

CITY COUNCIL ACTION REPORT

DATE: June 10, 2008

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services
Mark F. Miller, Planning Director

SUBJECT: Mobile Windshield Repair

Background:

- Troy City Council referred this issue to the Planning Commission for their evaluation.
- The Planning Commission discussed this issue at the February 5, 2008 and April 1, 2008 Special/Study meetings.
- On April 1, 2008 the Planning Commission recommended that City Council take no action on this item.
- City Management prepared a memorandum regarding mobile windshield repair for the August 20, 2007 City Council meeting (see attached).
- The City Attorney's Office prepared a memorandum on this issue (see attached).
- A representative of K-4 Enterprises, an area mobile windshield repair company, provided information on how some communities in the area permit mobile windshield repair (see attached).
- Since the April 1st Planning Commission meeting, there was an administrative error in the issuance of transient merchant permits to K-4 Enterprise, who temporarily operated at Oakland Mall.

Financial Considerations:

- There are no financial considerations associated with this item.

Legal Considerations:

- City Council has the authority to amend the Zoning Ordinance after a recommendation from the Planning Commission, after a Public Hearing. City Council could also create a permit process to review and approve mobile windshield repair.

Policy Considerations:

- Mobile windshield repair does not further any City of Troy Goals and Objectives.

Options:

- City Council can take no action on this item.
- City Council can make a finding that temporary outdoor use applications, including mobile windshield repair, are not appropriate in Troy.
- City Council can initiate the creation of a process to review and approve temporary outdoor use applications, including mobile windshield repair.
- City Council can refer the item back to the Planning Commission for consideration.

Attachments:

1. City Management memorandum from August 20, 2007 City Council meeting, dated August 14, 2007.
2. Memorandum from the City Attorney's Office, dated March 26, 2008.
3. Email from K4 Enterprises LLC, dated February 22, 2008.
4. Minutes from February 5, 2008 Planning Commission Special/Study meeting.
5. Minutes from April 1, 2008 Planning Commission Special/Study meeting.
6. Fix-N-Chips booklet.

Prepared by RBS/MFM

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CITY COUNCIL ACTION REPORT

Date: August 14, 2007

To: The Honorable Mayor and City Council

From: Phillip Nelson, City Manager
Lori Grigg Bluhm, City Attorney
Brian P. Murphy, Assistant City Manager/Economic Development Services
Mark F. Miller, Planning Director

Subject: Mobile Windshield Repair

Anthony Kapas, and other owners of Fix-N-Chips, approached the Planning Director regarding the use of parking lots in office and retail areas for the temporary set up of a shop which repairs cracks in windshields. Fix-N-Chips brings in tools, a sign on a trailer and utilizes over approximately 15 parking spaces. The business relies on individuals who happen to be traveling in the area for other reasons; i.e., going to an office or stopping to shop at a retail store, and then the potential customers would see the sign on the trailer in the parking lot. The business model relies on the impulse purchase and the customers would get their windshield fixed while they are working or shopping. The photos presented to City Council in the booklet were prepared by Fix-N-Chips and demonstrate the typical repair set up.

City Management and the City Attorney's Office do not recommend a change in the Zoning Ordinance to accommodate this type of business. Currently the use of the parking lot for business purposes is a violation of the Zoning Ordinance. Each business is required to maintain a minimum number of parking spaces. Allowing a temporary business to utilize required parking spaces violates the Zoning Ordinance. Further, the use of parking spaces and aisles could create a health and safety issue by creating unsafe traffic circulation patterns. There is also concern for equal application of the Zoning Ordinance, where other businesses are required to have a permanent location inside a building, along with the required parking. Thus, the Fix-N-Chips business model will have an economic advantage because there are not fixed assets used, such as a building or parking lot. Finally, if it were City Council's direction to permit these types of businesses, City Management and the City Attorney's office would have to conduct research whether it is discriminatory to permit only one business in a parking lot and not other similar uses.

Additionally, this type of business is not attractive. The sign on a trailer could be considered clutter and may distract vehicles in maneuvering safely about the parking lot. Other issues such as car queues and radios of those waiting could result in noise pollution and a littering problem.

Fix-N-Chips also asked the City to look into the option of not changing the Zoning Ordinance but allowing their business use under a temporary license authorized by the City Clerk. City Management and the City Attorney's Office are opposed to a temporary use under a license. According to Fix-N-Chips, the temporary use would be the entire spring, summer and fall seasons when they could conduct this type of activity outside. Such a license is an attempt to circumvent the Zoning Ordinance. There will always be the equal application of the law issue; why won't other similar businesses be allowed to operate in parking lots.

