

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,
Lyon's Restaurants In Oregon, Inc.)	CONCLUSIONS OF LAW,
LYON'S RESTAURANT)	AND ORDER
2998 Commercial Street SE)	
Salem, Oregon 97302)	
- - - - -)	
Marion County)	

A hearing in the above matter was held on the 30th day of November, 1982, in Salem, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was represented by David A. Rhoten, Attorney at Law, Salem. 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. Applicant seeks a Dispenser Class C (DC) license in the trade name LYON'S RESTAURANT, 2998 Commercial Street SE, Salem, Oregon.
2. The Commission's Staff has recommended that the license be refused based upon OAR 845-05-030(1), 845-05-040(3)(f) (sufficient licensed premises in the area; no banquet facility) and OAR 845-05-040(1) (dining service not unique).

3. Applicant's premises is located on Commercial Street SE, within the city limits of Salem. Commercial Street SE is a main north-south thoroughfare.

4. The premises seats approximately 140 persons.

5. The premises is open 24 hours a day, seven days a week.

6. The restaurant has a "family" atmosphere.

7. The food served at the premises is typical "American" cuisine. Breakfast foods include eggs, pastries and omelets. Many types of sandwich are offered. Dinners range in price from approximately \$3.85 to \$7.95. Dinners include meat, seafood and chicken, two Italian dishes and three Mexican dishes. Several salads are also offered.

8. If the license is granted, Applicant will offer approximately eight special cocktails, including strawberry colada, fresh banana surprise, strawberry margarita, and others.

9. The Salem Area Comprehensive Plan divides the Salem area into four "Service Districts." Applicant's premises is located in the South Salem Service District, which is the area south of Mission Street SE.

10. The South Salem Service District had a population of 39,773 according to the 1980 census. Its population was slightly larger than that of the East Salem Service District and substantially larger than that of the Central Salem Service District or the West Salem Service District.

11. During the period April 1, 1980, through August, 1982, the South Salem Service District had more housing starts than any of the other three Service Districts.

12. Official notice is taken that there are eight DC licensees in the Salem area. One, Los Baez, is approximately 300 feet north of Applicant's premises. Chelsea's is several blocks south. Two others are approximately two to two-and-one-half miles away in the downtown area of Salem. The other four DC licensees are approximately three to four miles to the north or northeast of Applicant's premises.

13. There are 35 DA outlets within six miles of Applicant's premises. The nearest is the Tom Tom Restaurant, approximately two blocks south. Twenty one DA outlets are within approximately two to three miles, with most being in the downtown area of Salem.

14. Eight dispenser outlets are located along Commercial SE, within two miles north or south of Applicant's premises.

15. Salem has a population of 93,075. As of November 30, 1982, 43 DA and Dispenser Class B (DB) licensees were located in the city.

16. Marion County, with a population of 209,730, has 74 DA and DB licensees.

17. The premises has no banquet facility.

18. The premises opened for business on August 4, 1982, with a Restaurant (R) license. Average monthly sales since opening have been as follows:

Food	\$75,906
Beer and Wine	<u>1,605</u>
TOTAL	\$77,511

19. Average monthly sales at existing dispenser outlets in Salem and Marion County have been as follows:

	<u>FOOD</u>	<u>ALCOHOLIC BEVERAGE</u>	<u>TOTAL</u>
City of Salem	\$30,986	\$17,446	\$48,432
Marion County	26,415	14,437	40,852
City of Salem DC Outlets	34,244	4,841	39,085

20. Many of the existing dispenser outlets in the Salem area are different from Applicant's premises in that they provide specialty or ethnic cuisine, are primarily dinner houses, emphasize entertainment, or have rather limited hours in comparison with Applicant's premises. Others, such as Chelsea's, have a similar menu and atmosphere. Applicant's general American menu, family atmosphere, and 24 hour operation are thus not unique in the area, although they may be somewhat unusual.

21. Applicant presently operates five other Lyon's Restaurants in Oregon. Two have Dispenser Class A (DA) licenses and three have DC licenses.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The existence of sufficient licensed premises in the locality set out in an application shall weigh against granting 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 does not indicate that there are sufficient licensed premises in the area. Although the precise number of premises within 10 miles and the population of such an area are not established by the evidence, the evidence indicates that Salem and Marion County have somewhat fewer than one DA and DB outlet per 2,000 population. The evidence also indicates that the greatest concentration of dispenser outlets in Salem is in or near the downtown area. The area along Commercial Street SE appears to have relatively few dispenser outlets given the population of the area.

The Commission concludes that this criterion is not a basis for denying the license.

2. 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 the dining service and atmosphere at Applicant's premises are not unique in the area. That is, there are other establishments providing general American fare and a family atmosphere. The evidence does indicate, however, that many of the other dispenser outlets in the area do differ from Applicant's premises in some regard, such as cuisine, hours of operation, or general atmosphere. Thus, although Applicant's premises is not unique, it is different from many of the other premises in the area.

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

3. Preference in licensing may be given to an applicant showing that applicant's premises will provide greater 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(2)(a).

The evidence indicates that Applicant's sales are already far in excess of sales at existing premises in the area. It may be inferred, therefore, that Applicant's premises serves substantially more patrons than do existing dispenser outlets. The hours of operation of the premises also provide a service to the public.

The evidence indicates that Applicant's premises does not have a banquet facility.

The Commission concludes that, despite the absence of a banquet facility, the sales and hours of operation at Applicant's premises indicate that the premises will provide greater service and facilities to the public than do other premises in the area. This criterion therefore provides a basis for preference in granting the license.

ULTIMATE CONCLUSIONS OF LAW

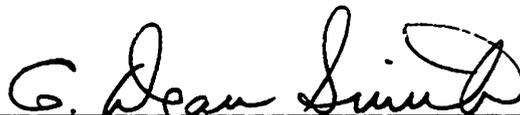
Although Applicant's dining service is not unique in the area, the license should be granted because Applicant's premises will provide additional services to the general public in the area. OAR 845-05-040(2)(a).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class C (DC) license by Lyon's Restaurant in Oregon, Inc., in the trade name Lyon's Restaurant, 2998 Commercial Street SE, Salem, Oregon 97302 be GRANTED.

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.



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.