



CITY COUNCIL ACTION REPORT

August 19, 2010

TO: John Szerlag, City Manager

FROM: Gary Mayer, Chief of Police
Captain Gerard Scherlinck, Services Division
Lieutenant Michael Lyczkowski
Sergeant Russel Harden
Officer James Feld

SUBJECT: Application for a New SDM Liquor License.

Background:

- Super City Smoker's Express, L.L.C. requests a New SDM License Business to be located at 2981 East Big Beaver, Troy, MI 48083, Oakland County {MLCC Request #524881}.
- On February 8, 2010, Mr. Harris appeared at the Liquor Advisory Committee Meeting and explained that the purpose of this request is to allow him to sell beer and wine from his store, to be consumed off premises. Mr. Harris purchased the business two years ago which currently sells cigars, cigarettes, and lottery tickets. The business also has a walk-in humidor. In response to questions about his criminal record, the applicant provided some information about his conviction for Misdemeanor Domestic Violence and also his conviction for Misdemeanor Assault or Assault and Battery. Based on the applicant's representation, the Liquor Advisory Committee recommended issuance of the requested SDM License, with the understanding that the police reports would be obtained to verify the accuracy of the information.
- There were some possible discrepancies between the police reports and the information provided to the Liquor Advisory Committee on February 8, 2010. As a result, the Liquor Advisory Committee rescinded its resolution of support on March 8, 2010 and requested additional investigation.
- At June 14, 2010 Liquor Advisory Committee Meeting, the applicant was invited to the meeting to provide additional clarification or explanation of the incidents that led to his misdemeanor assault convictions.
- Mr. Harris admitted to the Liquor Advisory Committee that he pled guilty to Count 1 – Misdemeanor Domestic Violence and to Count 4 – Misdemeanor Assault or Assault and Battery. He stated that although he wasn't guilty, he pled guilty to avoid

possible ramifications to his pension. He denied allegations reported in the Eastpointe Police Reports and follow-up investigation.

- The Committee unanimously recommended **Denial** of the request at the June 14, 2010 meeting.

Legal Considerations:

- Mr. Harris' criminal convictions are factors that must be considered under Troy City Ordinances and Michigan Liquor Control Commission Rules.
 - Troy City Ordinance, Chapter 101, Section 7: City Council shall consider the following factors in determining whether to approve a new or transferred liquor license or related permit: e. Past convictions of the applicant for any of the following: (iii) a crime involving any of the following: D) Violence.
 - Rule R 436.1105 Rule 5 (2) of the Michigan Liquor Control Commission states: The commission shall consider all of the following factors in determining whether an applicant may be issued a license or permit: (e) The applicant's moral character and (g) Past convictions of the applicant for any of the following: (iii) a crime involving any of the following: (d) Violence.
- The Troy City Council makes recommendations to the Michigan Liquor Control Commission when SDM Liquor Licenses are requested. Under the State Liquor Laws, Council can identify concerns about the issuance of a license to the applicant, and this information would then be forwarded on to the Michigan Liquor Control Commission for its consideration. No matter what action the Troy City Council takes, the Michigan Liquor Control Commission must also consider the applicant's criminal convictions in its determination.
- Approved as to Form and Legality:

Lori Grigg Bluhm, City Attorney

Date

Policy Considerations:

- This action supports Council's Outcomes Statement III: "Troy is rebuilding for a healthy economy reflecting the values of a unique community in a changing and interconnected world."

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. Ukraineec

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 Ukraineec

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

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 completely 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

AGREEMENT REGARDING LIQUOR LICENSE REQUEST

Re: Applicant:	<u>Super City Smoker's Express, L.L.C.</u>	Date:	<u>10/22/09</u>
Address:	<u>2981 East Big Beaver Road</u>	Type of License/s:	<u>SDM</u>
City/State/Zip:	<u>Troy, MI 48083</u>	MLCC Request ID:	<u>524881</u>

This Agreement, made 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 the Applicant as indicated above, hereinafter known as APPLICANT.

