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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Dispenser Class A)	
License by:)	FINAL
)	FINDINGS OF FACT,
Edwin and Song Welsh)	CONCLUSIONS OF LAW,
KIM-CHEE PALACE RESTAURANT)	AND ORDER
5827 E. Burnside)	
Portland, Oregon 97215)	
- - - - -)	
Multnomah County)	

A hearing in the above matter was held on the 12th day of March, 1984, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicants appeared in person and were represented by S. Ward Greene, Attorney at Law, Portland. The Commission was not represented by legal counsel.

On July 23, 1984, the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, and applicable statutes and regulations. Pursuant to this review, the Commission enters the following:

FINDINGS OF FACT

1. Applicants seek a Dispenser Class A (DA) license at the KIM-CHEE PALACE RESTAURANT. They presently hold a Restaurant license.

2. The Commission's Staff has recommended that the license be denied based upon OAR 845-05-030(1) (sufficient licensed premises in the locality), 845-05-040(1), (3)(f) (lesser services and facilities), 845-05-040(2)(c) (area not inadequately served), ORS 472.110(4) (quota).

3. Applicants' premises is an established Korean restaurant on East Burnside, several miles from downtown Portland.

4. Applicants have operated the premises since 1977 and have held a Restaurant license since 1978.

5. The premises is open six days a week, closed Monday: The hours of operation are from noon to 2:00 a.m.

6. The premises seats 35 in the main dining room, 45 in dining booths and tables in the combination lounge/dining area, and seven at the bar.

7. The menu features Korean food. Some Japanese and Chinese items are also on the menu.

8. Nineteen a la carte dishes are offered at lunch and dinner, ranging in price from about \$2.00 to about \$7.00. Among the items offered are the following: Bul Ko-Ki (Korean style barbecued beef); chicken tery yaki with sweet soy sauce; Kim Chee Bokkum (fried Kim Chee); O' Jing-Bokkum (fried squid); Kim-Chee Jji Gai (hot Kim-Chee soup); Doo Boo Jji Gai (beans cake soup); Jo Gai Jji Gai (hard shell clam soup); Sang Sun Jji Gai (hot fish soup); Man Doo Kook (Won Ton soup Korean style); Kal Bee Tang (beef rib's soup); Kal Bee Kom Tang (hot beef rib's soup); Koon Man Doo (fried Won Ton Korean style); Bee Beem Bap (mixed vegetable and rice); Jjam Bbong (shrimp noodle Korean style); Hong O' Hoi (raw skate fish); Yang Yum Doo Boo (seasoned bean's cake); Keem Gooi (roasted seaweed); Na Mool (seasoned crispy cold vegetables); and Kim-Chee (pickled Korean cabbage).

9. At dinner, in addition to the above, the following nine family style dinners are offered: Bul Ko-ki (Korean style barbecue beef), chicken teriyaki, tempura, sweet and sour pork, Mongolian beef, almond chicken, o'jing-o bokkum (fried cuttle fish), and bul kal-bee (Korean style barbecued short ribs). The dinners are priced at \$7.95 and \$8.95.

10. The menu also offers appetizers, 12 "chef specialties," and the following 11 side dishes: Kim-Chee, na mool (crispy vegetables), yang num doo boo, seng ya che (raw vegetables), ma lun an joo, seng gool (raw oysters), o' fing-o bokkum (squid), hong o' hoi (raw skate fish), Mongolian beef, tempura, and nam-bee o' deng (chunk soup).

11. Sales at the premises have been as follows:

<u>MONTH</u>	<u>FOOD</u>	<u>BEER & WINE</u>	<u>TOTAL</u>
<u>1983</u>			
March	\$5,600	450	\$6,050
April	5,500	350	5,850
May	4,800	320	5,120
June	6,100	425	6,525
July	4,700	625	5,325
August	6,000	1,700	7,700
September	6,800	1,400	8,200
October	5,199	1,242	6,441
November	5,975	1,327	7,302
December	3,730	1,269	4,999
<u>1984</u>			
January	4,899	1,870	6,769
<u>February</u>	4,011	1,828	5,839
Average	\$5,276	\$1,067	\$6,343

12. Applicants reasonably estimate that with the Dispenser Class A license in operation, their average monthly sales

would be as follows: food - \$7,058; alcoholic beverages - \$1,633; total - \$8,691.

13. Existing Dispenser Class A outlets in Multnomah County and the City of Portland have had the following average monthly sales:

	<u>FOOD</u>	<u>ALCOHOLIC LIQUOR</u>	<u>TOTAL</u>
Multnomah County	\$38,004	\$21,549	\$59,553
Portland	34,590	20,641	55,231

14. There are several thousand people of Korean ancestry living in the Portland area.

15. There are no dispenser outlets featuring Korean food in the Portland area. One establishment having a beer and wine license and featuring Korean food is located in Portland.

