

**City of Somerville
Licensing Commission**

**Senior Center
Tufts Administration Building
167 Holland Street**

**Regular Meeting
Wednesday
January 23, 2013
6:00 p.m.**

MINUTES

Chairman Andrew Upton called the meeting to order. Present were Commissioner John J. McKenna, Inspector Warren Chaille & Executive Secretary Jenneen M. Pagliaro.

Minutes of the November 19, 2012 meeting were accepted as submitted.

COMMUNICATIONS

Communication from the Board of Aldermen expressing their concerns with the recent activities at the Holiday Inn and requesting that the Licensing Commission implement appropriate sanctions based on the findings of its investigation. The Board took Administrative Notice and placed the communication on file.

Foodmaster Super Markets, Inc. d/b/a Johnnie's Foodmaster, 47-49 Beacon St. notifying the Commission that they are closed and currently marketing the sale of the Wine and Malt license. The Board took Administrative Notice and placed the communication on file.

COMMON VICTUALER LICENSES

Valentim Pizza, 505 Medford St. requesting to change the name of the business to Brazilian Churrasco Buffet & Grill, with no other changes to the business.

Present: Lucia Tavares

Ms. Tavares came before the Commission requesting a name change. No other changes to the business.

On a motion duly made and seconded, it was

VOTED: to approve the name change.

Friends Pizzeria, Inc.
38 Cross St.
Rafiquil Islam

Present: Rafiquil Islam

Mr. Islam came before the Commission requesting approval of a Common Victualer license for 38 Cross St.

Mr. Islam is the new owner and stated no other changes are being made to the business.

Along with the application, a menu, floor plan and lease were submitted for the Commissioners consideration.

On a motion duly made and seconded, it was

VOTED: To approve the Common Victualer license as presented.

KFSS Corp.
d/b/a The Kebab Factory
414 Washington St.

Present: Attorney Anne Vigorito

Atty. Vigorito, representing The Kebab Factory came before the Commission requesting approval of a Common Victualer license for 414 Washington St.

Atty. Vigorito stated that this is a new owner with no other changes to the business.

Along with the application, a menu, floor plan and lease were submitted for the Commissioners consideration.

On a motion duly made and seconded, it was

VOTED: To approve the Common Victualer license as presented.

North East Foods LLC
d/b/a Burger King
185 Somerville Ave.

Present: Radonane Marmoucha

Mr. Marmoucha came before the Commission requesting approval of a Common Victualer license for 185 Somerville Ave.

Mr. Marmoucha stated that this is a new owner with no other changes to the business.

Along with the application, a menu, floor plan and lease were submitted for the Commissioners consideration.

On a motion duly made and seconded, it was

VOTED: To approve the Common Victualer license as presented.

SPECIAL ALCOHOL LICENSES

Hellenic Associates of Somerville
d/b/a Dormition of the Virgin Mary Greek Orthodox Church
29 Central St.

Present: Phillip Dres

Mr. Dres came before the Commission requesting approval of a Special Alcohol License for the purpose of dispensing and selling alcoholic beverages for a Trivia Night on February 8, 2013 7:00PM-12:30AM.

Experienced servers will be dispensing the alcoholic beverages.

Police and Fire Details have been requested.

On a motion duly made and seconded, it was

VOTED: to grant the Special Alcohol as presented.

ALL FORMS ALCOHOL CLUB LICENSE

Pledge of License

Somerville Sports Club, Inc.
203 Somerville Ave.

Present: Attorney Issac Machado

Atty. Machado, representing Somerville Sports Club, Inc. came before the Commission requesting approval for a pledge of license to Paul F. Paone.

Atty. Machado stated that The Club is buying the building and this is a 10 year note for the financing of the building.

On a motion duly made and seconded, it was

VOTED: to grant the Pledge of License.

Wine and Malt Restaurant License

Alterations to Premises

Amelia's Kitchen, 1137 Broadway requesting approval for alterations to the premises by adding a bar. (Delo Susio, owner asked for this matter to be continued until next month's hearing due to illness) Matter to be continued until the February 20, 2013 hearing.

