

Adopted Minutes of the March 7, 2019 meeting of the Chelsea Licensing Commission

Location: City Council Conference Room, Chelsea City Hall, 500 Broadway, Chelsea, MA

Meeting opened at 6:05 p.m. by Chairman Mark Rossi.

Commission members present: Chair Rossi, Michael McAteer, Gladys Vega, Jim Guido and Roseann Bongiovanni

Also present: City Solicitor Cheryl Watson Fisher, Nancy Slater, Captain Keith Houghton, other members of the Chelsea Police Department

Chairperson Rossi asked for a motion to accept the minutes of the February 27, 2019 meeting; Guido so moved, Bongiovanni seconded, vote was unanimous to adopt and file.

Clerk's Update/New Business –

- a. Shop & Go was to provide an update on the status of the sale of their beer and wine license. City Solicitor Fisher reports that there has been no communication with that update. Bongiovanni asked which license they were using and Fisher reported that they are using their all alcohol license and were trying to sell their beer and wine license. Guido motioned that a final letter of intent be sent and if no communication received by next meeting, then Commission would revoke full alcohol license; Bongiovanni seconded; vote was unanimous and motion passed. Rossi offered a friendly amendment and moved the matter to a Public Hearing for revocation purposes. Guido seconded and the vote was unanimous.
- b. Tedeschi's was to provide intent for off premise license. Fisher reports no communication received as of this meeting. Guido moved the matter to a public hearing for revocation, Bongiovanni seconded, vote passed unanimously.
- c. Pineda Restaurant Corp d/b/a Rincon Latinos – Fisher reports that the applicant failed to file a change of premise application with the ABCC; attorney emailed and refiled change of premise. Captain Houghton of the Chelsea Police Department gave an update that construction is ongoing and the handicapped bathroom is being built. Move to Public Hearing and motioned to allow them to open with old occupancy permit made by Guido, seconded by McAteer, voted and passed unanimously.
- d. Fisher reviewed memoranda on increasing licensing fees regarding advertising of public hearings and the cost of doing so. Motion by Guido to increase fees by \$80.00 when a public hearing is needed, Vega seconded, voted and pass unanimously.

Public Hearing – Acapulco Mexican Restaurant, 238 Fifth Street – Chairperson Rossi read Notice into the record. Owner/Licensee Mr. Flores and Attorney Michael Ford appeared. Licensee stipulated to the fact that on November 11, 2018, an incident occurred on the premises between patrons and a security guard and the facts alleged in police report No. 18-1127-AR. The Licensing Commission attempted to view footage of the interior back hallway of the licensed premises taken on November 11, 2018.

Attorney Ford stated that the Licensee had no knowledge that incident was taking place in the back hallway but was present at the Licensed Premises during the altercation. Attorney Ford

also stated that the security guard involved was fired and that the Licensee cooperated with the police department by handing over the tape recordings of the evening. Captain Houghton testified that the security guard used a police baton on a patron and the video reviewed by CPD clearly shows the patron holding on to the security guard and being beaten by the guard with a police baton. Captain Houghton had a baton with him and shared it with the Commission. Captain Houghton testified that there is a criminal matter proceeding in court and the patron had a serious head wound. Captain Houghton stated that he is concerned that no one called the police department except the victim. Captain Houghton further testified that this establishment did have serious issues in 2015/2016 with drinking after hours and closing against Commission rules. Licensee said he did telephone the police department and that the patron would not let go of the security guard. Licensee testified he did not know of the baton because it was concealed. Chair opened the matter to public speaking: Councilor Avellaneda spoke about the overall role of security personnel throughout the city and that there should be rules and regulation by security guards at all licensed establishments. He feels that they should be registered with the City, be in some type of set uniforms. This is a huge issue throughout the licensed establishments. Chairman Rossi closed the public speaking portion of the hearing. Licensee through his attorney offered as a resolution the hiring of a new security company and that Licensee will be in full compliance of all rules and regulations but will need time to submit a security plan.

The Commission found the several incidents of violating Rule 2.14 in one night and found those violations to be willful. The Commission was further deeply disturbed that the patron was beaten by the security guard. The Commission ordered that the current security company be terminated and that the Licensee submitted an updated security plan. Vega stated this isn't enough and wanted a roll back of hours and suspension. McAteer moved to revoke seconded by Vega. No roll call after discussion. Motion to roll back hours to 3:00 pm to 11:00 p.m. by McAteer seconded by Bongiovanni; vote unanimous. Bongiovanni voted for a two day suspension to be held May 4th and May 5th weekend. Seconded by Vega; vote unanimous.

