

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Application for a	)	
Dispenser Class A (DA)	)	
License by:	)	FINAL
	)	FINDINGS OF FACT,
Far Man Lee and Yu Chiu Lee	)	CONCLUSIONS OF LAW,
FAR MAN	)	AND ORDER
3111 Gateway Street	)	
Springfield, OR 97477	)	
- - - - -	)	
Lane County	)	

A hearing in the above matter was held on the 28th day of October, 1982, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicants appeared in person and were represented by D. Michael Mills, Attorney at Law, Salem, Oregon. 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 A (DA) license in the trade name FAR MAN (formerly Undecided Trade Name), 3111 Gateway Street, Springfield, Oregon 97477.
2. The Commission sent the matter to a hearing for exploration of the following matters: OAR 845-05-040(2)(b) (uniqueness in dining service or atmosphere) and OAR 845-05-040(3)(f) (gross sales; banquet facilities).

3. Applicants' premises is located on Gateway Street within the city limits of Springfield. It is approximately one mile from the Interstate 5-Beltline Road interchange.

4. The premises has seating for 140 in the dining room and 26 in the lounge.

5. The premises will be open seven days a week: 11:30 a.m. to 10:00 p.m., Monday through Thursday; 11:30 a.m. to 11:00 p.m., Friday and Saturday; 12:00 noon until 10:00 p.m., on Sunday.

6. The menu at Far Man will feature good quality Cantonese cuisine. The dinner menu contains nine combination dinners; several varieties of chow mein and chop suey; egg foo young; rice, noodles and appetizers; and 14 special Chinese dishes. Prices of the various dinners are generally from \$3.50 to \$6.95. The menu also contains American food: nine steak and seafood dinners; six sandwiches; salads and beverages.

7. The lunch menu contains a similar variety of Chinese and American food.

8. The Applicants are licensed at Lee's Far East, a DA outlet in Eugene. Mr. Lee is a co-licensee at the Oriental Village, a Chinese restaurant holding a Retail Malt Beverage (RMB) license in Eugene.

9. Applicants have held the DA license at Lee's Far East for approximately four years. Prior to being licensed at Lee's Far East, Applicants operated an unlicensed Chinese restaurant in Pendleton, Oregon, for approximately three and one half years.

10. The premises at Far Man has three levels. The upper balcony area was used by prior operators for banquets. Applicants also intend to use it for banquets. It seats approximately 50 people and is separate enough from the rest of the premises to allow for private gatherings. The lower level of the premises also contains a space seating approximately 50 people, suitable for banquet use. It cannot be completely separated from the rest of the premises.

11. Gateway Street is a well developed main street at the point where the premises is located. It has grown rapidly in recent years and continues to grow. Approximately six motels are within one mile, including a Red Lion Inn, a Ramada Inn, a Shilo Inn, and three others. There are approximately 700 to 1,000 apartment residents within one half mile of the premises.

12. At least 15 commercial or industrial concerns are located within one mile of Applicants' premises.

13. The nearest outlets with DA licenses are as follows: Hacinda Steak House - 0.6 miles away; Red Lion Motor Inn - 0.7 miles away; Ramada Inn - 1.0 mile away; Mill Camp No. 5 - 2.0 miles away; and Country Squire Inn - 3.0 miles away.

14. The City of Springfield contains one Chinese restaurant holding a DA license, the Chinese Gardens in downtown Springfield, approximately seven or eight miles from Applicants' premises.

15. There are five Chinese restaurants with dispenser licenses in Eugene. The nearest is Foos (DA), approximately three miles away. Lee's Far East (DA) is also approximately

three miles away. The Asia Gardens (DA) is located in downtown Eugene, approximately four or five miles from Applicants' premises. Louie's Village (DA) is approximately five miles from Applicants' premises. Genghis Khan (DC) is approximately six miles from Applicants' premises.

16. All of the above noted restaurants, with the exception of Genghis Khan, serve Cantonese style Chinese food, the same style that Applicants serve. Foes is not noted for particularly good food service.

17. The building in which Applicants' premises is located was operated as an Italian restaurant with a DA license from June, 1977, to May, 1980. It then was licensed to other individuals as a Mexican restaurant. In May, 1982, the premises closed. Applicants were attempting to obtain the license through a change of ownership proceeding when the license expired on June 30, 1982. The former Licensees are undergoing bankruptcy proceedings.

