ACTION

	DATE
COMMITTEE	
M.A.P.C.	Endorse Item 5 7/17/80
B.C.C./~~B.C.C.~~	Refer to City Manager for Staff Report 8-19-80

DR 80-14 - Possible Amendment to the Zoning Ordinance - Taverns

THE CITY OF WICHITA

OFFICE OF DEPARTMENT OF LAW **DATE** September 2, 1980

RECEIVED
SEP 3 1980
METROPOLITAN PLANNING

TO ROBERT LAKIN, DIRECTOR OF PLANNING

FROM H. R. KUHN, ASSISTANT CITY ATTORNEY

ROUTE ☐ ____

SUBJECT Possible Amendments ☒ ____
the Zoning Ordinance

PA80-14

John Dekker, Director of Law, has requested that I review your memo of July 22, 1980 and to respond to the latter part of the concluding paragraph. K.S.A. 41-2704 grants authority to the Governing Body to prescribe:

> "hours of closing, standards of conduct, and rules and regulations concerning the moral, sanitary and health conditions of the places licensed and may establish zones within which no place of (such) business may be located ..."

The foregoing enabling authority grants to the Governing Body the right to establish the distance locations as set forth in 4.12.050 of the City Code. Said State statute is separate and distinct from the State zoning statute authorizing the creation of zoning districts. I believe that the Governing Body has the authority to establish the distance restrictions as well as impose the 2 to 4 week period of abandonment upon locations previously licensed.

The State statute does limit the Authority of the Governing Body of a city in the matter of denying or renewing the required licenses. If the qualifications of the State statute (K.S.A. 41-2702 and 4.12.050 of the City Code) are satisfied by the applicant, the Governing Body, "shall, if the applicant is qualified as provided by law issue a license..." This is particularly significant with regard to renewal licenses. Much of the discretion of the Governing Body was removed by the revision of the State statute in 1949. Prior to that time the Governing Body had been held by the Supreme Court to "have a right to" either grant a license or refuse to grant a license, depending on the approval or disapproval of an application.

The "imperative" language underlined above has been held to limit the authority to refuse a license to the Statutory grounds. This is not to say, however, that the Governing Body cannot create zones by utilizing the "distance" requirements or providing for a termination in the event of an "abandonment" of such use for a 2 to 4 week period.

The foregoing comments, however, are directed more at possibly amending the licensing provisions of the City Code rather than the zoning ordinance.

If you have any further questions in connection with this matter, I'll be pleased to hear from you.

Respectfully submitted,

H. R. KUHN
ASSISTANT CITY ATTORNEY

HRK:mb
cc: John Dekker

July 22, 1980

Board of City Commissioners
(through E. H. Denton, City Manager)
Robert A. Lakin, Director of Planning

Possible Amendments to the Zoning Ordinance - Taverns

The City Commission has requested the Planning Commission provide recommendations and advice concerning taverns insofar as their relation to the zoning ordinance and grandfather clauses therein. This request was directed to us on May 27.

A report to the Planning Commission has been submitted, including the staff evaluation of alternates relating to the zoning ordinance and to some degree those options available under the licensing provisions. Information submitted to the Planning Commission included all of the attachments which were submitted to the City Commission at the time it was considering the licensing for the "Club House". For reference purposes, copies of those memorandums are also attached for your use and consideration.

It was the conclusion of the Planning Commission that amending the zoning ordinance would not impact significantly the problem inasmuch as it would pertain only to new taverns. Even with the amendment of nonconforming use provisions, the existing taverns would not be impacted for a considerable period of time. The Planning Commission, by a vote of 6-1 (Hennessy voting no), Martens, Savina and Shook absent, recommended that the Commission not further consider the amendment of the zoning ordinance relating to these alternatives, but recommend the City Commission pursue changes in the licensing portions of the City code, including alterations in administrative interpretations as to abandonment. It is the view of the Commission that such period might be changed to a time period not more than two to four weeks, and that further relicensing of clubs be limited to those areas which have not experencied problems identified by Police Department investigation anf files. For details of the motion and discussion, see the attached extract of minutes of the Metropolitan Area Planning Commission meeting of July 17.

