



CITY COUNCIL ACTION REPORT

November 27, 2006

TO: Phillip L. Nelson, City Manager

FROM: Chief Charles Craft
Captain Gary Mayer
Sergeant Chris Stout

SUBJECT: Application for Transfer of Class C License for Kona Grill

Background:

- Kona Macadamia, Inc., requests to transfer ownership of 2006 Class C licensed business located at 819 E. Auburn, Rochester Hills, MI 48307, from Whirly-Ball-Rochester L.L.C.; transfer location to 30 E. Big Beaver, Troy, MI 48084, Oakland County; requests a new SDM license to be held in conjunction; and requests a new official permit (food) and new outdoor service area.

This is an Arizona based restaurant that has 14 other locations across the country. The establishment is an American grill with a sushi bar that has an upscale casual atmosphere. The restaurant will hold approximately 280 seats, including the patio. The building is currently under construction and they hope to open in February 2007. Management will be transferred in from other locations and additional managers will be hired. The Committee unanimously approved this request. The Police Department did not find any disqualifying factors for this request.

Financial Considerations:

- There are no financial considerations for the city.

Legal Considerations:

- City Council approval is required for the State to approve the transfer.

Policy Considerations:

- This application meets the City's criteria for liquor license transfer. It meets the City goal to retain and attract investment while encouraging redevelopment.

Options:

- The City Council can approve or deny the transfer.



FOR MLCC USE ONLY

Request ID # 377512

Business ID # 182232

POLICE INVESTIGATION REPORT

[Authorized by MCL 436.1217 and R 436.1105; MAC]

Please conduct your investigation as soon as possible, complete all four sections of this report and return the completed report and fingerprint cards to the MLCC

LICENSEE/APPLICANT NAME, BUSINESS ADDRESS AND LICENSING REQUEST:

KONA MACADAMIA, INC. (A DELAWARE CORPORATION) REQUESTS TO TRANSFER OWNERSHIP OF 2006 CLASS C LICENSED BUSINESS WITH OFFICIAL PERMIT (WHIRLY BALL), LOCATED IN ESCROW AT 819 E. AUBURN, ROCHESTER HILLS, MI 48307, OAKLAND COUNTY, FROM WHIRLY-BALL-ROCHESTER L.L.C.; TRANSFER LOCATION (GOVERNMENTAL UNIT) (MCL 436.1531(1) TO 30 E. BIG BEAVER, TROY, MI 48084, OAKLAND COUNTY; REQUESTS A NEW SDM LICENSE TO BE HELD IN CONJUNCTION; AND REQUESTS A NEW OFFICIAL PERMIT (FOOD) AND NEW OUTDOOR SERVICE AREA (STEP 2). *CANCEL OFFICIAL PERMIT (WHIRLY BALL)*

Section 1. APPLICANT INFORMATION

APPLICANT #1:
 KONA RESTAURANT HOLDINGS, INC. (A DELAWARE CORPORATION) – STOCKHOLDER
 715 EAST CAMELBACK, SUITE 220
 SCOTTSDALE, AZ 85251
 (CONTACT: J. SPIEL (480)922-8100)

APPLICANT #2:

DATE FINGERPRINTED: **NO FINGERPRINTS REQUIRED**

DATE FINGERPRINTED:

DATE OF BIRTH:
 Is the applicant a U.S. Citizen: Yes No*

DATE OF BIRTH:
 Is the applicant a U.S. Citizen: Yes No*

*Does the applicant have permanent Resident Alien status?
 Yes No*

*Does the applicant have permanent Resident Alien status?
 Yes No*

*Does the applicant have a Visa? Enter status:

*Does the applicant have a Visa? Enter status:

Attach the fingerprint card and \$30.00 for each card and mail to the Michigan Liquor Control Commission

ARREST RECORD: **Felony** **Misdemeanor**
 Enter record of all arrests & convictions (attach a signed and dated report if more space is needed)

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 Enter record of all arrests & convictions (attach a signed and dated report if more space is needed)

Section 2. INVESTIGATION OF BUSINESS AND ADDRESS TO BE LICENSED

Does applicant intend to have dancing, entertainment, topless activity, or extended hours permit?

