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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 Agenda

DATE OF MEETING: October 19, 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: 2nd Floor Hearing Room, 367 Main Street, Hyannis, MA

A meeting of the Barnstable Licensing Authority was held on Monday, September 21, 2015. Chairman Martin Hoxie called the meeting to order at 11:00 A.M. He introduced Gene Burman, Vice Chairman; Ron Semprini, Clerk; Richard V. Scali, Director of Regulatory Services; Elizabeth G. Hartsgrove, Consumer Affairs Supervisor; Lt. John Murphy and Patrolman Stephen Estey, Liaison Officers from the Barnstable Police Department; and Maggie Flynn, Recording Secretary.

Vote to accept Minutes:

1. Vote to accept minutes of the 09/21/2015 Meeting.

A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to accept the minutes of the 09/21/2015 meeting.

New Business:

1. **Application for Two New One Day Entertainment Licenses:** Application of David Kuehn on behalf of the Cotuit Center for The Arts, Falmouth Road, Cotuit for:

- a. American Hootenanny Event to be held on August 29, 2015 from 5:30 to 7:00 PM. Event to be held on the grounds for a barbeque picnic with entertainment prior to the main indoor evening event. Entertainment includes four New England music groups.
- b. Brazilian Cultural Festival to celebrate the rich culture of Brazil. The event will take place on the grounds of the Center on August 16, 2015 from 4:00-7:00 PM. Entertainment will include a samba dance demonstration and lessons along with food from the Brazilian Grill.

****Continued from 9/21/2015 Agenda****

David Kuehn appeared on behalf of the application. These events have already taken place and have been continued since the last hearing. A concrete patio that is 10 feet wide connected to the studio. Mr. Kuehn was unaware that an outdoor license was required for these events. Mr. Scali needs to clarify how this was received. This was in response to a complaint from a neighbor regarding the new building. Site plan review will be required if the Center extends their use, the gate is now locked for emergency only use; fire department has the code. The commissioners needed to be aware of these facts.

A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to retroactively approve the applications as presented.

2. **Application for a New One Day Entertainment License:** Application of Pete Lally of Spectacle Management for a One Day Entertainment License for a Judy Collins Concert to be held at the Barnstable Performing Arts Center, 744 West Main Street, Hyannis on November 20, 2015 beginning at 7:30 PM.

Tony Raine appeared for the event, he is the general manager for Spectacle management. Application was approved no questions.

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

3. **Application for (6) New One Day Wine Only Licenses:** Application of Nicole Wellbeloved on behalf of Wellbeloved Wellness for six one day wine licenses to serve wine after Barre exercise class. All events will begin with the 5:30 class with a participation of 13-15 participants. The events are to be held at Wellbeloved Wellness, 3821 Falmouth Rd., Marstons Mills. The schedule of

events is for the first Friday of every month: November 6, 2015, December 4, 2015, January 8, 2016, February 5, 2016, March 4, 2016 and April 1, 2016.

Nicole Wellbeloved appeared for this application. We hold Barre classes at the fitness center we would like to hold the 5:30 class and have the participants be able to have wine and cheese after class. There will be no under age participants. Nicole will be serving the wine. The class fee is \$15.00. My TIP certification is no longer in order.

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

- 4. Forfeiture of Licenses:** Ocean Partners Inc d/b/a The Island Merchant forfeited the All Alcohol Common Victualler License and Daily Live License.

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

- 5. Forfeiture of Licenses:** F&J Restaurant Bar & Nightclub Inc. d/b/a F&J Restaurant Bar forfeited the All Alcohol Common Victualler, Daily Live and Non-Live, Karaoke and Pool table licenses.

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

- 6. Forfeiture of Licenses:** SL Uno Hyannis Inc., d/b/a Uno Chicago Grill forfeited the All Alcohol Common Victualler license.

