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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: May 18, 2015**

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: 2<sup>nd</sup> Floor Hearing Room, 367 Main Street, Hyannis, MA**

A regular meeting of the Barnstable Licensing Authority was held on Monday, May 18, 2015. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Ron Semprini, Clerk; David Nunheimer, Associate Commissioner, Richard V. Scali, Director of Regulatory Services, Elizabeth G. Hartsgrove, Consumer Affairs Supervisor; Lt. John Murphy and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department; and Maggie Flynn, Recording Secretary.

### **Vote to accept Minutes:**

1. Vote to accept minutes of the 05/04/15 Meeting

**A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to accept the minutes of the 05/04/2015 meeting.**

### **New Business:**

- **Public Hearings:**

1. **New Annual Common Victualler License:** Application of BLMT Ventures LLC, d/b/a Five Guys Burgers and Fries, Cape Cod Mall, 769 Iyannough Rd., Hyannis, Mathew Baecker, Manager, for an Annual Common Victualler License. Interior seats total 52 with 30 employees and 8 shift employees all approved by the Building Commissioner. No exterior seats. Hours of operation will be 11:00 am to 10:00 pm daily.

*Michael Baldwin appeared on behalf of the application; he is owner of the franchise. If license granted at this hearing the restaurant will be open today. Originally applied for 52 seats and had to go to zoning to be approved for 62. Mr. Scali stated that you need to re-apply for additional seats but you need not re-appear.*

**A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to accept the application as presented.**

2. **a) Show Cause Hearing for 7-Eleven # 34380A:** The Barnstable Licensing Authority will hold a Show Cause Hearing for 7-Eleven, Inc., d.b.a. 7-Eleven #34380A, 426 Main Street, Hyannis, MA, Paul McGowan, Mgr., for various Health Code violations found during an on-site inspection conducted on April 10, 2015 resulting in the closure of the operation.

*Tom McKean, Board of Health Director, stated that there will several critical violations. The most severe was operation without a food service permit. The store was closed for 5 days to correct all violations. The store was in deplorable condition and the licensed manager, Paul McGowan, is no longer working at the premises. The tables and chairs were also removed. The store does not have a valid Common Victualler License at this time.*

*Blake Cruckshank represented 7- Eleven. He stated that this location is now becoming a corporate store and will be under his jurisdiction as the field consultant for the area.*

*Officer Maher asked if Mr. Cruckshank if he was aware of the problems at the store, he replied yes. Officer Maher further questioned regarding how many times he has been to the location at night. Mr. Cruckshank stated that procedures have been put in place to deal with loitering, stealing etc. Officer Maher disagreed. He stated that individuals have been in the store after 1am, this is a problem. Blake stated they have a new Manager which will help in correcting the problems of the store. Unfortunately she is not present at this hearing.*

**A motion was duly made by Mr. Burman and seconded by Mr. Semprini and a unanimous vote taken for findings of the Health Code Violations.**

**A second motion was duly made by Mr. Burman and seconded by Mr. Semprini and a unanimous vote taken for findings of guilt of the Health Code Violations.**

*Officer Maher suggested sanctions be imposed as follows: One day suspension to be held in abeyance for one year.*

**A third motion was duly made by Mr. Burman and seconded by Mr. Semprini and a unanimous vote taken for sanctions of guilt of the Health Code Violations.**

**b) New Annual Common Victualler License:** Application of 7 Eleven Inc, d/b/a 7 Eleven #34380H, 426 Main Street, Hyannis, Roberta Smith, Manager, for a New Annual Common Victualler License, to be operated daily 3 am to 1 am. Interior seating to include 22 seats as approved by the Building Commissioner; no exterior seating.