Robert A. Lakin
Director of Planning

RAL:rme
Attachments

cc: Metropolitan Area Planning Commission
John Dekker, Director of Law
Gene Brown, Deputy City Treasurer
Ralph Klose, City Treasurer
H. R. Kuhn, Assistant City Attorney

EXCERPT FROM PLANNING COMMISSION MINUTES OF JULY 17, 1980

16. DR 80-14 - Request by City Commission to consider changes to the zoning ordinance regarding taverns.

LAKIN stated that this item is a report to the Planning Commission concerning a matter requested by the City Commission for advice. He said that there has been before the City Commission in recent months a particular tavern which has apparently created problems for the neighborhood. In considering that problem the City Commission wanted to know the Planning Commission's views on what could be done to assist in the problem. Involved was the fact that the tavern apparently went out of business, then started up again with a new owner; the matter of issuing of licenses, its distance to adjacent residential zoning districts; whether or not taverns should be permitted in light commercial districts, whether or not there are issues of nonconformity; and whether old or new grandfather clauses would apply. LAKIN said that the day that they were discussing this problem, he was watching the meeting on Channel 8, and he was called down to the bench to tell the City Commission that the Planning Commission had a new zoning district under consideration which might not include taverns, but was a business district. Without a full understanding of that particular district, the City Commission did request that the MAPC provide changes to the permitted activities in "LC" and to provide recommendations for phasing out the grandfather clause providing for existing uses in existing locations.

LAKIN pointed out that the City Codes have two sections on taverns. One is a licensing ordinance which provides for a revenue source, a checking on who is the owner, and whether or not they have a criminal record. It also has within it a special criteria for location and licensing. He said that that particular ordinance has had a long history of change within the last 10 years. He said that one cannot locate a new tavern within 150 feet of a residential district. The second part of the City Code is the zoning ordinance. The zoning ordinance provides that taverns are permitted in a light commercial district and all of the additional heavier districts. LAKIN said that if taverns are taken out of "LC" it would mean that every tavern in town now located in "LC" would have the legal right to continue in existence for sixty years. The only way any of those would have to go out of business would be if they abandoned their property for over two years of time. Under the zoning ordinance, they could quit being a tavern, go to another use in the same comparable range of uses, and switch back to a tavern in future years not withstanding the licensing provisions. He said that another alternative could be to create a new district. LAKIN pointed out that the new district would not affect the existing taverns, and would only affect the location of new taverns. He said that if the amortization provision is changed the period of time for the amortization must be held to be reasonable by the courts.

LAKIN mentioned two other approaches that the Commission could consider, such as purchasing nonconforming uses by eminent domain, and to amend the law on licensing to modify or extend the City's rights on closing "problem taverns", whose owners or operators have a bad operating history.

LOFTON asked that under the nonconforming use if the taverns could expand.

LAKIN stated that under the existing City ordinance no square footage could be added to a building if it is nonconforming. He felt that part of the City ordinance should be changed to be in line with the County resolution which does allow expansions under certain conditions.

GOEBEL asked if the size of the tavern could be increased at all under City nonconforming use regulations. LAKIN said that it could not be increased one square foot.