- The City Council of the City of Troy, for and in consideration of the following covenants and conditions, agrees to recommend to the Michigan Liquor Control Commission Approval of the requested Liquor License to be located as indicated above in Troy Michigan.
- In consideration of the City of Troy's recommendation for approval of the request, the applicant hereby agrees that:
 - It has read and is aware of the provisions of City of Troy Ordinances, Chapter No. 67, Chapter No. 68, Chapter No. 98 and Chapter No. 101, 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.
 - 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 licensed business in the City of Troy.
 - 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, TAMS), or the program must be reviewed by the Troy Police Department to insure that the program is comparable to the recognized programs.
- Applicant agrees that the recommendation for 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.
- Applicant agrees that the recommendation for 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.
- Applicant agrees that upon such 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.

LICENSEE AUTHORIZED REPRESENTATIVE

Witnesses: M. Aileen Bittner
M. Aileen Bittner
Cheryl A. Stewart
Cheryl A. Stewart

Subscribed and sworn to before me this 27th day of October 2009
 Notary Public, Oakland County, MI
 Acting in the County of Oakland
 My commission expires: 9/25/2011

By: Joseph C. Harris II
Joseph C. Harris II

LAURA CAMPBELL
 Notary Public, Oakland County, MI
 My Commission Expires 9/25/2011
 Acting in Oakland County

CITY OF TROY

Witnesses: _____

Subscribed and sworn to before me this _____ day of _____ 200 _____
 Notary Public, _____ County, MI
 Acting in the County of Oakland
 My commission expires: _____

By: _____
 Louise Schilling, Mayor

By: _____
 Tonni Bartholomew, City Clerk



FOR MLCC USE ONLY	
Request ID #	<u>524881</u>
Business ID #	<u>220839</u>

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:

Super City Smoker's Express, L.L.C. Requests a New SDM License, to be located at 2981 E Big Beaver, Troy, MI 48083, Oakland County.

Section 1. APPLICANT INFORMATION

APPLICANT #1: Joseph Harris 36235 St. Clair New Baltimore, MI 48047 H(313) 475-0215, B(248) 689-1840	APPLICANT #2:
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DATE FINGERPRINTED:**

DATE OF BIRTH: Is the applicant a U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No* *Does the applicant have permanent Resident Alien status? <input type="checkbox"/> Yes <input type="checkbox"/> No* *Does the applicant have a Visa? Enter status:	DATE OF BIRTH: Is the applicant a U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No* *Does the applicant have permanent Resident Alien status? <input type="checkbox"/> Yes <input type="checkbox"/> No* *Does the applicant have a Visa? Enter status:
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Attach the fingerprint card and \$30.00 for each card and mail to the Michigan Liquor Control Commission

ARREST RECORD: <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Enter record of all arrests and convictions (Attach a signed and dated sheet if more space is needed)	ARREST RECORD: <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Enter record of all arrests and convictions (Attach a signed and dated sheet if more space is needed)
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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 motor vehicle fuel pumps at or directly adjacent to the establishment? 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 No, indicate which state and local ordinances the location does not meet: Building Plumbing Zoning Fire Sanitation Health

Section 4. RECOMMENDATION

1. Is this applicant qualified to conduct this business if licensed? Yes No*

2. Should the MLCC grant this request? Yes No*

*If any of the above questions were answered No, you must state your reasons for MLCC consideration of this recommendation on the back of this form or on an attached signed and dated sheet.

3. Is this recommendation subject to final inspection to determine that the proposed location meets all building, plumbing, zoning, fire, sanitation and health laws and ordinances? Yes No

4. Is this recommendation subject to any other conditions? Yes No

If Yes, list the conditions below or on an attached signed and dated sheet if more space is needed

Signature (Sheriff or Chief of Police) _____ Date _____
 Troy Police Department