*Further discussion was held with Mr. Cruckshank regarding the issues at this prominent Main Street location. The new manager is not at the hearing. Ms. Hartsgrove stated that the licensee is in compliance since the tables and chairs have been removed from the premises. Elizabeth Wurfbain, Director of the Hyannis BID stated she has seen some improvement in the area and location but has concerns regarding the tables and chairs coming back into the store. The Licensing Authority wants to meet the new manager.*

\*\*\*Continued to 6/08/2015 Licensing Authority Hearing\*\*\*

- 3. Amendment to Existing Class I Auto Dealer License:** Application of 500 Colony Place, Inc., d/b/a Premier Mazda, Joseph Laham, Manager, for an amendment to the existing Class I Auto Dealer License. Addition of 161 Stevens Street of 53 storage spaces. The existing Class I license is located at 141,145, 151 Stevens Street and 91 Bassett Lane, Hyannis; currently licensed for 127 parking spaces with 44 customer/employee spaces and 83 display spaces. The new total will be 180 spaces; 44 customer/employee spaces and 136 display spaces as approved by the Building Commissioner.

*Attorney Jeff Ford appeared on behalf of Joe Laham who is traveling at the present time. This lot was owned by the Dagwan family and Mr. Laham has gone through all the necessary zoning process to add this lot to his present Class I license.*

**A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to accept the application as presented.**

- 4. New Junk Dealer License:** Application has been filed by Aaron J Marks Hyannis, Inc., d/b/a A.J. Marks Jewelers, 973 Iyannough Road, Haynnis, Mark J

Chick, Manager, for a New Annual Junk Dealer License. Hours of operation to be 10 am to 5:30 pm, Mon – Sat.

*Mark Chick appeared on behalf of this application. His retail store changed locations so he was required to obtain a new Junk Dealer's license. Lt. Murphy stated that Mr. Chick and his organization have been very helpful to the Barnstable Police Department on several occasions.*

**A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to accept the application as presented.**

- 5. Amendment to Annual Common Victualler License:** Application of Whole Foods Market Group, Inc, d/b/a Whole Foods Market, 990 Iyannough Road, Hyannis; Dianne Dickson, Manager, for a New Annual Common Victualler License, to be operated 8 am to 10 pm. Amendment to license includes the addition of 3 picnic tables for 18 additional outdoor seats. The total number of seats will be 26 interior seats and 88 exterior seats for a total of 114 seats in accord with plans signed by the Building Commissioner 4/21/2015.

*Matt Snell appeared on behalf of the application. The store has a new manager, Michael Sousa. This application is to add 3 picnic tables for 18 outdoor seats in between the two outdoor, temporary/seasonal stationary food trucks.*

**A motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the application as presented.**

- 6. Alteration of Premises and Change of Manager of Existing All Alcohol Common Victualler License:** Application has been filed by JD Camas, LLC., d/b/a Tumi Ceviche Bar Ristorante, located at 529 Main Street Back, Hyannis, to alter the licensed premise of the existing Annual All Alcohol Restaurant License and Change the manager on record from Angel Rodrigo Camas Calle to Jose Calle. Alteration of Premise Description: to add an additional 36 seats on brick patio, as approved by the Building Commissioner. Amended description will be amended as follows: Renovated wood and brick structure at 592 Main Street, Hyannis, consisting of 2,520 sq.ft. +/- . Enter through brick patio having 55 seats. Entrance through 6' doorway, 4'9" hallway. To the left of entrance is main dining room/bar with 67 seats (7 bar seats, 6 seats at ceviche bar and 54 seats in open dining area at tables). Two emergency exits in dining room/bar area. To the right of the entrance is a private dining room with 13 seats. Kitchen in the rear with emergency exit. Four restrooms including one handicap. Total 80 seats, 4 standees, 14 employees, 98 interior occupancy. The remaining square footage is contained in the hallways and storage.

*Attorney David Lawler appeared on behalf of this application. This is an amendment to a current license to add additional outdoor seating (36 seats).*

*The new total seating will be 55. Also requested is a change of manager to Jose Calle from Angel Rodrigo Camas Calle.*

**A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to accept the application as presented.**

- 7. Alteration of Premises of Annual All Alcohol Common Victualler License and Change of D/B/A:** Application of Beech Tree Cantina, LLC, d/b/a Beech Tree Cantina/Off the Hook Sushi & Raw Bar, 599 Main Street, Hyannis, Jared Pane, Manager; for an Alteration of Premises to change the existing premises description to: One and one-half story wood frame building located at 599 Main Street, Hyannis, Basement and second floor for storage. Ten entrances/exits. One kitchen and two restrooms. Two outdoor serving areas, one restaurant, one bistro, seating at tables for 309 patrons and bar seating for 77 patrons. All changes have been approved by the Building Commissioner on plan dated 4/29/2015.

