



TO: Mayor and Members of City Council
FROM: Lori Grigg Bluhm, City Attorney
 Christopher J. Forsyth, Assistant City Attorney
DATE: March 12, 2007
SUBJECT: Hooters v. Troy – Proposed Consent Judgment

On Monday, March 12, 2007, our office received a settlement offer from Ed Lennon, who represents Hooters of Troy. According to the e-mail, the Troy City Council has a one time only opportunity to settle the case before the arguments at the Michigan Court of Appeals. Settlement of the case will occur ONLY if Council approves the attached consent judgment that Mr. Lennon drafted on behalf of his client at the March 19, 2007 City Council meeting.

The terms of this proposed consent judgment are as follows:

- Troy must approve the requested transfer of the Sign of the Beefcarver Class C Liquor license (Wagon Wheel) to Hooters of Troy.
- Upon approval of the requested transfer, Hooters will dismiss its appeal of the state court case, as well as dismiss its federal case against the City. Hooters would also forego any claims for damages, costs, or attorney fees from the City.
- Within 30 days of MLCC's approval of the requested transfer of the liquor license, Hooters would place the liquor license for the John R. Road location into escrow. Hooters further agrees to operate only one Hooters restaurant in the City of Troy.
- Hooters would remove the pole sign that currently extends over the roof of the building, as well as the pole sign that is located in the parking lot to the east of the building, which is visible from Big Beaver Road.
- Hooters would be allowed to replace the pole signs with the following:
 - A 36 inch "Hooters" wall sign to be constructed at the northwest corner of the building.
 - Two sets of orange lettered "Exist/Entrance" signs that will be placed near the curb cuts for Rochester and Big Beaver Roads.

If Council elects to settle this case, then Hooters would be allowed to replace the larger of the two pole signs (the sign over the roof) with a sign that has "Hooters" in 36 inch high letters. This lettering is consistent with the size of the lettering for "Hooters" that is currently on the larger pole sign. This new wall sign would be located at the northwest corner of the building. This proposed replacement sign would exceed the allowable wall signage that is permitted under the City of Troy ordinances- 113 square feet of wall signage. The proposed consent judgment also does not provide any specifics as to the size and character of the directional signs. In the previous consent judgment proposal, commercial messages were prohibited on the directional signs. That language has been omitted from this settlement proposal. In addition, the previous draft of the consent judgment also prohibited Hooters from seeking additional signage in the future. That language has also been removed from the current proposal. Additionally, the authority of the City to remove any non-conforming pole signs has also been removed from the current proposal.

If you have any questions concerning the proposed consent judgment please let us know.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HOOTERS OF TROY INC.,

Plaintiff,

v.

CASE NUMBER 06-CV- 14945
HON. JULIAN A. COOK
MAGIST. R. STEVEN WHALEN

CITY OF TROY,

Defendant.

_____/

EDWARD G. LENNON PLLC
Edward G. Lennon (P42278)
Attorney for Plaintiff
HYMAN LIPPITT, P.C.
Stephen McKenney (P65673)
Co-Counsel for Plaintiff
322 N. Old Woodward
Birmingham, MI 48009
248.723.1276

City of Troy – City Attorney’s Office
Lori Grigg Bluhm (P46908)
Christopher J. Forsyth (P63025)
Attorney for Defendant
500 W. Big Beaver Road
Troy, MI 48084
(248) 524-3320

_____ /

JUDGMENT BY CONSENT

At a session of said Court, held in the City of Detroit,
Eastern District of Michigan on _____.

PRESENT: Hon. _____
DISTRICT COURT JUDGE

HOOTERS OF TROY INC. and the CITY OF TROY consent to the entry
of this Consent Judgment.

RECITALS

1. Plaintiff, Hooters of Troy Inc. (“Hooters”), is a Georgia corporation and a wholly owned subsidiary of Hooters of America Inc., a Georgia corporation.

2. Plaintiff currently operates a Hooters restaurant located at 1686 John R Road in the City of Troy, Oakland County, Michigan. Plaintiff also currently holds a Class C Liquor License for this restaurant.

