

a.

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,
David Kashanian)	CONCLUSIONS OF LAW,
THE RED PEPPER)	AND ORDER
5331 SW Macadam)	
Portland, Oregon)	
- - - - -)	
Multnomah County)	

A hearing in the above matter was held on the 2nd day of March, 1983, in Portland, Oregon, before Hearings Examiner Douglas Crumme'. The Applicant appeared in person and was 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. David Kashanian has applied for a Dispenser Class C (DC) license at THE RED PEPPER, 5331 SW Macadam, Portland, Oregon. The Applicant has held a Restaurant license from the Commission since November, 1981.

2. The Commission's Regulatory Staff Committee voted four-to-one to grant the Applicant's application at the Committee's December 9, 1982 meeting. The Committee's recommendation was considered by the Commission at the Commission's December 27, 1982 meeting. At that meeting, the Commission deferred the application to a hearing.

3. In deferring the Applicant's application to a hearing, the Commission directed that the Applicant's qualifications for licensure be considered under the following:

- a. ORS 472.160(1) (sufficient licensed outlets in the locality set out in the application and the granting of a license in the locality set out in the application is not demanded by the public interest or convenience).
- b. OAR 845-05-030(1) (sufficient licensed outlets in the applicant's community).
- c. OAR 845-05-040(2)(a) (whether applicant's premises will provide greater services, facilities and economic benefit).
- d. OAR 845-05-040(2)(b) (whether 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 or other such characteristics).

4. The Red Pepper is located in the Water Tower Building in the John's Landing area along Southwest Macadam in Portland. The Water Tower Building contains approximately 48 stores, restaurants and shops. The Water Tower Building and John's Landing area also contain a number of offices.

5. The Red Pepper has seating for 94 persons in a single dining room. The premises does not have a banquet room, lounge or public bar.

6. The Applicant does not offer any pool tables, game machines or dancing.

7. Business hours at The Red Pepper are as follows:

Monday thru Thursday	11:30 a.m. to 9:30 p.m.
Friday	11:30 a.m. to 10:00 p.m.

Saturday
Sunday

11:30 a.m. to 9:30 p.m.
12:00 noon to 5:00 p.m.

8. The Red Pepper offers a large menu of moderately-priced Mexican dishes. The menu includes six appetizers (\$1.50 to \$4.25), four salads (\$2.95 to \$4.00), five types of tostadas (\$3.25 and \$3.50), four egg dishes (\$3.95 to \$4.25), three hamburgers (\$2.95 to \$3.75), three enchilada dinners (\$3.25 ala carte and \$4.25 complete meal), six burrito dinners (from \$2.75 ala carte to \$5.25 complete meal), two taco dinners (\$2.95 ala carte and \$3.95 complete dinner), three combination dinners (from \$3.10 ala carte to \$5.65 complete dinner), and three sandwiches (\$3.25). (Commission's Exhibit F.)

9. In going into business at The Red Pepper, the Applicant started with low prices to draw patrons and establish a regular clientele. The Applicant plans to raise prices 10 percent to 15 percent in the coming year. Upon raising prices, the Applicant intends to offer more higher-priced dinner items.

10. The Applicant's sales at The Red Pepper during 1982 have been as follows:

1982 ACTUAL SALES

<u>MONTH</u>	<u>FOOD</u>	<u>BEER AND WINE</u>	<u>TOTAL</u>
January	\$ 7,857.10	\$ 825.80	\$ 8,682.90
February	16,171.88	2,736.01	18,907.89
March	11,946.23	1,719.94	13,665.66
April	9,358.40	1,175.85	10,534.25
May	8,520.10	1,177.30	9,346.93
June	8,169.63	983.45	9,153.08
July	10,300.29	1,687.70	11,987.99
August	10,713.73	1,437.60	12,151.33
September	8,696.19	1,146.90	9,843.09
October	10,369.95	1,457.80	11,827.75
November	12,943.35	1,620.15	14,566.50
December	14,720.28	1,890.05	16,610.30

11. DA outlets in the following areas have recently experienced the average monthly sales indicated over a one-year period:

<u>AREA</u>	<u>FOOD SALES</u>	<u>TOTAL SALES</u>
City of Portland	\$33,541	\$52,275
Multnomah County	36,806	56,401

12. The Commission's License Division does not compile average sales figures for DC outlets. Hence, there are no average sales figures for existing DC outlets with which to compare the Applicant's sales.

