LIQUOR ADVISORY COMMITTEE MINUTES – FINAL JUNE 14, 2010

A regular meeting of the Liquor Advisory Committee was held on Monday, June 14, 2010 in the Council Board Room of Troy City Hall, 500 West Big Beaver Road. Chairman Max K. Ehlert called the meeting to order at 7:00 p.m.

Roll Call

PRESENT: Max K. Ehlert, Chairman
W. Stan Godlewski
Patrick C. Hall
Andrew Kaltsounis
David S. Ogg
Bohdan L. Ukrainec

ABSENT: Timothy P. Payne

ALSO PRESENT: Lieutenant Michael Lyczkowski
Officer James Feld
Susan Lancaster, Assistant City Attorney
Dane Lepola, student representative
Pat Gladysz

Resolution to Excuse Committee Member Payne

Resolution #LC2010-06-015
Moved by Kaltsounis
Seconded by Ukrainec

RESOLVED, That the absence of Committee member Payne at the Liquor Advisory Committee meeting of June 14, 2010 be **EXCUSED**.

Yes: 6
No: 0
Absent: Payne

Resolution to Approve Minutes of March 8, 2010 Meeting

Resolution #LC2010-06-016
Moved by Ogg
Seconded by Kaltsounis

RESOLVED, That the Minutes of the March 8, 2010 meeting of the Liquor Advisory Committee be **APPROVED**.

Yes: 6
No: 0
Absent: Payne

Agenda Items

1. **E Mart L.L.C.** requests a New SDM License to be located at 2963 East Big Beaver, Troy, MI 48083, Oakland County. {MLCC Req. #531318}. *Asian E Mart is located in the Golden Gate Plaza – former site of the CVS Drug Store which moved to East Big Beaver and John R. Owners Sung Hee Kim and Kwang B. Lim.*

Present to answer questions from the Committee were Kwang B. Lim and his attorney, Al Tabaka.

Mr. Lim informed the Committee that he owned an Oriental market in Ann Arbor approximately ten years ago. He then opened a Japanese restaurant in the Canton/Plymouth Township area. In May of 2009, Mr. Lim and his partner, Ms. Kim, opened the E Mart at its present location. The store is 13,000 square feet and sells Asian groceries. He plans to train his employees in accordance with MLCC requirements and will display the beer and wine in the rear of the store.

Officer Feld informed the Committee that he located no criminal history for the owners.

Resolution #LC2010-06-017
Moved by Godlewski
Seconded by Hall

RESOLVED, That the Liquor Advisory Committee recommends that the request of E Mart L.L.C. for a New SDM License to be located at 2963 East Big Beaver, Troy, MI 48083, Oakland County be **APPROVED**.

Yes: 6
No: 0
Absent: Payne

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2. **Smoker's Express, L.L.C.** requests a New SDM License, to be located at 2981 East Big Beaver, Troy, MI 48083, Oakland County. {MLCC Req. #524881}. *Smoker's Express is located in the Golden Gate Plaza – Northwest Corner of Dequindre and East Big Beaver – near Baskin Robbins. Owner – Joseph Harris.*

Present to answer questions from the Committee was Joseph Harris.

Officer Feld reviewed the details of this matter with the Committee:

- Prior to the 02/08/10 Liquor Advisory Committee meeting, the background investigation of applicant Joseph Harris revealed four charges, as follows:
  - Count 1, Misdemeanor Domestic Violence; Count 2, Misdemeanor Domestic Violence; Count 3, Felony Assault with Dangerous Weapon; and, Count 4, Misdemeanor Assault or Assault & Battery.
  - Mr. Harris' criminal history indicated he pled guilty to Counts 1 and 4, and Counts 2 and 3 were dismissed.
  - The Eastpointe Police Department was contacted and the report was requested. However, the report was not received prior to the meeting.
  - Prior to the 02/08/10 meeting, Mr. Harris was informed by Officer Feld that the Committee may request a statement as to the findings of the Troy Police Department's investigation regarding his arrest and guilty pleas. It was suggested that Mr. Harris address the Committee and give them details of the incident. At the 02/08/10 meeting, Mr. Harris stated to the Committee that the charges were a result of a domestic incident with his wife who was also a police officer and he took a plea to the charges rather than have her charged with a crime. Further, he stated at the meeting that he only pled since he did not want to risk losing his pension which he would lose if he was found guilty of the original charges.
- At this point in the meeting of 06/14/10, Officer Feld asked Mr. Harris if the above statements that Officer Feld had just made were a correct representation of what Mr. Harris had told the Committee on 02/08/10. Mr. Harris responded that they were correct statements.