16. Applicants estimate that approximately 30 percent of their clientele are of Korean ancestry, 50 percent are of "American" ancestry, and approximately 20 percent are of Japanese ancestry.

17. Applicants offered four letters in support of the application, one from the Korean Society of Oregon and three from businesses owned by Koreans. The letters cited the uniqueness of the restaurant and its service in providing authentic Korean food to the Korean community and to others who enjoy the food. The letters indicated that a liquor license would enhance the attractiveness of the business.

18. Applicants' restaurant was reviewed in 1982 by both the Oregonian and the Willamette Week. Both reviews noted the

distinctiveness of Korean food and praised most of the cuisine offered at the Kim-Chee Palace.

19. The decor of the premises has an oriental motif. The furnishings in the dining room have not been changed since Applicants purchased the premises. It contains vinyl booths and a mostly uncarpeted floor. The lounge/dining area contains Korean-style furniture custom-made for the premises.

20. Taped Korean music is played in the lounge.

21. The City of Portland, which has a population of 368,100, has 313 DA and DB outlets. Multnomah County, with a population of 564,500, has 380 DA or DB outlets in operation.

22. The nearest Dispenser Class A outlet to Applicants' premises is approximately three-fourths of a mile away. There are four other DA outlets within one mile of Applicants' premises.

23. In addition to the five premises noted above, 30 other DA outlets are within two miles of Applicants' premises and an additional 33 DA outlets are within a three-mile radius of Applicants' premises.

24. The Commission has approximately 70 DA licenses available for issuance.

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 establish the number of premises within 10 miles of Applicants' premises. The evidence does establish that there is a substantial number of such premises within three miles of Applicants' premises. However, the area within a three-mile radius of Applicants' premises includes a large portion of the east side of Portland. For example, premises to the northwest as far as the Lloyd Center area, to the southwest as far as the east bank of the Willamette River, to the south as far as Powell Boulevard, and to the east as far as 82nd Avenue, are included within this area. No population figure for this area were presented. It is not clear, therefore, that this number of premises is "sufficient" in some manner. A different rule, OAR 845-05-040(2)(c), states that the existence of more than one dispenser premises per 2,000 people in the city or county is prima facie evidence that the area is "adequately served." However, since that rule is not the one cited above and as it is not clear that "sufficient licensed premises" is the same concept as "adequate service," the relevance of this rule is doubtful.

The Commission concludes that this criterion does not provide a basis for denying the application.

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 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).

Applicants' dining service is unique in the Portland area. Applicants are entitled to a preference under this criterion.

Applicants have presented credible evidence that the Korean food they serve is authentic and of good quality. They have also established that their premises will meet a demand among the population of Korean ancestry and among others who like Korean food.

The Commission concludes that this criterion is of particular significance in this case and outweighs the low sales figures discussed below.

3. Preference in licensing may be given to applicants showing that the public is not being adequately served by dispenser outlets, if any, in the applicants community as defined in OAR 845-05-030(1). Evidence that there is more than one dispenser outlet per 2,000 people in the applicants' city or county will be prima facie evidence that the applicants' community is being adequately served. OAR 845-05-040(2)(c).

Portland and Multnomah County as a whole have more than one dispenser outlet per 2,000 population. Applicants are not entitled to preference under this criterion.

4. 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).

Applicants' present and projected sales are far below the average for the city and county. Although the projections appear to be conservative, even a more optimistic estimate would still place sales substantially below the average. It may therefore be concluded that Applicants' premises will serve fewer patrons than do the existing premises in the area.

The Commission concludes that although this criterion provides a basis for denial of the license, it is outweighed in this case by the criterion relating to uniqueness of food service.

5. The total number of dispenser licenses issued shall not exceed one per 2,000 population in the state. ORS 472.110(4).

The evidence indicates that the Commission has approximately 70 DA and DB licenses available for issuance. This statute thus does not provide a specific basis for denying the application. The bases for denial are found in ORS 472.160 and OAR 845-05-005 through 845-06-070.

ULTIMATE CONCLUSIONS OF LAW

Although Applicants' premises will provide service to fewer patrons than do existing licensed premises on the average, it is nevertheless concluded that the license should be granted because Applicants have demonstrated that the dining service at the premises will be unique in Portland and will provide a benefit to the public. OAR 845-05-040(2)(b).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A license by Edwin and Song Welsh in the trade name Kim-Chee Palace Restaurant, 5827 E. Burnside, Portland, be GRANTED,

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upon the payment of appropriate license fees to the Commission, with issuance of the license subject to the following conditions:

1. That the premises be ready for operation as a DA premises within 90 days of the Commission's Final Order in this matter or that the commitment of 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 27th day of July, 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.