Public Hearing – Aquillar Corporation d/b/a Bar La Cueva, 802 Broadway – Chairperson Rossi read the Notice into the record. Owner/Licensee Manual Aquillar, Security Guard Kevin Rosado Attorney John Dodge appeared. Attorney Dodge stipulated that the police report should be submitted into evidence. Attorney Dodge described what happened and the actions taken by his client as to removing the two individuals. A letter from a neighbor, Ms. Mary Szalkowski who could not attend the hearing was entered into evidence basically stating that the establishment has been a nuisance and music is loud. Licensee through its attorney stated that there was a small group of individuals in the restaurant having a verbal argument. The Licensee told them to take it outside and they started an argument with Mr. Losado the Manager. The Owner was in the back and contacted the police. Licensee testified that the two individuals involved although at the establishment for two to three hours did not appear intoxicated. The Manager said they were not falling down and were dancing. The Manager testified that the establishment was a bar not a restaurant and did not serve food. Captain Houghton testified that the officers on scene were not present for the hearing and did not request the video. Captain Houghton did say that Ms. Szalkowski does telephone the police department about the loud noise, urinating on the

walls and she has tried to be a good neighbor. He further testified that the officers at the scene did find both individuals intoxicated.

Bongiovanni asked about change of managers and this was confirmed by City Solicitor Fisher. Chair opened the public speaking portion of the hearing and Marianne Winship of 62 Beacon Street spoke about the quality of life issues of neighbors, etc. and thought the Licensing Commission should clip the wings of these establishments. City Manager Tom Ambrosino agreed that appropriate discipline should be taken by the Commission and he has realized that these issues are not just in the Downtown Corridor but serious City-wide problems and he will make it a top priority to be sure that licensees follow the rules. Chair closed the public speaking portion of the hearing. Vega asked several questions about their operation; hours are Monday – Thursday 1 p.m. – 1 a.m., Friday – Sunday 11 a.m. – 1 a.m., no food served, just snacks, occupancy is 60 patrons. Bongiovanni brought up issues of over-serving patrons, issues continually coming before the Commission, complete nuisance to the neighborhood. Dodge respectfully denies reports of CPD and the Commission and testimony of his client sets forth that licensee hasn't committed any violations. Dodge requests that no disciplinary action be taken and the matter be placed on file respectfully because there is not enough evidence. Rossi took position of a nuisance establishment based on prior discipline and it is our job to be the police of bad neighbors. Rosado did remember the incident and stated the patron only had 2-3 beers, didn't look drunk and was dancing/talking. Motion by Guido to rollback hours to 1 p.m. – 11 p.m. seven days per week, seconded by McAteer; Guido moved with a friendly amendment to rollback hours to 3 p.m. – 11 p.m. seven days per week; vote unanimously and motion passed. Guido moved to send to public hearing revocation of disc jockey and karaoke portion of the licensee's Amusement & Entertainment license, seconded by Bongiovanni, passed unanimously. New motion by Bongiovanni that the licensee serve two day weekend suspension on May 4 & 5, 2019, seconded by Vega and voted unanimously.

Public Hearing – Rincon Hondureno Function Hall, 194 Broadway – Reported that licensee did not notice abutters of hearing. Motion to continue by Guido, seconded by Rossi and voted unanimously.

Public Hearing – Fine Mart, 260 Broadway – The Chair read the notice into the record and present were the Owner Minh Diep Vo (?) and Attorney Brian McNellis appeared on three violations of their license; Sale of Alcohol to a Minor, Sale of Alcohol nips banned by the Licensing Commission on 5/22/18 and Report of Fighting inside the establishment. Attorney McNellis submitted a written submission to the Commissioners. Attorney McNellis stated that his client believed that an individual who had been frequenting his store for years was 21 years old and did not check on the date of the incident report. Attorney McNellis stated that his client in good faith believed the customer was 21. McNellis did admit to the prior discipline of selling to a minor occurred in 2011 by the ABCC. McNellis stated that the clerk who sold to the underage person is going to be trained.

Attorney McNellis stated that the video shows that the Owner's brother in law after provoked by an intoxicated individual asked that customer to leave. The customer did utter hate speech and ethnic slurs at the clerk and the clerk lost his temper and kicked the customer out of the store. McNellis informed the Commission that Fine Mart LLC has a policy not to lay their hands on a

client and sent the clerk to Anger Management Class. According to McNellis someone tried to call the police. Attorney McNellis then said that the store was not selling nips and that the Commission has to believe his client who has cooperated with the police department. Bongiovanni stated that the Licensee received both letters dated May 24, 2018 and September 4, 2018 as to the ban of the sale of alcohol nips in Chelsea. Captain Houghton confirmed that the Licensee attended a training held by the Chelsea Police Department in August 2018 where all licensees were told to always ask for identification. Licensee is an appellant of the appeal of the nip ban. Chelsea Police testified that the individuals who purchased the alcohol as a minor looked young and should have been carded. Chelsea Police testified that the individual who was assaulted by the Clerk was seen in the video as walking away and the clerk called her back and then assaulted her by kicking her. Chelsea Police testified that there was not full cooperation because a thumb drive provided by Licensee didn't work, that the establishment failed to provide sales receipts as to the nips. Chelsea Police Officer Farden then testified that the pictures submitted depicted what was present in the store as to nips and the review of the invoices showed that many nips were missing from a delivery on or about May 22, 2018 after the Nip ban was voted on by the Commission.