(Changes include, total seats remain the same at 309, 15 bars seats are reduced to 12, 35 patio seats are now 38 from 35, two kitchens are reduced to one and pizza oven is removed).

Also requested is a change of d/b/a from Beech Tree Cantina/Off the Hook Sushi & Raw Bar to Beech Tree Cantina.

*Jared Pane appeared on behalf of this application. The total number of seats remains the same; just re-arranging. Off the Hook is now gone, we will just be Beech Tree Cantina. There will be two menus; they will be the same except the back menu will have more seafood items. There are no changes in the tree area. Lt. Murphy stated that the Barnstable Police Department has a good working relationship with the Beech Tree staff. Lt. Murphy is requesting that security presence be increased closer to Main Street at closing time. Jared commented that this was brought to his attention at the end of last season and that he fully intends to comply with the request.*

**A motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the application as presented.**

- **One Day Licenses:**

- 1. Extension of On Premise Alcohol and Entertainment License:**

Application of Beth and Todd Marcus from Cape Cod Beer to have a Farmer's Market every Friday with various vendors through Mid- October. The Market will be open from 3-6 pm and will be held at Cape Cod Beer, 1336 Phinney's Lane, Hyannis adjacent/outside existing beer garden. Entertainment to include 2-3 performers with 2-3 pieces of equipment both amplified and non-amplified.

*Beth Marcus, owner of Cape Cod Beer appeared on behalf of this application. The concept behind the Farmer's Market is to be able to create an experience at the farmer's market to walk through the beer garden with a beer in your hand. Liz Hartsgrove added that she and Richard Scali determined that this could be accomplished through an extension of Premises to the original Farmer Brewery Pouring License held by Cape Cod Beer. They are able to do this as long as they do not exceed 30 days per year.*

**A motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the application as presented.**

**2. One Day Applications (21) for Wine Licenses at Farmers Market :**

Application of Frank Puzio of First Crush Winery to participate in weekly Farmer's Market to be located at Cape Cod Beer, 1336 Phinney's Lane, Hyannis, MA. Market to run from 3 - 6 pm on Friday's from May 22<sup>nd</sup>- October 9th, 2015.

*Beth Marcus appeared on behalf of this application. Frank Puzio sees patients on Monday and was unable to attend. Frank Puzio is the owner of First Crush Winery and would like to participate at the Farmer's Market at Cape Cod Beer and have one ounce samples and the ability to sell bottles of wine. In order to do so he has to have a Farm Winery License (he does) and have MDAR approval which he has obtained. The ABCC will then allow First Crush to participate at the Farmer's Market. As for entertainment, there will be no bands only a walking musician that is playing for tips.*

**A motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the application as presented.**

**3. One Day Beer and Wine and Entertainment Licenses:** Application of Bryony Scudder from Sail Cape Cod to have a one day event at The Cape Cod Maritime Museum, 135 South Street, Hyannis, MA. Event to be held 6/5/15 from 5:30-8:30 PM as "A Night at the Museum" fundraiser.

Mike Travato appeared on behalf of the application, he is the president of Board of Directors for Sail Cape Cod. The event will have a three piece band and donations will be requested.

**A motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the application as presented.**

- **Consent Agenda:** Vote to accept the Consent Agenda of the 05/18/2015 Meeting.

A motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the 05/18/2015 Consent Agenda as presented.

### **Show Cause Hearings:**

1. **Show Cause Hearing for Embargo Restaurant:** The Barnstable Licensing Authority will hold a Show Cause Hearing for Davester, LLC., d.b.a. Embargo Restaurant, 435 Main Street, Hyannis, MA, David Noble, Mgr., for violations of the Code of the Town of Barnstable, Massachusetts: Section § 501-6. Business arrangements of licenses.

