

**City of Somerville
Licensing Commission**

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

**Regular Meeting
Wednesday
February 22, 2012
6:00 p.m.**

MINUTES

Chairman Upton called the meeting to order. Present were Commissioner John J. McKenna and Executive Secretary Jenneen M. Pagliaro.

Minutes of the December 20, 2011 & January 18, 2012 meetings were accepted as submitted.

COMMUNICATIONS

Alcoholic Beverage Control Commission notice of Decision- Woody's Liquors, 523 Broadway. The Board took administrative Notice.

Alcoholic Beverage Control Commission notice of Decision- George Dilboy Post VFW, 371 Summer St. The Board took administrative Notice.

Alcoholic Beverage Control Commission notice of Hearing, Pavan Restaurant Group, Inc., d/b/a Diva, 246-248 Elm St. The Board took administrative Notice.

Alcoholic Beverage Control Commission notice of Decision, Las Brisas, 561 McGrath Highway. The Board took administrative Notice.

RULES

CONTINUED FROM JANUARY 18, 2012 MEETING

Assistant City Solicitor Jason Grossfield along with Cory Mashburn from Somerville Cares About Prevention submitting a proposed amendment to change the Somerville Licensing Commission Rules and Regulations to require that new liquor license applicants undergo training for the sale of alcohol to underage individuals.

On a motion duly made and seconded, it was

VOTED: to adopt the proposed amendment as submitted.

Non-Renewal of Common Victualer Licenses

Las Brisas, 561 McGrath Highway (Attorney Ann Vigorito stated the Las Brisas has closed the business as of February 2012).

SPECIAL ALCOHOL LICENSES

Boston Jewish Music Festival

Mr. Crepes

51 Davis Sq.

Present: Joseph Baron

Mr. Baron came before the Commission requesting approval of a Special Alcohol license for the purpose of dispensing and selling alcoholic beverages at a Post Concert Reception to be held at on March 1, 2012 from 9:30PM-11:00PM.

This will be a champagne toast to be held at Mr. Crepes, 51 Davis Sq. This will follow a concert that is being held at the Somerville Theater.

On a motion duly made and seconded, it was

VOTED: to grant the Special Alcohol license as presented.

COMMON VICTUALER LICENSES

Roc Group, Inc.

d/b/a Zing Wings Pizza & Grille

711 Broadway

Present: Attorney William Goldberg

Atty. Goldberg, representing Roc Group, Inc. d/b/a Zing Wings Pizza & Grille, 711 Broadway came before the Commission requesting approval of a Common Victualer License.

The business is being taken over by current employees of the restaurant.

On a motion duly made and seconded, it was

VOTED: to grant the Common Victualer License as presented.

Café Tango
16 Bow St.

Present: Vicky Magaletta

Ms. Magaletta came before the Commission requesting approval of a Common Victualler License for Café Tango at 16 Bow St.

Ms. Magaletta stated this would be a coffee shop/bakery

Ald. Gerwartz & Ald. Sullivan supports this application.

On a motion duly made and seconded, it was

VOTED: to grant the Common Victualler License as presented.

MDD Operations, LLC
d/b/a Amsterdam Falafelshop
248 Elm St.

Present: Matthew D'Alessio

Mr. D'Alessio came before the Commission requesting approval of a Common Victualler License for Amsterdam Falafelshop at 248 Elm St.

This space is currently occupied by Diva Restaurant Lounge. The landlord is putting up a wall to make a separate spot for this new establishment. Diva will keep part of the original restaurant.

This will have 19 seats approx. 1200 sq. feet

Ald. Gerwartz supports this application

On a motion duly made and seconded, it was

VOTED: to grant the Common Victualler License as presented.

Elm Street Donuts,
LLC d/b/a Dunkin Donuts
244 Elm St.

Present: Craig Nolan

Mr. Nolan came before the Commission requesting approval of a Common Victualler License for Dunkin Donuts at 244 Elm St.

This is an existing business changing ownership.

On a motion duly made and seconded, it was

VOTED: to grant the Common Victualer License as presented.

Highland Ave. Donuts, LLC
d/b/a Dunkin Donuts
154 Highland Ave.

Present: Craig Nolan

Mr. Nolan came before the Commission requesting approval of a Common Victualler License for Dunkin Donuts at 154 Highland Ave.

This is an existing business changing ownership.

On a motion duly made and seconded, it was

VOTED: to grant the Common Victualer License as presented.

Powder House Donuts, LLC
Dunkin Donuts
850 Broadway

Present: Craig Nolan

Mr. Nolan came before the Commission requesting approval of a Common Victualler License for Dunkin Donuts at 850 Broadway.

This is an existing business changing ownership.

On a motion duly made and seconded, it was

VOTED: to grant the Common Victualer License as presented.

Status Update
Continued from January 18, 2012

Las Brisas, 561 McGrath Highway to give status update on the Wine and Malt license pending at the Alcoholic Beverage Control Commission. (This matter is being continued from the January meeting. The Board suggested that the applicant contact the ABCC for an answer before the next meeting).