GARDNER stated that with all due respect to the City Commission, and acknowledging the fact that they were informed that the Planning Commission was considering another category, the zoning categories which allow for taverns and restaurant uses are hardly a proper tool to be utilized in policing a nuisance which is an abuse of an allowable use. He felt that to attempt to deal with abuses of allowable uses through the zoning ordinance is a complication that would be very difficult to be consistent with. He said that it has become apparent that the Commission, in their licensing procedure, has felt it neces- to restrict the appropriate locations substantially (i.e., distances from residential zoning), and felt it necessary to review the licensing for cereal malt beverage sale on an annual basis. The difficulties that they are dealing with, seem to revolve around what does and does not create a nuisance. It would appear that the City Commission needs direction and assistance by providing for a police review of records of nuisance complaints and disturbances at specific locations so that such could be considered when they review license renewals or new license applications. It would appear that they need to shorten their abandonment or discontinued use definition from the six month period to a point that it requires new licensing for a new owner as opposed to a renewal upon termination of a use and should be within a 14 or 30 day period as opposed to the six month period. It would appear that they need to take into consideration the abuses and nuisances occurring at a location as a factor that would impinge upon and affect new applicants and/or renewals instead of just renewals of licensing in particular locations. In an application for a new license or renewal, the abuses at a particular location would be on record and would impinge upon the ability to obtain a new license and would be a valid review factor based on the location as opposed to based upon the owner/operator. If Mr. Dekker would redesign the license ordinance, they would find it much easier to police in terms of their immediate problem as opposed to a zoning situation.

MOTION: That the Planning Commission endorses Alternate 5 of Mr. Lakin's memorandum suggesting that amending the law on licensing to modify or extend the City's rights on closing "problem taverns", owners or operators having records or bad operating history, be the proper pursuit of this particular problem. Gardner moved, Jones seconded.

LAKIN asked Commissioner Gardner, that in stating his motion would he care to include some of his other comments such as the change of time.

GARDNER stated that it appeared they need to take into consideration the nuisance and complaint receiving mechanism so that an adequate record was provided on a site and location basis as opposed to a particular operator, and they need to take into consideration a revision of their abandonment or discontinued use definition, and to take into consideration a police report of abuses at a location as opposed to who the owner is on both renewals and new applications. JONES, as second, acknowledged the change in the motion.

BAYOUTH commented that the owner could be an innocent bystander in a lot of these cases, and could not really control what happens beyond his property. GOEBEL assured him that control could be accomplished by an owner of the building if his lease was properly written and enforced.

VOTE ON THE MOTION: It carried with a vote of 6 in favor (Gardner, Jones, Goebel, Bayouth, Lofton and Wright), and 1 opposed (Hennessy). Martens, Savina and Shook were absent.

July 10, 1980

Metropolitan Area Planning Commission

Robert A. Lakin, Director of Planning

DR 80-14 - Request by City Commission to consider changes to the zoning ordinance Re: Taverns.

History

In considering complaints on the licensing of a tavern which was the source of problems for nearby neighbors, the zoning issue was brifely discussed. In hearing this on TV, I called down to the City Manager's table and advised him the MAPC was currently considering the creation of a new commercial district. After a brief discussion, the Board of City Commissioners requested that the MAPC provide changes to the permitted activities in "LC" and to provide recommendations for phasing out the grandfather clause providing for existing uses in existing locations.

PROBLEM STATEMENT
Licensing

The regulation of taverns comes under two separate portions of the City Code; 1) under licensing, and 2) under zoning. The most restrictive features of each set of regulations control.

To obtain a license, a new tavern may not be within 150 feet of a residential zoning district, nor nearer than 300 feet to a school or church. No waivers of distance are permitted. When the 150 foot distance requirement was inserted into the licensing regulations several years ago, it was primarily to limit the conversion of existing buildings to taverns that were within, or in close proximity, to residential neighborhoods. This was created by the conversion of several nonconforming buildings in residential neighborhoods that were originally neighborhood grocery stores. The taverns did not have adequate parking and the change to the new use created numerous problems to the neighborhood. The ordinance contains a "grandfather clause" which permits the relicensing of a tavern if it has not ceased to sell cereal malt beverages even though it does not meet the distance requirements. The Commission has certain other conditions for licensing/relicensing related to convictions of owners, etc. Attached is a memo from Dekker to Denton dated May 23 which further expands on the licensing law.

Zoning

Taverns require "LC", "C", "D", "E" or "F" zoning. The exception to this is if the tavern existing before zoning (1923) or existed in the County before zoning (1958 to current) and was annexed. These latter types would be designated "nonconforming". Under City ordinances, nonconforming uses may continue for 60 years after the date it became nonconforming.

