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TOWN OF BARNSTABLE

NOTICE OF MEETINGS OF TOWN DEPARTMENT AND ALL TOWN BOARDS
As Required by Chapter 28 of the Acts of 2009 which amends MGL Chapter 30 A

Licensing Authority Minutes

DATE OF MEETING: November 5, 2018

Check below which one applies

The Clerk's office has this meeting date already posted X

This is a special meeting which has not been posted

TIME: 9:30 a.m.

PLACE: 2nd Floor Hearing Room, 367 Main Street, Hyannis, MA

A meeting of the Barnstable Licensing Authority was held on Monday, October 15, 2108. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced; David Nunheimer, Clerk; Larry Decker, Associate Commissioner;; Nancy Karlson-Lidman, Associate Commissioner; Richard Scali, Licensing Director; CAO Officer Therese Gallant, Lt. John Murphy and Maggie Flynn, Recording Secretary. Ron Semprini, Vice-Chairman was absent.

Vote to accept Minutes

1. Vote to accept minutes of the 10/15/2018 meeting.

A motion was duly made by Mr. Nunheimer, seconded by Ms. Karlson-Lidman and a unanimous vote taken to accept the minutes of the 10/15/18 meeting.

New Business:

1. **Application for (5) One Day Alcohol and Entertainment Licenses:**

Application of Rebecca Banas on behalf of the Cape Cod Maritime Museum for five One Day Alcohol and Entertainment licenses for various museum events (see attached schedule). All events are to be held at the Cape Cod Maritime Museum, 135 South Street, Hyannis beginning at 6:00PM. Days of events are: 11/10, 11/14, 11/29, 12/12 and 12/15/18. Entertainment is for 2 amplified performers.

Rebecca Banas appeared on behalf of this application. There is one change in dates, 11/10/18 is canceled and adding 11/30/18 with a similar lectures series.

A motion was duly made by Ms. Karlson-Lidman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the application as amended.

2. **Application for a One Day Extension of Licensed Hours:** Application of Peter Connor on behalf of Barnstable Brewing for a One Day Extension of licensed hours. The request is to be open from 7:00 PM to 10:00 PM on November 6, 2018 for the Will Crocker Election Night Gathering. The event will take place at Barnstable Brewing 485 West main Street, Hyannis. The current licensed hours are 10:00 AM to 6:00 PM. No entertainment has been requested.

Peter Connor appeared on behalf of this application.

A motion was duly made by Ms. Karlson-Lidman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the application as presented.

3. **Application for a One Day Entertainment and (2) One Day Wine and Malt Licenses:** Application of Amanda Converse on behalf of Love Live Local , 539 South Street, Hyannis for a One Day Entertainment and (2) One Day Wine and Malt Licenses for the Love Local Fest; Holiday Edition. The event will take place at the Capetown Plaza (former Sports Authority space), 790 Lyannough Rd., Hyannis on December 1, 2018 from 5-9 PM and December 2, 2018 from 11 AM to 5 PM. Entertainment is to include 1 performer with 1 amplified piece.

Amanda Converse appeared on behalf of this application. This is the same as the summer festival but for indoor use. Wine to be served by West End, beer to be served by Cape Cod Beer and cider to be served by Provincetown location.

A motion was duly made by Ms. Karlson-Lidman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the application as presented.

4. Consent Agenda:

Fulya Tanyu appeared on behalf of the Hyannis Inn. She is requesting approval to be closed until April. They just purchased the Inn that historically has been open seasonally; they will re-evaluate their dates over the winter.

A motion was duly made by Ms. Karlson-Lidman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the Consent Agenda as presented.

Public Hearings:

- 1. Application for a New Annual All Alcohol Common Victualler License, Non-Live and Karaoke Entertainment Licenses:** Application of CC Entertainment Inc. d/b/a Flashback, 294 Main Street., Hyannis, Peter G Kempton, manager for a new Annual All Alcohol Common Victualler License, non-live Entertainment and karaoke license has been filed.

Premise Description: Premise is a one floor with $\frac{3}{4}$ basement. Front is 1395 sq. ft. including bar area, hallway to bathrooms, 3 bathrooms equaling 295 sq. ft. Kitchen is 1042 sq. ft. and storage room is 113 sq. ft. for a total of 2845 sq. ft. on first floor. The basement area is 286 sq. ft. for a total of 3131 sq. ft. Total seating is 119, 99 interior and 20 exterior; all approved by the Building Commissioner on 10/9/18.

Entertainment includes 25 video games, 6 TV's and karaoke.