No Yes, complete LC-1636

Are gas pumps on the premises or directly adjacent? No Yes, explain relationship:

Section 3. LOCAL AND STATE CODES AND ORDINANCES, AND GENERAL RECOMMENDATIONS

Will the applicant's proposed location meet all appropriate state and local building, plumbing, zoning, fire, sanitation and health laws and ordinances, if this license is granted? Yes No

If you are recommending approval subject to certain conditions, list the conditions: (attach a signed and dated report if more space is needed)

Section 4. RECOMMENDATION

From your investigation:

1. Is this applicant qualified to conduct this business if licensed? Yes No
2. Is the proposed location satisfactory for this business? Yes No
3. Should the Commission grant this request? Yes No
4. If any of the above 3 questions were answered no, state your reasons: (Attach a signed and dated report if more space is needed)

Signature (Sheriff or Chief of Police)

Date

TROY POLICE DEPARTMENT



Michigan Department of Labor & Economic Growth
MICHIGAN LIQUOR CONTROL COMMISSION (MLCC)
 7150 Harris Drive, P.O. Box 30005
 Lansing, Michigan 48909-7505

FOR MLCC USE ONLY

Request ID # 377512

Business ID # 182232

LAW ENFORCEMENT RECOMMENDATION

[Authorized by MCL 436.1916, R 436.1105(2)(d) and R 436.1403]

October 19, 2006

TO:

Re: KONA MACADAMIA, INC. (A DELAWARE CORPORATION)

We have received a request from the above licensee for the type of permit indicated below. Please make an investigation and submit your report and/or recommendation to the offices of the MLCC at the above address. Questions about this request should be directed to the MLCC Licensing Division at (517) 322-1400.

OFFICIAL PERMIT FOR EXTENDED HOURS OF OPERATION FOR: WHIRLY BALL *CANCEL*
 Weekdays _____ A.M. to _____ A.M.
 Sundays _____ A.M. to _____ A.M./P.M.

Recommended Recommended, subject to final inspection Not Recommended

NOTE: If the applicant is requesting two separate extended hours permits and the permits are for **different hours** you must complete the box below. If additional space is needed please use reverse side of this form.

OFFICIAL PERMIT FOR EXTENDED HOURS OF OPERATION FOR: FOOD
 Weekdays _____ A.M. to _____ A.M.
 Sundays 11:00 A.M. to 12:00 P.M.

Recommended Recommended, subject to final inspection Not Recommended

DANCE PERMIT

Recommended Recommended, subject to final inspection Not Recommended

ENTERTAINMENT PERMIT

Recommended Recommended, subject to final inspection Not Recommended

TOPLESS ACTIVITY PERMIT

Recommended Recommended, subject to final inspection Not Recommended

OUTDOOR SERVICE

Recommended Recommended, subject to final inspection Not Recommended

PARTICIPATION PERMIT

Recommended Recommended, subject to final inspection Not Recommended

ADDITIONAL BAR PERMIT

Recommended Recommended, subject to final inspection Not Recommended

OFF-PREMISE STORAGE

Recommended Recommended, subject to final inspection Not Recommended

Signed:

Signature and Title

Print Name and Title

TROY POLICE DEPARTMENT

Date: _____

RESOLUTION

At a _____ meeting of the _____
(Regular or Special) (Township Board, City or Village Council)

called to order by _____ on _____ at _____ P.M.