Alternatives

1. The Commission may wish to consider removing taverns from "LC" and making them first permitted in the "C", "D", "E" or "F" districts. This would effect only new taverns. All existing taverns would have nonconforming use rights (now 60 years).

2. Create a new commercial district to use near neighborhoods (now under consideration) which would not permit taverns. This would effect only new taverns. The distance rule in the licensing code does, to some degree, the same thing.

3. In connection with No. 1, amend the nonconforming use provision of the zoning code to provide a substantially shorter time than 60 years. Amortization provisions when reasonable have been upheld by the courts. A 5 to 20-year provision may be possible. Amend the code to provide that discontinuance of a use terminates its nonconformity immediately. Currently you can change from one use to a similar use, i.e., tavern to florist (or vice versa). This would impact all taverns made nonconforming.

   It has been my view that when nonconforming uses need financing, or near the end of their legal existence by the expiration of their nonconforming rights, they file for a zone change. More often than not they get it. To reduce this type of zoning action, I have advocated the opposite. Make nonconforming rights permanent and authorize expansions to allow modernization (under strict conditions, i.e., parking, screening, etc.).

4. Amend the State law to allow acquisition of nonconforming uses by eminent domain. The cost to be absorbed by either the City-at-large if it is a city benefit; or by a special assessment paid by the local area benefitting by the elimination of the use. Some specific findings would need to be made similar to the Redevelopment and Rehabilitation Board's findings on blight. Reuse of the land/buildings for conforming uses could reduce costs.

5. Amend the law on licensing to modify or extend the City's rights on closing "problem taverns", owners or operators having records or bad operating history. Changes may need to be made in the administrative interpretations on "abandonment" in relation to relicensing. The ordinance could be changed to provide for the law of grandfather rights on a showing of problems, the nature of which to be specified in the ordinance.

Action

Select one or more of the alternates above to recommend to the Board of City Commissioners. If involving the zoning ordinance, direct the staff to advertise for an appropriate hearing.

Robert A. Lakin
Director of Planning

RAL:rme
Attachments

cc: E. H. Denton, City Manager
John Dekker, Director of Law
Ralph Klose, City Treasurer
Gene Brown, Deputy City Treasurer
H. R. Kuhn, Assistant City Attorney

THE CITY OF WICHITA

OFFICE OF CITY MANAGER **DATE** May 28, 1980

RECEIVED
MAY 2 8 1980
METROPOLITAN PLANNING
ROUTE ☐ _____
☐ _____

TO Robert A. Lakin, Director of Planning

FROM Robert G. Finch, Deputy City Manager

SUBJECT Zoning Ordinance -- LC Activities

On May 27, 1980, the City Commission requested that the MAPC provide within 30 days suggested ordinance changes to establish permitted activities in "LC" zoning.

The City Commission further requested that the MAPC provide recommendations for phasing out the grandfather clause provided for existing uses in existing locations.

These questions were raised during public discussion of a cereal malt beverage license for a tavern at 1106 Pattie which was granted over the strong objections of the neighborhood residents. The Commission had been advised by the City Attorney that even though there might be obnoxious and illegal activities resulting from the future operation of the tavern there were no legal grounds to deny the license.

Please bring the requests of the City Commission to the attention of the Planning Commission with its report and recommendation to be returned to the City Commission on or before August 26, 1980.

for Ray Trail
Robert G. Finch
Deputy City Manager

RGF/pd
cc: Richard LaMunyon, Chief of Police

THE CITY OF WICHITA

OFFICE OF CITY MANAGER DATE May 28, 1980

RECEIVED
MAY 2 8 1980
METROPOLITAN PLANNING
ROUTE

TO Richard LaMunyon, Chief of Police

FROM Robert G. Finch, Deputy City Manager

SUBJECT "The Club House" -- Tavern

On May 27, 1980, the City Commission granted a cereal malt beverage license to Theodore W. Maisch, Sr. for a tavern operation at 1106 Pattie.