Fix-N-Chips is requesting that City Council authorize City Management and the City Attorney's Office to prepare a procedure to permit windshield repair in parking lots of unrelated office or retail businesses. City Management and the City Attorney's Office do not recommend that City Council allow these windshield repair uses.

Attachment: Fix-N-Chips Booklet

Prepared by MFM

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TO: Members of Troy Planning Commission
FROM: Lori Grigg Bluhm, City Attorney *LB*
Christopher J. Forsyth, Assistant City Attorney *CJF*
DATE: March 26, 2008
SUBJECT: Mobile Windshield Repair

At the February 4, 2008 special study session, there was an inquiry about limiting permitted uses on properties in the City of Troy. The issue was raised in connection with the discussion of the Fix n Chips proposal to locate its business in parking lots in the City of Troy. Although there appears to be some interest in permitting a mobile windshield repair business in parking lots in the City of Troy, there is also a concern that several other types of businesses would also be able to use parking lots in the City for their own business operations. Potential businesses include, but are not limited to, sales of t-shirts or artwork, flower and plant sales, carnivals, temporary food vendors, etc.

Based on our review, if the Troy ordinances are changed to allow mobile windshield repair businesses in parking lots in the City of Troy, then all similarly situated businesses must also be allowed. This opinion is based on the equal protection clause of the Michigan and U.S. Constitutions, which guarantees that governmental entities must treat all similarly situated entities equally. *Dowek v Charter Tp of Oxford*, 233 Mich App 62, 72; 592 NW2d 724 (1998). Preferential treatment for one type of business could only be permitted if there are natural distinguishing characteristics between the two businesses that justify different regulations. In our opinion, it would be very difficult to establish that there is a natural distinguishing characteristic between a mobile windshield repair business and any other type of retail business that wants to be located in parking lots in the City of Troy.

The adoption of an ordinance that allows only mobile windshield repair businesses in Troy parking lots would likely be constitutionally challenged as arbitrary and capricious, and in violation of the equal protection clause of the constitution.

If you have any questions, please let us know.

Brent Savidant

From: Anthony Kapas [tkapas@ticglobal.com]
Sent: Friday, February 22, 2008 1:39 PM
To: Brent Savidant
Cc: Peter Kapas
Subject: Windshield repair - K4 Enterprises

Brent,

Thank you for the opportunity to present our company to the planning board on February 5th. Per the direction in that meeting, I have provided the following list of contacts along with the cities they represent.

City of Southfield Mr. Wayne Jewell (248) 796-4110 (city blding department)

The city of Southfield currently provides K4 with a city Vendor license, Once vendor approval is obtained, our operation permits consisted of a Special event use grant for Non accessory retail sales permit, Documentation required for this permit is as follows: K4 was required to provide a site plan, intended days and hours of operation, as well as a Land owner letter of permission. In addition, I worked with the city sign ordinance department to ensure that the signage used was placed in an approved location, and was esthetically acceptable, and a minimum of 60 ft from any property line. In addition, the city of Southfield restricted the sign size to 64 square ft. as well as required the sign to be free standing.

City of Rochester Hills Mr. Bob White (248) 841-2441(city ordinance Enforcement blding department) the city of Rochester Hills currently provides K4 with a city Special event use permit, for this permit. Documentation required for this permit is as follows: K4 was required to provide a site plan, intended days and hours of operation, as well as a Land owner letter of permission. In addition the city required proof of liability insurance of 2,000,000.00 with the city of Rochester Hills named as additional certificate holder. We worked with the city sign ordinance department to ensure that the placement of our sign was in an approved location, and a minimum of 100 ft. from any major road.

Township of Lake Orion Mrs. Christine Clubine (248) 391-0403 (township blding department)

The township of Lake Orion provides K4 Enterprises a Temporary Use Permit. Documentation required for this permit is as follows: K4 was required to provide a site plan, intended days and hours of operation, as well as a Land owner letter of permission. In addition, we worked with the city sign ordinance department to ensure that the placement of our sign was in an approved location, and a minimum of 20 ft. from any major road.

Township of White Lake Mr. Craig "skip" Kouba 248 698-3300 ext. 134 (township ordinance enforcement blding department) The Township of White Lake provides K4 Enterprises a Temporary Use blding Permit. Documentation required for this permit is as follows: K4 was required to provide a site plan, intended days and hours of operation, as well as a Land owner letter of permission. In addition the city required proof of liability insurance of 2,000,000.00 with the Township named as additional certificate holder.