The following resolution was offered:

Moved by _____ and supported by _____

That the request to TRANSFER OWNERSHIP OF 2006 CLASS C LICENSED BUSINESS, LOCATED IN ESCROW AT 819 E. AUBURN, ROCHESTER HILLS, MI 48307, OAKLAND COUNTY, FROM WHIRLY-BALL-ROCHESTER L.L.C. TO KONA MACADAMIA, INC. (A DELAWARE CORPORATION); AND TRANSFER LOCATION (GOVERNMENTAL UNIT) (MCL 436.1531(1) TO 30 E. BIG BEAVER, TROY, MI 48084, OAKLAND COUNTY (STEP 2).

be considered for _____
(Approval or Disapproval)

APPROVAL

DISAPPROVAL

Yeas: _____

Yeas: _____

Nays: _____

Nays: _____

Absent: _____

Absent: _____

It is the consensus of this legislative body that the application be:

_____ for issuance
(Recommended or Not Recommended)

State of Michigan _____)

County of _____)

I hereby certify that the foregoing is a true and complete copy of a resolution offered and

adopted by the _____ at a _____
(Township Board, City or Village Council) (Regular or Special)

meeting held on _____
(Date)

(Signed) _____
(Township, City or Village Clerk)

SEAL

(Mailing address of Township, City or Village)

AGREEMENT REGARDING LIQUOR LICENSE REQUEST

This Agreement, made this _____ day of _____, 2006, by and between the CITY OF TROY, MICHIGAN, a municipal corporation, with offices located at 500 W. Big Beaver Road, Troy, Michigan 48084, hereinafter known as "THE CITY", and KONA MACADAMIA, INC., a Delaware corporation, with offices located at 7150 E. Camelback Road, Ste. 220, Scottsdale, AZ 85251.

RECITALS:

1. The City Council of THE CITY, for and inconsideration of the following covenants and conditions, agrees to recommend to the Michigan Liquor Control Commission, approval of KONA MACADAMIA, INC. for the APPLICANT, to be located at 30 E. Big Beaver, Troy, Michigan 48084, Oakland County (hereinafter "APPLICATION").

2. In consideration of THE CITY'S recommendation for approval of the APPLICATION, APPLICANT hereby agrees that:

- (a) It has read and is aware of the provisions of the City of Troy Ordinances, Chapter Nos. 67, 68, 92 and Chapter No. 98 (effective 02/01/01), and agrees that it shall be deemed to have knowledge of any subsequent amendments to said Chapters which may become effective during the term of this Agreement.
- (b) It has read and is in receipt of copies of the provisions of the City of Troy, City Council Resolution No. 92-1028 regarding Entertainment Permits, and agrees that it shall be deemed to have knowledge of any subsequent amendments to the Resolution which may become effective during the term of this Agreement.
- (c) It agrees to observe and comply with all laws, statutes, ordinances, rules, regulations or resolutions of the United States government, State of Michigan, and the City of Troy, or any department or agency of the governmental entities, as well as the rules and regulations of the Michigan Liquor Control Commission as they pertain to the operation of a liquor license business in the City of Troy.
- (d) It agrees to immediately require all employees who serve/sell alcohol, to attend a recognized alcohol awareness program, and forward the names of each certified employee to the Troy Police Department. The alcohol awareness program must

either be recognized by the Troy Police Department (i.e., TIPS, TAM, SERV SAFE Alcohol), or the program must be reviewed by the Troy Police Department to insure that the program is comparable to the recognized programs.

3. APPLICANT agrees that the recommendation of Approval agreed upon by the City Council is not a property right and is approved upon the express and continuing condition that no violation as set forth in paragraph 2 of this Agreement shall occur.

4. APPLICANT agrees that the recommendation of approval agreed upon by the City Council is approved upon the express and continuing condition that the physical characteristics (including, but not limited to the inside layout, building design and engineering, seating capacity, parking space allocations, fire exists, and other physical attributes); and also the nature and type of the business intended to be conducted remain virtually the same.

5. APPLICANT agrees that upon a violation, after full investigation and an opportunity for said APPLICANT to be heard, upon a finding by the City Council that a violation as set forth in paragraph 2 of this Agreement has occurred, the City Council shall have just cause for revocation of said recommendation for approval.

Witnesses:

Mark Shyg
Mark Slusz

Applicant:

KONA MACADAMIA, INC.

By: James C. Spiel
Its: Vice President and Secretary

Subscribed and sworn to before me
This 21st day of September, 2006.

Kristen Weber

Notary Public, Kristen Weber
Arizona, Maricopa County
My commission expires: March 8, 2008

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