The license was granted over the objections of neighborhood residents because there was no reason to legally refuse the permit.

The neighborhood complaints consisted of the classic violations found around such taverns located near residential areas (noise, vulgar language, illegal parking, vandalism, etc.).

Upon granting the license the City Commission asked that special police surveillance be given to "The Club House" to assure compliance with the law.

Please provide this office with a report as to conduct of this tavern from a policing standpoint after its first 30 days of operation.

Your report is requested to reach this office by July 9, 1980.

Roy Finch

Robert G. Finch
Deputy City Manager

RGF/pd
cc: Robert A. Lakin, Director of Planning

THE CITY OF WICHITA

OFFICE OF LAW DEPARTMENT

DATE May 23, 1980

RECEIVED
JUN 5 1980
METROPOLITAN PLANNING
ROUTE ☐ _____
☐ _____

TO E. H. Denton, City Manager

FROM John Dekker, Director of Law

SUBJECT The Club House - Cereal Malt Beverage License Application

The records concerning this application show that the cereal malt beverage license of the previous owner, Marvin Lowrey, expired April 10, 1980. On May 6, 1980, Mr. Theodore W. Maisch, Sr., applied for a license for the same establishment to be operated in the same manner and as the same type of business as Mr. Lowrey had previously. As indicated by the records, this establishment is within 150 feet of a residential zoning district.

Subsection (h) of Section 4.12.050 of the City Code, as amended on May 1, 1979, provides that cereal malt beverage licenses may be renewed for all establishments presently licensed within 300 feet of any church or public or parochial school or within 150 feet of a residential zoning district, so long as the premises are used or held for use as a tavern or building in which cereal malt beverages are sold. The ordinance further provides that should an establishment located within 300 feet of a church or public or parochial school or within 150 feet of a residential zoning district cease to be used as a tavern or building where cereal malt beverages are sold and the premises are used for another type of business, then no new license shall be issued for the sale of cereal malt beverages on the premises.

The City Treasurer's office, in administering this ordinance, has made an administrative determination that there must be the passage of six months' time before the use of an establishment as a tavern may be deemed abandoned or be deemed a new establishment. In my opinion, the administrative implementation of this six months' time period is reasonable and conforms to what the law would require as a reasonable and fair time for such determination. Further, such administrative determination is reasonable and proper.

Therefore, the lapse of time between the expiration of the license for Mr. Lowrey, April 10, 1980, and the application of Mr. Maisch, May 6, 1980, cannot be considered an abandonment of the use of the establishment in question as a tavern or as a new establishment.

11

In this regard, there is no disqualification of the cereal malt beverage license application of Mr. Maisch under the provisions of Subsection (h) of Section 4.12.050 of the City Code.

For a review of the previous circumstances leading to the adoption of the present policy on licensing of taverns see the attached reports from the Department of Law and the City Treasurer's office.

John Dekker
Director of Law

JD:GER:rg
Attachments

THE CITY OF WICHITA

OFFICE OF DEPARTMENT OF LAW

DATE March 16, 1979

TO Robert G. Finch, Deputy City Manager

FROM John Dekker, Director of Law

SUBJECT Ceral Malt Beverage Licenses

Since 1955, the following ordinances were enacted by the City of Wichita dealing with distance requirements in dispensing cereal malt beverages and provided, generally, as follows:

1. Ordinance No. 21-264, enacted in Aug. 1955, provided that no license would issue for the sale of cereal malt beverages on premises located within two hundred fifty feet of any church or school.

2. Ordinance No. 25-229, enacted March of 1960, reduced the minimum distance to 200 feet and provided that such distance would be measured from the nearest property line of the church or school to the nearest entrance to the tavern or the building in which cereal malt beverages were sold. "School" was identified as any public or parochial school.