In addition to the above mentioned cities, the following Oakland County cities have permit provisions through a Transient Merchant licenses.

They generally require approved site plans, and well as a performance bond.

Ferndale
Pontiac
Royal Oak
Waterford
West Bloomfield

Brent, again thank you for the boards consideration, we at K4 Enterprises look forward to the new season, and serving the residents of Troy as we have in other communities. If you have any questions, or require further information, please feel free to contact me.

Respectfully,

Anthony Kapas
K4 Enterprises LLC

STUDY ITEMS

6. MOBILE WINDSHIELD REPAIR – Discussion with Representatives of Fix-N-Chips (K4 Enterprises)

Mr. Savidant summarized the item.

Tony Kapas, a Troy resident and representative of Fix-N-Chips, 6030 Chase, Dearborn, was present. Mr. Kapas summarized the business as follows:

- They currently operate in five communities in Oakland County: Southfield, Waterford, White Lake, Rochester Hills and Lake Orion.
- They consider themselves to be a civic-minded business, providing an important, convenient service.
- They target underutilized parking lots and set up far from the front door of the business, in highly visible areas but out of the flow of traffic.
- They have professional signage and uniforms.
- They pay rent to the property owner to use space in parking lots.

Chair Schultz opened the floor for questions and comments from the members.

Mr. Strat asked if the business operates during inclement weather.

Mr. Kapas replied the business generally operates from April 1 through October 1. He indicated the quality of work is substandard if performed during rainy or cloudy weather.

Mr. Hutson shared a concern that a precedent might be set and a demand created for other types of businesses should this use be permitted.

Mr. Kapas said they pay \$1,000 per month to set up their business in a parking lot in Southfield. They were required to notify all businesses in the area and no objections were voiced.

Mr. Vleck suggested the uses might be appropriate if there were enough permit requirements.

Mr. Strat suggested an evaluation of the uses after one year.

Chair Schultz said he might consider the use if the City Attorney determined there was a way to permit this use and only this use.

Chair Schultz suggested the Planning Commission get feedback from the City Attorney's office on the matter, and further, find out how other communities permit the use and the impact of the use.

Chair Schultz suggested that the City Attorney's office review the matter and provide its findings to the members. He further suggested to do research on how other communities permit the use and the impact of the use.

STUDY ITEMS

6. **MOBILE WINDSHIELD REPAIR** – Discussion on Potential Zoning Ordinance Text Amendment

Mr. Miller summarized the item.

Mr. Forsyth gave an explanation of memorandum prepared by the City Attorney's office that addresses the issue of the equal protection clause of the Michigan and U.S. Constitutions.

Mr. Strat said he likes the idea of possibly allowing urban, pedestrian-friendly uses such as hot dog vendors along the Big Beaver Corridor.

Mr. Forsyth stated it is impossible to allow only specific uses, that you must open it up to all uses.

Mr. Maxwell asked if mobile windshield repair businesses would pay property taxes in the City.

Mr. Miller replied they would not.

Chair Schultz stated users pay rent to the owner of the parking lot, subsidizing the property taxes paid by the owner.

Mr. Maxwell asked if a representative from K4 Enterprises could briefly describe the business.

Peter Kapas of K4 Enterprises LLC gave a description of the business.

Mr. Maxwell asked what value the K4 business model would add to the community.

Mr. Kapas said windshield repair is an important safety issue and the mobile service provides convenience to people and families who are constantly on the go nowadays.

Mr. Maxwell asked how the business handles complaints.

Mr. Kapas replied if a chip is not repaired, a representative is sent to the home or workplace of the complainant and the windshield is replaced.

Mr. Strat asked Mr. Kapas to identify areas in Troy that K4 Enterprises would want to operate.

Mr. Kapas replied they are considering Oakland Mall and the K-Mart property at the intersection of Maple and Livernois.

General discussion followed.

Chair Schultz stated the direction from City Council is for the Planning Commission to evaluate mobile windshield repair. He indicated it is appropriate for the Planning

Commission to consider amendments to the Zoning Ordinance but not appropriate to develop other ordinances, such as licensing ordinances. He indicated that would be the responsibility of City Council and City Management. Chair Schultz said the members have two options: (1) provide the Planning Department direction for amending the Zoning Ordinance to permit mobile windshield repair, or (2) recommend that the City Council take no action on the item.