3. Plaintiff also operates a Hooters restaurant located at 2946-2950 Rochester Road (formerly the Wagon Wheel Saloon) in Troy. This new Hooters location currently operates its restaurant business without the sale of liquor.

4. On January 6, 2006, Plaintiff entered into an agreement with Sign of the Beefcarver, Inc. (“Beefcarver”) to purchase Beefcarver’s Class C and SDM Liquor Licenses and all permits (collectively the “Liquor License”) which Beefcarver was using at a restaurant named the Wagon Wheel Saloon and which it operated at 2946-2950 Rochester Road in Troy. The Wagon Wheel Saloon closed on or about May 31, 2006.

5. In addition to the agreement to purchase the Liquor License, Plaintiff also agreed to lease the property at 2946-2950 Rochester Road in which the Wagon Wheel Restaurant was located.

6. As required by the Michigan Liquor Control Code, MCL 436.1101 et. seq., Plaintiff submitted an application to the Michigan Liquor Control Commission, seeking a transfer of said Liquor License from Beefcarver to Hooters.

7. Pursuant to MCL 436.1501(2), such an application requires approval from the Troy City Council, the legislative body of the City of Troy. At the June 19, 2006 regular City Council meeting, the Troy City Council denied Hooter's request to transfer the Liquor License from Beefcarver.

8. On June 27, 2006, Plaintiff filed a lawsuit in Oakland County Circuit Court. Plaintiff sought an order of superintending control approving the transfer of the Liquor License to Hooters. This case was dismissed by Oakland County Circuit Court Judge John McDonald. Plaintiff has appealed Judge McDonald's dismissal, and the case is pending oral argument in the Michigan Court of Appeals (Docket no. 272155).

9. On November 2, 2006, Plaintiff initiated this 42 U.S.C. § 1983 lawsuit against Defendant.

10. After extensive negotiation, the parties have reached a settlement of this §1983 lawsuit and the state court action. The parties agree that Troy City Council shall approve Plaintiff's application to transfer the Liquor License provided that Plaintiff complies with certain conditions that are further defined in this Consent Judgment. The parties also agree that this Consent Judgment shall be binding upon the parties, their successors and assigns.

11. The Court has reviewed the proposed Consent Judgment, and has verified that it currently possesses jurisdiction over this action, and has approved the form and substance of this Consent Judgment.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. This Consent Judgment shall constitute the final judgment of the Federal District Court, Eastern District of Michigan, and resolves all claims between the parties.
2. With the entry of this Consent Judgment by the Court, the Troy City Council approves Plaintiff's application to transfer the Liquor License from the Beefcarver to Hooters. After such time, the Troy City Clerk shall immediately forward a resolution of approval of the transfer to the Michigan Liquor Control Commission.
3. The City of Troy will reasonably cooperate and file such other additional or revised documents that reflect the above referenced approval, and as required by the Michigan Liquor Control Commission to complete or expedite the Liquor License transfer.
4. In consideration of the approval of the transfer of the Liquor License by the City of Troy, Plaintiff agrees to the following:
 - a. Plaintiff relinquishes any claim of damages against Defendant and shall dismiss with prejudice its claims against the City of Troy filed with this Court.
 - b. Plaintiff will dismiss with prejudice its claim of appeal filed with the Michigan Court of Appeals in the state court action, which is entitled *In Re Hooters of Troy Inc.*, Oakland County Circuit Court No. 06-75618 AS, Michigan Court of Appeals No. 272155.
 - c. Plaintiff will cease its operation of a Hooters Restaurant at 1868 John R Road, and place its Class C liquor license for that location

into escrow with the Michigan Liquor Control Commission within 30 days after approval by the Michigan Liquor Control Commission of the transfer of the Liquor License. This Consent Judgment does not address any future transfer or sale of the John R. escrowed license, and any sale or transfer of said liquor license shall comply with the Michigan Liquor Control Code.