3. Ordinance No. 25-971, enacted in August, 1971, enlarged the minimum distance to 300 feet and provided that such distance was to be measured from the nearest property line of the church or school to the nearest portion of the exterior of the specific portion of the building occupied by the tavern in which cereal malt beverages were sold.

4. Ordinance 28-582, enacted in March, 1966, was essentially the same as the immediately foregoing ordinance (25-971), except that it made the distance requirements inapplicable where cereal malt beverages were sold at retail but not for consumption on the premises.

5. Ordinance No. 30-050, enacted in June, 1968, retained the minimum distance of 300 feet but provided that the distance would be measured from the main entrance of the church building or the nearest property line of the public or parochial school to the nearest portion of the exterior of the specific portion of the building in which cereal malt beverages were sold.

6. Ordinance No. 30-623, enacted in June of 1969, remained basically the same, except that it provided that the 300 feet distance limitation would not apply to colleges and universities within the city limits of Wichita, Kansas.

7. Ordinance No. 32-707, enacted in June of 1973, retained the 300 foot distance requirement for churches and schools but further provided that no tavern would be located within 150 feet of a residential zoning district. Distance measurements were to be made from the nearest property line of the residential zoning district, church or school to the nearest portion of the exterior of the specific portion of the building in which cereal malt beverages were sold.

All of the above ordinances provided that the distance requirements from residential zoning districts, churches and schools, could be waived by the governing body in cases of extreme hardship. Extreme hardship was never defined.

8. Ordinance No. 34-826, enacted in February, 1977, kept the 300 and 150 feet distance requirements and the manner of measuring such distance; however, the provisions of the prior ordinances relating to the authority of the governing body to waive the distance requirements were deleted.

9. Ordinance No. 35-813, enacted October of 1978, is our current ordinance. It made changes in prior ordinances not relating to distance requirements. A copy of that portion of Ordinance No. 35-813 which deals with distances is attached.

All of the above ordinances, including our present ordinance, had grandfather clauses and provided for relicensing except where a licensed establishment ceased to be used as a place which sold cereal malt beverages and was used for another type of business, then no new license would issue for such premises.

State law does not specifically regulate locations of taverns or other establishments which sell cereal malt beverages, but does provide that cities may prescribe hours of closing, regulations concerning the moral, sanitary and health conditions of licensed places and further may establish zones within which no place of business selling cereal malt beverages may be located (K.S.A. 41-2704).

Cities, then, are at liberty to prescribe their own regulations governing locations of establishments selling cereal malt beverages and any regulations which are reasonable, in the public interest, and not discriminatory, are valid and enforceable. Thus, the City Commission could revise the distance requirements, as it has in the past, or it could, as suggested in your memo, have different distance regulations for taverns as opposed to establishments which sell cereal malt beverages but are basically restaurants. Presently,

a distinction is made in licensing; one being a General Tavern Retailer License, the other, where no more than 49% of gross revenues are derived from the sale of cereal malt beverages, being a General Retailer License.

Our City Commission could also consider barriers, such as trafficways, in establishing distance requirements for sales of cereal malt beverages in relation to schools, churches, and residential zoning districts. Any such considerations would need to be uniformly applied, reasonable, and not discriminatory in effect.

With respect to the legality of a provision to prohibit the grandfathering of a location which is licensed by virtue of previous provisions of our cereal malt beverage ordinances, but, by reason of a change in distance requirements or some other requirement, would now be ineligible for a license, it is a general proposition of law that no contract or vested right of property is acquired in a license as against the power of a municipality to revoke it for cause or in the exercise of its police power to protect the public health, safety, morale or welfare. In other words, the mere issuance of a license or permit does not create a vested right or estop the municipality from revoking it.

The granting of a license to sell cereal malt beverages forms a part of the internal police system of this state and city and the authority which grants the license always retains the power to terminate it, either for cause of forfeiture or upon a change of policy and legislation touching the subject. There is, as noted above, no vested right acquired under a cereal malt beverage license, and hence, it can be revoked under the police power. Accordingly, it would seem that the valid enactment of an ordinance making no provision for grandfathering locations not in total compliance with existing ordinance provisions would, in effect, terminate all cereal malt beverage licenses issued to such locations.