- Officer Feld then continued with his report stating that after the 02/08/10 meeting, the Eastpointe Police Department report was received. The details of the 30 page report are as follows:

  - The Police Investigation into the arrest indicates on 05/06/07 Eastpointe Police Officers responded to a large house party getting out of control which involved at least 30 people. A patron indicated the problem was caused by Mr. Harris. The homeowner was found to have swelling under her left eye but indicated she fell during the party. Officers left without further incident.

  - Officers arriving on the scene stated they observed an unknown male running through the backyard and over a fence. Two subjects then approached the officer, pointed toward the fleeing male and stated, "that's the guy who had the gun. He was pulling it out and threatening people." When subject Joseph Harris approached, several subjects began pointing toward him stating, "that's the guy who had the gun."

  - Mr. Harris informed Eastpointe Police officers that he was a member of the Detroit Police Department and that he did not know anyone at the home.

  - Police Officers were dispatched to the residence 4½ hours later to take an Assault and Battery Report. The victim was the homeowner's daughter who alleged that she was assaulted by Mr. Harris. The victim indicated that Harris was yelling at her and her mother. Harris then grabbed the victim by the hair, slapped her in the face, and began to choke her. The victim also indicated that when officers were dispatched to the location the first time, it was due to Harris. She stated Harris and her uncle got into a heated argument and Harris pulled a gun on him. The uncle left the residence with Harris chasing and pointing his gun at him. The victim states her mother stepped in between both parties, and Harris reacted by punching her in the face, causing her left eye to swell. Officers indicated now that the victim's mother's eye was now almost completed swollen shut. She however indicated she had been involved in an argument with her daughter and she was slapped by her. She refused to have her eye photographed by the police.

  - Another victim came to the Eastpointe Police Department on 05/08/07 to file an Assault and Battery Complaint against Mr. Harris. This victim indicated she was attending the party

when a fight broke out involving Harris. She states she attempted to break up the fight when Harris shoved her, knocking her off the porch. The victim states the fall from the porch caused her right ankle to break.

- An investigation into the matter continued and the homeowner and her daughter came to the Eastpointe Police Department several days later and now stated a fight broke out between her and her sister, the second victim in the altercation who subsequently broke her ankle. When her daughter got between the two to intercede, she (her daughter) got struck by her mom. She also stated that her own daughter had given her the swollen black eye when she got between her mom and aunt. Her daughter added that she had lied to the police department earlier about being assaulted.

- On 07/09/07, Mr. Harris was charged by the Macomb County Prosecutor's Office with one count of Misdemeanor Domestic Violence, one count of Misdemeanor Assault or Assault & Battery, and one count of Felony Assault with a Dangerous Weapon.

- On 07/17/07, Mr. Harris appeared at the 38th District Court – Eastpointe and was charged with one count of Misdemeanor Domestic Violence which was ultimately bound over to the 16th Circuit Court in Mount Clemens.

- On 01/31/08, Mr. Harris pled guilty to Count 1, Misdemeanor Domestic Violence and Count 4, Misdemeanor Assault or Assault & Battery. Count 2, Misdemeanor Domestic Violence and Count 3, Felony Assault with a Dangerous Weapon were both dismissed. Mr. Harris was placed on two years' Probation and he retired from the Detroit Police Department.

At the 02/08/10 meeting, the Committee recommended approval of the request for a new SDM license for Smoker's Express. When Officer Feld presented the new information to the Committee at the 03/08/10 meeting, the Committee voted to rescind their recommendation for approval of the SDM license and this item was tabled until Officer Feld's investigation was completed.

Mr. Harris addressed the Committee and stated that the details from the Eastpointe Police Department report were inaccurate. He stated that the victims from the assault were available this evening and would address the Committee stating that no assault occurred. Mr. Harris further stated that the reason he pled guilty to Counts 1 and 4 was to avoid a trial that could have possibly had a negative effect on his retirement from the Detroit Police Department.