There was discussion on permitting mobile windshield repair using a licensing procedure or under the Zoning Ordinance.

Resolution # PC-2008-04---

Moved by: Troshynski

WHEREAS, The City Council received a proposal for preparing a procedure to permit mobile windshield repair; and

WHEREAS, The City Council referred the item to the Planning Commission for evaluation; and

WHEREAS, The Planning Commission has reviewed the potential for permitting mobile windshield repair in Troy.

THEREFORE BE IT RESOLVED, The Planning Commission recommends that City Council take no action on this item, and consider development licensing procedures to permit mobile windshield repair and similar businesses to promote sustainability and walkability.

Motion **FAILS** due to a lack of a second.

Mr. Hutson said he is opposed to creating provisions for reasons stated in the memorandum provided by the City Attorney's office.

Mr. Wright agreed with Mr. Hutson. He also suggested that permitting uses in parking lots encourages unfair competition.

Resolution # PC-2008-04-044

Moved by: Troshynski

Seconded by: Strat

WHEREAS, The City Council received a proposal for preparing a procedure to permit mobile windshield repair; and

WHEREAS, The City Council referred the item to the Planning Commission for evaluation; and

WHEREAS, The Planning Commission has reviewed the potential for permitting mobile windshield repair in Troy.

THEREFORE BE IT RESOLVED, The Planning Commission recommends that City Council take no action on this item, and recommends licensure review.

Yes: Strat, Troshynski
No: Hutson, Maxwell, Schultz, Tagle, Wright

MOTION DENIED

Chair Schultz reminded the members that City Council asked the Planning Commission to consider the appropriateness of operating businesses in parking lots.

Mr. Strat suggested these provisions could apply to similar businesses located next to sidewalks or bicycle paths, and could add to the City's walkability.

Resolution # PC-2008-04-045

Moved by: Hutson
Seconded by: Wright

WHEREAS, The City Council received a proposal for preparing a procedure to permit mobile windshield repair; and

WHEREAS, The City Council referred the item to the Planning Commission for evaluation; and

WHEREAS, The Planning Commission has reviewed the potential for permitting mobile windshield repair in Troy.

THEREFORE BE IT RESOLVED, The Planning Commission recommends that City Council take no action on this item.

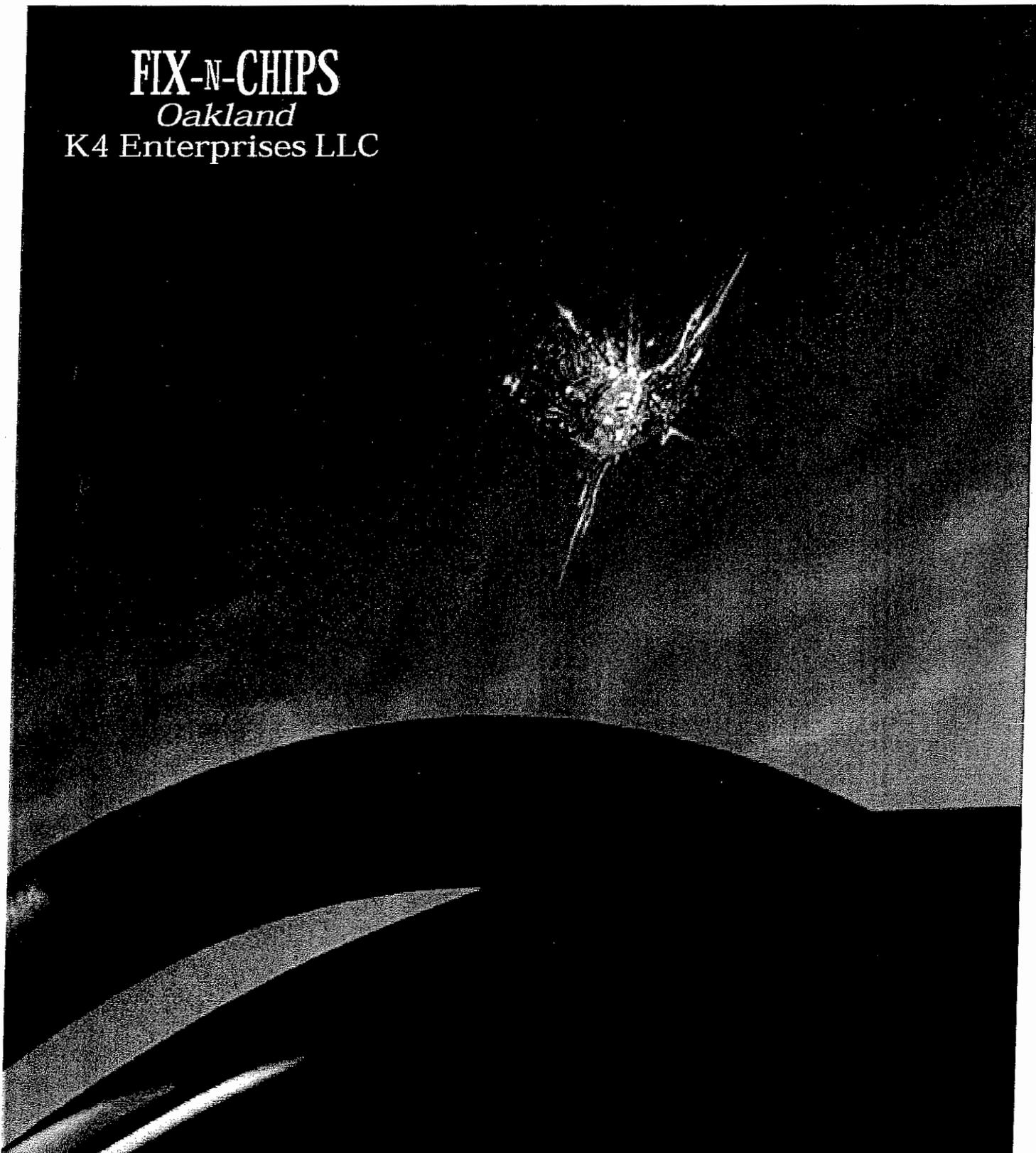
Yes: Hutson, Maxwell, Schultz, Tagle, Wright
No: Strat, Troshynski
Absent: Vleck

