

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  
Earl L. Wright ) FINDINGS OF FACT,  
WILDE OSCAR'S ) CONCLUSIONS OF LAW,  
318 SW Third ) AND ORDER  
Portland, OR 97204 )  
- - - - - )  
Multnomah County )

A hearing in the above matter was held on the 25th day of August, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was represented by John M. Burns, Attorney at Law, Portland. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to 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 A (DA) license at WILDE OSCAR'S. The premises presently holds a Retail Malt Beverage (RMB) license.
2. The Commission's Staff has recommended that the application be denied based upon OAR 845-05-030(1) (sufficient licensed premises in the area), OAR 845-05-040(1), 845-05-040(3)(f) (lesser services, facilities, and economic benefit

to the community) and OAR 845-05-040(2)(c) (community adequately served by dispenser outlets).

3. Applicant has operated Wilde Oscar's for approximately six years with a Retail Malt Beverage (RMB) license.

4. The premises is located in downtown Portland. It is within approximately one block of the border of the Skidmore Historic District. It is within approximately three blocks of the Yamhill Historic District and the proposed Morrison Street Development Project.

5. Applicant operates the premises somewhat in the style of an English pub. It contains one pool table but no electronic amusement devices. Applicant will remove the pool table if the license is granted.

6. The daytime menu at the premises contains approximately seven sandwiches. In addition, specialties such as English Pork pie, beef cornish pastie, onion soup, stuffed macaroni shells, and salads are offered.

7. Applicant has recently instituted a new dinner menu which contains the following entrees: stuffed pasta shells; lemon baked chicken breasts; shrimp mornay; pot roasted beef; English pork pie; beef cornish beef pastie. These entrees are served with soup or salad, vegetable, and bread; they range in price from \$4.95 to \$6.95. The dinners are served from approximately 5:30 p.m. to 8:30 p.m.

8. Applicant will also offer a night menu after the dinner hour. It contains sandwiches, pork pie, cornish pastie, and tamale pie soup.

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	\$5,354	\$5,581	\$10,935
September	5,300	5,712	11,012
October	5,241	5,109	10,350
November	4,855	5,082	9,937
December	4,731	5,645	10,376
<u>1983</u>			
January	4,435	4,970	9,405
February	4,354	4,924	9,278
March	4,032	4,769	8,801
April	3,710	4,037	7,737
May	3,965	4,858	8,823
June	4,680	6,324	11,004
<u>July</u>	<u>4,079</u>	<u>6,408</u>	<u>10,487</u>
Average	\$4,561	\$5,285	\$9,846

10. Applicant estimates that if the license is granted monthly food sales will average \$8,008 and total sales will average \$16,783.

11. Since 1980, Applicant has presented cabaret shows at Wilde Oscar's on a regular basis on a small stage in the restaurant portion of the premises. On a regular basis, Leigh Clarkgranville, a well known local performer, has presented shows. Other productions have featured the Sumus Theater Ensemble and other local and regional theater groups. Cabaret shows have drawn good crowds and have been well received by the local media. The premises has developed a reputation among artists in the Pacific Northwest as a showcase for small nightclub acts. The only other premises in the area featuring similar entertainment is Dobies, a DA premises in the "Old Town" area of Portland.

12. Dramatic and musical performances occur regularly on four nights a week at Wilde Oscar's. The acts change approximately every four to six weeks.

13. The availability of distilled liquor at Wilde Oscar's would enhance the economic viability of the cabaret theater at the premises. Many of those who attend the performances would prefer distilled spirits to beer and wine; thus larger crowds could be anticipated with a corresponding increase in revenue to the establishment and to the performers. The premises would therefore be on a significantly stronger economic footing and the continuation of this type of entertainment would be assured.

14. The Portland Development Commission sent a letter to the OLCC expressing support for the application. The letter states, in part:

"We believe that the entertainment uses being proposed will not only add to the night life needed to make Portland's downtown an increasingly attractive place, but to help implement an important objective of Portland's downtown plan."

15. Letters in support of the application were also sent by the Storefront's and Actors' Theater, the Multnomah Monthly Magazine, the Metro Private Industry Council, the Mental Health Services West, Inc., and various customers.

16. Applicant presented a petition containing approximately 352 signatures of those supporting the application.

17. The City of Portland, with a population of 368,000, has 313 DA and Dispenser Class B (DB) licenses in operation.

Multnomah County, with a population of 564,000, has 378 such licenses in operation.

