

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,
Sui Yan Choi	)	CONCLUSIONS OF LAW,
PEKING RESTAURANT	)	AND ORDER
239 NW Fourth Avenue	)	
Portland, OR 97209	)	
- - - - -	)	
Multnomah County	)	

A hearing in the above matter was held on the 15th day of September, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was not represented by legal counsel. The Commission was not represented by legal counsel.

The hearing was reopened on the 9th day of December, 1983, and the record remained open until December 20, 1983.

The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, the Amended Proposed Order of the Hearings Examiner, the Second Amended Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, Exceptions to the Amended 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. Applicant seeks a Dispenser Class C (DC) license at the PEKING RESTAURANT. The premises presently holds a Restaurant (R) license.

2. The Commission's Staff has recommended that the application be denied based upon OAR Chapter 845-05-030(1) (sufficient licensed premises in the locality), 845-05-040(1), 845-05-040(3)(f) (lesser services, facilities and economic benefit to the area), 845-05-040(2)(b) (not unique dining service or atmosphere) and 845-05-040(2)(c) (applicant has not established that the public is not adequately served).

3. Applicant's premises is located in the Chinatown - Old Town area of northwest Portland.

4. Applicant has operated the premises for approximately 11 years.

5. Applicant's premises is open for lunch and dinner six days a week from 11:00 a.m. to 9:00 p.m.

6. The food at Applicant's premises is Cantonese style, offering many varieties of rice, chow mein, chow yuk, chow don, noodles, various combination plates and family dinners. In addition, approximately 22 house special dishes are offered. Prices for dinners range from approximately \$4.00 to approximately \$8.00. At lunch, various combination luncheon specials are offered.

7. In addition to the above foods, Applicant's premises offer a special Chinese dim sum lunch. Approximately 20 items are on the dim sum menu. They are served from roving trays, Hong Kong style. Applicant was the first Chinese restaurant to offer dim sum specialties in the Portland area, beginning in

approximately 1972. At least one other restaurant in the Chinatown area offers dim sum now, as does at least one other in east Portland. Varieties and size of the dim sum menu vary from place to place.

8. If the DC license is granted, Applicant will add an extensive American menu for lunch and dinner. The American lunch menu will feature ten entrees, 13 sandwiches, and several salads. The American dinner menu includes many steak and other meat dishes, seafood dinners such as scallops, salmon, frog legs and others, and various kinds of soup and sandwiches.

Applicant offers the American menu because other Chinese restaurants in the area do not offer substantial American food.

9. Sales at Applicant's premises have been as follows:

<u>MONTH</u>	<u>FOOD</u>	<u>BEER &amp; WINE</u>	<u>TOTAL</u>
<u>1982</u>			
August	\$11,226	\$540	\$11,766
September	9,997	365	10,362
October	10,107	331	10,438
November	9,088	348	9,436
December	10,006	330	10,336
<u>1983</u>			
January	7,730	211	7,941
February	6,185	225	6,410
March	7,820	293	8,113
April	5,759	249	6,008
May	5,342	205	5,547
June	4,454	190	4,644
July	6,508	223	6,731
<u>August</u>	<u>5,576</u>	<u>241</u>	<u>5,817</u>
Average	\$ 7,677	\$289	\$ 7,966

10. Sales figures offered at the reopened hearing are as follows:

<u>MONTH</u>	<u>FOOD</u>	<u>BEER &amp; WINE</u>	<u>TOTAL</u>
<u>1983</u>			
October	\$8,168	\$257	\$8,425
November	8,935	194	9,129

11. Applicant attributes the decline in sales during most of 1983 to competition from other licensed Chinese restaurants in the area.

12. Applicant estimates that the addition of a DC license would increase his sales by approximately 20 percent.

13. Average monthly sales at DA outlets in Multnomah County and the City of Portland have been as follows:

	<u>FOOD</u>	<u>ALCOHOLIC BEVERAGE</u>	<u>TOTAL</u>
Multnomah County	\$38,064	\$21,489	\$59,553
City of Portland	34,540	20,691	55,231

14. There are at least seven Chinese restaurants within approximately two blocks of Applicant's premises. Five of these have DA licenses: Rickshaw Charlie's, Republic Restaurant, Tuck Lung Restaurant, Suzy Wong Restaurant, and Hung Far Low. Two others, the Yen Kee and Fong Chong, have R licenses. Applicant has felt at a competitive disadvantage because of the number of Chinese restaurants in the area holding dispenser privileges.