MOTION CARRIED

Mr. Strat explained his vote on the motion. He stated there should be a recommendation to City Council that the Transient Merchant License is a possible mechanism to consider.

Ms. Troshynski explained her vote on the motion. She stated the Planning Commission owes the City Council another arena for permitting these types of uses.

FIX-N-CHIPS
Oakland
K4 Enterprises LLC



Helping Troy to see clearly,
“One chip at a time”



Members of the Troy Planning Department
500 W. Big Beaver
Troy Mi. 48084

Thank you for allowing Fix-n-Chips Oakland the opportunity to present our company for your consideration. Fix-N-Chips, Oakland met with the Troy City Planning department back in March of this year to discuss the possibility of beginning operations in the City of Troy. Our initial meeting with Mark Miller, and Brent Savidant (both in planning) proved to be very enlightening as they provided candid answers and issues that we as a company would need to address. The following correspondence represents excerpts from the findings of that meeting. Our company model was developed to address two major issues: first, according to police and insurance reports, there is a real safety issue with motorists driving a vehicle with chipped or cracked front windshield. Second, as busy as most people are nowadays, it is hard to find the time to get windshields repaired knowing that it will result in the down time of their vehicle for many hours and often a day at a traditional glass shop. In addition, many glass shops prefer to replace the windshield as profit margins are much higher. Our parent company (Fix-N-Chips) has teamed up with local merchants to offer this service in areas where their customers live and shop. The convenience of this approach allows residents to utilize our service while doing their weekly errands. In many cases the repair is accomplished while they are shopping. Thus, no time off work or special scheduling to address this critical safety issue.

Business Concept:

Our intent is to provide a service oriented business. The service specifically addresses the repair of automotive windshields. To provide this service we have teamed up with local community business owners (including Meijer, Kmart and Ramco Gershenson Properties Trust & others). We have secured the right to set up a temporary mobile repair unit in their parking lots once approval is obtained from local municipalities. Our operation requires the use of approx 6 to 10 spaces (typically these spaces are located on the outer perimeter of the lot, remote and removed from the regular parking lot traffic flow, and generally unused by customers). The store patrons are then able to facilitate a repair while shopping!! In the event that the customer happens to see our signs from the road, they then can utilize our "pull up service" to effectively have their vehicle repaired. The pull-up service generally takes 10-15 minutes with the customer waiting in their vehicle while the repair is being completed. Then the customer is on his/her way to complete their daily errands. As per our discussion with the planning department, we are seeking to provide this service within the city limit of Troy. We have found that this activity falls into a category of "specialized licenses" in other communities surrounding Troy, and appreciate the opportunity to submit the following request letter to provide our windshield repair service within the city boundaries.