The above is not to say that an ordinance which would effectively revoke all cereal malt beverage licenses which are issued at locations not in conformance with the present distance requirements could be enacted without problems. Any such ordinance would need to be uniform, in the public interest and reasonable, and where substantial work has been done, expenditures made and obligations incurred, in reliance on a license issued and renewed perhaps many times, arguments against reasonableness could certainly be made. It would seem that a great number of "neighborhood bars" would be affected by such legislation, and my recommendation would be that, prior to pursuing this matter further, a count should be made of all licenses now held by reason of the prior "grandfathering" processes to determine the magnitude of the problem.

Certainly, if the governing body chooses to delete the grandfathering provisions from our cereal malt beverage licensing ordinance, the deletion and its effect would have to be applied uniformly and all nonconforming licenses would need to be revoked. It would not be lawful to grandfather some and not others. This may or may not be a problem. Here again, I recommend that the magnitude of the problem be more fully explored.

If you have any questions, please advise.

John Dekker
Director of Law

JD:SAI:cdh

THE CITY OF WICHITA

OFFICE OF City Treasurer DATE March 29, 1979

TO Eugene H. Denton, City Manager, through
Russell Brenner, Director of Administration

FROM Gene Brown, Deputy City Treasurer

SUBJECT Cereal Malt Beverage Waivers

During the City Commission meeting March 27, I reported that currently there are 54 Cereal Malt Beverage waivers in effect. I have re-examined the 603 beer applications for 1978 and the 54 waivers or non-conforming rights situations is correct.

Most of the confusion concerning the ordinance and its definitions can be explained by the following senerio: In June of 1973, the first 150 foot provision was incorporated into 4.12.050 (g). From the period of June 1973, and until January 1975, the City, by management decision considered restaurants the same as taverns for Cereal Malt Beverage purposes. In other words, restaurants were required to acertain 300 feet and 150 feet waivers the same as taverns during this period. After the City Commission adopted 4.12.060, in January 1975, restaurants no longer were required to have the 150 feet waivers. 4.12.060 did in fact define for the first time, General Taverns, General Retailers (restaurants) and Case Retailers. Therefore, from January 1975, and until February, 1977, General Taverns were restricted by the 300 feet and the 150 feet provisions. General Retailers were only regulated by the 300 foot provision and of course Case Retailers were not restricted by the distance criteria at all. All waivers were deleted with the passage of ordinance number 34-826 in February, 1977.

While I was at the podium, Mayor Connie Peters stated that the El Mexico Restaurant at 1905 South Hillside had received a waiver for a restaurant She was correct and the waiver was granted 2/26/74. This waiver was approved prior to the ordinance revision adopted during January, 1975, and consequently the 150 foot stipulation was applied to this restaurant.

Commissioner Shanahan stated at the time of our discussion that the "Soupcon Restaurant" at 3700 East Douglas was a church waiver. He also was correct, however, there was no application for this address during 1978, therefore it was not included in the 54 total.

Listed below is a breakdown of the 54 grandfathered and current Cereal Malt Beverage waivers.

General Retailers (Restaurants)

Church/School		
Non-Conforming	1	
Commission Waiver	0	
Total		1

General Retailers (Restaurants) cont.

Residential Property		
Non Conforming	5	
Commission Waivers	4	
New Establishments since 1/75	3	
Total		12
General Taverns		
Church/School		
Non-Conforming	5	
Commission Waiver	1	
Total		6
Residential Property		
Non-Conforming	34	
Commission Waiver	1	
Total		35
Total Both Catagories		54

If I can be of any other assistance in this matter, please advise.

Gene Brown
Deputy City Treasurer

GB:po

cc: City Commissioners
Robert Finch, Asst. City Manager
John Dekker, Director of Law
Ralph A. Klose, City Treasurer