This application was DENIED at the Alcoholic Beverages Control Commission. Atty. Vigorito stated that Las Brisas has closed the business permanently.

Wine and Malt Package Store
Change of Location

Himgiri Enterprises, Inc. d/b/a K-2 Beer & Wine requesting approval for a change of location of the Wine and Malt package Store license from 545 McGrath Highway to 514 Medford St. (Alderman O'Donovan has requested a continuance to allow the applicant to conduct neighborhood outreach).

ALL FORMS ALCOHOLIC BEVERAGES
7 DAY RESTAURANT

Change of Floor Plan

Terranova Inc.
d/b/a Mikes Restaurant
9 Davis Sq.

Present: Maria Terranova

Ms. Terranova came before the Commission requesting approval for a change of floor plan.

Ms. Terranova stated the amount of seats would not change. They would be removing booths and extending the bar area.

On a motion duly made and seconded, it was

VOTED: to grant the Change of Floor Plan.

Alterations To Premises

SDH Assoc. Corp.,
d/b/a Five Horses Tavern
400 Highland Ave.

Present: Sarah Hanson

Ms. Hanson came before the Commission requesting approval to serve alcoholic beverages at the outdoor seating area.

Ms. Hanson stated the outdoor area will have 6 tables and 12 seats.

Ald. Gerwartz is in favor of the application.

On a motion duly made and seconded, it was

VOTED: to grant the Alteration to extend the premises.

Transfer of License
Change of Location

Requesting transfer of the All Forms Alcoholic Beverages 7 Day Restaurant License from New Asia Restaurant to Broadway BBQ, also approval for a Common Victualer license and Entertainment consisting of Entertainment by Performers, Patrons and Devices to be situated at 118-120 Broadway.

Attorney DiGirolamo requested a continuation of this matter so the owners can have a neighborhood meeting.

NEW ALL FORMS ALCOHOLIC BEVERAGES
7 DAY RESTAURANT
NON TRANSFERRABLE
(2 AVAILABLE)

Fat hen LLC, d/b/a La Brasa
130 Broadway

(Attorney Joseph Hanley)

Atty. Hanley, representing La Brasa came before the Commission requesting approval for a New All Forms Alcoholic Beverages 7 Day Restaurant license and a Common Victualer license.

Atty. Hanley stated this applicant was approved at a previous meeting for a different location but the application was withdrawn from the ABCC.

The owner Mr. McClennan has 30 years restaurant experience.

East Somerville Main Streets is in support of this application

Ald. White, Desmond, Connolly & Roche are in support.

George Proakis of OSPCD recommends approval of this license.

On a motion duly made and seconded, it was

VOTED: to grant the Wine and Malt Restaurant license.

FFDJ, LLC
d/b/a The Wine Bar
89 Holland St.

Present: Attorney Ann Vigorito

Atty. Vigorito, representing The Wine Bar came before the Commission requesting approval for a New All Forms Alcoholic Beverages 7 Day Restaurant license and a Common Victualer license.

Felisha Foster will be the manager and has 13 years restaurant experience.

The application was heard at a prior meeting, However the Commission only had one license to issue and another establishment received the license.

Ald. Sullivan, Desmond, Connolly & Gerwitz are in support of this application

George Proakis of OSPCD recommends approval of this license.

On a motion duly made and seconded, it was

VOTED: to grant the Wine and Malt Restaurant license.

Yuksel-Berti
d/b/a Istanbul'Lu
237 Holland St.

Present: Attorney William Goldberg

Atty. Goldberg, representing Istanbul' Lu came before the Commission requesting approval for a New All Forms Alcoholic Beverages 7 Day Restaurant license.

Atty. Goldberg stated this establishment has applied a couple of times but has not been able to secure a license.

George Proakis of OSPCD is not recommending approval at this time.

Atty. Goldberg made a motion to withdraw this application.

On a motion duly made and seconded, it was

VOTED: to Withdraw the Wine and Malt Restaurant application.

VIOLATIONS

Sligo Pub

237A Elm St.

Present: Assistant City Solicitor Jason Grossfield & Attorney Richard DiGirolamo

Atty. DiGirolamo, representing, Sligo Pub came before the Commission to show cause why the All Forms Alcoholic Beverages 7-Day Restaurant license, Common Victualer, Entertainment License of the above-referenced establishment should not be modified, suspended, revoked, or the hours during which sales of alcoholic beverages may be made reduced for alleged violation of the above referenced General Laws, Code of Massachusetts Regulations and the Somerville Licensing Commission Rules and Regulations to wit:-

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 1.14.b.- Licensees shall call the police and an ambulance and take all other reasonable steps to assist patrons and persons who are injured in or on the licensed premises or whose injuries have occurred outside the premises but have been brought to the attention of the licensee.

Somerville Licensing Commission Rule 1.13.a.(5)- Licensees shall make all reasonable and diligent efforts to ensure that illegal activities do not occur at the licensed premises. Such efforts may include, but are not limited to: (5) calling for police assistance as necessary to protect patrons against injury or to evict unruly patrons or to uncover unlawful conduct or to give medical assistance and providing police with requested information.

