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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

| | | |
|----------------------------|---|---------------------|
| In the Matter of the |) | |
| Application for a |) | |
| Dispenser Class C (DC) |) | |
| License by: |) | FINAL |
| |) | FINDINGS OF FACT, |
| Chi and Rebecca Liu |) | CONCLUSIONS OF LAW, |
| LIU CHI CHINESE RESTAURANT |) | AND ORDER |
| 814 SW Broadway |) | |
| Portland, Oregon 97205 |) | |
| - - - - - |) | |
| Multnomah County |) | |

A hearing in the above matter was held on the 7th day of September, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicants appeared in person and were not represented by legal counsel. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. Applicants seek a Dispenser Class C (DC) license at LIU CHI CHINESE RESTAURANT. The premises presently holds a Restaurant (R) license.
2. The Commission's Staff has recommended that the application be denied based upon OAR 845-05-040(2)(b) (dining service not unique), OAR 845-05-040(2)(c) (applicants have not

established inadequate service in the community), OAR 845-05-030(1), 845-05-040(1) (sufficient licensed premises in the locality).

3. Applicants' premises is located in the downtown area of Portland in a building known as the Jackson Towers. The restaurant has been open since June of 1983.

4. The premises is open for lunch and dinner seven days a week. The hours of operation are 11:00 a.m. to 10:00 p.m. Monday through Thursday, 11:00 a.m. to 11:00 p.m. Friday, noon to 11:00 p.m. Saturday, and noon to 10:00 p.m. Sunday.

5. The premises has a main dining room which seats approximately 80 and a smaller dining room which seats approximately 40.

6. The food at Applicants' premises is Northern Chinese and Szechuan.

7. The menu is extensive, containing 11 appetizers, 10 kinds of soup, seven pork dishes, 10 beef dishes, 12 poultry dishes, 17 seafood dishes, and 9 vegetable dishes. Prices of the main dishes generally range from approximately \$5.00 to \$8.00. Peking duck is offered at \$20.00.

8. In addition to the regular menu, Applicants offer special dishes for banquets and other gatherings.

9. Applicants' food is authentic Northern Chinese food, both in preparation and presentation. Among the dishes which are unique in the area in terms of ingredients or manner of

presentation are the house special soup, which contains whipped eggs, creamed corn, crab meat and chicken; the bon bon chicken, which is flavored in a distinctive manner; the five-spiced bean cakes with shredded pork, which contains a dried hot bean curd purchased in San Francisco; the house special beef, which is flavored with imported barbecue sauce, and the stir-fried shredded dried squid.

10. Applicants will also prepare various special dishes upon request for a banquet or gathering. The dishes may be attractively and unusually presented through the use of carved vegetables and fruits.

11. During the application process, Applicants offered the following projection of average monthly sales if the license is granted:

| | | |
|--------|---|---------------|
| Food | - | \$46,400 |
| Liquor | - | <u>11,600</u> |
| TOTAL | - | \$58,000 |

12. Actual sales at the premises during the three months of operation have been as follows:

| <u>MONTH</u> | <u>FOOD</u> | <u>BEER/WINE</u> | <u>TOTAL</u> |
|--------------|-------------|------------------|--------------|
| June | \$11,533 | \$ 866 | \$12,399 |
| July | 17,401 | 1,254 | 18,655 |
| August | 17,667 | 1,534 | 19,201 |

13. Applicants anticipate that sales will grow as time goes on. They did not advertise during the first two months of operation.

14. Applicants' chef is from Taiwan. He worked for three years at the Chinese Embassy in The Ivory Coast.

15. Applicants have hosted approximately 30 banquets or other private affairs at the premises during the three months of operation. The smaller dining room, which they have used for banquets, seats approximately 40. They will use the main dining room, however, for larger gatherings as needed.

16. Applicants have received favorable commentary about their food from many people since it opened, including the staff of the Downtowner newspaper, and Governor Victor Atiyeh, who attended a large banquet at the premises. A patron named David Chin wrote a letter to the OLCC stating, among other things:

"I was born and raised in China and consider myself an expert on the quality of Chinese cooking. As you may know, in the United States Chinese restaurants have traditionally provided only Americanized Cantonese style food, which is not typical of the authentic Chinese dishes usually eaten by Chinese people, especially for formal dinners.

In the past few years there have been some new immigrants who have introduced so-called Mandarin food. Mandarin food is really a generalization of several kinds of cooking from different provinces of China. From a Chinese point of view, some so-called Mandarin restaurants here are more or less modified, even Americanized.