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

- 7. Consent Agenda:**

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

Show Cause Hearings:

- 1. Show Cause Hearing for Trader Ed's:** The Barnstable Licensing Authority will hold a Show Cause Hearing for Harbor Club, Inc., d/b/a Trader Ed's, Wayne Kurker, Manager, 11 Willow Street, Hyannis for the following violations of the Town of Barnstable, MA Code: **Section 501-12A5 Illegal activity on the licensed premise. (1Count)**

Not calling police for assistance 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.

Stephen Pizzuti appeared on behalf of this applicant. Wayne Kurker also appeared. Lt. Murphy will be presenting the evidence for the Barnstable police department.

Lt. Murphy stated that this is a Show Cause hearing, this is the first time the police department has brought this type of complaint to the Board. This is educational rather than punitive. Lt. Murphy reviewed the police report. The Barnstable Police went to the Hospital on the basis of an assault complaint at Trader Ed's. The Barnstable Police were given a video regarding the event. No one from the Trader Ed's notified the Police department. Lt. Murphy met with Attorney Pizzuti to state that core issue is whether or not they should or should not have called; interpretation of the ordinance.

Attorney Pizzuti introduced Wayne Kurker. Attorney Pizzuti asked if the Lt. saw the tape, is there any doubt that he was removed in a professional and expeditious manner. He was removed, the problem was solved. The removal took less than 2 minutes, it does not matter for this complaint. Were you aware that the security person, a first responder that he was a licensed EMT for the Town of Bourne?

Lt. Murphy stated that this is a unique situation in front of the board. Lt. Murphy reiterated that this is educational. Mr. Hoxie asked if the victim was here. Both the victim and suspect have pending criminal complaints. Attorney Pizzuti stated that for Mr. Kurker to be brought in front of the Board there should not be any guilt or letter in the file. Mr. Hoxie moved to dismiss this case. Lt. Murphy stated that in this current world that we live in regarding retaliatory results 501-12A5 needs to be not concerned with patrons but the public. Any licensee that ejects a patron subjects the public to that patron. Trader Ed's did not try to cover anything up. Based upon your comments Mr. Chairman, this violation was warranted and brought forward in good faith. Lt. Murphy stated that this ordinance needs to be changed to read that any Licensee SHALL notify the Police Department. Officer Estey will be visiting every establishment. Mr. Burman is torn as to whether or not dismiss. There is an obligation to protect the public. Mr. Semprini did agree that in the future the Police Department needs to be notified.

A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to dismiss.

2. **Show Cause Hearing for Gol Market:** The Barnstable Licensing Authority will hold a Show Cause Hearing for VE Foods, LLC., d/b/a Gol Market, Vincent D'Olimpio, Manager, 55 Iyannough Road, Hyannis for violations of the Code of the Town of Barnstable, Massachusetts: **Section § 501-7I. Alcoholic Beverages Sales and Laws.** (1 count – sale or delivery of an alcoholic beverage to a person under 21 years of age).

CAO Stephen Estey read the facts of the case for the Police report. He further reviewed the actual transaction involving the decoy in the sting operation.

Attorney Lawler stated that they acknowledge the violation. Mr. D'Olimpio has held a license for over 22 years; a mistake was made. Mr. D'Olimpio researched a new set of software; the computer requires the individual to input the birth date. A supermarket uses the scanning feature. There will be renewal of TIPS training for all the employees. Any punitive punishment will be for the sale of alcohol not food. The Police department issue is to suspend the alcohol only not food. Mr. Scali stated that the standard is for a 2 day suspension, 1 to serve and 1 day to be held for 1 year from the date of the violation only for the alcohol. Attorney Lawler stated that no appeal is to be filed.

After testimony from Consumer Affairs Officer Stephen O. Estey the following motions were voted 3-0 by the Licensing Authority:

FINDINGS: To move that the Licensing Authority determine violation of Section §501-7I of the Barnstable Licensing Authority Rules and Regulations was found;

VERDICT: To move that the Licensing Authority find Gol Market at 55 Hyannis Road Hyannis guilty in violating Section §501-7I of the Barnstable Licensing Authority Rules and Regulations;

ACTION: To move that the Licensing Authority suspend the Annual Wine & Malt Package Store License for 2 days; serve a 1 day suspension on November 3, 2015, have 1 day held in abeyance for one year from the date of violation.

