

2. The Commission's Regulatory Staff Committee recommended that the Applicants' application be refused, citing the following:

- a. ORS 472.160(1) (sufficient licensed premises and not demanded by public interest or convenience).
- b. OAR 845-05-030(1) (sufficient licensed premises).
- c. OAR 845-05-040(1) and OAR 845-05-040(3)(f) (whether applicants will provide greater or lesser services, facilities and economic benefit in comparison with other dispenser licensees and pending dispenser applications).
- d. OAR 845-05-040(3)(e)(B) (emphasis on alcoholic beverages).
- e. OAR 845-05-040(3)(d) (applicant will provide meal service at only one meal per day).
- f. OAR 845-05-040(2)(b) and OAR 845-05-040(3)(a) (whether applicant's premises will provide dining service or atmosphere which is unique or substantially different from that offered by other licensees within a 20-mile radius).
- g. ORS 472.110(4) (quota).
- h. Battle Creek Golf Course, Inc. v. OLCC, 21 Or. App. 179, 534 P2d 204 (1975).

(Commission's Exhibit E.)

3. The House of Chin would be located approximately one mile north of the intersection of Commercial Street SE and Interstate 5 in South Salem.

4. The House of Chin would contain a dining room and a lounge.

5. The dining room will have seating for 120 persons. The dining room will contain a 30-seat area that the Applicants propose to use for banquets and meetings in addition to regular dining. The 30-seat area is separated from the remainder of the premises on two sides by walls and may be separated from the dining room on the third side by a folding wall. The 30-seat area may be separated on the fourth side from the entry and lobby area by a folding half-wall with a door.

6. The House of Chin's lounge will contain seating for 177 persons. The entire menu will be served in the lounge. The lounge contains a number of tables and booths that are large enough for the service of meals. The lounge also contains a bandstand and dance floor, a bar and a game room. The game room is separated from the remainder of the premises by walls and doors with the exception that a portion of one of the walls will be topped by spindles rather than being full to the ceiling.

7. The Applicants' proposed lounge will cover 3,971 square feet. The proposed dining areas will cover 1,402 square feet.

8. The projected cost for land, construction and equipment for the House of Chin is \$630,000.

9. The Applicants project that it will take six months from the grant of a DA license until the House of Chin could be constructed, equipped and opened for business.

10. The Applicants proposed to operate the House of Chin initially from 4:00 p.m. to 2:00 a.m., seven days a week. The full menu would be served from 4:00 p.m. to 2:00 a.m.

11. The Applicants originally hoped to begin opening at 11:00 a.m. and serving lunch at the House of Chin once the business had been operating for several months. Before starting a lunch business, the Applicants wanted to operate just for dinner in order to acquaint patrons with the business, to develop the restaurant staff's experience, and to assess demand at the House of Chin for lunch operations. However, after the Commission cited, as a basis for recommending refusal of the license, the fact that the Applicants would only be offering one meal per day, the Applicants agreed as a condition to the issuance of the license to be open for the service of lunch.

12. The House of Chin will feature live country and western music for dancing seven days per week. The live music will play from 9:00 p.m. until 2:00 a.m. Nationally-known acts will occasionally be featured. Also, the Applicants intend to occasionally present live entertainment in a dinnershow format. The Applicants would change the type of music featured at the House of Chin to meet market conditions and the current taste of the public. The Applicants would obtain OLCC approval for any change in style of music if such approval were necessary.

13. The House of Chin's game room in the lounge will contain two pool tables, three video games and four dart boards.

14. The dining room at the House of Chin will be separated from the lounge by a folding wall. The folding wall will be closed until 9:00 p.m. After 9:00 p.m. the folding wall will be opened, allowing dining patrons to view and hear the music in the lounge.

15. The Applicants intend to employ approximately 40 persons at the House of Chin.

16. The Applicants propose to use the same menu at the House of Chin that they are using at the Hong Kong Restaurant, a DA-licensed facility they own in Dallas, Oregon.

17. The Applicants' proposed menu includes the following:

8 Combination Chinese Dinners	\$3.75 to \$6.50
16 Chinese Specialty Dinners	4.50 to 6.75
26 Chinese Varietal Foods	2.75 to 4.00
19 Traditional American Beef, Seafood, etc. entrees	\$3.75 to 8.75
5 Salads	2.50 to 4.50
12 Sandwiches	1.60 to 4.20
3 Soups	2.75 to 3.75
4 Appetizers	2.25 to 3.00
3 Children's Dinners	2.25 to 2.50

(Applicants' Exhibit No. 7.)