Lieutenant Michael Lyczkowski addressed the Committee and stated that the Police Department cannot support a recommendation to approve this application. The Police Department is concerned about the conflicting information that was gathered during the course of Officer Feld's investigation and about the two assault and battery convictions on Mr. Harris' criminal history. While he appreciates that Mr. Harris has offered to have witnesses testify that the incidents did not occur, the convictions on his criminal record still stand. Lastly, the Police Department certainly has a concern that tobacco outlets that legally sell to persons 18 years of age also have the desire to sell alcohol. The Police Department has concerns that establishments such as these would be mixing these two products for sale and may present opportunities for alcohol sales to minors.

Assistant City Attorney Susan Lancaster addressed the Committee and stated that there were four felony counts brought against Mr. Harris and it was up to the prosecutor to decide if they want to offer a plea. For reasons unknown to us, the plea bargain was offered to Mr. Harris. This resulted in two convictions. She presumes that Mr. Harris had the opportunity for legal representation and explanation of his right to trial. If the matter had proceeded to trial, the witnesses would have been required to testify.

Mr. Ehlert asked Ms. Lancaster if she felt that the prosecutor offered the plea because he was not convinced of the case and witnesses. Ms. Lancaster replied that the prosecutor may have offered the plea for many reasons, e.g., he might not have had cooperative witnesses, it might have been difficult to try this case in view of the large number of witnesses at the incident, or there could have been other reasons. There are usually many reasons that are taken into consideration when offering a plea bargain and it does not mean that the prosecutor was not convinced of the evidence. It could have been that Mr. Harris previously had a clean record and he was a police officer at the time.

Ms. Lancaster stated that the City Ordinance reads that we must consider if the applicant has ever been convicted of a violent crime when an application for liquor license is received. She believes what the Police Department is saying is that, based upon their extensive research that began in February, it appears that Mr. Harris' account conflicts with their findings. This Committee can either let their ruling stand or make a Motion to reconsider their recommendation to City Council.

Mr. Hall recalled that at the 03/08/10 meeting, the Committee voted to rescind their previous recommendation for approval.

Ms. Lancaster agreed that the recommendation had been rescinded and a new Motion for approval or denial would be required.

Mr. Ehlert stated that this was a two-part issue: (1) circumstances of Mr. Harris' criminal history and (2) type of establishment requesting liquor license.

Resolution #LC2010-06-018
Moved by Hall
Seconded by Kaltsounis

RESOLVED, That the Liquor Advisory Committee recommends that the request of Smoker's Express, L.L.C. for a New SDM License, to be located at 2981 East Big Beaver, Troy, MI 48083, Oakland County be **DENIED**.

Yes:	6
No:	0
Absent:	Payne

Informational Items

Officer Feld updated the Committee on the following informational items:

Cameron Mitchell Restaurants, LLC
The restaurant plans to enlarge the outdoor service area in the fall of 2010.

Target Corporation
A new SDM License was granted several years ago, but the store decided to not put the license into use. They will now reapply.

Class C License
Based on the population tally from the 2000 census, the City of Troy was allotted 54 Class C Licenses. We currently have one available license. Everyone is aware that the 2010 census was just conducted. At that time, we are unaware if our population will increase or decrease. If the population has decreased and we drop to the level of 53 Class C Licenses, we will lose the one unused license. Currently, that one available license is being "held" by City Council for future use by whoever may choose to build on the former K-Mart Headquarters site. However, the MLCC has changed their rules regarding the granting of Class C licenses: (1) if the business exceeds $750,000 in renovations or structure or (2) if the business is in the downtown business district (Big Beaver from Rochester to Coolidge), then the business may apply to MLCC for a Class C license if the City has none available. The Police Department advised City management that there was no need to hold that license for the K-Mart location. The City Council is now considering giving that Class C to a caterer at the Community Center.

Ms. Lancaster advised the Committee that amendments to the Liquor Ordinance are being researched by the Legal Department

The meeting adjourned at 7:50 p.m.

Max K. Ehlert, Chairman

Patricia A. Gladysz, Secretary II