ALL FORMS ALCOHOLIC BEVERAGES
7 DAY RESTAURANT

Transfer of License
Common Victualer
& Entertainment License

381 Summer St. Restaurant
d/b/a Rosebud
381 Summer St.

Present: Attorney Martin Pomeroy & Martin Bloom

Atty. Pomeroy, representing 381 Jumbo LLC came before the Commission requesting approval for the transfer the of All Forms alcoholic beverages 7 day restaurant license from 381 Summer St. LLC d/b/a Rosebud to 381 Jumbo LLC d/b/a Rosebud also approval for a Common Victualer license and Entertainment License for Entertainment consisting of Entertainment by Performers, Patrons and Devices at 381 Summer St.

Mr. Bloom has restaurant experience and plans to remodel the restaurant. There will be a new floor plan and menu.

On a motion duly made and seconded, it was

VOTED: to approve the Transfer of License, Common Victualer & Entertainment License

Transfer of License
Common Victualer, Entertainment License
& Pledge of License

PLPBDDBG LLC
d/b/a Deco Restaurant
425 Washington St.

Present: Attorney Karen Simeo & Tony Maws

Atty. Simeo, representing Off Larsen Lane, LLC came before the Commission requesting approval to transfer the All Forms alcoholic beverages 7 day restaurant license from PLPBDDBG LLC to Off Larsen Lane, LLC d/b/a The Kirkland also approval for a Pledge of License to Nadwash, LLC and approval for a Common Victualer license and Entertainment License for Entertainment consisting of Entertainment by Performers, Patrons and Devices at 425 Washington St.

Atty. Simeo stated this space has been vacant for some time and the new owner will finish up renovating the space.

Mr. Maws has restaurant experience.

Alderman Heuston sent a note of support.

One resident spoke in support of this application.

On a motion duly made and seconded, it was

VOTED: to approve the Transfer of License, Common Victualer, Pledge of license & Entertainment License.

VIOLATION

DDH Hotel Somerville, LLC
d/b/a Holiday Inn of Somerville
30 Washington St.

Present: Assistant City Solicitor Jason Grossfield & Attorney Joseph Ayoub

Atty. Ayoub, representing, The Holiday Inn came before the Commission to show cause why the All Forms Alcoholic Beverages Innholder license, Common Victualer license, Special Hours Permit, and/or Entertainment license issued to the above establishment should not be modified, suspended, revoked, or the hours during which sales of alcoholic beverages may be made reduced for alleged violations of Somerville Licensing Commission Rules and Regulations to wit:-

Somerville Licensing Commission Rule 1.04(c). No licensee may issue special admissions passes or "V.I.P." cards except according to the following rules: (3) The special pass may not entitle the passholder to free drinks or to a discount on drinks.

Somerville Licensing Commission Rule 1.04(g).

Licensees shall not permit entrance to the premises by more persons than the number approved by the Commission for the capacity of the premises minus the number of employees working in the public areas at the time; provided, however, that at premises

where the Commission has approved a capacity which is less than the capacity figure approved by the Inspectional Services Dept., the licensee need not deduct the number of employees from the capacity figure set by the Commission so long as the total number of individuals does not exceed said capacity figure approved by the Inspectional Services Department.

Somerville Licensing Commission Rule 1.04(h). Licensees who permit persons to wait in line for a table or a seat or for entrance to the premises must obey the following rules: (1) Persons who wait inside the premises must be kept in an orderly line and must not be permitted to block fire aisles or exits. The number of such persons waiting inside the premises may not exceed the number of persons allowed as standees; (2) Persons who are permitted to wait in line outside the premises must be supervised by an employee of the licensed premises. Such employee must stand outside with the line during all times when the line exceeds ten persons and shall announce no further admissions to the premises if persons in the line are being loud or disorderly or if the line is blocking the sidewalk or is of a size that could reasonably be expected to cause noise or other problems for residents of the area or for passersby. To the extent that lines in front of a licensed premises become the subject of public complaints, the licensee shall be rebuttably presumed to be inviting a public nuisance and will be subject to disciplinary proceedings for same. It is recommended that licensees in residential areas discourage lines of more than ten persons.