18. Applicants opened the premises approximately three weeks before the hearing.

19. Applicants estimate that average monthly sales at Far Man during the first three months of operation will be as follows:

<u>FOOD</u>	<u>ALCOHOLIC BEVERAGE</u>	<u>TOTAL</u>
\$22,067	\$3,895	\$25,962

20. The projections of sales were based primarily upon Applicants' sales at Lee's Far East, a Chinese restaurant in Eugene at which they hold a DA license. Average monthly sales

at Lee's Far East have been as follows: \$30,000, food; \$6,000, liquor.

21. Lee's Far East and Far Man have approximately the same seating capacity. Applicants believe that Far Man is in a better area, however, because of the development and growth in the Gateway area.

22. Average monthly sales at dispenser outlets in Springfield and Lane County have been as follows:

	<u>FOOD</u>	<u>ALCOHOLIC BEVERAGE</u>	<u>TOTAL</u>
Springfield	\$23,238	\$23,951	\$47,189
Lane County	30,860	18,126	48,986

23. Springfield, which has a population of 41,540, has 10 DA licenses and three Dispenser Class B (DB) licenses.

24. Lane County, which has a population of 275,000, has 83 DA licenses and 14 DB licenses.

25. Following the October, 1982, Commission Meeting, there were 77 DA and DB licenses available for issuance throughout the State. There were 26 applications for such licenses pending.

26. Applicants are carrying out minor remodeling in the kitchen and lounge.

#### DISCUSSION

The Staff's representative at the hearing requested that if the license is granted, the conditions noted below in the Proposed Order section be imposed. Applicants did not object to these conditions.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Preference for issuance of a dispenser license will be given to applicants who provide dining service or atmosphere which is unique or substantially different in quality, quantity or type from that offered by other licensees within a 20-mile radius as indicated by menu, decor and amenities, entertainment or other characteristics. OAR 845-05-040(2)(b).

The evidence indicates that there are six other dispenser outlets serving Chinese food in the Eugene - Springfield area. None of these is actually near to Applicants' premises, but all are within the 20-miles specified by this criterion. The evidence indicates that the food at one of these establishments is definitely inferior to that at Applicants' premises and that food at another, Genghis Khan, is of a different style. The evidence thus establishes that there is not a large number of comparable Chinese restaurants with dispenser licenses in the area. Nevertheless, it cannot be said that Applicants' premises is literally "unique."

The Commission concludes that this criterion does not provide a basis for preference in granting a license.

2. Unfavorable consideration may be given to an applicant if applicant's 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).

Applicants' projections of sales would place food sales at approximately the average for the City of Springfield. Sales of alcoholic beverages would be substantially less than the average at Springfield establishments.

The Commission believes that Applicants' estimates are very reasonable and perhaps conservative. It is noted that Applicants' sales at Lee's Far East are somewhat more than their projections for Far Man, even though the two establishments have approximately the same seating capacity and although Far Man is, according to the evidence, located in a better area for business. The Commission concludes that Applicants' premises, if the license is granted, will have food sales in excess of those of the average for Springfield establishments. As the food prices are relatively low, it may be inferred that the premises will serve more patrons than do existing premises in the area.

The evidence establishes that Applicants' premises does have facilities suitable for banquets and that Applicants intend to host banquets.

The Commission concludes that the anticipated sales and the existence of banquet facilities indicate that the premises will provide greater services to the public. A preference for the granting of the license is therefore indicated under this criterion.

#### ULTIMATE CONCLUSIONS OF LAW

Although the food service at the premises is not literally unique, the license should be granted because the premises will

provide good quality Chinese food in an area that has few licensed establishments doing so, because the premises will serve numbers of patrons comparable to that served at existing premises, and because the facility has banquet rooms to serve the public. OAR 845-05-040(1), (2)(a) and (3)(f).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license by Far Man Lee and Yu Chiu Lee in the trade name Far Man, 3111 Gateway Street, Springfield, Oregon 97477, be GRANTED, with the issuance of the license subject to the following conditions:

1. That an executed copy of the sales contract be provided;
2. That the minor remodeling of the kitchen and lounge noted in Findings of Fact No. 26 be completed and approved;
3. That the above conditions be complied with within 60 days of the Final Order granting the license, or that the license be withdrawn.

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, 1983.



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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.