15. Applicant's premises seats approximately 106. This figure includes a 40 to 50 seat banquet room recently installed by Applicant. Applicant holds a number of banquets per month in the new banquet area.

16. Multnomah County, with a population of 564,000, has 378 DA and Dispenser Class B (DB) licenses in operation. It

has 17 DC licenses. The City of Portland, with a population of 368,000, has 313 DA and DB premises in operation and 14 DC premises.

17. Applicant offered a petition in support of the application signed by approximately 330 people.

18. At the reopened hearing, Applicant offered an additional supporting petition containing 538 signatures. Applicant also offered 12 letters supporting the application. Several were from other licensed premises in the area, such as Tuck Lung, The Republic, Fong Chong, and The Magic Garden. Others were from representatives of Chinese organizations, such as the Chinese Consolidated Benevolent Association and the Chinese Chamber of Commerce. The latter organization noted that several major new projects, such as the U.S. Bank Tower, have recently brought more people into the area. One of the letters was from a vice president of the U.S. National Bank, who noted that the license would enhance the district.

#### DISCUSSION

Although the evidence provided at the reopened hearing indicates substantial public support for the application, the Commission does not believe it is sufficient to overcome the factors noted below.

#### ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The existence of sufficient licensed premises in the locality set out in the application will weigh against issuing a license. For purposes of this section, the applicant's community will be a 10-mile radius for dispenser licenses. OAR 845-05-030(1).

The precise number of premises with dispenser privileges within 10-miles of Applicant's premises is not established by the evidence. Nevertheless, the evidence does indicate that the City of Portland and Multnomah County have substantially more such premises than one per 2,000 population. Although it may be argued that, as this is an application for a DC outlet, the number of DA outlets is not conclusive, the number of such outlets may be taken as an indication of sufficiency of dispenser outlets in general in the area.

The Commission concludes that this criterion provides a basis for denying the application.

2. Unfavorable consideration may be given to an applicant if the premises will provide lesser services, facilities and economic benefit to the area or to the general public, as indicated by actual or reasonably projected number of patrons served, seating capacity, banquet facilities, hours of operation, number of employees, extent of investment in facilities, amenities, or other such characteristics. Gross sales figures may be used as a basis for determining the number of patrons served. OAR 845-05-040(3)(f).

Sales at Applicant's premises are far below the average at DA outlets in Portland or Multnomah County and will likely remain so even if the DC license is granted. Again, it may be argued that a comparison with DA outlets is not altogether fair. Nevertheless, the sales at Applicant's premises are such as to indicate that the number of patrons served there is relatively small. Applicant has recently installed a banquet facility and is presently hosting banquets. The Commission concludes that that fact is not enough to offset the evidence that

the number of patrons served will be small. The Commission concludes that this criterion provides a basis for denying the license.

3. Preference in licensing may be given to an applicant showing that the 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).

Applicant's menu is primarily Cantonese food. Applicant makes no claim that it is unusual in either the immediate area or in the City or County as a whole. On the other hand, Applicant serves a dim sum luncheon. Applicant was the first restaurant in Portland to serve such delicacies, according to the evidence. However, the evidence also establishes that there are at least two other restaurants in Portland which presently serve such fare. Applicant thus may claim to have an unusual menu in this regard, although not a unique one. Given the fact that the dim sum is only a part of the lunch menu, however, the Commission concludes that such claim to distinction is not sufficient to create a preference under this criterion.

Applicant's proposal to add substantial American food to the menu is apparently designed to meet a perceived public need. It gives some distinction to Applicant's menu in relation to those of the other Chinese restaurants in the area. However, the Commission concludes that it is not sufficient to qualify the premises for preference under this criterion.

ULTIMATE CONCLUSIONS OF LAW

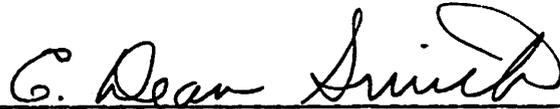
Although Applicant has a well established restaurant, the application for a DC license should be refused because Applicant does not qualify for a preference and because the area is served by sufficient licensed premises. OAR 845-05-040(2)(b), 845-05-030(1).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class C (DC) license by Sui Yan Choi in the trade name Peking Restaurant, 239 NW Fourth Avenue, Portland, Oregon 97209, be DENIED.

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

Dated this 24th day of January, 1984.



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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.