18. Average sales at existing DA licensees in the City of Portland and Multnomah County have been as follows:

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

19. Seating at the premises is as follows:

Restaurant	20
At Bar	8
Lounge	20
Outdoor Patio	<u>20</u>
TOTAL	<u>68</u>

20. The premises is open seven days a week: 11:00 a.m. to 1:00 a.m. Sunday through Thursday and 11:00 a.m. to 2:30 a.m. Friday and Saturday.

21. There are at least 10 dispenser outlets within four or five blocks of Applicant's premises. Sales at these premises range from approximately \$4,000 per month to well over \$100,000 per month. Several of these establishments are significantly under the average for Portland and Multnomah County while several are substantially above the average.

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. OAR 845-05-030(1).

The evidence establishes that Portland and Multnomah County both contain dispenser outlets in excess of one per 2,000 population. That is at least slight evidence that there are "sufficient" such premises in the area. The evidence further establishes that downtown Portland has a substantial number of such premises.

The Applicant presented evidence that Wilde Oscar's draws from areas outside the immediate Portland area. However, the evidence was not enough to indicate that the 10-mile radius noted in the above criterion is inappropriate.

The Commission concludes that this criterion weighs against the issuing of 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).

Applicant's estimate of sales if the license is granted, which would place the average at approximately \$16,000 per month, appears reasonable. Such sales would be only approximately one third of the average for Portland or Multnomah County. It may be reasonably inferred, therefore, that Applicant's premises will serve substantially fewer patrons than does the "average" of such premises in the area. Applicant correctly points out that some of the premises in the area are below the

average, whereas others are above the average. It is in the nature of an "average" figure, however, that, generally speaking, approximately half of the entities involved will be below the average. The fact that many of the licensed premises in the area have sales below the average is thus not surprising. It does not negate the fact that, under this criterion, below average sales are a basis for denying the application.

3. Preference in licensing 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 the cabaret style entertainment offered at Wilde Oscar's is very unusual in the Portland area. Only one other premises offers a similar form of such entertainment. The evidence further establishes that Wilde Oscar's has a history of success for providing such entertainment and enjoys a reputation in the area as a center for such entertainment. However, the Commission concludes that this factor is not sufficient to outweigh the factors weighing against granting the license.

#### ULTIMATE CONCLUSIONS OF LAW

The license should be denied because the premises will provide lesser services, facilities and economic benefit to the area and because the area is served by sufficient licensed premises. OAR 845-05-030(1), OAR 845-05-040(3)(f).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license by Earl L. Wright in the trade name Wilde Oscar's, 318 SW Third, Portland, Oregon 97204, be DENIED.

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.



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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.



STATE OF OREGON

INTEROFFICE MEMO

DATE: November 4, 1983

TO: Jill Thompson, Acting Director  
Hearings Division  
FROM: Allen R. Scott, Hearings Examiner  
Hearings Division

SUBJECT: Exceptions by License Division  
Earl Wright  
WILDE OSCAR'S  
318 SW Third  
Portland, OR 97204  
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Multnomah County

The Exceptions do not find fault with any of the Findings of Fact but rather object to some of the conclusions. I would note the following in reply.

- I The Exceptions object to the conclusion that the application is entitled to a preference under OAR 845-05-040(2)(b), which gives preference where the dining service or atmosphere is unique or substantially different from other premises within 20 miles. The Hearings Examiner believes that although the word "unique" may most properly be used to mean "one of a kind," it is often used to mean merely "very unusual" or "uncommon." The Exceptions note this also. These latter uses seem to be what is intended in the criterion. Otherwise, only one restaurant with a particular type of cuisine, atmosphere, or entertainment could gain preference in a particular town, no matter how large the town. In this case, the evidence establishes that there is only one other Dispenser outlet in the Portland area with this type of entertainment. The Examiner concludes that the criterion can reasonably be considered as a basis for preference under these circumstances.
- II The Exceptions argue that even if the application is entitled to a preference under the above criterion, the license should nevertheless be denied because of the number of premises in the Portland area and because of the applicant's relatively low sales. The Hearings Examiner agrees that where there are both positive and negative factors, a weighing process is involved. It is the Examiner's view, however, that the criteria giving "preference" may properly be used to outweigh the criteria involving sufficiency of premises or size of gross sales. Otherwise, applications in Portland or one of the many other cities or counties around the state which have "sufficient" licensed premises could not possibly be granted, no matter what sort of preference might be indicated.

The Hearings Examiner believes that the Exceptions fairly state the issues in the matter. The Examiner does not, however, believe that any modification in the recommendation is needed.

ARS:dg