Hours of operation and entertainment are 11:00 AM to 1:00 AM, Daily

Peter Kempton appeared on behalf of the application. He has purchased the building, currently renovating. Reopen as a classic bar, video and restaurant. This is an 80's theme. Mr. Scali asked about experience. He has owned several restaurants and done marketing for the past 30 years. The bar itself is twelve seats and there will be 25 games. The food will be varied. Greater majority will be below \$18.00. There will be a charge for the games, operational March 1st at the latest. Mr. Scali reviewed the occupancy/seating numbers.

A motion was duly made by Ms. Karlson-Lidman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the application as presented.

2. Application for an Alteration of Premises on an All Alcohol Retail Package

Goods Store License: Application of Bilal Corporation, d/b/a Willow Package Store, 700 Yarmouth Road, Hyannis, Shakeel M. Farooq, Manager for an Alteration of Premises description of the existing premises. Alteration of premise is for additional square footage to be added to the premises.

New Description: Single story building of approximately 3481 sq. ft. with 2 entrances and 2 exits. Having approximately 2521 sq. ft. of retail space and 960 sq. ft of storage.

All changes approved by the Building Department on 9/7/18.

Tom Souza, Attorney represented this application. Shakeel Farooq also appeared. The plan is to add another 1200 sq. ft to the current space. Mr Scali asked if the landlord was present, no he is not. The expansion is for alcohol. Mr. Logan has sent an email regarding the handicap signs that have not been posted. Attorney Souza will reach out to the landlord. Mr. Scali asked that Attorney Souza confirm to Mr. Logan and him on the status.

A motion was duly made by Ms. Karlson-Lidman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the application as presented.

3. Application for a Change of Class on a Seasonal All Alcohol Common

Victualler License: Application of Villa Noble LLC. d/b/a The West End, 20 Scudder Ave., Hyannis, David Noble, manager, to amend their existing alcohol and entertainment licenses.

Amendment request is for a change of class from Seasonal to Annual on the All Alcohol Common Victualler and Live and Non-Live licenses.

Hours of Operation are 8:00 AM to 1:00 AM; Daily. Hours of Entertainment are 11:00 AM to 12:45 AM; Daily.

******Postponed until 12/03/2018******

4. Application for a Change of Location and Manager for an Annual Wine and Malt Retail Goods Package Store:

Application has been filed to change the location and manager of the Annual Wine and Malt Retail Package Goods Store of Speedway of Massachusetts LLC d/b/a Speedway Jennifer Gunderway manager, 50 Ocean Street, Hyannis, Hyannis. Location change is from 50 Ocean Street Hyannis to 317 Falmouth Rd., Hyannis. The Manager change is from Jennifer Gunderway to Mark Veiga.

Description of Premise: Single floor building with 1 main entrance/exit point, 1 secondary egress point, 1 roll up door. Space consists of 2540 sq. ft. of total retail floor space, including walk-in cooler, walk in freezer (exterior, accessed via inside stock room), and storage/back of house space.

Hours of Alcohol sales: Monday through Saturday 8:00 AM to 11:00 PM and Sunday 10:00 AM to 11:00 PM.

Attorney Andrew Upton, Wayne Bartley, Scott Dietzman and Mark Veiga appeared on behalf of the application. . Mr. Upton thanked the Commission and the Town for allowing them to continue this process. We have returned to try and transfer this to 317 Falmouth. They have proven their fitness to hold a license for many years. Nationally, they have older 2700 licenses. Please see the Alcohol training methodology, (Attached). Speedway offers one stop shopping. We have a small selection of well-known brands, a petition of 200 people have requested approval. This is just a switch from one location. No increase in traffic or noise. DOT has spent tens of millions of dollars; Speedway has contributed an additional \$380,000 to add additional traffic controls. There have been no abutter concerns; no abutter has reached out to Speedway. Speedway makes an effort to be a good neighbor.

Wayne Bartley stated that he knows it is a privilege to have a license in your Town; we take it very seriously.

Mark Veiga, manager on site. We purchased a home in Hyannis. My customers like the idea of one stop shopping. He reviewed the POS training system and the scanning of ID's. This is his first time serving alcohol. Speedway requires that all individuals will be TIPS trained.

Larry Decker inquired about previous violations. There was a violation several years ago when we were taking over from the Hess Corp. The ratio for beer /wine is 80/20.

A motion was duly made by Ms. Karlson-Lidman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the application as presented.

Show Cause Hearings: The Barnstable Licensing Authority will hold Show Cause Hearings for the following establishments violating the following: Section 502-I sections R & T (Violation of MGL c138 s34) of the Town of Barnstable, Massachusetts Code: Alcoholic Beverages Sales and Laws - sale or delivery of an alcoholic beverage to a person under 21 years of age on September 8, 2018.