ASC Grossfield read the license violations into the record. ASC Grossfield stated that on October 10, 2011. A patron fell inside the establishment and broke their. The bar tender on duly directed a patron to help him carry the injured woman outside to the back parking lot. The Police were not called.

ASC Grossfield and Sligo Pub came up with joint disposition of a 3 day roll back of hours to 11:30PM to be served February 27,28 & 29, 2012 also that within 30 days of this meeting the licensee shall review the requirements of the SLC with all servers and staff and shall complete training with Somerville Cares About Prevention relative to best practices for service of alcohol.

On a motion duly made and seconded, it was

VOTED: To accept the joint recommendation.

Pavan Rest. Group, Inc.
d/b/a Diva
246-248 Elm St.

Present: Assistant City Solicitor Jason Grossfield and Attorney William Goldberg

Attorney Goldberg, representing Diva came before the Commission to show cause why the All Forms Alcoholic Beverages 7 Day Restaurant license, Common Victualer license, Entertainment and 2AM Closing 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:

- (1)A licensee may issue special passes;
- (2)The special passes must state the calendar year on the face of the pass;
- (3)The special pass may not entitle the passholder to free drinks or to a discount on drinks;
- (4)The licensee must keep a list of the names and addresses of all pass-holders and must have such list available if requested by the Commission;
- (5)The licensee is responsible for ensuring that persons are picked to be passholders on a rational basis and not on any basis that invidiously discriminates.

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 1.06.b. The licensed premises shall conform to the floor plan approved by the Commission with regard to the structures and the walls at the premises, as well as with regard to all tables, chairs, booths, bars, counters, barstools, dance floors or areas, railing partitions, and other barriers at the premises. Any changes in the floor plan or any renovations of any kind may not be made without notification to the Commission and the prior approval of the Commission. The floor plan shall be drawn to scale. It shall include the location and dimensions of all equipment

Somerville Licensing Commission Rule 1.06.e. No outside area may be used as a waiting area or other gathering place for patrons without prior approval by 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. 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.

204 CMR 4.00: **PROHIBITION OF CERTAIN PRACTICE**

204-4.03: Certain Practices Prohibited

(1) No licensee or employee or agent of a licensee shall:

(d) sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;

(2) No licensee shall advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under 204 CMR 4.03.

Assistant City Solicitor Jason Grossfield read the violation into the record. Police Sgt. Sean Sheehan stated that on December 31, 2011 he was called to the Diva Lounge for officer assistance. Upon arrival, he noticed a line outside of the establishment. Upon speaking to a few of the patrons Sgt. Sheehan was told that Diva was holding an open bar party and had sold tickets on the internet. Upon entering the establishment Police questioned the manager in regards to the occupancy load. The Police noted that they were well over the allowed occupancy. The Fire Dept. was called to the business and determined that no further persons were to be permitted entry due to the occupancy limit, and subsequently, the licensee was cited for the violation of the Massachusetts Fire Code

on 1/8/12 in relation to the event held on December 31, 2011. The overcrowding in the Diva Lounge amounted to an extreme public safety hazard with real potential for dire consequences in an emergency, and the police report of Sgt. Sheehan indicates that multiple police officers responded to the scene due to the number of persons seeking entry to the premises

The manager acknowledged that the number of tickets sold for the New Year's party exceeded the occupancy limit for the premises and that so-called VIP passes were sold. Evidence of online ticket sales, which were made available to the public for purchase, was received by the Commission, including the official Facebook page of the licensee, and various other websites advertising that a ticket to said party would include open bar for the unlimited, free purchase of drinks included in the price of a ticket, VIP tickets, and DJ's. Representatives of the licensee further acknowledged that tables were moved within the restaurant portion of the premises and that a rope was erected outside on the sidewalk for persons waiting to enter the premises, without the approval of the licensing commission. The licensee further indicated that no count was kept which would allow it to determine the occupancy levels of the restaurant versus the bar section of the premises.

Assistant City Solicitor Jason Grossfield advised that this was the licensee's second major violation of the licensing commission's rules and regulations within a three-year period and recommended a disposition in accordance with the commissions' guidelines.

Based on the testimony and exhibits received during the hearing as well as the facts set out herein and in the Notice of Hearing.

On a motion duly made and seconded,

VOTED: the Commission voted to sanction the establishment by suspending the 2AM closing license effective immediately and the licensee may not apply again for one year, the Common Victualler License closing hour is hereby rolled back until 11:00PM for 30 Days, the All-Forms Alcohol License is suspended for 7 days to be served over a 75 day period and the representing attorney shall send a letter with the dates, The Entertainment License is hereby conditioned to only permit Background music and 3 televisions. No other Entertainment is allowed and the licensee may not apply for any additional Entertainment for 2 years.

There being no further business, the meeting was adjourned.

Respectfully

Jenneen M. Pagliaro
Executive Secretary