- 3. Show Cause Hearing for Speedway:** The Barnstable Licensing Authority will hold a Show Cause Hearing for Speedway, LLC., d/b/a Speedway, Mark Barbi, Manager, 50 Ocean Street, Hyannis for violations of the Code of the Town of Barnstable, Massachusetts: **Section § 501-7I. Alcoholic Beverages Sales and Laws.** (1 count – sale or delivery of an alcoholic beverage to a person under 21 years of age).

******Continued to 11/16/2015******

- 4. Show Cause Hearing for Thai House:** The Barnstable Licensing Authority will hold a Show Cause Hearing for the Jomkwan, Inc. d.b.a. Thai House, 304-306 Main Street, Hyannis, MA, Saithip Atiwethin, Mgr., for violation of Code of the Town of Barnstable, Massachusetts, **§501-14A1, Other causes for revocation, suspension and modification:** due to a number of Health violations, as cited in the attached Public Health Division Food Establishment Inspection Report dated September 24, 2015, at the Thai House located at 304-306 Main Street, Hyannis. **§501-5C, Physical Premise:** Portions of premise covered by the license was found unsanitary. **§501-5A, Physical Premise:** License is considered not in good standing due to failure to comply with statutory Health and Fire codes.

Donna Miorandi, health inspector, appeared to give evidence of the Health Code violations. She stated that on 9/24/15 there was food, electrical and fire code

violations necessary to close the facility. Grease was a major problem, no allergen certificate, no serve safe, no log. The establishment was closed for 2 weeks mainly due to hiring contractors. Deputy Fire Chief Dean Melanson stated there were a number of issues relative to lighting, electrical and some gas code issues. Inside of the kitchen is heavily coated with grease. The hood systems inspections were out of date. The vast majority of violations have been corrected. There are a few minor issues that remain outstanding; we will follow up.

Mr. Scali asked if they were suspended by the Health Board. No, another failure would bring them in front of the Board.

The Licensee (Louis) stated that he agrees with everything that the Board of Health and Fire Department presented. Everything will be done. The owner hired him as a manager and to correct the problems, you will be applying as manager of record. The Thai House has 4 employees. Mr. Burman asked how long would you say the accumulation has taken place; hard to say, based on volume. A period of time has elapsed; it is supposed to be cleaned nightly. On 9/24, no one was serve safe trained which was part of the problem. The lack of understanding English is a problem. In March, grease was noted. Mr. Burman asked Deputy the same question; it occurred within a four month period.

Mr. Scali stated that we will be seeing more of these types of violations. Recommend a warning be placed on file or a one day suspension to be held. Mr. Hoxie stated one day to be held; Mr. Burman wanted a day to be served. Mr. Semprini thought this was a little swift.

After testimony from Health Inspector Donna Miorandi, Deputy Fire Chief Dean Melanson and your newly hired manager, the following motions were voted 3-0 by the Licensing Authority:

FINDINGS: To move that the Licensing Authority determine violation of Section §501-14A1, §501-5C and §501-5A of the Barnstable Licensing Authority Rules and Regulations was found;

VERDICT: To move that the Licensing Authority find Thai House at 304-306 Main Street Hyannis guilty in violating Section §501-14A1, §501-5C and §501-5A of the Barnstable Licensing Authority Rules and Regulations;

ACTION: To move that the Licensing Authority place a letter in the file and hold a one day suspension, for each violation (total of 3 days), in abeyance for one year from the date of the violation.