*David Noble and Attorney Robert Bianchi were present at the hearing.*

*Officer Maher stated he began to hear rumors in March that Embargo was purchased. Officer Maher asked Mr. Pratt how he can represent himself as the new owner, he stated that he will file application soon. Mr. Noble also confirmed that an application will be filed soon. Mr. Pratt paid \$200,000 in advance to clear up debt. Mr. Pratt yet again stated he was the new owner. On 4/9 Mr. Noble called the station stating that he needed help taking the restaurant back from the Pratt's.*

*Attorney Bianchi stated that an arrangement was made through an asset purchase agreement; an application was submitted for transfer. Mr. Noble had planned to go on vacation. He had John Rush in place to manage the restaurant. The \$200,000 was a promissory note which the funds were used to pay the Commonwealth agencies. It was a loan. On the 9<sup>th</sup> of April Mr. Noble called for a Police detail to remove the Pratt's. He believed there might be some difficulty. The principal idea was for them to get a handle of the operation of the restaurant. Mr. Noble remained on the license; he is responsible. Timing was bad due to the vacation.*

*Officer Maher asked if the promissory note was signed to the corporation. This is a loan to the restaurant. Mr. Noble was on this personally as well, kind of an unusual arrangement. Mr. Noble is still obligated to pay the note. If Mr. Noble defaults, how will the Pratt's secure their money. If Mr. Noble needed to take the keys back; it means that the Pratt's had control. This was only for access to the building. He wanted them out of the building.*

*Mr. Nunheimer stated that a promissory note was signed for \$200,000; to pay the DOR and DUA; Mr. Noble needed to be apply for to the Licensing Authority and the ABCC. It was to expedite the license transfer. Only security was restaurant equipment. It was secured by assets of the business. Board approval was required.*

*Attorney Bianchi stated that this was negotiated by two law firms. Liz Hartsgrove asked if the premise is still available for sale. Mr. Noble stated it is not listed. An agreement was to close.*

*Is there any legal action pending, there are accusations on both sides. The loan was made to Davester LLC with personal guarantees.*

*Mr. Burman stated that he has been involved in many multi-million transactions. Mr. Noble was behind in his payments, this was to bring him to date.*

*Mr. Noble stated that he pays approx \$450,000 in taxes. Mr. Scali stated why you would turn over the restaurant for two weeks to individuals without experience. Mr. Bush is experienced. Mr. Noble's manager will run the restaurant, this is a way different than previous times he has been away.*

*For clarification, Mr. Noble did not want a confrontation with the Pratt's. The more important part is the loan according to Officer Maher. Mr. Pratt felt he was the owner once he gave the \$200,000; he acted in that manner.*

*Officer Maher stated it is now necessary for the Pratt's to come forward to the Licensing Authority as an interested party.*

*Punitive action: Officer Maher. Another hearing is required due to the financial interest. Mr. Noble has to apply. The Pratt's will have to be on the application.*

*A five day suspension is in order, one day to serve, remainder to be held for 1 year. Apply within 60 days. Lt. Murphy requested that the Pratt's be heard.*

*Mr. Scali recommends revocation of the license.*

*Attorney Bianchi stated this was not a planned out act, both represented by counsel. It would have been easy for him to apply correctly. It was a mistake. Mr. Noble employs a lot of people, there was no intent just negligence. The history of this licensee was provided. Mr Noble is not new to this process. This was intentional act. There would not be any transfer of license without the money.*

*Mr. Hoxie asked if this violation coupled with previous violations enough to revoke the license. The Pratt's are the unknown voice in the room. The Pratt's could be the unintended victim.*

*Lt. Murphy stated that the ABCC will make the decision. Mr. Scali the application is from Davester LLC not the Pratt's. Mr. Burman stated that he agreed with Mr. Scali. Attorney Nunheimer stated that there may be other documentation that needs to be reviewed. Ms. Hartsgrove wants to clarify the dates. The application is to be received within 30 days. All documents in addition to the promissory note are required including the asset purchase agreement. June 13<sup>th</sup> to file application and to be heard on July 13<sup>th</sup>.*

**A motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken for findings on 501-6 A, C and I.**



A second motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken for guilty findings on 501-6 A, C and I.