In addition to the above, the Applicants will feature one Chinese and one "American" special each day.

18. The Applicants' family has been involved in the restaurant business in Salem and elsewhere since the 1920s. The Applicants' family has developed its own individualized cooking methods and recipes for the Cantonese food featured on their menu. Differences between the Applicants' method of preparing food and other Chinese restaurants include the types and combinations of spices that the Applicants use. Additionally, the Applicants attempt to put as much care and quality into their "American" food as they do into their Chinese food.

19. The Applicants have projected the following average monthly sales at the House of Chin:

<u>Projected Sales</u>			
<u>Food</u>	<u>Liquor</u>	<u>Total</u>	<u>Percent of Food To Total</u>
\$31,335.81	\$22,830.07	\$54,165.88	57.8%

20. The Applicants' projected sales are based on their actual sales at the Hong Kong Restaurant, a DA-licensed outlet they own in Dallas, Oregon. The actual average monthly sales at the Hong Kong Restaurant have been as follows:

<u>Actual Sales</u>				
Hong Kong Restaurant, Dallas, Oregon				
<u>License Year</u>	<u>Food</u>	<u>Liquor</u>	<u>Total</u>	<u>Percent of Food To Total</u>
1981	\$31,892.00	\$ 6,566.00	\$38,458.00	82.9%
1982	31,635.00	16,465.00	48,100.00	65.8%
1983	27,111.00	18,606.00	45,717.00	59.3%

21. The Applicants have held a DA license at the Hong Kong Restaurant in Dallas for four years. The Hong Kong Restaurant has a lounge, a dining room and a banquet room that is also used for overflow dining. The Hong Kong lounge contains seating for 160 persons. The Hong Kong dining room and banquet room contain seating for 160 persons. The Hong Kong has the same menu proposed for the House of Chin. The Hong Kong is open six days a week from lunch until approximately 2:00 a.m. The Hong Kong features live country and western music six nights a week beginning at 9:00 p.m. The Hong Kong Restaurant is approximately 750 to 1,000 square feet smaller than the House of Chin is proposed to be.

22. The Hong Kong Restaurant operated by the Applicants in Dallas experiences approximately 22 percent of its sales at lunch.

23. The Applicants project somewhat higher sales at the House of Chin than they have recently realized at the Hong Kong Restaurant in part because South Salem is more populous than Dallas and the House of Chin would be located on a busy street in close proximity to the south freeway interchange of Salem.

24. Dispenser outlets in the following areas have recently experienced the average monthly gross sales indicated below:

<u>Area</u>	<u>Food Sales</u>	<u>Total Sales</u>	<u>Percent of Food To Total</u>
City of Salem -			
1981	\$27,799	\$42,674	65.1 %
1982	\$30,986	\$48,432	64.0 %
1983	\$27,373	\$44,918	60.9 %
Marion County	\$26,415	\$40,852	65.0 %

25. The following areas contain the populations and numbers of dispenser 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 Salem	90,720	45.36	43	10
Marion County	205,900	102.95	75	13

26. The following are the nearest DA outlets to the proposed site of the House of Chin and have the recent average sales, seating, banquet facilities and type of cuisine indicated:

<u>Dispenser's Outlet</u>	<u>Approx. Distance To House Of Chin</u>	<u>Food Sales</u>	<u>Total Sales</u>	<u>% Of Food To Total Sales</u>	<u>Seating Total/Banq.</u>	<u>Type of Cuisine</u>
Colonial House	.3 mi N.	\$23,899	\$32,738	73%	170/80	American
Battle Creek Restaurant	.4 mi S.	3,714	8,977	41%	120/0	American
Mazzi's Italian Food	.6 mi N.	46,420	55,000	89%	200/0	Italian
Eddie's Supper Club	1 mi N.	9,368	30,369	31%	115/30	American
Tom Tom Restaurant	1.4 mi N.	41,565	50,235	83%	415/120	American
Salem Golf Club	2.2 mi NW	16,586 (Projections)	22,333	77%	215/100	American
The Flight Deck	2.8 mi NE	14,088	22,283	63%	96/0	American
Copper Still Restaurant	3 mi N.	25,829	41,907	54%	155/0	American
Kwan's	3.3 mi N.	30,859	33,372	92%	359/113	Oriental
Ryan's Motor Inn	3.5 mi N.	24,344	41,728	58%	320/100	American

27. One of the ten nearest DA outlets listed in the Findings of Fact above is open for dinner only. Five are open for lunch and dinner. Four are open for breakfast, lunch and dinner.