Somerville Licensing Commission Rule 1.06(a). No licenses shall be issued or shall be considered in good standing unless licensed premises comply with all statutory requirements, including all applicable building codes, and fire, health, safety, trash, and other government regulations and laws.

Somerville Licensing Commission Rule 1.07(c). No licensee shall permit any person to have a direct or indirect financial or beneficial interest in the licensed business or to receive any revenue from the business or to manage the premises other than the person properly approved of by the Commission and the salaried employees of such persons. The foregoing Rule 1.07.c. does not prohibit the use of revenue for payment of inventory and other operating expenses.

Somerville Licensing Commission Rule 1.07(d). No licensee shall permit any person to work at the licensed premises or to hold him or herself out as a person in a position of authority at the premises except for those persons who are owners and officers or who are salaried employees for whom payroll records are available. No licensee may pay an employee any percentage of the profits of the business or pay an employee in any manner other than by salary or hourly rate except upon approval of the Commission.

Somerville Licensing Commission Rule 1.07(g). No licensee shall enter into an agreement with an independent contractor to provide beverages or food or entertainment or management at the premises without the prior approval of the Commission.

Somerville Licensing Commission Rule 1.07(o). Alcoholic beverages licensees shall not use any trade name, assumed name, or abbreviated name in connection with the licensed business unless the same appears on the license certificate issued by the Commission or unless written permission is first obtained from the Commission. The use of any unauthorized name on the books, records, stationery, or interior or exterior of the licensed premises or for advertising purposes or telephone listing, or on the Internet is prohibited unless permission is first obtained from the Commission.

Somerville Licensing Commission Rule 1.09(a). It shall be the obligation of licensees to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times. Each licensee will be held accountable for all violations that are related to the licensed premises to determine whether or not the licensee acted properly in the given circumstances.

Somerville Licensing Commission Rule 1.09(c). Licensees shall act reasonably and diligently to disperse loiterers or patrons who attempt to congregate in front of or at the licensed premises. Failure of the licensee to keep persons from congregating at the licensed premises may lead to disciplinary action against the licensee for allowing a public nuisance. Reasonable steps to be taken by the licensee may include, but are not limited to: (1) maintaining the front door in a closed position; (2) asking loiterers to disperse; (3) calling the police if loiterers refuse to disperse; (4) requesting a police detail or stationing an employee at the front door to disperse loiterers; (5) refusing to allow the same patrons to walk in and out of the premises at short intervals; (6) maintaining order in lines of patrons waiting outside to get in; (7) announcing that no further patrons will be allowed into the premises if lines become too long or disorderly or loud.

Somerville Licensing Commission Rule 1.09(e). When any noise, disturbance, misconduct, disorder, act or activity occurs in the licensed premises, or in the area in front of or adjacent to the licensed premises, or in any parking lot provided by the licensee for the use of its patrons, which in the judgment of the Commission adversely affects the protection, health, welfare, safety or repose of the residents of the area in which the licensed premises are located, or results in the licensed premises becoming the focal point for police attention, or is offensive to public decency, the licensee may be held in violation of the license and subject to proceedings for suspension, revocation or modification of the license.