Officer Farden then testified that the nips were on display in front of the counter as depicted in the pictures and near the register. He stated about 8 cases of fireball nips were on the receipt and none were present in the store. The Chair opened the hearing for public speaking:

City Manager Ambrosino spoke about the work that the City is doing to improve the Downtown Corridor and this location is a crucial part of that work. The City's actions need to be taken seriously and feels that Fine Mart should be disciplined appropriately. Kevin Mahan, 150 Captain's Row, life-long resident and currently a school crossing guard spoke about the fine patrons of Fine Mart and Mr. Vo's great reputation. Jocelyn Raspi, 150 Chestnut Street, has lived here for two years, visits the store at least twice daily for coffee and cigarettes. The employees of Fine Mart are hard-working people, honest, they don't ask regulars for ID's unless they don't know them and were happy about the Nip Ban. Mini Graney, City of Chelsea Downtown Initiative, stated that the issues in the downtown corridor are directly related to public drinking, people are concerned about their safety in this area and the sketchiness of the area. Robin Thurston, 250 Congress Avenue, moved here two and a half years ago with her family. She has always seen clerks ask for ID, has seen them card people, feels safe visiting there and they are hard-working people. Chairperson Rossi closed the public speaking portion of the public hearing.

Attorney McNellis for the licensee asked if they were to get justice from this system. He confirmed an email of January 10, 2019 stating that CPD was not requiring video and that it wasn't fair to bring documents into evidence at this public hearing. Houghton stated he didn't ask for the video himself, he sent an officer to verbally request it. Officer Vega, who couldn't be at this meeting would testify that in two instances of selling to two different people without being carded. Bongiovanni asked who the clerk was; Ming Vo said his name was Tran and no relation. Bongiovanni stated to Mr. Vo that he was at the meetings on nip ban, sat in trainings and still allowed this to happen. Attorney McNellis said they sent Tran for training. Guido stated that

they didn't check ID's and just assumed they were 21 years of age. He asked Mr. Vo if he went on his good faith belief that parties were 21. Bongiovanni they questioned whether the Commission could believe his credibility and expressed dissatisfaction with Mr. Vo because of his participation in the meetings/trainings. Rossi stated that three times in a short period of time they have had violations; and expressed that they have high level of responsibility and are failing. McNellis responded that things are repetitive. Commission voted unanimously to have the Licensee serve 7 (one week) days for violation of MGL c. 138 Sale to a Minor on a motion by Guido seconded by McAteer. A motion to suspend for six months failed. A Motion as to the assault for a 3 day suspension failed. Commission voted unanimously for a two week suspension for violation of the Nip Ban on a motion by McAteer and seconded by Bongiovanni. Commission voted 4 to 1 for a three week suspension for the violation of Rule 2.14 on a motion by Bongiovanni and seconded by Vega. Commission voted unanimously to have the six week suspension run concurrently and to begin on April 1, 2019 on a motion by Guido and seconded by Bongiovanni. Commission voted 3 to 2 against allowing a stay of the decision on a motion by McAteer and seconded by Guido. Public Hearing closed.

Public Hearing – Cuzcatlan Restaurant Corp., 142 Broadway – application for change of d/b/a to Rodeo Bar & Grill. CPD reports no problems at this location. Vega asked why to be sure that they weren't renting the license; the response was no, just "rebranding". Guido motioned to accept the change in d/b/a, Rossi seconded, passed unanimously.

Date of next meeting was discussed and moved to Wednesday, April 3, 2019 at 6 p.m.

Marijuana Regulations – continued Public Hearing opened by Chairperson Rossi. Outlined that tonight the Commission will focus on Sections 12.05 Annual Fees, 12.06 Concentration/Distance Markers and 12.07 Security, of the proposed regulations. Fisher gave information on Host Agreements for retail facilities and stated that we currently have the following locations looking for host agreements; 121 Webster, 80 Eastern (retail and grow facility), 200 Beacham and 390 Beacham.

Section 12.05 Concentration

Jay Satin for Green Star Herbals spoke in favor of 12.05 because two locations close together would create traffic problems. They have done a traffic study as part of their proposals. Michael Koehler and Frometa felt that two locations within any zone would be unfair. Rossi stated that the Commission will look at licenses and locations on a case by case basis and it would be at the discretion of the Commission.

Fisher spoke about host agreements, Commission meetings, zoning process, special permits and CCC applications. Avellanda opposes any restriction of the number of feet from one place to another. Feels it should be decided on a case by case basis.

Motion to leave 12.05 at the discretion of Licensing Commission confirmed.

Section 12.06 Application Fees

Commissioners discussed fees both for CCC and the City.

Motion for the City to impose \$500.00 application fee and license fee of \$5,000.00/annually confirmed.

Section 12.07 Security

CCC has set very high standards/rules around security. It will be part of the City's process with the host agreements. Questions were resolved but final vote to be taken at another meeting after Chief Kyes' input. Green Star Herbals security representative offered his expertise in this matter and has also worked with Chief Kyes.

Section 12.11 Prohibitions

A question was raised regarding prohibitions and that medical sales were allowed by law to those under 21 years of age. Commissioners stated that retail sales will not be allowed to those under 21 years of age unless allowed by law which is only medical.

Motion to adjourn meeting at 9:35 p.m. by Rossi, seconded by Bongiovanni and adopted.