28. Four of the ten nearest dispenser's outlets listed in Findings of Fact No. 26 above offer live music and dancing.

29. The sales, seating, banquet facilities and type of cuisine of the seven dispenser outlets in Salem with Oriental menus are as follows:

<u>Outlet and Type of License</u>	<u>Distance To House Of Chin</u>	<u>Food Sales</u>	<u>Total Sales</u>	<u>% Of Food To Total Sales</u>	<u>Seating Total/Banq.</u>	<u>Type of Cuisine</u>
Kwan's (DA)	3.3 mi N.	\$30,859	\$33,372	92%	359/113	Chinese
Golden Dragon (DA)	3.7 mi N.	22,291	26,880	82%	330/150	Chinese
Canton Garden (DA)	4.2 mi NE	53,734	65,070	82%	200/0	Chinese
Great Wall (DC)	4.2 mi N.	15,062	16,087	93%	60/36	Chinese
Blue Willow (DA)	4.5 mi NE	25,400	34,176	74%	140/0	Chinese
Shoji's (DA committed)	4.6 mi NE	30,416	35,833	84%	110/0	Japanese
Fortune Cookie (DA)	6.5 mi N.	19,149	22,396	85%	126/0	Chinese

30. Only one Chinese-menu dispenser outlet in Salem offers live music and dancing. This outlet, the Golden Dragon, has live music two or three nights a week.

31. Two of the 53 dispenser outlets in Salem (Prime Country and Enciso's) are known to offer live country and western music for dancing. Two or three other Salem dispenser outlets used to feature live country and western music but have discontinued it during the past year. There are other Salem dispenser outlets though that offer other styles of live music besides country and western.

32. The population of the City of Salem dropped approximately 680 persons between July 1, 1982 and July 1, 1983. The population of Marion County

dropped approximately 1,450 persons and the population of the State of Oregon dropped approximately 21,185 persons during the same period.

33. The unemployment rate in Marion-Polk Counties in 1983 was 9.8 percent. Approximately 16 employers in Marion County reduced their work forces by 50 employees or more during the one-year period prior to April, 1983. However, the economy in Marion County has been slowly improving in 1983.

34. The following Salem-area dispenser outlets have closed since January 1, 1982:

Salem Dispenser Closures - Since January 1, 1982

<u>Outlet</u>	<u>Month Closed</u>	<u>Location</u>	<u>Type of Menu</u>
Park Plaza Restaurant (D'Allesandro, Ltd.)	April, 1982	Downtown Salem	
Keg and Platter	June, 1982	East Salem	
Prime Rib	June, 1982	North Salem	
The Tahiti	July, 1982	Downtown Salem	
The Broadway Landmark Inn	November, 1982	North Salem	
Palaske's	February, 1983	North Salem	Steak and Seafood
Toulouse Chez Robert	August, 1983	Downtown Salem	French
Brockman's	September, 1983	South Salem	American
Leonardo's	October, 1983	East Salem	

35. The Commission has issued a new dispenser license at the location of the former Park Plaza Restaurant since the Park Plaza closed in April, 1982. Similarly, the Commission has issued a new dispenser license at the location of the former Tahiti Restaurant since the Tahiti closed in July, 1982. The

Commission issued a new dispenser license at the location of the Prime Rib after the Prime Rib closed in June, 1982. However, this new outlet (Palaske's) itself closed in February, 1983.

36. Since January, 1982, the Commission has issued ten dispenser licenses at new locations in Salem. These dispenser outlets are as follows:

NEW DISPENSER LOCATIONS LICENSED
IN SALEM SINCE JANUARY, 1982

<u>Month</u>	<u>Outlet</u>	<u>License</u>
March, 1982	Chelsea's (south)	DC
March, 1982	Sea Galley	DA
June, 1982	Poor Richards	DA
September, 1982	Catfish Callahan's	DC
October, 1982	Terrarium	DC
November, 1982	Kwan's	DA
December, 1982	Chelsea's (north)	DC
January, 1983	Lyon's	DC
March, 1983	Nacho's	DC
June, 1983	Brockman's	DA

37. The population of census tract No. 23, where the House of Chin would be located, is likely to more than double by the year 2,000.

