

RESOLUTION NO. 95-1919

RESOLUTION OF THE NEWBERG CITY COUNCIL RECOMMENDING THAT THE OREGON LIQUOR CONTROL COMMISSION (OLCC) DENY THE LICENSE TO OPERATE A PACKAGE LIQUOR STORE TO APPLICANTS HABIB NASIRE AND FAKEER RAHIM, UNDER A CHANGE OF OWNERSHIP AT THE MARKET COMMONLY KNOWN AS "EVERYBODY'S MARKET" WITH A NEW TRADE NAME OF "TOBACCO EVERYBODY'S MARKET" AND A PRESENT TRADE NAME OF "H-MARKET," LOCATED AT 2113 PORTLAND ROAD, NEWBERG, OREGON.

RECITALS:

1. On April 6, 1995, the City of Newberg received an application for issuance of a package store liquor license pursuant to a change of ownership for a market known as "Everybody's Market," located at 2113 Portland Road, Newberg, Oregon.
2. Under the City's procedure, the City Manager referred the matter to the Police Department for a report, and pursuant to that report, the City Manager recommended that the license not be granted.
3. Further, according to the City's procedure, the matter was then referred to the City Council for their recommendation.
4. On June 5, 1995, the City held a hearing to address the application. A number of people testified at the hearing.
5. The applicants were present in person and also represented by legal counsel. The applicants had received prior notice of the hearing and received all documents mailed to the Council in the Council agenda packet.
6. At the hearing, the applicants, through their attorney, Mark Sherman, asked that the decision be delayed until the July 3rd meeting in order for the applicants to answer questions posed to them by Council.
7. The applicant has submitted no additional information.
8. The applicants had received notice of the hearing for July 3, 1995. The applicants have received copies of the documents mailed to the Council in the agenda package.

NOW, THEREFORE, THE NEWBERG CITY COUNCIL RESOLVES AS FOLLOWS: :

1. The Newberg City Council recommends that the Oregon Liquor Control Commission (OLCC) deny the application for a package store liquor license

pursuant to a change of ownership at a store known as "Everybody's Market," with a new trade name of "Tobacco Everybody's Market," and a present trade name of "H- Market" located at 2113 Portland Road, Newberg, Oregon.

2. The Council adopts as findings of facts, the recitals as recited above and takes into consideration all information presented to it at the hearings, and bases its decision specifically on the following findings.
 - A. The representation as to the financial responsibility of the applicants and the verifiable financing of the business has not been presented correctly. The interest of the applicants in the business has not been represented adequately in the application. The documents presented did not reflect the actual amount for which the business was being sold, the amount the applicants have invested or the financial worth of the applicants.
 - B. One of the applicants, Fakeer Rahim, has a history of selling alcohol to intoxicated persons and/or selling alcohol to minors. Although neither incident resulted in actual criminal conviction, both incidents were reported and involved police contact in which the applicant (Mr. Rahim) was, in one incident, less than truthful with the Police Officer and expressed a misunderstanding as to his duties in exercising and selling alcohol. Further, in an incident involving selling alcohol to a minor, it was held by the District Court Judge that the case had been proved by a preponderance of the evidence, although not proved beyond a reasonable doubt, which is the criminal burden of proof.
 - C. There has been a history of disturbances at this particular location.
 - D. There was testimony at the hearing on June 5th that tobacco had been sold to individuals under the age of 18 years of age, even though this market would have received notice, as all other markets, that there were regulations prohibiting the sale of tobacco to persons under the age of 18 years of age. This regulation was to be specifically enforced.
 - E. There has been some history of disorderly activities associated at this premises including vandalism and excessive or obtrusive noise. The police have had to respond to the location a number of times concerning incidents taking place in the parking lot.
 - F. The ownership of the market is unclear. Wahid Mahmood, who had specifically been prohibited from being on the premises and participating in the management, seems to have actually been running the business. Mr. Nasire and Mr. Rahim have been participants and actively involved in the

business for at least over the last year, and have been involved in these problems with the market.

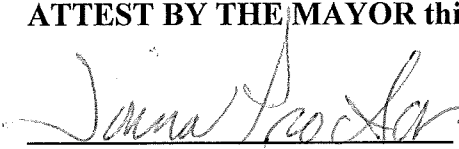
- G. Fakeer Rahim has applied to the Department of Agriculture for a license indicating that he was the owner of the market in April, 1994. However, he did not disclose any ownership to the OLCC until over a year later.
 - H. No further applications should be processed or recommended until verifiable, factual information can be obtained in accordance with the applicants' finances and ownership of the market.
3. Further, the City requests that OLCC notify it of any change in the status of the license at such premises and any administrative actions taken concerning the market and/or package store liquor license.

ADOPTED by the Newberg City Council this 3rd day of July, 1995.



Duane R. Cole, City Recorder

ATTEST BY THE MAYOR this 6th day of July, 1995.



Donna Proctor, Mayor