store.

To add to the currently available variety of items included in the gift boxes, Man Crates wishes to seek the privilege of having the option to add alcoholic beverages to their gift boxes. Initially, the primary alcoholic beverage that Man Crates wishes to include in some of its gift boxes will be a small variety of select, specialty beers.

Later, they anticipate the possibility of adding distilled spirits and wine to some of the gift boxes. Marketing research and consumers' tastes and requests will dictate what types of distilled spirits and wines that will be considered for inclusion to some of the gift boxes that are made available.

With the addition of the alcoholic beverage, the price of the gift box is raised accordingly. Presently, the gift boxes are priced in a range from \$25 to \$180. There will be a variety of Man Crates gift boxes available with several combinations of products in the boxes, with and without the inclusion of an alcoholic beverage.

Man Crates only accepts credit cards as the method of payment for internet sales.

#### ABC Licensing privileges -

Any off-sale retail licensee can sell alcoholic beverages for consumption or delivery off or away from the premises. An order can be received by way of mail, telephone, or internet. The types of alcoholic beverages are limited by the type of ABC license that is issued to the retailer.

ABC licensees who sell only wine pursuant to an order received by mail, telephone or internet, that is to be delivered away from the premises, are licensees who are restricted by license privileges or the type of license they hold.

As to your question asking if only wine will be marketed and sold through internet sales, the answer is, no.

#### Licensees who are restricted to wine only sales -

Wineries (type 02-winegrowers), Beer and Wine Wholesalers with an Off-Sale Beer and Wine combination license (type 17/20), and a Limited Off-Sale Wine license (type 85) limit's the licensee to sell only wine for orders received on the internet.

The winegrower (type 02) and the beer and wine wholesaler / off-sale beer and wine licensee (type 17/20) have to provide a storefront to display their products to the public, in addition to being able to take sales orders through the internet.

The Limited Off-Sale Wine license (type 85) only permits internet sales and the licensee is prohibited from opening a storefront that is open to the public.

#### Off-Sale Licensees -

A type 20, Off-Sale Beer and Wine licensee can sell only beer and wine in the original factory package at the premises for consumption off or away from the premises.

The sale can be in-person or pursuant to orders received in-person, by mail, telephone, or internet, to locations outside the premises. Delivery can be by store employees or by common carriers.

Similarly, a type 21, Off-Sale General licensee can sell beer, wine and distilled spirits in the original factory package at the premises for consumption off or away from the premises. The sale can be in-person or pursuant to orders received in-person, by mail, telephone, or internet, to locations outside the premises. Delivery can be by store employees or by common carriers.

Delivery methods and restrictions -

Man Crates utilizes the services of FedEx to deliver their Man Crates products.

If Man Crates is successful in obtaining approval to add alcoholic beverages to their gift boxes, they will be paying additional delivery fees on each gift box containing an alcoholic beverage. When the gift box arrives at its destination, a government issued photo identification is required to be reviewed by the delivery person and an adult signature is required before the delivery of the item is completed. This is to ensure that the person receiving the gift box at the point of delivery is a person 21 years of age or older.

The FedEx delivery signature service for alcoholic beverages is stated as follows -

“FedEx obtains a signature from any person at least 21 years old (government-issued photo identification required) at the delivery address. If no one is at the address, FedEx will reattempt delivery. Adult Signature Required overrides any recipient release that may be on file for deliveries to nonresidential addresses.”

The FedEx delivery signature services can be viewed at the following link -

[http://www.fedex.com/us/developer/product/WebServices/MyWebHelp/Services/Options/c\\_DeliverySignatureServices.html](http://www.fedex.com/us/developer/product/WebServices/MyWebHelp/Services/Options/c_DeliverySignatureServices.html)

An excerpt of the FedEx shipping policy for alcoholic beverages are stated as follows -

“Before you process shipments containing alcohol, review the following information:

- You must sign a FedEx Alcohol Shipping Agreement prior to shipping. Contact your FedEx account executive to start the enrollment process.
- Alcohol content information is not required except for international shipments. For international shipments, you must identify alcohol shipments in the description.