The most important reason Liu Chi Chinese Restaurant has become my favorite dining place, especially when I want to hold a party, is because of the different ways of preparing dishes. Some of their dishes are

not even listed on the regular menu. They provide some authentic Chinese dishes which are familiar to the Chinese but have never been known to most Americans. For example, for a banquet the Restaurant will serve different courses which will not only be prepared and flavored in a different style, but some may be arranged in a unique manner, such as flower baskets. Some of the seafood ingredients used in many of the dishes the Restaurant prepares, to my knowledge, are not even available in the Portland area. One example is a Chinese turtle course which can be prepared in at least three different ways by Liu Chi Chinese Restaurant."

Mr. Chin goes on to state that he believes that the meals at Applicants' premises are incomplete without the availability of distilled liquor.

17. Applicants presently own and operate the Lung Fung Restaurant in North Portland. They have owned the premises for approximately three years. The average sales at the Lung Fung are approximately \$72,000 per month, with about 80 percent of this figure in food sales.

18. The City of Portland, with a population of approximately 368,000, has 314 DA and DB licensees. It has 16 DC operations. Multnomah County, with a population of 564,000, has 379 DA and DB licensees and 19 DC operations.

19. There are approximately nine Chinese restaurants with dispenser privileges in downtown Portland south of Burnside Avenue. There are another seven Chinese restaurants with dispenser privileges in downtown Portland north of Burnside.

20. Among the nearest dispenser outlets serving Chinese food are the following: Hunan, three blocks away; Uncle Chen, seven blocks away; Chang's Yangtze, three blocks away; Lu Yen, 15 blocks away; Pepper Tree Garden Restaurant, seven blocks away; Yen Ching Restaurant, seven blocks away; Jade West Restaurant, 17 blocks away; Jasmine Restaurant, 14 blocks away; Marco Polo Garden, 10 blocks away; and Tuck Lung, approximately 12 blocks away.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The following criterion will weigh against issuing a license: there are sufficient licensed premises in the locality set out in the application. For purposes of this section, the applicant's community will be a 10-mile radius for dispenser licenses and a two-mile radius for other licenses, unless the applicant establishes that a substantial portion of the patronage of the premises is or would be from a larger or smaller area. OAR 845-05-030(1).

The evidence establishes that the City of Portland and Multnomah County contain substantially more dispenser outlets than one per 2,000 in population. That may be taken as evidence of "sufficient" such premises. It is noted, however, that Applicants are seeking a Dispenser Class C license, which is not controlled by the one per 2,000 population quota. Nevertheless, the evidence does provide some basis for concluding that the downtown area of Portland, in terms of sheer numbers, is not suffering from a lack of licenses.

2. An application for a dispenser license may be granted or denied on the basis of a comparison with other existing dispenser licenses in the same city or county.

Preference in licensing may be given to applicants showing that the public is not being adequately served by dispenser outlets in the community. OAR 845-05-040(1), (2)(c).

The same considerations apply here as were noted in connection with the criterion discussed above. The Commission concludes, therefore, that Applicants are not entitled to preference based upon inadequate service in the area.

3. Preference may be given to an applicant showing that applicant's premises will provide dining service or atmosphere which is unique or substantially different in quality or type from that offered by other licensees within a 20-mile radius as indicated by menu, decor and amenities, entertainment or other such characteristics. OAR 845-05-040(2)(b).

The evidence establishes that there are many Chinese restaurants in the downtown Portland area. Applicants argue, however, that the food service at Liu Chi is unlike that at other places in Portland. Such a claim is, of course, difficult for a non-expert to evaluate. However, Applicants were persuasive in their argument that many of their dishes and their general style of preparation and service are unlike that at other restaurants in the area. Their argument is, to some degree, corroborated by the view expressed by a person with an apparently valid claim to knowledge of such cuisine (see Finding of Fact 16). The Commission concludes that Applicants have established a basis for preference under this criterion.

ULTIMATE CONCLUSIONS OF LAW

Although there are many dispenser outlets serving Chinese food in the Portland area, Applicants' application should be granted because Applicants' premises serves food which is unique in the area. OAR 845-05-040(2)(b).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class C (DC) license by Chi and Rebecca Liu in the trade name Liu Chi Chinese Restaurant, 814 SW Broadway, Portland, Oregon, be GRANTED.

It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

Dated this 21st day of November, 1983.



C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.