- d. After the John R restaurant is closed, Plaintiff shall be permitted to operate only one Hooters restaurant in Troy, which currently is located at 2946-2950 Rochester Road.
- e. Upon approval of the transfer of the Liquor License by the City of Troy, Plaintiff shall remove the two pole signs (collectively Pylon Signs F & G”), which were erected at this location. More specifically, the first pole sign Plaintiff shall remove is located a short distance from the restaurant, is in close proximity to the intersection of Rochester and Big Beaver Roads, and is the larger of the two pole signs. The second pole sign Plaintiff shall remove is located in close proximity to the northeast parking entrance to the restaurant, which also curb cuts on Big Beaver Road, and is the smaller of the two pole signs. These two pole signs are further described as F, SF Pylon, and G, DF Pylon, in the attached plan (Ex. A, incorporated by reference).
- f. Instead of Pylon Signs F & G, Plaintiff shall add 36 inch channel letters which spell the word “Hooters” on the northwest corner of

the building facing north which currently has no signage. In addition, Hooters will add "Entrance/Exit" signs to the parking lot in orange letters at the curb cuts on both Big Beaver and Rochester Roads.

5. The parties agree to waive all costs and attorney fees incurred as a result of the case.
6. By entry of this Consent Judgment, the parties, their agents, successors, assignees waive and discharge any and all claims that they may have against the other party, including its officials and employees, relating to the subject of this lawsuit.
7. In order to effectuate the intent of this Consent Judgment and to reconcile any differences of the parties that may arise in connection with the performance of this Consent Judgment, this Court shall retain jurisdiction of this action.

DISTRICT COURT JUDGE

Approved for entry:

HOOTERS OF TROY INC.

By: _____
Coby G. Brooks, President

CITY OF TROY, a Michigan Municipal Corporation

By: _____

Louise Schilling, Mayor

By: _____
Tonni Bartholomew, City Clerk

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 HOOTERS OF TROY, INC., a Georgia corporation, with offices located at 1815 The Exchange, Atlanta, Georgia 30339, hereinafter known as "APPLICANT".

RECITALS:

1. The City Council of THE CITY, for and in consideration of the following covenants and conditions, agrees to recommend to the Michigan Liquor Control Commission, approval of the transfer of ownership of the Class C license and permits now held by Sign of The Beefcarver, Inc. to the APPLICANT, located at 2946-2950 Rochester Road, Troy, Michigan 48084, Oakland County (hereinafter "APPLICATION")

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

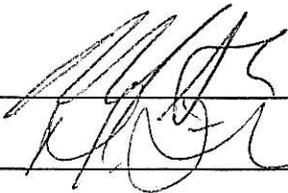
- (a) It has read and is aware of the provisions of the City of Troy Ordinances, Chapter Nos. 67, 68, 92 and Chapter No. 98 (effective 02/01/01), and agrees that it shall be deemed to have knowledge of any subsequent amendments to said Chapters which may become effective during the term of this Agreement.
- (b) It has read and is in receipt of copies of the provisions of the City of Troy, City Council Resolution No. 93-1028 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 exits, and other physical attributes); and also the nature and type of business intended to be conducted remain virtually the same.

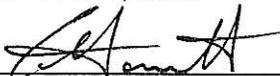
5. APPLICANT agrees that upon a violation, after full investigation and an opportunity for said APPLICANT to be heard, upon a finding by the City Council that a violation as set forth in paragraph 2 of this Agreement has occurred, the City Council shall have just cause for revocation of said recommendation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

Witnesses:



Applicant:

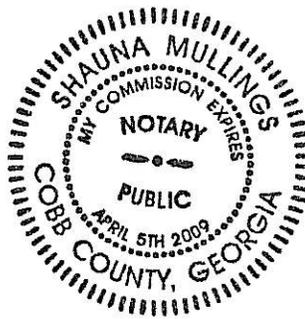
HOOTERS OF TROY, INC.

By: 
_____ Coby G. Brooks, President

Subscribed and sworn to before me
this 31 day of March, 2006.



Notary Public
Cobb County, Georgia
My commission expires: 4-5-2009



CITY OF TROY

By: _____
Louise E. Schilling, Mayor

By: _____
Tonni L. Bartholomew, Clerk

Subscribed and sworn to before me
this _____ day of _____, 2006.

Notary Public, Oakland County, Michigan
My commission expires:

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