Advantages to Quick service on site repair:

- * Our hours of operation align with those most convenient for our Customers. Our typical hours of operation is on Weekends and are generally 10am - 7pm Saturday, and 12pm - 7pm Sunday
- * Safer community. This is a quick effective way to ensure that the driver's vision of the road is unobstructed. Thus we contribute to safer roads for the residents and visitors of the communities we operate in.
- * Service is completed quickly (generally the service only requires a 10-15 minute commitment from the customer)
- * Meijer, Kmart and Ramco Gershenson received favorable customer comments regarding our service in areas where it has been initiated
- * Service has been recognized by insurance companies to reduce accidents and injuries involving pedestrians, keeping the community safe and ultimately reduce insurance claims.
- * Insurance companies have recognized a reduction in the claims for windshield replacement
- * Additional revenue for local merchant. Each location is secured with an operating agreement. This includes rental of space. Other programs encourage customers to shop in our site owners establishment thus supporting business in the communities we operate.
- * Community goodwill – for those customers that do not have the proper insurance, and do not appear to have the ability to pay for the repair, we will complete a chip repair free of charge as a community service

Operation Agreement/Facilities:

While on site, we strive to operate as a compliment of our host business. Our current agreement provides for the following:

- * Structured rent schedule
- * Usage of the property facilities (bathrooms, ect.)
- * Specific hours of operation (subject to weather) usually correspond to that of the sponsored merchant site
- * Property site location is on the outer perimeter of the lot utilizing areas that generally remain vacant site plans are mapped out and identified as our approved operating area
- * Merchants that we seek to partner with have ample parking, typically excess capacity either by design, or storefront vacancies.
- * Attractive site appearance is the highest priority enforced by our management and corporate mystery shopper programs. We strive to leave our sites cleaner than we arrived.
- * Mobile repair unit is erected and collapsed daily. It is only on premises during our hours of operation

Corporate Site requirements:

All sites are required to include the following:

- * Approval from local municipalities (with either a letter or license available for viewing upon request) on site with supervisor at all times
- * Approval from land owner (with a copy of the approval letter available for viewing upon request) on site with supervisor at all times
- * Insurance both for the Mobile Repair Unit as well as liability insurance prescribed by corporate as well as site sponsor
- * Cooler of ample water supply available for staff use
- * First aid /medical kit
- * Tools required to provide repairs
- * Please note that this business and tools do not require auxiliary electrical assistance, therefore, there will not be any generator or electrical cords on premises.
- * All employees (generally 3-5 to a team) are required to wear uniforms clearly identifying them as employees (hats are considered optional) this projects customer confidence, brand awareness as well as assurance that they will receive top quality workmanship and service.
- * All employees are required to act professionally as well as courteous
- * No additional item sales are permitted on the site
- * Site employee is required to have a cellular phone when on site. These are primarily used to initiate contact to customer insurance companies to obtain proper authorization. In addition, we have found instances when we have been able to provide assistance to stranded or distressed residents.

In conclusion, we are finding a willingness and enthusiasm among the communities we have approached with this business model. The real customer convenience, community safety and value Fix-n-chips provide only enhance those communities we partner with. Our mission is to "partner" with the City of Troy to help insure it is one of Michigan's safest communities. We believe that Fix-n-chips will represent an asset to the city of Troy as it has in other communities. License approval would allow for greater control by the city over this type of business venture directing their establishment in Troy. It is our understanding that this will allow the city to pick and choose merchants eligible for site approval. It is our hope and expectation that Troy will recognize the value of our business to the community and grant us the required approvals so that we can operate according to and comply with the guidelines established by the city government. Again, thank you for your time and input into our business proposal. I will be happy to provide additional information upon request. Please feel free to contact me should you have any questions, or concerns that I might be able to answer.

Respectfully,

Anthony Kapas
K4 enterprises
(586) 917-4992 (mobile)

Photos from our Livonia site last year Southfield Site
this year and March of Dimes/Farmers Ins. event earlier this year



Mobil Repair Unit set up with 3 cars in process of repair



Typical set-up while completing repair.



Uniformed employee including safety glasses



Mobil Repair Unit set-up at Southfield fund raiser for March of Dimes



Southfield location during normal operations



March Of Dimes charity Event partnership with Farmers Ins. and Fix-n-Chips