

67

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Request for Alteration of)	
the Dispenser Class A (DA))	
Licensed Premises by:)	FINAL
)	FINDINGS OF FACT,
Robert J. and Roberta T. Norton)	CONCLUSIONS OF LAW,
THE IRON KETTLE)	AND ORDER
377 SW Coast Highway)	
Waldport, Oregon 97394)	
-----)	
Lincoln County)	

A hearing in the above matter was held on the 19th day of October, 1982, in Newport, Oregon, before Hearings Examiner Douglas Crumme'. The Applicants appeared in person and were not represented by legal counsel. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. Robert J. and Roberta T. Norton have held a Dispenser Class A (DA) license at THE IRON KETTLE, 377 SW Coast Highway, Waldport, Oregon, for approximately 15 years.

2. In approximately April, 1982, the Licensees altered their premises by converting a gift shop to a coffee shop, by adding pizza to the evening menu, and by installing a pizza ordering counter and reducing seating by 14 in the dining room.

3. After they made the changes noted in the Finding of Fact above, the Licensees discovered that approval from the Commission was required. The Licensees consequently sought Commission approval for the changes.

4. The Commission's Licensing Staff has recommended that the Licensees' request for alteration of premises be denied, citing OAR 845-05-040(3)(b) (unfavorable consideration may be given to an applicant if the applicant will provide primarily fast foods, short order foods such as hamburgers, sandwiches, pancakes, eggs, and pizza, or other foods with which distilled liquor drinks are not normally ordered). (Commission's Exhibit E.)

5. The Licensees would agree to discontinue serving pizza if required by the Commission for the maintenance of the Licensees' DA license.

6. Before the April, 1982 remodeling, the Iron Kettle had a dining room with seating for 58 persons and a lounge with seating for 150 persons.

7. After the April, 1982 remodeling, seating in the dining room was reduced by 14 seats to make space for the pizza ordering counter. The seating in the lounge remained the same. The former gift shop was converted to a coffee shop with seating for 30 at tables and seating for seven at an eating counter.

8. The Iron Kettle is open for breakfast, lunch and dinner. The premises lunch and dinner menus are sold in the coffee shop and lounge as well as in the dining room.

9. The lunch menu at the Iron Kettle includes the following:

Chef's salad	\$ 3.50
Shrimp louie	4.75
Soup of the day	.95 & 1.65
Oyster stew	2.60
Clam chowder	1.50 & 2.60
Grilled cheese sandwich	2.50
Ham, turkey or beef sandwich	2.95
Bacon, lettuce and tomato sandwich	2.95
Reuben sandwich	2.95
Club sandwich	2.95
Monte Cristo sandwich	3.10
Vegetarian sandwich	2.75
Hamburger	2.75
Cheeseburger	2.85
Mushroom burger with Swiss cheese	2.95
Barbecued beef or ham	2.85
French dip sandwich	2.95
Fish and chips	3.25

(Applicants' Exhibit No. 2)

10. The Applicants' present dinner menu includes the following:

8-oz. New York steak	\$ 6.95
Prawns	7.95
Oysters	7.50
Scallops	7.95
Steamed clams	7.95
Chicken dinner	5.95
Seafood platter	8.95
Hamburger deluxe	2.50
Cheeseburger deluxe	2.65
Fish and chips	4.95
Clam chowder	2.60
Oyster stew	2.60
Pizza with choice of 18 toppings -	
Small	3.40 to 6.35
Large	4.75 to 8.75
Giant	6.25 to 11.50

(Applicants' Exhibit No. 2)

11. When the Licensees added pizza in April, 1982 they otherwise retained their former menu items with the exception that the crab louie, chef's salad and one steak were deleted from the dinner menu. Additionally, the manner of preparation of the dinner food was changed somewhat. Prior to April, 1982 more of a gourmet method of preparation was used. There was more sauteeing and prices were higher.

12. The Licensees made their April, 1982 move to add pizza, add a coffee shop and lower dinner entree prices somewhat because of the effects of the poor economy. The Licensees discovered that their patrons were less willing or less able to purchase a high-priced dinner entree. The Licensees discovered that the pizza and the lower prices have worked out well for families with children and for persons who are unemployed.

13. The Licensees try to encourage their patrons to be seated and order their lunch or dinner items from the waiter or waitress. However, on occasion some local patrons will place a pizza order directly at the pizza counter in the dining room.

14. Patrons arriving at the Iron Kettle are seated by a host/hostess waiter or waitress. The patrons are given water and place settings.

15. The Licensees did not change the decor of the Iron Kettle when pizza was added to the menu in April, 1982. The Licensees maintained the same nautical decor that they had formerly for the premises.

16. The Iron Kettle's dining room does not have any game machines or a jukebox. Kids and teenagers do not loiter around the premises as might typically occur at a pizza parlor.