Somerville Licensing Commission Rule 1.11(a). No licensee may provide entertainment of any kind unless the licensee holds an entertainment license issued pursuant to the General Laws, Chapter 140, section 183A. Such license must be held in the same name, by the same owners, and with the same manager as the food or beverage licensee; provided, however, that in cases where entertainment on the premises is to be conducted by a person or entity who is an independent contractor at the premises, the food or beverage licensee may seek the approval of the Commission for an exemption from this rule based upon a written contract with the independent contractor to book and/or to produce the entertainment. The food or beverage licensee shall be responsible for the actions of such independent contractor on the premises in addition to the

responsibility held by the independent contractor pursuant to the entertainment license. The food or beverage licensee shall pay the independent contractor a fee according to the written contract, said fee to be commensurate with the market value of the services, and the independent contractor shall not be given any direct or indirect interest in the licensed premises other than the fee set out in the contract. Said fee shall not be based upon the number of patrons attending an entertainment event. The food or beverages licensee shall provide in the contract for removing the independent contractor in the event that the entertainment is poorly managed or causes violations to occur at the licensed premises. Any food or beverage licensee who permits entertainment at the licensed premises pursuant to a license held by a person in violation of this rule will be subject to disciplinary action by the Commission.

Somerville Licensing Commission Rule 1.14(a). Licensees shall instruct their employees and security personnel that they are not to make bodily contact with a patron unless to protect other patrons or themselves from being subjected to body blows or other harm from an unruly patron. In all other circumstances employees and security personnel are to call the police to have patrons removed from the premises when such patrons are being disruptive and they are unable to convince the patron to leave the premises voluntarily.

The date of the alleged offense was December 28, 2012.

Assistant City Solicitor Jason Grossfield read the violations into the record. ASC stated that these facts raise concerns for the City and the Commission and the conduct of the licensee is not for the public good.

ASC stated a fight broke out between two women and escalated into small groups also fighting in the parking lot. It took the Somerville Police, Medford Police and State Police to bring order to the crowd. The event was over sold.

The City sent Inspectional Services to the establishment the next day and cited the Holiday Inn for various issued regarding their Certificate of Inspection and shut them down.

ASC Grossfield and Atty. Ayoub, representing the Holiday Inn came up with a Joint recommended disposition of

1. **Modification of the Liquor License and Special Hours Permit:** The Closing Hour for the sale of alcoholic beverages for the cocktail lounge / night club area portion of the licensed premises, now or formerly known as Night Games and/or Metropolitan Square, shall be rolled back from 2:00 AM to 12:00 AM, Sunday – Saturday.

2. As to the modification set forth above, Licensee shall not be eligible to apply for a later Closing Hour for 2 years from the date of this decision. No application shall be granted if licensee has violated any licensing commission rule or regulation or state or city law during the 2 year period. Any such application shall be subject to the discretion of the licensing commission and all applicable laws, rules and regulations.
 3. All entertainment must cease ½ hour before the Closing Hour as specified in the Entertainment License.
 4. Modification of the Liquor License and Entertainment License: No sale or delivery of alcoholic beverages, and no entertainment, shall be permitted in or upon the cocktail lounge / night club area portion of the licensed premises, now or formerly known as Night Games and/or Metropolitan Square, for 30 consecutive days from January 24, 2013 thru February 23, 2013.
 5. The outside area, including but not limited to the outdoor walkway and parking lot, adjacent to the rear, side doorway to the cocktail lounge / night club area portion of the licensed premises, now or formerly known as Night Games and/or Metropolitan Square, shall not be used as a waiting area or other gathering place for patrons. Nothing herein shall prohibit the use of said outside area and doorway as an emergency exit in accordance with all applicable laws and regulations.
 6. Licensee shall not enter into an agreement with an independent contractor to provide beverages or food or entertainment or management at the premises without the prior approval of the Commission, pursuant to Somerville Licensing Commission Rules & Regulations Rule 1.07(g).
- A. Any costs incurred by the Holiday Inn associated with acceptance of the recommended disposition shall be borne by the Holiday Inn.
 - B. Holiday Inn, the licensee, agrees that upon the Commission accepting and entering the above-recommended disposition, the Holiday Inn waives all available appeals, including but not limited to, any rights to appeal the facts, the decision, and/or any sanctions imposed by the Somerville Licensing Commission based on the admitted facts.

On a motion duly made and seconded, it was

VOTED: to accept the recommended disposition as presented.

There being no further business, the meeting was adjourned.

Respectfully

Jenneen M. Pagliaro
Executive Secretary