- 1. Show Cause Hearing for an Annual All Alcohol Common Victualler License:**
Sam Diego's Inc. d/b/a/ Sam Diego's, Robert W. Kershaw, Manager, 950 Lyannough Rd., Hyannis.
******Postponed from 10/15/18 Licensing Authority Hearing******

Attorney Chuck Sabatt and Robert Kershaw appeared on behalf of this hearing. Officer Gallant reviewed the details of the Alcohol Compliance checks. She furthered described the actual check at Sam Diego's.

Sam Diego's has been licensed for 37 years. Attorney Sabatt reviewed all the detail for the restaurant operations and the number of employees. They are very philanthropic to the community. In its history, there has been 1 previous violation back in 2011. All individuals on their staff are TIPS trained. Employee handbook

is extensive. They subscribe to current publications about ID's. Anyone that appears to be 30 years of age or younger will be carded.

The bartender on the night in question was immediately terminated. No understanding as to why/how this happened. The bar was not that busy. The restaurant also subscribes to a service to check their process. This was an obvious failure; requesting that any potential penalty be suspended.

Officer Gallant has followed suit with first time violations. Two day suspension, one to serve, one to be held in abeyance for one year from today.

Lt. Murphy has glowing words for this establishment. This was a onetime incident.

After testimony from Consumer Affairs Officer Therese Gallant, the following motions were voted by the Licensing Authority:

FINDINGS: To move that the Licensing Authority determine violation of Section § 502-1r of the Barnstable Licensing Authority Rules and Regulations was found (3-0);

VERDICT: To move that the Licensing Authority find Sam Diego's, 950 Iyannough Road,, Hyannis guilty in violating Section § 502-1r of the Barnstable Licensing Authority Rules and Regulations (3-0);

ACTION: To move that the Licensing Authority suspend the Annual All Alcohol Common Victualler for 2 days: of which you will serve one day suspension on January 21, 2019 and have one day suspension held in abeyance for one year from date of this hearing (3-0).

2. Show Cause Hearing for an Annual All Alcohol Common Victualler License:

Aztec City LLC d/b/a Ristorante Milanese, Maria N. Calle, Manager, 302 Main Street, Hyannis

******Postponed from 10/15/18 Licensing Authority Hearing******

Attorney Pizzuti and Jorge Fernandez appeared on behalf of this Show Cause. Officer Gallant reviewed the details.

Attorney Pizzuti suggested that this was an unfortunate situation. The summer bartender had left. The bartender had been serving a party and they mingled to the bar and thought all had their ID's checked.

David Nunheimer recused himself.

After testimony from Consumer Affairs Officer Therese Gallant, the following motions were voted by the Licensing Authority:

FINDINGS: To move that the Licensing Authority determine violation of Section § 502-1r of the Barnstable Licensing Authority Rules and Regulations was found (3-0);

VERDICT: To move that the Licensing Authority find Ristorante Milanese 302 Main St., Hyannis guilty in violating Section § 502-1r of the Barnstable Licensing Authority Rules and Regulations (3-0);

ACTION: To move that the Licensing Authority suspend the Annual All Alcohol Common Victualler for 2 days: of which you will serve one day suspension on January 1, 2019 and have one day suspension held in abeyance for one year from date of this hearing (3-0)

3. Show Cause Hearing for an Annual All Alcohol Common Victualler License:

JC Camas LLC d/b/a/ Tumi Ceviche Bar Ristorante, Jose Calle, Manager, 592 Main Street, Hyannis

******Postponed from 10/15/18 Licensing Authority Hearing******

Officer Gallant reviewed the details of the compliance check. This incident took place approximately an hour later.

This was a little different, the question regarding do you have an ID was never completely finished. There was a little bit of dispute and a communication issue between the 2 women at the bar.

Attorney Pizzuti stated that the integrity of the police department is not at all being judged at this time. We have a witness as to what the decoy has said. Are decoys paid, no. This individual is part of the Community impact unit. Does he have any criminal justice training? Not that I am aware of. The decoy is 18 years old.

Amanda Polly, 37 years old from S Yarmouth stated she has been working for 17 years in the service industry. She reviewed her history. No violations in those years, she was working as a server that evening. She recounted the entire story. She assumed that her co-worker had seen his ID. That did not happen. He waited for her to leave. He was 100% asked for his ID. What was the length of time? He asked Amanda to give him the beer.

Lt Murphy asked about her experience. Has anyone ever trained you to assume that someone asked for an ID.? Have you ever double checked an ID? It could have happened. My question is not a reflection of your character, just on the assumption part.

Attorney Pizzuti is addressing the compliance check itself. The decoy did not do everything properly. If he was asked and he did not leave the compliance check failed. This is supposed to be a learning experience.