13. The following areas contain the populations and numbers of dispenser's outlets indicated:

<u>AREA</u>	<u>POPULATION</u>	<u>POPULATION DIVIDED BY 2,000</u>	<u>DISPENSER LICENSES COMMITTED AND IN OPERATION</u>	
			<u>DA/DB</u>	<u>DC</u>
City of Portland	366,960	183.48	310	13
Multnomah County	561,400	280.70	378	17

14. The nearest dispenser outlets to The Red Pepper are as follows:

<u>OUTLET</u>	<u>TYPE OF LICENSE</u>	<u>DISTANCE AND DIRECTION FROM THE RED PEPPER</u>
Wooden Horse Eating Establishment	DA	In Water Tower Building
Piccolo Mondo Ristorante	DA	In Water Tower Building
Captain Billy Bang's Restaurant	DA	In Water Tower Building
Quinn's Mill	DA	2 blocks east

15. In addition to the above, DA outlets within one mile of The Red Pepper in the John's Landing area include Mazzi's, Victoria Station, and The Rusty Pelican.

16. The Commission has approved the closure of two dispenser licensed outlets within one mile of The Red Pepper. The

first of these outlets was formerly Horatio's. A proposal is pending before the Commission to change the name of this premises to Tequila Willie's, specializing in Texas and Mexican food. The second of these outlets is the Don Juan. The Don Juan was closed because of fire approximately three or four months prior to the Applicant's hearing. Before the premises closed due to the fire, the Don Juan had featured Mexican food for approximately three or four months.

17. The nearest Mexican-menu dispenser outlet to The Red Pepper is Zapata's, approximately one mile north.

18. The Commission takes official notice that there are a number of dispenser-licensed Mexican-menu restaurants within 20 miles of The Red Pepper.

19. The Applicant's landlord at the Water Tower Building supports the issuance of a DC license to the Applicant at The Red Pepper.

20. The Applicant intends to discuss making arrangements with its landlord at the Water Tower Building to enable The Red Pepper to operate later in the evening.

21. The Commission takes official notice that as of April 21, 1983 there were 16 DC licenses available to the Commission for issuance. The Commission further takes official notice that as of this same date there were 12 DC license applications pending before the Commission.

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).

Evidence that there is more than one dispenser license per 2,000 people in the applicant's city or county will be prima facie evidence that the applicant's community is being adequately served. OAR 845-05-040(2)(c).

The record establishes that the Applicant's community contains relatively sufficient dispenser outlets. Both the City of Portland and Multnomah County contain more than one dispenser outlet per 2,000 population. Further, there are three dispenser outlets in the Water Tower Building shopping mall in which the Applicant is located and three other dispenser outlets within a one-mile distance in the John's Landing area along Southwest Macadam. The relative sufficiency of dispenser's outlets in the Applicant's community weighs against licensure under OAR 845-05-030(1).

2. An application for a DA license may be granted or denied on the basis of a comparison with existing DA licenses in the same city or county or a comparison with other pending dispenser's applications. OAR 845-05-040(1). Preference in licensing may be given to applicants providing greater economic benefit to the area or 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, entertainment or 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 Applicant's sales have shown a growth trend and an increase in sales at the premises would be likely with receipt of

a DC license and the Applicant's planned increase in menu prices. Although the resulting sales at the premises are likely to be substantially below the recent average sales of DA outlets in the City of Portland and in Multnomah County, a direct comparison between DA outlets and a DC applicant is probably not entirely fair because of the difference in license privileges between the two types of licenses. Given these different privileges, the Commission concludes that the Applicant's likely sales with a DC license do not show a lack of preference for licensure under OAR 845-05-040(2)(a).

3. 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 proposed Mexican menus at the two closed dispenser outlets in the John's Landing area (Tequila Willie's and Don Juan) should not be considered under this criterion because of the uncertainties about whether these businesses will ever open again with Mexican menus. There are a number of other dispenser-licensed Mexican-menu restaurants within 20 miles of The Red Pepper. The Red Pepper's dining service and atmosphere therefore are not unique. The Commission notes, however, that there are presently no other dispenser-licensed Mexican restaurants along Southwest Macadam in the Johns Landing area. The

John's Landing area contains a number of retail shops and commercial offices. This fact affects to some degree the lack of preference otherwise shown under OAR 845-05-040(2)(b).

ULTIMATE CONCLUSIONS OF LAW

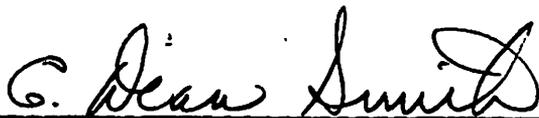
The Applicant's application is demanded by the public interest and convenience. The relative sufficiency of existing dispenser outlets in the Applicant's community is outweighed by the Applicant's likely sales level with a DC license. The Applicant's lack of uniqueness is counterbalanced in large degree by the present absence of a dispenser's licensed restaurant with a Mexican menu in the John's Landing area. ORS 472.160(1).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class C (DC) license by David Kashanian at The Red Pepper, 5331 SW Macadam, 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 23rd day of May, 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.