A third motion was duly made by Mr. Nunheimer, seconded by Mr. Burman and a unanimous vote taken for : an application to be filed within 30 days ( June 13, 2015) inclusive of the promissory note and asset purchase agreement and a motion to continue until July 13<sup>th</sup> provided an application be received by June 13<sup>th</sup> for interested parties.

### **Continued Business:**

1. **Ferreira's Recycling Inc., 85 Old Yarmouth Road, Hyannis: Junk Dealer's License:** Review of Final Conditions document and renewal of Junk Dealer's License.

*Attorneys Connors and Houghton both signed the document. The Licensing Authority is voting on renewing the license for 1 year from today's date. Mr. Scali stated that this agreement is very good and to please ensure that Mr. Ferreira is committed to these timelines. Any other circumstances that arise will also come before the board.*

*Lt. Murphy recognizes all the hard work, only approve for 6 months; Ferreira's in 6 months will have needed to complete site plan review at this time, acceptable progress. Mr. Hoxie, can we not renew for a year and then have a show cause hearing. Easier to not renew than revoke a license. Mr. Burman stated the attorneys have worked hard to prepare this agreement, will Mr. Ferreira comply. Yes after my experience with Mr. Ferreira. Mr. Burman agrees with Lt Murphy.*

*Ms. Hartsgrove noted that there is no date on this agreement. The current conditions remain in place and the agreement will be attached as well.*

*Attorney Connors stated that some of the issues raised in the superior court matter have been resolved through this agreement. There is still the punitive action remaining. Request the board to remove.*

**A motion was duly made by Mr. Nunheimer, seconded by Mr. Burman and a unanimous vote taken to renew the Junk Dealer's License for one year with the existing and newly agreed upon conditions. Additionally Mr. Ferreira needs to come in for a review in 8 months (January 2016)**

### **Licensing Division Updates:**

1. Licensing Department updates – Pedi-cabs hearing is on Friday. Taxi rate meter increase. Uber complaint received.
2. Police Department updates – Rockwell Amusements, all CORI checks are good, one traffic warrant.

Release of Executive Session Minutes, if any (0).

And any other new business to come before the Licensing Authority.

**PERSONS INTERESTED ARE ADVISED THAT, IN THE EVENT ANY MATTER TAKEN UP AT THE MEETING REMAINS UNFINISHED AT THE CLOSE OF THE MEETING, IT MAY BE PUT OFF TO A CONTINUED SESSION OF THIS MEETING, WITH PROPER POSTING.**

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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. For meetings of a local public body, notice shall be filed with building in which the clerk's office is located the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal

The meeting was adjourned at 11:45

Respectfully submitted,

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Margaret D. Flynn, Recorder  
Town of Barnstable Licensing Authority

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Ron Semprini, Clerk  
Town of Barnstable Licensing Authority

# **Town of Barnstable**

## **Consumer Affairs**

**Elizabeth G. Hartsgrove, Supervisor**

**Licensing Authority**

**200 Main Street**

**Hyannis, MA 02601**

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### **BARNSTABLE LICENSING AUTHORITY**

# **CONSENT AGENDA**

**May 18, 2015**

#### **Renewals:**

1. **One Day All Alcohol License** - Application of Katherine Pina for the Annual St. Anthony's Feast Day to be held on June 13, 2015 from 12:00 PM to 6:00 PM. Event to be held at 502 Old Mill Road, Osterville, MA.

#### **Junk Dealers:**

1. Jewelcraft, 585 Main Street, Hyannis
2. Cottage Chic Resale, 645 Main Street, Hyannis
3. Cape Abilities, 3239 Main St, Barnstable

#### **Common Victualler:**

1. The Egg & I, 521/523 Main Street, Hyannis
2. Craigville Beach Grill, 974 Craigville Beach Rd, Centerville

#### **Forfeiture of Annual Junk Dealer License:**

1. Play It Again Sports, 425 Iyannough Rd., Route 28, Hyannis