If you are going to rely on the statement of these decoys, we have evidence that this did not take place.

Officer Gallant has no reason to doubt them. The manager had confirmed previous notice was given to the restaurant from their sister restaurant.

The decoy does not have ID, if asked he must leave.

Mr. Scali stated that we must follow the procedures. Mr. Hoxie is reluctant to make a decision without hearing from the decoy. Attorney Hoxie stated that there

were 2 other people present. We can get statements form these individuals. This is supposed to be an informational procedure.

Mr. Scali stated that procedure has been followed to the letter of the law. This is a he said she said situation. Lt. Murphy stated that he can check on having the 18 year old present. The bottom line is that the bar gave the beer to an underage individual. Sometimes people assume when they should not. The ABCC rules on the guidelines not the authority. We can have the 18 year here if need be.

The way to keep it from being entrapment is to ensure all the guidelines are followed. We are saying that this was not complied with.

Mr. Hoxie does not want to discredit the decoy or the witness.

Officer Gallant asked if Attorney Pizzuti spoke with the woman who delivered the beer. No he has not.

The BPD has good intentions.

Mr. Decker sees the similarities in the 2 stories.

Lt Murphy stated that the frustrating part of this is the adversarial nature that this creates with the businesses in town. The simple fact is that an 18 year old walked into a bar and was served.

Mr. Scali stated that here are extenuating circumstances here. You can look at the evidence presented. Lt. Murphy has reiterated that the Board wants consistency. The BPD would not be averse to a guilty finding with no suspension sanction.

The police will consider this a first offense.

Attorney Pizzuti reiterated that his is a controlled situation.

This issue could only be solved if the decoy sufficient fact to find a guilty finding but it is being held.

Jorge stated he respects the police department. Jorge takes everything very seriously. I thank you very much for everything.

After testimony from Consumer Affairs Officer Therese Gallant, and presentation of evidence and argument by your counsel, the following motions were voted by the Licensing Authority:

FINDINGS: To move that the Licensing Authority determine violation of Section § 502-1r of the Barnstable Licensing Authority Rules and Regulations was found (3-0);

VERDICT: To move that the Licensing Authority finds sufficient facts were in evidence that would warrant a finding of guilty by Tumi Cerviche Bar Ristorante, 592 Main St., Hyannis for violating Section § 502-1r of the Barnstable Licensing Authority Rules and Regulations, however there are extenuating circumstances. (3-0);

ACTION: VOTED, the Authority continues the matter without a finding for one year. If the Licensee is found to have violated Section 502-1r in that year then a finding of guilty shall enter and a two day suspension of the

Annual All Alcohol Common Victualler shall be imposed, both days to be served for that violation. If there is no further violation within the one year period then this shall not constitute a violation of Section 502-1r. (3-0)

Licensing Division Updates:

- 1. Licensing Department updates-** Mr. Scali updated the Board, renewals are in full swing. Viewpermit for renewals on-line for next year. ½ year payments will not be available any longer. Seasonal population increase prior to March needs to be placed on Agenda; January 2019 Agenda. This will affect Seasonal Package Store. This certification will come from the Town Clerk. Ten Pin Eatery will have change of Manager and Stockholders. Ryan's will be buying out Chapin's.

- 2. Police Department updates-** None at this time.

The meeting was adjourned at 11:30 AM

Respectfully submitted,

**Margaret D. Flynn, Recorder
Town of Barnstable Licensing Authority**

**David Nunheimer, Clerk
Town of Barn Licensing Authority**

- **Matters not reasonably anticipated by the Chair**

The list of matters, are those reasonably anticipated by the president/chair, which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the sub-committee may go into executive session. For your information the section of the M.G.L. that pertains to postings of meetings is as follows: Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain: the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. Meetings of a local public body, notice shall be filed with the municipal clerk, and posted in a manner conspicuously visible to the public at all hours

Town of Barnstable
Licensing Authority
200 Main Street
Hyannis, MA 02601
www.town.barnstable.ma.us

Telephone: (508) 862-4674

Fax: (508) 778-2412

BARNSTABLE LICENSING AUTHORITY
CONSENT AGENDA
November 5, 2018

Renewals:

1. **Application for (4) One Day Entertainment Licenses:** Application of Leonard Klein on behalf of the German American Club for four Entertainment licenses for their Annual Social Events. All events will take place at St. Mary's Parish Hall, 3055 Main Street, Barnstable on 2/9/19, 4/13/19, 5/11/19 and 6/8/19 from 6:00 PM to 8:30 PM. Entertainment is to include 2 performers with 2 non-amplified pieces.