38. The population of Marion County has grown as follows between 1950 and 1980:

POPULATION AND PERCENT CHANGE IN
POPULATION IN MARION COUNTY

<u>Total Population</u>				<u>Percent Change</u>			
<u>1950</u>	<u>1960</u>	<u>1970</u>	<u>1980</u>	<u>1950-60</u>	<u>1960-70</u>	<u>1970-80</u>	<u>1950-80</u>
101,401	120,888	151,309	204,692	19.2	25.2	35.3	101.9

39. The population of Marion County is likely to increase from between 13.1 and 23.1 percent between 1980 and 1990, and 18.1 and 27.2 percent between 1990 and 2000. (Applicants' Exhibit No. 10.)

40. The following businesses and facilities have been constructed within 1.5 miles of the proposed site of the House of Chin within the last five

years: a Waremart (at least 20,000 square feet in size), a Bi-Mart (at least 20,000 square feet), a Bureau of Land Management office building and a Medical Center office building. In addition, the following businesses and facilities are being constructed or expanded within 1.5 miles of the proposed site of the House of Chin: a G.I. Joe's (at least 20,000 square feet), the Salem Farm & Garden Store, and a U.S. Postal Service building. A Payless Shopping Center is proposed to be constructed within 1.5 miles of the proposed site of the House of Chin. South Commercial Street contains vacant lots where new businesses can be constructed in the future.

41. At the date of the Applicants' December 29, 1983 reopened hearing there were 65 dispenser outlets licenses available to the Commission for issuance to DA and Dispenser Class B applicants. There were recently 33 DA license applications and no DB applications pending before the Commission.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The following criteria will weigh against issuing a license:

(1) There are sufficient licensed premises in the locality set out in the application, or the granting of a license in the locality set out in the application is not demanded by public interest or convenience. Factors such as declining or static population, business or industrial development in the applicant's community, or by decreasing sales or patronage at other similarly licensed outlets in that community may be considered. 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).

...

Preference in licensing may be given to applicant showing any one or more of the following. The applicant shall have the burden of proving that these provisions apply:

...

(c) The public is not being adequately served by dispenser outlets, if any, in the applicant's community as defined in 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 House of Chin would be located in Salem. The record shows that Salem is adequately served by existing dispenser's outlets under OAR 845-05-040(2)(c) and OAR 845-05-030(1). OAR 845-05-040(2)(c) states that the existence of more than one dispenser outlet per 2,000 population will be prima facie evidence that an applicant's community is adequately served. Salem contains 53 dispenser licenses to serve its population of 90,720. The population of Salem declined in 1983. By the date of the December 29, 1983 reopened hearing, four Salem dispenser's outlets had closed in 1983. The average monthly sales of Salem dispenser outlets declined by about 7.3 percent in 1983 from 1982. These factors indicate that at this time there are sufficient dispenser's outlets to adequately serve the public in Salem, despite the prospects for future growth near the proposed outlet and in Marion County.

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).

Unfavorable consideration may be given to an applicant if the 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).

a. The Applicants have projected average monthly total sales with a DA license of \$54,165.88. The projection is based on the sales of the Applicants' DA-licensed Hong Kong Restaurant in Dallas, Oregon. The Hong Kong has recently averaged \$45,717 a month in total sales.

The House of Chin will be similar in size to the Hong Kong. The Hong Kong has more seats (320 versus 297) but the House of Chin will have at least 750 more square feet.

The Hong Kong is presently open for lunch and dinner. The Applicants would agree to operate the House of Chin for lunch and dinner as a condition to licensure. The House of Chin will be open seven days a week instead of six days a week for the Hong Kong. The House of Chin is located near a much larger population than the Hong Kong.

However, in arriving at their projections, the Applicants did not conduct any studies of any kind to determine the demand for a licensed premises at their proposed location, or to determine the demand, if any, for another Chinese/American restaurant or for another dispenser-licensed premises with live country and western music. There is thus no reasonable basis for arriving at the projections envisioned by the Applicants. Thus, the Applicants' projected sales with a DA license do not indicate preference for licensure under OAR 845-05-040(2)(a).

b. The Applicants will have a 30-seat room that can be screened off from the remainder of the premises. The intended use of this room is for private parties. The room is located immediately adjacent to the lounge, and its folding-partition walls would not provide a sound barrier. This shows some favorable consideration for license issuance under OAR 845-05-040(2)(a).

c. The Applicants would be able to open the House of Chin's proposed folding wall and use the entire 297 seats in the premises for shows. This large lounge and entertainment capacity shows preference for license issuance under OAR 845-05-040(2)(a).

d. The Applicants' proposed investment of \$630,000 for the House of Chin and the Applicants' relatively large planned staff of 40 employees show preferences for license issuance under OAR 845-05-040(2)(a).