- Common carriers such as FedEx Express® and FedEx Ground® must report alcohol shipping activity to state authorities on a regular basis. For this reason, shippers must notify FedEx of each shipment containing alcohol via their electronic FedEx shipping solution and by applying FedEx alcohol shipping labels. For all FedEx electronic shipping solutions or third-party systems, the shipper must identify the shipment as containing alcohol by entering “\$AW” in the Customer Reference field for all shipments.
- State law, as well as FedEx policy, requires an adult signature at the time of delivery for every package containing alcohol. It is the shipper’s responsibility to ensure an adult is available to sign for the shipment at delivery, and to select the appropriate signature service so that FedEx is alerted to the adult signature requirement as a condition of delivery of the shipment. If a shipper fails to follow the procedures outlined herein, the shipment will be deemed undeliverable. Violations may result in suspension or termination of your FedEx account.”

The entire text of the FedEx alcohol shipment policy can be viewed at the following link - [http://www.fedex.com/us/developer/product/WebServices/MyWebHelp\\_August2010/Content/Proprietary\\_Developer\\_Guide/Alcohol\\_Shipping.htm](http://www.fedex.com/us/developer/product/WebServices/MyWebHelp_August2010/Content/Proprietary_Developer_Guide/Alcohol_Shipping.htm)

In addition to the restricted delivery requirement, there are invoice requirements that Man Crates must adhere to pursuant to the rules and regulations of the Department of Alcoholic Beverage Control which includes the California Business and Professions Code and the California Code of Regulations.

#### Invoices -

The following is an excerpt from Title 4, Division 1, Rule 17, of the California Code of Regulations that pertains to deliveries from off-sale licensees to consumers:

#### **§ 17. Contents of Sales Invoices and Retail Delivery Orders.**

“(e) No alcoholic beverage shall leave the premises of an off-sale licensee for delivery to a consumer, except pursuant to an order previously received by such licensee. Such alcoholic beverages shall be accompanied by a delivery order, which order must state the quantity, brand, proof, and price of such alcoholic beverages, and the name and address of the consumer purchaser, and shall have printed or stamped thereon the name and address of such off-sale licensee. A copy of such order shall be kept on file by the off-sale licensee for a period of two years after the date of delivery.”

Original link to the entire text of CCR Rule 17 -

[https://govt.westlaw.com/calregs/Document/I078B6500D45811DEA95CA4428EC25FA0?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I078B6500D45811DEA95CA4428EC25FA0?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

Summary -

At this time, Man Crates is hoping to obtain approval at the County and State levels to obtain a type 21 Off-Sale General alcoholic beverage license so they can compliment their present variety of products offered in their gift boxes.

The concept and practice of selling gift boxes with alcoholic beverages is a currently accepted practice and allowed by law with the correct retail alcoholic beverage license.

This practice is permitted and regulated for both on-site sales and by way of mail, telephone and internet orders for delivery of alcoholic beverages to locations away from or off the premises. The delivery of such orders are regulated, controlled and restricted to persons who are 21 years of age or older.

Man Crates wishes to improve their offerings to the public by adding alcoholic beverages to compliment the present variety of products they offer in their current and future gift boxes. Man Crates products are unique within the internet marketplace.

Man Crates believes that with the option of offering gift boxes that include alcoholic beverages, this will satisfy the public's convenience or necessity by providing a unique product that is not available elsewhere.

Man Crates does not wish to create a business whose primary focus is the sales of alcoholic beverages. They wish to continue to offer their gift boxes, with the option of offering some gift boxes that can contain an alcoholic beverage along with a variety of other products that appeals to men.

If I can provide any additional information to assist you with the PC&N process, please do not hesitate to contact me. Thank you for your time and attention to Man Crates' request for a PC&N review.

Sincerely,



R. Ciganovich, Consultant  
Private Investigator

Attachments:

ABC-409 Direct Shipments And Internet Sales Of Alcoholic Beverages  
ABC-616 Common ABC License Types And their Basic Privileges  
ABC Industry Advisory Limited Off-Sale Wine Licenses - Type 85 licenses  
ABC Frequently Asked Questions - Question #123 - Retail Licensees and Invoices  
California Code of Regulations Rule 17 - Invoices (full text)