5. **Show Cause Hearing for C'Est La Vie:** The Barnstable Licensing Authority will hold a Show Cause Hearing for the C'Est La Vie French Patisserie, LLC. d.b.a. C'Est La Vie French Patisserie, 592 Main Street, Hyannis, MA, Nathalie Tournier, Mgr., for code violations of the Town of Barnstable, Massachusetts: **§501-1D Availability of Rules and Regulations:** Operating a business without a valid license posted on the premise. **§501-5A Physical Premise:** Operating a business without complying with all statutory requirements, including all applicable building, fire, health codes and regulations. **§501-14A1 Other causes for revocation, suspension and modification:** Violating any provision relevant

to M.G.L. or any rule and regulation of the Town of Barnstable. **§501-19 Activity without valid license displayed prohibited:** allowing activity on premise that requires a license without a valid license on display at premise.

Elizabeth Hartsgrove presented the facts of the Show Cause; Nathalie Tournier represented C'Est La Vie.

The timeline was to open in four days but we had not heard from them since they appeared in March. This was not possible due to outstanding issues. Ms. Hartsgrove notified Nathalie of these facts, she opened. A Cease and Desist was issued and Officer Estey closed the restaurant. Procedures were not followed at the time. All permits have been received to date. Deputy Chief Dean Melanson on 10/01/2015 an inspection was done. Exits were problems and some areas needed to be completed.

Mr. Hoxie asked if she has operated in Massachusetts previously; no. Mr. Hoxie stated that he is concerned that she operated without permits. Nathalie said there was some confusion on her part; she believed when she did open that she was allowed to do so. There was a lot of discussion about bathrooms and number of seats and what was required.

Mr. Scali stated that there were a number of issues and then losing the contractor she truly believed that a lot of things were completed. She only has 19 seats at present. Mr. Scali stated that he agrees with a warning and that a program coordinator is necessary to prevent this from happening again.

After testimony from Elizabeth Hartsgrove, Deputy Fire Chief Dean Melanson and Health Inspector Donna Miorandi, the following motions were voted 3-0 by the Licensing Authority:

FINDINGS: To move that the Licensing Authority determine violation of Section §501-1D, §501-5A and §501-19 of the Barnstable Licensing Authority Rules and Regulations was found;

VERDICT: To move that the Licensing Authority find C'est La Vie French Patisserie at 592 Main Street Hyannis guilty in violating Section §501-1D, §501-5A and §501-19 of the Barnstable Licensing Authority Rules and Regulations;

ACTION: To move that the Licensing Authority issue a warning on the three violations.

Licensing Division Updates:

1. **Licensing Department updates** – Elizabeth Hartsgrove stated the Renewals will be going out in the mail by the end of October.
2. **Police Department updates** – Lt. Murphy congratulated CAO Estey on his first Show Cause presentation and his new position. The Police Department will continue to work with the Consumer Affairs office to amend the regulation that

was previously heard by Show Cause. Mr. Scali echoed the performance of Officer Estey; it has worked out very well and we are thankful to have him on board.

Release of Executive Session Minutes, if any (0).And any other new business to come before the Licensing Authority.

Executive Session: Strategy with respect to ABCC appeal by Scottie's Pizza.

The meeting was adjourned at 11:35

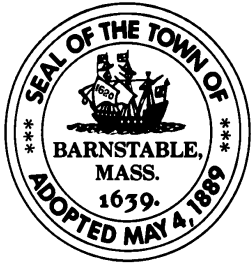
Respectfully submitted,

Margaret D. Flynn, Recorder

Ron Semprini, Clerk

▪ **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 in or on the municipal building in which the clerk's office is located.



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BARNSTABLE LICENSING AUTHORITY
CONSENT AGENDA
October 19, 2015

1. **Application for A new One Day Wine Only Alcohol License:**
Application of Susan Carey on behalf Gallery Artrio for a One Day Alcohol License to serve wine at an Artist reception. Event to be held at Gallery Artrio, 50 Pearl Street, Hyannis on December 10, 2015 from 6:30 to 7:30 PM. This event is an addition to earlier approved events for the Gallery.

approved