17. The Licensees have a \$10,000 exterior sign that advertises the availability of steaks and seafood at the Iron Kettle. The Licensees intend to maintain their current and historical selection of steaks and seafood and do not intend to change the Iron Kettle to a pizza parlor.

18. The Commission takes official notice from the Commission's October 18, 1982 computer printout that the Licensees' average monthly sales at the Iron Kettle during a recent one-year period were as follows:

ACTUAL AVERAGE MONTHLY SALES - 1982

<u>FOOD SALES</u>	<u>TOTAL FOOD AND ALCOHOLIC BEVERAGES</u>	<u>PERCENT OF FOOD TO TOTAL</u>
\$5,919	\$16,316	36.27 %

19. The Commission has issued DA licenses to other outlets that serve pizza during the two years preceding the Licensees' October 19, 1982 hearing. A number of these licenses were issued to Italian-menu restaurants that offered pizza as a sidelight to other Italian entrees.

20. The Applicants have patrons who order both pizza and cocktails.

21. Licensee Robert Norton operated the Iron Kettle himself until January, 1982. At that time, Mr. Norton had his second heart attack in eight years. Mr. Norton's physician

advised him to stop working at the Iron Kettle. Mr. Norton, therefore, turned over the management of the premises to his daughter Theresa Newton. The Licensees' alterations of the Iron Kettle for which the Licensees seek approval were instituted under Mrs. Newton in an attempt to maintain the sales and the profitability of the business.

DISCUSSION

1. The record of the Licensees' hearing was held open to receive the following Exhibits from the Licensees:

- a. A log of dishes sold (pizza versus other entrees) over a one-month period and an estimate of the dollar amount of pizza sales over that period.
- b. Photos of the Iron Kettle showing areas relevant to the hearing.
- c. Sales for the Iron Kettle for 1982, broken down month-by-month between food and alcoholic beverages.

A letter to the Licensees reminding them of their agreement to submit these Exhibits was mailed on December 20, 1982. These Exhibits had not been received from the Licensees as of the date of this Proposed Order.

2. Hearings Specialist Syron testified that a main concern of the Commission is to prevent degeneration of dispenser outlets into pizza parlors. Mr. Syron therefore recommended if the Commission approves the Licensees' alteration request, that approval be conditioned upon the Licensees maintaining accurate

records of pizza sales, upon the Licensees maintaining the substantial equivalent of their present dinner menu, and upon the Licensees maintaining a dinner house atmosphere, with no picnic tables or game machines allowed in the dining room.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Unfavorable consideration may be given to a [dispenser's] applicant if any of the following are shown:

. . .

(b) The applicant will provide primarily fast foods, short order foods, such as hamburgers, sandwiches, pancakes, eggs, and pizza, or other foods with which distilled liquor drinks are not normally ordered. This provision does not apply to Dispenser Class "B" licenses. OAR 845-05-040(3)(b).

The Licensees' dinner menu after the addition of pizza in April, 1982 includes eight entrees, two hamburgers, clam chowder, oyster stew and the pizza with a choice of 18 different toppings.

The fact that the Licensees offer eight dinner entrees besides the pizza and the two hamburgers compels the conclusion that fast foods or short order foods such as pizza or hamburgers are not emphasized. The option of the eight dinner entrees offers a relatively well-rounded alternative to the pizza and hamburgers. The decor in the dining portion of the premises has not changed. Patrons are seated at their tables and given water, silverware and a menu. Orders are generally placed by patrons at the table with the waiter or waitress. It

does not appear that pizza at the Iron Kettle is emphasized or is pushed.

The conversion of the gift shop to a coffee shop for more dining space also does not appear to have caused The Iron Kettle to emphasize fast or short order foods. The dinner menu available in the dining room was not diminished by changing the gift shop to a coffee shop.

In light of the above, the Commission concludes that the Licensees' request for alteration of the premises should not be denied under OAR 845-05-040(3)(b).

ULTIMATE CONCLUSIONS OF LAW

The alterations that have taken place (addition of pizza, addition of coffee shop, reduction of dining room seating by 14) have not led the Iron Kettle to emphasize the sale of fast foods or short order foods. Thus, unfavorable consideration for these alterations is not shown under OAR 845-05-040(3)(b). The proposed alterations have not been alleged to be otherwise inconsistent with the public interest and convenience. ORS 472.160(1).

FINAL ORDER

It is hereby ordered that the request for alteration of premises by Robert and Roberta Norton at The Iron Kettle, 377 SW Coast Highway, Waldport, Oregon, be GRANTED and the alterations in the premises described in Findings of Fact No. 2 be allowed, subject to the following conditions:

- a. The Licensees must maintain an accurate dollar record of pizza sales versus other food sales.

- b. The Licensees must maintain the substantial equivalent of their present dinner menu. See Finding of Fact No. 10.
- c. The Licensees shall make no future changes in their decor, fixtures, menu or entertainment that lead to an emphasis on the sale of fast or short order foods at the premises.

It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

Dated this 28th day of March, 1983.



C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.