3. Unfavorable consideration may be given to an applicant if the applicant's premises will be operated primarily as a tavern rather than as a restaurant, as indicated by factors emphasizing the sale of alcoholic liquor to a greater degree than food service. OAR 845-05-040(3)(e)(B).

The Hong Kong experienced only 59 percent food sales in 1983. And the food sales percentage at the Hong Kong has been on a significant down trend since 1981. See Findings of Fact No. 20. The House of Chin appears likely to place a greater emphasis than the Applicants' Hong Kong Restaurant on the sale of alcohol. The House of Chin would have a greater percentage of seating in its lounge than the Hong Kong. Many of the tables in the lounge are "cocktail" tables which are not large enough to accommodate full meal service. The House of Chin would open up its entire premises to the lounge and live music after 9:00 p.m. The House of Chin would devote at least 73.9 percent of its floor space to the lounge proper. A lounge is, by definition and general usage, a place where people go to drink. Because the House of Chin would emphasize alcohol sales and entertainment more than the Hong Kong, it is probable that the House of Chin would sell more alcoholic liquor than food. It appears that the Applicants' premises will be operated primarily as a tavern rather than a restaurant. Unfavorable consideration for license issuance is therefore shown under OAR 845-05-040(3)(e)(B).

4. Unfavorable consideration may be given to an applicant if the applicant will provide meal service at no more than one meal per day. OAR 845-05-040(3)(d).

The Applicants would agree as a condition to licensure to operate for lunch and offer their full menu until 2:00 a.m. each day. Thus, unfavorable consideration for licensure is not shown under OAR 845-05-040(3)(d).

5. 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).

- a. The Applicants have not demonstrated that the House of Chin's dining service or atmosphere would be unique or substantially different within a 20-mile radius of its proposed site. There are six Chinese restaurants with dispenser licenses located within 6.5 miles of the proposed site of the House of Chin. The main differences cited by the Applicants between these six restaurants and the House of Chin were the Applicants' different use of spices and the attention the Applicants pay to the quality of their "American" food. These factors alone though do not make the dining service at the House of Chin unique or substantially different. Thus, preference for licensure is not shown under OAR 845-05-040(2)(b) on account of the House of Chin's menu.

- b. The House of Chin would feature live country and western music seven nights a week with some nationally known acts and some dinner shows. However, two other Salem dispenser outlets (within 20 miles of the Applicants' proposed premises) feature country and western music. And other Salem dispenser outlets offer other styles of live music. See Findings of Fact Nos. 28 and 31. The Applicants have indicated they may switch from country and western music if their patrons' preferences change. Thus, the fact that the Applicants

would initially offer live country and western music does not make the application unique or substantially different and does not show a preference under OAR 845-05-040(2)(b).

6. The number of dispenser licenses available to the Commission for issuance to DA and DB outlets is limited under ORS 472.110. Caution must be exercised in the review of this application then, in order to insure that only those dispenser license applicants most qualified to serve the public interest and convenience are issued the limited dispenser licenses available. Battle Creek Golf Course, Inc. v. OLCC, 21 Or. App. 179, 183-84, 534 P2d 204 (1975); ORS 472.160(1).

ULTIMATE CONCLUSIONS OF LAW

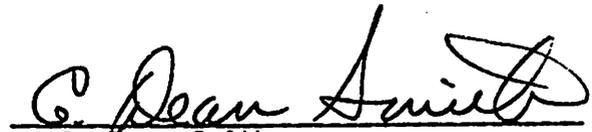
This application is not demanded by the public interest and convenience despite the preference for licensure indicated by the Applicants' relatively large proposed facility, large proposed investment, and large number of planned employees. These factors are overcome because of the relative sufficiency of dispenser outlets in the Applicants' community, (especially in view of the declining population and decreasing sales at other dispenser premises in Salem), because there is no persuasive evidence that the public is not being adequately served by existing dispenser premises, because the proposed outlet would not be unique or substantially different, because the proposed outlet would be likely to emphasize the sale of liquor, and because of the constraints of the quota on DA licenses available and the need to issue those limited licenses to only the most qualified applicants. ORS 472.160(1).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license at the House of Chin, northwest corner of Fabry Road and Commercial Street SE, Salem, Oregon, be DENIED.

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

Dated this 26th day of January, 1984.



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.